FINAL ENVIRONMENTAL IMPACT REPORT

FOR

TONNER HILLS PLANNED COMMUNITY

DEIR 581
SCH 20011031137

VOLUME IA

Draft EIR (Distributed): April 25, 2002
Final EIR (Certified): November 19, 2002
State Clearinghouse No.: SCH 2001031137

FINAL
ENVIRONMENTAL IMPACT REPORT

FOR

TONNER HILLS PLANNED COMMUNITY

Prepared For:

County of Orange
Environmental Planning Services Division
300 N. Flower
Santa Ana CA 92702
(714) 834-3144
Contact Person: Bryan Speegle

Draft EIR Prepared By:

Culbertson, Adams & Associates, Inc.
85 Argonaut, Suite 220
Aliso Viejo CA 92656
(949) 581-2888
Contact Person: M. Andriette Culbertson

January 2003

Draft EIR (Distributed): April 25, 2002
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January 2003

Transcript of Board of Supervisors Meeting 11/19/02

Orange County Planning Commission Resolution #02-10

Orange County Planning Commission Resolution #02-13

Orange County Planning Commission Agenda 10/16/02

Current Planning Services Division Staff Report with Exhibits
- City of Brea Memorandum dated 9/23//97
- Tonner Hills Planned Community Residential Site Development Standards
- Draft Board of Supervisors Resolution for Zone Change ZC 01-01
- Planning Commission Resolution for Tonner Hills Area Plan

Planning & Development Services Division Staff Report dated 10/16/02

Community & Advance Planning Services Division Staff Report dated 10/16/02

Draft Development Agreement between County of Orange and Nuevo Energy Company

Memorandum to Orange County Planning Commission re Updated Mitigation Monitoring Program dated 10/16/02

Memorandum and Errata to Orange County Planning Commission from Manager, Current Planning dated 10/16/02

Statement of Findings and Facts

Statement of Overriding Considerations

Mitigation Monitoring Program

Planning Commission Meeting Minutes 10/16/02

Transcript of Planning Commission Meeting 10/16/02

Planning Commission Meeting Minutes 9/18/02 (Meeting held in Brea)

Current Planning Services Division Staff Report dated 9/18/02

Environmental Planning Services Division Staff Report dated 9/18/02

Notice of Completion and Environmental Document Transmittal

VOLUME I

Volume I contains the Draft Environmental Impact Report (EIR 581) dated April 2002. This volume is bound under separate cover.

VOLUME II

Volume II contains the Technical Appendices. These volumes are bound under separate cover.

VOLUME III

Volume III contains the Responses to Comments for the Draft Environmental Impact Report dated April 2002. This volume is bound under separate cover.

Notice of Determination
Dated November 19, 2002

POSTED

NOV 19 2002

DARLENE J. BLOOM, INTERIM CLERK-RECORDER

By RS DEPUTY

County of Orange
NOTICE OF DETERMINATION

Project Charge Number: PP54045

FILED

NOV 19 2002

DARLENE J. BLOOM, INTERIM CLERK-RECORDER

By RS DEPUTY

TO: Office of Planning and Research
County Clerk, County of Orange

FROM: Planning and Development Services Department

SUBJECT: Filing of Notice of Determination in Compliance with Section 21108 or 21152 of the Public Resources Code

Project Title: Tonner Hills Planned Community DEIR 581	**Type of Document:** Environmental Impact Report
State Clearinghouse Number: 2001031137	**Previously certified or adopted? If yes, provide document number and certification date:** EIR No.
Contact Persons: Project Manager – Bryan Speegle CEQA Project Manager – Chuck Shoemaker	**Telephone:** (714) 834-3144 (714)834-2166
Applicant: Nuevo Energy	**Address: 1021 Main Street, Ste. 2100, Houston TX 77002**
Project Location: NW of intersection of Lambert Rd./Valencia Ave., unincorporated Orange County	
Project Description: Development of a 795 unit master planned community that combines residential, open space, recreational and public use, along with the continued operation of oil and gas production facilities with associated Zone Change, Area Plan.	

Notice is hereby given that the **County of Orange** as lead agency, Environmental Planning Services Division , has made the following determination on the above-described project:

1. The project was approved by the Board of Supervisors on November 19, 2002.
2. The project will ~~not~~ have a significant effect on the environment.
   - ☒ An Environmental Impact Report was prepared for this project pursuant to the provisions of CEQA.
   - ☐ A Negative Declaration was prepared for this project pursuant to the provisions of CEQA.
3. Mitigation Measures **were** incorporated into the project through conditions of approval and project design.
4. For this project a Statement of Overriding consideration was **Adopted.**
5. Findings **were** made pursuant to CEQA Guidelines 15091 (Statement of Facts and Findings).
6. A copy of the **EIR** and the record of the project approval is on file and may be examined at:

Planning & Development Services Department,
Environmental Planning Services Division,
300 N. Flower, Room 321
Santa Ana, California 92702-4048.
(714) 834-5550.

Recorded in Official Records, County of Orange
Darlene Bloom, Clerk-Recorder
2002850014 09 12:40pm 11/19/02
170 52 Z02 Z01
850.00 43.00 0.00 0.00 0.00 0.00 0.00 0.00 893.00

Date: Nov. 19, 2002

Signature: Charles M. Shoemaker

Title: Senior Planner

Fish & Game Fee Finding: EIR - $850.00

Previously Paid Receipt No. (See Attached): _____

JM Revised 10-2-02

Board of Supervisors
Resolution #02-365 dated 11/19/02
Zone Change ZC 01-01

RESOLUTION OF THE BOARD OF SUPERVISORS OF

ORANGE COUNTY, CALIFORNIA

November 19, 2002

WHEREAS, pursuant to California Government Section 65000 et seq., the County of Orange has an adopted General Plan which meets all of the requirements of State Law; and

WHEREAS, pursuant to State Planning and Zoning Law, this Board has reviewed Zone Change ZC 01-01 for the Tonner Hills Planned Community Program and the proposed Development Map and Statistical Summary; and

WHEREAS, the Tonner Hills Planned Community Program and Development Map and Statistical Summary will provide for a maximum of 795 residential dwelling units on approximately 789.8 acres within unincorporated Orange County; and

WHEREAS, in conformance with State Law, legally noticed public hearings for said project and related items were held by the Orange County Planning Commission on September 18, 2002 and October 16, 2002; and

WHEREAS, in conformance with California Environmental Quality Act (California Public Resources Code Section 21000, et seq.), the State CEQA Guidelines (California Administrative Code Section 15000, et seq.), and the County's environmental analysis procedures, the County has prepared EIR No. 581 (State Clearinghouse Number 2001031137) to evaluate the potential environmental impacts of the proposed project; and

WHEREAS, proposed Final EIR 581 has been reviewed and analyzed by the County and reflects the County's independent judgment on the proposed project; and

WHEREAS, the adoption of the Planned Community Program would establish zoning for the Tonner Hills Planned Community area as PC "Planned Community" District; and

WHEREAS, the 789.8 acre project area is located within an area of land currently zoned A1 "General Agricultural" District, with an (O) "Oil Production" District overlay and is located within unincorporated Orange County; and

WHEREAS, a proposed Zone Change (ZC 01-01) has been prepared which will reflect the adoption of the Planned Community Program and the adoption of the PC zoning for the property consistent with the Planned Community Program, and would delete the existing zoning of A1 which provided a General Agricultural designation; and

WHEREAS, Zone Change ZC 01-01 has been considered by the Planning Commission and the Planning Commission has recommended approval by the Board of Supervisors to change the zoning for said 789.8 acres within unincorporated Orange County to PC "Planned Community" District, with an (O) "Oil Production" District overlay (Tonner Hills Planned Community Program) to permit a maximum of 795 residential units; and

WHEREAS, the proposed zone change (ZC 01-01) is consistent with and implements the land use established under the County's General Plan; and

WHEREAS, this Board of Supervisors has reviewed and considered all of the environmental documentation prepared to evaluate the proposed project, including all elements of the EIR and the recommendations of the Planning Commission; and

WHEREAS, this Board of Supervisors has listened to and considered the public comments that were presented to it at all of the public hearings held on this project; and

WHEREAS, this Board of Supervisors has fully considered and reviewed proposed Final EIR 581, including the Comments and Response to Comments; the Zone Change and Planned Community Program; the Planning Commission's recommendation; and all other information presented to it in writing and orally that pertain to the proposed Planned Community Program;

NOW, THEREFORE BE IT RESOLVED, the Board of Supervisors makes and adopts the following findings:

1. General Plan – The use proposed is consistent with the objectives, policies and general land uses and programs specified by the General Plan,

2. General Welfare – The use proposed will not result in conditions or circumstances contrary to the public health and safety and the general welfare and the public interest, health, comfort, convenience, safety, order and general welfare will be served and provided for by the proposal described by this project.

3. CEQA – The approval of the proposed Zone Change are in compliance with the requirements of the California Environmental Quality Act and that the refinements that been made to the Project do not amount to significant new information concerning the Project, nor has any significant new information become known to the Board of Supervisors through the public hearings held on the Project, or through the comments on the Draft EIR and Response to Comments.

4. Mitigation Monitoring – The monitoring requirements of Public Resources Code Section 21081.6 have been met in that a Mitigation Measure Monitoring Program has been adopted.

BE IT FURTHER RESOLVED THAT the Board of Supervisors hereby approves and adopts Zone Change ZC 01-01 in the form presented to the Planning Commission on October 16, 2002 within Planning and Development Services Department staff report.

BE IT FURTHER RESOLVED THAT this Board makes the following findings regarding its intent to adopt the proposed Zone Change:

The Board pursuant to Resolution No. 02-___ (EIR RESO NO.) and through a separate action has certified the Tonner Hills Planned Community EIR No. 581, which analyzes the potential environmental impacts of the proposed project in compliance with CEQA, and has adopted the Statement of Findings and Facts for the proposed project.

BE IT FURTHER RESOLVED THAT the Board of Supervisors approves the Tonner Hills Planned Community Development Map and Statistical Table as described in Zone Change ZC 01-01.

The foregoing was passed and adopted by the following vote of the Orange County Board of Supervisors, on November 19, 2002, to wit:

AYES:	Supervisors:	TODD SPITZER, JAMES W. SILVA, CHARLES V. SMITH THOMAS W. WILSON, CYNTHIA P. COAD
NOES:	Supervisor(s):	
EXCUSED:	Supervisor(s):	
ABSTAINED:	Supervisor(s):	

Cynthia P. Coad
CHAIR

STATE OF CALIFORNIA)
)
COUNTY OF ORANGE)

I, DARLENE J. BLOOM, Clerk of the Board of Orange County, California, hereby certify that a copy of this document has been delivered to the Chair of the Board and that the above and foregoing Resolution was duly and regularly adopted by the Orange County Board of Supervisors .

IN WITNESS WHEREOF, I have hereto set my hand and seal.

Adam Steiler for
DARLENE J. BLOOM
Clerk of the Board
County of Orange, State of California

Resolution No: 02-365

Agenda Date: 11/19/2002

Item No: 93

I certify that the foregoing is a true and correct copy of the Resolution adopted by the Board of Supervisors, Orange County, State of California

DARLENE J. BLOOM, Clerk of the Board of Supervisors

By: _____
Deputy

Board of Supervisors
Resolution #02-366 dated 11/19/02
DEIR 581

RESOLUTION OF THE BOARD OF SUPERVISORS OF

ORANGE COUNTY, CALIFORNIA

November 19, 2002

WHEREAS, the Tonner Hills Project includes, but is not limited to; Draft EIR 581, Zone Change (ZC) 01-01, the Tonner Hills Area Plan, and the Tonner Hills Development Agreement; and

WHEREAS, the County of Orange, as Lead Agency, has carefully reviewed the Initial Study pursuant to the CEQA Guidelines §15064, and on March 27, 2001, the County issued a Notice of Preparation/Initial Study for Draft EIR (DEIR) 581 and caused that Notice of Preparation to be distributed to all responsible agencies, trustee agencies, and interested parties; and

WHEREAS, the County prepared DEIR 581 (State Clearinghouse No. 2001031137), dated April 25, 2002, pursuant to the requirements of CEQA, the CEQA Guidelines, and the County's environmental analysis procedures; and

WHEREAS, the comments on the Notice of Preparation were considered by the County in preparing DEIR 581; and

WHEREAS, a Notice of Completion for the DEIR was filed on April 25, 2002 giving public notice of the availability of the DEIR for review and comment; and

WHEREAS, copies of the DEIR were circulated for public review and comment in accordance with CEQA §21091 for a period of sixty (60) days between April 25, 2002 and June 25, 2002; and

WHEREAS, public comments have been received on the DEIR, and responses to those comments were prepared and provided on September 18, 2002 to the Board of Supervisors in a separately bound document entitled "Responses to Comments" on Draft Environmental Impact Report No. 581 for the Tonner Hills Project; and

WHEREAS, the Planning Commission held noticed public hearings on September 18, 2002 and October 16, 2002 to receive and consider public testimony with respect to DEIR 581 and the Tonner Hills Project; and

WHEREAS, the Planning Commission reviewed all environmental documentation comprising

the Final EIR and recommends that the Board of Supervisors find that the Final EIR considers all environmental effects of the proposed project and is complete and adequate and fully complies with all requirements of CEQA and the CEQA Guidelines; and

WHEREAS, a mitigation monitoring and reporting program has been drafted to meet the requirements of *Public Resources Code* §21081.6 as a Mitigation Measure Monitoring Program. This program is designed to ensure compliance with project changes imposed and mitigation measures imposed to avoid or substantially lessen the significant effects identified in the Final EIR. The mitigation monitoring and report checklist, which is included in the Final EIR and incorporated herein by reference, defines the following for each mitigation measure:

1. Method and Timing for Verification – In each case, a method and time for verification of the mitigation, or review of evidence that mitigation has taken place, is provided. The method and verification points selected are designed to ensure that impact-related components of project implementation are adequately addressed and do not proceed without establishing that the mitigation is assured.
2. Responsible Person – To guarantee that the mitigation measure will not be inadvertently overlooked in connection with the issuance of a later permit, in each case, a supervising a public official is named in the mitigation measure as responsible for ensuring that the mitigation is carried out.
3. Definition of Mitigation – In each case (except where a mitigation, such as a geotechnical report, is a well-known procedure or term of art), the mitigation measure contains the criteria for mitigation, either in the form of adherence to certain adopted regulations or identification of the steps to be taken in mitigation; and

WHEREAS, attached to this Resolution and incorporated herein by reference are Exhibit A, "Findings of Fact", Exhibit B "Statement of Overriding Considerations for the Final Environmental Impact Report No. 581 (SCH #2001031137)," and Exhibit C "Mitigation Monitoring Program."

WHEREAS, Pursuant to *Public Resources Code* §21089, this project requires the filing of California Department of Fish and Game fees in accordance with Section 711.4 of the *Fish and Game Code*.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. This Board of Supervisors has reviewed all environmental documentation comprising the EIR and has found that the EIR considers all environmental effects of the proposed project, and is adequate and complete and fully complies with all requirements of CEQA and the Guidelines.

2. This Board of Supervisors hereby finds that the EIR prepared for the Tonner Hills Planned Community is complete in that it addresses all environmental effects of the proposed project and fully complies with the requirements of the California Environmental Quality Act and CEQA Guidelines for all actions and approvals associated with the development of the proposed project contemplated in the EIR, including the zone change (establishment of the Planned Community, Development Plan, and Program Text), the Area Plan, Site Development Permits, Level A and Level B Maps, Grading Permits, Improvement Plans, Development Permits, Development Agreement, and future annexation, including related actions such as pre-annexation and agreements leading to pre-annexation.

3. This Board of Supervisors finds that the EIR and the findings have identified all significant environmental effects of the project and that there are no known potential environmental impacts not addressed in the EIR.

4. This Board of Supervisors finds that all significant effects of the project are set forth in the Statement of Findings and Facts and the EIR.

5. This Board of Supervisors finds that the EIR has described all reasonable alternatives to the project that could feasibly obtain the basic objectives of the project (including the "No Project" Alternative), even when these alternatives might impede the attainment of project objectives and might be more costly. Further, this Board of Supervisors finds that a good faith effort was made to incorporate alternatives in the preparation of the Responses to Comments as an integral part of the EIR process, and all reasonable alternatives were considered in the review process of the EIR and ultimate decisions on

the project. The Board of Supervisors finds that, in fact, an alternative project is being recommended for adoption based on the EIR and comments thereon.

6. The Board of Supervisors finds, in the case of the Alternative 4 Preferred Plan, that although the EIR identifies certain significant environmental effects that will result if the project is approved, all significant effects that can feasibly be mitigated or avoided have been reduced to an acceptable level by the imposition of mitigation measures on the approved project, with the exception of Air Quality, Agricultural Resources, and Transportation impacts. Although mitigation measures in these areas will substantially lessen these significant impacts, adoption of the measures will not fully avoid them. Therefore, a Statement of Overriding Considerations is required and is attached hereto as Exhibit A.

7. This Board of Supervisors finds that potential mitigation measures or project alternatives not incorporated into the project (including the "No Project/No Development" Alternative) were rejected as infeasible, based upon specific economic, social and other considerations as set forth in the Statement of Overriding Considerations, the EIR, and the administrative record.

8. This Board of Supervisors finds that no substantial evidence has been presented that would call into question the facts and conclusions in the EIR.

9. This Board of Supervisors finds that no significant new information has been added to this EIR pursuant to CEQA Guidelines §15088.5, such that recirculation for additional public review is necessary.

The foregoing was passed and adopted by the following vote of the Orange County Board of Supervisors, on November 19, 2002, to wit:

AYES:	Supervisors:	TODD SPITZER, JAMES W. SILVA, CHARLES V. SMITH THOMAS W. WILSON, CYNTHIA P. COAD
NOES:	Supervisor(s):	
EXCUSED:	Supervisor(s):	
ABSTAINED:	Supervisor(s):	

Cynthia P. Coad
CHAIR

STATE OF CALIFORNIA)
)
COUNTY OF ORANGE)

I, DARLENE J. BLOOM, Clerk of the Board of Orange County, California, hereby certify that a copy of this document has been delivered to the Chair of the Board and that the above and foregoing Resolution was duly and regularly adopted by the Orange County Board of Supervisors .

IN WITNESS WHEREOF, I have hereto set my hand and seal.

DARLENE J. BLOOM
Clerk of the Board
County of Orange, State of California

Resolution No: 02-366

Agenda Date: 11/19/2002

Item No: 93

I certify that the foregoing is a true and correct copy of the Resolution adopted by the Board of Supervisors, Orange County, State of California

DARLENE J. BLOOM, Clerk of the Board of Supervisors

By: _____
Deputy

Board of Supervisors
Resolution #02-367 dated 11/19/02
Development Agreement

RESOLUTION OF THE BOARD OF SUPERVISORS OF

ORANGE COUNTY, CALIFORNIA

November 19, 2002

WHEREAS, Government Code Section 65864 et seq. authorizes the County to enter into binding development agreements to achieve certain public purposes; and

WHEREAS, pursuant to the state authorization cited above, this Board adopted Resolution 02-066 establishing procedures for the processing of development agreements; and

WHEREAS, pursuant to Government Code Section 65300 et seq., the County has adopted a General Plan which provides for residential, commercial, industrial and public facilities to meet the future needs of the County population as projected in adopted population and growth forecasts; and

WHEREAS, this Board has approved Zone Change ZC 01-01 for the Tonner Hills Planned Community on November __, 2002 which allows for the development of the Tonner Hills Planned Community property ("Property") in northeastern Orange County, subject to conditions ("Conditions of Approval") establishing certain obligations including the provision of specified public improvements to ensure that there are not facility and service deficiencies which would impact traffic and other public services as development occurs on the Property; and

WHEREAS, Nuevo Energy Company, a Delaware corporation, on behalf of itself ("Owner"), proposes to enter into a development agreement with the County for the Property which would provide for certain additional public benefits including but not limited to park land, open space, trails, affordable housing, habitat preservation, and public facility improvements, in return for assurance that the planned community development regulations, development plan and other existing land use ordinances and regulations of County will be utilized for a period of twenty years; and

WHEREAS, the proposed Development Agreement provides significant public benefits to the County and the public in addition to those which could be obtained through the existing subdivision process; and

WHEREAS, pursuant to and in accordance with Government Code Section 65867.5, the

proposed Development Agreement provides that any tentative map prepared for the property will comply with the provisions of Government Code Section 66473.7, which requires verification of the availability of a sufficient water supply for the subdivision; and

WHEREAS, the Property is within the sphere-of-influence of the City of Brea ("City"), as established by the Local Agency Formation Commission; and

WHEREAS, among other things, the purpose of the proposed Tonner Hills Development Agreement is to facilitate the near term annexation of the Property by the City by providing the aforementioned assurances to the Owner with respect to their land use entitlements; and

WHEREAS, the County, City, and Owner have entered into a Memorandum of Understanding ('MOU") to facilitate the orderly planning, development, and annexation of the Property; and

WHEREAS, the proposed development agreement together with the MOU will collectively enable the early annexation of the Property; and

WHEREAS, in recognition of the need for assurances and predictability in providing these and other benefits to the County in connection with the proposed Development Agreement, the Owner proposes said Agreement which provides that the regulations guiding the Tonner Hills Planned Community development will be those in effect on the Effective Date of the Agreement and, as related to this project, will not be modified except as set forth in the Agreement during the term thereof; and

WHEREAS, as a result of the County's consideration of the development right to be vested pursuant to the proposed Development Agreement, the proposed Development Agreement requires the Owner to participate in the provision of certain other public services and/or facilities in connection with the development of the Property, as set forth therein; and

WHEREAS, these additional requirements of the proposed development agreement are of significant benefit to the County and the future residents of the Tonner Hills Planned Community; and

WHEREAS, the proposed development agreement reserves to the County all powers reasonably necessary to protect the public health and safety in connection with development of the Tonner Hills Planned Community; and

WHEREAS, County also retains flexibility under the proposed Development Agreement to adopt and apply to the Tonner Hills Planned Community Development Plan future regulations which are not in

conflict with existing land use ordinances; and

WHEREAS, the Planning Commission conducted a duly noticed public hearing on October 16, 2002 to consider the proposed Development Agreement and has recommended approval of the proposed Agreement by this Board pursuant to procedures established with respect to development agreements; and

WHEREAS, this Board has reviewed the proposed Development Agreement with respect to consistency with the Orange County General Plan, applicable zoning regulations, and Resolution No. 02-066; and

WHEREAS, the proposed development agreement contemplates that further environmental studies, analyses, reports and documents may be required in connection with future approvals; and

WHEREAS, the proposed development agreement provides that prior to and as a condition precedent to the construction or development of any public facilities to be constructed and/or funded, in whole or in part, by the Owner, all governmental permits and approvals must be obtained as required by the applicable land use ordinances or other regulations and all environmental studies, analyses, reports and other documents are to be prepared and completed therefore in full and strict compliance with the California Environmental Quality Act (CEQA) and other applicable regulations; and

WHEREAS, this Board conducted a duly noticed public hearing to consider the proposed Development Agreement; and

WHEREAS, the proposed Development Agreement will not subject the County to any additional liability for monetary damages as a result of any assurance or right contained therein or for any other reason;

WHEREAS, this Board considered Final EIR 581 prior to approval of Zone Change ZC 01-01 and the proposed Development Agreement and approved Final EIR 581 for the Zone Change and Development Agreement based upon specific findings in compliance with the California Environmental Quality Act;

NOW, THEREFORE, BE IT RESOLVED that this Board reaffirms that Final EIR 581 is adequate to satisfy the requirements of CEQA for the proposed Development Agreement.

BE IT FURTHER RESOLVED that based upon the foregoing recitals, which are incorporated

herein as findings of this Board, and the following findings, this Board hereby approves the Tonner Hills Development Agreement.

1. The Development Agreement is consistent with the Orange County General Plan, applicable zoning regulations and Board Resolution 02-066.
2. The public benefits that will be provided by Owner, as set forth in Exhibit D of the Development Agreement, which are incorporated herein by reference, serve as consideration for the County entering into this development agreement.

The foregoing was passed and adopted by the following vote of the Orange County Board of Supervisors, on November 19, 2002, to wit:

AYES:	Supervisors:	TODD SPITZER, JAMES W. SILVA, CHARLES V. SMITH THOMAS W. WILSON, CYNTHIA P. COAD
NOES:	Supervisor(s):	
EXCUSED:	Supervisor(s):	
ABSTAINED:	Supervisor(s):	

Cynthia P. Coad

CHAIR

STATE OF CALIFORNIA)
)
COUNTY OF ORANGE)

I, DARLENE J. BLOOM, Clerk of the Board of Orange County, California, hereby certify that a copy of this document has been delivered to the Chair of the Board and that the above and foregoing Resolution was duly and regularly adopted by the Orange County Board of Supervisors .

IN WITNESS WHEREOF, I have hereto set my hand and seal.

COUNTY OF ORANGE CALIFORNIA

DARLENE J. BLOOM
Clerk of the Board
County of Orange, State of California

Resolution No: 02-367

Agenda Date: 11/19/2002

Item No: 95

I certify that the foregoing is a true and correct copy of the Resolution adopted by the Board of Supervisors, Orange County, State of California

DARLENE J. BLOOM, Clerk of the Board of Supervisors

By: _____
Deputy

Board of Supervisors
Ordinance #02-010 dated 11/19/02
Zone Change ZC 01-01

ORDINANCE NO. 02-010

AN ORDINANCE OF THE COUNTY OF ORANGE, CALIFORNIA, AMENDING THE COUNTY OF ORANGE ZONING MAP BY REZONING CERTAIN LAND FROM THE A1(O) DISTRICT TO THE PC (O) DISTRICT, (TONNER HILLS PLANNED COMMUNITY) AND ADOPTING THE TONNER HILLS PLANNED COMMUNITY PROGRAM IN ACCORDANCE WITH THE ZONING CODE OF ORANGE COUNTY. (ZC 01-01)

The Board of Supervisors of the County of Orange, California, ordains as follows:

SECTION 1. The Orange County Zoning Map is hereby amended in accordance with Section 7-9-48, 7-9-49, and 7-9-155 of the Codified Ordinances of the County of Orange by rezoning certain land from the A1 "General Agricultural" District, (O) "Oil Production" District to PC, "Planned Community" District, (O) "Oil Production" District per Zone Change ZC 01-01 as shown in Exhibit A.

SECTION 2. The Tonner Hills Planned Community Program Regulations, Development Map and Statistical Summary Table per Zone Change ZC 01-01, are hereby adopted as described in Exhibit B.

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This ordinance shall take effect and be in full force thirty (30) days from and after its passage and before the expiration of fifteen (15) days after the passage thereof, shall be published once in an adjudicated newspaper in the County of Orange.

THE FOREGOING was **PASSED** and **ADOPTED** by the following vote of the Orange County Board of Supervisors on November 19, 2002 , to wit:

AYES: Supervisors: TODD SPITZER, JAMES W. SILVA, CHARLES V. SMITH
THOMAS W. WILSON, CYNTHIA P. COAD

NOES:
EXCUSED:
ABSTAINED:

Cynthia P Coad

CHAIR

STATE OF CALIFORNIA)
) ss:
COUNTY OF ORANGE)

I, DARLENE J. BLOOM, Clerk of the Board of Orange County, California, hereby certify that a copy of this document has been delivered to the Chair of the Board and that the above and foregoing Ordinance was duly and regularly adopted by the Orange County Board of Supervisors.

IN WITNESS WHEREOF, I have hereto set my hand and seal.

Darlene J. Bloom

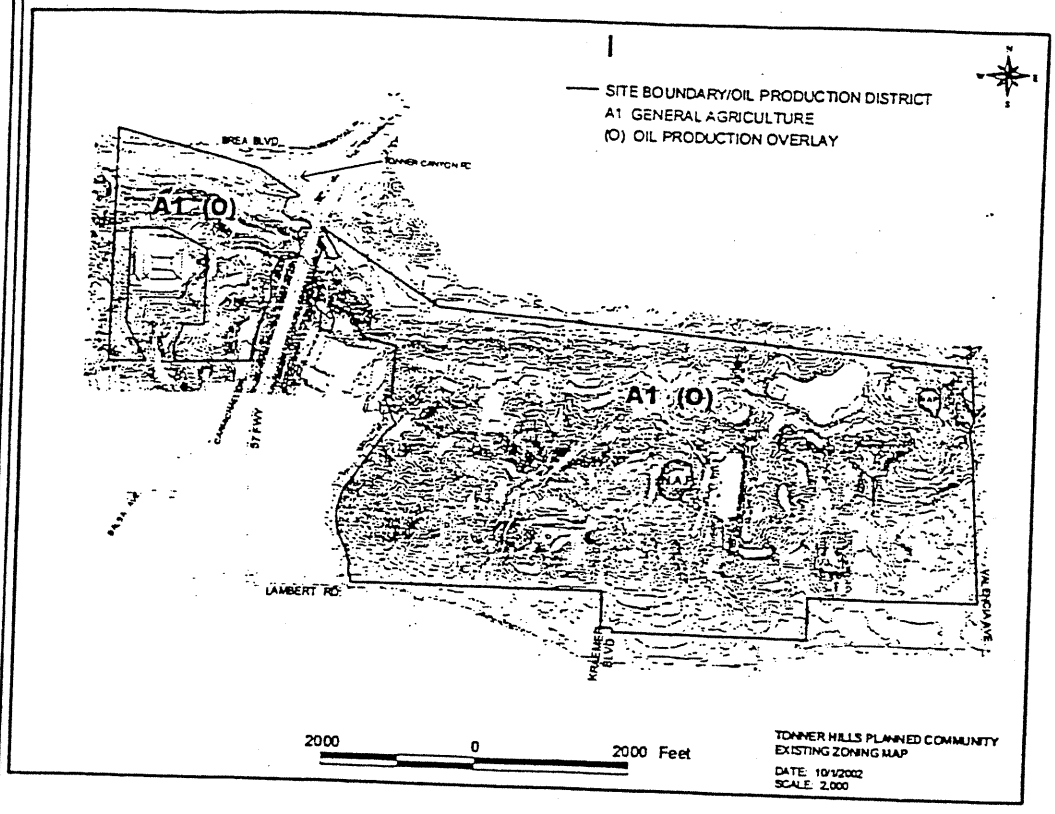
DARLENE J. BLOOM
Clerk of the Board.
County of Orange, State of California

Ordinance No.: 02-010
Agenda Date: 11/19/2002
Item No.: 93

I certify that the foregoing is a true and correct copy of the Ordinance adopted by the Board of Supervisors , Orange County, State of California

DARLENE J. BLOOM, Clerk of the Board of Supervisors

By:_____
Deputy


SITE BOUNDARY/OIL PRODUCTION DISTRICT
A1 GENERAL AGRICULTURE
(O) OIL PRODUCTION OVERLAY
BREA BLVD.
TONNER CANYON RD.
A1 (O)
57 FWY
LAMBERT RD.
KRAEMER BLVD.
VALENCIA AVE.
2000 0 2000 Feet
TONNER HILLS PLANNED COMMUNITY
EXISTING ZONING MAP
DATE: 10/1/2002
SCALE: 2,000

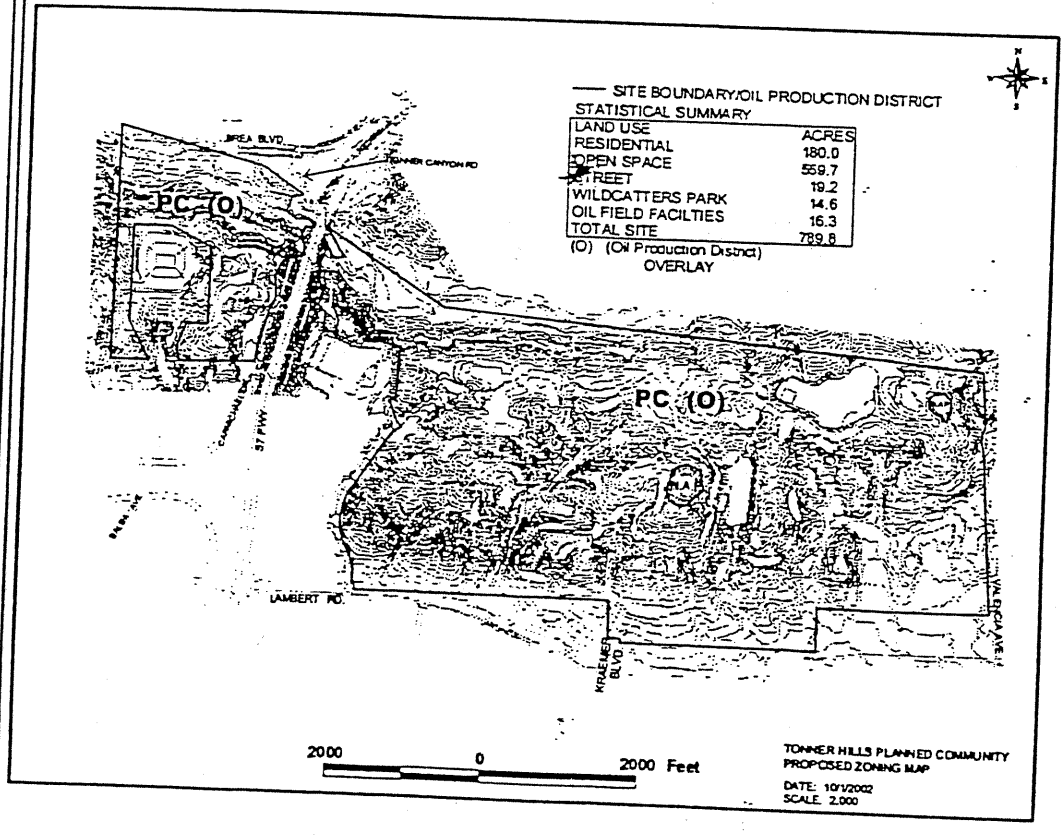

SITE BOUNDARY/OIL PRODUCTION DISTRICT
STATISTICAL SUMMARY
LAND USE | ACRES
RESIDENTIAL | 180.0
OPEN SPACE | 559.7
STREET | 19.2
WILDCATTERS PARK | 14.6
OIL FIELD FACILITIES | 16.3
TOTAL SITE | 789.8
(O) (Oil Production District) OVERLAY
BREA BLVD.
TONNER CANYON RD.
PC (O)
57 FWY
LAMBERT RD.
KRAEMER BLVD.
VALENCIA AVE.
2000 0 2000 Feet
TONNER HILLS PLANNED COMMUNITY
PROPOSED ZONING MAP
DATE: 10/1/2002
SCALE: 2,000

Exhibit A

Board of Supervisors
Ordinance #02-011 dated 11/19/02
Development Agreement DA 2001-1

ATTACHMENT 3

ORDINANCE NO. 02-011

AN ORDINANCE OF THE COUNTY OF ORANGE, CALIFORNIA, APPROVING DEVELOPMENT AGREEMENT 2001-1 FOR THE TONNER HILLS PLANNED COMMUNITY

The Board of Supervisors of the County of Orange, California, does ordain as follows:

SECTION 1. Pursuant to Government Code Section 65867.5 this Board hereby approves Development Agreement 2001-1 for the Tonner Hills Planned Community as considered by the Board on November 19, 2002.

SECTION 2. This Ordinance shall take effect and be in full force thirty (30) days from and after its passage and, before the expiration of fifteen (15) days after the passage thereof, shall be published once in the Orange County Register, a newspaper published in the County of Orange, State of California, together with the names of the members of the Board of Supervisors voting for or against the same.

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This ordinance shall take effect and be in full force thirty (30) days from and after its passage and before the expiration of fifteen (15) days after the passage thereof, shall be published once in an adjudicated newspaper in the County of Orange.

THE FOREGOING was **PASSED** and **ADOPTED** by the following vote of the Orange County Board of Supervisors on November 19, 2002 , to wit:

AYES: Supervisors: TODD SPITZER, JAMES W. SILVA, CHARLES V. SMITH
THOMAS W. WILSON, CYNTHIA P. COAD

NOES:
EXCUSED:
ABSTAINED:

Cynthia P. Coad
CHAIR

STATE OF CALIFORNIA)
) ss:
COUNTY OF ORANGE)

I, DARLENE J. BLOOM, Clerk of the Board of Orange County, California, hereby certify that a copy of this document has been delivered to the Chair of the Board and that the above and foregoing Ordinance was duly and regularly adopted by the Orange County Board of Supervisors.

IN WITNESS WHEREOF, I have hereto set my hand and seal.

Darlene J. Bloom
DARLENE J. BLOOM
Clerk of the Board.
County of Orange, State of California

Ordinance No.: 02-011
Agenda Date: 11/19/2002
Item No.: 95

I certify that the foregoing is a true and correct copy of the Ordinance adopted by the Board of Supervisors , Orange County, State of California

DARLENE J. BLOOM, Clerk of the Board of Supervisors

By:_____
Deputy

Board of Supervisors
Minute Orders
November 19, 2002

ORANGE COUNTY BOARD OF SUPERVISORS

MINUTE ORDER

November 19, 2002

Submitting Agency/Department: PLANNING AND DEVELOPMENT SERVICES

Public Hearing to consider adopting resolution approving Zone Change ZC01-01 (Tonner Hills Planned Community Program Text, development map and statistical summary table); and adopt "An Ordinance of the County of Orange, California, amending the County of Orange zoning map by rezoning certain land from the A1(O) District to the PC (O) District, (Tonner Hills Planned Community) and adopting the Tonner Hills Planned Community Program in accordance with the zoning code of Orange County (ZC 01-01)" - District 3

The following is action taken by the Board of Supervisors:

APPROVED AS RECOMMENDED ☐ OTHER ☒

APPROVED AS AMENDED TO: CERTIFY FINAL EIR 581; ADOPT RESOLUTION APPROVING ZONE CHANGE ZC01-01 (TONNER HILLS PLANNED COMMUNITY PROGRAM TEXT, DEVELOPMENT MAP AND STATISTICAL SUMMARY TABLE); ADOPT AN ORDINANCE ESTABLISHING THE TONNER HILLS PLANNED COMMUNITY ZONING DISTRICT; AND TO AMEND THE PLANNED COMMUNITY REGULATIONS FOR THE PUBLIC USE AREA TO PROHIBIT BUS STORAGE AND MAINTENANCE YARDS

Unanimous ☒ (1) SMITH: Y (2) SILVA: Y (3) VACANT: Y (4) COAD: Y (5) WILSON: Y

Vote Key: Y=Yes; N=No; A=Abstain; X=Excused; B.O.=Board Order

Documents accompanying this matter:

- ☒ Resolution(s) 02-365 - 02-366
- ☒ Ordinances(s) 02-010
- ☐ Contract(s)

Item No. 93

Special Notes:

Copies sent to:
CEO
Planning & Development Services – Marta Crane
Auditor
12/16/02
CEO

I certify that the foregoing is a true and correct copy of the Minute Order adopted by the Board of Supervisors , Orange County, State of California.
DARLENE J. BLOOM, Clerk of the Board

By:_____
Deputy

ORANGE COUNTY BOARD OF SUPERVISORS
MINUTE ORDER
November 19, 2002

Submitting Agency/Department: PLANNING AND DEVELOPMENT SERVICES

Public hearing to consider adopting "An Ordinance of the County of Orange, California, Approving Development Agreement 2001-1 for the Tonner Hills Planned Community"; adopting resolution approving development agreement 2001-1 with Nuevo Energy Company; and making California Environmental Quality Act and other findings - District 3

The following is action taken by the Board of Supervisors:

APPROVED AS RECOMMENDED ☒ OTHER ☐

Unanimous ☒ (1) SMITH: **Y** (2) SILVA: **Y** (3) VACANT: **Y** (4) NORBY: **Y** (5) WILSON: **Y**

Vote Key: Y=Yes; N=No; A=Abstain; X=Excused; B.O.=Board Order

Documents accompanying this matter:

☒ Resolution(s) 02-367
☒ Ordinances(s) 02-011
☐ Contract(s)

Item No. 95

Special Notes:

Copies sent to:

CEO
Planning & Development Services – Bryan Speegle/Alan Gamson
Auditor

1/9/03

I certify that the foregoing is a true and correct copy of the Minute Order adopted by the Board of Supervisors , Orange County, State of California.
DARLENE J. BLOOM, Clerk of the Board

By:_____
Deputy

ORANGE COUNTY BOARD OF SUPERVISORS

MINUTE ORDER

November 19, 2002

Submitting Agency/Department: PLANNING AND DEVELOPMENT SERVICES

Approve Memorandum of Understanding with Brea and Nuevo Energy Company for orderly planning, development, and annexation of proposed Tonner Hills Planned Community property - District 3

The following is action taken by the Board of Supervisors:

APPROVED AS RECOMMENDED ☐ OTHER ☒

APPROVED AMENDED MEMORANDUM OF UNDERSTANDING WITH CITY OF BREA AND NUEVO ENERGY COMPANY REVISING SECTION 1.3 CHANGING THE DEADLINE FOR FILING THE APPLICATION FOR ANNEXATION FROM 1/15/03 TO 1/30/03

Unanimous ☒ (1) SMITH: Y (2) SILVA: Y (3) VACANT: Y (4) COAD: Y (5) WILSON: Y

Vote Key: Y=Yes; N=No; A=Abstain; X=Excused; B.O.=Board Order

Documents accompanying this matter:

- ☐ Resolution(s)
- ☐ Ordinances(s)
- ☐ Contract(s)

Item No. 94

Special Notes:

Copies sent to:

CEO
Planning & Development – Bryan Speegle – / ltr. Mou.
Auditor

12/16/02

I certify that the foregoing is a true and correct copy of the Minute Order adopted by the Board of Supervisors , Orange County, State of California.
DARLENE J. BLOOM, Clerk of the Board

By:_____
Deputy

Orange County Board of Supervisors Agenda
November 19, 2002

A G E N D A

REGULAR MEETING OF THE BOARD OF SUPERVISORS
ORANGE COUNTY, CALIFORNIA

Tuesday, November 19, 2002

BOARD HEARING ROOM, FIRST FLOOR
10 Civic Center Plaza
Santa Ana, California

CYNTHIA P. COAD
CHAIR
Fourth District

THOMAS W. WILSON
VICE CHAIR
Fifth District

CHARLES V. SMITH
SUPERVISOR
First District

JAMES W. SILVA
SUPERVISOR
Second District

TODD SPITZER
SUPERVISOR
Third District

COUNTY EXECUTIVE OFFICER
Michael Schumacher

COUNTY COUNSEL
Benjamin P. de Mayo

CLERK OF THE BOARD
Darlene J. Bloom

The Orange County Board of Supervisors welcomes you to this meeting. This agenda contains a brief general description of each item to be considered. The Board of Supervisors encourages your participation. If you wish to speak on an item contained in the agenda, please complete a Speaker Form identifying the item(s) and deposit it in the Speaker Form Return box located on the side of the podium. If you wish to speak on a matter which does not appear on the agenda, you may do so during the Public Comment period at the close of the meeting. Except as otherwise provided by law, no action shall be taken on any item not appearing in the agenda. Speaker Forms are available in the containers located on the far left and far right walls and at the middle entrance to the Hearing Room. When addressing the Board, please state your name for the record prior to providing your comments. Please address the Board as a whole through the Chair. Comments to individual Supervisors or staff are not permitted. Speakers will be limited to three (3) minutes.

*** The meeting room will accommodate hearing impaired persons. Please see the Clerk for assistance. ***

All supporting documentation is available for public review in the office of the Clerk of the Board of Supervisors located in the Hall of Administration Building, 10 Civic Center Plaza, Room 465, Santa Ana, California 92701 during regular business hours, 8:00 a.m. - 5:00 p.m., Monday through Friday.

9:30 A.M.

INVOCATION: Supervisor Smith, First District

PLEDGE OF ALLEGIANCE: Supervisor Spitzer, Third District

INDEX

I. PRESENTATIONS/INTRODUCTIONS		Page 2
II. CONSENT CALENDAR	(Items 1-74)	Page 2
III. DISCUSSION ITEMS	(Items 75-92)	Page 9
IV. PUBLIC HEARINGS	(Items 93-95)	Page 11
V. CLOSED SESSION	(Items CS-1-CS-5)	Page 11
VI. PUBLIC, BOARD & EMAIL COMMENTS & ADJOURNMENT		Page 12

A G E N D A

I. PRESENTATIONS/INTRODUCTIONS

Chair Coad will be presenting a resolution will be introducing Honorable M. Finbar Hill, Consul General of Ireland

Supervisor Wilson will be presenting a resolution honoring The Irvine Company as title sponsor and Trails4All as host organization of the 6th Annual "Inner-Coastal and Watershed Cleanup Day"

Supervisor Wilson will be presenting a resolution recognizing Crime Prevention Month

Chair Coad will be presenting resolution proclaiming November 2002 as "National Adoption Awareness Month"

Chair Coad will be presenting a resolution proclaiming November 2002 as "Grand Jury Awareness Month"

II. CONSENT CALENDAR (Items 1-74)

All matters are approved by one motion unless pulled by a Board Member for discussion or separate action. At this time, any member of the public may ask the Board to be heard on any item on the Consent Calendar.

BOARD APPOINTMENTS

Chair Coad:

1. Orange County Cemetery Board - Reappoint Frank C. Brix, Sr., Anaheim, for term ending 11/7/06

2. Senior Citizens Advisory Council - Reappoint Leslie Gardner, Anaheim, for term ending 12/31/04 and Yvonne Mitchell, Placentia, for term ending 12/31/03

3. **Supervisor Silva** - Senior Citizens Advisory Council - Reappoint Pat Davis and Dick White, Huntington Beach, for terms ending 12/31/04

4. **Supervisor Wilson** - Animal Control Advisory Board - Appoint Kay Bennett, Santa Ana, for term ending 10/8/04

COMMENDATIONS/PROCLAMATIONS

5. **Supervisor Silva** - Adopt resolution recognizing and congratulating Becky Esparza for her twenty years of dedicated volunteer service

6. **Supervisor Smith** - Adopt resolution commending Chief James I. Cook on his retirement from Westminster Police Department

COMMUNITY SERVICES AGENCY

7. Receive and file 2001-2002 Orange County Human Relations Commission report - All Districts

8. Approve sublease extension #L-1704 with State Department of General Services for office space, for One-Stop Center, Mission Viejo; and make California Environmental Quality Act findings - District 5

A G E N D A

HEALTH CARE AGENCY

9. Approve agreements with Feedback Foundation, Inc. ($89,000), Senior Meals and Services, Inc. ($89,000) and South County Senior Services ($89,000) for Senior Ethnic Meal Pilot Program services, 11/19/02 - 10/31/03 - All Districts

10. Approve agreement with State Department of Alcohol and Drug Programs for Drug Court Partnership Act of 2002 Grant funds, 7/1/02 - 6/30/03 ($408,875) - All Districts

11. Approve price agreement N1000004858 with Info X, Inc. for software maintenance and support for Veri-Claim software for electronic verification of Medi-Cal and Medicare claims, 11/19/02 - 11/18/06 ($144,805) - All Districts

INTEGRATED WASTE MANAGEMENT DEPARTMENT

12. Approve continuance of emergency and make appropriate findings pursuant to Public Contract Code Section 22050(c)(1) for recent sudden and unexpected movement in landslide mass and necessary emergency repair to complete work, Frank R. Bowerman landfill; set review to determine continuing need for emergency action for 12/10/02, 9:30 a.m. and every 14 days thereafter - District 3 *(4/5 vote)* (Continued from 9/10/02, Item 61; 9/24/02, Item 64; 10/8/02, Item 6; 10/22/02, Item 13; 11/5/02, Item 17)

JOHN WAYNE AIRPORT

13. Approve continuance of emergency and make appropriate findings pursuant to Public Contract Code Section 22050(c)(1) for installation of explosion detection systems; set review to determine continuing need for emergency action for 12/10/02, 9:30 a.m. and every 14 days thereafter - District 2 *(4/5 vote)* (Continued from 8/20/02; Item S29C, 8/27/02, Item S57A; 9/10/02, Item 14; 9/24/02, Item 13; 10/8/02, Item 8; 10/22/02, Item 15; 11/5/02, Item 19)

ORANGE COUNTY PUBLIC LIBRARY

14. Authorize submission of grant application to and acceptance of grant award from California State Library for Public Library Staff Education Program, FY 2002-03 ($13,480) - All Districts

15. Approve reduction or repeal of various fines and fees for certain library services, effective 12/2/02; and make California Environmental Quality Act and other findings - All Districts

PLANNING AND DEVELOPMENT SERVICES

16. Receive and file Economic Feasibility Study for proposed Military Museum at the former MCAS Tustin Blimp Hangar - District 3

PUBLIC FACILITIES AND RESOURCES DEPARTMENT

17. Accept work with American Restoration and Construction for replacement of playground and fitness cluster equipment, Yorba Regional Park ($153,816.81); and authorize remaining payment to First National Insurance Company of America - District 3

18. Approve change order 9 with Tait Environmental Management, Inc. for re-installation of soil vapor extraction system, Central Garage, Santa Ana ($19,582; new total $325,222.80) - District 1

19. Authorize Auditor-Controller to issue payment to the Ocean Institute for installation of Stormwater Best Management Practices System, Dana Point Harbor ($205,814) - District 5

20. Accept work with Sandoval Construction for modifications/improvements of facilities for ADA compliance, Dana Point Harbor; project completed 8/30/02 ($88,676.83) - District 5

21. Approve in concept Tustin Avenue widening project; approve Negative Declaration IP00-047; and make California Environmental Quality Act findings - Districts 3 & 4

22. Approve agreement 02-0029C with the State Department of Pesticide Regulation for mandated enforcement of pesticide permit regulations, 7/01/02 - 6/30/03 ($61,705) - All Districts

23. Reject all bids received 10/9/02, for Crescent Basin recreational improvements - District 4

24. Adopt resolution approving grant agreement 02-201-026 with State Boating and Waterways for purchase of four sailboats, Dana Point Harbor Youth & Group Facility; and authorize Director to execute subsequent amendments under certain conditions - District 5

25. Approve price agreement N1000004837 with Joe Rhodes Maintenance Service, Inc. for automated fuel system repair service, 11/20/02 - 11/19/03 ($31,000); renewable for two additional years; and make California Environmental Quality Act findings - All Districts

26. Adopt resolution authorizing submittal of applications for Orange County Transportation Funding Program funds for street improvements, FYs 2003-08; and approve project rankings - All Districts

27. Adopt resolution approving submission of grant application to State Department of Transportation for the Carbon Creek Bikeway project; and authorize Director or designee to execute related documents and subsequent amendments - Districts 2 and 4

Acting as the Orange County Flood Control District:

28. Approve plans and specifications and set bid opening for 12/18/02, 2:00 p.m., for restoration of Serrano Creek Habitat between Bake Parkway and Trabuco Road; and make California Environmental Quality Act findings - District 5

29. Approve agreement to quitclaim easement to Pico La Pata, LLC for construction of retaining wall, Segunda Deshecha Channel ($2830); and make California Environmental Quality Act and other findings - District 5

30. Approve agreement D02-110 with P&D Environmental for on-call capital project resource permit services ($200,000) - All Districts

31. Approve three-year license with J.T. Restaurants, L.P. for restaurant parking, Katella Yard, Anaheim; and make California Environmental Quality Act and other findings - District 4

32. Adopt resolution vacating easements along San Juan Creek; approve and accept easement from KB Home Coastal, Inc. for ingress and egress purposes; and make California Environmental Quality Act findings - District 5

Acting as the Board of Supervisors and Orange County Flood Control District:

33. Approve agreement D02-109 with Keeton Kreitzer for on-call environmental services ($200,000); and authorize Director or designee to execute extensions under certain conditions - All Districts

34. Approve agreement D02-111 with PCR Services Corporation for on-call capital project resource permit services ($200,000); and authorize Director or designee to extend agreement under certain conditions - All Districts

35. Approve amended agreement D98-028 with The Irvine Company for construction of Orchard Estates Retarding Basin - District 3

SOCIAL SERVICES AGENCY

36. Approve amended Wraparound Orange County Plan and Memorandum of Understanding with State Department of Social Services for delivery of wraparound services for child replacement - All Districts

37. Approve amendment 2 to agreement CMM1201 with Foster Assessment Center and Testing Service for Independent Living Skills Program, 12/1/01 - 6/30/03 ($24,100; new total $46,500) - All Districts

38. Approve sublease agreement with Maximus, Inc. for Foster Care Eligibility Program office space, Cypress; and make California Environmental Quality Act findings - District 2

PUBLIC PROTECTION

Probation:

39. Select Community Service Programs as primary and Orange County Youth and Family Services as alternate firms for Juvenile Diversion Program services; and authorize negotiation of agreement for Board approval - All Districts

40. Approve price agreement N1000004853 with L.A. Cha Maintenance Company for janitorial maintenance services, 909 North Main Street, Santa Ana, 12/1/02 - 11/30/03 ($83,830.92); renewable for two additional years - District 1

Sheriff-Coroner:

41. Adopt resolution approving lease agreement with State Department of Forestry and Fire Protection for Sheriff-Coroner on-call helicopter services - All Districts

42. Approve agreement with National University for professional educational services, James A. Musick facility, 12/1/02 - 11/30/04; renewable for three additional years - District 3

43. Approve agreement with Enforcement Support Agency for automated field reporting system ($196,000) - All Districts

44. Select T.M.A.D. Engineers as primary and TOFT WOLFF FARROW, INC. as alternate firms for review and design of electrical, data and conduit requirements for new health management information system; and authorize negotiation of agreement for Board approval - Districts 1 & 3

45. Approve amended price agreement N2000002278 with Exterminetics of Southern California, Inc. for insect, pest and rodent control services at various Sheriff-Coroner, Probation and CEO facilities, term ending 11/3/04 ($10,000 per year; new total $92,900); and authorize purchasing agent to amend agreement under certain conditions - All Districts

46. Approve price agreement N1000004849 with California Service Bureau for warrant reduction services ($40,000); renewable for two additional years - All Districts

GENERAL ADMINISTRATION

Auditor-Controller:

47. Receive and file Report of Refunds for FY 2001-02 - All Districts

48. Receive and file Fund/Agency Semi-Annual Report for FY 2001-02 - All Districts

49. Receive and file Annual Report of Revolving Funds for FY 2001-02 - All Districts

50. Receive and file Annual Report of Cash Difference Funds, Overage Fund and Cash Losses for FY 2001-02 - All Districts

51. **Chair Coad** - Approve Community Social Program Grant funds to Anaheim Family YMCA; approve budget adjustment; and make appropriate findings, 11/19/02 - 5/31/03 ($15,000)

Clerk of the Board:

52. Approve 2003 Board of Supervisors Meeting Schedule - All Districts

53. Approve and adopt proposed amendments to the Conflict of Interest Code for the Orange County Department of Education - All Districts

54. Approve and adopt proposed amendments to the Conflict of Interest Code for the Laguna Beach County Water District - All Districts

55. Approve and adopt proposed amendments to the Conflict of Interest Code for the Santa Ana Unified School District - All Districts

56. Approve and adopt proposed amendments to the Conflict of Interest Code for the Rancho Canada Financing Authority - All Districts

57. Approve and adopt proposed amendments to the Conflict of Interest Code for the El Toro Water District - All Districts

58. Approve and adopt proposed amendments to the Conflict of Interest Code for the Laguna Beach Unified School District - All Districts

59. Approve and adopt proposed amendments to the Conflict of Interest Code for the Irvine Unified School District - All Districts

60. Approve and adopt proposed amendments to the Conflict of Interest Code for the Ocean View School District and the Centralia School District - All Districts

County Counsel:

61. Approve substitution of Resources Law Group, LLP for Beveridge and Diamond to provide litigation services in case of Spirit of the Sage Council v. Babbitt 98-1873 (EGS) D.D.C.; approve agreement with Resources Law Group, LLP for litigation services, effective 3/8/00 - All Districts

62. **Acting as the Board of Supervisors and MCAS EL Toro Redevelopment Authority** - Adopt resolution authorizing County Counsel stipulating to stay all pending litigation between ETRPA and County regarding EIR 563 and EIR 573 - All Districts

County Executive Office:

63. Approve agreement with Hangzhou Hi-tech Zone for exchange and cooperation - All Districts

64. Approve purchase of software and support services from Valicert, Inc ($41,310); approve price agreement N1000004846 with Valicert, Inc. for software maintenance services, 11/19/03 - 11/18/04; renewable for three additional years ($6,885 per year) - All Districts

65. Approve Memorandum of Understanding with Santa Ana and Orange County Transportation Authority for negotiations related to potential acquisition of Fruit Street Parcel - District 1

66. Approve Records Control Schedules 332A - 342A for implementation by Public Facilities and Resources Department; authorize continuing disposition of records in accordance with the schedules; and delete Records Control Schedules 68C, 69C, 70B, 72A, 96C, 99C, 108A, 132A, 133A, 168A, 176A - 179A, 186A - 218A, 230A - 242A, and 264A - 270A - All Districts

67. Approve Records Control Schedules 343A - 344A for implementation by Treasurer-Tax Collector; authorize continuing disposition of records in accordance with the schedules; and delete Records Control Schedules 169B - 175B, and 262A - 263A - All Districts

Supervisor Smith:

68. Approve Community Social Program Grant funds to The Nicholson Pipe Drums Band; approve budget adjustments; and make appropriate findings, 11/19/02 - 6/30/03 ($2,000)

69. Approve Community Social Program Grant funds to Loaves and Fishes Soup Kitchen; approve budget adjustments; and make appropriate findings, 11/19/02 - 6/30/03 ($4,000)

70. Approve Community Social Program Grant funds to Abrazar Community Service and Education Center; approve budget adjustments; and make appropriate findings, 11/19/02 - 6/30/03 ($3,000)

71. Approve Community Social Program Grant funds to Helping Others Prepare for Eternity; approve budget adjustments; and make appropriate findings, 11/19/02 - 6/30/03 ($1,000)

72. Approve Community Social Program Grant funds to The Interval House Crisis Shelters; approve budget adjustments; and make appropriate findings, 11/19/02 - 6/30/03 ($4,000)

73. Approve Community Social Program Grant funds to Mexican American Opportunity Foundation; approve budget adjustments; and make appropriate findings, 11/19/02 - 6/30/03 ($4,000)

74. **Treasurer-Tax Collector** - Approve price agreement N1000004868 with Moody's Investors Service for Investment Grade Corporate and ABCP Credit Research Program, 11/1/02 - 10/31/03 ($35,288.13); renewable for four additional years; and authorize Purchasing Agent to amend agreement under certain conditions - All Districts

END OF CONSENT CALENDAR

III. DISCUSSION ITEMS (Items 75-92)

At this time, members of the public may ask the Board to be heard on the following items as those items are called.

HEALTH CARE AGENCY

75. Approve acceptance of award letter from State Department of Health Services for Local Assistance Funding for Tuberculosis Control and Prevention, 7/1/02 - 6/30/03 ($931,593) - All Districts

76. Approve amendment A-2 to agreement 01-15089 with State Department of Health Services for AIDS related services, 7/1/01 - 6/30/04 ($83,611; new total $9,453,607) - All Districts

HOUSING AND COMMUNITY DEVELOPMENT

77. **Acting as the Orange County Housing Authority** - Approve amendments to regulatory agreement declaration of restrictive covenants loan agreement and promissory note with Costa Mesa Village Ltd. for restructuring of the Orange County Housing Authority loan; authorize director or designee to execute related documents; and make California Environmental Quality Act and National Environmental Policy Act findings - District 2

78. **Acting as the Board of Supervisors and Orange County Development Agency** - Approve amended cooperative agreement with Cypress for design, construction and maintenance of Belmont Street, Merten Avenue and Sumner Place; adopt resolution declaring portions as County Highways for right-of-way and construction purposes; approve Right of Entry form; approve reprogramming of Community Development Block Grant funds; and make California Environmental Quality Act and other findings; and **Acting as Orange County Development Agency** - make appropriate findings - District 2

INTEGRATED WASTE MANAGEMENT DEPARTMENT

79. Approve amended price agreement N1000004106 with Safety-Kleen (California), Inc. for household hazardous waste collection, packing, transportation and disposal services, effective 9/6/02; approve assignment of agreement from Safety-Kleen (California), Inc. to clean Harbors Environmental Services, Inc.; and authorize Auditor-Controller to refund security deposit to Safety-Kleen, Inc. ($1,190,000) - All Districts

JOHN WAYNE AIRPORT

80. Select a primary and alternate firm from ranked list for operation of parking facilities and courtesy shuttle bus services; and make California Environmental Quality Act and other findings - District 2

PUBLIC FACILITIES AND RESOURCES DEPARTMENT

81. Second reading and adoption of "An Ordinance of the County of Orange, California Adding Sections 5-6-100 Through 5-6-129, Pertaining to Cable Television and Customer Service Standards" - All Districts (Continued from 11/5/02, Item 90)

82. Approve continuance of emergency and make appropriate findings pursuant to Public Contract Code Section 22050(c)(1) for installation of negative pressure, HEPA filtered mechanical system, Health Care Agency Public Health Laboratory; set review to determine continuing need for emergency action for 12/10/02, 9:30 a.m. and every 14 days thereafter - District 1 *(4/5 vote)* (Continued from 11/5/02, Item 92)

83. Ratify execution of Acquisition Contract for purchase of Barham Ranch from Orange Unified School District for addition to Santiago Oaks Regional Park ($4,593,000) - District 3

84. Approve the dissolution of County Services Areas No. 4 and 25, disbursement of fund balances to Aliso Viejo; and approve related budget adjustments - District 5

85. Approve price agreement N1000004659 with Waters and Faubel for implementation of public and education element, Orange County Municipal Stormwater Program ($780,000); renewable for two additional years - All Districts

86. **Acting as the Orange County Flood Control District** - Select Epic Land Solutions, Inc. and Overland Resources, Inc. as primary and Paragon Partners Ltd. as alternate firms for on-call real estate services, Prado Dam acquisition project; and authorize negotiation of agreement for Board approval - All Districts

87. **Acting as the Board of Supervisors and Orange County Flood Control District** - Select Huitt-Zollars, Inc., Towill, Inc. and The Keith Companies as primary and Johnson-Frank & Associates, Inc., David Evans and Associates and Psomas and Associates as alternate firms for on-call surveying services, Prado Dam acquisition and various projects; and authorize negotiation of agreements for Board approval - All Districts

PUBLIC PROTECTION

Sheriff-Coroner:

88. Approve amendment 5 to agreement with Villa Park for law enforcement services, 7/1/02 - 6/30/03 - District 3

89. Approve amendment 7 to Agreement with Stanton for law enforcement services, 7/1/02-2/12/03 ($3,547,049) - District 2

90. Ratify emergency purchase order PC 060 L0019330.03 public works project with LAD Construction, Inc. for replacement of water-damaged walls and floors to stop water leakage from dishwashing operations and to correct unhealthful and unsafe conditions, Theo Lacy Jail kitchen ($215,000); set review on 12/10/02, 9:30 a.m., and every 14 days thereafter; and make appropriate findings - District 3

91. Approve price agreement N1000004861 with Southwest Mortuary Services for on-call body transport services, 12/1/02 - 11/30/03 ($300,000); renewable for four additional years - All Districts

GENERAL ADMINISTRATION

92. **Assessor Department** - Approve agreement with State Department of Finance for participation in State County Property Tax Administration Grant Program for FY 2002-03; establish Fund 127 for budgetary and accounting purposes - All Districts (RA 4 4/5)

A G E N D A

IV. PUBLIC HEARINGS (Items 93-95)

PLANNING AND DEVELOPMENT SERVICES

93. Public Hearing to consider adopting resolution approving Zone Change ZC01-01 (Tonner Hills Planned Community Program Text, development map and statistical summary table); and adopt "An Ordinance of the County of Orange, California, amending the County of Orange zoning map by rezoning certain land from the A1(O) District to the PC (O) District, (Tonner Hills Planned Community) and adopting the Tonner Hills Planned Community Program in accordance with the zoning code of Orange County (ZC 01-01)" - District 3

94. Approve Memorandum of Understanding with Brea and Nuevo Energy Company for orderly planning. development, and annexation of proposed Tonner Hills Planned Community property - District 3

95. Public hearing to consider adopting "An Ordinance of the County of Orange, California, Approving Development Agreement 2001-1 for the Tonner Hills Planned Community"; adopting resolution approving development agreement 2001-1 with Nuevo Energy Company; and making California Environmental Quality Act and other findings - District 3

V. CLOSED SESSION (Items CS-1-CS-5)

GENERAL ADMINISTRATION

County Counsel:

CS-1. CONFERENCE WITH LEGAL COUNSEL - PENDING LITIGATION: County Counsel requests a closed session to discuss with the Board of Supervisors the status of pending litigation pursuant to Government Code Section 54956.9(a). The case is: Frances Swick v. County of Orange, WCAB Case No. ANA 330965 - All Districts

CS-2. CONFERENCE WITH LEGAL COUNSEL - PENDING LITIGATION: County Counsel requests a closed session to discuss with the Board of Supervisors the status of pending litigation pursuant to Government Code Section 54956.9(a). The case is: Jerry Krans v. County of Orange, WCAB Case No. AHM 0073334; AHM 0073335 - All Districts

CS-3. CONFERENCE WITH LEGAL COUNSEL - PENDING LITIGATION: County Counsel requests a closed session to discuss with the Board of Supervisors the status of pending litigation pursuant to Government Code Section 54956.9(a). The case is: Louis Granieri v. County of Orange, WCAB Case No. ANA 0359651 - All Districts

CS-4. CONFERENCE WITH LEGAL COUNSEL - PENDING LITIGATION: County Counsel requests a closed session to discuss with the Board of Supervisors the status of pending litigation pursuant to Government Code Section 54956.9(a). The case is: The Lincoln Club of Orange County, et al. v. City of Anaheim, et al., United States District Court, Central District. Case No. SACV02-874 GLT (MLGx) - All Districts

CS-5. CONFERENCE WITH LEGAL COUNSEL - PENDING LITIGATION: County Counsel requests a closed session to discuss with the Board of Supervisors the status of pending litigation pursuant to Government Code Section 54956.9(a). The cases are: County of Orange v. Beardslee, et al., OCSC Case No. 02CC11376; County of Orange v. Hendon One et al., OCSC Case No. 02CC11379; County of Orange v. Parker et al., OCSC Case No. 02CC11381; County of Orange v. Schwendeman et al., OCSC Case No. 02CC11385; County of Orange v. Trabuco Canyon Water Dist. et al., OCSC Case No. 02CC11383; County of Orange v. Trabuco P.W.T. et al., OCSC Case No. 02CC11386; County of Orange v. T-Y Nursery et al., OCSC Case No. 02CC11387; County of Orange v. Yasutake et al., OCSC Case No. 02CC11388 - All Districts

VI. PUBLIC, BOARD & EMAIL COMMENTS & ADJOURNMENT

PUBLIC COMMENTS:

At this time, members of the public may address the Board of Supervisors regarding any off-agenda items within the subject matter jurisdiction of the Board of Supervisors provided that NO action may be taken on off-agenda items unless authorized by law. Comment shall be limited to three minutes per person and twenty minutes for all comments, unless different time limits are set by the Chair subject to the approval of the Board.

BOARD COMMENTS:

At this time, members of the Board of Supervisors may comment on agenda or non-agenda matters and ask questions of or give directions to staff; provided that NO action may be taken on off-agenda items unless authorized by law.

ADJOURNED:

NEXT MEETINGS:

November 26, 2002	**Canceled Meeting**
December 3, 2002	**Canceled Meeting**
December 10, 2002	**Regular Meeting**

Agenda Staff Report
November 19, 2002
Tonner Hills Planned Community

Agenda Item

AGENDA STAFF REPORT

ASR Control 02-000549

MEETING DATE:	11/19/02
LEGAL ENTITY TAKING ACTION:	Board of Supervisors
BOARD OF SUPERVISORS DISTRICT(S):	3
SUBMITTING AGENCY/DEPARTMENT:	Planning and Development Services (Approved)
DEPARTMENT CONTACT PERSON(S):	Marta Crane 834-5144 George Britton 834-5312, Chuck Shoemaker 834-2166

Subject: Tonner Hills Planned Community

CEO CONCUR	County Counsel Review	CLERK OF THE BOARD
Concur	Approved Ordinance to Form	Public Hearing 3 Votes Board Majority

Budgeted: N/A **Current Year Cost:** N/A **Annual Cost:** N/A

Staffing Impact: No **# of Positions:** **Sole Source:** No

Current Fiscal Year Revenue: N/A

Funding Source: N/A

Prior Board Action: No

RECOMMENDED ACTION(S)

1. Conduct Public Hearing.
2. Certify Final EIR 581 for the project.
3. Adopt Board of Supervisor Resolution approving Zone Change ZC01-01 (Tonner Hills Planned Community Program Text, Development Map and Statistical Summary Table);
4. Adopt an Ordinance establishing the Tonner Hills Planned Community Zoning District.

SUMMARY:

On October 9 and 16, 2002, the Orange County Planning Commission held duly noticed public hearings on Planning Application PA 01-0009, and acted to Certify Draft Final EIR 581 for the project and recommended its certification by the Board of Supervisors; and subsequently acted to approve the Area Plan for the Tonner Hills Planned Community project, subject to Board of Supervisors approval of Zone Change ZC01-01; and recommended approval of the draft Ordinance establishing the Tonner Hills Planned Community by the Board of Supervisors.

BACKGROUND INFORMATION:

The applicant, Nuevo Energy Company, proposes to develop a planned community on a 789.8 acre site, located in the northernmost area of unincorporated Orange County, within the sphere of influence (SOI) of the City of Brea.

The project site is comprised of three oil and gas producing properties owned entirely by the Nuevo Energy Company. The majority of the project site (681 acres or 86 %) is located east of the Orange Freeway (SR 57), with a small portion (108 acres, or 14%) located west of the freeway, at the northerly terminus of Carmichael Drive.

The proposed development as presented in the project documents, which include an Area Plan and a Planned Community Program Text (PC Text), consists of the following (Exhibits 4 and 5):

1. A maximum of 795 residential dwelling units within approximately 180 acres - Residential Planning Areas 1-7
2. 14.6 acres of Local Park Land – Planning Area 8
3. Approximately 559.7 acres of Open Space with continued and new oil production activities – Planning Areas 10-12
4. 21.5 acres of Open Space/Public Use area – Planning Area 9
5. Approximately 16.3 acres of existing oil facilities – Tonner Tank Farm and Main Oil Operations Facility.

The proposed regulations contained in the PC Text establish the authority and procedures necessary for the orderly development of the Tonner Hills property. These regulations contain zoning requirements such as permitted uses, lot size, setbacks, building height, etc. They will require discretionary approval of Area Plans and/or Site Development Permits prior to approval of any subdivision map or residential development. All Area Plans will require review and approval by the Planning Commission. Additionally, the proposed regulations designate the City of Brea as an official review body with a 30 day review period prior to action on discretionary permits.

In conjunction with the zone change, the Tonner Hills project includes an Area Plan that will direct the initial phase of development, allowing preliminary mass grading of the site. This Area Plan was unanimously approved by the Planning Commission at its October 16, 2002 public hearing (Exhibits 1 and 2).

CEQA

Nuevo Energy submitted a development proposal for 914 dwelling units with the County of Orange in January 2001, after withdrawing an application in November 2000 that had been on file with the City of Brea since December 1998. This withdrawal occurred prior to a November 2000 election, which included a City ballot measure that, if passed, would have affected the processing of development projects within the City.

The County issued a Notice of Preparation (NOP) on March 27, 2001 as a first indication of its intent to prepare an EIR to address the potential environmental impacts associated with the applicant's proposal. On April 26, 2001 the County conducted and EIR scoping meeting in the City of Brea at Brea Olinda High School. The NOP period ended on May 9, 2001.

On April 25, 2002, the County of Orange released Draft EIR 581 (SCH # 2001031137) for a 45-day public review period. The public comment period was scheduled to end on June 10, 2002. However, it was extended to 60 days and ended on June 25, 2002. Prior to the close of the public comment period, the County received over 60 pieces of correspondence transmitting comments on the project. Many comments focused on wildlife movement, residential density, traffic, and biological habitat concerns.

As the applicant and staff reviewed the concerns, it became evident that additional refinements could be

incorporated into the applicant's plan that could further reduce some project impacts and respond to comments from various sources. The refinements made to the Tonner Hills project included: The elimination of Tonner Hills Road, which provided secondary access to the project site but bifurcated a wildlife corridor; the reduction in the number of dwelling units from 914 to 795 units; the elimination of the 7.7 acre commercial site; the expanded preservation of an area referred to as Cable Canyon; _a greater pull back of development from the ridgelines along the northern development edge; and the preservation of a wildlife corridor which provides linkage to larger open space areas to the east and west of the Tonner Hills project site.

The Planning Commission heard testimony regarding the proposed refinements and public comments regarding still greater project revisions. The Commission considered all testimony and materials provided to them. They determined that the impacts of the Tonner Hills project had been adequately addressed in the draft EIR and the project alternatives. The key project alternative is Alternative 4, "The City of Brea Alternative". The Planning Commission certified the EIR for Alternative 4 and recommends certification of Final EIR 581 by the Board of Supervisors (Exhibit 3).

Conclusion

The development proposal has been the subject of a number of pre-annexation meetings facilitated by the County of Orange CEO's office between the applicant, the City of Brea, and the County Planning & Development Services Department. A number of significant revisions to the scale of the development plan occurred in response to the comments received on the DEIR 581 from the public and various reviewing agencies, and as a result of these joint meetings. The final documents submitted for the Board of Supervisor's consideration are the outcome of consensus building reached during the review process, with input from County staff, the City of Brea and the community at large. The final project as proposed, and its regulatory documents have embraced the spirit of the City's vision. In addition, the project includes public benefits in the form of commitment of 10% of the total dwelling units as low income affordable housing; dedication of a minimum of 559.7 acres of open space; 21.5 acres of public use land, and trails and wildlife corridors. These benefits and the phasing of the project are included in the Tonner Hills Development Agreement submitted as a separate item for Board's consideration.

REVIEWING AGENCIES:

County Counsel

EXHIBIT(S):

1. Draft Planning Commission 10/16/2002, Meeting Minutes;
2. Planning Commission Staff Reports;
3. Draft Final EIR 581;
4. Draft Planned Community Program Text.
5. Area Plan and Planning Commission Resolution No. 02-10 adopted on October 16, 2002.

ATTACHMENT(S):

1. Draft Resolution Certifying EIR 581 including
Attachment A. Statement of Facts and Findings;
Attachment B. Overriding Considerations, and
Attachment C. Mitigation Monitoring and Reporting Program
2. Draft Resolution approving Zone Change ZC 01-01.
3. Draft Ordinance adopting the Tonner Hills Planned Community Program Text.

Agenda Staff Report
November 19, 2002
Tonner Hills Development Agreement DA 2001-1

Agenda Item

AGENDA STAFF REPORT

ASR Control 02-000587

MEETING DATE:	11/19/02
LEGAL ENTITY TAKING ACTION:	Board of Supervisors
BOARD OF SUPERVISORS DISTRICT(S):	3
SUBMITTING AGENCY/DEPARTMENT:	Planning and Development Services (Approved)
DEPARTMENT CONTACT PERSON(S):	Bryan Speegle (714) 834-3144 Harry Persaud (714) 834-3669

Subject: Tonner Hills Development Agreement DA 2001-1

CEO CONCUR	**County Counsel Review**	**CLERK OF THE BOARD**
Concur	Approved Agreement to Form	Public Hearing 3 Votes Board Majority

Budgeted: N/A **Current Year Cost:** N/A **Annual Cost:** N/A

Staffing Impact: No **# of Positions:** **Sole Source:** No

Current Fiscal Year Revenue: N/A

Funding Source: N/A

Prior Board Action: None

RECOMMENDED ACTION(S)

1) Read title of Ordinance (Attachment 3)

2) Order further reading of the Ordinance be waived

3) Conduct Public Hearing

4) Adopt draft Resolution approving DA 2001-1 (Attachment 2)

5) Adopt Ordinance approving DA 2001-1

SUMMARY:

The Planning & Development Services Department requests approval of a Development Agreement (DA 2001-1) proposed by Nuevo Energy Company (Landowner) for the Tonner Hills Planned Community.

BACKGROUND INFORMATION:

The Tonner Hills Planned Community and Development Plan (Zone Change ZC 01-01) and Memorandum of Understanding (MOU) are scheduled for your Board's consideration on Novemeber 19, 2002 concurrently with the recommended Development Agreement 2001-1. Board action on the Development Agreement would occur subsequent to an action by your Board approving Final Environmental Impact

Report (FEIR) 581 (which addresses CEQA compliance for the zone change and development agreement) and ZC 01-01. The zone change, MOU, and development agreement are reflected as separate agenda items on the November 19, 2002 Board Agenda.

On October 16, 2002, the Orange County Planning Commission recommended your Board approve a Draft Board of Supervisors Resolution and Development Agreement for the Tonner Hills Planned Community that is substantially consistent with the proposed development agreement considered by the Planning Commission. In compliance with the Planning Commission action, the Board of Supervisors Resolution and Development Agreement 2001-1 are provided for your Board's consideration as Attachment 2 and 1, respectively.

The Tonner Hills property is located in the City of Brea's sphere of influence. The Development Plan will permit up to 795 dwelling units and 559.7 acres of open space with continued oil production activities. The Development Agreement ("DA") will apply to the 789-acre Tonner Hills Planned Community property ("Property"). The DA will grant entitlements to the landowner, Nuevo Energy Company, for the build out of the Tonner Hills Planned Community for a twenty-year term without new County-imposed regulations in consideration of: 1) the phased annexation of the Property, 2) certain financial commitments to the County for park and trail improvements, law enforcement, library, child care facilities or services as well as the Art in Public Places Program and the County's General Plan, and 3) provision of affordable housing and dedication of open space, park land, trails and wildlife corridor.

Government Code Sections 65864-65869.5 permit the County to enter into a development agreement with the landowner to establish a contract for land use development which runs with the land and is binding upon the parites for a determinate time according to the terms and conditions in the agreement. On September 15, 1987, your Board authorized the Environmental Management Agency with the assistance of the County Administrative Office and County Counsel, to negotiate development agreements. On Mar 19, 2002, your Board approved Resolution 02-066, which established revised procedures for the proces and implementation of development agreements. The recommended DA and its processing are consistent with the procedures set forth in Board Resolution 02-066.

In negotiating the DA, staff has focused on obtaining public benefits which would benefit the citizens of Orange County and the future residents of the Property. Those public benefits are described in detail in Exhibit D of the DA (Attachment 1). Collectively they provide for substantial public benefits, which would not have otherwise been realized, if the Property were annexed prior to actually being developed. These benefits support important County planning objectives as well as County facilities and/or services. The DA also acknowledges and anticipates the near-term phased annexation of the Property to the City of Brea.

Notice of Public Hearing:

Notice of the Board of Supervisors hearing was published in the November 9, 2002 edition of The Orange County Register.

Compliance with CEQA:

Final EIR 581 addresses the proposed project. The Final EIR is provided for your Board's consideration together with Zone Change ZC 01-01. Prior to approval of the zone change and DA, your Board must approve the Final EIR. A separate Board of Supervisors Resolution addressing CEQA compliance and approving Final EIR 581 is provided with ZC 01-01 for your Board's consideration. In addition, the recommended Board of Supervisors Resolution (Attachment 2) _approving the DA, affirms that Final 581 is adequate to satisfy the requirements of CEQA for the DA.

REVIEWING AGENCIES:

County Executive Office
County Counsel

ATTACHMENT(S):

1) Development Agreement 2001-1
2) Board of Supervisors Resolution
3) Ordinance

Agenda Staff Report
November 19, 2002
Tonner Hills Memorandum of Understanding

Agenda Item

AGENDA STAFF REPORT

ASR Control 02-000588

MEETING DATE:	11/19/02
LEGAL ENTITY TAKING ACTION:	Board of Supervisors
BOARD OF SUPERVISORS DISTRICT(S):	3
SUBMITTING AGENCY/DEPARTMENT:	Planning and Development Services (Approved)
DEPARTMENT CONTACT PERSON(S):	Bryan Speegle (714) 834-3144 Harry Persaud (714) 834-3669

Subject: Tonner Hills Memorandum of Understanding

CEO CONCUR	County Counsel Review	CLERK OF THE BOARD
Concur	Approved Agreement to Form	Public Hearing 3 Votes Board Majority

Budgeted: N/A **Current Year Cost:** N/A **Annual Cost:** N/A

Staffing Impact: No **# of Positions:** **Sole Source:** No

Current Fiscal Year Revenue: N/A

Funding Source: N/A

Prior Board Action: None

RECOMMENDED ACTION(S)

Approve Memorandum of Understanding with City of Brea and Nuevo Energy Company

SUMMARY:

The Planning & Development Services Department requests approval of a Memorandum of Understanding by and among the County of Orange, City of Brea, and Nuevo Energy Company to provide for the orderly planning, development, and annexation of the proposed Tonner Hills Planned Community property.

BACKGROUND INFORMATION:

The Tonner Hills property consists of 789-acres located in the City of Brea's sphere of influence. The landowner, Nuevo Energy Company ("Nuevo"), has been negotiating with the County and City of Brea ("City") concerning the orderly planning, development and annexation of the Tonner Hills property ("Property"). The proposed Memorandum of Understanding ("MOU") memorializes the agreement of the County, City and Nuevo concerning the Property. The MOU provides clarification and direction concerning: 1) regulatory authority governing planning and development of the Property, 2) discretionary approval responsibilities, 3) annexation of the Property, 4) affordable housing requirements, and 5) other responsibilities of the parties.

As part of the planning process, Nuevo has filed Zone Change ZC 01-01 and Development Agreement DA 2001-1 in an effort to secure entitlements to build residential units on a portion of the Tonner Hills

property. In addition to the proposed MOU, both ZC 01-01 and DA 2001-1 are scheduled for your Board's consideration on November 19, 2002.

Notice of Public Hearing:

Notice of the Board of Supervisors hearing was published in the November 9, 2002 edition of The Orange County Register.

Compliance with CEQA:

The proposed project is covered by draft Final Environmental Impact Report No. 581 (SCH 2001031137) prepared in accordance with the requirements of CEQA for the Tonner Hills project and attendant approvals.

REVIEWING AGENCIES:

County Executive Office
County Counsel

ATTACHMENT(S):

Tonner Hills Memorandum of Understanding

Supplemental Transmittal
To Board of Supervisors
November 15, 2002

County of Orange
Planning & Development Services Department

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Supplemental Transmittal
Agenda Items Nos. 93, 94 and 95
November 19, 2002 Agenda

DATE: November 15, 2002

TO: Clerk of the Board

FROM: Director, Planning and Development Services Department

SUBJECT: Board of Supervisors November 19, 2002 Agenda – Items Nos. 93, 94 and 95 for Tonner Hills EIR, Zone Change and Related Projects

This supplements the reports for Item 93 the Final EIR 581, Item 94 the Memorandum of Understanding for the Tonner Hills Planned Community, and Item 95 the Development Agreement for the Tonner Hills Planned Community.

Final EIR 581- Intersection Data:
At the October 16, 2002 Planning Commission hearing, Ms. Diane Taylor stated that the traffic conditions at the intersection of Lambert Road – Carbon Canyon Road/Valencia described in the Tonner Hills EIR, the Hover Project EIR and the Brea Sports Park EIR (the latter two are City of Brea EIRs projects) were inconsistent. Traffic consultants reviewed the EIRs and determined there is no conflict among the documents. The Tonner Hills EIR utilized a conservative analysis of the potential impacts and offered specific traffic mitigation at the specified locations. (Attachment 1)

Final EIR 581- Errata:
The second attachment is "Errata to Tonner Hills Planned Community Responses to Comments and Draft EIR No. 581." This attachment outlines for ease of reference the minor corrections, which have been incorporated in the Final EIR.

Final EIR 581- Mitigation Measure H-21:
The third attachment is a statement that the intent of Mitigation Measure H-21 (page 43 of the CEQA Statement of Facts and Findings, Exhibit A of the Draft Board of Supervisors Resolution) applies only within development areas. The mitigation measure does not permit trenches for underground lines in the open space areas of the project. The mitigation measure applies only to areas subject to "site plans." Site plans are only required for development areas such as, Planning Areas 1 through 7 of the proposed Planned Community. The undergrounding of oil and gas lines in these areas is to promote safety and land use compatibility.

Supplemental Transmittal
Agenda Items Nos. 93, 94 and 95
November 19, 2002 Agenda

Item 94 – Memorandum of Understanding (MOU):
In an e-mail on November 12, 2002, the City of Brea staff submitted late comments on the MOU between the County, City of Brea and the applicant. The MOU sets assumptions intended to lead to a pre-annexation agreement and annexation of the site. Attachment 4 includes the MOU with revisions proposed by staff and the applicant to respond to the City's comments.

In four instances, staff disagrees with City comments:

1. Section 1.3 of the MOU: The City staff proposes to delete the requirement that the City execute a pre-annexation agreement and annex the property, and substitute a wholly new and different provision never discussed during the six months of negotiations on the MOU. The City staff's proposed deletion would effectively relieve the City of compliance with the MOU by allowing the City not to annex the site. PDSD proposes that the Board approve the City's late addition to Sec. 1.3, but we recommend that the requirement of a deadline for City approval of the pre-annexation agreement be retained in the MOU as shown in Attachment 4.

2. The City proposes that funding for the Sheriff Department ($400 per unit) for countywide facilities and service be diverted to the City. The funding is required by Board policy on Development Agreements to mitigate regional Sheriff Department needs. The City's request should therefore be denied.

3. The City staff's e-mail alleges that the MOU somehow anticipates or permits (a) an acquisition of the public use area by the Brea Olinda School District for a bus yard and (b) that the County and applicant agreed to lighted sports fields a the local park. Neither of these statements is accurate. The proposed Tonner Hills regulations and plans do not permit either proposal. The MOU does not anticipate or permit these uses or facilities.

4. Finally, the City staff's e-mail states:

   > "City staff is aware of the past difficulties associated with this project and have made every effort to maintain a positive, constructive approach to this most recent effort to cooperate and coordinate the review of this project, as called for in the LAFCO/County/BIA SOI resolution. These most recent events have undermined the information we have presented to our elected officials and damage the credibility of the process. The attached MOU revisions are our attempt to provide certainty regarding the high expectations for this project to be an asset to the Brea community and to allow for future acquisition of open space areas where feasible."

   In response, this statement is misleading and implies that the County staff and applicant are the source of the past difficulties associated with this project. In addition, the City staff continue to misstate the policies of the Sphere of Influence Guidelines and imply that County staff and the applicant have not complied with the Guidelines. PDSD categorically denies the accuracy and

implications of the City staff's statement. Finally, the most recent events (See 2 above) were caused by the School District's actions not the County or the applicant. As noted above, the City's staff's proposed deletion of a deadline for a pre-annexation agreement in Section 1.3 would effectively relieve the City of compliance with the MOU while leaving all the County and applicant requirements. No further changes to the MOU are justified.

Item 95 – Tonner Hills Development Agreement: Attachment 5 is the revised Tonner Hills Development Agreement text with errata changes (excluding Exhibits). This document, which includes minor changes to the development agreement text, replaces the development agreement text provided previously as Attachment 1 to the Agenda Staff Report for Agenda Item No. 95.

There are no changes to Attachments 2 and 3 to the Agenda Staff Report for this item.

SUPPLEMENTAL RECOMMENDATIONS:

Item 93: Amend the recommended certification of Final EIR 581 to include the Errata to the Response to Comments in Attachment 2.

Item 94: Amend the approval of the Memorandum of Understanding to include the modifications in Attachment 4.

Item 95: Amend the adoption of the Development Agreement to include the modifications in Attachment No. 5.

Respectfully submitted,

Thomas B. Mathews-Director

Contact person: Chuck Shoemaker, 834-2166

Attachments

Cc: Members, Board of Supervisors
CEO
County Counsel

ATTACHMENT 1

Response to Comment
Diane Taylor Remarks at Planning Commission Meeting
October 16, 2002

Issue: Comparison of traffic impact findings at intersection of Lambert Road-Carbon Canyon Road/Valencia Avenue in Tonner Hills EIR, Hover EIR, Sports Park EIR.

The review period for the Draft Environmental Impact Report ended on June 25, 2002. This comment was made at the October 16, 2002 Planning Commission Meeting. Under CEQA, the County may respond to comments received after the close of the review period, but is not obligated to do so. The County offers the following response to the late comment.

The Sports Park DEIR and the Hover (TT 16047) DEIR both indicate that the intersection of Valencia Avenue at Lambert Road-Carbon Canyon Road operates at unacceptable levels of service during the PM peak hour of traffic (1.07 and 1.03, respectively). Our review of the Canyon Crest DEIR indicates a similar result. The revised Tonner Hills analysis contained in the Responses to Comments identifies a corresponding existing level of service of .79. The traffic count data for all three studies reference the same time frame (fall or September/October of 2001). Since the updated data used in the Tonner Hills Analysis was provided by the City of Brea, it is likely that the traffic count data is the same in all three studies. It is not possible to state this as a certainty, since the DEIR does not include actual turning movement volumes or count sheets.

Based on the assumption stated in the above paragraph (all three studies used the same traffic count data), the difference in ICU results is likely the result of differences in the intersection geometry inputs. Since the geometric data is also not available within the DEIR as posted on the website, this conclusion again cannot be stated with certainty.

The situation is reversed for the long range forecasts at this intersection. The other two studies show acceptable traffic operations, while the Tonner Hills Response to Comments updated analysis (page42) indicates a future deficiency and recommends mitigation.

The conclusion of this analysis is that the Tonner Hills analysis is more conservative than the other projects, and only the Tonner Hills project proposes specific mitigation at this location, in addition to City of Brea Nexus Program proposed improvements. Therefore, there is no conflict.

ATTACHMENT 2

Errata to Tonner Hills Planned Community
Responses to Comments and
Draft Environmental Impact Report No. 581
SCH No. 2001031137

The following minor corrections have been incorporated into the Final Environmental Impact Report (FEIR) text but are listed here for ease of reference. Under CEQA Guidelines §15088(c)(1), *the response to comments may take the form of a revision to the draft EIR or may be a separate section in the final EIR. Where the response to comments makes important changes in the information contained in the text of the draft EIR, the lead agency should either: (1) revise the text in the body of the EIR or (2) include marginal notes showing that the information is revised in the response to comments.* The changes are intended to clarify or correct information in the Draft EIR in response to comments received on the document or those initiated by staff. The changes appear in the order of the location in the Responses to Comments document and identify sections in the Draft EIR to which they refer.

City of Brea Letter – Comment 1-41

Page 4.13-2, item (2), states that the City of Brea provides park reservation services and Park Play Daze. The City does not provide park reservations or Park Play Daze.

Table 4.13-1 on page 4.13-2 is corrected to read:

Arovista Park, 13.82 acres; City Hall Park, 3.2 acres, 25-meter swimming pool, one basketball court
Brea Junior High Park, no volleyball courts
Country Hills Park, one basketball court and one lighted baseball field
Greenbriar Park, one play area
Tamarack Park, one basketball court and one play area.

City of Brea Letter – Comment 1-44

DEIR page 4.3-2, Section 4.3.1.a.(2) – Corrected to reflect adoption of the City of Brea Housing Element Update in October 2000.

City of Brea Letter – Comment 1-52

The following will be added as Mitigation Measure H-31 to the FEIR (Section 4.13.4):

H-31 The project will be subject to the latest edition of the Orange County Fire Authority "Combustible Soil Gas Hazard Mitigation Guidelines" and the City of Brea Combustible Soil Gas Mitigation System Installation and Inspection Requirements.

City of Brea Letter – Comment 1-56

The table found in the City of Brea letter (page 38 of 52) and on page 1-80 of the Responses to Comments document replaces Table 4.16-2 on page 4.16-7 of the DEIR.

Brea Fire Department Existing Resources

Station #	Location	Equipment	Personnel
1	555 N. Berry	1 paramedic 1 engine company 1 reserve engine	3 career 1 apprentice
2	185 s. Laurel	1 engine company 1 reserve engine	3 career
3	400 N. Kraemer	1 paramedic 1 engine company 1 truck company 1 command vehicle 1 reserve command vehicle	3 career 1 apprentice 3 career 1 career
4	170 Olinda Place	1 Type III brush engine	1 career

City of Brea Letter – Comment 1-62

In Section 6.4.2.c (page 6-26 of the DEIR), the first sentence is revised to read:

> The population of the City of Brea was 36,518 in 1999.

Austin-Foust Associates-Appendix C Volume 1 – Comment 1-90

Page 35, Paragraph 1 – "New Term" changed to "Near Term".

Austin-Foust Associates-Appendix C Volume 1 – Comment 1-97

Page 39, Paragraph 1 – Change "no Balsa" to "on Balsa".

Austin-Foust Associates-Appendix C Volume 1 – Comment 1-99 –

Page 54, Paragraph 4 – Insert "for GMP" following "D" and "for CMP" following "E".

Austin-Foust Associates -Appendix C Volume 1 – Comment 1-111 –

Page 154, Paragraph 2 – Typographical error in Table 6-2 is corrected (a second southbound left turn lane is included in the operations analysis worksheets).

Austin-Foust Associates - Appendix C Volume 1 – Comment 1-116

Page 160, Paragraph 1 - "This improvement will fully mitigate the project AM and PM peak hour impacts at this location ~~(although it will not provide acceptable traffic operations).~~"

Austin-Foust Associates - Appendix C Volume 1 – Comment 1-121

Page 166 – northbound lanes – 2 left, 2 through, 1 right.

Austin-Foust Associates - Appendix C Volume II – Comment 1-136

Page 3-5, paragraph 2 – last sentence – change "east" to "west".

Austin-Foust Associates -Draft EIR – Comment 1-152

DEIR page 4.7-9, Exhibit 4.7-3 – Tonner Canyon Road east of the SR-57 is not divided.

Austin-Foust Associates - Draft EIR – Comment 1-153

DEIR page 4.7-9, Exhibit 4.7-3 – Imperial Highway east of Rose is six-lane divided.

Austin-Foust Associates - Draft EIR – Comment 1-154

DEIR page 4.7-11, Exhibit 4.7-4 – Delete Berry Street north of Northwood Avenue.

City of Brea Letter – Comment 1-187

Page 4.10-21, first paragraph:

> Since the male was seen and heard only once, Chambers Group concluded that this vireo was not nesting on-site and was considered a ~~vagrant~~ migrant (Exhibit 4.10-6).

City of Brea Letter – Comment 1-228

The third bullet on page 4.10-55 (Section 4.10.4, BR-4) is revised to read:

- Any crushing of existing habitat during the breeding season of the gnatcatcher (February 15 through August 15) will be under the supervision of the biological monitor. The biological monitor will be empowered to restrict such activities to minimize the harm and harassment of breeding gnatcatchers or fledglings. During this time, the biological monitor will provide USFWS with weekly summaries, via facsimile transmission, of all gnatcatcher monitoring activities.

  Crushing of existing habitat would not occur during the breeding season (February 15 to July 31) unless approved by a biological monitor familiar with requirements of breeding birds, especially coastal California gnatcatchers. Removal of crushed vegetation could occur in the breeding season if a biological monitor is present to prevent disruption to protected breeding birds.

City of Brea Letter – Comment 1-235

DEIR page 6-31 – first paragraph:

> The proposed project will result in the enhancement and restoration of the riparian woodlands in the Tonner Creek and, thus, will likely result in more habitat being available for the ~~gnatcatchers~~ least Bell's vireo.

U. S. Department of the Interior, Fish and Wildlife Service Letter – Comment 4-4

Table 4.10-3a is added to Section 4.10.1.c.(2), after Table 4.10-3 on page 4.10-20, as follows:

Known Gnatcatcher Locations within the Chino/Puente Hills

Location	Gnatcatchers Present	Source
Unocal property (former) in western La Habra Heights	2 pairs	Sam Reed, pers. comm., 2002
Brea Canon Estates	1 pair	Chambers Group, 2001
Aera Energy, Puente Hills	4 pairs	George Basye, 2000
Tonner Hills (subject property)	14 to 18 pairs	Chambers Group, 2002
Shell/MWD Reservoir	2 pairs	Chambers Group, 2002
Shell/MWD Property and Chino Hills State Park	19 pairs*	Shell/MWD, 1994; Alissa Ing, pers. comm., 2002
Yorba Linda Water District	3 pairs	Chambers Group, 1999
Shapell Properties "A" and "B", Yorba Linda	9 pairs, 2 individuals	Bonterra, 2000
Shapell Property "C", Yorba Linda	1 pair	Bonterra, 2000
Total	55 to 59 pairs	

*This number is based on impacts to gnatcatchers anticipated in association with the Shell/MWD Habitat Conservation Plan and observations of gnatcatchers in Chino Hills State Park by State Park Resource Ecologist, Alissa Ing.

Orange County Fire Authority Letter – Comment 13-1

The language for Mitigation Measure H-15 (Section 4.15.4, page 4.15-43) will be revised to read:

H-15 All habitable structures shall be located at least 50 feet from any operating wellhead, including water injection wells, pursuant to the requirements of the Uniform Fire Code and the OCFA and subject to monitoring and inspection by the OCFA. All habitable structures within 100 feet from an oil well shall comply with OCFA Planning and Development standard guideline C-02 (Guideline for Residences less than 100' from an Oil Well), as adopted at the time of construction.

Orange County Fire Authority Letter – Comment 13-2

Mitigation Measure H-32 (Section 4.15.4, page 4.15-46) will be added as follows:

H-32 The oil operator shall update and revise as necessary the RMP (Risk Management Plan) on file with the OCFA for the Oil Field operations adjacent to the proposed development. Such RMP revisions shall be submitted and accepted by OCFA prior to the issuance of any certificates of occupancy for the project.

Orange County Fire Authority Letter – Comment 13-3

Page 4.16-1, Section 4.16.1.a.(1):

The Orange County Fire Authority (OCFA) provides fire protection and emergency services to the project area, as well as other unincorporated areas and ~~18~~ 22 cities within Orange County.

Orange County Fire Authority Letter – Comment 13-4

DEIR page 4.16-7, Section 4.16.1a.(2), first paragraph:

~~However, under OCFA reciprocal response and mutual aid agreements with adjoining jurisdictions along with the required Secured Fire Protection Agreement (SFPA) with OCFA, Brea Fire Department resources would be available to provide fire and emergency response services to the development.~~ With the implementation of a Fire Protection Agreement between the City of Brea and the OCFA in conjunction with the Secured Fire Protection Agreement between the developer and OCFA, Brea Fire Department resources would be available to provide fire and emergency response services to the development; however, in the absence of an agreement between the City of Brea and the OCFA for services, the development would be required to provide for

any shortfall in the costs of providing emergency services to this area by OCFA as outlined in the Secured Fire Protection Agreement.

Orange County Fire Authority Letter – Comment 13-5

DEIR Section 4.16.3.a, page 4.16-11, first paragraph:

~~The project site is currently within the County jurisdiction, and Brea fire services are provided when called upon by the Orange County Fire Authority as part of the mutual aid agreement between the two entities. If the area is annexed into the City, it is likely that fire protection services would be provided by the Brea Fire Department. In the event of annexation, the mutual aid agreement would change in terms of command structure and unit response configuration, although the exact nature of these changes to the agreement is unknown at this time. The City has a Nexus program that requires that all new development pay a fire impact fee at the time of building permit issuance. Payment of the fire impact fee would serve as mitigation to reduce the impact of Tonner Hills on the Brea Fire Department to a less than significant level.~~ The project site is currently within the Fire Authority's jurisdiction, and is provided with initial emergency services by the City of Brea through a mutual aid agreement in place between the two entities. After being developed, the area will no longer be able to be serviced in this manner. If annexed into the City of Brea, the City would provide all fire department services. If annexed, the mutual aid agreement would be changed to reflect the new responsibilities of each agency. The City of Brea has a Nexus Program that requires that all new development pay a fire impact fee at the time of building permit issuance. Payment of the fire impact fee would serve as mitigation to reduce the impact of Tonner Hills on the Brea Fire Department to a less than significant level.

In the event the development is not annexed into the City of Brea, OCFA will need to provide service to this area. If this service can be provided under a Fire Protection Services Agreement with the City of Brea, such an agreement will be used. It should be understood that the Secured Fire Protection Agreement between OCFA and the developer will address this issue with provisions for funding and facilities in the event that the City of Brea does not provide services under contract. Every effort will be made to provide protection to the development in the most cost effective manner available that meets the service criteria for the OCFA.

All discretionary approvals for the project will be processed through the County of Orange. Consistent with the use of County development standards and guidelines throughout the DEIR, the development will be required to design and construct the fire protection infrastructure and related issues to OCFA and County standards, unless otherwise specified in a Memorandum of Understanding between the County and City.

Orange County Fire Authority Letter – Comment 13-6

DEIR page 4.16-13, Section 4.16.4:

PS-1 **Secured Fire Protection Agreement** - Prior to recordation of the first final map within the project boundaries, including maps for financial and conveyance purposes only, or prior to grading, whichever comes first, the applicant shall enter into a Secured Fire Protection Agreement with the Orange County Fire Authority (OCFA).

Orange County Fire Authority Letter – Comment 13-7

DEIR page 4.16-15, Section 4.16.4, the following sentence will be added as the final paragraph:

[PS-8] All fuel modification plans shall be in accordance with the OCFA guidelines for development within Special Fire Protection Areas as outlined in Guidelines C-04, C-05 and C-06.

Brea Olinda Unified School District Letter – Comment 19-2

DEIR page 4.16-8, Table 4.16-3 – Title is revised to read:

Brea Olinda Unified School District 2000-01 Enrollment

Brea Olinda Unified School District Letter – Comment 19-3

The County hereby incorporates the revised student generation rate of 0.597 students per single-family residential unit and 0.382 students per multi-family residential unit.

Brea Olinda Unified School District Letter – Comment 19-5

DEIR page 4.16-12, Table 4.16-4 is revised to reflect the new student generation rates of 0.597 students per single-family residential unit and 0.382 students per multi-family residential unit.

Revised Table 4.15-4 – Tonner Hills Planned Community Student Generation Rate

Planning Area	Dwelling Units	BOUSD Student Generation Rate Per Unit	Estimated Student Generation
1	54	0.597	32
2	102	0.597	61
3	233	0.597	139
4	182	0.597	109
5	97	0.597	58
6	87	0.597	52
7	40	0.597	24
Totals	795		475

Source: Tim Harvey, Superintendent, Brea Olinda Unified School District (June 25, 2002 letter)

Miscellaneous Typographical Correction

Section 4.10.1.d.(2), page 4.10-32, the reference to exhibit and page number at the end of the first paragraph is revised as follows:

> . . . The wildlife corridor is illustrated in Exhibit 4.10-9 on page 4.10-49.

Mitigation Measures

Following are additional changes to the Mitigation Measures portion of the DEIR which are the result of project refinements. Deleted language is identified by ~~strike thru~~; additions are identified by underlining.

~~N-3 Prior to issuance of building permits for tenant improvements for proposed Uses in the Mixed Use area, proposed uses shall be evaluated by the Manager, Planning Services, to determine if a detailed noise assessment is required to ensure that the use will not result in a violation of the noise ordinance. If a study is called for, the study shall be prepared by a County certified acoustical consultant and conform to the requirements presented in the County's Land Use/Noise Compatibility Manual.~~

AE-5 Prior to approval of certificates of use and occupancy, existing electrical above ground utilities with a capacity of 12 kV or less shall be placed underground within the individual residential ~~or mixed use~~ planning areas.

AE-6 Prior to issuance of any building permit, the applicant shall demonstrate that all exterior lighting has been designed and located so that all direct rays are confined to the property in a manner meeting the approval of the Manager, Building Permit Services. Lighting shall be designed to minimize visibility of light sources by directing lighting toward the on-site structures and not illuminating areas outside property boundaries. ~~Lighting along Tonner Hills Road shall be designed to protect the wildlife corridor crossing. The bridge spanning Tonner Creek shall be~~

~~illuminated with bollards or other in-structure fixtures to Prevent glare and light spillover into the creek.~~

H-4 **Disposal of Gun Club Soil** – The impacted soil at the former gun club location will be transported off-site and disposed of at a licensed disposal facility. Documentation of the disposal activity will be included in a site closure report submitted to OCHC ~~and DTSC~~.

H-10 Any previously abandoned well that does not meet current standards and is located within a residential ~~or commercial~~ neighborhood or within an adjacent street right-of-way shall be reabandoned in accordance with current CDOGGR specifications prior to building permit approval. Evidence of conformance to CDOGGR standards for any remedial plugging shall be provided to the Manager, Current Planning, and the Manager, Subdivision and Grading, immediately upon completion of reabandonment activity.

H-19 Prior to issuance of building permits, soils adjacent to oil wells abandoned in residential areas will be mitigated to meet residential cleanup requirements of the ~~OCHCA approved~~ RAP. Once the project is occupied, subsequent well abandonments shall be subject to and processed in accordance with CDOGGR and OCHCA regulations.

Responsible Monitoring Party: ~~County of Orange~~, CDOGGR

H-20 Prior to the County's issuing the first Certificate of Occupancy, a program to carefully monitor the hydrogen sulfide (H_2S) content of the produced gas shall be developed and implemented to prevent higher levels of H_2S from becoming present in the produced gas. This program shall be reviewed ~~and approved~~ by the CDOGGR and reviewed and approved by the OCHCA. Downhole treatment shall begin when the level of H_2S exceeds 10 ppm.

ATTACHMENT 3

Attachment 3

Mitigation Measure H-21. All oil and gas flowlines shall be installed in underground trenches, separate from other utilities. Location of all pipelines shall be recorded on site plans. Seismic joints and flexible couplings shall be installed in all cases where flowlines cross known or suspected fault lines. Seismic sensing devices shall be installed to allow for the shutdown of the field in the event of a significant seismic event (5.0 magnitude or higher on the Richter scale). The developer/property owner shall indicate compliance with these measures on project utility and building plans and be subject to review and approval by the Manager, Current Planning, prior to implementation of the proposed project.

ATTACHMENT 4

TONNER HILLS

MEMORANDUM OF UNDERSTANDING

November 11, 2002

This Memorandum of Understanding (MOU) is entered into by and among the County of Orange (County), the City of Brea (City), and Nuevo Energy Company (Nuevo), regarding the development of the proposed Tonner Hills Planned Community (THPC). THPC consists of 789-acres of unincorporated territory that is within the City's sphere of influence as determined by the Local Agency Formation Commission (LAFCO).

WHEREAS, County, City, and Nuevo have been negotiating regarding the orderly planning, development, and annexation of the proposed THPC property, as depicted in the THPC Plan (Exhibit 1), and have reached a point where the parties hereto feel it is necessary to embody their agreement and understanding into a written MOU; and

WHEREAS, the parties intend that the THPC will be annexed into the City when the THPC is developed.

NOW, THEREFORE, in consideration of the above statements, and other good and valuable consideration, receipt of which is hereby acknowledged, the Parties agree as follows:

1.1 The Tonner Hills Planned Community (THPC) Plan, consisting of the THPC Development Map and Statistical Summary Table, Development Regulations and Tonner Hills Area Plan, as identified in Exhibit 1 and incorporated herein by reference, shall be the basis of the County's recommended Planned Community development plan for the THPC property.

1.2 The parties agree that discretionary development approvals by the County shall conform to the standards and procedures established by the THPC Plan approved by the County. The County and Nuevo agree to incorporate into discretionary approvals the City's codified standards in effect on August 20, 2002, as identified in Exhibit 2, provided that wherever there is a conflict between Exhibit 1 and Exhibit 2, County actions shall comply with Exhibit 1. The THPC Regulations shall require that all discretionary permits be submitted to the City for review and comment 30 days prior to action as provided for in the County Zoning Code, Section 7-9-150.3(b). However, the County shall retain its independent land use authority, and while County agrees to consider City's comments, County shall not be required to comply with City's comments. Where the County does not comply

with City's comments, the THPC Development Regulations shall provide for an appeal by the City to the Board of Supervisors.

1.3 The Parties shall enter into a THPC Pre-Annexation Agreement (Agreement) that requires Nuevo, on or before January 15, 2003, to file all necessary applications with LAFCO for annexation of THPC to the City and provides for County to retain all planning, zoning, subdivision, grading, building permit, inspection, and CEQA authority until issuance of the last Certificate of Use and Occupancy for THPC. Said Agreement shall be executed by the Parties hereto on or before December 17, 2002, or the issuance of encroachment or other permits by the City to connect THPC water and/or sewer facilities to City facilities, whichever occurs first. This MOU and the Agreement are predicated on the establishment of public streets for the project and City of Brea as the preferred provider of water and sewer service. If the City is not legally capable of providing public services under acceptable terms established in the Agreement or fails to execute said Agreement by the required deadline, Nuevo Energy shall be free to connect THPC water and sewer facilities to alternative water and/or sewer providers and City hereby agrees to grant encroachment permits for connections of THPC streets to City highways and streets.

1.4 The Pre-Annexation Agreement shall be consistent with this MOU, provided however the Agreement may include additional elements meeting the approval of the Parties.

1.5 County and Nuevo shall enter into a Development Agreement pursuant to Governmental Code Section 65866 under which Nuevo's rights to develop the THPC are vested in accordance with California statute and case law. The Development Agreement shall require that, in the event that the City fails to execute a Pre-Annexation Agreement, Nuevo shall submit to LAFCO an application for a phased annexation, if possible, of each THPC Planning Area as it is completed, provided, however, that the annexation of any Planning Area shall not be deemed complete and final unless and until development is completed in that Planning Area. For annexation purposes, development shall be considered complete when all of the Certificates of Use and Occupancy have been issued for that Planning Area.

1.6 Prior to recordation of each phase of the annexation, County shall be entitled to collect and keep any processing or development fees required by County for all THPC planning and development permits or approvals. The City of Brea shall receive a flat payment of $10,000 per Planning Area for processing of Planning Areas 1-6 and $3,500 for Planning Area 7. Payment of processing fee for each area is due to the City of Brea upon first submittal of plans for review.

1.7 The City shall be entitled to collect and keep any development nexus fees and fire equipment exactions as provided in Exhibit 2 and incorporated herein by reference. The Nexus Fees that are in effect on August 20, 2002 and the fire equipment exaction referenced in Exhibit 2 are applicable only if an annexation application is submitted and deemed complete by LAFCO in accordance with Section 1.3 of this MOU.

1.8 City agrees that County and/or Brea Olinda Unified School District and Nuevo may enter into Development Agreements, Community Facility Districts and/or Assessment Districts relating to implementation of the THPC.

1.9 The Parties agree not to file lawsuits or to directly or indirectly support litigation filed by others, either as a party, through financial contributions, providing staff support, or by failing to aggressively defend such litigation, that challenges the adequacy of the THPC Final EIR, the City's General Plan Update and Final EIR, this MOU or the Pre-Annexation Agreement identified in Section 1.3 above.

1.10 The parties agree that the THPC will comply with the City's affordable housing program in effect on August 20, 2002, provided, however, that the County shall be entitled to credit toward County's RHNA allocation and Housing Element compliance for all affordable units or other measures generated by compliance with the City's program. The City of Brea shall manage the affordable housing program for the THPC.

1.11 Nuevo, or its successor in ownership, shall provide the City of Brea at least 270 days notice prior to commencement of grading activities of Phase Two of the

Tonner Hills development. The City has expressed interest in acquiring all or part of the Phase Two area, and; during this period an offer to purchase all or any portion of the Phase Two development area would be entertained by Nuevo Energy Company or its successor in ownership.~~but an acknowledgement of the City's potential interest in the property and a commitment to review any serious offer from the City prior to commencement of mass grading of Phase Two~~.

2. **Third Party Beneficiary**

Nuevo, City and County agree that this MOU is made and entered into for the sole protection and benefit for the parties and their successors and assigns: No other person shall have any right of action based upon any provision of this MOU.

3. **Successors in Interest.**

The burdens of this MOU shall be binding upon, and the benefits of this MOU shall inure to the benefit of, all successors in interest to the Parties to this MOU.

4. **Effective Date.** This MOU shall become effective as of the date of execution by the last party to sign.

IN WITNESS THEREOF, the parties hereto have executed this MOU on the day and year set forth below their signature.

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COUNTY:

BY: _____

Cynthia P. Coad, Board Chair

Date: _____

SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE BOARD CHAIR:

By: _____

Darlene J. Bloom, Clerk of the Board of Supervisors

APPROVED AS TO FORM:

Benjamin P. de Mayo, County Counsel

By: _____

_____, Deputy

CITY:

BY: _____

Marty Simonoff, Mayor

Date: _____

ATTEST:

By: _____

Elaine M. Capps, City Clerk

APPROVED AS TO FORM:

By: _____

James L. Markman, City Attorney

Nuevo Energy:

By: _____

Its: _____

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EXHIBIT 1

THE TONNER HILLS PLANNED COMMUNITY
DEVELOPMENT MAP AND STATISTICAL SUMMARY TABLE,
DEVELOPMENT REGULATIONS, AND AREA PLAN

EXHIBIT 2

CITY OF BREA STANDARDS, GUIDELINES AND POLICIES
APPLICABLE TO THE TONNER HILLS PLANNED COMMUNITY

1. Sections of the Brea Municipal Code effective August 20, 2002 that applicable to the THPC, including Title 2 (Administration and Personnel (specific to applicability of PRHS Commission and Park issues), Title 10 (Vehicles and Traffic), Title 12 (Streets, Sidewalks and Public Property), Title 13 (Utilities), Title 15 (Building and Construction Safety), Title 16 (Fire Safety), Title 18 (Subdivisions and Floodplain Management), and Title 20 (Zoning Code).

2. Sections of the City of Brea General Plan effect August 20, 2002, including Parks, Recreation, and Human Services Element and its applicability to park needs and design.

3 The 2001 California Building Standards Code with local amendments (Brea Ord. 1060 (Building and 1061 (Fire) approved by the City as of August 20, 2002.

ATTACHMENT 5

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

COUNTY OF ORANGE
Planning and Development Services Dept.
P.O. Box 4048
Santa Ana, CA 92702-4048
Attn: Harry Persaud

(Space Above This Line for Recorder's Use)

TONNER HILLS

DEVELOPMENT AGREEMENT BETWEEN

THE COUNTY OF ORANGE AND

NUEVO ENERGY COMPANY

TABLE OF CONTENTS

DEVELOPMENT AGREEMENT

Page

Recitals....1

Agreement....3

1. Section; Definitions & Exhibits....3

2. Mutual Benefits & Assurances....9

3. Owners Obligations; & Provision of Public Benefits....10

4. Regulations Governing the Development of Property....14

5. Periodic Reviews....22

6. Transfers & Assignments....22

7. Annexation & Incorporation....26

8. Terms of Agreement....26

9. Amendment....27

10. Processing of Requests & Applications....28

11. Default, Remedies & Estoppel Certificates....28

12. Third Party Litigation....31

13. Effect of Agreement on Title....32

14. Mortgage Protection; Certain Rights of Cure....34

15. Miscellaneous Provisions....35

DEVELOPMENT AGREEMENT
(Govt. Code Sections 65864-65869.5)

THIS AGREEMENT ("Agreement") is entered into this _____ day of _____, _____, by and between, Nuevo Energy Company ("Nuevo"), a Delaware corporation ("OWNER"), and the COUNTY OF ORANGE, a political subdivision, organized and existing under the laws of the State of California ("COUNTY").

RECITALS

This Agreement is entered into based upon the following facts:

A. When used in these Recitals, each of the terms defined in Section 1 of this Agreement shall have the meaning given to it therein.

B. Government Code Sections 65864-65869.5 authorize COUNTY to enter into binding development agreements with persons having legal or equitable interests in real property for the development of such property, in order to, among other things: encourage and, provide for the development of public facilities in order to support the development of new housing, provide certainty in the approval of development projects in order to avoid the waste of resources and the escalation in the cost of housing and other development to the consumer and encourage investment in and commitment to comprehensive planning which will make maximum efficient utilization of resources at the least economic cost to the public; and (1) provide assurance to developers that they may proceed with their projects in accordance with existing policies, rules and regulations, subject to their conditions of approval and (2) strengthen the public planning process and encourage private participation in comprehensive planning and reduce the economic costs of development.

C. OWNER is the holder of a legal interest in the Property and desires and intends to develop the Property as a large scale development for the uses and purposes set forth in the Development Plan. The Development of the Property requires substantial early and major capital expenditures and investments with respect to the construction and installation of major infrastructure and facilities, both on-site and off-site, (including, for example, the provision of sheriff, library, fire and other public facilities and the performance of this Agreement) of sufficient capacity to serve the residents and others using the Property as anticipated by the General Plan and this Agreement.

D. COUNTY has determined that the Development Plan implements the goals and policies of County's General Plan and of all specific plans (as referenced in Government Code Sections 65450 et seq.) applicable to the Project and provides balanced and diversified land uses and imposes appropriate standards and requirements with respect to land development and usage so as to maintain the overall quality of life and of the environment within the County.

E. Pursuant to Government Code Section 65865, COUNTY has adopted Resolution No. 02-066 establishing procedures and requirements for the consideration of proposed development agreements.

F. OWNER has applied for, and COUNTY has approved, the Development Plan and granted the Existing Development Approvals in order to protect the interests of County's existing and anticipated citizens and the quality of their community and environment through the planned development process. As part of the process of approving the Development Plan and the Existing Development Approvals, COUNTY has undertaken, pursuant to the California Environmental Quality Act CEQA), the required analyses of the environmental effects which would be caused by the Project. In addition to other matters which COUNTY took into consideration in its analyses of the environmental effects which would be caused by the Project, COUNTY scrutinized with particular care the adverse impacts associated with the need for remediation of contaminated soils on and redevelopment of portions of the Property used, operated and maintained as an oil field, the plugging and abandonment of certain oil wells and oil production facilities, the demolition of certain oil facility and related structures and the restoration of certain Open Space Areas near land used for oil operations; continued Oil Operations and Servicing (see 1.2.29); vehicular traffic ; air quality and water supply conditions within the County; and the availability of adequate levels of public services and facilities within the County, including, without limitation, library, sheriff, paramedic and fire protection, flood control improvements, open space and community parks. COUNTY has imposed a series of mitigation measures in connection with the development of the Project to eliminate the anticipated adverse impacts on COUNTY traffic and air quality conditions and on levels of public services and facilities within the County, including, without limitation, sheriff, library, paramedic and fire protection, flood control improvements, open space and community parks.

G. In accordance with State law, COUNTY has adopted the General Plan which considers and provides for the need for residential, commercial, industrial facilities which are necessary to meet the future needs of the population.

H. As consideration for the assurances provided by this Agreement, COUNTY has requested that OWNER provide, and OWNER is willing to provide additional public benefits as described in Exhibit D of this Agreement. Those additional public benefits set forth in Exhibit D include, but are not limited to, certain additional fee contributions and lands as well as the construction and transfer to the County, or its successor or assignee certain additional improvements and public facilities for existing and future residents of the Property. The COUNTY has determined that the public benefits for which OWNER is obligated, together with the mitigation measures imposed by the COUNTY on the Project, adequately provide for the health, safety, and welfare needs of the existing and future residents of the Property subject to the provisions of this Agreement with respect to future monitoring programs. COUNTY Planning Commission and Board of Supervisors have found and determined that this Agreement: (1) is consistent with COUNTY's General Plan and with all specific plans (as referenced in Government Code Section 65450 et seq.) applicable to the Project; (2) is in the best interests of the health, safety and general welfare of COUNTY, its residents and the public; (3) is entered into pursuant to and constitutes a present exercise of the police power by COUNTY; and (4) is entered into pursuant to and in compliance with the requirements of Section 65867 of the Development Agreement Legislation and COUNTY Resolution No. 02-066; and the COUNTY Board of Supervisors has adopted an ordinance authorizing the execution of this Agreement.

I. COUNTY desires to be assured that if the Property is annexed to, or included within the boundaries of, another Local Agency that the work to complete OWNER's Obligations will continue expeditiously and efficiently and that the transfer of authority to such Local Agency will be provided for as contemplated by the Development Agreement Legislation and OWNER desires to be assured that thereupon this Agreement will continue in full force and effect to the extent permitted by law.

J. Based on the foregoing, OWNER and COUNTY desire to enter into this Agreement.

AGREEMENT

NOW, THEREFORE, for and in consideration of the foregoing recitals of fact, the mutual covenants contained herein and other consideration, the value and adequacy of which are hereby acknowledged, the parties agree as follows:

1. SECTIONS; DEFINITIONS AND EXHIBITS.

1.1 Sections and Paragraphs. Any reference in this Agreement to a "Section" is a reference to the indicated numbered section or sub-section of this Agreement and a reference to a "Paragraph" is a reference to the indicated paragraph of a Section.

1.2 Definitions. The following terms when used in this Agreement shall be defined as follows:

1.2.1 "Affordable Housing" means residential dwelling units available for sale or rent to qualifying tenants in strict accordance with the Housing and Urban Development (HUD) criteria for low and moderate income rental unit. HUD Low and Moderate Income rental rates and HUD qualifying tenant income will be adhered to.

1.2.2 "Annual Monitoring Review" or "Annual Review" means the annual review required pursuant to Section 5 herein below.

1.2.3 "Build-out Phasing Plan" means an advisory, non-binding plan to be prepared by OWNER showing the intended schedule for the completion of the Development of the Property in accordance with the Development Plan and this Agreement, together with such other information regarding the anticipated Development as shall be reasonably requested by COUNTY.

1.2.4 "Building and Improvement Standards" means Regulations of COUNTY which are of general application which establish regulations and standards for the building, construction and installation of structures and associated improvements such as and including, without limitation, COUNTY's building, plumbing, mechanical, grading, swimming pool, sign and fire codes.

1.2.5 "CFD" means a community facilities district formed pursuant to the Mello-Roos Community Facilities Act of 1982 (Government Code Section 53311 et seq. as amended).

1.2.6 "COUNTY" means the County of Orange, a political subdivision of the State of California.

1.2.7 "County" means the geographical area within the boundaries of COUNTY.

1.2.8 "COUNTY Development Agreement Resolution" means Resolution No. 02-066 adopted by the Board of Supervisors of COUNTY on March 19, 2002 establishing a procedure for the consideration and approval of development agreements pursuant to the Development Agreement Legislation.

1.2.9 "Development" means the improvement of the Property for purposes of effecting the structures, improvements and facilities comprising the Project, including without limitation: remediation of contaminated soils on and redevelopment of, a portion of the Property used, operated and maintained as an oil field; plugging and abandonment of certain oil wells and oil production facilities; improvement of and continued Oil Operations and Servicing within the Property; demolition of certain existing structures; restoration of Open Space Areas; grading construction of infrastructure and Public Facilities related to the Project (whether located within or outside the Property) the construction of structures and buildings and the installation of landscaping; but not including the maintenance , repair , reconstruction or redevelopment of any structures, improvements or facilities after the initial construction completion thereof.

1.2.10 "Development Agreement Legislation" means Sections 65864 through 65869.5 of the California Government Code as it exists on the Effective Date.

1.2.11 "Development Approval(s)" means site specific plans, maps, permits and other entitlements to use of every kind and nature approved or granted by COUNTY in connection with the Development of the Property, including but not limited to: the Tonner Hills Development Plan, feature plans, area plans and site plans, tentative and final subdivision tract maps, vesting tentative maps, conditional and special use permits and grading, building and other similar permits.

1.2.12 "Development Exactions" means the requirements of COUNTY in connection with or pursuant to any Land Use Ordinance or Development Approval for the dedication of land or property, the payment of fees or money or the construction or improvement of public facilities in

order to lessen, offset, mitigate or compensate for the adverse impacts of the Project on environmental or other public concerns or interests or for the improvement, construction or acquisition of any public infrastructure, facilities or property. The term shall not include assessments and taxes unless exacted as a condition of development under a Development Approval.

1.2.13 "Development Plan" or "Plan" means the Tonner Hills Planned Community District Regulations Area Plan No. _____ and regulations with respect thereto adopted by COUNTY Board of Supervisors on _____ by Ordinance _____ as amended to the Effective Date.

1.2.14 "Economic Expectations" means the reasonable, investment based economic expectations with respect to the completion of the Project in accordance with the Governing Policies taking into consideration technical, financing, market and other factors.

1.2.15 "Effective Date" means the date first set forth hereinabove.

1.2.16 "Existing Development Approvals" means those certain Development Approvals in effect on the Effective Date with respect to the Property, including without limitation, the "Existing Development Approvals" which are listed on Exhibit B.

1.2.17 "Existing Land Use Ordinances" means those certain Land Use Ordinances in effect on the Effective Date.

1.2.18 "Existing Land Use Regulations" means those certain Land Use Regulations in effect on the Effective Date.

1.2.19 "Existing Regulations" means the Regulations in effect on the Effective Date.

1.2.20 "Financing District" or "District" means a community facilities district formed pursuant to the Mello-Roos Community Facilities District Act of 1982 (California Government Code Sections 53311 et seq., as amended), an assessment district formed pursuant to the Improvement Act of 1911 (California Streets & Highways Code Sections 5000 et seq., as amended), an assessment district formed pursuant to; the Municipal Improvement Act of 1913 (California Streets & Highways Code Sections 10000 et seq., as amended), an assessment district formed pursuant to the Landscaping and Lighting Act of 1972 (California Streets and Highways Code Sections 22500 et seq., as amended), or any other similar special district or assessment district authorized pursuant to State law for purposes of financing the cost of public improvements, Public Facilities, services and/or Public Facilities fees within a distinct geographic area of the COUNTY.

1.2.21 "General Plan" means the General Plan of COUNTY.

1.2.22 "General Plan Review" means the review of the General Plan conducted by COUNTY referred to in Section 5.2.

1.2.23 "Governing Policies" means (a) the policies specified in Section 4.1; and (b) Existing Land Use Ordinances but not including Existing Development Approvals.

1.2.24 "Land Use Ordinances" means the ordinances adopted by the Board of Supervisors of COUNTY which govern the permitted uses of land, the density and intensity of use, and the design, improvement, and construction standards and specifications applicable to the Development of Property, including, but not limited to: the General Plan, the Development Plan, specific plans, zoning ordinances, planned community district ordinances, development moratoria and growth management and phased development programs, ordinances establishing Development Exactions, subdivision and park codes and Building and Improvement Standards.

1.2.25 "Land Use Regulations" means Regulations of COUNTY governing the permitted uses of land, density and intensity of use and the design, improvement, and construction standards and specifications applicable to the Development of the Property, including, but not limited to, mitigation measures required in order to lessen or compensate for the adverse impacts of the Project on the environment and other public interests and concerns. Land Use Regulations include, but are not limited to, Land Use Ordinances, Development Approvals and Development Exactions. The term Land Use Regulations does not include, however, Regulations relating to the conduct of business, professions and occupations generally; taxes and assessments other than Development Exactions; Regulations for the control and abatement of nuisances; encroachment and other permits and the conveyances of rights and interests which provide for the use of or entry upon public property; and, any exercise of the power of eminent domain.

1.2.26 "MPAH" means the Orange County Master Plan of Arterial Highways, as prepared and maintained by the Orange County Transportation Authority (the MPAH), which designates routes for collector, secondary, primary, major and principal arterial highways, smart streets and transportation corridors within the County.

1.2.27 "Mortgage" means a mortgage, deed of trust or sale and leaseback arrangement or other transaction in which the Property, or a portion thereof or an interest therein, is pledged as security, contracted for in good faith and for fair value.

1.2.27 "Mortgagee" means the holder of the beneficial interest under a Mortgage, or the owner of the Property, or interest therein, under a Mortgage.

1.2.28 "Ordinance Number 3570" means Section 7-9-703 and 7-9-704 of the Codified Ordinances of the County of Orange, as enacted by Ordinance 3570 as in effect on the Effective Date.

1.2.29 "Oil Operations and Servicing" means implementation, operations, servicing and all other activities associated with Owner's present and future (i) oil, gas and injector wells and (ii) infrastructure, buildings, pipelines, transmission lines and all facilities associated with the foregoing, together with the right of ingress and egress to, from, under and across the Property, in a manner that does not materially interfere with the mitigation requirements of the Development Approvals. Items (i) and (ii) are collectively referred to herein as "oil wells and production facilities."

1.2.30 "Open Space Areas" means those areas shown in the Development Plan as open space, excluding therefrom all oil wells and related facilities shown on Exhibit F-2 ("Open Space Retained Wells and Facilities").

1.2.31 "OWNER" means Nuevo Energy Company, a Delaware Corporation.

1.2.32 "OWNER 's Obligations" means the obligations of OWNER to pay the sums, build and construct the improvements, dedicate the lands and improvements and undertake and perform the other actions described in Section 3 and Exhibit D.

1.2.33 "Project" means the development project contemplated by the Development Plan with respect to the Property, including but not limited to on-site and off-site improvements, as such development project is further defined, enhanced or modified pursuant to the provisions of this Agreement.

1.2.34 "Property" means those certain lands as to which OWNER had a legal interest on the Effective Date, as described in Exhibit A.

1.2.35 "Public Facilities" means those certain public lands and/or facilities to be improved, constructed and dedicated or conveyed to the public pursuant to Section 3.1, as described in Exhibit D.

1.2.36 "Regulations" means laws, statutes, ordinances, and codes (including the Building and Improvement Standards, Land Use Ordinances, and Land use Regulations), resolutions, rules, regulations and orders; approvals, denials and conditional approvals in connection with

tentative, vesting tentative and final subdivision maps, parcel maps, conditional and special use permits and other permits of every kind and character; programs; and official policies and actions of COUNTY; together with amendments to all of the foregoing.

1.2.37 "Reservations of Authority" means the rights and authority excepted from the assurances and rights provided to OWNER in Section 4.2 and reserved to COUNTY therein and in Section 4.3.

1.2.38 "Traffic-Related Development Exactions" means any Development Exactions to provide for rights-of-way, facilities, or improvements for the road and motor vehicular traffic system within the County, including, but not limited to, the Property, or for any facilities, equipment or physical improvements (e.g. the purchase of buses or the installation of a light rail system) which are a substitute therefor or are to serve the same function as an increase in the capacity of, or a reduction in traffic on, the Regional Road Network or said road and motor vehicular traffic system.

1.3 Exhibits. The reference to a specified "Exhibit" in this Agreement is a reference to a certain one of the exhibits listed below, as determined by the accompanying letter designation, which exhibits are attached hereto and by this reference made a part hereof.

Exhibit Designation	Description
A	Description of Property
B	Existing Development Approvals
C	Memorandum of Understanding between COUNTY, OWNER, and the City of Brea
D	Benefits to COUNTY and its Residents
E	Project Phasing Plan
F	Existing Retained Oil Production Facilities and Location of Existing Retained Oil Production Facilities and Planned Development

Particular Conditions Contained in General Plan, Development Plan and Existing Development Approvals Which Are Anticipated to be Satisfied in Whole or Part Upon the Specified Performance.

2. MUTUAL BENEFITS AND ASSURANCES.

2.1 Purposes of Agreement. This Agreement is entered into for the purpose of carrying out the Development Plan for the Project in a manner that will ensure certain anticipated benefits to both COUNTY (including, without limitation, the existing and future residents and populations of COUNTY) and OWNER, as described in the RECITALS, Exhibit D, and as follows:

(i) To provide and assure to COUNTY the participation of OWNER in the accelerated, coordinated and more economic construction, funding and dedication to the public, as provided in Section 3, of certain other public facilities and benefits, and to provide for the anticipated levels of residents and populations of the Property, the County and adjacent areas, all as provided for in the General Plan, as set forth in detail in Exhibit D;

(ii) To provide to OWNER assurances regarding the Development Approvals, Development Exactions, Development Plan, Existing Development Approvals, Existing Land Use Ordinances, Existing Land Use Regulations, Existing Regulations, Governing Policies, Land Use Ordinances, Land Use Regulations and Regulations that will be applicable to the Development of the Property, including but not limited to those relating to timing, density and intensity of Development and Development Exactions, that will justify the undertakings and commitments of OWNER described above and the investment in major on-site and off-site infrastructure for the Project and of a size which is necessary to service the existing and anticipated residents and populations of the Property and adjacent areas. Without limiting the generality of the foregoing, this Agreement provides for the completion of public facilities and improvements: (A) prior to the time that they would be required legally of OWNER under Existing Land Use Regulations or otherwise required in connection with the phasing of the Project; and (B) of a size that would be justified only by the magnitude of the Project provided for by the Development Plan.

2.2 Undertakings and Assurances Contemplated and Promoted by Development Agreement Legislation. The mutual undertakings and assurances described above and provided for in this Agreement are for the benefit of COUNTY and OWNER and promote the comprehensive planning, private and public cooperation and participation in the provision of public facilities, and the effective and efficient development of infra-structure and facilities, supporting development which was contemplated and promoted by the Development Agreement Legislation.

2.3 Bargained For; Reliance by Parties. The assurances provided to OWNER in Section 4 are provided pursuant to and as contemplated by the Development Agreement Legislation, bargained for and in consideration for the undertakings of OWNER set forth in Section 3 of this Agreement and are intended by COUNTY to be and have been relied upon by OWNER to its detriment in undertaking the obligations and

covenanting as provided in Section 3 hereinbelow and in this Agreement generally and in expending monies and making improvements pursuant to this Agreement with respect to the public facilities and the Project.

3. OWNER'S OBLIGATIONS; AND PROVISION OF PUBLIC BENEFITS.

3.1 In General.

a. Public Benefits. It is acknowledged that a primary purpose of this Agreement is to provide for the accelerated and coordinated completion of Public Facilities and the other public benefits described in Exhibit D. Accordingly, OWNER shall promptly (to the extent that a time for performance is specified hereunder) and fully perform OWNER's Obligations as set forth in and subject to the terms and conditions of Exhibit D and this Agreement, including but not limited to the undertakings in connection with the construction and dedication or conveyance of the Public Facilities.

b. Existing Conditions and Undertakings. OWNER shall continue to be obligated to, and shall, perform all of the duties and obligations provided for or required by any provisions of the existing General Plan, the Development Plan and the Existing Development Approvals in connection with the Development of the Property.

3.2 Community Facilities District.

a. Formation of District. At the written request ("Request") of OWNER, COUNTY will use its best efforts to form a CFD/Financing Districts in the form and type specified in the Request, which will include the Property, or portion thereof, within its/their boundaries for the purpose of funding the planning, design and construction of all or a portion of and off-site infrastructure and facilities described as agreed upon by OWNER and COUNTY, and will cause the Districts to issue, from time to time, bonds to provide sufficient funds to construct and/or to acquire from OWNER the Public Facilities (including, in addition, all costs of forming and administering the district and issuing and selling such bonds).

b. No Obligation to Form District. Notwithstanding the foregoing, it is acknowledged by the parties that nothing contained in this Agreement shall be construed as requiring COUNTY or the COUNTY Board of Supervisors to form a CFD or cause a CFD to issue bonds.

3.3 Dedication, Construction and Conveyance of Public Facilities.

a. In General. The Public Facilities to be dedicated (in the case of lands) and constructed by OWNER and dedicated or conveyed to COUNTY as described in Exhibit D, shall be completed in accordance with the provisions of Exhibit D and designs, specifications and standards promulgated by COUNTY in accordance with Existing Regulations, and dedicated and conveyed to COUNTY in fee, free of all liens and encumbrances of every kind and nature except as expressly set forth in Exhibit D or agreed in writing by COUNTY. All such dedications shall be accomplished in a manner meeting the approval of the COUNTY.

OWNER and COUNTY shall expeditiously enter into agreements ("Implementation Agreements"), and in no event, later than one (1) year after the Effective Date, each in a form customarily utilized by COUNTY, with the specific terms agreed upon by the parties, providing for the construction and completion of the Public Facilities and their conveyance to COUNTY in accordance with this Agreement. COUNTY shall withhold issuance of building permits pending execution of the Implementation Agreements.

b. Public Facilities; Subdivision Requirements. With respect to any such Public Facilities as to which only a preliminary phase is required to be completed under this Agreement as provided in Exhibit D, such Public Facilities shall be completed in connection with the Development of Property as required by the Existing Land Use Regulations.

3.4 Relationship of Parties. In performing OWNER's obligations, OWNER is acting under this Agreement as an independent contractor and is not acting as the agent or employee of COUNTY nor shall anything in this Agreement be construed as creating between OWNER and COUNTY a partnership or joint venture for any purpose.

3.5 Conformity with Funding Mechanisms. Notwithstanding anything in this Agreement to the contrary:

a. No reimbursement or credit provisions shall be implemented in any manner which conflicts with the provisions governing the formation, funding and operation of existing or future applicable CFDs, fee programs or other mechanisms implemented by COUNTY to obtain funds for improvement and/or acquisition of the Public Facilities

b. Under no circumstances shall OWNER be entitled to any reimbursement with respect to Public Facilities as to which OWNER has previously been reimbursed by COUNTY, other landowners or another CFD or Financing District; and

c. Whenever in this Agreement reimbursement for the cost or value of any Public Facility is provided for, the amount thereof shall be reduced by and to the extent the OWNER has theretofore received any reimbursement for such Public Facility.

3.6 Public Works. If OWNER is required by this Agreement to construct any Public Facilities which will be dedicated to COUNTY or any other public agency upon completion, and if required by applicable laws to do so, OWNER shall perform such work in the same manner and subject to the same requirements as would be applicable to COUNTY or such other public agency should it have undertaken such construction.

3.7 Provision of Rights and Interests by COUNTY. In any instance where OWNER is required to construct any Public Facilities on lands not owned by OWNER, as a condition precedent to the performance of such obligation, COUNTY shall provide or cause to be provided the real property rights and interests necessary for the construction of such Public Facilities. OWNER shall have no obligation to pay for such rights or interests except that OWNER shall pay all reasonable administrative costs of COUNTY (including, but not limited to the administrative costs of condemnation) related to the acquisition and transfer of said rights and interests.

a. Public Financing of Other Public Facilities. Upon the request of OWNER, the parties shall cooperate in exploring the use of CFDs, special assessment districts and other similar Project-related public procedures and institutions for the financing of the construction, improvement or acquisition of public infrastructure, facilities, lands and improvements to serve the Project and its residents, whether located within or outside the Property. It is acknowledged that nothing contained in this Agreement shall be construed as requiring COUNTY or the COUNTY Board of Supervisors to form such a district or to issue or sell bonds.

b. Additional Fees. As set forth in Exhibit D hereto, OWNER has agreed to construct or pay fees to COUNTY to partially fund the construction of library and sheriff facilities. In certain instances the obligations of OWNER in providing such facilities are in excess of OWNER's pro rata share (and may include, in effect, amounts reflecting benefits to existing development or development anticipated in the distant future) of the costs of such facilities as determined pursuant to COUNTY Ordinance Number 3570.

(A.) It is acknowledged by the parties that the Development of the Property in accordance with the Governing Policies and the Existing Land Use Regulations will provide for orderly growth in accordance with the policies and goals set forth in the COUNTY General Plan, as implemented through its Growth Management Program.

Subject to the provisions of Paragraphs (B.) and (C.) below, OWNER shall participate, on a pro rata basis in the manner as provided for in COUNTY Ordinance Number 3570, in any future fee programs which are not Traffic-Related Development Exactions and which are adopted by the COUNTY Board of Supervisors in accordance with the Growth Management Program which include the Project as a portion of the respective area of benefit.

(B.) Notwithstanding the provisions of Paragraph (A) above, COUNTY acknowledges that OWNER has dedicated, or agreed to dedicate pursuant to this Agreement, to COUNTY, lands to be used for open space and park purposes in an amount in excess of that required to satisfy COUNTY's current and anticipated standards for open space; provided, however, that OWNER shall be subject to any Development Exactions imposed as a condition to or pursuant to, the granting of future Development Approvals in accordance with the Governing Policies for local park and local open space purposes.

(C.) In accordance with Paragraph 3.7.b(A.), COUNTY may require additional Development Exactions to provide for further library and sheriff facilities to service the future residents and populations of the Property; provided, however, that such further Development Exactions with respect to library and sheriff facilities and services with respect to the Property shall not exceed in the aggregate more than ten percent (10%) of OWNER's pro rata share, as determined in a manner consistent with COUNTY Ordinance Number 3570 and as set forth in Exhibit D, of the amounts specified in Exhibit D for each such facility.

(D.) Notwithstanding the limitation as set forth in Paragraph (C.), if as a result of an initiative COUNTY is compelled by a court of competent jurisdiction to construct additional fire, library, sheriff and park facilities within the Project for the purpose of benefiting the Project, then OWNER shall be subject to any fee program adopted pursuant to Paragraph (A.) for the purpose of funding such additional facility without regard to the limitations set forth in Paragraph (C.). Nothing in this Paragraph shall prohibit OWNER from appealing any such determination by a court of competent jurisdiction.

(E.) While the parties acknowledge the appropriateness of the Growth Management Program as a procedure for

monitoring and providing for future residents and populations, OWNER is concerned that COUNTY could attempt to decrease the rights and interests of OWNER provided for in Section 4 under the justification of providing increased facilities for future residents or the public. Accordingly, in adopting any such program which is in conflict with the Governing Policies, COUNTY shall reasonably find and determine that the future needs of the residents or the public require such facilities.

4. REGULATIONS GOVERNING THE DEVELOPMENT OF THE PROPERTY.

4.1 Governing Policies. Except as otherwise specified in this Agreement and the Development Approvals, the rules, regulations and official policies governing the permitted uses of the Property, the density and intensity of use of the Property, the provisions for reservation or dedication of land for public purposes and the design, improvement and construction standards and specifications applicable to Development of the Property are the Existing Land Use Ordinances, including the General Plan and Development Plan. Notwithstanding the generality of the foregoing and in addition to other deviations from the Existing Regulations specified in this Agreement and the Development Approvals, in recognition of various mitigation measures specified in the Development Approvals, the following additional Regulations shall apply: i) Habitable structures may be constructed within a minimum distance of one hundred fifty (150) feet from operational oil, gas, and injector wells (collectively, "oil wells"), or at a distance less than 100 feet when approved by Orange County Fire Authority in accordance with the Orange County Fire Authority Guideline C-02, "Requirements for Residences less than 100 feet from an Oil Well, and (ii) the Oil Operations and Servicing may continue as permitted uses under the Development Plan. The existing oil wells and production facilities located above the surface of the Property are shown on Exhibit F. Open Space retained oil wells and production facilities ("Open Space Retained Wells and Facilities") are also shown on Exhibit F.

a. Permitted Uses. The uses permitted hereunder in accordance with the Existing Land Use Ordinances, are as set forth in the Development Plan.

b. Number of Units, Density and Intensity. The total number, density and intensity of units permitted hereunder in accordance with the Existing Land Use Ordinances, are as set forth in the Development Plan.

c. Maximum Height and Size of Buildings. The maximum height and size of the buildings within the Property permitted hereunder in accordance with the Existing Land Use Ordinances are as set forth in the Development Plan.

d. Reservations and Dedication of Lands for Public Purposes and Undertaking to Participate in Completion of Regional Road Network and Major Public Facilities. As provided in Section 3, OWNER has undertaken to dedicate certain lands and construct and convey to the public the Public Facilities and to provide certain public benefits. In addition, the Existing Land Use Ordinances and Existing Development Approvals require OWNER to provide and undertake certain other public benefits and facilities as described in Section 3.3

e. No Density Increases. COUNTY has expressed interest in ensuring the provision of regional and community level infrastructure, and is pursuing the use of development agreements as a method whereby a level of assurance can be achieved concerning the service demands within planned communities so that adequate long-range plans for needed infrastructure can be developed and implemented. COUNTY and OWNER acknowledge that the establishment of land use density and dwelling unit maximums as set forth in Section 4.1b. are necessary for facility planning efforts. OWNER intends not to apply for residential increases for the Project, and COUNTY intends not to revise the maximum density and dwelling unit totals as set forth in Section 4.1b during the term of this Agreement, thus ensuring that appropriate facilities and services are planned and implemented. Further, OWNER intends not to apply for any intensification of non-residential uses within the Property which would be inconsistent with or would unduly burden existing and planned public facilities and services. Notwithstanding the foregoing, density may be allocated by OWNER in accordance with Section 6.1b.

f. Timing of Development. The parties acknowledge that the most efficient and economic Development of the Property depends upon numerous factors such as market orientation and demand, interest rates, competition and similar factors and that generally it will be most economically beneficial to the ultimate purchasers to have the rate of Development determined by OWNER. Accordingly, the timing, sequencing and phasing of Development shall be as determined by OWNER in its sole subjective business judgment and discretion except that the rate of Development shall not exceed that as set forth in Exhibit E and shall be in accord with the Existing Land Use Regulations subject to the Reservations of Authority set forth in Section 4.3 and the other terms and conditions of this Agreement.

g. Moratoria; Phasing of Development. The parties acknowledge and agree that the Governing Policies contemplate and provide for the phasing of the Development of the Property, and that except as expressly provided in this Section 4, no initiative, referendum, moratorium, ordinance, resolution, or other Land Use Regulation or limitation on the conditioning, rate, timing or sequencing of the Development of the Property or any portion thereof shall apply to or govern the Development of the Property

during the term hereof whether affecting parcel or subdivision maps (whether tentative, vesting tentative, or final), building or site development plans or permits, occupancy permits, occupancy certificates or other entitlements to use to be approved, issued or granted by COUNTY. In the event of any such subsequent action, OWNER shall continue to be entitled to apply for and receive Development Approvals in accordance with the Existing Land Use Regulations, subject only to the exercise of the Reservations of Authority set forth in Section 4.3 and the terms of this Agreement

h. Development Exactions. In addition to and not in limitation of the foregoing, or the provisions of Section 4.2 except and subject to the Reservations of Authority, COUNTY shall not levy or require any further Development Exactions except those provided for in Section 3 or which are provided for or required by or pursuant to the Existing Land Use Regulations (including, but not limited to the existing General Plan, the Development Plan, and Existing Development Approvals) which include, but are not limited to, Development Exactions which may be required by COUNTY in accordance with its current subdivision standards and policies (including, without limitation, as to the amount, time and method of payment);

i. Dedications. At the appropriate points in the Development of the Project and in accordance with Exhibit E, OWNER shall irrevocably offer for dedication or reserve for acquisition by COUNTY or its successor, assignee, or designee the Public Facilities, including streets, rights-of-way, parkland and other areas as more fully set forth in Exhibit D.

j. Permits and Approvals - Cooperation. COUNTY shall accept and timely process, in the normal and legal manner for processing such matters, all applications for future Development Approvals contemplated by, required under or necessary to effect the intent of this Agreement. Provided tentative tract map, parcel map and precise development plan and other applications are consistent with the Development Plan, COUNTY shall take final action on such applications within the time frames set forth in the Permit Streamlining Act, California Government Code Sections 65920 et seq., unless an extension is agreed to by OWNER.

k. Further Mitigation. In connection with the issuance of any future Development Approvals which are subject to review under CEQA, the COUNTY shall not impose any environmental alternatives or mitigation measures in addition to those referenced in the Development Approvals unless determined to be necessary or appropriate in the course of CEQA review. The Mitigation Measures and Mitigation Monitoring Plan set forth in EIR 581 constitute additional benefits anticipated under this Agreement. Those Mitigation Measures will be enforced and monitored in the manner set forth in EIR 581..

l. Water Supply. Water supply for the project has been the subject of the analysis required by Government Code section 66473.7, Public Resources Code section 21151.9 and Water Code section 10631, et seq.

4.2 Regulation of Development.

a. In General. Notwithstanding any future action of COUNTY, whether by ordinance, resolution, initiative or otherwise, during the term of this Agreement, the rules, regulations and official policies applicable to and governing the Development of the Property shall be the Existing Land Use Regulations as modified by the Governing Policies together with amendments and additions adopted pursuant to Section 4.3a.and b.

b. Vested Rights. In developing the Property, OWNER is provided and assured the vested right to require that the Land Use Regulations of COUNTY applicable to and governing the Development of the Property during the term hereof shall be as provided in this Section 4.2.

4.3 Limitations, Reservations and Exceptions. Notwithstanding anything to the contrary set forth in Section 4.2 hereinabove, in addition to the Existing Land Use Regulations, only the following Land Use Regulations adopted by COUNTY hereafter shall apply to and govern the Development of the Property ("Reservations of Authority"):

a. Future Regulations. Future COUNTY Land Use Regulations which are not in conflict with the Governing Policies or which are in conflict with the Governing Policies and the application of which to the Development of the Property has been consented to in writing by OWNER;

b. State and Federal Laws and Regulations. Existing and future State and federal laws and regulations, together with any COUNTY Land Use Regulations, programs and actions, or inaction, which are reasonably (taking into consideration, among other things, the assurances provided to OWNER hereunder) adopted or undertaken by COUNTY in order to comply with State and federal laws and regulations; provided, that in the event that State or federal laws and regulations prevent or preclude compliance with one or more provisions of this Agreement, such provisions shall be modified or suspended as may be necessary to comply with such State and federal laws and regulations, in which event this Agreement shall remain in full force and effect to the extent that it is not inconsistent with such laws and regulations and that performance of the remaining provisions would not be inconsistent with the intent and purposes of this Agreement;

c. Public Health and Safety. Land Use Regulations which are adopted by COUNTY, which may be in conflict with the Governing Policies which are reasonably necessary in order to protect the public health and safety;

d. Building and Improvement Standards. Present and future Building and Improvement Standards, except that (taking into consideration the assurances to OWNER in this Section 4) any future amendment thereto which significantly reduces the amount of land within the Property which can be utilized for structures and improvements or significantly increases the amount of open space within the Project under the Development Plan shall not be considered a provision of any of the Building and Improvement Standards included within the exception provided by this Paragraph 4.3d. and shall not apply to and govern the Development of the Project unless it complies with another exception under this Section 4.3;

e. Processing Fees and Charges. Processing fees and charges of every kind and nature imposed or required by COUNTY under current or future Regulations covering the actual costs of COUNTY in (i) processing applications and requests for permits, approvals and other actions and (ii) monitoring compliance with any permits issued or approvals granted or the performance of any conditions with respect thereto or any performance required of OWNER hereunder; and,

f. Full Extent of Law. The parties acknowledge and agree that COUNTY is restricted in its authority to limit its police power by contract and that the foregoing limitations, reservations and exceptions are intended to reserve to COUNTY all of its police power which cannot be so limited. Notwithstanding the foregoing, this Agreement shall be construed, contrary to its stated terms if necessary, to reserve to COUNTY all such power and authority which cannot be restricted by contract.

4.4 Further Assurances to OWNER Regarding Exercise of Reservations of Authority.

a. Adoption of General Plan and Development Plan. In preparing and adopting the General Plan and the Development Plan and in granting the Existing Development Approvals, COUNTY considered the health, safety and welfare of the existing and future residents and populations of the County and prepared in this regard extensive environmental impact reports ("EIRs") (including EIR 581 dated April, 2002) as well as extensive traffic impact reports (dated April, 2002) and other studies. Without limiting the generality of the foregoing, in preparing and adopting the General Plan and Development Plan,, the COUNTY Board of Supervisors carefully considered and determined the projected needs (taking into consideration the planned development of the Project, adjacent areas and the County) for sheriff, fire, library, paramedic and

similar facilities and services within the Project, the adjacent areas and the County, and the projected needs within the Project and such areas for flood control measures, the general capacity of the Property, the needs of the residents for open space and parks, the appropriateness of the number of units to be developed and the density and intensity of the development comprising the Project. The parties acknowledge that the allocation of Development within the Property as part of future Development Approvals is subject to various considerations pursuant to the Existing Land Use Regulations such as the location of particular wildlife populations, earthquake fault and other natural hazard zones, cultural resources and other site specific considerations Further, the parties acknowledge that in certain instances, the development of the Property may be restricted and adversely affected and impacted by future Land Use Regulations adopted by COUNTY as provided in Section 4.3.

b. Assurances to OWNER. The parties further acknowledge that the public benefits to be provided by OWNER to COUNTY pursuant to this Agreement, including, without limitation, the participation by OWNER in the coordinated completion of the Public Facilities and the financing and construction thereof are in consideration for and reliance upon assurances that the Property can be developed in accordance with the Existing Land Use Regulations (subject to the terms of this Agreement). Accordingly, while recognizing that the Development of the Property may be affected by the exercise of the Reservations of Authority and the requirement that OWNER participate in future public facilities, OWNER is concerned that normally the Courts extend to local agencies significant deference in the adoption of Land Use Regulations which might permit COUNTY to attempt to apply inconsistent Land Use Regulations in the future under justification of the Reservations of Authority or the COUNTY's authority to require OWNER's participation under Section 3.7b. Accordingly, OWNER desires assurances that COUNTY will not inequitably further restrict or limit the Development of the Property in conflict with the provisions of this Agreement.

c. Judicial Review.

(1) Burden of Proof. Based on the foregoing, in the event OWNER judicially challenges (including the procedure pursuant to Section 11.5) the application of a future Land Use Regulation as being in conflict with this Agreement or exceeding or violating COUNTY'S authority (as described herein), OWNER shall bear the burden of proof in establishing that such Land Use Regulation was applied in conflict with the Governing Policies. In the event that OWNER bears its burden of proof and establishes that such Land Use Regulation is in conflict with the Governing Policies, COUNTY shall thereafter bear the burden of proof in establishing

that such Land Use Regulation was adopted pursuant to and in accordance with this Agreement.

(2) Considerations. Considerations, among others, in determining whether any such future COUNTY Land Use Regulation was properly applied shall include:

(i) With respect to any future Land Use Regulations adopted by COUNTY pursuant to paragraphs 4.3c. (with respect to the protection of public health and safety) or 4.3b. (with respect to federal and state regulation), the extent to which such regulation substantially impairs the rights of OWNER hereunder and is (A) to be unreasonably borne only by OWNER and the Project (taking into consideration the obligations of OWNER under this Agreement) rather than being also borne by other lands and interests, or (B) unreasonable taking into consideration other reasonable and practicable alternatives; and

(ii) with respect to any future Land Use Regulations adopted pursuant to Paragraph 4.3c. (with respect to the protection of public health and safety):

(A) Whether, and the extent to which, the concerns which are the subject of the proposed Land Use Regulation were considered and/or provided for in the adoption of the Existing Land Use Regulations or this Agreement; and

(B) The greater the severity of the adverse impact of the Land Use Regulation on the reasonable investment based Economic Expectations of OWNER (taking into consideration the extent of any mitigation of such impacts provided by COUNTY in connection with such Land Use Regulation, for example, by the transfer of development density), the greater the showing required of COUNTY that the concerns addressed are legitimate and that such Land Use Regulation is reasonable taking into consideration such concerns.

The parties believe that the foregoing considerations are appropriate under the law and are not intended to, and shall not, limit the authority of COUNTY with respect to the police power which cannot be limited by contract. Further, said considerations shall be interpreted, supplemented and revised to reflect subsequent judicial determinations and State legislative enactments further defining the extent and nature of the authority of local agencies which must be reserved and cannot be limited by contracts such as this Agreement.

(3) Administrative Findings and Burden of Proof.

(a) COUNTY Findings and Determinations. As a condition precedent to adopting any Land Use Regulation or taking any action requiring the action or approval of the COUNTY Board of Supervisors which is in conflict with the Governing Policies, after providing OWNER with reasonable notice and an opportunity to be heard, COUNTY shall make specific findings and determinations as to the basis for applying such Land Use Regulation to the Development in accordance with Section 4.3 or Section 3.7b.

(b) OWNER's Burden of Proof. As a condition precedent to any claim by OWNER that a proposed Land Use Regulation does not comply with the Reservations of Authority or Section 3.7b. and, therefore, cannot be applied to and govern the Development of the Property (whether in a judicial proceeding or otherwise), OWNER shall raise the claim at the COUNTY Board of supervisors hearing (and may raise it earlier) at which the proposed Land Use Regulation is considered and shall present all information which, in its judgment, is relevant and upon which it intends to rely, or present in any judicial proceeding, including, but not limited to, information regarding OWNER's reasonable investment based Economic Expectations, and, in addition, shall provide at such time any further information regarding OWNER's reasonable investment based Economic Expectations reasonably requested by COUNTY. In the event that the proposed Land Use Regulation is of a kind that is not heard by or appealable to the COUNTY Board of Supervisors and provided that OWNER is given reasonable prior notice, as a condition precedent to any such claim, OWNER shall raise the claim and provide the above information as a protest to the agent or representative of COUNTY promulgating or applying the proposed Land Use Regulation.

4.5 Regulation by other Public Agencies. It is acknowledged by the parties that other public agencies not within the control of COUNTY possess authority to regulate aspects of the Development of the Property separately from or jointly with COUNTY and this Agreement does not limit the authority of such other public agencies. For example, pursuant to Government Code Section 66477, in the event that an agency (for example, a community services district), provides park and recreational services or facilities, it shall be permitted by the parties, to participate jointly with COUNTY to determine the location of land to be dedicated or

in lieu fees to be paid for local park purposes, provided that COUNTY shall exercise its authority subject to this Agreement.

5. PERIODIC REVIEWS

5.1 Annual Review. COUNTY and OWNER shall review the performance of this Agreement, and the Development of the Project, at least once every 12-month period from the Effective Date in accordance with Government Code Section 65865.1. As part of such Annual Monitoring Review, within 30 days after each anniversary of this Agreement, OWNER shall deliver to COUNTY:

a. A then current Build-out Phasing Plan for the Project; and

b. All information reasonably requested by COUNTY (i) regarding OWNER's performance under this Agreement demonstrating that OWNER has complied in good faith with terms of this Agreement and (ii) as required by the Existing Land Use Ordinances.

If as a result of such periodic review, COUNTY finds and determines, on the basis of substantial evidence, that OWNER has not complied in good faith with any of the terms or conditions of this Agreement, COUNTY may terminate this Agreement as provided in Section 11.2.

5.2 Five-Year General Plan Review. Every five years following the Effective Date, COUNTY intends to conduct a review of its General Plan including how the General Plan applies to the Project. OWNER shall cooperate with COUNTY in the conducting of this review and in developing mutually acceptable revisions to the General Plan and any revisions to the Development Plan pursuant thereto; provided, however, that neither COUNTY nor OWNER shall have any obligation to agree to such changes.

6. TRANSFERS AND ASSIGNMENTS.

6.1 Transfer and Assignments of Rights and Interests.

a. Rights and Interests Appurtenant. Except as provided in Section 6.3, the rights and interests conveyed and provided herein to OWNER benefit and are appurtenant to the Property. OWNER has the right to sell, assign and transfer any and all of its rights and interests and to delegate any and all of its duties and obligations hereunder; provided, however, that such rights and interests may not be transferred or assigned except in strict compliance with the following conditions precedent:

(i) Said rights and interests may be transferred or assigned only together with and as an incident of the transfer and assignment of the portions of the Property to which they relate, including any transfer or assignment pursuant to any foreclosure of a Mortgage or a deed in lieu of such foreclosure; and

(ii) Concurrent with any such assignment or transfer or within five (5) business days thereafter, OWNER shall notify COUNTY in writing of such assignment or transfer, the portions of the Property to which the assignment or transfer is appurtenant, and the name and address (for purposes of notices hereunder) of the transferee or assignee, together with the corresponding number of dwelling units which are included within such transfer and OWNER and the assignee or transferee shall notify COUNTY whether the assignee or transferee has assumed any of OWNER's Obligations under this Agreement and which of OWNER's obligations have been assumed; and

(iii) Prior to or concurrent with such assignment or transfer, OWNER shall either make an offer of dedication to COUNTY of all rights-of-way necessary to complete the Regional Road Network Improvements through the portions of the Property being assigned or transferred in accordance with the provisions of Section 3.1 or provide COUNTY with the binding commitment and agreement of the proposed assignee or transferee, in a form reasonably acceptable to COUNTY, irrevocably committing said proposed assignee or transferee to offer to dedicate said rights-of-way to COUNTY in accordance with the provisions of Section 3.1 as soon as the appropriate legal descriptions are provided.

(iv) Any attempt to assign or transfer any right or interest in this Agreement except in strict compliance with this Section 6, shall be null and void and of no force and effect. Notwithstanding anything to the contrary in this Section or elsewhere in this Agreement, no such transfer, nor any portion of the Property transferred, shall include any oil, gas or other hydrocarbons, water or minerals, of any type, nor any rights, benefits or accoutrements relating thereto, nor any rights, benefits, accoutrements or obligations in respect of or in connection with, the Oil Operations and Servicing, unless specifically stated to the contrary and itemized individually, in the document or instrument of conveyance.

(v) COUNTY shall have no duty or obligation of any kind or nature to maintain a record of such transfers or assignments of portions of the Property or numbers and allocations of units involved or to notify or advise prospective or actual assignees or transferees or others of such assignments or the resulting allocation of units with respect to the Property or under this Agreement.

b. Allocation of Density. It is acknowledged that the density of development provided by the Governing Policies may be distributed by OWNER disproportionately throughout the Property in accordance with and subject to the Existing Land Use Regulations. COUNTY shall not be

obligated to the successors of OWNER to advise or notify any such successor or any other person as to the density of development allowed under this Agreement or any of the Land Use Regulations with respect to any particular portion of the Property; provided, however, that COUNTY shall upon the request of OWNER enter into further agreements in a recordable form allocating to the various portions of the Property the then allowable density of units pursuant to the Governing Policies. Such an agreement may include provisions relating to the assumption of certain of OWNER's obligations hereunder and the allocation of the benefits and burdens of this Agreement, all as specifically provided in this Article 6. The reasonable costs and expenses of COUNTY in considering and responding to any such request shall be reimbursed to COUNTY by OWNER forthwith upon the request of COUNTY.

c. Subject to Terms of Agreement. Following any such assignment or transfer of any of the rights and interests of OWNER under this Agreement, the exercise, use and enjoyment thereof shall continue to be subject to the terms of this Agreement to the same extent as if the assignee or transferee were OWNER. Without limiting the generality of the foregoing,

(i) In order to claim or benefit from any right or interest hereunder or provision hereof (including but not limited to the rights of OWNER under Section 11), any subsequent assignee or transferee shall have no right, and shall be obligated not, to claim damages from or against COUNTY under Section 11;

(ii) The further assignment or transfer of any of the rights or interests under this Agreement shall be made only in accordance with and subject to the terms of this Section 6.1; and

(iii) The rights and interests assigned or transferred are subject to termination in accordance with this Agreement.

Notwithstanding the foregoing, the assignee or transferee of any of the rights and interests of OWNER shall take said rights and interests subject to this Agreement and shall perform the duties and obligations of OWNER.

d. Release of OWNER. Notwithstanding the assignment or transfer of portions or all of the Property or rights or interests under this Agreement, OWNER shall continue to be obligated under this Agreement unless released or partially released by COUNTY with respect to OWNER's Obligations and the other duties and obligations of OWNER under this Agreement which release or partial release shall be provided by COUNTY upon the full satisfaction by OWNER of the following conditions:

(i) OWNER is not then in default under this Agreement;

(ii) OWNER has provided COUNTY with the written notice required under Paragraph 6.1.a.; and

(iii) such assignee or transferee has assumed such duties and obligations as to which OWNER is requesting to be released and has provided COUNTY with security and other assurances equivalent to those which were provided by OWNER assuring COUNTY that OWNER's Obligations and the other duties and obligations of OWNER under this Agreement for which OWNER is being released will be fully and strictly performed as provided in this Agreement.

e. Effect of Noncompliance. From and after the assumption of obligations under this Agreement by a transferee pursuant to this Section, noncompliance by any such transferee with the terms and conditions of this Agreement assumed by such transferee shall entitle COUNTY to pursue any and all of its rights under this Agreement so assumed against such transferee; but, such noncompliance shall not be deemed a default or grounds for termination hereof with respect to, or constitute cause for COUNTY to initiate enforcement action against, other persons then owning or holding interests in the Property or any portion thereof and not themselves in default hereunder. Similarly, noncompliance by OWNER with respect to any terms and conditions of this Agreement not assumed by such transferee shall entitle COUNTY to pursue any and all of its rights under this Agreement retained by OWNER against OWNER, but, such noncompliance by OWNER shall not be deemed a default or grounds for termination hereof with respect to, or constitute cause for COUNTY to initiate enforcement action against, such transferee or other persons then owning or holding interest in the Property or any portion thereof and not themselves in default hereunder.

f. Rights of Successors and Assigns. Any and all successors, including without limitation, those successors acquiring their interests in the Property and this Agreement by merger, consolidation, stock sale, pledge, corporate reorganization or other conveyance by business arrangement, and assigns of OWNER shall have all of the same rights, benefits and obligations of OWNER under this Agreement, to the extent acquired as part of the Property and/or permitted in this Section.

6.2 Termination of Agreement With Respect to Individual Parcels Upon Sale to Public. Notwithstanding any provisions of this Agreement to the contrary, the burdens of this Agreement shall terminate as to any lot which has been finally subdivided and individually (and not in "bulk") leased (for a period of one year or more) or sold to the purchaser or user thereof and thereupon and without the execution or recordation of any further document or instrument such lot shall be released from and no longer be subject to or burdened by the provisions of this

Agreement; provided, however, that the benefits of this Agreement shall continue to run as to any such lot until a building is constructed on such lot, or until the termination of this Agreement, if earlier, at which time this Agreement shall terminate as to such lot.

7. ANNEXATION AND INCORPORATION. Upon the incorporation or annexation of the Property in or to any city or other county (the "Local Agency"), such Local Agency, as contemplated by and provided in Section 65865.3 (a) of the Development Agreement Legislation (with respect to incorporation) shall succeed to the benefits and rights and be bound by the obligations and duties of COUNTY hereunder to the same extent as if the Local Agency were a signatory hereof, including but not limited to the obligation to issue necessary permits and approvals in accordance herewith; provided, however, and except that COUNTY shall continue to be a beneficiary with respect to the OWNER's Obligations under this Agreement and may enforce the provisions hereof with respect thereto. Notwithstanding the foregoing: (i) upon any such annexation or incorporation, this Agreement shall not be terminated, amended, modified or cancelled with respect to OWNER's Obligations without the prior written approval and consent of COUNTY and any attempt to do so shall be null and void and of no force and effect; and (ii) if OWNER's rights pursuant to this Agreement are terminated or suspended as a result of such incorporation or annexation, OWNER's obligations shall be terminated or suspended, as applicable. The timing and process for annexation is set forth in the Memorandum of Understanding (MOU) between the parties hereto and the City of Brea which is attached to this Agreement as Exhibit C.

8. TERM OF AGREEMENT.

8.1 Stated Term. The term of this Agreement is intended to provide sufficient time for the full repayment of any bonds to be issued by any CFD or Financing District referred to in Section 3.2, or other debt obligations incurred in lieu of said bonds, for the purpose of financing the construction and acquisition of Public Facilities. Based on the foregoing, this Agreement shall become effective on the Effective Date and unless earlier terminated pursuant to the provisions of this Agreement shall continue in effect for twenty (20) consecutive years therefrom. In the event that the parties determine that a longer period is necessary to achieve the foregoing purpose, the term of this Agreement may be extended by the further written agreement of the parties in accordance with Section 9.

8.2 Rights and Duties Following Termination.

a. In General. Upon the termination of this Agreement, no party shall have any further right or obligation hereunder except with respect to any obligations required to have been performed prior to said termination or with respect to any default in the performance of the provisions of this Agreement which has occurred prior to said termination.

b. Survival of Terms. In the event that this Agreement is terminated for any reason other than the default of OWNER, the rights and duties of the parties shall be as set forth in Paragraph 8.2a., except as provided in this Paragraph 8.2b. as follows:

(i) Reimbursement. COUNTY acknowledges that in connection with certain fee programs, OWNER may have participated financially in excess of OWNER's Pro-rata Share in the cost of the Public Facilities, in which case COUNTY shall endeavor to cause other benefited undeveloped lands and owners thereof to be identified, and COUNTY shall, to the extent feasible, attempt to require such other landowners to reimburse to OWNER, through COUNTY, that portion of such costs incurred by OWNER in excess of its Pro-Rata Share, as reasonably determined by COUNTY which has not been previously reimbursed by COUNTY or a District. OWNER acknowledges that COUNTY may be limited in the manner in which it may collect or require such reimbursement and that COUNTY may be unable to cause OWNER to be reimbursed for such costs.

(ii) Assurances for Completed Milestones. To the extent that certain OWNER's Obligations (set forth in Exhibit D), have been fully performed to the extent required at such time, this Agreement shall continue in full force and effect during the remainder of the stated term of this Agreement set forth in Section 8.1 to assure OWNER that the Land Use Regulations applicable and governing the Development of the Property during such time shall be as provided in Section 4 except that the assurances regarding the number of units permitted to be developed within the Property which are provided by the Governing Policies shall be reduced by the number of units authorized in each phase and shall not exceed the total number of units contemplated by this Agreement.

9. AMENDMENT. Subject to the provisions of Section 7 and Section 11, this Agreement may be amended or cancelled only by the mutual agreement of the parties in accordance with Government Code Section 65868, in a writing executed by the parties and recorded in the official records of COUNTY.

10. PROCESSING OF REQUESTS AND APPLICATIONS. COUNTY shall process any applications for action pursuant to this Agreement, or for permits or approvals for Development of the Property, under the procedures for the processing of applications for such applications which are then in effect; provided, however, as provided in Section 4, no subsequently adopted Regulation (including, without limitation, any moratorium or other phasing of development) shall be applicable to and shall delay the acceptance or processing of any such application except in strict accordance with the Existing Land Use Regulations or Land Use Regulations adopted by COUNTY pursuant to the Reservations of Authority. As provided above, the standards applied in approving or disapproving such applications shall be as set forth in the Existing Land Use Regulations, subject to the Reservations of Authority.

11. DEFAULT, REMEDIES AND ESTOPPEL CERTIFICATES. Unless canceled as provided herein, or modified or suspended pursuant to Government Code Section 65869.5 or

terminated pursuant to this Section 11, this Agreement is enforceable according to its terms by either party hereto.

11.1 Remedies in General. It is acknowledged by the parties that COUNTY would not have entered into this Agreement if it were to be liable in damages under or with respect to this Agreement or the application thereof.

In general, each of the parties hereto may pursue any remedy at law or equity available for the breach of any provision of this Agreement; except that COUNTY shall not be liable in damages to OWNER, or to any assignee, transferee of OWNER or any other person, and OWNER covenants not to sue for or claim any damages, for:

(A.) any breach of, or which arises out of, this Agreement;

(B.) the taking, impairment or restriction of any right or interest conveyed or provided hereunder or pursuant hereto; or

(C.) arising out of or connected with any dispute, controversy or issue regarding the application or interpretation or effect of the provisions of this Agreement,

provided, however, that the foregoing does not limit the liability of COUNTY, if any, for damages which:

(A.) are not for a breach of this Agreement or which do not arise under this Agreement;

(B.) are not with respect to any right or interest conveyed or provided hereunder or pursuant hereto, and

(C.) do not arise out of or which are not connected with any dispute, controversy or issue regarding the application, interpretation or effect of the provisions of this Agreement to, on or the application of, any Regulation of COUNTY.

Without limiting the generality of the foregoing, and as an example, in the event that COUNTY refuses to issue building permits under and in accordance with a Vesting Tentative Map issued by COUNTY, OWNER would be entitled to whatever remedies at law or in equity which are available, including, if available under law, the right to monetary damages.

11.2 Termination of Agreement for Default by OWNER.

COUNTY in its discretion may terminate this Agreement for any failure of OWNER to perform any material duty or obligation of OWNER under, or to comply in good faith with the terms and conditions of this Agreement (hereinafter referred to as "default"); provided however, COUNTY may terminate this Agreement pursuant to this Section only after providing written notice to OWNER of the default setting forth the nature of the default and the actions, if any, required by OWNER to cure such default and, where the default can be cured,

OWNER has failed to take such actions and cure such default within sixty (60) days after the effective date of such notice or, in the event that such default cannot be cured within such 60 day period but can be cured within a longer time has failed to commence the actions necessary to bring itself into compliance as required and to diligently pursue such steps to completion.

11.3 Termination of Agreement for Default of COUNTY. OWNER in its discretion may terminate this Agreement by written notice to COUNTY after the default by COUNTY in the performance of a material term of this Agreement and only after notice by OWNER thereof to COUNTY and, where the default can be cured, the failure of COUNTY to cure such default within 60 days after the effective date of such notice or, in the event that such default cannot be cured within such 60 day period, the failure of COUNTY to commence to cure such default within such 60 day period and to diligently proceed to complete such actions and to cure such default.

11.4 Specific Performance. The parties acknowledge that monetary damages and remedies at law generally are inadequate due, in part, to the size, nature and scope of the Project, it will not be practical or possible to restore the Property to its natural condition once implementation of this Agreement has begun and specific performance is a particularly appropriate remedy for the enforcement of this Agreement and should be available to both parties based on the following reasons and facts:

(i) the unavailability of monetary damages against COUNTY provided in Section 11.1 hereinabove;

(ii) OWNER's Obligations provided for in the Agreement were bargained for by COUNTY and given in return for assurances by COUNTY to OWNER regarding the, Existing Regulations (except as specified to the contrary herein) applicable to the Development of the Property, which assurances were in turn relied upon by OWNER in undertaking OWNER's Obligations;

(iii) Due to the size, nature and scope of the Project, it may not be practical or possible to restore the Property to its natural condition once implementation of this Agreement has begun; after such implementation, OWNER may be foreclosed from other choices it may have had to utilize the Property, or portions thereof, and to provide other benefits to the COUNTY. OWNER has invested significant time and resources and performed extensive planning and processing of the Project in agreeing to the terms of this Agreement and will be investing even more significant time and resources in implementing the Project in reliance upon the terms of this Agreement, and it is not possible to determine the sums of money which would adequately compensate OWNER for such efforts;

(iv) The inability of OWNER to recover and receive back its capital investment in the Public Facilities to be provided to COUNTY as part of OWNER's Obligations and to re-plan and provide for different uses of the Property once such facilities and infrastructure have been completed;

(v) The use of the Property for the purposes and uses described in the Development Plan is unique; and.

(vi) The critical public need and concern regarding a better balance between jobs and housing in the region and residential housing in the COUNTY and the Public Facilities and other major facilities and infrastructure to be provided by OWNER as part of OWNER's Obligations as well as for the benefits that can be obtained from the long-term and comprehensive planning and stability contemplated by the Development Agreement Legislation.

Further, the parties acknowledge that for the reasons set forth above (particularly because of the lack of monetary damages available to OWNER), in connection with any judicial proceeding regarding the performance of this Agreement, rights, or the interests and duties of the parties hereunder, including a proceeding pursuant to Section 11.5, it is appropriate for, and the parties shall cooperate in requesting (whether by stipulations or otherwise) the court with jurisdiction to proceed expeditiously and to retain jurisdiction until the underlying conflict or dispute has been fully resolved.

11.5 Appointment of Referee. As an alternative procedure hereunder, a party initiating legal action hereunder may request that such action be heard by a reference from the Orange County Superior Court pursuant to the reference procedures of California Code of Civil Procedure Sections 638, et seq. OWNER and COUNTY, in such case, shall use their best efforts to agree upon a single referee who shall then try all issues, whether of fact or law, and report a finding and judgment thereon and issue all legal and equitable relief appropriate under the circumstances of the controversy before him. If OWNER and COUNTY are unable to agree upon a referee within ten (10) days of a written request to do so by either party, either party may seek to have a referee appointed pursuant to Section 640 of the California Code of Civil Procedure. The cost of such proceeding (exclusive of the attorneys fees and cost of the parties) shall be borne equally by the parties. Any referee selected pursuant to this Section 11.5 shall be considered a temporary judge appointed pursuant to Article 6, Section 21 of the California Constitution. In the event that an alternative method of resolving disputes concerning the application, enforcement or interpretation of development agreements is provided by legislative or judicial action after the Effective Date, the parties may, by mutual agreement, select such alternative method.

11.6 Estoppel Certificates. Either party may at any time deliver written notice to the other party requesting an estoppel certificate (the "Estoppel Certificate") stating:

11.6.1 The Agreement is in full force and effect and is a binding obligation of the parties;

11.6.2 The Agreement has not been amended or modified either orally or in writing or, if so amended, identifying the amendments;

11.6.3 That there has been no default in the performance of the requesting party's obligations under the Agreement or, if a default does exist, the

nature and amount of any default. A party receiving a request for an Estoppel Certificate shall provide a signed certificate to the requesting party within thirty (30) days after receipt of the request. The Director of the COUNTY's Planning and Development Services Department or its designee may sign Estoppel Certificates on behalf of the COUNTY. Any officer of OWNER may sign on behalf of OWNER. An Estoppel Certificate may be relied on by assignees, transferees and mortagees of OWNER. In accordance with Section 11, COUNTY shall have no liability for monetary damages to OWNER, any assignee, transferee or mortagee or any other person in connection with, resulting from or based upon the issuance of any certificate hereunder.

11.5.4 In the event that one party requests an Estoppel Certificate from the other, the requesting party shall reimburse the other party for all reasonable and direct costs and fees incurred by such party with respect thereto, including reasonable attorney's fees.

12. THIRD PARTY LITIGATION.

12.1 General Plan Litigation.

a. Litigation. As set forth above, COUNTY has determined that this Agreement is consistent with the General Plan and that the General Plan meets all of the legal requirements of State law. OWNER has reviewed the General Plan and concurs with COUNTY's determination. The parties acknowledge that:

(i) Presently there is no litigation challenging the legality, validity and adequacy of certain provisions of the General Plan;

(ii) In the future there may be other similar challenges to provisions of the General Plan as well as others; and

(iii) If successful, such challenges could delay or prevent the performance of this Agreement and the Development of the Property.

(iv) In addition to the other provisions of this Agreement, including, without limitation, the provisions of Section 11, COUNTY shall have no liability under this Agreement for any failure of COUNTY to perform under this Agreement or the inability of OWNER to develop the Property as contemplated by the Development Plan or this Agreement as the result of a judicial determination that on the Effective Date, or at any time thereafter, the General Plan, or portions thereof, are invalid or inadequate or not in compliance with law.

b. Revision of General Plan. If for any reason the General Plan or any part thereof is hereafter judicially determined as provided above to be

invalid or inadequate or not in compliance with the State or federal Constitutions, laws or regulations, this Agreement shall remain in full force and effect and upon the adoption or amendment of any General Plan provision which is necessary in order to comply with State or federal Constitutions, laws or regulations to cure such invalidity or inadequacy, together with any amendments of the Development Plan and the Land Use Regulations which are necessary in order to comply with the portions of such new or revised General Plan which are necessary to avoid the invalidation of this Agreement, the reference in Section 4 to the General Plan shall thereafter mean and refer to such portions of the new or amended General Plan and such amendments in the Development Plan and Land Use Regulations.

c. Suspension of obligations. In the event that Development of the Property is enjoined or prevented from proceeding by any judicial order or determination in connection with the determinations regarding the General Plan referred to above and the subsequent proceedings with respect thereto referred to in paragraph b. of this Section, the time for performance of the obligations of the parties hereunder shall be extended as provided in Section 15.11.

d. Option to Terminate. In the event that any such amendments of the General Plan or the Development Plan or Land Use Regulations result in a reduction in the number of units or the density or intensity, or timing, sequencing or phasing of Development or otherwise adversely impact the reasonable investment based Economic Expectations of OWNER in connection with the Project, OWNER may terminate this Agreement by notice in writing to COUNTY and recorded in the official records of COUNTY.

13. EFFECT OF AGREEMENT ON TITLE.

13.1 Covenants Run With The Land. Subject to the provisions of Sections 6 and 14:

(i) All of the provisions, agreements, rights, powers, standards, terms, Covenants and obligations contained in this Agreement shall be binding upon the parties and their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, devisees, administrators, representatives, lessees, and all other persons acquiring any rights or interests in the Property, or any portion thereof, whether by operation of laws or in any manner whatsoever and shall inure to the benefit of the parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns;

(ii) All of the provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land pursuant to applicable law;

(iii) Each covenant to do or refrain from doing some act on the Property hereunder (A) is for the benefit of and is a burden upon every portion of the Property, (B) runs with such lands and (C) is binding upon each party and each successive owner during its ownership of such properties or any portion thereof, and each person having any interest therein derived in any manner through any owner of such lands, or any portion thereof, and shall benefit each party and its lands hereunder, and each other person succeeding to an interest in such lands.

Notwithstanding any of the foregoing or in this Agreement to the contrary, any assignee or transferee or Mortgagee which acquires any right or interest in or with respect to the Property or any portion thereof shall take and hold such rights and interests subject to this Agreement and shall not have been deemed to have assumed the OWNER's Obligations of the other affirmative duties and obligations of OWNER hereunder except:

(i) To the extent that any of such assignees, transferees or mortgagees have expressly assumed any of the duties or obligations of OWNER hereunder;

(ii) If any such assignee, transferee or mortgagee accepts, holds, or attempts to exercise or enjoy the rights or interests of OWNER hereunder, it shall have assumed the obligations of OWNER under Sections 3 and 11; and

(iii) To the extent that the performance of any duty or obligation by OWNER is a condition precedent to the performances of a covenant by COUNTY, it shall continue to be a condition to COUNTY's performance hereunder.

13.2 No Dedication or Lien. Nothing herein shall be construed as a dedication or transfer of any right or interest in, or as creating a lien with respect to, the title to the Property.

13.3 Termination Upon Final Sale. As provided in Section 6.2, without the requirement of any further writing or action on the part of any party hereto, this Agreement shall terminate as to specific lots as provided therein.

14. MORTGAGEE PROTECTION: CERTAIN RIGHTS OF CURE.

14.1 Mortgagee Protection. This Agreement shall be, superior and senior to any lien placed upon the Property, or any portion thereof, including the lien of any Mortgage. Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish or impair the lien of any Mortgage made in good faith and for value and any acquisition or acceptance of title or any right or interest in or with respect to the Property, or any portion thereof, by a Mortgagee (whether under or pursuant to a Mortgage, foreclosure, trustee's sale, deed in lieu of

foreclosure, or otherwise), shall be subject to all of the terms and conditions contained in this Agreement.

14.2 Mortgagee Not Obligated. Notwithstanding the provisions of Section 14.1 above, no Mortgagee shall have an obligation or duty under this Agreement to perform Owner's Obligations or other affirmative covenants of OWNER hereunder, or to guarantee such performance; except that to the extent that any covenant to be performed by OWNER is a condition to the performance of a covenant by COUNTY, the performance thereof shall continue to be a condition precedent to COUNTY's performance hereunder.

14.3 Notice of Default to Mortgagee; Right of Mortgagee to Cure. If COUNTY receives notice from a Mortgagee requesting a copy of any notice of, default given OWNER hereunder and specifying the address for service thereof, and records a copy of each request in the official records of COUNTY in the manner required under Civil Code Section 2924b with respect to Requests for Notices of Default, then COUNTY shall deliver to such Mortgagee, concurrently with service thereon to OWNER, any notice given to OWNER with respect to any claim by COUNTY that OWNER has not complied in good faith with the terms of this Agreement or has committed an event of default. Each Mortgagee shall have the right (but not the obligation) for a period of ninety (90) days after the receipt of such notice from COUNTY to cure or remedy, or to commence to cure or remedy, the claim of default or noncompliance set forth in the COUNTY's notice. If the default is of a nature which can only be remedied or cured by such Mortgagee upon obtaining possession, such Mortgagee shall seek to obtain possession with diligence and continuity through foreclosure, a receiver or otherwise, and shall thereafter remedy or cure the default or noncompliance within thirty (30) days after obtaining possession. If any such default or noncompliance cannot, with diligence, be remedied or cured within such thirty (30) day period, then such Mortgagee shall have such additional time as may be reasonably necessary to remedy or cure such default or noncompliance if such Mortgagee commences cure during such thirty (30) day period, and thereafter diligently pursues and completes such cure.

14.4 Bankruptcy. Notwithstanding the foregoing provisions of Section 14, if any Mortgagee is prohibited from commencing or prosecuting foreclosure or other appropriate proceedings in the nature thereof by any process or injunction issued by any court or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving OWNER, the times specified in Section 14.3 for commencing or prosecuting foreclosure or other proceedings shall be extended for the period of the prohibition, provided that such Mortgagee is proceeding expeditiously to terminate such prohibition and in no event for a period longer than one year.

15. MISCELLANEOUS PROVISIONS.

15.1 Recordation of Agreement. This Agreement and any amendment or cancellation hereof shall be recorded in the Official Records of COUNTY by the Clerk of the Board of Supervisors within the period required by Section 65868.5 of the Government Code.

15.2 Entire Agreement. This Agreement, with its exhibits, sets forth and contains the entire understanding and agreement of the parties and there are no oral or written

representations, understandings or ancillary covenants, undertakings or agreements which are not contained or expressly referred to herein and no testimony or evidence of any such representations, understandings or covenants shall be admissible in any proceeding of any kind or nature to interpret or determine the terms or conditions of this Agreement. The exhibits are incorporated herein by this reference.

15.3 Severability. If any term, provision, covenant or condition of this Agreement shall be determined invalid, void or unenforceable, the remainder of this Agreement shall not be affected thereby to the extent such remaining provisions are not rendered impractical to perform taking into consideration the purposes of this Agreement.

15.4 Interpretation and Governing Law. This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California.

15.5 Section Headings. All section headings and subheadings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

15.6 Singular and Plural. As used herein, the singular of any word includes the plural.

15.7 Joint and Several Obligations. If any obligation of OWNER hereunder to COUNTY is the obligation of more than one person, such obligation and any liability with respect thereto shall be joint and several among the obligees.

15.8 Time of Essence. Time is of the essence in the performance of the provisions of this Agreement as to which time is an element.

15.9 Waiver. Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Agreement thereafter.

15.10 No Third Party Beneficiaries. The only parties to this Agreement are OWNER and COUNTY. There are no third party beneficiaries this under Agreement

15.11 Force Majeure. Neither party shall be deemed to be in default where failure or delay in performance of any of its obligations under this Agreement is caused by floods, earthquakes, other Acts of God, fires, wars, riots or similar hostilities, strikes and other labor difficulties beyond such party's control, government regulations, court actions (such as restraining orders or injunctions) or other causes beyond such party's control. If any such events shall occur, the term of this Agreement and the time for performance by either party of any of its obligations hereunder shall be extended by the period of time that such events prevented such performance provided that the term of this Agreement shall not be extended under any circumstances for more than five (5) years or for a period which would cause this Agreement or provisions hereof to be void as violating the rule against perpetuities.

15.12 Attorneys Fees. In any action or undertaking to enforce the provisions of this Agreement, each of the parties hereto shall bear its own attorneys fees.

15.13 Mutual Covenants. The covenants contained herein are mutual covenants and also constitute conditions to the concurrent or subsequent performance by the party benefited thereby of the covenants to be performed hereunder by such benefited party.

15.14 Notices. Any notice required or provided for under this Agreement shall be in writing and delivered in person to an officer of any party, or sent by Federal Express, private commercial delivery or courier service for next business day delivery, or may be deposited in the United States mail, duly certified or registered, return receipt requested, with postage prepaid, and addressed to the party for whom intended, as follows:

If to COUNTY:

Orange County Board, of Supervisors
10 Civic Center Plaza
Santa Ana, California 92701
Attn: Clerk of the Board
FAX: (714) 834-4439
Phone: (714) 834-3453

Director of Planning & Development Services
300 N. Flower St.
P.O. Box 4048
Santa Ana, CA 92702-4048
FAX: (714) 834-2771

If to OWNER:

Nuevo Energy Company
1021 Main Street, Suite 2100
Houston, Texas 77002
Attn: David Leach
FAX: (713) 374-4899
Telephone: (713) 374-4802

with a copy to:

William P. Tanner, Esq.
Nossaman, Guthner, Knox & Elliott, LLP
18101 Von Karman Avenue, Suite 1800
Irvine, California 92612
FAX: (949) 833-7878
Telephone: (949) 833-7800

John Ullom

Ullom & Associates
16149 Redmond Way, Suite 401
Redmond, Washington 98052
FAX: (425) 836-2870
Telephone: (425) 836-2728

Notice may also be given by facsimile transmission ("Fax") to any party at the respective Fax number given above and marked "RUSH - PLEASE DELIVER IMMEDIATELY," provided receipt of such transmission shall be confirmed by follow-up notice within seventy-two (72) hours by another method authorized above. Any party hereto may from time to time, by written notice to the other party as required herein, designate a different address which shall be substituted for the one above specified. Notice by any method shall be deemed served or delivered only upon actual receipt at the address or Fax number listed above. Any notice given as required herein shall be deemed given seventy-two (72) hours after deposit in the United States mail or upon receipt.

15.15 Annexation and Other Permits. COUNTY also agrees to assist and cooperate with Nuevo in completing any annexation implemented and approved by a majority of individual homeowners on the Property, but will not support or assist any such annexation movement attempted by a Transferee, developer(s) and/or homeowner's association, unless specifically requested to do so by Nuevo in writing; and in securing any COUNTY, State and Federal permits or authorizations which may be required in connection with development of the Project.

15.16 Successors and Assigns. The terms and conditions of this Agreement shall be binding upon and inure to the benefit of the parties and their successors and assigns.

15.17 Counterparts. This Agreement may be executed by the parties in counterparts which counterparts shall be construed together and have the same effect as if all of the parties had executed the same instrument.

15.18 Conveyances. Conveyances of the Property or portions thereof, including without limitation Open Space Areas, required or permitted pursuant to the terms of this Agreement shall not include any portion (or all) of the oil, gas and other hydrocarbon substances or water or other minerals, of every type and nature, in, under or on the Property.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first set forth above.

Memorandum to Clerk of the Board
November 18, 2002

County of Orange **MEMO**

2002 NOV 18 AM10:20:55

DATE: November 18, 2002

TO: Darlene Bloom, Clerk of the Board of Supervisors

FROM: Director, Planning and Development Services Department

SUBJECT: November 19, 2002 Board Agenda Items 93, 94 and 95 Tonner Hills Planned Community Final EIR 581, Zone Change and Memorandum of Understanding

Board Agenda Items 93, 94 and 95 all concern the Tonner Hills Planned Community. Therefore, we recommend that the Board of Supervisors consolidate the testimony on all three Agenda Items into one public hearing.

We recommend that the Board of Supervisors' actions on these three Board Agenda Items be separate motions with separate votes. If you have any questions, please contact me at 834-4643 or Bryan Speegle at 834-3144.

Thomas B. Mathews, Director
Planning and Development Services Department

Cc: Board of Supervisors
CEO
County Counsel

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COCO ✓
GRAND JURY ✓
DATE 11/20 BY ELF

Building Industry Association Letter
November 18, 2002

Submitted by Mike Dalsamo
11-19-02 #93-95

November 18, 2002

The Honorable Cynthia Coad, Chairperson and
The Orange County Board of Supervisors
10 Civic Center Plaza
Santa Ana, CA 92701

Dear Chairperson Coad and Members of the Board of Supervisors:

On behalf of the Building Industry Association of Southern California/Orange County Chapter (BIA/OC), I am writing to encourage the Orange County Board of Supervisors to vote in favor of the Nuevo Energy Company's plan for Tonner Hills without further reduction in density.

The Orange County Chapter of the Building Industry Association of Southern California (BIA/OC) is a non-profit trade association representing 900 companies employing 75,000 people affiliated with the homebuilding industry. The BIA/OC mission is to promote proactive participation in the development of economic and community issues in Orange County. The BIA/OC is affiliated with the California BIA and the National Association of Home Builders.

Our members, who live throughout Orange County and surrounding areas, support the Tonner Hills Planned Community. This is an environmentally sensitive plan that protects 574.7 acres in open space, more than 71% of the property, and proposes to build 795 homes. I hope that you will join us in supporting this project.

This plan protects and provides valuable open space for our community--at absolutely no cost to the taxpayers. Out of the 798-acre hillside property more than 574 acres will be preserved as open space. This is a great deal for our community. In addition, Tonner Canyon will be preserved including a vital link in the Puente-Chino Hills Corridor. This is the only access route for large mammal migration under the 57 Freeway and Nuevo Energy Company proposes no new development in this area. They will also protect Cable Canyon and hundreds of acres of Gnatcatcher habitat that will be enhanced and preserved in perpetuity. This is an excellent plan for the environment.

Another benefit is the additional homes being brought to North Orange County. This region needs new housing and this project brings a wide array of housing to a market that is lacking in new development. These homes will also help address traffic in an area that has a significant jobs/housing imbalance. The addition of new homes near jobs and shopping areas will help ease congestion.

BIA

Orange County Chapter

Building Industry Association of Southern California

17744 Sky Park Circle
Suite 170
Irvine, California 92614
949.553.9500
fax 949.553.9507
http://www.biaoc.com

PRESIDENT
LJ EDGCOMB
PULTE HOME CORP

VICE PRESIDENT
JON ROBERTSON
CALIFORNIA PACIFIC HOMES

2ND VICE PRESIDENT
GORDON CRAIG
MONARCH WEST

TREASURER
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ASSOCIATE MEMBER V.P.
LAER PEARCE
LAER PEARCE AND ASSOCIATES

MEMBER-AT-LARGE
BILL WATT
BAYWOOD DEVELOPMENT

MEMBER-AT-LARGE
ANDY BERNSTEIN
JACKSON, DEMARCO
& PECKENPAUGH

CHIEF EXECUTIVE OFFICER
LYNNE FISHEL

An Affiliate of the National Association of Home Builders and the California Building Industry Association.

Nuevo Energy Company has also made a significant effort to meet with and address concerns expressed by the community. The plan now reflects the desires of the community and various environmental agencies. The removal of Tonner Hills Road, removal of the commercial center and the protection of Tonner and Cable Canyons has gone a long way to ease concerns about the project.

In closing, the Tonner Hills Plan is a project that protects the environment, provides much-needed housing and addresses community concerns. Please support the proposal for Tonner Hills. You will provide our community with an invaluable asset of open space and significant benefits for our citizens.

With housing availability and affordability having reached a crisis point, every reasonable effort needs to be made to ensure that good, environmentally balanced projects are entitled so we can help meet housing demand. By approving the project as it stands, the Board of Supervisors has the opportunity to send a positive message to BIA members and the public that you are willing to work with developers who submit responsible projects for review and approval.

Once again, we urge your approval of the Tonner Hills Master Planned Community. Thank you for your consideration of our comments.

Sincerely,

Lynne Fishel
Chief Executive Officer

cc: Members of the Board of Supervisors
BIA/OC Board of Directors and Past Presidents
BIA/OC Government Affairs Committee

Errata To Tonner Hills Planned Community
Responses to Comments

Errata to Tonner Hills Planned Community
Responses to Comments and
Draft Environmental Impact Report No. 581
SCH No. 2001031137

The following minor corrections have been incorporated into the Final Environmental Impact Report (FEIR) text but are listed here for ease of reference. Under CEQA Guidelines §15088(c)(1), *the response to comments may take the form of a revision to the draft EIR or may be a separate section in the final EIR. Where the response to comments makes important changes in the information contained in the text of the draft EIR, the lead agency should either: (1) revise the text in the body of the EIR or (2) include marginal notes showing that the information is revised in the response to comments.* The changes are intended to clarify or correct information in the Draft EIR in response to comments received on the document or those initiated by staff. The changes appear in the order of the location in the Responses to Comments document and identify sections in the Draft EIR to which they refer.

City of Brea Letter – Comment 1-41

Page 4.13-2, item (2), states that the City of Brea provides park reservation services and Park Play Daze. The City does not provide park reservations or Park Play Daze.

Table 4.13-1 on page 4.13-2 is corrected to read:

Arovista Park, 13.82 acres; City Hall Park, 3.2 acres, 25-meter swimming pool, one basketball court
Brea Junior High Park, no volleyball courts
Country Hills Park, one basketball court and one lighted baseball field
Greenbriar Park, one play area
Tamarack Park, one basketball court and one play area.

City of Brea Letter – Comment 1-44

DEIR page 4.3-2, Section 4.3.1.a.(2) – Corrected to reflect adoption of the City of Brea Housing Element Update in October 2000.

City of Brea Letter – Comment 1-52

The following will be added as Mitigation Measure H-31 to the FEIR (Section 4.13.4):

H-31 The project will be subject to the latest edition of the Orange County Fire Authority "Combustible Soil Gas Hazard Mitigation Guidelines" and the City of Brea Combustible Soil Gas Mitigation System Installation and Inspection Requirements.

City of Brea Letter – Comment 1-56

The table found in the City of Brea letter (page 38 of 52) and on page 1-80 of the Responses to Comments document replaces Table 4.16-2 on page 4.16-7 of the DEIR.

Brea Fire Department Existing Resources

Station #	Location	Equipment	Personnel
1	555 N. Berry	1 paramedic 1 engine company 1 reserve engine	3 career 1 apprentice
2	185 s. Laurel	1 engine company 1 reserve engine	3 career
3	400 N. Kraemer	1 paramedic 1 engine company 1 truck company 1 command vehicle 1 reserve command vehicle	3 career 1 apprentice 3 career 1 career
4	170 Olinda Place	1 Type III brush engine	1 career

City of Brea Letter – Comment 1-62

In Section 6.4.2.c (page 6-26 of the DEIR), the first sentence is revised to read:

The population of the City of Brea was 36,518 in 1999.

Austin-Foust Associates-Appendix C Volume 1 – Comment 1-90

Page 35, Paragraph 1 – "New Term" changed to "Near Term".

Austin-Foust Associates-Appendix C Volume 1 – Comment 1-97

Page 39, Paragraph 1 – Change "no Balsa" to "on Balsa".

Austin-Foust Associates-Appendix C Volume 1 – Comment 1-99 –

Page 54, Paragraph 4 – Insert "for GMP" following "D" and "for CMP" following "E".

Austin-Foust Associates -Appendix C Volume 1 – Comment 1-111 –

Page 154, Paragraph 2 – Typographical error in Table 6-2 is corrected (a second southbound left turn lane is included in the operations analysis worksheets).

Austin-Foust Associates - Appendix C Volume 1 – Comment 1-116

Page 160, Paragraph 1 - "This improvement will fully mitigate the project AM and PM peak hour impacts at this location ~~(although it will not provide acceptable traffic operations)."~~

Austin-Foust Associates - Appendix C Volume 1 – Comment 1-121

Page 166 – northbound lanes – 2 left, 2 through, 1 right.

Austin-Foust Associates - Appendix C Volume II – Comment 1-136

Page 3-5, paragraph 2 – last sentence – change "east" to "west".

Austin-Foust Associates -Draft EIR – Comment 1-152

DEIR page 4.7-9, Exhibit 4.7-3 – Tonner Canyon Road east of the SR-57 is not divided.

Austin-Foust Associates - Draft EIR – Comment 1-153

DEIR page 4.7-9, Exhibit 4.7-3 – Imperial Highway east of Rose is six-lane divided.

Austin-Foust Associates - Draft EIR – Comment 1-154

DEIR page 4.7-11, Exhibit 4.7-4 – Delete Berry Street north of Northwood Avenue.

City of Brea Letter – Comment 1-187

Page 4.10-21, first paragraph:

> Since the male was seen and heard only once, Chambers Group concluded that this vireo was not nesting on-site and was considered a ~~vagrant~~ migrant (Exhibit 4.10-6).

City of Brea Letter – Comment 1-228

The third bullet on page 4.10-55 (Section 4.10.4, BR-4) is revised to read:

- Any crushing of existing habitat during the breeding season of the gnatcatcher (February 15 through August 15) will be under the supervision of the biological monitor. The biological monitor will be empowered to restrict such activities to minimize the harm and harassment of breeding gnatcatchers or fledglings. During this time, the biological monitor will provide USFWS with weekly summaries, via facsimile transmission, of all gnatcatcher monitoring activities.

  Crushing of existing habitat would not occur during the breeding season (February 15 to July 31) unless approved by a biological monitor familiar with requirements of breeding birds, especially coastal California gnatcatchers. Removal of crushed vegetation could occur in the breeding season if a biological monitor is present to prevent disruption to protected breeding birds.

City of Brea Letter – Comment 1-235

DEIR page 6-31 – first paragraph:

> The proposed project will result in the enhancement and restoration of the riparian woodlands in the Tonner Creek and, thus, will likely result in more habitat being available for the ~~gnatcatchers~~ least Bell's vireo.

U. S. Department of the Interior, Fish and Wildlife Service Letter – Comment 4-4

Table 4.10-3a is added to Section 4.10.1.c.(2), after Table 4.10-3 on page 4.10-20, as follows:

Known Gnatcatcher Locations within the Chino/Puente Hills

Location	Gnatcatchers Present	Source
Unocal property (former) in western La Habra Heights	2 pairs	Sam Reed, pers. comm., 2002
Brea Canon Estates	1 pair	Chambers Group, 2001
Aera Energy, Puente Hills	4 pairs	George Basye, 2000
Tonner Hills (subject property)	14 to 18 pairs	Chambers Group, 2002
Shell/MWD Reservoir	2 pairs	Chambers Group, 2002
Shell/MWD Property and Chino Hills State Park	19 pairs*	Shell/MWD, 1994; Alissa Ing, pers. comm., 2002
Yorba Linda Water District	3 pairs	Chambers Group, 1999
Shapell Properties "A" and "B", Yorba Linda	9 pairs, 2 individuals	Bonterra, 2000
Shapell Property "C", Yorba Linda	1 pair	Bonterra, 2000
Total	55 to 59 pairs	

*This number is based on impacts to gnatcatchers anticipated in association with the Shell/MWD Habitat Conservation Plan and observations of gnatcatchers in Chino Hills State Park by State Park Resource Ecologist, Alissa Ing.

Orange County Fire Authority Letter – Comment 13-1

The language for Mitigation Measure H-15 (Section 4.15.4, page 4.15-43) will be revised to read:

H-15 All habitable structures shall be located at least 50 feet from any operating wellhead, including water injection wells, pursuant to the requirements of the Uniform Fire Code and the OCFA and subject to monitoring and inspection by the OCFA. All habitable structures within 100 feet from an oil well shall comply with OCFA Planning and Development standard guideline C-02 (Guideline for Residences less than 100' from an Oil Well), as adopted at the time of construction.

Orange County Fire Authority Letter – Comment 13-2

Mitigation Measure H-32 (Section 4.15.4, page 4.15-46) will be added as follows:

H-32 The oil operator shall update and revise as necessary the RMP (Risk Management Plan) on file with the OCFA for the Oil Field operations adjacent to the proposed development. Such RMP revisions shall be submitted and accepted by OCFA prior to the issuance of any certificates of occupancy for the project.

Orange County Fire Authority Letter – Comment 13-3

Page 4.16-1, Section 4.16.1.a.(1):

The Orange County Fire Authority (OCFA) provides fire protection and emergency services to the project area, as well as other unincorporated areas and ~~18~~ 22 cities within Orange County.

Orange County Fire Authority Letter – Comment 13-4

DEIR page 4.16-7, Section 4.16.1a.(2), first paragraph:

~~However, under OCFA reciprocal response and mutual aid agreements with adjoining jurisdictions along with the required Secured Fire Protection Agreement (SFPA) with OCFA, Brea Fire Department resources would be available to provide fire and emergency response services to the development.~~ With the implementation of a Fire Protection Agreement between the City of Brea and the OCFA in conjunction with the Secured Fire Protection Agreement between the developer and OCFA, Brea Fire Department resources would be available to provide fire and emergency response services to the development; however, in the absence of an agreement between the City of Brea and the OCFA for services, the development would be required to provide for

any shortfall in the costs of providing emergency services to this area by OCFA as outlined in the Secured Fire Protection Agreement.

Orange County Fire Authority Letter – Comment 13-5

DEIR Section 4.16.3.a, page 4.16-11, first paragraph:

~~The project site is currently within the County jurisdiction, and Brea fire services are provided when called upon by the Orange County Fire Authority as part of the mutual aid agreement between the two entities. If the area is annexed into the City, it is likely that fire protection services would be provided by the Brea Fire Department. In the event of annexation, the mutual aid agreement would change in terms of command structure and unit response configuration, although the exact nature of these changes to the agreement is unknown at this time. The City has a Nexus program that requires that all new development pay a fire impact fee at the time of building permit issuance. Payment of the fire impact fee would serve as mitigation to reduce the impact of Tonner Hills on the Brea Fire Department to a less than significant level.~~ The project site is currently within the Fire Authority's jurisdiction, and is provided with initial emergency services by the City of Brea through a mutual aid agreement in place between the two entities. After being developed, the area will no longer be able to be serviced in this manner. If annexed into the City of Brea, the City would provide all fire department services. If annexed, the mutual aid agreement would be changed to reflect the new responsibilities of each agency. The City of Brea has a Nexus Program that requires that all new development pay a fire impact fee at the time of building permit issuance. Payment of the fire impact fee would serve as mitigation to reduce the impact of Tonner Hills on the Brea Fire Department to a less than significant level.

In the event the development is not annexed into the City of Brea, OCFA will need to provide service to this area. If this service can be provided under a Fire Protection Services Agreement with the City of Brea, such an agreement will be used. It should be understood that the Secured Fire Protection Agreement between OCFA and the developer will address this issue with provisions for funding and facilities in the event that the City of Brea does not provide services under contract. Every effort will be made to provide protection to the development in the most cost effective manner available that meets the service criteria for the OCFA.

All discretionary approvals for the project will be processed through the County of Orange. Consistent with the use of County development standards and guidelines throughout the DEIR, the development will be required to design and construct the fire protection infrastructure and related issues to OCFA and County standards, unless otherwise specified in a Memorandum of Understanding between the County and City.

Orange County Fire Authority Letter – Comment 13-6

DEIR page 4.16-13, Section 4.16.4:

PS-1 **Secured Fire Protection Agreement** - Prior to recordation of the first final map within the project boundaries, including maps for financial and conveyance purposes only, or prior to grading, whichever comes first, the applicant shall enter into a Secured Fire Protection Agreement with the Orange County Fire Authority (OCFA).

Orange County Fire Authority Letter – Comment 13-7

DEIR page 4.16-15, Section 4.16.4, the following sentence will be added as the final paragraph:

[PS-8] All fuel modification plans shall be in accordance with the OCFA guidelines for development within Special Fire Protection Areas as outlined in Guidelines C-04, C-05 and C-06.

Brea Olinda Unified School District Letter – Comment 19-2

DEIR page 4.16-8, Table 4.16-3 – Title is revised to read:

Brea Olinda Unified School District 2000-01 Enrollment

Brea Olinda Unified School District Letter – Comment 19-3

The County hereby incorporates the revised student generation rate of 0.597 students per single-family residential unit and 0.382 students per multi-family residential unit.

Brea Olinda Unified School District Letter – Comment 19-5

DEIR page 4.16-12, Table 4.16-4 is revised to reflect the new student generation rates of 0.597 students per single-family residential unit and 0.382 students per multi-family residential unit.

Revised Table 4.15-4 – Tonner Hills Planned Community Student Generation Rate

Planning Area	Dwelling Units	BOUSD Student Generation Rate Per Unit	Estimated Student Generation
1	54	0.597	32
2	102	0.597	61
3	233	0.597	139
4	182	0.597	109
5	97	0.597	58
6	87	0.597	52
7	40	0.597	24
Totals	795		475

Source: Tim Harvey, Superintendent, Brea Olinda Unified School District (June 25, 2002 letter)

Miscellaneous Typographical Correction

Section 4.10.1.d.(2), page 4.10-32, the reference to exhibit and page number at the end of the first paragraph is revised as follows:

. . . The wildlife corridor is illustrated in Exhibit 4.10-9 on page 4.10-49.

Mitigation Measures

Following are additional changes to the Mitigation Measures portion of the DEIR which are the result of project refinements. Deleted language is identified by ~~strike-thru~~; additions are identified by underlining.

~~N-3 Prior to issuance of building permits for tenant improvements for proposed Uses in the Mixed Use area, proposed uses shall be evaluated by the Manager, Planning Services, to determine if a detailed noise assessment is required to ensure that the use will not result in a violation of the noise ordinance. If a study is called for, the study shall be prepared by a County certified acoustical consultant and conform to the requirements presented in the County's Land Use/Noise Compatibility Manual.~~

AE-5 Prior to approval of certificates of use and occupancy, existing electrical above ground utilities with a capacity of 12 kV or less shall be placed underground within the individual residential ~~or mixed use~~ planning areas.

AE-6 Prior to issuance of any building permit, the applicant shall demonstrate that all exterior lighting has been designed and located so that all direct rays are confined to the property in a manner meeting the approval of the Manager, Building Permit Services. Lighting shall be designed to minimize visibility of light sources by directing lighting toward the on-site structures and not illuminating areas outside property boundaries. ~~Lighting along Tonner Hills Road shall be designed to protect the wildlife corridor crossing. The bridge spanning Tonner Creek shall be~~

~~illuminated with bollards or other in-structure fixtures to Prevent glare and light spillover into the creek.~~

H-4 **Disposal of Gun Club Soil** – The impacted soil at the former gun club location will be transported off-site and disposed of at a licensed disposal facility. Documentation of the disposal activity will be included in a site closure report submitted to OCHC ~~and DTSC~~.

H-10 Any previously abandoned well that does not meet current standards and is located within a residential ~~or commercial~~ neighborhood or within an adjacent street right-of-way shall be reabandoned in accordance with current CDOGGR specifications prior to building permit approval. Evidence of conformance to CDOGGR standards for any remedial plugging shall be provided to the Manager, Current Planning, and the Manager, Subdivision and Grading, immediately upon completion of reabandonment activity.

H-19 Prior to issuance of building permits, soils adjacent to oil wells abandoned in residential areas will be mitigated to meet residential cleanup requirements of the ~~OCHCA approved~~ RAP. Once the project is occupied, subsequent well abandonments shall be subject to and processed in accordance with CDOGGR and OCHCA regulations.

Responsible Monitoring Party: ~~County of Orange~~, CDOGGR

H-20 Prior to the County's issuing the first Certificate of Occupancy, a program to carefully monitor the hydrogen sulfide (H_2S) content of the produced gas shall be developed and implemented to prevent higher levels of H_2S from becoming present in the produced gas. This program shall be reviewed ~~and approved~~ by the CDOGGR and reviewed and approved by the OCHCA. Downhole treatment shall begin when the level of H_2S exceeds 10 ppm.

Responses to Additional Late Comments

County of Los Angeles Dept. of Public Works
Diane Taylor
Caltrans District 12

Mitigation Measures Not Incorporated

None.

Effects Not Mitigated to a Level of Insignificance

None.

Transportation/Circulation

The following is a summary of significant effects to transportation/circulation.

> The project has the potential to impact surrounding intersections. The project will include mitigation measures to improve the intersections to allowable levels of service.

With implementation mitigation measures impacts relative to transportation/circulation will be reduced to less than significant. However, in the event there is a failure of assumptions upon which mitigation is based (i.e. funding, city cooperation on timely implementation), there could be significant impacts. Therefore, for these reasons, and in spite of the fact that the Board believes mitigation reduces impacts to a level of insignificance, a finding of significant impact is hereby made.

Based on a review of the October 16, 2002 letter from the County of Los Angeles received at the Orange County Planning Commission hearing of the same date, the County of Orange finds that he project alone will not significantly impact Los Angeles County intersections. This fact is also acknowledged in the County's letter. Together with a multitude of other projects in the greater County of Orange/County of Los Angeles area, it can be expected that this project will contribute to cumulative impacts in the long-term, especially at the SR-57 Southbound off-ramp to Brea Canyon Road. Therefore, the County finds that the cumulative impact of the project, although incrementally small, may significantly impact this facility. Although this project's impact will not be significant, the County hereby adopts mitigation measure T-5 to reduce cumulative impacts to an acceptable level.

The County disagrees with the County of Los Angeles that adoption of said mitigation measure is inadequate for cumulative traffic impacts. However, in an abundance of caution, a statement of overriding considerations will be made.

Findings

Finding 1 - Changes or alterations have been required in, or incorporated into, the project that avoid or substantially lessen many of the significant environmental effects as identified in the EIR.

COUNTY OF LOS ANGELES
DEPARTMENT OF PUBLIC WORKS

900 SOUTH FREMONT AVENUE
ALHAMBRA, CALIFORNIA 91803-1331
Telephone: (626) 458-5100
www.ladpw.org

JAMES A. NOYES, Director

ADDRESS ALL CORRESPONDENCE TO:
P.O. BOX 1460
ALHAMBRA, CALIFORNIA 91802-1460

IN REPLY PLEASE
REFER TO FILE: T-3

October 16, 2002

Mr. Thomas B. Mathews, Director
County of Orange
Planning & Development Services Department
P.O. Box 4048
Santa Ana, CA 92702-4048

TONNER HILLS PLANNED COMMUNITY
RESPONSES TO COMMENTS
ENVIRONMENTAL IMPACT REPORT (SEPTEMBER 2002)
CITY OF BREA AREA, COUNTY OF ORANGE

We have reviewed the document for the proposed project located in the northeastern portion of unincorporated County of Orange adjacent to the City of Brea. The project site is located to the east and west of the Orange (SR-57) Freeway, south of the SR-57 and Tonner Canyon Road interchange.

Refinements to the proposed project were made with four key modifications as follows:

- Deletion of Tonner Hills Road as a project access point and providing access along Valencia Avenue.
- Deletion of commercial/mixed-use development on the corner of Wild Cat Way and Lambert Road.
- Elimination of development on the west side of Cable Canyon and Neighborhood 7.
- Reduction in dwelling units for Neighborhoods 5 and 6.

The revised project results in the development of 795 single-family residential dwelling units, 20.2 acres for public uses, and 15 acres for neighborhood park use. The project is estimated to generate 10,459 vehicle trips per day, and 744 and 1,780 peak hour trips in the a.m. and p.m. peak hours, respectively.

The additional traffic analyses and information requested in our June 25, 2002, letter has not been provided. However, we find the project traffic within the County of Los Angeles generally is counter to the peak traffic flow in the area. We agree that the project alone will not significantly impact any County of Los Angeles intersections, and that the cumulative traffic of the proposed project along with other related projects will significantly impact the following County of Los Angeles/Caltrans intersection. The document recommends the project should contribute its proportionate share of the cost of the following mitigation measures:

Orange (SR-57) Freeway Southbound Off-ramp at Brea Canyon Road

North Approach: One left-turn lane and dual exclusive right-turn lanes (add an exclusive right-turn lane).

The study indicates that this improvement will be part of the proposed fee program and the project should pay its fair share of the cost for this improvement. However, based on the County of Los Angeles' guidelines, this improvement will not fully mitigate the cumulative traffic impacts. Additional measures are needed for full mitigation. We recommend consulting with Caltrans District 7 and the County of Los Angeles Department of Public Works for further evaluation of this intersection for additional measures that will mitigate to insignificance. Otherwise, the EIR would need to disclose an unmitigated impact.

In addition, we require that the EIR disclose whether there are any California Environmental Quality Act significant impacts on the SR-57 within the County of Los Angeles and whether they will be mitigated.

If you have any questions, please contact Mr. Suen Fei Lau of our Traffic and Lighting Division, Traffic Studies Section, at (626) 300-4820.

Very truly yours,

JAMES A. NOYES
Director of Public Works

J. M. Alexander

T. M. ALEXANDER
Deputy Director

SFL:cn
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cc: Chief Administrative Office (Lari Sheehan)
Department of Regional Planning

Response to Comment
Diane Taylor Remarks at Planning Commission Meeting
October 16, 2002

Issue: Comparison of traffic impact findings at intersection of Lambert Road-Carbon Canyon Road/Valencia Avenue in Tonner Hills EIR, Hover EIR, Sports Park EIR.

The review period for the Draft Environmental Impact Report ended on June 25, 2002. This comment was made at the October 16, 2002 Planning Commission Meeting. Under CEQA, the County may respond to comments received after the close of the review period, but is not obligated to do so. The County offers the following response to the late comment.

The Sports Park DEIR and the Hover (TT 16047) DEIR both indicate that the intersection of Valencia Avenue at Lambert Road-Carbon Canyon Road operates at unacceptable levels of service during the PM peak hour of traffic (1.07 and 1.03, respectively). Our review of the Canyon Crest DEIR indicates a similar result. The revised Tonner Hills analysis contained in the Responses to Comments identifies a corresponding existing level of service of .79. The traffic count data for all three studies reference the same time frame (fall or September/October of 2001). Since the updated data used in the Tonner Hills Analysis was provided by the City of Brea, it is likely that the traffic count data is the same in all three studies. It is not possible to state this as a certainty, since the DEIR does not include actual turning movement volumes or count sheets.

Based on the assumption stated in the above paragraph (all three studies used the same traffic count data), the difference in ICU results is likely the result of differences in the intersection geometry inputs. Since the geometric data is also not available within the DEIR as posted on the website, this conclusion again cannot be stated with certainty.

The situation is reversed for the long range forecasts at this intersection. The other two studies show acceptable traffic operations, while the Tonner Hills Response to Comments updated analysis (page42) indicates a future deficiency and recommends mitigation.

The conclusion of this analysis is that the Tonner Hills analysis is more conservative than the other projects, and only the Tonner Hills project proposes specific mitigation at this location, in addition to City of Brea Nexus Program proposed improvements. Therefore, there is no conflict.

County of Orange
Planning & Development Services Department

Thomas B. Mathews
DIRECTOR

300 N. FLOWER ST.
SANTA ANA, CALIFORNIA

MAILING ADDRESS:
P.O. BOX 4048
SANTA ANA, CA 92702-4048

November 4, 2002

State of California
Department of Transportation
District 12
3337 Michelson Drive, Suite 380
Irvine CA 92612-8894

Attn: Robert F. Joseph, Chief
Re: Responses to Comments for Tonner Hills Planned Community

Dear Mr. Joseph:

In response to your letter of October 17, 2002, as a responsible agency, and regarding your review of the Tonner Hills Planned Community Responses to Comments, we would like to further clarify some of the issues and concerns identified by Caltrans. Following are comments related to each of the three questions in that letter.

1. Response 8-3 – The distribution assumed in the report is based on a direct derivative of the OCTAM travel demand model. This tool is different from OCTAM only in the level of traffic analysis zone (TAZ for the project site has been further disaggregated for the TAZ's that are directly related to the project site. The trip distribution has been obtained directly from the OCTAM travel demand model and disaggregated to a refined TAZ for a greater level of detail. Adherence to the OCTAM travel demand forecasting characteristics, specifically including the distribution of project traffic, was a major consideration in choosing this approach to the travel demand forecasting procedures employed in this traffic study.

The project trip distribution exhibits (revised to reflect the elimination of Tonner Hills Road) are included in the responses to comment document, pages 51 to 56. As shown on these exhibits, no project traffic directly uses the Imperial Highway northbound on-ramp. The differences in traffic volumes on Exhibits 4.7-6 and 4.7-8 are not directly related to the project. Use of a travel demand model (such as the one applied in this analysis) reflects the redistribution of all traffic (not just project traffic) when new development is introduced into the study area/system. The changes in traffic volume referenced in the comment are due to these redistribution effects.

2. Response 8-5 – The application of a travel demand model, rather than a manual distribution of project traffic, furthers the Model's consistency with OCTAM and allows for redistribution of all traffic within the study area in response to the new development. The slightly reduced ICU values are justified by the inclusion of additional residential development as represented by the project. Longer trips from residential developments that are more distant from Orange County employment centers have been replaced by trips from the proposed project residential development.

3. Response 8-7 – A project impact at this location has been identified in the project traffic impact analysis. In addition to the impact to the interscotion providing access to the SR-57 freeway, impacts to the on-ramp itself have been discussed with Caltrans staff. Various interested agencies, including Caltrans, the City of Brea, and the Orange County Transportation Authority (OCTA) are involved in ongoing efforts to identify the most appropriate solution to the existing and projected future deficiencies at this location. The project's fair share contribution to improvements needed to address this impact is included as a condition of development approval

Consideration of the Tonner Hills FEIR will come before the Board of Supervisors on November 19, 2002. Please advise if you have any further questions or concerns.

Sincerely,

Bryan Speegle

Bryan Speegle, Assistant Director

Minutes
Board of Supervisors Meeting
November 19, 2002

SUMMARY ACTION MINUTES

REGULAR MEETING OF THE BOARD OF SUPERVISORS
ORANGE COUNTY, CALIFORNIA

Tuesday, November 19, 2002, 9:30 A.M.

BOARD HEARING ROOM, FIRST FLOOR
10 Civic Center Plaza
Santa Ana, California

CYNTHIA P. COAD
CHAIR
Fourth District

THOMAS W. WILSON
VICE CHAIR
Fifth District

CHARLES V. SMITH
SUPERVISOR
First District

JAMES W. SILVA
SUPERVISOR
Second District

TODD SPITZER
SUPERVISOR
Third District

ATTENDANCE: All Present

EXCUSED: None

PRESENT:	COUNTY EXECUTIVE OFFICER	Michael Schumacher
	COUNTY COUNSEL	Benjamin P. de Mayo
	CLERK OF THE BOARD	Darlene J. Bloom

INVOCATION: Supervisor Smith, First District, gave the invocation

PLEDGE OF ALLEGIANCE: Supervisor Spitzer, Third District, led the assembly in the Pledge of Allegiance

I. PRESENTATIONS/INTRODUCTIONS

Chair Coad introduced Honorable M. Finbar Hill, Consul General of Ireland

Supervisor Wilson presented a resolution honoring The Irvine Company as title sponsor and Trails4All as host organization of the 6th Annual "Inner-Coastal and Watershed Cleanup Day"

Supervisor Wilson presented a resolution recognizing Crime Prevention Month

Chair Coad presented a resolution proclaiming November 2002 as "National Adoption Awareness Month"

Chair Coad presented a resolution proclaiming November 2002 as "Grand Jury Awareness Month"

Chair Coad presented a resolution recognizing Todd Spitzer as Assemblyman Elect - 71st District

SUMMARY ACTION MINUTES

II. CONSENT CALENDAR (Items 1-74)

53124 **APPROVED AS RECOMMENDED WITH THE EXCEPTIONS OF ITEMS 39 & 61 WHICH WERE DELETED; ITEM 16 WHICH WAS CONTINUED TO 12/17/02, 9:30 A.M.; ITEMS 51 & 68-73 WHICH RECEIVED A NO VOTE FROM SUPERVISOR SILVA; AND ITEMS 7 & 63 WHICH WERE PULLED FOR DISCUSSION AND SEPARATE VOTE**

BOARD APPOINTMENTS

Chair Coad:

1. Orange County Cemetery Board - Reappoint Frank C. Brix, Sr., Anaheim, for term ending 11/7/06

2. Senior Citizens Advisory Council - Reappoint Leslie Gardner, Anaheim, for term ending 12/31/04 and Yvonne Mitchell, Placentia, for term ending 12/31/03

3. **Supervisor Silva** - Senior Citizens Advisory Council - Reappoint Pat Davis and Dick White, Huntington Beach, for terms ending 12/31/04

4. **Supervisor Wilson** - Animal Control Advisory Board - Appoint Kay Bennett, Santa Ana, for term ending 10/8/04

COMMENDATIONS/PROCLAMATIONS

5. **Supervisor Silva** - Adopt resolution recognizing and congratulating Becky Esparza for her twenty years of dedicated volunteer service
RESO: 02-350

6. **Supervisor Smith** - Adopt resolution commending Police Chief James I. Cook on his retirement from Westminster Police Department
RESO: 02-351

COMMUNITY SERVICES AGENCY

7. Receive and file 2001-2002 Orange County Human Relations Commission report - All Districts
24135 **APPROVED AS RECOMMENDED**

8. Approve sublease extension #L-1704 with State Department of General Services for office space, for One-Stop Center, Mission Viejo; and make California Environmental Quality Act findings - District 5

HEALTH CARE AGENCY

9. Approve agreements with Feedback Foundation, Inc. ($89,000), Senior Meals and Services, Inc. ($89,000) and South County Senior Services ($89,000) for Senior Ethnic Meal Pilot Program services, 11/19/02 - 10/31/03 - All Districts

10. Approve agreement with State Department of Alcohol and Drug Programs for Drug Court Partnership Act of 2002 Grant funds, 7/1/02 - 6/30/03 ($408,875) - All Districts

11. Approve price agreement N1000004858 with Info X, Inc. for software maintenance and support for Veri-Claim software for electronic verification of Medi-Cal and Medicare claims, 11/19/02 - 11/18/06 ($144,805) - All Districts

INTEGRATED WASTE MANAGEMENT DEPARTMENT

12. Approve continuance of emergency and make appropriate findings pursuant to Public Contract Code Section 22050(c)(1) for recent sudden and unexpected movement in landslide mass and necessary emergency repair to complete work, Frank R. Bowerman landfill; set review to determine continuing need for emergency action for 12/10/02, 9:30 a.m. and every 14 days thereafter - District 3 *(4/5 vote)* (Continued from 9/10/02, Item 61; 9/24/02, Item 64; 10/8/02, Item 6; 10/22/02, Item 13; 11/5/02, Item 17)

JOHN WAYNE AIRPORT

13. Approve continuance of emergency and make appropriate findings pursuant to Public Contract Code Section 22050(c)(1) for installation of explosion detection systems; set review to determine continuing need for emergency action for 12/10/02, 9:30 a.m. and every 14 days thereafter - District 2 *(4/5 vote)* (Continued from 8/20/02; Item S29C, 8/27/02, Item S57A; 9/10/02, Item 14; 9/24/02, Item 13; 10/8/02, Item 8; 10/22/02, Item 15; 11/5/02, Item 19)

ORANGE COUNTY PUBLIC LIBRARY

14. Authorize submission of grant application to and acceptance of grant award from California State Library for Public Library Staff Education Program, FY 2002-03 ($13,480) - All Districts

15. Approve reduction or repeal of various fines and fees for certain library services, effective 12/2/02; and make California Environmental Quality Act and other findings - All Districts

PLANNING AND DEVELOPMENT SERVICES

16. Receive and file Economic Feasibility Study for proposed Military Museum at the former MCAS Tustin Blimp Hangar - District 3

53124 **CONTINUED TO 12/17/02, 9:30 A.M.**

PUBLIC FACILITIES AND RESOURCES DEPARTMENT

17. Accept work with American Restoration and Construction for replacement of playground and fitness cluster equipment, Yorba Regional Park ($153,816.81); and authorize remaining payment to First National Insurance Company of America - District 3

18. Approve change order 9 with Tait Environmental Management, Inc. for re-installation of soil vapor extraction system, Central Garage, Santa Ana ($19,582; new total $325,222.80) - District 1

19. Authorize Auditor-Controller to issue payment to the Ocean Institute for installation of Stormwater Best Management Practices System, Dana Point Harbor ($205,814) - District 5

20. Accept work with Sandoval Construction for modifications/improvements of facilities for ADA compliance, Dana Point Harbor; project completed 8/30/02 ($88,676.83) - District 5

21. Approve in concept Tustin Avenue widening project; approve Negative Declaration IP00-047; and make California Environmental Quality Act findings - Districts 3 & 4

22. Approve agreement 02-0029C with the State Department of Pesticide Regulation for mandated enforcement of pesticide permit regulations, 7/01/02 - 6/30/03 ($61,705) - All Districts

23. Reject all bids received 10/9/02, for Crescent Basin recreational improvements - District 4

24. Adopt resolution approving grant agreement 02-201-026 with State Boating and Waterways for purchase of four sailboats, Dana Point Harbor Youth & Group Facility; and authorize Director to execute subsequent amendments under certain conditions - District 5
RESO: 02-352

25. Approve price agreement N1000004837 with Joe Rhodes Maintenance Service, Inc. for automated fuel system repair service, 11/20/02 - 11/19/03 ($31,000); renewable for two additional years; and make California Environmental Quality Act findings - All Districts

26. Adopt resolution authorizing submittal of applications for Orange County Transportation Funding Program funds for street improvements, FYs 2003-08; and approve project rankings - All Districts
RESO: 02-353

27. Adopt resolution approving submission of grant application to State Department of Transportation for the Carbon Creek Bikeway project; and authorize Director or designee to execute related documents and subsequent amendments - Districts 2 and 4
RESO: 02-354

Acting as the Orange County Flood Control District:

28. Approve plans and specifications and set bid opening for 12/18/02, 2:00 p.m., for restoration of Serrano Creek Habitat between Bake Parkway and Trabuco Road; and make California Environmental Quality Act findings - District 5

29. Approve agreement to quitclaim easement to Pico La Pata, LLC for construction of retaining wall, Segunda Deshecha Channel ($2830); and make California Environmental Quality Act and other findings - District 5

30. Approve agreement D02-110 with P&D Environmental for on-call capital project resource permit services ($200,000) - All Districts

31. Approve three-year license with J.T. Restaurants, L.P. for restaurant parking, Katella Yard, Anaheim; and make California Environmental Quality Act and other findings - District 4

32. Adopt resolution vacating easements along San Juan Creek; approve and accept easement from KB Home Coastal, Inc. for ingress and egress purposes; and make California Environmental Quality Act findings - District 5
RESO: 02-355

Acting as the Board of Supervisors and Orange County Flood Control District:

33. Approve agreement D02-109 with Keeton Kreitzer for on-call environmental services ($200,000); and authorize Director or designee to execute extensions under certain conditions - All Districts

34. Approve agreement D02-111 with PCR Services Corporation for on-call capital project resource permit services ($200,000); and authorize Director or designee to extend agreement under certain conditions - All Districts

35. Approve amended agreement D98-028 with The Irvine Company for construction of Orchard Estates Retarding Basin - District 3

SOCIAL SERVICES AGENCY

36. Approve amended Wraparound Orange County Plan and Memorandum of Understanding with State Department of Social Services for delivery of wraparound services for child replacement - All Districts

37. Approve amendment 2 to agreement CMM1201 with Foster Assessment Center and Testing Service for Independent Living Skills Program, 12/1/01 - 6/30/03 ($24,100; new total $46,500) - All Districts

38. Approve sublease agreement with Maximus, Inc. for Foster Care Eligibility Program office space, Cypress; and make California Environmental Quality Act findings - District 2

PUBLIC PROTECTION

Probation:

39. Select Community Service Programs as primary and Orange County Youth and Family Services as alternate firms for Juvenile Diversion Program services; and authorize negotiation of agreement for Board approval - All Districts

53124 **DELETED**

40. Approve price agreement N1000004853 with L.A. Cha Maintenance Company for janitorial maintenance services, 909 North Main Street, Santa Ana, 12/1/02 - 11/30/03 ($83,830.92); renewable for two additional years - District 1

Sheriff-Coroner:

41. Adopt resolution approving lease agreement with State Department of Forestry and Fire Protection for Sheriff-Coroner on-call helicopter services - All Districts
RESO: 02-356

42. Approve agreement with National University for professional educational services, James A. Musick facility, 12/1/02 - 11/30/04; renewable for three additional years - District 3

43. Approve agreement with Enforcement Support Agency for automated field reporting system ($196,000) - All Districts

44. Select T.M.A.D. Engineers as primary and TOFT WOLFF FARROW, INC. as alternate firms for review and design of electrical, data and conduit requirements for new health management information system; and authorize negotiation of agreement for Board approval - Districts 1 & 3

45. Approve amended price agreement N2000002278 with Exterminetics of Southern California, Inc. for insect, pest and rodent control services at various Sheriff-Coroner, Probation and CEO facilities, term ending 11/3/04 ($10,000 per year; new total $92,900); and authorize purchasing agent to amend agreement under certain conditions - All Districts

46. Approve price agreement N1000004849 with California Service Bureau for warrant reduction services ($40,000); renewable for two additional years - All Districts

GENERAL ADMINISTRATION

Auditor-Controller:

47. Receive and file Report of Refunds for FY 2001-02 - All Districts

48. Receive and file Fund/Agency Semi-Annual Report for FY 2001-02 - All Districts

49. Receive and file Annual Report of Revolving Funds for FY 2001-02 - All Districts

50. Receive and file Annual Report of Cash Difference Funds, Overage Fund and Cash Losses for FY 2001-02 - All Districts

51. **Chair Coad** - Approve Community Social Program Grant funds to Anaheim Family YMCA; approve budget adjustment; and make appropriate findings, 11/19/02 - 5/31/03 ($15,000)

53124 N **APPROVED AS RECOMMENDED**

Clerk of the Board:

52. Approve 2003 Board of Supervisors Meeting Schedule - All Districts

53. Approve and adopt proposed amendments to the Conflict of Interest Code for the Orange County Department of Education - All Districts

54. Approve and adopt proposed amendments to the Conflict of Interest Code for the Laguna Beach County Water District - All Districts

55. Approve and adopt proposed amendments to the Conflict of Interest Code for the Santa Ana Unified School District - All Districts

56. Approve and adopt proposed amendments to the Conflict of Interest Code for the Rancho Canada Financing Authority - All Districts

57. Approve and adopt proposed amendments to the Conflict of Interest Code for the El Toro Water District - All Districts

58. Approve and adopt proposed amendments to the Conflict of Interest Code for the Laguna Beach Unified School District - All Districts

59. Approve and adopt proposed amendments to the Conflict of Interest Code for the Irvine Unified School District - All Districts

60. Approve and adopt proposed amendments to the Conflict of Interest Code for the Ocean View School District and the Centralia School District - All Districts

County Counsel:

61. Approve substitution of Resources Law Group, LLP for Beveridge and Diamond to provide litigation services in case of Spirit of the Sage Council v. Babbitt 98-1873 (EGS) D.D.C.; approve agreement with Resources Law Group, LLP for litigation services, effective 3/8/00 - All Districts

53124 **DELETED**

62. **Acting as the Board of Supervisors and MCAS EL Toro Redevelopment Authority -** Adopt resolution authorizing County Counsel stipulating to stay all pending litigation between ETRPA and County regarding EIR 563 and EIR 573 - All Districts
RESO: 02-357

Chair Coad:

63. Adopt resolution proclaiming intent to establish a People to People Friendship agreement with Hangzhou

41235 **APPROVED AS RECOMMENDED**
RESO: 02-358

County Executive Office:

64. Approve purchase of software and support services from Valicert, Inc ($41,310); approve price agreement N1000004846 with Valicert, Inc. for software maintenance services, 11/19/03 - 11/18/04; renewable for three additional years ($6,885 per year) - All Districts

65. Approve Memorandum of Understanding with Santa Ana, Santa Ana Redevelopment Agency and Orange County Transportation Authority for negotiations related to potential acquisition of Fruit Street Parcel - District 1

66. Approve Records Control Schedules 332A - 342A for implementation by Public Facilities and Resources Department; authorize continuing disposition of records in accordance with the schedules; and delete Records Control Schedules 68C, 69C, 70B, 72A, 96C, 99C, 108A, 132A, 133A, 168A, 176A - 179A, 186A - 218A, 230A - 242A, and 264A - 270A - All Districts

67. Approve Records Control Schedules 343A - 344A for implementation by Treasurer-Tax Collector; authorize continuing disposition of records in accordance with the schedules; and delete Records Control Schedules 169B - 175B, and 262A - 263A - All Districts

Supervisor Smith:

68. Approve Community Social Program Grant funds to The Nicholson Pipe Drums Band; approve budget adjustments; and make appropriate findings, 11/19/02 - 6/30/03 ($2,000)
53124 N **APPROVED AS RECOMMENDED**

69. Approve Community Social Program Grant funds to Loaves and Fishes Soup Kitchen; approve budget adjustments; and make appropriate findings, 11/19/02 - 6/30/03 ($4,000)
53124 N **APPROVED AS RECOMMENDED**

70. Approve Community Social Program Grant funds to Abrazar Community Service and Education Center; approve budget adjustments; and make appropriate findings, 11/19/02 - 6/30/03 (S3,000)
53124 N **APPROVED AS RECOMMENDED**

71. Approve Community Social Program Grant funds to Helping Others Prepare for Eternity; approve budget adjustments; and make appropriate findings, 11/19/02 - 6/30/03 ($1,000)
53124 N **APPROVED AS RECOMMENDED**

72. Approve Community Social Program Grant funds to The Interval House Crisis Shelters; approve budget adjustments; and make appropriate findings, 11/19/02 - 6/30/03 ($4,000)
53124 N **APPROVED AS RECOMMENDED**

73. Approve Community Social Program Grant funds to Mexican American Opportunity Foundation; approve budget adjustments; and make appropriate findings, 11/19/02 - 6/30/03 (S4,000)
53124 N **APPROVED AS RECOMMENDED**

74. **Treasurer-Tax Collector** - Approve price agreement N1000004868 with Moody's Investors Service for Investment Grade Corporate and ABCP Credit Research Program, 11/1/02 - 10/31/03 ($35,288.13); renewable for four additional years; and authorize Purchasing Agent to amend agreement under certain conditions - All Districts

END OF CONSENT CALENDAR

SUMMARY ACTION MINUTES

III. DISCUSSION ITEMS (Items 75-S92B)

HEALTH CARE AGENCY

75. Approve acceptance of award letter from State Department of Health Services for Local Assistance Funding for Tuberculosis Control and Prevention, 7/1/02 - 6/30/03 ($931,593) - All Districts
51234 **APPROVED AS RECOMMENDED**

76. Approve amendment A-2 to agreement 01-15089 with State Department of Health Services for AIDS related services, 7/1/01 - 6/30/04 ($83,611; new total $9,453,607) - All Districts
15234 **APPROVED AS RECOMMENDED**

HOUSING AND COMMUNITY DEVELOPMENT

77. **Acting as the Orange County Housing Authority** - Approve amendments to regulatory agreement declaration of restrictive covenants loan agreement and promissory note with Costa Mesa Village Ltd. for restructuring of the Orange County Housing Authority loan; authorize director or designee to execute related documents; and make California Environmental Quality Act and National Environmental Policy Act findings - District 2
23154 **APPROVED AS RECOMMENDED**

78. **Acting as the Board of Supervisors and Orange County Development Agency** - Approve amended cooperative agreement with Cypress for design, construction and maintenance of Belmont Street, Merten Avenue and Sumner Place; adopt resolution declaring portions as County Highways for right-of-way and construction purposes; approve Right of Entry form; approve reprogramming of Community Development Block Grant funds; and make California Environmental Quality Act and other findings; and **Acting as Orange County Development Agency** - make appropriate findings - District 2
24135 **APPROVED AS RECOMMENDED**
RESO: 02-359

INTEGRATED WASTE MANAGEMENT DEPARTMENT

79. Approve amended price agreement N1000004106 with Safety-Kleen (California), Inc. for household hazardous waste collection, packing, transportation and disposal services, effective 9/6/02; approve assignment of agreement from Safety-Kleen (California), Inc. to clean Harbors Environmental Services, Inc.; and authorize Auditor-Controller to refund security deposit to Safety-Kleen, Inc. ($1,190,000) - All Districts
52134 **APPROVED AS RECOMMENDED**

JOHN WAYNE AIRPORT

80. Select a primary and alternate firm from ranked list for operation of parking facilities and courtesy shuttle bus services; and make California Environmental Quality Act and other findings - District 2
25134 **APPROVED AS RECOMMENDED: SELECTED PARKING CONCEPTS, INC. AS PRIMARY AND AMPCO SYSTEM PARKING, INC. AS ALTERNATE FOR PARKING FACILITIES AND COURTESY SHUTTLE BUS SERVICES**

PUBLIC FACILITIES AND RESOURCES DEPARTMENT

81. Second reading and adoption of "An Ordinance of the County of Orange, California Adding Sections 5-6-100 Through 5-6-129, Pertaining to Cable Television and Customer Service Standards" - All Districts (Continued from 11/5/02, Item 90)
31254 **APPROVED AS RECOMMENDED**
ORD: 02-009

82. Approve continuance of emergency and make appropriate findings pursuant to Public Contract Code Section 22050(c)(1) for installation of negative pressure, HEPA filtered mechanical system, Health Care Agency Public Health Laboratory; set review to determine continuing need for emergency action for 12/10/02, 9:30 a.m. and every 14 days thereafter - District 1 *(4/5 vote)* (Continued from 11/5/02, Item 92)
13254 **APPROVED AS RECOMMENDED**

83. Ratify execution of Acquisition Contract for purchase of Barham Ranch from Orange Unified School District for addition to Santiago Oaks Regional Park ($4,593,000) - District 3
35124 **APPROVED AS RECOMMENDED**

84. Approve the dissolution of County Services Areas No. 4 and 25, disbursement of fund balances to Aliso Viejo; and approve related budget adjustments - District 5
52134 **APPROVED AS RECOMMENDED**

85. Approve price agreement N1000004659 with Waters and Faubel for implementation of public and education element, Orange County Municipal Stormwater Program ($780,000); renewable for two additional years - All Districts
53124 **APPROVED AS RECOMMENDED**

86. **Acting as the Orange County Flood Control District** - Select Epic Land Solutions, Inc. and Overland Resources, Inc. as primary and Paragon Partners Ltd. as alternate firms for on-call real estate services, Prado Dam acquisition project; and authorize negotiation of agreement for Board approval - All Districts
51234 **APPROVED AS RECOMMENDED**

87. **Acting as the Board of Supervisors and Orange County Flood Control District** - Select Huitt-Zollars, Inc., Towill, Inc. and The Keith Companies as primary and Johnson-Frank & Associates, Inc., David Evans and Associates and Psomas and Associates as alternate firms for on-call surveying services, Prado Dam acquisition and various projects; and authorize negotiation of agreements for Board approval - All Districts
23154 **APPROVED AS RECOMMENDED**

PUBLIC PROTECTION

Sheriff-Coroner:

88. Approve amendment 5 to agreement with Villa Park for law enforcement services, 7/1/02 - 6/30/03 - District 3
31254 **APPROVED AS RECOMMENDED**

89. Approve amendment 7 to Agreement with Stanton for law enforcement services, 7/1/02-2/12/03 (S3,547,049) - District 2
23154 **APPROVED AS RECOMMENDED**

90. Ratify emergency purchase order PC 060 L0019330.03 public works project with LAD Construction, Inc. for replacement of water-damaged walls and floors to stop water leakage from dishwashing operations and to correct unhealthful and unsafe conditions, Theo Lacy Jail kitchen (S215,000); set review on 12/10/02, 9:30 a.m., and every 14 days thereafter; and make appropriate findings - District 3
31254 **APPROVED AS RECOMMENDED**

91. Approve price agreement N1000004861 with Southwest Mortuary Services for on-call body transport services, 12/1/02 - 11/30/03 ($300,000); renewable for four additional years - All Districts
21354 **APPROVED AS RECOMMENDED**

GENERAL ADMINISTRATION

92. **Assessor Department** - Approve agreement with State Department of Finance for participation in State County Property Tax Administration Grant Program for FY 2002-03; establish Fund 127 for budgetary and accounting purposes - All Districts (RA 4 4/5)
31254 **APPROVED AS RECOMMENDED**

PUBLIC FACILITIES AND RESOURCES DEPARTMENT

S92A. Adopt resolutions allocating Fourth District Discretionary Proposition 12 funds to projects submitted by Housing and Community Development Department and Harbors, Beaches and Parks and appointing Director or designee as agent to negotiate and execute necessary documents under certain conditions for completion of projects; and authorizing the State to reallocate County funds to project submitted by Anaheim - District 4
41235 **APPROVED AS RECOMMENDED**
RESO: 02-360 - 02-363

GENERAL ADMINISTRATION

S92B. **Chair Coad** - Adopt resolution recognizing Todd Spitzer as Assemblyman Elect - 71st District
51234 **APPROVED AS RECOMMENDED**
RESO: 02-364

IV. PUBLIC HEARINGS (Items 93-95)

PLANNING AND DEVELOPMENT SERVICES

93. Public Hearing to consider adopting resolution approving Zone Change ZC01-01 (Tonner Hills Planned Community Program Text, development map and statistical summary table); and adopt "An Ordinance of the County of Orange, California, amending the County of Orange zoning map by rezoning certain land from the A1(O) District to the PC (O) District, (Tonner Hills Planned Community) and adopting the Tonner Hills Planned Community Program in accordance with the zoning code of Orange County (ZC 01-01)" - District 3

B.O. **CLOSED PUBLIC HEARING**

32154 **APPROVED AS AMENDED TO: CERTIFY FINAL EIR 581; ADOPT RESOLUTION APPROVING ZONE CHANGE ZC01-01 (TONNER HILLS PLANNED COMMUNITY PROGRAM TEXT, DEVELOPMENT MAP AND STATISTICAL SUMMARY TABLE); ADOPT AN ORDINANCE ESTABLISHING THE TONNER HILLS PLANNED COMMUNITY ZONING DISTRICT; AND TO AMEND THE PLANNED COMMUNITY REGULATIONS FOR THE PUBLIC USE AREA TO PROHIBIT BUS STORAGE AND MAINTENANCE YARDS**

RESO: 02-365 - 02-366
ORD: 02-010

94. Approve Memorandum of Understanding with Brea and Nuevo Energy Company for orderly planning, development, and annexation of proposed Tonner Hills Planned Community property - District 3

B.O. **CLOSED PUBLIC HEARING**

32154 **APPROVED AMENDED MEMORANDUM OF UNDERSTANDING WITH CITY OF BREA AND NUEVO ENERGY COMPANY REVISING SECTION 1.3 CHANGING THE DEADLINE FOR FILING THE APPLICATION FOR ANNEXATION FROM 1/15/03 TO 1/30/03**

95. Public hearing to consider adopting "An Ordinance of the County of Orange, California, Approving Development Agreement 2001-1 for the Tonner Hills Planned Community"; adopting resolution approving development agreement 2001-1 with Nuevo Energy Company; and making California Environmental Quality Act and other findings - District 3

B.O. **CLOSED PUBLIC HEARING**

32154 **APPROVED AS RECOMMENDED**

RESO: 02-367
ORD: 02-011

SUMMARY ACTION MINUTES

V. CLOSED SESSION (Items CS-1-SCS6)

GENERAL ADMINISTRATION

County Counsel:

CS-1. CONFERENCE WITH LEGAL COUNSEL - PENDING LITIGATION: County Counsel requests a closed session to discuss with the Board of Supervisors the status of pending litigation pursuant to Government Code Section 54956.9(a). The case is: Frances Swick v. County of Orange, WCAB Case No. ANA 330965 - All Districts

B.O. **HELD, THE CLERK READ: BY UNANIMOUS VOTE, APPROVED A PROPOSED SETTLEMENT IN THE CASE OF FRANCIS SWICK V. COUNTY OF ORANGE. THE PROPOSED SETTLEMENT REMAINS SUBJECT TO FINAL APPROVAL OF OTHERS. AS SOON AS THE PROPOSED SETTLEMENT BECOMES FINAL, DETAILS WILL BE MADE AVAILABLE IN THE OFFICE OF THE CLERK OF THE BOARD TO ANY PERSON WHO INQUIRES.**

CS-2. CONFERENCE WITH LEGAL COUNSEL - PENDING LITIGATION: County Counsel requests a closed session to discuss with the Board of Supervisors the status of pending litigation pursuant to Government Code Section 54956.9(a). The case is: Jerry Krans v. County of Orange, WCAB Case No. AHM 0073334; AHM 0073335 - All Districts

B.O. **HELD, THE CLERK READ: BY UNANIMOUS VOTE, APPROVED A PROPOSED SETTLEMENT IN THE CASE OF JERRY KRANS V. COUNTY OF ORANGE. THE PROPOSED SETTLEMENT REMAINS SUBJECT TO FINAL APPROVAL OF OTHERS. AS SOON AS THE PROPOSED SETTLEMENT BECOMES FINAL, DETAILS WILL BE MADE AVAILABLE IN THE OFFICE OF THE CLERK OF THE BOARD TO ANY PERSON WHO INQUIRES.**

CS-3. CONFERENCE WITH LEGAL COUNSEL - PENDING LITIGATION: County Counsel requests a closed session to discuss with the Board of Supervisors the status of pending litigation pursuant to Government Code Section 54956.9(a). The case is: Louis Granieri v. County of Orange, WCAB Case No. ANA 0359651 - All Districts

B.O. **HELD, THE CLERK READ: BY UNANIMOUS VOTE, APPROVED A PROPOSED SETTLEMENT IN THE CASE OF LOUIS GRANIERI V. COUNTY OF ORANGE. THE PROPOSED SETTLEMENT REMAINS SUBJECT TO FINAL APPROVAL OF OTHERS. AS SOON AS THE PROPOSED SETTLEMENT BECOMES FINAL, DETAILS WILL BE MADE AVAILABLE IN THE OFFICE OF THE CLERK OF THE BOARD TO ANY PERSON WHO INQUIRES.**

CS-4. CONFERENCE WITH LEGAL COUNSEL - PENDING LITIGATION: County Counsel requests a closed session to discuss with the Board of Supervisors the status of pending litigation pursuant to Government Code Section 54956.9(a). The case is: The Lincoln Club of Orange County, et al. v. City of Anaheim, et al., United States District Court, Central District, Case No. SACV02-874 GLT (MLGx) - All Districts

B.O. **HELD, THE CLERK READ: BY UNANIMOUS VOTE, APPROVED A PROPOSED SETTLEMENT IN THE CASE OF LINCOLN CLUB V. COUNTY OF ORANGE. THE PROPOSED SETTLEMENT REMAINS SUBJECT TO FINAL APPROVAL OF OTHERS. AS SOON AS THE PROPOSED SETTLEMENT BECOMES FINAL, DETAILS WILL BE MADE AVAILABLE IN THE OFFICE OF THE CLERK OF THE BOARD TO ANY PERSON WHO INQUIRES.**

CS-5. CONFERENCE WITH LEGAL COUNSEL - PENDING LITIGATION: County Counsel requests a closed session to discuss with the Board of Supervisors the status of pending litigation pursuant to Government Code Section 54956.9(a). The cases are: County of Orange v. Beardslee, et al., OCSC Case No. 02CC11376; County of Orange v. Hendon One et al., OCSC Case No. 02CC11379; County of Orange v. Parker et al., OCSC Case No. 02CC11381; County of Orange v. Schwendeman et al., OCSC Case No. 02CC11385; County of Orange v. Trabuco Canyon Water Dist. et al., OCSC Case No. 02CC11383; County of Orange v. Trabuco P.W.T. et al., OCSC Case No. 02CC11386; County of Orange v. T-Y Nursery et al., OCSC Case No. 02CC11387; County of Orange v. Yasutake et al., OCSC Case No. 02CC11388 - All Districts

B.O. **HELD. THE CLERK READ: THE BOARD DIRECTED COUNSEL TO DISMISS THE ACTIONS AND EXECUTE ANY DOCUMENTS NECESSARY TO TERMINATE THE CASES.**

SCS6. **County Executive Office** - CONFERENCE WITH LABOR NEGOTIATOR - County Executive Office requests a closed session pursuant to Government Code Section 54957.6 with labor negotiator representative, Susan Paul, to discuss terms and conditions for certain represented employees, United Domestic Workers of America, AFSCME, AFL-CIO, In-Home Supportive Services
CONTINUED TO 12/10/02, 9:30 A.M.

VI. PUBLIC, BOARD & EMAIL COMMENTS & ADJOURNMENT

PUBLIC COMMENTS:

Archer Muncy - Oral Re: Preservation of MCAS Tustin blimp hanger

Edmon Penyamin - Oral Re: Abuse by law enforcement

Thelma Franks - Oral Re: HUD Program

Frances Williams, Mike Boeck, Bob Coyle - Oral Re: Waste management rate increase

Mike Boeck - Oral Re: Waste Management, Inc. rate increase

BOARD COMMENTS:

Supervisor Spitzer - Oral Re: Resigned as Supervisor effective 5:00 p.m. today

ADJOURNED: 12:45 P.M.

54123 Adjourned in memory of William "Max" Bridges

14235 Adjourned in memory of Corliss Graham

45123 Adjourned in memory of Rod Speer

SUMMARY ACTION MINUTES

*** KEY ***

Left Margin Notes

1. √ Supervisor Smith
2. √ Supervisor Silva
3. √ Supervisor Spitzer
4. √ Chair Coad
5. √ Supervisor Wilson

A. √ Abstained
X. √ Excused
N. √ No
BO √ Board Order

Right Margin Notes

O. √ Ordinance
R. √ Resolution

Above numbers refer to Supervisorial Districts (1st number = Moved by; 2nd number = Seconded by)

CYNTHIA P. COAD, CHAIR
Orange County Board of Supervisors

DARLENE J. BLOOM
Orange County Clerk of the Board

Board of Supervisors
Transcript of Meeting
November 19, 2002

COUNTY OF ORANGE

BOARD OF SUPERVISORS

In re:)

)

Tonner Hills Planned)

Community.)

_____)

ORIGINAL

REPORTER'S TRANSCRIPT OF AUDIOTAPED PROCEEDINGS

Orange County, California

Tuesday, November 19, 2002

Transcribed by:

LAURIE HELD-BIEHL

CSR No. 6781

JOB No. 203166

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COUNTY OF ORANGE

BOARD OF SUPERVISORS

In re:)
)
Tonner Hills Planned)
Community.)
)

REPORTER'S TRANSCRIPT OF

AUDIOTAPED PROCEEDINGS, proceedings dated November 19, 2002, transcribed February 6, 2003, in Orange, California, by LAURIE HELD-BIEHL, Certified Shorthand Reporter No. 6781.

APPEARANCES:

ORANGE COUNTY BOARD OF SUPERVISORS:

CYNTHIA P. COAD, Chair
THOMAS W. WILSON, Vice Chair
JAMES W. SILVA
CHARLES V. SMITH
TODD SPITZER

Tuesday, November 19, 2002

Orange County Board of Supervisors

CHAIRPERSON COAD: And with that, that concludes our discussion items.

We move now to public hearings, and I understand that there's interest in having 93, 94 and 95 as one hearing and it would require, however, separate votes; so I will open the public hearing and if you could read these items, please.

UNIDENTIFIED SPEAKER: Yes.

Item number 93 under Planning and Development Services, public hearing to consider adopting resolution approving zone change ZC01-01, Tonner Hills Planned Community program text, development map and statistical summary table; and adopt an ordinance entitled an Ordinance of the County of Orange, California, amending the County of Orange zoning map by rezoning certain land from the A1(O) District to the PC(O) District, Tonner Hills Planned Community and adopting the Tonner Hills Planned Community Program in accordance with the zoning code of Orange County, ZC01-01.

Item number 94 is approve Memorandum of Understanding with Brea and Nuevo Energy Company for orderly planning, development and annexation of proposed

Tonner Hills Planned Community property.

And item number 95 is a public hearing to consider adopting an ordinance entitled an Ordinance of the County of Orange, California, approving Development Agreement 2001-1 for the Tonner Hills Planned Community, adopting resolution approving Development Agreement 2001-1 with Nuevo Energy Company, and making CEQA and other findings.

And we do have 13 speaker requests.

CHAIRPERSON COAD: All right.

And Mr. Matthews.

MR. MATTHEWS: Yes. Good morning, Madam Chair and Honorable Board. I have --

CHAIRPERSON COAD: Officially, I need to hammer that. All right.

MR. MATTHEWS: Good morning, Madam Chair and Honorable Boardmembers. I am Tom Matthews, Director of the County Planning Development Services Department. I will make my presentation as succinct as possible in light of the speakers who have come down here to testify this morning.

On January 31, 2001, Nuevo Energy submitted a development proposal for 914 dwelling units located in the City of Brea Sphere of Influence. The project is generally located north of Lambert Road between Valencia

Avenue and the 57 Freeway. The property has been in oil production for over 100 years.

And I would point to the wall exhibits behind Supervisor Wilson, they depict the overall site and the main features, both topographic and those areas that are scheduled in this proposal for development and continued oil production and restoration and habitat.

Of the total 798-acre site, the proposed project includes development that is proposed for 180 acres, which is approximately 23 percent of the site, with a maximum of 795 residential dwelling units. The remaining 618 acres of the site would include 14.6 acres of improved local park, 21.5 acres of land for public uses, including park uses, and 559 acres, or 70 percent, of the site as open space, and approximately 16.3 acres of oil production uses.

Interim oil operations would continue and be gradually phased out. And I would point out for the record that this is a phenomena that's occurring throughout Orange County.

At the conclusion of the 60-day draft EIR review period, we received comments focused primarily on the issues of wildlife movement, residential density, traffic and biological habitat. As a result of these comments, as well as a series of discussions involving

the city, and I might add the CEO's office, the applicant and our staff made additional changes incorporated into the applicant's original plan that reduced project impacts.

These major changes included the following: the elimination of Tonner Hills Road, which provided secondary access in the original plan to the project site but would, in fact, have bifurcated the wildlife corridor along Tonner Canyon; a reduction in the total number of dwelling units from 914 to 795; the elimination of a 7.7-acre commercial site, together with an expanded preservation of an area referred to as Cable Canyon; a greater pull back of development from the ridgelines, which is a prime issue in the City of Brea, as it is in other locations through South County; and a preservation of a major wildlife corridor, which is recognized both by the County of Orange as well as state and federal agencies along Tonner Canyon. It, in fact, provides major east/west linkage between Chino Hills and the hills above Yorba Linda, and those same hills that extend over into Los Angeles County.

The documents that are before your board this morning include, in addition to the proposed final EIR 581, Tonner Hills Planned Community zoning text and regulations and an area plan, a Memorandum of

Understanding with the City of Brea, and finally a Development Agreement.

These later documents, both the Memorandum of Understanding and Development Agreement, spell out the project's public benefits, which, among other things, include the dedication and restoration of open space, parks and a public park site -- excuse me, public use site.

The planning commission, of course, considered all of the testimony at a hearing conducted outside these chambers in the adjoining room and reviewed the Environmental Impact Report and the documentation for the project and considered that, in fact, the Environmental Impact Report had adequately addressed all of the project impacts and that they unanimously recommend the certification of that document.

The planning commission also recommends that your honorable board adopt the planned community zone change and also approve the development agreement.

Madam Chair, this completes my major presentation, but I do have a minor change to the recommended action with respect to the documents that are before you.

As your honorable board knows, there are many last-minute discussions regarding these development

projects, and this has just been hammered out between the county staff and the City of Brea, and we would recommend that the documents be changed as follows:

Revise Section 1.3 of the Memorandum of Understanding to change the deadline for execution of the pre-annexation agreement from December 17, 2002 to January 15, 2003, and change the deadline for filing the application for annexation from January 15 to June 30, 2002.

The last change, Madam Chair, and I will sit down, amend the planned community regulations for the public use area to prohibit bus storage and maintenance yards. And I would like to give a copy of those changes to the clerk for the record.

Before I sit down, Madam Chair, I would like to acknowledge the staff of the Planning Development Services Department, headed up by Chuck Shoemaker and Chad Brown, and also for the expert and unbelievable assistance from Bill Mahoney.

CHAIRPERSON COAD: And all three of these are District 3 items.

Supervisor Spitzer.

SUPERVISOR SPITZER: Thank you.

We have provided a copy of those for consideration, but at this time, Madam Chair, I was

going to ask Mr. Matthews to make that presentation.

I'll reserve my comments, obviously, until after I have the input from the public; so I'd ask you to call those speakers at this time.

MR. MATTHEWS: Madam Chair, I was just reminded that I read into the record the annexation deadline was 2002 and that should be 2003.

CHAIRPERSON COAD: I have one question for just a little further definition.

I was always very concerned that any developments in North County be able to have the benefits of any mitigation accommodations that were made. And could you just explain that a little bit, about the wildlife corridor and the money staying in the area.

MR. MATTHEWS: Madam Chair and Board, the best possible solution to impacts that are created to the natural habitat is to avoid the impact. On small projects where the impact may not be avoided, there is a procedure whereby the impacts can be mitigated by providing and off-setting financial contributions so that mitigation sites can be improved or enhanced or purchased off site; such is not the case with this project.

This project is a large project. It's

800 acres, approximately, in size, and it has historically, and hopefully well into the future, a major linkage opportunity between the resource areas that I mentioned earlier in my presentation; so it is the intent that those environmental impacts to habitat be mitigated on site with the phase-out of the oil operations, that the habitat issues, which subsequently will be addressed through permits through the state and federal wildlife agencies, will be addressed on site.

CHAIRPERSON COAD: All right. Thank you.

And I have a request from Supervisor Silva, who's always watchful of the county budget, and he is asking that perhaps the three people in the adjoining room would be interested in moving into this room and we could save electricity. That is his request.

All right. If you'd call the speakers.

UNIDENTIFIED SPEAKER: I'll call the speakers three at a time. The first are John, I believe it's Ullom, Bev Perry and Claire Schlotterbeck.

CHAIRPERSON COAD: Welcome. And just begin with your name and city of residence.

MR. ULLOM: Thank you.

My name is John Ullom. My associate, Bob Odle, and myself, represent the landowner, Nuevo Energy Company.

Madam Chair and Honorable Boardmembers, the Tonner Hills Planned Community represents a long-term comprehensive planning effort that began back in '96 by identifying the physical, environmental and political constraints associated with the property resulting in a plan that retained 70 percent of the property and permanent open space eventually to be owned by a public agency; provides enhanced vegetation for the protection of the endangered California Gnatcatcher, and restores property that has endured over 100 years of industrialized use and oil production.

In cooperation and under the supervision of the county, state and federal agencies, the site restoration and re-vegetation begins immediately with the development of the project:

Preserves the visual backdrop to the local community and the northern entrance to the County of Orange from the 57 Freeway;

Preserves the major wildlife corridor through the northern reaches of the property;

The Tonner Creek Wildlife Corridor is the only east/west large mammal corridor connecting beneath the 57 Freeway for the Chino/Puente Hills Wildlife Corridor, as identified by the State of California's Missing Links Report.

There is an exhibit up here on the wall that shows the southern trace of that corridor as defined in the report, and all of the development lies south of that corridor.

Provides the dedication and improvement of public parks, well in excess of Quinby Act requirements, including the retention and restoration of the half-century old Wildcatters Park;

Provides for the dedication and improvement of miles of public trails, walkways and bikeways;

Provides for a balanced mix of housing in a jobs-rich environment that includes an important affordable housing component.

On October 28th, the Brea Olinda School District Board unanimously approved a school impact mitigation agreement that provides for the dedication of land and enhanced school fee payments, and we have been diligently working with the U.S. Fish and Wildlife Service and the Army Corps of Engineers and anticipate concluding the permitting process within the next month.

I would like to conclude with a comment regarding statements made by an elected official from the City of Brea at the September 18th Orange County Planning Commission and public hearing on the Tonner Hills development asking for a reduction in the density

to a maximum of 755 units.

In May of this year, County Assistant Chief Executive Officer William Mahoney chaired the first of what was to be 12 scheduled meetings between the county and the City of Brea and Nuevo Energy to resolve site plan and public utility services issues in order to reach concurrence on a pre-annexation agreement. During the process, Nuevo agreed to make dramatic revisions to the project description as originally submitted.

The changes made included the elimination of a major entryway to the project from Tonner Canyon Road; the elimination of private streets and guard gates; the elimination of 119 units; the elimination of one residential planning area and the reduction in size of two other planning areas; the addition of over nine acres of improved park lands; and the elimination of a commercial center at the intersection of Wildcat Way and Lambert.

The center would have been the only retail center west of the 57 and north of Birch in the City of Brea. It would have served a 770,000 square-foot Ullom Point Office Complex and the Brea Olinda High School immediately west of the property, in addition to existing residential communities along Carbon Canyon and Lambert Roads.

The changes made by the plan reduced the overall traffic impacts to the property by the project nearly 50 percent.

In meetings with the county and the city on August 28th this year, the applicant negotiated final demands from the city to reach agreement on a site plan. At that time, I was told by representatives of the City of Brea that 795 units would be an acceptable unit count. Based on that assurance, we proceeded to revise the project description, complete the response to comments on the draft Environmental Impact Report and revise both the area plan and the planned community text to reflect all changes.

We would ask that the board consider those changes that were negotiated rather than taking an out-of-context request to reduce density further.

Thank you for your indulgence and patience.

And we would also like to thank Mr. Mahoney for all of the meetings and effort that were put into our efforts with the City of Brea.

Thank you.

CHAIRPERSON COAD: Okay. Next speaker, please.

UNIDENTIFIED SPEAKER: I believe it was Bev Perry.

MR. BEAUMAN: Obviously, I'm not Bev Perry. She had to leave. She is chairing a SCAG meeting and asked me

to speak on her behalf.

I'm John Beauman, a member of the Brea City Council, also, and I have Bev's notes, if I will have the opportunity to do that.

We want to first thank Supervisor Spitzer for his efforts on behalf of the City of Brea to get us into some of the discussions that were going on between the county and Nuevo. We appreciate that and we want to acknowledge that.

We want to ask your support on four items that are very important to the City of Brea.

It's imperative to Brea that our local codes are the prevailing standards for both fire and building codes. We request that the MOU agreement defer to Brea standards and policies and guidelines as the prevailing documents. This development will be annexed into the City of Brea and we believe it's essential that it meets Brea's standards right from the beginning.

The standard clause allocates $400 per dwelling unit to the Orange County Sheriff's Office. If the city is, in fact, to annex that particular development, we believe that that money should be allocated to the City of Brea for policing by the City of Brea.

Brea also provided an alternative plan for consideration in the EIR. This plan was developed by

citizens of the community and worked at -- which came up with a maximum of 755 units for that particular area that would be in alignment with our general plan. We ask -- it's not a significant movement, but we ask that the general plan for the City of Brea be honored and respected in this regard, looking at the elimination of county islands.

In fact, with the elimination of county islands, it would be essential for this number to fit our general plan. We're in the process of revising it and we would appreciate your consideration.

In recognition of the desires of the Brea community and ongoing challenges associated with traffic, habitat, air quality, open space, I request that, in fact, you do cap the number of units at 755 as a reasonable balance between the Nuevo's interests and those of the community.

We ask for full support in creating agreements that recognize the legitimate public purpose of acquiring open space in the Tonner Hills if funding is available. The community interest is in preserving sensitive reaches of the Tonner Hills project as open space, and we ask that the adequate language in the MOU agreement is necessary to provide for this option, and we ask you to please support this community desire.

Thank you.

CHAIRPERSON COAD: Thank you.

MS. SCHLOTTERBECK: My name is Claire Schlotterbeck, I'm Executive Director of Hills for Everyone.

For the last 25 years, our group has worked to create, complete and connect Chino Hills State Park and the lands to the west in the Puente/Chino Hills.

I'm here today because of our ongoing concern over the environmental damage this project does to our region that is resource rich.

The mitigation for virtually all of the issues is uncertain and improperly deferred. Biological resource mitigation is improperly deferred by simply stating that Nuevo will comply with the Department of Fish and Game and the U.S. Fish and Wildlife Service.

The county did not adopt mitigation measures that were suggested by the public and they did that without adequate findings. The county did not provide evidence of infeasibility of mitigation measures in the project alternatives, in design alternatives, including the financial analysis.

The noise mitigation is ridiculous. As I understand it, it admits that construction is going to exceed daytime standards, yet the only mitigation is to limit the noise to daytime. What is going to be done to

lessen that daytime noise for the very real people who live near the project?

The mitigation for traffic is equally ridiculous. Nuevo is required to pay full or fair-share fees for project-specific impacts, but there is no assurance that those fees will be used to mitigate this project.

There is also a traffic impact fee that is supposed to be paid for general projects that are more distant from the site, yet whatever Nuevo spends to mitigate on its local impacts is deducted from the money they're supposed to contribute to the general projects at a distance. This supposes that cars generated by the Nuevo project magically stop impacting roads beyond the project boundary, and that Nuevo has little responsibility to the greater regional road network.

The rejection of project alternatives doesn't appear to be supported by substantial evidence in the record. In particular, financial infeasibility is not demonstrated.

CEQA requires you to show why an alternative is not feasible with real numbers. It is especially troublesome when the document rejects an alternative because the applicant doesn't like it. That is not the perogative of the applicant, but rather the

responsibility of the county. Although the EIR did come up with an environmentally superior alternative, there is virtually no discussion of why it is infeasible.

In summary, the findings of fact are not supported by substantial evidence with regard to the significance of the impacts, infeasibility of the project alternatives and mitigation measures and the statement of overriding considerations. We urge the county to turn this project down until the deficiencies are remedied.

Thank you.

UNIDENTIFIED SPEAKER: I'll call the next three speakers.

Ken DuFour, Reed Royalty and Charles View.

MR. DEFOUR: I am Ken DuFour, a long-time resident of Orange County and very proud of it.

Madam Chair, I first experienced Orange County in 1958 on a trip out here from Minnesota. It was a spectacular place then and I fell in love with it immediately. I returned in '62 to join the staff of the Orange County Health Department. At that time, my rent for a little garage apartment in Costa Mesa was $85 a month. At that time, homes on Balboa Island, in Corona del Mar and Newport Beach were selling for 32,000 bucks, and for an extra two grand you could get an ocean view.

I could kick myself that I wasn't able to buy then. That says something about what the Orange County Health Department was paying, but let's leave that off tonight.

In '74 I came back to this paradise and I bought my first home for 103,5, and I've raised my family here and I've been so proud of it ever since.

I know there are people who are just now seeing Orange County for the first time and wish not only for the American dream but for the best of the California dream. And as I heard today at the beginning of this meeting, we may have to say the Irish dream, based on Mr. Hill.

Unfortunately, housing prices continue to go through the proverbial roof. Part of that problem is that Orange County is such a beautiful and wonderful place to live and it's extremely desirable and that pushes the price up. But the other part of the problem is due to the anti-growth sentiment that derails the decreases in the number of homes in most of our development areas. I do not want to see this take place in Tonner Hills.

Make no mistake, I believe Orange County is in a homing crisis. I ask you to pay attention to the thousands of renters who desire to purchase a home. Think of them when you review the Tonner Hills plan.

That plan provides 795 homes, with more than 71 percent open space. This is a plan that is respectful of this environment and it still provides much needed housing.

Please help others achieve this American dream, in the one that we all have been able to satisfy ourselves with by being residents of Orange County. I urge you to support the plan that's before you.

Thank you.

CHAIRPERSON COAD: Thank you.

Next speaker.

MR. ROYALTY: Good morning, Madam Chair and Honorable Members, my name is Reed Royalty. I'm president of the Orange County Tax Payers Association headquartered in San Juan Capistrano.

We spent most of the day touring the Tonner Hills project, and based on what we saw there, we ask that you approve it.

OC Tax likes public benefits that are provided with private money, and the Tonner Hills project does that. For example, 71 percent of the land, as we just heard, will be preserved as parks and open space at no taxpayer expense. In proportion to its size, this is a gift that's equivalent to the recently wildly heralded gift of The Irvine Company to Orange County for open

space.

The plan will provide new nature trails at no taxpayer expense. It will provide land for parking lot expansion and financial assistance for new schools, and the developer will fund roads to and within the property and has agreed to improve intersections near the property, all at no costs to taxpayers.

Now, we assume at OC Tax that there are opponents of the project who will ask that the whole thing be turned into open space or a larger portion of it, but I've looked at your budget, I've looked at the state budget, and you don't have the money to buy it and you won't have for decades to come, I'm afraid, by what I've seen. It would be improper to seize it without compensation. And the proposals before you this morning are a win-win situation. Mother Nature and the taxpayers get well-maintained open space and much needed housing, and the property owner will be fairly compensated.

So the Orange County Tax Payers Association asks you to approve the recommended action.

Thank you very much.

MR. VIEW: Good morning, Madam Chair, Members of the Board. I'm Charles View, Development Services Director for the City of Brea.

I'm here this morning to talk about the Tonner Hills project. I'd like to start off by thanking county staff, particularly Bill Mahoney, Brian Spiegel, Chuck Shoemaker, Chad and Marta, who helped us on the project, and the developers, John Ullom and Bob Odle, most importantly, residents of Brea.

As you've heard from a couple of folks this morning, this project has a long history, the City of Brea's been involved off and on over the years. I would like to thank Supervisor Spitzer for getting us reinvolved in the project to help shape it. I think that will be part of the legacy as you leave Orange County.

The City of Brea was challenged with providing to the County of Orange to develop an alternative plan for consideration to the EIR process, and as you heard from Councilmember Beauman, we did that; developed a plan that called for approximately 680 to 755 units.

Subsequent to submitting that plan and receiving the draft EIR, we reviewed it, identified a number of CEQA-related concerns, and most importantly, thought that the project alternative had not been given adequate consideration in the project. It would reach out to the county through the board of supervisors' office and were able to successfully begin discussions

with Nuevo and the staff.

We had ongoing discussion, as Mr. Ullom identified, in 12 meetings. As part of those meetings, we were negotiating a reasonable project. The 795-unit count, in fact, was put on the table as part of the discussions by City of Brea staff as a maximum we thought that could be supported in the community. We could not provide assurances because, as we stated earlier, they had to go through a committee review and a council review.

When we took report to the committee and the council, we advocated for that number as being a reasonable balance for the community based on our discussions with Nuevo and the county staff.

Subsequent to our recommendations and proposals to both the Brea committee and the city council, they did endorse a plan that allowed a maximum development of 795 units.

I will share with you that a number of the members of the committee in particular were only there because they were charged with providing a project, should development occur. Some of them, frankly, did not want to see development occur at all but recognized the responsibility to help shape the development; so that's where the 795 number came from that was discussed

earlier today.

As you've heard from our elected officials, that number certainly doesn't reflect the most desirable number for the City of Brea. There are folks who would like to see lower numbers, 755, which represents the maximum from the committee and our general plan...

(Tape turned over.)

...with the staff and with the developers and have reached agreement on the MOU that's before you.

I would agree with Tom Matthews, it's been up-to-the-last-minute discussions. I'd like to thank him personally for addressing the issue of the bus yard. That was a major concern for the city in terms of a bus yard in close proximity to our residential areas.

The critical areas identified include the use of Brea fire and building codes, especially regarding ongoing oil field operations and methane mitigation for construction. The reason why that was identified again today is also not only our standards but our policies regarding residential development, and we would like to see Brea standards carry the day where there's disagreement.

We look forward to continuing the discussions with county staff and Nuevo developers as we reach an agreement to a pre-annexation agreement. We think

critical to that is Brea utility service for water and sewer and certainly public streets, and we think we can make good progress with that, both with the Nuevo developers and county staff.

And at this time we endorse the project as it's proposed, with the caveats that we would ask the consideration, as you heard earlier, possibly for a reduced unit count of 755.

I would like to make sure it's clear for the record, though, that the city council and the committee did vote that this was a better alternative than it would have been submitted before and they voted for that with the 795-unit count.

Thank you very much.

CHAIRPERSON COAD: Thank you. Next speaker, please.

UNIDENTIFIED SPEAKER: The next three names are Rex Gaede, Mike Balsamo and Brad White.

MR. GAEDE: Madam Chairman, Members of the Board of Supervisors, my name is Rex Gaede. I've lived in Brea for over 35 years and had the privilege of being voted by the people onto their school board and onto their city council and I'm a former mayor.

I would like to put my two cents in here, if I may.

When I was on the council, and since I've been

living in Brea for all these years, I think that we have always looked to look for the best use of land around us and to keep it under a quality condition as we approve each project, and I think we have achieved that over the years and I think this particular project follows on with that philosophy.

And I'm very proud to be able to say that I would like to endorse what has been submitted here. I think it's a fine project.

I think that over a year of mitigation that took place between a citizen's committee and individuals that were able to get in on this and try to work out what is best, and certainly I think we have to recognize that the lowering of the density, you might say, and the cancellation of a commercial component were major changes that the developers made as a concession to that citizen's group.

And of course I think the most appealing one should be to those who are sometimes called the environmentalists, that the access on the backside of that project on Tonner Canyon to the 57 Freeway is a major concession, and one that I think that we should be very proud of. Everyone.

I'd just like to say that this world we have, particularly in Southern California, there are those who

might be on the environmental side and those you might say on the building side, for lack of a better term, but we do try to get together. We try to make these things work and I think this project has displayed that.

After all, local government has, I think, a primary responsibility to the people. And the real social issue here is our responsibility to make sure that we can house the kind of population that we have in this county, and not to have them have to drive from Riverside or Palm Springs to go to work, and I think we have a primary responsibility to that.

I guess the question is, is it mice or men?

MR. BALSAMO: I have a letter here in support of the project that I'd like to pass forward.

My name is Mike Balsamo. I'm with Building Industry Association of Orange County. BIA represents over 900 companies and over 75,000 employees in Orange County in the business of building homes and related industries. Thank you for the opportunity to speak before you today.

I want to talk about housing issues in general, you know, on a national level it's widely acknowledged that the housing industry is propping up our economy in America, it's helping us to avoid or avert a full-blown recession; so this is a critical economic issue.

In terms of California, due to our regulatory framework and CEQA and a variety of reasons, we're undersupplying our market here by over 100,000 dwelling units annually, that's on a statewide basis; so obviously as we don't meet the demand, our supply is dwindling, we see prices continue to go up, and several of the other speakers have touched on that.

In Orange County, our medium-priced home is now approximately $370,000. To put it in perspective, a lot of people think that we're just on the go here in the building industry and really building up the environment.

In the 1980s, we were doing more than twice as many housing units on an annual basis as we are today. We're basically running out of land in Orange County and it's forcing our builders and landowners to be more responsible.

We have to deal with growth. Industry experts are saying that over the next 15 to 20 years, we're expecting to see about 600,000 more people in Orange County. That's a population roughly equivalent to the size of San Francisco. We can either plan for it or not. And these are not just immigration, but largely due to the extent of births here in Orange County.

If we don't plan for it, we can see failures in

our infrastructure, talking about school overcrowding, water and sewer systems, any number of things that we already see evidence of that in certain areas of the county.

Another factor, as has been mentioned, is driving. If we force the new homes out into the Inland Empire, we suffer air quality impacts and traffic impacts that are negative to our whole region as a whole.

The alternative is we can plan for this development. I think that's what you're seeing evidence of here today.

Tonner Hills, 795 homes and 71 percent open space dedication, this seems like a reasonable and balanced plan, and we urge you to support this project and support the American dream for homeownership.

Thank you.

MR. WHITE: Madam Chairman and Honorable Board, my name is Brad White. I reside in Huntington Beach, California, and I am actually the president of the California Property Rights Council, but I wanted to kind of go off topic just for a second.

I was here earlier when you started the board meeting and I personally want to thank you for not forgetting those of us that are in the Reserves and in

the military. I know Supervisor Silva has visited us over at Joint Forces Training Base in Los Al and it means a lot that you folks remember us and also keep us and our family members in your prayers.

I'm sorry, I don't mean to be sentimental about it, but much of us have been doing much needed PT in preparation for our nation's work.

So I'll get back to the topic at hand.

UNIDENTIFIED SPEAKER: Thank you.

And could you start his time now, please.

CHAIRPERSON COAD: I wasn't going to call him on the red light. Don't worry.

MR. WHITE: Thank you.

As I mentioned before, my name is Brad White, I'm the president of the California Property Rights Council. We believe the right to own property is one of our nation's greatest freedoms. Our goal is to support landowners and help protect the property rights. We support the property rights to develop their property.

Nuevo Energy has put forth a proposal for Tonner Hills that will provide this community new homes. Today is an opportunity for the board to respect the rights of property owners and allow the Tonner Hills project to move forward.

Tonner Hills is a well-balanced plan and

protects the ridgelines, preserves hundreds of acres of open space and allows the property owner to build homes on their land.

Please keep in mind that California is in a housing crisis, as others have mentioned before. It is imperative that property owners be allowed to build new homes.

I gathered together some recent headlines, but there's actually an article out of Berkeley 2001, believe it or not, that is dealing with NIMBYism and all these other things that are kind of causing a lot of the so-called urban sprawl that they so much claim that they want to fight.

Anyway, back to what I was speaking about before.

California is in an absolute housing crisis, I firmly believe. We need your help to approve projects that will help to address this. Please respect the property rights of Nuevo Energy and also the Fifth and Fourteenth Amendment of the United States Constitution and allow Tonner Hills to move forward.

Thank you. God bless you, Orange County, and the United States.

UNIDENTIFIED SPEAKER: The final three speakers are Darren Henry, Diane Taylor and Vince Mariner.

MR. HENRY: My name is Darren Henry, and thank you for allowing me to address you on this issue.

In some contrast to the gentleman that spoke earlier, I'm a 30-year resident, all my life here in Orange County, and I'm just now, in about three months, starting my own family. And as we all know, the housing prices are utterly ridiculous these days here and I would like to continue to live here in Orange County and raise my family here in Orange County, just as I was raised here.

Projects such as these offer more opportunity for people such as in my position to be able to afford housing for our families and continue to remain here in Orange County; so I would urge you to approve this project.

Thank you.

MS. TAYLOR: My name is Diane Taylor, I live in Brea.

Unlike many of the people, I'm sorry to have to say this, acting like shills speaking in favor of the Tonner Hills project who have never and probably never will live in Brea, I am a 20-year resident of Carbon Canyon, an often overlooked corner of this county. I am not an anti-growth advocate.

I could speak about the inadequacy of the

Tonner Hills project and how offensive it, the process, the consultants and the county have been to the citizens of Brea. But in the interest of time, I will instead address the inadequacy of the EIR, approval of which will likely generate lawsuits and/or a probable request for a grand jury investigation.

There are several issues, but I want to bring to your attention what I feel is most important, traffic and the transportation/circulation element of the EIR, which should be recirculated because it is inadequate.

I gave many reasons documented at the planning commission meeting on October 16th, but the bottom line is that the major means of accessing the development extending Tonner Canyon Road has now been eliminated and we do not have an EIR that addresses the impact on Brea's existing roadway infrastructure.

Kraemer Boulevard and Valencia Avenue will now be the only access to the project, and the Valencia entrance was not included in the EIR, or, of course, mitigation measures to be evaluated for an already troubled intersection at Valencia with Lambert/Carbon Canyon Road.

Have any of you observed the impossible situation? Take a field trip any day between 5:00 and 7:00 p.m. Carbon Canyon Road is the major alternative

to the 91 Freeway for commuters from San Bernardino and Riverside Counties. Traffic now backs up for almost a mile in several directions on the roadways leading to the Tonner Hills project. What will happen with an additional 800 homes with no other access?

Also, do not forget that Valencia Avenue is the only road to the county's Olinda Alpha Landfill. The closure date of 2013 is now likely to be extended to 2025 or even longer. Trash truck traffic of over 4,000 daily trips now presents a serious problem, especially in the morning commute time.

Valencia Avenue was not included in the EIR as an access to the Tonner Hills project. Approving this flawed EIR which stress quantity over quality is a serious mistake unless the transportation/circulation element is revised and recirculated. Until this is done, it is unknown what number of dwelling units is appropriate.

Thank you.

MR. MARINER: My name is Vince Mariner, a 20-year resident of Brea, and I don't think anybody is questioning the property owner's right to develop on it. I think it's a matter of mixing up the amount of homes and the size of the homes with the kind of traffic problems that are existent in Brea today.

The previous development that is directly adjacent to this one called Olinda Heights has been in process for eight years of grading and grading and grading and grading to try to make the almost undevelopable property developable. The homes, which originally they had asked for 2200, were down to 670 and they still are right next to each other with backyards that you could not put a swimming pool in.

The same thing is going to exist with this property. The 71 percent that they are giving to the community is undevelopable in any way, shape or form. It's a travesty. I mean, when you're talking about cliffs and cracks in the infrastructure that are going to come from earthquakes are just well known, and the EIR, which stated that traffic was mitigatable, is not. It's gotten worse and worse and worse, and it takes now 30 minutes to get from Kraemer to Carbon Canyon, which is three and a half miles, on Lambert Road. And you can get down here from Brea in less than 30 minutes.

So I hope that you look into the EIR and some of the falsehoods that were stated in that with some scrutiny.

Thank you.

CHAIRPERSON COAD: Are there additional speakers?

UNIDENTIFIED SPEAKER: No, I've not received any

others.

CHAIRPERSON COAD: Supervisor Spitzer?

With that, I will close the public hearing.

SUPERVISOR SPITZER: Thank you very much.

Mr. Matthews, I'd like you to respond to the City of Brea's letter in one instance, the original question about building and fire codes.

Obviously, you know, I'm very familiar with methane mitigation and methane migration issues with respect to closed landfills, but what about with respect to closed oil producing areas?

MR. MATTHEWS: Madam Chair, in response to Supervisor Spitzer's question, we understand and would like to clarify for the record that this project will have to comply with the codes that are in force at the time the permits are eventually issued. That's a standard procedure.

And we know that those codes change. They change sometimes every several years. And so the intent is to convey that this project will comply with the latest codes.

Now, we disagree with the City of Brea's contention that the MOU and the development agreement needs to address this. There is an opportunity to address this in the pre-annexation agreement and we

would request that your honorable board agree with that position.

SUPERVISOR SPITZER: Just a follow-up.

Do we have present codes in the county that are contemporary with Brea's codes or as purported in their letter, they're representing they've adopted standards because they've had other projects in the area that have dealt with closed oil producing property.

MR. MATTHEWS: Madam Chair, the difference between the County of Orange code and the City of Brea code with respect to building codes first, Supervisor Spitzer, both the City of Brea and the County of Orange must comply with the Uniform Building Code. Those codes are adopted periodically.

Now, with respect to the oil production and extraction codes adopted by the City of Brea, I am not personally familiar with the details of how those differ.

I do know, though, Supervisor Spitzer, that the City of Brea has their own fire department and the OCFA has a different standard. I'm not sure exactly precisely what those differences are.

SUPERVISOR SPITZER: Well, you talked about that. I just want to explain, because it was made in the public record, I think by Councilmember Beauman, that in the

event that there is a pre-annexation agreement, obviously the fees that are now generated from that property that are paid to the Orange County Sheriff's Department will be negotiated in a property tax exchange and the Brea City Police Department and Brea Fire will be compensated for those services with respect to that property. Those are all issues with respect to a pre-annexation agreement.

Would you just explain to the board in about 30 seconds what attempts, if any, you made, both at my request and any other's request, to try to get a pre-annexation agreement surrounding this particular development so that those issues would have been resolved prior to coming here today.

MR. MATTHEWS: Madam Chair, it has been our intent since the beginning of the discussions with the City of Brea, and we're open to that issue -- as a matter of fact, it is my understanding, and the property owner may wish to comment at some point during the hearing, that there were early-on discussions before the project was withdrawn from the city and filed with the County of Orange.

SUPERVISOR SPITZER: Thank you very much.

Colleagues, do you have question of staff before I make my comments?

Well, first of all, I've reviewed the minutes of the Brea City Council meeting and I --

These were adopted. They were --

Brea considered this project, the city council, on September 17th, and the minutes were adopted on October 1st.

The motion to approve the project was made by Mayor Pro Tem Perry and seconded by Councilmember Beauman endorsing the project; however, they did have three caveats: Consideration of lowering the maximum unit --

You have in your minutes 792 but I think you meant 795.

-- as proposed by Nuevo to 755; that they wanted the Wildcatter Park sooner, rather than later, it's my understanding that's been resolved; and then the Hoover development tract issue, that's also been resolved.

So, really, the issue, in my opinion, before us today, where there's really any discrepancy, given what Mr. Matthews said about the building code issue and the pre-annexation agreement, is whether or not the number of units that's been derived during the subject discussion is appropriate or not.

You know, my goal prior to getting here today

was to try to synthesize this issue down to the very nitty-gritty so that this board would know exactly where there were points of contention or controversy.

When the developer submitted their plan originally, they had submitted 914 dwelling units. We are now today at 795 with significant concessions. Obviously the City of Brea would like to see a reduction in densities to 755 and they've communicated that to us; however, after reviewing the project and also the open space considerations, I firmly believe that the proper balance has been struck with this project.

Secondly, quite frankly, having lived in Brea for ten years, there is a critical need for housing in Brea. I'm not an elected local representative, except I am with respect to the board, but, you know, I do defer to the city council greatly in their general plan.

In this particular instance, we need more housing, not less. And in my opinion, we need responsible housing, and this is responsible housing.

Therefore, given that said, Madam Chair, I'd be moving the actions as follows:

Action number 2, certify the final EIR 581;

Action number 3, adopt the board resolution approving zone change CZ01-01, which is the Tonner Hills Planned Community program text, development map and

statistical summary table.

Also, adopt an ordinance establishing the Tonner Hills Planning Community zoning district, as well as taking into consideration and moving staff recommendation which has been negotiated as of late. And I'll just read it into the record because it's the formal motion. It's been submitted to the clerk, but I'll just read it for the record.

Revise Section 1.3 of the MOU to change the deadline for execution of the Pre-Annexation Agreement from December 17, 2002 to January 15, 2003, and change the deadline for filing the application for annexation from January 15, 2003 to January 30, 2003. That would be item 5.

And item 6 would be amend the planned community regulations for the public use area to prohibit bus storage and maintenance yards.

Mr. Matthews, is that a satisfactory motion?

MR. MATTHEWS: Madam Chair, it is. That covers the issues.

SUPERVISOR SPITZER: County Counsel, is that complete?

COUNTY COUNSEL: I don't believe you -- you haven't dealt with item 95 yet, the development agreement, I don't believe. You're talking about item 93 so far.

SUPERVISOR SPITZER: Yeah, that was 93.

COUNTY COUNSEL: That was 93.

SUPERVISOR SPITZER: So that's a motion on 93 but were consolidated.

With respect to item --

There's no actions in 94?

COUNTY COUNSEL: 94 is the approval of the MOU, and you've stated the amendments to that; so if you approve the MOU with what you mentioned as amendments --

SUPERVISOR SPITZER: Then with respect to 95, what is it, action items 4 and 5, draft resolution?

COUNTY COUNSEL: Correct.

SUPERVISOR SPITZER: Then I'll read those as well.

With respect to item 95, I'd move item 4, which is a draft resolution approving DA 2001-1, Attachment 2. And item 5, adopt ordinance approving DA 2001-1.

So just for the record, under item 93, I've moved six items: four in the original filed AIT, two that were submitted this morning have been submitted to the clerk, they were numbered 1 and 2, I renumbered them 5 and 6. I've included in that motion, then, action with respect to number 94.

And then number 95, to be consistent with the AIT, I will call those action items 4 and 5 versus 1 and 2, but they are as read or as written in the agenda

items.

UNIDENTIFIED SPEAKER: I would second 93, 94 and 95.

CHAIRPERSON COAD: All right.

Now, do we have to take a vote on each number separately, or can we take it all together?

UNIDENTIFIED SPEAKER: You may take it all together.

CHAIRPERSON COAD: All right.

Is there a further discussion?

Objections?

Motion carries.

And I do believe we do have need for a closed session; so we will have that following our adjournments.

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I, the undersigned, a Certified Shorthand Reporter of the State of California, do hereby certify:

That the foregoing audiotaped proceedings were transcribed before me at the time and place herein set forth; that a verbatim record of the audiotaped proceedings was made by me using machine shorthand, to the best of my ability, based on the quality of the audiotape, and same was thereafter transcribed under my direction; further, that the foregoing is an accurate transcription of the audiotaped proceedings thereof, again, to the best of my ability, based on the quality of the audiotape, and having not personally been in attendance at said audiotaped proceedings.

I further certify that I am neither financially interested in the action nor a relative or employee of any attorney of any of the parties.

IN WITNESS WHEREOF, I have this date subscribed my name.

Dated: FEB 10 2003

LAURIE HELD-BIEHL, CSR, RPR, CRR
CSR No. 6781

RESOLUTION OF THE ORANGE COUNTY PLANNING COMMISSION COUNTY OF ORANGE, CALIFORNIA	RES. NO. 02-10 DATE OF ADOPTION: October 16, 2002

On the motion of Commissioner Goacher, duly seconded and carried, the following Resolution was adopted:

WHEREAS, Nuevo Energy Company (the "Applicant") filed an application for an Area Plan to develop a maximum of 914 residential units 7.7 acres of commercial and 508.4 acres of open space on approximately 789.8 acres within unincorporated Orange County for a residential development project hereinafter referred to as the "Tonner Hills"; and

WHEREAS, the Applicant has amended the Area Plan to reduce the number of dwelling units to a maximum of 795 residential units, increased the open space to 559.7 acres and deleted the commercial site that is now reflected within the proposed Tonner Hills Area Plan; and

WHEREAS, these 789.8 acres are located within an area of land currently zoned A1 "General Agricultural" District, with an (O) "Oil Production" District overlay and is located within unincorporated Orange County; and

WHEREAS, Zone Change ZC 01-01 has been considered by this Planning Commission and this Planning Commission has recommended approval by the Board of Supervisors to change the zoning for said 789.8 acres within unincorporated Orange County to PC "Planned Community" District, with an (O) "Oil Production" District overlay (Tonner Hills Planned Community Program) to permit a maximum of 795 residential units; and

WHEREAS, this Area Plan for Tonner Hills Planned Community will only become valid and effective following the final adoption of Zone Change ZC 01-01 for the Tonner Hills Planned Community Program and Development Map and Statistical Summary by the Board of Supervisors; and

WHEREAS, pursuant to California Government Code Section 65000 et seq. the County of Orange has an adopted General Plan which meets all of the requirements of State Law;

WHEREAS, in compliance with the provisions of the California Government Code, a legally noticed public hearing was held by the Orange County Planning Commission on September 18, 2002 and October 16, 2002 to consider the Tonner Hills Planned Community Program and Development Map and Statistical Summary, together with the proposed Area Plan for the Tonner Hills project submitted by the Applicant; and

WHEREAS, in conformance with California Environmental Quality Act (California Public Resources Code Section 21000, et seq.), the State CEQA Guidelines (California Administrative Code Section 15000, et seq.), and the County's environmental analysis

procedures, the County has prepared EIR No. 581 (State Clearinghouse Number 2001031137) to evaluate the potential environmental impacts of the proposed project; and

WHEREAS, EIR 581 has been reviewed and analyzed by the County and reflects the County's independent judgment on the proposed project; and

WHEREAS, the Planning Commission has determined pursuant to CEQA that Final EIR 581 constitutes adequate environmental documentation for the Tonner Hills Area Plan, and certified EIR 581 at a legally noticed public hearing on October 16, 2002 as being complete and adequate and that it fully complies with all requirements of CEQA, the State CEQA Guidelines, and the County's environmental analysis procedures; and

WHEREAS, the Planning Commission has reviewed and fully considered EIR 581, and has listened to and considered the public comments that were presented to it at all of the public hearings held on this project; and

NOW THEREFORE, BE IT RESOLVED that the Planning Commission makes the following findings with respect to the EIR 581 and the Tonner Hills Planned Community Area Plan:

1. That this Orange County Planning Commission considered the Tonner Hills Planning Application PA 01-0009, for Zone Change 01-01, Area Plan, and EIR No. 581.

2. That EIR No. 581 was considered prior to approval of the project and was determined to adequately address all potential adverse environmental impacts of the proposed project and to meet all the requirements of CEQA and the State CEQA Guidelines.

3. That this Planning Commission finds that the Final EIR has identified all significant environmental impacts of the Tonner Hills Planning Application.

4. That the conditions adopted herein are reasonably related to the use of the property and necessary for appropriate development and operation of the uses permitted by the County General Plan and the Tonner Hills Planned Community.

5. That this Area Plan for Tonner Hills Planned Community will only become valid and effective following the final adoption of Zone Change ZC 01-01 for the Tonner Hills Planned Community Program and Development Map and Statistical Summary by the Orange County Board of Supervisors.

NOW THEREFORE, BE IT FURTHER RESOLVED that the Orange County Planning Commission hereby approves the Tonner Hills Planned Community Area Plan for the Tonner Hills Development Project subject to the Findings as set forth in Appendix A and the Conditions of Approval as included in Appendix B to this Resolution.

AYES: Long, Goacher, Nielsen, McBurney, Merriman

NOES: None

ABSENT: None

I HEREBY CERTIFY that the foregoing Resolution No. 02-10 was adopted on October 16, 2002 by the Orange County Planning Commission.

ORANGE COUNTY PLANNING COMMISSION

By: Chuck McBurney, Chairman

Orange County Planning Commission
Resolution #02-13
Approval of DEIR 581 and Related
Zone Change and Area Plan

RESOLUTION NO. 02-13
RESOLUTION OF THE PLANNING COMMISSION
ORANGE COUNTY, CALIFORNIA

On motion of Commissioner Nielsen, duly seconded and carried, the following Resolution was adopted:

WHEREAS, the Tonner Hills Project includes, but is not limited to; Draft EIR 581, Zone Change (ZC) 01-01, the Tonner Hills Area Plan, and the Tonner Hills Development Agreement; and

WHEREAS, The County of Orange, as Lead Agency, has carefully reviewed the Initial Study pursuant to the CEQA Guidelines Sec. 15064, and on March 27, 2001 the County issued a Notice of Preparation/Initial Study for Draft EIR (DEIR) 581, and caused that Notice of Preparation to be distributed to all responsible agencies, trustee agencies and interested parties; and

WHEREAS, the County prepared DEIR 581 (State Clearinghouse No. 2001031137), dated April 25, 2002, pursuant to the requirements of CEQA, the CEQA Guidelines, and the County's environmental analysis procedures; and

WHEREAS, the comments on the Notice of Preparation were considered by the County in preparing DEIR 581; and

WHEREAS, a Notice of Completion for the DEIR was filed on April 25, 2002 giving public notice of the availability of the DEIR for review and comment; and

WHEREAS, copies of the DEIR were circulated for public review and comment in accordance with CEQA Section 21091 for a period of sixty (60) days between April 25, 2002 and June 25, 2002; and

WHEREAS, public comments have been received on the DEIR, and responses to those comments have been prepared and provided on September 18, 2002 to the Planning Commission in a separately bound document entitled "Responses to Comments" on Draft Environmental Impact Report No. 581 for the Tonner Hills Project; and

WHEREAS, the Planning Commission held noticed public hearings on September 18, 2002 and October 16, 2002 to receive and consider public testimony with respect to DEIR 566 and the Tonner Hills Project; and

WHEREAS, the Planning Commission reviewed all environmental documentation comprising the Final EIR and can recommend that the Board of Supervisors find that the Final EIR considers all environmental effects of the proposed project and is complete and adequate and fully complies with all requirements of CEQA and the CEQA Guidelines; and

WHEREAS, a mitigation monitoring and reporting program has been drafted to meet the requirements of Public Resources Code Section 21081.6 as a Mitigation Measure Monitoring Program. This program is designed to ensure compliance with project changes imposed and mitigation measures imposed to avoid or substantially lessen the significant effects identified in the Final EIR. The mitigation monitoring and report checklist, which is included in the Final EIR and incorporated herein by reference, defines the following for each mitigation measure:

1. Method and Timing for Verification – In each case, a method and time for verification of the mitigation, or review of evidence that mitigation has taken place, is provided. The method and verification points selected are designed to ensure that impact related components of project implementation are adequately addressed and do not proceed without establishing that the mitigation is assured.

2. Responsible Person – To guarantee that the mitigation measure will not be inadvertently overlooked in connection with the issuance of a later permit, in each case, a supervising a public official is named in the mitigation measure as responsible for ensuring that the mitigation is carried out.

3. Definition of Mitigation – In each case (except where a mitigation, such as a geotechnical report, is a well-known procedure or term of art), the mitigation measure contains the criteria for mitigation, either in the form of adherence to certain adopted regulations or identification of the steps to be taken in mitigation; and

WHEREAS, attached to this Resolution and incorporated herein by reference are Exhibit A "Findings of Fact", Exhibit B "Statement of Overriding Considerations for the Final Environmental Impact Report No. 581 (SCH #2001031137)", and Exhibit C "Mitigation Monitoring Program."

WHEREAS, Pursuant to Public Resources Code Section 21089, this project requires the filing of California Department of Fish and Game fees in accordance with Section 711.4 of the Fish and Game Code.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. This Planning Commission has reviewed all environmental documentation comprising the EIR and has found that the EIR considers all environmental effects of the proposed project, and is adequate and complete and fully complies with all requirements of CEQA and the Guidelines.

2. This Planning Commission hereby finds that the EIR prepared for the Tonner Hills Planned Community is complete in that it addresses all environmental effects of the proposed project and fully complies with the requirements of the California Environmental Quality Act and CEQA Guidelines for all actions and approvals

associated with the development of the proposed project contemplated in the EIR including the zone change (establishment of the Planned Community, Development Plan, and Program Text), the Area Plan, Site Development Permits, Level A and Level B Maps, Grading Permits, Improvement Plans, Development Permits, Development Agreement, and future annexation, including related actions such as pre-annexation and agreements leading to pre-annexation. The Planning Commission recommends forwarding the EIR to the Board of Supervisors for consideration and certification.

3. This Planning Commission finds that the EIR and the findings has identified all significant environmental effects of the project and that there are no known potential environmental impacts not addressed in the EIR.

4. This Planning Commission finds that all significant effects of the project are set forth in the Statement of Findings and Facts and the EIR.

5. This Planning Commission finds that the EIR has described all reasonable alternatives to the project that could feasibly obtain the basic objectives of the project (including the "No Project" Alternative), even when these alternatives might impede the attainment of project objectives and might be more costly. Further, this Planning Commission finds that a good faith effort was made to incorporate alternatives in the preparation of the Responses to Comments as an integral part of the EIR process, and all reasonable alternatives were considered in the review process of the EIR and ultimate decisions on the project. The Planning Commission finds that, in fact, an alternative project being recommended for adoption based on the EIR and comments thereon.

6. The Planning Commission finds, in the case of the Alternative 4 Preferred Plan, that although the EIR identifies certain significant environmental effects that will result if the project is approved, all significant effects that can feasibly be mitigated or avoided have been reduced to an acceptable level by the imposition of mitigation measures on the approved project, with the exception of Air Quality, Agricultural Resources and Transportation impacts. Although mitigation measures in these areas will substantially lessen these significant impacts, adoption of the measures will not fully avoid them. Therefore, a Statement of Overriding Considerations is required and is attached hereto as Exhibit B.

7. This Planning Commission finds that potential mitigation measures or project alternatives not incorporated into the project (including the "No Project/No Development" Alternative) were rejected as infeasible, based upon specific economic, social and other considerations as set forth in the Statement of Overriding Considerations, the EIR and administrative record.

8. This Planning Commission finds that no substantial evidence has been presented that would call into question the facts and conclusions in the EIR.

9. This Planning Commission finds that no significant new information has been added to this EIR pursuant to CEQA Guidelines §15088.5, such that recirculation for additional public review is necessary.

The foregoing resolution was carried by the following vote:

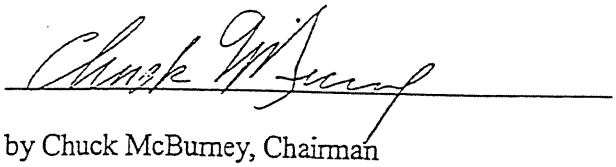
Ayes: Commissioners: Nielsen, Commons-Long, Merriman, Goacher, McBurney

Noes: Commissioners: none

Abstain: Commissioners: none

I HEREBY CERTIFY that the foregoing Resolution No. 02-13 was adopted on October 16, 2002, by the Orange County Planning Commission.

ORANGE COUNTY PLANNING COMMISSION



by Chuck McBurney, Chairman

Orange County Planning Commission
Agenda dated October 16, 2002

ORANGE COUNTY PLANNING COMMISSION AGENDA
OCTOBER 16, 2002 AT 1:30 P.M.
10 CIVIC CENTER PLAZA
SANTA ANA, CA

CHAIRMAN
CHUCK MCBURNEY
FOURTH DISTRICT

BEN NIELSEN
FIRST DISTRICT

SHIRLEY COMMONS LONG
SECOND DISTRICT

RICK GOACHER
THIRD DISTRICT

BARBARA MERRIMAN
FIFTH DISTRICT

THE ORANGE COUNTY PLANNING COMMISSION WELCOMES YOU TO THIS MEETING. THIS AGENDA CONTAINS A BRIEF GENERAL DESCRIPTION ON EACH ITEM TO BE CONSIDERED. THE ORANGE COUNTY PLANNING COMMISSION ENCOURAGES YOUR PARTICIPATION.

THOSE PERSONS ADDRESSING THE COMMISSION ARE REQUESTED TO GIVE THEIR NAME AND ADDRESS FOR THE RECORD.

EXCEPT AS OTHERWISE PROVIDED BY LAW, NO ACTION SHALL BE TAKEN ON ANY ITEM NOT APPEARING IN THE FOLLOWING AGENDA. HOWEVER, ITEMS MAY BE TAKEN UP IN A DIFFERENT SEQUENCE.

WRITTEN MATERIALS MUST BE RECEIVED 24 HOURS IN ADVANCE TO ENSURE CONSIDERATION BY THE COMMISSION.

A LIMITED NUMBER OF STAFF REPORTS ARE AVAILABLE AT THE COMMISSION MEETINGS.

AT THE CONCLUSION OF THE MEETING ON ITEMS LISTED ON THIS AGENDA, MEMBERS OF THE PUBLIC MAY ADDRESS THE COMMISSION ON ITEMS OF INTEREST TO THE PUBLIC THAT ARE WITHIN THE SUBJECT MATTER JURISDICTION OF THE COMMISSION

ANY MEMBER OF THE PUBLIC MAY ASK THE COMMISSION TO BE HEARD ON THE FOLLOWING ITEMS, AS THOSE ITEMS ARE CALLED.

COMMENTS SHALL BE LIMITED TO FIVE (5) MINUTES PER PERSON AND TWENTY (20) MINUTES FOR ALL COMMENTS, UNLESS DIFFERENT TIME LIMITS ARE SET BY THE CHAIRMAN SUBJECT TO THE APPROVAL OF THE PLANNING COMMISSION.

PLEDGE OF ALLEGIANCE

ROLL CALL:

ITEMS SET FOR 1:30 P.M.: (2)

ITEM 1.: PUBLIC HEARING- ZONE CHANGE 01-01 AND AREA PLAN FOR NUEVO ENERGY CO. and DRAFT EIR 581 - DISTRICT 3. The 789-acre Tonner Hills Planned Community project site is located north of Lambert Road on the easterly and westerly sides of the Orange Freeway (SR 57) in the Sphere of Influence of the City of Brea. The proposal includes Zone Change ZC 01-01 from the A1 (O) "General Agricultural" ("Oil Production") District to the PC (O)"Planned Community, ("Oil Production") District establishing the Tonner Hills Planned Community Development Regulations and Development Map, and the Tonner Hills Area Plan for the development of a maximum of 795 dwelling units and preservation of a minimum of 540 acres open space and habitat with continued interim oil production activities. Vehicular access to the planned community would be limited to two intersections with existing highways Lambert Road and Valencia Avenue to serve the development located on the east side of the 57 Freeway and one access from Carmichael Drive to serve the single residential planning area located on the west side of the 57 Freeway. Proposed Final EIR 581 has been prepared in accordance with CEQA to address the environmental impacts of the Tonner Hills project. (Continued from September 18, 2002). Recommended Action: a. Receive staff reports and public testimony as appropriate, b. Certify Final EIR 581 c. Approve the Tonner Hills Area Plan effective upon adoption of ZC 01-01 by the Board of Supervisors, d. Recommend the Board of Supervisors certify Final EIR 581, and e. Recommend the Board of Supervisors adopt Zone Change ZC01-01. (Shoemaker/Crane)

ITEM 2.: PUBLIC HEARING- TONNER HILLS PLANNED COMMUNITY DEVELOPMENT AGREEMENT FOR NUEVO ENERGY CO. PROPERTY - DISTRICT 3. The 789-acre Tonner Hills Planned Community project site is located north of Lambert Road on the easterly and westerly sides of the Orange Freeway (SR 57) in the Sphere of Influence of the City of Brea. The proposal consists of a development agreement between the County of Orange and Nuevo Energy Company. Proposed Final EIR 581 has been prepared in accordance with CEQA to address the environmental impacts of the Tonner Hills Development Agreement. Recommended Action: a. Receive staff report and public testimony as appropriate, b. Recommend the Board of Supervisors approve Draft Resolution and Development Agreement for the Tonner Hills Planned Community that staff finds to be substantially consistent with the proposed development agreement considered by the Planning Commission. (Persaud/Gamson)

Reports from Planning & Development Services Department

A. Reports on recent actions of the Board of Supervisors.

B. Major decisions and proposals of P&DSD.

C. Meetings and Conferences of interest to the Commission.

D. Previous Commission or Commissioner requests.

E. Litigation.

F. Planning Commission request for future P&DSD Report.

At this time members of the public may address the Planning Commission regarding any item within the subject matter jurisdiction of the Commission provided that NO action may be taken on off-agenda items unless authorized.

Current Planning Services Division
Staff Report with Exhibits

City of Brea Memorandum dated 9/23/97
Re Neighborhood Design Elements

Tonner Hills Planned Community
Residential Site Development Standards

Draft Board of Supervisors Resolution
For Zone Change ZC 01-01

Planning Commission Resolution for Tonner Hills Area Plan

PLANNING & DEVELOPMENT SERVICES DEPARTMENT

PLANNING COMMISSION - AGENDA ITEM No. 1

DATE: October 16, 2002

TO: Orange County Planning Commission

FROM: Current Planning Services Division

SUBJECT: Continued Public Hearing on Planning Application PA 01-0009 for Zone Change ZC 01-01; Area Plan and for Nuevo Energy Company

PROPOSAL: A zone change to reclassify the property from the A1 (O) "General Agricultural" ("Oil Production") district to PC (O) "Planned Community" ("Oil Production") District establishing the Tonner Hills Planned Community Development Regulations, Development Map and Statistical Summary Table; and an Area Plan for a maximum of a 795 dwelling units including a range of single-family detached and attached dwelling units, as well as a minimum of 559.7 acres to be retained in open space with continued interim oil production activities.

LOCATION: The 789-acre Tonner Hills Planned Community project site is located north of Lambert Road on the easterly and westerly sides of the Orange Freeway (SR 57) in the Sphere of Influence of the City of Brea. The project is located within the **Third Supervisorial District.**

STAFF CONTACT: Marta B. Crane, AICP, Project Manager
Phone: (714) 834-5144 FAX: (714) 834-4652
Chad Brown, Senior Planner
Phone : (714) 834-5159

SYNOPSIS: Staff recommends that the Planning Commission approve the attached resolutions:
1. Recommending that the Board of Supervisors adopt Zone Change ZC01-01 to establish the Tonner Hills PC "Planned Community" Land Use Regulations, Development Map and Statistical Summary Table; and 2. Approving the associated Area Plan. This is the second public haring on the project continued form the September 18, 2002, Planning Commission hearing held at the City of Brea to consider the applicants proposal.
This staff report expands on the previous 9/18/2002 report, and analyzes in further detail the specific elements of the proposed project.

PROJECT PROPONENTS:

Property Owner:
Nuevo Energy Company
500 N. Kraemer Blvd, Bldg. B
Brea, CA 93455

Applicant/Agent:
Ullom Associates
16149 Redmond Way, #401
Redmond, WA 98052

REFERRAL FOR COMMENT AND PUBLIC NOTICE:

A Notice of Hearing was mailed to all owners of record within 300 feet of the subject site on September 6, 2002. Additionally, notices were posted as required by established public posting procedures on September 6, 2002, at the 300 N. Flower Building; and at three locations on the site, specifically at the end of Carmichael Drive west of the 57 Freeway; at the intersection of Kraemer Boulevard and Lambert Road; and at the intersection of Valencia Avenue and Santa Fe Street. During the September 18, 2002, Planning Commission hearing, the Commission continued this item to the October 16, 2002 hearing, to be held at the Hall of Administration, building 10, Civic Center Plaza, Santa Ana.

CEQA COMPLIANCE:

Proposed Final EIR 581 has been prepared in accordance with the California Environmental Quality Act (CEQA). Environmental Planning Services staff has prepared and will present proposed final EIR 581 within a separate staff report for this item. Information about the proposed project contained in proposed Final EIR 581 is referred to in this report. Proposed Final EIR 581 also contains information about possible alternatives to the proposed project. Prior to project action, the Planning Commission must find this proposed final EIR adequate to satisfy the requirements of CEQA.

GENERAL PLAN CONSISTENCY:

The majority of the project site has a (1B) "Suburban Residential" land use designation with allowable densities of 0.5 to 18 dwelling units per acre. Portions of the site located at the intersection of Lambert Road and Wildcat Way and where an existing oil facility is located are designated (2A) "Community Commercial". The proposed project consisting of residential detached and attached land uses, open space uses, and continued oil production uses are all consistent with the General Plan "Suburban Residential" and "Community Commercial" designations.

PROJECT SITE AND EXISTING CONDITIONS:

The project site is comprised of three oil and gas producing properties with a total of 789.8 gross acres owned entirely by the Nuevo Energy Company, the project applicant.

Existing access to the project site is provided from Lambert Road, Tonner Canyon Road, Carmichael Drive, Kraemer Boulevard, Valencia Avenue, and Wildcat Way. The primary access to the property east of the 57 Freeway is from Kraemer Boulevard, which intersects Lambert Road approximately one mile east of the 57 Freeway. Kraemer Boulevard is an existing signalized intersection and is one of two proposed access points to the proposed project. The second access point is proposed from Valencia Avenue at the intersection with Santa Fe Avenue, where the adjacent master planned Olinda Ranch project is located east of the Tonner Hills project site. Access to the western portion of the project, west of the 57 Freeway is currently from oil roadways extending from the Tonner Canyon exit off of the 57 Freeway. Future access to this portion of Tonner Hills is proposed via a local street to be aligned with Carmichael Drive extended.

The project site has been utilized for oil production purposes since 1900 and has been steadily developed into its present industrialized condition. Existing site improvements resulting from this industrialized use include surface and subsurface gas lines, oil storage and processing facilities, paved roads, water storage facilities, maintenance facilities, and operation support office buildings. Nuevo Energy Co. will implement restoration and remediation of the site while operation of oil and gas production facilities continues. There are approximately 5 acres in the northeasterly portion of the project site that are leased to a green waste facility, which is proposed to remain on the project site. There are also two out parcels, approximately 6.1 acres, owned by the City of Brea and improved with two 10 million-gallon City water reservoirs.

The project site's topography, geotechnical, seismic, and hydrology conditions among others, are fully described within various sections of Draft Environmental Impact Report (DEIR 581) presented under separate Planning Commission review and consideration. These areas are fully described with the project Area Plan presented to the Commission. The project development plan has been designed with the site constraints and existing uses contemplated.

PROJECT SITE SURROUNDING LAND USE:

Direction	Existing Zoning	Existing Land Use
Project Site	A1 "General Agriculture" District, (O) "Oil Production" District	Oil Production
North	A1 "General Agriculture" District, (O) "Oil Production" District	Oil Production
South	City of Brea – Residential PC/R1	Single Family, Multi-Family Residential
East	City of Brea – Olinda Ranch Specific Plan	Olinda Ranch Master Planned Community
West	City of Brea – Residential R1 /PD	Commercial office, Brea Olinda High School and single family residential.

PROPOSED PROJECT:

The applicant, Nuevo Energy Company proposes to develop a planned community on a 789.8 acre site, located in the northernmost area of unincorporated Orange County, within the sphere of influence of the City of Brea. The majority of the project site (681 acres or 86 %) is located east of the Orange Freeway (SR 57), with a small portion (108 acres, or 14%) located west of the freeway, at the northerly terminus of Carmichael Drive.

The Nuevo Energy Company proposes to implement this project as a Planned Community. Therefore, the project will require a zone change to establish the Planned Community zoning designation. The Tonner Hills Planned Community Program Text establishing the Land Use and Development Regulations and a Development Map and Statistical Summary Table have been developed for this proposal. The proposed development is depicted in the Planned Community Documents attached and includes the following:

1. A maximum of 795 residential dwelling units within approximately 180 acres - Residential Planning Areas 1-7
2. 14.6 acres of Local Park Land – Planning Area 8
3. Approximately 559.7 acres of Open Space with continued and new oil production activities – Planning Areas 10-12
4. 21.5 acres of Open Space/Public Use area – Planning Area 9
5. Approximately 16.3 acres of existing oil facilities – Tonner Tank Farm and Main Oil Operations Facility.

The project also includes an evaluation of a proposed Area Plan for Planning Commission consideration that defines the development consistent with the proposed Tonner Hills Planned Community.

The proposed project, through negotiations with the applicant, the City of Brea, and PDSD staff, has been reduced from a maximum 914 dwelling units to a maximum of 795 dwelling units. In addition, the commercial site has been deleted; development adjacent to Cable Canyon has been deleted, and residential development near the major ridgelines has been reduced. Overall, the project has been scaled back in density and intensity compared to the applicant's original proposal, and the open space and recreation areas have been increased.

Zone Change 01-01

The project includes a zone change that would rezone the site from A1 ("General Agriculture") District, with an (O) "Oil Production" overlay to (PC), "Planned Community" District. It should be noted that included with the proposed zone change to PC, the project anticipates retaining the existing "Oil Production" (O) District in order to continue the oil extraction activities currently operating on site. Therefore, the zone change proposed includes the suffix (O) in conjunction with the PC zone change as stated above. The majority of oil production wells and facilities are proposed in the open space designated areas (Planning Areas 10 through 12) with restrictions and limited maintenance of existing operations elsewhere on site.

The Area Plan and Program Text documents discussed below are Exhibits 3 and 4 of this staff report.

Area Plan

The Area Plan sets forth guidelines for grading, circulation, infrastructure, integrated oil production operations, landscape, public parks and community hiking and riding trails, architecture and community design. The Area Plan also allows for the initial mass grading of the site in preparation of future development, however, development of property within the planned community will be subject to land use regulations contained the Planned Community Program Text discussed below.

The overall community design concept includes the following principles:

- Preservation and enhancement of natural habitat.
- Non-automotive mobility within the community.
- Neighborhood interaction and connectivity.
- Diversity and choice of residential neighborhood character.

- Opportunities for a variety of lifestyles and economic segments of the marketplace.

Residential – A total of 795 dwelling units to be developed in 7 different planning areas in 180 acres of the project site. The residential concepts envisioned for Tonner Hills include a wide range of residential product types intended to create a series of distinct neighborhoods with distinct scale, character and architectural styles. The neighborhoods would be linked by a network of pedestrian paths and by bicycle trails connecting them all together with the local parks and with the rest of Brea's neighborhoods surrounding Tonner Hills.

To accomplish this vision, a variety of housing types within each planning area has been proposed. The Area Plan establishes a target number of dwelling units, a target lot size for each planning area, and a target residential density. Provisions within the Tonner Hills Planned Community Regulations allow the target number of units for any planning area to be adjusted provided the total number of 795 dwelling units is not exceeded. A minimum lot size for each planning area is also established in the event that the target number of dwelling units is exceeded. Planning Areas 1, 2 and 3 include a mixture of single family detached and single family attached residential development. Planning Areas 4 through 7 include only single family detached residential development. Planning Area 7 is slated for large-lot development. The table below describes the housing types proposed and characteristics anticipated for each Planning Area.

TABLE 1
RESIDENTIAL PLANNING AREAS

PLANNING AREA	GROSS ACRES	RESIDENTIAL TYPE(S)	MINIMUM LOT SIZE	TARGET LOT SIZE	TARGET DWELLING UNITS	NET DENSITY
PA 1	15.5	Conventional SF Cluster SF	Conventional: 4,000 sf Cluster: 2,600 sf	5,000 sf	54	3.5
PA 2	11.4	Single Family Attached Cluster SF Conventional SF	SFA N/A Cluster: 2,600 sf Conventional: 4,000 sf	SFA : No minimum lot size applicable	102	8.9
PA 3	42.6	Conventional SF Cluster SF	Cluster: 2,600 sf Conventional: 4,000 sf	Cluster: 2,600 sf Conventional : 4,000 sf	233	5.5
PA 4	38.9	Conventional SF	4,000 sf	5, 000 sf	182	4.7
PA 5	23.6	Conventional SF	4,000 sf	5,000 sf	97	4.1
PA 6	34.9	Conventional SF	4,000 sf	6,000 sf	87	2.5
PA 7	13.1	Conventional SF	7,200 sf	8,000 sf	40	3.0
TOTAL	180				795	4.4

Community Design Guidelines – A major component of the Area Plan establishes the design guidelines for the proposed community. These guidelines are extensive and detailed and they embrace the vast

majority of the City of Brea's Neighborhood Design Elements memorialized in the City's memorandum of 9/23/1997 (Exhibit 1). PDSD Staff does not support adoption the City of Brea's recommendation to prohibit the use of wood fences in the Planned Community. Staff does not object to their use along interior property lines because there is no compelling public benefit to preclude their use. Poor maintenance of wood fences in general was a concern of the City of Brea. Although PDSD staff concurs, existing County Property Maintenance Regulations already in place are better suited to address that problem. Other regulations recommended by the City of Brea related to the dimensions of architectural elements, window box planters, the quality of bird stoops on roofs and the quality of garage doors. Staff did not find the Planned Community Land Use Regulations in the PC Text or the Area Plan Design Guidelines to be the appropriate regulatory mechanism to control such issues, and recommended that they become responsibility of the Homeowners Association should they become an issue to the community. In regards to the City of Brea's recommendation to require developer-installed front yard landscaping on single family residential lots, staff did not find that at the price range anticipated for the homes in the proposed Planned Community, landscaping issues would warrant the need to require installation by the developer. However, in the case of attached and multi-family developments, developer-installed landscape will be required.

The proposed Tonner Hills Planned Community guidelines include the following:

Circulation Design, at the community and neighborhood level – Guidelines for collector streets, local streets, sidewalks and bikeways. Specifics of the design concept are discussed below under *Circulation*.

Grading Concept – Guidelines for contour and landform grading techniques; building pads, cut/fill slopes; retaining walls and drainage devices. Specifics of the design concept are discussed below under *Grading*.

Neighborhood Design– Guidelines for streets, varied setback depth, building placement and orientation, mixture of one and two story homes, placement and orientation of garages, neighborhood entry statements, pedestrian walkways and parking auto courts.

Residential Architecture – The community theme and architectural goal for Tonner Hills is that of "compatible variety". Rather than specify particular architectural styles, builders and their professional design teams are encouraged to develop architectural designs based upon styles historic to Orange County and the Southern California region.

For each residential planning area, and for the purpose of diversity, builders will be required to identify and provide a variety of architectural styles for their projects. Three different elevations will be required within each architectural style.

Elements guiding residential architecture include, bulk, mass and scale; building and roof materials and colors; window and doors design; porches and balconies; columns and posts; and building elevation articulations.

Other architectural design elements addressed in the documents are mechanical equipment, gutters and downspouts; chimneys; skylights; solar panels and accessory structures.

Landscape Design Concept – The Design Guidelines include a "Conceptual Master Landscape Plan" that contains a master list of tree and plant materials intended to create a distinctive, diverse environment that will lend identity and character to the developed and natural areas of the project. The landscape concept integrates the built environment with the natural features of the land. The landscape design standards address Streetscapes, local and community wide; neighborhood entries; slopes and buffer zones, brush management and view corridors.

Circulation – The Planned Community includes two major access points. The primary access to the easterly portion of the project will be from the south, at Kraemer Boulevard, just north of the fire station at the intersection with Lambert Road. This collector street will continue eastbound, to intersect with Valencia Avenue where a second access point into the project is planned to align with the existing intersection of Santa Fe and Valencia Avenue. The western portion of the Planned Community will be accessed from the continuation of a local collector street to be aligned with the existing Carmichael Drive.

Street design of the major collector roads proposed for the Planned Community is responsive to the natural terrain of the site. For the most part, collector roads follow existing oil field roadway alignments, except along the proposed access to and from Valencia Avenue.

Grading - The grading concept proposed for Tonner Hills is a balanced grading program respectful of the natural topography recognizing the nature of the existing terrain with special attention to the preservation of major landforms and significant drainage courses. Grading in the site will result in 4.2 million cubic yards of earth with balancing cut and fill on-site based upon the retention of open space areas that have value as wildlife habitat, the avoidance of natural hazards, and consideration of topographical features that comprise the visual backdrop to the neighboring communities. Edge conditions of residential planning areas will seek to replicate natural conditions wherever practical given habitat or geological constraints through the use of contour grading and landform grading.

Contour grading creates a curvilinear pattern to slopes by using variations of horizontal and vertical curves and provides for a general rounding of slopes at slope intersections and at areas of transition to open space, given geologic conditions and habitat restoration activities underway. Landform grading replicates the irregular shapes of natural slopes resulting in aesthetically pleasing elevations and profiles.

Perimeter manufactured slopes proposed to provide an edge to open space areas are expected to blend with the natural terrain, and the major contiguous ridges that provide a visual backdrop to neighboring communities will be retained. Building pad grading concepts will encourage conformance with or replication of the natural topographic conditions of the site. A variety of lot depths and widths are proposed to discourage rigid and uniform development edges.

Open Space – A minimum of 559.7 acres within Planning Areas 10 though 12, will be retained in open space. The uses proposed for these planning areas include primarily passive open space for coastal sage scrub, wetland/riparian walnut and other habitat preservation and restoration, as well as the continuation of interim oil production activities

A total of 21.5 acres of open space land (Planning Area 9) located on the westerly side of Valencia Avenue near Santa Fe Avenue will be reserved for public/quasi public use such as parks, nature trails, or playgrounds. The Area Plan includes design guidelines for graded open space and fuel modification areas as well as design concepts for hiking and riding trails.

Art in Public Places – The County of Orange does not have an art in public places program, however, the Planned Community proposal will address the City of Brea's Art in Public Places Program by establishing a developer funded mechanism with an agreed upon value of 1,500,000 dollars. Up to 50% of this value may be used to establish a community Art Education Endowment Program in cooperation with the Brea Olinda Unified School District. Allowable expenses under this program are the cost of the art and related expenses to display the art. The land and art will be owned and maintained by the Master Community Association.

Oil Operations – Oil operations will continue on portions of Planning Areas 10 through 12 as well as 16.3 acres of the Main Facility and the Tonner Tank Farm. Any new wells will be subject to the regulations of the Orange County Oil Code, the Orange County Fire Authority (OCFA), and the California Department of Conservation, Division of Oil Gas and Geothermal Resources (DOG&GR). In residential Planning Areas (1 through 7), no new wells will be drilled, nor will existing wells be re-drilled. A number of existing wells will be phased out of the site, specifically from the proposed residential areas. Any well proposed for continued operation within a residential planning area will be replaced with subsurface vault units, subject to the regulations and standards of the County, the OCFA and the DOG&GR. The Area Plan includes guidelines for screening and integration of oil production activities within and near residential Planning Areas. The PC regulations further establish specific requirements for separation between residential structures and oil wells.

Local Parks – Wildcatters Park will be expanded from 5.8 acres to 14.6 acres. PDSD staff and The City of Brea consider improvement of this park an important benefit for the community; therefore, development of this planning area is expected to occur early in the development phasing. Implementation of the expanded Wildcatters Park as depicted in the Area Plan is detailed in the Development Agreement presented to the Commission under a separate staff report. At build out, Planning Area 8 will include recreation and community facility uses such as a recreation building, ball fields, off street parking, riding hiking and bicycle trails and other active recreational uses. This local parkland will satisfy the Orange County local park code as well as the City of Brea local park standards.

Planned Community Program Text

The Planned Community Program Text Regulations (PC Text) will establish regulations, authority and procedures necessary for the orderly development of the Tonner Hills property. Table 2 (Exhibit 2), summarizes the uses permitted and the development standards applicable within each planning area. These regulations will not permit any new oil production activity within any residential planning area.

The proposed regulations will require discretionary approval of Area Plans and/or Site Development Permits prior to approval of any subdivision map or residential development. All Area Plans will require review and approval by the Planning Commission. Additionally, the proposed regulations designate the City of Brea as an official review body with a 30 day review period prior to action on discretionary permits, thereby affording the City additional input as more specific development proposals occur.

At its September 18, 2002, public hearing, the Planning Commission was presented with an introductory overview of the proposed project. A brief comparison of the existing project in contrast with the project originally submitted in January of 2001 was also presented in conjunction with a synopsis of the issues

that lead to the project currently under consideration in this staff report. The Planning Commission received public input and continued the public hearing to October 16, 2002.

A major theme of the public comments received at the public hearing related to the concern that the City of Brea's vision did not receive appropriate consideration. Staff worked with the applicant to address these issues and believes that revisions to the final project, as discussed in this staff report, have embraced the vast majority of the City's vision and specific requests as follows:

- Preserve natural resources such as Cable Canyon and Tonner Canyon.
- Preserve the 5.8 acre Wildcatters Park and its enhancement to 14.6 acres.
- Early improvement and construction of Wildcatters Park.
- Provide access to the development from Valencia Avenue.
- Delete the Tonner Hills Road access.
- Provide estate-type housing including 8,000 square foot minimum lot size in designated areas.
- Honoring the City's development standards and Neighborhood Design Elements. (As stated above, the regulations that this project will be subject to among many others include all standards of public benefit that the City requested in its memorandum of 9/23/97. For example, single story residential units intermixed within the development; sidewalks on both sides of double loaded streets; quality architectural detailing and building materials; fully articulated building elevations, garage door and window design, etc.)

A number of other public benefit components of this project such as affordable housing and dedication of open space are further addressed in the Tonner Hills Development Agreement submitted for the Planning Commission consideration as a separate item.

CONCLUSION

The development proposal has been the subject of a number of pre-annexation meetings facilitated by the County of Orange CEO's office between the applicant, the City of Brea, and the County Planning & Development Services Department. A number of significant revisions to the scale of the development plan occurred in response to the comments received on the DEIR 581 from the public and various reviewing agencies, and as a result of these joint meetings. The final documents submitted for Planning Commission consideration are the outcome of consensus building reached during the review process, with input from County staff, the City of Brea and the community at large. Staff believes that the final project, and its regulatory documents have embraced most of the elements of the City's vision. In some instances, the development guidelines and regulations proposed for Tonner Hills go beyond the City's adopted policies and codified standards to ensure that the Tonner Hills community contributes and improves upon the City's residential opportunities. In addition, the project includes public benefits in the form of commitment of 10% of the total dwelling units as low income affordable housing; dedication of a minimum of 559.7 acres of open space; 21.5 acres of public use land, and trails and wildlife corridors. These elements and the phasing of the project are also included in the Tonner Hills Development Agreement submitted for Planning Commission consideration as a separate public hearing item. Based on the analysis presented in this staff report, staff supports approval of Zone Change ZC 01-01; the Planned Community Program Text, Development Map and Statistical Summary Table; and the Tonner Hills Area Plan, subject to the findings and conditions of approval in appendices A and B.

RECOMMENDED ACTION:

Planning and Development Services Department, Current Planning Services Division recommends the Planning Commission:

a. Receive staff report and public testimony as appropriate; and,
b. Certify DEIR 581 for the Project and recommend its certification by the Board of Supervisors,
c. Approve Draft Board of Supervisors Resolution for Zone Change ZC01-01 (Tonner Hills Planned Community Program Text and Development Map and Statistical Summary Table) and recommend its approval by the Board of Supervisors, and
d. Approve Draft Planning Commission Resolution approving the Area Plan for the Tonner Hills Planned Community, subject to the Board of Supervisors adoption of the proposed Zone Change ZC 01-01.

Respectfully submitted,

George Britton

George Britton, Manager
Current Planning Services

EXHIBITS:

1. City of Brea's Memorandum of 9/23/97. Neighborhood Design Elements.
2. Table 2- Residential Site Development Standards Table.
3. Proposed Draft Planned Community Program Text, Development Map and Statistical Table.
4. Proposed Area Plan.
5. Draft Board of Supervisors Resolution for Zone Change.
6. Planning Commission Resolution for Area Plan.

/Tonner Hills/staff report PC 10-02.doc

PLANNING & DEVELOPMENT SERVICES DEPARTMENT REPORT

PLANNING COMMISSION HEARING
OCTOBER 16, 2002

CITY OF BREA 9/23/1997 MEMORANDUM
NEIGHBORHOOD DESIGN ELEMENTS

EXHIBIT 1

City of Brea
department of development services

memorandum

DATE: September 23, 1997

TO: Planning Commission

FROM: Planning Division

SUBJECT: NEIGHBORHOOD DESIGN ELEMENTS

Planning staff has recently undertaken a series of field studies to help us understand and define design elements which help residential neighborhoods endure over time. We feel that this has been an important exercise with findings that can most immediately be applied to the Olinda Heights project.

Though these design elements may not be universally applicable, staff believes they represent a good starting point from which the City and a builder can discuss new residential areas. Listed below are some of our basic findings which we hope will assist the Commission in future residential reviews:

- Providing a single story floor plan within a tract's unit mix helps provide for a diversity of housing types within the neighborhood and the City. These units also serve to visually "break-up" the streetscape appearance and avoid a monotony of building forms. Single story units are also effective to break down the massing of building forms where homes back-up to an arterial street at the perimeter of a tract.

- Additional levels of architectural detailing for side and rear elevations visible from public streets must be provided to enhance a project's appearance from these view corridors.

- Entry statements and/or monuments are an important component to a housing tract. These features announce "you have arrived" and set the all important first impression of a community or neighborhood.

- The design details of architectural elements need to be correct for each application. For example, the size of exposed beams for eave treatments must be of a scale matching the structure. Where an 8" x 8" beam is visually correct, a 4" x 4" beam should not be substituted. Similarly, where window box planters are provided, they need to be a correct width to correspond with the window width. This general concept should be applied to the review of all such architectural features.

- The quality of architectural detailing and the materials used must be reviewed carefully. For example, where a stacked rock veneer is proposed for use at the base of building walls or columns assurances must be provided that the stone will be milled with flat edges to stack neatly. Unsightly gaps and irregular spacing must be avoided. Bird stops for tile roofs need to be of a quality appearance. Our field observations noted several bird stops which were constructed out of cut sheet metal which was then wired onto tile edges . resulting in a "cheap" look.

- Garage door selection is important. One piece, tilt-up, doors are almost always of inferior quality and aesthetics compared to sectional roll-up doors. However, specifying roll-up doors alone is not enough. Strive for solid core roll-ups which will not dent or shift out of shape with age.

- Wood fencing materials generally bring maintenance problems as a neighborhood ages. Recall Brea's experience with the grape stake fencing at State College and Lambert. Masonry, steel, and other appropriate materials are superior choices to withstand the test of time.

- Sidewalks are important. Recent development trends have made sidewalks on only one side of a street common practice. This may not always be an appropriate solution and maintaining sidewalks on both sides of a residential street should be considered carefully.

- Street widths and what is appropriate should be considered. Narrower streets make for a more intimate neighborhood but tend to be a challenge to allow for all the required engineering needs. The key is keeping the street wide enough to serve those needs (i.e. parking, trash collection, fire service, etc.). These may vary from project to project and the "one size fits all" argument does not apply.

- Landscaping within front yard areas is important. Traditionally, we insist on a developer providing front yard landscaping for home buyers. However, how we condition this is well worth some discussion. For example, consideration may need to be given to the market at which the housing is aimed. Buyers of "move-up" housing may want to create their own custom yard treatment, while the entry level buyer may be financially unable to do so. The level of conditioned landscaping might vary with housing type.

- Avoid overly repetitive landscape themes or materials within production units. Just as elevation treatments of units vary, landscaping might also, reasonably, vary.

- The idea of having front yards of "small lot" projects controlled by Homeowner Associations merits consideration. Such control helps to insure regular landscape care and maintenance for these critical yard areas.

- The layout of various home models should include some reverse plans to vary the streetscape. Likewise, the front building setbacks should vary to create building movement along the street.

Respectfully submitted,

David M. Crabtree
Senior Planner

Reviewed and concurred by:

Jay Trevino
City Planner

DMCh/nei des ele

PLANNING & DEVELOPMENT SERVICES DEPARTMENT REPORT

PLANNING COMMISSION HEARING
OCTOBER 16, 2002

TABLE 2

TONNER HILLS PLANNED COMMUNITY
RESIDENTIAL SITE DEVELOPMENT STANDARDS

EXHIBIT 2

TABLE 2
RESIDENTIAL SITE DEVELOPMENT STANDARDS

	SFD CONVENTIONAL	SFD CONVENTIONAL	SFD CONVENTIONAL	SFD CLUSTER	SFA TOWNHOME PAIRED HOME	MULTIPLE FAMILY
PLANNING AREA	PA's 1-7	PA's 1-6	PA's 1-6	PA's 1-3	PA 2	PA 2
MIN. BUILDING SITE AREA	No Minimum	No Minimum	No Minimum	No minimum	2,000 sf	5,000 sf
MIN. BLDG. SITE AREA/UNIT	N/A	N/A	N/A	1200 SF	1000 SF	1,000 sf
LOT WIDTH @ SETBACK LINE	60 ft.	50 ft.	50 ft.	25 ft.	N/A	None
MIN. LOT SIZE	8,000 sf.	5,000 sf.	4,000 sf.	2,600 sf.	N/A	N/A
SETBACKS(1)(3)						
Front	20 ft.	10 ft.	10 ft.	5 ft.	8 ft.	Buildings shall be setback a minimum of 15 ft. from any exterior property line and 15 ft. between buildings internal to one another.
Rear	25 ft. (2)	15 ft.	15 ft.	10 ft.	10 ft.	
Side Yard	8 ft.	10 ft. min. one side only/ 10 ft. aggregate both sides.	10 ft. min. one side only/10 ft. aggregate both sides.	5 ft.	10 ft. on one side.	
From a residential Street (corner lot)	15 ft.	15 ft.	15 ft.	15 ft.	15 ft.	N/A
Patios	3 ft. (4)	3 ft. (4)	3 ft. (4)	3ft.(4)	0 ft. (4)	N/A
SET-BACK FROM OIL WELLS/ HABITABLE STRUCTURES	150 ft, or as approved by OCFA per Guideline C-02.	150 ft, or as approved by OCFA per Guideline C-02.	150 ft, or as approved by OCFA per Guideline C-02.	150 ft, or as approved by OCFA per Guideline C-02.	150 ft, or as approved by OCFA per Guideline C-02.	150 ft, or as approved by OCFA per Guideline C-02.
SITE COVERAGE	No Maximum	No Maximum	No Maximum	70%	60%	60% excluding carports or garages.
PRIVATE OPEN SPACE	NA	NA	NA	10% of net area	100 sf/unit	200 sf/unit of which a minimum of 50% shall be in common areas
PARKING	Per Section 6	Per Section 6	Per Section 6	Per Section 6	Per Section 6	Per Section 6
BUILDING HEIGHT	35 ft.	35 ft.	35 ft.	35 ft.	35 ft.	40 ft.(5)
Fences/Walls	See 2.7.1.j	See 2.7.1.j	See 2.7.1.j	See 2.7.21	See 2.7.3.j	See 2.7.4.i
Trash/Storage	N/A	N/A	N/A	N/A	N/A	See 2.7.4.l
Screening	N/A	N/A	N/A	N/A	N/A	See 2.7.4.m

1) Projections into required setbacks including front porches and architectural projections including but not limited to chimneys, pot shelves, cornices, eaves, outside staircases, balconies, enhanced window sills, shutter details, window trims, and entry gates may project 5 feet or within 1 foot of the property line whichever is the least projection into the setback.
2) May be counted as required fuel modification area.
3) 20 Feet where abutting a fuel modification area.
4) 8 feet when adjacent to a side street property line of a corner lot.
5) 10 feet allowance for architectural elements.

PLANNING & DEVELOPMENT SERVICES DEPARTMENT REPORT

PLANNING COMMISSION HEARING
OCTOBER 16, 2002

DRAFT BOARD OF SUPERVISORS RESOLUTION
FOR
ZONE CHANGE ZC 01-01

EXHIBIT 5

RESOLUTION OF THE BOARD OF SUPERVISORS
OF ORANGE COUNTY CALIFORNIA
NOVEMBER 19, 2002

On the motion of Supervisor _____, duly seconded and carried, the following Resolution was adopted:

WHEREAS, pursuant to California Government Section 65000 et seq., the County of Orange has an adopted General Plan which meets all of the requirements of State Law; and

WHEREAS, pursuant to State Planning and Zoning Law, this Board has reviewed Zone Change ZC 01-01 for the Tonner Hills Planned Community Program and the proposed Development Map and Statistical Summary; and

WHEREAS, the Tonner Hills Planned Community Program and Development Map and Statistical Summary will provide for a maximum of 795 residential dwelling units on approximately 789.8 acres within unincorporated Orange County; and

WHEREAS, in conformance with State Law, legally noticed public hearings for said project and related items were held by the Orange County Planning Commission on September 18, 2002 and October 16, 2002; and

WHEREAS, in conformance with California Environmental Quality Act (California Public Resources Code Section 21000, et seq.), the State CEQA Guidelines (California Administrative Code Section 15000, et seq.), and the County's environmental analysis procedures, the County has prepared EIR No. 581 (State Clearinghouse Number 2001031137) to evaluate the potential environmental impacts of the proposed project; and

WHEREAS, proposed Final EIR 581 has been reviewed and analyzed by the County and reflects the County's independent judgment on the proposed project; and

WHEREAS, the adoption of the Planned Community Program would establish zoning for the Tonner Hills Planned Community area as PC "Planned Community" District; and

WHEREAS, the 789.8 acre project area is located within an area of land currently zoned A1 "general agricultural" District, with an (O) "Oil Production" District overlay and is located within unincorporated Orange County; and

WHEREAS, a proposed Zone Change (ZC 01-01) has been prepared which will reflect the adoption of the Planned Community Program and the adoption of the PC zoning for the property consistent with the Planned Community Program, and would delete the existing zoning of A1 which provided a General Agricultural designation; and

WHEREAS, Zone Change ZC 01-01 has been considered by this Planning Commission and the Planning Commission has recommended approval by the Board of Supervisors to change the zoning for said 789.8 acres within unincorporated Orange County to PC "Planned Community" District, with an (O) "Oil Production" District overlay (Tonner Hills Planned Community Program) to permit a maximum of 795 residential units; and

WHEREAS, the proposed zone change (ZC 01-01) is consistent with and implements the land use established under the County's General Plan; and

WHEREAS, this Board of Supervisors has reviewed and considered all of the environmental documentation prepared to evaluate the proposed project, including all elements of the EIR and the recommendations of the Planning Commission; and

WHEREAS, this Board of Supervisors has listened to and considered the public comments that were presented to it at all of the public hearings held on this project; and

WHEREAS, this Board of Supervisors has fully considered and reviewed proposed Final EIR 581, including the Comments and Response to Comments; the Zone Change and Planned Community Program; the Planning Commission's recommendation; and all other information presented to it in writing and orally that pertain to the proposed Planned Community Program;

NOW, THEREFORE BE IT RESOLVED, the Board of Supervisors makes and adopts the following findings:

1. General Plan – The use proposed is consistent with the objectives, policies and general land uses and programs specified by the General Plan,

2. General Welfare – The use proposed will not result in conditions or circumstances contrary to the public health and safety and the general welfare and the public interest, health, comfort, convenience, safety, order and general welfare will be served and provided for by the proposal described by this project.

3. CEQA – The approval of the proposed Zone Change are in compliance with the requirements of the California Environmental Quality Act and that the refinements that been made to the Project do not amount to significant new information concerning the Project, nor has any significant new information become known to the Board of Supervisors through the public hearings held on the Project, or through the comments on the Draft EIR and Response to Comments.

4. Mitigation Monitoring – The monitoring requirements of Public Resources Code Section 21081.6 have been met in that a Mitigation Measure Monitoring Program has been adopted.

BE IT FURTHER RESOLVED THAT the Board of Supervisors herby approves and adopts Zone Change ZC 01-01 in the form presented to the Planning Commission on October 16, 2002 within Planning and Development Services Department staff report.

BE IT FURTHER RESOLVED THAT this Board makes the following findings regarding its intent to adopt the proposed Zone Change:

The Board pursuant to Resolution No. 02-___ (EIR RESO NO.) and through a separate action has certified the Tonner Hills Planned Community EIR No. 581, which analyzes the potential environmental impacts of the proposed project in compliance with CEQA, and has adopted the Statement of Findings and Facts for the proposed project.

BE IT FURTHER RESOLVED THAT the Board of Supervisors approves the Tonner Hills Planned Community Development Map and Statistical Table as described in Zone Change ZC 01-01.

PLANNING & DEVELOPMENT SERVICES DEPARTMENT REPORT

PLANNING COMMISSION HEARING
OCTOBER 16, 2002

PLANNING COMMISSION RESOLUTION
FOR
TONNER HILLS AREA PLAN

EXHIBIT 6

RESOLUTION OF THE ORANGE COUNTY PLANNING COMMISSION COUNTY OF ORANGE, CALIFORNIA	RES. NO. 02- DATE OF ADOPTION: October 16, 2002

On the motion of Commissioner_____, duly seconded and carried, the following Resolution was adopted:

WHEREAS, Nuevo Energy Company (the "Applicant") filed an application for an Area Plan to develop a maximum of 914 residential units 7.7 acres of commercial and 508.4 acres of open space on approximately 789.8 acres within unincorporated Orange County for a residential development project hereinafter referred to as the "Tonner Hills"; and

WHEREAS, the Applicant has amended the Area Plan to reduce the number of dwelling units to a maximum of 795 residential units, increased the open space to 559.7 acres and deleted the commercial site that is now reflected within the proposed Tonner Hills Area Plan; and

WHEREAS, these 789.8 acres are located within an area of land currently zoned A1 "General Agricultural" District, with an (O) "Oil Production" District overlay and is located within unincorporated Orange County; and

WHEREAS, Zone Change ZC 01-01 has been considered by this Planning Commission and this Planning Commission has recommended approval by the Board of Supervisors to change the zoning for said 789.8 acres within unincorporated Orange County to PC "Planned Community" District, with an (O) "Oil Production" District overlay (Tonner Hills Planned Community Program) to permit a maximum of 795 residential units; and

WHEREAS, this Area Plan for Tonner Hills Planned Community will only become valid and effective following the final adoption of Zone Change ZC 01-01 for the Tonner Hills Planned Community Program and Development Map and Statistical Summary by the Board of Supervisors; and

WHEREAS, pursuant to California Government Code Section 65000 et seq. the County of Orange has an adopted General Plan which meets all of the requirements of State Law;

WHEREAS, in compliance with the provisions of the California Government Code, a legally noticed public hearing was held by the Orange County Planning Commission on September 18, 2002 and October 16, 2002 to consider the Tonner Hills Planned Community Program and Development Map and Statistical Summary, together with the proposed Area Plan for the Tonner Hills project submitted by the Applicant; and

WHEREAS, in conformance with California Environmental Quality Act (California Public Resources Code Section 21000, et seq.), the State CEQA Guidelines (California Administrative Code Section 15000, et seq.), and the County's environmental analysis

procedures, the County has prepared EIR No. 581 (State Clearinghouse Number 2001031137) to evaluate the potential environmental impacts of the proposed project; and

WHEREAS, EIR 581 has been reviewed and analyzed by the County and reflects the County's independent judgment on the proposed project; and

WHEREAS, the Planning Commission has determined pursuant to CEQA that Final EIR 581 constitutes adequate environmental documentation for the Tonner Hills Area Plan, and certified EIR 581 at a legally noticed public hearing on October 16, 2002 as being complete and adequate and that it fully complies with all requirements of CEQA, the State CEQA Guidelines, and the County's environmental analysis procedures; and

WHEREAS, the Planning Commission has reviewed and fully considered EIR 581, and has listened to and considered the public comments that were presented to it at all of the public hearings held on this project; and

NOW THEREFORE, BE IT RESOLVED that the Planning Commission makes the following findings with respect to the EIR 581 and the Tonner Hills Planned Community Area Plan:

1. That this Orange County Planning Commission considered the Tonner Hills Planning Application PA 01-0009, for Zone Change 01-01, Area Plan, and EIR No. 581.

2. That EIR No. 581 was considered prior to approval of the project and was determined to adequately address all potential adverse environmental impacts of the proposed project and to meet all the requirements of CEQA and the State CEQA Guidelines.

3. That this Planning Commission finds that the Final EIR has identified all significant environmental impacts of the Tonner Hills Planning Application.

4. That the conditions adopted herein are reasonably related to the use of the property and necessary for appropriate development and operation of the uses permitted by the County General Plan and the Tonner Hills Planned Community.

5. That this Area Plan for Tonner Hills Planned Community will only become valid and effective following the final adoption of Zone Change ZC 01-01 for the Tonner Hills Planned Community Program and Development Map and Statistical Summary by the Orange County Board of Supervisors.

NOW THEREFORE, BE IT FURTHER RESOLVED that the Orange County Planning Commission hereby approves the Tonner Hills Planned Community Area Plan for the Tonner Hills Development Project subject to the Findings as set forth in Appendix A and the Conditions of Approval as included in Appendix B to this Resolution.

AYES:

NOES:

ABSENT:

I HEREBY CERTIFY that the foregoing Resolution No. 02-___ was adopted on October 16, 2002 by the Orange County Planning Commission.

ORANGE COUNTY PLANNING COMMISSION

_____

By: Chuck McBurney, Chairman

Appendix A
Findings
PA010009

1 **GENERAL PLAN** **PA010009**

That the use or project proposed is consistent with the objectives, policies, and general land uses and programs specified in the General Plan adopted pursuant to the State Planning and Zoning Law.

2 **ZONING** **PA010009**

That the use, activity or improvement(s) proposed, subject to the specified conditions, is consistent with the provisions of the Zoning Code, or specific plan regulations applicable to the property.

3 **COMPATIBILITY** **PA010009**

That the location, size, design and operating characteristics of the proposed use will not create unusual conditions or situations that may be incompatible with other permitted uses in the vicinity.

4 **GENERAL WELFARE** **PA010009**

That the application will not result in conditions or circumstances contrary to the public health and safety and the general welfare.

5 **PUBLIC FACILITIES** **PA010009 (Custom)**

That the approval of this application is in compliance with Codified Ordinance Section 7-9-711 regarding public facilities (fire station, library, sheriff, etc.).

6 **COMMUNITY ANALYSIS AREA** **PA010009**

That the project will not reduce the availability of affordable housing within the community analysis area and will otherwise substantially comply with the intent of this section.

7 **FINAL EIR** **PA010009 (Custom)**

That Final EIR No.581 was considered prior to approval of the project and determined to adequately address all potential adverse environmental impacts of the proposed project and meets all the requirements of CEQA and the state CEQA Guidelines.

a. Based on the Initial Study, it is found that the EIR serves as a Program EIR for the proposed project; and

b. The approval of the certified Final EIR for the project reflects the independent judgement of the lead agency.

8 **FISH & GAME - SUBJECT** **PA010009**

That pursuant to Section 711.4 of the California Fish and Game Code, this project is subject to the required fees as it has been determined that potential adverse impacts to wildlife resources may result from the project.

9 **NCCP SIGNIFICANT** **PA010009**

That the project has the potential of adversely affecting significant Coastal Sage Scrub habitat and therefore, may preclude the ability to prepare an effective subregional Natural Communities Conservation Planning (NCPP) Program.

Appendix B
Conditions of Approval
PA010009

1 CP CP NA BASIC/ZONING REG PA010009

This approval constitutes approval of the proposed project only to the extent that the project complies with the Orange County Zoning Code and any other applicable zoning regulations. Approval does not include any action or finding as to compliance of approval of the project regarding any other applicable ordinance, regulation or requirement.

2 CP CP NA BASIC/PRECISE PLAN PA010009

Except as otherwise provided herein, this permit is approved as a precise plan. If the applicant proposes changes regarding the location or alteration of any use or structure, the applicant shall submit a changed plan to the Director, PDS, for approval. If the Director, PDS, determines that the proposed change complies with the provisions and the spirit and intent of the approval action, and that the action would have been the same for the changed plan as for the approved plot plan, he may approve the changed plan without requiring a new public hearing.

3 CP CP NA BASIC/COMPLIANCE PA010009

Failure to abide by and faithfully comply with any and all conditions attached to this approving action shall constitute grounds for the revocation of said action by the Orange County Planning Commission.

4 CP CP NA BASIC/OBLIGATIONS PA010009

Applicant shall defend at his/her sole expense any action brought against the County because of issuance of this permit. Applicant shall reimburse the County for any court costs and attorneys fees that the County may be required to pay as a result of such action. The County may, at its sole discretion, participate in the defense of any action, but such participation shall not relieve applicant of his/her obligations under this condition.

5 CP CP NA BASIC/APPEAL EXACTIONS PA010009

Pursuant to Government Code Section 66020, the applicant is hereby informed that the 90-day approval period in which the applicant may protest the fees, dedications, reservations or other exactions imposed on this project through the conditions of approval has begun.

6 CP CP R DEVELOPMENT STANDARDS PA010009 (Custom)

Prior to the recordation of any subdivision map, the applicant shall place a note on the map that the property is subject to the standards of the Tonner Hills Planned Community and use zoning regulations.

7 CP CP B SCHOOL FEES PA010009 (Custom)

Prior to the issuance of a building permit for residential construction, the applicant shall provide written verification from the School District, in a manner meeting the approval of the Manager of Community and Advance Planning that a mitigation agreement has been reached with the District for subject property consistent with the provision of land contiguous to, but outside of the project boundaries, to the Brea Olinda School for the expansion of the existing parking lot for the High School, and provision of substantial funds for improvements.

8 CP/EP CPEP R/G MITIGATION MONITORING PROGRAM PA010009 (Custom)

Prior to recordation of the first final map, either for conveyance or development, or prior to any grading or building permit, whichever comes first, the applicant shall comply with all applicable mitigation measures which shall be applied as conditions of approval due at the development milestone applicable at the time recordation of a final map or permit issuance. The specific mitigation measures, which shall be applied as conditions of approval are incorporated herein by reference as contained in the Mitigation Monitoring Program of Final EIR No. 581 certified by the Board of Supervisors.

9 CP CP NA PROJECT PHASING AND PROJECT IMPROVEMENTS/DEDICATIONS PA010009 (Custom)

Stipulations contained in the Tonner Hills Development Agreement between the County of Orange and Nuevo Energy Company, as they pertain to the timely implementation of improvements as scheduled in the project phasing plan are incorporated herein as conditions of approval of the Area Plan for the Tonner Hills Planned Community.

10 CP CP AP CITY OF BREA REVIEW PA010009 (Custom)

Thirty days (30) prior to action on any discretionary permits located within the Tonner Hills Planned Community, the permit application must be submitted to the City of Brea for review and commnent.

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11 AREA PLAN SUBJECT TO ZONE CHANGE APPROVAL PA010009 (Custom)

Approval of this Area Plan for Tonner Hills Planned Community will only become valid and effective following the final adoption of Zone Change ZC01-01 for the Tonner Hills Planned COmmunity Program and Development Map and Statistical Summary Table by the Orange County Board of Supervisors.

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12 HP HP G ARCHAEO OBS & SALVAGE PA010009

Prior to the issuance of any grading permit, the applicant shall provide written evidence to the Manager, Subdivision and Grading, that applicant has retained a County-certified archaeologist, to observe grading activities and salvage and catalogue archaeological resources as necessary. The archaeologist shall be present at the pre-grade conference, shall establish procedures for archaeological resource surveillance, and shall establish, in cooperation with the applicant, procedures for temporarily halting or redirecting work to permit the sampling, identification, and evaluation of the artifacts as appropriate. If the archaeological resources are found to be significant, the archaeological observer shall determine appropriate actions, in cooperation with the project applicant, for exploration and/or salvage.

Prior to the release of the grading bond the applicant shall obtain approval of the archaeologist's follow-up report from the Manager, Harbors, Beaches & Parks HBP/Coastal and Historical Facilities. The report shall include the period of inspection, an analysis of any artifacts found and the present repository of the artifacts. Applicant shall prepare excavated material to the point of identification. Applicant shall offer excavated finds for curatorial purposes to the County of Orange, or its designee, on a first refusal basis. These actions, as well as final mitigation and disposition of the resources, shall be subject to the approval of the Manager, HBP/Coastal and Historical Facilities. Applicant shall pay curatorial fees if an applicable fee program has been adopted by the Board of Supervisors, and such fee program is in effect at the time of presentation of the materials to the County of Orange or its designee, all in a manner meeting the approval of the Manager, HBP/Coastal and Historical Facilities.

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13 HP HP G PALEO OBS & SALVAGE PA010009

Prior to the issuance of any grading permit, the project applicant shall provide written evidence to the Manager, Subdivision and Grading, that applicant has retained a County certified paleontologist to observe grading activities and salvage and catalogue fossils as necessary. The paleontologist shall be present at the pre-grade conference, shall establish procedures for paleontological resource surveillance, and shall establish, in cooperation with the applicant, procedures for temporarily halting or redirecting work to permit sampling, identification, and evaluation of the fossils. If the paleontological resources are found to be significant, the paleontologist shall determine appropriate actions, in cooperation with the applicant, which ensure proper exploration and/or salvage.

Prior to the release of the grading bond the applicant shall submit the paleontologist's follow up report for approval by the Manager, HBP/Coastal and Historical Facilities. The report shall include the period of inspection, a catalogue and analysis of the fossils found, and the present repository of the fossils. Applicant shall prepare excavated material to the point of identification. The applicant shall offer excavated finds for curatorial purposes to the County of Orange, or its designee, on a first refusal basis. These actions, as well as final mitigation and disposition of the resources, shall be subject to approval by the HBP/Coastal and Historical Facilities. Applicant shall pay curatorial fees if an applicable fee program has been adopted by the Board of Supervisors, and such fee program is in effect at the time of presentation of the materials to the County of Orange or its designee, all in a manner meeting the approval of the Manager, HBP/Coastal and Historical Facilities.

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14 F F GBU FUEL MODIFICATION PA010009 (Custom)

[Res] Service Codes: 1.9 & 1.10

A. Prior to the recordation of a subdivision map or the issuance of a preliminary grading permit, the applicant shall obtain approval from the Fire Chief in consultation with the Manager, Subdivision and Grading Services for a conceptual fuel modification plan and program. Please contact the Orange County Fire Authority at (714) 744-0499 or visit the Orange County Fire Authority website to obtain a copy of the "Guideline for Fuel Modification Plans and Maintenance."

B. Prior to the issuance of a precise grading permit, the applicant shall obtain approval from the Fire Chief in consultation with the Manager, Subdivision and Grading Services for a precise fuel modification plan and program. The plan shall indicate the proposed means of modifying vegetation to reduce the risk to structures. Please contact the Orange County Fire Authority at (714) 744-0499 or visit the Orange County Fire Authority website to obtain a copy of the "Guideline for Fuel Modification Plans and Maintenance."

C. Prior to the issuance of a building permit, the developer, under the supervision of the Fire Chief, shall have completed the portion of the approved fuel modification plan determined to be necessary before the introduction of any combustible materials into the project area. Approval shall be subject to an on-site inspection.

D. Prior to the issuance of any certificate of use and occupancy, the fuel modification shall be installed and completed under the supervision of the Fire Chief with an approved plant pallet. The CC&Rs or other approved documents shall contain provisions for maintaining the fuel modification zones, including the removal of all dead and dying vegetation. The fuel modification zones shall be subject to triennial inspections.

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15 **F F G SECURED FIRE PROTECTION AGREEMENT PA010009 (Custom)**

Prior to recordation of the first final map, including maps for financial and conveyance purposes, or a grading permit, which ever comes first, the applicant shall enter into a Secured Fire Protection Agreement with the fire protection agency with jurisdiction over the project site.

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16 **EP/CAP EP/CAP R AFFORDABLE HOUSING PA010009 (Custom)**

Prior to the recordation of the first subdivision map that creates residential building sites, the subdivider shall submit and obtain approval of a Housing Program Report from the Manager, Environmental and Project Planning. The subdivider shall demonstrate in said report how the proposed housing program complies with the Affordable Housing Implementation Plan for the Tonner Hills Planned Community as follows: A minimum of 10% of the total number of resuidential units wuill be developed as low-income affodable housing in a manner meeting the approval of the Manager, Community and Advance Planning Services.

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17 **SG SG/ER R HAZARDOUS MATERIAL PA010009 (Custom)**

Prior to the recordation of a subdivision map, the subdivider shall submit, a "Hazardous Materials Assessment" and a "Disclosure Statement" covering the property (both fee and easement) which will be offered for dedication or dedicated to the County of Orange or the Orange County Flood Control District, for review and approval by the Manager, Subdivision and Grading, in consultation with the Manager, PFRD/ Environmental Resources.

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18 **HP HP R OPEN SPACE DEDICATIONS PA010009 (Custom)**

Prior to or concurrent with recordation of the first Level A map, the applicant shall irrevocably offer to dedicate in fee, free of liens and leases, to the County of Orange or its designee all of the Open Space shown on the Development Map (Planning Areas 10, 11, 12 and 9) in a manner meeting the approval of the County Counsel, and Managers of Current Planning and HBP/Program Management and Coordination.

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19 **EP/HBP EP/HBP G RESORUCE MANAGEMENT PLAN (REMP) PA010009 (Custom)**

Prior to issuance of the first grading permit or approval of the first subdivision map, whichever occurs first, the applicant shall obtain approval from the Director, Planning and Development Services Department (PDSD) of a Resource Management Plan (REMP) for the Tonner Hills Planned Community. Said REMP shall address: 1) restoration of habitat that will occur as part of the oil site remediation process or as required mitigation by State and Federal wildlife agencies, 2) restoration monitoring and success criteria, 3) long-term invasive species control requirements, 4) protocols for conducting oil operations and facility maintenance within restoration areas, and 5) a perpetual funding mechanism to support these activities.

Based upon the REMP the applicant shall be required to dedicate open space areas in scenic and/or resource preservation easements in a manner meeting the approval of the Director, PDSD in consultation with the Manager, PFRD/HBP Program Management and Coordination consistent with Section 3 "Open Space Use Regulations" of the Tonner Hills Planned Community Regulations. The easement shall identify areas of ongoing oil operation to be distinguished from areas intended to be preserved as wildlife habitat.

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20 **EP/HBP CP/SG G CONSISTENCY WITH REMP PA010009 (Custom)**

All construction related activities shall be consistent with the approved Resource Management Plan (REMP) in a manner meeting the approval of the Director, PDSD, in consultation with the Manager PFRD/HBP Program Management and Coordination.

Planning & Development Services Division
Staff Report dated October 19, 2002

ITEM 1

Planning and Development Services Department Report

DATE: October 16, 2002 (continued from September 18, 2002)

TO: Orange County Planning Commission

FROM: Planning & Development Services Department/Environmental Planning Services Division

SUBJECT: Public Hearing – Proposed Tonner Hills Planned Community (ZC01-01); Draft EIR 581 (SCH# 2001031137)

PROPOSAL: The Tonner Hills Planned Community project is a privately initiated development request to develop 795 residential dwelling units on a 789-acre site. Gross residential density would be approximately1.0 dwelling unit per acre. The total residential developed area would be approximately 180.0 acres with a residential development density of 4.4 dwelling units per acre Residential lot sizes would range from 2,600 square feet to 8,000 square feet. Continued oil facilities operations would entail 16.3 acres. Open space would be approximately 559 acres, or 70 percent of the project site.

LOCATION: The project site is located in the northeastern portion of unincorporated Orange County within the Sphere of Influence of the City of Brea. The Orange Freeway (SR 57) bisects the site, with 681 acres on the east side of the freeway and north of Lambert Road and 108 acres on the west side of the freeway at the southwest corner of Tonner Canyon Road and the Orange Freeway. (Supervisorial District 3)

APPLICANT: Nuevo Energy

STAFF CONTACT: Charles Shoemaker, Chief, Environmental Planning
Marta Crane, Project Manager, Current Planning Services Division

SYNOPSIS: This is the second public hearing to consider the draft EIR for the Tonner Hills Planned Community. In addition to the environmental document, the applicant is requesting; a zone change (ZC01-01) from the A1(O) "General Agricultural"("Oil Production") district to the PC (O) "Planned Community" District; adoption of the Tonner Hills Planned Community Development Regulations and Development Map and approval of an Area Plan for the purpose directing the development of the planned community. Discussion of these two discretionary actions is contained in the Current Planning Services Division staff report. A separate staff report has also been prepared to address a Development Agreement for the development of the Tonner Hills Planned Community.

Organization of Draft EIR 581:

Draft EIR (DEIR) 581 is composed of Volume I and a set of Technical Appendices. The first three chapters of the DEIR provide an expanded introduction, executive summary and project description. This portion of the document helps introduce to the reader to scope of Nuevo Energy Co.'s proposal and its history initially as a private development request in the City of Brea. Section 4 is an important section of the document focusing on the various environmental impacts associated with development of the proposed project. Key among those impacts which have been analyzed by this document are; "Land Use and Planning," "Transportation and Circulation," "Biology," "Hazards" and "Public Services." Section 5.0 relates to the long-term implications of the project, growth inducing impacts, and unavoidable adverse impacts of the project. Section 6.0 of the document focuses on project alternatives. They are also discussed briefly in this report.

A set of Technical Appendices was developed to transmit the large amount of technical studies, which were completed to provide a comprehensive evaluation of the project site and to convey work that was begun when the application was with the City of Brea and then augmented when it was filed with the County. There are thirteen elements, letters A through M that constitute the Technical Appendices. Appendices A and B are the Initial Study, Notice of Preparation (NOP) and the Responses to the NOP. Appendices C through I, and L are the various technical studies including, traffic, noise, air quality, biology, geology, hazards, hydrology and cultural resources. Appendix J is the Phase I and II Environmental Site Assessment; Appendix K is the Olinda-Alpha Landfill Memorandum of Understanding; and Appendix M is the County's Sphere of Influence Policy Guidelines. Appendices K and M are included to provide context to the fact that the project is located within the sphere of influence of the City of Brea and that special coordination was followed in the processing of the Nuevo Energy request by the County.

BACKGROUND:

The September 16, 2002 Staff Report provided a history of the Tonner Hills property beginning with 1900 when the first oil well was drilled through the planning and development request process that has culminated in the County of Orange processing the Nuevo Energy Project. The Report noted that the Nuevo Energy development request was first filed with the City of Brea in 1998 and subsequently withdrawn by the applicant prior to a November 2000 election which included a City ballot measure that would have affect the processing of development projects within the City. The Staff Report also explained that the original development request called for the construction of 1, 445 dwelling units, but that number was reduced to 914 dwelling units prior to project withdrawal. The project also included a commercial site and a public use area.

Nuevo Energy submitted a development proposal for 914 dwelling units with the County of Orange January 2001. The County issued a Notice of Preparation (NOP) on March 27,

2001 as a first indication of its intent to prepare an EIR to address the potential environmental impacts associated with the applicant's proposal. On April 26, 2001 the County conducted and EIR scoping meeting in the City of Brea at Brea Olinda High School. The NOP period ended on May 9, 2001.

Through May and June and by prior agreement, the City of Brea formed a Tonner Hills ad hoc Citizens' Committee to develop a City preferred development alternative to be included in the Draft EIR. On July 3, 2001 the Brea City Council endorsed a development alternative with a residential development range of 680 – 755 dwelling units on 126 acres (the dwelling unit figure includes Tract 16047 a 14-acre parcel located in the City that was proposed for approximately 56 dwelling units). The City alternative did not include any commercial acreage and deleted the Tonner Hills Road connection.

Through the remainder of 2001 the County and its EIR consultants worked to prepare Draft EIR 581. Coordination meetings occurred between the City and County. There were meetings between County, City and the Local Agency Formation Commission (LAFCO) to discuss annexation matters related to the Tonner Hills project. Through January and February discussions continued relative to the provision of services and pre-annexation. On February 11, 2002, County, City, LAFCO and service provider representatives meet to discuss the provision of public services and pre-annexation. It is noted that the Tonner Hills project can secure public services from sources other than the City of Brea. Through March and April 2002, discussions continued relative to pre-annexation and public services.

On April 25, 2002, the County of Orange released Draft EIR 581 (SCH # 2001031137) for 45-day public review period. The public comment period was scheduled to end on June 10, 2002. However, the public review period was extended to 60-day and ended on June 25, 2002. Prior to the close of the public comment period, the County receives over 60 pieces of correspondence transmitting comments on the project. Many comments focus on residential density, traffic, and biological habitat concerns. Since June 2002 County staff and the EIR consultant have worked to prepare a Response to Comments document, which was distributed to the Planning Commission at the September 18, 2002 public hearing.

Since May 2002, discussions have continued between the applicant's representatives, County and City staff. Topics have included pre-annexation topics and discussions surrounding refinements to the Nuevo Energy plans that have come as a result of comments on the project and as means to enhance the Tonner Hills Planned Community's annexation by the City. As reported at the September 18, 2002 Planning Commission hearing, the refinements to the development plan include; the elimination of Tonner Hills Road, the reduction in the number of dwelling units from 914 to 795 units, the elimination of the 7.7-acre commercial use, the elimination of development from an area referred to as Cable Canyon and a greater pull back of development from the ridgelines which form the backdrop to the City. Open space and local park acreage has also increased through the planning effort.

Environmental Setting

The Nuevo Energy Company landholdings encompass 789 acres and three oil and gas producing properties, the Stearns Fee, the East Naranjal Fee and the Columbia Fee. There are approximately 227 active oil wells onsite, in addition to idle wells, abandoned wells and water injection wells. Two active tank farms that process crude oil are located on site. A gas plant, which collects and processes natural gas from producing oil fields for sale of or lease production operations, is located in the northeastern portion of the site. The plant also generates electrical power from the burning of waste products. The electrical power is used to either power oil field equipment or is placed into the larger electrical grid. A dewatering facility, which processes oil solids and liquids, operates in the central portion of the site. There are tank farms and oil sump locations, a former gas plant site (which has been remediated), and other surface and subsurface pipes and flow lines that are located on site. A gun range operated for a number of years. The site was closed in 1996 and has subsequently been remediated for lead contamination.

The project site is located to the north of the existing incorporated city boundary and serves as a visual edge with its rolling hills and varying topography. Beyond the site to the north are Tonner Creek and natural hillsides of the Puente-Chino Hills range that continue over the Los Angeles County border. These hills and ridges beyond the site extend to greater elevations than the ridges on the project site and serve as the visual backdrop for this northerly portion of Orange County. To the northeast are the Olinda and Olinda Alpha Landfills, which are visible from areas in Brea and other communities in portions of north Orange County. Portions of the landfills are visible from the project site. The project site is not visible from any designated scenic highways. Carbon Canyon Road is the nearest viewscape corridor as designated by the County of Orange Scenic Highways Master Plan.

The proposed Tonner Hills Planned Community is characterized by terrain that slopes upward from Lambert Road generally in a northerly direction, first gently and then more steeply toward the north. Elevations range from approximately 460 feet above mean sea level (msl) at Lambert Road to over 700 feet above msl in the western portion of the property and approximately 800 feet above msl in the northeasterly portion of the property. The site steeply slopes downward on the most northern portion of the property to Tonner Creek, which is at approximately 460 feet above mean sea level. The site is well defined by rolling hills and ridgelines generally running east to west with some ridgeline and knoll features branching off to the south, and small but steeply sloping canyons and intermittent drainage courses. Portions of the existing ridgelines have been impacted by industrial activities such as the old gas plant and existing gas plant. In addition, the ridgeline network has been impacted by the construction of two City reservoirs surrounded by the project site and the development of the existing Brea Olinda High School. The site is also bisected by the Orange (SR 57) Freeway. Portions of the site have slopes in excess of 30%. Overhead utility lines servicing the oil field traverse the site in many directions.

Other existing facilities within the project boundaries, but not a part of the project, include two 10-million gallon steel reservoirs, the East Side Reservoir and the Valencia Reservoir. These reservoirs are owned and operated by the City of Brea. A third reservoir, Brea Reservoir,

located west of the Orange (SR 57) Freeway is operated by the Metropolitan Water District of Southern California.

Discussion of Draft EIR 581 (SCH# 2001031137):

Draft EIR 581 was prepared in accordance with the California Environmental Quality Act (CEQA) statutes, as amended (Public Resources Code §21000, et seq.), the CEQA Guidelines (California Code of Regulations §15000, et seq.), and County of Orange Environmental procedures. An Initial Study (Number PA01-0009) for the project and a Notice of Preparation (NOP) for an EIR were prepared and distributed to local Responsible and Trustee Agencies, the State Clearinghouse, involved local private and public organizations, and members of the public between March 27, 2001 and May 9, 2001. In addition, a public EIR Scoping Meeting was conducted on April 26, 2001 at Brea Olinda High School.

In accordance with CEQA Guidelines §15146, the degree of specificity required in an EIR must correspond to the actions to be covered by the EIR. The County of Orange has determined that the degree of specificity needed for the Tonner Hills Planned Community requires details sufficient to address policy level decisions at the General Plan level and mean grading levels of detail required for subdivision maps. The County determined that the Tonner Hills Planned Community EIR should be a Program EIR.

CEQA Guidelines §15146 defines a program EIR as:

> ... an EIR which may be prepared on a series of actions that can be characterized as one large project and are related:
>
> 1. Geographically,
> 2. As logical parts in the chain of contemplated actions,
> 3. In connection with issuance of rules, regulations, plans, or other general criteria to govern the conduct of a continuing program, or
> 4. As individual activities carried out under the same authorizing statutory or regulatory authority and having generally similar environmental effects which can be mitigated in similar ways.

Therefore, DEIR 581 was prepared to address all known potential effects associated with the implementation of the Tonner Hills project. It is an appropriate vehicle to address this project since there will be multiple and sequential discretionary approvals. Draft EIR 581 was prepared to address the environmental impacts associated with the development of the Tonner Hills project.

SUMMARY OF ENVIRONMENTAL ANALYSIS:

Following the close of the public review period, refinements to the proposed project were made in response to the comments received. In accordance with CEQA §15088, the County, as Lead Agency, evaluated comments received and caused four key modifications in the project site plan to further mitigate anticipated impacts or objections raised.

County staff reviewed the refinements to the plan at the September 18, 2002 Planning Commission hearing. Representatives of the City of Brea described the September 17, 2002 action of the City of Brea City Council to support the recommendation of the City's ad-hoc planning committee for Tonner Hills and endorse the refinements to the project. Therefore, the plan being recommended for approval is Alternative 4 with modified design features and mitigation measures hereinafter referred to as "Alternative 4 Preferred Plan" or "refined plan." To document this approach, the County staff, the City staff, and Nuevo Energy representatives have prepared a Memorandum of Understanding (MOU) leading to a Pre-Annexation Agreement. For the County, the MOU would also lead to Board of Supervisors' approval of a Development Agreement with Nuevo Energy, an action identified in the Draft EIR (DEIR Section 3.4). Alternative 4 and its impacts are analyzed in Section 6.4 of the Draft EIR. Since public circulation of the Draft EIR, the County, the City, and Nuevo Energy have identified additional mitigation design features and mitigation measures for Alternative 4, which are incorporated into the Alternative 4 Preferred Plan.

The design features and the mitigation measures that form the Alternative 4 Preferred Plan respond to a large number of comments on the Draft EIR, which is the specific intent of the County, the City, and Nuevo Energy. In summary, Alternative 4 was described and analyzed in detail in the circulated Draft EIR, and the design features and mitigation measures for the Alternative 4 Preferred Plan do not add new significant impacts or additional information on significant impacts. Therefore, the Alternative 4 Preferred Plan does not require revision and recirculation of the Draft EIR.

The impacts listed below represent the key issues and areas of controversy, which were addressed in Draft EIR 581 and were responded to through the refined plan and the Response to Comments document.

1. Biological Resources:

   Section 4.10 of the Draft EIR describes the biological setting, impacts and mitigation measures associated with the development of the Tonner Hills project. The discussion is further augmented by "General Response 3: Biological Resources" contained in the Response to Comments document. Together, they represent a comprehensive assessment of the biological impacts associated with the original development plan and the plan as refined through the environmental and planning processes.

For example, the original Tonner Hills project would have disturbed 209.2 acres of habitat impacts. The refined Tonner Hills project reduces the amount of impact to 178.3 acres. Approximately 83.3 acres of coastal sage scrub would be impacted a reduction of 18.9 acres from the original project. The project site contains 105.9 acres of riparian and woodland habitat. The refined project would disturb 8.7 acres of these two habitat types. A total of 6.05 acres on the site fall under the jurisdiction of the Corps, including 3.11 acres that meet the Army Corps of Engineers criteria for wetlands. A total of 16.93 acres on the site fall under CDFG jurisdiction. In 1999 the applicant began informal consultation meetings with the U.S. Fish and Wildlife Service (USFWS), the California Department of Fish and Game (CDFG), and the Army Corps of Engineers (ACOE). Early meetings with the ACOE included a verification of the jurisdictional delineation and a discussion that a Section 7 Consultation was the appropriate process to pursue because the California gnatcatchers utilize the habitat in the drainages as well as on the uplands. Representatives from USFWS and CDFG were provided with an overview of the project planning process and toured the project area. As a result of the initial consultation, the resource agencies requested that the project be redesigned to avoid the Cable Canyon drainage as much as possible and reiterated that avoidance of the listed species was one of the most important parts of the planning process in relation to the Endangered Species Act.

In September 2001, additional site visits with USFWS and CDFG were conducted with the Chambers Group, providing the agency personnel with a brief history of the project and showing the character of the coastal sage scrub and drainages along with the locations of most of the pairs of gnatcatchers on the site. In January 2002, the draft biological assessment and mitigation plan was submitted to the resource agencies for initial review. The formal Section 7 consultation process with the ACOE and USFWS began in March 2002. The applicant is continuing to work with the Wildlife Agencies to secure a Biological Opinion for the Tonner Hills project.

Subsequent to the release of the draft EIR and in response to comments on the draft document further refinements have been incorporated into the design of the plan. One example is the elimination of development on the west side of Cable Canyon and Neighborhood 7 to avoid California gnatcatcher habitat areas. This refinement responds directly to comments of the U. S. Fish and Wildlife Services, the California Department of Fish and Game (together, Wildlife Agencies), the Wildlife Corridor Conservation Authority (WCCA) and the City of Brea.

The Biological Resources section and the Mitigation Monitoring Program contain mitigation measures BR-1 through BR-5, which are intended to mitigate the potential biological resources impacts.

2. Wildlife Corridors:

Tonner Canyon is a primary wildlife corridor linking animal movement in the Puente-Chino Hills from one side of the Orange (SR 57) Freeway to the other. It provides year-round water and cover for small and large mammals. Tonner Canyon spans three

counties and is in a natural state from its origins near Chino Hills Parkway in San Bernardino County, as it passes into Los Angeles County and the Firestone Boy Scout reservation, and then enters Orange County. Tonner Canyon enters the Planned Community site along the northern boundary of the western portion of the site prior to passing under the 57 (Orange) Freeway. It continues along Brea Boulevard, where it enters the City of Brea and developed urban areas. Tonner Canyon provides connectivity in the Puente-Chino Hills. Information pertaining to the location of the wildlife corridor was presented at the September 18 2002 Planning Commission hearing.

While Tonner Canyon is a primary wildlife corridor, only a small portion of the canyon is within the boundaries of the Planned Community. During the biological survey, animal signs such as tracks and scat were observed along Tonner Creek. Several species were observed on-site by Chambers Group, Inc. biologists while conducting field surveys, including mule deer, coyote, gray fox, raccoon, rabbit, and bobcat. Oil field personnel have observed other species utilizing the site, including mountain lion and skunk.

Cable Canyon, which is a smaller drainage located in the central portion of the project site, runs north-northeast to south-southwest may be considered as wildlife habitat but is not considered a wildlife corridor. Due to the dense cover of trees and other shrubs, it provides good cover for medium and large mammal species. Coyote and deer sign were observed within this area. Currently, the deer are accessing Cable Canyon from a variety of access points, primarily on the southern portion of this site.

Subsequent to the release of the draft EIR and in response to comments on the draft document further refinements have been incorporated into the design of the plan. One example already discussed is the elimination of development on the west side of Cable Canyon and Neighborhood 7. This refinement preserves the Cable Canyon drainage and preserves the wildlife habitat contained therein. The major refinement to the plan affects the wildlife corridor that would have been affected by the construction of Tonner Hills Road. Tonner Hills Road would have crossed Tonner Creek and have provided secondary access to the planned community. Though the project included a span bridge over the creek and a proposal to remove non-native plant vegetation from the creek, a number of commenters, including the Wildlife Agencies, WCCA and the City of Brea recommended the deletion of Tonner Hills Road. This elimination of the Tonner Hills Road responds directly to their comments and leaves the wildlife corridor located along Tonner Creek in its current condition.

3. Geophysical Setting:

The Tonner Hills project site site covers approximately 789.8 acres on the southern flank of the eastern Puente Hills. The Puente Hills are of a complex, uplifted and faulted anticlinal structure, with the south-dipping Chino Fault Zone on the northeast and the north-dipping Whittier Fault Zone on the southwest. These two fault zones merge with the northwest-trending Elsinore Fault Zone at the east end of the Puente uplift, in Santa Ana Canyon. The La Habra Syncline (buried below alluvial plain

sediments) trends parallel to the hills on the southwestern side. At the hearing of September 18, 2002, staff and the applicant reviewed the locations of the various active and inactive faults that affect the Tonner Hills property. Recalling that oil deposits are often associated with the presence of fault lines, staff and the applicant also discussed at the hearing the location and potential impacts associated with known tar seeps on the property.

The Whittier Fault Zone is subject to the provisions of the Alquist-Priolo Earthquake Fault Zone Act. The Alquist-Priolo Zone affects the most northeasterly corner of the property and the general area of where proposed Tonner Hills Road would have traversed. Under the Act development must be located away from known fault lines. The locations of the two known active traces of the fault were taken into consideration when designing the proposed project. There is no project residential development proposed on or within the proximity of the Whittier Fault or the Alquist-Priolo Zone. The nearest proposed development (Neighborhood 1) is located greater than 1,400 feet southwest of the southern active trace of Whittier Fault and 500 feet southwest from the Alquist-Priolo Zone.

Mitigation measures G-1 through G-10 are included in the DEIR to address the geophysical environment. Key among the measures are G-1 which addresses the fault lines and G-7 which addresses the impacts associated with tar seeps.

4. Traffic Impacts:

Traffic was identified at the time of the EIR scoping meeting to be of significant concern to the City staff and residents of Brea. It was one area of analysis, which also garnered much coordination between City staff, County staff and the traffic consultants. The originally proposed 914 dwelling units project, which included the 7.7-acre commercial site was projected to generate a total of 18,132 trip-ends per day. Projected trips were 1,004 vehicles per hour during the A.M. peak hours and 1,780 vehicles per hour during the P.M. peak hours. The EIR analyzed multiple scenarios including traffic with and without Tonner Hills Road and including less development intensity. Tonner Hills Road was anticipated to reduce traffic impacts to Lambert Road, which would be exacerbated by this project.

Through the public review period refinements were made to the project. Those included the reduction in the number of dwelling units from 914 to 795, the elimination of Tonner Hills Road from the project and the elimination of the commercial center at Wild Cat Way and Lambert Road. The effect of these refinements was that the project would now generate 10,459 trip-ends per day. Projected trips were 744 vehicles per hour during the A.M. peak hours and 1,055 vehicles per hour during the P.M. peak hours. The refined project results in a general traffic reduction of 7,673 trip-ends per day.

Mitigation measures in the DEIR address the various traffic scenarios including mitigation measures to be employed if Tonner Hills Road were built. The

Mitigation Monitoring Report reflects the changes brought about as a result of the refined project. The most significant of these is the basic assumption that the project would participate in the City of Brea fee program. However there is some uncertainty associated with this program. The fee program currently includes an adopted component and a component that is proposed and under consideration by the City's decisionmakers. Consequently, there is an additional mitigation measure that addresses the uncertainty. It reads as follows: "Prior to or concurrent with the approval of the first tentative map, the subdivider shall submit an opening year traffic study analysis in conjunction with the submittal of each Level "B" Tentative Map, to the Manager of Current Planning Services for review and approval. Such studies shall ascertain the existing traffic conditions and determine if any future mitigation is necessary."

At the September 18, 2002 hearing staff reported that there were two significant unavoidable adverse impacts of the project, air quality and agriculture. While it is demonstrated that the proposed traffic mitigation measures will reduce the transportation related impacts to a less than significant level the uncertainty of the traffic mitigation due to its reliance on the City of Brea traffic fee program causes the Traffic and Circulation impacts to now be considered significant and unavoidably adverse. The traffic mitigation measures for the project may be found in the Mitigation Monitoring Program Report beginning on page twelve.

5. Aesthetics Impacts:

The project site is located to the north of the existing incorporated city boundary and serves as a visual edge with its rolling hills and varying topography. Beyond the site to the north are Tonner Creek and natural hillsides of the Puente-Chino Hills range that continue over the Los Angeles County border. These hills and ridges beyond the site extend to greater elevations than the ridges on the project site and serve as the visual backdrop for this northerly portion of Orange County. To the northeast are the Olinda Alpha Landfill, which are visible from areas in Brea and other communities in portions of north Orange County. Portions of the landfills are visible from the project site. The project site is not visible from any designated scenic highways. Carbon Canyon Road is the nearest viewscape corridor as designated by the County of Orange Scenic Highways Master Plan.

Topographically, the site consists of a series of low hills along its southern boundary, rising to ridges of moderate to steep relief in the central and northern part. Elevations at the site range from approximately 450 feet along the southern project boundary to 800 feet near the northeastern project boundary.

Although the project is located in the jurisdiction of the County of Orange, it also is located within the Sphere of Influence of the City of Brea. The City of Brea expressed early its concern relative to visual development impacts within the hills surrounding the City. To promote consistent analysis of the project, the proposed

project was developed with consideration for the City of Brea General Plan and Hillside Management Ordinance.

The City of Brea hillside management regulations of the zoning ordinance are intended to further define and implement the goals and objectives of the General Plan and advisory Vision documents, primarily to preserve the natural terrain, quality of the environment, and rural aesthetic character of the City of Brea. The Hillside Management Ordinance is also intended to minimize the negative effects of grading and provide for the health, safety, and welfare of the citizens of the city while providing for the development of hillside areas.
Some of the relevant goals, objectives, and policies include:

- Encourage sensitive development in the hillside areas through flexible design and innovative arrangement of building sites by utilizing flexible lot sizes, clustering, and setback variations.

- Encourage developments, which use desirable existing features of land such as natural vegetation, viewsheds, geologic and archaeological features.

- Provide for appropriate intensity (i.e., density, massing) of development on hillside properties through a variety of design techniques such as ensuring that development intensity decreases as the slope percentage increases (i.e., becomes steeper); that lot sizes are appropriate for the steeper topography; and that the separation of structures is sufficient to preserve the viewshed.

At the September 18, 2002 Planning Commission hearing, County planning staff reviewed the site and situation of the Tonner Hills property. Staff reviewed the presence of several ridgelines and their relationships to the City of Brea's vision. Staff described a major ridge that forms the backdrop for the project and a secondary horseshoe-shaped ridge that is located near the intersection of Wild Cat Way and Lambert Road. Staff also described that development would impact a smaller physical feature located to the west of Wildcatters' Park. City planning staff also explained the City's interest to preserve it visual amenities. City staff reviewed the process for developing a City development alternative, which was analyzed in the DEIR. Their plan included consideration for the major and minor ridgelines that traverse the Tonner Hills property.

The refined project takes into consideration the City's interest to preserve the visual backdrop of the City. The refined plan moves development in Planning Area 5 and 6 further from the major ridge than the earlier proposal; it preserves the horseshoe shaped ridge through the elimination of the commercial use at the intersection of Wild Cat Way and Lambert Road and it preserves the visual amenity of Cable

Canyon. The effect of the reduced development density will also mitigate potential visual impacts.

To analyze the potential visual and aesthetic impacts of the original project a series of visual simulations were prepared. They are contained in Chapter 4.11 of the draft EIR. They demonstrate that the original project would have minimal visual impact to the City and surrounding area. Because minimal visual impacts were identified with the original proposal, the visual simulations were not updated with the refined project. Mitigation Measures AE-1 through AE-6 are included to mitigate aesthetic impacts.

Project Alternatives:

Pursuant to CEQA, an EIR must assess a reasonable range of alternatives to the project action or location (Guidelines Section 15126.6). The discussion must focus on opportunities for eliminating any significant adverse environmental effects, or reducing them to a level of insignificance"... even if these alternatives would impede to some degree the attainment of the project objectives, or would be more costly..." (Guidelines Section 15126.6(b)). An EIR must identify an environmentally-superior alternative among other alternatives. As with cumulative impacts, the discussion of alternatives is governed by the "rule of reason." An EIR need not consider an alternative whose effect cannot be reasonably ascertained, or does not contribute to an informed decision-making and public participation process.

Alternatives to the proposed project are presented in this section. Each alternative is designed to alleviate environmental problems identified in the EIR or were specifically requested for consideration (such as the City's alternative). Several design change alternatives are also considered. Typically, the design alternatives evaluate one or more changes to the proposed plan, yet are not sufficiently different from the proposed project or alternatives that they qualify as free-standing alternatives. Many of these design features could be combined with any alternative.

- **Alternative 1 – No Project Alternative:** This alternative would retain the status quo of entitlement efforts. The property would remain in oil production, which would be expanded, and the zone change and other approvals sought for the proposed project would be abandoned. This alternative is discussed pursuant to the requirements of CEQA §15126.6(e). It assumes that there will eventually be development on this site but at an unspecified time in the future.

- **Alternative 2 – No Development Alternative:** This alternative would retain the current operation on the property and abandon all development now and in the future resulting in no improvement to any site conditions or characteristics. It assumes not only the abandonment of the proposed project, but any development during the projected 10-year build out for the proposed project. This alternative is

considered as it relates to long-term effects on housing/population/employment figures in meeting County growth projections.

- **Alternative 3 – Previous 1,445 dwelling unit Brea Highlands Project:** The previous project presented to the City of Brea consisted of a plan for 1,445 dwelling units on 241.5 acres. Approximately 3.5 acres in the 1,445-unit project were to be developed with commercial uses. Park uses are commensurate between the two proposals. Further, the proposed project has more open space.

  This alternative was included because its size has the capacity to increase the number of dwelling units to address the jobs-to-housing balance, one of the stated project objectives. The alternative evaluated contains a 13.4-acre parcel (56 dwelling units) that has since been sold by the landowner and is no longer part of the Tonner Hills project.

- **Alternative 4 – City of Brea Alternative:** The Brea City Council established the Tonner Hills Review Committee to provide input regarding the proposed project development application. The committee formulated an alternative development plan, which it identified as "Tonner Hills Review Committee Value Statements" These statements formed the basis for the alternative referred to as the "City Alternative." Unlike the proposed project, the City Alternative envisions a maximum of 755 dwelling units in 8 neighborhoods on 823.8 acres, inclusive of the acreage not included in the proposed project. This alternative redesigns the interior circulation system for the project by eliminating access from the northwestern boundary (the proposed Tonner Hills Road) and using Valencia Avenue and Lambert Road for ingress and egress. The design provides for several areas of "estate housing" (large houses on large lots), mainly in the areas of higher elevations. Higher density housing would be available in the southernmost neighborhoods near Lambert Road. A total of 126.2 acres of residential development is proposed. No mixed-use is included in this alternative, and the 7.7-acre mixed-use parcel remains undeveloped.

  The City Alternative also designated preservation of Wildcatters Park, which abuts the public use portion of the site. The City designated a 38.9-acre public use area to allow for additional park uses such as ball fields, bicycle/pedestrian paths, etc.

- **Alternative 5 – Golf Course and Large-lot Residential (reduced density) Alternative:** This project alternative provided for an 18-hole golf course and approximately 246 acres of residential uses in "mini-ranchettes" or estates with a minimum lot size of 10,000 square feet. The residential acreage is assumed to be completely graded; therefore, the land area could alternatively accommodate approximately 1,400 residential units. Since a 1,445-unit alternative is already examined herein, attention focused on the combination of the golf course and the 738-unit ranchette alternative. This alternative is considered as a reduction in residential land use and a substantial increase in recreational land use.

- **Alternative 6 – City of Brea Former General Plan:** This alternative analyzed the City of Brea General Plan in place at the time the Tonner Hills project development application was submitted to the County (January 2001). This alternative evaluated development of land uses within all land use categories currently designated for the project site. The buildout portions of this alternative would be based primarily on the proposed project neighborhood configurations and evaluates the potential land use intensities over the 789.8-acre project site. This alternative evaluates 1,093 dwelling units distributed over the 746.5 acres of residential land uses. Regarding non-residential categories, the General Plan designates 9.2 acres for General Commercial uses and 30.5 acres for Public Facilities and Grounds, both located at the northern section of the site on either side of the Orange (SR 57) Freeway at Tonner Canyon Road. An additional 3.6 acres designated, as Office Facilities is located at Wild Cat Way just north of Lambert Road. For purposes of this analysis, the 30.5-acre Public Facilities portion assumes the construction of a 60,000-sq.ft. regional postal facility.

- **Alternative 7 – City of Brea Revised Updated General Plan (30% Reduction):** On July 17, 2001, the Brea City Council approved a 30% reduction in intensity of certain land areas within the City General Plan as well as reclassifications of several roadways. At the Council meeting, City staff stated that the Tonner Hills project area (defined as 823.7 acres) would support 1,252 dwelling units under a General Plan buildout, or 881 dwelling units with a 30% reduction. The final reading of the ordinance amending the General Plan was adopted on August 7, 2001. This alternative analyzed the City of Brea General Plan as revised in July 2001. The Revised General Plan became effective subsequent to the submittal of the Tonner Hills project development application, which was submitted to the County of Orange.

  This alternative evaluates development of land uses within all land use categories currently designated for the project site and excludes property outside the project boundary. The build-out portions of this alternative would be based primarily on the proposed project neighborhood configurations. Regarding non-residential categories, the General Plan designated 9.2 acres for general commercial uses and 30.5 acres for Public Facilities and Grounds, both located at the northern section of the site on either side of the Orange (SR 57) Freeway at Tonner Canyon Road. An additional 3.6 acres designated Office Facilities is located at Wild Cat Way just north of Lambert Road. For purposes of analysis, the 30.5-acre Public Facilities portion assumes the construction of a 60,000-sq.ft. regional postal facility. This alternative addresses the City of Brea's sphere of influence relationship to the project and the relevant City of Brea governing plans and ordinances under which site development could occur.

- **Alternative 8 – 624 –699 Dwelling Units Using project Configuration:** This alternative incorporates the number of dwelling units in the City of Brea Alternative

onto the development footprint defined in the proposed project. This alternative takes advantage of the balanced grading in the proposed project, as well as the other opportunities for reduced impacts related to most of the topical issues presented in each alternative. This alternative eliminates the 56 dwelling units on the City of Brea's Recommended Project, which were located on the parcel that is no longer owned by the applicant.

This alternative is considered in order to address the sphere of influence considerations for the City of Brea, and to evaluate a much lower density alternative. Briefly, the alternative would be as stated above, but no development would occur on ridgelines as identified by the City of Brea in its Ridgeline Ordinance, resulting in a modified project footprint. This would have the effect of reducing total development area by an estimated 16 acres, and reducing units by 100. There would be no grading of Park Ridge in Neighborhoods 1 and 2, and a pullback from the ridgeline in Neighborhood 6.

- **Alternative 9 – Very Low Density/Estate:** In close proximity to the date of publication of this Draft EIR, it was learned that the City of Brea General Plan Advisory Committee (GPAC) had engaged in a discussion regarding the Tonner Hills project and other properties during which a "1 unit per 5 acres" density alternative was suggested for consideration.

  This alternative would generate approximately 158 units. This would represent a "true" 1 DU/5 acre alternative. Distribution of the units would be over the entire property, with home sites being situated where possible, and the remainder of property not devoted to the home sites encompassed within private property ownership, with the exception of ongoing oil operations.

- **Design Alternative 1 – Delete Tonner Hills Road:** This alternative proposes the deletion of Tonner Hills Road from the planned community and analyzes the impact of eliminating the access point to the larger portion of the project (east of the Orange Freeway), while retaining access from Lambert Road. A second project access point is proposed to connect at Valencia Avenue aligned with the existing Olinda Ranch entry intersection. This alternative is considered as a way to reduce the impacts to the Puente-Chino Hills wildlife corridor.

- **Design Alternative 2 - 150 Affordable Housing Units on Mixed Use Site:** This alternative would replace the commercial site of 7.7-acres (located at the southwest corner of the site) with 150 affordable housing units. This would bring the total dwelling units for the project to 1,064 dwellings. While the County does not have mandatory affordable housing goals in the Housing Element of its General Plan for this area, the County and the developer, through a development agreement, could discuss opportunities for affordable housing in the project area. This alternative is included to analyze such an affordable housing scenario.

- **Design Alternative 3 – Wildlife Passage:** This alternative proposes a pullback of Neighborhood 7 in order to increase the size of the passageway for wildlife moving from Cable Canyon to Tonner Canyon and adjacent parts of the project site. As part of this alternative, four dwelling units within Neighborhood 7 would be removed. This would increase the distance between the neighborhood and the mixed-use site on Lambert Road from 300 feet to nearly 450 feet. Additionally, the northeast corner of the mixed-use site would be set aside as non-developed and would be landscaped in a manner consistent with the natural area. This corner would be set back a distance of 75 feet. This setback, along with the vertical separation from the mixed-use site to the natural area, will further serve to buffer the development from the wildlife using Cable Canyon and the surrounding undeveloped area.

- **Design Alternative 4 – Relocate Dwelling Units for Neighborhoods 5 and 6 to Public Use Site:** One of the stated values of the citizens of the City of Brea has been to maintain their ridgeline views. While the proposed project has successfully accomplished that goal, this alternative considers the potential to further reduce ridgeline impacts by relocating several dwelling units in Neighborhoods 5 and 6 to the proposed Public Use Site. Ten acres of the Public Use Site would be used to accommodate the relocation of the following dwelling units:

  - Neighborhood 5 – 35 dwelling units from the westerly portion of that neighborhood
  - Neighborhood 6 – 40 dwelling units from the westerly portion of that neighborhood

  The remaining 20 acres of the Public Use Site would be available for uses previously discussed in other alternatives.

ISSUES RAISED BY COMMENTERS:

The DEIR was distributed to various public agencies, citizens groups and interested individuals for a 60-day review period in accordance with the requirements of CEQA and the CEQA Guidelines. The review period began on April 25, 2002 and ended on June 25, 2002. The County received 65 comment letters from responsible agencies, special interested groups and individuals. Two additional letters were received after the close of the comment period. Following the close of the September 18, 2002 hearing, the Planning Commission were provided copies of the Response to Comments package. The City of Brea and all those who commented received a written response to their comments.
In many instances comments raised similar or identical issues. In addition, General Responses were prepared to respond in a comprehensive manner to specific environmental issues. These included: a description of the refinements to the proposed following public review; Sphere of Influence/applicable development standards; biological resources; and, transportation and circulation. Regarding sphere of influence and public service provisions, discussions continue between the City of Brea and the applicant relative to

timing of annexation and appropriate levels of public services. The Draft EIR addresses public services including; water and wastewater, police and fire protection.

SUMMARY:

This report is intended to advance the Planning Commission's understanding of the history and evolution of the recommended development plan and draft EIR 581 for the Tonner Hills property. Development requests date to 1998 when Nuevo Energy Company submitted plans to the City of Brea for the development of 1,445 dwelling units. In November 2000, Nuevo Energy withdrew its development request from the City; and, in January 2001, submitted a 914 dwelling unit proposal to the County.

DEIR 581 has been prepared to address the environmental impacts of the 914 dwelling unit project. It contains project alternatives and design alternatives for the consideration of the decision makers and identifies mitigation measures, which reduce the impacts of the project to levels less than significant. Since the close of the comment period the project has been further refined. Those refinements include; a reduction in dwelling units to 795 units, the elimination of Tonner Hills Road, the elimination of development adjacent to Cable Canyon, a refinement that moves development further away from the ridgelines which serve as a backdrop to the City, and the elimination of the commercial use at the corner of Wild Cat Way and Lambert Road. As mentioned earlier in this report, the plan being recommended for approval is Alternative 4 with modified design features and mitigation measures that reflect the refinements described above.

Comments and Correspondence have been received from interested parties and have either been addressed in the Response to Comments document, responded in this report or provided for Planning Commission consideration.

Staff concludes that DEIR 581, technical appendices and Response to Comments documents, prepared for the Tonner Hills Planned Community are complete in that they address all environmental effects of the proposed project and fully comply with the requirements of the California Environmental Quality Act and CEQA Guidelines for all actions and approvals associated with the development of the proposed project contemplated in the EIR including; the zone change (establishment of the Planned Community, Development Plan, and Program Text), the Area Plan, Site Development Permits, Level A and Level B Maps, Grading Permits, Improvement Plans, Development Permits, Development Agreement, and future annexation, including related actions such as pre-annexation and agreements leading to pre-annexation. Further, staff concludes that no substantial evidence has been presented that would call into question the facts and conclusions in the EIR nor any significant new information that has been added to this EIR pursuant to CEQA Guidelines §15088.5, such that recirculation for additional public review is necessary.

Recommended CEQA Action:

1. Receive staff report and public testimony as appropriate
2. Certify DEIR 581 for the Project and recommend certification by the Board of Supervisors for the Project.

Respectively submitted

for Tim Neely, Manager
Environmental Planning
Services Division

Attachments

1) Draft Planning Commission Resolution
   a. Draft CEQA Statement of Facts and Findings Tonner Hills Planned Environmental Impact Report No. 581
   b. Statement of Overriding Considerations
      Tonner Hills Planned Community
      Environmental Impact Report No. 581
   c. Mitigation Monitoring and Reporting Plan Tonner Hills Planned Community Environmental Impact Report No. 581

Community & Advance Planning Services Division
Staff Report dated October 16, 2002

Planning and Development Services Department Report

DATE: October 16, 2002

TO: Orange County Planning Commission

FROM: Planning & Development Services Department/Community and Advance Planning Services Division

SUBJECT: Public Hearing-Proposed Tonner Hills Development Agreement (DA 2002-1)

PROPOSAL: A Development Agreement is proposed by Nuevo Energy for the Tonner Hills Planned Community. The agreement would grant entitlements for the buildout of the Tonner Hills Planned Community for a ten year term without new County-imposed regulations in consideration for certain financial commitments to the County for affordable housing, park and recreation facilities, remediation of soil and rehabilitation, infrastructure improvements, library, child-care and the County's General Plan purposes.

LOCATION: The project site is located north of Lambert Road on the easterly and westerly sides of the Orange Freeway (SR 57) in the Sphere of Influence of the City of Brea- Third Supervisorial District.

SYNOPSIS: PDSD/Community and Advance Planning Services Division has determined that the proposed Development Agreement is consistent with Government Code Section 65864 et seq. and the applicable Development Agreement enabling legislation. Therefore PDSD request that the Planning Commission: 1. Receive staff report and public testimony as appropriate 2. Recommend the Board of Supervisors approve draft Draft Resolution and the Development Agreement for the Tonner Hills Planned Community that is substantially consistent with the proposed development agreement considered by the Planning Commission

CONTACTS: Harry Persaud, 714-834-3669
Alan Gamson, 714-834-5378

DISCUSSION:

During the last several months, your Commission conducted a series of public hearings on the proposed Tonner Hills Planned Community development proposal and associated EIR-581. The project permits up to a 795 dwelling unit planned community that would provide a range of single-family detached and attached dwelling units, as well as 559.7 acres to be retained in open space with continued oil production activities

Government Code Sections 65864-65869.5 permit the County to enter into a development agreement with a property owner to establish a contract for land use development which runs with the land and is binding upon the parties for a determinate time according to the terms and conditions in the agreement. On September 15,1987, the Board of Supervisors authorized the Environmental Management Agency with the assistance of the County Administrative Office and County Counsel to negotiate development agreements. On March 19, 2002 the Board of Supervisors adopted Resolution No. 02-066, which established revised procedures for the processing of development agreements.

In negotiating the Development Agreement (Attachment 1), staff has focused on obtaining public benefits, which would benefit the citizens of Orange County and the future residents of the Tonner Hills Planned Community. Among the benefits being negotiated are the provisions for affordable housing, open space and recreation uses, and provision of infrastructure facilities. These benefits are described in details in Exhibit 'D' of the Development Agreement.

DEVELOPMENT AGREEMENTS BENEFITS

Exhibit 'D' of the Development Agreement, which describes the benefits of the Tonner Hills Planned Community, will be transmitted to your Commission under separate cover.

NOTIFICATION:

Notice of the Planning Commission hearing was provided to the general public in the October 4, 2002, edition of The Orange County Register. Any comments received from interested parties regarding the draft agreement will be provided to your Commission under separate cover.

COMPLIANCE WITH CEQA

The proposed project is covered by proposed final Environmental Impact Report No. 581. Prior to project approval, the decision-maker must assert that this EIR is adequate to satisfy the requirements of CEQA for the proposed project.

RECOMMENDATION:

The Planning and Development Services Department recommends that your Commission:

1. Receive staff report and public testimony as appropriate

2. Recommend the Board of Supervisors approve Draft Resolution and Development Agreement for the Tonner Hills Planned Community that is substantially consistent with the proposed development agreement considered by the Planning Commission

Respectfully submitted,

John B. Buzas, Manager
Community & Advance Planning Services Division

Attachments: 1. Draft Tonner Hills Development Agreement
2. Draft Board of Supervisor Resolution

Draft Development Agreement
Between
County of Orange and Nuevo Energy Company

DRAFT

ATTACHMENT 1

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

COUNTY OF ORANGE
Planning and Development Services Dept.
P.O. Box 4048
Santa Ana, CA 92702-4048
Attn: Harry Persaud

(Space Above This Line for Recorder's Use)

TONNER HILLS

DEVELOPMENT AGREEMENT BETWEEN

THE COUNTY OF ORANGE AND

NUEVO ENERGY COMPANY

DRAFT

TABLE OF CONTENTS

DEVELOPMENT AGREEMENT

Page

DRAFT

DEVELOPMENT AGREEMENT
(Govt. Code Sections 65864-65869.5)

THIS AGREEMENT ("Agreement") is entered into this _____ day of _____, _____, by and between,—Nuevo Energy Company ("Nuevo"), a Delaware corporation ("OWNER"), and the COUNTY OF ORANGE, a political subdivision, organized and existing under the laws of the State of California ("COUNTY").

RECITALS

This Agreement is entered into based upon the following facts:

A. When used in these Recitals, each of the terms defined in Section 1 of this Agreement shall have the meaning given to it therein.

B. Government Code Sections 65864-65869.5 authorize COUNTY to enter into binding development agreements with persons having legal or equitable interests in real property for the development of such property, in order to, among other things: encourage and, provide for the development of public facilities in order to support the development of new housing, provide certainty in the approval of development projects in order to avoid the waste of resources and the escalation in the cost of housing and other development to the consumer and encourage investment in and commitment to comprehensive planning which will make maximum efficient utilization of resources at the least economic cost to the public; and (1) provide assurance to developers that they may proceed with their projects in accordance with existing policies, rules and regulations, subject to their conditions of approval and (2)-strengthen the public planning process and encourage private participation in comprehensive planning and reduce the economic costs of development.

C. OWNER is the holder of a legal interest in the Property and desires and intends to develop the Property as a large scale, mixed use development for the uses and purposes set forth in the Development Plan. The Development of the Property requires substantial early and major capital expenditures and investments with respect to the construction and installation of major infrastructure and facilities, both on-site and off-site, (including, for example, the provision of sheriff, library, fire and other public facilities and the performance of this Agreement) of sufficient capacity to serve the residents and others using the Property as anticipated by the General Plan and this Agreement.

D. COUNTY has determined that the Development Plan implements the goals and policies of County's General Plan and and of all specific plans (as referenced in Government Code Sections 65450 et seq.)-applicable to the Project and provides balanced and diversified land uses and imposes appropriate standards and requirements with respect to land development and usage so as to maintain the overall quality of life and of the environment within the County.

E. Pursuant to Government Code Section 65865, COUNTY has adopted Resolution No. 02-066 establishing procedures and requirements for the consideration of proposed development agreements.

F. OWNER has applied for, and COUNTY has approved, the Development Plan and granted the Existing Development Approvals in order to protect the interests of County's existing and anticipated citizens and the quality of their community and environment through the planned development process. As part of the process of approving the Development Plan and the Existing Development Approvals, COUNTY has undertaken, pursuant to the California Environmental Quality Act CEQA), the required analyses of the environmental effects which would be caused by the Project. In addition to other matters which COUNTY took into consideration in its analyses of the environmental effects which would be caused by the Project, COUNTY scrutinized with particular care the adverse impacts associated with the need for remediation of contaminated soils on and redevelopment of portions of the Property used, operated and maintained as an oil field, the plugging and abandonment of certain oil wells and oil production facilities, the demolition of certain oil facility and related structures and the restoration of certain Open Space Areas near land used for oil operations; continued Oil Operations and Servicing (see 1.2.28); vehicular traffic ; air quality and water supply conditions within the County; and the availability of adequate levels of public services and facilities within the County, including, without limitation, library, sheriff, paramedic and fire protection, flood control improvements, open space and community parks. COUNTY has imposed a series of mitigation measures in connection with the development of the Project to eliminate the anticipated adverse impacts on COUNTY traffic and air quality conditions and on levels of public services and facilities within the County, including, without limitation, sheriff, library, paramedic and fire protection, flood control improvements, open space and community parks.

G. In accordance with State law , COUNTY has adopted the General Plan which considers and provides for the need for residential, commercial, industrial facilities which are necessary to meet the future needs of the population.

H. As consideration for the assurances provided by this Agreement, COUNTY has requested that OWNER provide, and OWNER is willing to provide additional public benefits as described in Exhibit D of this Agreement. Those additional public benefits set forth in Exhibit D include, but are not limited to, certain additional fee contributions and lands as well as the construction and transfer to the County, or its successor or assignee certain additional improvements and public facilities for existing and future residents of the Property. The COUNTY has determined that the public benefits for which OWNER is obligated, together with the mitigation measures imposed by the COUNTY on the Project, adequately provide for the health, safety, and welfare needs of the existing and future residents of the Property subject to the provisions of this Agreement with respect to future monitoring programs. COUNTY Planning Commission and Board of Supervisors have found and determined that this Agreement: (~~i~~1) is consistent with COUNTY's General Plan and with all specific plans (as referenced in Government Code Section 65450 et seq.) applicable to the Project; (~~ii~~2) is in the best interests of the health, safety and general welfare of COUNTY, its residents and the public; (~~iii~~3) is entered into pursuant to and constitutes a present exercise of the police power by COUNTY; and (~~iv~~4) is entered into pursuant to and in compliance with the requirements of Section 65867 of the Development Agreement Legislation and COUNTY Resolution No. 02-066; and the COUNTY Board of Supervisors has adopted an ordinance authorizing the execution of this Agreement.

I. COUNTY desires to be assured that if the Property is annexed to, or included within the boundaries of, another Local Agency that the work to complete OWNER's Obligations will continue expeditiously and efficiently and that the transfer of authority to such Local Agency will be provided for as contemplated by the Development Agreement Legislation and OWNER desires to be assured that thereupon this Agreement will continue in full force and effect to the extent permitted by law.

J. Based on the foregoing, OWNER and COUNTY desire to enter into this Agreement.

AGREEMENT

NOW, THEREFORE, for and in consideration of the foregoing recitals of fact, the mutual covenants contained herein and other consideration, the value and adequacy of which are hereby acknowledged, the parties agree as follows:

1. SECTIONS; DEFINITIONS AND EXHIBITS.

1.1 Sections and Paragraphs. Any reference in this Agreement to a "Section" is a reference to the indicated numbered section or sub-section of this Agreement and a reference to a "Paragraph" is a reference to the indicated paragraph of a Section.

1.2 Definitions. The following terms when used in this Agreement shall be defined as follows:

1.2.1 "Affordable Housing" means residential dwelling units available for rent to qualifying tenants in strict accordance with the Housing and Urban Development (HUD) criteria for a moderate income rental unit. HUD Moderate Income rental rates and HUD qualifying tenant income will be adhered to.

1.2.2 "Annual Monitoring Review" or "Annual Review" means the annual review required pursuant to Section 5 herein below.

1.2.3 "Build-out Phasing Plan" means an advisory, non-binding plan to be prepared by OWNER pursuant to Section 5 hereinbelow showing the intended schedule for the completion of the Development of the Property in accordance with the Development Plan and this Agreement, together with such other information regarding the anticipated Development as shall be reasonably requested by COUNTY.

1.2.4 "Building and Improvement Standards" means Regulations of COUNTY which are of general application which establish regulations and standards for the building, construction and installation of structures and associated improvements such as and including, without limitation, COUNTY's building, plumbing, mechanical, grading, swimming pool, sign and fire codes.

1.2.5 "CFD" means a community facilities district formed pursuant to the Mello-Roos Community Facilities Act of 1982 (Government Code Section 53311 et seq. as amended).

1.2.6 "COUNTY" means the County of Orange, a political subdivision of the State of California.

1.2.7 "County" means the geographical area within the boundaries of COUNTY.

1.2.8 "COUNTY Development Agreement Resolution" means Resolution No. 02-066 adopted by the Board of Supervisors of COUNTY on March 19, 2002 establishing a procedure for the consideration and approval of development agreements pursuant to the Development Agreement Legislation.

1.2.9 "Development" means the improvement of the Property for purposes of effecting the structures, improvements and facilities comprising the Project, including, without limitation: remediation of contaminated soils on and redevelopment of, a portion of the Property used, operated and maintained as an oil field; plugging and abandonment of certain oil wells and oil production facilities; improvement of and continued Oil Operations and Servicing within the Property; demolition of certain existing structures; restoration of Open Space Areas; grading; construction of infrastructure and Public Facilities related to the Project (whether located within or outside the Property); the construction of structures and buildings; and the installation of landscaping; but not including the maintenance , repair , reconstruction or redevelopment of any structures, improvements or facilities after the initial construction completion thereof..

1.2.10 "Development Agreement Legislation" means Sections 65864 through 65869.5 of the California Government Code as it exists on the Effective Date.

1.2.11 "Development Approval(s)" means site specific plans, maps, permits and other entitlements to use of every kind and nature approved or granted by COUNTY in connection with the Development of the Property, including but not limited to: the Tonner Hills Development Plan, feature plans, area plans and site plans, tentative and final subdivision tract maps, vesting tentative maps, conditional and special use permits and grading, building and other similar permits.

1.2.12 "Development Exactions" means the requirements of COUNTY in connection with or pursuant to any Land Use Ordinance or Development Approval for the dedication of land or property, the payment of fees or money or the construction or improvement of public facilities in order to lessen, offset, mitigate or compensate for the adverse impacts of the Project on environmental or other public concerns or interests or for the improvement, construction or acquisition of any public infrastructure, facilities or property. The term shall not include assessments and taxes unless exacted as a condition of development under a Development Approval-.

1.2.12 "Development Plan" or "Plan" means the Tonner Hills Planned Community District Regulations ~~District/Specific~~ and Area Plan ~~]~~ No. _____, and regulations with respect thereto adopted by COUNTY Board of Supervisors on _____ by Ordinance _____ as amended to the Effective Date.

1.2.13 "Economic Expectations" means the reasonable, investment based economic expectations with respect to the completion of the Project in accordance with the Governing Policies taking into consideration technical, financing, market and other factors.

1.2.14 "Effective Date" means the date first set forth hereinabove.

1.2.15 "Existing Development Approvals" means those certain Development Approvals in effect on the Effective Date with respect to the Property, including, without limitation, the "Existing Development Approvals" which are listed on Exhibit B.

1.2.16 "Existing Land Use Ordinances" means those certain Land Use Ordinances in effect on the Effective Date.

1.2.17 "Existing Land Use Regulations" means those certain Land Use Regulations in effect on the Effective Date.

1.2.18 "Existing Regulations" means the Regulations in effect on the Effective Date."

1.2.19 "Financing District" or "District" means a community facilities district formed pursuant to the Mello-Roos Community Facilities District Act of 1982 (California Government Code Sections 53311 et seq., as amended), an assessment district formed pursuant to the Improvement Act of 1911 (California Streets & Highways Code Sections 5000 et seq., as amended), an assessment district formed pursuant to; the Municipal Improvement Act of 1913 (California Streets & Highways Code Sections 10000 et seq., as amended), an assessment district formed pursuant to the Landscaping and Lighting Act of 1972 (California Streets and Highways Code Sections 22500 et seq., as amended), or any other similar special district or assessment district authorized pursuant to State law for purposes of financing the cost of public improvements, Public Facilities, services and/or Public Facilities fees within a distinct geographic area of the COUNTY.

1.2.20 "General Plan" means the General Plan of COUNTY.

1.2.21 "General Plan Review" means the review of the General Plan conducted by COUNTY referred to in Section 5.2.

1.2.23 "Governing Policies" means (~~i~~a) the policies specified in Section 4.1; and (~~ii~~b) Existing Land Use Ordinances but not including Existing Development Approvals.

1.2.24 "Land Use Ordinances" means the ordinances adopted by the Board of Supervisors of COUNTY which govern the permitted uses of land, the density and intensity of use, and the design, improvement, and construction standards and specifications applicable to the Development of Property, including, but not limited to: the General Plan, the Development Plan, specific plans, zoning ordinances, planned community district ordinances, development moratoria and growth management and phased development programs, ordinances establishing Development Exactions, subdivision and park codes and Building and Improvement Standards.

1.2.25 "Land Use Regulations" means Regulations of COUNTY governing the permitted uses of land, density and intensity of use and the design, improvement, and construction standards and specifications applicable to the Development of the Property, including, but not limited to, mitigation measures required in order to lessen or compensate for the adverse impacts of the Project on the environment and other public interests and concerns. Land Use Regulations include, but are not limited to, Land Use Ordinances, Development Approvals and Development Exactions. The term Land Use Regulations does not include, however, Regulations relating to the conduct of business, professions and occupations generally; taxes and assessments other than Development Exactions; Regulations for the control and abatement of nuisances; encroachment and other permits and the conveyances of rights and interests which provide for the use of or entry upon public property; and, any exercise of the power of eminent domain.

1.2.26 "MPAH" means the Orange County Master Plan of Arterial Highways, as prepared and maintained by the Orange County Transportation Authority (the MPAH), which designates routes for collector, secondary, primary, major and principal arterial highways, smart streets and transportation corridors within the County.

1.2.27 ""Mortgage"" means a mortgage, deed of trust or sale and leaseback arrangement or other transaction in which the Property, or a portion thereof or an interest therein, is pledged as security, contracted for in good faith and for fair value.

1..2.27 "Mortgagee" means the holder of the beneficial interest under a Mortgage, or the owner of the Property, or interest therein, under a Mortgage.

1.2.28 Ordinance Number 3570 means Section 7-9-703 and 7-9-704 of the Codified Ordinances of the County of Orange, as enacted by Ordinance 3570 as in effect on the Effective Date.

1.2.29 "Oil Operations and Servicing" means implementation, operations, servicing and all other activities associated with Owner's present and future (i) oil, gas and injector wells and (ii) infrastructure, buildings, pipelines, transmission lines and all facilities associated with the foregoing, together with the right of ingress and egress to, from, under and across the Property, in a manner that does not materially interfere with the mitigation requirements of the Development Approvals. Items (i) and (ii) are collectively referred to herein as "oil wells and production facilities."

1.2.30 "Open Space Areas" means those areas shown in the Development Plan as open space, excluding therefrom all oil wells and related facilities shown on Exhibit E-3 ("Open Space Retained Wells and Facilities").

1.2.31 "OWNER" means Nuevo Energy Company, a Delaware Ceorporation

1.2.32 OWNER 's Obligations" means the obligations of OWNER to pay the sums, build and construct the improvements, dedicate the lands and improvements and undertake and perform the other actions described in Section 3 and Exhibit D.

1.2.33 "Project" means the development project contemplated by the Development Plan with respect to the Property, including but not limited to on-site and off-site improvements, as such development project is further defined, enhanced or modified pursuant to the provisions of this Agreement.

~~1.2.34~~1.2.34 "Property" means those certain lands as to which OWNER had a legal interest on the Effective Date, as described in Exhibit A.

~~1.2.35~~1.2.35 "Public Facilities~~"~~" means those certain public lands and/or facilities to be improved, constructed and dedicated or conveyed to the ~~public~~COUNTY public pursuant to Section 3.1, as described in Exhibit ~~DC~~ D.

~~1.2.38~~1.2.365 "Regulations" means ~~the Land Use Ordinances, Land Use Regulations and all other~~ laws, statutes, ordinances, and codes (including the Building and Improvement Standards, Land Use Ordinances, and Land use Regulations), resolutions, rules, regulations and orders; approvals, denials and conditional approvals in connection with tentative, vesting tentative and final subdivision maps, parcel maps, conditional and special use permits and other permits of every kind and character; programs; and official policies and actions of COUNTY; together with amendments to all of the foregoing.

~~1.2.39~~1.2.376 "Reservations of Authority" means the rights and authority excepted from the assurances and rights provided to OWNER in Section 4.2 and reserved to COUNTY therein and in Section 4.3.

~~1.2.40~~1.2.37 "Traffic-Related Development Exactions" means any Development Exactions to provide for rights-of-way, facilities, or improvements for the road and motor vehicular traffic system within the County, including, but not limited to, the Property,

or for any facilities, equipment or physical improvements (e.g. the purchase of buses or the installation of a light rail system) which are a substitute therefor or are to serve the same function as an increase in the capacity of, or a reduction in traffic on, the Regional Road Network or said road and motor vehicular traffic system

1.3 Exhibits. The reference to a specified "Exhibit" in this Agreement is a reference to a certain one of the exhibits listed below, as determined by the accompanying letter designation, which exhibits are attached hereto and by this reference made a part hereof.

Exhibit Designation	Description
A	Description of Property
B	Existing Development Approvals
~~D~~C	Memorandum of Understanding between COUNTY, OWNER, and the City of Brea, dated October , 2002. ~~OWNER's Obligations; Public Benefits~~
~~E~~D	~~Project Phasing Plan~~ OWNER's Obligations: Public Benefits
~~E~~E	~~Easement Agreement and Depiction (location of certain oil wells and Open Space Retained Wells and Facilities)~~Project Phasing Plan
~~F~~F	~~Existing Regulations~~Oil Operations and Services Easement Agreement and Depiction

Particular Conditions Contained in General Plan, Development Plan and Existing Development Approvals Which Are Anticipated to be Satisfied in Whole or Part Upon the Specified Performance.

2. MUTUAL BENEFITS AND ASSURANCES.

2.1 Purposes of Agreement. This Agreement is entered into for the purpose of carrying out the Development Plan for the Project in a manner that will ensure certain anticipated benefits to both COUNTY (including, without limitation, the existing and future residents and populations of COUNTY) and OWNER, as described in the RECITALS, ~~in~~ Exhibit ~~D~~C D, and as follows:

(i) To provide and assure to COUNTY the participation of OWNER in the accelerated, coordinated and more economic construction, funding and dedication to the public, as provided in Section 3, of certain other public facilities and benefits, and to provide for the anticipated levels of residents and populations of the Property, the Foothill Area, the County and adjacent areas, all as provided for in the General Plan, as set forth in detail in Exhibit D;

(ii) To provide to OWNER assurances regarding the Development Approvals, Development Exactions, Development Plan, Existing Development Approvals, Existing Land Use Ordinances, Existing Land Use Regulations, Existing Regulations, Governing Policies, Land Use Ordinances, Land Use Regulations and Regulations that will be applicable to the Development of the Property, including but not limited to those relating to timing, density and intensity of Development and Development Exactions, that will justify the undertakings and commitments of OWNER described above and the investment in major on-site and off-site infrastructure for the Project and of a size which is necessary to service the existing and anticipated residents and populations of the Property and adjacent areas. Without limiting the generality of the foregoing, this Agreement provides for the completion of public facilities and improvements: (A) prior to the time that they would be required legally of OWNER under Existing Land Use Regulations or otherwise required in connection with the phasing of the Project; and (B) of a size that would be justified only by the magnitude of the Project provided for by the Development Plan.

2.2 Undertakings and Assurances Contemplated and Promoted by Development Agreement Legislation. The mutual undertakings and assurances described above and provided for in this Agreement are for the benefit of COUNTY and OWNER and promote the comprehensive planning, private and public cooperation and participation in the provision of public facilities, and the effective and efficient development of infra-structure and facilities, supporting development which was contemplated and promoted by the Development Agreement Legislation.

2.3 Bargained For; Reliance by Parties. The assurances provided to OWNER in Section 4 are provided pursuant to and as contemplated by the Development Agreement Legislation, bargained for and in consideration for the undertakings of OWNER set forth in Section 3 of this Agreement and are intended by COUNTY to be and have been relied upon by OWNER to its detriment in undertaking the obligations and covenanting as provided in Section 3

hereinbelow and in this Agreement generally and in expending monies and making improvements pursuant to this Agreement with respect to the public facilities and the Project.

3. OWNER'S OBLIGATIONS; AND PROVISION OF PUBLIC BENEFITS.

3.1 In General.

a. Public Benefits. It is acknowledged that a primary purpose of this Agreement is to provide for the accelerated and coordinated completion of Public Facilities and the other public benefits described in Exhibit ~~D~~D. Accordingly, OWNER shall promptly (to the extent that a time for performance is specified hereunder) and fully perform OWNER's Obligations as set forth in and subject to the terms and conditions of Exhibit ~~D~~ D and this Agreement, including but not limited to the undertakings in connection with ~~the FCPP Program,~~ the construction and dedication or conveyance of the Public Facilities.

b. Existing Conditions and Undertakings. OWNER shall continue to be obligated to, and shall, perform all of the duties and obligations provided for or required by any provisions of the existing General Plan, the Development Plan and the Existing Development Approvals in connection with the Development of the Property.

3.2 Community Facilities District.

At the written request ("Request") of OWNER, COUNTY will use its best efforts to form a CFD/Financing Districts in the form and type specified in the Request, which will include the Property, or portion thereof, within its/their boundaries for the purpose of funding the planning, design and construction of all or a portion of and off-site infrastructure and facilities described as Public Facilities on Exhibit C, and will cause the Districts to issue, from time to time, bonds to provide sufficient funds to construct and/or to acquire from OWNER the Public Facilities (including, in addition, all costs of forming and administering the district and issuing and selling such bonds).

b. No Obligation to Form District. Notwithstanding the foregoing, it is acknowledged by the parties that nothing contained in this Agreement shall be construed as requiring COUNTY or the COUNTY Board of Supervisors to form a CFD or cause a CFD to issue bonds. In the event that OWNER fails to terminate this Agreement or provide the above-mentioned assurances within the time periods specified above, COUNTY may, at its option, terminate this Agreement by notice in writing to OWNER and recordation of said notice in the official records of COUNTY.

3.3 Dedication, Construction and Conveyance of Public Facilities.

a. In General. The Public Facilities to be dedicated (in the case of lands) and constructed by OWNER and dedicated or conveyed to COUNTY as described in Exhibit ~~D~~C, shall be completed in accordance with the provisions of Exhibit ~~D~~CD and designs, specifications and standards promulgated by COUNTY in accordance with ~~current~~Existing Regulations, and dedicated and conveyed to COUNTY in fee, free of all liens and encumbrances of every, kind and nature except as expressly set forth in Exhibit D~~D~~C or agreed in writing by COUNTY~~.~~. All such dedications shall be accomplished in a manner meeting the approval of the COUNTY.

OWNER and COUNTY shall expeditiously enter into agreements ("Implementation Agreements"), and in no event, later than one (1) year after the Effective Date, each in a form customarily utilized by COUNTY, with the specific terms agreed upon by the parties, providing for the construction and completion of the Public Facilities~~,~~ and their conveyance to COUNTY in accordance with this Agreement.

b. Public Facilities; Subdivision Requirements. With respect to any such Public Facilities as to which only a preliminary phase is required to be completed under this Agreement as provided in Exhibit D~~D~~C, such Public Facilities shall be completed in connection with the Development of Property as required by the Existing Land Use Regulations.

3.4 Relationship of Parties. In performing OWNER's obligations, OWNER is acting under this Agreement as an independent contractor and is not~~.~~ acting as the agent or employee of COUNTY nor shall anything in this Agreement be construed as creating between OWNER and COUNTY a partnership or joint venture for any purpose.

3.5 Conformity with Funding Mechanisms. Notwithstanding anything in this Agreement to the contrary:

a. ~~no~~No reimbursement or credit provisions shall be implemented in any manner which conflicts with the provisions governing the formation, funding and operation of existing or future applicable CFDs, fee programs or other mechanisms implemented by COUNTY to obtain funds for improvement and/or acquisition of the Public Facilities

b. Under no circumstances shall OWNER be entitled to any reimbursement with respect to Public Facilities as to which OWNER has ~~theretofore~~previously been reimbursed by COUNTY, other landowners or ~~a CFD~~anotherCFD or Financing District; and

c. ~~whenever~~Whenever in this Agreement reimbursement for the ~~cost or~~ cost or value of any Public Facility is provided for, the amount thereof shall be reduced by and to the extent the OWNER has theretofore received any reimbursement for such Public Facility.

3.6 Public Works. If OWNER is required by this Agreement to construct any ~~public works facilities~~Public Facilities which will be dedicated to COUNTY or any other public agency upon completion, and if required by applicable laws to do so, OWNER shall perform such work in the same manner and subject to the same requirements as would be applicable to COUNTY or such other public agency should it have undertaken such construction.

3.7. Provision of Rights and Interests by COUNTY. In any instance where OWNER is required to construct any Public Facilities on lands not owned by OWNER, as a condition precedent to the performance of such obligation, COUNTY shall provide or cause to be provided the real property rights and interests necessary for the construction of such Public Facilities. OWNER shall have no obligation to pay for such rights or or interests excdpt that OWNER shall pay all reasonable administrative costs of COUNTY (including, but not limited to the administrative costs of condemnation) related to the acquisition and transfer of said rights and interests.

a. Public Financing of Other Public Facilities. Upon the request of OWNER, the parties shall cooperate in exploring the use of CFDs, special assessment districts and other similar Project-related public procedures and institutions for the financing of the construction, improvement or acquisition of public infrastructure, facilities, lands and improvements to serve the Project and its residents, whether located within or outside the Property. It is acknowledged that nothing contained in this Agreement shall be construed as requiring COUNTY or the COUNTY Board of Supervisors to form such a district or to issue or sell bonds.

b. As set forth in Exhibit D hereto, OWNER has agreed to construct or pay fees to COUNTY to partially fund the construction of fire, library and sheriff facilities. In certain instances the obligations or OWNER in providing such facilities are in excess of OWNER's pro rata share (and may include, in effect, amounts reflecting benefits to existing development or development anticipated in the distant future) of the costs of such facilities as determined pursuant to COUNTY Ordinance Number 3570.

(A.) It is acknowledged by the parties that the Development of the Property in accordance with the Governing Policies and the Existing Land Use Regulations will provide for orderly growth in accordance with the policies and goals set forth in the COUNTY General Plan, as implemented through its Growth Management Program. Subject to the provisions of Paragraphs (B.) and (C.) below, OWNER shall participate, on a pro rata basis in the manner as provided for in COUNTY Ordinance Number 3570, in any future fee programs which are not Traffic-Related Development Exactions and which are adopted by the COUNTY Board of Supervisors in accordance with the Growth Management Program which include the Project as a portion of the respective area of benefit.

(B.) Notwithstanding the provisions of Paragraph (A) above, COUNTY acknowledges that OWNER has dedicated, or agreed to dedicate pursuant to this Agreement, to COUNTY, lands to be used for open space and park purposes in an amount in excess of that required to satisfy COUNTY's current and anticipated standards for open space; provided, however, that OWNER shall be subject to any Development Exactions imposed as a condition to or pursuant to, the granting of future Development Approvals in accordance with the Governing Policies for local park and local open space purposes. [Check adequacy of existing flood control provisions].

(C.) As set forth in Exhibit D hereto, OWNER has agreed to construct or pay fees to COUNTY to partially fund the construction of fire, library and sheriff facilities. In certain instances the obligations or OWNER in providing such facilities are in excess of OWNER's pro rata share (and may include, in effect, amounts reflecting benefits to existing development or development anticipated in the distant future) of the costs of such facilities as determined pursuant to COUNTY Ordinance Number 3570.

(D.) In accordance with Paragraph 3.8b(l.)(A.), COUNTY may require additional Development Exactions to provide for further fire, library and sheriff facilities to service the future residents and populations of the Property; provided, however, that such further Development Exactions with respect to fire, library and sheriff facilities and services with respect to the Property shall not exceed in the aggregate more than ten percent (10%) of OWNER's pro rata share, as determined in a manner consistent with COUNTY Ordinance Number 3570 and as set forth in Exhibit D, of the amounts specified in Exhibit D for each such facility.

(E.) Notwithstanding the limitation as set forth in Paragraph (C.), if as a result of an initiative COUNTY is compelled by a court of competent jurisdiction to construct additional fire, library, sheriff and park facilities within the Project for the purpose of benefiting the Project, then OWNER shall be subject to any fee program adopted pursuant to Paragraph (A.) for the purpose of funding such additional facility without regard to the limitations set forth in Paragraph (C.). Nothing in this Paragraph shall prohibit OWNER from appealing any such determination by a court of competent jurisdiction.

(F.) While the parties acknowledge the appropriateness of the Growth Management Program as a procedure for monitoring and providing for future residents and populations, OWNER is concerned that COUNTY could attempt to decrease the rights and interests of OWNER provided for in Section 4 under the guise of providing increased facilities for future residents or the public. Accordingly, in adopting any such program which is in conflict with the Governing Policies, COUNTY shall reasonably find and determine that the future needs of the residents or the public require such facilities.

4. REGULATIONS GOVERNING THE DEVELOPMENT OF THE PROPERTY.

4.1 Governing Policies. Except as otherwise specified in this Agreement and the Development Approvals, the rules, regulations and official policies governing the permitted uses of the Property, the density and intensity of use of the Property, the provisions for reservation or dedication of land for public purposes and the design, improvement and construction standards and specifications applicable to Development of the Property are the Existing Land Use Ordinances, including the General Plan and Development Plan.

4.2 Notwithstanding the generality of the foregoing and in addition to other deviations from the Existing Regulations specified in this Agreement and the Development Approvals, in recognition of various mitigation measures specified in the Development Approvals, the following additional Regulations shall apply: i) Habitable structures may be constructed within a minimum distance of one hundred fifty (150) feet from operational oil, gas, and injector wells (collectively, "oil wells"), or at a distance less than 100 feet when approved by Orange County Fire Authority in accordance with the Orange County Fire Authority Guideline C-02, "Requirements for Residences less than 100 feet from an Oil Well. (ii) habitable structures may be constructed within one hundred (100) feet of other operational oil wells, and (iii) the Oil Operations and Servicing may continue as permitted uses under the Development Plan–The existing oil wells and production facilities located above the surface of the Property are shown on Exhibit E. Open Space retained oil wells and production facilities ("Open Space Retained Wells and Facilities") are also shown on Exhibit E. COUNTY has concurrently herewith, executed an Easement Agreement in the form of Exhibit E to provide the ingress, egress and access described herein over the Open Space Areas to the extent dedicated to COUNTY, from time to time, as provided herein.

a. Permitted Uses. The uses permitted hereunder in accordance with the Existing Land Use Ordinances, are as set forth in the Development Plan

b. Number of Units, Density and Intensity. The total number, density and intensity of units permitted hereunder in accordance with the Existing Land Use Ordinances , are as set forth in the Development Plan as set forth in Exhibit .

c. Maximum Height and Size of Buildings. The maximum height and size of the buildings within the Property permitted hereunder in accordance with the Existing Land Use Ordinances are as set forth in the Development Plan which is set forth in Exhibit .

d. Reservations and Dedication of Lands for Public Purposes and Undertaking to Participate in Completion of Regional Road Network and Major Public Facilities. As provided in Section 3, OWNER has undertaken to dedicate certain lands and construct and convey to the public the Public Facilities and to provide certain public benefits. In addition, the Existing Land Use Ordinances and Existing Development Approvals require OWNER to provide and undertake certain other public benefits and facilities as described in Section 3.3

.e. No Density Increases. COUNTY has expressed interest in ensuring the provision of regional and community level infrastructure, and is pursuing the use of development agreements as a method whereby a level of assurance can be achieved concerning the service demands within planned communities so that adequate long-range plans for needed infrastructure can be developed and implemented. COUNTY and OWNER acknowledge that the establishment of land use density and dwelling unit maximums as set forth in Section 4.1b. are necessary for facility planning efforts. OWNER intends not to apply for residential increases for the Project, and COUNTY intends not to revise the maximum density and dwelling unit totals as set forth in Section 4.1b. during the term of this Agreement, thus ensuring that appropriate facilities and services are planned and implemented. Further, OWNER intends not to apply for any intensification of non-residential uses within the Property which would be inconsistent with or would unduly burden existing and planned public facilities and services. Notwithstanding the foregoing, density may be allocated by OWNER in accordance with Section 6.1b.

f. Timing of Development. The parties acknowledge that the most efficient and economic Development of the Property depends upon numerous factors such as market orientation and demand, interest rates, competition and similar factors and that, generally it will be most economically beneficial to the ultimate purchasers to have the rate of Development determined by OWNER. Accordingly, the timing, sequencing and phasing of Development shall be as determined by OWNER in its sole subjective business judgment and discretion except that the rate of Development shall not exceed that as set forth in Exhibit E and shall be in accord with the Existing Land Use Regulations subject to the Reservations of Authority set forth in Section 4.3 and the other terms and conditions of this Agreement.

g. Moratoria; Phasing of Development. The parties acknowledge and agree that the Governing Policies contemplate and provide for the phasing of the Development of the Property, and that except as expressly provided in this Section 4, no initiative, referendum, moratorium, ordinance, resolution, or other Land Use Regulation or limitation on the conditioning, rate, timing or sequencing of the Development of the Property or any portion thereof shall apply to or govern the Development of the Property during the term hereof whether affecting parcel or subdivision maps (whether tentative, vesting tentative, or final), building or site development plans or permits, occupancy permits, occupancy certificates or other entitlements to use to be approved, issued or granted by COUNTY. In the event of any such subsequent action, OWNER shall continue to be entitled to apply for and receive Development

Approvals in accordance with the Existing Land Use Regulations, subject only to the exercise of the Reservations of Authority set forth in Section 4.3 and the terms of this Agreement

h. Development Exactions. In addition to and not in limitation of the foregoing, or the provisions of Section 4.2 except and subject to the Reservatons of Authority, COUNTY shall not levy or require any further Development Exactions except those provided for in Section 3 or which are provided for or required by or pursuant to the Existing Land Use Regulations -(including, but not limited to the existing General Plan, the Development Plan, and Existing Development Approvals) which include, but are not limited to, Development Exactions which may be required by COUNTY in accordance with its current subdivision standards and policies (including, without limitation, as to the amount, time and method of payment);

i. Dedications. At the appropriate points in the Development of the Project and in accordance with Exhibit E, OWNER shall irrevocably offer for dedication or reserve for acquisition by COUNTY or its successor, assignee, or designee the Public Facilities, including streets, rights-of-way, parkland and other areas as more fully set forth in Exhibit D.

j. Permits and Approvals - Cooperation. COUNTY shall accept and timely process, in the normal and legal manner for processing such matters, all applications for future Development Approvals contemplated by, required under or necessary to effect the intent of this Agreement. Provided tentative tract map, parcel map and precise development plan and other applications are consistent with the Development Plan, COUNTY shall take final action on such applications within the time frames set forth in the Permit Streamlining Act, California Government Code Sections 65920 et seq., unless an extension is agreed to by OWNER.

k. Further Mitigation. In connection with the issuance of any future Development Approvals which are subject to review under CEQA, the COUNTY shall not impose any environmental alternatives or mitigation measures in addition to those referenced in the Development Approvals unless determined to be necessary or appropriate in the course of CEQA review. The Mitigation Measures and Mitigation Monitoring Plan set forth in EIR constitute additional benefits anticipated under this Agreement. Those Mitigation Measures will be enforced and monitored in the manner set forth in EIR---

l. Water supply for the project has been the subject of the analysis required by

4.2 Regulation of Development.

a. In General. Notwithstanding any future action of COUNTY, whether by ordinance, resolution, initiative or otherwise, during the term of this Agreement, the rules, regulations and official policies applicable to and governing the Development of the

Property shall be the Existing Land Use Regulations as modified by the Governing Policies together with amendments and additions adopted pursuant to Section 4.3a.b.

b. Vested Rights. In developing the Property, OWNER is provided and assured the vested right to require that the Land Use Regulations of COUNTY applicable to and governing the Development of the Property during the term hereof shall be as provided in this Section 4.2.

4.3 Limitations, Reservations and Exceptions. Notwithstanding anything to the contrary set forth in Section 4.2 hereinabove, in addition to the Existing Land Use Regulations, only the following Land Use Regulations adopted by COUNTY hereafter shall apply to and govern the Development of the Property ("Reservations of Authority"):

a. Future Regulations. Future COUNTY Land Use Regulations which are not in conflict with the Governing Policies or which are in conflict with the Governing Policies and the application of which to the Development of the Property has been consented to in writing by OWNER;

b. State and Federal Laws and Regulations. Existing and future State and federal laws and regulations, together with any COUNTY Land Use Regulations, programs and actions, or inaction, which are reasonably (taking into consideration, among other things, the assurances provided to OWNER hereunder) adopted or undertaken by COUNTY in order to comply with State and federal laws and regulations; provided, that in the event that State or federal laws and regulations prevent or preclude compliance with one or more provisions of this Agreement, such provisions shall be modified or suspended as may be necessary to comply with such State and federal laws and regulations, in which event this Agreement shall remain in full force and effect to the extent that it is not inconsistent with such laws and regulations and that performance of the remaining provisions would not be inconsistent with the intent and purposes of this Agreement;

c. Public Health and Safety. Land Use Regulations which are adopted by COUNTY, which may be in conflict with the Governing Policies which are reasonably necessary in order to protect the public health and safety;

d. Building and Improvement Standards. Present and future Building and Improvement Standards, except that (taking into consideration the assurances to OWNER in this Section 4) any future amendment thereto which significantly reduces the amount of land within the Property which can be utilized for structures and improvements or significantly increases the amount of open space within the Project under the Development Plan shall not be considered a provision of any of the Building and Improvement Standards included within the

exception provided by this Paragraph 4.3d. and shall not apply to and govern the Development of the Project unless it complies with another exception under this Section 4.3;

e. Processing Fees and Charges. Processing fees and charges of every kind and nature imposed or required by COUNTY under current or future Regulations covering the actual costs of COUNTY in (i) processing applications and requests for permits, approvals and other actions and (ii) monitoring compliance with any permits issued or approvals granted or the performance of any conditions with respect thereto or any performance required of OWNER hereunder; and,

f. Full Extent of Law. The parties acknowledge and agree that COUNTY is restricted in its authority to limit its police power by contract and that the foregoing limitations, reservations and exceptions are intended to reserve to COUNTY all of its police power which cannot be so limited. Notwithstanding the foregoing, this Agreement shall be construed, contrary to its stated terms if necessary, to reserve to COUNTY all such power and authority which cannot be restricted by contract.

4.4 Further Assurances to OWNER Regarding Exercise of Reservations of Authority.

a. Adoption of General Plan and Development Plan. In preparing and adopting the General Plan and the Development Plan and in granting the Existing Development Approvals, COUNTY considered the health, safety and welfare of the existing and future residents and populations of the County and prepared in this regard extensive environmental impact reports ("EIRs") (including EIRs dated _____, _____ and _____) as well as extensive traffic impact reports (for example, traffic reports prepared _____ dated _____ and _____ dated _____ and other studies. Without limiting the generality of the foregoing, in preparing and adopting the General Plan and Development Plan,, the COUNTY Board of Supervisors carefully considered and determined the projected needs (taking into consideration the planned development of the Project, adjacent areas and the County) for sheriff, fire, library, paramedic and similar facilities and services within the Project, ~~the~~ adjacent areas and the County, and the projected needs within the Project and such areas for flood control measures, the general capacity of the Property, the needs of the residents for open space and parks, the appropriateness of the number of units to be developed and the density and intensity of the development comprising the Project. The parties acknowledge that the allocation of Development within the Property as part of future Development Approvals is subject to various considerations pursuant to the Existing Land Use Regulations such as the location of particular wildlife populations, earthquake fault and other natural hazard zones, cultural resources and other site specific considerations. Further, the parties acknowledge that in certain instances, the development of the Property may be restricted and adversely affected and impacted by future Land Use Regulations adopted by COUNTY as provided in Section 4.3.

b. Assurances to OWNER. The parties further acknowledge that the public benefits to be provided by OWNER to COUNTY pursuant to this Agreement, including, without limitation, the participation by OWNER in the coordinated completion of the Public Facilities and the financing and construction thereof are in consideration for and reliance upon

assurances that the Property can be developed in accordance with the Existing Land Use Regulations (subject to the terms of this Agreement). Accordingly, while regognizing that the Development of the Property may be affected by the exercise of the Reservations of Authority and the requirement that OWNER participate in future public facilities, OWNER is concerned that normally the Courts extend to local agencies significant deference in the adoption of Land Use Regulations which might permit COUNTY to attempt to apply inconsistent Land Use Regulations in the future–under guise of the Reservations of Authority–or the COUNTY's authority to require OWNER's participation under Section 3.8b. Accordingly, OWNER desires assurances that COUNTY will not inequitably further restrict or limit the Development of the Property in conflict with the provisions of this Agreement.

c. Judicial Review.

(1) Burden of Proof. Based on the foregoing, in the event OWNER judicially challenges (including the procedure pursuant to Section 11.5) the application of a future Land Use Regulation as being in conflict with this Agreement or exceeding or violating COUNTY'S authority (as described herein), OWNER shall bear the burden of proof in establishing that such Land Use Regulation was applied in conflict with the Governing Policies. In the event that OWNER bears its burden of proof and establishes that such Land Use Regulation is in conflict with the Governing Policies, COUNTY shall thereafter bear the burden of proof in establishing that such Land Use Regulation was adopted pursuant to and in accordance with this Agreement.

(~~1~~2) Considerations. Considerations, among others, in determining whether any such future COUNTY Land Use Regulation was properly applied shall include:

(i) With respect to any future Land Use Regulations adopted by COUNTY pursuant to paragraphs 4.3c. (with respect to the protection of public health and safety) or 4.3b. (with respect to federal and state regulation), the extent to which such regulation substantially impairs the rights of OWNER hereunder and is (A) to be unreasonably borne only by OWNER and the Project (taking into consideration the obligations of OWNER under this Agreement) rather than being also borne by other lands and interests, or (B) unreasonable taking into consideration other reasonable and practicable alternatives; and

(ii) with respect to any future Land Use Regulations adopted pursuant to Paragraph 4.3~~b~~c. (with respect to the protection of public health and safety):

(A) Whether, ~~And~~and the extent to which, the concerns which are the subject of the proposed Land Use Regulation were considered and/or provided for in the adoption of the Existing Land Use Regulations or this Agreement; and

(B) The greater the severity of the adverse impact of the Land Use Regulation on the reasonable investment based Economic Expectations of OWNER (taking into consideration the extent of any mitigation of such impacts provided by COUNTY in connection with such Land Use Regulation, for example, by the transfer of development density), the greater the showing required of COUNTY that the concerns addressed

are legitimate and that such Land Use Regulation is reasonable taking into consideration such concerns.

The parties believe that the foregoing considerations are appropriate under the law and are not intended to, and shall not, limit the authority of COUNTY with respect to the police power which cannot be limited by contract. Further, said considerations shall be interpreted, supplemented and revised to reflect subsequent judicial determinations and State legislative enactments further defining the extent and nature of the authority of local agencies which must be reserved and cannot be limited by contracts such as this Agreement.

(3) Administrative Findings and Burden of Proof.

(a) COUNTY Findings and Determinations. As a condition precedent to adopting any Land Use Regulation or taking any action requiring the action or approval of the COUNTY Board of Supervisors which is in conflict with the Governing Policies, after providing OWNER with reasonable notice and an opportunity to be heard, COUNTY shall make specific findings and determinations as to the basis for applying such Land Use Regulation to the Development in accordance with Section 4.3 or Section 3.8b.

(b) OWNER's Burden of Proof. As a condition precedent to any claim by OWNER that a proposed Land Use Regulation does not comply with the Reservations of Authority or Section 3.8b. and, therefore, cannot be applied to and govern the Development of the Property (whether in a judicial proceeding or otherwise), OWNER shall raise the claim at the COUNTY Board of supervisors hearing (and may raise it earlier) at which the proposed Land Use Regulation is considered and shall present all information which, in its judgment, is relevant and upon which it intends to rely, or present in any judicial proceeding, including, but not limited to, information regarding OWNER's reasonable investment based Economic Expectations, and, in addition, shall provide at such time any further information regarding OWNER's reasonable investment based Economic Expectations reasonably requested by COUNTY. In the event that the proposed Land Use Regulation is of a kind that is not heard by or appealable to the COUNTY Board of Supervisors and provided that OWNER is given reasonable prior notice, as a condition precedent to any such claim, OWNER shall raise the claim and provide the above information as a protest to the agent or representative of COUNTY promulgating or applying the proposed Land Use Regulation

4.5 Regulation by other Public Agencies. It is acknowledged by the parties that other public agencies not within the control of COUNTY possess authority to regulate aspects of the Development of the Property separately from or jointly with COUNTY and this Agreement does not limit the authority of such other public agencies. For example, pursuant to Government Code Section 66477, in the event that an agency (for example, a community services district), provides park and recreational services or facilities, it shall be permitted by the parties, to participate jointly with COUNTY to determine the location of land to be dedicated or in lieu fees to be paid for local park purposes, provided that COUNTY shall exercise its authority subject to this Agreement.

5. PERIODIC REVIEWS

5.1 Annual Review. COUNTY and OWNER shall review the performance of this Agreement, and the Development of the Project, at least once every 12-month period from the Effective Date, in accordance with Government Code Section 65865.1. As part of such Annual Monitoring Review, within 30 days after each anniversary of this Agreement, OWNER shall deliver to COUNTY:

a. a then current Build-out Phasing Plan for the Project; and

b. all information reasonably requested by COUNTY (i) regarding OWNER's performance under this Agreement demonstrating that OWNER has complied in good faith with terms of this Agreement and (ii) as required by the Existing Land Use Ordinances.

If as a result of such periodic review, COUNTY finds and determines, on the basis of substantial evidence, that OWNER has not complied in good faith with any of the terms or conditions of this Agreement, COUNTY may terminate this Agreement as provided in Section 11.2

5.2 Five-Year General Plan Review. Every five years following the Effective Date, COUNTY intends to conduct a review of its General Plan including how the General Plan applies to the Project. OWNER shall cooperate with COUNTY in the conducting of this review and in developing mutually acceptable revisions to the General Plan and any revisions to the Development Plan pursuant thereto; provided, however, that neither COUNTY nor OWNER shall have any obligation to agree to such changes.

6. TRANSFERS AND ASSIGNMENTS.

6.1 Transfer and Assignments of Rights and Interests.

a. Rights and Interests Appurtenant. Except as provided in Section 6.3, the rights and interests conveyed and provided herein to OWNER benefit and are appurtenant to the Property. OWNER has the right to sell, assign and transfer any and all of its rights and interests and to delegate any and all of its duties and obligations hereunder; provided, however, that such rights and interests may not be transferred or assigned except in strict compliance with the following conditions precedent:

(i) Said rights and interests may be transferred or assigned only together with and as an incident of the transfer and assignment of the portions of the

Property to which they relate, including any transfer or assignment pursuant to any foreclosure of a Mortgage or a deed in lieu of such foreclosure; and

(ii) Concurrent with any such assignment or transfer or within five (5) business days thereafter, OWNER shall notify COUNTY in writing of such assignment or transfer, the portions of the Property to which the assignment or transfer is appurtenant, and the name and address (for purposes of notices hereunder) of the transferee or assignee, together with the corresponding number of dwelling units which are included within such transfer, and OWNER and the assignee or transferee shall notify COUNTY whether the assignee or transferee has assumed any of OWNER's Obligations under this Agreement and which of OWNER's obligations have been assumed; and.

(iii) Prior to or concurrent with such assignment or transfer, OWNER shall either make an offer of dedication to COUNTY of all rights-of-way necessary to complete the Regional Road Network Improvements through the portions of the Property being assigned or transferred in accordance with the provisions of Section 3.1 or provide COUNTY with the binding commitment and agreement of the proposed assignee or transferee, in a form reasonably acceptable to COUNTY, irrevocably committing said proposed assignee or transferee to offer to dedicate said rights-of-way to COUNTY in accordance with the provisions of Section 3.1 as soon as the appropriate legal descriptions are provided.

Any attempt to assign or transfer any right or interest in this Agreement except in strict compliance with this Section 6, shall be null and void and of no force and effect. Notwithstanding anything to the contrary in this Section or elsewhere in this Agreement, no such transfer, nor any portion of the Property transferred, shall include any oil, gas or other hydrocarbons, water or minerals, of any type, nor any rights, benefits or accoutrements relating thereto, nor any rights, benefits, accoutrements or obligations in respect of or in connection with, the Oil Operations and Servicing, unless specifically stated to the contrary and itemized individually, in the document or instrument of conveyance.

COUNTY shall have no duty or obligation of any kind or nature to maintain a record of such transfers or assignments of portions of the Property or numbers and allocations of units involved or to notify or advise prospective or actual assignees or transferees or others of such assignments or the resulting allocation of units with respect to the Property or under this Agreement.

b. Allocation of Density. It is acknowledged that the density of development provided by the Governing Policies may be distributed by OWNER disproportionately throughout the Property in accordance with and subject to the Existing Land Use Regulations. COUNTY shall not be obligated to the successors of OWNER to advise or

notify any such successor or any other person as to the density of development allowed under this Agreement or any of the Land Use Regulations with respect to any particular portion of the Property; provided, however, that COUNTY shall upon the request of OWNER enter into further agreements in a recordable form allocating to the various portions of the Property the then allowable density of units pursuant to the Governing Policies. Such an agreement may include provisions relating to the assumption of certain of OWNER's obligations hereunder and the allocation of the benefits and burdens of this Agreement, all as specifically provided in this Article 6. The reasonable costs and expenses of COUNTY in considering and responding to any such request shall be reimbursed to COUNTY by OWNER forthwith upon the request of COUNTY.

c. Subject to Terms of Agreement. Following any such assignment or transfer of any of the rights and interests of OWNER under this Agreement, the exercise, use and enjoyment thereof shall continue to be subject to the terms of this Agreement to the same extent as if the assignee or transferee were OWNER. Without limiting the generality of the foregoing,

(i) In order to claim or benefit from any right or interest hereunder or provision hereof (including but not limited to the rights of OWNER under Section 11), any subsequent assignee or transferee shall have no right, and shall be obligated not, to claim damages from or against COUNTY under Section 11;

(ii) The further assignment or transfer of any of the rights or interests under this Agreement shall be made only in accordance with and subject to the terms of this Section 6.1; and

(iii) The rights and interests assigned or transferred are subject to termination in accordance with this Agreement.

Notwithstanding the foregoing, the assignee or transferee of any of the rights and interests of OWNER shall take said rights and interests subject to this Agreement and shall perform the duties and obligations of OWNER.

d. Release of OWNER. Notwithstanding the assignment or transfer of portions or all of the Property, or rights or interests under this Agreement, OWNER shall continue to be obligated under this Agreement unless released or partially released by COUNTY with respect to OWNER's Obligations and the other duties and obligations of OWNER under this Agreement which release or partial release shall be provided by COUNTY upon the full satisfaction by OWNER of the following conditions:

(i) OWNER is not then in default under this Agreement;

(ii) OWNER has provided COUNTY with the written notice required under Paragraph 6.1.a.; and

(iii) such assignee or transferee has assumed such duties and obligations as to which OWNER is requesting to be released and has provided COUNTY with security and other assurances equivalent to those which were provided by OWNER assuring

COUNTY that OWNER's Obligations and the other duties and obligations of OWNER under this Agreement for which OWNER is being released will be fully and strictly performed as provided in this Agreement.

e. Effect of Noncompliance. From and after the assumption of obligations under this Agreement by a transferee pursuant to this Section, noncompliance by any such transferee with the terms and conditions of this Agreement assumed by such transferee shall entitle COUNTY to pursue any and all of its rights under this Agreement so assumed against such transferee; but, such noncompliance shall not be deemed a default or grounds for termination hereof with respect to, or constitute cause for COUNTY to initiate enforcement action against, other persons then owning or holding interests in the Property or any portion thereof and not themselves in default hereunder. Similarly, noncompliance by OWNER with respect to any terms and conditions of this Agreement not assumed by such transferee shall entitle COUNTY to pursue any and all of its rights under this Agreement retained by OWNER against OWNER, but, such noncompliance by OWNER shall not be deemed a default or grounds for termination hereof with respect to, or constitute cause for COUNTY to initiate enforcement action against, such transferee or other persons then owning or holding interest in the Property or any portion thereof and not themselves in default hereunder.

f. Rights of Successors and Assigns. Any and all successors, including without limitation, those successors acquiring their interests in the Property and this Agreement by merger, consolidation, stock sale, pledge, corporate reorganization or other conveyance by business arrangement, and assigns of OWNER shall have all of the same rights, benefits and obligations of OWNER under this Agreement, to the extent acquired as part of the Property and/or permitted in this Section.

6.2 Termination of Agreement With Respect to Individual Parcels Upon Sale to Public. Notwithstanding any provisions of this Agreement to the contrary, the burdens of this Agreement shall terminate as to any lot which has been finally subdivided and individually (and not in "bulk") leased (for a period of one year or more) or sold to the purchaser or user thereof and thereupon and without the execution or recordation of any further document or instrument such lot shall be released from and no longer be subject to or burdened by the provisions of this Agreement; provided, however, that the benefits of this Agreement shall continue to run as to any such lot until a building is constructed on such lot, or until the termination of this Agreement, if earlier, at which time this Agreement shall terminate as to such lot.

7. ANNEXATION AND INCORPORATION. Upon the incorporation or annexation of the Property in or to any city or other county (the "Local Agency"), such Local Agency, as contemplated by and provided in Section 65865.3 (a) of the Development Agreement Legislation (with respect to incorporation), shall succeed to the benefits and rights and be bound by the obligations and duties of COUNTY hereunder to the same extent as if the Local Agency were a signatory hereof, including but not limited to the obligation to issue necessary permits and approvals in accordance herewith; provided, however, and except that COUNTY shall continue to be a beneficiary with respect to the OWNER's Obligations under this Agreement and may enforce the provisions hereof with respect thereto. Notwithstanding the

foregoing: (i) upon any such annexation or incorporation, this Agreement shall not be terminated, amended, modified or cancelled with respect to OWNER's Obligations without the prior written approval and consent of COUNTY and any attempt to do so shall be null and void and of no force and effect; and (ii) if OWNER's rights pursuant to this Agreement are terminated or suspended as a result of such incorporation or annexation, OWNER's obligations shall be terminated or suspended, as applicable. The timing and process for annexation is set forth in the Pre Annexation between the parties hereto and the City of Brea and the Local Agency Formation Commission which is attached to this Agreement as Exhibit .

8. TERM OF AGREEMENT.

8.1 Stated Term. The term of this Agreement is intended to provide sufficient time for the full repayment of any bonds to be issued by any CFD or Financing District referred to in Section 3.2, or other debt obligations incurred in lieu of said bonds, for the purpose of financing the construction and acquisition of Public Facilities. Based on the foregoing, this Agreement shall become effective on the Effective Date and unless earlier terminated pursuant to the provisions of this Agreement shall continue in effect for twenty (20) consecutive years therefrom. In the event that the parties determine that a longer period is necessary to achieve the foregoing purpose, the term of this Agreement may be extended by the further written agreement of the parties in accordance with Section 9.

8.2 Rights and Duties Following Termination.

a. In General. Upon the termination of this Agreement, no party shall have any further right or obligation hereunder except with respect to any obligations required to have been performed prior to said termination or with respect to any default in the performance of the provisions of this Agreement which has occurred prior to said termination.

b. Survival of Terms. In the event that this Agreement is terminated for any reason other than the default of OWNER, the rights and duties of the parties shall be as set forth in Paragraph 8.2a., except as provided in this Paragraph 8.2b. as follows:

(i) Reimbursement. COUNTY acknowledges that in connection with certain fee programs, OWNER may have participated financially in excess of OWNER's Pro-rata Share in the cost of the Public Facilities, in which case COUNTY shall endeavor to cause other benefited, undeveloped lands and owners thereof to be identified, and COUNTY shall, to the extent feasible, attempt to require such other landowners to reimburse to OWNER, through COUNTY, that portion of such costs incurred by OWNER in excess of its Pro-Rata Share, as reasonably determined by COUNTY which has not been previously reimbursed by COUNTY or a District. OWNER acknowledges that COUNTY may be limited in the manner in which it may collect or require such reimbursement and that COUNTY may be unable to cause OWNER to be reimbursed for such costs.

(ii) Assurances for Completed Milestones. To the extent that certain OWNER's Obligations, (set forth in Exhibit ~~D~~C), have been fully performed to the extent required at such time, this Agreement shall continue in full force and effect during the remainder of the stated term of this Agreement set forth in Section 8.1 to assure OWNER that the Land

Use Regulations applicable and governing the Development of the Property during such time shall be as provided in Section 4 except that the assurances regarding the number of units permitted to be developed within the Property which are provided by the Governing Policies shall be reduced by the number of units authorized in each phase and shall not exceed the total number of units contemplated by this Agreement.

9. AMENDMENT. Subject to the provisions of Section 7 and Section 11, this Agreement may be amended or cancelled only by the mutual agreement of the parties in accordance with Government Code Section 65868, in a writing executed by the parties and recorded in the official records of COUNTY.

10. PROCESSING OF REQUESTS AND APPLICATIONS. COUNTY shall process any applications for action pursuant to this Agreement, or for permits or approvals for Development of the Property, under the procedures for the processing of applications for such applications which are then in effect; provided, however, as provided in Section 4, no subsequently adopted Regulation (including, without limitation, any moratorium or other phasing of development) shall be applicable to and shall delay the acceptance or processing of any such application except in strict accordance with the Existing Land Use Regulations or Land Use Regulations adopted by COUNTY pursuant to the Reservations of Authority. As provided above, the standards applied in approving or disapproving such applications shall be as set forth in the Existing Land Use Regulations, subject to the Reservations of Authority.

11. DEFAULT, REMEDIES AND ESTOPPEL CERTIFICATES. Unless canceled as provided herein, or modified or suspended pursuant to Government Code Section 65869.5 or terminated pursuant to this Section 11, this Agreement is enforceable according to its terms by either party hereto.

11.1 Remedies in General. It is acknowledged by the parties that COUNTY would not have entered into this Agreement if it were to be liable in damages under or with respect to this Agreement or the application thereof.

In general, each of the parties hereto may pursue any remedy at law or equity available for the breach of any provision of this Agreement; except that COUNTY shall not be liable in damages to OWNER, or to any assignee, transferee of OWNER or any other person, and OWNER covenants not to sue for or claim any damages, for:

(A.) any breach of, or which arises out of, this Agreement;

(B.) the taking, impairment or restriction of any right or interest conveyed or provided hereunder or pursuant hereto; or

(C.) arising out of or connected with any dispute, controversy or issue regarding the application or interpretation or effect of the provisions of this Agreement;

provided, however, that the foregoing does not limit the liability of COUNTY, if any, for damages which:

(A.) are not for a breach of this Agreement or which do not arise under this Agreement;

(B.) are not with respect to any right or interest conveyed or provided hereunder or pursuant hereto, and

(C.) do not arise out of or which are not connected with any dispute, controversy or issue regarding the application, interpretation or effect of the provisions of this Agreement to, on or the application of, any Regulation of COUNTY.

Without limiting the generality of the foregoing, and as an example, in the event that COUNTY refuses to issue building permits under and in accordance with a Vesting Tentative Map issued by COUNTY, OWNER would be entitled to whatever remedies at law or in equity which are available, including, if available under law, the right to monetary damages.

11.2 Termination of Agreement for Default by OWNER.

COUNTY in its discretion may terminate this Agreement for any failure of OWNER to perform any material duty or obligation of OWNER under, or to comply in good faith with the terms and conditions of this Agreement (hereinafter referred to as "default"); providedhowever, COUNTY may terminate this Agreement pursuant to this Section only after providing written notice to OWNER of the default setting forth the nature of the default and the actions, if any, required by OWNER to cure such default and, where the default can be cured, OWNER has failed to take such actions and cure such default within sixty (60) days after the effective date of such notice or, in the event that such default cannot be cured within such 60 day period but can be cured within a longer time, has failed to commence the actions necessary to bring itself into compliance as required and to diligently pursue such steps to completion.

11.3 Termination of Agreement for Default of COUNTY. OWNER in its discretion may terminate this Agreement by written notice to COUNTY after the default by COUNTY in the performance of a material term of this Agreement and only after notice by OWNER thereof to COUNTY and, where the default can be cured, the failure of COUNTY to cure such default within 60 days after the effective date of such notice or, in the event that such default cannot be cured within such 60 day period, the failure of COUNTY to commence to cure such default within such 60 day period and to diligently proceed to complete such actions and to cure such default.

11.4 Specific Performance. The parties acknowledge that monetary damages and remedies at law generally are inadequate due, in part, to the size, nature and scope of the Project, it will not be practical or possible to restore the Property to its natural condition once implementation of this Agreement has begun and specific performance is a particularly

appropriate remedy for the enforcement of this Agreement and should be available to both parties based on the following reasons and facts:

(i) the unavailability of monetary damages against COUNTY provided in Section 11.1 hereinabove;

(~~ii~~iii) OWNER's Obligations provided for in the Agreement were bargained for by COUNTY and given in return for assurances by COUNTY to OWNER regarding the Existing Regulations (except as specified to the contrary herein) applicable to the Development of the Property, which assurances were in turn relied upon by OWNER in undertaking OWNER's Obligations;

(~~iii~~iii) Due to the size, nature and scope of the Project, it may not be practical or possible to restore the Property to its natural condition once implementation of this Agreement has begun; after such implementation, OWNER may be foreclosed from other choices it may have had to utilize the Property, or portions thereof, and to provide other benefits to the COUNTY. OWNER has invested significant time and resources and performed extensive planning and processing of the Project in agreeing to the terms of this Agreement and will be investing even more significant time and resources in implementing the Project in reliance upon the terms of this Agreement, and it is not possible to determine the sums of money which would adequately compensate OWNER for such efforts;

(~~iv~~iii) The inability of OWNER to recover and receive back its capital investment in the Public Facilities to be provided to COUNTY as part of OWNER's Obligations and to replan and provide for different uses of the Property once such facilities and infrastructure have been completed;

(~~v~~iv) The use of the Property for the purposes and uses described in the Development Plan is unique; and,

(v) The critical public need and concern regarding a better balance between jobs and housing in the region and residential housing in the COUNTY and the Public Facilities and other major facilities and infrastructure to be provided by OWNER as part of OWNER's Obligations as well as for the benefits that can be obtained from the long-term and comprehensive planning and stability contemplated by the Development Agreement Legislation.

Further, the parties acknowledge that for the reasons set forth above (particularly because of the lack of monetary damages available to OWNER), in connection with any judicial proceeding regarding the performance of this Agreement, rights, or the interests and duties of the parties hereunder, including a proceeding pursuant to Section 11.4, it is appropriate for, and the parties shall cooperate in requesting (whether by stipulations or otherwise) the court with jurisdiction to proceed expeditiously and to retain jurisdiction until the underlying conflict or dispute has been fully resolved.

11.5 Appointment of Referee. As an alternative procedure hereunder, a party initiating legal action hereunder may request that such action be heard by a reference from the

Orange County Superior Court pursuant to the reference procedures of California Code of Civil Procedure Sections 638, et seq. OWNER and COUNTY, in such case, shall use their best efforts to agree upon a single referee who shall then try all issues, whether of fact or law, and report a finding and judgment thereon and issue all legal and equitable relief appropriate under the circumstances of the controversy before him. If OWNER and COUNTY are unable to agree upon a referee within ten (10) days of a written request to do so by either party, either party may seek to have a referee appointed pursuant to Section 640 of theCalifornia Code of Civil Procedure. The cost of such proceeding (exclusive of the attorneys fees and cost of the parties) shall be borne equally by the parties. Any referee selected pursuant to this Section 11.5 shall be considered a temporary judge appointed pursuant to Article 6, Section 21 of the California Constitution. In the event that an alternative method of resolving disputes concerning the application, enforcement or interpretation of development agreements is provided by legislative or judicial action after the Effective Date, the parties may, by mutual agreement, select such alternative method.

11.6 Estoppel Certificates. Either party may at any time deliver written notice to the other party requesting an estoppel certificate (the "Estoppel Certificate") stating:

11.6.1 The Agreement is in full force and effect and is a binding obligation of the parties;

11.6.2 The Agreement has not been amended or modified either orally or in writing or, if so amended, identifying the amendments;

11.6.3 That there has been no default in the performance of the requesting party's obligations under the Agreement or, if a default does exist, the nature and amount of any default. A party receiving a request for an Estoppel Certificate shall provide a signed certificate to the requesting party within thirty (30) days after receipt of the request. The chief executive officer of the COUNTY or the Director of the COUNTY's Development and Planning Services or any person designated by the chief executive may sign Estoppel Certificates on behalf of the COUNTY. Any officer of OWNER may sign on behalf of OWNER. An Estoppel Certificate may be relied on by assignees, transferees and mortagees of OWNER.

11.5.4 In the event that one party requests an Estoppel Certificate from the other, the requesting party shall reimburse the other party for all reasonable and direct costs and fees incurred by such party with respect thereto, including reasonable attorney's fees.

12. THIRD PARTY LITIGATION.

12.1 General Plan Litigation.

a. Litigation. As set forth above, COUNTY has determined that this Agreement is consistent with the General Plan and that the General Plan meets all of the legal requirements of State law. OWNER has reviewed the General Plan and concurs with COUNTY's determination. The parties acknowledge that:

(i) Presently there is no litigation challenging the legality, validity and adequacy of certain provisions of the General Plan;

(ii) In the future there may be other similar-challenges to ~~such~~ provisions of the General Plan-as well as others; and

(iii) If successful, such challenges could delay or prevent the performance of this Agreement and the Development of the Property.

In addition to the other provisions of this Agreement, including, without limitation, the provisions of Section 11, COUNTY shall have no liability under this Agreement for any failure of COUNTY to perform under this Agreement or the inability of OWNER to develop the Property as contemplated by the Development Plan or this Agreement as the result of a judicial determination that on the Effective Date, or at any time thereafter, the General Plan, or portions thereof, are invalid or inadequate or not in compliance with law.

b. Revision of General Plan. If for any reason the General Plan or any part thereof is hereafter judicially determined as provided above to be invalid or inadequate or not in compliance with the State or federal Constitutions, laws or regulations, this Agreement shall remain in full force and effect and upon the adoption or amendment of any General Plan provision which is necessary in order to comply with State or federal Constitutions, laws or regulations to cure such invalidity or inadequacy, together with any amendments of the Development Plan and the Land Use Regulations which are necessary in order to comply with the portions of such new or revised General Plan which are necessary to avoid the invalidation of this Agreement, the reference in Section 4 to the General Plan shall thereafter mean and refer to such portions of the new or amended General Plan and such amendments in the Development Plan and Land Use Regulations.

c. Suspension of obligations. In the event that Development of the Property is enjoined or prevented from proceeding by any judicial order or determination in connection with the determinations regarding the General Plan referred to above and the subsequent proceedings with respect thereto referred to in paragraph b. of this Section, the time for performance of the obligations of the parties hereunder shall be extended as provided in Section 16.11.

d. Option to Terminate. In the event that any such amendments of the General Plan or the Development Plan or Land Use Regulations result in a reduction in the number of units or the density or intensity, or timing, sequencing or phasing of Development or otherwise adversely impact the reasonable investment based Economic Expectations of OWNER in connection with the Project, OWNER may terminate this Agreement by notice in writing to COUNTY and recorded in the official records of COUNTY.

14. EFFECT OF AGREEMENT ON TITLE.

14.1 Covenants Run With The Land. Subject to the provisions of Sections 6 and 15:

(i) All of the provisions, agreements, rights, powers, standards, terms, Covenants and obligations contained in this Agreement shall be binding upon the parties and their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, devisees, administrators, representatives, lessees, and all other persons acquiring any rights or interests in the Property, or any portion thereof, whether by operation of laws or in any manner whatsoever and shall inure to the benefit of the parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns;

(ii) All of the provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land pursuant to applicable law;

(iii) Each covenant to do or refrain from doing some act on the Property hereunder (A) is for the benefit of and is a burden upon every portion of the Property, (B) runs with such lands and (C) is binding upon each party and each successive owner during its ownership of such properties or any portion thereof, and each person having any interest therein derived in any manner through any owner of such lands, or any portion thereof, and shall benefit each party and its lands hereunder, and each other person succeeding to an interest in such lands.

Notwithstanding any of the foregoing or in this Agreement to the contrary, any assignee or transferee or Mortgagee which acquires any right or interest in or with respect to the Property or any portion thereof shall take and hold such rights and interests subject to this Agreement and shall not have been deemed to have assumed the OWNER's Obligations of the other affirmative duties and obligations of OWNER hereunder except:

(~~ii~~iv) ~~to~~To the extent that any of such assignees, transferees or mortgagees have expressly assumed any of the duties or obligations of OWNER hereunder;

(~~ii~~v) ~~if~~If any such assignee, transferee or mortgagee accepts, holds, or attempts to exercise or enjoy the rights or interests of OWNER hereunder, it shall have assumed the obligations of OWNER under Sections ~~3.2e.~~3 and 11; and

(~~iii~~vi) ~~to~~To the extent that the performance of any duty or obligation by OWNER is a condition precedent to the performances of a covenant by COUNTY, it shall continue to be a condition to COUNTY's performance hereunder.

14.2 No Dedication or Lien. Nothing herein shall be construed as a dedication or transfer of any right or interest in, or as creating a lien with respect to, the title to the Property.

14.3 Termination Upon Final Sale. As provided in Section 6.2, without the requirement of any further writing or action on the part of any party hereto, this Agreement shall terminate as to specific lots as provided therein.

15. MORTGAGEE PROTECTION; CERTAIN RIGHTS OF CURE.

15.1 Mortgagee Protection. This Agreement shall be, superior and senior to any lien placed upon the Property, or any portion thereof, including the lien of any Mortgage. Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish or impair the lien of any Mortgage made in good faith and for value and any acquisition or acceptance of title or any right or interest in or with respect to the Property, or any portion thereof, by a Mortgagee (whether under or pursuant to a Mortgage, foreclosure, trustee's sale, deed in lieu of foreclosure, or otherwise), shall be subject to all of the terms and conditions contained in this Agreement.

15.2 Mortgagee Not Obligated. Notwithstanding the provisions of Section 15.1 above, no Mortgagee shall have an obligation or duty under this Agreement to perform Owner's Obligations or other affirmative covenants of OWNER hereunder, or to guarantee such performance; except that to the extent that any covenant to be performed by OWNER is a condition to the performance of a covenant by COUNTY, the performance thereof shall continue to be a condition precedent to COUNTY's performance hereunder.

15.3 Notice of Default to Mortgagee; Right of Mortgagee to Cure. If COUNTY receives notice from a Mortgagee requesting a copy of any notice of, default given OWNER hereunder and specifying the address for service thereof, and records a copy of each request in the official records of COUNTY in the manner required under Civil Code Section 2924b with respect to Requests for Notices of Default, then COUNTY shall deliver to such Mortgagee, concurrently with service thereon to OWNER, any notice given to OWNER with respect to any claim by COUNTY that OWNER has not complied in good faith with the terms of this Agreement or has committed an event of default. Each Mortgagee shall have the right (but not the obligation) for a period of ninety (90) days after the receipt of such notice from COUNTY to cure or remedy, or to commence to cure or remedy, the claim of default or noncompliance set forth in the COUNTY's notice. If the default is of a nature which can only be remedied or cured by such Mortgagee upon obtaining possession, such Mortgagee shall seek to obtain possession with diligence and continuity through foreclosure, a receiver or otherwise, and shall thereafter remedy or cure the default or noncompliance within thirty (30) days after obtaining possession. If any such default or noncompliance cannot, with diligence, be remedied or cured within such thirty (30) day period, then such Mortgagee shall have such additional time as may be reasonably necessary to remedy or cure such default or noncompliance if such Mortgagee commences cure during such thirty (30) day period, and thereafter diligently pursues and completes such cure.

15.4 Bankruptcy. Notwithstanding the foregoing provisions of Section 15, if any Mortgagee is prohibited from commencing or prosecuting foreclosure or other appropriate proceedings in the nature thereof by any process or injunction issued by any court or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving OWNER, the times specified in Section 15.3 for commencing or prosecuting foreclosure or other proceedings shall be extended for the period of the prohibition, provided that such Mortgagee is proceeding expeditiously to terminate such prohibition and in no event for a period longer than one year.

16. MISCELLANEOUS PROVISIONS.

16.1 Recordation of Agreement. This Agreement and any amendment or cancellation hereof shall be recorded in the Official Records of COUNTY by the Clerk of the Board of Supervisors within the period required by Section 65868.5 of the Government Code.

16.2 Entire Agreement. This Agreement, with its exhibits, sets forth and contains the entire understanding and agreement of the parties and there are no oral or written representations, understandings or ancillary covenants, undertakings or agreements which are not contained or expressly referred to herein and no testimony or evidence of any such representations, understandings or covenants shall be admissible in any proceeding of any kind or nature to interpret or determine the terms or conditions of this Agreement. The exhibits are incorporated herein by this reference.

16.3 Severability. If any term, provision, covenant or condition of this Agreement shall be determined invalid, void or unenforceable, the remainder of this Agreement shall not be affected thereby to the extent such remaining provisions are not rendered impractical to perform taking into consideration the purposes of this Agreement.

16.4 Interpretation and Governing Law. This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California.

16.5 Section Headings. All section headings and subheadings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

16.6 Singular and Plural. As used herein, the singular of any word includes the plural.

16.7 Joint and Several Obligations. If any obligation of OWNER hereunder to COUNTY is the obligation of more than one person, such obligation and any liability with respect thereto shall be joint and several among the obligees.

16.8 Time of Essence. Time is of the essence in the performance of the provisions of this Agreement as to which time is an element.

16.9 Waiver. Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Agreement thereafter.

16.10 No Third Party Beneficiaries. The only parties to this Agreement are OWNER and COUNTY. There are no third party beneficiaries this under Agreement

16.11 Force Majeure. Neither party shall be deemed to be in default where failure or delay in performance of any of its obligations under this Agreement is caused by floods, earthquakes, other Acts of God, fires, wars, riots or similar hostilities, strikes and other labor difficulties beyond such party's control, government regulations, court actions (such as restraining orders or injunctions) or other causes beyond such party's control. If any such events shall occur, the term of this Agreement and the time for performance by either party of any of its

obligations hereunder shall be extended by the period of time that such events prevented such performance provided that the term of this Agreement shall not be extended under any circumstances for more than five (5) years or for a period which would cause this Agreement or provisions hereof to be void as violating the rule against perpetuities.

16.12 Attorneys Fees. In any action or undertaking to enforce the provisions of this Agreement, each of the parties hereto shall bear its own attorneys fees.

16.13 Mutual Covenants. The covenants contained herein are mutual covenants and also constitute conditions to the concurrent or subsequent performance by the party benefited thereby of the covenants to be performed hereunder by such benefited party.

16.14 Notices. Any notice required or provided for under this Agreement shall be in writing and delivered in person to an officer of any party, or sent by Federal Express, private commercial delivery or courier service for next business day delivery, or may be deposited in the United States mail, duly certified or registered, return receipt requested, with postage prepaid, and addressed to the party for whom intended, as follows:

If to COUNTY:

Orange County Board, of Supervisors
10 Civic Center Plaza
Santa Ana, California 92701
Attn: Clerk
FAX: _____
Phone: _____

Director of Planning & Development Services
300 N. Flower St.
P.O. Box 4048
Santa Ana, CA 92702-4048

If to OWNER:

_____
_____
_____

Nuevo Energy Company
1021 Main Street, Suite 2100
Houston, Texas 77002
Attn: David Leach
FAX: (713) 374-4899
Telephone: (713) 374-4802

with a copy to:

William P. Tanner, Esq.
Nossaman, Guthner, Knox & Elliott, LLP
18101 Von Karman Avenue, Suite 1800
Irvine, California 92612
FAX: (949) 833-7878
Telephone: (949) 833-7800

John Ullom
Ullom & Associates
16149 Redmond Way, Suite 401
Redmond, Washington 98052
FAX: (425) 836-2870
Telephone: (425) 836-2728

Notice may also be given by facsimile transmission ("Fax") to any party at the respective Fax number given above and marked "RUSH - PLEASE DELIVER IMMEDIATELY," provided receipt of such transmission shall be confirmed by follow-up notice within seventy-two (72) hours by another method authorized above. Any party hereto may from time to time, by written notice to the other party as required herein, designate a different address which shall be substituted for the one above specified. Notice by any method shall be deemed served or delivered only upon actual receipt at the address or Fax number listed above. Any notice given as required herein shall be deemed given seventy-two (72) hours after deposit in the United States mail or upon

16.15 Annexation and Other Permits. COUNTY also agrees to assist and cooperate with Nuevo in completing any annexation implemented and approved by a majority of individual homeowners on the Property, but will not support or assist any such annexation movement attempted by a Transferee, developer(s) and/or homeowner's association, unless specifically requested to do so by Nuevo in writing; and in securing any COUNTY, State and Federal permits or authorizations which may be required in connection with development of the Project, as provided in the Pre Annexation Agreement attached thereto as Exhibit .

16.16 Successors and Assigns. The terms and conditions of this Agreement shall be binding upon and inure to the benefit of the parties and their successors and assigns.

16.17 Counterparts. This Agreement may be executed by the parties in counterparts which counterparts shall be construed together and have the same effect as if all of the parties had executed the same instrument.

16.18 Conveyances. Conveyances of the Property or portions thereof, including without limitation Open Space Areas, required or permitted pursuant to the terms of this

Agreement shall not include any portion (or all) of the oil, gas and other hydrocarbon substances or water or other minerals, of every type and nature, in, under or on the Property.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first set forth above.

OWNER:

By:_____

Its:_____

COUNTY:

By:_____

Its:_____

THE COUNTY OF ORANGE, CALIFORNIA, a political subdivision of the State of California

By:_____
Chair, Board of Supervisors

Attest:

SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE CHAIRMAN OF THE BOARD.

By:_____

DARLENE J. BLOOM

Clerk of the Board of Supervisors, County of Orange, California

DRAFT

APPROVED AS TO FORM:

BENJAMIN P. DE MAYO, County Counsel
ORANGE COUNTY, CALIFORNIA

By:_____
Roger P. Freeman, Deputy

STATE OF CALIFORNIA)
) ss.
COUNTY OF ORANGE)

On this_____ day of _____, 2001, before me, _____ _____, personally appeared DARLENE J. BLOOM, known to me to be the Clerk of Board of Supervisors of the County of Orange and known to me to be the person who executed the within instrument on behalf of the County of Orange, pursuant to Government Code Section 25103, and acknowledged to me that such political subdivision executed the same by use of an authorized facsimile signature.

WITNESS my hand and official seal.

_____
Notary Public
in and for said County and State

By:_____
Authorized signature/Position

STATE OF ~~CALIFORNIA~~TEXAS)
) ss.
COUNTY OF ~~ORANGE~~HARRIS)

On this_____ day of _____, 2001, before me, _____ _____, personally appeared _____ personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) who executed the within instrument as _____ of ~~the partners of~~ Nuevo Energy Company, the ~~partnership~~corporation that executed the within instrument, and acknowledged to me that they executed the same on behalf of Nuevo Energy Company, a ~~partnership~~corporation, and that said last named ~~partnership~~corporation executed the same.

WITNESS my hand and official seal.

Notary Public
in and for said County and State

STATE OF ~~CALIFORNIA~~TEXAS)
) ss.
COUNTY OF ~~ORANGE~~HARRIS)

On this_____ day of _____, 2001, before me, _____, personally appeared _____ ~~and~~ _____ personally known to me ~~(~~or proved to me on the basis of satisfactory evidence~~)~~ to be the ~~persons~~person(s) who executed the within instrument as _____ ~~President and~~ _____ ~~Secretary,~~of Nuevo Energy Company, ~~on behalf of _____,~~ the ~~corporation therein named, and acknowledged to me that said corporation~~ corporation that executed the within instrument ~~pursuant to its bylaws or a resolution of its board of directors, said corporation being known to me to be one of the partners of _____ the partnership that executed the within instrument, and acknowledged to me that such corporation~~, and acknowledged to me that they executed the same ~~as such partner and that such partnership~~ on behalf of Nuevo Energy Company, a corporation, and that said last named corporation executed the same.

WITNESS my hand and official seal.

Notary Public
in and for said County and State

~~STATE OF CALIFORNIA~~

EXHIBIT A

Description of Property

BOUNDARY DESCRIPTION

THOSE PORTIONS OF THE RANCHO SAN JUAN CAJON DE SANTA ANA, IN THE UNINCORPORATED TERRITORY OF THE COUNTY OF ORANGE, AND THE CITY OF BREA, IN THE COUNTY OF ORANGE, STATE OF CALIFORNIA AS SHOWN ON A RECORD OF SURVEY OF THE NORTHEASTERLY PORTION OF THE RANCHO SAN JUAN CAJON DE SANTA ANA, FILED IN BOOK 12 PAGE 40 OF RECORDS OF SURVEY IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, TOGETHER WITH A PORTION OF LAND DESCRIBED IN A DEED, BILL OF SALE AND ASSIGNMENT, RECORDED APRIL 10, 1996 AS INSTRUMENT NO. 19960175928 OF OFFICIAL RECORDS, IN THE OFFICE OF SAID COUNTY RECORDER, BOTH BEING SHOWN ON RECORD OF SURVEY NO. 91-1007 FILED IN BOOK 133, PAGES 41 THROUGH 46 INCLUSIVE, OF RECORDS OF SURVEYS AND RECORD OF SURVEY NO. 2001-1007, FILED IN BOOK 187, PAGES 02 THROUGH 07 INCLUSIVE, OF RECORDS OF SURVEYS BOTH IN THE OFFICE OF SAID COUNTY RECORDER, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THOSE PORTIONS OF SECTIONS 1 AND 12, TOWNSHIP 3 SOUTH, RANGE 10 WEST AND SECTIONS 5, 6, 7 AND 8, TOWNSHIP 3 SOUTH, RANGE 9 WEST, IN THE RANCHO SAN JUAN CAJON DE SANTA ANA, AS SHOWN ON A MAP RECORDED IN BOOK 51, PAGE 7 OF MISCELLANEOUS MAPS, IN THE OFFICE OF SAID COUNTY RECORDER, DESCRIBED AS FOLLOWS:

BEGINNING AT A WHITE POST 4 INCHES SQUARE IN MOUND WITH PITS AT THE NORTHEAST CORNER OF THE RANCHO SAN JUAN CAJON DE SANTA ANA, BEING ALSO THE SOUTHEAST CORNER OF THE RANCHO RINCON DE LA BREA; THENCE ALONG THE PATENT BOUNDARY OF SAID RANCHO RINCON DE LA BREA, NORTH 84° WEST 107.51 CHAINS TO A SAND STONE MARKED R. B. IN MOUND WITH PITS; THENCE ALONG SAID PATENT BOUNDARY NORTH 57° 42' WEST 43.67 CHAINS TO A WHITE POST 4 INCHES SQUARE IN MOUND OF STONE MARKED S. J. C. S. A. AT INTERSECTION OF THE PATENT LINES OF SAID RANCHOS SAN JUAN CAJON DE SANTA ANA AND RINCON DE LA BREA; THENCE ALONG THE PATENT LINE OF SAID RANCHO SAN JUAN CAJON DE SANTA ANA, NORTH 76° 25' WEST 62.67 CHAINS TO A 2" X 4" POST MARKED 62.67 IN MOUND WITH PITS; THENCE SOUTH 1° 45' WEST 58.96 CHAINS TO A 2" X 4" POST MARKED 20.60 IN MOUND WITH PITS; THENCE NORTH 89° EAST 20.00 CHAINS TO A 4" X 4" POST IN MOUND WITH PITS; THENCE SOUTH 1° 45' WEST 20.00 CHAINS TO A 2" X 4" POST MARKED 20.60 IN MOUND WITH PITS; THENCE NORTH 88° 39' EAST 55.48 CHAINS TO A 2" X 4" POST MARKED 20 IN MOUND WITH PITS; THENCE SOUTH 0° 30' EAST 20.00 CHAINS TO A 2" X 4" POST IN MOUND WITH PITS; THENCE NORTH 89° 45" EAST 134.63 CHAINS TO A 2" X 4" POST MARKED 40.10 IN MOUND WITH PITS UPON THE EASTERN BOUNDARY OF SAID RANCHO SAN JUAN CAJON DE SANTA ANA; THENCE ALONG SAME NORTH 4° WEST 47.51 CHAINS TO THE PLACE OF **BEGINNING**.

TOGETHER WITH PARCEL 1 OF A COUNTY OF ORANGE LOT LINE ADJUSTMENT NO. LL 2000-054, RECORDED AUGUST 13, 2001 AS INSTRUMENT NO. 20010557229 OF OFFICIAL RECORDS.

EXCEPTING THEREFROM THE WESTERLY 200 ACRES OF THE ABOVE DESCRIBED TRACT.

ALSO EXCEPTING THEREFROM ANY PORTION LYING NORTHERLY OF THE AGREED BOUNDARY LINE AND BOUNDED WESTERLY BY LINE, RUNNING NORTH 28° 30' EAST FROM THE WESTERN TERMINUS OF SAID LINE AS ESTABLISHED BY AGREEMENT BETWEEN THE UNION OIL COMPANY OF CALIFORNIA AND THE GRAHAM-LOFTUS OIL COMPANY, RECORDED JUNE 10, 1905 IN BOOK 120, PAGE 223 OF DEEDS, IN THE OFFICE OF SAID COUNTY RECORDER.

ALSO EXCEPTING THEREFROM PARCELS A6471-4, A6471-5, A6471-6 AND A6471-7 OF THAT CERTAIN FINAL ORDER OF CONDEMNATION, SUPERIOR COURT CASE NO. 156220, A CERTIFIED COPY OF WHICH WAS RECORDED SEPTEMBER 29, 1970 IN BOOK 9417, PAGE 364 OF OFFICIAL RECORDS, IN THE OFFICE OF SAID COUNTY RECORDER.

ALSO EXCEPTING THEREFROM THAT PORTION DESCRIBED IN DEED TO THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA RECORDED FEBRUARY 10, 1967 IN BOOK 8173, PAGE 641 OF OFFICIAL RECORDS, IN THE OFFICE OF SAID COUNTY RECORDER.

ALSO EXCEPTING THEREFROM THAT PORTION DESCRIBED IN DEED TO THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA RECORDED FEBRUARY 10, 1967 IN BOOK 8173, PAGE 647 OF OFFICIAL RECORDS, IN THE OFFICE OF SAID COUNTY RECORDER.

ALSO EXCEPTING THEREFROM ANY PORTION LYING SOUTHERLY OF THE CITY OF BREA ANNEXATION NO. 86-1, RECORDED DECEMBER 26, 1986, AS INSTRUMENT NO. 86-642752 OF OFFICIAL RECORDS, IN THE OFFICE OF SAID COUNTY RECORDER.

ALSO EXCEPTING THEREFROM ANY PORTION LYING EASTERLY OF THE CITY OF BREA ANNEXATION NO. RO96-02, RECORDED OCTOBER 02, 1996 AS INSTRUMENT NO. 1996053838 OF OFFICIAL RECORDS, IN THE OFFICE OF SAID COUNTY RECORDER.

ALSO EXCEPTING THEREFROM THE ANY PORTION LYING WITHIN THE FOLLOWING PARCEL OF LAND

BEGINNING AT A POINT ON THE NORTHERLY LINE OF PARCEL 1 OF PARCEL MAP NO. 86-243, FILED IN BOOK 214, PAGES 28 THROUGH 31 INCLUSIVE OF PARCEL MAPS, IN THE OFFICE OF SAID COUNTY RECORDER, SAID POINT BEING THE SOUTHERLY TERMINUS OF A COURSE SHOWN AS " N 23°26'07"W 490.71' " ON SAID PARCEL MAP;

THENCE ALONG SAID NORTHERLY LINE NORTH 23°26'08" WEST 308.00 FEET TO THE **TRUE POINT OF BEGINNING**;

THENCE CONTINUING ALONG SAID NORTHERLY LINE THE FOLLOWING COURSES:
NORTH 23°26'08" WEST 182.71 FEET,
NORTH 60°42'49" WEST 177.75 FEET,
NORTH 10°33'18" EAST 381.48 FEET AND
NORTH N70°17'56" WEST 621.18 FEET;

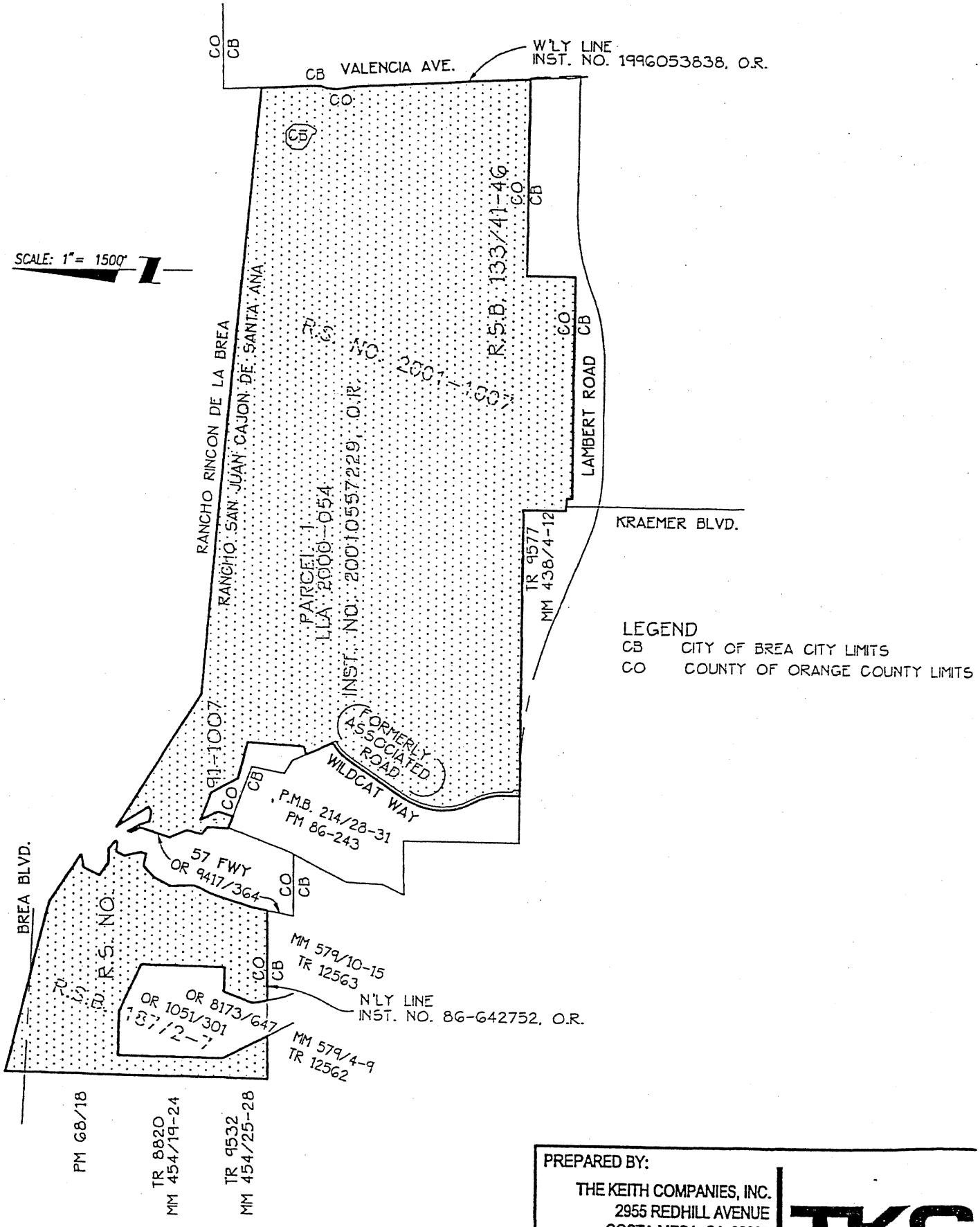
THENCE LEAVING SAID NORTHERLY LINE NORTH 18°00'00" EAST 175.00 FEET;
THENCE NORTH 25°00'00" WEST 237.00 FEET;
THENCE SOUTH 68°00'00" EAST 338.00 FEET;
THENCE SOUTH 30°00'00" EAST 356.00 FEET;
THENCE SOUTH 76°00'00" EAST 435.00 FEET;
THENCE SOUTH 03°00'00" WEST 650.00 FEET;
THENCE SOUTH 71°08'27" WEST 95.87 FEET TO THE **TRUE POINT OF BEGINNING.**

SUBJECT TO COVENANTS, CONDITIONS, RESTRICTIONS, RESERVATIONS, EASEMENTS AND RIGHTS-OF-WAY OF RECORD, IF ANY.

THE ABOVE DESCRIPTION IS FOR PLANNING PURPOSES ONLY

K:\13207.00\surmap\DOC\LEGALS\area plan.doc

BOUNDARY DEPICTION



LEGEND

CB CITY OF BREA CITY LIMITS

CO COUNTY OF ORANGE COUNTY LIMITS

PREPARED BY:
THE KEITH COMPANIES, INC.
2955 REDHILL AVENUE
COSTA MESA, CA. 92626
TEL: (714) 540-0800

TKC

K:\13207.00\DWG\PRSE0108.DWG

DATE: JULY 18, 2002 JOB NO. 13207.00

EXHIBIT B

Existing Development Approvals

Placeholder

EXHIBIT C

Memorandum of Understanding

Placeholder

EXHIBIT D

Benefits to County and its Residents

Exhibit D will be transmitted to the Planning Commission under separate cover.

EXHIBIT E

Project Phasing Plan

Exhibit E will be transmitted to the Planning Commission under separate cover.

Memorandum to Orange County Planning Commission
Re Updated Mitigation Monitoring Program
Dated October 16, 2002

County of Orange **MEMO**

DATE: October 16, 2002

TO: Orange County Planning Commission

FROM: Charles M. Shoemaker, Chief, Private Projects, Environmental Planning Services

SUBJECT: Updated Tonner Hills Planned Community Mitigation Monitoring and Reporting Plan (Exhibit C) to the Draft Planning Commission Resolution for DEIR 581

Subsequent to the distribution of the Planning and Development Services Department Staff Report for Draft EIR 581, it was determined that several additional revisions to the Tonner Hills Planned Community Mitigation Monitoring and Reporting Plan (Exhibit C) to the Draft Planning Commission Resolution for DEIR 581 were necessary to reflect changes to the project that were not incorporated in the Mitigation Monitoring and Reporting Plan that accompanied the draft Planning Commission Resolution contained in the October 16, 2002 Staff Report. The changes are as follow:

1. N-3 is deleted completely, as it related to the commercial corner
2. AE-5, deleted the words "mixed-use"
3. AE-6 deleted the last 2 sentences as they related to Tonner Hills Road
4. H-4 deleted Department of Toxic Substances Control (DTSC) as it is not regulating this clean-up effort
5. H-5 deleted DTSC from Monitoring Party, as it is not regulating this effort.
6. H-10 deleted the words "or commercial neighborhood"
7. H-19 added CDOGGR to Monitoring Party, deleted OCHCA – correction
8. Added the fair share % to traffic mitigation measures # 6 and #8, just for informational purposes.

Please exchange the attached Exhibit C for the version attached to the draft Planning Commission Resolution for DEIR 581.

Memorandum & Errata to Orange County Planning Commission
From Manager, Current Planning
Dated October 16, 2002

County of Orange

MEMO

DATE: October 16, 2002

TO: PLANNING COMMISSION

FROM: GEORGE BRITTON, MANAGER, CURRENT PLANNING GB for

SUBJECT: TONNER HILLS PLANNED COMMUNITY – DOCUMENT ERRATA

The pages attached contain proposed revisions to the Tonner Hills Planned Community Program and Area Plan submitted as Exhibits 3/4 and 4/5 of the staff report. The proposed changes are errata correcting typographical errors, and provide clarifications and refinements to the regulations proposed. The proposed changes are herein submitted as supplements to Exhibits 3/4 and 4/5, for Planning Commission review and approval, and shall become revisions to the final documents upon Planning Commission action.

REV'd

Tonner Hills Planned Community Text and Area Plan
Errata Sheet
October 16, 2002

PLANNED COMMUNITY TEXT

PAGE 1-3
REVISE SECTION 1.3, "NON STANDARD PROVISIONS AND REGULATIONS" AS FOLLOWS:

(2) Existing oil operations and uses shall be considered permitted in all Planning Areas. No new wells will be drilled or existing wells re-drilled within any residential planning area after the County issues the first Certificate of Occupancy within that planning area. Any new wells drilled, or existing wells re-drilled outside of the residential neighborhoods, will be permitted and inspected by the DOG&GR. Prior to the first grading permit, the oil operator shall provide the County with a map providing survey coordinates for all current and abandoned wells. This plan shall be revised as conditions demand. COA

Oil wells to be retained in residential planning areas will be accommodated by replacing the existing pumping unit, pulling pad, and well cellar with a subsurface pumping unit enclosed within a concrete vault. The vault will have a lockable steel plate lid to isolate the unit from view or public access. The vault's size may vary, however a typical vault in a residential planning area will be 6 feet by 8 feet. The subsurface pumping unit will be electrically operated and will be equipped with an automatic shutoff valve in the event of flooding and a methane sensor equipped with an automatic shutoff valve. These wells will not be located within any private residential lot proposed in the Tonner Hills development. No habitable structure may be constructed within 150 feet of the retained subsurface well's wellhead or as otherwise approved by OCFA pursuant to Guideline C-02.

(4) The existing conditionally permitted green waste recycling facility located in the open space area of the Tonner Hills Planned Community shall be considered a conditionally permitted use.

PAGE 2-1
REVISE PARAGRAPH 3 UNDER SECTION 2.0, " PURPOSE AND INTENT" AS FOLLOWS:

The purpose of these regulations is to provide for a compatible relationship between residential uses and existing and future oil operations including but not limited to wells, the gas plant, tank farm, dewatering facilities, underground and above ground pipelines and administrative offices and servicing facilities within the Tonner Hills Planned Community. To accomplish this, no new wells will be drilled or existing wells re-drilled within any residential planning area after the County issues the first Certificate of Occupancy within that planning area. Any new wells drilled, or

existing wells re-drilled outside of the residential neighborhoods, will be permitted and inspected by the DOG&GR. Prior to the first grading permit, the oil operator shall provide the County with a map providing survey coordinates for all current and abandoned wells. This plan shall be revised as conditions demand.

Oil wells to be retained in residential planning areas will be accommodated by replacing the existing pumping unit, pulling pad, and well cellar with a subsurface pumping unit enclosed within a concrete vault. The vault will have a lockable steel plate lid to isolate the unit from view or public access. The vault's size may vary, however a typical vault in a residential planning area will be 6 feet by 8 feet. The subsurface pumping unit will be electrically operated and will be equipped with an automatic shutoff valve in the event of flooding and a methane sensor equipped with an automatic shutoff valve. These wells will not be located within any private residential lot proposed in the Tonner Hills development. No habitable structure may be constructed within 150 feet of the retained subsurface well's wellhead or as otherwise approved by OCFA pursuant to Guideline C-02.

PAGE 2-3

REVISE SECTION 7.2.1, "CONVENTIONAL SINGLE FAMILY DETACHED RESIDENTIAL USE REGULATIONS" AS FOLLOWS:

2.7.1 CONVENTIONAL SINGLE FAMILY DETACHED RESIDENTIAL (Applies to Planning Areas 1-7)

a. Minimum building site area – ~~No minimum.~~

Planning Areas 1-6 - Four thousand (4,000) square feet.
Planning Area 7 - Eight thousand (8,000) square feet.

~~b. Minimum lot size - Four thousand (4,000) square feet.~~

PAGE 2-4

REVISE SECTION 2.7.2, "CLUSTER SINGLE FAMILY DETACHED RESIDENTIAL USE REGULATIONS" AS FOLLOWS:

2.7.2 CLUSTER SINGLE FAMILY DETACHED RESIDENTIAL (Applies to Planning Areas 1-3)

a. Minimum building site area - ~~No minimum~~
Twenty six hundred (2,600) square feet.

~~b. Minimum lot size - Twenty six hundred (2,600) square feet~~

PAGE 2-6

REVISE SECTION 2.7.3, "ATTACHED SINGLE FAMILY RESIDENTIAL USE REGULATIONS" AS FOLLOWS:

2.7.3 ATTACHED SINGLE FAMILY RESIDENTIAL (Applies to Planning Area 2)

a. Minimum building site area - Two thousand (2,000) square feet.

~~b. Minimum lot size - Not applicable.~~

PAGE 2-7
REVISE SECTION 2.7.4, "MULTIPLE FAMILY RESIDENTIAL USE REGULATIONS" AS FOLLOWS:

7.2.4 MULTIPLE FAMILY RESIDENTIAL (Applies to Planning Area 2)

a. Minimum building site area - Five thousand (5,000) square
~~b. Minimum lot size - Not applicable~~

c. Maximum building height - ~~Fifty (50) feet~~ Forty (40) feet.

PAGE 2-10,
DELETE THE FOLLOWING:

r. Recreation Uses -

~~• Building site coverage: Sixty percent (60%) maximum excluding carports or garages.~~

ADD NEW PAGE 2-11 AS "TABLE 1 - RESIDENTIAL SITE DEVELOPMENT STANDARDS" AS FOLLOWS:

Table 1
RESIDENTIAL SITE DEVELOPMENT STANDARDS

	SFD CONVENTIONAL	SFD CONVENTIONAL	SFD CONVENTIONAL	SFD CLUSTER	SFA TOWNHOME/ PAIRED HOME	MULTIPLE FAMILY
PLANNING AREA	PA's 1-8	PA's 1-7	PA's 1-7	PA's 1-3	PA's 2-3	PA 2
MIN. BUILDING SITE AREA	8,000 sf.	5,000 sf.	4,000 sf.	2,600 sf.	2,000 sf.	5,000 sf.
MIN. BLDG. SITE AREA/UNIT	N/A	N/A	N/A	1200 sf.	1000 sf.	1,000 sf
LOT WIDTH @ SETBACK LINE	60 ft.	50 ft.	50 ft.	25 ft.	N/A	None
SETBACKS (1) (3) Front Rear Side Yard	 20 ft. 25 ft. (2) 8 ft.	 10 ft. 15 ft. 10 ft. min. one side only/ 10 ft. aggregate both sides.	 10 ft. 15 ft. 10 ft. min. one side only/10 ft. aggregate both sides.	 5 ft. 10 ft. 5 ft.	 8 ft. 10 ft. 10 ft. on one side.	Buildings shall be setback a minimum of 15 ft. from any exterior property line and 15 feet between buildings internal to one another.
From a residential street (corner lot)	15 ft.	15 ft.	15 ft.	15 ft.	15 ft.	N/A
Patios	3 ft. (4)	3 ft. (4)	3 ft. (4)	3ft.(4)	0 ft. (4)	N/A
SET- BACK FROM OIL WELLS/ HABITABLE STRUCTURES	150 ft. unless otherwise approved by OCFA per Guideline C-02.	150 ft. unless otherwise approved by OCFA per Guideline C-02.	150 ft. unless otherwise approved by OCFA per Guideline C-02.	150 ft. unless otherwise approved by OCFA per Guideline C-02.	150 ft. unless otherwise approved by OCFA per Guideline C-02.	150 ft. unless otherwise approved by OCFA per Guideline C-02.
SITE COVERAGE	No maximum.	No maximum.	No maximum.	70%	60%	60% excluding carports or garages.
PRIVATE OPEN SPACE	NA	NA	NA	10% of net area	100 SF/unit	200 SF/unit of which a minimum of 50% shall be in common areas.
SIGNS	Per Section 7	Per Section 7	Per Section 7	Per Section 7	Per Section 7	Per Section 7
PARKING	Per Section 6	Per Section 6	Per Section 6	Per Section 6	Per Section 6	Per Section 6
BUILDING HEIGHT	35 ft.	35 ft.	35 ft.	35 ft.	35 ft.	40 ft.(5)
FENCES/WALLS	See 2.7.1.j	See 2.7.1.j	See 2.7.1.j	See 2.7.2.l	See 2.7.3.j	See 2.7.4.i
TRASH/STORAGE	N/A	N/A	N/A	N/A	N/A	See 2.7.4.l
SCREENING	N/A	N/A	N/A	N/A	N/A	See 2.7.4.m

Notes:

1) Projections into required setbacks including front porches and architectural projections including but not limited to chimneys, pot-shelves, cornices, eaves, outside staircases, balconies, enhanced window sills, shutter details, window trims, and entry gates may project 5 feet or within 1 foot of the property line whichever is the least projection into the setback.
2) May be counted as required fuel modification area.
3) 20 feet where abutting a fuel modification area.
4) 8 feet when adjacent to a side street property line of a corner lot.
5) Architectural projections may exceed the height limit by an additional ten (10) feet.

PAGE 3-3
REVISE SECTION 3.6 (2) AS FOLLOWS:

(2) Due to the wide variety of open space types of uses permitted, specific development standards are not established for these uses. Development standards for those open space uses permitted subject to the approval of a Site Development Permit shall be established by the approved Site Development Permit in accordance with the requirements of Section ~~5~~ 8.

PAGE 4-1
REVISE SECTION 4.1 (2) AS FOLLOWS:

(2) In accordance with the regulations of the Tonner Hills Planned Community, "Oil Operations and Servicing" may include, without limitation, the right to conduct exploration and exploitation surveys, drill for, explore, re-drill, work over, re-work, and/or complete wells for oil, gas, and other hydrocarbon substances, water, and minerals of every type and nature, together with the right to conduct primary, secondary, and/or tertiary recovery operations or to use other techniques, whether known or unknown, and to produce, take, treat, store, and sell water and oil, gas, and other hydrocarbon substances for the property, together with the right to permanently place, locate, relocate, construct, reconstruct, maintain, operate, use, repair, replace, remove, move, change the size of, increase the number of, and remove wells, pipelines, power lines, buildings, facilities, equipment, and fixtures necessary or desirable for the continued operation of the oil and gas field on, over, under, in and through the property, together with the right of ingress and egress to, from, and across the property to all existing and future oil wells and production facilities.

No new wells will be drilled or existing wells re-drilled within any residential planning area after the County issues the first Certificate of Occupancy within that planning area. Any new wells drilled, or existing wells re-drilled outside of the residential neighborhoods, will be permitted and inspected by the DOG&GR. Prior to the first grading permit, the oil operator shall provide the County with a map providing survey coordinates for all current and abandoned wells. This plan shall be revised as conditions demand.

Oil wells to be retained in residential planning areas will be accommodated by replacing the existing pumping unit, pulling pad, and well cellar with a subsurface pumping unit enclosed within a concrete vault. The vault will have a lockable steel plate lid to isolate the unit from view or public access. The vault's size may vary, however a typical vault in a residential planning area will be 6 feet by 8 feet. The subsurface pumping unit will be electrically operated and will be equipped with an automatic shutoff valve in the event of flooding and a methane sensor equipped with an automatic shutoff valve. These wells will not be located within any private residential lot proposed in the Tonner Hills development. No habitable structure may be constructed within 150 feet of the retained subsurface well's wellhead or as otherwise approved by OCFA pursuant to Guideline C-02.

PAGE 4-2
REVISE SECTION 4.4 AS FOLLOWS:

4.2 PROHIBITED USES

~~Not applicable~~

(1) No new wells in residential planning areas pursuant to 4.1 (2) above.
(2) Telecommunications facilities.

REVISE SECTION 4.5 (2) AS FOLLOWS:
(2) New oil production facilities shall be inspected by the California Department of Conservation, Division of Oil, Gas and Geothermal Resources.

a. In compliance with safety and visibility requirements from Cal DOGGR, oil fields within the Tonner Hills Planned Community shall be secured by appropriate fencing. The existing fencing along Lambert Road, Valencia Avenue, Wildcat Way, adjacent to the high school, above Carmichael Drive and along Brea Boulevard will remain.

As residential development occurs, perimeter tract fences will be replaced, or new fences will be installed as required. These fences will be tubular steel or wrought iron depending upon design compatibility with the residential architectural theme of the development. Where there is an interface between residential development and an oil field road, there will be a gate built with either tubular steel or wrought iron and gates will remain locked for security purposes.

ADD NEW SECTION 4.6 AS FOLLOWS:

4.6 PHASING

Prior to obtaining approval of a tentative tract map for development of any residential planning area, a conceptual plan shall be submitted to Cal DOGGR and the County for the abandonment and/or undergrounding of wells located within the residential planning area. Prior to issuance of a precise grading permit for any residential planning area a final plan for the abandonment and/or undergrounding of wells shall be submitted to Cal DOGGR and the County.

PAGE 5-3
ADD THE FOLLOWING LANGUAGE TO SECTION 5.5 AS FOLLOWS

(h) Community facilities located proximate to oil activities are subject to all applicable OCFA regulations.

Page 8-1
Revise Section 8.1.1 (1) "Area Plan Content and Procedures" as follows:

(1) The Area Plan shall be approved concurrent with or prior to approval of a tentative subdivision map and/or Site Development Permit, or clearance for issuance of building or grading permits for any portion of the Planned Community. Final approval of any tentative map(s) affected shall be concurrent with or follow approval of an Area Plan or an amendment thereof. The Area Plan shall be approved by the Planning Commission per Section 7-9-150.3 (c), "Public Hearings", of the Zoning Code. Any subsequent Area Plan amendment shall be submitted to and approved by the Planning Commission in the same manner as the approval of the Area Plan. The Area Plan shall be forwarded to the City of Brea for review and comment thirty (30) calendar days prior to final action by the approving authority. However, if the City of Brea responds in less than 30 days, the approving authority may take final action if all other public notification requirements have been satisfied. Failure of the City of Brea to respond shall not necessarily delay action on the Area Plan.

PAGE 8-4
REVISE SECTION 8-2, SITE DEVELOPMENT PERMITS, AS FOLLOWS:

The purpose of a Site Development Permit is to provide an opportunity for administrative review of detailed plans for project proposals within the community, and to provide an optional method for establishing alternative site development standards for residential and non-residential uses as provided in Section 7-9-150 of the Zoning Code. Except as otherwise provided by this section or when proposing alternative site development standards, the Director shall be the approving authority for all Site Development Permits.

For purposes of this Planned Community the designated "citizens' body" ~~as specified in Section 7-9-150.1(d) of the Zoning Code~~ shall be the City of Brea. The application for discretionary shall be forwarded to the City of Brea for review and comment (30) calendar days prior to final action by the approving authority. However, if the City of Brea responds in less than 30 days, the approving authority may take final action if all other public notification requirements have been satisfied. Failure of the City of Brea to respond shall not necessarily delay action on the Permit.

PAGE 8-5
REVISE SECTION 8.2.1, "SITE DEVELOPMENT PERMIT CONTENT AND PROCEDURES" AS FOLLOWS:

(1) Submittal Requirement - Site Development Permits shall be approved by the Director as required below, prior to clearance for issuance of any building or grading permits. At the discretion of the Director, minor projects or projects

which are accessory to ~~or an expansion of~~ an existing use may be exempted from the requirement of a Site Development Permit review.

(2) Concurrent Processing - A Site Development Permit can be processed concurrently with a ~~Planned Community Program~~, an Area Plan and/or tentative map(s).

PAGE 8-6
REVISE SECTION 8.2.1, "SITE DEVELOPMENT PERMIT CONTENT AND PROCEDURES" AS FOLLOWS:

(5) Amendments - A Site Development Permit may be amended by the same procedure listed above in Section 8.2.

PAGE 10-1
REVISE THE FOLLOWING DEFINITION:

B

Building site – Same as Lot Size, a parcel or contiguous parcels of land established in compliance with the building site requirements of this Planned Community Program.

PAGE 10-2
ADD THE FOLLOWING NEW DEFINITION:

L

Lot Size – Same as Building Site Area. a parcel or contiguous parcels of land established in compliance with the building site requirements of this Planned Community Program.

PAGE 3-4
REVISE THE SECOND PARAGRAPH AS FOLLOWS:

To accomplish the goal of promoting a variety of housing types within each planning area, the Area Plan describes a variety of residential types for each planning area and establishes a target number of dwelling units and a target lot size for each planning area. Provisions within the Tonner Hills Planned Community Zoning allow the target number of units for any planning area to be exceeded provided the total number of 795 dwelling units is not exceeded. A minimum lot size (building site size) for each planning area is established in the event that the target number of dwelling units is exceeded. Table 1, which follows, describes the housing types proposed for Tonner Hills and the neighborhoods appropriate for each housing type.

PAGE 3-9
ADD A NEW SECTION 3.5.1, "OIL FIELD USES" AS FOLLOWS AND RENUMBER SUBSEQUENT SECTIONS ACCORDINGLY.

3.5 OIL FIELD USES

The Tonner Hills Area Plan anticipates the retention and integration of elements of the existing oil field operations within the developed community. The major elements of the operations include: oil production and water injection wells, oil storage and processing facilities, natural gas plant and power generation turbines, and the gathering lines, utility lines and access roads to serve these facilities. These operations come under the primary purview of the State of California Department of Conservation, Division of Oil, Gas and Geothermal Resources (Cal DOGGR). Oil operations and service facilities within Tonner Hills are illustrated on Exhibit 9.

3.5.1 EXISTING OPERATIONS

At the time of the adoption of the Tonner Hills Area Plan there were 196 active oil wells, 14 water injection wells, 82 idle wells, and 87 abandoned wells located on the property. There are two flow lines from each well, taking either oil and produced water or natural gas to gathering lines that then go to one of two existing tank farms: East Naranjal tank farm located in the south central portion of the property and the Tonner Canyon tank farm located in the north west of the property, on to the west of the 57 Freeway. The flow lines lie primarily on the surface of the property, following existing oil field service road alignments, and through relatively undisturbed open space areas. The individual flow lines are steel and typically two to three inches in diameter. Gathering lines also are also aligned with existing service roads or in open space and the steel lines range in size from four inches to ten inches, depending upon the volume of fluids to be accommodated in the line. All wells are run with electrical motors and served from an overhead power line providing 440-volts to the individual well motors.

The tank farms separate the oil from the produced water by running the fluids through a separation and clarification tank. The produced oil is then transferred by pipeline to a sales line the leaves the property at a location near Wildcat Way and Lambert. The sales line is operated by others. The produced water is either injected into the formation through the water injector wells, a process to enhance the oil production, or is taken from the property by a permitted sewer connection to the Orange County Sanitation District.

Natural gas is taken to the Main Oil Facility where it is processed into propane and Liquefied Natural Gas, the remaining product, methane, is burned in the two gas powered turbines at the facility. Electricity generated from the turbines is used to power the oil field, with the excess being sold to the ISP. Both the propane and the LNG is stored in pressure vessels and trucked from the site as needed.

3.5.2 Future Oil Field Operations

Even though nearly 75% of the Tonner Hills Planned Community remains in open space, the development of the Tonner Hills Planned Community will require changes to the oil operations to accommodate the development of the residential neighborhoods.

Oil Wells

With the development of the property, many of the current oil wells will be abandoned. The oil well abandonment procedure is regulated, permitted and inspected by the State of California Department of Conservation, Division of Oil, Gas & Geothermal Resources (Cal. D O.C., D.O.G.&GR). Subject to the review of the Cal. D O.C., D.O.G.&GR, it may also be necessary to re-abandon certain previously abandoned wells. It is expected that a total of 190 to 210 operating wells, including water injector wells, will remain in operation. The precise number of wells remaining after development will be at the sole discretion of the oil operator and may be impacted by economic conditions or the demand for oil at the time of development. Prior to obtaining approval of a tentative tract map for development of any residential planning area, a conceptual plan shall be submitted to Cal DOGGR and the County for the abandonment and/or undergrounding of wells located within the residential planning area. Prior to issuance of a precise grading permit for any residential planning area a final plan for the abandonment and/or undergrounding of wells shall be submitted to Cal DOGGR and the County.

No new wells will be drilled or existing wells re-drilled within any residential planning area after the County issues the first Certificate of Occupancy within that planning area. Any new wells drilled, or existing wells re-drilled outside of the residential neighborhoods, will be permitted and inspected by the DOG&GR. Prior to the first grading permit, the oil operator shall provide the County with a map providing survey coordinates for all current and abandoned wells. This plan shall be revised as conditions demand.

Oil wells to be retained in residential planning areas will be accommodated by replacing the existing pumping unit, pulling pad, and well cellar with a subsurface pumping unit enclosed within a concrete vault. The vault will have a lockable steel plate lid to isolate the unit from view or public access. The vault's size may vary, however a typical vault in a residential planning area will be 6 feet by 8 feet. The subsurface pumping unit will

be electrically operated and will be equipped with an automatic shutoff valve in the event of flooding and a methane sensor equipped with an automatic shutoff valve. These wells will not be located within any private residential lot proposed in the Tonner Hills development. No habitable structure may be constructed within 150 feet of the retained subsurface well's wellhead or as otherwise approved by OCFA pursuant to Guideline C-02.

There may be no structures constructed over wells abandoned in the residential neighborhoods. Subject to the Combustible Soil Gas Mitigation Hazard regulations of the Orange County Fire Authority methane venting may be required of certain wells abandoned within or adjacent to the residential neighborhoods or collector streets.

Oil wells, or water injector wells remaining in residential areas well require a setback from a habitable structure of one hundred feet. This setback may be reduced to fifty feet though an application to the Orange County Fire Authority under the terms of the Orange County Fire Authority's *Guideline for Residences Less than 100' from an Oil Well.* Any well seeking to have a reduced setback will be required to be designed such that the surface aspect of the well is minimized in order that the primary operating equipment of the well is placed in an underground vault, thereby reducing the visual impact of the well. The modifications to the oil wells remaining in the development areas will take place during, and concurrent with the grading operation for each phase of development. No new oil wells or injector wells will be completed within the residential neighborhoods once the first Certificate of Use and Occupancy has been received for that neighborhood. Cal. D O.C., D.O.G.&GR will review and approve the development site plan in relation to both existing and previously abandoned wells prior to the issuance of a building permit.

Oil wells remaining in open space will have security fencing in accordance with the requirements of Cal. D O.C., D.O.G.&GR. Where the remaining wells lie within two hundred feet of the residential neighborhoods they will have visual screening from the neighborhoods in accordance with the design guidelines described in Section 6. No new oil wells or injector wells will be completed within the open space area except on existing well pads as shown in the Coastal Sage Mitigation Plan approved with the Biological Opinion issued by the United States Fish and Wildlife Services.

Flow Lines and Gathering Lines

The development of the Tonner Hills Planned Community will disrupt the current flow line and gathering line system. The abandonment of a large number of existing oil wells will further disrupt the system. All lines associated with the abandoned wells will be removed at the time of well abandonment. New flow lines and gathering lines will be placed in underground trenches within the residential areas. These lines will be primarily within the public street right of way, or within the lots designated for the oil wells, and owned and maintained by the Master Community Association. There will be cases where the lines will be within easement areas adjacent to residential lots. The "B" level tentative maps will provide a schematic layout of the flow line and gathering line infrastructure in order that there not be a conflict with public or private utilities. An "as

built" plan will be provided to the Orange County Fire Authority upon completion of each phase.

Electrical Service

Flow lines and gathering lines within open space areas will remain above ground and follow existing patterns to the extent possible.

Electrical service to all wells within the residential areas will be provided by an underground conduit system. Electrical service in open space areas will remain on above ground pole lines.

Facilities

The development of the Tonner Hills Planned Community will require that the existing East Naranjal Tank Farm be decommissioned. With decommissioning, the soils beneath the tank farm will be cleaned up in accordance with the Remedial Action Plan for the Tonner Hills (Stearns Property) project approved by the Orange County Health Care Agency dated December 16, 1999 and last amended October 3, 2001. The Tonner Canyon Tank Farm will be expanded as necessary to accommodate the lost processing capabilities of the East Naranjal Tank Farm. It is anticipated that the expansion will be limited to the construction of two additional five thousand barrel tanks, the associated expansion of the containment dike and the installation of additional manifolds, piping and monitoring equipment to accommodate the new storage capacity. The footprint of the existing facility will be expanded by approximately twenty-five percent to handle the new facilities. The final design and size of the facility will be shown with the conservation easement to be dedicated over the open space area. The South Coast Air Management District retains the responsibility for permitting any changes to the Tonner Canyon Tank Farm and for continual inspection of the facility for compliance with the permit. Cal. D O.C., D.O.G.&GR and the Orange County Fire Authority will also provide oversight to the planned improvements at the Tonner Canyon Tank Farm.

The Main Oil operations will continue in operations at the existing location. Access to the facility will come through the project and through an existing access road to Valencia Avenue. With the development of the Tonner Hills Planned Community access for any trucks carrying Liquefied Natural Gas or propane from the site will use the Valencia Avenue access point that does not utilize the collector or local streets of the Tonner Hills Planned Community. This facility will be screened from public view in accordance with the criteria found in the Design Guidelines.

PAGE 6-5
REVISE NO. 2, SIDEWALKS AS FOLLOWS:

d. Sidewalks shall be provided with landscape enhancements ~~on both sides~~ (landscape parkways, landscape areas, open space, slopes or parks) and should not directly abut community walls. Sidewalks shall be provided on two sides

of the street (double loaded streets) and on one side of the street (single loaded streets house side) along all local streets.

PAGE 6-43

ADD THE FOLLOWING LANGUAGE TO SECTION 6.8.2 SCREENING/FENCING:

In compliance with safety and visibility requirements from Cal DOGGR, oil fields within the Tonner Hills Planned Community shall be secured by appropriate fencing. The existing fencing along Lambert Road, Valencia Avenue, Wildcat Way, adjacent to the high school, above Carmichael Drive and along Brea Boulevard will remain.

As residential development occurs, perimeter tract fences will be replaced, or new fences will be installed as required. These fences will be tubular steel or wrought iron depending upon design compatibility with the residential architectural theme of the development. Where there is an interface between residential development and an oil field road, there will be a gate built with either tubular steel or wrought iron and gates will remain locked for security purposes.

Statement of Findings and Facts

Recommended
CEQA Statement of Findings and Facts
Tonner Hills Planned Community
Environmental Impact Report No. 581

1. Introduction

The California Environmental Quality Act (CEQA) and the CEQA Guidelines (Guidelines) provide that:

> "No public agency shall approve or carry out a project for which an Environmental Impact Report has been certified which identifies one or more significant environmental effects of the project unless the public agency makes one or more written findings for each of those significant effects, accompanied by a brief explanation of the rationale for each finding." (CEQA Guidelines §15091)

Because the EIR identified significant effects that may occur as a result of the project, and in accordance with the provisions of the Guidelines, the Board of Supervisors hereby adopts these findings as part of the approval of the Project.

The County has prepared an EIR for the proposed Project in accordance with CEQA and CEQA Guidelines requirements. As mandated by County procedures, the EIR is subject to review and approval by the Planning Commission and the Board of Supervisors.

It is not considered reasonable, required, or feasible for this Board of Supervisors to recite every detail forming the basis for its findings herein, since the voluminous record, incorporated herein by reference and made publicly available, contains the substantial evidence explaining the facts in support. The Board of Supervisors considers this incorporation approach justified, especially in light of the fact that the County has responded in writing to each written comment raising environmental issues and has made this information widely available through staff reports and mailings. Where appropriate and helpful to understanding the basis of the Board of Supervisors' recommended findings herein, the County has mentioned certain aspects of the record arising from public input, in particular, the revisions to the project following public review which form the basis for the findings and project recommendations herein.

2. Revisions to the Project Following Public Review

Following the close of the public review period, refinements to the proposed project were made in response to the comments received. In accordance with CEQA §15088, the County, as Lead Agency, evaluated comments received and caused four key modifications in the project site plan to further mitigate anticipated impacts or objections raised.

The County staff, the City of Brea, and Nuevo Energy representatives have agreed to recommend adoption of Alternative 4 with modified design features and mitigation measures (Exhibit 1-1) hereinafter referred to as "Alternative 4 Preferred Plan" or "refined plan." To document this approach, the County staff, the City staff, and Nuevo Energy representatives have prepared a Memorandum of Understanding (MOU) leading to a Pre-Annexation Agreement. For the County, the MOU would also lead to Board of Supervisors' approval of a Development Agreement with Nuevo Energy, an action identified in the Draft EIR (DEIR Section 3.4). Alternative 4 and its impacts are analyzed in Section 6.4 of the Draft EIR. Since public circulation of the Draft EIR, the County, the City, and Nuevo Energy have identified additional mitigation design features and mitigation measures for Alternative 4, which are incorporated into the Alternative 4 Preferred Plan.

The design features and the mitigation measures that form the Alternative 4 Preferred Plan respond to a large number of comments on the Draft EIR, which is the specific intent of the County, the City, and Nuevo Energy. In summary, Alternative 4 was described and analyzed in detail in the circulated Draft EIR, and the design features and mitigation measures for the Alternative 4 Preferred Plan do not add new significant impacts or additional information on significant impacts. Therefore, the Alternative 4 Preferred Plan does not require revision and recirculation of the Draft EIR.

All of these revisions were contemplated and evaluated in the DEIR Chapter 6, Alternatives to the Proposed Project, and include the following:

1. Deletion of Tonner Hills Road as a project access point and providing access along Valencia Avenue (Design Alternative 1).

2. Deletion of commercial/mixed-use development on the corner of Wild Cat Way and Lambert Road (Project Alternative 4).

3. Elimination of development on the west side of Cable Canyon in Neighborhood 7 (Project Alternative 4 and Design Alternative 3).

4. Reduction in dwelling units from Neighborhoods 5 and 6 (Project Alternative 4 and Design Alternative 4).

The proposed modifications to the project site plan incorporate project alternatives and design alternatives that have been described and analyzed in the Draft EIR and do not create new significant impacts or substantially increase the severity of previously analyzed project impacts. In fact, the project refinements further reduce impacts previously evaluated in the DEIR for noise, air quality, aesthetics, biological resources, transportation, hydrology, utilities, and public services.

Overall, the reduction in the number of dwelling units and the deletion of the commercial/mixed-use center decreases the average daily traffic by 42%. Correspondingly, there are reductions in the vehicular emissions associated with the project. ROG emissions are reduced to below the SCAQMD thresholds; however, CO and NO_X emissions remain above the thresholds, and the long-term regional air quality impacts remain unavoidable as analyzed in the DEIR. Impacts to

Agricultural Resources also remain significant and unavoidable under the Alternative 4 Preferred Plan and a Statement of Overriding Considerations shall be adopted.

The Alternative 4 Preferred Plan presents a project that minimizes the physical environmental impacts and thus further reduces the impacts to noise, air quality, aesthetics, biological resources, transportation, hydrology, utilities, and public services from what was analyzed in the DEIR. The Alternative 4 Preferred Plan meets all of the project objectives. Therefore, in consideration of these changes in project design and incorporation of additional mitigation measures, the Board of Supervisors accepts this project alternative: Alternative 4 Preferred Plan.

3. Description of EIR Project Alternatives and Design Alternatives

The EIR evaluated project alternatives for the Tonner Hills property. The Board of Supervisors has reviewed and considered such alternatives in light of the adverse environmental effects that may result from the project and the reduction or elimination of such effects that might be accomplished by selection of one of the alternatives.

Each alternative is summarized below and the specific environmental, economic, social or other factors that are considered to render such alternatives infeasible are set forth. The discussions below are intended to summarize and not fully restate the evidence contained in the Draft EIR, Responses to Comments, and the administrative records as a whole.

The following is a brief description of each project alternative and design variation considered in the Draft EIR:

Project Alternative 1: No Project

This alternative would retain the status quo of entitlement efforts. The property would remain in oil production, which would be expanded, and the zone change and other approvals sought for the proposed project would be abandoned. This alternative was discussed pursuant to the requirements of CEQA §15126.6(e). It assumes that there will eventually be development on this site but at an unspecified time in the future. While the No Project Alternative achieves the objective of minimizing the overall adverse environmental impacts, none of the other project objectives are achieved. Therefore, this alternative is rejected.

Project Alternative 2: No Development

This alternative would retain the current operation on the property and abandon all development now and in the future resulting in no improvement to any site conditions or characteristics. It assumes not only the abandonment of the proposed project, but any development during the projected 10-year buildout for the proposed project. This alternative is considered as it relates to long-term effects on housing, population and employment figures in meeting County growth projections. The No Development Alternative meets one project objective – minimizing overall adverse environmental impacts. None of the other project objectives are achieved. Therefore, this alternative is rejected.

Project Alternative 3: Previous 1,445-Unit Brea Highlands Project

The previous project presented to the City of Brea consisted of a plan for 1,445 dwelling units on 241.5 acres, as contrasted with the proposed project of 914 dwelling units on 193.9 acres. Approximately 3.5 acres in the 1,445-unit project were to be developed with commercial uses, whereas 7.7 acres of the proposed project are to be developed with mixed uses. Park uses are commensurate between the two proposals when controlled for size, except for the 32.7 acres of Public Use being made available for acquisition. This alternative achieves all of the project objectives except for minimization of environmental impacts. Relative to the proposed project, this alternative has greater environmental impacts due primarily to the increased size (acreage and dwelling units). Therefore, this alternative is rejected.

Project Alternative 4: City of Brea Alternative

The City Alternative envisions a maximum of 755 dwelling units in 8 neighborhoods on 823.8 acres, inclusive of the acreage not included in the proposed project. This alternative redesigns the interior circulation system for the project by eliminating access from the northwestern boundary (the proposed Tonner Hills Road) and using Valencia Avenue and Lambert Road for ingress and egress. The design provides for several areas of "estate housing" (large houses on large lots), mainly in the areas of higher elevations. Higher density housing would be available in the southernmost neighborhoods near Lambert Road. A total of 126.2 acres of residential development is proposed. No mixed use is included in this alternative, and the 7.7-acre mixed-use parcel remains undeveloped. Unlike the proposed project, the City Alternative addressed the 789.9 acres of the project plus the acres within the City that are not part of the proposed project. For consistency purposes, the City Alternative was presented as submitted, but clarification of the geographic area is made as appropriate.

The City Alternative also designates preservation of the existing configuration of Wildcatters Park, which abuts the public use portion of the site. The City designated a 38.9-acre public use area to allow for additional park uses such as ball fields, bicycle/pedestrian paths, etc. Many of the project objectives are not achieved under the City Alternative. The City land plan conflicts with existing oil and gas production facilities exposes houses to known hazards by locating development in close proximity to tar seeps and fault lines, and ignores the existing roadway alignment for internal circulation. Perhaps more importantly, the alternative calls for an import of fill of striking proportions that would be extremely disruptive to the community and the environment. The mere cost (approximately $8 per cubic yard) would be prohibitive. The overall financial burden of grading would make the project unfeasible. Because of the lower number of dwelling units proposed with the City Alternative (680 to 755, including property beyond the purview of this project), the potential for the project to support a diversity of housing styles and provide additional dwelling units to influence the jobs/housing imbalance is significantly impacted. Therefore, this alternative is rejected.

Project Alternative 5: Golf Course and Large-Lot Residential (Reduced Density) Project

This project alternative provides for an 18-hole golf course and approximately 246 acres of residential uses in mini-ranchettes or estates with a minimum lot size of 10,000 square feet. The residential acreage is assumed to be completely graded, which would support a golf course and a 738-unit ranchette alternative. Due to the substantial landform modifications required to build the golf course, this project alternative does not minimize the overall adverse environmental impacts, nor does it meet many of the project habitat protection objectives. The impacts to oil operations access are also greater with this alternative than with the proposed project. For these reasons, this alternative is rejected.

Project Alternative 6: City of Brea General Plan

This alternative analyzes the City of Brea General Plan in place at the time the Tonner Hills project development application was submitted to the County (January 2001). This alternative evaluates 1,093 dwelling units distributed over the 746.5 acres of residential land uses. Regarding non-residential categories, the General Plan designates 9.2 acres for General Commercial uses and 30.5 acres for Public Facilities and Grounds, both located at the northern section of the site on either side of the Orange (SR 57) Freeway at Tonner Canyon Road. An additional 3.6 acres designated as Office Facilities is located at Wild Cat Way just north of Lambert Road. For purposes of this analysis, the 30.5-acre Public Facilities portion assumes the construction of a 60,000-sq.ft. regional postal facility. This alternative fails to meet the objective of minimizing overall adverse environmental impacts throughout the project site unless additional mitigation measures are identified. This alternative also does not preserve open space linkages for wildlife movement. Therefore, this alternative is rejected.

Project Alternative 7: City of Brea Revised General Plan (30% Reduction)

On July 17, 2001, the Brea City Council approved a 30% reduction in intensity of certain land areas within the General Plan as well as reclassifications of several roadways. At the Council meeting, City staff stated that the project area (defined as 823.7 acres) would support 1,252 dwelling units under a General Plan buildout, or 881 dwelling units with a 30% reduction. This alternative analyzes the City of Brea General Plan as revised in July 2001. The lower density, fewer dwelling unit alternative reduces the opportunity to provide needed housing. Fewer dwelling units also fails to provide for a wider variety of housing styles and prices, reducing the opportunity to meet the County's affordable housing requirements. Additionally, the expenses associated with developing the site and the reduced number of dwelling units makes this alternative economically infeasible. For these reasons, this alternative is rejected.

Project Alternative 8: 624-699 Dwelling Units Using Project Configuration

This alternative incorporates the number of dwelling units in the City of Brea Alternative onto the development footprint defined in the proposed project. This alternative eliminates the 56 dwelling units on the City of Brea's Recommended Project that were located on the parcel that is

no longer owned by the applicant. A variant to this alternative is also considered which eliminated all development from ridgelines as identified by the City of Brea in its Ridgeline Ordinance, resulting in a modified project footprint. This alternative reduced total development area by an estimated 16 acres, and reduced units by 100. These alternatives fail to meet the following project objectives as identified in the EIR: provide additional housing in the north Orange County area to the maximum extent possible in an effort to reduce the jobs/housing imbalance; create a variety of lot sizes and configurations that support a diversity of housing styles throughout the planned community; and balance grading quantities on-site (No Ridgeline Development Variant). The lower density, fewer dwelling unit alternative reduces the opportunity to provide needed housing. Fewer dwelling units also fails to provide for wider variety of housing styles and prices, reducing the opportunity to meet the County's affordable housing requirements. Therefore, this alternative is rejected.

Project Alternative 9: Very Low Density/Estate Alternative

This alternative evaluated a 1 unit per five acre development project in response to recent discussions the City of Brea General Plan Advisory Committee (GPAC) had engaged in a regarding Tonner Hills project and other properties. The alternative would result in approximately 158 dwelling units on the property. While the density is arithmetically lower, the impacts are much higher in terms of resource destruction. Clearly, regardless of the restrictions put on land within a private ownership, natural resources are commonly lost due to a property owner's use of the lot and extensive fuel modification requirements. In this context, impacts to natural resources would be increased over the proposed project, even though impacts to other areas (e.g, traffic) would be reduced. This alternative would not meet many of the stated project objectives. Furthermore, because of the expenses associated with extensive grading and utility connections, this project alternative is not economically feasible. Therefore, this alternative is rejected.

Design Alternative 1 - Delete Tonner Hills Road

This alternative proposes the deletion of Tonner Hills Road from the planned community and analyzes the impact of eliminating the access point to the larger portion of the project (east of the Orange Freeway), while retaining access from Lambert Road. A second project access point is proposed to connect at Valencia Avenue aligned with the existing Olinda Ranch entry intersection. This design alternative has been accepted.

Design Alternative 2 - 150 Affordable Housing Units on Mixed Use Site

This alternative would replace the commercial site of 7.7 acres (located at the southwest corner of the site) with 150 affordable housing units with the total dwelling units for the project at 1,064. Because all development on the 7.7 acre site has been removed, this design alternative is rejected.

Design Alternative 3 - Wildlife Passage

This alternative proposes a pullback of Neighborhood 7 in order to increase the size of the passageway for wildlife moving from Cable Canyon to Tonner Canyon and adjacent parts of the project site. As part of this alternative, four dwelling units within Neighborhood 7 will be removed. This will increase the distance between the neighborhood and the mixed-use site on Lambert Road from 300 feet to nearly 450 feet. A variation of this design alternative which removes all development from Neighborhood 7 has been accepted.

Design Alternative 4 - Relocate Dwelling Units from Neighborhoods 5 and 6 to Public Use Site

This alternative considers the potential to further reduce ridgeline impacts by relocating several dwelling units in Neighborhoods 5 and 6 to the proposed Public Use Site. This design alternative is rejected as it does not provide any benefits over the preferred project, and the project as preferred does not affect true ridgelines in any event.

4. Findings of Fact

The Board of Supervisors has reviewed the final EIR prepared to evaluate the proposed project and has considered the public record on the project as earlier described in these findings.

These findings summarize the data and conclusions contained in the Draft EIR, the various responses to comments and the administrative record. The Draft EIR, the various responses to comments and the administrative record are incorporated into these findings as set forth in full.

Consistent with the requirements of the CEQA Guidelines, the EIR for the Tonner Hills Planned Community (hereinafter EIR) discusses environmental effects in proportion to their severity and probability of occurrence. To that end, the EIR recognizes that certain areas of impact from the project are unlikely to occur, or if potentially occurring can be mitigated to a level of insignificance by imposition of conditions to the project. It is not reasonably anticipated that potential additional impacts will be discovered as a result of future studies (as identified per the mitigation measures) because of the substantial evidence in the administrative record (including the EIR presently). Therefore, these studies are incorporated into the mitigation measures to further assure protection and recognize responsible agency involvement occurring in the normal course of affairs after the lead acts.

The Board of Supervisors therefore finds, based on all the data currently available, that while no significant adverse impacts are expected to be discovered as a result of any of these subsequent studies, the requirements of such studies in connection with the project and the reservation of the power to incorporate any mitigation measures required to mitigate any previously unknown impacts to insignificant levels, is itself adequate mitigation for any impacts disclosed by such subsequent surveys and studies, however, unlikely.

The EIR identifies a number of potentially significant adverse environmental effects of the project. The EIR also identifies mitigation measures that would reduce or eliminate potential adverse effects. These effects and the mitigation measures are summarized below.

All mitigation measures have been written as monitoring programs pursuant to *Public Resources Code* §21081.6. The drafting of these measures has been designed to ensure compliance during project implementation as explained further in the EIR. The MMP, which is incorporated herein and into the Final EIR by reference, defines the following for each mitigation measure:

1. A Time for Performance - In each case, a time for performance of the mitigation, or review of evidence that mitigation has taken place, is provided. The performance points selected are designed to ensure that impact related components of project implementation do not proceed without establishing that the mitigation is assured.

2. A Responsible Party Supervising Performance - In each case, a public official is named in the mitigation measure as responsible for ensuring that the mitigation is carried out. To guarantee that the mitigation measure will not be inadvertently overlooked in connection with the issuance of a later permit, the supervising public official who grants the permit called for in the performance.

3. Definition of Mitigation - In each case (except where a mitigation, such as a geotechnical report, is a well-known procedure or a term of art), the mitigation measure contains the criteria for mitigation, either in the form of adherence to certain adopted regulations or identification of the steps to be taken in mitigation.

These findings merely summarize data in the EIR administrative record for purposes of identifying the significant impacts and mitigation measures for the project. The EIR is incorporated by reference into these findings as substantial evidence therefore as if set forth fully in the findings. The Final EIR is composed of the following elements:

a. Draft EIR (Volume 1, State Clearinghouse No.2001-03-1137);

b. Technical Appendices to Draft EIR (Volumes A-M);

c. Comments received on the Draft EIR and responses to those comments (Responses to Comments);

d. County of Orange staff reports dated September 18, 2002, and October 16, 2002;

e. All attachments, incorporations, and references specified in a. through d. above.

All of the above information has been and will be on file with the County of Orange Planning and Development Services Department, 300 N. Flower Street, Santa Ana CA 92703.

Pursuant to §21081 of CEQA and §15091 of the Guidelines, the Lead Agency is required to make one or more of the following findings prior to approval of a project for which an EIR has

been completed, identifying one or more significant effects of the project along with statements of facts supporting each finding:

Finding 1 - Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen many of the significant environmental effects as identified in the EIR, or

Finding 2 - Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency, or

Finding 3 - Specific economic, social or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the Final EIR.

Land Use and Planning

Significant Effects

With incorporation of the County's zoning standards and conditions of approval for the project, impacts relative to land use will be reduced to less than significant.

Findings

There are no impacts requiring findings.

Mitigation Measures

No mitigation measures are required as the project has incorporated compliance with all governing land use and planning regulations.

Mitigation Measures Added

None.

Mitigation Measures Not Incorporated

None.

Effects Not Mitigated to a Level of Insignificance

None.

Agriculture

Significant Effects

The following is a summary of significant effects to agriculture.

Loss of 18 acres of a former plant nursery designated as Unique Farmland will contribute incrementally on a statewide basis to the conversion of agricultural lands to urbanized uses.

Findings

Finding 3 - Specific economic, social or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the Final EIR.

Mitigation Measures

No mitigation measures are available.

Mitigation Measures Added

None.

Mitigation Measures Not Incorporated

None.

Effects Not Mitigated to a Level of Insignificance

The loss of Unique Farmland is considered a significant and unavoidable impact.

Population and Housing

The project does not raise significant impacts to population and housing. Through development, the project offers new housing opportunities within the County in an area that is considered "job-rich".

Findings

There are no impacts requiring findings.

Mitigation Measures

No mitigation measures are required.

Mitigation Measures Added

None.

Mitigation Measures Not Incorporated

None.

Effects Not Mitigated to a Level of Insignificance

None.

Geophysical

The following is a summary of significant effects to geophysical.

> The Project site is subjected to potential geological impacts associated with fault ruptures during an earthquake, seismic ground shaking, and its secondary effects of slope instability, compressible/collapsible soils, expansive and corrosive soils, tar seeps, and methane gas. The Project grading plans will balance cut and fill on-site, resulting in approximately 5,500,000 cubic yards of grading activities. An additional 3,600,000 cubic yards of remedial grading is anticipated for the stabilization of alluvium, colluvium, landslide debris, and older, uncompacted fills. The Project will contribute to cumulative land form alterations and geophysical impacts.

With implementation mitigation measures impacts relative to geophysical will be reduced to less than significant.

Findings

Finding 1 - Changes or alterations have been required in, or incorporated into, the project that avoid or substantially lessen many of the significant environmental effects as identified in the EIR.

Mitigation Measures

G-1 **Fault Investigations** - Prior to issuance of the grading permit, the project applicant shall ensure that development throughout the project area shall include geologic investigations performed by a California-licensed geologist or engineering geologist to document the location, orientation, recency of activity, and direction of anticipated offset for active or potentially active faults that impact the development area. In particular, the precise location and activity of the Tonner Fault should be determined, because of its proximity to future home sites (approximately 50 feet). Appropriate setbacks from designated active faults

should be included in project planning and design, and a report should be submitted to the Manager, Subdivision and Grading.

G-2 **Geotechnical Investigation and Report** - Prior to the issuance of a grading permit, the project applicant shall submit a geotechnical report to the Manager, Subdivision and Grading, for approval. The report shall be prepared by a California-registered engineering geologist and licensed civil engineer with experience in soil engineering, and shall include technical information and recommendations in the format required by the County of Orange Grading Manual.

G-3 **Liquefaction** - Prior to issuance of a grading permit, the project applicant shall ensure that the geotechnical investigation fully characterizes the presence and extent of liquefiable soils and shall submit a report to the Manager, Subdivision and Grading. The project is not within a state-delineated Seismic Hazard Zone for liquefaction; however, the state maps may not show all potentially liquefiable areas. Therefore, a site-specific analysis of the liquefaction potential in areas of the property underlain by alluvium should be included in future detailed geotechnical investigations. In order to assist in this analysis, the state has published specific guidelines for evaluating and mitigating liquefaction (California Division of Mines and Geology Special Publication 117, 1997). In general, the liquefaction investigation identifies the depth, thickness, and lateral extent of any liquefiable layers that would affect the project site. If such layers exist, an analysis is then performed to estimate the type and amount of ground deformation that might occur, given the seismic potential of the area.

Mitigation measures generally fall into two categories: ground improvement or foundation design. Ground improvement measures include removal and recompaction of low density soils, removal of excess ground water, in-situ ground densification, and other types of ground improvement (such as grouting or surcharging). Special foundations that may be recommended range from deep piles to reinforcement of shallow foundations (such as post-tensioned slabs). The type (or combinations of types) of mitigation depends on the site conditions and on the nature of the proposed project (California Division of Mines and Geology, 1997).

G-4 **Slope Stability** – Prior to issuance of the grading permit, the existing slopes that will remain adjacent to development areas should be investigated and analyzed for gross stability in accordance with current soil engineering standards. Graded slopes (including cut, fill, and cut-over-fill slopes) and graded/natural slope combinations will also require investigation and analysis. Grossly unstable slopes can be stabilized by buttressing, flattening the slope gradient, lowering the height of the slope, constructing the slope with geogrid reinforcement, or by combinations of these methods. Where slopes cannot be stabilized, building setbacks will be imposed.

Specific recommendations for remediation of slope instability shall be included in the geotechnical report for the project, which shall be submitted for review and approval to the Manager, Subdivision and Grading.

G-5 **Compressible/Collapsible Soils** - Prior to issuance of the grading permit, a geotechnical soil analysis shall be performed to characterize the presence of compressible and/or collapsible soil within the project site. The findings and specific recommendations shall be included in the geotechnical report for the project and shall be submitted for review and approval to the Manager, Subdivision and Grading. Compressible soils are routinely removed and recompacted in proposed fill areas. Where perimeter fill slopes descend into natural canyons, the compressible soils are not only removed under the fill slope, but for a specified distance beyond the toe of the fill slope. This provides support for the slope and mitigates the potential for settlement. The removal area generally extends beyond the grading design at a minimum 1:1 projection (if landslides are present, a 1.5:1 or 2:1 projection is used). A 1:1 projection means the bottom of the removal extends beyond the toe to a horizontal distance equal to the depth of the removal bottom below the toe. Consequently, this distance is primarily dependent on the thickness of the compressible soils, but is also dependent on the gradient of the natural slope below the fill (the steeper the slope, the farther the removal is extended).

G-6 **Expansive and Corrosive Soils** - Prior to issuance of the grading permit, and as part of the geotechnical investigation performed by a California licensed geologist and geotechnical engineer, the presence and extent of potentially expansive and corrosive soils within the project site shall be characterized. The best defense against expansive soils in new developments is to avoid placing expansive soils near the surface. If this is unavoidable, building areas with expansive soils are typically "presaturated" to a moisture content and depth specified by the soil engineer, thereby "pre-swelling" the soil prior to constructing the structural foundation or hardscape. This method is often used in conjunction with designing stronger foundations that can resist small ground movements without cracking. Good surface drainage control is essential for all types of improvements, both new and old.

G-7 **Tar Seeps** - The potential for naturally occurring crude oil seeps cannot be completely eliminated; however, it can be greatly reduced by the implementation of the following remedial measures.

- Prior to the issuance of a grading permit, a thorough analysis and preliminary remediation plan shall be prepared by the geotechnical consultant in order to reduce impacts of future oil seepage to a level of non-significance. The plan shall be submitted for review and approval to the Manager, Subdivision and Grading. For the residential areas, remedial grading will be required to reduce the potential for future oil seepage at finished grades. This could include deeper overexcavation, thereby placing

a thick fill column between the seep and finish grade; a subsurface drainage and capture system; and/or higher compaction standards.

- During grading, the geotechnical consultant shall observe and map all excavations for oil seepage. The geotechnical consultant shall provide specific remedial recommendations based on the actual conditions encountered. Remedial recommendations shall include a means by which to reduce the potential for future landscape irrigation water to form a perched ground water table on the oil-bearing bedrock or fill.

- During grading the location of any subsurface, utility lines shall be overexcavated a minimum of 2 feet below the base of the line in bedrock or soils with naturally occurring hydrocarbon. The geotechnical consultant shall evaluate any utility line located in oil-bearing areas for its potential to provide a pathway for oil migration (i.e., via the permeable bedding sands). Oil-bearing fill materials shall not be placed as utility line backfill.

- During grading, the geotechnical and/or environmental consultant shall evaluate the need for clarifiers in order to reduce the potential of water carrying crude oil to impact the site.

- Prior to issuance of building permits, the geotechnical consultant shall issue an as-graded report documenting the location of naturally occurring oil and any remedial measures installed and a monitoring and maintenance plan for tar seep drainage and collection systems. The report and plan shall be submitted to the Manager, Subdivision and Grading, and the Manager, Current Planning, for approval.

- The oil seep analysis and mitigation shall be performed by a California registered engineering geologist and soil engineer. All reports, work plans, and mitigation plans shall be submitted to the Manager, Subdivision and Grading, for review and approval.

G-8 **Reservoirs** - Prior to issuance of the grading permit, the flow directions, flow volumes, and inundation levels shall be estimated by the design civil engineer for the project and submitted to the Manager, Subdivision and Grading, for approval. If necessary, engineered devices or structures should be considered to redirect any potential flow away from residential neighborhoods. If feasible, the water tanks should be relocated outside the Alquist-Priolo Earthquake Fault Zone. The presence or absence of faults should be determined by conducting a detailed geologic investigation.

G-9 **Observation and Testing** – Prior to issuance of building permits, a final report summarizing the observation and testing performed during grading by the geotechnical consultant and for the project shall be submitted to the Manager, Subdivision and Grading for approval.

G-10 **Grading** - All grading shall be performed in accordance with the County of Orange Grading and Excavation Code, County of Orange Grading Manual and the appropriate sections of the Uniform Building Code.

Mitigation Measures Added

None.

Mitigation Measures Not Incorporated

None.

Effects Not Mitigated to a Level of Insignificance

None.

Hydrology and Drainage

The following is a summary of significant effects to hydrology and drainage.

Development of the Project will result in the increase of peak runoff flows due to the increased construction of impervious surfaces, which results in shorter runoff times and greater concentration of hydrological flows. Increased erosion of sediment will result during the construction stages of the Project. Urban wastewater runoff will significantly increase as a direct result of this Project, resulting in greater impacts to hydrology and drainage.

With implementation mitigation measures impacts relative to hydrology and drainage will be reduced to less than significant.

Findings

Finding 1 - Changes or alterations have been required in, or incorporated into, the project that avoid or substantially lessen many of the significant environmental effects as identified in the EIR.

Mitigation Measures

HD-1 Prior to the recordation of a subdivision map for development (except maps for financing and conveyance purposes only) and prior to the issuance of any grading permits, the following drainage studies shall be submitted to and approved by the Manager, Subdivision and Grading and the Manager, PFRD/Program Development Division:

a. A drainage study of the project including diversions, off-site areas that drain onto and/or through the project, and justification of any diversions; and

b. When applicable, a drainage study evidencing that proposed drainage patterns will not overload existing storm drains; and

c. Detailed drainage studies indicating how the project grading, in conjunction with the drainage conveyance systems including applicable swales, channels, street flows, catch basins, storm drains, and flood water retarding, will allow building pads to be safe from inundation from rainfall runoff that may be expected from all storms up to and including the theoretical 100-year flood.

HD-2 a. Prior to the recordation of a subdivision map for development (except maps for financing and conveyance purposes only) and prior to the issuance of any grading permits, the applicant shall, in a manner meeting the approval of the Manager, Subdivision and Grading, the Manager, PFRD/Program Development, and the Manager, Flood Control Program:

1) Design provisions for surface drainage; and

2) Design all necessary storm drain facilities extending to a satisfactory point of disposal for the proper control and disposal of storm runoff; and

3) Dedicate the associated easements to the County of Orange to ensure adequate maintenance access, if determined necessary.

b. Prior to the issuance of any certificates of use and occupancy, said improvements shall be constructed in a manner meeting the approval of the Manager, Subdivision and Grading and Manager, Construction.

HD-3 Prior to the recordation of a subdivision map for development or prior to the issuance of any grading permit, whichever comes first, and if determined necessary by the Manager, Subdivision and Grading, the applicant shall record a letter of consent from the upstream and/or downstream property owners permitting drainage diversions and/or unnatural concentrations. The form of the letter of consent shall be approved by the Manager, Subdivision and Grading Services, and the Manager, PFRD/Program Development Division prior to recordation of the letter.

HD-4 Prior to the recordation of a subdivision map for development (except maps for financing and conveyance purposes only), the subdivider shall participate in the applicable Master Plan of Drainage in a manner meeting the approval of the Manager, Subdivision and Grading, and the Manager, PFRD/Program Development, including payment of fees and the construction of the necessary facilities.

HD-5 a. Prior to the approval of a site development permit per Zoning Code §7-9-113, the applicant shall submit an Elevation Certificate to the Manager, Current Planning Services, identifying the base flood elevation and certifying that the planned elevation of the lowest floor, including

basements, is at least one (1) foot above the Base Flood Elevation (BFE). *(Note: to eliminate FEMA requirements for flood insurance, the lowest elevation of any part of the structure, not only the lowest floor, must be above the BFE.)*

b. Prior to the issuance of certificates of use and occupancy for any building, the applicant shall complete Section "E" of the Elevation Certificate, identifying the Base Flood Elevation (BFE) and certifying the as-built lower floor, including basement, as constructed, is at least one (1) foot above the BFE, in a manner meeting the approval of the Manager, Building Inspection Services. *(Note: to eliminate FEMA requirements for flood insurance, the lowest elevation of any part of the structure, not only the lowest floor, must be above the BFE.)*

HD-6 Prior to the issuance of any certificates of use and occupancy, the applicant shall not grant any new easements over any property subject to a requirement of dedication or irrevocable offer to the County of Orange or the Orange County Flood Control District, unless such easements are expressly made subordinate to the easements to be offered for dedication to the County. Prior to granting any of said easements, the subdivider shall furnish a copy of the proposed easement to the Manager, Subdivision and Grading, and the Manager, PFRD/Program Development, for review and approval. Further, a copy of the approved easement shall be furnished to the Manager, Building Inspection Services, prior to the issuance of any certificate of use and occupancy.

HD-7 Prior to the recordation of a subdivision map for development (except maps for financing and conveyance purposes only), the subdivider shall not grant any development-related easements (i.e., oil production related easements are excluded) over any property subject to a requirement of dedication or irrevocable offer to the County of Orange or the Orange County Flood Control District, unless such easements are expressly made subordinate to the easements to be offered for dedication to the County. Prior to granting any of said easements, the subdivider shall furnish a copy of the proposed easement to the Manager, Subdivision and Grading, for review and approval.

HD-8 Prior to the issuance of any grading permits, applicant shall delineate on the grading plan the floodplain which affects the property, in a manner meeting the approval of the Manager, Subdivision and Grading.

HD-9 Prior to the recordation of a subdivision map for development, applicant shall delineate on the final map and the project grading plan the floodplain which affects the property, in a manner meeting the approval of the Manager, Subdivision and Grading.

HD-10 Prior to the issuance of any grading permits, applicant shall submit a Runoff Management Plan (RMP) to the Manager, Subdivision and Grading, and the Manager, Flood Control Programs, for review and approval.

HD-11 Prior to the issuance of any grading permits for phased improvements, applicant shall submit drainage calculations indicating that the proposed drainage improvements are adequate to mitigate for project impacts as stated in the Runoff Management Plan to the Manager, Subdivision and Grading, and the Manager, Flood Control Programs, for review and approval.

HD-12 Prior to the recordation of a subdivision map for development (except maps for financing and conveyance purposes only), the applicant shall, in a manner meeting the approval of the Manager, Subdivision and Grading, and the Manager, PFRD/Program Development Division, initiate the formation of a Community Service Area covering the same area as the Master Homeowners Association for the purpose of maintaining the on-site drainage facilities.

HD-13 During grading and construction activities for the water reservoir storage tanks, all grading and site preparation shall comply with the County Grading Ordinance and the Uniform Building Code (for seismic criteria) and be approved by the Manager, Subdivision and Grading. Water storage tank design shall comply with the American Water Works Association (AWWA) Standard D-100 for structural design and seismic requirements. The design plans shall be submitted to the Manager, Building Inspection Services, for approval.

Mitigation Measures Added

None.

Mitigation Measures Not Incorporated

None.

Effects Not Mitigated to a Level of Insignificance

None.

Water Quality

The following is a summary of significant effects to water quality.

The Project will result in the increase of stormwater runoff due to the construction of impervious surfaces, which results in the increase of water quality impacts. Urban wastewater runoff typically associated with residential and mixed-use developments will increase as a direct result of this Project.

With implementation mitigation measures impacts relative to water quality will be reduced to less than significant.

Findings

Finding 1 - Changes or alterations have been required in, or incorporated into, the project that avoid or substantially lessen many of the significant environmental effects as identified in the EIR.

Mitigation Measures

WQ-1 **Runoff Management & Water Quality Plan** - Prior to the recordation of the first final map (either for conveyance or development), or prior to the issuance of any rough or precise grading permit, whichever occurs first, the land owner/applicant shall prepare, and receive approval from the Manager, Subdivision and Grading Services Division, in consultation with the Environmental Resources and Flood Program Sections of the PFRD Program Development Division (PDD) of, a Runoff Management Plan (RMP), including Water Quality Management Plan (WQMP) covering the subject property. The RMP shall include the location of all permanent large-scale Best Management Practices (BMPs), including filtration devices, such as water quality basins, detention basins, debris basins, grass/bio-swales, energy dissipaters, and other BMPs.

WQ-2 **Master Infrastructure Improvements** - Prior to the recordation of the first final map (either for conveyance or development), or prior to the issuance of any rough or precise grading permit, whichever occurs first, the land owner shall design and construct all applicable master infrastructure improvements identified in the approved RMP, including debris basins, bio-swales, energy dissipaters, drainage pipes, and other improvements, and shall provide all necessary dedications, all in a manner meeting the approval of the Manager, Subdivision & Grading, and the Manager, PFRD/Program Development Division.

WQ-3 **NPDES** - Prior to issuance of any grading permits, the applicant shall submit evidence to the Manager, Subdivision and Grading, that the applicant has obtained coverage under the NPDES statewide General Construction Activity Stormwater Permit from the State Water Resources Control Board, which includes the preparation of a Storm Water Pollution Prevention Program and incorporates BMP to minimize stormwater runoff.

WQ-4 **Final Map Note for Retention Basins** - Prior to the recordation of each final map (either for conveyance or development), a note shall be placed on the applicable final map where appropriate, indicating that retention basins will be required on the property in accordance with the approved RMP, in a manner meeting the satisfaction of the Manager, Subdivision & Grading Services Division.

Mitigation Measures Added

None.

Mitigation Measures Not Incorporated

None.

Effects Not Mitigated to a Level of Insignificance

None.

Transportation/Circulation

The following is a summary of significant effects to transportation/circulation.

The project has the potential to impact surrounding intersections. The project will include mitigation measures to improve the intersections to allowable levels of service.

With implementation mitigation measures impacts relative to transportation/circulation will be reduced to less than significant. However, in the event there is a failure of assumptions upon which mitigation is based (i.e. funding, city cooperation on timely implementation), there could be significant impacts. Therefore, for these reasons, and in spite of the fact that the Board believes mitigation reduces impacts to a level of insignificance, a finding of significant impact is hereby made.

Based on a review of the October 16, 2002 letter from the County of Los Angeles received at the Orange County Planning Commission hearing of the same date, the County of Orange finds that he project alone will not significantly impact Los Angeles County intersections. This fact is also acknowledged in the County's letter. Together with a multitude of other projects in the greater County of Orange/County of Los Angeles area, it can be expected that this project will contribute to cumulative impacts in the long-term, especially at the SR-57 Southbound off-ramp to Brea Canyon Road. Therefore, the County finds that the cumulative impact of the project, although incrementally small, may significantly impact this facility. Although this project's impact will not be significant, the County hereby adopts mitigation measure T-5 to reduce cumulative impacts to an acceptable level.

The County disagrees with the County of Los Angeles that adoption of said mitigation measure is inadequate for cumulative traffic impacts. However, in an abundance of caution, a statement of overriding considerations will be made.

Findings

Finding 1 - Changes or alterations have been required in, or incorporated into, the project that avoid or substantially lessen many of the significant environmental effects as identified in the EIR.

Mitigation Measures

T-10 Balsa Avenue between State College Boulevard and Carmichael Drive
Prior to issuance of certificates of use and occupancy for residences within Planning Area 8, the developer shall pay to the County on a fair share basis for any agreed upon traffic calming measures along Balsa Avenue.

T-11 City of Brea Fee Program
Prior to issuance of building permits, the project shall participate in both the City of Brea currently adopted fee program and the City of Brea proposed fee program for transportation improvements. These fees shall be paid on a per unit basis.

Mitigation Measures Added

Scenario 1: Mitigation Measures Required With Tonner Canyon Road

1. **Brea Boulevard (NS) at Central Avenue (EW)**
Prior to the issuance of certificates of use and occupancy, the developer shall pay to the County on a fair share basis for the improvement. The southbound approach should be restriped from two exclusive thru lanes and one exclusive right turn lane to provide one exclusive thru lane, one shared thru-right turn lane and an exclusive right turn lane. This location is projected to experience deficient operations under Without Project conditions. Therefore, the project is only responsible for a fair share contribution at this location. The fair share contribution is 3.5%.

2. **State College Boulevard (NS) at Lambert Road (EW)**
Prior to the issuance of certificates of use and occupancy, the developer shall pay to the County on a fair share basis for the improvement. The project impact mitigation measure at this location includes constructing an additional (second) left turn lane and converting the current shared left turn-through lane to an exclusive through lane. The feasibility of this improvement has been reviewed based on field reconnaissance and aerial photographs. Based upon this review, it appears that this improvement can be implemented. The proposed improvement will not provide acceptable traffic operations. This location is also projected to experience deficient operations under Without Project conditions. Therefore, the project is only responsible for a fair share contribution towards this improvement under these conditions. The fair share contribution at this location is 10.7% in the AM peak hour and 30.0% in the PM peak hour.

3. **Kraemer Boulevard (NS) at Lambert Road (EW)**
Prior to the issuance of certificates of use and occupancy, the developer shall pay to the County on a fair share basis for the improvement. The eastbound approach should be restriped to provide 2 exclusive through lanes, a shared through-right turn lane, and an exclusive right turn lane (this location is planned to include three exclusive through lanes and an exclusive right turn lane). This will provide

acceptable AM peak hour operations (there is no PM peak hour deficiency). The project is responsible for the recommended improvement.

4. **Valencia Avenue (NS) at Birch Street (EW)**
Prior to the issuance of certificates of use and occupancy, the developer shall pay to the County on a fair share basis for the improvement. Deficiencies are projected for both AM and PM peak hour traffic operations and for both Without Project and With Project conditions. The southbound approach should be restriped to add a second left turn lane, an exclusive thru lane and a shared thru-right turn lane. This improvement will provide acceptable AM peak hour traffic operations and will mitigate the project PM peak hour impact. As this location is also projected to experience deficient operations under Without Project conditions, the project is only responsible for a fair share contribution towards the recommended improvement. The fair share percentages are 6.5% in the AM peak hour and 48.0% in the PM peak hour.

5. **Rose Drive (NS) at Imperial Highway (EW)**
This location was not identified as impacted by the project in the DEIR under the With Tonner Canyon Road scenario. Based on the updated analysis using the newly constructed intersection geometry, a project impact has been identified. Mitigation consists of contributing on a fair share basis towards construction of an exclusive westbound right turn lane. The project fair share contribution for this mitigation measure is 15.0%.

Scenario 2: Mitigation Measures Required Without Tonner Canyon Road

6. **Brea Boulevard (NS) at Central Avenue (EW)**
Prior to the issuance of certificates of use and occupancy, the developer shall pay to the County on a fair share basis for the improvement. The improvement includes a restriped/reconstructed the northbound approach to add a third thru lane, a single exclusive left turn lane and an exclusive right turn lane (the approach currently provides two left turn lanes, two through lanes, and one right turn lane). This will provide acceptable AM peak hour operations. To mitigate the project PM peak hour impact, a southbound right turn arrow (overlap) is required at this intersection. This location is also projected to experience deficient operations under Without Project conditions (PM peak hour only). Therefore, the project is only responsible for a fair share contribution (75% A.M. and 4.3% P.M.) towards this improvement (the southbound right turn overlap).

7. **Kraemer Boulevard (NS) at Lambert Road (EW)**
Prior to the issuance of certificates of use and occupancy, the developer shall pay to the County on a fair share basis for the improvement. The eastbound approach should be restriped to provide two exclusive through lanes, a shared through-right turn lane, and an exclusive right turn lane (this location is planned to include three exclusive through lanes and an exclusive right turn lane). This will provide acceptable AM peak hour operations (there is no PM peak hour deficiency). This location is also projected to experience deficient operations under Without Project

conditions. Therefore, the project is only responsible for a fair share contribution towards the recommended improvement. The fair share contribution is 20.5% at this location.

8. **Rose Drive (NS) at Imperial Highway (EW)**
Prior to the issuance of certificates of use and occupancy, the developer shall pay to the County on a fair share basis for the improvement. Mitigation consists of contributing on a fair share basis (10%) towards construction of an exclusive westbound right turn lane.

9. **Valencia Avenue (NS) at Lambert Road (EW)**
Prior to the issuance of certificates of use and occupancy, the developer shall pay to the County on a fair share basis for the improvement. The currently planned intersection geometry, per the City of Brea adopted fee program, would provide two eastbound left turn lanes and three eastbound through lanes. The recommended mitigation measure is to reconstruct the eastbound approach to the intersection. The mitigation measure for this intersection includes provides a single eastbound left turn lane, two exclusive eastbound through lanes, a shared eastbound through and right turn lane, and an additional exclusive eastbound right turn lane. The project contribution for the Without Tonner Canyon Road Connection conditions is 4.0%.

Both Scenarios 1 and 2:

10. Prior to or concurrent with the approval of the first tentative tract map, the subdivider shall submit an opening year traffic study analysis in conjunction with the submittal of each Level "B" Tentative Map, to the Manager of Current Planning for review and approval. Such studies shall ascertain the existing traffic conditions and determine if any future mitigation is necessary.

Mitigation Measures Not Incorporated

T-1 Brea Boulevard (NS) at SR 57 Southbound On-Ramp (EW)
Near Term Conditions: Prior to issuance of certificates of use and occupancy, the developer shall pay on a fair share basis for provision of a second northbound and a second southbound through lane. The proposed improvement is also part of the City of Brea proposed fee program. Any project contribution should be credited toward the project's impact fees.

T-2 Brea Boulevard (NS) at Tonner Canyon Road (EW)
Near Term Conditions: Prior to issuance of certificates of use and occupancy, the developer shall pay on a fair share basis for provision of a second northbound and a second southbound through lane. The proposed improvement is also part of the City of Brea proposed fee program. Any project contribution/construction should be credited toward the project's impact fees.

2025 Conditions: The developer shall pay on a fair share basis for restriping the westbound approach from an exclusive left turn lane and exclusive right turn lane to provide a shared left-right turn lane and an exclusive right turn lane. If this improvement is constructed by the project, a credit against other fees/obligations should be considered.

T-3 Brea Boulevard (NS) at Central Avenue (EW)

Near Term Conditions: Prior to issuance of certificates of use and occupancy, the developer shall pay on a fair share basis for:

- Construction of a second southbound left turn lane and a southbound right turn overlap (arrow).
- Restriping/reconstructing the eastbound approach to provide one (additional) exclusive right turn lane.
- Restriping/reconstructing the westbound approach to provide two through lanes and one exclusive right turn lane.

All improvements are part of the City of Brea proposed fee program except for the eastbound exclusive right turn lane and southbound right turn overlap (arrow) which shall require fair share fees paid to the County of Orange.

T-4 State College Boulevard (NS) at Lambert Road (EW)

Near Term and 2025 Conditions: Prior to issuance of certificates of use and occupancy for 70% of the project or occupancy of Planning Area 8, the developer shall pay to the County the entire amount for providing an additional (second) southbound left turn lane and converting the current shared southbound left turn-through lane to an exclusive through lane.

T-5 SR 57 Southbound Off-Ramp at Brea Canyon Road

Near Term and Long Term Conditions: Prior to issuance of certificates of use and occupancy, the developer shall pay to the County on a fair share basis for one of the three following alternatives:

- Eliminate the left turn movement allowing channelization of the eastbound through movement on Brea Canyon Road to eliminate the need to stop at this intersection.
- Allow southbound left turns and only channelize one eastbound travel lane for free flow travel.
- Construct a separate slip ramp for traffic to exit the southbound Orange (SR 57) Freeway and proceed east (north) on Brea Canyon Road including an acceleration lane/merging section to achieve acceptable traffic operations.

T-6 SR 57 Southbound Ramps (NS) at Lambert Road (EW)

Near Term Conditions: Prior to issuance of certificates of use and occupancy, the developer shall pay to the County on a fair share basis for restriping/reconstructing the eastbound approach to provide two exclusive through lanes, a shared through-right turn lane, and an exclusive right turn lane. (This location currently includes three exclusive through lanes and an exclusive right turn lane.)

T-7 Kraemer Boulevard (NS) at Lambert Road (EW)

Near Term Conditions: Prior to issuance of certificates of use and occupancy, the developer shall pay to the County the entire amount for restriping the eastbound approach to provide one exclusive through lane, a shared through-right turn lane, and an exclusive right turn lane. (This location currently includes two exclusive through lanes and an exclusive right turn lane.)

2025 Conditions: The developer shall pay on a fair share basis for restriping the eastbound approach to provide two exclusive through lanes, a shared through-right turn lane, and an exclusive right turn lane. (This location is planned to include three exclusive through lanes and an exclusive right turn lane as part of the City of Brea proposed fee program.) If this improvement is constructed by the project, a credit against other fees/obligations should be considered.

T-8 Valencia Avenue (NS) at Birch Street (EW)

2025 Conditions: The developer shall pay to the County on a fair share basis for restriping the southbound approach to eliminate the existing exclusive right turn lane and provide a second southbound left turn lane.

T-9 Imperial Highway (NS) at Bastanchury Road (EW)

Prior to issuance of certificates of use and occupancy, the developer shall pay to the County on a fair share basis for restriping the southbound approach to eliminate the existing exclusive right turn lane and provide a second southbound left turn lane.

Effects Not Mitigated to a Level of Insignificance

Impacts are mitigated to a level of insignificance if assumptions made regarding timing, fee programs, and a schedule for construction are met. If they are not, there could be significant impacts of an unknown scope, since the failure of the assumption-if it occurs-is not known.

Air Quality

The following is a summary of significant effects to air quality.

- Construction-related emissions of NO_X and PM10.
- Generation of CO, ROG and NO_X - operational air emissions associated with the proposed project.

With implementation mitigation measures impacts relative to air quality, some impacts will be reduced, but the project will exceed air quality standards established by the SCAQMD and these impacts will remain significant and unavoidable.

Findings

Finding 3 - Specific economic, social or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the Final EIR.

Mitigation Measures

AQ-1 During grading and construction phases, the project shall apply measures contained in Table 1 and Table 2 of SCAQMD Rule 403. Prior to the issuance of grading permit, the applicant shall obtain appropriate permits from the SCAQMD and submit them to the Manager, Subdivision and Grading Services.

AQ-2 During grading and construction phases, the project shall reduce construction equipment emissions by implementing the following measures, which shall be included in grading and improvement plans specifications for implementation by contractors:

- Use low emissions mobile construction equipment.
- Maintain construction equipment engines by keeping them tuned.
- Use low sulfur fuel for stationary construction equipment. This is required by SCAQMD Rules 431.1 and 431.2.
- Utilize existing power sources (i.e., power poles) when feasible. This measure would minimize the use of higher polluting gas or diesel generators.
- Configure construction parking to minimize traffic interference.
- Minimize construction of through-traffic lanes. When feasible, construction should be planned so that lane closures on existing streets are kept to a minimum.
- Schedule construction operations affecting traffic for off-peak hours.
- Develop a traffic plan to minimize traffic flow interference from construction activities (the plan may include advance public notice of routing, use of public transportation and satellite parking areas with a shuttle service.

AQ-3 Prior to issuance of building permits, the applicant shall obtain approval of an Air Quality Mitigation Plan by the Manager, Environmental and Project Planning. The Plan shall address each applicable control measure listed below in order to determine which control measures are feasible, recommend implementation conditions, and establish methods of applying conditions to contractors, buyers, lessees, tenants and occupants to comply with Rule 402 and Rule 403. The project applicant shall reimburse the County for costs of an independent third party peer review, if necessary, of this Plan. Specific mitigation measures could include:

a. Transportation Demand Management Measures
   1. Schedule truck deliveries and pickups during off-peak hour.

2. Provide adequate ingress and egress at all entrances to public facilities to minimize vehicle idling at curbsides.
3. Provide dedicated turn lanes as appropriate and provide roadway improvements at heavily congested roadways.

b. Energy Efficient Measures

5. Improve thermal integrity of the buildings and reduce thermal load with automated time clocks or occupant sensors.
6. Install energy efficient street lighting.
7. Capture waste heat and re-employ it in nonresidential buildings.
8. Landscape with native drought-resistant species to reduce water consumption and to provide passive solar benefits.
9. Provide lighter color roofing and road materials and tree planning programs to comply with the AQMP Miscellaneous Sources MSC-01 measure.
10. Comply with the AQMP Miscellaneous Sources PRC-03, and Stationary Sources Operations Enhanced Inspection and Maintenance and ADV-MISC to reduce emissions of restaurant operations.
11. Provide bicycle lanes, storage areas, and amenities, and ensure efficient parking management.
12. Provide preferential parking to high occupancy vehicles and shuttle services. Also, designate additional car pool or vanpool parking. The air quality benefit cannot be quantified.
13. Employers should provide variable work hours and telecommuting to employees to comply with the AQMP Advanced Transportation Technology ATT-01 and ATT-02 measures.
14. Provide dedicated parking spaces with electrical outlets for electrical vehicles.
15. Develop a trip reduction plan to comply with SCAQMD Rule 2202.
16. Employers should provide ride-matching, guaranteed ride home, or car pool or vanpool to employees as a part of the TDM program and to comply with the AQMP Transportation Improvements TCM-01 measure.
17. Synchronize traffic signals.
18. Encourage the use of alternative fuel or low emission vehicles to comply with the AQMP On-Road Mobile M2 measure, and Off-Road Mobile Sources M9 and M10 measures.
19. Introduce window glazing, wall insulation, and efficient ventilation methods.

Mitigation Measures Added

None.

Mitigation Measures Not Incorporated

None.

Effects Not Mitigated to a Level of Insignificance

ROG emissions are reduced to below the SCAQMD thresholds; however, CO and NO_X emissions remain above the thresholds, and the long term regional air quality impacts remain unavoidable as analyzed in the DEIR.

Noise

The following is a summary of significant effects to noise.

- Construction-related noise from heavy equipment.
- Noise from mixed use site affecting residential dwelling units.
- Noise from project-related traffic due to increased dwelling units/ population.

With implementation mitigation measures impacts relative to noise will be reduced to less than significant.

Findings

Finding 1 - Changes or alterations have been required in, or incorporated into, the project that avoid or substantially lessen many of the significant environmental effects as identified in the EIR.

Mitigation Measures

N-1 During grading and construction activities, the project applicant shall comply with the County of Orange Noise Ordinance, including limitations on allowable construction hours.

N-2 Prior to the issuance of grading permits, the project proponent shall produce evidence acceptable to the Manager, Building Permits Services, that:

a. All construction vehicles or equipment, fixed or mobile, operated within 1,000 feet of a dwelling shall be equipped with properly operating and maintained mufflers.
b. All operations shall comply with Orange County Codified Ordinance Division 6 (Noise Control).
c. Stockpiling and/or vehicle staging areas shall be located as far as practicable from dwellings.

Notations in the above format, appropriately numbered and included with other notations on the front sheet of the project's permitted grading plans will be considered as adequate evidence of compliance with this condition.

N-4 The applicant shall sound attenuate all residential lots and residential dwellings against present and projected noise (which shall be the sum of all noise impacting the project) so that the composite interior standard of 45 dBA CNEL for habitable rooms and a source specific exterior standard of 65 dBA CNEL for outdoor living areas is not exceeded. The applicant shall provide a report prepared by a County-certified acoustical consultant, which demonstrates that these standards will be satisfied in a manner consistent with Zoning Code §7-9-137.5, as outlined below. At a minimum, the report shall address noise levels of above-ground retained oil production facilities and activities within 500 feet of residential areas, as well as noise generated by traffic on nearby roadways.

a. Prior to the recordation of a subdivision maps or prior to the issuance of grading permits, as determined by the Manager, Building Permits Services, the applicant shall submit an acoustical analysis report to the Manager, Building Permits Services, for approval. The report shall describe in detail the exterior noise environment and preliminary mitigation measures. Acoustical design features to achieve interior noise standards may be included in the report, in which case it may also satisfy item b. below.

b. Prior to the issuance of any building permits for residential construction, the applicant shall submit an acoustical report describing the acoustical design features of the structures required to satisfy the exterior and interior noise standards to the Manager, Building Permits Services, for the approval along with satisfactory evidence which indicates that the sound attenuation measures specified in the approved acoustical report have been incorporated into the design of the project.

c. Prior to the issuance of any building permits, the applicant shall show all free-standing acoustical barriers on the project's plot plan illustrating height, location and construction in a manner meeting the approval of the Manager, Building Permits Services.

d. Prior to the issuance of certificates of use and occupancy, field testing in accordance with the County's Noise Ordinance may be required by the Manager, Building Permits Services to verify compliance with all applicable standards. The project applicant shall reimburse the County for the costs of an independent third party peer review of this evidence.

N-5 Prior to the issuance of any building or grading permits, the applicant shall obtain approval of the Manager, Building Permits Services, of an acoustical analysis report and appropriate plans which demonstrate that the noise levels generated by project noise generating equipment during its operation shall be controlled in compliance with Orange County Codified Ordinance, Division 6 (Noise Control). The report shall be prepared under the supervision of a County-certified

acoustical consultant and shall describe the noise generation potential of the project during its operation and the noise mitigation measures, if needed, that shall be included in the plans and specifications of the project to assure compliance with Orange County Codified Ordinance, Division 6 (Noise Control).

Mitigation Measures Added

None.

Mitigation Measures Not Incorporated

N-3 Prior to issuance of building permits for tenant improvements for proposed uses in the Mixed Use area, proposed uses shall be evaluated by the Manager, Planning Services, to determine if a detailed noise assessment is required to ensure that the use will not result in a violation of the noise ordinance. If a study is called for, the study shall be prepared by a County certified acoustical consultant and conform to the requirements presented in the County's Land Use/Noise Compatibility Manual.

Effects Not Mitigated to a Level of Insignificance

None.

Biological Resources

The following is a summary of significant effects to biological resources.

- Development as proposed will impact coastal sage scrub and other habitats with associated loss of wildlife values.
- Walnut trees within drainage channels may be negatively impacted during grading.
- Streambeds and U.S. designated wetlands within U.S. Army Corps of Engineers jurisdiction may be impacted by the proposed development.

With implementation mitigation measures and incorporation of the design changes in the Alternative 4 Preferred Plan, it is determined that at this time of this writing prior to the Planning Commission meeting, impacts relative to biological resources will be reduced to less than significant.

Findings

Finding 1 - Changes or alterations have been required in, or incorporated into, the project that avoid or substantially lessen many of the significant environmental effects as identified in the EIR.

Mitigation Measures

BR-1 Prior to the issuance of any grading, clearing, or other landform modification permit, the developer shall submit evidence to the Director or designee, Development Services Department, that appropriate federal, state, and county permits have been obtained for the biological resources on-site to be removed by development. Said permits shall specify the timing, nature, and review authority for the mitigation measures, if any, that are required in connection with these removals. No removals shall be authorized until all necessary resource agency permits have been obtained.

BR-2 Prior to the issuance of a grading permit, walnut trees within drainage channels shall be identified on the grading plan and retained to the greatest extent feasible. Said grading shall be subject to review and approval by the Manager, Current Planning Services.

BR-3 Prior to the issuance of a grading permit, the property owner/developer shall obtain a §1603 Streambed Alteration Agreement, if required by the *California Fish and Game Code*; and a permit under the guidelines of §404(b)(1) of the Clean Water Act, if required by the U.S. Army Corps of Engineers. Mitigation is intended to adhere to the "no net loss" policies of the CDFG and the U.S. Army Corps of Engineers. If a §404 Permit from the ACOE is required, a §401 Water Quality Certification will also be required from the California Regional Water Quality Control Board, Santa Ana Region. Evidence shall be provided to the Manager, Subdivision and Grading.

BR-4 Prior to initiation of grading, and upon approval from the Manager, Environmental Planning services, the property owner/developer shall implement the Tonner Hills Habitat Mitigation and Monitoring Program (which is included in the Technical Appendices). The Program incorporates measures to:

- Preserve and protect walnut and oak woodlands outside the project footprint.
- Preserve and protect coastal sage scrub habitat outside the project footprint.
- Preserve and protect riparian habitat outside the project footprint.
- Create additional coastal sage scrub habitat prior to and during project implementation.
- Create additional walnut-coast live oak woodland habitat.
- Enhance preserved habitat in Cable Canyon.

The mitigation plan provides for a phased-in creation of riparian, coastal sage scrub, and walnut-oak woodland habitat on-site.

Mitigation Measures Added

BR 5 Crushing of existing habitat would not occur during the breeding season (February 15 to July 31) unless approved by a biological monitor familiar with requirements of breeding birds, especially coastal California gnatcatchers. Removal of crushed vegetation could occur in the breeding season if a biological monitor is present to prevent disruption to protected breeding birds.

Mitigation Measures Not Incorporated

None.

Effects Not Mitigated to a Level of Insignificance

At the time of this writing, prior to Planning Commission action, a final determination by the USFWS has not yet been made. Evidence in the DEIR and design changes in the project to further avoid sensitive habitat areas supports the issuance of a no-jeopardy opinion by the USFWS; however, this opinion has not yet been rendered.

Aesthetics

The following is a summary of significant effects to aesthetics.

- Effects on visual quality of the site and scenic vistas.
- Impacts on visual quality from continued oil operations.
- Creation of light and/or glare.

With implementation mitigation measures impacts relative to aesthetics will be reduced to less than significant.

Findings

Finding 1 - Changes or alterations have been required in, or incorporated into, the project that avoid or substantially lessen many of the significant environmental effects as identified in the EIR.

Mitigation Measures

AE-1 Prior to the issuance of any grading permit or recordation of a subdivision map that creates building sites, whichever occurs first, the applicant shall obtain approval of the Manager, PFRD/HBP Program Management and Coordination, of a landscape and tree preservation plan for the property. This plan shall be consistent with the revegetation plan required as set forth in Section 4.10, Biological Resources, of this EIR.

AE-2 Prior to the approval of a Site Development Plan, a proposed color palette for the residential building materials and color schemes shall be submitted for review and

approval by the Manager, Current Planning. The color palette shall consist of colors which complement with the surrounding hillsides.

AE-3 Prior to issuance of grading permits for final grading plans, the applicant shall submit for review and approval by the Manager, Current Planning, grading plans that comply with the County of Orange Zoning Code §7-9-139 (Grading and Excavation) and use contour and/or landform grading techniques for slopes viewed from public rights-of-way as described below:

a. Contour grading results in landforms that exhibit many of the characteristics present with natural landforms as opposed to traditional terraced grading. Contour grading techniques include:
   - The use of horizontal and vertical curve variations for slope banks creating a curvilinear pattern.
   - Post-development landforms that exhibit natural terrain characteristics (without the heavily modeling effects of landform grading).
   - A general rounding of slopes at slope intersections and transition zones with natural grade.

b. Landform graded slopes replicate the irregular shapes of natural slopes resulting in aesthetically pleasing elevations and profiles. Landform grading techniques should be used whenever slopes are being created which will be open to view from public rights-of-way.

AE-4 Prior to approval of a proposed Site Plan application, the Manager, Current Planning Services, shall review detailed development plans to ensure that adequate screening is provided around existing and proposed oil facilities as well as other utility structures. Such screening for all remaining oil well equipment within the residential neighborhoods and public use area shall be consistent with the specifications included in the approved Area Plan. For above-ground oil operations equipment within visual proximity of residential or recreation areas, screening shall be provided through the use of vine covered fences, walls and/or landscape plantings.

AE-5 Prior to approval of certificates of use and occupancy, existing electrical above ground utilities with a capacity of 12 kV or less shall be placed underground within the individual residential planning areas.

AE-6 Prior to issuance of any building permit, the applicant shall demonstrate that all exterior lighting has been designed and located so that all direct rays are confined to the property in a manner meeting the approval of the Manager, Building Permit Services. Lighting shall be designed to minimize visibility of light sources by directing lighting toward the on-site structures and not illuminating areas outside property boundaries.

Mitigation Measures Added

None.

Mitigation Measures Not Incorporated

None.

Effects Not Mitigated to a Level of Insignificance

None.

Cultural/Scientific Resources

Significant Effects

The following is a summary of significant effects to cultural/scientific resources.

- The proposed project will have a significant effect on cultural resources if its development or operation would result in the unmitigated alteration of ORA-1483H.
- Buried cultural resources, such as chipped or ground stone, historic debris, building foundations, or human bone, may be uncovered during grading for the proposed project.
- Where deep excavation is necessary and where there is a possibility of encountering rocks of the Puente, Fernando, or La Habra Formations or older Quaternary alluvium and Quaternary non-marine terrace deposits, the potential for recovering fossils would be considered high.

With implementation mitigation measures impacts relative to cultural/scientific resources will be reduced to less than significant.

Findings

Finding 1 - Changes or alterations have been required in, or incorporated into, the project that avoid or substantially lessen many of the significant environmental effects as identified in the EIR.

Mitigation Measures

CR-1 A qualified archaeological monitor approved by the County of Orange and paid for by the developer/property owner shall be present to monitor all ground-disturbing activities within 250 feet of ORA-1483H.

CR-2 If buried cultural resources, such as chipped or ground stone, significant historic debris, building foundations, or human bone, are inadvertently discovered during ground-disturbing activities, work will stop in that area and within 100 feet of the find until a qualified archaeologist monitor approved by the County and paid for by the developer/ property owner can assess the significance of the find and, if

necessary, develop appropriate treatment measures in consultation with the County of Orange and other appropriate agencies.

If human remains of Native American origin are discovered during project construction, it is necessary to comply with state laws relating to the disposition of Native American burials, which fall within the jurisdiction of the Native American Heritage Commission (*Public Resources Code* §5097). If any human remains are discovered or recognized in any location other than a dedicated cemetery, there will be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent human remains until the coroner of the county has been informed and has determined that no investigation of the cause of death is required. Section 7050.5 of the *California Health and Safety Code* requires that construction or excavation be stopped in the vicinity of discovered human remains until the coroner can determine whether the remains are those of a Native American. If the remains are determined to be Native American, the coroner must contact the California Native American Heritage Commission.

If the remains are of Native American origin:

a. The descendants of the deceased Native Americans may recommend to the landowner or the person responsible for the excavation work a means of treating or disposing of, with appropriate dignity, the human remains and any associated grave goods as provided in *Public Resources Code* §5097.98, or
b. And the Native American Heritage Commission was unable to identify a descendant or the descendant failed to make a recommendation within 24 hours after being notified by the commission, the landowner shall re-inter the human remains with appropriate dignity on the property in a location not subject to further subsurface disturbance.

According to the *California Health and Safety Code*, six or more human burials at one location constitutes a cemetery (§8100) and disturbance of Native American cemeteries is a felony (§7052).

The construction contractor and the County of Orange will ensure that work is halted until appropriate treatment measures are implemented if potentially significant cultural resources are discovered during construction activities.

CR-3 The areas with dense vegetation but relatively level topography, such as along Tonner Creek and on ridgetops and hilltops, shall be monitored by a qualified archaeological monitor approved by the County and paid for by the developer/property owner when vegetation grubbing and clearing occur and during grading.

CR-4 Prior to the issuance of a grading permit, the developer/property owner shall direct a County Certified Vertebrate Paleontologist (CCVP) to provide written

evidence (letter verification) to the Manager, Subdivision and Grading, indicating that a CCVP has been retained to observe (monitor) grading activities and salvage and catalog fossils as necessary. The hiring of the CCVP will be approved by the County and paid for by the developer/property owner. The CCVP will ensure the following actions are implemented:

- *Develop monitoring plan.* A paleontological resource monitoring plan shall be developed by a CCVP. This plan should include a schedule for grading monitoring to be maintained while conducted within fossiliferous geologic units, in order to further evaluate on-site fossil resources.
- *Conduct salvage operations.* Salvage operations shall be initiated and coordinated with the developer and the County if significant concentrations of fossils are encountered during grading.
- *Protect unearthed fossils.* Paleontological field monitors (staff paleontologists) shall be equipped to salvage fossils as they are unearthed to avoid construction delays and remove samples of sediments which are likely to contain the remains of small fossil vertebrates. Monitors must be empowered to temporarily halt or divert grading equipment to allow the removal of large specimens. If significant concentrations of fossils are encountered or separate equipment is operating at distances greater than 1/8 mile apart, additional staff paleontologists may be required during grading in order to maintain compliance with mitigation measures.
- *Establish resource surveillance procedures.* The CCVP shall be present at the pre-grading conference, shall establish procedures for paleontological resource surveillance, and shall establish, in cooperation with the project developer, procedures for temporarily halting or redirecting work to permit sampling, identification, and evaluation of the fossils. If major paleontological resources are discovered, which require long-term halting or redirecting of grading, the paleontologist shall report such findings to the project developer and to the County of Orange.
- *Protect fossil finds.* During grading, the CCVP shall determine appropriate actions, in cooperation with the project developer, which ensure proper exploration and/or salvage of encountered paleontologic resources (fossils). Excavated significant fossil finds shall be offered to the County of Orange, or its designee, on a first-refusal basis. The project developer may retain said fossil finds if written assurance is provided that they will be properly preserved, unless said finds are of special significance, or the County of Orange indicates a desire to study and/or display them, in which case the fossils shall be immediately accessioned to the County of Orange, or designee. These actions, as well as final mitigation and disposition of the resources, shall be subject to the County of Orange guidelines and regulations. Prior to the issuance of a precise (fine) grading permit, the paleontologist shall submit a final report for approval by the County of Orange.
- *Observe grading.* Paleontologic grading observation, supplemented by weekly periodic in-grading supervisory inspections by the CCVP, shall be maintained when grading in all on-site geologic units. This will enable

further evaluation, protection and salvaging of any significant paleontological resources encountered on-site. Monitoring on a full-time basis is required as significant concentrations of fossils are anticipated within geologic units to be exposed during grading of the site. Monitoring schedules can only be altered during the project by the CCVP.

- *Complete salvage operations quickly.* If significant concentrations of fossils are encountered, which cannot be collected during monitoring time, salvage operations must be initiated and completed as quickly as feasible at the direction of the CCVP and coordinated with the on-site grading foreman. The County of Orange, or its designee, and the property developer will be notified regarding any paleontologic salvage operation as soon as possible.
- *Prepare final report.* Prior to the issuance of certificates of occupancy, or as required by the County of Orange, a final paleontological report – paid for by the developer – shall be prepared for submission, review, and approval by the appropriate lead regulatory agency. The report shall include grading dates, methodologies, an itemized inventory of specimens and analysis of the significance of encountered fossils, and information regarding curation of collected fossils to the point of identification and accession of the fossils to the County of Orange or a museum repository with a retrievable storage system. The final report and inventory, when submitted to the appropriate lead agency, signifies completion of the program to mitigate impacts on paleontologic resources.

Mitigation Measures Added

None.

Mitigation Measures Not Incorporated

None.

Effects Not Mitigated to a Level of Insignificance

None.

Recreation

Significant Effects

The following is a summary of significant effects to recreation.

The project will generate additional residents, which will increase the demand upon existing local, county and state recreational facilities.

With implementation mitigation measures impacts relative to recreation will be reduced to less than significant.

Findings

Finding 1 - Changes or alterations have been required in, or incorporated into, the project that avoid or substantially lessen many of the significant environmental effects as identified in the EIR.

Mitigation Measures

R-1 Prior to approval of any subdivision map that creates building sites, the applicant shall:

1. Designate public parkland for dedication or provide for payment of in lieu fees according to the requirements of the Local Park Code. The Wildcatters Park has already been identified as part of the total dedication that will be required.
2. Irrevocably offer to dedicate a 16-foot-wide recreation an easement for riding and hiking trails (Tonner Ridge Trail) in a location and in a manner meeting the approval of the Manager, PFRD/Harbors, Beaches and Parks/Program Management and Coordination prior to recordation of an applicable subdivision map in compliance with county Standard Conditions of Approval Manual conditions for recreation easements.
3. Provide for Class I paved bike trails through the project on collector streets and on those pedestrian/emergency access roads.
4. Dedicate a Scenic Preservation Easement to the County of Orange over the natural and enhanced open space (of the type to permit fuel modification and continued oil operation infrastructure until oil operations are phased out) to ensure its status in perpetuity. Easement dedication(s) shall be subject to the approval of the Manager, PFRD/HBP Program Management and Coordination, prior to recordation of applicable subdivisions, in compliance with County Standard Conditions of Approval Manual conditions for scenic preservation easements.
5. Areas to be irrevocably offered to the County for scenic preservation easement purposes shall be landscaped and equipped for irrigation, as applicable, and approved in accordance with the County Standard Conditions of Approved Manual conditions for Public Area Landscaping, subject to the approval of the Manager, PFRD/HBP Program prior to recordation of applicable subdivision map(s).

R-2 Prior to approval of an applicable subdivision map, a trail and bikeway improvement plan shall be submitted subject to approval of the Manager, PFRD/HBP Program Management and Coordination. Improvement plans shall include, but not be limited to (as applicable), trail and bikeway alignments, wood rail fences, cross-sections for trail and bikeways, drainage, irrigation, and landscaping palette.

Mitigation Measures Added

None.

Mitigation Measures Not Incorporated

None.

Effects Not Mitigated to a Level of Insignificance

None.

Mineral Resources

Significant Effects

The project will not have any significant effects on mineral resources and has been designed to accommodate on-going oil extraction and production.

Findings

Finding 1 - Changes or alterations have been required in, or incorporated into, the project that avoid or substantially lessen many of the significant environmental effects as identified in the EIR.

Mitigation Measures

No mitigation measures are required.

Mitigation Measures Added

None.

Mitigation Measures Not Incorporated

None.

Effects Not Mitigated to a Level of Insignificance

None.

Hazards

Significant Effects

The following is a summary of significant effects to hazards.

Impacts include oil seeps, crude oil impacted soil, PCBs, VOCs, regulated metal contaminated soil, methane gas, gas, oil and utility line, well blowouts, natural gas plant, and power generation turbine.

With implementation mitigation measures impacts relative to hazards will be reduced to less than significant.

Findings

Finding 1 - Changes or alterations have been required in, or incorporated into, the project that avoid or substantially lessen many of the significant environmental effects as identified in the EIR.

Mitigation Measures

H-1 **Document Remediation** – An experienced petroleum environmental consultant shall document the remediation efforts during all three remediation phases, overall site grading, and implementation of the project mitigation measures in accordance with the approved RAP. Site closure reports containing environmental documentation will be submitted to the OCHCA and the SARWQCB for approval. A closure letter from the OCHCA will be obtained to document the completion of remediation activities prior to the issuance of building permits.

H-2 **Adhere to Proper Health and Safety Measures** - Proper health and safety measures must be followed according to a site-specific Health and Safety Plan prepared by the environmental consultant prior to and during the remediation of all areas, including areas identified to contain elevated VOC concentrations. This includes, but is not limited to, personal protection equipment for workers and monitoring for VOCs during remediation activities. Before starting remediation activities in these areas, the contractor shall obtain a permit from SCAQMD pursuant to Rule 1166. OSHA guidelines will be followed by on-site workers.

H-3 **Verification Sampling and Analysis** – Verification sampling will be conducted under the direction of a representative of the OCHCA during all three mediation phases. Additional analysis of samples may be necessary to ensure that a site is fully characterized so as not to spread potentially impacted soil throughout the property.

H-4 **Disposal of Gun Club Soil** - The impacted soil at the former gun club location will be transported off-site and disposed of at a licensed disposal facility.

Documentation of the disposal activity will be included in a site closure report submitted to OCHCA.

H-5 **Disposal of Road Material** - Asphaltic road material will be removed during grading activities and used as deep fill, and its placement, location, and elevation will be documented during mass grading activities. Documentation of this activity will be included in the site closure report.

H-6 **Disposal of Tarry Material** - If the tarry material is found to be suitable, based on analytical results for reuse on-site as deep fill, the exact depth and location will be surveyed and documented in the site closure report. If it is not suitable for burial on-site, it will be removed and transported to a licensed waste facility.

H-7 **Disposal of Soil Containing PCB-Impacted Material** - Soils containing PCB concentrations greater than 0.22 mg/kg but less than 0.5 mg/kg will be stockpiled and reused in open space or as deep fill at depths greater than 10 feet in non-residential areas of the Tonner Hills project. Excavated soils containing PCB concentrations ranging from 0.5 mg/kg and to 10 mg/kg will be stockpiled and reused as deep fill at depths greater than 10 feet in street locations that will provide a "cap" within the Tonner Hills project. Excavated soils containing PCB concentrations greater than 10 mg/kg or greater will be transported off-site to a licensed disposal facility.

H-8 **Supervision of Mass Grading Activities** - An experienced petroleum environmental consultant will be on-site during all mass grading activities to ensure that all "suspect" material is properly characterized and managed.

H-9 Prior to commencing grading operations, the developer/property owner shall consult with the CDOGGR for information on the wells located in the residential area. All wells to be abandoned, or wells not abandoned to current standards, shall meet the current standards of CDOGGR. Any previously abandoned well shall be plugged and abandoned in accordance with current CDOGGR specifications prior to grading permit approval. Evidence of this consultation shall be provided to the County Manager, Subdivision and Grading, prior to commencement of grading. Any idle wells within the Planned Community shall be abandoned prior to development unless adequate provisions are taken to ensure that operators have access to these wells prior to grading, to the satisfaction of the County.

H-10 Any previously abandoned well that does not meet current standards and is located within a residential neighborhood or within an adjacent street right-of-way shall be reabandoned in accordance with current CDOGGR specifications prior to building permit approval. Evidence of conformance to CDOGGR standards for any remedial plugging shall be provided to the Manager, Current Planning, and the Manager, Subdivision and Grading, immediately upon completion of reabandonment activity.

H-11 The developer/property owner shall demonstrate on residential site plans that no buildings shall be allowed over wells that have either been plugged and abandoned or reabandoned to the CDOGGR and OCFA current specifications, or that are within 50 feet of a water injection well. Said plans shall be subject to review and approval by the Manager, Current Planning.

H-12 A seismic sensor shall be placed at strategic locations to shut down production in the event of a significant seismic event (5.0 magnitude or higher on the Richter scale). The oil operator shall conduct a study to determine the seismic thresholds for shutting down production and the location, type, and number of sensors required. The study shall be subject to review and approval by the County. The seismic sensor and shut-down system shall be in place and operational prior to the County's issuing the first Certificate of Occupancy for a residential unit.

H-13 Oil wells in residential areas will be placed with subsurface pumping units enclosed in a concrete vault. The vault will have a grated steel grill plate to restrict the unit from public access. No new wells shall be drilled in a residential area once the County issues the first Certificate of Occupancy. Within the residential, park, and commercial/mixed-use planning areas, no new wells shall be drilled, nor shall existing wells be redrilled after the County issues the first Certificate of Occupancy for a residential unit.

H-14 Any residential structure constructed within 10 feet of an abandoned well shall receive special venting treatment pursuant to CDOGGR and OCFA standards and to the satisfaction of the County and CDOGGR. The developer/property owner shall indicate compliance with this measure on proposed building plans that are subject to review and approval by the Manager, Current Planning. Compliance is also subject to periodic site inspections by the County during construction.

H-15 All habitable structures shall be located at least 50 feet from any operating well head, including water injection wells, pursuant to the requirements of the Uniform Fire Code and the OCFA and subject to monitoring and inspection by the OCFA. <u>All habitable structures within 100 feet from an oil well shall comply with OCFA Planning and Development standard guideline C-02 (Guideline for Residences less than 100' from an Oil Well), as adopted at the time of construction.</u>

H-16 All drilling, operations, maintenance, and abandonment of wells during the life of the project shall be in accordance with §3106 of the Public Resources Code and overseen and approved by the CDOGGR. Compliance with this measure is subject to periodic site inspections by the Manager, Building Inspection Services and the CDOGGR.

H-17 If any abandoned or unrecorded wells are uncovered or damaged during excavation or grading, remedial plugging operations shall be required. If such discovery occurs, approval from CDOGGR to perform remedial activities is required. In the event the abandoned or unplugged wells are encountered during grading, Nuevo or the Construction Manager shall inform the Manager,

Subdivision and Grading, within 24 hours of such an occurrence. Evidence of conformance to CDOGGR standards for any remedial plugging shall be provided to the County and the OCFA immediately upon completion of said remediation activity.

H-18 Oil wells within open space planning areas where Scenic Preservation Easements have been dedicated to the County shall contain security fencing that meets the standards and requirements of CDOGGR. This fencing shall be indicated on project plans and subject to the review and approval of the Manager, County PFRD/HBP Program Management and Coordination.

H-19 Prior to issuance of building permits, soils adjacent to oil wells abandoned in residential areas will be mitigated to meet residential cleanup requirements of the RAP. Once the project is occupied, subsequent well abandonments shall be subject to and processed in accordance with CDOGGR regulations.

H-20 Prior to the County's issuing the first Certificate of Occupancy, a program to carefully monitor the hydrogen sulfide (H_2S) content of the produced gas shall be developed and implemented to prevent higher levels of H_2S from becoming present in the produced gas. This program shall be reviewed by the CDOGGR and reviewed and approved by the OCHCA. Downhole treatment shall begin when the level of H_2S exceeds 10 ppm.

H-21 All oil and gas flowlines shall be installed in underground trenches, separate from other utilities. Location of all pipelines shall be recorded on site plans. Seismic joints and flexible couplings shall be installed in all cases where flowlines cross known or suspected fault lines. Seismic sensing devices shall be installed to allow for the shutdown of the field in the event of a significant seismic event (5.0 magnitude or higher on the Richter scale). The developer/property owner shall indicate compliance with these measures on project utility and building plans and be subject to review and approval by the Manager, Current Planning, prior to implementation of the proposed project.

H-22 The oil operator shall compile a list of all hazardous materials used on the project site and demonstrate that the storage and use of these materials do not present a public safety hazard. This list, and documentation demonstrating that no public safety hazard exists, shall be reviewed and approved by the OCHCA and the OCFA prior to the County's issuing the first Certificate of Occupancy for a residential unit. In addition, the oil operator and the owner shall provide the same type of documentation it proposes to use a hazardous material not currently on the approved list.

H-23 Prior to issuance of occupancy permits, the geotechnical consultant shall prepare a maintenance/monitoring manual describing the responsible parties, upkeep, monitoring program, record keeping and reporting required with respect to any oil seep mitigation measures installed within the project. The report shall include a map showing the locations of all pertinent structures (such as subdrain outlets,

vaults, clarifiers, etc.) and shall be approved by the Manager, Subdivision and Grading.

H-24 Prior to grading, a baseline study shall be performed to gain a better understanding of the current distribution and concentrations of methane in the area proposed for development. This study shall include soil gas sampling and analysis performed by a methane consultant. Since the distribution of methane can change with depth, the consultant's report shall include a work plan for further investigation during grading, including sampling intervals, procedures, and potential mitigation measures that might be implemented during grading. This report shall be submitted to the OCFA for approval.

H-25 During grading, soil gas sampling and analysis shall be performed on the bottom of all excavations in the development area. This would include cuts to design grade, overexcavation of building pads, the bottoms of areas where unsuitable foundation soils have been removed, buttress cuts, etc. "Bottoms" sampling shall also be conducted at each well location. The sampling and analysis shall include a determination of gas pressure, hydrocarbon concentration, and chemical composition. If anomalous and potentially hazardous gas seeps are identified, the methane consultant shall recommend specific remedial measures and submit findings to the OCFA for approval.

H-26 During grading, any subsurface structures that may act as a conduit for methane gas (such as sewer lines, storm drains, subdrains, etc.) shall be evaluated by the methane consultant with respect to the local conditions. The methane consultant shall provide specific remedial recommendations, such as venting, as needed for approval by OCFA.

H-27 Full time monitoring of the grading activities shall be provided by the petroleum environmental consultant in order to document the depth, lateral extent, and concentrations of any crude oil-impacted fills. This information shall be provided to the methane consultant for evaluation and consideration in the final methane remedial recommendations.

H-28 At the completion of grading, and prior to the issuance of building permits, sampling and analysis shall be performed by the methane consultant at future building locations. Based on the data collected prior to, during, and at the completion of grading, the methane consultant shall make final recommendations for methane mitigation during construction and future ongoing monitoring at buildout. The analysis and recommendations shall consider the guidelines recommended by OCFA (Guideline C-03 dated January 31, 2000) as minimum requirements. Any deviations from the guidelines shall be supported by scientific evidence, and approved by the OCFA.

H-29 Prior to the issuance of occupancy permits, the methane consultant shall prepare a manual describing the responsible parties, upkeep, monitoring program, record-keeping required, and reporting required with respect to the methane mitigation

installed within the project. The report shall include a map showing the locations of all monitoring wells, vents, or other pertinent structures. The Tonner Hills Homeowners Association shall be responsible for ongoing monitoring and reporting to the OCHCA and the OCFA as described in the methane consultant report.

H-30 All methane investigation and analyses shall be performed by a California registered engineer and/or geologist with demonstrated proficiency in the subject of soil gas investigation and mitigation. All methane reports, work plans, mitigation plans, and monitoring plans are subject to the review and approval of the OCFA.

Mitigation Measures Added

H-15 *[edited as noted above]*

H-31 The project will be subject to the latest edition of the Orange County Fire Authority "Combustible Soil Gas Hazard Mitigation Guidelines" and the City of Brea Combustible Soil Gas Mitigation System Installation and Inspection Requirements.

H-32 The oil operator shall update and revise as necessary the RMP (Risk Management Plan) on file with the OCFA for the Oil Field operations adjacent to the proposed development. Such RMP revisions shall be submitted and accepted by OCFA prior to the issuance of any certificates of occupancy for the project.

Mitigation Measures Not Incorporated

None.

Effects Not Mitigated to a Level of Insignificance

None.

Public Services

Significant Effects

The following is a summary of significant effects to public services.

The project is situated in the County of Orange Special Fire Protection Area (SFPA), which is designated as a high potential fire hazard zone. Development of the planned community will result in greater demand and impact on school services provided by Brea-Olinda Unified School District, and public safety services.

With implementation mitigation measures impacts relative to public services will be reduced to less than significant.

Findings

Finding 1 - Changes or alterations have been required in, or incorporated into, the project that avoid or substantially lessen many of the significant environmental effects as identified in the EIR.

Mitigation Measures

PS-1 **Secured Fire Protection Agreement** - Prior to recordation of the first final map within the project boundaries, including maps for financial and conveyance purposes only, or prior to grading, whichever comes first, the applicant shall enter into a Secured Fire Protection Agreement with the Orange County Fire Authority (OCFA).

PS-2 **Fire Hydrants**

a. Prior to the recordation of a subdivision map for development, the applicant shall submit a fire hydrant location plan for the review and approval of OCFA.

b. Prior to the issuance of a building permit, the applicant shall submit to OCFA evidence of the on-site fire hydrant system and indicate whether it is public or private. If the system is private, it shall be reviewed and approved by OCFA prior to issuance of a building permit. Provisions shall be made by the applicant for the repair and maintenance of the system, in a manner meeting the approval of OCFA.

c. Prior to the issuance of any certificate of use and occupancy, all fire hydrants shall have a blue reflective pavement marker indicating the hydrant location on the street or drive per the Orange County Fire Authority Standards as approved by OCFA. These markers are to be maintained in good condition by the property owner.

PS-3 **Water Availability** - Prior to the issuance of a building permit, the applicant shall provide evidence of adequate fire flow. The Orange County Fire Authority Water Availability for Fire Protection form shall be signed by the applicable water district and submitted for approval to the Orange County Fire Authority. If sufficient water to meet fire flow requirements is not available, an automatic fire extinguishing system may be required in each structure affected by insufficient fire flow. It is recommended, but not required, that fire flows are based upon field testing and not solely on engineering calculations to avoid issues at time of certificates and use and occupancy when verification is again required.

PS-4 **Automatic Fire Sprinkler Systems**

a. Prior to the recordation of a subdivision map for development, a note shall be placed on the map stating that all commercial structures over 6,000 square feet, all residential structures over 5,500 square feet, and all

structures exceeding fire department access requirements shall be protected by an automatic fire sprinkler system, in a manner meeting the approval of OCFA. To the extent feasible, such situations should be identified during the tentative map review process, or equivalent review, and such approval should be specifically conditioned regarding appropriate fire sprinkler requirements.

b. Prior to the issuance of a building permit, the applicant shall submit plans for any required automatic fire sprinkler system in any structure to the OCFA for review and approval.

c. Prior to the issuance of a certificate of use and occupancy, this system shall be operational in a manner meeting the approval of OCFA.

PS-5 **Fire Access Roads**

a. Prior to the issuance of a mass or rough grading permit, the applicant shall provide plans and/or information for review and approval by OCFA demonstrating that adequate fire and emergency response access ways through the disturbed areas of the project site will be maintained during all phases of mass or rough grading operations.

b. Prior to the recordation of a subdivision map for development or the issuance of any precise grading permit, whichever occurs first, the applicant shall obtain approval of OCFA for all fire protection access roads within 150 feet of all portions of the exterior of every structure on-site, or an alternative means and method request shall be approved by OCFA.

c. Prior to the issuance of any precise grading permits, the applicant shall submit and obtain approval of plans for all roads, streets and courts, public or private, from OCFA in consultation with the Manager, Subdivision and Grading Services. The plans shall include the plan view and section view, and indicate the grade and width of the street or court measured flow line to flow line. All proposed fire apparatus turnarounds shall be approved by OCFA and, if needed, clearly marked when a dead-end street exceeds 150 feet or when otherwise required. Applicable CC&Rs or other approved documents shall contain provisions that prohibit obstructions, such as speed bumps/humps, control gates, or other modifications within said easement or access road unless prior approval of OCFA is granted.

d. A note shall be placed on the fire protection access easement plan indicating that all street/road signs shall be designed and maintained to be either internally or externally illuminated in a manner meeting approval of OCFA.

PS-6 **Street Markings**

a. Prior to the issuance of a building permit, the applicant shall submit plans and obtain approval from OCFA for fire lanes on required fire access roads less than 36 feet wide. The plan shall indicate the locations of red curbing and signage. A drawing of the proposed signage with the height, stroke and color of lettering and the contrasting background color shall be submitted to and approved by OCFA.

b. Prior to the issuance of any certificate of use and occupancy, the fire lanes shall be installed in accordance with the approved fire lane plan. The CC&Rs or other approved documents shall contain a fire lane map and provisions which prohibit parking in the fire lanes. The method of enforcement shall be documented.

PS-7 **Fire Hazard Notification**

a. *State Responsibility Areas*. Prior to the recordation of a subdivision map for development, the subdivider shall place a note on the map meeting the approval of OCFA that the property is in a "(High/Very High) Fire Hazard Area" due to wildland exposure based on State SRA Maps.

b. *Special Fire Protection Area Notification*. Prior to recordation of any final tract map, the subdivider shall place a note on the map meeting the approval of OCFA that the property is in a "Special Fire Protection Area" and must meet all requirements for development within the area or file for a conditional exclusion with OCFA.

c. *Special Fire Protection Area Development*. Prior to the issuance of a building permit, the applicant shall meet all requirements for development and construction within a Special Fire Protection Area, including increase street widths, Class A roof assemblies, fire sprinklers, etc., or shall receive a conditional exclusion approved from OCFA.

d. *Special Fire Protection Area Conditional Exclusion*. If applicable, prior to recordation of any final tract map, the subdivider shall place a note on the map meeting the approval of OCFA that the property is "Conditionally Excluded" from a "Special Fire Protection Area," and shall identify lots/buildings which are subject to construction requirements.

PS-8 **Fuel Modification** - Prior to the issuance of any preliminary grading permit, the applicant shall obtain the approval of OCFA, in consultation with the Manager, Subdivision and Grading Services, of a conceptual fuel modification plan and program.

Prior to the issuance of any precise grading permit, the applicant shall obtain the approval of OCFA, in consultation with the Manager, Subdivision and Grading Services, of a precise fuel modification plan and program. The plan shall indicate the proposed means of achieving an acceptable level of risk to structures by vegetation.

Prior to the issuance of a building permit, the developer shall have completed, under the supervision of OCFA, that portion of the approved fuel modification plan determined to be necessary by OCFA before the introduction of any combustible materials into the project area. Approval shall be subject to on-site inspection.

Prior to the issuance of any certificate of use and occupancy, the fuel modification shall be installed and completed under the supervision of OCFA. Further, the installed fuel modification plant pallet shall be established to a degree meeting the

approval of OCFA. The CC&Rs, or other approved documents, shall contain provisions for maintaining the fuel modification zones including the removal of all dead and dying vegetation subject to triennial inspections.

All fuel modification plans shall be in accordance with the OCFA guidelines for development within Special Fire Protection Areas as outlined in Guidelines C-04, C-05 and C-06.

PS-9 **Access Gates** - If applicable, prior to the issuance of any grading permits, the applicant shall submit and obtain OCFA's approval for the construction of any gate across required fire authority access road/drives. Contact the Orange County Fire Authority at (714) 744-0499 for a copy of the "Guidelines for Design and Installation of Emergency Access Gate and Barriers."

PS-10 **Fire Impact Fees** - The project applicant shall pay all applicable dispatch impact fees prior to the issuance of any building permits.

PS-11 **Oil Field Mitigation** - Copies of oil field mitigation measures specified in the Mitigation Measures subsection of the Hazards section shall be provided to OCFA as part of "standard conditions" of approval for the proposed development prior to the issuance of certificate of occupancy.

PS-12 **Library Impact Fees** - The project applicant shall pay all applicable Orange County Library Services in lieu fees prior to the issuance of any building permits.

PS-13 **School Impact Fees** - Prior to the issuance of a building permit, the project applicant shall comply with Senate Bill 50 and pay the applicable school impact fees. Presently, the Brea-Olinda Unified School District's adopted School Impact Fees for Residential development is $2.05 per square foot and $0.33 per square foot for commercial or mixed use developments. Upon completion of the designated tract map, the valid amount shall be issued.

Mitigation Measures Added

[edited as noted in PS-1 and PS-8 above]

Mitigation Measures Not Incorporated

None.

Effects Not Mitigated to a Level of Insignificance

None.

Utilities and Service Systems

Significant Effects

The following is a summary of significant effects to utilities and service systems.

The Project will result in incremental increase in the demand for utilities and service systems. However, the demands by the proposed project are within the capacities of the service providers. Utilities and services systems such as water, electricity, gas sewer, solid waste, and telecommunications are not anticipated to experience significant impacts due to the developer and service fees typically allocated to fund necessary on-site and off-site improvements.

With implementation mitigation measures impacts relative to utilities and service systems will be reduced to less than significant.

Findings

Finding 1 - Changes or alterations have been required in, or incorporated into, the project that avoid or substantially lessen many of the significant environmental effects as identified in the EIR.

Mitigation Measures

US-1 **Water Conservation** - Prior to issuance of building permits, the project applicant shall incorporate all practical and mandated water conservation measures to the satisfaction of the Metropolitan Water District of Southern California, Water Conservation Plans.

US-2 **Recycling Programs** - Prior to issuance of building permits, the applicant shall comply with guidelines set forth by the County of Orange in accordance with the California Integrated Waste Management Act (1989, AB 939), which mandates recycling programs for each jurisdiction in California.

US-3 **Consultation with Southern California Edison Company** - Prior to the issuance of building permits, the developer shall demonstrate to the Manager, Current Planning, Southern California Edison has been consulted regarding participation in programs designed to increase the efficiency of operation and decrease energy costs.

US-4 **Consultation with Southern California Gas Company** - Prior to the issuance of building permit, the project applicant shall consult with the Southern California Gas Company to determine the proper facilities and location needed to serve the site.

US-5 **Payment of Construction Fees** - The project applicant shall be responsible for paying the appropriate costs and fees for the construction of facilities used to

serve the project site per the rules and regulations established by each utility for the extension of said facilities.

US-6 **Water Services** - Prior to the issuance of a grading permit, Southern California Water Company must obtain a Certificate of Public Convenience and Necessity (CPCN) under §1001 of the *Public Utilities Code* from the California Public Utilities Commission (CPUC).

Mitigation Measures Added

None.

Mitigation Measures Not Incorporated

None.

Effects Not Mitigated to a Level of Insignificance

None.

Statement of Overriding Considerations

Statement of Overriding Considerations
Tonner Hills Planned Community
Environmental Impact Report No. 581

UNAVOIDABLE IMPACTS IDENTIFIED IN EIR No. 581

The Tonner Hills Planned Community will have a significant unavoidable cumulative impacts in the area of air quality, agricultural resources and transportation, as described in detail in the Environmental Impact Report and the Statement of Findings and Facts.

The EIR has identified all feasible mitigation measures with respect to the air quality, agricultural resources and transportation impacts. Although these mitigation measures may substantially lessen this significant impact, adoption of the measures may not fully avoid the impacts.

As a result, to approve the project, the County of Orange, as Lead Agency, must make a statement of overriding considerations pursuant to CEQA Guidelines Section 15093. This statement allows a lead agency to cite a project's general economic, social or other benefits as a justification for choosing to allow the occurrence of specified significant environmental effects that have not been avoided. The statement explains why, in the agency's judgment, the project's benefits outweigh the unavoidable significant effects. Under Section 15043 of the CEQA Guidelines, a public agency may approve a project although the project may have significant impacts.

CEQA does not require lead agencies to analyze beneficial impacts in an EIR. Rather, EIR's are to focus on potential significant effects on the environment, defined to be adverse (Public Resources Code, Section 21068). However, these benefits can be cited, if necessary, in a statement of overriding considerations (CEQA Guidelines, Section 15093).

IDENTIFIED PUBLIC BENEFITS

The County, in its review and consideration of the proposed Tonner Hills Planned Community project, and in consideration of the significant unavoidable cumulative impact in the area of air quality and agricultural resources, hereby finds that the following public benefits of the Alternative 4 Preferred Plan override the above-referenced Unavoidable Adverse Impacts for the following reasons:

1. The adoption of the Tonner Hills Planned Community Alternative 4 Preferred Plan and certification of the EIR will contribute housing in the County of Orange by the provision of additional residential units. The County had determined that the provision of additional housing is a public benefit of the project. The project will provide housing opportunities that meet the objectives and policies the County's General Plan Housing Element and SCAG's Regional Housing Needs Assessment.

2. The adoption of the Tonner Hills Planned Community Alternative 4 Preferred Plan and certification of the EIR will provide substantial job creation opportunities in the County of Orange throughout the duration of the project's construction term. The County has determined that the creation of additional job opportunities is a public benefit of the project.

3. The adoption of the Tonner Hills Planned Community Alternative 4 Preferred Plan and certification of the EIR will create a balanced multi-use development of a residential planned community and continued oil production which provides a mechanism for the preservation and conservation of sensitive habitat, including the wildlife corridor thorough Tonner Canyon, in perpetuity. The County has determined that the conservation and preservation of sensitive habitat and the wildlife corridor is a public benefit of the project.

4. The adoption of the Tonner Hills Planned Community Alternative 4 Preferred Plan and certification of the EIR will provide connectivity to the regional recreational trail system and bikeway system with the implementation of the Tonner Hills trail and provision of bike paths along the roadways within the Tonner Hills community. The County has determined that this recreational trail and regional connectivity is a public benefit of the project.

5. The adoption of the Tonner Hills Planned Community Alternative 4 Preferred Plan and certification of the EIR will create a 14.6 acre public park. The County has determined that the creation of additional public park space is a benefit of the project.

Based on the public benefits noted above, the Planning Commission of the County of Orange finds that the public benefits of the proposed project substantially outweigh the unavoidable adverse impacts of the project on air quality and agricultural resources and hereby recommends to the Board of Supervisors adoption of this Statement of Overriding Consideration in accordance with the CEQA Guidelines Section 15021.

Mitigation Monitoring Program

Mitigation Monitoring and Reporting Plan
Tonner Hills Planned Community
Environmental Impact Report No. 581

The California Environmental Quality Act (CEQA) requires all public agencies to establish monitoring or reporting procedures for mitigation measures adopted as conditions of approval in order to mitigate or avoid significant project impacts. The monitoring or reporting program must be designed to ensure compliance during project implementation (*Public Resources Code* §21081.6).

Provided on the following pages is a summary of the proposed mitigation measures associated with the proposed project. Following each mitigation measure heading is an indication of the action involved with enforcement, implementation and timing of the mitigation measure ("Mitigation Measure"), implementation action (i.e., "Mitigation Milestone"), and the Responsible Monitoring Party. This Mitigation Monitoring Program is intended to reflect the requirements of AB 3180 (Cortese), which requires a monitoring program to ensure the implementation of these mitigation measures.

Mitigation Measure		Mitigation Milestone	Responsible Monitoring Party	Verification Date
Geophysical				
G-1	**Fault Investigations** - Prior to issuance of the grading permit, the project applicant shall ensure that development throughout the project area shall include geologic investigations performed by a California-licensed geologist or engineering geologist to document the location, orientation, recency of activity, and direction of anticipated offset for active or potentially active faults that impact the development area. In particular, the precise location and activity of the Tonner Fault should be determined, because of its proximity to future home sites (approximately 50 feet). Appropriate setbacks from designated active faults should be included in project planning and design, and a report should be submitted to the Manager, Subdivision and Grading.	Geotechnical review by licensed geologist including appropriate setbacks from active faults. Submit report to Manager, Subdivision & Grading.	County of Orange - Manager, Subdivision & Grading	

	Mitigation Measure	Mitigation Milestone	Responsible Monitoring Party	Verification Date
G-2	**Geotechnical Investigation and Report** - Prior to the issuance of a grading permit, the project applicant shall submit a geotechnical report to the Manager, Subdivision and Grading, for approval. The report shall be prepared by a California-registered engineering geologist and licensed civil engineer with experience in soil engineering, and shall include technical information and recommendations in the format required by the County of Orange Grading Manual.	Submit geotechnical report by California registered engineering geologist per format in County of Orange Grading Manual.	County of Orange - Manager, Subdivision & Grading	
G-3	**Liquefaction** - Prior to issuance of a grading permit, the project applicant shall ensure that the geotechnical investigation fully characterizes the presence and extent of liquefiable soils and shall submit a report to the Manager, Subdivision and Grading. The project is not within a state-delineated Seismic Hazard Zone for liquefaction; however, the state maps may not show all potentially liquefiable areas. Therefore, a site-specific analysis of the liquefaction potential in areas of the property underlain by alluvium should be included in future detailed geotechnical investigations. In order to assist in this analysis, the state has published specific guidelines for evaluating and mitigating liquefaction (California Division of Mines and Geology Special Publication 117, 1997). In general, the liquefaction investigation identifies the depth, thickness, and lateral extent of any liquefiable layers that would affect the project site. If such layers exist, an analysis is then performed to estimate the type and amount of ground deformation that might occur, given the seismic potential of the area. Mitigation measures generally fall into two categories: ground improvement or foundation design. Ground improvement measures include removal and recompaction of low density soils, removal of excess ground water, in-situ ground densification, and other types of ground improvement (such as grouting or surcharging). Special foundations that may be	Submit site specific analysis of liquefaction potential per California Division of Mines and Geology guidelines.	County of Orange - Manager, Subdivision & Grading	

	Mitigation Measure	Mitigation Milestone	Responsible Monitoring Party	Verification Date
	recommended range from deep piles to reinforcement of shallow foundations (such as post-tensioned slabs). The type (or combinations of types) of mitigation depends on the site conditions and on the nature of the proposed project (California Division of Mines and Geology, 1997).			
G-4	**Slope Stability** – Prior to issuance of the grading permit, the existing slopes that will remain adjacent to development areas should be investigated and analyzed for gross stability in accordance with current soil engineering standards. Graded slopes (including cut, fill, and cut-over-fill slopes) and graded/natural slope combinations will also require investigation and analysis. Grossly unstable slopes can be stabilized by buttressing, flattening the slope gradient, lowering the height of the slope, constructing the slope with geogrid reinforcement, or by combinations of these methods. Where slopes cannot be stabilized, building setbacks will be imposed. Specific recommendations for remediation of slope instability shall be included in the geotechnical report for the project, which shall be submitted for review and approval to the Manager, Subdivision and Grading.	Investigate and analyze existing slopes. Submit specific recommendations in geotechnical report for review.	County of Orange - Manager, Subdivision & Grading	
G-5	**Compressible/Collapsible Soils** - Prior to issuance of the grading permit, a geotechnical soil analysis shall be performed to characterize the presence of compressible and/or collapsible soil within the project site. The findings and specific recommendations shall be included in the geotechnical report for the project and shall be submitted for review and approval to the Manager, Subdivision and Grading. Compressible soils are routinely removed and recompacted in proposed fill areas. Where perimeter fill slopes descend into natural canyons, the compressible soils are not only removed under the fill slope, but for a specified distance beyond the toe of the fill slope. This provides support	Prepare geotechnical soil analysis for compressible/collapsible soils. Submit for review.	County of Orange - Manager, Subdivision & Grading	

	Mitigation Measure	Mitigation Milestone	Responsible Monitoring Party	Verification Date
	for the slope and mitigates the potential for settlement. The removal area generally extends beyond the grading design at a minimum 1:1 projection (if landslides are present, a 1.5:1 or 2:1 projection is used). A 1:1 projection means the bottom of the removal extends beyond the toe to a horizontal distance equal to the depth of the removal bottom below the toe. Consequently, this distance is primarily dependent on the thickness of the compressible soils, but is also dependent on the gradient of the natural slope below the fill (the steeper the slope, the farther the removal is extended).			
G-6	**Expansive and Corrosive Soils** - Prior to issuance of the grading permit, and as part of the geotechnical investigation performed by a California licensed geologist and geotechnical engineer, the presence and extent of potentially expansive and corrosive soils within the project site shall be characterized. The best defense against expansive soils in new developments is to avoid placing expansive soils near the surface. If this is unavoidable, building areas with expansive soils are typically "presaturated" to a moisture content and depth specified by the soil engineer, thereby "pre-swelling" the soil prior to constructing the structural foundation or hardscape. This method is often used in conjunction with designing stronger foundations that can resist small ground movements without cracking. Good surface drainage control is essential for all types of improvements, both new and old.	Characterize presence ad extent of potentially expansive and corrosive soils in geotechnical report.	County of Orange - Manager, Subdivision & Grading	
G-7	**Tar Seeps** - The potential for naturally occurring crude oil seeps cannot be completely eliminated; however, it can be greatly reduced by the implementation of the following remedial measures. • Prior to the issuance of a grading permit, a thorough analysis and preliminary remediation plan shall be prepared by the geotechnical consultant in order to reduce impacts of future oil seepage to a level of non-significance. The plan shall be submitted for review and	Analyze tar seeps and prepare remediation plan to reduce impacts. Submit for review.	County of Orange - Manager, Subdivision & Grading	

Mitigation Measure	Mitigation Milestone	Responsible Monitoring Party	Verification Date
approval to the Manager, Subdivision and Grading. For the residential areas, remedial grading will be required to reduce the potential for future oil seepage at finished grades. This could include deeper overexcavation, thereby placing a thick fill column between the seep and finish grade; a subsurface drainage and capture system; and/or higher compaction standards.			
• During grading, the geotechnical consultant shall observe and map all excavations for oil seepage. The geotechnical consultant shall provide specific remedial recommendations based on the actual conditions encountered. Remedial recommendations shall include a means by which to reduce the potential for future landscape irrigation water to form a perched ground water table on the oil-bearing bedrock or fill.	Observe and map all excavations for oil seepage. Provide specific remedial recommendations.	County of Orange - Manager, Subdivision & Grading	
• During grading the location of any subsurface, utility lines shall be overexcavated a minimum of 2 feet below the base of the line in bedrock or soils with naturally occurring hydrocarbon. The geotechnical consultant shall evaluate any utility line located in oil-bearing areas for its potential to provide a pathway for oil migration (i.e., via the permeable bedding sands). Oil-bearing fill materials shall not be placed as utility line backfill.	Evaluate subsurface utility lines for potential oil migration.	County of Orange - Manager, Subdivision & Grading	
• During grading, the geotechnical and/or environmental consultant shall evaluate the need for clarifiers in order to reduce the potential of water carrying crude oil to impact the site.	Evaluate need for clarifiers.	County of Orange - Manager, Subdivision & Grading	
• Prior to issuance of building permits, the geotechnical consultant shall issue an as-graded report documenting the location of naturally occurring oil and any remedial measures installed and a monitoring and maintenance plan for tar seep drainage and collection systems. The report and plan shall be submitted to the Manager, Subdivision	Issue as-graded report documenting location and remedial measures for oil and monitoring and maintenance plan for tar seep systems. Submit reports and plans.	County of Orange - Manager, Subdivision & Grading	

	Mitigation Measure	Mitigation Milestone	Responsible Monitoring Party	Verification Date
	and Grading, and the Manager, Current Planning, for approval. • The oil seep analysis and mitigation shall be performed by a California registered engineering geologist and soil engineer. All reports, work plans, and mitigation plans shall be submitted to the Manager, Subdivision and Grading, for review and approval.			
G-8	**Reservoirs** - Prior to issuance of the grading permit, the flow directions, flow volumes, and inundation levels shall be estimated by the design civil engineer for the project and submitted to the Manager, Subdivision and Grading, for approval. If necessary, engineered devices or structures should be considered to redirect any potential flow away from residential neighborhoods. If feasible, the water tanks should be relocated outside the Alquist-Priolo Earthquake Fault Zone. The presence or absence of faults should be determined by conducting a detailed geologic investigation.	Prepare and submit flow direction, volume, and levels report; conduct detailed geologic investigation regarding presence/absence of faults.	County of Orange - Manager, Subdivision & Grading	
G-9	**Observation and Testing** – Prior to issuance of building permits, a final report summarizing the observation and testing performed during grading by the geotechnical consultant and for the project shall be submitted to the Manager, Subdivision and Grading for approval.	Prepare and submit final observation and testing report.	County of Orange - Manager, Subdivision & Grading	
G-10	**Grading** - All grading shall be performed in accordance with the County of Orange Grading and Excavation Code, County of Orange Grading Manual and the appropriate sections of the Uniform Building Code.	Grading subject to Orange County Grading and Excavation Code and Uniform Building code.	County of Orange - Manager, Subdivision & Grading	
Hydrology and Drainage				
HD-1	Prior to the recordation of a subdivision map for development (except maps for financing and conveyance purposes only) and prior to the issuance of any grading permits, the following drainage studies shall be submitted to and approved by the Manager, Subdivision and Grading and the Manager, PFRD/Program Development Division:	Prepare and submit drainage studies showing: • Diversions, off-site areas, • Drainage patterns will not overload existing storm drains; • Safety of building pads from rainfall	County of Orange - Manager, Subdivision & Grading County of Orange - Manager PFRD/Program Development Division	

	Mitigation Measure	Mitigation Milestone	Responsible Monitoring Party	Verification Date
	a. A drainage study of the project including diversions, off-site areas that drain onto and/or through the project, and justification of any diversions; and b. When applicable, a drainage study evidencing that proposed drainage patterns will not overload existing storm drains; and c. Detailed drainage studies indicating how the project grading, in conjunction with the drainage conveyance systems including applicable swales, channels, street flows, catch basins, storm drains, and flood water retarding, will allow building pads to be safe from inundation from rainfall runoff that may be expected from all storms up to and including the theoretical 100-year flood.	runoff inundation.		
HD-2	a. Prior to the recordation of a subdivision map for development (except maps for financing and conveyance purposes only) and prior to the issuance of any grading permits, the applicant shall, in a manner meeting the approval of the Manager, Subdivision and Grading, the Manager, PFRD/Program Development, and the Manager, Flood Control Program: 1) Design provisions for surface drainage; and 2) Design all necessary storm drain facilities extending to a satisfactory point of disposal for the proper control and disposal of storm runoff; and 3) Dedicate the associated easements to the County of Orange to ensure adequate maintenance access, if determined necessary. b. Prior to the issuance of any certificates of use and occupancy, said improvements shall be constructed in a manner meeting the approval of the Manager, Subdivision and Grading and Manager, Construction.	Design provisions for surface drainage, storm drain facilities for disposal; dedicate easements for maintenance access.	County of Orange - Manager, Subdivision & Grading County of Orange - Manager PFRD/Program Development Division County of Orange - Manager, Flood Control Program	
HD-3	Prior to the recordation of a subdivision map for development or prior to the issuance of any grading permit, whichever	Record letter of consent from upstream/downstream property owners	County of Orange - Manager, Subdivision &	

	Mitigation Measure	Mitigation Milestone	Responsible Monitoring Party	Verification Date
	comes first, and if determined necessary by the Manager, Subdivision and Grading, the applicant shall record a letter of consent from the upstream and/or downstream property owners permitting drainage diversions and/or unnatural concentrations. The form of the letter of consent shall be approved by the Manager, Subdivision and Grading Services, and the Manager, PFRD/Program Development Division prior to recordation of the letter.	for drainage diversions and unnatural concentrations. Submit letter for approval.	Grading County of Orange - Manager PFRD/Program Development Division	
HD-4	Prior to the recordation of a subdivision map for development (except maps for financing and conveyance purposes only), the subdivider shall participate in the applicable Master Plan of Drainage in a manner meeting the approval of the Manager, Subdivision and Grading, and the Manager, PFRD/Program Development, including payment of fees and the construction of the necessary facilities.	Participate in applicable Master Plan of Drainage (fee payment, facility construction)	County of Orange - Manager, Subdivision & Grading County of Orange - Manager PFRD/Program Development Division	
HD-5	a. Prior to the approval of a site development permit per Zoning Code §7-9-113, the applicant shall submit an Elevation Certificate to the Manager, Current Planning Services, identifying the base flood elevation and certifying that the planned elevation of the lowest floor, including basements, is at least one (1) foot above the Base Flood Elevation (BFE). *(Note: to eliminate FEMA requirements for flood insurance, the lowest elevation of any part of the structure, not only the lowest floor, must be above the BFE.)* b. Prior to the issuance of certificates of use and occupancy for any building, the applicant shall complete Section "E" of the Elevation Certificate, identifying the Base Flood Elevation (BFE) and certifying the as-built lower floor, including basement, as constructed, is at least one (1) foot above the BFE, in a manner meeting the approval of the Manager, Building Inspection Services. *(Note: to eliminate FEMA requirements for flood insurance, the lowest elevation of any part of the*	Submit elevation certificate regarding base flood elevation; complete Section E of elevation certificate.	County of Orange - Manager, Current Planning Services	

	Mitigation Measure	Mitigation Milestone	Responsible Monitoring Party	Verification Date
	structure, not only the lowest floor, must be above the BFE.)			
HD-6	Prior to the issuance of any certificates of use and occupancy, the applicant shall not grant any new easements over any property subject to a requirement of dedication or irrevocable offer to the County of Orange or the Orange County Flood Control District, unless such easements are expressly made subordinate to the easements to be offered for dedication to the County. Prior to granting any of said easements, the subdivider shall furnish a copy of the proposed easement to the Manager, Subdivision and Grading, and the Manager, PFRD/Program Development, for review and approval. Further, a copy of the approved easement shall be furnished to the Manager, Building Inspection Services, prior to the issuance of any certificate of use and occupancy.	Furnish copy of any proposed easements over property subject to County of Orange or Orange County Flood Control District.	County of Orange - Manager, Subdivision & Grading County of Orange - Manager PFRD/Program Development Division County of Orange - Manager, Building Inspection Services	
HD-7	Prior to the recordation of a subdivision map for development (except maps for financing and conveyance purposes only), the subdivider shall not grant any development-related easements (i.e., oil production related easements are excluded) over any property subject to a requirement of dedication or irrevocable offer to the County of Orange or the Orange County Flood Control District, unless such easements are expressly made subordinate to the easements to be offered for dedication to the County. Prior to granting any of said easements, the subdivider shall furnish a copy of the proposed easement to the Manager, Subdivision and Grading, for review and approval.	Furnish copy of any proposed development-related easements over property subject to County of Orange or Orange County Flood Control District.	County of Orange - Manager, Subdivision & Grading	
HD-8	Prior to the issuance of any grading permits, applicant shall delineate on the grading plan the floodplain which affects the property, in a manner meeting the approval of the Manager, Subdivision and Grading.	Delineate flood plain on Grading Plan.	County of Orange - Manager, Subdivision & Grading	

Mitigation Measure	Mitigation Milestone	Responsible Monitoring Party	Verification Date
HD-9 Prior to the recordation of a subdivision map for development, applicant shall delineate on the final map and the project grading plan the floodplain which affects the property, in a manner meeting the approval of the Manager, Subdivision and Grading.	Delineate flood plain on Final Map.	County of Orange - Manager, Subdivision & Grading	
HD-10 Prior to the issuance of any grading permits, applicant shall submit a Runoff Management Plan (RMP) to the Manager, Subdivision and Grading, and the Manager, Flood Control Programs, for review and approval.	Submit Runoff Management Plan (RMP) for review and approval.	County of Orange - Manager, Subdivision & Grading County of Orange - Manager, Flood Control Programs	
HD-11 Prior to the issuance of any grading permits for phased improvements, applicant shall submit drainage calculations indicating that the proposed drainage improvements are adequate to mitigate for project impacts as stated in the Runoff Management Plan to the Manager, Subdivision and Grading, and the Manager, Flood Control Programs, for review and approval.	Submit drainage calculations showing adequate mitigation for review and approval.	County of Orange - Manager, Subdivision & Grading County of Orange - Manager, Flood Control Programs	
HD-12 Prior to the recordation of a subdivision map for development (except maps for financing and conveyance purposes only), the applicant shall, in a manner meeting the approval of the Manager, Subdivision and Grading, and the Manager, PFRD/Program Development Division, initiate the formation of a Community Service Area covering the same area as the Master Homeowners Association for the purpose of maintaining the on-site drainage facilities.	Initiate formation of community service area for drainage facilities.	County of Orange - Manager, Subdivision & Grading County of Orange - Manager, PFRD/Program Development Division	
HD-13 During grading and construction activities for the water reservoir storage tanks, all grading and site preparation shall comply with the County Grading Ordinance and the Uniform Building Code (for seismic criteria) and be approved by the Manager, Subdivision and Grading. Water storage tank design shall comply with the American Water Works Association (AWWA) Standard D-100 for structural design and seismic	Comply with County grading ordinance and Uniform Building Code for water reservoir storage tanks.	County of Orange - Manager, Subdivision & Grading County of Orange - Manager, Building Inspection Services	

	Mitigation Measure	Mitigation Milestone	Responsible Monitoring Party	Verification Date
	requirements. The design plans shall be submitted to the Manager, Building Inspection Services, for approval.			
Water Quality				
WQ-1	**Runoff Management & Water Quality Plan** - Prior to the recordation of the first final map (either for conveyance or development), or prior to the issuance of any rough or precise grading permit, whichever occurs first, the land owner/ applicant shall prepare, and receive approval from the Manager, Subdivision and Grading Services Division, in consultation with the Environmental Resources and Flood Program Sections of the PFRD Program Development Division (PDD) of, a Runoff Management Plan (RMP), including Water Quality Management Plan (WQMP) covering the subject property. The RMP shall include the location of all permanent large-scale Best Management Practices (BMPs), including filtration devices, such as water quality basins, detention basins, debris basins, grass/bio-swales, energy dissipaters, and other BMPs.	Prepare for approval a Runoff Management Plan, including Water Quality Management Plan.	County of Orange - Manager, Subdivision & Grading County of Orange - Manager, PFRD/Program Development Division	
WQ-2	**Master Infrastructure Improvements** - Prior to the recordation of the first final map (either for conveyance or development), or prior to the issuance of any rough or precise grading permit, whichever occurs first, the land owner shall design and construct all applicable master infrastructure improvements identified in the approved RMP, including debris basins, bio-swales, energy dissipaters, drainage pipes, and other improvements, and shall provide all necessary dedications, all in a manner meeting the approval of the Manager, Subdivision & Grading, and the Manager, PFRD/Program Development Division.	Design and construct all applicable master infrastructure improvements in the Runoff Management Plan.	County of Orange - Manager, Subdivision & Grading County of Orange - Manager, PFRD/Program Development Division	
WQ-3	**NPDES** - Prior to issuance of any grading permits, the applicant shall submit evidence to the Manager, Subdivision and Grading, that the applicant has obtained coverage under the NPDES statewide General Construction Activity	Submit evidence of coverage under NPDES permit.	County of Orange - Manager, Subdivision & Grading	

	Mitigation Measure	Mitigation Milestone	Responsible Monitoring Party	Verification Date
	Stormwater Permit from the State Water Resources Control Board, which includes the preparation of a Storm Water Pollution Prevention Program and incorporates BMP to minimize stormwater runoff.			
WQ-4	**Final Map Note for Retention Basins** - Prior to the recordation of each final map (either for conveyance or development), a note shall be placed on the applicable final map where appropriate, indicating that retention basins will be required on the property in accordance with the approved RMP, in a manner meeting the satisfaction of the Manager, Subdivision & Grading Services Division.	Note retention basins on final Map.	County of Orange - Manager, Subdivision & Grading	
Transportation and Circulation				
T-10	Balsa Avenue between State College Boulevard and Carmichael Drive Prior to issuance of certificates of use and occupancy for residences within Planning Area 8, the developer shall pay to the County on a fair share basis for any agreed upon traffic calming measures along Balsa Avenue.	Pay fair share fee	County of Orange - Manager, Current Planning	
T-11	City of Brea Fee Program Prior to issuance of building permits, the project shall participate in both the City of Brea currently adopted fee program and the City of Brea proposed fee program for transportation improvements. These fees shall be paid on a per unit basis.	Participate in currently adopted fee program.	City of Brea – Development Services Manager	
Scenario 1: Mitigation Measures Required With Tonner Canyon Road				
1.	**Brea Boulevard (NS) at Central Avenue (EW)** Prior to the issuance of certificates of use and occupancy, the developer shall pay to the County on a fair share basis for the improvement. The southbound approach should be restriped from two exclusive thru lanes and one exclusive right turn lane to provide one exclusive thru lane, one shared thru-right turn lane and an exclusive right turn lane. This location is projected to experience deficient operations under Without	Pay fair share fee.	County of Orange - Manager, Current Planning	

Mitigation Measure	Mitigation Milestone	Responsible Monitoring Party	Verification Date
Project conditions. Therefore, the project is only responsible for a fair share contribution at this location. The fair share contribution is 3.5%.			
2. **State College Boulevard (NS) at Lambert Road (EW)** Prior to the issuance of certificates of use and occupancy, the developer shall pay to the County on a fair share basis for the improvement. The project impact mitigation measure at this location includes constructing an additional (second) left turn lane and converting the current shared left turn-through lane to an exclusive through lane. The feasibility of this improvement has been reviewed based on field reconnaissance and aerial photographs. Based upon this review, it appears that this improvement can be implemented. The proposed improvement will not provide acceptable traffic operations. This location is also projected to experience deficient operations under Without Project conditions. Therefore, the project is only responsible for a fair share contribution towards this improvement under these conditions. The fair share contribution at this location is 10.7% in the AM peak hour and 30.0% in the PM peak hour.	Pay fair share fee.	County of Orange - Manager, Current Planning	
3. **Kraemer Boulevard (NS) at Lambert Road (EW)** Prior to the issuance of certificates of use and occupancy, the developer shall pay to the County on a fair share basis for the improvement. The eastbound approach should be restriped to provide 2 exclusive through lanes, a shared through-right turn lane, and an exclusive right turn lane (this location is planned to include three exclusive through lanes and an exclusive right turn lane). This will provide acceptable AM peak hour operations (there is no PM peak hour deficiency). The project is responsible for the recommended improvement.	Pay fair share fee.	County of Orange - Manager, Current Planning	
4. **Valencia Avenue (NS) at Birch Street (EW)** Prior to the issuance of certificates of use and occupancy, the developer shall pay to the County on a fair share basis for the improvement. Deficiencies are projected for both AM and PM	Pay fair share fee.	County of Orange - Manager, Current Planning	

Mitigation Measure	Mitigation Milestone	Responsible Monitoring Party	Verification Date
peak hour traffic operations and for both Without Project and With Project conditions. The southbound approach should be restriped to add a second left turn lane, an exclusive thru lane and a shared thru-right turn lane. This improvement will provide acceptable AM peak hour traffic operations and will mitigate the project PM peak hour impact. As this location is also projected to experience deficient operations under Without Project conditions, the project is only responsible for a fair share contribution towards the recommended improvement. The fair share percentages are 6.5% in the AM peak hour and 48.0% in the PM peak hour.			
5. **Rose Drive (NS) at Imperial Highway (EW)** This location was not identified as impacted by the project in the DEIR under the With Tonner Canyon Road scenario. Based on the updated analysis using the newly constructed intersection geometry, a project impact has been identified. Mitigation consists of contributing on a fair share basis towards construction of an exclusive westbound right turn lane. The project fair share contribution for this mitigation measure is 15.0% .	Pay fair share fee.	County of Orange - Manager, Current Planning	
Scenario 2: Mitigation Measures Required Without Tonner Canyon Road			
6. **Brea Boulevard (NS) at Central Avenue (EW)** Prior to the issuance of certificates of use and occupancy, the developer shall pay to the County on a fair share basis for the improvement. The improvement includes a restriped /reconstructed the northbound approach to add a third thru lane, a single exclusive left turn lane and an exclusive right turn lane (the approach currently provides two left turn lanes, two through lanes, and one right turn lane). This will provide acceptable AM peak hour operations. To mitigate the project PM peak hour impact, a southbound right turn arrow (overlap) is required at this intersection. This location is also projected to experience deficient operations under Without Project conditions (PM peak hour only). Therefore, the project is only	Pay fair share fee.	County of Orange - Manager, Current Planning	

Mitigation Measure	Mitigation Milestone	Responsible Monitoring Party	Verification Date
responsible for a fair share contribution (75% A.M. 4.3% P.M.) towards this improvement (the southbound right turn overlap).			
7. **Kraemer Boulevard (NS) at Lambert Road (EW)** Prior to the issuance of certificates of use and occupancy, the developer shall pay to the County on a fair share basis for the improvement. The eastbound approach should be restriped to provide two exclusive through lanes, a shared through-right turn lane, and an exclusive right turn lane (this location is planned to include three exclusive through lanes and an exclusive right turn lane). This will provide acceptable AM peak hour operations (there is no PM peak hour deficiency). This location is also projected to experience deficient operations under Without Project conditions. Therefore, the project is only responsible for a fair share contribution towards the recommended improvement. The fair share contribution is 20.5% at this location.	Pay fair share fee.	County of Orange - Manager, Current Planning	
8. **Rose Drive (NS) at Imperial Highway (EW)** Prior to the issuance of certificates of use and occupancy, the developer shall pay to the County on a fair share basis for the improvement. Mitigation consists of contributing on a fair share basis (10%) towards construction of an exclusive westbound right turn lane.	Pay fair share fee.	County of Orange - Manager, Current Planning	
9. **Valencia Avenue (NS) at Lambert Road (EW)** Prior to the issuance of certificates of use and occupancy, the developer shall pay to the County on a fair share basis for the improvement. The currently planned intersection geometry, per the City of Brea adopted fee program, would provide two eastbound left turn lanes and three eastbound through lanes. The recommended mitigation measure is to reconstruct the eastbound approach to the intersection. The mitigation measure for this intersection includes provides a single eastbound left turn lane, two exclusive eastbound through lanes, a shared eastbound through and right turn lane, and an	Pay fair share fee.	County of Orange - Manager, Current Planning	

Mitigation Measure	Mitigation Milestone	Responsible Monitoring Party	Verification Date
additional exclusive eastbound right turn lane. The project contribution for the Without Tonner Canyon Road Connection conditions is 4.0%.			
Scenario 1 *and* Scenario 2			
10. Prior to or concurrent with the approval of the first tentative tract map, the subdivider shall submit an opening year traffic study analysis in conjunction with the submittal of each Level "B" Tentative Map, to the Manager of Current Planning for review and approval. Such studies shall ascertain the existing traffic conditions and determine if any future mitigation is necessary.	Preparation and submittal of opening year traffic studies.	County of Orange-Manager of Current Planning	
Air Quality			
AQ-1 During grading and construction phases, the project shall apply measures contained in Table 1 and Table 2 of SCAQMD Rule 403. Prior to the issuance of grading permit, the applicant shall obtain appropriate permits from the SCAQMD and submit them to the Manager, Subdivision and Grading Services.	Comply with measures in SCAQMD Rule 403. Obtain appropriate permits from SCAQMD.	County of Orange - Manager, Subdivision & Grading	
AQ-2 During grading and construction phases, the project shall reduce construction equipment emissions by implementing the following measures, which shall be included in grading and improvement plans specifications for implementation by contractors: • Use low emissions mobile construction equipment. • Maintain construction equipment engines by keeping them tuned. • Use low sulphur fuel for stationary construction equipment. This is required by SCAQMD Rules 431.1 and 431.2. • Utilize existing power sources (i.e., power poles) when feasible. This measure would minimize the use of higher polluting gas or diesel generators. • Configure construction parking to minimize traffic	Implement measures to reduce construction equipment emissions. Develop traffic plan for construction activities.	County of Orange – Manager, Subdivision & Grading	

	Mitigation Measure	Mitigation Milestone	Responsible Monitoring Party	Verification Date
	interference. • Minimize construction of through-traffic lanes. When feasible, construction should be planned so that lane closures on existing streets are kept to a minimum. • Schedule construction operations affecting traffic for off-peak hours. Develop a traffic plan to minimize traffic flow interference from construction activities (the plan may include advance public notice of routing, use of public transportation and satellite parking areas with a shuttle service.			
AQ-3	Prior to issuance of building permits, the applicant shall obtain approval of an Air Quality Mitigation Plan by the Manager, Environmental and Project Planning. The Plan shall address each applicable control measure listed below in order to determine which control measures are feasible, recommend implementation conditions, and establish methods of applying conditions to contractors, buyers, lessees, tenants and occupants to comply with Rule 402 and Rule 403. The project applicant shall reimburse the County for costs of an independent third party peer review, if necessary, of this Plan. Specific mitigation measures could include: a. Transportation Demand Management Measures 1. Schedule truck deliveries and pickups during off-peak hour. 2. Provide adequate ingress and egress at all entrances to public facilities to minimize vehicle idling at curbsides. 3. Provide dedicated turn lanes as appropriate and provide roadway improvements at heavily congested roadways. b. Energy Efficient Measures 5. Improve thermal integrity of the buildings and reduce thermal load with automated time clocks or occupant sensors.	Obtain approval of an Air Quality Mitigation Plan including Transportation Demand Management Measures & Energy Efficient Measures.	County of Orange - Manager, Environmental and Project Planning	

Mitigation Measure	Mitigation Milestone	Responsible Monitoring Party	Verification Date
6. Install energy efficient street lighting. 7. Capture waste heat and re-employ it in nonresidential buildings. 8. Landscape with native drought-resistant species to reduce water consumption and to provide passive solar benefits. 9. Provide lighter color roofing and road materials and tree planning programs to comply with the AQMP Miscellaneous Sources MSC-01 measure. 10. Comply with the AQMP Miscellaneous Sources PRC-03, and Stationary Sources Operations Enhanced Inspection and Maintenance and ADV-MISC to reduce emissions of restaurant operations. 11. Provide bicycle lanes, storage areas, and amenities, and ensure efficient parking management. 12. Provide preferential parking to high occupancy vehicles and shuttle services. Also, designate additional car pool or vanpool parking. The air quality benefit cannot be quantified. 13. Employers should provide variable work hours and telecommuting to employees to comply with the AQMP Advanced Transportation Technology ATT-01 and ATT-02 measures. 14. Provide dedicated parking spaces with electrical outlets for electrical vehicles. 15. Develop a trip reduction plan to comply with SCAQMD Rule 2202. 16. Employers should provide ride-matching, guaranteed ride home, or car pool or vanpool to employees as a part of the TDM program and to comply with the AQMP Transportation Improvements TCM-01 measure. 17. Synchronize traffic signals. 18. Encourage the use of alternative fuel or low emission vehicles to comply with the AQMP On-			

	Mitigation Measure	Mitigation Milestone	Responsible Monitoring Party	Verification Date
	Road Mobile M2 measure, and Off-Road Mobile Sources M9 and M10 measures. 19. Introduce window glazing, wall insulation, and efficient ventilation methods.			
Noise				
N-1	During grading and construction activities, the project applicant shall comply with the County of Orange Noise Ordinance, including limitations on allowable construction hours.	Comply with County of Orange Noise Ordinance.	County of Orange	
N-2	Prior to the issuance of grading permits, the project proponent shall produce evidence acceptable to the Manager, Building Permits Services, that: a. All construction vehicles or equipment, fixed or mobile, operated within 1,000 feet of a dwelling shall be equipped with properly operating and maintained mufflers. b. All operations shall comply with Orange County Codified Ordinance Division 6 (Noise Control). c. Stockpiling and/or vehicle staging areas shall be located as far as practicable from dwellings. Notations in the above format, appropriately numbered and included with other notations on the front sheet of the project's permitted grading plans will be considered as adequate evidence of compliance with this condition.	Comply with County of Orange Codified Ordinance Division 6 as noted on grading plans.	County of Orange - Manager, Building Permits Services	
N-4	The applicant shall sound attenuate all residential lots and residential dwellings against present and projected noise (which shall be the sum of all noise impacting the project) so that the composite interior standard of 45 dBA CNEL for habitable rooms and a source specific exterior standard of 65 dBA CNEL for outdoor living areas is not exceeded. The applicant shall provide a report prepared by a County-certified acoustical consultant, which demonstrates that these standards	Sound attenuation measures in compliance with Zoning Code §7-9-137.5 to be submitted by County-certified acoustical consultant.	County of Orange - Manager, Building Permits Services	

Mitigation Measure	Mitigation Milestone	Responsible Monitoring Party	Verification Date
will be satisfied in a manner consistent with Zoning Code §7-9-137.5, as outlined below. At a minimum, the report shall address noise levels of above-ground retained oil production facilities and activities within 500 feet of residential areas, as well as noise generated by traffic on nearby roadways. a. Prior to the recordation of a subdivision maps or prior to the issuance of grading permits, as determined by the Manager, Building Permits Services, the applicant shall submit an acoustical analysis report to the Manager, Building Permits Services, for approval. The report shall describe in detail the exterior noise environment and preliminary mitigation measures. Acoustical design features to achieve interior noise standards may be included in the report, in which case it may also satisfy item b. below. b. Prior to the issuance of any building permits for residential construction, the applicant shall submit an acoustical report describing the acoustical design features of the structures required to satisfy the exterior and interior noise standards to the Manager, Building Permits Services, for the approval along with satisfactory evidence which indicates that the sound attenuation measures specified in the approved acoustical report have been incorporated into the design of the project. c. Prior to the issuance of any building permits, the applicant shall show all free-standing acoustical barriers on the project's plot plan illustrating height, location and construction in a manner meeting the approval of the Manager, Building Permits Services. d. Prior to the issuance of certificates of use and occupancy, field testing in accordance with the County's Noise Ordinance may be required by the Manager, Building Permits Services to verify compliance with all			

	Mitigation Measure	Mitigation Milestone	Responsible Monitoring Party	Verification Date
	applicable standards. The project applicant shall reimburse the County for the costs of an independent third party peer review of this evidence.			
N-5	Prior to the issuance of any building or grading permits, the applicant shall obtain approval of the Manager, Building Permits Services, of an acoustical analysis report and appropriate plans which demonstrate that the noise levels generated by project noise generating equipment during its operation shall be controlled in compliance with Orange County Codified Ordinance, Division 6 (Noise Control). The report shall be prepared under the supervision of a County-certified acoustical consultant and shall describe the noise generation potential of the project during its operation and the noise mitigation measures, if needed, that shall be included in the plans and specifications of the project to assure compliance with Orange County Codified Ordinance, Division 6 (Noise Control).	Obtain approval of acoustical analysis report in compliance with Orange County Codified Ordinance Division 6 (Noise Control).	County of Orange - Manager, Building Permits Services	
Biological Resources				
BR-1	Prior to the issuance of any grading, clearing, or other landform modification permit, the developer shall submit evidence to the Director or designee, Development Services Department, that appropriate federal, state, and county permits have been obtained for the biological resources on-site to be removed by development. Said permits shall specify the timing, nature, and review authority for the mitigation measures, if any, that are required in connection with these removals. No removals shall be authorized until all necessary resource agency permits have been obtained.	Submit evidence that appropriate federal, state, and county permits have been obtained for removal of biological resources by development.	County of Orange - Director of Development Services	
BR-2	Prior to the issuance of a grading permit, walnut trees within drainage channels shall be identified on the grading plan and retained to the greatest extent feasible. Said grading shall be subject to review and approval by the Manager, Current Planning Services.	Identify and retain walnut trees within drainage channels.	County of Orange - Manager, Current Planning Services	

Mitigation Measure	Mitigation Milestone	Responsible Monitoring Party	Verification Date
BR-3 Prior to the issuance of a grading permit, the property owner/developer shall obtain a §1603 Streambed Alteration Agreement, if required by the *California Fish and Game Code*; and a permit under the guidelines of §404(b)(1) of the Clean Water Act, if required by the U.S. Army Corps of Engineers. Mitigation is intended to adhere to the "no net loss" policies of the CDFG and the U.S. Army Corps of Engineers. If a §404 Permit from the ACOE is required, a §401 Water Quality Certification will also be required from the California Regional Water Quality Control Board, Santa Ana Region. Evidence shall be provided to the Manager, Subdivision and Grading.	Obtain necessary permits from the California Department of Fish & Game, the U.S. Army Corps of Engineers, and the California Regional Water Quality Control Board.	County of Orange - Manager, Subdivision and Grading	
BR-4 Prior to initiation of grading, and upon approval from the Manager, Environmental Planning services, the property owner/developer shall implement the Tonner Hills Habitat Mitigation and Monitoring Program (which is included in the Technical Appendices). The Program incorporates measures to: • Preserve and protect walnut and oak woodlands outside the project footprint. • Preserve and protect coastal sage scrub habitat outside the project footprint. • Preserve and protect riparian habitat outside the project footprint. • Create additional coastal sage scrub habitat prior to and during project implementation. • Create additional walnut-coast live oak woodland habitat. • Enhance preserved habitat in Cable Canyon. The mitigation plan provides for a phased-in creation of riparian, coastal sage scrub, and walnut-oak woodland habitat on-site.	Implement Tonner Hills Habitat Mitigation and Monitoring Program	County of Orange - Manager, Environmental Planning Services	

	Mitigation Measure	Mitigation Milestone	Responsible Monitoring Party	Verification Date
BR 5	Crushing of existing habitat would not occur during the breeding season (February 15 to July 31) unless approved by a biological monitor familiar with requirements of breeding birds, especially coastal California gnatcatchers. Removal of crushed vegetation could occur in the breeding season if a biological monitor is present to prevent disruption to protected breeding birds.	Obtain approval of biological monitor for any crushing of existing habitat during breeding season.	County of Orange – Manager, Environmental Planning Services	
Aesthetics				
AE-1	Prior to the issuance of any grading permit or recordation of a subdivision map that creates building sites, whichever occurs first, the applicant shall obtain approval of the Manager, PFRD/HBP Program Management and Coordination, of a landscape and tree preservation plan for the property. This plan shall be consistent with the revegetation plan required as set forth in Section 4.10, Biological Resources, of this EIR.	Obtain approval of a Landscape and Tree Preservation Plan.	County of Orange - Manager, PFRD/HBP Program Management and Coordination	
AE-2	Prior to the approval of a Site Development Plan, a proposed color palette for the residential building materials and color schemes shall be submitted for review and approval by the Manager, Current Planning. The color palette shall consist of colors which complement with the surrounding hillsides.	Submit for review proposed color palette for building materials.	County of Orange - Manager, Current Planning	
AE-3	Prior to issuance of grading permits for final grading plans, the applicant shall submit for review and approval by the Manager, Current Planning, grading plans that comply with the County of Orange Zoning Code §7-9-139 (Grading and Excavation) and use contour and/or landform grading techniques for slopes viewed from public rights-of-way as described below: a. Contour grading results in landforms that exhibit many of the characteristics present with natural landforms as opposed to traditional terraced grading. Contour grading techniques include: • The use of horizontal and vertical curve variations for slope banks creating a curvilinear pattern.	Submit for review grading plans in compliance with County of Orange Zoning Code §7-9-139.	County of Orange - Manager, Current Planning Services	

	Mitigation Measure	Mitigation Milestone	Responsible Monitoring Party	Verification Date
	• Post-development landforms that exhibit natural terrain characteristics (without the heavily modeling effects of landform grading). • A general rounding of slopes at slope intersections and transition zones with natural grade. b. Landform graded slopes replicate the irregular shapes of natural slopes resulting in aesthetically pleasing elevations and profiles. Landform grading techniques should be used whenever slopes are being created which will be open to view from public rights-of-way.			
AE-4	Prior to approval of a proposed Site Plan application, the Manager, Current Planning Services, shall review detailed development plans to ensure that adequate screening is provided around existing and proposed oil facilities as well as other utility structures. Such screening for all remaining oil well equipment within the residential neighborhoods and public use area shall be consistent with the specifications included in the approved Area Plan. For above-ground oil operations equipment within visual proximity of residential or recreation areas, screening shall be provided through the use of vine covered fences, walls and/or landscape plantings.	Submit for review detailed development plans for screening of oil facilities.	County of Orange - Manager, Current Planning Services	
AE-5	Prior to approval of certificates of use and occupancy, existing electrical above ground utilities with a capacity of 12 kV or less shall be placed underground within the individual residential planning areas.	Place electrical above-ground utilities underground.	County of Orange Manager, Building Permit Services	
AE-6	Prior to issuance of any building permit, the applicant shall demonstrate that all exterior lighting has been designed and located so that all direct rays are confined to the property in a manner meeting the approval of the Manager, Building Permit Services. Lighting shall be designed to minimize visibility of light sources by directing lighting toward the on-site structures and not illuminating areas outside property boundaries.	Design lighting to confine direct rays to property and prevent glare and light spillover into Tonner Creek.	County of Orange - Manager, Building Permit Services	

	Mitigation Measure	Mitigation Milestone	Responsible Monitoring Party	Verification Date
Cultural/Scientific Resources				
CR-1	A qualified archaeological monitor approved by the County of Orange and paid for by the developer/property owner shall be present to monitor all ground-disturbing activities within 250 feet of ORA-1483H.	Archaeological monitor on-site during grading.	County of Orange - Approved monitor	
CR-2	If buried cultural resources, such as chipped or ground stone, significant historic debris, building foundations, or human bone, are inadvertently discovered during ground-disturbing activities, work will stop in that area and within 100 feet of the find until a qualified archaeologist monitor approved by the County and paid for by the developer/ property owner can assess the significance of the find and, if necessary, develop appropriate treatment measures in consultation with the County of Orange and other appropriate agencies. If human remains of Native American origin are discovered during project construction, it is necessary to comply with state laws relating to the disposition of Native American burials, which fall within the jurisdiction of the Native American Heritage Commission (*Public Resources Code* §5097). If any human remains are discovered or recognized in any location other than a dedicated cemetery, there will be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent human remains until the coroner of the county has been informed and has determined that no investigation of the cause of death is required. Section 7050.5 of the *California Health and Safety Code* requires that construction or excavation be stopped in the vicinity of discovered human remains until the coroner can determine whether the remains are those of a Native American. If the remains are determined to be Native American, the coroner must contact the California Native American Heritage Commission.	Cease work and assess significance of remains/resources per §7050.5 of California *Health and Safety Code*.	County of Orange - Approved monitor and Coroner	

	Mitigation Measure	Mitigation Milestone	Responsible Monitoring Party	Verification Date
	If the remains are of Native American origin: a. The descendants of the deceased Native Americans may recommend to the landowner or the person responsible for the excavation work a means of treating or disposing of, with appropriate dignity, the human remains and any associated grave goods as provided in *Public Resources Code* §5097.98, or b. And the Native American Heritage Commission was unable to identify a descendant or the descendant failed to make a recommendation within 24 hours after being notified by the commission, the landowner shall re-inter the human remains with appropriate dignity on the property in a location not subject to further subsurface disturbance. According to the *California Health and Safety Code*, six or more human burials at one location constitutes a cemetery (§8100) and disturbance of Native American cemeteries is a felony (§7052). The construction contractor and the County of Orange will ensure that work is halted until appropriate treatment measures are implemented if potentially significant cultural resources are discovered during construction activities.			
CR-3	The areas with dense vegetation but relatively level topography, such as along Tonner Creek and on ridgetops and hilltops, shall be monitored by a qualified archaeological monitor approved by the County and paid for by the developer/property owner when vegetation grubbing and clearing occur and during grading.	Monitor vegetation grubbing and clearing during grading by qualified archeological monitor.	County of Orange - Approved monitor	
CR-4	Prior to the issuance of a grading permit, the developer/property owner shall direct a County Certified Vertebrate Paleontologist (CCVP) to provide written evidence (letter verification) to the Manager, Subdivision and Grading, indicating that a CCVP has been retained to observe (monitor) grading activities and salvage and catalog fossils as necessary. The hiring of the CCVP will be approved by the County and	Provide written evidence indicating retention of certified vertebrate paleontologist to monitor grading. Monitor to ensure all stated mitigation actions are implemented.	County of Orange - Manager, Subdivision and Grading	

Mitigation Measure	Mitigation Milestone	Responsible Monitoring Party	Verification Date
paid for by the developer/property owner. The CCVP will ensure the following actions are implemented: • *Develop monitoring plan*. A paleontological resource monitoring plan shall be developed by a CCVP. This plan should include a schedule for grading monitoring to be maintained while conducted within fossiliferous geologic units, in order to further evaluate on-site fossil resources. • *Conduct salvage operations*. Salvage operations shall be initiated and coordinated with the developer and the County if significant concentrations of fossils are encountered during grading. • *Protect unearthed fossils*. Paleontological field monitors (staff paleontologists) shall be equipped to salvage fossils as they are unearthed to avoid construction delays and remove samples of sediments which are likely to contain the remains of small fossil vertebrates. Monitors must be empowered to temporarily halt or divert grading equipment to allow the removal of large specimens. If significant concentrations of fossils are encountered or separate equipment is operating at distances greater than 1/8 mile apart, additional staff paleontologists may be required during grading in order to maintain compliance with mitigation measures. • *Establish resource surveillance procedures*. The CCVP shall be present at the pre-grading conference, shall establish procedures for paleontological resource surveillance, and shall establish, in cooperation with the project developer, procedures for temporarily halting or redirecting work to permit sampling, identification, and evaluation of the fossils. If major paleontological resources are discovered, which require long-term halting or redirecting of grading, the paleontologist shall report such findings to the project developer and to the County of Orange. • *Protect fossil finds*. During grading, the CCVP shall			

Mitigation Measure	Mitigation Milestone	Responsible Monitoring Party	Verification Date
determine appropriate actions, in cooperation with the project developer, which ensure proper exploration and/or salvage of encountered paleontologic resources (fossils). Excavated significant fossil finds shall be offered to the County of Orange, or its designee, on a first-refusal basis. The project developer may retain said fossil finds if written assurance is provided that they will be properly preserved, unless said finds are of special significance, or the County of Orange indicates a desire to study and/or display them, in which case the fossils shall be immediately accessioned to the County of Orange, or designee. These actions, as well as final mitigation and disposition of the resources, shall be subject to the County of Orange guidelines and regulations. Prior to the issuance of a precise (fine) grading permit, the paleontologist shall submit a final report for approval by the County of Orange. • *Observe grading*. Paleontologic grading observation, supplemented by weekly periodic in-grading supervisory inspections by the CCVP, shall be maintained when grading in all on-site geologic units. This will enable further evaluation, protection and salvaging of any significant paleontological resources encountered on-site. Monitoring on a full-time basis is required as significant concentrations of fossils are anticipated within geologic units to be exposed during grading of the site. Monitoring schedules can only be altered during the project by the CCVP. • *Complete salvage operations quickly*. If significant concentrations of fossils are encountered, which cannot be collected during monitoring time, salvage operations must be initiated and completed as quickly as feasible at the direction of the CCVP and coordinated with the on-site grading foreman. The County of Orange, or its designee, and the property developer will be notified regarding any			

Mitigation Measure	Mitigation Milestone	Responsible Monitoring Party	Verification Date
paleontologic salvage operation as soon as possible. • *Prepare final report.* Prior to the issuance of certificates of occupancy, or as required by the County of Orange, a final paleontological report – paid for by the developer – shall be prepared for submission, review, and approval by the appropriate lead regulatory agency. The report shall include grading dates, methodologies, an itemized inventory of specimens and analysis of the significance of encountered fossils, and information regarding curation of collected fossils to the point of identification and accession of the fossils to the County of Orange or a museum repository with a retrievable storage system. The final report and inventory, when submitted to the appropriate lead agency, signifies completion of the program to mitigate impacts on paleontologic resources.			
Recreation			
R-1 Prior to approval of any subdivision map that creates building sites, the applicant shall: 1. Designate public parkland for dedication or provide for payment of in lieu fees according to the requirements of the Local Park Code. The Wildcatters Park has already been identified as part of the total dedication that will be required. 2. Irrevocably offer to dedicate a 16-foot-wide recreation an easement for riding and hiking trails (Tonner Ridge Trail) in a location and in a manner meeting the approval of the Manager, PFRD/Harbors, Beaches and Parks/Program Management and Coordination prior to recordation of an applicable subdivision map in compliance with county Standard Conditions of Approval Manual conditions for recreation easements. 3. Provide for Class I paved bike trails through the project on collector streets and on those pedestrian/emergency access roads.	Designate and dedicate parkland, trails, and scenic preservation easement. Landscaping to be completed per County Standard Condition of Approval for Public Area Landscaping.	County of Orange - Manager, PFRD/HBP	

	Mitigation Measure	Mitigation Milestone	Responsible Monitoring Party	Verification Date
	4. Dedicate a Scenic Preservation Easement to the County of Orange over the natural and enhanced open space (of the type to permit fuel modification and continued oil operation infrastructure until oil operations are phased out) to ensure its status in perpetuity. Easement dedication(s) shall be subject to the approval of the Manager, PFRD/HBP Program Management and Coordination, prior to recordation of applicable subdivisions, in compliance with County Standard Conditions of Approval Manual conditions for scenic preservation easements. 5. Areas to be irrevocably offered to the County for scenic preservation easement purposes shall be landscaped and equipped for irrigation, as applicable, and approved in accordance with the County Standard Conditions of Approved Manual conditions for Public Area Landscaping, subject to the approval of the Manager, PFRD/HBP Program prior to recordation of applicable subdivision map(s).			
R-2	Prior to approval of an applicable subdivision map, a trail and bikeway improvement plan shall be submitted subject to approval of the Manager, PFRD/HBP Program Management and Coordination. Improvement plans shall include, but not be limited to (as applicable), trail and bikeway alignments, wood rail fences, cross-sections for trail and bikeways, drainage, irrigation, and landscaping palette.	Submit for approval Trail and Bikeway Improvement Plan.	County of Orange - Manager, PFRD/HBP Program Management and Coordination	

	Mitigation Measure	Mitigation Milestone	Responsible Monitoring Party	Verification Date
Hazards				
H-1	**Document Remediation** – An experienced petroleum environmental consultant shall document the remediation efforts during all three remediation phases, overall site grading, and implementation of the project mitigation measures in accordance with the approved RAP. Site closure reports containing environmental documentation will be submitted to the OCHCA and the SARWQCB for approval. A closure letter from the OCHCA will be obtained to document the completion of remediation activities prior to the issuance of building permits.	Document remediation by petroleum environmental consultant. Submit reports.	Orange County Health Care Agency (OCHCA) Santa Ana Regional Water Quality Control Board (SARWQCB)	
H-2	**Adhere to Proper Health and Safety Measures** - Proper health and safety measures must be followed according to a site-specific Health and Safety Plan prepared by the environmental consultant prior to and during the remediation of all areas, including areas identified to contain elevated VOC concentrations. This includes, but is not limited to, personal protection equipment for workers and monitoring for VOCs during remediation activities. Before starting remediation activities in these areas, the contractor shall obtain a permit from SCAQMD pursuant to Rule 1166. OSHA guidelines will be followed by on-site workers.	Prepare and follow health and safety plan. Obtain permit from SCAQMD. Follow OSHA guidelines.	South Coast Air Quality Management District (SCAQMD)	
H-3	**Verification Sampling and Analysis** – Verification sampling will be conducted under the direction of a representative of the OCHCA during all three mediation phases. Additional analysis of samples may be necessary to ensure that a site is fully characterized so as not to spread potentially impacted soil throughout the property.	Verification sampling and analysis	OCHCA	
H-4	**Disposal of Gun Club Soil** - The impacted soil at the former gun club location will be transported off-site and disposed of at a licensed disposal facility. Documentation of the disposal activity will be included in a site closure report submitted to OCHCA.	Transport impacted soil off-site and document disposal.	OCHCA	

	Mitigation Measure	Mitigation Milestone	Responsible Monitoring Party	Verification Date
H-5	**Disposal of Road Material** - Asphaltic road material will be removed during grading activities and used as deep fill, and its placement, location, and elevation will be documented during mass grading activities. Documentation of this activity will be included in the site closure report.	Document removal of impacted asphalt.	OCHCA	
H-6	**Disposal of Tarry Material** - If the tarry material is found to be suitable, based on analytical results for reuse on-site as deep fill, the exact depth and location will be surveyed and documented in the site closure report. If it is not suitable for burial on-site, it will be removed and transported to a licensed waste facility.	Document removal of tarry material.	OCHCA	
H-7	**Disposal of Soil Containing PCB-Impacted Material** - Soils containing PCB concentrations greater than 0.22 mg/kg but less than 0.5 mg/kg will be stockpiled and reused in open space or as deep fill at depths greater than 10 feet in non-residential areas of the Tonner Hills project. Excavated soils containing PCB concentrations ranging from 0.5 mg/kg and to 10 mg/kg will be stockpiled and reused as deep fill at depths greater than 10 feet in street locations that will provide a "cap" within the Tonner Hills project. Excavated soils containing PCB concentrations greater than 10 mg/kg or greater will be transported off-site to a licensed disposal facility.	Stockpile, reuse, or dispose of soils containing PCBs per specified methods.	OCHCA	
H-8	**Supervision of Mass Grading Activities** - An experienced petroleum environmental consultant will be on-site during all mass grading activities to ensure that all "suspect" material is properly characterized and managed.	Monitor grading and manage suspect materials.	OCHCA	
H-9	Prior to commencing grading operations, the developer/property owner shall consult with the CDOGGR for information on the wells located in the residential area. All wells to be abandoned, or wells not abandoned to current standards, shall meet the current standards of CDOGGR. Any previously abandoned well shall be plugged and abandoned in	Consult with and meet standards of CDOGGR for abandoned and plugged wells.	California Department of Conservation, Division of Oil, Gas & Geothermal Resources (CDOGGR) County of Orange – Manager, Subdivision	

	Mitigation Measure	Mitigation Milestone	Responsible Monitoring Party	Verification Date
	accordance with current CDOGGR specifications prior to grading permit approval. Evidence of this consultation shall be provided to the County Manager, Subdivision and Grading, prior to commencement of grading. Any idle wells within the Planned Community shall be abandoned prior to development unless adequate provisions are taken to ensure that operators have access to these wells prior to grading, to the satisfaction of the County.		and Grading	
H-10	Any previously abandoned well that does not meet current standards and is located within a residential or within an adjacent street right-of-way shall be reabandoned in accordance with current CDOGGR specifications prior to building permit approval. Evidence of conformance to CDOGGR standards for any remedial plugging shall be provided to the Manager, Current Planning, and the Manager, Subdivision and Grading, immediately upon completion of reabandonment activity.	Reabandon wells that do not meet current CDOGGR standards.	County of Orange – Manager, Subdivision and Grading County of Orange – Manager, Current Planning	
H-11	The developer/property owner shall demonstrate on residential site plans that no buildings shall be allowed over wells that have either been plugged and abandoned or reabandoned to the CDOGGR and OCFA current specifications, or that are within 50 feet of a water injection well. Said plans shall be subject to review and approval by the Manager, Current Planning.	Submit for approval plans showing building placement relative to plugged or abandoned wells.	County of Orange – Manager, Current Planning	
H-12	A seismic sensor shall be placed at strategic locations to shut down production in the event of a significant seismic event (5.0 magnitude or higher on the Richter scale). The oil operator shall conduct a study to determine the seismic thresholds for shutting down production and the location, type, and number of sensors required. The study shall be subject to review and approval by the County. The seismic sensor and shut-down system shall be in place and operational prior to the County's issuing the first Certificate of Occupancy for a residential unit.	Conduct study to determine seismic thresholds and locations of seismic sensors.	County of Orange	

	Mitigation Measure	Mitigation Milestone	Responsible Monitoring Party	Verification Date
H-13	Oil wells in residential areas will be placed with subsurface pumping units enclosed in a concrete vault. The vault will have a grated steel grill plate to restrict the unit from public access. No new wells shall be drilled in a residential area once the County issues the first Certificate of Occupancy. Within the residential, park, and commercial/mixed-use planning areas, no new wells shall be drilled, nor shall existing wells be redrilled after the County issues the first Certificate of Occupancy for a residential unit.	Enclose wells in residential areas in concrete vault.	County of Orange	
H-14	Any residential structure constructed within 10 feet of an abandoned well shall receive special venting treatment pursuant to CDOGGR and OCFA standards and to the satisfaction of the County and CDOGGR. The developer/property owner shall indicate compliance with this measure on proposed building plans that are subject to review and approval by the Manager, Current Planning. Compliance is also subject to periodic site inspections by the County during construction.	Indicate compliance with special venting treatment of abandoned wells on building plans. Subject to review and approval.	County of Orange – Manager, Current Planning	
H-15	All habitable structures shall be located at least 50 feet from any operating well head, including water injection wells, pursuant to the requirements of the Uniform Fire Code and the OCFA and subject to monitoring and inspection by the OCFA. All habitable structures within 100 feet from an oil well shall comply with OCFA Planning and Development standard guideline C-02 (Guideline for Residences less than 100' from an Oil Well), as adopted at the time of construction.	Comply with OCFA planning and development standards for building locations from wells.	Orange County Fire Authority	
H-16	All drilling, operations, maintenance, and abandonment of wells during the life of the project shall be in accordance with §3106 of the Public Resources Code and overseen and approved by the CDOGGR. Compliance with this measure is subject to periodic site inspections by the Manager, Building Inspection Services and the CDOGGR.	Comply with §3106 of *Public Resources Code* for drilling, operations, maintenance and abandonment of wells.	CDOGGR	

	Mitigation Measure	Mitigation Milestone	Responsible Monitoring Party	Verification Date
H-17	If any abandoned or unrecorded wells are uncovered or damaged during excavation or grading, remedial plugging operations shall be required. If such discovery occurs, approval from CDOGGR to perform remedial activities is required. In the event the abandoned or unplugged wells are encountered during grading, Nuevo or the Construction Manager shall inform the Manager, Subdivision and Grading, within 24 hours of such an occurrence. Evidence of conformance to CDOGGR standards for any remedial plugging shall be provided to the County and the OCFA immediately upon completion of said remediation activity.	Obtain approval for remedial plugging of abandoned or unrecorded wells. Provide evidence of conformance of remediation	CDOGGR County of Orange Orange County Fire Authority	
H-18	Oil wells within open space planning areas where Scenic Preservation Easements have been dedicated to the County shall contain security fencing that meets the standards and requirements of CDOGGR. This fencing shall be indicated on project plans and subject to the review and approval of the Manager, County PFRD/HBP Program Management and Coordination.	Submit for approval plans for security fencing of wells in scenic preservation easement areas.	County of Orange – Manager, County PFRD/HBP Program Management	
H-19	Prior to issuance of building permits, soils adjacent to oil wells abandoned in residential areas will be mitigated to meet residential cleanup requirements of the RAP. Once the project is occupied, subsequent well abandonments shall be subject to and processed in accordance with CDOGGR and OCHCA regulations.	Mitigate soils in residential areas adjacent to wells to meet RAP.	CDOGGR	
H-20	Prior to the County's issuing the first Certificate of Occupancy, a program to carefully monitor the hydrogen sulfide (H_2S) content of the produced gas shall be developed and implemented to prevent higher levels of H_2S from becoming present in the produced gas. This program shall be reviewed by the CDOGGR and reviewed and approved by the OCHCA. Downhole treatment shall begin when the level of H_2S exceeds 10 ppm.	Develop and implement program to monitor hydrogen sulfide for review and approval.	County of Orange CDOGGR OCHCA	

	Mitigation Measure	Mitigation Milestone	Responsible Monitoring Party	Verification Date
H-32	The oil operator shall update and revise as necessary the RMP (Risk Management Plan) on file with the OCFA for the Oil Field operations adjacent to the proposed development. Such RMP revisions shall be submitted and accepted by OCFA prior to the issuance of any certificates of occupancy for the project.	Update and review Risk Management Plan and submit for review and acceptance.	Orange County Fire Authority	
Public Services				
PS-1	**Secured Fire Protection Agreement** - Prior to recordation of the first final map within the project boundaries, including maps for financial and conveyance purposes only, or prior to grading, whichever comes first, the applicant shall enter into a Secured Fire Protection Agreement with the Orange County Fire Authority (OCFA).	Enter into Secured Fire Protection Agreement.	Orange County Fire Authority	
PS-2	**Fire Hydrants** a. Prior to the recordation of a subdivision map for development, the applicant shall submit a fire hydrant location plan for the review and approval of OCFA. b. Prior to the issuance of a building permit, the applicant shall submit to OCFA evidence of the on-site fire hydrant system and indicate whether it is public or private. If the system is private, it shall be reviewed and approved by OCFA prior to issuance of a building permit. Provisions shall be made by the applicant for the repair and maintenance of the system, in a manner meeting the approval of OCFA. c. Prior to the issuance of any certificate of use and occupancy, all fire hydrants shall have a blue reflective pavement marker indicating the hydrant location on the street or drive per the Orange County Fire Authority Standards as approved by OCFA. These markers are to be maintained in good condition by the property owner.	Submit Fire Hydrant Plan (location, system type, pavement markers).	Orange County Fire Authority	
PS-3	**Water Availability** - Prior to the issuance of a building permit, the applicant shall provide evidence of adequate fire	Submit OCFA Water Availability for Fire Protection Form.	Orange County Fire Authority	

	Mitigation Measure	Mitigation Milestone	Responsible Monitoring Party	Verification Date
H-28	At the completion of grading, and prior to the issuance of building permits, sampling and analysis shall be performed by the methane consultant at future building locations. Based on the data collected prior to, during, and at the completion of grading, the methane consultant shall make final recommendations for methane mitigation during construction and future ongoing monitoring at buildout. The analysis and recommendations shall consider the guidelines recommended by OCFA (Guideline C-03 dated January 31, 2000) as minimum requirements. Any deviations from the guidelines shall be supported by scientific evidence, and approved by the OCFA.	Sample and analyze future building locations for methane mitigation per OCFA Guideline C-03.	Orange County Fire Authority	
H-29	Prior to the issuance of occupancy permits, the methane consultant shall prepare a manual describing the responsible parties, upkeep, monitoring program, record-keeping required, and reporting required with respect to the methane mitigation installed within the project. The report shall include a map showing the locations of all monitoring wells, vents, or other pertinent structures. The Tonner Hills Homeowners Association shall be responsible for ongoing monitoring and reporting to the OCHCA and the OCFA as described in the methane consultant report.	Prepare manual of responsible parties for methane mitigation.	OCHCA OCFA	
H-30	All methane investigation and analyses shall be performed by a California registered engineer and/or geologist with demonstrated proficiency in the subject of soil gas investigation and mitigation. All methane reports, work plans, mitigation plans, and monitoring plans are subject to the review and approval of the OCFA.	Submit for review and approval all methane reports, plan, and mitigation.	Orange County Fire Authority	
H-31	Prior to issuance of building permits, the project will be subject to the latest edition of the Orange County Fire Authority "Combustible Soil Gas Hazard Mitigation Guidelines" and the City of Brea Combustible Soil Gas Mitigation System Installation and Inspection Requirements.	Submit to OCFA Combustible Soil Gas Hazard Mitigation Guidelines and Brea Combustible Soil Gas Mitigation System Installation and Inspection Requirements.	Orange County Fire Authority	

	Mitigation Measure	Mitigation Milestone	Responsible Monitoring Party	Verification Date
	development. This study shall include soil gas sampling and analysis performed by a methane consultant. Since the distribution of methane can change with depth, the consultant's report shall include a work plan for further investigation during grading, including sampling intervals, procedures, and potential mitigation measures that might be implemented during grading. This report shall be submitted to the OCFA for approval.			
H-25	During grading, soil gas sampling and analysis shall be performed on the bottom of all excavations in the development area. This would include cuts to design grade, over-excavation of building pads, the bottoms of areas where unsuitable foundation soils have been removed, buttress cuts, etc. "Bottoms" sampling shall also be conducted at each well location. The sampling and analysis shall include a determination of gas pressure, hydrocarbon concentration, and chemical composition. If anomalous and potentially hazardous gas seeps are identified, the methane consultant shall recommend specific remedial measures and submit findings to the OCFA for approval.	Conduct bottom sampling at each well location. If hazardous seeps are identified, recommend specific remediation for approval.	Orange County Fire Authority	
H-26	During grading, any subsurface structures that may act as a conduit for methane gas (such as sewer lines, storm drains, subdrains, etc.) shall be evaluated by the methane consultant with respect to the local conditions. The methane consultant shall provide specific remedial recommendations, such as venting, as needed for approval by OCFA.	Evaluate conduits for methane gas and provide specific remedial measures.	Orange County Fire Authority	
H-27	Full time monitoring of the grading activities shall be provided by the petroleum environmental consultant in order to document the depth, lateral extent, and concentrations of any crude oil-impacted fills. This information shall be provided to the methane consultant for evaluation and consideration in the final methane remedial recommendations.	Monitor and document crude oil impacted fills for evaluation.	Orange County methane consultant	

	Mitigation Measure	Mitigation Milestone	Responsible Monitoring Party	Verification Date
H-21	All oil and gas flowlines shall be installed in underground trenches, separate from other utilities. Location of all pipelines shall be recorded on site plans. Seismic joints and flexible couplings shall be installed in all cases where flowlines cross known or suspected fault lines. Seismic sensing devices shall be installed to allow for the shutdown of the field in the event of a significant seismic event (5.0 magnitude or higher on the Richter scale). The developer/ property owner shall indicate compliance with these measures on project utility and building plans and be subject to review and approval by the Manager, ~~Current Planning~~, prior to implementation of the proposed project.	Comply with measures regarding flowline installations as shown on utility and building plans.	County of Orange – Manager, Current Planning	
H-22	The oil operator shall compile a list of all hazardous materials used on the project site and demonstrate that the storage and use of these materials do not present a public safety hazard. This list, and documentation demonstrating that no public safety hazard exists, shall be reviewed and approved by the OCHCA and the OCFA prior to the County's issuing the first Certificate of Occupancy for a residential unit. In addition, the oil operator and the owner shall provide the same type of documentation it proposes to use a hazardous material not currently on the approved list.	Compile hazardous materials list on project site. Submit for review and approval proof of no public safety hazard.	OCHCA OCFA	
H-23	Prior to issuance of occupancy permits, the geotechnical consultant ~~shall~~ prepare a maintenance/monitoring manual describing the responsible parties, upkeep, monitoring program, record keeping and reporting required with respect to any oil seep mitigation measures installed within the project. The report shall include a map showing the locations of all pertinent structures (such as subdrain outlets, vaults, clarifiers, etc.) and shall be approved by the Manager, Subdivision and Grading.	Prepare maintenance/monitoring manual with respect to oil seep mitigation measures.	County of Orange – Manager, Subdivision and Grading	
H-24	Prior to grading, a baseline study shall be performed to gain a better understanding of the current distribution and concentrations of methane in the area proposed for	Prepare baseline study of distribution and concentrations of methane. Include work plan for further investigation.	Orange County Fire Authority	

	Mitigation Measure	Mitigation Milestone	Responsible Monitoring Party	Verification Date
	flow. The Orange County Fire Authority Water Availability for Fire Protection form shall be signed by the applicable water district and submitted for approval to the Orange County Fire Authority. If sufficient water to meet fire flow requirements is not available, an automatic fire extinguishing system may be required in each structure affected by insufficient fire flow. It is recommended, but not required, that fire flows are based upon field testing and not solely on engineering calculations to avoid issues at time of certificates and use and occupancy when verification is again required.			
PS-4	**Automatic Fire Sprinkler Systems** a. Prior to the recordation of a subdivision map for development, a note shall be placed on the map stating that all commercial structures over 6,000 square feet, all residential structures over 5,500 square feet, and all structures exceeding fire department access requirements shall be protected by an automatic fire sprinkler system, in a manner meeting the approval of OCFA. To the extent feasible, such situations should be identified during the tentative map review process, or equivalent review, and such approval should be specifically conditioned regarding appropriate fire sprinkler requirements. b. Prior to the issuance of a building permit, the applicant shall submit plans for any required automatic fire sprinkler system in any structure to the OCFA for review and approval. c. Prior to the issuance of a certificate of use and occupancy, this system shall be operational in a manner meeting the approval of OCFA.	Place note on Subdivision Map for automatic fire sprinkler systems. Submit plans for sprinkler system.	Orange County Fire Authority	
PS-5	**Fire Access Roads** a. Prior to the issuance of a mass or rough grading permit, the applicant shall provide plans and/or information for review and approval by OCFA demonstrating that	Provide plans for review and approval for emergency access roads. Provide plans for review and approval of all roads, streets, and courts.	Orange County Fire Authority County of Orange - Manager, Subdivision	

Mitigation Measure	Mitigation Milestone	Responsible Monitoring Party	Verification Date
adequate fire and emergency response access ways through the disturbed areas of the project site will be maintained during all phases of mass or rough grading operations. b. Prior to the recordation of a subdivision map for development or the issuance of any precise grading permit, whichever occurs first, the applicant shall obtain approval of OCFA for all fire protection access roads within 150 feet of all portions of the exterior of every structure on-site, or an alternative means and method request shall be approved by OCFA. c. Prior to the issuance of any precise grading permits, the applicant shall submit and obtain approval of plans for all roads, streets and courts, public or private, from OCFA in consultation with the Manager, Subdivision and Grading Services. The plans shall include the plan view and section view, and indicate the grade and width of the street or court measured flow line to flow line. All proposed fire apparatus turnarounds shall be approved by OCFA and, if needed, clearly marked when a dead-end street exceeds 150 feet or when otherwise required. Applicable CC&Rs or other approved documents shall contain provisions that prohibit obstructions, such as speed bumps/humps, control gates, or other modifications within said easement or access road unless prior approval of OCFA is granted. d. A note shall be placed on the fire protection access easement plan indicating that all street/road signs shall be designed and maintained to be either internally or externally illuminated in a manner meeting approval of OCFA.		and Grading	

Mitigation Measure	Mitigation Milestone	Responsible Monitoring Party	Verification Date
PS-6 **Street Markings** a. Prior to the issuance of a building permit, the applicant shall submit plans and obtain approval from OCFA for fire lanes on required fire access roads less than 36 feet wide. The plan shall indicate the locations of red curbing and signage. A drawing of the proposed signage with the height, stroke and color of lettering and the contrasting background color shall be submitted to and approved by OCFA. b. Prior to the issuance of any certificate of use and occupancy, the fire lanes shall be installed in accordance with the approved fire lane plan. The CC&Rs or other approved documents shall contain a fire lane map and provisions which prohibit parking in the fire lanes. The method of enforcement shall be documented.	Submit plans for approval regarding fire lane widths and signage.	Orange County Fire Authority	
PS-7 **Fire Hazard Notification** a. *State Responsibility Areas*. Prior to the recordation of a subdivision map for development, the subdivider shall place a note on the map meeting the approval of OCFA that the property is in a "(High/Very High) Fire Hazard Area" due to wildland exposure based on State SRA Maps. b. *Special Fire Protection Area Notification*. Prior to recordation of any final tract map, the subdivider shall place a note on the map meeting the approval of OCFA that the property is in a "Special Fire Protection Area" and must meet all requirements for development within the area or file for a conditional exclusion with OCFA. c. *Special Fire Protection Area Development*. Prior to the issuance of a building permit, the applicant shall meet all requirements for development and construction within a Special Fire Protection Area, including increase street widths, Class A roof assemblies, fire	Place a note on map designating "High/Very High Fire Hazard Area," "Special Fire Protection Area." Meet requirements for development in those areas. Identify conditional exclusions.	Orange County Fire Authority	

	Mitigation Measure	Mitigation Milestone	Responsible Monitoring Party	Verification Date
	sprinklers, etc., or shall receive a conditional exclusion approved from OCFA. d. *Special Fire Protection Area Conditional Exclusion.* If applicable, prior to recordation of any final tract map, the subdivider shall place a note on the map meeting the approval of OCFA that the property is "Conditionally Excluded" from a "Special Fire Protection Area," and shall identify lots/buildings which are subject to construction requirements.			
PS-8	**Fuel Modification** - Prior to the issuance of any preliminary grading permit, the applicant shall obtain the approval of OCFA, in consultation with the Manager, Subdivision and Grading Services, of a conceptual fuel modification plan and program. Prior to the issuance of any precise grading permit, the applicant shall obtain the approval of OCFA, in consultation with the Manager, Subdivision and Grading Services, of a precise fuel modification plan and program. The plan shall indicate the proposed means of achieving an acceptable level of risk to structures by vegetation. Prior to the issuance of a building permit, the developer shall have completed, under the supervision of OCFA, that portion of the approved fuel modification plan determined to be necessary by OCFA before the introduction of any combustible materials into the project area. Approval shall be subject to on-site inspection. Prior to the issuance of any certificate of use and occupancy, the fuel modification shall be installed and completed under the supervision of OCFA. Further, the installed fuel modification plant pallet shall be established to a degree meeting the approval of OCFA. The CC&Rs, or other	Obtain approval of Conceptual fuel Modification Plan and Precise Fuel Modification Plan. Install fuel modification materials and plants.	Orange County Fire Authority County of Orange - Manager, Subdivision and Grading	

	Mitigation Measure	Mitigation Milestone	Responsible Monitoring Party	Verification Date
	approved documents, shall contain provisions for maintaining the fuel modification zones including the removal of all dead and dying vegetation subject to triennial inspections. All fuel modification plans shall be in accordance with the OCFA guidelines for development within Special Fire Protection Areas as outlined in Guidelines C-04, C-05 and C-06.			
PS-9	**Access Gates** - If applicable, prior to the issuance of any grading permits, the applicant shall submit and obtain OCFA's approval for the construction of any gate across required fire authority access road/drives. Contact the Orange County Fire Authority at (714) 744-0499 for a copy of the "Guidelines for Design and Installation of Emergency Access Gate and Barriers."	Submit for approval plans for gate construction across fire access roads.	Orange County Fire Authority	
PS-10	**Fire Impact Fees** - The project applicant shall pay all applicable dispatch impact fees prior to the issuance of any building permits.	Pay all applicable fees.	County of Orange	
PS-11	**Oil Field Mitigation** - Copies of oil field mitigation measures specified in the Mitigation Measures subsection of the Hazards section shall be provided to OCFA as part of "standard conditions" of approval for the proposed development prior to the issuance of certificate of occupancy.	Provide copies of oil field mitigation measures.	Orange County Fire Authority	
PS-12	**Library Impact Fees** - The project applicant shall pay all applicable Orange County Library Services in lieu fees prior to the issuance of any building permits.	Pay all applicable fees.	Orange County Library Services	
PS-13	**School Impact Fees** - Prior to the issuance of a building permit, the project applicant shall comply with Senate Bill 50 and pay the applicable school impact fees. Presently, the Brea-Olinda Unified School District's adopted School Impact Fees for Residential development is $2.05 per square foot and $0.33 per square foot for commercial or mixed use developments. Upon completion of the designated tract map,	Pay all applicable fees.	Brea Olinda Unified School District	

	Mitigation Measure	Mitigation Milestone	Responsible Monitoring Party	Verification Date
	the valid amount shall be issued.			
Utilities and Service Systems				
US-1	**Water Conservation** - Prior to issuance of building permits, the project applicant shall incorporate all practical and mandated water conservation measures to the satisfaction of the Metropolitan Water District of Southern California, Water Conservation Plans.	Incorporate all conservation measures per MWD conservation plans.	Metropolitan Water District of Southern California	
US-2	**Recycling Programs** - Prior to issuance of building permits, the applicant shall comply with guidelines set forth by the County of Orange in accordance with the California Integrated Waste Management Act (1989, AB 939), which mandates recycling programs for each jurisdiction in California.	Comply with California Integrated Waste Management Act Guidelines	County of Orange	
US-3	**Consultation with Southern California Edison Company** - Prior to the issuance of building permits, the developer shall demonstrate to the Manager, Current Planning, Southern California Edison has been consulted regarding participation in programs designed to increase the efficiency of operation and decrease energy costs.	Consult regarding programs to increase efficiency and decrease costs.	Southern California Edison	
US-4	**Consultation with Southern California Gas Company** - Prior to the issuance of building permit, the project applicant shall consult with the Southern California Gas Company to determine the proper facilities and location needed to serve the site.	Consult with Southern California Edison to determine facilities and locations	Southern California Gas Company	
US-5	**Payment of Construction Fees** - The project applicant shall be responsible for paying the appropriate costs and fees for the construction of facilities used to serve the project site per the rules and regulations established by each utility for the extension of said facilities.	Pay appropriate fees and costs to utilities.	Southern California Edison Southern California Gas Company	
US-6	**Water Services** - Prior to the issuance of a grading permit, Southern California Water Company must obtain a Certificate of Public Convenience and Necessity (CPCN) under §1001 of	Obtain Certificate of Public Convenience and Necessity	Southern California Water Company	

Mitigation Measure	Mitigation Milestone	Responsible Monitoring Party	Verification Date
the *Public Utilities Code* from the California Public Utilities Commission (CPUC).			

Planning Commission Meeting Minutes
October 16, 2002

Minutes

ORANGE COUNTY Planning Commission Meeting – October 16, 2002

Time 1:30 P.M.

Item 1 and Item 2 were heard together.

Item 1.: Public Hearing – Zone Change 01-01 and Area Plan for Nuevo Energy Company and Draft EIR 581.

Item 2.: Public Hearing – Tonner Hills Planned Community Development Agreement for Nuevo Energy Company Property.

Executive Officer Britton introduced the projects. He recommended that the Commission conduct today's public hearing in the following order: 1) Staff presentation by Chuck Shoemaker, Environmental Planning, who will discuss Draft EIR 581; Marta Crane, Current Planning, who will discuss the Zone Change, Planned Community Regulations and Area Plan; 2) Alan Gamson who is available should the Commission have questions regarding the Development Agreement. Open the Public Hearing. The Applicant's representatives will speak, and John Ullom has a Powerpoint presentation. Accept Additional public testimony. 3) Close the Public Hearing. 4) Planning Commission deliberation. 5) Planning Commission's recommended action. Mr. Britton stated that staff was not presenting a formal report regarding the Development Agreement.

Commissioner Long stated that she did take a tour of the project site with the developer.

Senior Planner Shoemaker stated this is the second public hearing for the 789 acres Tonner Hills Planned Community. He noted that the first public hearing was held on September 18, 2002 at the City of Brea Council Chambers. He stated that at that time staff provided the Commission with a general introduction to the project. He stated that the Commission received testimony from the members of the public, representatives from the City of Brea, and the applicant. Mr. Shoemaker stated that he would review the site and situation and changes made to the project and how they are reflected in the Planning Commission Resolution for the CEQA document. He referred to the exhibits, Alternative 4 Preferred Plan. He pointed out the 57 Freeway and stated that the 57 Freeway bisects the property, creating one planning area located on the west side of the freeway that is accessed off of an extension of Carmichael. The remainder of the property is located on the east side of the 57 Freeway. Mr. Shoemaker pointed out on the exhibit the direction Lambert Road runs and Valencia Avenue runs along the eastern boundary. He stated that access to the property is from an extension of Kraemer Blvd., he pointed out on the exhibit where Kraemer crosses Lambert, extends through the City of Brea and extends to the property at the location he pointed out on the exhibit. Mr. Shoemaker pointed out the only place that the property abuts Lambert adjacent to the intersection of Wildcat Way and Lambert road.

Mr. Shoemaker stated that the project was originally submitted as a 914 dwelling unit project and included a small 7.7 acres commercial center, development along Cable Canyon and additional development along the edge, which he pointed out on the exhibit. Mr. Shoemaker stated that staff took into account much of the work that had been done by the City of Brea. He stated that as part of the scoping session it was agreed the City of Brea would prepare an alternative plan that would be analyzed in the EIR. He noted that this became Alternative 4 in the EIR and forms the basis for what is being recommended as the preferred project. Mr. Shoemaker stated that development has been deleted along Cable Canyon, he pointed out another area where development was trimmed. He stated that there was an access road referred to as Tonner Hills Road that would have come off the backside of the property and was projected to provide relief for traffic generated by the 914 dwelling units. He pointed out the location of the exhibit. He stated that staff discussed the City's ridgeline preservation policy and their desire to maintain the backdrop. He pointed out ridgeline locations on the exhibit. He stated that this ridgeline is included in the City's General Plan as well as the horseshoe-shaped ridgeline at a lower elevation and a smaller topographical feature that is referred to as a "hillock" adjacent to Wildcatters Park, which is not preserved as part of the project. Mr. Shoemaker pointed out on the exhibit a further ridgeline to the north of the property and stated that this ridgeline is at a higher elevation and more of a backdrop for the community. Mr. Shoemaker stated that as previously discussed that oil operations have occurred on this property dating back to the 1900's. He stated that oil extraction would still be ongoing with this project. He stated that there is mitigation for this as well as consideration in the Planned Community Regulations for ongoing oil extraction. Mr. Shoemaker discussed wildlife movement and stated that this was addressed extensively in the EIR. He pointed out on the exhibit a wildlife movement corridor. He stated that this was a concern with many who commented in the Response to Comments and at the previous public hearing. He stated that the Wildlife Corridor Conservation Authority and the City of Brea and the wildlife agencies were very much interested in it being maintained. He stated that the wildlife corridor runs under the 57 Freeway and runs partially on the property but primarily runs along side Tonner Creek. Mr. Shoemaker stated that this is an important connection, which might have been compromised by Tonner Hills Road. He pointed out more open space areas on the exhibit to the west and open space areas located below the Olinda Alpha Landfill that proceed to Chino Hills State Park. He noted that the connection to these to these open lobes is the wildlife corridor that goes under the 57 Freeway. He stated the EIR addressed habitat preservation. He stated that Cable Canyon would be preserved as requested in many of the public comments. He stated that some of the higher elevations would be preserved and the connectivity of open space is being preserved. He pointed out the public use area and Wildcatters Park on the exhibit and stated that Wildcatters Park has increased in size to 14.6 acres. Mr. Shoemaker discussed traffic. He stated that the primary connection is at the extension of Kraemer across Lambert; and, the secondary access would have been Tonner Hills Road off the backside down to Brea Canyon Road and the 57 Freeway. He noted that there was no direct access off of Valencia in the original application. He stated that through the revisions made to the plan there is now a road (he pointed out the road on the exhibit) connection at Valencia that would line up with Santa Fe Drive on the opposite side of the Olinda Ranch property. He noted that there would be two primary entrances to the

project as pointed out on the exhibit. He pointed out an emergency access on an existing oil road at Wildcat Way, a gate that provided access to the upper development and another emergency access to the lower tier development coming off another road he pointed out. Mr. Shoemaker stated that what staff would be using as the basis for analysis was very important to the City of Brea, the County, Cal Trans, and the Orange County Transportation Authority. He noted the City of Brea has its own traffic model, which is different from the model employed by the County. He stated that there was a lot of discussion between the traffic consultants, OCTA and the City of Brea. He stated that it was agreed that the project use the County model. He noted that there is general conformance with both modeling efforts. He stated that one of the differences is how the County views right-turn overlap. He stated that traffic changes were looked at very carefully when the project was revised from 914 units to 795 units. He stated that the original project would have generated 13,182 ADT and the preferred Alternative 4 generate 10, 459 trips, 744 trips in the a.m. peak and 1,055 in the p.m. peak; and the original project would have generated 1,780 p.m. peek trips. He noted that the reduction between the original project and the revised project. Mr. Shoemaker stated that those changes are reflected in the Mitigation Monitoring Program report. He discussed a letter received from the County of Los Angeles, Department of Public Works (See Attachment #1). Mr. Shoemaker stated that after discussion with the applicant and the environmental consultants, the applicant is willing to participate on a fair share basis for the off ramp that Cal Trans has requested and the County of LA is necessary to support this project. He stated that the way staff would recommend folding this into the action would be as an overriding benefit of the project not as a mitigation measure. He stated that staff didn't feel this should be included as a mitigation measure because the project did not generate enough traffic to warrant those kinds of improvements. He stated that the property is in an Alquist-Priolo area. Mr. Shoemaker discussed unavoidable impacts; 1) Air Quality, property is in a non-attainment basin and 2) Agricultural, a unique circumstance that this piece of property had a nursery. He pointed out the nursery location on the exhibit. He stated that the removal resulted in an adverse impact to unique farmland. 3) Traffic mitigation is dependent on programs that are in part managed and controlled by the City of Brea. He noted that mitigation is in place but because it will require participation and coordination with the City of Brea, the timing on some of these mitigation measures is not as well known. Therefore, staff is identifying it as an unavoidable adverse impact to the project. Mr. Shoemaker discussed an updated handout to the Commission. He stated that attached to the staff report is a Planning Commission Resolution with Exhibit A Facts and Findings, Exhibit B Overriding Benefits, Exhibit C Mitigation Monitoring Reporting Program. He stated that after reviewing some of the changes that have come about to the refined project there are eight (8) additional editorial type changes staff wanted to have reflected in the Mitigation Monitoring Program Report. He requested that the Commission exchange the Mitigation Monitoring Program Report that was attached to the Resolution in the staff report for the Mitigation Monitoring Program Report handed out to the Commission today. Mr. Shoemaker stated that staff believed that Draft EIR 581 is adequate for the project being proposed, Alternative #4 Preferred and in many instances it is compatible with the Alternative developed by the City of Brea. He requested that the Planning Commission certify Draft EIR 581 for the project and recommend certification by the Board of Supervisors.

Commissioner Goacher stated that in the correspondence received from the County of Los Angeles they stated on page 2 at the bottom that they require that the EIR disclose whether there are any California Environmental Quality Act significant impacts on the SR-57 within the County of Los Angeles and whether they will be mitigated.

Mr. Shoemaker responded the he would like to confer with the consultant on that.

Planner IV Crane gave a presentation on the Zone Change, Planned Community Regulations and Area Plan. She noted that on September 18, 2002 staff had provided the Commission with a brief synopsis on the general elements being proposed. She stated that the item presented today included the request for the Zone Change that would reclassify the property from the current A1 Agricultural, Oil Production Designation to PC, Planned Community, Oil Production. She stated that this new designation would establish the new Tonner Hills Planned Community Regulations, Development map, and Statistical Summary Table as well as an Area Plan for a maximum of 795 dwelling units with a minimum of 559.7 acres to be retained as open space with continued oil production activity. She stated that approval of the zone change would establish new regulations contained in the PC text to govern the development on the property. Ms. Crane stated that approval of the Area Plan would direct the initial phase of development, allowing preliminary mass grading of the site. She referred to the PC Text Document (Exhibit #3), which addressed all zoning requirements such as lot size, lot width, building height, and parking. The PC Text contains regulations germane to the oil production activity that will continue on the site, and also contains administration and procedural requirements and the Statistical Summary Table with the Development Map for the property. She stated that the Area Plan (Exhibit #4) proposes seven different planning areas that include a range of housing concepts. She pointed out that Planning Area (PA) #7 contained large lot subdivisions at 7,000 and 8,000 SF lots, and that Planning Areas 1, 2 & 3 included smaller lot sizes with a mixture of single-family residential and multi-family residential. Ms. Crane discussed the project densities ranging from 2.5 units per acre to 8.9 units per acre, with an overall net density of 4.4 units per acre. She stated that the project contains 14.6 acres of local park land, including the existing Wildcatters Park; and 21 acres of land reserved in the corner of the property for public uses. She stated that types of uses permitted in these Planning Areas included uses such as parks, playgrounds, and community facilities. She pointed out that the plan includes also 559.7 acres of Open Space surrounding the residential development areas (shown in yellow on the exhibit) where passive open space uses and continued oil production activities will be permitted. She stated that there is a Condition of Approval of this project that requires that the open space and public land be dedicated in fee to the County of Orange. She discussed a major component of the Area Plan, the Design Guidelines Section, which establishes the overall design concept of the community with specific guidelines for circulation, grading, neighborhood design, architecture, open space and oil production. She stated that the regulations presented today respond to the unique features of the Tonner Hills property and are a blend of Orange County Regulations and Development Standards combined with the City of Brea's neighborhood design elements contained in Exhibit 1 of the staff report. She stated that at the last

public hearing on this matter, staff heard concerns from the public that the vision of the City of Brea had not been properly addressed. She stated that staff worked with the applicant to address these concerns and that staff felt that the standards contained in the proposed Area Plan meet the County standards and responded to the design expectations of the City of Brea. The staff report contained a summary of which standards were not folded into the proposed regulations and an explanation as to why they were not included. Ms. Crane noted that a blue errata sheet had been handed out to the Commission that included an new section that addresses the oil field activity as well minor clean ups such as typographical errors, clarifications and refinements to the regulations proposed, and it updated the City of Brea's participation in the review of discretionary applications within this property. She noted that the errata included the City of Brea's request regarding fencing around the oil fields. Ms. Crane summarized that the project presented to the Commission today has been through a number of pre-annexation meetings facilitated by the County CEO, the applicant, The City of Brea and PDSD staff (Planning Development Service Division). She noted that a number of revisions to the scale of the project had occurred as a result of public comments. She stated that the final documents submitted for the Planning Commission's consideration were the outcome of consensus building during the review process, and that staff believed the final project and its regulatory documents had embraced the spirit of the City of Brea's vision. She discussed that there were public benefits from this project in the form of commitment of 10% of the total dwelling units for affordable housing in the low income range and the dedication of open space, noting that further details on these benefits and the project phasing were discussed in the Development Agreement submitted as a separate item for the Commission's consideration. She stated that based on the analysis staff presented to the Commission, staff supported the approval of the project and Zone Change ZC 01-01, the Planned Community Program Text, Development Map, and Statistical Summary Table and, the Tonner Hills Area Plan this project subject to the findings and conditions of approval as stipulated in the recommended actions listed in the staff report.

Mr. Shoemaker responded to Commissioner Goacher's previous question. He called the Commission's attention to the Response to Comments, general response #4, transportation/circulation page 38, freeway contributions. He stated that as it relates to Congestion Management Program the threshold is 3 percent before there is a significant impact to the freeway. He stated that table 4-4 indicates that the project generates a maximum of 1.1 percent. He noted that it is underneath the threshold value. Mr. Shoemaker stated that because we are talking about the off ramps there is the one percent test and the conclusion of the refined traffic discussion in on page 41, the last paragraph, the last sentence reads the results of the refined project one percent test indicates that the project no longer contributes a significant amount of traffic to any of those locations. He noted that it falls beneath the one percent threshold for intersections, and under the 3 percent freeway threshold.

2:05 P.M.: The Chairman opened the public hearing.

John Ullom, Applicant, discussed the traffic reduced from 18,132 to 10,459 ADT. He stated that this reduction wasn't all residential, that elimination of ADT from the

commercial center was included in that number. He stated that school issues were raised at the Brea public hearing and he has been working with the Brea Olinda School District and would shortly enter into a School Fee Mitigation Program that will involve the dedication of land for the expansion of the high school and possibly land in the public use area. He noted that the District Counsel is preparing the agreement now and hope to have that agreement here within the next 30-days. Mr. Ullom gave a power point presentation. He pointed out the project location, residential area and open space. He pointed out the location of the high school and the location area of the dedication of land. He pointed out dedicated land in the open space area for a new school if necessary. He stated that 24 percent of the land would be residential and 71 percent natural and enhanced open space. He pointed out three access points to the property. He pointed out the location of a new traffic signal, bikeways including connector and emergency vehicle access. He discussed the alignment of trail and pointed out there location. He pointed out the location of the wildlife corridor and Tonner Creek. Mr. Ullom pointed out the ridgeline of the property and noted that the ridgeline will not be touched. He discussed the Wildlife Corridor Missing Linkage #30 report. He offered different angles as the property is seen from aerial views. He discussed natural habitat and hydrology. He noted that some facilities in Cable Canyon would be removed. He stated that no oak trees would be removed. Mr. Ullom discussed the re-vegetation program and noted that it is currently under study by the U.S. Fish and Wildlife Services, and are in the final stages of negotiations for the no jeopardy letter, and in final stages of negotiations with U. S. Army Corps of Engineers on the balance of our 404 permitting on the property. He stated that one 404 permit has been received, a 1603 permit related to a large stream that was subject to an environmental cleanup. Mr. Ullom stated that the balance of the 404 should be issued within the next 90-days. He stated that oil operations are located in the open space area but is not consider part of the open space. He pointed out two tank farms on the property and noted that all fluids will be handled at the Tonner Tank Farm. He stated that two additional tanks and a tank wall would be added to handle the fluids. He pointed out Wildcatters Park and noted that it was not included in the open space calculations but included in the developable areas. He stated that 9-acres would be added to the park. Mr. Ullom stated that an attached product would be located in Planning Areas 1, 2 and 3 with minimum single-family lot sizes. He pointed out the location of affordable housing. He provided views from different angles that the project could be seen from. He noted that no visible project could be seen from the 57 Freeway coming from the north.

Ken DuFour discussed the price of housing in Orange County and the cost of rent in Orange County back in 1962 and the present. He stated he has lived in Orange County since 1962 but left for a while and moved back in 1974. Mr. DuFour stated that since he moved back the cost of housing in Orange County has gone through the roof. He stated that Orange County is in a housing crises and the Commission should keep this in mind when they make their decision on Tonner Hills.

Reed Royalty, representing Orange County Tax Payers Association, stated that this is a project that offers benefits to the public at no cost to the taxpayers. He stated that he

supported this project. He stated that some people want this whole property turned into open space but there is not money to that.

Diane Taylor, resident of Brea, stated that she would be greatly impacted by this project. She stated that she did not advocate turning this into unbuilt property. She stated that she had several issues with the Draft EIR, the consultants and the County. She said she expressed these issues at the public hearing in Brea. Ms. Taylor stated that she had even more now because the public has not had access to any new documents for revisions. She stated that the development put forth during the Notice of Preparation period contained elements that were deemed unacceptable by the public and the City of Brea as submitted in written comments. Ms. Taylor stated that all of the elements were incorporated into the Draft EIR including a commercial strip mall access off of Tonner Canyon road, 914 homes, a gated community, extensive ridgeline development and no access to public parks and to Cable Canyon. Ms. Taylor stated that today we have heard that these items have been eliminated. She stated that the consensus of the community, many who have been involved in the project feel that this was done deliberately mostly for negotiation purposes. She stated that the project presented today is where the negotiating process should have begun. She stated that all of these lead to the perceptions of a bad faith effort by all parties involved. Ms. Taylor stated that she would focus on traffic and the transportation/circulation element of the Draft EIR. She stated that elimination of Tonner Hill road access forces all traffic to and from the larger eastern portion onto Brea's overloaded, over burdened existing roadways. She stated that the transportation/circulation portion of the DEIR should be re-circulated complete with more recent and more accurate traffic analysis of the existing situation. She stated that other EIR's issued recently contain different volume to capacity ratio, intersection to capacity utilization, and level of service for many of the same roadways and intersections. She stated that she was referring to two other projects within Brea's city limit. She stated that the public has not had an opportunity to review any modifications or mitigation measure, therefore, I urge you to delay your decision until the transportation/circulation portion is re-circulated and evaluated.

Judy Tamasi, representing the Wildlife Corridor Conservation Authority (WCCA). She stated that with this project WCCA is primarily concerned with preserving wildlife movement and habitat and specifically preserving on-site population of gnatcatchers. Ms. Tamasi stated that the following six recommendations are needed. 1) Additional avoidance is needed. She stated that the western portion of area 6 must be deleted from the west end of PA 6 to Cable Canyon. 2) Reciprocal Conservation Easements must be granted to the County, City of Brea and WCCA to ensure management and preservation to the habitat in the open space areas while oil operations are ongoing. 3) When oil operations cease open space areas should be dedicated in fee title to a public park or conservation agency. 4) Restrictive and allowable uses in the proposed open space areas must clearly be defined before project approval. As an example the following uses must be prohibited in the open space area: additional grading, additional lighting, and fencing that inhibits wildlife movement. 5) The conservation easements must define in detail the allowable uses and area for continued oil operations in the proposed open space areas. 6) Funding system for the ongoing habitat management of the proposed open space areas

must be explicitly defined in the Final EIR and Conditions of Approval. She stated that this could be done through a landscape maintenance or benefit assessment district. She stated that if homeowners association will manage brush clearance a minimum of $15,000 to $20,000 should be provided annually in perpetuity.

Claire Schlotterbeck, representing Hills for Everyone, concurred with the two previous speakers. She stated that the EIR is not adequate and that another access is needed to the south. She requested that the developer comply with the City of Brea's General Plan and Ridgeline Ordinance. She discussed cumulative impacts, the EIR is inadequate, 14,000 units under construction, proposed or approved in Orange County. She stated that the EIR was inadequate because there was very little economic analysis done. She stated that buyers of these homes are made aware of condoms under the house to prevent methane gases from coming up, can't dig further than two feet down because you might interfere with tar seep mitigation measures. She stated that these are the same disclosures required for the Olinda development. Ms. Schlotterbeck stated that she suggested that this project be a senior development.

Constance Spenger stated that the reduction in traffic as stated by the developer is on paper only. She stated that this project would increase by 700 trips by local traffic. She stated that this development is just urban sprawl. Ms. Spenger stated that the EIR is inadequate because it does not discussed the amount of space occupied by the California gnatcatcher habitat in north/south Orange County or Los Angles County. She said the EIR does not say how many miles of urban edge would be added in that area and what the effect the urban edge has on biodiversity. She stated that it does not contain a map depicting the gnatcatcher in the north/south Orange County and Los Angeles County region. She stated that the EIR does not discuss the cumulative effect of destroyed gnatcatcher habitat and the additional edge to that habitat. She stated that the EIR does not discuss how much critical habitat has been destroyed in north/south Orange County or Los Angeles County. She stated that destruction of habitat is counteractive to the Endangered Species Act. She noted that if you destroy the habitat the species in that habitat does not recover.

Beth Doucette stated that she was in favor of this project. She noted that 71 percent of the property has been preserved as open space and stated that this is a environmentally sensitive plan and requested project approval. She stated that Tonner Hills homes would provide many benefits to the community.

Monica Noriega spoke in favor of the Tonner Hills project. She stated that this project provided many benefits to the community and preserves 71 percent of the property as open space. Ms. Noriega stated that the developer has a track record with this project. She noted that the developer has worked closely with the community.

Mr. Ullom offered rebuttal. He clarified for Ms. Tamasi, who represented WCCA, that the Development Agreement and Planned Community Text does deal with the dedication of a conservation easement on all of the open space that would be irrevocable offered of dedication with the recordation of the first map upon restoration of the site after the oil

impacts are cleaned. He noted that oil operations might not cease for 30-50 years. Mr. Ullom stated that the areas of oil operations are clearly defined and the remaining wells are clearly defined and defined with the U.S. Fish & Wildlife Services. He stated that in over a year of discussions with U.S. Fish & Wildlife Services, 2-3 years with the Army Corps of Engineers, there has been no concern with extending the open space pass at the north end of Cable Canyon because it runs into existing oil operations. He stated that PA6 has suffered industrial over the past 10-years and this allows us to clean it and develop it under remedial action plan approved by the Orange County Health Care Agency.

2:50 P.M.: No one else wishing to be heard, the Chairman closed the public hearing.

Senior Planner Brown stated that he had one additional comment to make in regards to comments we heard from WCCA. He noted that as mentioned by Mr. Ullom in the draft Conditions of the Approval of the Area Plan Resolution that requires the applicant prior to the issuance of the first grading permit or recordation of the map that allows the action of movement of earth or disturbance on the property. He stated that they are required to submit and get approval of a Resource Management Plan that would address a number of those issues that were brought up. Mr. Brown read into the record the Condition of Approval. Prior to the issuance of the first grading permit or approval of the first subdivision map which ever occurs first the applicant shall obtain approval from the Manager Planning Development Services Division of a Resource Management Plan for the Tonner Hills Planned Community, said Resource Management Plan shall address 1) the restoration of habitat to occur as part of the oil site remediation process as required by mitigation by State and Federal Wildlife Agencies. 2) Restoration Monitoring and success criteria. 3) Long term evasive species control requirements. 4) Protocol for conducting oil operations and facility maintenance within restoration areas. 5) Funding to support these activities.

Mr. Shoemaker discussed issues raised at today's public hearing. He stated that in preparation of the draft EIR the work evaluated various combinations of roadways. They included analyzing the original project with and without Tonner Hills road and certain improvements at various intersections and at various densities. He stated that staff attempted to be very comprehensive. Mr. Shoemaker stated that it was decided from various comments received from groups including WCCA, Resource Agencies, to modify the project and therefore, reduce the number of units, eliminate the commercial center. He stated that the traffic consultant was called upon to re-look at the traffic analysis that was done in the EIR. He stated that the Response to Comment document before the Commission today is a response to all of the individuals that commented on the EIR and those related to traffic. He noted that the general response begins on page 35 of that document. He stated that staff went back and looked at the 795 unit project with no Tonner Hills road. He stated that our consultants and our in-house traffic staff reviewed traffic and as a result was determined the project does not exceed the Congested Management Program for the County; and, the project is properly mitigated. He noted that there is a comment made by Ms. Taylor regarding mitigation measures. He noted that there is mitigation to make improvements to the intersection of Lambert and

Valencia road. Mr. Shoemaker stated that he concurs with the traffic experts and that traffic mitigation is sufficient for the 795 unit project without the commercial center and without Tonner Hills road. He stated that staff provided the Response to Comments document to various agencies and anyone that made a comment was sent a response to that comment.

Commissioner Goacher stated that the point was made that the Commission has errata sheet and refined mitigation before us, which the public did not have.

Mr. Shoemaker stated that the refinements in the Mitigation Monitoring Report are editorial and the one change came about as the result of the letter received from the County of Los Angles comment is to be treated as an overriding benefit. He stated that participation in a fair share at the south bound off ramp at 57 and Lambert. He noted that staff is not offering any new mitigation. Mr. Shoemaker stated that there is a limited amount of access points available for this project. He pointed out that there is no access off the backside of the property. He pointed out the location where a barrier is formed that prohibits access to the property. He discussed why Wildcat Way is used as an emergency access only.

Mr. Brown noted that the community of Coto de Caza, which had a similar dwelling unit count is served by only two access points.

Action.: 3:10 P.M.: The motion of Nielsen, seconded by Long, to certify DEIR 581 for the Project and recommend its certification by the Board of Supervisors was carried by unanimous vote.

The motion of Goacher, seconded by Long, subject to the Errata Sheet and Supplemental handed out today, to approve Draft Board of Supervisors Resolution for Zone Change ZC01-01 (Tonner Hills Planned Community program Text and Development Map and Statistical Summary Table) and recommend its adoption by the Board of Supervisors.

The motion of Goacher, seconded by Long, subject to the Errata Sheet and Supplemental handed out today, to approve Draft Planning Commission Resolution approving the Area Plan for the Tonner Hills Planned Community.

The Motion made by Nielsen, seconded by Long, subject to the Errata Sheet and Supplemental handed out today, to approve the Draft Development Agreement for the Tonner Hills Planned Community and recommend its adoption by the Board of Supervisors.

Attachment F

COUNTY OF LOS ANGELES
DEPARTMENT OF PUBLIC WORKS

900 SOUTH FREMONT AVENUE
ALHAMBRA, CALIFORNIA 91803-1331
Telephone: (626) 458-5100
www.ladpw.org

JAMES A. NOYES, Director

ADDRESS ALL CORRESPONDENCE TO
P.O. BOX 1460
ALHAMBRA, CALIFORNIA 91802-1460

IN REPLY PLEASE
REFER TO FILE: T-3

October 16, 2002

Mr. Thomas B. Mathews, Director
County of Orange
Planning & Development Services Department
P.O. Box 4048
Santa Ana, CA 92702-4048

TONNER HILLS PLANNED COMMUNITY
RESPONSES TO COMMENTS
ENVIRONMENTAL IMPACT REPORT (SEPTEMBER 2002)
CITY OF BREA AREA, COUNTY OF ORANGE

We have reviewed the document for the proposed project located in the northeastern portion of unincorporated County of Orange adjacent to the City of Brea. The project site is located to the east and west of the Orange (SR-57) Freeway, south of the SR-57 and Tonner Canyon Road interchange.

Refinements to the proposed project were made with four key modifications as follows:

- Deletion of Tonner Hills Road as a project access point and providing access along Valencia Avenue.
- Deletion of commercial/mixed-use development on the corner of Wild Cat Way and Lambert Road.
- Elimination of development on the west side of Cable Canyon and Neighborhood 7.
- Reduction in dwelling units for Neighborhoods 5 and 6.

The revised project results in the development of 795 single-family residential dwelling units, 20.2 acres for public uses, and 15 acres for neighborhood park use. The project is estimated to generate 10,459 vehicle trips per day, and 744 and ~~1,780~~ 1055 peak hour trips in the a.m. and p.m. peak hours, respectively.

The additional traffic analyses and information requested in our June 25, 2002, letter has not been provided. However, we find the project traffic within the County of Los Angeles generally is counter to the peak traffic flow in the area. We agree that the project alone will not significantly impact any County of Los Angeles intersections, and that the cumulative traffic of the proposed project along with other related projects will significantly impact the following County of Los Angeles/Caltrans intersection. The document recommends the project should contribute its proportionate share of the cost of the following mitigation measures:

Orange (SR-57) Freeway Southbound Off-ramp at Brea Canyon Road

North Approach: One left-turn lane and dual exclusive right-turn lanes (add an exclusive right-turn lane).

The study indicates that this improvement will be part of the proposed fee program and the project should pay its fair share of the cost for this improvement. However, based on the County of Los Angeles' guidelines, this improvement will not fully mitigate the cumulative traffic impacts. Additional measures are needed for full mitigation. We recommend consulting with Caltrans District 7 and the County of Los Angeles Department of Public Works for further evaluation of this intersection for additional measures that will mitigate to insignificance. Otherwise, the EIR would need to disclose an unmitigated impact.

In addition, we require that the EIR disclose whether there are any California Environmental Quality Act significant impacts on the SR-57 within the County of Los Angeles and whether they will be mitigated.

If you have any questions, please contact Mr. Suen Fei Lau of our Traffic and Lighting Division, Traffic Studies Section, at (626) 300-4820.

Very truly yours,

JAMES A. NOYES
Director of Public Works

J. M. Alexander

T. M. ALEXANDER
Deputy Director

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cc: Chief Administrative Office (Lari Sheehan)
Department of Regional Planning

attachment 2.

1318 East Glenwood Avenue
Fullerton, California 92831
October 16, 2002

Chairman and Commissioners
Orange County Planning Commission
10 Civic Center Plaza
Santa Ana, California

E81

Re: Nuevo oil DEIR comments, north Orange County

Dear Chairman and Commissioners:

The DEIR is deficient in the following ways:

It does not discuss the amount of occupied California gnatcatcher habitat in the north Orange, south Los Angeles County region.

It does not say how many miles of urban edge would be added to the south side of the ridgeline (hills above Lambert, on the Project), and what are the effects of urban edge on the web of life (biodiversity) in these hills.

It does not include a map showing the numbers of California gnatcatcher pairs in the north Orange, South Los Angeles County region.

~~It does not show a map of California gnatcatcher Critical Habitat on the Project.~~

It does not discuss the cumulative effects of destruction of California gnatcatcher Critical Habitat, and the addition of urban edge to that habitat.

It does not show how much occupied California gnatcatcher habitat and Critical Habitat has been destroyed in the north Orange, south Los Angeles County region. It does not tell of the cumulative impacts.

The document is inaccurate in that it attributes increase of California gnatcatcher pairs in the east Fullerton Hills to revegetation. Cowbird trapping should be credited for the major part of the increase.

Destruction of California gnatcatcher Critical Habitat is counter to the intent of the Endangered Species Act. Critical Habitat is the area into which the species can be expected to recover. Destruction of this habitat takes away the potential for recovery of the species.

Thank you for the opportunity to comment on the Nuevo DEIR.

Yours truly,

Constance Spenger

Constance Spenger

Planning Commission
Transcript of Meeting
October 16, 2002

COUNTY OF ORANGE

PLANNING COMMISSION

In re:)

)

Tonner Hills Planned)

Community.)

_____)

ORIGINAL

REPORTER'S TRANSCRIPT OF AUDIOTAPED PROCEEDINGS

Orange County, California

Wednesday, October 16, 2002

Transcribed by:

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COUNTY OF ORANGE

PLANNING COMMISSION

In re:)
)
Tonner Hills Planned)
Community.)
)

REPORTER'S TRANSCRIPT OF

AUDIOTAPED PROCEEDINGS, proceedings dated October 16, 2002, transcribed February 6, 2003, in Orange, California, by LAURIE HELD-BIEHL, Certified Shorthand Reporter No. 6781.

APPEARANCES:

Commissioner McBurney, Chair

Commissioner Goacher

Commissioner Long

Commissioner Nielsen

Orange County Planning Commission

October 16, 2002

CHAIRMAN McBURNEY: The Orange County Planning Commission is now in session for October 16, 2002.

Will the audience please rise and join us in the salute to the flag.

(Pledge of Allegiance.)

CHAIRMAN McBURNEY: Item number 1.

EXECUTIVE OFFICER BRITTON: Mr. Chairman and Commissioners, both items number 1 and number 2 relate to the project proposed by the Nuevo Energy Company for the area in the Brea Sphere of Influence in North Orange County.

Our recommendation would be to receive staff reports and testimony on both those items and -- after the public hearing and that dialogue -- you know, close the hearing obviously and act separately. But that would be --

Our recommendation would be to hear both item 1, which is public hearing related to zone change 01-01 and associated area plan; and item 2, a development agreement related to the same project, as well as the Draft EIR 581 as one consolidated item to make it easier for those offering testimony.

And if that is agreeable to the commission, Mr. Shoemaker would lead off with a staff presentation, followed by Marta Crane from Current Planning.

We're not planning a presentation, per se, on the development agreement issues, although staff is available should there be questions or to respond to testimony. And I believe the applicant would also like the opportunity at the beginning of the public hearing to make a presentation.

Thank you.

COMMISSIONER LONG: Mr. Chairman?

CHAIRMAN McBURNEY: Yes, ma'am.

COMMISSIONER LONG: For the record, I'd like it known that I took a tour of the development with the developers and was shown it from one end to the other.

CHAIRMAN McBURNEY: Thank you.

Mr. Shoemaker.

MR. SHOEMAKER: Mr. Chairman and Members of the Planning Commission, this is our second hearing for the consideration of the 789-acre Tonner Hills Planned Community as submitted by Nuevo Energy. Our first hearing was back on September 18th. It was held, as you'll recall, at the City of Brea.

At that time, staff provided your planning commission with a site situation and general

introduction to the project. You've seen testimony from members of the public, including representatives of the City of Brea and by the applicant.

What I would like to do this afternoon is just quickly go over the site situation, talk a little bit more about some of the changes that were made in the project and how they're reflected in all our planning commission resolutions for the CEQA document and then pass the presentation on to Ms. Marta Crane, who will review the planned community regulations and area plan for you.

So very quickly, let me just refer to the exhibits to the planning commission's right. I'll be looking at the one that is identified as Alternative 4 Preferred Plan.

Very quickly, the 57 Freeway bisects the property, creates one planning area that's located on the west side of the 57 Freeway that is accessed off of an extension of Carmichael Drive in the City of Brea. The remainder of the property is located on the east side of the 57 Freeway. Lambert Road runs along this area here and Valencia runs along the eastern boundary.

Access to the property is from an extension of Kraemer Boulevard. Kraemer crosses Lambert, extends through the City of Brea and then enters the property at

this location here. The only place at which the property is actually abutting Lambert is here adjacent to the intersection of Wildcat Way and Lambert Road.

The project, as originally submitted, you'll recall, was a 914-dwelling-unit project. It included a small 7.7-acre neighborhood commercial center located here, and also included development that was along Cable Canyon and also had additional dwelling that was along this edge up here. You'll recall in our presentation that in our evaluation and review, we took into account much of the work that had been done, or consideration for work that had been done by the City of Brea.

You'll recall that as an agreement as part of the scoping session, that the city would prepare an alternative plan that would be analyzed in the EIR; that is alternative 4 in the EIR. It forms the basis of what is now being recommended as the project.

The application has deleted the development along planning area 7 at Cable Canyon, trimmed development here. You'll recall that there was an access road referred to as Tonner Hills Road that would have basically come off the backside of the property and come down and formed sort of a relief mechanism for traffic generated by the 914 dwelling units.

We had discussed at our last meeting the city's ridgeline plans and their desire to maintain the backdrop. There's a ridgeline that runs basically along this area here that's identified within the city's general plan, as well as a horseshoe-shaped ridgeline that is here at a lower elevation, and a smaller topographic feature that has variously been referred to as a helic adjacent to Wildcatters Park. That minor feature is not a part of the project.

We talked about the fact that as you look at Tonner Hills, the property itself, you'll see the foreground ridgeline, but there is a greater ridgeline that is further to the north and is at a higher elevation, that is more of a major backdrop to the community.

We had discussed in our first presentation that this piece of property has been the subject of oil extraction dating back to the 1900s. Oil extraction is still -- would go on with this project and there's mitigation for that, as well as consideration in the planned community regulations for ongoing oil extraction.

The areas that we also covered and were covered very carefully within the EIR, we talked about wildlife movement at our first meeting, that there is a wildlife

movement corridor that many of the commenters, the Wildlife Corridor Conservation Authority, the City of Brea, the wildlife agencies, were very much interested in its being maintained. It runs basically underneath the 57 Freeway and runs partially on the property, but it primarily runs along Tonner Creek. But it's an important connection and might have been compromised by Tonner Hills Road, but it is a point at which more open space areas that are further to the west, and I'll just kind of roughly trace those out, as well as open space areas under the Olinda Alpha Landfill and then go on to the Chino Hills State Park.

This area under the 57 Freeway, the value of it is it is the connection between these two major lobes of open space. And the fact that Tonner Hills Road is not a part of this project ensures that it will not be affected by any kind of traffic.

We talked about habitat preservation and the EIR addresses habitat preservation.

One of the items that I touched upon is the interest from the community and others that Cable Canyon be preserved, it is being preserved; that some of these higher elevations be preserved; the connectivity of open space being preserved. There is additional open space that is being saved as a result of this project.

We talked about the public use area that is located down at this area, as well as Wildcatters Park. As a part of this project, Wildcatters Park or this park area is increased in size to 14.6 acres and preserved as open space.

We talked about traffic at our first hearing, and I'd like to touch a little bit more in detail on traffic as it relates to this project.

The original project, as I indicated, its primary connection is here at the extension of Kraemer across Lambert, and the secondary access would have been Tonner Hills Road off the backside and down to Brea Canyon Road and to the 57 Freeway. There was no direct access to Valencia with the original application, the original design. This might have been secondary access or access that would have been reserved only for the public use area.

Through the revisions made to the plan, this road now goes through and connects to Valencia and it will line up with Santa Fe Drive on the opposite side within the Olinda Ranch property; so there still will be two primary points of entrance to the project, one here at the extension of Kraemer above Lambert and one here at Valencia.

There will be fire access or emergency access

off an extension, or excuse me, not an extension but an existing oil road here at Wildcat Way. There's a gate here that provides fire access to this upper tier of development. Fire access coming roughly off of this access road and serving the lower tier of development here.

In terms of traffic, one of the things that was very important I think to all players involved in the project from the County of Orange, the City of Brea, Orange County Transportation Authority and Caltrans is what would we be using as the basis for the analysis. The city has its own modeling effort, as does the County of Orange, and there was a lot of discussion between our traffic consultants, OCTA and the city, and it was agreed that we would follow the county model, the OCTA model.

And the discovery in doing so is that there's general conformance with both modeling efforts; however, there are a couple of differences, and that relates to how the county reviews and looks at right-turn overlap, very highly -- a rather technical evaluation that assumes a certain amount of right turns available when you've got three lefts -- controlled lefts.

That's one of the differences between the two models but in general, the results were comparable to

one another.

But I do want to say that there was a great deal of review and coordination in terms of the traffic analysis and it became necessary as the project was revised from 914 units to the 795 that's now being requested.

As a result of that, the a.m. and p.m. peak trips change, they're documented in our staff reports. The original project would have generated --

Excuse me, let me get that figure --

Here we go.

The original project would have generated 18,132 ADT. The modified project, the preferred alternative, would generate 10,459 trips; that would have been 744 trips in the a.m. peak and 1,055 in the p.m. peak. The original project would have generated 1,780 p.m. peak trips. The reduction is approximately 7,673 ADT between the 914 project and the 795 project.

Those changes resulted in some changes that are reflected in the Mitigation Monitoring Program Report, and I would like to draw the commission's attention to a piece of correspondence that we provided to you at the beginning of the meeting, it's from the County of Los Angeles Department of Public Works.

In the piece of correspondence which we

received just prior to this meeting, they review, in the first page, the changes that I have outlined for the benefit of the planning commission, the elimination of certain areas of development, deletion of Tonner Hills Road, et cetera.

But on the second page, one of the items that they identify is a desire to see this project participate in the southbound off-ramp at Brea Canyon Road, which was a mitigation measure with the 914-unit project. But in the evaluation with the revised project, it was no longer deemed necessary as a mitigation measure to the project.

However, in discussion --

And one more thing I'd like to just draw to the commission's attention.

In the last paragraph on the first page, they note that the a.m. peak trips are 744 and the p.m. is 1,780, and as I've indicated, it is actually 1,055 with the refined project. The 1,780 is the original project.

But in discussion with the applicant and with our environmental consultant, they are willing, the applicant is willing to participate on a fair-share basis for that off-ramp and work with Caltrans, as requested, and the County of L.A., as necessary, for any participation that might be warranted with this project.

We don't deem that it is necessary or that it will be required, but I think in order to maintain good working relationships with the County of L.A. and Caltrans, we're willing to do that.

The way that it would be folded into the actions on today's project is not as a mitigation measure, but it would be included as one of the overriding benefits of the project; again, because we don't believe it is warranted as a mitigation measure because, as I've explained, the refined project does not generate enough traffic to warrant those kinds of improvements, but it is something that as an overriding benefit they will participate.

Other areas that were reviewed and talked about at our first meeting had to do with geology and we indicated to the planning commission that this area is in a Alquist-Priolo zone. There is a --

The Whittier/Elsinore Fault runs and the Alquist-Priolo zone touches the property in this location here and runs off the property, and it's just a brief piece that is also affected about this location here. None of the residential development is within proximity of the Alquist-Priolo zone.

We talked about the reduced density of the project and the effect that that has on traffic.

One of the other things that we had indicated in our first presentation, that with this project there are two areas of unavoidable adverse impacts, one had to do with air quality and relates to the fact that we are in a non-attainment basin.

Also, we had indicated that agriculture and that it was a slight -- it was a unique circumstance that this piece of property had a nursery located roughly at this location here. And with its removal, there's an unavoidable adverse impact as it relates to unique farmland, the nursery.

A third unavoidable adverse impact comes about as a result of the refined project and the fact that mitigation is dependent upon programs that are, in part, managed and controlled by the City of Brea.

Mitigation is in place, but because it will require participation and coordination with the City of Brea, the timing on some of these mitigation measures is not as well known as it might be as if it were a program that might be managed by the County of Orange; and therefore, we're identifying it now as an unavoidable adverse impact with the project.

Lastly, I would just like to draw to the planning commission's attention another updated handout that we provided to your commission, it was on the

goldenrod paper.

Attached to our staff report is a Draft Planning Commission Resolution, it included three exhibits. Exhibit 1 --

Excuse me. Exhibit A was the facts and findings; Exhibit B, the overriding benefits; and Exhibit C was the Mitigation Monitoring and Reporting Program.

As a result of reviewing more closely some of the changes that have come about as a result of the refined project, there are eight additional editorial-type changes that we wanted to have reflected in the Mitigation Monitoring Program Report; hence, we're now asking the commission to exchange the Mitigation Monitoring Program and Reporting Report that was in the staff report and attached to the resolution with the one that was attached to the goldenrod memorandum.

We conclude that the EIR, Draft EIR 581, is adequate for the project being proposed. The project now being proposed is Alternative 4 Preferred. In many instances it is consistent with the alternative that have been developed by the City of Brea.

We also recommend that the planning commission certify the EIR for the project and recommend that

certification by the Board of Supervisors. We have included the resolution to that effect. And as I've explained, we have an updated Mitigation Monitoring Program Reporting Report for that purpose.

Mr. Chairman, that concludes my presentation. I'm available for questions/comments at this point, otherwise I'd like to pass the presentation to Marta Crane.

CHAIRMAN McBURNEY: Thank you, Mr. Shoemaker.

Any questions?

COMMISSIONER GOACHER: Yes.

Chuck, just one question. Staying with the County of Los Angeles correspondence received by staff on page 2 towards the bottom, it implies in their statement of "In addition, we require that the EIR disclose whether there are any CEQA significant impacts in the County of Los Angeles."

It's implying that we didn't do that. Could you comment on that, please?

MR. SHOEMAKER: I'd like to just confer maybe with our consultant on that, but I think I can say --

Well, let me confirm that and then come back.

COMMISSIONER GOACHER: Fine.

MR. SHOEMAKER: Will that be all right?

COMMISSIONER GOACHER: Sure.

CHAIRMAN McBURNEY: Sure, sure. Certainly. Thank you.

Any other questions?

Thank you, Chuck.

May we hear now from Marta Crane, please.

MS. CRANE: Good afternoon, Mr. Chairman and Members of the Commission. Can you hear me? I have to move this down a little bit.

At the last hearing on this matter on September 18th, staff provided you with a brief synopsis of the project, the general elements being proposed. Before you today are the documents that contain the proposed development regulations for the Tonner Hills project. The actions that staff is presenting to you today are the request for a zone change that will reclassify the property from the current A1 agricultural/oil production designation, to PC, oil production.

This new designation will establish the Tonner Hills Planned Community development regulations, development maps, statistical summary table and an area plan for a maximum of 795 dwelling units, like Chuck mentioned before, with a minimum of 559.7 acres to be retained in open space with interim oil production activity. Upon adoption, this zone change will

establish the regulations that will govern development in the property.

In conjunction with the regulations, like I mentioned before, we have the planned community --

Thank you.

-- also includes an area plan. Upon planning commission approval of the area plan, this document will direct the initial phases of development allowing preliminary mass grading of the site.

Now, the PC text document, which is Exhibit 3 in your packages, contains all the zoning requirements for the property, like lot size, lot width, building heights, setbacks, parking, and these requirements are summarized also in a table in the back of my staff report. It's Table 2.

The PC text also contains specific regulations that are germane to the oil production activity that will continue on the site.

Also in the PC text you will find administration and procedural requirements and a statistical summary table with the development map for the property.

The other document, which is Exhibit 4 of your packet, is the area plan. The area plan is proposing, like I think Chuck mentioned in the exhibit, seven

different residential planning areas that will include a range of housing concepts from planning area number 7 over on this side of the property with residential large lot -- 7-, 8,000 square-feet lots, to more compact development on these areas here, planning area 1, 2 and 3, where we find a mixture of single-family residential cluster and multiple-family residential.

The net densities in the proposed development range from 2-1/2 dwelling units per acre to 8.9 dwelling units per acre, and the average residential density in the property is 4.4 dwelling units per acre.

The project also contains 14-1/2 half acres, 14.6 acres of local park land, and that is -- this green area over here includes the existing Wildcatters Park area to a total of 14.6 acres.

There are also 21 acres of land reserved in the corner of the property for public uses, and types of uses and vision for this area include parks, playgrounds; uses permitted in this area includes that and community facilities as well.

The plan includes 559.7 acres of open space surrounding the yellow areas, which is the residential development. This open space will be mostly passive open space and will continue with the oil operations that are existing on this site.

There is a condition of approval on this project that will require that the open space and the public land be dedicated in fee to the County of Orange upon development.

A major component in the area plan, Exhibit Number 4, is the design guidelines section. This section establishes the overall design concept for the community and it includes guidelines for everything from circulation, grading, neighborhood design, architectural open space and oil production.

I made you open your document.

The regulations presented to the community today respond to the unique site features of the Tonner Hills property and are a blend of Orange County regulations and development standards combined with the City of Brea's neighborhood design elements. These elements are actually part of your staff report, Exhibit Number 1.

At the last planning commission hearing on this matter we heard public comments from the City of Brea where they had concerns that the City of Brea vision had not been properly addressed. Staff took it upon itself to work out with the applicant and address these concerns as well, and we feel we have a right, at a point where these standards contained in the area plan

meet the county standards and they respond to the design expectations of the City of Brea.

In the staff report, there is a summary of which standards from that memorandum were folded into the regulations and which ones weren't, and an explanation as to why they weren't folded in.

Also, as part of your attachments I have included an errata sheet in the blue addenda that you just received. In that errata sheet, you will find an additional section that addresses the oil field activity, as well as some minor cleanups, typographical errors and things like that, and it also updated the City of Brea's participation and their review of discretionary approvals within this property. We also included in the addenda the city's request to address fencing around the oil fields.

In summary, what I'd like to say is this development proposal before you today has been the subject of a number of pre-annexation meetings facilitated by the county CEO between the applicant, the City of Brea and PDSD staff. As Chuck Shoemaker mentioned before, a number of significant revisions to the scale of the project have occurred in response to public commenting.

The final document submitted for planning

commission's consideration today are the outcome of consensus building during the review process. Staff believes that the final project and its regulatory documents have embraced the spirit of the City of Brea's vision.

The project includes, also, public benefits in the form of commitment of 10 percent of the total dwelling units as affordable housing in the low-income range. It includes a dedication of open space that I mentioned before, and details on this and the phasing of the project are contained in the development agreement.

Based on the analysis presented to you today, staff supports the approval of the project and the Zone Change Number ZC01-01, the Planned Community Program Text, Development Map and Statistical Summary Table and the Tonner Hills Area Plan, subject to the findings and conditions of approval as stipulated in the recommended actions listed in the staff report.

And that concludes my presentation.

CHAIRMAN McBURNEY: Thank you, Ms. Crane. Thank you very much.

Mr. Shoemaker, did you acquire an answer for Mr. Goacher?

MR. SHOEMAKER: Yes, Mr. Chairman.

In answer to the question, and I probably

should have spent a little more time on the Response to Comments document in my presentation, but I will draw the attention of the planning commission to the general response, number 4, "Transportation and Circulation," beginning on page 38 that talks about freeway traffic volume contributions.

And as it relates to the Congestion Management Program, the threshold is 3 percent before there is a significant impact for the freeway. Table 4-4 indicates that the project generates the maximum of 1.1 percent, so it's underneath that threshold value.

And also, because we also were talking about the off-ramps, there also, then, is the 1 percent test, and the conclusion of the refined traffic discussion occurs on page 41, the last paragraph there, in the last sentence of that last paragraph, "The results of the refined project, 1 percent test, indicates that the project no longer contributes a significant amount of traffic to any of those locations," so it falls underneath the 1 percent threshold for intersections and under the 3 percent threshold for the freeway itself.

CHAIRMAN McBURNEY: Thank you very much, Chuck.

At this time I will open the public hearing and we will hear from the applicant or his representatives.

MR. ULLOM: Thank you, Chairman McBurney and

Commissioners.

I have a PowerPoint presentation I would like to make, if I can get the screen on.

While we're waiting for that, one of the issues that Mr. Shoemaker brought up was the traffic reductions going from 18,132 to 10,459 average daily trips, and I don't know that it was clear that that wasn't all with just the reduction of the residential component. We did eliminate over 5,000 average daily trips from the commercial site at the corner of Wildcat Way and Lambert, which is a major component of that 43 percent reduction.

Also, in response to comments made at the last public hearing in September regarding schools, we have been negotiating with the Brea Olinda School District and we are shortly to enter in an enhanced School Fee Mitigation Agreement that would also involve the dedication of land for the expansion of the high school, and possibly land in the public use area if they decide this is necessary, to move forward to another school or other facility at that point.

And the district's counsel is preparing the final agreement now and we would hope to have that agreement here within the next 30 days.

At today's meeting, last meeting, we had a lot

of pictures to present and talked about how the project got to that point. I'd like just to go over a few elements of the project, specific project that we really didn't address at the last meeting.

Again, this is the area for the site plan that is in the PC text and the area plan.

We have 559 acres, almost 560 acres of natural and enhanced open space, parks, streets, and 180 acres of residential development; so we have 71 percent of the property is an open space. And I think that with the property laid out over the topography map, that kind of highlights that open space element.

And again, the area for the high school sits right in through here. The area that they're talking about that we're in agreement with is the dedication of land in this area right here for the expansion of the parking lot, allowing them to provide buildings elsewhere on the property.

The concern or interest is also in the public use area as a possible site as they go forward with the evaluation for a school within the public use area which was analyzed in the EIR and addressed in the planning documents.

A pie chart on the percentages. Again, we're developing about 24 percent of the site for residential,

leaving 71 percent in the natural and enhanced open space.

We have three access points to the property. We have Carmichael Drive on the west side, which is already stubbed into the property and was stubbed in back in 1986 with the development of the J.M. Peters tract.

This is the Valencia Avenue entry. This is the Santa Fe Drive looking west to our property, and there will be traffic signals built here as part of the Olinda Ranch project. The avenue right in through here is the sole access point to the landfill at this point in time. And I know upon completion the traffic signal will go there. We'll participate in those traffic improvements with our intersection improvements, also.

These are schematic elevations for the entry treatments on Valencia and Kraemer. They're faux gates. They are public streets but they will have an enhanced entry feature with the community logo on them.

This is a plan view of the entry on Kraemer and also, in essence, it will be duplicated at Valencia Avenue.

This is an 80-foot section of road, 40 foot of paving, with the balance either in parkways or median.

One of the elements that we've had in since the

beginning on this project is a Class I bikeway shown here, a 12-foot Class I bikeway, in addition to a 6-foot sidewalk. And that bikeway, Class I bikeway, will traverse at the site basically from Kraemer to Valencia and then up into planning area 5, where it will go into a Class II or III bikeway and connect over to Wildcat Way and also connect to the Tonner Ridge Trail.

My confidence in my presentation, use it here to begin with.

These next exhibits deal with emergency vehicle access points, and these points were brought up I think by one of the city council people at the last meeting.

Planning area 7, which is 40 lots with its primary access onto Carmichael, has an emergency vehicle access point that will go through the MWD center and exit onto Balsa.

Wildcat Way. Wildcat Way is an existing improved street that terminates as a dedicated street here at the edge of the high school and then continues on as a paved road into the property, and this will be an emergency vehicle access point here at the edge of the property; so we will revise the gate structures off to fit in with the project. And currently, there are fire boxes on there now.

We will have one at Kraemer Boulevard, which

basically is an existing oil field road. And from the main oil operations, the emergency vehicle access point will come back on to Valencia, which again follows existing road patterns.

Back to the aerial.

This is a graphic depiction of the open space and the 71 percent. We're going to talk about some of the components of that open space.

One component would be the Tonner Ridge Trail, which would be a dedicated public trail system, running from the high school, or an extension of Wildcat Way, over to Valencia Avenue, and eventually that will connect into the future park that will be at the Olinda Alpha Landfill, and also provide connections to the city trail system that exists on Valencia and Lambert Road is Carbon Canyon Road as it goes east and will connect to the historic center within the Olinda Ranch project next door.

These are some of the views that you're going to get from that trail system. This basically is the alignment of the trail, it's currently an improved oil field road. This is looking to the east.

Some of the questions that arose last time, and we had a graphic last time, concerns the wildlife corridor.

Last year, the Missing Linkage Report was issued, which was a compilation document of all of the missing linkages and critical linkages for wildlife corridors throughout the State of California. The one that impacted our property was missing linkage number 30, which is part of the Chino Hills/Puente Hills Corridor.

In blue we see Tonner Creek, and this is basically the ridgeline of the property. We do not touch the ridgeline with our development. And you can see that we avoid any impacts within that corridor area. This is by design. There is developable property down here and we have stayed back of it.

We participated in the large mammal survey that took place starting back in '97, invited representatives from San Diego State and Cal Poly Pomona, through a USGS survey on the property for large mammal migration. We also participated at the same time with a herpetology study and an avium survey that primarily dealt with the land here in the canyon bottom.

This is from the Missing Wildlife Corridor Missing Linkages Report and highlights Route 57 and shows missing linkage number 30 here and how it goes from the east and to the west of our property. And this is the property as it overlays the Missing Linkages

Report.

This is kind of difficult with the lights.

It covers basically the wildlife corridor to the east of the property. Our property is in the foreground with Tonner Creek coming up in through here.

A little bit lighter picture.

Again, our property is in the foreground through here. Tonner Creek comes over here, and this is taken just basically down in this area as Tonner Creek departs our property.

This looks to the west and the 57 corridor crossing. Tonner Creek. Looks down Tonner Creek. Again, this land is Brea Canyon oil property, our property is in the foreground, and then our property covers the actual creek as it exits and goes from the east to the west beneath the freeway.

Habitat is an issue. This photograph is taken near the southwest corner of the property where we now have over 100 contiguous acres for restoration and revegetation.

This is from Cable Canyon. Cable Canyon is a preserved ephemeral stream. We have some facilities within Cable Canyon now that will be removed, non-native trees will be taken out and we'll have native vegetation. And this is the one area that will have a

lot of walnut woodlands to be planted.

This is an oak on the ridge of the property. There are no oaks disturbed as a result of this development.

This gives you an indication of the oil operations. This is an oil service road and an oil well that lies right off of Wildcat Way, and we will be revegging these areas, removing non-native materials, but still maintaining access to these wells in through here.

Part of the reveg, no credit is taken for the oil service roads. No new roads will be pioneered and many of these roads will be abandoned with the reveg program.

The reveg program is currently under review by the U.S. Fish and Wildlife Service, and we're in the final stages of negotiation for the no-jeopardy letter, and we are also in the final stages of negotiations with the U.S. Army Corps of Engineers on the balance of our 404 permitting on the property.

Currently we have one 404 permit and a 1603 permit related to one of our larger ephemeral streams that was the subject of an environmental cleanup, and the balance of the 404 permits hopefully will be issued here within the next 90 days.

Not a part of the open space areas but within the open space areas are the current oil operations. There are currently two tank farms on the property. We have the Eastern Noranhall (phonetic) tank farm and our Tonner tank farm. With the development of the property, all fluids will be handled at the Tonner tank farm.

This is a picture of the Tonner tank farm. In better lighting, you would see the Tonner Creek down in through here. This tank farm has been in place for about 30 years. We will add two additional tanks in the disturbed area and a containment wall to handle the balance of the fluids.

This is the main oil operations viewed from the east from the current recycling facility.

Not included in the open space calculations but included within the developable areas is Wildcatters Park, but it certainly is an area that we consider a part of that open space component.

Wildcatters Park has a derrick over an abandoned well that has been there since the '50s. The park itself has been there since the '50s. It is landscaped. We have a number of healthy trees and we have some picnic facilities on the park and playgrounds.

And a component of the plan is the retention of the improved areas of the park, retention of all healthy

trees. We will augment the trees and we will be making improvements to the park to bring it up to public standards. And then we're adding another 9-1/2 acres to the east of the park where active ball fields can be; so this will be more of a passive area with the active ball fields to the east.

Again, touching back on the open space.

The residential areas again, as described in the area plan, goes from a potential for an attached product in planning areas 1, 2 and 3, minimum single-family lot sizes in here of 4,000 square foot. PA 2 is where we do have the highest probability of an attached product and perhaps the affordable housing component. And then we go --

Basically as we go up the hill and over the hill the lots get larger, less dense, till we end up with lots that have a minimum size of 8,000 square feet and an average size of over 10,000 square feet on the 40 lots on the west side.

We have some view diagrams here that are out of the EIR, and the EIR actually analyzed the view for the 914, so these have been updated merely to deal with the project as it currently exists.

Part of the concern in developing this plan was how to make this not highly visible and really --

And folded into that backdrop there is these ridges that are the backdrop of the City of Brea. Part of that was done by staying back down off the ridgelines, or just leaving areas alone. I think one of the most highly visible areas is the west corner of the property, and these are the hills that are at Wildcat Way and Lambert Road, and this view will remain unchanged.

The next view is basically up the 57 Freeway looking up the hill...

(Tape turned over.)

...earlier. This is identified as a prominent ridge in the city's hillside management ordinance. It lies in a bowl of ridges that are anywhere from 150 feet to 200 foot higher, and this would be viewed from Valencia Avenue and Lambert Road, the intersection. And again, this gives you the visibility of the higher ridges that basically enfold the visibility of park ridge.

The issue is how will the project look coming up Kraemer. This, again, was one that was identified by the city in their documents and concern of how we're going to appear coming up Kraemer, which is a busy street. And again, we have a traffic signal kind of blocking things there, but the major ridges, again,

basically bury the project. You'll see some low-lying residential units up in through here and over in through here, but they lie behind the ridges.

That's all. Thank you.

We have our consultants here if there's any technical questions, or if I can answer any questions perhaps in response to comments.

Again, thank you for your time.

UNIDENTIFIED SPEAKER: Thank you.

Any questions?

COMMISSIONER LONG: You didn't tell us your name, sir.

MR. ULLOM: Oh, I'm sorry. I thought I did.

My name is John Ullom. Bob Odle and I represent Nuevo Energy Company.

COMMISSIONER LONG: Thank you.

CHAIRMAN McBURNEY: All right.

We will move on to public testimony. Do we have some speakers?

UNIDENTIFIED SPEAKER: Yes.

We do have some speakers who have filled out their blue slips. And anyone who has not yet done so, please go ahead and fill one out.

First we have Ken DuFour, I believe it is.

MR. DUFOUR: Mr. Chairman, Members of the Committee,

I first experienced Orange County in 1958. It was a spectacular place. I returned in '62 to work for the Orange County Health Department. My rent for a little over-the-garage apartment in Costa Mesa was 85 bucks a month. At that time, homes in Balboa, Corona del Mar and Newport were going for 32- to 35,000 bucks with ocean views. I could kick myself now that I couldn't afford one then.

In '74 I came back to this paradise and I bought a home and raised my family here. I've never regretted that move. I know there are people now who are just beginning to experience Orange County for the first time and wish not only to have the American dream that I've enjoyed but they also desire our California dream.

Unfortunately, housing prices have gone through the roof. Part of the problem is that Orange County is a beautiful and extremely desirable place. But the other part of this problem is due to the anti-growth sentiment that derails and decreases the number of homes in most development projects. I do not want to see this take place in Tonner Hills.

Make no mistake, Orange County is in a housing crisis. I ask each of you to pay attention to the hundreds and thousands of renters who desire to purchase

a home in this great area. Think of them when you review the Tonner Hills plan that provides 795 homes and more than 71 percent of open space for the young people to enjoy.

This is a plan that is respectful of the environment while providing much needed housing. Please help others achieve not only the American dream, but also our California dream by voting yes on the Tonner Hills plans.

Thank you.

CHAIRMAN McBURNEY: Thank you, Mr. DuFour.

UNIDENTIFIED SPEAKER: Reed Royalty.

MR. ROYALTY: Good afternoon, Mr. Chairman and Members. My name is Reed Royalty, I'm president of the Orange County Tax Payers Association.

As you can imagine, we don't like taxes much but we do support taxes when they're fair and understandable and cost-effective and good for business. We spent a full day touring this property, and we've spent at least that much time looking at the paperwork, and based on what we've seen of the land and the plan, we ask that you approve it.

The Orange County Tax Payers Association just loves public benefits that are funded by private money. The Tonner Hills project is an excellent example of such

public/private cooperation. It would provide substantial benefits to the public at little or no cost to taxpayers, and I picked out several examples that just struck me as I was studying this thing.

74 percent of the land will go to parks and open space. In proportion to the size of this project, this is comparable to the recently widely praised gift of land to the county by The Irvine Company.

Secondly, it provides new nature trails at no taxpayer expense. It provides land for an expansion of the high school parking lot and financial assistance to the school, no cost to taxpayers. Pays for public services such as police, fire protection, water and sewer services, funding roads to and within the property, and the developer's agreed to improve intersections near the property, all at no cost to taxpayers.

Now, those are just five examples that struck me as I was touring the property and looking at the paperwork. And based on what I've heard here, it's been improved even from that point.

Now, the Orange County Tax Payers Association assumes there are opponents to the project who probably will demand that the entire property be turned into open space, but there's no taxpayer's money to do that, to

buy the private land for that purpose, and it would be improper to seize the land without compensating the owner.

So what we've seen today is a win-win solution; Mother Nature and the public get some well-maintained open space and much needed housing and the property owner will be fairly compensated.

Thank you very much.

CHAIRMAN McBURNEY: Thank you for your input.

UNIDENTIFIED SPEAKER: Tonya Gonzalez.

(Inaudible.)

UNIDENTIFIED SPEAKER: Okay. Let's see. Maury Schroeder, same --

(Inaudible.)

UNIDENTIFIED SPEAKER: Okay.

Tony Marino? Yes. I'm sorry.

Diane Taylor.

MS. TAYLOR: My name is Diane Taylor, and in contrast to the previous speakers, I live in Brea and therefore I will be impacted by the project and I do not advocate turning this into unbuilt property.

Since both of the agenda items have been incorporated, I would like to be able to extend my comments a bit longer than the three minutes but not up to six minutes from two items.

I have several issues with the Tonner Hills project, the Draft EIR and the role of various consultants and the county itself, some of which I expressed at the planning commission meeting last month in Brea. I have even more now since the public has not had access to any new documents or revisions.

The development proposal put forth during the notice of preparation period contained elements which were deemed unacceptable by community members and even the city at meetings and in written comments. Virtually all of these very offensive elements were then incorporated into the DEIR. This includes the commercial strip mall access from Tonner Canyon Road, 914 homes, a gated community, extensive ridgeline development, no public access to parks and development within Cable Canyon, but we've heard today that those have been eliminated.

It is the consensus of many of us in the community who have been involved with the project that this was done deliberately for negotiation purposes only.

The modified proposal now presented is actually where the negotiations process should have begun. All of these issues have contributed to the perception of a bad faith attitude of the parties involved.

Today, in the interest of time, I will delay until the public hearing before the board of supervisors most of these other issues, focusing now on just one, traffic and the inadequacy of the transportation/circulation element of this Draft EIR.

Eliminating the Tonner Canyon Road access forces all traffic to and from the larger eastern portion of the project onto Brea's already overburdened existing roadways. The transportation/circulation portion of the DEIR should be recirculated, complete with recent and more accurate traffic analysis of the existing situation.

Other EIRs issued recently contained different traffic volumes, volume-to-capacity ratios, intersection-to-capacity utilization and level of service for many of the same roadways and intersections. I am referring to the Canyon Crest project and the so-called Hoover project adjacent to Tonner Hills but within Brea city limits.

The latter DEIR was issued September 26th, just a few weeks ago. A major discrepancy exists in that that Draft EIR lists the intersection of Valencia Avenue and Lambert/Carbon Canyon Road at a level of service F in the evening, while the Tonner Hills Draft EIR claims that it is a C in the evening.

Valencia Avenue north of the intersection with Lambert/Carbon Canyon Road will now be, along with Kraemer Boulevard, the only access to this portion of the development. Recent announcements and issues compound the traffic situation at this already troubled intersection.

Olinda Heights at the northeast corner was designed to include its own elementary school. Despite that EIR's determination that the designated site was appropriate, the state found it otherwise and the school site was eliminated for safety reasons. Children are now being bussed and driven south on Valencia and then east on Carbon Canyon Road to Olinda School.

Valencia Avenue is the only access to the Olinda Alpha Landfill north of Olinda Heights. 4400 daily trips are generated by trash trucks, and the county is now determining whether to extend the life of the landfill beyond closure in the year 2013 until 2025. Trash truck and school bus contention was not anticipated but it is evident now that school is in session.

A sports park and intermediate school have now been proposed for the northwest corner of Valencia and Birch, just south of Tonner Hills. A very large part of the property on Valencia between Birch and Imperial is

to be developed by Unocal, and that Draft EIR is expected shortly.

Currently under construction with a completion expected in the next two months are intersection and roadway improvements funded by Olinda Ranch and long delayed by developer bankruptcies. However, the major improvement, which is the addition of second eastbound and westbound lanes on Carbon Canyon, will extend less than one mile east of the intersection. At that point, Carbon Canyon Road will continue permanently as a one-lane-each-way winding road complete with switchbacks and hairpin turns into San Bernardino County.

The inevitable bottleneck for eastbound commuter traffic in the evening will place untenable demands on the Valencia and Lambert/Carbon Canyon intersection, and consequently on Valencia Road, Lambert and nearby roadways, all of which will also be adversely impacted by this Tonner Hills project.

Carbon Canyon Road, for those of you who are not familiar with it, is used as an alternative to the 91 Freeway for out-of-county commuters; however, it is the only access to our homes for those of us living in Orange County's extreme northeast corner. You really should take a field trip to the area at 6 o'clock some evening.

It is a concern of many in the Brea community that perhaps no additional mitigation measures can be developed to alleviate the impact of the Tonner Hills development. We need a complete analysis and description of the mitigation measures before the county moves forward. It may be determined that a statement of overriding considerations is required because it would be impossible to mitigate the traffic impact with the current proposal of almost 800 homes.

The public has not had an opportunity to review any modifications to mitigation measures; therefore, I urge you to delay your decision until the transportation/circulation element is recirculated and reevaluated.

Thank you.

CHAIRMAN McBURNEY: Thank you.

UNIDENTIFIED SPEAKER: Next will be Judy Tamasi.

MS. TAMASI: Judy Tamasi, I'm representing Wildlife Corridor Conservation Authority, also known as WCCA. WCCA is a joint powers of agency between the cities of Brea, Diamond Bar, La Habra Heights and Whittier, as well as state parks, Los Angeles County and the Santa Monica Mountains Conservancy.

With respect to this project, WCCA is primarily concerned with preserving wildlife movement and habitat,

and specifically preserving the on-site population of Coastal California Gnatcatchers. The new project design comes closer to providing ecologically functional open space areas but it still does not achieve this goal. The following six recommendations must be included:

Number one: Additional avoidance is needed. The western portion of neighborhood 6 must be deleted from the west end of planning area 6 to Cable Canyon. This is so that the northern portion of Cable Canyon can be protected and so that there is a connection from the northern portion of Cable Canyon to the northern part of the property.

If this proposed open space area to the west of the project is not expanded, all of the proposed open space on the west side of the project, including the gnatcatcher habitat, will be not fully functional. This is the only way to make it more functional.

Number two: Prior to project impacts, overlapping reciprocal conservation easements must be granted to the county, the City of Brea and WCCA to ensure management and preservation of a habitat in the open space areas while oil operations are ongoing.

Number three: When the oil operations cease, the open space areas should be dedicated in fee title to a public park or conservation agency.

Number four: Restricted and allowable uses in the proposed open space areas must clearly be defined project to prior approval. For example, the following uses must be identified as prohibited in the proposed open space area: additional grading, additional lighting and fencing that inhibits wildlife movement.

Number five: The conservation easements must define in detail the allowable uses and areas for continued oil operations in the proposed open space areas.

Number six: A funding mechanism for the ongoing habitat management of the proposed open space areas must be explicitly required and defined in the Final EIR and the conditions of approval. This can be done through a landscape maintenance or benefit assessment district.

Under the premise that a homeowners association would fund brush clearance, a minimum of 15,000 to $20,000 should be provided annually in perpetuity.

In closing, it is absolutely critical that the western portion of planning area 6 be deleted from the project, and there must be guarantee that the proposed open space areas will be protected and managed in perpetuity as defined in this testimony.

The FEIR and conditions of approval should

reflect these changes.

If you're interested, I'd be happy to provide these points in writing within 24 hours.

Thank you.

CHAIRMAN McBURNEY: Thank you.

UNIDENTIFIED SPEAKER: Next is Claire Schlotterbeck.

MS. SCHLOTTERBECK: My name is Claire Schlotterbeck, I'm Executive Director of Hills for Everyone.

Our group, for the last 25 years, has worked to establish Chino Hills State Park and is now working on the connections between Chino Hills State Park and the lands to the west.

I'd like to say that I concur with WCCA's statement that they just made.

We do not also believe that the EIR is adequate on two specific counts.

The traffic. In particular, another access is needed, as Diane Taylor pointed out, to the south. I find it amazing that we think two access roads for 800 houses in fire-prone territory is safe.

I'd also like to say that we would like to see this developer comply with Brea's Ridgeline Ordinance and the level of general plan density. They have gone around the citizens of Brea and the local control ever since they became involved in this project and we deeply

resent it.

In terms of cumulative impacts, the EIR is inadequate. 14,000 units are under construction, approved or proposed for North Orange County. This is with an existing infrastructure and houses already built. This is the same amount that is proposed on 22,000 acres of Rancho Mission Viejo where they still have room to plan. Few of the people in those houses have moved in, so we have no measure of whether or not the mitigations proposed for all of those projects are adequate.

The EIR is inadequate because there was very little economic analysis done. Nuevo will continue to receive economic return on over 200 oil wells, and we're wondering just how much profit they're entitled to at the expense of our community.

The proposed alternative greatly resembles Brea's alternative, which your EIR ripped apart.

We request that the same level of disclosures to the buyers of these properties be required as were required on Olinda Ranch, such things as condoms under the house to prevent methane gas from coming up.

In Olinda Ranch, for example, they can't dig further than two feet down because they might interfere with tar seep mitigation measures. The public who buys

these houses need to be protected.

We have never suggested that this property be donated. We instead proposed a project of a senior community that was a winner for everyone. It changed the traffic pattern, it didn't allow housing on ridgelines, it prevented further overcrowding of our schools and we were completely ignored in this.

And finally, I'd like to say I'm sorry that you and the other people who represent groups outside of Brea found it reasonable to tour this project but you did not accept our invitation to tour Chino Hills State Park and the entire wildlife corridor that we have jointly been working on for 25 years. That invitation is still open and we'd still like to show you what we're about and how important this backdrop is to all of North Orange County.

Thank you.

CHAIRMAN McBURNEY: Thank you.

UNIDENTIFIED SPEAKER: Constance, I believe it's Spenger.

MS. SPENGER: Good afternoon, Chairman McBurney and Commissioners. My name is Constance Spenger and I live at 1318 East Glenwood Avenue in Fullerton.

The reduction in traffic that the proponent developer talked about is only on paper. In reality,

70,000 new auto trips would be added to the local traffic.

And also, the claims of 500 acres-plus open space, while perhaps technically correct, they're greatly exaggerated as far as natural habitat, and that is because this development is actually urban sprawl. It just sprawls all over the land and adds many miles, or a few miles, I haven't counted them all up, of urban edge to the natural habitat.

So the EIR is deficient in the following ways: It does not discuss the amount of occupied California Gnatcatcher habitat in North Orange/South Los Angeles County region.

It does not say how many miles of urban edge would be added in that area and what effects the urban edge has on the web of life, that's also called the biodiversity.

It does not include a map showing the numbers of California Gnatcatcher pairs in the North Orange/South Los Angeles County region.

It does not discuss the cumulative effects of destruction of California Gnatcatcher critical habitat and the addition of urban edge to that habitat.

It does not show how much occupied California Gnatcatcher and habitat and critical habitat has been

destroyed in the North Orange and South Los Angeles County region, nor tell of the cumulative impacts.

The document is inaccurate in that it attributes increase of California Gnatcatcher pairs in the East Fullerton hills to revegetation, whereas Cowbird trapping should be credited for the major part of the increase.

Destruction of California Gnatcatcher critical habitat is counter to the effect of the Endangered -- to the intent of the Endangered Species Act. Critical habitat is the area in to which the species can be expected to recover. Destruction of this habitat correspondingly takes away the potential for the recovery of the species in that habitat.

Thank you for this opportunity to comment.

CHAIRMAN McBURNEY: Thank you.

UNIDENTIFIED SPEAKER: Beth Doucette.

CHAIRMAN McBURNEY: I'd like to request that the remainder of the speakers, if they have heard their comments of what they're going to say, that they just come up and say that I agree with speaker such and such, rather than repeat the same things over and over.

Thank you.

MS. DOUCETTE: Good afternoon. My name is Beth Doucette and I have been a resident here in

Orange County for 12 years, and some day I hope to be a homeowner here, and right now it's not looking to good for me.

So I am here to say that I would hope that you would vote in favor of Tonner Hills, as it is a good plan, it is an environmentally sensitive plan that preserves about 70 percent of the property as open space, and this is the type of plan that should move forward.

The landowner has done the right thing and proposed a plan that preserved the majority of the property, provides benefits for the community, preserves wildlife habitat and also provides new homes for our community, which as a single mom this is the most important issue to me.

In fact, this plan is more about protecting the environment than it is about building new homes.

Tonner Hills is an environmentally sensitive, well-planned community that will be a benefit to our entire community. Tonner Hills will provide much needed new homes into a market that is sorely lacking in homes. Please do the right thing for our community and vote in favor of Tonner Hills.

CHAIRMAN McBURNEY: Thank you.

UNIDENTIFIED SPEAKER: Mr. Chairman, the last

completed blue form I have is from Monica Noriega.

MS. NORIEGA: Good afternoon, thank you for the opportunity to speak to you today. My name is Monica Noriega and my address is at 7336 Center Avenue in Huntington Beach.

I support Tonner Hills. I think this is a project that should be approved because it provides numerous benefits to Orange County. It preserves and protects almost 560 acres of permanent open space, nearly 71 percent of the entire property. It will also bring new homes to our community.

As envisioned, this plan will create hundreds of new jobs and contribute millions to the Southern California economy. The increased tax base it will generate will have a positive impact statewide. California's economy is fragile and the Tonner Hills project will bring in million of dollars to the region, making it a vital project for the state.

This developer has a proven track record with this project. From the beginning they have worked with the community to address concerns and fine tune their project to appease concerns. The plan originally included a golf course and a hotel but the citizens expressed a desire for open space and the plan was revised.

The plan included many more homes, a road that went down near Tonner Canyon, and this project balances economic benefits with environmental considerations.

Development will not take place near Tonner Creek or in Cable Canyon. Hundreds of acres will be preserved to protect the California Gnatcatcher and the housing element will be restricted to about 180 acres of the total area of the property.

You have the opportunity to help our region grow in a balanced and positive manner. Tonner Hills represents environmental enhancement, economic stimulation and positive community growth. I ask you to please support this project.

Thank you.

CHAIRMAN McBURNEY: Thank you.

That is the end of the --

UNIDENTIFIED SPEAKER: Those are all those that I'm aware of who want to speak, Mr. Chairman.

CHAIRMAN McBURNEY: Is there anyone else in the audience that wishes to address this situation or speak?

All right. Mr. --

MR. ULLOM: John Ullom.

CHAIRMAN McBURNEY: -- Ullom, if you'd like a rebuttal.

MR. ULLOM: I would just like to clarify an issue in

relationship to the comments from the representative, Judy Tamasi, of WCCA.

The development agreement and the planned community text do deal with the dedication of an easement, a conservation easement initially on all of the open space. It would be also offered for dedication -- an irrevocable offer of dedication with the recordation of the first map upon restoration of the site after the oil impacts are clean and the oil impact or the oil ceases to operate on the property, which may be 30 to 50 years in the future.

The areas of operation on the oil are clearly defined, the remaining wells are clearly defined, and that's also been clearly defined with the U.S. Fish and Wildlife Service.

In over a year of negotiations and discussions with U.S. Fish and Wildlife Service and more, two to three years with the Army Corps of Engineers, there has been no concern or regard for extending the open space past the north end of Cable Canyon because it runs into existing oil operations in a graded area.

The entire western area north of planning area 6 is an area that has been -- well, suffered industrially over the last hundred years. This allows us to clean it and develop it under the Remedial Action

Plan that's been approved by Orange County Health Care Agency.

If I could clarify anything else, I'd be happy to.

CHAIRMAN McBURNEY: Thank you. I think you answered our questions.

Again I will ask, is there anyone in the audience who wishes to speak to this item before I close the public hearing?

Seeing no one, I'll close the public hearing.

Staff, did you have any comments?

MR. BROWN: I just have one additional comment to build upon, again, in regards to the comments we heard from WCCA.

And what Mr. Ullom had mentioned is also embodied within the condition of -- the draft conditions of approval of the area plan resolution that requires the applicant, prior to the issuance of the first grading permit or recordation of the map, which is really the enacting action that would allow the movement of earth or any disturbance on the property, they're required to submit to and obtain approval of a resource management plan that would address a number of those issues that were brought up.

More specifically, the condition, I'll read it

for you.

Prior to issuance of first grading permit or approval of the first subdivision map, whichever occurs first, the applicant shall obtain approval from the director of planning development services of a Resource Management Plan for the Tonner Hills Planned Community. Said Resource Management Plan shall address, one, the restoration of habitat that will occur as part of the oil site remediation process or as required by mitigation by state or federal wildlife agencies; two, restoration monitoring and success criteria; three, long-term invasive species control requirements; four, protocol for conducting oil operations and facility maintenance within restoration areas; and five, a perpetual funding mechanism to support these activities.

Additionally, it refers back to what Mr. Ullom had also referred to in regards to that dedication of preservation, both resource and scenic easements over the top of the open space areas immediately.

CHAIRMAN McBURNEY: Thank you.

What's your pleasure, Commissioners?

COMMISSION GOACHER: Mr. Chairman, I'd like to make sure that we have all the comments responded to that are listed, the points that were brought up both at the previous session as well on the same subject, and

(inaudible) respond to that. And I think those points need to be addressed or at least responded to, if possible.

Prior to that, I don't recall who made the comment but there was a comment made that we may be in a procedure as well, so I'd like to hear that, based upon the statement that the public was not given distinct material which the planning commission has in its possession today.

I'd like to hear a response to some of the primary issues that were brought up.

CHAIRMAN McBURNEY: Okay.

COMMISSIONER GOACHER: Can you give me a more focused --

MR. SHOEMAKER: I might, Mr. Chairman, but let me --

Let's see.

With regard to just general traffic, let me just respond by saying that the Response to Comments document in reevaluating the project --

Well, let me back up even further.

In preparation of the Draft EIR, the work that was done evaluated various combinations of roadways, the original project with and without Tonner Hills Road with certain other improvements at various intersections and at various densities, and so on, to try and be very

comprehensive.

When it was decided as a result of comments that were received from groups, including WCCA and Resource Agencies, and so on, to modify the project and therefore reduce the number of units, eliminate the commercial center, the traffic consultant was called upon to relook at the traffic analysis that was done in the EIR.

And in the document before your commission -- the Response to Comment document before your commission is a general response to all of the individuals that commented on the EIR and those that were related to traffic.

There was a general response that begins on page 35 of that document that we went back through, looked at the project, the 795 project, no commercial, no Tonner Hills Road. And in the conclusion of that work, and it was done not only by our consultant but also reviewed and evaluated by our in-house traffic people, is that the project does not exceed the Congested Management Program for the county. It is properly mitigated.

There is a mitigation measure. The comment that was made by, I believe it may have been Ms. Taylor, pertaining to Valencia and Lambert, there is mitigation

included in the document for improvements to Valencia and Lambert Road to mitigate traffic from this project. That mitigation measure appears on page 49 of the general response to comments.

So I am not a traffic engineer, but as a generalist planner, I have to concur with the evaluations that have been done by those people who are traffic consultants and who are traffic specialists that we have adequately -- and the document has adequately evaluated the traffic for the 795-unit project without the 7-acre commercial center, without Tonner Hills Road, and with the mitigation measures being offered along Lambert at the various intersections is adequate for this project.

As for the comment as to what may or may not have been available for review, we provided the entire Response to Comments document to the public agencies as we passed it out to --

Well, let me be supported by our environmental consultant. Okay.

That anyone that made a comment was sent a response to that comment. I don't know if everybody received the entire document but I --

COMMISSIONER GOACHER: Well, I think the point that was being made today was that errata sheet in front of

us and we've got an alternative mitigation that refined what should (inaudible) refine mitigation and (inaudible).

MR. SHOEMAKER: Well, and as I indicated related to that is that the refinements in the Mitigation Monitoring Program Report are editorial, they're not substantive and that were in mitigation.

So the one change that came about as a result of the County of Los Angeles comment is to be treated as an overriding benefit, participation in a fair share for the southbound off-ramp at 57 and Lambert.

So today we're not offering, from an environmental side, any new mitigation. It is the editorial changes that are reflected in the Mitigation Monitoring Program Report.

COMMISSIONER GOACHER: Can you speak to the lack of sufficient access points? I think the question has come up before. Could you respond to that?

MR. SHOEMAKER: And there may be several ways for me to attempt to do that, Mr. Chairman and Commission Goacher.

There are only limited places in which access can be afforded this project.

I'm going to ask Marta if I may borrow the laser pointer again.

And again, I'm going to work from west, you know, left to right or west to east across the property.

Again, for the benefit of everyone, 57 Freeway. This is planning area 8, I believe the number is.

7, excuse me. We eliminated Tonner area (inaudible.)

The only access to this piece of property is Carmichael Drive. There is no access available out the backside primarily because, one, this is an area that I think everyone agrees should be preserved as permanent open space. And as Mr. Ullom had indicated in his presentation, the one and only additional emergency access comes off an access way from the MWD property.

As we move across to the larger remnant of the property, again, as we had indicated in our presentation, Lambert Road runs here along the south.

This piece of property is the one that speakers have talked about, this is the Hoover tract, I think it's Tract 16047, it's being processed by the City of Brea, and it forms a barrier between the Tonner Hills property and Lambert.

There's existing residential development here within the City of Brea that doesn't afford any access through it to Lambert. The only place at which Lambert becomes -- abuts or is tangential to the property is

here near the intersection of Wildcat Way. And as we've indicated in our previous staff reports and presentations, this was the area of the 7.7-acre commercial center.

Obviously any access that might have been afforded here would have only been limited to commercial property.

This is Wildcat Way and Wildcat Way provides access to development within the City of Brea, it's a large -- I couldn't tell you off the top of my head how many square feet of office/commercial and some restaurant uses within the City of Brea. It takes access off of Wildcat Way. And here at the end of Wildcat Way is the driveway access to Brea Olinda High School.

Wildcat Way would be used as emergency access to this upper tier of development.

There had been and have been discussions over time about, you know, what about providing direct access through Wildcat Way to this upper-tier development, and for various reasons it's never been a part of the project. Those include the desirability of maintaining, as Ms. Tamasi indicated, the wildlife connectivity between this wildlife corridor and this lower area in Cable Canyon.

The school district is not interested in seeing additional traffic, nor was the City of Brea interested in seeing additional traffic using Wildcat Way and accessing the property.

So as we move again, going left to right across the property, access points become very, very limited. And in fact, the only access that exists here off of Lambert is the extension of Kraemer across Lambert into the property.

Going further west along Lambert, this piece of property is unincorporated. It is not controlled by Nuevo Energy, it's controlled by Aria Energy, and I suppose --

This is in the Sphere of Influence again in the City of Brea. I think the likelihood is that this property would be planned jointly by Aria Energy and the City of Brea and perhaps access could be afforded, but to date there is none.

So there's limited points along --

Kind of the long and short of it; there are limited points of access available along Lambert. And as we get to the secondary point, it became appropriate to try and line up an extension of Kraemer across the property to Santa Fe Drive at Valencia.

The desirability, the applicant's proposal

initially to do Tonner Hills Road was abandoned as a result of much of the comments and interests on preserving the connectivity, the wildlife movement and open space areas that form and are the backdrop of the property; so instead of --

As the planning process evolved, the opportunities for additional access becomes less and less; hence, the access points are the access points that are before your planning commission.

MR. BROWN: If I may add something to that for some discussion, speaking of access, the fire authority has not expressed any concerns on this project in regards to access to the project. And indeed, there are a number of additional emergency accesses that were pointed out, both within the documentation in the area plan as well as that were highlighted today from the presentation of the applicant.

As a comparison, and has been brought to my attention, that Coto de Caza is approximately 6,000 acres, and that includes approximately or is permitted up to approximately 6,000 homes. Now, this is in the extreme fire hazard out there and it is served by two accesses from arterial highways.

So as a comparison and so forth, Coto de Caza is probably at the extreme end and it is served by only

two primary access points as well.

MR. SHOEMAKER: The last thing that I would like to respond, the issues related to habitat protection and so on, and the gnatcatcher was mentioned several times in comments made by members of the public.

As Mr. Ullom, representing the applicant, indicated, they are working with the U.S. Fish and Wildlife Service, California Department of Fish and Game, Army Corps or Engineers to secure the necessary biological opinion, and that will address in more detail the various habitat issues and what levels of protection this project will be required to provide over and above what is being -- well, the superior jurisdictions will elaborate as to what the levels of participation will be for this property.

UNIDENTIFIED SPEAKER: Thank you.

I think Ms. Adams made quite an attempt to get to the front.

(Inaudible.)

COMMISSIONER GOACHER: One other major point, and that is Claire also mentioned that she wants to make sure that the --

I don't recall if she was complaining that it doesn't or wants to make sure the development complies with the city's ridgeline ordinance, but it is my

understanding that it did; is this correct?

MR. SHOEMAKER: It does, with the exception, and this has been -- the city's ridgeline and -- in my evaluation of the city's ridgeline ordinance, there's a primary ridgeline that runs...

(Conclusion of tape.)

...there had been initial concern that the development here in planning areas 5 and 6 was going to penetrate that ridge. It was not the case, never was the case with the project, but it's been -- the project has been further refined to pull planning areas 5 and 6 further away from that ridgeline.

There is a minor ridgeline, as I indicated, that's kind of a horseshoe shape, that's located down in this location here, that would have been a compromise by the commercial center. Since the commercial center has been eliminated from the project, that feature is now preserved.

The topography, remaining topography of the property is slightly, you know, slightly undulating or they're low-level hills and so on, and one that was of importance to the city is the one that I indicated variously called the helic. It kind of forms the backdrop to the west of Wildcatters Park. This low-lying feature, it's not a part of the ridge, it is a

stand-alone feature, would be removed as a -- would be eliminated as a result of this development.

So the major elements, the backdrop, this backdrop ridge is not affected. This feature that's located here at Wildcat Way and Lambert. This helic, which is, by my kind of unscientific evaluation driving back and forth across the frontage of the property, is really only visible as you are roughly about this location here looking into the property. The long view is it is lost by all the intervening development and intervening topography, and it is certainly not a part -- it is not at the same elevation as this ridge that is at the backside of the property.

COMMISSIONER GOACHER: Thank you.

I have no further questions.

But if I could, I'd like to make just one real quick statement, Mr. Chairman.

CHAIRMAN McBURNEY: Sure, go ahead.

COMMISSIONER GOACHER: As the room was filling today, I realized that there are a number of people that are participants on the applicant's side, on the technical consulting team, that I have had associations and do have associations with at this time.

My wife and I own a planning firm that goes by the name of RTG Planning & Development Services, and in

the course of doing business, some of the technical consultants on this project have served on some of the projects that our firm works on.

At no time have any of the consultants here today spoken to me about this project out of session. In fact, I don't think they've ever spoken to me about this project.

One of the applicant's representatives, Mr. Odle, has been in my office in the past; but again, never did this subject come up. He serves on a ULI education committee with one of the key members of our staff, and in that context he's been in our building. But everything about this hearing has been within the four walls of this hearing here in the city building.

CHAIRMAN McBURNEY: Thank you.

COMMISSIONER GOACHER: Thank you, sir.

CHAIRMAN McBURNEY: Any other comments from the commissioners?

COMMISSIONER LONG: I have one question, and I may have misunderstood Constance Spenger's comment that perhaps staff could verify that. I understood her to say that this project would generate 70,000 additional autos trips per day? Do I have that right?

UNIDENTIFIED SPEAKER: Excuse me, that's 700.

COMMISSIONER LONG: Oh.

UNIDENTIFIED SPEAKER: 7,000.

Is that what we had in our analysis for --

UNIDENTIFIED SPEAKER: No, but we had indicated --

(Inaudible.)

UNIDENTIFIED SPEAKER: But we had indicated that the original project was on the order of 18,000, the refined project is 10-; a reduction of 7,000 and change, Mr. Chairman.

CHAIRMAN McBURNEY: I see. Okay. Thank you.

Any other questions of staff, or comments?

COMMISSIONER LONG: Thank you.

CHAIRMAN McBURNEY: Commissioners, what is your pleasure?

UNIDENTIFIED SPEAKER: At this point, Mr. Chairman, I think it would be wise to go back to the three staff reports in terms of the sequence, which I'm sure you had already planned to do in any event.

CHAIRMAN McBURNEY: Uh-huh.

Well, first we have the DEIR 581 for the project, and we can recommend certification or non-certification to the Board of Supervisors.

COMMISSIONER NIELSON: Mr. Chairman, I'll move EIR 581 with the revisions provided by staff.

COMMISSIONER LONG: Second.

CHAIRMAN McBURNEY: It's been moved and seconded to

certify to the Board of Supervisors the DEIR 581.

All in favor say aye.

(Aye response by all.)

CHAIRMAN McBURNEY: So moved.

And secondly, we have the draft Board of Supervisors Resolution for Zone Change ZC01-01, this is the Tonner Hills Planned Community Program Text and Development Map and Statisitical Summary Table, and recommend its adoption or denial to the Board of Supervisors.

COMMISSIONER GOACHER: Mr. Chairman, so moved, subject to the errata sheet and supplemental materials provided today.

COMMISSIONER LONG: Second.

CHAIRMAN McBURNEY: Again, moved and seconded to approve Draft Board of Supervisors Resolution for Zone Change ZC01-01 to the Board of Supervisors.

All in favor say aye.

(Aye response by all.)

CHAIRMAN McBURNEY: So moved.

Next we have the Draft Planning Commission Resolution approving the area plan for the Tonner Hills Planned Community.

COMMISSIONER GOACHER: Mr. Chairman, so moved.

COMMISSIONER LONG: Second.

CHAIRMAN McBURNEY: It's been moved to approve Draft Planning Commission Resolution approving the area plan for the Tonner Hills Planned Community.

All in favor say aye.

COMMISSIONER LONG: Aye.

UNIDENTIFIED SPEAKER: And that would be subject to the blue errata sheets as well?

CHAIRMAN McBURNEY: Yes.

All in favor say aye.

(Aye response by all.)

CHAIRMAN McBURNEY: So moved.

And last but not least, approve the Draft Development Agreement for the Tonner Hills Planned Community and recommend its adoption to the Board of Supervisors.

COMMISSIONER NIELSEN: So moved.

COMMISSIONER LONG: Second.

CHAIRMAN McBURNEY: Again, moved and seconded to approve the Draft Development Agreement for the Tonner Hills Planned Community and recommend adoption to the Board of Supervisors.

All in favor say aye.

(Aye response by all.)

CHAIRMAN McBURNEY: Thanks very much, ladies and gentlemen.

I, the undersigned, a Certified Shorthand Reporter of the State of California, do hereby certify:

That the foregoing audiotaped proceedings were transcribed before me at the time and place herein set forth; that a verbatim record of the audiotaped proceedings was made by me using machine shorthand, to the best of my ability, based on the quality of the audiotape, and same was thereafter transcribed under my direction; further, that the foregoing is an accurate transcription of the audiotaped proceedings thereof, again, to the best of my ability, based on the quality of the audiotape, and having not personally been in attendance at said audiotaped proceedings.

I further certify that I am neither financially interested in the action nor a relative or employee of any attorney of any of the parties.

IN WITNESS WHEREOF, I have this date subscribed my name.

Dated: FEB 10 2003

Laurie Held-Biehl

LAURIE HELD-BIEHL, CSR, RPR, CRR
CSR No. 6781

Planning Commission Meeting Minutes
From September 18, 2002
Meeting Held In Brea

Minutes

ORANGE COUNTY Planning Commission Meeting – September 18, 2002

Time 1:30 P.M.

Item 1.: Public Hearing – Zone Change 01-01 and Area Plan for Nuevo Energy Co., Draft EIR 581.

Executive Officer Britton introduced the project.

Senior Planner Shoemaker gave the staff presentation. He acknowledged City of Brea staff for coordinating the use of the City of Brea Council Chambers for this Planning Commission public hearing. He identified the applicant as Nuevo Energy Co. He stated that the project consists of 789 acres and pointed out on an exhibit the boundaries and surrounding land uses. Mr. Shoemaker stated that access to the project site is from Lambert Road, Tonner Canyon Road, Carmichael Drive, Kraemer Boulevard, Valencia Avenue, and Wild Cat Way. He noted that the primary access to the property east of the 57 Freeway is from Kraemer Blvd, which intersects Lambert Road approximately one mile east of the 57 Freeway. He stated that Kraemer Blvd. is an existing signalized intersection and is one of two proposed access points to the project site. He stated that the second access point is proposed from Valencia Avenue at the intersection of Santa Fe Ave., where the adjacent master planned Olinda Ranch project is located east of the Tonner Hills project site. Mr. Shoemaker stated that access to the western portion of the project, west of the 57 Freeway would be from an extension of Carmichael Drive. He pointed out all access routes on a wall exhibit. He provided background information on the project site and proposal. He reviewed for the Planning Commission the CEQA process noting that until November 2000 the project was processed by the City of Brea. Faced with a city growth initiative, Nuevo Energy withdrew its application and filed with the County in January 2001. The EIR scoping meeting was conducted in the City of Brea. It was agreed that the City would prepare an alternative for inclusion in the DEIR. He stated there are nine alternatives and four design alternatives discussed in DEIR 581; He noted that Alternative #4 is the City's preferred Alternative.

Mr. Shoemaker stated that since the 1900's the project site has been utilized for oil production. He noted that site improvements resulting from industrialized uses include; surface and subsurface gas lines, oil storage and processing facilities, paved roads, water storage facilities, maintenance facilities, and operation support office buildings. Mr. Shoemaker stated that the applicant will implement restoration and remediation of the site while operation of oil and gas production facilities continues. Mr. Shoemaker discussed the project site's topography, geotechnical, seismic, and hydrology conditions as described in DEIR 581

Mr. Shoemaker discussed habitat concerns that were raised. He stated that the proposed project would preserve and enhance natural habitat. He stated that 559.7 acres included primarily passive open space to be preserved in its natural state as well as the

continuation of limited oil production activities in Planning areas 11 through 15. He noted that 21.5 acres of open space land located at the intersection of Valencia Avenue and Lambert Road will be designated parks, natural trails or playground.

Mr. Shoemaker stated that the applicant's original proposal consisted of 914 dwellings units, on 194 acres and 7.7 additional acres of mixed commercial/residential uses totaling approximately 201.7 acres, with access taken from Tonner Canyon Road and Kraemer Blvd. He stated that the current proposal has been scaled back by eliminating the mixed-use component and reducing the number of dwellings to 795 on 180 acres of development. He noted that a proposed access road referred to as "Tonner Hills Road" has also been eliminated. He noted a correction on page 5 of EPSD staff report; the report should have included an unavoidable adverse impact to agriculture as well as the noted air quality impact. He noted a minor correction on Page 5 of the CPSD staff report; the "785" figure should read 795 dwelling units. Mr. Shoemaker stated that staff believes the impacts of the project have been identified and mitigation measures prepared in DEIR 581 to address each impact. He stated that Mr. Brown and Ms. Crane under Mr. Britton are preparing the planned community regulations, which will be presented at the next hearing. Mr. Shoemaker stated that the Brea City Council met last night to review the refined project. He indicated that the City Council had endorsed the recommendation of a City Review Committee supporting the reduced and refined project. He noted that Charlie View the City's Community Development Director would address the Planning Commission. He then introduced Mr. John Ullom, the applicant's representative.

John Ullom, representing the Nuevo Energy, stated that the project site is 789 acres divided by the 57 Freeway. He stated that 116 acres are west of the 57 Freeway and 673 acres are east of the 57 Freeway. He clarified that the unavoidable adverse impact described by Mr. Shoemaker affected 23 acres of unique farmland. He stated that Unocal was the original owner of the project. He reviewed the history of the project site including; oil production, sheep farming, and agriculture. Mr. Ullom identified four nearby residential developments on the wall exhibits; he indicated that the 914 dwelling units originally proposed for Tonner Hills was less than the density of existing nearby developments.

Mr. Ullom stated there are 210 active oil wells and 87 abandoned oil wells and approximately 200 operating oil wells. Mr. Ullom pointed out an old gas flare and stated that this site is now a field office. He stated that discharges have been greatly reduced. He stated that there have been numerous studies conducted, including studies for the Wildlife Corridor Conservation Authority and the USGS, on the property. He understood a major issue confronting the project relates to Tonner Creek, which is major link in an important east-west habitat corridor. He stated that the applicant has developed a refined alternative plan that eliminates Tonner Hills Road from the plan. Additionally there would be no development on the north side of the property other than an existing oil field service road. He stated that removing traffic from Lambert Road is an issue. He stated that the elimination of the commercial center (at Wild Cat Way) allowed the elimination of Tonner Hills Road.

Mr. Ullom stated that 74 percent of the project site would remain as open space. He stated that there is a coastal sage scrub mitigation plan and there would be a conservation easement over the entire open space with an irrevocable offer of dedication to the County. He stated that there would be no new oil sites and no new roads into the open space. He stated that coastal sage scrub restoration, which would be a two-phase program, would occur ahead of development. He noted that between 24 and 30 oil wells would remain in the residential areas, but that they would be placed in below grade vaults to minimize their visibility. He stated that above ground wells would be fenced and screened and no closer than 50 feet from any residential dwelling. Mr. Ullom stated that at the time Nuevo Energy filed its plan with the County the City of Brea General Plan permitted 1,093 dwelling units, 9.2 acres of commercial and 30.5 acres of public use on the project site. Since submittal the City of Brea reduced land use density in this area by 30 percent. He stated that the 795 dwelling unit figure was generated on August 28, 2002 at a meeting attended by County and City staff. He noted that traffic has been reduced by 42 percent. He discussed the school issues and noted that they are in discussions with the Brea Olinda Unified School District and will continue to work with the school district. He requested approval of Nuevo Energy's 795 dwelling unit plan. He stated that he expected that a draft pre-annexation agreement with the City of Brea and the County can be developed and approved.

Charles View, Community Development Director for the City of Brea, stated that this is the largest development in the City of Brea and the largest SOI project the City will ever see. He stated that this area will someday be part of the City of Brea. He reviewed the formation of a City committee that was established to prepare a city preferred alternative. He noted that City issues related to habitat, no commercial uses, wildlife movement and Tonner Hills Road access. He indicated that the committee concluded that an appropriate density for this area was between 680 and 755 dwelling units. The City objects to any gated project entries. Mr. View stated the City believes that additional access points to Lambert Road are needed. He stated that they did not receive the DEIR until last April and they worked day and night to review DEIR 581. He stated that the City concluded the DEIR did not meet the City's vision.

Mr. View stated that on September 10, 2002 the refined development plan was reviewed by the City Committee. He stated that the vision of the City of Brea had been met in this revised plan. He stated that City Council, which met on September 17, 2002 endorsed the committee's recommendation for 795 dwelling units. However, Mr. View said the Council's action included three caveats; that 755 dwelling units would be better, Wildcatter's Park be developed early in phase with early occupancy, and additional access to Lambert Rd. be secured. He discussed annexation of the property into the City of Brea. He expressed the City's desire that City standards would be a part of the approved plan. He stated that he was looking forward to how County staff addresses the response to comments.

2:28 P.M.: The Chairman opened the public hearing.

Diane Taylor, resident of Olinda Village, located east of project site, presented her background qualification regarding traffic. She expressed concern with additional traffic and stated her belief the traffic studies were not adequate. She stated that some of the studies were conducted during the summer months when school was not in session. Ms. Taylor stated that the entire traffic section of DEIR 581 needs to be redone. She suggested that maybe the entire EIR needed to be redone because the plan in the EIR is not the revised final plan being proposed. She stated that the EIR needed to be recirculated because all the changes being looked at came out of the meeting before the Notice of Preparation (NOP).

Melaine Schlotterbeck expressed displeasure for the timing of the Planning Commision hearing. She stated that the final revised plan is much better but it could be better still. She stated that in her opinion the applicant has not given up enough. She stated that this area is a part of a larger "Global hot spot" for biodiversity.

Bev Perry, Mayor Pro Tem of the City of Brea, and a City representative to the Wildlife Corridor Conservation Authority, stated that the elimination of Tonner Hills Rd. and other revisions are greatly appreciated. She stated that she would like to see a pre-annexation agreement with the City of Brea reflecting the City of Brea standards. She indicated her continued support from 755 dwelling units. She read into the record excerpts from the Sphere of Influence Guidelines. She stated that the homes built in Brea were to the City's standard and one day this project site will be annexed into the City of Brea and this development should reflect the City's standards. She stated that the homes in Brea are highly sought after. Ms. Perry stated that there are still concerns with the connector road, safety issues, and only one access on Lambert Road. She noted that on the south side of Lambert there are several access areas. She stated that they would like to see that also on the north side of Lambert. She thought the additional access points would promote improved safety in an emergency. She discussed viewshed, quality of like, safety, schools and wildlife issues. Ms. Perry said that some people would like to see no development. She stated that SOI guidelines were prepared for project such as this one. She requested that the Commission honor the City of Brea community standards and values. She said she believed that we're very close to closing a deal on the project.

Lou Danes stated that the Commission needs to address the project's elevation relative to fire safety He discussed the number of exits for this development. He stated that there are safety issues that need to be addressed and that the Fire Department would have to protect this area and the applicant should work closely with the City Fire Department.

Brad White, California Property Rights Foundation, stated his belief the proposed project today is a win-win situation. He discussed what happens when project are not wanted and how the public reacts to them. He stated that he was pleased with the 73 percent open space; and indicated his support for the project.

Monika Noriega stated that Tonner Hills is a good plan and she looked forward to one day being a homeowner. She felt the plan should be allowed to move forward. She liked

the provision of 73 percent open space. She requested that the Commission vote in favor of the proposed project.

Liz Bock stated that she prefers to see the hills just as they are without homes and parks. She stated that the denser the project is the harder it is to protect. Ms. Bock stated that the school capicaty is at its maximum. She discussed the quality of life in the City of Brea, and the preservation of the sense of town. She stated that the streets are over capacity as it is and with this project you are adding impacting quality of life. She stated that by adding more traffic lights on Lambert would cause more traffic delays and further slow traffic. She stated that density is also a problem and the applicant should incorporate ways to get around on foot or bicycle. She stated there are many people who would like to attend this hearing today but they couldn't because they had to work.

Rex Gaede, a 35-year resident of Brea, presented his backgound including ex-City Council member, ex-County Planning Commissioner and ex-School Board member. He stated that a difficult problem has been worked out with City officials to make this a better project. He stated that there are still some problems to be worked out but we will continue working. He felt that this project was very near to a compromise. Mr. Gaede stated that this project would make the City a better place.

John Baumann, Brea City Council, stated there is a lot of development (referring to this project and one proposed by Aera) proposed in the hills of the City. He discussed the perceived cumulative effect of all the proposed development and the impact to the community. He stated that the 795 dwelling unit proposal is a compromise, though he expressed support for 755 dwelling units.

2:55 P.M.: No one else wishing to be heard, the Chairman closed the public hearing.

Commissioner McBurney thanked the City officials for the use of the Council Chambers and for allowing the Planning Commission to conduct a public hearing in their city. He stated that staff is recommending continuation of this project and asked if October 16, 2002 at the County Civic Center would be a good date.

Commissioner Merriman stated that she would check her schedule. All other Commissioners stated that October 16, 2002 was fine.

Commissioner Goacher thanked City officials for the use of the Council Chamber. He apologized for not being able to conduct a night meeting.

Mr. Shoemaker noted that the Response to Comments document for DEIR 581 would be available beginning today, September 18, 2002.

Action: 3:00 P.M.: The motion of Goacher, seconded by Long, to continue Zone Change 01-01 and Area Plan for Nuevo Energy Co. and Draft EIR 581 to October 16, 2002 was carried by unanimous vote.

Current Planning Services Division
Staff Report

PLANNING & DEVELOPMENT SERVICES DEPARTMENT

PLANNING COMMISSION - AGENDA ITEM No. 1

DATE: September 18, 2002

TO: Orange County Planning Commission

FROM: Current Planning Services Division

SUBJECT: Public Hearing on Planning Application PA 01-0009 for Zone Change ZC 01-01 and Area Plan for Nuevo Energy Company.

PROPOSAL: To rezone the property from the A1 (O) ("General Agricultural" "Oil Production") district to PC (O) ("Planned Community" "Oil Production") district; adopt the Tonner Hills Planned Community Development Regulations and Development Map; and, approve an Area Plan for the purpose of directing the development of a 795 dwelling unit planned community that would provide a range of single-family detached and attached dwelling units. In excess of 559 acres of the property would be retained in open space with continued oil production activities. Access to the planned community is proposed to be from Lambert Road and Valencia Avenue.

LOCATION: The 789-acre Tonner Hills Planned Community project site is located north of Lambert Road on the easterly and westerly sides of the Orange Freeway (SR 57) in the Sphere of Influence of the City of Brea. The project is located within the **Third Supervisorial District.**

STAFF CONTACT: Marta B. Crane, Project Manager
Phone: (714) 834-5144 FAX: (714) 834-4652
Chad Brown, Chief, Site Planning
Phone: (714) 834-5159

SYNOPSIS: The purpose of this presentation and report is to provide the Planning Commission and the public with an overview of the proposed Tonner Hills Planned Community project. The intent is to facilitate convenient communication between the adjacent City of Brea community and the Orange County Planning Commission as it begins its review of the proposed Zone Change, and its associated Area Plan and Planned Community Program. Staff recommends the hearing be continued to a time and location certain.

PROJECT PROPONENTS:

Property Owner:
Nuevo Energy Company
500 N. Kraemer Blvd, Bldg. B
Brea, CA 93455

Applicant/Agent:
Ullom Associates
16149 Redmond Way, #401
Redmond, WA 98052

PUBLIC NOTICE:

A Notice of Hearing was mailed to all owners of record within 300 feet of the subject site on September 6, 2002. Additionally, notices were posted as required by established public posting procedures on September 6, 2002, at the 300 N Flower Building; and at three locations on the site, specifically at the end of Carmichael Drive west of the 57 Freeway; at the intersection of Kraemer Boulevard and Lambert Road; and at the intersection of Valencia Avenue and Santa Fe Street.

CEQA COMPLIANCE:

Draft EIR 581 has been prepared in accordance with the California Environmental Quality Act (CEQA). Environmental Planning Services staff has prepared and will present Draft EIR 581 within a separate staff report for this item. Information about the proposed project contained in Draft EIR 581 is referred to in this report. Draft EIR 581 also contains information about possible alternatives to the proposed project.

GENERAL PLAN CONSISTENCY:

The majority of the project site has a (1B) "Suburban Residential" land use designation with allowable densities of 0.5 to 18 dwelling units per acre. Portions of the site located at the intersection of Lambert Road and Wild Cat Way and where an existing oil facility is located are designated (2A) "Community Commercial". The proposed project consisting of residential detached and attached land uses, open space uses, and continued oil production uses are all consistent with the General Plan "Suburban Residential" and "Community Commercial" designations described above.

BACKGROUND:

The project site is comprised of three oil/gas producing properties with a total of 789.8 gross acres owned entirely by the Nuevo Energy Company, the project applicant.

Existing access to the project site is provided from Lambert Road, Tonner Canyon Road, Carmichael Drive, Kraemer Boulevard, Valencia Avenue, and Wild Cat Way. The primary access to the property east of the 57 Freeway is from Kraemer Boulevard, which intersects Lambert Road approximately one mile east of the 57 Freeway. Kraemer Boulevard is an existing signalized intersection and is one of two proposed access points to the proposed project. The second access point is proposed from Valencia Avenue at the intersection with Santa Fe Avenue, where the adjacent master planned Olinda Ranch project is located east of the Tonner Hills project site. Access to the western portion of the project, west of the 57 Freeway currently occurs from oil roadways extending from the Tonner Canyon exit off of the 57 Freeway. Future access to this portion of Tonner Hills is proposed via a local street to be aligned with Carmichael Drive extended.

The project site has been utilized for oil production purposes since 1900 and has been steadily developed into its present industrialized condition. Existing site improvements resulting from this industrialized use include surface and subsurface gas lines, oil storage and processing facilities, paved roads, water storage

facilities, maintenance facilities, and operation support office buildings. Nuevo Energy Co. will implement Restoration and remediation of the site while operation of oil and gas production facilities continues. There are approximately 5 acres in the northeasterly portion of the project site that are leased to a green waste facility. This facility is proposed to remain on the project site while development occurs. There are also two out parcels, approximately 6.1 acres, owned by the City of Brea and improved with two 10 million-gallon City water reservoirs.

The project site's topography, geotechnical, seismic, and hydrology conditions are fully described within various sections of DEIR 581. These areas will also be fully described with the project area plan when presented to the Commission at a future public hearing. The project development plan has been designed with the site constraints and existing uses contemplated.

Originally, the Tonner Hills Planned Community proposal consisted of 914 residential dwelling units, in 194 acres and 7.7 additional acres of mixed commercial/residential uses totaling approximately 201.7 acres. Access to the site was originally proposed from Tonner Canyon Road and Kraemer Boulevard. The current project has been scaled back by eliminating the mixed use component and reducing the number of dwelling units to 795 in 180 acres of development, and by eliminating a proposed access road, referred to as Tonner Hills Road, originally proposed from Tonner Canyon Road.

SURROUNDING LAND USE:

Direction	Zoning	Existing Land Use
Project Site	A1 "General Agriculture" District, (O) "Oil Production" District	Oil Production
North	A1 "General Agriculture" District, (O) "Oil Production" District	Oil Production
South	City of Brea - Residential	Majority Single Family Residential, limited Multi-Family Residential
East	City of Brea - Residential	Olinda Ranch Master Planned Community
West	City of Brea – Commercial office and Brea Olinda High School	Commercial office and Brea Olinda High School and single family residential.

PROPOSED PROJECT:

The applicant, Nuevo Energy Company proposes to develop a planned community on a 789.5 acre site, located in the northernmost area of unincorporated Orange County, within the sphere of influence of the City of Brea. The majority of the project site (681 acres or 86 %) is located east of the Orange Freeway (SR 57), with a small portion (108 acres, or 14%) located west of the freeway, at the northerly terminus of Carmichael Drive.

The Nuevo Energy Company proposes to implement this project as a Planned Community. Therefore, the project will require a zone change to establish the Planned Community zoning designation and the Development Plan, as well as the Planned Community Program Text establishing the land use and development regulations. In addition, adoption of an Area Plan and a Development agreement will be part of this project.

The proposed development is depicted in Exhibit 1 and includes the following:

1. A maximum of 795 residential dwelling units within approximately 180 acres - Residential Planning Areas 1 through 8 (labeled "Neighborhood 1 through 8" on Exhibit 1. It should be noted that Planning Area 7 has been delete from the project).
2. 14.6 acres of Local Park land – Planning Area 10 (labeled "Wildcatters Park" on Exhibit 1).
3. Approximately 559 acres of Open Space with continued and new oil production activities – Planning Areas 11 to 15 (labeled "Open Space" on Exhibit 1).
4. 21.5 acres of Open Space/Public Use area – Planning Area 16 (labeled "Open Space, Public Use" on Exhibit 1).
5. Approximately 16.3 acres of existing oil facilities – Tonner Tank Farm and Main Oil Operations Facility.

Zone Change 01-01

The project includes a zone change that would rezone the site from A1 ("General Agriculture") district, with an O ("Oil Production") overlay, to PC, ("Planned Community") district with the continued O ("Oil Production") overlay district. It should be noted that included with the proposed zone change to PC, the project anticipates retaining the existing "Oil Production" (O) overlay district in order to continue the oil extraction activities currently operating on site. Therefore, the zone change proposed includes the suffix (O) in conjunction with the PC zone change as stated above. The majority of oil production wells and facilities are proposed in the open space designated areas (Planning Areas 11 through 15) with limited maintenance of existing operations elsewhere on site. The proposed regulations will reflect the intent of the City of Brea's development standards to the maximum extent possible, and will not permit any new oil production activity within any residential designated planning areas.

The proposed regulations would require discretionary approval of Area Plans and Site Development Permits prior to any residential development. All Area Plans would require review and approval by the Planning Commission. Additionally, the proposed regulations for the Tonner Hills Planned Community will designate the City of Brea as an official review body for all projects with the Planned Community.

Area Plan

The applicant's proposed Area Plan consists of a Program text, a development plan, and conceptual plans for grading, circulation, infrastructure, integrated oil production operations, landscaping guidelines, and community design guidelines. The proposed Area Plan is prepared for the purpose of directing the development of a 795 dwelling unit planned community that would provide a range of single-family detached and attached dwelling units in compliance with the proposed PC (O) zone change regulations.

The proposed documents described above will be presented for review at a later Planning Commission hearing date to be determined by the Planning Commission.

PROJECT OVERVIEW:

The following summaries provide the Planning Commission and the public with an overview of the various elements of the Tonner Hills Planned Community. The applicant proposes an overall community design concept that includes the following principles:

- Preservation and enhancement of natural habitat
- Non-automotive mobility within the community
- Neighborhood interaction and connectivity
- Diversity and choice of residential neighborhood character
- Opportunities for a variety of lifestyles and economic segments of the marketplace

795

Residential – A total of 785 dwelling units. Planning Areas 1, 2 and 3 include a mixture of single family detached and single family attached residential development. Planning Areas 4 through 7 include only single family detached residential development. The residential concepts envisioned for Tonner Hills include residential product types that range from upscale, large lot, single family detached homes to compact clustered attached single and multifamily development. The residential component of the project intends to create a series of distinct neighborhoods, with distinct scale, character and architectural styles linked by a network of pedestrian paths and bicycle trails connecting them all together with the local parks as well as linking them with the rest of the Brea communities surrounding Tonner Hills.

Open Space – A total of 559.7 acres. Comprised within Planning Areas 11 though 15, the uses proposed for these planning areas include primarily passive open space to be ultimately preserved in its natural state as well as the continuation of unlimited oil production activities. Over 21.5 acres of open space land located at the intersection of Valencia Avenue and Lambert Road will be slated for potential public/quasi public use of open space such as parks, nature trails, or playgrounds.

Art in Public Places – The County of Orange does not have an art in public places program, however, the Planned Community proposal will satisfy the City of Brea's Art in Public Places Program by establishing a developer funded mechanism such as an endowment for a community art education program that can be established in cooperation with the Brea Olinda School District. The restoration of a vintage "76" sign currently located near Wildcatters Park is also under consideration. This sign symbolizes the historic Union Oil Company presence on the project site over the last century. The details of this component of the project will be specified in the Tonner Hills Development Agreement.

Oil Operations – A total of 559.7 acres. Planning Areas 11 through 15, as well as 16.3 acres from the Main Facility and the Tonner Tank Farm will continue unlimited oil production activity. Existing and newly established oil production uses are proposed. Any new wells will be subject to the regulations of the Orange County Oil Code, the Orange County Fire Authority (OCFA), and the California Department of Conservation, Division of Oil Gas and Geothermal Resources (DOG&GR). In residential Planning Areas (1 through 7), no new wells will be drilled, nor will existing wells be re drilled. A number of existing wells will be phased out of the site, and specifically, from the proposed residential areas. Any

unless necessary for safe oil operations

well proposed for continued operation within a residential Planning Area will be replaced with subsurface vault units, subject to the regulations and standards of the County, the OCFA and the DOG&GR.

Local Parks – Wildcatters Park will be expanded from 5.8 acres to 14.6 acres for local park purposes. This Planning Area is proposed to include recreation and community facility uses such as community centers, ball fields, swimming pools, tennis courts, riding hiking and bicycle trails and other active recreational uses. This local park land will satisfy the Orange County local park code and will meet the City of Brea local park requirements as well.

Grading - The grading concept proposed for Tonner Hills is a balanced grading program respectful of the natural topography recognizing the nature of the existing terrain with special attention to the preservation of major landforms and significant drainage courses. Perimeter manufactured slopes proposed to provide an edge to open space areas are expected to blend with the natural terrain, and the major contiguous ridges that provide a visual backdrop to neighboring communities will be retained. Building pad grading concepts will encourage conformance with or replication of the natural topographic conditions of the site. A variety of lot depths and widths are proposed to discourage rigid and uniform development edges.

Circulation – The Planned Community includes two major access points. The primary access to the westerly portion of the project will be from the south, at Kraemer Boulevard, just north of the fire station at the intersection with Lambert Road. This collector will continue eastbound, to intersect with Valencia Avenue where a second access point into the project is planned to align with the existing intersection of Santa Fe and Valencia Avenue. A new traffic signal is proposed at this intersection. The western portion of the Planned Community will be accessed from the continuation of a local street to be aligned with the existing Carmichael Drive.

Street design of the major collector roads proposed for the Planned Community is responsive to the natural terrain of the site. For the most part, collector roads follow existing oil field roadway alignments, except along the proposed access to and from Valencia Avenue.

CONCLUSION

The purpose of this presentation and report is to provide the Planning Commission and the public with an overview of the proposed Tonner Hills Planned Community project. The intent is to facilitate convenient communication between the adjacent City of Brea community and the Orange County Planning Commission as it begins its review of the proposed Zone Change, its associated Area Plan, and Planned Community Program. The development proposal has been the subject of a number of pre-annexation meetings facilitated by the County of Orange CEO's office between the applicant, the City of Brea, and the County Planning & Development Services Department. A number of significant revisions to the scale of the development plan occurred as a result of these joint meetings and in response to the comments received on the DEIR 581 from the public and various reviewing agencies. Such revisions will be fully incorporated into the Tonner Hills Planned Community project as specific features of the Area Plan and the requirements contained in the Program regulations. These documents will be presented at a future Planning Commission public hearing for review and action.

Staff requests that the Planning Commission provide staff with comments and obtain public testimony on the project. Staff recommends that the Commission continue the public hearing to a time and location certain.

RECOMMENDED ACTION:

Planning and Development Services Department, Current Planning Services Division recommends the Planning Commission:

a. Receive staff presentation and public testimony as appropriate; and,
b. Direct staff as may be appropriate; and,
c. Continue Public Hearing to a time and location certain.

Respectfully submitted,

George Britton, Manager
Current Planning Services

EXHIBITS:

1. Proposed Draft Development Plan

Environmental Planning Services Division
Staff Report

Item #1

Planning and Development Services Department Report

DATE: September 18, 2002

TO: Orange County Planning Commission

FROM: Planning & Development Services Department/Environmental Planning Services Division

SUBJECT: Public Hearing -- Proposed Tonner Hills Planned Community (ZC01-01); Draft EIR 581 (SCH# 2001031137)

PROPOSAL: The Tonner Hills Planned Community project is a privately initiated development request to develop 795 residential dwelling units on a 789-acre site. Gross residential density would be approximately1.0 dwelling unit per acre. The total residential developed area would be approximately 180.0 acres with a residential development density of 4.4 dwelling units per acre Residential lot sizes would range from 2,600 square feet to 8,000 square feet. Continued oil facilities operations would entail 16.3 acres. Open space would be approximately 559 acres, or 70 percent of the project site.

LOCATION: The project site is located in the northeastern portion of unincorporated Orange County within the Sphere of Influence of the City of Brea. The Orange Freeway (SR 57) bisects the site, with 681 acres on the east side of the freeway and north of Lambert Road and 108 acres on the west side of the freeway at the southwest corner of Tonner Canyon Road and the Orange Freeway.

APPLICANT: Nuevo Energy

STAFF CONTACT: Charles Shoemaker, Chief, Environmental Planning Services Division
Marta Crane, Project Manager, Current Planning Services Division

SYNOPSIS: This is the first public hearing to consider the draft EIR for the Tonner Hills Planned Community. In addition to the environmental document, the applicant is requesting; a zone change (ZC01-01) from the A1(O) "General Agricultural"("Oil Production") district to the PC (O) "Planned Community" District; adoption of the Tonner Hills Planned Community Development Regulations and Development Map and approval of an Area Plan for the purpose directing the development of the planned community. Discussion of these two discretionary actions is contained in the Current Planning Services Division staff report. This report provides a brief history of the environmental documents, which have been prepared to address the development of the project site, an introduction to the project site's environmental setting and a discussion of Draft EIR 581.

Bob.

714 540-6486

Organization of Draft EIR 581:

Draft EIR (DEIR) 581 is composed of Volume I and a set of Technical Appendices. The first three chapters of the DEIR provide an expanded introduction, executive summary and project description. This portion of the document helps introduce to the reader to scope of Nuevo Energy Co.'s proposal and its history initially as a private development request in the City of Brea. Section 4 is an important section of the document focusing on the various environmental impacts associated with development of the proposed project. Key among those impacts which have been analyzed by this document are; "Land Use and Planning," "Transportation and Circulation," "Biology," "Hazards" and "Public Services." Section 5.0 relates to the long-term implications of the project, growth inducing impacts, and unavoidable adverse impacts of the project. Section 6.0 of the document focuses on project alternatives. They are also discussed briefly in this report.

A set of Technical Appendices was developed to transmit the large amount of technical studies, which were completed to provide a comprehensive evaluation of the project site and to convey work that was begun when the application was with the City of Brea and then augmented when it was filed with the County. There are thirteen elements, letters A through M that constitute the Technical Appendices. Appendices A and B are the Initial Study, Notice of Preparation (NOP) and the Responses to the NOP. Appendices C through I, and L are the various technical studies including, traffic, noise, air quality, biology, geology, hazards, hydrology and cultural resources. Appendix J is the Phase I and II Environmental Site Assessment; Appendix K is the Olinda-Alpha Landfill Memorandum of Understanding; and Appendix M is the County's Sphere of Influence Policy Guidelines. Appendices K and M are included to provide context to the fact that the project is located within the sphere of influence of the City of Brea and that special coordination was followed in the processing of the Nuevo Energy request by the County.

Background/ History:

The Tonner Hills project site has a lengthy history of oil extraction dating back to 1900 when the first oil well was drilled. The Nuevo Energy Company landholdings encompass three oil and gas producing properties, the Stearns Fee, the East Naranjal Fee and the Columbia Fee. There are approximately 227 active oil wells onsite, in addition to idle wells, abandoned wells and water injection wells. Two active tank farms that process crude oil are located on site. A gas plant, which collects and processes natural gas from producing oil fields for sale of or lease production operations, is located in the northeastern portion of the site. The plant also generates electrical power from the burning of waste products. The electrical power is used to either power oil field equipment or is placed into the larger electrical grid. A dewatering facility, which processes oil solids and liquids, operates in the central portion of the site. There are tank farms and oil sump locations, a former gas plant site (which has been remediated), and other surface and subsurface pipes and flow lines that are located on site. A gun range operated for a number of years. The site was closed in 1996 and has subsequently been remediated for lead contamination.

Plans for the eventual conversion of the Nuevo Energy landholdings from oil production to other forms of development began with the City of Brea in April1996. However, it was not until December 22, 1998 that Nuevo Energy submitted the "Brea Highlands Specific Plan" to the City of Brea. The City of Brea published a Notice of Preparation (NOP) of intent to prepare an EIR for

this project on July 27, 1999. That proposal consisted of a plan to construct 1,445 dwelling units on 241 acres of the entire 789 acres. The plan included a 3.5-acre commercial use.

In February 2000, Nuevo Energy revised downward the number of dwelling units and submitted a revised specific plan. The City issued a new NOP on April 12, 2000. During the latter part of 2000 there was a movement within the City to pass a ballot measure that would have affected the processing of future development projects including the Brea Highlands Specific Plan. On November 7, 2000, Nuevo Energy withdrew the Brea Highlands project from the City. Through November and December 2000 Nuevo Energy and City representatives met regarding the withdrawal of the application and Nuevo Energy's intentions to file an application with the County of Orange.

On January 31, 2001, Nuevo Energy filed a development application for the Tonner Hills Planned Community (previously Brea Highlands Specific Plan) with the County. The proposal was for 914 dwelling units on 193 acres, 7.7 acres of commercial uses and 32 acres of public use area. The remaining acreage would be open space with continued oil production facilities. Access to the project site included access points from Lambert Road and one access point using a new road, referred to as Tonner Hills Road, which would extend along the back side of the project and connect with Brea Canyon Road. On March 27, 2001 the County issued a Notice of Preparation as a first indication of its intent to prepare an EIR to address the environmental impacts associated with the applicant's proposal. On April 26, 2001 the County conducted an EIR scoping meeting in the City of Brea. The NOP period ended May 9, 2001.

Through May and June and by prior agreement, the City of Brea formed a Tonner Hills ad hoc Citizens' Committee to develop a City preferred development alternative to be included in the Draft EIR. On July 3, 2001 the Brea City Council endorsed a development alternative with a residential development range of 680 – 755 dwelling units on 126 acres (the dwelling unit figure includes Tract 16047 a 14-acre parcel located in the City that was proposed for approximately 56 dwelling units). The City alternative did not include any commercial acreage and deleted the Tonner Hills Road connection.

Through the remainder of 2001 the County and its EIR consultants worked to prepare Draft EIR 581. Coordination meetings occurred between the City and County. There were meetings between County, City and the Local Agency Formation Commission (LAFCO) to discuss annexation matters related to the Tonner Hills project. Through January and February discussions continued relative to the provision of services and pre-annexation. On February 11, 2002, County, City, LAFCO and service provider representatives meet to discuss the provision of public services and pre-annexation. It is noted that the Tonner Hills project can secure public services from sources other than the City of Brea. Through March and April 2002, discussions continued relative to pre-annexation and public services.

On April 25, 2002, the County of Orange released Draft EIR 581 (SCH # 2001031137) for 45-day public review period. The public comment period was scheduled to end on June 10, 2002. However, the public review period was extended to 60-day and ended on June 25, 2002. Prior to the close of the public comment period, the County receives over 60 pieces of correspondence transmitting comments on the project. Many comments focus on residential density, traffic, and biological habitat concerns. Since June 2002 County staff and the EIR consultant have worked to

prepare a Response to Comments document, which should be available to the Planning Commission at the September 18, 2002 public hearing.

Since May 2002 discussions have continued between the applicant's representatives, County and City staff. Topics have included pre-annexation topics and discussions surrounding refinements to the Nuevo Energy plans that have come as a result of comments on the project and as means to enhance the Tonner Hills Planned Community's annexation by the City. These refinements include; the elimination of Tonner Hills Road, the reduction in the number of dwelling units from 914 to 795 units, the elimination of the 7.7-acre commercial use, the elimination of development from an area referred to as Cable Canyon and a greater pull back of development from the ridgelines which form the backdrop to the City. Open space acreage is increased as well as local park acreage.

September 18, 2002 is the first proposed Planning Commission hearing for the consideration of the draft EIR and preliminary discussions of the proposed development plans, Planned Community regulations and Area Plan. By prior arrangement this hearing will be held at the City of Brea. Subsequent meeting(s) will be held in Santa Ana.

Discussion of Draft EIR 581 (SCH# 2001031137):

This Environmental Impact Report (EIR) has been prepared in accordance with the California Environmental Quality Act (CEQA) statutes, as amended (Public Resources Code §21000, et seq.), the CEQA Guidelines (California Code of Regulations §15000, et seq.), and County of Orange Environmental procedures. An Initial Study (Number PA01-0009) for the project and a Notice of Preparation (NOP) for an EIR were prepared and distributed to local Responsible and Trustee Agencies, the State Clearinghouse, involved local private and public organizations, and members of the public between March 27, 2001 and May 9, 2001. In addition, a public EIR Scoping Meeting was conducted on April 26, 2001 at Brea Olinda High School.

In accordance with CEQA Guidelines §15146, the degree of specificity required in an EIR must correspond to the actions to be covered by the EIR. The County of Orange has determined that the degree of specificity needed for the Tonner Hills Planned Community requires details sufficient to address policy level decisions at the General Plan level and mean grading levels of detail required for subdivision maps. The County determined that the Tonner Hills Planned Community EIR should be a Program EIR.
CEQA Guidelines §15146 defines a program EIR as:

> ... an EIR which may be prepared on a series of actions that can be characterized as one large project and are related:
>
> 1. Geographically,
> 2. As logical parts in the chain of contemplated actions,
> 3. In connection with issuance of rules, regulations, plans, or other general criteria to govern the conduct of a continuing program, or
> 4. As individual activities carried out under the same authorizing statutory or regulatory authority and having generally similar environmental effects which can be mitigated in similar ways.

Therefore, DEIR 581 was prepared to address all known potential effects associated with the implementation of the Tonner Hills project. It is an appropriate vehicle to address this project since there will be multiple and sequential discretionary approvals. Draft EIR 581 was prepared to address the environmental impacts associated with the development of the Tonner Hills project. The attached table (Table 1) presents each impact topic discussed in the DEIR. The table also includes a listing of mitigation measures, which are intended to reduce the level of significance of each respective impact. After mitigation only the impacts associated with air quality remain unavoidably adverse due to the fact that the project site like all of Orange County and the Los Angeles basin is located within a non-attainment air basin for air quality. and ag resources – sig impacts unavoid.

Project Alternatives:

Pursuant to CEQA, an EIR must assess a reasonable range of alternatives to the project action or location (Guidelines Section 15126.6). The discussion must focus on opportunities for eliminating any significant adverse environmental effects, or reducing them to a level of insignificance"... even if these alternatives would impede to some degree the attainment of the project objectives, or would be more costly..." (Guidelines Section 15126.6(b)). An EIR must identify an environmentally-superior alternative among other alternatives. As with cumulative impacts, the discussion of alternatives is governed by the "rule of reason." An EIR need not consider an alternative whose effect cannot be reasonably ascertained, or does not contribute to an informed decision-making and public participation process.

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Alternatives to the proposed project are presented in this section. Each alternative is designed to alleviate environmental problems identified in the EIR or were specifically requested for consideration (such as the City's alternative). Several design change alternatives are also considered. Typically, the design alternatives evaluate one or more changes to the proposed plan, yet are not sufficiently different from the proposed project or alternatives that they qualify as free-standing alternatives. Many of these design features could be combined with any alternative.

- **Alternative 1 – No Project Alternative:** This alternative would retain the status quo of entitlement efforts. The property would remain in oil production, which would be expanded, and the zone change and other approvals sought for the proposed project would be abandoned. This alternative is discussed pursuant to the requirements of CEQA §15126.6(e). It assumes that there will eventually be development on this site but at an unspecified time in the future.

- **Alternative 2 – No Development Alternative:** This alternative would retain the current operation on the property and abandon all development now and in the future resulting in

no improvement to any site conditions or characteristics. It assumes not only the abandonment of the proposed project, but any development during the projected 10-year buildout for the proposed project. This alternative is considered as it relates to long-term effects on housing/population/employment figures in meeting County growth projections.

- **Alternative 3 – Previous 1,445 dwelling unit Brea Highlands Project:** The previous project presented to the City of Brea consisted of a plan for 1,445 dwelling units on 241.5 acres. Approximately 3.5 acres in the 1,445-unit project were to be developed with commercial uses. Park uses are commensurate between the two proposals. Further, the proposed project has more open space.

  This alternative was included because its size has the capacity to increase the number of dwelling units to address the jobs-to-housing balance, one of the stated project objectives. The alternative evaluated contains a 13.4-acre parcel (56 dwelling units) that has since been sold by the landowner and is no longer part of the Tonner Hills project.

- **Alternative 4 – City of Brea Alternative:** The Brea City Council established the Tonner Hills Review Committee to provide input regarding the proposed project development application. The committee formulated an alternative development plan, which it identified as "Tonner Hills Review Committee Value Statements" These statements formed the basis for the alternative referred to as the "City Alternative." Unlike the proposed project, the City Alternative envisions a maximum of 755 dwelling units in 8 neighborhoods on 823.8 acres, inclusive of the acreage not included in the proposed project. This alternative redesigns the interior circulation system for the project by eliminating access from the northwestern boundary (the proposed Tonner Hills Road) and using Valencia Avenue and Lambert Road for ingress and egress. The design provides for several areas of "estate housing" (large houses on large lots), mainly in the areas of higher elevations. Higher density housing would be available in the southernmost neighborhoods near Lambert Road. A total of 126.2 acres of residential development is proposed. No mixed-use is included in this alternative, and the 7.7-acre mixed-use parcel remains undeveloped.

  The City Alternative also designated preservation of Wildcatters Park, which abuts the public use portion of the site. The City designated a 38.9-acre public use area to allow for additional park uses such as ball fields, bicycle/pedestrian paths, etc.

- **Alternative 5 – Golf Course and Large-lot Residential (reduced density) Alternative:** This project alternative provided for an 18-hole golf course and approximately 246 acres of residential uses in "mini-ranchettes" or estates with a minimum lot size of 10,000 square feet. The residential acreage is assumed to be completely graded; therefore, the land area could alternatively accommodate approximately 1,400 residential units. Since a 1,445-unit alternative is already examined herein, attention focused on the combination of the golf course and the 738-unit ranchette alternative.

  This alternative is considered as a reduction in residential land use and a substantial increase in recreational land use.

- **Alternative 6 – City of Brea Former General Plan:** This alternative analyzed the City of Brea General Plan in place at the time the Tonner Hills project development application

was submitted to the County (November 2000). This alternative evaluated development of land uses within all land use categories currently designated for the project site. The buildout portions of this alternative would be based primarily on the proposed project neighborhood configurations and evaluates the potential land use intensities over the 789.8-acre project site. This alternative evaluates 1,093 dwelling units distributed over the 746.5 acres of residential land uses. Regarding non-residential categories, the General Plan designates 9.2 acres for General Commercial uses and 30.5 acres for Public Facilities and Grounds, both located at the northern section of the site on either side of the Orange (SR 57) Freeway at Tonner Canyon Road. An additional 3.6 acres designated as Office Facilities is located at Wild Cat Way just north of Lambert Road. For purposes of this analysis, the 30.5-acre Public Facilities portion assumes the construction of a 60,000-sq.ft. regional postal facility.

- **Alternative 7 – City of Brea Revised Updated General Plan (30% Reduction):** On July 17, 2001, the Brea City Council approved a 30% reduction in intensity of certain land areas within the City General Plan as well as reclassifications of several roadways. At the Council meeting, City staff stated that the Tonner Hills project area (defined as 823.7 acres) would support 1,252 dwelling units under a General Plan buildout, or 881 dwelling units with a 30% reduction. The final reading of the ordinance amending the General Plan was adopted on August 7, 2001. This alternative analyzed the City of Brea General Plan as revised in July 2001. The Revised General Plan became effective subsequent to the submittal of the Tonner Hills project development application, which was submitted to the County of Orange (November 2000).

  This alternative evaluates development of land uses within all land use categories currently designated for the project site and excludes property outside the project boundary. The build-out portions of this alternative would be based primarily on the proposed project neighborhood configurations. Regarding non-residential categories, the General Plan designated 9.2 acres for general commercial uses and 30.5 acres for Public Facilities and Grounds, both located at the northern section of the site on either side of the Orange (SR 57) Freeway at Tonner Canyon Road. An additional 3.6 acres designated Office Facilities is located at Wild Cat Way just north of Lambert Road. For purposes of analysis, the 30.5-acre Public Facilities portion assumes the construction of a 60,000-sq.ft. regional postal facility. This alternative addresses the City of Brea's sphere of influence relationship to the project and the relevant City of Brea governing plans and ordinances under which site development could occur.

- **Alternative 8 – 624 –699 Dwelling Units Using project Configuration:** This alternative incorporates the number of dwelling units in the City of Brea Alternative onto the development footprint defined in the proposed project. This alternative takes advantage of the balanced grading in the proposed project, as well as the other opportunities for reduced impacts related to most of the topical issues presented in each alternative. This alternative eliminates the 56 dwelling units on the City of Brea's Recommended Project, which were located on the parcel that is no longer owned by the applicant.

  This alternative is considered in order to address the sphere of influence considerations for the City of Brea, and to evaluate a much lower density alternative. Briefly, the alternative would be as stated above, but no development would occur on ridgelines as identified by

the City of Brea in its Ridgeline Ordinance, resulting in a modified project footprint. This would have the effect of reducing total development area by an estimated 16 acres, and reducing units by 100. There would be no grading of Park Ridge in Neighborhoods 1 and 2, and a pullback from the ridgeline in Neighborhood 6.

- **Alternative 9 – Very Low Density/Estate:** In close proximity to the date of publication of this Draft EIR, it was learned that the City of Brea General Plan Advisory Committee (GPAC) had engaged in a discussion regarding the Tonner Hills project and other properties during which a "1 unit per 5 acres" density alternative was suggested for consideration. No details regarding this alternative were available (e.g., mapping, character, developable area). The City of Brea had not requested that this alternative be considered in the past, and did not request that it be considered. However, the County opted to include an alternative in the DEIR in the interest of completeness. However, inasmuch as this alternative arrived late in the analytical approach it is presented with a brief analysis only.

  This alternative would generate approximately 158 units. This would represent a "true" 1 DU/5 acre alternative. Distribution of the units would be over the entire property, with home sites being situated where possible, and the remainder of property not devoted to the home sites encompassed within private property ownership, with the exception of ongoing oil operations.

- **Design Alternative 1 – Delete Tonner Hills Road:** This alternative proposes the deletion of Tonner Hills Road from the planned community and analyzes the impact of eliminating the access point to the larger portion of the project (east of the Orange Freeway), while retaining access from Lambert Road. A second project access point is proposed to connect at Valencia Avenue aligned with the existing Olinda Ranch entry intersection. This alternative is considered as a way to reduce the impacts to the Puente-Chino Hills wildlife corridor, which is at its narrowest point where Tonner Creek passes under the Orange (SR 57) Freeway on the project site. A report titled "Missing Linkages: Restoring Connectivity to the California Landscape," dated April 2001, notes that the Puente-Chino Hills wildlife corridor is at a choke point at this location and gives this corridor a rank of medium-high importance. Unmitigated construction of the proposed Tonner Hills Road might impact this wildlife corridor.

- **Design Alternative 2 - 150 Affordable Housing Units on Mixed Use Site:** This alternative would replace the commercial site of 7.7-acres (located at the southwest corner of the site) with 150 affordable housing units. This would bring the total dwelling units for the project to 1,064 dwellings. While the County does not have mandatory affordable housing goals in the Housing Element of its General Plan for this area, the County and the developer, through a development agreement, could discuss opportunities for affordable housing in the project area. This alternative is included to analyze such an affordable housing scenario.

- **Design Alternative 3 – Wildlife Passage:** This alternative proposes a pullback of Neighborhood 7 in order to increase the size of the passageway for wildlife moving from Cable Canyon to Tonner Canyon and adjacent parts of the project site. As part of this alternative, four dwelling units within Neighborhood 7 would be removed. This would

increase the distance between the neighborhood and the mixed-use site on Lambert Road from 300 feet to nearly 450 feet. Additionally, the northeast corner of the mixed-use site would be set aside as non-developed and would be landscaped in a manner consistent with the natural area. This corner would be set back a distance of 75 feet. This setback, along with the vertical separation from the mixed-use site to the natural area, will further serve to buffer the development from the wildlife using Cable Canyon and the surrounding undeveloped area.

The EIR identifies the current design of the project as causing the possible discouragement of Cable Canyon by mule deer due to the small passageway for deer into and out of Cable Canyon. The primary access for the deer to pass into and out of the canyon is around the bottom of Neighborhood 7. The size of this passage is further compromised by the conversion of the slope and vegetation to a manufactured state and the presence of an emergency access road/public foot and bicycle path through the middle of the passage. This alternative is proposed to mitigate any potential impacts to deer movement.

- **Design Alternative 4 – Relocate Dwelling Units for Neighborhoods 5 and 6 to Public Use Site:** One of the stated values of the citizens of the City of Brea has been to maintain their ridgeline views. While the proposed project has successfully accomplished that goal, this alternative considers the potential to further reduce ridgeline impacts by relocating several dwelling units in Neighborhoods 5 and 6 to the proposed Public Use Site. Ten acres of the Public Use Site would be used to accommodate the relocation of the following dwelling units:

  - Neighborhood 5 – 35 dwelling units from the westerly portion of that neighborhood
  - Neighborhood 6 – 40 dwelling units from the westerly portion of that neighborhood

  The remaining 20 acres of the Public Use Site would be available for uses previously discussed in other alternatives.

ISSUES RAISED BY COMMENTERS:

The DEIR was distributed to various public agencies, the City of Brea, citizens groups and interested individuals for a 45-day review period in accordance with the requirements of CEQA and the CEQA Guidelines. The review period began on April 25, 2002 and ended on June 10, 2002. However, the comment period was extended two additional weeks at the request of the City of Brea. Thus, the comment period ended on June 25, 2002. The spectrum of comments was wide and varied. However, there were consistent comments received expressing concern that the inclusion of Tonner Hills Road would negatively affect a wildlife movement corridor that runs under the Orange Freeway and provides linkage to open space areas further west of the project site and continue east into Chino Hills State Park. There were consistent comments concerned with the preservation of Cable Canyon for animal habitat purposes. There were concerns relative to the overall density of the project and general interest in the style of residential development that might occur. Comments also focused on the proposed commercial use at the corner of Wild Cat Way and Lambert Road. There were concerns that retail commercial uses would be inappropriate so close to Brea Olinda High School. Concerns were expressed regarding the on-going oil production uses. Lastly, there were concerns regarding the County processing a project within the City of Brea's Sphere of Influence and the relationship to provision of public services.

Responses to these concerns, and many others, may be found in the Response to Comments document. It is not included with this report but will be provided to the Planning Commission at its September 18, 2002 hearing. As indicated in this report, the Nuevo Energy Company development proposal has undergone refinements since the public review period and as a consequence to comments received. Those refinements are described in this report and are in keeping with the nine project alternatives and the four design alternatives evaluated in the draft EIR. Regarding the provision of public services and sphere of influence comments, discussions between the applicant's representatives, City and County staff are continuing to move in a positive direction towards the development of a pre-annexation agreement between all parties.

SUMMARY:

This report is intended to introduce the Planning Commission to the history and evolution of the most recent development proposal for the Tonner Hills property. Development requests date to 1998 when a Nuevo Energy Company submitted plans to the City of Brea for the development of 1,445 dwelling units. In November 2000, Nuevo Energy withdrew its development request from the City; and, in January 2001, submitted a 914 dwelling unit proposal to the County.

DEIR 581 has been prepared to address the environmental impacts of the 914 dwelling unit project. It contains project alternatives and design alternatives for the consideration of the decision makers and identifies mitigation measures, which reduce the impacts of the project to levels less than significant. Since the close of the comment period the project has been further refined. Those refinements include; a reduction in dwelling units to 795 units, the elimination of Tonner Hills Road, the elimination of development adjacent to Cable Canyon, a refinement that moves development further away from the ridgelines which serve as a backdrop to the City, and the elimination of the commercial use at the corner of Wild Cat Way and Lambert Road.

This is the first hearing to consider Nuevo Energy Company's development plans for the 789-acre project site. It is the Planning Commission's first opportunity to comment and provide instruction relative to the project. A second public hearing will be scheduled at the Planning Commissions' direction.

Recommended Action:

1. Receive staff report and public testimony as appropriate
2. Continue hearing on DEIR 581 to a location and date certain.

Respectively submitted,

for Timothy S. Neely, Manager
Environmental Planning Services Division

Attachments
Draft EIR 581 (Planning Commission only)
Table 2-1 – Summary of Project Impacts and Mitigation Measures (Planning Commission only)

Notice of Completion
And Environmental Document Transmittal

Reviewing Agencies Checklist

Form A, continued

KEY
S = Document sent by lead agency
X = Document sent by SCH
✓ = Suggested distribution

_____Resources Agency
_____Boating & Waterways
_____Coastal Commission
_____Coastal Conservancy
_____Colorado River Board
S Conservation
S Fish & Game
_____Forestry & Fire Protection
_____Office of Historic Preservation
_____Parks & Recreation
_____Reclamation Board
_____S.F. Bay Conservation & Development Commission
_____Water Resources (DWR)

Business, Transportation & Housing
_____Aeronautics
_____California Highway Patrol
S CALTRANS District # 12
_____Department of Transportation Planning (headquarters)
_____Housing & Community Development

_____**Food & Agriculture**

Health & Welfare
_____Health Services

State & Consumer Services
_____General Services
_____OLA (Schools)

Environmental Protection Agency
S Air Resources Board
_____California Waste Management Board
_____SWRCB: Clean Water Grants
_____SWRCB: Delta Unit
_____SWRCB: Water Quality
_____SWRCB: Water Rights
S Regional WQCB # 8 (_____)

Youth & Adult Corrections
_____Corrections

Independent Commissions & Offices
_____Energy Commission
S Native American Heritage Commission
_____Public Utilities Commission
_____Santa Monica Mountains Conservancy
_____State Lands Commission
_____Tahoe Regional Planning Agency

S Other DTSC, Division of Oil and Gas

Public Review Period (to be filled in by lead agency)

Starting Date April 25, 2002 Ending Date June 10, 2002

Signature [signature] Date April 22, 2002

Lead Agency (Complete if applicable):
Consulting Firm: Culbertson, Adams & Associates, Inc.
Address: 85 Argonaut, Suite 220
City/State/Zip: Aliso Viejo, CA 92656
Contact: Elizabeth C. Mahoney, Dir. Environmental Planning
Phone: (949) 581-2888

Applicant: Nuevo Energy Company
Address: 500 N. Kraemer Blvd., Ste. B
City/State/Zip: Brea, CA 92821
Phone: (425) 836-2728 (John Ullom)

For SCH Use Only:
Date Received at SCH _____
Date Review Starts _____
Date to Agencies _____
Date to SCH _____
Clearance Date _____
Notes:

Form A

Notice of Completion & Environmental Document Transmittal

SCH # 2001031137

Mail to: State Clearinghouse, PO Box 3044, Sacramento, CA 95812-3044 916/445-0613

Project Title: Tonner Hills Planned Community

Lead Agency: County of Orange Planning Department | Contact Person: Chuck Shoemaker

Street Address: 300 N. Flower Street | Phone: (714) 834-2166

City: Santa Ana, CA | Zip: 92702-4048 | County: Orange

Project Location:

County: Orange | City/Nearest Community: City of Brea/City of Fullerton

Cross Streets: Lambert Road/Valencia Avenue | Zip Code: 92821 | Total Acres: 789.8

Assessor's Parcel No. n/a | Section: n/a | Twp. n/a | Range: n/a | Base: n/a

Within 2 Miles: State Hwy #: 57 | Waterways: n/a

Airports: Ontario Int'l | Railways: n/a | Schools: Brea-Olinda USD

Document Type:

CEQA: ☐ NOP ☐ Early Cons ☐ Neg Dec ☒ Draft EIR ☐ Supplement/Subsequent EIR (Prior SCH No.)_____ ☐ Other_____

NEPA: ☐ NOI ☐ EA ☐ Draft EIS ☐ FONSI

Other: ☐ Joint Document ☐ Final Document ☐ Other_____

Local Action Type:

☐ General Plan Update ☐ General Plan Amendment ☐ General Plan Element ☒ Community Plan

☐ Specific Plan ☐ Master Plan ☐ Planned Unit Development ☐ Site Plan

☐ Rezone ☐ Prezone ☐ Use Permit ☐ Land Division (Subdivision, etc.)

☐ Annexation ☐ Redevelopment ☐ Coastal Permit ☐ Other_____

Development Type:

☒ Residential: *Units* 914 *Acres*_____

☐ Office: *Sq.ft.*_____ *Acres*_____ *Employees*_____

☒ Commercial: *Sq.ft.* 77,000 *Acres* 7.7 *Employees*_____

☐ Industrial: *Sq.ft.*_____ *Acres*_____ *Employees*_____

☐ Educational

☒ Recreational 5.8-acres park use and 32.7 acres public use

☐ Water Facilities: *Type*_____ *MGD*_____

☐ Transportation: *Type*_____

☐ Mining: *Mineral*_____

☐ Power: *Type*_____ *Watts*_____

☐ Waste Treatment: *Type*_____

☐ Hazardous Waste: *Type*_____

☐ Other:_____

Funding (approx.): Federal $_____ State $_____ Total $_____

Project Issues Discussed in Document:

☒ Aesthetic/Visual
☒ Agricultural Land
☒ Air Quality
☒ Archeological/Historical
☐ Coastal Zone
☒ Drainage/Absorption
☒ Economic/Jobs
☐ Fiscal
☒ Flood Plain/Flooding
☒ Forest Land/Fire Hazard
☒ Geologic/Seismic
☒ Minerals
☒ Noise
☒ Population/Housing Balance
☒ Public Services/Facilities
☒ Recreation/Parks
☒ Schools/Universities
☐ Septic Systems
☒ Sewer Capacity
☒ Soil Erosion/Compaction/Grading
☒ Solid Waste
☒ Toxic/Hazardous
☒ Traffic/Circulation
☒ Vegetation
☒ Water Quality
☒ Water Supply/Groundwater
☒ Wetland/Riparian
☒ Wildlife
☐ Growth Inducing
☒ Landuse
☒ Cumulative Effects
☐ Other_____

Present Land Use/Zoning/General Plan Designation:

Present land use: Crude oil and gas extraction/operations established over 100 years ago; Zoning: A1 (O) General agricultural with oil production overlay; General Plan: 2A Community Commercial / 1B Suburban Residential

Project Description:

Nuevo Energy Company proposes a comprehensive plan to develop 789.8 acres of land that has been used for oil and gas production for approximately 100 years. The proposed plan involves development of a master-planned community that combines residential, open space, recreational, public/institutional, and mixed uses. The plan also incorporates continued operation of oil and gas production facilities. The project applicant has carefully evaluated the opportunities and constraints associated with establishing residential development to ensure a balanced community. Eight (8) residential neighborhoods will provide 914 residential units, composed traditionally of single-family detached homes, single-family cluster homes, and single-family attached homes. The neighborhoods will be linked to recreational uses and natural and enhanced open space areas. The proposed 7.7 acres of mixed use is located at the southwesterly corner of the site.