

CHAPTER 2.0 INTRODUCTION AND BACKGROUND

2.1 Purpose of the Draft EIR

2.1.1 Authority

This Environmental Impact Report (EIR) was prepared pursuant to the provisions of the California Environmental Quality Act (CEQA) of 1970, as amended (Public Resources Code Section 21000 et seq.) and the CEQA Guidelines (California Code of Regulations Section 15000 et seq.). This EIR assesses the potential impacts associated with the proposed Aerie project. The City of Newport Beach is the Lead Agency for the proposed project and the discretionary actions listed below.

An EIR is an informational document prepared pursuant to CEQA. It provides decision-makers, public agencies, and the public in general with detailed information about the potential significant environmental effects of a proposed project. It also lists the ways in which the significant effects of a project might be minimized and identifies several alternatives to the project for consideration. CEQA requires that an EIR contain at a minimum, certain specific information, including but not limited to a clear, concise project description; environmental settings; discussion of environmental impacts; effects found not to be significant, and cumulative impacts. This information is required pursuant to Sections 15120 through 15132 of the State CEQA Guidelines.

2.1.2 Incorporation by Reference

As permitted by Section 15150 of the CEQA Guidelines, this Draft EIR has referenced several technical studies, analyses, and reports. Information from the documents that has been incorporated by reference has been briefly summarized in the appropriate section(s) that follow and the relationship between the incorporated part of the referenced document and the Draft EIR has been described. The documents and other sources, which have been used in the preparation of this Draft EIR, are identified in Chapter 12.0 (Bibliography). In accordance with Section 15150(b) of the State CEQA Guidelines, the location where the public may obtain and review these referenced documents and other sources used in the preparation of the Draft EIR is also identified in Chapter 12.0. Several Elements of the Newport Beach General Plan have been used extensively in the preparation of the Draft EIR. Where appropriate and necessary, one or more of those elements have been incorporated by reference as permitted by CEQA and the State CEQA Guidelines. In addition, environmental analysis contained in the Final EIR prepared for the General Plan Update has also been incorporated into this Draft EIR. The information and analysis incorporated by reference have been summarized in the appropriate sections of this document.

2.1.3 Intended Uses of the Draft EIR

Pursuant to the requirements of CEQA, the Draft EIR is intended to provide information regarding the environmental consequences of, mitigation measures for, and alternatives to, the proposed Aerie project. It is also meant to facilitate discussions with other agencies regarding implementation of mitigation measures. CEQA is specific about providing disclosure where “[t]he EIR is to demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action ...” [Guidelines Section 15300 (d)]. CEQA also requires consideration of the whole or entirety of an action. With these guiding principles in mind, the intended uses of this EIR are to:

- Inform the decision-makers, public, and agencies about the project;
- Analyze the potential environmental impacts of the proposed Aerie project;
- Provide notice to Responsible/Trustee Agencies regarding the Aerie project;
- Incorporate analysis related to the requirements of CEQA to allow responsible agencies to make findings pursuant to this EIR.

Although this Draft EIR will also be necessarily specific in the depth of analysis (i.e., project-level analysis), this document, along with the supporting existing setting and General Plan and related long-range planning documents, provides environmental documentation for the implementation of each of the elements proposed by the project applicant for use of the existing and proposed development. It provides project level environmental documentation for individual project elements that are consistent with the goals, concepts, and strategies of the City of Newport Beach General Plan.

A discretionary approval is an action taken by a government agency that calls for the exercise of judgment in deciding whether to approve or how to carry out a project. For this project, the government agency is the Newport Beach City Council. To approve and implement the proposed Aerie project, the following specific discretionary approvals by the Newport Beach City Council are needed:

- Certification of the EIR (DEIR and FEIR together)/Approval of the Mitigation Monitoring and Reporting Program
- Approval of a General Plan Amendment
 - Approval of a Coastal Land Use Plan Amendment
 - Approval of a Zone Change
 - Approval of a Tentative Tract Map
 - Approval of a Modification Permit
 - Approval of a Coastal Residential Development Permit

In accordance with Section 15161 of the State CEQA Guidelines, this document is intended to serve as a “project” EIR that examines the environmental impacts of the specific development project. In this case, several discretionary actions are requested to implement the proposed Aerie project. The analysis contained in this document will focus on the changes in the environment that will result from the development of the proposed improvements identified by the applicant, Advanced Real Estate Services, Inc.

2.1.4 Related Approvals

This EIR may be used by the following public agencies in the adoption of the proposed Aerie project, related improvements, and approval of implementation activities there under (refer to Table 2-1);

1. City Council of the City of Newport Beach;
2. Planning Commission of the City of Newport Beach;

3. Departments of the City of Newport Beach that must approve implementation activities undertaken in accordance with the General Plan Amendment, Zone Change, Coastal Residential Development Permit, and related discretionary actions;
4. California Coastal Commission;
5. California Regional Water Quality Control Board;
6. All other public agencies that may approve implementation activities or permits undertaken in accordance with the discretionary approvals listed above.

2.1.5 Agencies Having Jurisdiction

The principal agency having jurisdiction over the proposed project is the City of Newport Beach because the project site is located in the City. Nonetheless, the proposed project includes a series of possible actions over which a number of agencies may have authority. Table 2-1 lists potential state, regional, and local approvals that may occur during the course of implementation of the proposed project and identifies the agencies with potential jurisdiction over these permits and/or approvals.

**Table 2-1
 List of Potential Responsible Agencies/Project Approvals**

Agency	Permit/Approval
Local Agencies	
City of Newport Beach	General Plan Amendment Zone Change Coastal Land Use Plan Amendment Coastal Residential Development Permit Tentative Tract Map Modification Permit Building, Grading and Ancillary Permits Water Supply and Distribution Sewer Facilities Drainage/Flood Control Facilities
Regional Agencies	
Orange County Sanitation District	Sewage Collection and Treatment Connection Permit
Orange County Health Care Agency	Asbestos and Lead Based Paint Remediation Soils and Vapor Remediation
South Coast AQMD	Asbestos Abatement
State Agencies	
Coastal Commission	Coastal Land Use Plan Amendment Coastal Development Permit
State Water Resources Control Board	National Pollution Discharge Elimination System (NPDES) Storm Water Permit for Construction Activities

Agency	Permit/Approval
Federal Agencies	
Army Corps of Engineers	Section 404 Permit Section 10 Permit

2.1.6 Notice of Preparation/Scoping Meeting

The City of Newport Beach has complied with Sections 15063 and 15082 of the CEQA Guidelines by preparing and issuing a Notice of Preparation of a Draft EIR. The City of Newport Beach determined that the Aerie project required the preparation of the EIR and, as authorized by Section 15060(d) of the State CEQA Guidelines, an initial study was not prepared. The City distributed a Notice of Preparation (NOP) of an EIR for the proposed Aerie project on September 23, 2008 for a 30-day review period. The NOP was distributed to the State Clearinghouse Office of Planning and Research, public agencies, utility and service providers, interested persons who requested notice, Orange County Clerk/Recorder, and homeowners' associations in the project area. Copies of the NOP and the distribution list are provided in Appendix A of this EIR. The City also conducted a community scoping meeting on October 29, 2008 pursuant to Section 15083 of the State CEQA Guidelines.

The City received five (5) written responses to the NOP (refer to Appendix B). The initial NOP comments were used to establish the scope of the issues addressed in this Draft EIR. Appendix B contains a copy of the NOP comment letters that were received during each NOP comment period.

2.1.7 Availability of the Draft EIR

The Draft EIR has been distributed directly to numerous public agencies and to interested organizations for review and comment. The Draft EIR and all related technical studies are also available for review and copying at the City of Newport Beach, Planning Department. These documents and materials are also available for inspection at the Newport Beach Public Library located at 1000 Avocado in the City of Newport Beach. In addition, copies of the Draft EIR are also available for review at the two branch libraries listed below.

Mariners Branch
 2005 Dover Drive
 Newport Beach, CA 92660

Balboa Branch
 100 East Balboa Boulevard
 Newport Beach, CA 92660

Agencies, organizations and individuals are invited to comment on the information presented in the Draft EIR during the public review period, which will begin on _____ and will end on _____. Specifically, comments are requested on the scope and adequacy of the environmental analysis. Respondents are also asked to provide or identify additional environmental information that is germane but which they feel may not have been used in the analysis. Following the public review period, a response to all substantive public review comments will be prepared and compiled into a Final EIR. The Final EIR will be considered by the Newport Beach City Council for certification.

In addition to the locations identified above, copies of the Draft EIR for the Aerie project are also available for review at:

City of Newport Beach
Planning Department
3300 Newport Boulevard
Newport Beach, CA 92658-8915
Contact Person: James Campbell, Principal Planner (949) 644-3210

2.1.8 Opportunities for Public Input and the EIR Process

If comments on the Draft EIR are submitted, they will be addressed in the Responses to Comments Report. The Responses to Comment Report will be part of the Final EIR and will be presented to the Newport Beach City Council for their consideration of the EIR and the proposed Aerie project. The Response to Comments Appendix will be available for public review at the City of Newport Beach Planning Department located at 3300 Newport Boulevard.

2.1.9 Certification of the EIR

After the circulation of the Draft EIR, the City of Newport Beach will prepare responses to all written comments received on the environmental analysis presented in that document and will prepare the Final EIR. The Final EIR will consist of the Draft EIR, revised as appropriate based on comments received during the public comment period, the EIR Appendices and the Responses to Comments Appendix.

The Newport Beach City Council will review the Final EIR and will consider the information and analysis contained in that document prior to its certification, should the City Council find the environmental analysis to be adequate. The City Council will be required to certify the EIR as being adequate under CEQA prior to approving the discretionary actions that constitute project approval.

2.2 Methodology

2.2.1 Existing Conditions

This introductory section describes the existing environmental conditions related to each issue analyzed in the Draft EIR. In accordance with Section 15125 of the State CEQA Guidelines, both the local and regional settings are discussed as they existed at the time the NOP was published.

2.2.2 Significance Criteria

Section 15126 of the CEQA Guidelines requires that an EIR "identify and focus on the significant environmental effects" of a proposed project. "Effects" and "impacts" mean the same under CEQA and are used interchangeably within this Draft EIR. A "significant effect" or "significant impact" on the environment means "*a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project*" (Section 15382 of the CEQA Guidelines).

In determining whether an impact is "significant" within CEQA's definition, emphasis has been given to the basic policies of CEQA with respect to a particular subject matter, as well as to specific criteria for significance found in the CEQA Guidelines (refer to Appendix G to the CEQA Guidelines). An effort has been made to avoid overly subjective significance criteria that are not based in specific CEQA policies and/or generally accepted thresholds upon which significance can be determined. For each subject area

addressed within this Draft EIR, significance criteria are identified that have been applied in analyzing the potential effects of the Proposed Project.

2.2.3 Standard Conditions

The Proposed Project will incorporate, where necessary or required, standard conditions and uniform codes as required by the City and/or other responsible agencies. For analytical purposes, compliance with these regulatory requirements is not considered mitigation. Where an otherwise significant impact is avoided, in whole or in part, due to the application of standard regulatory requirements or project features, the text will note that an issue of environmental concern exists and that it is addressed by a standard regulatory requirement. The requirement has been identified and the manner in which it addresses the environmental issue is also identified. This precludes the use of mitigation measures that are mere repetitions of common practice, City planning/approval procedures, or laws that are applicable to the Proposed Project.

2.2.4 Impact Analysis

The impact analysis presented in the Draft EIR identifies specific project-related impacts. As described above, the significance criteria provide the basis for distinguishing between impacts that are determined to be significant (i.e., impact exceeds the threshold of significance) and those that are less than significant. The existing environmental setting (i.e., existing conditions) is the baseline for documenting the nature and extent of impacts anticipated to result from project implementation. Potential impacts presented in the Draft EIR will be based on a "worst case analysis," which assumes future development within the subject property based on a maximum buildout of the site proposed by the project applicant.

In assessing the impacts of the Proposed Project and the various CEQA alternatives, the City of Newport Beach has conducted the following analysis:

"Potential effects" of the project have been identified. Initially, these potential effects are identified on a cursory level. No determination is made that they truly are "significant," "adverse," or "substantial." This process merely identifies issues and impacts, which, on a cursory level, may seem possible. "Potential effects" include issues identified in the environmental analysis as well as those raised by the public, the City, and other public agencies.

With respect to each potential effect, an analysis has been conducted to determine if, in fact:

- The project produces the identified "effect"; and
- The effect produces a substantial, or potentially substantial, change in the physical conditions within the area affected by the project (i.e., "significant"); and
- The changed conditions are "adverse."

Where the investigation of a potential effect concludes the effect is too speculative for evaluation, that conclusion is noted and the discussion of that effect is ended. Where the investigation demonstrates a potential effect does or may (without undue speculation) occur, but is beneficial, that conclusion is noted. Where the investigation demonstrates a potential effect is not significant or not adverse, that conclusion is noted.

2.2.5 Mitigation Measures

Where the analysis described in Section 2.2.4 above demonstrates that a potential effect does or may (without undue speculation) occur and is found to have a substantial or potentially substantial **and** adverse impact on physical conditions within the area affected by the project, that conclusion is noted and:

- Mitigation measures are provided which will minimize or avoid the significant effects and, in most cases, reduce them to less than significant levels; and/or
- Where feasible mitigation measures are not identified which can reduce or avoid the significant effect(s) to less than significant levels, the significant effect will be identified as one that will result in "significant unavoidable adverse impacts".

2.2.6 Level of Significance After Mitigation

This section of the Draft EIR will identify the level of impact that would remain after implementation of the mitigation measures, including significant unavoidable adverse impacts (i.e., those effects that either cannot be mitigated or they remain significant even after mitigation) or if the mitigation measures prescribed cannot reduce the significant impacts to a less than significant level (or the mitigation measures are infeasible, or their implementation cannot be guaranteed because they are the responsibility of another public agency).

2.3 Format of the Draft EIR

As noted above, this EIR focuses on the analysis of those environmental parameters that may experience significant adverse impacts as a result of the proposed Aerie project. This analysis is documented in this Draft EIR as follows:

Section 1.0 – Executive Summary. This section includes the executive summary, which summarizes the proposed project and the project alternatives. In addition, a table is included in this section that summarizes the potential environmental impacts, mitigation measures and level of significance after mitigation.

Section 2.0 – Introduction and Background. This section provides relevant, information, context and background on the CEQA process and the proposed project.

Section 3.0 – Project Description. This section includes a brief description of the environmental setting, provides a detailed project description, enumerates the project objectives, and identifies implementation/phasing associated with the proposed project.

Section 4.0 – Environmental Analysis. This section describes the existing conditions, the thresholds of significance, the analytical methodology, the impacts of the proposed project, mitigation to reduce or avoid any significant adverse impacts, and the level of significance of the impacts after mitigation.

Section 5.0 – Impacts Determined Not to be Significant. This section summarizes the environmental impacts determined not to be significant.

Section 6.0 – Significant Unavoidable Adverse Impacts. This section summarizes the potential significant unavoidable adverse impacts of the proposed project, after mitigation, based on the analysis documented in Section 4.0.

Section 7.0 – Irreversible and Irretrievable Commitment of Resources. This section addresses the potential for irretrievable and irreversible commitment of resources associated with the proposed project.

Section 8.0 – Growth-Inducing Impacts. This section addresses the potential for growth-inducing impacts associated with the proposed project.

Section 9.0 – Cumulative Impacts. This section addresses the potential for cumulative impacts associated with the proposed project.

Section 10.0 – Project Alternatives. This section provides a qualitative analysis of the potential environmental impacts associated with the Alternatives to the Project, including the No Project Alternative.

Section 11.0 – Organizations and Persons Consulted. This section lists the City of Newport Beach staff and/or departments consulted during the preparation of the Draft EIR as well as consultant personnel who were consulted during or responsible for the preparation of this Draft EIR.

Section 12.0 – References. This section lists the references used in the preparation of this Draft EIR.

Section 13.0 – Glossary of Acronyms. This section provides a comprehensive glossary of terms and acronyms used in the EIR.

Appendices. The Appendices to this EIR include the NOP, the responses to the NOP and technical reports prepared to analyze the potential impacts of the project alternatives. Technical studies prepared for the proposed project, which include: (1) circulation queuing analysis; (2) air quality analysis; (3) noise analysis; (4) terrestrial and marine biology assessment; (5) hydrology analysis; (6) geotechnical analysis; (7) coastal engineering assessment; (8) Phase I environmental site assessment and asbestos survey; (9) visual simulations; and (10) cultural and paleontological assessments. The several technical assessments prepared for the proposed project are either appended to the Draft EIR or are available at the Newport Beach Planning Department for review.