

***Response to Public Comments
Draft
Environmental Impact Report
SCH No. 2007021054***

**AERIE
(PA 2005-196)**

***City Of Newport Beach
Planning Department
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Newport Beach, CA 92658***

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**RESPONSES TO PUBLIC COMMENTS ON THE
DRAFT ENVIRONMENTAL IMPACT REPORT – SCH NO. 2007021054
AERIE (PA 2005-196)
NEWPORT BEACH, CA**

INTRODUCTION

The 45-day public review and comment period for the Draft Environmental Impact Report (EIR) prepared for the proposed Aerie residential project extended from March 20, 2009 through May 4, 2009. The City of Newport Beach received 12 comment letters on the Draft EIR. Responses to the comments included in each of the letters received by the City have been prepared and are included with the Final EIR. The comment letters were received from:

1. Southern California Gas Company (March 25, 2009)
2. Environmental Quality Affairs Citizens Advisory Committee (April 20, 2009)
3. Marilyn L. Beck (April 29, 2009)
4. Moot Group (May 1, 2009)
5. Jan D. Vandersloot (May 3, 2009)
6. California Department of Transportation (May 4, 2009)
7. Comprehensive Planning Services (May 4, 2009)
8. Jinx L. Hansen (May 4, 2009)
9. Melinda Luthin, Esq. (May 4, 2009)
10. Coast Law Group, LLP (May 4, 2009)
11. California Regional Water Quality Control Board (May 5, 2009)
12. A. David Kovach (May 5, 2009)

Responses to these comments have been prepared in compliance with Section 15088 of the State CEQA Guidelines. The letters received during the public review period have been reproduced in the section that follows. The letters have been reviewed and substantive comments have been identified and numbered for easy reference. Responses have been prepared for each of the identified comments, which follow the letters from the agencies in this "Response to Public Comments" Appendix to the Final EIR.

1. Southern California Gas Company (March 25, 2009)

Response to Comment No. 1-1

This comment letter, which indicates that gas service can be provided from existing gas mains located in the project vicinity and, further, that gas service would be provided to the project based on gas supply in accordance with regulatory requirements, is acknowledged. As suggested in this comment, the project applicant will contact Southern California Gas Company for information on conservation programs that may be appropriate for implementation. This comment does not raise any environmental issues; no further response is necessary.

2. Environmental Quality Affairs Citizens Advisory Committee (April 20, 2008)

Response to Comment No. 2-1

The Construction Management Plan (CMP) is included in the Draft EIR as Appendix B and is a component of the proposed project (DEIR 1-1.) It is binding on the project, but is not a "mitigation measure." The footnote on page 1-6 of the Draft EIR is intended to provide clarification on the difference between mitigation measures and specific project elements or project design features. The intent of each is to ensure that potential project-related impacts do not exceed significance thresholds. However, the important distinction between the two is that the proposed project has been designed to incorporate the project design features proposed by the applicant and identified in the CMP in order to avoid an impact entirely, or to ensure that the effect of a particular impact does not exceed the significance threshold. As a result, where applicable, the discussion of potential impacts in each section of the Draft EIR reflects the incorporation of the project design features in the analysis. Without the incorporation of these project elements, potential project-related impacts would be significant, necessitating the implementation of mitigation measures, which are required or recommended to eliminate or reduce potential significant effects that would be anticipated as a direct or indirect result of project implementation. While the difference may be subtle, the important distinction is that the "project design features" are pre-emptive, serving to avoid or minimize potentially significant impacts through the design of the project.

Response to Comment No. 2-2

The proposed docks extend to the Federal Pierhead Line, thus meeting all legal requirements. They are consistent with neighboring development. Two boats will be berthed to the outside of this dock, as the City permits. The dock, including these two boats, will not affect boating lanes. Even assuming a 24' beam width for a boat tied to the channel side of the dock, there would still be approximately 520 feet of open water between the westerly side of the main channel, thereby providing 10 50-foot wide lanes for channel navigation. There is a nearby Navigational Station that has been in-place for years and the proposed dock with boats does not encroach within the channel any farther than the existing Navigational Station. City policy currently allows boats to extend beyond the Pierhead Line no farther than the beam (maximum width) of the boat, which is typically not wider than 24 feet.

The reference to the Cutter Narwhal is inapplicable. The Cutter Narwhal is a Coast Guard rescue boat, not a pleasure boat of the kind that would dock at the project. It is therefore irrelevant that the Cutter Narwhal employs a crew of ten.

Response to Comment No. 2-3

The area in which the site is located is characterized by a variety of single- and multiple-family residential homes that reflect a range of densities and architectural styles, which contribute to the unique character of Corona del Mar. (DEIR 4.1-8.) The proposed project reflects a distinctive architectural character that continues this tradition of architectural variety and diversity. (DEIR 4.1-11.) Specifically, the architectural style of the project reflects an organic, modern, contemporary style. (DEIR 4.1-8.) This is consistent with General Plan Policy LU 1.1, which reads "Maintain and enhance the beneficial and unique character of the different neighborhoods, business districts, and harbor that together identify Newport Beach. Locate and design development to reflect Newport Beach's topography, architectural diversity, and view sheds" (Emphasis added.)

Response to Comment No. 2-4

Based on the significance criteria identified in DEIR Section 4.5.2, implementation of the proposed project would not adversely affect a scenic resource and would not result in significant aesthetic impacts. The DEIR makes relies upon visual simulations to support this conclusion, as shown below:

- Visual Simulation V10 - Kayak 1 illustrates the changes anticipated to occur as a result of project implementation. From this vantage in the harbor just south of the proposed project site, the differences in visual character relate mostly to the bluff development. No significant visual impacts would occur to the cove or the natural features below the bluff. Specifically, the proposed dock facilities would not affect existing views to the cove from either this or close by vantage points. (DEIR 4.5-17.)
- Visual Simulation V12 - Kayak 3 illustrates the visual character of the proposed project from a vantage near the northern limits of the site within the harbor beyond the proposed boat dock. Some of the existing rock outcroppings and related features characterizing the cove below the bluff would be obscured by the proposed dock and boats. In addition, other features along the water's edge south of the cove would also be obscured; however, all of those features would be seen from other vantages and their loss from view would be only from locations north of the proposed dock. It is important to note that none of the existing features would be eliminated or destroyed as a result of project implementation; rather, they would all remain as elements of the site and come into and go out of one's view depending on the location within the harbor. Their loss from the field of view would be brief when passing by the site in the harbor. (DEIR 4.5-22.)
- Visual Simulation V17 - Kayak 4 depicts the proposed project from a vantage in the harbor that is between the boat dock for the existing residence south of the project and the boat dock for the proposed project. In this simulation, the proposed project, including the dock facilities proposed, reveal that when viewed from this location, neither the rock outcroppings nor the cove features would be affected by any of the proposed development. All of the significant existing cove and bluff features (e.g., bluff formations, rock outcroppings, sandy beach, etc.) will remain in view from this location within the channel. (DEIR 4.5-22.)
- Visual Simulation V13 - Channel 1 illustrates the visual context of the proposed Aerie project to the existing development to the north and south and the overall visual character along the bluffs in the vicinity of the project site. The entrance to the cove below the bluff is both visually and physically accessible. Views of the other significant topographic features of the property that create aesthetic value in addition to the bluff itself (specifically the rock outcroppings and cove), would not be significantly affected by the development; none would be altered by the proposed development. (DEIR 4.5-25.)
- Visual Simulation V14 - Channel 2 provides a direct view of the proposed project from inside the channel. The sandy beach cannot be seen from this vantage. However, as previously indicated, any potential effect on the view of these features is brief and intermittent as one "cruises" into and out of the harbor. (DEIR 4.5-25.)
- Visual Simulation V15 - Channel 3 depicts the proposed development from the channel just to the north of the proposed boat dock. Portions of the rock outcroppings, the sandy beach, and related features cannot be seen from this location within the harbor; however, virtually all of the bluff up to the proposed multiple-family structure will remain within view of boaters as they travel into and out of the harbor. (DEIR 4.5-25.)

Response to Comment No. 2-5

As noted above, the proposed docks extend to the Federal Pierhead Line, thus meeting all legal requirements. They are consistent with neighboring development. Two boats will be berthed to the outside of this dock, as the City currently allows by policy. The dock, including these two boats, will not

affect boating lanes. Even assuming a 24' beam width for a boat tied to the channel side of the dock, there would still be approximately 520 feet of open water between the westerly side of the main channel, thereby providing 10 50-foot wide lanes for channel navigation. There is a nearby Navigational Station that has been in-place for years and the proposed dock with boats does not encroach within the channel any farther than the existing Navigational Station. City policy currently allows boats to extend beyond the Pierhead Line no farther than the beam (maximum width) of the boat, which is typically not wider than 24 feet.

Response to Comment No. 2-6

The applicant will bear the cost for the undergrounding certain power poles and overhead wires on Carnation Avenue near Ocean Boulevard beyond the basic City requirement to underground overhead utility lines from the nearest utility pole to the project site. The elimination of these features would enhance views and the aesthetic character within the neighborhood. (DEIR 4.1-34.)

Response to Comment No. 2-7

The project proposes a total of 25 parking spaces for the 8 condominiums, including 16 for residents, eight visitor spaces, and one service vehicle space. Additionally, two parking spaces have been provided for golf carts. The parking supply can be increased by an additional six spaces through the use of vehicle lifts in the garages for individual units. This far exceeds the City's requirement of 20 parking spaces for an 8-unit condominium project (i.e., two spaces per unit plus 0.5 guest space per unit). As a result, project residents and guests will be adequately served by on-site parking.

Response to Comment No. 2-8

Implementation of the standard conditions, project features (upgraded catch basin), and, specifically, the BMPs prescribed in the Construction Management Plan, Draft WQMP and SWPPP, as well as implementation of the proposed storm drainage system described in the documents, will ensure that the potential impacts associated with an increase in surface runoff resulting from development of the proposed Aerie residential project are avoided.

Site design and treatment BMPs have also been identified in the WQMP and will be implemented to ensure that water entering the harbor has been adequately treated to avoid potential impacts to that impaired water body. Specifically, the site has been designed to minimize impervious areas and maximize permeability. The site has also been designed to minimize directly connected impervious areas. Treatment BMPs incorporated into the project are intended to treat surface runoff include a proprietary StormFilter unit. Following treatment by the project StormFilter unit, site runoff will pass through an Abtech Smart Sponge Plus drain insert for additional treatment for bacteria as a pollutant of concern. (DEIR 4.6-10.)

Notwithstanding the increase of impervious surfaces on the project site, the proposed drainage system is expected to reduce the pollutant level in site runoff, compared to existing conditions that consist of sheet flow runoff directly to the bay, and unfiltered runoff into a storm drain catch basin just south of the site, at Carnation Avenue and Ocean Boulevard. (DEIR 4.6-11.)

Response to Comment No. 2-9

A small portion of the existing eelgrass bed (approximately 30 square feet) could potentially be affected by shading effects from vessels docked within the slips and the dock structure. The area of eelgrass habitat that is actually affected by long-term shading will be determined during post-construction monitoring surveys conducted pursuant to National Marine Fisheries Service (NMFS) Southern California Eelgrass Mitigation Policy (NMFS 1991 as amended). The location and amount of eelgrass to be transplanted shall be determined following the results of the two annual monitoring efforts stipulated in the CMP, which will

be undertaken as part of the proposed project. Specifically, the following measures will be undertaken as identified in the CMP to ensure that potential impacts to eelgrass are avoided or reduced to a less than significant level.

- An updated pre-construction eelgrass and invasive algae survey shall be completed within 30 days of the initiation of the proposed dock/gangway construction. The results of this survey will be used to update the results of the March 2007 eelgrass survey and to identify, if any, potential project-related eelgrass losses and the presence or absence of the invasive algae (*Caulerpa taxifolia*) in accordance with NMFS requirements.
- A post-construction project eelgrass survey shall be completed within 30 days of the completion of project construction in accordance with the Southern California Eelgrass Mitigation Policy (NMFS 1991 as amended, Revision 11). The report will be presented to the resources agencies and the Executive Director of the California Coastal Commission within 30 days after completion of the survey. If any eelgrass has been impacted in excess of that determined in the pre-construction survey, any additional impacted eelgrass will be mitigated at a ratio of 1.2:1 (mitigation to impact).
- Eelgrass shall be mitigated based on two annual monitoring surveys that document the changes in bed (i.e., area extent and density) in the vicinity of the footprint of the boat dock, moored vessel(s), and/or related structures during the active-growth period for eelgrass (typically March through October). Mitigation shall be implemented pursuant to the requirements of the Southern California Eelgrass Mitigation Policy (NMFS 1991 as amended, Revision 11). A statement from the applicant indicating their understanding of the potential mitigation obligation that may follow the initial two-year monitoring is required. If losses are identified, a final eelgrass mitigation plan shall be submitted to the City of Newport Beach and resources agencies for review and acceptance.
- The project marine biologist shall mark the positions of eelgrass beds in the vicinity of the dock and gangway construction area with buoys prior to the initiation of any construction activities.
- The project marine biologist shall meet with the construction crew prior to initiation of construction to orient them to specific areas where eelgrass presently exists.
- Support vessels and barges shall maneuver and work over eelgrass beds only during tides of +2 feet mean lower low water (MLLW) or higher to prevent grounding within eelgrass beds, damage to eelgrass from propellers, and to limit water turbidity.
- Anchors and anchor chains shall not impinge upon eelgrass habitat. (DEIR 4.7-16)

Response to Comment No. 2-10

A detailed catch basin diagram will be part of the construction documents and will be subject to review and approval by the City during plan check and permitting process.

Response to Comment No. 2-11

A full-size set of project plans is available for review at the City of Newport Beach Planning Department, 3300 Newport Boulevard. (James Campbell, Principal Planner, is the Project Manager.)

Response to Comment No. 2-12

The CDFG prohibits the taking of any marine organisms within 1,000 feet of the high tide line is intended to protect marine life, including the sand dollar. In addition, in order to further avoid potential impacts to these species, the sand flats within the cove should be avoided by construction personnel and equipment and future residents should be made aware of the sensitivity of the cove to promote its long-term protection. As a result, the DEIR concludes that potentially significant impacts to the sand dollar colony can be avoided.

To ensure that project related impacts to these and other intertidal marine resources will be avoided, the CMP specifies several project elements and measures to be implemented, including:

- Construction activities associated with the elevated walkway leading to the gangway, and construction personnel shall avoid impacts to rocky intertidal habitat and to eelgrass beds and sand dollar habitat within the Carnation Cove by, among other things, (a) posting signage at key access points in front of the beach and on the elevated walkway stating that access is limited to the elevated walkway during construction; (b) using yellow tape to prevent access to rocky intertidal habitat, eelgrass beds, and sand dollar habitat; and (c) prohibiting access to the water and rocky shoreline within the cove.
- Residents shall be informed of the sensitivity of the cove as a unique marine biological habitat to assist in ensuring the long-term protection of the cove's marine biological resources.
- Signage shall be posted at access points in front of the beach and on the elevated walkway, which state that access is limited to the elevated walkway during construction. In addition, yellow tape shall be used to prevent access. Access shall not be permitted to the water or rocky shorelines within the cove. (DEIR 4.7-17 – 1.7-18.)

Response to Comment No. 2-13

EIRs are not required to "facilitate evaluation of the ability of the construction crews to comply" with mitigation measures. Rather, the role of the EIR is to provide information to the public and decision-makers of a project's potential impact upon the environment and to set forth and describe proposed mitigation measures that minimize the significant effects of potential environmental impacts. It is the lead agency (City) that will decide whether to adopt mitigation measures. In that capacity, the lead agency will determine whether such measures are feasible and fully enforceable through permit conditions, agreements, or other legally binding instruments, as discussed in CEQA Guidelines Section 15126.4.

Response to Comment No. 2-14

With respect to long-term operational noise, the DEIR notes that "Although on-site noise levels associated with residential activities on the redeveloped site would increase compared to current conditions because the only the single-family residential dwelling unit and three units within the apartment building are occupied, it is anticipated that any increase in long-term noise associated with the residential uses would be those occurring as a result of outdoor activities. Passive recreational activities in and around the proposed pool, on the private decks and along the walkway and beach area at the bottom of the property are not expected to result in significant noise levels. If future residents and their guests should engage in activities that result in temporary, loud noise levels that exceed the limits set forth in Chapters 10.26 and 10.28 of the City's Municipal Code, the City is empowered to take actions to abate that activity. This project would not result in exposure of neighboring residents or future residents on site to noise levels that exceed City standards. Therefore, no significant long-term noise impacts are anticipated and no mitigation measures are required." (DEIR 4.4-27.)

Response to Comment No. 2-15

Project-related construction activities were assessed for the potential to result in vibration impacts at the nearest vibration sensitive uses (nearby residential uses). The assessment of annoyance from vibration from construction activities is based on several criteria including perceptibility, frequency of occurrence, time of occurrence and duration, as discussed below.

- Perceptibility - In terms of perceptibility, the criteria for establishing potentially significant vibration induced annoyance impacts is average daytime (there will be no nighttime construction) vibration measurements that are "felt." The FTA has established 84 VdB as the level that is "felt" or readily perceived.
- Frequency of Occurrence - In terms of frequency of occurrence, loaded trucks that will only result in transient (1-2 second) exposures of perceptible vibration as they pass in front of residences would not result in significant vibration impacts for annoyance.
- Duration - With respect to the duration of vibration intensive construction activities, the total number of days for which vibration from project related construction activities would exceed the "felt" level is approximately 25 work days.
- Time of Occurrence - Residential uses are much more sensitive to vibrations occurring at night as compared to the day time. Construction activities that would generate perceptible levels of vibration are time-restricted by Municipal Code Section 10.28.040. Under Section 10.28.040, construction is permitted on weekdays between the hours of 7:00 AM and 6:30 PM, Saturdays between the hours of 8:00 AM and 6:00 PM, and is prohibited on Sundays and any federal holidays.

Although the maximum vibration levels associated with certain construction activities would, in some instances, be "felt" under FTA criteria and could occur frequently in the days they do occur, because construction activity would be limited to the least vibration-sensitive times of the day, the duration of perceptible vibration would be relatively brief and intermittent and would cease when construction is concluded; therefore, potential vibration impacts will not result in a significant vibration annoyance impact.

Response to Comment No. 2-16

This comment asks how the DEIR can rely on the General Plan to set 65 dBA CNEL as an acceptable criterion for residential noise when such a level is higher than the City's Municipal Code noise standards found in Table 4.4-2. The answer is that the General Plan and Municipal Code apply to different noise sources. The City's Noise Element standards are for the assessment of long-term vehicular traffic noise impacts. For residential uses that include single-family, two-family, and multiple-family dwelling units, the City considers exterior vehicular traffic noise levels up to 65 dBA CNEL as Clearly Compatible and Normally Compatible. By contrast, the City's Municipal Code noise standards found in Table 4.4-2 apply to non-transportation, stationary noise sources. These noise standards do not apply to noise generated by vehicle traffic because the state, counties, and cities are preempted from controlling vehicle noise under federal law. Instead, the City's noise ordinance is designed to protect people from objectionable non-transportation noise sources such as music, machinery, pumps, and air conditioners. (DEIR Appendix F: Aerie Residential Development Construction Noise And Vibration Study, pages 19-21.)

Response to Comment No. 2-17

This comment appears to ask how the daytime noise levels in the project area were derived. Additional detail on the methodology used to obtain the current range of average daytime noise levels in the project

area is presented in Appendix E of the Draft EIR. According to Wieland Acoustics, "[i]n order to document the existing noise environment in the study area, continuous 24-hour measurements were obtained at four locations between April 23 and 30, 2008. (Refer to Figure 6-1 for the measurement locations.) To obtain the measurements, the microphone was positioned at a height of 5 feet above the ground. ... The instrumentation used to obtain the noise measurements consisted of integrating sound level meters (Model 712) and an acoustical calibrator (Model CAL150) manufactured by Larson Davis Laboratories. The accuracy of the calibrators is maintained through a program established by the manufacturer, and is traceable to the National Bureau of Standards. All instrumentation meets the requirements of the American National Standards Institute (ANSI) 51.4-1971." (DEIR Appendix E: Environmental Noise Study for the Construction of the Proposed Carnation Cove Dock Replacement Project in the City of Newport Beach, page 9.)

Response to Comment No. 2-18

The DEIR concludes that, at full occupancy, the project's eight condominium units will generate 47 average daily trips. This conclusion is based on trip generation rates published by the Institute of Transportation Engineers and represents an increase of 24 trips/day over the baseline (23 trips/day.) (DEIR Table 4.2-2.) The trip generation rates published by the Institute of Transportation Engineers are the industry standard and do not reflect an "unrealistically optimistic" scenario. Furthermore, as illustrated in Figure N4 (Future Noise Contours) of the Noise Element, all of the residential streets in the project area are forecast to remain below 60 dBA CNEL based on buildout of the City pursuant to the General Plan.

The comment about the "questionable acceptance of a 65 dBA standard for appropriate residential noise levels" was addressed above in Response to Comment No. 16. In short, the City Noise Element's 65 dBA standard is the appropriate benchmark for discussing long-term traffic noise because the Noise Element specifically relates to long-term vehicular traffic noise impacts. By contrast, the City's Municipal Code noise standards found in Table 4.4-2 apply to non-transportation, stationary noise sources. (DEIR Appendix E: Environmental Noise Study for the Construction of the Proposed Carnation Cove Dock Replacement Project in the City of Newport Beach, page 9.)

Response to Comment No. 2-19

Refer to Response to Comment No. 2-18.

Response to Comment No. 2-20

Refer to Response to Comment No. 2-18.

Response to Comment No. 2-21

The project has been designed to minimize glare by incorporating building materials that are not conducive to the creation of glare. For example, exterior materials proposed for the residential structure would consist of non-reflective materials, including a titanium roof and photo-voltaic array with a matte finish, stucco-covered walls, and stone accents with rough, rather than polished textures. Tinted glazing is proposed on the windows and most of the windows will have overhangs that will cast shadows over the glazing. As a result, no significant glare impacts from building finish materials anticipated and no mitigation measures are required. (DEIR 4.5-29.)

Response to Comment No. 2-22

Although the proposed swimming pool is neither designed nor intended to be a water quality treatment feature, a variety of Best Management Practices (BMPs) have been identified in a preliminary Stormwater Pollution Prevention Plan (SWPPP) and Water Quality Management Plan (WQMP) with respect to treating

storm flow ingredients. Treatment BMPs include a proprietary StormFilter unit. Following treatment by the project StormFilter unit, site runoff will pass through an Abtech Smart Sponge Plus drain insert for additional treatment for bacteria as a pollutant of concern. (DEIR 4.6-10.) Implementation of these and other measures outlined in the WQMP will ensure that potential water quality impacts will be less than significant.

Response to Comment No. 2-23

An off-site drainage area encompassing 11.54 acres contributes storm flows to the existing catch basin in Carnation Avenue/Ocean Boulevard. Storm flows generated within this drainage area have a 100-year peak storm flow rate of 40 cubic feet per second (cfs). The proposed project would result in a decrease in the 100-year storm flow, which would be directed to an existing storm drain that has adequate capacity. However, the existing catch basin is currently deficient. Although no significant project-related impacts are anticipated as a result of the reduction in storm flow generated by the proposed project, this facility will be improved by the project applicant to accommodate the storm flows generated within the tributary area, including the project site. (DEIR 4.6-7.)

Response to Comment No. 2-24

"Sanitary sewer outflow" is water from the project that flows into the sewer lines that is conveyed to the sewage treatment plant operated by the Orange County Sanitation District (OCSD).

Response to Comment No. 2-25

Line 3 of the first "bullet" will be revised to read, "... informs facility users of the impacts of dripping and dumping oil, paints, solvents or other potentially ...".

Response to Comment No. 2-26

As suggested by the commenter, the existing text under N11 includes reporting of violations.

Response to Comment No. 2-27

An Abtech Smart Sponge Plus is a filtration system for storm water. When deployed in filtration mechanisms, it removes hydrocarbons, trash, debris, sediment and other contaminants including bacteria from stormwater.

Response to Comment No. 2-28

Pool water will be disposed of properly into the sanitary sewer or treated by mobile cleaning devices prior to discharges to the street or storm drain.

Response to Comment No. 2-29

According to the California Regional Water Quality Control Board, federal regulations do not define "maximum extent practicable" (MEP), but in general, to achieve the MEP standard, municipalities employ BMPs that are likely to be effective and are not cost-prohibitive. The Draft EIR has determined that the BMPs incorporated into the proposed project design will be effective in reducing pollutant loads when compared to the existing storm runoff quality. Ultimately, the Regional Water Quality Control Board will be responsible for ensuring that the BMPs achieve the MEP standard.

Response to Comment No. 2-30

A vegetation map was prepared by Robert Mitchell & Associates, as noted on page 4.7-1 (refer to footnote 1) in the Draft EIR. This map is attached to these Responses. The plant species occupying the subject property are identified and described on page 4.7-1 on the Draft EIR. Although it appears that the commenter is suggesting that a mitigation measures be imposed to retain non-native species currently occupying the site, the project includes design features requiring the exclusive use of native drought-tolerant plant species determined do be consistent with the California coastal bluff environment as required by Policy No. 4.4.3-13 of the Coastal Land Use Plan (CLUP). All invasive plant species will also be removed as required by CLUP Policy No. 4.1.3-1. This is an environmentally superior approach to the suggestions presented in this comment. It is important to note that existing native plant species will not be removed.

Additionally, as noted in footnote 1 on page 4.7-1 of the Draft EIR, none of the native species on-site was removed. The lemonade berry will remain on-site. With respect to shading effects, refer to the discussion on page 4.7-14 and Exhibit 4.7-1 on page 4.7-15 of the Draft EIR.

Response to Comment No. 2-31

The City's CLUP recognizes that in certain instances, habitats presumed to be ESHA may occur in settings where the ecological functions are minimal and that the ESHA presumption is rebuttable. Specifically, the CLUP recognizes four factors that should be considered, which when present allows for rebuttal of the ESHA presumption. Specifically the factors are:

- Patch Size and Connectivity;
- Dominance by Invasive, non-native species;
- Disturbance and proximity to development; and
- Fragmentation and Isolation

The vegetation noted by the commenter consists of a few individuals California buckwheat (*Eriogonum fasciculatum*) shrubs, a single patch of lemonadeberry (*Rhus integrifolia*) that likely consists of a single shrub or two, and a few scattered individuals of California encelia (*Encelia californica*). At most, the subject vegetation covers a few hundred square feet. Based on the CLUP, an ESHA designation would not be appropriate based on 1) the small amount of vegetation, literally consisting of a handful or individual shrubs that because of their small size, exhibit minimal ecological function; 2) the subject vegetation is surrounded by areas of non-native vegetation including ornamentals associated with the residences as well as some highly invasive species (e.g., giant reed), 3) the proximity of the small patch of vegetation to existing development further limits the ecological functions of the small area of vegetation; and 4) the patch is generally isolated from larger patches of native scrub vegetation by the adjacent development.

Based on all presence of each of the four CLUP-defined factors, designation of the small area consisting of common shrubs with little ecological value, an ESHA determination is not warranted based on the site specific data.

Response to Comment No. 2-32

The December 12, 2008 Jurisdictional Delineation report prepare by Glenn Lukos Associates (GLA) for the project site followed the Coastal Commission's use of the "one parameter" approach for making wetland determinations (see for example the detailed discussion on pages 10 and 11 of the December 12, 2008 Report). GLA acknowledged the Commission's approach, but also noted, based on the

Commission's own guidance that the one-parameter approach can be "falsified" when strong positive evidence for upland conditions are presented

In this case, a number of factors were presented that demonstrate that the African umbrella sedge is not growing as a wetland plant, which when considered together provide the strong evidence for upland conditions, thereby falsifying the presumption that that area is a wetland. These factors include the following:

1. The African umbrella sedge is listed on the *National List of Plant Species that Occur in Wetlands* as a Facultative Wet (FACW) species, meaning that it occurs in wetlands approximately 67-percent of the time and in **uplands 33-percent** of the time. Therefore, there is **one chance in three** that any place this species occurs is upland, and further detailed investigation is needed to determine whether wetland conditions are in fact present.
2. The subject patch of African umbrella sedge occurs on a steep slope that prevents ponding or inundation by shallow water for periods sufficient to lead to anaerobic soil conditions, within the upper 12 inches, as confirmed in the field by GLA. The site clearly lacks wetland hydrology.
3. The soils in the area of the African umbrella sedge exhibit strong upland characteristics, confirming the lack of wetland hydrology, further confirming the upland characteristics of the site.

The commenter speculates regarding the possible source of water that supports the African umbrella sedge stating that it "may be" the 30-inch drain pipe or seepage from the bluff. These issues were fully addressed in the December 12, 2008 GLA Report, a portion of which is excerpted below:

*Given the lack of wetland hydrology, as confirmed by the strong upland characteristics of the soils, it appears that the African umbrella sedge is supported by regular irrigation water. During the December 10, 2008, site visit, we observed the neighbor washing off her deck and steps, with the water running into the adjacent honeysuckle. She was also directly watering the honeysuckle with some over spray directly reaching the umbrella sedge. Also, approximately halfway into our field visit, we observed a very small "trickle" of water discharging from the 30-inch pipe that lasted for just a few minutes. Upon investigating the source of water, we found a different neighbor, washing an automobile with the runoff eventually reaching the area. Such runoff would not be sufficient to make a positive finding for the presence of wetland hydrology; however, combined with the irrigation of the adjacent landscaped slope it explains the presence of the umbrella sedge, especially given the strong upland character of the soils. It is also important to note in this regard that the African umbrella sedge is designated as FACW, meaning that up to one-third of occurrences of this species is in upland areas. Confirmation that African umbrella sedge is a common landscape plant that is highly adaptable is provided in the *Sunset Western Garden Book*:*

Grows in or out of water. Effective near pools, in pots or planters, or in dry stream beds or rock gardens. Self sows. Can become weedy....¹ [Emphasis added.]

Given this adaptability, in the absence of other wetland indicators such as the confirmed presence of wetland hydrology or hydric soils, the presence of this plant is not a reliable indicator of wetland conditions and the nearby irrigation would explain the presence of this highly adaptable species

¹ *Sunset Western Garden Book*, by the Editors of *Sunset Magazine* 1990 p 312

Also, with regard to the irrigation, Exhibit 3, Photograph 2 of the December 12, 2008 GLA Report depicts the irrigation heads on the slope immediately above the African umbrella sedge

The commenter suggests that a 100-foot buffer should be provided to protect the African umbrella sedge, which was also addressed in the December 12, 2008 report:

Policy 4.2.2-3 of the City's CLUP specifies that all wetland ESHA shall have "a minimum buffer width of 100 feet wherever possible"; however, it is important to consider the entire policy set forth in 4.2.2-3:

Require buffer areas around wetlands of a sufficient size to ensure the biological integrity and preservation of the wetland that they are designed to protect. Wetlands shall have a minimum buff width of 100 feet wherever possible. **Smaller buffer widths may be allowed only where it can be demonstrated that 1) a 100 foot buffer is not possible due to site constraints, and 2) the proposed narrower buffer would be amply protective of the biological integrity of the wetland given the site-specific characteristics of the resource, and of the type and intensity of disturbance.** *[Emphasis added]*

Should a finding be made that the area of African umbrella sedge is a wetland, it is important to note that this area is exactly the sort of resource that does not require a 100-foot buffer for the following reasons:

- First, the area already lacks a 100-foot buffer along the eastern and southern edges due to the presence of existing residential structures, including the neighboring structure, which is within approximately 17 feet of the umbrella sedge as depicted on Exhibit 3 (this distance was measured with a tape measured using GIS).
- Second, as depicted on Exhibit 3, the area of sedge is almost entirely surrounded by or occurs as understory to non-native species and the African umbrella sedge is a non-native species that is considered to be highly invasive and would be subject to eradication from local wetland restoration sites or managed wetlands.
- Third, when considered in accordance with the ESHA definition in the Coastal Act, the area does not meet any of the criteria typically associated with ESHA. Specifically, the African umbrella sedge cannot in any way be considered rare as it is a widespread invasive species. The approximately 0.004 acre area does not support or exhibit potential to support any rare or otherwise special status species and does not exhibit importance in the ecosystem given its position on the landscape and composition. Finally, the area is already highly degraded due to the presence of the invasive and/or non-native species noted above.

Given these factors, including the proximity of established neighboring development no change in buffer requirements compared with the current conditions is warranted.

Finally, it is important to note that the commenter references the Coastal Commission's findings during a hearing held on April 9, 2009. The conditions in that case are very different from those in this case, where GLA asserted that no wetland parameters were present and the Commission asserted that two parameters were present. The findings by the Commission in that case have no direct applicability to this project.

Response to Comment No. 2-33

Refer to Response to Comment No. 2-32.

Response to Comment No. 2-34

Refer to Response to Comment No. 2-32.

Response to Comment No. 2-35

Merrill and Hobson (1970) made observations on the behavior, distribution, and abundance of the sand dollar (*Dendraster excentricus*) along the Pacific Coast of California and Baja, California between 1963 and 1968. Sand dollar populations occur on sandy bottoms in bays, tidal channels, and along the outer coast. They noted that sand dollar beds were reported in earlier Newport Harbor studies (MacGinitie, 1939, Limbaugh, unpubl. data), "but had not been found since these areas were dredged". Sand dollars can occur in coastal inlets, frequently on sand patches, within and near beds of *Zostera* (MacGinitie and MacGinitie, 1968). Most populations in inlets occur near the openings to the sea. The bay populations of *Dendraster* often occurs in harbors with wide entrance channels and in areas of other coastal inlets without strong tidal currents. The substrate is generally fine, poorly sorted sand, usually with an overlying layer of detritus (Merrill and Hobson 1970). They noted that in Newport Harbor (no location provided), the highest proportion of sand dollars occurs in waters 2 to 4 ft deep. All of the Merrill and Hobson observations between 1963 and 1968 were made by diving.

Coastal Resources Management (CRM) biologists surveyed the entire shallow water habitat of Newport Harbor and Upper Newport Bay twice, between 2003-2004 and 2006-2007 at depths from 0.0 to -12 ft mean lower low water (MLLW). The only location where concentrations of sand dollar beds were located was within Carnation Cove inlet. These beds were also present during surveys CRM made in the Cove during summer 2008. This bed occurs intertidally. Occasionally, individuals were also found along the west channel entrance channel, along Channel Drive. It is not unreasonable to assume that sand dollars may also occur subtidally in the main entrance channel.

Noble Consultants, Inc. determined that the dock project would not affect sediment transport in the area. Consequently, sediment transport will not affect eelgrass or sand dollar bed distribution or abundance. The local environment is well flushed tidally, and the potential for short-term turbidity to adversely affect eelgrass and/or the sand dollar beds is low. In addition, the project has identified BMPs and project design features to reduce the potential for adverse effects during construction and operation of the docks. Construction-period mitigation measures within the Cove have been provided that are meant to limit the movement of construction crews, and educate the construction crew and/or residents of the importance of avoiding the cove's eelgrass and sand dollar beds.

With respect to "taking specimens out of the marine environment," SC 4 7-1 stipulates that the project will comply with California Code of Regulations, Title 14, Section 29.05, which prohibits the taking of any marine organisms within 1,000 feet of the high tide line without a sport fishing permit.

Response to Comment No. 2-36

Sediment deposited along the entrance channel at Newport Harbor is due to the uniqueness of sequential sediment transport patterns that are typically observed in the harbor entrance area. Coastal alongshore drifted sands are transported either through the wedge area or via the entrance channel during the winter months and moved further into the bay by southerly swells primarily occurring in the following summer season. Sand-quality sediment movement within the project region is typically in the along-channel direction from the harbor entrance to the inner bay. Flow patterns (i.e., potential sand movement patterns) at the project site during typical flood/ebb tide cycles were presented in the Coastal Engineering

Assessment Appendix (see Figures 9 and 10). With a small percent of the along-channel blockage area resulting from the proposed new dock facility, the potential impact to this unique sediment movement process in the entrance channel is insignificant.

Response to Comment No. 2-37

The project site is not potential habitat for the tidewater goby; therefore, this species is not expected to occur at the project site. The EIR will be revised to correct the inconsistency noted in this comment.

3. Marilyn L. Beck (April 29, 2009)

Response to Comment No. 3-1

The Predominant Line of Existing Development ("PLOED") is defined by reference to the bluff face. CLUP Policy 4.4.3-8 reads, in relevant part, as follows: "Prohibit development on bluff faces, except private development on coastal bluff faces along Ocean Boulevard, Carnation Avenue and Pacific Drive in Corona del Mar determined to be consistent with the predominant line of existing development." Therefore, the PLOED applies to visible development on the bluff face, not subterranean excavation behind the bluff face.

Response to Comment No. 3-2

The PLOED can be viewed in either a "horizontal" or "vertical" sense. A horizontal perspective can be described as a distance from a specified location such as a street or property line. A vertical perspective can be described as a point or line above a specified location such as the ground or, in this case, the ocean. In 2007, the Newport Beach City Council established a PLOED at elevation 50.7 feet North American Vertical Datum of 1988 ("NAVD88") for the proposed project. This is an elevation or contour on the project site's bluff face, below which the proposed residential building cannot be visible.

Response to Comment No. 3-3

In this case, the PLOED was identified by reference to the bluff face and does not limit subterranean excavation behind the bluff face as it would not be visible. Therefore, the depth of subterranean excavation is not a factor in determining compliance with the PLOED.

As with the proposed project, future development along Carnation Avenue would be subject to individualized PLOED determinations. The existing development along Carnation Avenue will provide the basis for establishing the PLOED for these properties. The CLUP Glossary definition of PLOED will guide that determination. According to the CLUP Glossary, a PLOED is "[t]he most common or representative distance from a specified group of structures to a specified point or line (e.g. topographic line or geographic feature). For example, the predominant line of existing development for a block of homes on a coastal bluff (a specified group of structures) could be determined by calculating the median distance (a representative distance) these structures are from the bluff edge (a specified line)." Given that the existing development along Carnation Avenue is at or close to the 50.7 feet NAVD88 elevation and does not extend all the way down to Bayside Place, it is unlikely that a future project proposing to descend all the way down to Bayside Place could be found consistent with CLUP policies.

Response to Comment No. 3-4

The comment indicates a belief that the project is subject to CLUP Policy 4.4.3-5, which requires new development to be set back from the bluff edge. This policy is not applicable in this case as Policy 4.4.3-8 allows development to be located on the bluff face when existing structures are already present and new development must be within the PLOED. The questions indicate a belief that the project's pool should not be permitted below the 50.7 NAVD88 PLOED and it also questions the project's compliance with the intent of the PLOED policy. CLUP Policy 4.4.3-8 reads, in relevant part, as follows: "Prohibit development on bluff faces, except private development on coastal bluff faces along Ocean Boulevard, Carnation Avenue and Pacific Drive in Corona de Mar determined to be consistent with the predominant line of existing development." Therefore, the PLOED applies to visible development on the bluff face, not subterranean excavation behind the bluff face. In this case, the PLOED was identified by the reference to the bluff face.

The pool will be located at the basement level. Since the improvements on the basement and sub-basement level are behind the bluff face and will not be visible to the public, they are not subject to the PLOED.

Response to Comment No. 3-5

As indicated on page 4.6-6 of the DEIR, the percentage of the site's impervious surface, which includes building coverage, in the redeveloped condition is approximately 28 percent of the total project area. This figure represents an increase in impervious surfaces of about six percent when compared to the existing impervious surface.

Response to Comment No. 3-6

As noted in Response to Comment No. 5, in the redeveloped condition the site's impervious surface area increases to 28 percent of the site's total area from 22 percent of the site's total area in the existing condition (refer to page 4.6-6 in the Draft EIR). However, despite this increase in impervious surface area, the proposed redevelopment will actually result in an improvement in water quality over the existing condition due to the proposed storm drainage system and water quality treatment facilities. These facilities will be designed to capture and treat runoff from the impervious surface areas and discharge the flows at a rate consistent with the existing drainage patterns for the site. In the existing condition, the majority the site's runoff for impervious areas sheet flow to Newport Bay without treatment.

Response to Comment No. 3-7

The 1.4-acre property is a coastal bluff visible from Newport Harbor. The Newport Beach General Plan and Coastal Land Use Plan identify coastal bluffs as well as other landforms such as canyons, hillsides, and cliffs as significant natural landforms, which contribute to the scenic and visual qualities of the coastal zone.

Response to Comment No. 3-8

General Plan Policy NR 23.1 states as follows: "Preserve cliffs, canyons, bluffs, significant rock outcroppings, and site buildings to minimize alteration of the site's natural topography and preserve the features as a visual resource." The project complies with this policy in a host of ways discussed in DEIR Sections 4.1 (Land Use and Planning) and 4.5 (Aesthetics.) For instance, the project itself has been designed to complement the site's natural bluff features. The project's "curvilinear" features will allow the building to blend into the bluff when compared to the existing rectilinear features of the existing residential structure. In addition, the proposed colors are consistent with the natural environment, and the project's mass has been broken by the physical separation between the two main structural elements. Finally, the bluff face below the proposed structure would be preserved and landscaped and enhanced with native plant materials.

The project is proposed to be more than two feet higher than the PLOED at elevation 52.83 feet, except for a dock access/emergency exit at elevation 40.5 feet that is recessed and screened from public view. As a result, the proposed project will be consistent with existing development pattern of the area as required by CLUP policy and it will effectively preserve the bluff below the proposed residential structure as a visual resource.

Response to Comment No. 3-9

The comment relates to the encroachment of balconies within the side yard setback above Bayside Place and it describes a belief that it violates CLUP Policy 4.4.3-6 as the project extends away from Carnation Avenue beyond the line of existing homes on Carnation Avenue. Although, CLUP Policy No. 4.4.3-6 is not

applicable in this case, CLUP Policy 4.4.3-8 is applicable and this policy requires development of the project site to be consistent with the PLOED. As indicated previously, the PLOED can be viewed in either in a "horizontal" or "vertical" sense. A horizontal perspective can be described as a distance from a specified location such as a street or property line. A vertical perspective can be described as a point or line above a specified location such as the ground or, in this case, the ocean. In 2007, the Newport Beach City Council established a PLOED at elevation 50.7 feet North American Vertical Datum of 1988 ("NAVD88") for the proposed project. This is an elevation or contour on the project site's bluff face, below which the proposed residential building cannot be visible. During that consideration, City Council considered the horizontal projection of the project from Carnation Avenue and did not identify an inconsistency with Policy 4.4.3-8. The balconies in question will not project into a public view; however, they will be within the view from private properties northerly on Carnation Avenue. The photograph provided with this comment shows a view from an unknown vantage that appears to be from private property. The extent of development depicted may or may not be accurate; however it appears to be roughly consistent with the proposed project.

Response to Comment No. 3-10

Because this project is located on a site with an existing principal structure built on the bluff face, the applicable CLUP Policy is 4.4.3-9, and not the policy language cited in the comment. Policy 4.4.3-9 states: "[w]here principal structures exist on coastal bluff faces along Ocean Boulevard, Carnation Avenue and Pacific Drive in Corona del Mar, require all new development to be sited in accordance with the predominant line of existing development in order to protect public coastal views. Establish a predominant line of development for both principle structures and accessory improvements. The setback shall be increased where necessary to ensure safety and stability of the development." (Emphasis added.) This policy prevails over the general policy cited by the commenter by its very nature; Policy 4.4.3-9 was intended to create an exception to the general policy. Specifically, it would not be possible for project to be both built on the bluff face and, at the same time, be set back 25 feet from the bluff edge. Because the project complies with the individualized PLOED determination made by the City Council in 2007, it complies with the applicable CLUP policy cited above.

Response to Comment No. 3-11

The comment addresses the project's consistency with a "horizontal predominant line of development." This is not a term that is used in the City's CLUP. Compliance with the CLUP's policies related to setbacks and PLOED is addressed in Table 4.1-2 and the Responses to Comment Nos. 1, 9 and 10. It is not the role of the EIR to justify the modification permit.

Response to Comment No. 3-12

The policy to promote architectural diversity in itself suggests that different types of architecture are desirable in Newport Beach. The focus of this comment suggests that the proposed project lacks conformity with the existing development. Such conformity, being roughly the opposite of diversity, would actually appear to be inconsistent with the intent of the City's policies articulated in Policies LU 1.1 and LU 1.2. Therefore, the proposed project seeks to achieve the intent of the long-range goals and objectives of preserving and enhancing the character of the City and the important features, including the bluff, through its unique design. The remainder of the comment appears to express the commenter's subjective opinion and further response is not required.

Response to Comment No. 3-13

The comment cites Land Use Element Policy LU1.4 and suggests that the proposed project, including the proposed building's gross floor area, is not consistent with the policy. The City's growth strategy is reflected in the Land Use Element of the General Plan by designating land for specific uses and by

providing densities and intensities for those land uses. Policy LU1.4 is a guiding principle against which future amendments, including the proposed project, are to be compared and judged. It is important to note that the density of the proposed project is consistent with the density permitted by the General Plan, which permits up to 27 dwelling units on the subject property, even if the General Plan Amendment were not part of the proposal. The 584-square foot increase in the project site, which is the only portion of the project site subject to the General Plan Amendment, only increases the maximum number of dwelling units on the site by one unit. The project only proposes eight units where 28 would be theoretically permitted. Section 4.1 (Land Use/Relevant Planning) and Section 4.5 (Aesthetics) provide an evaluation of the proposed project for consistency with more specific resource protection policies. The comment further indicates that the project will be effectively using 100 percent of the resource, which is not accurate. Approximately 40 percent of the site will remain as bluff, cove and water.

Response to Comment No. 3-14

Presumably, the comment is referring not to a developer response but the discussion of Policy LU 4.1 in the City's DEIR. Assuming that to be the case, the entire project has been analyzed in the context of the Land Use Plan. The discussion of Policy LU 4.1 focused on the proposed amendment to the Land Use Plan. The consistency of the remainder of the Land Use Plan is discussed throughout Table 4.1-1.

Response to Comment No. 3-15

The automobile elevators are convenient and efficient. These elevators will allow the residents to access their personal garages in a quick and efficient manner. Elevators allow the highest efficiency of space due to the elimination of approximately 250 linear feet of concrete ramps. The two elevators will service resident parking needs for seven units. All required guest parking spaces are directly accessible from Carnation Avenue. Auto elevators are utilized in many condominium projects throughout the United States, Europe, and Asia. This is not new technology. Beyond that, the commenter is correct in acknowledging that her opinion is subjective.

Response to Comment No. 3-16

The proposed project includes the undergrounding of the existing overhead utility lines at the corner of Ocean Boulevard and Carnation Avenue with the removal of two existing utility poles. This is a voluntary off site community benefit provided by the applicant in order to improve the aesthetic character of the area. The applicant is providing this benefit with Alternative A and not with other alternatives. No City policy or ordinance, including General Plan Policy NR 21.3, requires the implementation of such off-site improvements. The only requirements for the removal and undergrounding of overhead utilities are those with respect to such improvements on a project site. In other words, the developer must underground the existing overhead utility line extending to the site from the nearest utility pole and no farther pursuant to Title 19 of the Municipal Code.

Response to Comment No. 3-17

Policy NR 22.1 states: "Continue to regulate the visual and physical mass of structures consistent with the unique character and visual scale of Newport Beach. The issues related to architectural diversity have been addressed previously. It is not the City's policy to regulate architecture that complies with all applicable development standards and General Plan policy. Similarly, any comparison of visual and physical mass must be based on what constitutes the unique character and visual scale of the community. Existing development in the area, including Channel Reef, regardless of whether it conforms to current policies or regulations, are factors that contribute to the character of the City and are considerable. As discussed in Tables 4.1-1 and 4.1-2, the proposed project is consistent with the relevant policies in the General Plan and Coastal Land Use Plan.

Response to Comment No. 3-18

The bluff face is preserved to the PLOED. The excavation occurring behind the bluff and underneath the location of the existing and proposed structures is not deemed to be a significant alteration of the natural landform because there will be no significant visual impact or impact to bluff stability resulting from the excavation as discussed in Sections 4.5 and 4.9, respectively.

Response to Comment No. 3-19

CLUP Policy 4.4.3-3 was not addressed in the Draft EIR because it does not apply to the project. Development relating to the site's coastal bluff is governed by General Plan Policy 4.4.3-9, which states: "[w]here principal structures exist on coastal bluff faces along Ocean Boulevard, Carnation Avenue and Pacific Drive in Corona del Mar, require all new development to be sited in accordance with the predominant line of existing development in order to protect public coastal views. Establish a predominant line of development for both principle structures and accessory improvements. The setback shall be increased where necessary to ensure safety and stability of the development." (Emphasis added.) This policy prevails over the general policy cited by the commenter because by its very nature, Policy 4.4.3-3 was intended to create an exception to the general policy. Specifically, it would not be possible for project to be both built on the bluff face and, at the same time, be set back 25 feet from the bluff edge. Because the project complies with the individualized PLOED determination made by the City Council in 2007, it complies with the applicable CLUP policy cited above.

Response to Comment No. 3-20

CLUP Policy 4.4.3-5 is applicable to blufftop development. Development relating to the site's coastal bluff is governed by General Plan Policy 4.4.3-9, which is discussed in Response to Comment No. 4-19.

Response to Comment No. 3-21

The comment cites a portion of CLUP Policy 4.4.3-8 and suggests that new development be visually compatible to the maximum extent feasible. The provision cited applies to public improvements constructed on bluff faces based upon the City Council's interpretation and action to approve Coastal Land Use Plan Amendment No. 2007-003 on November 13, 2007, so this standard is not applicable. However, project compatibility is a goal supported by other General Plan and CLUP policies. The comment indicates that the proposed gross floor area is not compatible when compared with development along Carnation Avenue. The comment is noted; however, floor area is not necessarily a good measure of compatibility for residential applications. From a visual perspective, the project will be viewed from the street where a strong argument can be made that not only is the proposed project generally visually compatible with the surrounding area, but it is also significantly more visually compatible than the structure it is intended to replace. Similarly, when viewed from the harbor, it would be visually compatible with other structures immediately to the south as illustrated in Exhibit 4.5-15 in the Draft EIR. The series of visual simulations presented in Section 4.5 of the Draft EIR illustrate the existing visual character of the site as well as after development of the proposed project occurs. When compared to the existing apartment structure, the simulations reveal that the high vertical elements of the existing structure are replaced with curvilinear features that conform to the bluff landscape for the purpose of minimizing the effect of the proposed development. When compared to the other existing residential development, including the significantly larger Channel Reef project, the proposed project scale of the proposed project and its effect on the bluff is reduced through the implementation of curvilinear features, natural color, and building materials.

Response to Comment No. 3-22

Refer to Responses to Comment Nos. 3-1, 3-9 and 3-10.

Response to Comment No. 3-23

As indicated in Response to Comment No. 3-18, grading of 25,240 cubic yards of earth material behind the bluff does not result in changes to the bluff face below elevation 50.7 NAVD88, with the exception of the emergency exit from the lower level to the existing access stair4case on the bluff face, which will be screened from view.

Response to Comment No. 3-24

The Construction Management Plan (CMP), to which reference was made throughout the Draft EIR, is included in the DEIR as Appendix B. Copies of the Draft EIR, including the CMP, were available at the City of Newport Beach Planning Department and the Newport Beach Public Library (1000 Avocado), Mariner's Branch Library (2005 Dover Drive), and the Balboa Branch Library (100 East Balboa Boulevard).

Response to Comment No. 3-25

The project applicant will be responsible for any repairs to the damaged roadways along the haul route that may be required as a result of construction activities associated with project implementation.

Response to Comment No. 3-26

The visual simulations illustrate the proposed residential structure with blue eaves. The colors selected for the proposed project are intended to complement the natural bluff character and setting along Newport Harbor.

Response to Comment No. 3-27

Implementation of state-of-the-art energy features, upgrading of the existing catch basin, and undergrounding of the existing overhead utility lines by removing two utility poles at the corner of Ocean Boulevard and Carnation Avenue are voluntary off site community benefits provided by the applicant. These benefits are not required by the City. As a result, the inclusion or exclusion of these benefits in a particular alternative is a function only of the applicant's willingness to provide for such benefits. "Voluntary" means that the applicant agrees to provide the benefit. Reasonable alternatives under CEQA should not include requirements that cannot be legally imposed.

The project would require a total of 61 caissons as opposed to the 75 caissons required by the 3 Single Family Home Alternative. This is due to the fact that the 3 Single Family Home Alternative would necessitate three separate structural foundations, each of which would require a sufficient number of caissons, as noted below:

Number of caissons for Lot 1 =	21
Number of caissons for Lot 2 =	27
Number of caissons for Lot 3 =	27
Total number of caissons =	75

The six-year construction timeframe associated with the 3 Single Family Home Alternative was determined based on an expert opinion rendered by Lyleen Ewing, real estate agent with Coldwell Banker Previews International as indicated in the attached letter. Because a multi-family structure is built as a single project, it is irrelevant as to whether there are eight buyers. The commenter's opinion about the viability and compatibility of the 3 Single Family Home Alternative is noted.

Response to Comment No. 3-28

Implementation of state-of-the-art energy features, upgrading of the existing catch basin, and undergrounding of the existing overhead lines by removing two utility poles at the corner of Ocean Boulevard and Carnation Avenue are voluntary off site community benefits provided by the applicant (refer to Response to Comment No. 3-27). These benefits cannot be required by the City. As a result, the inclusion or exclusion of these benefits in a particular alternative is a function only of the applicant's willingness to provide for such benefits.

The proposed 5-unit alternative is approximately 39,017 square feet. The commenter's opinion about the reasonableness of the 5 Unit Multiple-Family Alternative is noted. As indicated in the discussion of this alternative on page 10-16, while there would be reductions in short-term, construction-related impacts, they are outweighed by a reduction and/or elimination of project components, including upgrading of the existing catch basin, energy conservation features, and the removal of utility poles. In addition, as set forth in Chapter 10.0, the project objectives would not be achieved to the same extent as the proposed project.

Response to Comment No. 3-29

The commenter's opinion about the reasonableness of the two 8-Unit Multiple-Family Alternatives is noted. Refer to Response to Comment No. 3-28.

Response to Comment No. 3-30

In order to address the possibility that the project may not be completed, the Newport Beach Planning Commission previously identified a condition to which the applicant has given concurrence. This condition would stipulate the following:

Prior to the issuance of a grading or building permit, the applicant shall provide the City with a performance bond or its equivalent to ensure timely completion of all improvements represented on plans and drawings submitted for permit approval in the event construction of improvements consistent with project approval is abandoned. The performance bond or its equivalent shall be in 100% of the cost of the building shell. The bond or equivalent shall be released in 25% increments upon completion of each quarter of construction of the building shell. The performance bond or its equivalent shall be issued with the City as beneficiary by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance in the State of California and shall have an assigned policyholders' Rating of A (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Bests Key Rating Guide unless otherwise approved by the City Risk Manager.

The potential liability related to bluff failure they could affect adjacent properties including public improvements within the abutting right-of-way rests with the project applicant, his design team, and contractors. In the event the applicant declares bankruptcy during construction, the City would have the ability to call in the bond that would be posted to complete the project.

4. Moote Group (May 1, 2009)

Response to Comment No. 4-1

Refer to Responses to Comment Nos 3-10, 3-18, and 3-23

Response to Comment No. 4-2

The dock access/emergency exit, which also acts as the access to the bluff face staircase leading down to the cove and docks, has been designed to blend into the existing natural character of the bluff through the use of natural landscape and hardscape material, including rocks. The door itself is recessed behind the bluff face. As a result, the exit is considered to be consistent with PLOED because the PLOED's purpose is to protect visual resources. Because it represents a life safety feature, it is consistent with the intent of Policy No. 4.4.3-12, and is located 2.18 feet above the lowest level of the existing apartment structure on the site, the City Council has the discretion to find this feature consistent with this policy and the PLOED. This access/emergency exit meets the bluff face at elevation 44.48 feet NAVD88 and not at elevation 40.5 feet NAVD88 as suggested by the Moote Group. The basement level (finished floor) is at elevation 40.5 feet NAVD88 and not the dock access/emergency exit

Response to Comment No. 4-3

As stated in the DEIR, the excavation of the subterranean levels at the bluff will leave a trapezoidal section of intact rock as part of the bluff face. Based on the planned basement level excavation and adjacent bluff configurations shown on cross-sections, the minimum horizontal setback distance between the basement wall and bluff face at elevation 30.0 feet NAVD88 is generally 20 feet or greater and at PLOED elevation 50.7 feet NAVD88, it is generally 5 feet or greater. Shoring will consist of drilled and cast-in-place concrete caissons and lagging will be incorporated where required. A Soilmec track-mounted drilling rig is currently being considered to excavate these caissons, and is capable of drilling through massive, hard and moderately cemented sandstone to the depths anticipated at this site with no shocks and minimal or no vibrations. Ram hoe equipment will not be required at this area of the site. In addition, provisions for special excavation are included in Neblett & Associates, Inc. Conceptual Grading Plan Review Report (dated September 30, 2008) and may be used in limited zones of the excavations adjacent to the shoring system.

A pinnacle of rock to remain in place will front the access entry area. This pinnacle of rock will result from a maximum 5 feet excavation at this location and will be landward of the 50.7 feet elevation development line. In view of the limited excavation operation at this location, it is not anticipated that this pinnacle of rock will be compromised. In the event that this pinnacle of rock is compromised, it is intended to be reconstructed with artificial rock in accordance with Local Coastal Program Policy 4.4.3-12.

Vibration monitoring and surveying of surface monuments will also be performed during shoring installation, subterranean level excavation operations, and construction activities, and these operations will be modified, as necessary, to mitigate potential damage to the trapezoidal section of intact rock bluff to remain.

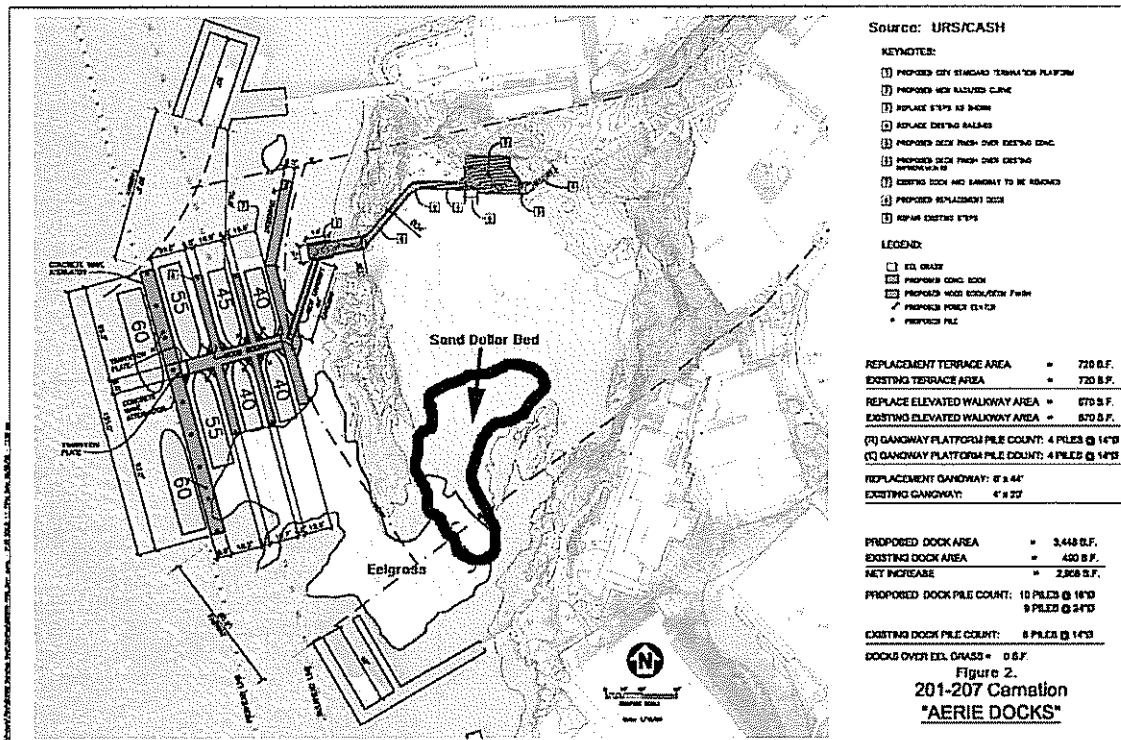
Response to Comment No. 4-4

Contrary to the commenter's assertion, by no means is there certainty that the rock face will sustain damage due to the construction activity. The section of rock is a trapezoidal shape with a generally 20' base and 5' wide upper section. The rock strength will resist erosion and potential of failure for the economic life of the structure. The bluff face is not at risk in the area of the dock access/emergency exit. The excavated rock will be contoured to the City's CLUP (LCP) policy 4.4.3-12 (H) "Requiring any altered slopes to blend into the natural contours of the site."

Response to Comment No. 4-5

As illustrated in the figure following this response, the sand dollar beds are located approximately 100 ft to the southeast inside the cove. They are not present at the proposed dock location. The overlap in eelgrass and proximity to placement of the piles is also shown in the figure. The edge of the eelgrass bed is within several feet of three of the proposed pile locations. As indicated in the Construction Management Plan (CMP), the project includes the implementation of Best Management Practices (BMPs), which will be used during pile emplacement to minimize and avoid losses of eelgrass. The BMPs include but are not limited to the use of silt curtains and the least-damaging method of pile emplacement. All piles will be pre-drilled, since there is rock and shale below the surface. A steel sleeve can be placed around the drilling operation to control the sedimentation during the installation process. The contractor and coastal engineer will also work to contain and/or minimize the tailings from the hole, to reduce impacts to water quality and eelgrass bed resources.

Losses of eelgrass, if any, as a result of pile emplacement will be determined during agency-mandated pre-and-post eelgrass surveys and mitigation will be implemented in accordance with the Southern California Eelgrass Mitigation Policy Guidelines (NMFS 1991 as amended). As a note, the project does not propose pile driving. All piles will be pre-stressed concrete piles set in pre-drilled, augered holes.



Response to Comment No. 4-6

This comment suggests that the air quality analysis should be reviewed by a third party "expert." It is important to note that the Draft EIR, including the air quality analysis, was submitted to the South Coast Air Quality Management District (SCAQMD) for review and comment during the public comment period; the SCAQMD did not submit comments to the City. No specific comments related to the adequacy of the air quality analysis are presented in this letter and no response is required.

Response to Comment No. 4-7

This comment reflects the opinion of the commenter and does not raise any issues related to the adequacy of the acoustical analysis. No response is necessary.

5. Jan D. Vandersloot (May 3, 2009)

Response to Comment No. 5-1

A vegetation map was prepared by Robert Mitchell & Associates, as noted on page 4.7-1 (refer to footnote 1) in the Draft EIR. This map is attached to these Responses. The plant species occupying the subject property are identified and described on page 4.7-1 on the Draft EIR. Although it appears that the commenter is suggesting that a mitigation measures be imposed to retain non-native species currently occupying the site, the project includes design features requiring the exclusive use of native drought-tolerant plant species determined do be consistent with the California coastal bluff environment. This is an environmentally superior approach to the suggestions presented in this comment. As indicated in Response to Comment No. 2-20, all invasive plant species will also be removed. It is important to note that existing native plant species will not be removed.

Additionally, as noted in footnote 1 on page 4.7-1 of the Draft EIR, none of the native species on-site was removed. The lemonade berry will remain on-site. With respect to shading effects, refer to the discussion on page 4.7-14 and Exhibit 4.7-1 on page 4.7-15 of the Draft EIR.

Response to Comment No. 5-2

The City's CLUP recognizes that in certain instances, habitats presumed to be ESHA may occur in settings where the ecological functions are minimal and that the ESHA presumption is rebuttable. Specifically, the CLUP recognizes four factors that should be considered, which when present allows for rebuttal of the ESHA presumption. Specifically the factors are:

- Patch Size and Connectivity;
- Dominance by Invasive, non-native species;
- Disturbance and proximity to development; and
- Fragmentation and Isolation

The vegetation noted by the commenter consists of a few individuals California buckwheat (*Eriogonum fasciculatum*) shrubs, a single patch of lemonadeberry (*Rhus integrifolia*) that likely consists of a single shrub or two, and a few scattered individuals of California encelia (*Encelia californica*). At most, the subject vegetation covers a few hundred square feet. Based on the CLUP, an ESHA designation would not be appropriate based on 1) the small amount of vegetation, literally consisting of a handful or individual shrubs that because of their small size, exhibit minimal ecological function; 2) the subject vegetation is surrounded by areas of non-native vegetation including ornamentals associated with the residences as well as some highly invasive species (e.g., giant reed), 3) the proximity of the small patch of vegetation to existing development further limits the ecological functions of the small area of vegetation; and 4) the patch is generally isolated from larger patches of native scrub vegetation by the adjacent development.

Based on all presence of each of the four CLUP-defined factors, designation of the small area consisting of common shrubs with little ecological value, an ESHA determination is not warranted based on the site-specific data.

Response to Comment No. 5-3

Refer to Response to Comment No. 2-33.

Response to Comment No. 5-4

Refer to Response to Comment No. 2-35

Response to Comment No. 5-5

CRM observations of the eelgrass bed in summer 2008 within and outside the cove indicated that the areal cover is similar to that of 2003-2004 and 2005-2007. Eelgrass density was 273 turions per square meter in March 2004; in August 2008, the density was slight less (221 per square meter). A baywide eelgrass density decline was observed at most areas sampled; it was not limited to the Carnation Cove area. Eelgrass bed area and density information to be used for the final impact analysis will be determined during agency-mandated pre-and-post eelgrass surveys according to the Southern California Eelgrass Mitigation Policy Guidelines (NMFS 1991 as amended). Eelgrass grows outside of the current footprint of the dock's structure. As stated in the impact analysis, there is 30 square feet of eelgrass may potentially be underneath 3,448 square feet of dock structure, which is 0.9% of the total dock. Projects that implement BMPs that include using translucent dock materials, or other methods to increase light underneath docks and vessels are encouraged, but not mandated by NMFS. Effects of dock and vessel shading are evaluated over a two-year post-construction monitoring period. If at the end of the two years of monitoring, eelgrass loss is the result of shading than this loss is required to be mitigated at a ratio of 1.2 to 1 (mitigation to loss ration, NMFS 1991, as amended). There is no formal "credit" within the NMFS eelgrass mitigation policy that gives "credit" to a project that increases eelgrass cover under docks or boats.

Response to Comment No. 5-6

Sediment deposited along the entrance channel at Newport Harbor is due to the uniqueness of sequential sediment transport patterns that are typically observed in the harbor entrance area. Coastal alongshore drifted sands are transported either through the wedge area or via the entrance channel during the winter months and moved further into the bay by southerly swells primarily occurring in the following summer season. Sand-quality sediment movement within the project region is typically in the along-channel direction from the harbor entrance to the inner bay. Flow patterns (i.e., potential sand movement patterns) at the project site during typical flood/ebb tide cycles were presented in the Coastal Engineering Assessment Appendix (see Figures 9 and 10). With a small percent of the along-channel blockage area resulting from the proposed new dock facility, the potential impact to this unique sediment movement process in the entrance channel is insignificant.

Response to Comment No. 5-7

The project site is not potential habitat for the tidewater goby; therefore, this species is not expected to occur at the project site. The EIR will be revised to correct the inconsistency noted in this comment.

Response to Comment No. 5-8

Comment noted. The commenter's address was included on the mailing list for the project.

6. California Department of Transportation (May 4, 2009)

Response to Comment No. 6-1

This comment identifies Caltrans' responsibility as a commenting agency and indicates that it has not comments on the Draft EIR. As suggested in this comment, should any work related to project implementation occur with a Caltrans right-of-way, the applicant must first obtain an encroachment permit from that agency. This comment is acknowledged; no response is necessary.

Response to Comment No. 6-2

As suggested in this comment, the City of Newport Beach will continue to notify Caltrans of this project and future development that could potentially affect State transportation facilities. This comment is acknowledged; no response is necessary.

7. Comprehensive Planning Services (May 4, 2009)

Response to Comment No. 7-1

As stated in Section 1.0 of the air quality technical analysis (refer to Appendix D), demolition is based on the removal of 16,493 square feet of existing structure. Grading is based on 1.4 acres of land and 25 percent of this area is disturbed daily during grading activities. These assumptions are reflected in the analysis presented in Table 1 of the Air Quality Analysis and summarized in Section 4.3 of the Draft EIR.

Response to Comment No. 7-2

Section 15145 of the CEQA Guidelines provides that "[i]f, after thorough investigation, a lead agency finds that a particular impact is too speculative for evaluation, the agency should note its conclusion and terminate discussion of the impact." Although technical data does not yet exist that would allow the City to determine without the use of undue speculation how a project of this size would impact global climate, the Draft EIR nonetheless presents a substantive discussion of the effects of global climate and the Project's potential greenhouse gas (GHG) emissions. Section 4.3 addresses the nature of global climate change, identifies daily operation emissions, discusses the project's greenhouse gas emissions, identifies the active and passive "green strategies" that the project will employ, and, after providing this thorough analysis, concludes that there is no way to state with reasonable scientific certainty that the project will conflict with any state policies related to global warming.

Because there is general scientific acceptance that global warming is occurring and that human activity is a significant contributor to the process, it is easy to conclude that the emission of even a minute amount of GHG contributes to the warming process. However, under CEQA, this would be an improper standard for at least two reasons. First, AB 32 has explicitly stated the State's policy that "*de minimis*" emissions shall not be subject to regulation. Specifically, AB 32 (in Health and Safety Code §38561(e)) tasks CARB with "*recommend[ing] a de minimis threshold of greenhouse gas emissions below which emission reduction requirements will not apply.*" Thus, not only does AB 32 not require that *all* project emissions be regulated, it explicitly states the Legislature's intent that a threshold be established to identify "minor" amounts of emissions which will not be part of a regulatory program.

Second, the evaluation under CEQA of a project's *direct* impacts does not start and finish with the simple question of whether a project *contributes* to an environmental effect such as global climate change. Rather, CEQA requires a legitimate determination as to whether the project contributes to a level that makes that contribution *significant*. CEQA defines a "significant effect on the environment" as a substantial, or potentially substantial, adverse change in the environment (Public Resources Code §21068.) Exactly what contribution to an impact is required for an impact to be "significant" is evaluated through the establishment of a "threshold of significance." CEQA Guideline §15064.7 defines a "threshold of significance" as "an identifiable quantitative, qualitative or performance level of a particular environmental effect, non-compliance with which means the effect will normally be determined to be significant by the agency and compliance with which means the effect normally will be determined to be less than significant." A threshold of significance cannot be an arbitrary measure.

There is little, if any, support in the scientific and environmental communities for the proposition that an isolated project's relatively miniscule contribution of GHG *standing alone* (i.e., a direct, as opposed to cumulative, project impact) would alter the course of global climate change. Assuming *only* existing environmental conditions in combination *only* with the GHG emissions of an isolated project (i.e., without taking into consideration other past, current, and future projects throughout the world), there is no credible argument that the GHG emissions of virtually any isolated project standing alone would have a substantial, or potentially substantial, adverse impact on global climate conditions. For these reasons, although information regarding the gross GHG emissions of the proposed project is provided within this section,

substantial evidence does not exist to support a threshold of significance for direct project impacts absent the use of speculation

With respect to cumulative impacts, any threshold for cumulative significance must delineate a marker for determining whether the proposed project's effects would be "cumulatively considerable," meaning "that the incremental effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of current projects, and the effects of probable future projects." (CEQA Guidelines §15065(a)(3))

As previously noted, because global climate change is the product of GHG emissions *throughout the world*, it is not possible to identify all past, current, and probable future projects on planet Earth without gross speculation. Additionally, evaluation using speculative "per capita" or other projections of worldwide GHG emissions based upon projections of population growth over many decades may provide valuable information, but would not constitute an analysis of the "incremental effects" of the project in either of the contexts identified in Section 15130(b) of the CEQA Guidelines which are discussed above. Until either (i) the Air Resources Board completes sufficient work under AB 32 to provide a cumulative impact analytical framework which is the equivalent of an "adopted general plan or related planning document," or (ii) the Legislature establishes a different basis for evaluating cumulative impacts under CEQA, establishing a significance threshold which meets current CEQA legal requirements will be dependent upon speculation.

Therefore, because the establishment of thresholds of significance would require undue speculation, this DEIR does not establish a threshold of significance for either direct or cumulative impacts to global climate change. That discussion reflects the thorough and thoughtful investigation required by CEQA and identifies certain measures to be incorporated within the Project that will lower potential GHG emissions. In the end, however, the DEIR's conclusion that the potential global climate change impacts of the project cannot be calculated without undue speculation falls squarely under the directive of Section 15145.

Response to Comment No. 7-3

The primary toxic air contaminant of concern during the construction of the proposed project involves the emissions of diesel particulate matter (DPM). DPM is emitted from the exhaust from onsite construction vehicles as well as trucks accessing the project site. DPM was not analyzed in the DEIR because there is no potential for a significant impact for the following reasons:

- Exposure to construction vehicle emissions will be very brief. The "heaviest" period of construction vehicle trips involves excavation and will occur during construction Phase I, roughly July 16, 2010 to January 10, 2011. Such a short exposure duration to air toxics would yield a lower health risk because there would be a shorter time frame for the accumulated risk.
- Construction and delivery vehicles will be required to turn off their engines while on site.
- SCAQMD's AB2588 guidelines contemplate a 70-year exposure for residential cancer risks and a 40-year exposure for worker cancer risks. By contrast, the "heaviest" period of construction vehicle trips involves excavation and will occur over about 6 months, roughly July 16, 2010 to January 10, 2011. Because of the brevity of construction activities, the SCAQMD does not recommend that construction projects be evaluated for health risk impacts.
- There will not be a substantial quantity of DPM sources. Project related construction vehicles will operate at the site for a duration of 8-10 hours per day and will consist of a maximum of about 30 vehicles distributed over the project site. This quantity of construction vehicle use is minimal considering that the SCAQMD's Multiple Air Toxics

Exposure Study (MATES-III) identifies the majority of health risk in the south coast air basin from roadways. In comparison, the 405 freeway in Orange County has an annual average of 9,000-14,000 truck trips occurring 24 hours a day and operates on a permanent basis.

Based on the reasons identified above, the health risk impacts from DPM emissions during construction activities do not represent a significant impact.

Response to Comment No. 7-4

Table 1-1 in the Draft EIR provides a summary of the potential project impacts, mitigation measures (if any), and the level of significance after mitigation is implemented. Several "standard conditions" are identified not only in that table but also in Section 4.3.3 (refer to page 4.3-11). In addition, several "project design features" are also identified in Table 1-1 that are incorporated into the project to avoid potentially significant impacts. Neither the standard conditions nor the project design features are mitigation measures as suggested in this comment. Nonetheless, they have been included in the Executive Summary table and will be included in the Mitigation Monitoring and Reporting Program (MMRP) to ensure that they will be implemented as proposed by the project applicant and/or required by the SCAQMD.

Response to Comment No. 7-5

A discussion of the potential lighting impacts is presented on page 4.5-29 of the Draft EIR. That discussion indicates that:

"The project has been designed to minimize glare by incorporating building materials that are not conducive to the creation of glare. For example, exterior materials proposed for the residential structure would consist of non-reflective materials, including a titanium roof and photo-voltaic array with a matte finish, stucco-covered walls, and stone accents with rough, rather than polished textures. Tinted glazing is proposed on the windows and most of the windows will have overhangs that will cast shadows over the glazing. As a result, no significant glare impacts from building finish materials are anticipated and no mitigation measures are required."

Similarly, an extensive set of visual simulations has been included in the Section 4.5 of the Draft EIR that illustrate vantages from several locations inside the harbor, including those that are available to recreational boat users in the harbor. The discussion of Visual Simulation V17 (refer to Exhibit 4.5-17) on page 4.5-22 does address views to the small beach below the bluff. As indicated in that discussion and suggested elsewhere in the visual analysis, although some visual access from the bay would be affected by the dock from time to time as one passes up and down the harbor, none of the significant existing cove and bluff features will be permanently damaged or destroyed. Views to those important visual features will still be available, depending on one's location relative to the cove and related features. As a result, no significant visual impacts are anticipated.

Response to Comment No. 7-6

Refer to Response to Comment No. 3-24.

Response to Comment No. 7-7

The EIR analyzes several potentially feasible alternatives to the proposed project, including: (1) No Project/No Development; (2) Alternative Site; (3) Reduced Intensity/3 Single-Family Residences; (4) Reduced Intensity/5 Multiple-Family Residential Project; and (5) Existing Zoning/8-Unit Multiple-Family Residential Project with Reduced Grading. The comment states that the EIR's alternatives are narrow in

scope and biased toward the project. This is inaccurate. In fact, the DEIR's range of reasonable alternatives was selected based upon their ability to avoid or reduce significant environmental impacts of the project and to feasibly attain most of the basic project objectives, as required by CEQA.

The 3 Single Family Home Alternative and the 5-unit Multi-family Alternative were not selected as the environmentally superior alternative because they would not result in the same degree of benefits as would be derived from project implementation (e.g., underground overhead power poles creating an improved aesthetic character on Carnation Avenue and upsizing of the existing deficient catch basin). Since none of the improvements to drainage, aesthetics and/or energy conservation systems would be included in the 3 Single Family Home Alternative, the environmental benefits would not accrue to that alternative.

The DEIR identifies no significant impacts related to GHG emissions (refer to Response to Comment No. 7-2). Because CEQA clearly allows only project alternatives that eliminate or substantially reduce identified project-related impacts, the commenter's focus on GHG emissions is not relevant to the alternatives analysis. GHG emissions were, in fact, effectively considered in the evaluation of the relative environmental merits of the alternatives through the consideration of the energy-efficient project design features. Nonetheless, the GHG emissions for the project and any of the alternatives are so minimal that differences the emissions between the various alternatives is not considered significant enough to warrant the selection of one alternative over another.

8. Jinx L. Hansen (May 4, 2009)

Response to Comment No. 8-1

This comment expresses concern that several issues evaluated in the Draft EIR have been misrepresented or have not been adequately addressed. However, no specific comment related to the inadequate analysis is identified. Therefore, no response is possible or required.

Response to Comment No. - 82

Refer to Response to Comment No. 3-24.

Response to Comment No. - 83

The commenter has cited information as set forth in the DEIR but has not raised any questions or comments related to the adequacy of the analysis. Therefore, no response is possible or required.

Response to Comment No. 8-4

Table 1-1 in the Executive Summary (refer to Chapter 1.0 of the Draft EIR) enumerates the relevant project design features that are project elements that are intended to ensure that potential adverse effects of construction traffic are avoided or minimized. As indicated in the CMP (refer to Appendix B in the DEIR), construction staging will be coordinated by a team of flag persons to ensure that neighborhood impacts are minimized. The construction process is thoroughly described in the CMP, which discusses construction staging, traffic control, parking and safety related to the additional traffic. These aspects of the proposed project are also discussed in the Draft EIR in Section 4.2 (refer to pages 4.2-2 through 4.2-5 in the Draft EIR). Potential impacts associated with construction activities, including the hauling operations that would result in over 2,000 heavy truck trips, are evaluated in Section 4.2 (Traffic and Circulation). These potential impacts are summarized in the Executive Summary (Table 1-1). As indicated in this comment and prescribed in the CMP and reflected in the Draft EIR, heavy truck traffic would be limited to a maximum of four trips per hour. To ensure that construction traffic does not exceed the levels identified in the Draft EIR, the traffic control plan identified in the CMP will be strictly enforced. To prevent obstruction of traffic lanes in the project vicinity, a flag person will be retained to maintain safety adjacent to the roadways. In addition, a construction valet and a team of flag persons will also direct traffic at the site, shuttle drop-off/pick-up, and material deliveries. During the excavation process, the flag person will coordinate with the foreman at the dump site who will radio in the dump trucks from the Olinda-Alpha Sanitary Landfill at the rate of one truck every 15 minutes. The CMP provides measures to assure that trucks will not be lined up along the haul route during any stage of construction. The analysis in the Draft EIR concludes that through the implementation of the project design measures prescribed in the CMP, the potential adverse construction-related traffic impacts would be reduced to an less than significant level. This comment, which expresses disagreement with the effectiveness of the "mitigation measures" is acknowledged.

Response to Comment No. 8-5

As indicated in the CMP, to prevent obstruction of through traffic lanes, which could affect residents exiting their homes via automobile, traffic control will be coordinated with the Police Department and Public Works Department (Traffic and Development Services Division) to ensure vehicular safety. In addition, a flag person will be retained to maintain vehicular safety in the vicinity of the subject property and neighborhood.

Response to Comment No. 8-6

Section 5.0 in the CMP addresses safety and security. At the present time a pedestrian walkway does not exist adjacent to the site. Secure fencing will be installed to foster pedestrian safety and a four-foot wide temporary walkway will be designated in front of the fencing at the street curb along Carnation Avenue during Phases I and II of construction. During Phase IV, the chain link fence will be pulled back four feet from the street curb. In addition, if required by the Public Works Department, a four-foot wide temporary crosswalk will also be created across Carnation to direct pedestrians to the existing sidewalk on the south side of the street. Other features of the prescribed measures included in the CMP to address safety and security include the construction of a six-foot perimeter fence and appropriate signage indicating the limits of the construction area. Refer to the Appendix B in the Draft EIR for a complete discussion of the safety measures that will be implemented.

Response to Comment No. 8-7

Refer to Responses to Comment Nos. 3-10, 3-18, and 3-23.

Response to Comment No. 8-8

Comment noted. The sand dollars are within the cove, and not near the docks. Based on coastal engineering studies of sand transport, the sand dollar populations within the cove will not be affected by the dock component. The dock component will not cause any changes within the sediment transport regime.

The dock component has not been before the Harbor Commission for approval. In fact, the first step in the dock approval process will be taken by the Harbor Resources Manager, who must approve or disapprove the application for the dock expansion. The Harbor Resources Manager's decision may be appealed by any interested party to the Harbor Commission. Only then will the Harbor Commission vote on the application for the dock expansion. Any Harbor Commission decision may be appealed to the City Council.

The Harbor Commission did not "recommend denial" of the docks at its April 8, 2009 meeting, as suggested by the comment. Instead, according to the City's draft minutes from that meeting, the Commission went on record as not opposing the expansion of the existing dock. Commissioner Beek made the following advisory motion, "While not opposed to the expansion of the existing dock and its area and capacity we believe the size and configuration of the proposed dock project would create significant negative impact on, navigation and recreational boating in the harbor". This motion, which carried with all eyes, has no legal effect.

Response to Comment No. 8-9

A construction bond is a surety bond, which is a guarantee in which the surety guarantees that the contractor, called the "principal" in the bond, will perform the "obligation" stated in the bond. For example, the "obligation" stated in a bid bond is that the principal will honor its bid; the "obligation" in a performance bond is that the principal will complete the project; and the "obligation" in a payment bond is that the principal will properly pay subcontractors and suppliers. Bonds frequently state, as a "condition," that if the principal fully performs the stated obligation, then the bond is void; otherwise the bond remains in full force and effect.

If the principal fails to perform the obligation stated in the bond, both the principal and the surety are liable on the bond, and their liability is "joint and several." That is, either the principal or surety or both may be sued on the bond, and the entire liability may be collected from either the principal or the surety. The amount in which a bond is issued is the "penal sum," or the "penalty amount," of the bond. Except in a

very limited set of circumstances, the penal sum or penalty amount is the upward limit of liability on the bond.

The person or firm to whom the principal and surety owe their obligation is called the "obligee." On bid bonds, performance bonds, and payment bonds, the obligee is usually the owner. Where a subcontractor furnishes a bond, however, the obligee may be the owner or the general contractor or both. The people or firms who are entitled to sue on a bond, sometimes called "beneficiaries" of the bond, are usually defined in the language of the bond or in those state and federal statutes that require bonds on public projects.

With respect to the possibility that the project may not be completed, refer to Response to Comment No. 3-30.

In the event that damage to local streets occurs as a result of the construction activities, including streets along the haul route, the project applicant and/or contractor will be responsible for ensuring that the damage is corrected to the satisfaction of the City of Newport Beach.

Response to Comment No. 8-10

The project design features included in the CMP as well as the standard conditions and other mitigation measures will be included in the Mitigation Monitoring and Reporting Project (MMRP) as required by CEQA. The MMRP identifies each measure, the method of verifying how each measure will be implemented, and who will be responsible for implementing the measure. The City of Newport Beach will be responsible for ensuring that each mitigation measure is implemented in accordance with the MMRP.

Response to Comment No. 8-11

As indicated in Table 4.1-1 (refer to page 4.1-12), the proposed project is consistent with Policy No. CE 7.1.1, which requires the provision of adequate, convenient parking. The proposed project provides a total of 23 off-street parking spaces (not including six additional "lift" parking spaces) within the proposed residential structure, which exceeds the City's parking code requirements. In addition, project implementation will result in an increase in the number of on-street parking available to visitors to the neighborhood because the existing curb cut will be substantially reduced; three new parking spaces will be created on Carnation Avenue. This comment, which suggests that the proposed project is not consistent with the surrounding neighborhood, is acknowledged.

9. Melinda Luthin, Esq. (May 4, 2009)

Response to Comment No. 9-1

The Construction Management Plan (CMP) is attached to the Draft EIR as Appendix B, as indicated on page 3-27 of the document. The CMP was prepared by the applicant as part of the project description. The document has been reviewed extensively in the preparation of the DEIR. The CMP has been available for review and comment throughout the public review and comment period for the DEIR. Refer to Response to Comment No. 3-24. The CMP is a component of the proposed project, meaning that the environmental evaluation conducted for the project considers all of the measures included in the CMP to be part of the project proposal. Each of the measures in the CMP was considered where applicable in the evaluation of the project's potential significant effects. As indicated in Section 2.1.7 in the DEIR, the DEIR and all related technical appendices (including the CMP) were available for review and copying at the City of Newport Beach Planning Department, as well as the three of the City's public libraries. Therefore, recirculation of the EIR is not required.

Response to Comment No. 9-2

The comment alleges that the Project Objectives are "boilerplate" statements that read "like an advertisement for the project" and are not supported by facts. Under CEQA, the project objectives are intended to represent and reflect the applicant's goals for its project, not the lead agency's or those of the community. As discussed in CEQA Guideline Section 15124(b), the Project Description should contain "[a] statement of the objectives sought by the proposed project. A clearly written statement of objectives will help the Lead Agency develop a reasonable range of alternatives to evaluate in the EIR and will aid the decision makers in preparing findings or a statement of overriding considerations, if necessary. The statement of objectives should include the underlying purpose of the project."

The comment that the Project Objectives are "boilerplate" statements is wrong. The term "boilerplate" typically refers to standard legal provisions that are not customized or individualized to meet a certain set of facts. The Project Objectives were created by the applicant specifically to apply to the proposed project. For instance, it is highly unlikely that another project would include the following objective: "2. To enhance the aesthetic quality of the neighborhood by replacing a deteriorating 60-year old structure with a high-quality residential project utilizing unique modern design principles and featuring (a) the elimination of conventional garage doors for all units, (b) the concealing of all parking from street view, (c) significant landscape and streetscape enhancements, (d) the removal of two existing power poles on Carnation Avenue, as well as the associated overhead wires, and (e) replacing these features by undergrounding the new wiring." The features discussed in Objective 2 are unique to the project and the project site.

The comment that the Project Objectives are not supported by facts is also not correct. The objectives themselves, as set forth in Section 1.1.4, are not required to be supported by facts. Instead, they are statements that represent and reflect the applicant's goals for the project.

Response to Comment No. 9-3

The Project's "advanced design" relates to a myriad of features. Generally speaking, the proposed project has been designed to reflect a modern character, which complements the variety of architectural styles that exist within the Corona del Mar neighborhood. One significant "advanced design" attribute is the project's "curvilinear" form, which will allow the building to blend into the bluff when compared to the existing rectilinear features of the existing residential structure. Other advanced design features are the energy efficiency systems and design beyond the minimum Title 24 requirements planned by the applicant. The number and size of dwelling units in such a design, or any design, is typically a function of the land use density limitations and the applicant's objective(s).

Attainment of a given Objective (e.g., a sufficient number of units to justify certain project features) is subjective. Chapter 10 of the DEIR (Alternatives) discusses the extent to which each alternative would achieve the Objectives under the heading "Ability to Achieve Project Objectives."

The comment asks "What 'architectural diversity' of the community is this [project] trying to emulate?" First, diversity is not conforming or emulating what currently exists. By its nature, a project contributes to a community's "diversity" by being different. The project reflects diversity by not "trying to emulate" other structures in the community. As a result, the project has been designed to reflect a modern character, which complements the variety of architectural styles that exist within the immediate neighborhood.

The project will add distinction to the harbor and the neighborhood by redeveloping an existing site that was developed in 1949 and 1955. The existing dwelling units are older than many in the Corona del Mar neighborhood. The age and architectural character of the existing residential structures contrast with the character and quality of nearby homes, which have been remodeled and/or rebuilt and exhibit a variety of architectural themes that provide visual interest and variety.

Response to Comment No. 9-4

The proposed project includes the undergrounding of the existing overhead utility lines at the corner of Ocean Boulevard and Carnation Avenue. This is a voluntary off-site community benefit provided by the applicant in order to improve the aesthetic character of the area. The Subdivision Code (Title 19 of the Municipal Code) requires that utility lines for the project be underground. Since there are existing overhead utility lines to the site, the applicant will be required to place these lines underground to the nearest utility pole. Undergrounding of overhead lines beyond that point would not be required by Code.

Response to Comment No. 9-5

The proposed Aerie project has been designed utilizing "green" architecture criteria and energy efficient design, including but not limited to the following features:

- Design to maximize solar orientation to increase the use of daylighting concepts and reduce energy usage.
- Use of high-thermal mass for capturing and retaining heat through solar heat gain apertures.
- Optimum overhangs to minimize harsh summer sun exposures while allowing winter heat gain.
- Natural ventilation systems that capitalize on prevailing ocean breezes and thermal convection dynamics.
- Dual paned glazing systems using "Low-E" glass (both non-mechanical and hybrid systems).
- Solar domestic hot water and pool heating
- Solar photovoltaic arrays to generate electricity.
- Multi-zoned, high velocity hydronic heating and cooling systems.
- Instantaneous hot water boilers with solar domestic hot water assist.
- Reduction of energy use through high efficacy lighting fixtures.
- Lutron Homeworks interactive lighting control systems.

The comment asks why another project incorporating such design features is not being built instead. To the extent that these often expensive features are not required by local, state or federal regulations, their inclusion into the project is a business decision of the applicant rather than a regulatory decision imposed by the agency. Many or all of these features could be incorporated into another project. The City has the discretion to approve or deny the project as proposed.

Response to Comment No. 9-6

This comment reflects the opinion of the commenter and raises no environmental issues. No response is necessary.

Response to Comment No. 9-7

The comment questions Project Objective No. 5 and indicates that the project will decrease parking on the street. This statement is incorrect in that the length of the curb cut that currently provides vehicular access to the site will be substantially reduced. This will result in the creation of three on-street public parking spaces. The addition of these on-street parking spaces is considered a beneficial impact, particularly during the peak summer/tourist season.

Second, the project proposes a total of 25 parking spaces for the 8 condominiums, including 16 for residents, eight visitor spaces, and one service vehicle space. Additionally, two parking spaces have been provided for golf carts. This far exceeds the City's requirement of 20 parking spaces for an 8-unit condominium structure on the site. One residential unit and five guest parking spaces will not rely upon the use of the vehicle elevators. Two vehicle elevators are proposed to provide access to the remaining subterranean parking, which will minimize inconvenience and conflict. As indicated in Section 4.2 (refer to page 4.2-7), the entire elevator loading, elevator motion, and unloading procedure requires between one and one and one half minutes. Maintenance of the elevators will be required and emergency power supply will be required to ensure use of the elevators during a power outage. As a result, project residents and guests will be well served by on-site parking.

Response to Comment No. 9-8

The commenter is directed to Section 4.5 (Aesthetics), and particularly to the 17 visual simulations contained in that section. Although project implementation will result in the introduction of a different structure on the site, views from important public vantages (e.g., Begonia Park) would not be inhibited as a result of the project. Views through the site from the "public view point" at Ocean Boulevard and Carnation Avenue adjacent to the project would be enhanced. As indicated in Response to Comment No. 2-20, all invasive plant species will also be removed. The view angle through the site from that location to the harbor and ocean would be increased by approximately 76 percent as a result of project implementation.

In addition, the project will result in an enhanced view of the bluff below the proposed building when viewed from the Bay. Presently, the bluff face is altered to varying degrees with retaining walls supporting the apartment building and exterior walkways. This bluff face alteration due to existing development extends down the bluff faced to varying elevations from approximately 68 feet to as low as 42.3 feet. As a result of development, these altered portions of the bluff face below elevation 50.7 feet NAVD88 (PLOED) will be restored. The remainder of the bluff face below the PLOED established by the City Council will be preserved. These aspects of the proposed project will avoid a significant impact to the visual quality and views (which is a goal of the PLOED policies adopted by the City).

Views from important public vantages such as Begonia Park would not be significantly affected by the proposed project. The EIR Aesthetics analysis evaluated three views from Begonia Park (refer to Exhibits 4.5-9, 4.5-10, and 4.5-11):

- From the lower bench within the Park (Exhibit 4.5-9), the harbor and ocean to the west are clearly visible following implementation of the project. The proposed multiple-family residential structure and associated landscaping will extend outward onto the bluff and encroach slightly into the viewshed beyond the limits of the existing apartment building and single-family residence that currently occupy the site. However, only a small portion of the ocean view at the horizon would be affected by the proposed project from the lower

bench of Begonia Park; no portion of the harbor visible from this location would be affected by the proposed project.

- From the upper bench of Begonia Park (Exhibit 4.5-10), it is apparent that site development would extend outward onto the north face of the bluff, affecting a small area of the ocean view at the horizon. Similar to the lower bench view, no portion of the harbor view would be affected.
- The final visual simulation of the proposed project from Begonia Park (Exhibit 4.5-11) reveals that although the northerly encroachment of the multiple-family residential structure into the viewshed will occur, the effect on this view will be minimal. Only a small portion of the ocean at the horizon in the background would be eliminated from view and the view of the harbor is not reduced; however, this change would not be significant because it represents a nearly indistinguishable increment of the total viewshed and, in particular, the ocean view.

Based on the significance criteria identified in Section 4.5.2, implementation of the proposed project would not result in significant aesthetic impacts. Specifically, as discussed above, the proposed structure would not adversely affect views from Begonia Park.

Finally, the proposed project includes the voluntary undergrounding of existing off-site overhead utility poles and overhead lines at the corner of Ocean Boulevard and Carnation Avenue to improve and enhance the aesthetic character of the area. The City cannot require the undergrounding of the off-site overhead power lines and utility pole removal other than the power lines that extend from the utility pole directly across Carnation Avenue to the project. This comment expresses the opinion that the undergrounding of the utility lines and utility pole removal is insignificant. This opinion is noted and no further response is necessary.

Response to Comment No. 9-9

Project Objective No. 8 indicates that the applicant wants to minimize the project's impact upon private views by developing a project on average four feet below the zoning district's development standards. The comment suggests that the DEIR comment on the impact of the project's "maximum exceedences (*sic*)" that will occur. The project does not exceed the height limit of the zoning code and private views are not protected by any City policy or regulation. The commenter is directed to Section 4.5 (Aesthetics), and particularly to the 17 visual simulations contained in that section, for a discussion regarding the project's impact upon views.

Response to Comment No. 9-10

Table 1-1 in the Chapter 1.0 (Executive Summary) is not intended to provide an exhaustive analysis of the proposed project. Rather it provides a matrix that summarizes the potentially significant project-related impacts, mitigation measures (including standard conditions and project design features), and the residual impacts anticipated after the implementation of the project with the "mitigation." The conclusions contained in Table 1-1 are based on the analysis presented in each of the topical sections (e.g., Land Use/Relevant Planning, Traffic and Circulation, Noise, etc.), which reflect the findings and recommendations in each of the relevant technical studies prepared for the project as well as other research and analysis conducted for the project. The analysis of relevant General Plan policies (refer to Table 4.1-1) and Coastal Land Use Plan policies (refer to Table 4.1-2) revealed that the proposed project does adequately address the relevant policies and is consistent with those policies, including the provision of the 8-slip dock. Recognizing that Table 1-1 is a summary, the commenter is referred to each of the individual sections to obtain a better understanding of the analysis presented in the DEIR.

Response to Comment No. 9-11

Section 4.9.3 (refer to page 4.9-3) identifies four "standard conditions", including compliance with all applicable City codes (e.g., Excavation and Grading Ordinance) and the California Building Code requirements to ensure that potential soils and geologic characteristics that affect site development are adequately addressed in the grading and building design. In addition, extensive analysis of the site's soils and geologic conditions have been undertaken and completed, which serve to guide development of the site.

Response to Comment No. 9-12

The waiver of shoreline protection that will be executed by the property owner requires, as a condition of building the project and obtaining a coastal development permit, that the property owner waive its right under the coastal act to install future shoreline protective devices, such as a seawall, if its property is threatened by marine erosion. This requirement is a standard condition required by CLUP Policy 2.8.6-9 that is applied for all development occurring along the City's coastal bluff areas.

Response to Comment No. 9-13

This is a standard condition that has no specific application to this project except for the concrete pad. As pointed out in this comment, no new accessory structures are proposed. There is no information known to the City related to routine maintenance, soil integrity, or coastal erosion that has not been disclosed to the public in the DEIR and supporting technical studies. Additionally, routine maintenance is not a "project" in the context of CEQA necessitating environmental analysis.

Response to Comment No. 9-14

The geotechnical study prepared by Neblett & Associates was subject to a third party review by GMU. That review resulted in some comments on the analysis conducted for the proposed project, which have been addressed by the project geologist. In addition, the soils and geologic reports prepared for the proposed project have been submitted to the City for review by the City's Building and Safety Department. The project shall be designed in accordance with the recommendations presented in those reports, subsequent detailed soils engineering studies, and applicable City and State building code requirements. All final plans and final engineering report and calculations will be subject to plan check review, which will be performed by the City Building Department engineers to ensure that the grading and structural designs comply with the requirements stipulated by the geologist and the requirements of the most current California Building Code.

Response to Comment No. 9-15

The "first section" (i.e., Potential Impacts) in Table 1-1 for biological resources is not applicable. The Standard Conditions identified in the next column (i.e., Mitigation Measures) are simply conditions that must be implemented by all projects (e.g., compliance with local, state and/or federal laws and regulations, etc.) in the event they are applicable. In this case, because a portion of the project is located within the marine environment, the project must comply with State law related to marine organisms. In addition, because the site is located within the City's coastal zone, the City requires the use of native, drought tolerant plant species consistent with the coastal environment. The "standard conditions" are not mitigation measures; however, they will be included in the Mitigation Monitoring and Report Program (MMRP) to ensure that the project complies with all local, state and federal requirements.

Response to Comment No. 9-16

Refer to Response to Comment No. 9-14.

Response to Comment No. 9-17

The "qualified" biologist will be selected by the applicant subject to approval by the City of Newport Beach. The biologist shall possess any requisite certifications that may be required by the California Department of Fish and Game and/or U.S. Fish and Wildlife Service to conduct the pre-construction surveys.

Response to Comment No. 9-18

The commenter's statement does not reflect the facts and analysis as presented in the DEIR. All of the project design features incorporated to avoid potentially significant impacts are enumerated in both the executive summary (Table 1-1), Section 4.7, and the CMP. The commenter is directed to those discussions to better understand the means by which the project applicant has agreed to implement pre-emptive measures to avoid impacts to biological resources.

Response to Comment No. 9-19

The 30 square feet of eelgrass bed that has a potential to be affected by the project represents 0.3% of the eelgrass mapped in 2005 (10,155 square feet) and 2007 (10,082 square feet), both within Carnation Cove and in the vicinity of the proposed dock project. It represents 0.8% of the total amount of eelgrass just in the vicinity of the proposed dock.

Response to Comment No. 9-20

Refer to Responses to Comment Nos. 3-24 and 5-5

Response to Comment No. 9-21

The construction impacts to eelgrass are fully addressed in the biological assessment and in Section 4.7 in the DEIR. Construction impacts relate to potential loss of eelgrass during pile emplacement and the spread of turbidity plumes. All piles will be pre-drilled, since there is rock and shale below the surface. A steel sleeve can be placed around the drilling operation to control the sedimentation during the installation process. The contractor and coastal engineer will also work to contain and/or minimize the tailings from the hole, to reduce impacts to water quality and eelgrass bed resources. Measures to avoid or reduce to a level of insignificance any loss of eelgrass are set forth in the CMP and on page 4.7-16 in the Draft EIR.

Response to Comment No. 9-22

Should losses of eelgrass be documented during the pre-and post-construction surveys, a detailed mitigation plan will be developed at that time to offset project losses of eelgrass and included as part of the Coastal Commission permit conditions. Losses of eelgrass will be mitigated at a mitigation-to-impact ratio of 1.2 to 1 per the Southern California Eelgrass Mitigation Policy (NMFS 1991, as amended) by conducting an eelgrass transplant program either on-site, or within Newport Bay. Contrary to the commenter's contention, when the formulation of the precise means of mitigating impacts is truly impractical at the time of project approval, the agency may devise measures that will satisfy specific performance criteria identified at the time of project approval. (See e.g., *Sacramento Old City Assn. v. City Council*, 229 Cal App 3d 1011(1991).) The provisions of the CMP identified above constitute such a commitment by the applicant and the City to avoid or reduce to a level of insignificance all potential impacts to eelgrass.

Response to Comment No. 9-23

As noted in the DEIR, the public has and will continue to have access to Carnation Cove up to the mean high tide line. Neither the applicant nor the future residents have the authority to restrict that access at the present time. The cove is currently not designated as a protected resource (e.g., ESHA) and there are no legal impediments to the enjoyment by the public of the cove below the mean high tide line. Nonetheless, the CMP provides for measures to restrict enjoyment of the cove by workers during construction in order to avoid potential impacts to the sand dollars from their use of the cove. To achieve that objective, the CMP provides for the use of signage and tape to clearly identify the area and discourage use by construction workers. A project marine biologist will perform weekly onsite inspections to assure that the required protections are in place (refer to page 4 7-18 in the Draft EIR).

Response to Comment No. 9-24

This comment simply disagrees with the conclusion presented in the Draft EIR without providing any basis for that disagreement. The conclusion in the Draft EIR that visual impacts are not significant is based on an extensive visual analysis that includes several visual simulations that illustrates the proposed project from vantages in the project environs. As suggested in that analysis, views to the site will be altered by the development; however, the proposed project has been designed to avoid significant visual impacts. The project respects the predominant line of existing development established by the City and the structure has been sited to conform to the bluff topography. Building materials, colors and landscaping have been incorporated into the project to complement the natural topographic features. Views from Begonia Park are not significantly affected. Although views from the channel would be momentarily affected by the construction of the boat dock and related facilities, no important visual amenity (e.g., rock outcropping, cove, etc.) would be destroyed or permanently affected. Furthermore, views through the site will be enhanced as a result of the underground of some overhead utilities and an expansion of views through the site from Ocean Boulevard and Carnation Avenue. As a result, potential visual impacts would not be significant.

Response to Comment No. 9-25

This comment suggests that the lighting mitigation section is incomplete. Although SC 4.5-1 was mislabeled as SC 4.5.1 on page 4.5-2, three standard conditions (not mitigation measures) are included in this section of the Draft EIR, which is not incomplete.

Response to Comment No. 9-26

SC 4.5-3 (not SC 4.5-2 as indicated in this comment) requires the applicant to dedicate a view easement on the subject property. The intent of the view easement, which will be in favor of the public, is the protection and enhancement of public views through the site from Ocean Boulevard. As indicated in SC 4.5-3, the site must be designed to ensure that views are not blocked by structures and/or landscaping. The view easement is required to ensure that the view preservation and enhancement provided by the project remain in perpetuity for the benefit of the public.

Response to Comment No. 9-27

Encroachment into the Monterey Formation alone does not result in an actual impact, although it does create the potential for impacts to paleontological resources. However, those potential impacts are less than significant because a paleontological monitor will be present during grading activities (SC 4.10-2). As indicated in that condition, the paleontological monitor has the authority to redirect or halt excavation until the fossils are evaluated and/or salvaged. Furthermore, any discovery, along with supporting documentation and an itemized catalogue, will be accessioned into the collections of a suitable repository, thereby avoiding potentially significant impacts.

Response to Comment No. 9-28

The commenter presumably expresses the opinion that there will be a negative impact to the public due to the project's increased street parking and a belief that the project will have and hinder availability of beaches to the public. The commenter provides no basis or facts to support this contention. As set forth in Section 4.2 (Traffic and Circulation), project implementation will create three (3) additional on-street parking spaces (and not reduce it) with a reduction in the length of the existing driveway approach that currently provides access to the site. The proposed project provides a total of 25 off-street parking spaces (including two golf cart spaces and not including six "lift" parking spaces), which exceeds the City's off-street parking requirement of 20 spaces. By providing parking in excess of requirements, there will be reduced demand for street parking. With or without the project, the beach below the bluff is not visible from public areas adjacent to the project site. Project impacts would not result in any hindrance to public beach access. The cove below the bluff would not be blocked by the proposed dock and will remain accessible to kayakers and swimmers in the area to the same extent that it has been historically.

Response to Comment No. 9-29

The commenter provides conclusory statements without stating any basis for those conclusions. The only possible response is referring the commenter to the detailed discussion of drainage and hydrology contained in the DEIR. Section 4.6 (Drainage and Hydrology) provides a discussion of the post-development runoff and the potential impacts to water quality, including the effect on Newport Bay, which is an "impaired" water body under Section 303(d) of the Clean Water Act. As required by the City and the Regional Water Quality Control Board, the applicant has prepared a Draft Stormwater Pollution Prevention Plan (SWPPP) and Water Quality Management Plan (WQMP) to address construction- and post-construction water quality impacts, respectively. These plans include best management practices (BMPs) to filter pollutants, including bacteria, from stormwater to ensure that downstream water quality is not impacted. Several of the routine structural and non-structural BMPs are identified in the Section 4.6.4 of the Draft EIR. In addition, several measures are also incorporated as "project design features" in the CMP, which also serve to avoid significant water quality impacts. As indicated on page 4.6-11 in the Draft EIR, with the incorporation of the measures prescribed in the CMP.

The potential impacts to marine life are discussed in Section 4.7 (Biological Resources). Impacts to eelgrass, Carnation Cove marine life, marine mammals, including special status marine species, etc., are discussed in Section 4.7-4. To ensure that dock construction activities do not adversely affect marine life, several project design features have been included in the CMP as indicated above. These measures are also identified on page 4.7-16 (eelgrass) and other marine creatures (invertebrates). No significant impacts are anticipated to occur to marine fishes, mammals, reptiles, or birds.

Response to Comment No. 9-30

Based on a population per household (pph) of 2.19 persons (OCP-2006), the proposed project would support fewer than 20 persons. The site currently supports 15 dwelling units on the site, including 14 apartment units and one single-family residence. Only three of the 15 units are currently occupied. However, if all of the units were to be occupied, the site would support about 33 residents based on the 2.19 pph in the City. As a result, the proposed project would support fewer residents than the existing apartment building and single-family residence. Relative to density, the proposed project has a density of the proposed project is less than six dwelling units per acre (du/ac), compared to over 10 du/ac for the existing development.

10. Coast Law Group (May 4, 2009)

Response to Comment Nos. 10-1 through 10-5

The commenter offers the interpretation that Natural Resources Policy NR23.1 provides two separate and distinct development objectives that are to minimize alteration of a site's natural topography and to preserve the site's features as a visual resource. The commenter points to CLUP Policy 4.4.3-12 and the narrative of the Coastal Land Use Plan regarding the goal to control bluff face development to minimize further alteration. These two objectives cannot be separate and distinct when considering that CLUP Policy 4.4.3-8 that allows development on the Corona del Mar bluff faces provided it is done so in accordance with the identified PLOED. If minimizing alteration of a site's topography were a separate goal, minimizing alteration would suggest no alteration beyond that associated with existing development would be allowable. If this were the case, a site well within the PLOED could not achieve development levels comparable to the predominant development pattern and an inequity would be created that is contrary to Policies 4.4.3-8 and 4.4.3-9. Both of the NR23.1 objectives are achieved when development does not alter the topography of the site in excess of the PLOED.

The comment incorrectly states that the intent of the CLUP is to prohibit any further alteration of coastal bluffs in Corona del Mar. Development on coastal bluff faces in Corona del Mar, including Carnation Avenue, is controlled to minimize further alteration and is permitted by CLUP Policies 4.4.3-8 and 4.4.3-9. Development must be within the PLOED. The City Council established a PLOED for the site at elevation 50.7 feet NAVD88. The project is proposed to be more than two feet higher than the PLOED at elevation 52.83 feet NAVD88, except for a dock access/emergency exit at elevation 40.5 feet NAVD88, which will be recessed and screened from public view by rocks and/or landscape elements. The basement and sub-basement levels are subterranean and will not be visible from either the street or the bay. Project implementation will result in the removal of man-made elements (except the existing access stair on the bluff face) located below the PLOED that currently affect the visual character and integrity of the bluff. Specifically, the bluff face is altered to varying degrees with retaining walls supporting the apartment building and exterior walkways. This bluff face alteration due to existing development extends down the bluff face to varying elevations from approximately 68 feet to as low as 42.3 feet. As a result of development, these altered portions of the bluff face below elevation 50.7 feet NAVD88 (PLOED) will be restored. The remainder of the bluff face below the PLOED established by the City Council will be preserved. These aspects of the proposed project will avoid a significant impact to the visual quality and views and will result in an enhanced view of the bluff below the proposed building when viewed from the Bay.

The commenter suggests that that the project is inconsistent with a portion of CLUP Policy 4.4.3-8 that "permits such improvements only when no feasible alternative exists..." The reference in CLUP Policy 4.4.3-8 to "such improvements" has been interpreted by the City Council to refer to the "public improvements" referenced in the first sentence of the policy and not "private development." Therefore, the commenter's interpretation of Policy 4.4.3-8 is not accurate.

The comment further states that "to the extent bluff-related development is permitted in the Corona del Mar area at all, it must be consistent with and limited to the scope of pre-existing structures such that further landform alterations are avoided. These limitations apply because bluff face development is now strictly prohibited and is only allowed per those grand-fathered uses." The commenter presumably believes that bluff face further development of bluff faces is prohibited except where pre-existing structures have altered the bluff face. Indeed this is one interpretation of PLOED policies, but it fails to recognize the fundamental principal of the policy. Properties are presently developed on the bluff face to differing degrees and those properties that are not developed consistent with the predominant development pattern are allowed to further alter the bluff face to achieve development judged to be within the identified predominant development pattern; it is a way to preserve a measure of equity in property rights by allowing similar lots in similar topographic settings to be developed in a similar manner. In this

case, the City Council considered the existing development along the Carnation/Ocean bluff and the identified the PLOED at 50.7 feet NAVD88. The project is proposed to be more than two feet higher than the PLOED at elevation 52.83 feet, except for a dock access/emergency exit at elevation 40.5 feet that is recessed and screened from public view. As a result, the proposed project is consistent with existing development pattern of the area and it preserves the bluff face below the proposed residential structure as a visual resource in a manner that minimized alteration of the site's natural topography consistent with CLUP and General Plan policy.

Response to Comment No. 10-6

The comment incorrectly concludes that that CLUP's policies apply to subterranean excavation and "lateral encroachments." This conclusion is not supported by the plain wording of the CLUP policies. The referenced policies (4.4.3) never discuss subterranean excavation and/or lateral encroachments. To the contrary, they regularly make reference to "bluff faces" (4.4.3-8, 4.4.3-9). Therefore, the DEIR properly concludes that the project is consistent with the CLUP policies analyzed in Table 4.1-2. With respect to minimizing landform alteration, refer to Responses to Comment Nos. 10-1 through 10-3.

Response to Comment No. 10-7

The comment incorrectly states that the project will result in the eradication of the site's underlying coastal bluff. As stated in these responses to comments, the lowest elevation of the proposed project (other than the dock access/emergency exit) is approximately 10 feet higher on the bluff than the lowest extent of a portion of the foundation of the existing residential structure. Additionally, excavation behind the bluff face will not adversely affect either the stability of the bluff or appearance of the bluff. The issues raised by this comment are fully addressed in General Plan and CLUP consistency analyses (refer to Tables 4.1-1 and 4.1-2, respectively) in Section 4.1 of the DEIR.

It is important to note that the reason to minimize landform alteration is to avoid visual impacts in the context of the CLUP policies and Coastal Act. Alteration of the bluff below and behind the bluff face and PLOED does not compromise either the integrity of the bluff as intended in Policy NR 23.1 or the PLOED as established by the City Council. While the intent of Policy NR 23.1 may be the "preservation" of the bluff, development must balance the goals of maintaining/enhancing the aesthetic character of a coastal bluff and, at the same time, minimize landform alteration. The project has been designed to achieve that balance by respecting the PLOED as established by the City Council, incorporation of a landscape palette that is complementary to the City's coastal bluff environment, and siting and designing the structure to conform to the existing bluff topography. As a result, the project is consistent with the intent of these policies.

Response to Comment No. 10-8

The commenter provides conclusory statement without stating any basis for those conclusions. The comment alleges that excavation associated with the proposed project would "set an incredibly poor precedent for future development in the area and would lead to the complete destruction of the City's coastal bluffs over time." This is incorrect. Developments like the proposed project require extensive environmental review prior to approval. If such future projects could lead to bluff instability or erosion impacts, those issues would be examined in the course of that environmental review. Ultimately, the City will make an individualized determination as to the appropriateness of a given project for a given site. It is therefore both inaccurate and irresponsible to suggest that approval of the proposed project would somehow "lead to the complete destruction of the City's coastal bluffs over time."

The comment further alleges that excavation associated with the proposed project would "would permanently alter the 100,000 year-old bluff in favor of leaving a rock 'pillar' that is only expected to remain in place for the structure's 75-year economic life." This intentionally misrepresents the DEIR's

reference to a 75-year economic life. The reference to 75 years in the DEIR was not intended as an upper-limit on the durability of the rock pillar. Instead, it was a direct response to CLUP Policy 2.8.6-10, which requires developers to "[s]ite and design new structures to avoid the need for shoreline and bluff protective devices during the economic life of the structure (75 years)."

A number of technical studies have been prepared to assess the potential project to ensure that development of the site is consistent with CLUP Policy 2.8.6-10. These studies include: (1) Grading Plan Review Report prepared by Neblett & Associates, August 2005; (2) Coastal Hazard Study prepared by GeoSoils Inc., dated October 2006; (3) Stormwater Pollution Prevention Plan prepared by Hunsaker and Associates dated June 2005 (revised January 17, 2008); and (4) Hydrology analysis prepared by Hunsaker & Associates Irvine dated March 2007 (Revised December 20, 2007). Collectively, the findings of these studies and technical review documents indicate that the project will neither be subject to nor contribute to erosion, geologic instability, geologic hazard nor require shoreline protective devices during the economic life of the structure (75 years). In addition, the proposed project will be designed to comply with current CBC structural design parameters and other measures prescribed in the geologic/geotechnical report prepared for the project. Additionally, to further validate the conclusions of the studies pertaining to the stability of the bluff, the City retained an independent third party geologist to review the stability issue. That third party geologist, GMU, concurred with the conclusions of the reports regarding bluff stability.

Although footnote 4 of this comment suggests that the engineering and geological studies defy common sense, the reality is those studies are based on sound scientific and engineering data and analysis. Additionally, footnote 5 of this comment states that the DEIR does not identify the square footage of the site's residential structures. The DEIR provided information related to the size of the site, number of units, percent of site coverage to provide the appropriate baseline for evaluating project impacts. As a point of information, the square footage of the site's existing residential structures is approximately 16,493 square feet. (Note: This number is referenced in the Air Quality Technical Appendix.)

Response to Comment No. 10-9

Refer to Responses to Comment Nos. 3-8, 2-11, 3-18, and 10-4. The comment states that "the Project violates the protective policies of the General Plan and CLUP), as the proposed development has not been designed to 'minimize alteration' of the site's natural topography and underlying bluff "to the maximum extent feasible." (Emphasis in original.) The City disagrees. The project is proposed to be more than two feet higher than the PLOED at elevation 52.83 feet NAVD88, except for a dock access/emergency exit at elevation 40.5 feet NAVD88. As a point of reference, the lowest reach down the bluff face of the existing apartment building is 42.3 feet NAVD88. Project implementation will therefore result in up to a maximum of approximately 10 additional vertical feet of bluff face along a portion of the bluff that is currently altered, as compared with existing conditions. As an added benefit, the man-made features (e.g., concrete remnants, pipes, etc.) would be removed from the bluff face below the proposed structure, which would be landscaped and enhanced with native plant materials.

Response to Comment No. 10-10

The comment incorrectly concludes that the proposed project would result in "significant visual and aesthetic impacts under CEQA" because it will be taller and larger than existing development. This comment reflects disagreement with the conclusions presented in the Draft EIR. However, it does not provide new facts or new analysis that would permit a meaningful response. Other than noting that the project is not a high rise structure and it is not the tallest structure nor the structure with the greatest number of stories in the vicinity, the commenter is referred to the analysis in Section 4.1 (Land Use/Relevant Planning) and Section 4.5 (Aesthetics) for the detailed analysis supporting the conclusions presented in the DEIR.

Response to Comment No. 10-11

It should be noted that a comparative floor area analysis, as suggested in this comment, is not necessarily the only or best measure of determining potential visual impacts related to the physical mass of a particular structure within a visual context. Other factors, such as architecture, building materials, site design, and conformity with the natural topographic features, in this case, a coastal bluff, are but a few of the factors that determine a project's potential visual impacts.

The Corona del Mar community is represented by a variety of architectural styles and designs and is characterized by a range of smaller single-family detached residences to large, multiple-family structures when viewed from the harbor. Although the proposed multiple-family structure be unique in character, its mass would not be unique when compared to other structures in the immediate vicinity, including the Channel Reef development. What the comment characterizes as an "abuse of discretion" is reference to a much larger project two lots from the proposed project. To the contrary, to pretend that the diversity of architecture and structures within the neighborhood does not exist would ignore the directives of CEQA to analyze the project in the context of the existing environment. Many of the 17 visual simulations contained in Section 4.5 clearly depict the diverse structures both in terms of design and mass that are present in the neighborhood. In addition, these simulations illustrate that the physical mass of the proposed structure is not out of character when viewed in context with the existing structures.

Response to Comment No. 10-12

This comment is incorrect. The height and bulk of the boats anticipated to utilize the proposed dock facilities are illustrated in each of the visual simulations from the harbor vantages (refer to Exhibit 4.5-14 through 4.5-19). As indicated in those visual simulations and discussed in the accompanying analysis of the view impacts, the potential effects of the proposed docks would alter views from several vantages; however, the views would only be interrupted for a short period of time as one travels up and down the channel. None of the existing aesthetic amenities (e.g., bluff formations below the PLOED, rock outcroppings, cove, etc.) would be destroyed or permanently damaged as a result of project implementation and views to the bluff and below, although temporarily affected, would not be lost. As a result, potential visual impacts are anticipated to be less than significant.

Response to Comment Nos. 10-13 and 10-14

As indicated in the visual analysis and reiterated in Response to Comment No. 10-12, none of the existing rock outcroppings would be destroyed or permanently altered. The proposed project has been designed in accordance with the established predominant line of existing development (PLOED) established by the Newport Beach City Council with the exception of the emergency access, which has been designed to be indiscernible from the harbor.

Exhibit 4.5-4 (Simulation V02) does provide a visual perspective from Channel Road Beach, which is located across the channel from the subject property. As indicated in that visual simulation and discussed on page 4.5-8 in the Draft EIR, when occupied by one or more boats, the proposed boat docks would also obscure some of the rock features located below the bluff. However, it is important to note that views of the majority of the natural features located north of the proposed docks would not be affected. The affect would be similar to that related to view blockage that would occur with boats that could be docked at the existing dock facilities. Therefore, while the proposed project would result in some long-term obstruction from public vantages along the Peninsula, the incremental effect of such obstruction when compared to the existing obstructions as well as those that could occur from the use of the existing docks would be less than significant.

Response to Comment No. 10-15

Refer to Response to Comment No. 2-21.

Response to Comment No. 10-16

Based on the data provided in Section 7 of the referenced report, and using a distance of 130 feet from the proposed dock construction to the beach at Carnation Cove, it is estimated that the average construction noise level will be 72 dB(A) and the maximum noise level will be 77 dB(A) during the drilling phase. During the concrete pile phase the estimated average construction noise level will be 69 dB(A) and the maximum noise level will be 77 dB(A). The estimated increase in noise level due to construction activities will be 14.6 to 21.5 dB(A) during the drilling phase and 11.6 to 18.5 dB(A) during the concrete pile phase. These levels do not substantially increase the severity of the identified noise impact and do not change the DEIR's finding of unavoidable significant construction noise impacts. Recreational uses in the small cove are limited to swimming and kayaking when the tide is higher in the Bay and occasionally sun bathing when the cove is exposed at low tide. Physical access from the water will be maintained during construction of the docks; however, visitors may choose to avoid the cove during the construction period. Noise would be intermittent during the day and intermittent during the overall construction. Assuming that access to the cove might be affected for up to 40 days, the resulting impact to access (for recreational use of the cove) is considered less than significant considering the intermittent, short-term nature of the potential impact.

With respect to footnote 7, crane usage at the project site was estimated by the project's architect to occur for less than 15 percent of the time. The graphics in the Construction Noise and Vibration Study depict average conditions for each of the major construction phases. Inclusion of noise contour graphics for all types of equipment that would be used during the construction of the proposed project would not be practical. The noise contour graphics were included to portray typical noise level exposures at the noise sensitive uses proximate to the project site. Due to the intermittent and infrequent nature of crane usage at the project site, this noise source was not included as part of the portrayal of typical conditions. In addition, the inclusion of noise generated by intermittent crane usage would not result in a substantial increase in the severity of noise impacts or change the finding of unavoidable significant construction noise impacts nor would it substantially change the magnitude of noise generated at the project site.

Response to Comment No. 10-17

The commenter is correct that maximum noise levels were not identified in the main body of the DEIR. However, as indicated in the comment, they can be found in Appendix E of the DEIR. The location of these maximum noise levels within the DEIR does not affect the DEIR's analysis or conclusions. With regard to a "standard 65 dB threshold of significance for assessing residential noise impacts", the 65 dB standard referred to in the comment is a community noise equivalent level (CNEL) standard and is applied only to transportation noise (e.g., traffic) since it considers 24 hours of continuous noise exposure. Construction noise is controlled by Section 10.28.040 (Construction Activity – Noise Regulations) of the City's Municipal Code. This section of the Code controls construction noise by regulating the hours during which it is allowed to occur. There are no quantitative standards for construction noise levels.

Response to Comment No. 10-18

The noise impacts associated with the installation of concrete piles are discussed in Appendix E of the DEIR. Referring to the appendix, it can be seen that both the average and maximum construction noise levels during the concrete pile phase of dock construction are expected to be less than the noise levels during the drilling phase. The location of this discussion within the DEIR does not change the DEIR's finding of unavoidable significant construction noise impacts nor does it change the magnitude of construction noise generated at the project site.

The noise impacts at residences across the Channel are discussed in Appendix E of the DEIR. The location of this discussion within the DEIR does not change the DEIR's finding of unavoidable significant construction noise impacts. With regard to the 65 dB threshold, please refer to Response 10-17.

Response to Comment No. 10-19

The comment states that the vibration analysis only addresses construction equipment working 80 feet from vibration-sensitive uses. Both the average and maximum vibration levels were assessed as shown in Table 18 of the *Construction Noise and Vibration Study*. The average vibration level is based on equipment operating at the center of the project site, approximately 80 feet from the nearest residence. The maximum vibration level is based on equipment generally working between 9 and 13 feet from the nearest residence as shown in the attached tables. The attached table summarizing vibration further supports the conclusions regarding vibration impacts set forth in the DEIR.

Response to Comment No. 10-20

The comment requests that cosmetic and structural damage be taken into account in the DEIR. Cosmetic and structural damage from construction activities were evaluated as shown in the analysis starting on page 4.4-22 of the DEIR, Section 7.2 of the *Environmental Noise Study for the Construction of the Proposed Carnation Cove Dock Replacement Project*, and Section 4.2.2 of the *Construction Noise and Vibration Study*. Cosmetic and structural damage are considered as the same type of impact. The DEIR specifies cosmetic damage relative to project generated vibration because structural damage may imply damage to the structural integrity of a building, which would not occur due to construction activities.

The comment also requests that the analysis consider site conditions, including the geology at the project site. The methodology for the assessment of vibration impacts is consistent with the methods adopted by the Federal Transit Administration for construction activities. Prediction of vibration impacts is inherently difficult due to the multitude of variables, such as geologic strata, soil type, presence of water, etc. The most accurate method of determining levels of vibration at sensitive uses is through the use of vibration monitoring equipment included in the Construction Management Plan (CMP). The CMP requires that vibration probes be placed at 215 Carnation Avenue to monitor construction activities at the site due to its proximity and relationship to the subject property. A vibration monitoring program will identify any construction activity that exceeds the criteria for cosmetic damage. If cosmetic damage occurs, the applicant has agreed to indemnify the property owners in the immediately contiguous lots against any losses resulting from that cosmetic damage, provided that those contiguous owners provide the applicant with access to their structures to allow a pre-demolition inspection of the current condition of their structures. With the implementation of the vibration monitoring, which includes use of alternative methods if vibration levels have the potential to cause cosmetic or structural damage and the requirement to indemnify property owners of vibration-induced cosmetic/structural damage, vibration impacts were found to be less than significant.

Response to Comment No. 10-21

The comment states that the DEIR's analysis of annoyance from construction-generated vibration is deficient in that it exceeds the FTA's threshold of perceptibility. Although the vibration does exceed the threshold of perceptibility, as stated in the DEIR and the *Construction Noise and Vibration Study*, the assessment of human annoyance from construction vibration were based collectively on four criteria and not a single one:

1. perceptibility
2. frequency of occurrence
3. time of occurrence

4. duration

These four criteria provide a more comprehensive approach to the assessment of what constitutes "excessive" vibration impacts (as cited by the comment) as opposed to the sole criterion of vibration perceptibility.

An example of this is inherent in the assessment of construction noise. Construction noise would be perceptible for hundreds of feet and, in some instances, thousands of feet. However, the mere audibility of construction noise does not constitute an impact. As with the assessment of vibration impacts, the same factors required for vibration assessment need to be considered. For example, if a backhoe were used for utility trenching along a roadway during the day for four months, the noise from this activity would be perceptible, but, due to the occurrence during the least noise sensitive portion of the day, it would not be a significant construction noise impact. However, if this same backhoe were working in the late night for the same amount of time to avoid causing traffic congestion, it would likely be construed as a significant construction noise impact due to the increased sensitivity people have to noise during the late night. The noise generation from the backhoe would remain the same, but the other factors need to be considered in the overall assessment of vibration impacts.

Because of the importance of these four criteria, the vibration impact analysis for construction activities does not rely solely on perceptibility to determine potential vibration impacts.

Response to Comments No. 10-22 through 10-27

Comments acknowledged. Refer to Responses to Comment Nos. 2-9, 2-36, and 4-5. In regards to vessel transit, vessels transit throughout Newport Harbor transit over eelgrass beds in the vicinity of Corona del Mar, Balboa Island, Balboa Peninsula, Bay Island, and Harbor/Linda Isles, and within yacht club basins. Except for where depths are extremely shallow (at the inner edges of docks), we have observed no propeller scars or evidence of adverse impacts due to normal vessel movement approaching docks. Eelgrass in the vicinity of the project dock area is located at depths between -6 to -12 ft MLLW. These depths are sufficient for vessel transit to and from the docks without adverse impacts to eelgrass.

The commenter further expresses the opinion that the proposed dock structures are not consistent with CLUP Policies 4.1.4-3 and 4.2.5-1 in that they have not been designed to avoid impacts to eelgrass to the "greatest extent possible" and that insufficient mitigation is proposed for operation of the slips. Policy 4.1.4-3 calls for the design of structures including floating docks over the water to "avoid impacts to eelgrass meadows." Policy 4.2.5-1 states; "Avoid impacts to eelgrass (*Zostera marina*) to the greatest extent possible. Mitigate the loss of eelgrass at a 1:2 to 1:1 mitigation ratio and in accordance with the Southern California Eelgrass Mitigation Policy. Encourage the restoration of eelgrass throughout Newport Harbor where feasible." Both policies provide for mitigation of impacts. Refer to Responses to Comment Nos. 2-9, 2-36, and 4-5 [MSOffice1] and Section 4.7 (Biological Resources) of the DEIR for a discussion of measures that have been incorporated within the project to avoid and mitigate impacts to eelgrass. The proposed docks have been designed to avoid the eelgrass beds to the maximum extent while providing one slip per unit and maintaining necessary maneuvering area between the proposed docks and nearby docks for the safety of use. The only possible way to avoid impacts and further is to provide a smaller dock structure thereby providing berthing for fewer boats or smaller boats. Given the nature of the propose project, this change is not practical; however, the City Council will need to consider if the project has avoided and mitigated impacts to eelgrass consistent with CLUP policies. In regards to potential vessel-related impacts, vessels constantly transit throughout Newport Harbor over eelgrass beds and except where depths are extremely shallow (at the inner edges of docks at low tides), no propeller scars or evidence of adverse impacts due to normal vessel movement approaching docks have been observed. Eelgrass in the vicinity of the project dock area is located at depths between -6 to -12 ft MLLW. These depths are sufficient for vessel transit to and from the docks without adverse impacts to eelgrass.

Response to Comment Nos. 10-28 through 10-32

The construction work associated with the docks and gangway will not result in any significant impacts to the sand dollar habitat or eelgrass beds. Materials associated with the disassembly and demolition of the docks and the 'over the water gangway' will be removed via a barge. The removal and repair on the upper fixed pier walkway will be completed from the walkway level after a protective barrier (15 mil Stegowrap) has been placed below it during construction to minimize the possibility that construction debris could impact the marine environment. As shown in the figure associated with comment 4-5, sand dollars have not been identified in the sandy area near the pier walkway. That figure is based on a survey performed in August 2008 by Coastal Resource Management. As a result, all work associated with the upper fixed pier walkway will maintain a distance of no less than 50 feet from the sand dollar habitat.

The repair to the concrete piers will be from the sandy area below and completed during low tide. Again, as shown in the figure associated with Response to Comment 4-5, no sand dollars are located in this area. Each pier area will be protected by draping a 15 mil thick Stegowrap barrier over the sand and over the two-foot tall plywood wall that will be built around each concrete pier. All construction debris and concrete repairs will be contained within this 'clean zone' and will be removed from the site by the contractor by land.

The construction barge will be outfitted with the drilling equipment, storage tanks, hoists, and materials, including the pre-cast piles. The concrete piles will be loaded onto the barge from a nearby shipyard, which will be the material loading and off-loading venue for the entire dock project. The drilling operation will incorporate a steel casing or sleeve around the hole to be drilled. During the drilling itself, a vacuum hose will extract debris from the casing and pump it into a storage tank on the barge, filtering materials from the sea water as it pumps. The concrete pre-cast pile will be hoisted from the barge into predrilled holes. Each pile will have a full depth silt curtain placed around it during the placement operation. Finally, the dock sections will be constructed and finished off site, delivered to the shipyard and floated to the Aerie site for assembly. Final utility distribution and dock accessories will be in-place on the floating dock.

A marine biologist will monitor the dock demolition, pile installation and all associated rebuilding to ensure, among other things, implementation of Best Management Practices, as specified in the Construction Management Plan and DEIR (pages 4 7-16, 18.) A silt screen will be placed across the entrance to the cove where eelgrass and sand dollar beds are located. The eelgrass silt curtains will be placed under the direction of the marine biologist for each operation. This will ensure that impacts to the intertidal marine resources will be avoided.

Response to Comment No. 10-33

Contrary to the commenter's contention, when the formulation of the precise means of mitigating impacts is truly impractical at the time of project approval, the agency may devise measures that will satisfy specific performance criteria identified at the time of project approval. (See *e.g.*, *Sacramento Old City Assn. v. City Council*, 229 Cal.App.3d 1011(1991).) The commenter notes that surveys are proposed to be performed during the appropriate blooming window identified for each species, and argues that waiting for that blooming season is improper under CEQA. The basis for the commenter's contention appears to be that "all nine species are currently within their blooming window." However, the Notice of Preparation of the DEIR was published on September 23, 2008, and preparation of the DEIR, followed by public review, has occurred since that time. This period of preparation was not during the "blooming window" of the species, thus rendering the precise means of identifying and mitigating impacts to these species impractical. As a result, the CMP and the DEIR provide for a pre-construction nesting survey and a series of focused surveys to determine presence or absence of these species. As indicated in Section 4.7 (Biological Resources), a qualified botanist shall conduct focused surveys within the appropriate blooming windows to determine the presence or absence of these species. If during the focused surveys these

species are identified as being impacted by the development, an incidental take permit pursuant to Section 2081 of California Fish and Game Code will be required before a grading permit may be issued

Additionally, the proposed bluff landscaping plan incorporates native drought tolerant plant species that must be found to be compatible and consistent with California coastal bluff environment. Thus, the legal requirements discussed above have been satisfied. The provisions of the CMP and the DEIR constitute the required commitment by the applicant and the City to avoid or reduce to a level of insignificance all potential impacts to special status plant species.

Response to Comment No. 10-34

The Construction Management Plan requires one or more off-site parking location(s) to be secured in order to prevent construction workers from parking in the neighborhood surrounding the project site. The project applicant will be required to secure a binding agreement to accommodate the varying number of workers needed for each construction phase, which agreement shall be presented to the City prior to the issuance of the permits for the phase of construction that will require the off-site parking. This agreement must ensure that (1) the off-site parking location will commit a sufficient number of spaces to Aerie construction workers during the relevant term, and (2) the off-site location possesses the proper permits and authority to rent the subject spaces. Once the proper agreements are in place, two ten-passenger shuttle vans will run up to 6-8 trips each morning and evening and up to 5 trips at lunch time to/from the project site and remote parking lot.

Once again, because the actual dates of construction are not now known, it is not feasible, much less practical, for the applicant to identify specific impacts and mitigation at the time of project approval. Although the Construction Management Plan requires that the off-site parking location(s) will be within a 5 mile radius of the project site, it is not currently known when construction will commence, therefore it is not possible to execute binding agreements with off-site parking lot operators at this time. It is also not possible to evaluate any site-specific environmental impacts associated with an off-site parking location without engaging in speculation, which is prohibited by the California Environmental Quality Act. Therefore, the applicant has agreed to a condition requiring that, if the Planning Director determines that the operation of the off-site parking shuttle may result in one or more potentially significant environmental impacts that have not been evaluated in this DEIR, appropriate environmental review will commence pursuant to the California Environmental Quality Act prior to the issuance of the permit for the applicable phase of construction. Thus, the legal requirements discussed in prior Responses have been satisfied. The provisions of the CMP and the DEIR constitute the required commitment by the City and the applicant to avoid or reduce to a level of insignificance all potential impacts related to off-site parking.

Response to Comment No. 10-35

Refer to Response to Comment 8-9. Section 2.6 (Construction Process) in the Congestion Management Plan (CMP) included in Appendix B of the Draft EIR includes a project design feature that limits only one truck at a time in 15 minute intervals at the project site. As indicated in the CMP, during the excavation process, flagmen will coordinate with the project foreman at the dump site who will radio in the dump trucks from the Olinda-Alpha Sanitary landfill. In addition, the flagmen will also coordinate ingress and egress of cement trucks and delivery trucks during the respective construction phases. As indicated in the CMP, these trucks would arrive at the site with no greater frequency than the discharge rate by the contractor so that no more than one truck is on-site at one time and that trucks will not need to queue on Carnation Avenue.

Response to Comment No. 10-36

Refer to Responses to Comment Nos. 8-4 and 8-5 above. As indicated above, the CMP addresses all aspects of the construction activities anticipated to occur, including road and safety issues. Section 4.0

(Traffic Control) identifies the haul routes, deliver requirements, and traffic control plan. Section 5.0 (Safety and Security) outlines the measures that will be implemented to ensure pedestrian safety, including fencing, appropriate signage and safe and clean pathways to the project site. In addition, a four-foot wide temporary crosswalk will be created across Carnation Avenue to direct pedestrians to the existing sidewalk on the southerly side of the street, subject to the approval of the Public Works Department.

Response to Comment No. 10-37

The project has been designed to comply with the California Fire Code. As indicated in Section 5.5 on page 5-2 of the DEIR, a preliminary code compliance analysis was conducted by City staff. Based on that analysis, the proposed building is in compliance, although a final compliance determination will be made prior to the issuance of a building permit. If required, the project will be redesigned to address the Fire or Building Departments' comments, including the underground parking component. The project has been designed with several features to facilitate and enhance the provision of adequate fire protection, including an emergency communication device, automatic fire suppression system, automatic and manual fire alarm systems, a fire control room, a Class I wet standpipe, and other features as determined necessary by the Newport Beach Fire Department.

Response to Comment No. 10-38

The commenter incorrectly states that the proposed project violates applicable floor area provisions. The calculation of the maximum allowable gross floor area based upon applicable Zoning provisions and definitions provided with the Zoning Code (Title 20 of the Municipal Code). The maximum allowable gross floor area for a multi-unit development is 1.75 times the buildable area of the lot. The buildable area of the lot is defined as the lot area minus required setback areas. No provisions for the exclusion of submerged lands from the calculation of the maximum gross floor area exist.

Response to Comment No. 10-39

To the extent that the comment is addressing the significant environmental impacts that could result from the granting of the approval of the modification to the setbacks, refer to Responses to Comment Nos. 3-8, 3-18, and 3-23 for an explanation as to why there are no such significant impacts. To the extent that the comment is addressing the criteria for the approval of the proposed modification, that is not an environmental issue and no further response is necessary.

Response to Comment No. 10-40

The construction of the dock system will not significantly impact the use of the small cove by swimmers or kayaks. The docks are north of the entrance to the cove. Therefore, there is no impact to access or use of the cove. The construction time frame of the docks is estimated to be from May 16 to July 10, of which approximately three weeks will be required for the drilling operation. All construction materials and equipment will access the dock area from the bay via barges designed for this purpose.

The California Integrated Waste Management Act of 1989 (i.e., AB 939) requires that the County must maintain 15 years of available Countywide solid waste disposal capacity. The County's landfill system currently has a 15-year capacity to accommodate the proposed project. As a result, project implementation will not result in any significant impacts on landfill capacity and, further, will not adversely affect the ability of the existing facilities operated and maintained by the Orange County Waste & Recycling (OCW&R) to provide adequate landfill capacity to serve the County. The Orange County landfill system has sufficient capacity to accommodate both the proposed project and future development within the County based on current plans and long-range capacity.

The proposed dock facilities do not extend into the navigable waters of Newport Harbor. Therefore, project implementation will not adversely affect either navigation or recreation. In addition, the barge will stage for drilling and placement of the pre-cast piles landward of (i.e., outside) the 500' channel width and also landward of the line of the existing navigation station north of the docks. Dock construction is outside of the inbound general boating traffic lanes in the harbor channel.

Response to Comment No. 10-41

This comment reflects the commenter's conclusion that summarizes the prior comments. The comment is acknowledged; no further response is necessary.

11. California Regional Water Quality Control Board (May 5, 2009)

Response to Comment No. 11-1

The commenter seems to confuse the setting of the African Umbrella sedge on the slope, well above the bay/saltwater environment. As detailed in the December 12, 2008 GLA Delineation Report, the African umbrella sedge occurs on the slope, well above the limits of mean high water and there is no nexus between the location of the umbrella sedge and potential work associated with docks, etc. The comment that the U.S. Army Corps of Engineers and Regional Board should be listed in Table 4.6-2 is noted. The change will be made to the Final EIR.

Response to Comment No. 11-2

To prevent water quality impacts to Newport Bay, the proposed redevelopment has been designed with a series of BMPs (detailed in the project's conceptual WQMP and SWPPP documents incorporated by reference in the DEIR) in the proposed storm drain collection system to ensure runoff entering the harbor has been adequately treated. Refer to Section 4.7 for a discussion of the project design features related to mitigation and avoidance of eelgrass and sand dollar impacts.

Response to Comment No. 11-3

Enclosed in the Response to Comment document is a copy of WQMP Exhibit, A which illustrates the proposed water quality treatment system for the proposed redevelopment (exhibit attached).

Response to Comment No. 11-4

To provide a level of pretreatment an ADS storm water quality unit or approved equivalent will be incorporated into the project's storm drainage system to remove floatables, litter and some sediment in the site runoff before water enters the cistern vault for pumping to ground level for additional water quality treatment.

Consequently, the DEIR, conceptual WQMP and conceptual SWPPP shall implement the following summary of the water quality treatment system for the proposed redevelopment when finalized:

In the redeveloped condition, the majority of the project will reside below the existing grade of Carnation Avenue. The base of the structure will be approximately 45-feet below the existing grade at Carnation Avenue. Storm discharges and roof runoff will be conveyed via a proposed drainage system consisting of pipe conduits, area drains and down spouts that will drain to a cistern located in the sub-basement level of the building. An ADS storm water quality unit or approved equivalent will pre-treat runoff to remove floatables, litter and some sediment before water enters the cistern vault. This drainage will then be pumped up to ground level and treated with a StormFilter and then, to an Abtech Smart Sponge Plus Drain Insert prior to tying into the existing public storm drain line and discharging to Lower Newport Bay to the west.

Additionally, WQMP Exhibit A enclosed with the response to comment document (refer to Response for Comment 11-2) has been updated to reflect the addition of the ADS storm water quality unit prior to water entering the cistern vault.

As noted in the DEIR, a Draft SWPPP and WQMP have been submitted to the City of Newport Beach and are available for review at the City.

BMP Compliance with SWRCB Water Quality Order No. 99-08.DWQ-General Permit for Construction Activity

The potential impacts of construction activities on water quality focus primarily on sediments and turbidity and pollutants that might be associated with sediments (e.g., phosphorus and legacy pesticides). Construction-related activities that are primarily responsible for sediment releases are related to exposing soils to potential mobilization by rainfall/runoff and wind. Such activities include removal of vegetation from the site, grading of the site, and trenching for infrastructure improvements. Environmental factors that affect erosion include topographic, soil, and rainfall characteristics. Non sediment-related pollutants that are also of concern during construction include waste construction materials; chemicals, liquid products, and petroleum products used in building construction or the maintenance of heavy equipment; and concrete-related waste streams.

Based on the Construction General Permit Notice of Intent (NOI) and construction phase SWPPP, construction impacts from project development shall be minimized through compliance with the Construction General Permit. This permit requires the development and implementation of a SWPPP, which must include erosion and sediment control BMPs that would meet or exceed measures required by the Construction General Permit, as well as BMPs that control the other potential construction-related pollutants. A SWPPP shall be developed as required by, and in compliance with, the Construction General Permit. Erosion control BMPs are designed to prevent erosion, whereas sediment controls are designed to trap sediment once it has been mobilized. The General Permit requires the SWPPP to include a menu of BMPs to be selected and implemented based on the phase of construction and the weather conditions. BMPs on this menu include, but are not limited to:

- slope stabilization using rock, vegetation, mulches or other soil stabilizers;
- re-vegetation;
- hydro-seeding exposed areas;
- sediment controls such as check dams, desilting basins, fiber rolls, and silt fencing;
- installation of energy dissipaters and drop structures;
- catch basin inlet protection,
- construction materials management; and
- cover and containment of construction materials and wastes.

The SWPPP shall be designed and implemented to address site-specific conditions related to project construction. The SWPPP shall identify the sources of sediment and other pollutants that may affect the quality of storm water discharges and describe and ensure the implementation and maintenance of BMPs to reduce or eliminate sediment, pollutants adhering to sediment, and other non-sediment pollutants in storm water as well as non-storm water discharges.

The significant criteria for the construction phase of the project are implementation of BMPs consistent with Best Available Technology Economically Achievable and Best Conventional Pollutant Control Technology (BAT/BCT), as required by the Construction General Permit. The applicant or its successor would reduce or prevent erosion and sediment transport and transport of other potential pollutants (e.g., construction material-related pollutants) from the project sites during the construction phase through implementation of BMPs meeting BAT/BCT in order to prevent or minimize environmental impacts and to ensure that discharges during the construction phase of the project would not cause or contribute to any exceedance of water quality standards in the receiving waters.

On this basis, the impact of construction-related runoff from the project sites is considered less than significant

BMP Compliance with the OC DAMP and WQMP (as required by RWQCB – 8's OC MS4 Permit)

The project WQMP shall identify post-construction related Best Management Practices (BMPs) that will be used onsite to control predictable pollutant runoff, and shall comply with all applicable measures specified in the Countywide Water Quality Management Plan (WQMP) and NPDES Drainage Area Management Plan (DAMP), the assignment of long-term maintenance responsibilities, and the location(s) of all structural BMPs.

BMPs are structural devices, procedures, rules or methods which, when implemented and followed, should reduce and/or eliminate the specific source of pollution of which the BMP is targeted. The post-construction related BMPs shall be developed and will be implemented for the proposed project. All BMPs indicated in the project's WQMP will be implemented and maintained in good and effective condition.

The property owner shall establish requirements for (a) ownership/maintenance of and/or maintenance easements for community common areas in the project and (b) implementation of educational pollution prevention on BMPs, including community awareness programs.

Routine Source Control BMPs are required and shall be incorporated in this redevelopment project. All of the following types of BMPs listed below for specific land use/type of project in the Countywide Water Quality Management Plan tables shall be discussed and considered for utilization by the project WQMP for implementation to the extent that they are appropriate for the site and project.

Source Control BMPs

- Routine Structural BMPs
- Routine Non-Structural BMPs
- Site Design BMPs
- Treatment BMPs

An update to the MS4 related to the project, is anticipated to be adopted by the summer of 2009. Once adopted, Low Impact Development (LID) BMPs and Hydromodification related BMPs (the objective of which is to have the post-development hydrology mimic that of the pre-development hydrology condition) are expected to become project requirements, as is TMDL integration. LID BMPs include a priority use of infiltration BMPs, harvesting and re-use of water BMPs and vegetated or evaporation BMPs over-treating and releasing water.

Response to Comment No. 11-6

All BMPs intended for construction and post-construction conditions shall reflect targeted compliance with Total Maximum Daily Loads (TMDL's) and shall be in support of the Orange County Newport Bay Fecal Coliform Source Management Plan (OCNBFCSMP). The OCNBFCSMP is meant to provide compliance with the fecal-coliform/pathogen TMDL adopted for Lower Newport Bay and Upper Newport Bay.

The following additional TMDL's are incorporated for reference:

- a. The Siltation (sediments) and Nutrient TMDLs adopted for Lower Newport Bay, Upper Newport Bay, San Diego Creek Reach 1, and San Diego Creek Reach 2.
(http://www.waterboards.ca.gov/santaana/water_issues/programs/tmdl/index.shtml)

The future TMDLs anticipated for selenium and metals (Lower and Upper Newport Bay), selenium and fecal coliform (San Diego Creek Reach 1), and specified metals (San Diego Creek Reach 2). A TMDL for organochlorine compounds (particularly DDT, chlordane, and PCBs) is anticipated for Lower Newport Bay, Upper Newport Bay, and San Diego Creek Reaches 1 and 2.

Response to Comment No. 11-7

Groundwater dewatering is not anticipated for the construction of the proposed redevelopment due to the fact that subsurface water was not observed during field investigation (Conceptual Grading Plan Review Report for TTM 16882 by Neblett & Associates dated September 30, 2008.)

12. A. David Kovach (May 5, 2009)

Response to Comment No 12-1

The comments presented in this letter address "conflicts" that exist in the Newport Beach General Plan and the manner in which various land use policies should more appropriately address the density and intensity of development on the subject property. As indicated in this letter, the commenter believes that the City's land use criteria are internally inconsistent. It is important to note that the policy analysis presented in Section 4.1 (Land Use/Relevant Planning) and, specifically, in Tables 4.1-1 and 4.1-2 in the Draft EIR discussed the relationship of the proposed project to the adopted policies and not the internal conflicts that exist as suggested in this comment. No comments related to the adequacy of the environmental analysis are identified in this letter, which will be forwarded to the Newport Beach Planning Commission and City Council for consideration prior to taking an action on the proposed project.



CITY OF NEWPORT BEACH
PLANNING DEPARTMENT
(949) 644-3200

DATE: June 2, 2009
TO: Planning Commission
FROM: James Campbell, Principal Planner *JWC*
SUBJECT: AERIE (PA2005-196) – Attachments to Response to Comments

Four attachments to the Responses to Comments were inadvertently omitted. They are:

1. Existing Vegetation Map – referenced from responses 2-30 and 5-1 on page 11 and 26 respectively. This map is also within the project plan set.
2. Letter from Lyleen Ewing - referenced from response 3-27 on page 21.
3. Vibration summary tables - referenced from response 10-19 on page 49.
4. Water Quality Management Plan Exhibit A - referenced from response 11-3 on page 55.

The items are attached to this memorandum and I apologize for any inconvenience and they have been added to the Response to Comment document. If you have any question regarding this memorandum, please contact me at 949-644-3210 or jcampbell@city.newport-beach.ca.us.

AREA #1

AREA #1 CONSISTS OF THE ROCK OUTCROPPING CLOSEST TO THE SHORE AT THE WESTERN MOST EDGE OF THE PROPERTY. AT HIGH TIDE, THIS AREA IS CUT OFF FROM THE REST OF THE SITE BY OCEAN BUT IS ACCESSIBLE BY MEANS OF THE DOCK BOARDWALK. AREA APPEARS TO NEVER HAVE BEEN PRUNED OR THINNED.

- NATIVE PLANTS:**
 ENCELIA CALIFORNICA
 ISOCOMA SPECIES
 OPUNTIA LITTORALIS
 RHUS INTEGRIFOLIA
- NON-NATIVE PLANTS:**
 BROMUS SPECIES
 LIMONIUM PEREZII
 MELILOTUS SPECIES
 HAHN'S IVY
 AGAVE SPECIES
 HETEROMELES ARBUTIFOLIA

AREA #2

AREA #2 CONSISTS OF THE AREA TO THE NORTH SIDE OF THE SUN DECK AREA. THIS AREA APPEARS TO NEVER HAVE BEEN PRUNED OR THINNED.

- NATIVE PLANTS:**
 ARTEMESIA CALIFORNICA
 ENCELIA CALIFORNICA
 ERIOGONUM FASCICULATUM
 OPUNTIA LITTORALIS
 RHUS INTEGRIFOLIA
- NON-NATIVE PLANTS:**
 AGAVE SP.
 CARPOBROTUS SPECIES
 LIMONIUM PEREZII
 SUCCULENTS

AREA #3

AREA #3 IS TO THE NORTHEAST OF AREA 2 ON THE NORTH SIDE OF THE EXISTING PEDESTRIAN STAIRS AND WALK. RELATIVELY SPEAKING, THIS AREA CONSISTS OF SMALL RIDGE AND FAIRLY FLAT AREA. THE GROUND PLANE CONSISTS OF PATCHES OF CLOVER AND ICE PLANT. AREA DOES NOT APPEAR TO HAVE BEEN PRUNED.

- NATIVE PLANTS:**
 BACCHARIS SALICIFOLIA
 ENCELIA CALIFORNICA
- NON-NATIVE PLANTS:**
 BROMUS SPECIES
 LIMONIUM PEREZII
 MELILOTUS SPECIES
 MYOPORUM LAETUM
 ARUNDO DONAX "VERSICOLOR"
 PITTOSPORUM TOBIRA
 PITTOSPORUM PHILLYREOIDES

AREA #4

AREA #4 COVERS THE AREA TO THE NORTHWEST OF THE UPPER REACH OF EXISTING PEDESTRIAN WALK ALONG THE NORTHWEST SIDE OF THE EXISTING BUILDING. AREA DOES NOT APPEAR TO HAVE BEEN PRUNED.

- NATIVE PLANTS:**
 ENCELIA CALIFORNICA
- NON-NATIVE PLANTS:**
 BROMUS SPECIES
 ACACIA REDOLENS
 MELILOTUS SPECIES
 CARPOBROTUS SPECIES
 PERLARGONIUM PELTATUM

AREA #5

AREA #5 IS AT THE UPPERMOST NORTHWEST CORNER OF THE PROPERTY AND APPEARS TO HAVE NO NATIVE PLANT MATERIAL. AREA DOES NOT APPEAR TO HAVE BEEN PRUNED.

- NATIVE PLANTS:**
 ENCELIA CALIFORNICA
- NON-NATIVE PLANTS:**
 ACACIA REDOLENS
 CARPOBROTUS SPECIES
 BOUGAINVILLEA SPECTABILIS
 BROMUS SPECIES

AREA #6

AREA #6 IS A TRIANGULAR SHAPED PLANTER AREA BOUNDED BY THE EXISTING PEDESTRIAN WALK AND STAIRS AND THE NORTHWEST SIDE OF THE BUILDING. AREA DOES NOT APPEAR TO HAVE BEEN PRUNED.

- NATIVE PLANTS:**
 ENCELIA CALIFORNICA
- NON-NATIVE PLANTS:**
 CARPOBROTUS SPECIES
 YUCCA RECURVIFOLIA
 MELILOTUS SPECIES
 NICOTIANA GLAUCA
 SUCCULENTS
 PITTOSPORUM TOBIRA

AREA #7

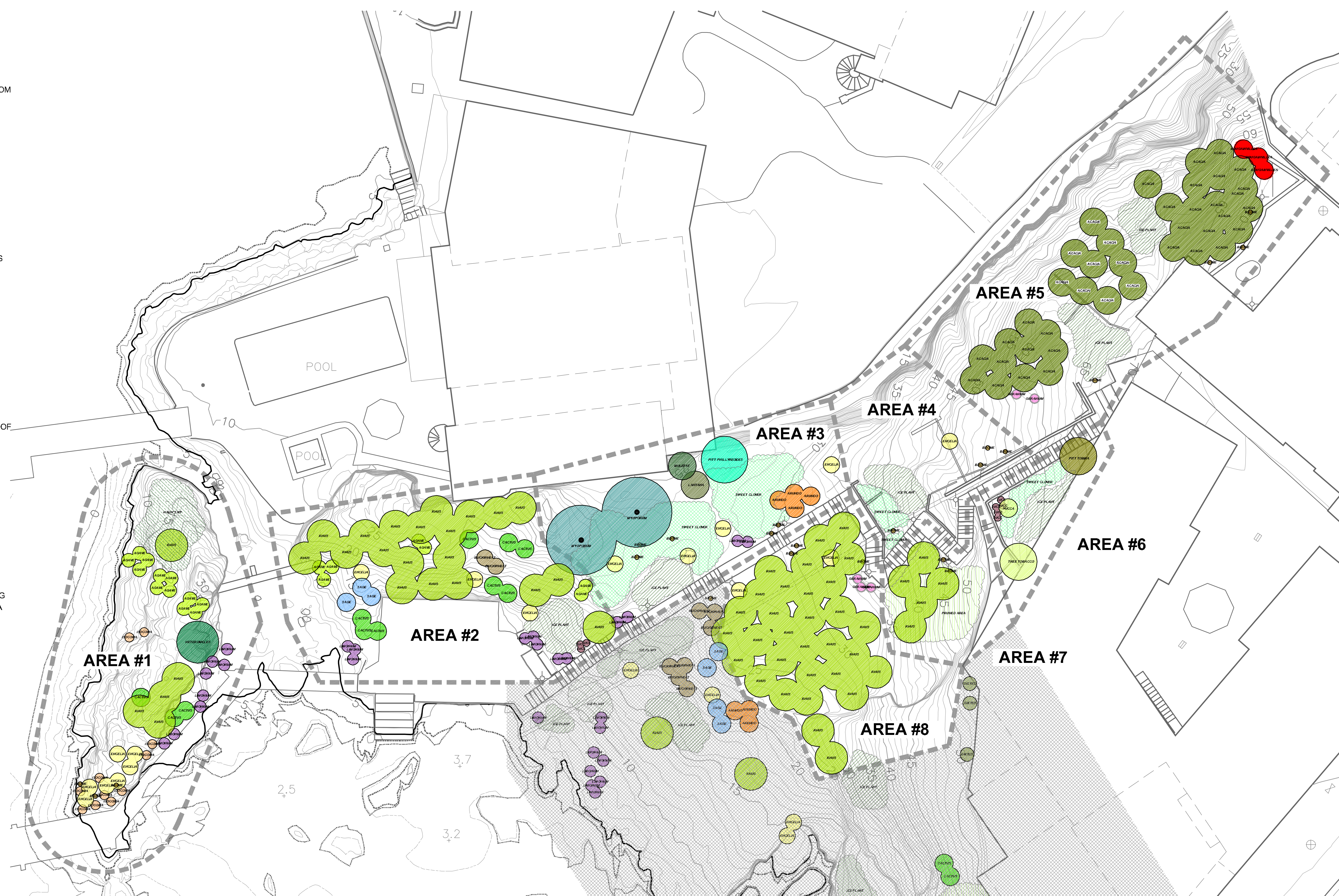
AREA #7 IS THE AREA TO THE BETWEEN THE NORTH SIDE OF THE EXISTING BUILDING AND THE ZIG ZAGGING OF THE EXISTING WALK AND STAIRS. THIS AREA APPEARS TO HAVE HAD THE RHUS PRUNED BACK A YEAR OR SO AGO, HOWEVER, ALL OF THE RHUS IS SENDING OUT NEW SHOOTS AND SUCKERS AND APPEARS TO BE HEALTHY IN NATURE AND SURVIVING.

- NATIVE PLANTS:**
 RHUS INTEGRIFOLIA
- NON-NATIVE PLANTS:**
 BROMUS SPECIES

AREA #8

AREA #8 IS ON THE SOUTH SIDE OF THE EXISTING WALK AND STAIRS AND CONSISTS OF THE LARGEST MASS OF RHUS ON THE SITE. THE MASS RUNS FROM JUST BELOW THE ZIG ZAGGING OF THE WALK TO THREE (3) LANDINGS ABOVE THE SUN DECK DESCRIBED IN AREA #2 ABOVE. AREA HAS HAD MYOPORUM REMOVED.

- NATIVE PLANTS:**
 ENCELIA CALIFORNICA
 RHUS INTEGRIFOLIA
- NON-NATIVE PLANTS:**
 BROMUS SPECIES
 PERLARGONIUM PELTATUM



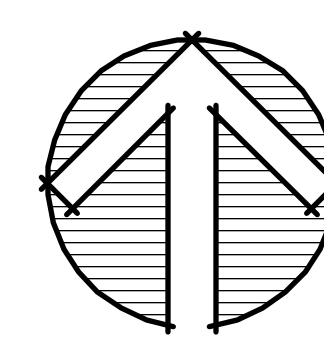
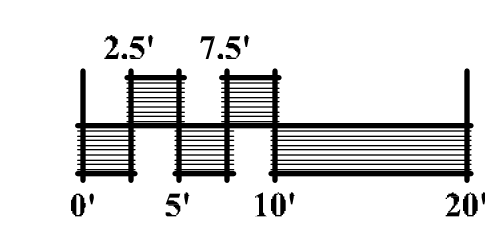
SEE SHEET L-2 FOR AREAS 9 THROUGH 14

- ENTIRE SITE**
- NATIVE PLANTS: BOTANICAL NAME (COMMON NAME)**
- ARTEMESIA CALIFORNICA (SAGEBRUSH)
 - BACCHARIS SALICIFOLIA (MULEFAT)
 - ENCELIA CALIFORNICA (CALIFORNIA ENCELIA)
 - ERIOGONUM FASCICULATUM (BUCKWHEAT)
 - ISOCOMA SPECIES (GOLDENBUSH)
 - OPTUNIA LITTORALIS (PRICKLY PEAR CACTUS)
 - RHUS INTEGRIFOLIA (LEMONADE BERRY)
 - ACACIA REDOLENS (PROSTRATE ACACIA)
 - AGAVE SPECIES (AGAVE)
 - ARUNDO DONAX "VERSICOLOR" (VARIEGATED ARUNDO)
 - ASPARGUS SPRENGERI (ASPARAGUS FERN)
 - BOUGAINVILLEA SPECTABILIS (BOUGAINVILLEA)
 - BROMUS SPECIES (BROME)
 - CARPOBROTUS SPECIES (ICE PLANT)
- NON-NATIVE PLANTS: BOTANICAL NAME (COMMON NAME)**
- CISSUS RHOMBIFOLIA (GRAPE IVY)
 - DIETES BICOLOR (FORTNIGHT LILY)
 - DISTICTIS BUCCINATORIA (BLOOD RED TRUMPET VINE)
 - HEDERA HELIX "HAHNII" (HAHN'S IVY)
 - HETEROMELES ARBUTIFOLIA (TOYON)
 - JUNIPERUS CHINENSIS "BLUE POINTE" (BLUE POINTE JUNIPER)
 - LANTANA MONTEVIDENSIS (NO COMMON NAME)
 - LIGUSTRUM JAPONICUM (PRIVET)
 - LIMONIUM PEREZII (SEA LAVENDER)
 - LONICERA SPECIES (HONEYSUCKLE)
 - MELILOTUS SPECIES (SWEET CLOVER)
 - MUSA SPECIES (BANANA)
 - MYOPORUM LAETUM (MYOPORUM)
 - NICOTIANA GLAUCA (TREE TOBACCO)
 - PERLARGONIUM PELTATUM (GERANIUM)
 - PIMPINELLA ANISIUM (ANISE)
 - PITTOSPORUM PHILLYREOIDES (WILLOW PITTOSPORUM)

- PITTOSPORUM TOBIRA (TOBIRA)
- CYRTOMIUM FALCATUM "ROCHFORDIANUM" (JAPANESE HOLLY FERN)
- SUCCULENTS (SUCCULENTS)
- TECOMARIA CAPENSIS (CAPE HONEYSUCKLE)
- VINCA MINOR (DWARF PERIWINKLE)
- WASHINGTONIA ROBUSTA (MEXICAN FAN PALM)
- YUCCA RECURVIFOLIA (YUCCA)
- CLEARED AREA - BARE DIRT

PRUNING & CLEARING

NOTE:
 IT APPEARS AS THOUGH ONLY NON-NATIVE PLANT MATERIAL HAS BEEN PRUNED THROUGHOUT THE ENTIRE SITE, WITH THE EXCEPTION OF AREA #7 AS NOTED, WHERE THE RHUS ARE MAKING A COMEBACK AND APPEAR TO BE IN GOOD HEALTH. REFER TO SPECIFIC COMMENTS FOR EACH AREA REGARDING PRUNING AS WELL AS WHETHER OR NOT THE MATERIAL PRUNED IS OF A NATIVE OR NON-NATIVE GENUS AND SPECIES.



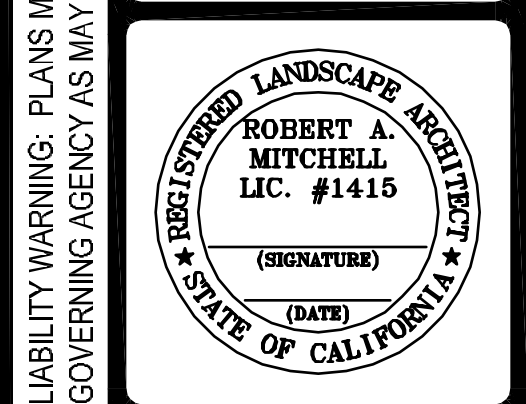
REVISION	BY

EXISTING VEGETATION MAP

AERIE
 201 - 207 CARNATION AVENUE
 CORONA DEL MAR, CALIFORNIA
 ADVANCED REAL ESTATE SERVICES
 2974 EL TORO ROAD, LAKE FOREST, CALIFORNIA 92650

PLANNING
 DESIGN
 LANDSCAPE ARCHITECTURE

ROBERT MITCHELL & ASSOCIATES
 LANDSCAPE ARCHITECTS
 J. A. N. D. S. O. F. T. E. C. S.
 28112-2112 FAX (949) 581-3807 rmitche@aerielandsc.com (rmitche.com)



BLUEPRINTER'S DATE STAMP:

DATE: 1/06/09
 SCALE: 1" = 10'-0"
 SHEET: 874PC
 OF: 874PC

L-1

NOT FOR CONSTRUCTION

AREA #9

AREA #9 IS THE AREA TO THE SOUTH OF THE EXISTING WALK, FROM THE SUN DECK AREA DESCRIBED IN AREA #2 UP TO THE LOWER SIDE OF AREA #8. AREA DOES NOT APPEAR TO HAVE BEEN PRUNED.

- NATIVE PLANTS:**
 ENCELIA CALIFORNICA
 ARTEMESIA CALIFORNICA
 ERIOGONUM FASCICULATUM
 RHUS INTEGRIFOLIA
- NON-NATIVE PLANTS:**
 ARUNDO DONAX "VERSICOLOR"
 LIMONIUM PEREZII
 CARPOBROTUS SPECIES

AREA #10

AREA #10 IS THE SLOPE AREA AT THE BASE OF A RETAINING WALL SUPPORTING AN EXISTING WALK AND LANDING. AREA HAS HAD MYOPORUM PRUNED / REMOVED.

- NATIVE PLANTS:**
- NON-NATIVE PLANTS:**
 DIETES BICOLOR

AREA #11

AREA #11 CONSISTS OF THE UPPER SLOPE AREA TO THE SOUTHWEST OF THE EXISTING BUILDING AND WALK AREA. THE AREA HAS BEEN RECENTLY PRUNED, AND ALL OF THE STUMPS APPEAR TO BE FROM MYOPRUM LAETUM. FROM PREVIOUS PHOTOS, THE ENTIRE AREA APPEARED TO CONSIST OF NON-NATIVE MATERIAL IN A DENSE, LARGE MASS. IT IS ONLY ON THE FRINGES, WHERE SUFFICIENT LIGHT WOULD BE AVAILABLE TO SUPPORT NATIVE PLANT MATERIAL.

- NATIVE PLANTS:**
 OPUNTIA LITTORALIS
- NON-NATIVE PLANTS:**
 MYOPORUM LAETUM
 PITTOSPORUM TOBIRA
 VINCA MINOR

AREA #12

AREA #2 IS THE NARROW PLANTING AREA ALONG THE SOUTHEAST SIDE OF THE BUILDING BETWEEN A SERVICE WALK AND THE ADJACENT PROPERTY AND STRUCTURES. NO NATIVE MATERIAL WERE NOTED. AREA APPEARS TO HAVE HAD THE BANANA (MUSA) PRUNED.

- NATIVE PLANTS:**
- NON-NATIVE PLANTS:**
 MUSA SPECIES (BANANA)
 ASPARAGUS SPRENGERI
 HEDERA HELIX "HAHNII"
 VINCA MINOR
 DISTICTIS BUCCINATORIA

AREA #13

AREA #13 IS THE AREA BELOW AREA 11 WHERE THE EXISTING STORM DRAIN DAYLIGHTS AND CONSISTS OF A DENSE MASSING OF NON-NATIVE PLANT MATERIAL. AREA DOES NOT APPEAR TO HAVE BEEN PRUNED.

- NATIVE PLANTS:**
- NON-NATIVE PLANTS:**
 MYOPORUM LAETUM
 JUNIPERUS CHINENSIS "BLUE POINTE"
 LIGUSTRUM JAPONICUM
 PITTOSPORUM PHILLYREOIDES
 CYRTOMIUM FALCATUM
 "ROCHFORDIANUM"
 WASHINGTONIA ROBUSTA
 VINCA MINOR

AREA #14

AREA #14 CONSISTS OF SLOPE AREA ADJACENT TO THE EXISTING CONDOMINIUM PROJECT THAT APPEARS TO SPILL ONTO THIS PROPERTY. NO NATIVES WERE OBSERVED IN THIS AREA AS WELL. AREA DOES NOT APPEAR TO HAVE BEEN PRUNED.

- NATIVE PLANTS:**
- NON-NATIVE PLANTS:**
 ASPARAGUS SPRENGERI
 CARPOBROTUS SPECIES
 CISSUS RHOMBIFOLIA
 LONICERA SPECIES
 PIMPINELLA ANISUM (ANISE)
 TECOMARIA CAPENSIS
 VINCA MINOR

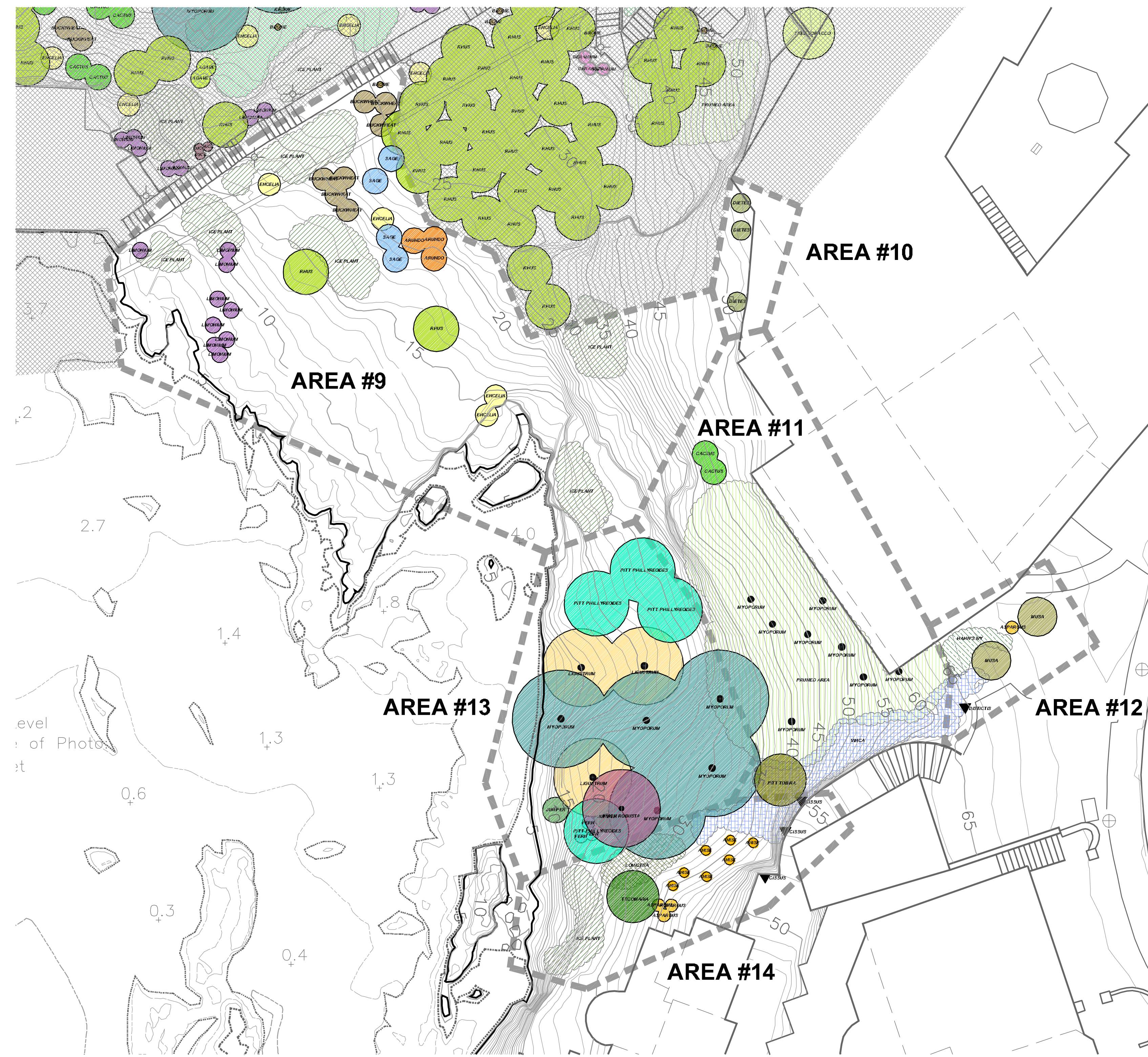
PRUNING & CLEARING

NOTE:
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ENTIRE SITE

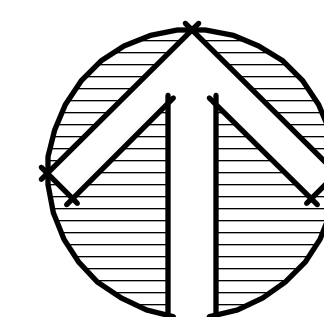
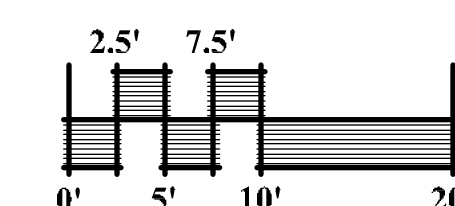
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 - BACCHARIS SALICIFOLIA (MULEFAT)
 - ENCELIA CALIFORNICA (CALIFORNIA ENCELIA)
 - ERIOGONUM FASCICULATUM (BUCKWHEAT)
 - ISOCOMA SPECIES (GOLDENBUSH)
 - OPTUNIA LITTORALIS (PRICKLY PEAR CACTUS)
 - RHUS INTEGRIFOLIA (LEMONADE BERRY)
- NON-NATIVE PLANTS: BOTANICAL NAME (COMMON NAME)**
- ACACIA REDOLENS (PROSTRATE ACACIA)
 - AGAVE SPECIES (AGAVE)
 - ARUNDO DONAX "VERSICOLOR" (VARIEGATED ARUNDO)
 - ASPARGUS SPRENGERI (ASPARAGUS FERN)
 - BOUGAINVILLEA SPECTABILIS (BOUGAINVILLEA)
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 - CISSUS RHOMBIFOLIA (GRAPE IVY)
 - DIETES BICOLOR (FORTNIGHT LILY)
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 - LONICERA SPECIES (HONEYSUCKLE)
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 - PITTOSPORUM PHILLYREOIDES (WILLOW PITTOSPORUM)
 - PITTOSPORUM TOBIRA (TOBIRA)
 - CYRTOMIUM FALCATUM "ROCHFORDIANUM" (JAPANESE HOLLY FERN)
 - SUCCULENTS (SUCCULENTS)
 - TECOMARIA CAPENSIS (CAPE HONEYSUCKLE)
 - VINCA MINOR (DWARF PERIWINKLE)
 - WASHINGTONIA ROBUSTA (MEXICAN FAN PALM)
 - YUCCA RECURVIFOLIA (YUCCA)
 - CLEARED AREA - BARE DIRT

SEE SHEET L-1 FOR AREAS 1 THROUGH 8



PRUNING & CLEARING

NOTE:
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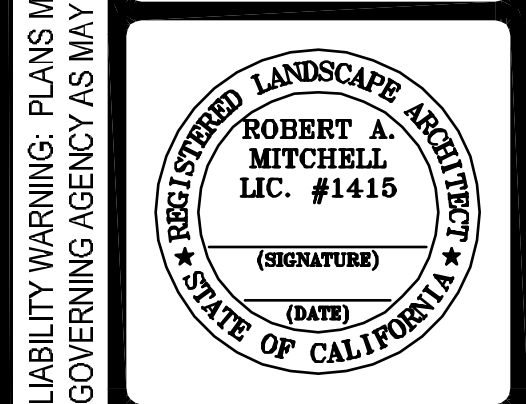
REVISION	BY

EXISTING VEGETATION MAP

AERIE
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PLANNING
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ROBERT MITCHELL & ASSOCIATES
 LANDSCAPE ARCHITECTS
 J. AND S. O. F. T. O. N. S.
 28112 212 FAX (949) 581-3807 rmitche@robertmitchell.com (rmitche.com)



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L-2

NOT FOR CONSTRUCTION

COLDWELL BANKER PREVIEW'S *International*

LYLEEN EWING
SOCIETY OF EXCELLENCE

Mr. Jim Campbell
Senior Planner
City of Newport Beach
3300 Newport Boulevard
Newport Beach, CA 92663

Dear Mr. Campbell,

I have been selling real estate in Orange County for over 35 years. In my career, I have personally handled hundreds of real estate transactions, of which the majority have been in the Newport Beach-Corona del Mar area.

I have been asked to render an opinion on the market absorption time for three speculative single family homes located on the property commonly known as 201-207 Carnation Avenue in Corona del Mar. I understand that each of these three homes would have expansive coastal views, a roof deck and one boat slip. The average size of the three homes would be approximately 8,300 livable square feet. I also understand that, as with much of the newer bluff top construction in the area, these homes would be highly amenitized and would involve significant excavation and grading and the placement of caissons. Given the remarkable location and view of these homes, it is my professional opinion that these homes likely would be listed for sale within an approximate price range of \$14,000,000 to \$16,000,000 even in today's depressed real estate market.

Demand for luxury homes in Newport Beach has declined significantly as a result of the economic downturn, and there is no clear indication as to how deep or how long this decline will last. Most recently, for the 22 business days ending January 15, 2009, DataQuick reports that the pace of sales in Corona Del Mar (Zip 92625) was down 38.5% from the same time last year. Further, according to the January 22, 2009, home inventory report from Steve Thomas of Altera Real Estate, in Orange County, 350 homes were listed for sale at asking prices above \$4 million, but only three had pending sales in the previous thirty days. While these numbers may not be a precise predictor of performance for the sales of any individual home or category of homes, for statistical purposes, this translates to an absorption rate of almost ten years (116.67 months) for these 350 homes. This same report discloses that even in the much stronger real estate market of two years ago, it would have taken over 31 months to absorb the current homes on the market. (Report available at

4 San Joaquin Plaza suite #260 Newport Beach CA 92660
949-6441600 • Direct 949-759-3786 • Cellular 949-233-8051 • Fax 949-644-5384
ljewing@coldwellbanker.com

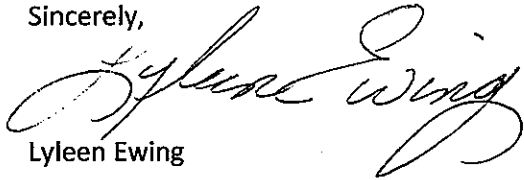
<http://www.ouragentspot.com/sthomas/MarketTime-Jan-22-09.doc>.) So what does all this translate to on the ground? Simply put: homes that once would have quickly attracted multiple offers are now likely to languish on the market, in some cases for a matter of years rather than months.

The current economic reality has fundamentally changed the economics of speculative home development. Today, experienced builders have adopted a "wait-and-see" approach. For multiple-single family home sites such as these, builders will "wait-and-see" where the money is coming from before they assume the risk and expense of construction.

Based on the ongoing economic downturn and the high cost of construction associated with this site, on one hand, and the premier location of these home sites on the other, it is my opinion that it would take a bare minimum of four years to pre-sell the three home sites, with one site sold an average of once every two years. Generally speaking, I expect one home site to be sold at the beginning of year one, the second home site to be sold at the end of year two, and the third site to be sold at the end of year four. Based on a two year per home construction schedule (per Brion Jeannette Architecture), total buildout of all three homes would therefore take approximately six years from the time of the first sale.

I hope that this opinion is helpful. Should you desire any further information, please feel free to call.

Sincerely,

A handwritten signature in cursive script that reads "Lyleen Ewing". The signature is written in black ink and is positioned above the printed name.

Lyleen Ewing

Coldwell Banker Residential Brokerage

Construction Generated Vibration Annoyance

Vibration Annoyance Criteria

Demolition Phase

Equipment	Approximate Velocity Level at 25 ft, VdB	Closest Distance (feet):	Average Distance (feet)	Approximate Velocity Level, VdB	Approximate Velocity Level, VdB
Excavator (Small bulldozer)	58	11.5	80	65	43
Backhoe Loader(Small bulldozer)	58	11.5	80	65	43
Loaded trucks	86	25	80	86	71
	Criteria			78	78

Excavation (50 ft)

Equipment	Approximate Velocity Level at 25 ft, VdB	Closest Distance (feet):	Average Distance (feet)	Approximate Velocity Level, VdB	Approximate Velocity Level, VdB
Large bulldozer	87	9	80	96	72
Excavator (Small bulldozer)	58	9	80	67	43
Loader (Small bulldozer)	58	9	81	67	43
Loaded trucks	86	25	80	86	71
	Criteria			78	78

Excavation (40 ft)

Equipment	Approximate Velocity Level at 25 ft, VdB	Closest Distance (feet):	Average Distance (feet)	Approximate Velocity Level, VdB	Approximate Velocity Level, VdB
Large bulldozer	87	9	80	96	72
Ram Hoe	87	9	80	96	72
Loader (Small bulldozer)	58	9	81	67	43
Excavator (Small bulldozer)	58	9	81	67	43
Loaded trucks	86	25	80	86	71
	Criteria			78	78

Excavation (28 ft)

Equipment	Approximate Velocity Level at 25 ft, VdB	Closest Distance (feet):	Average Distance (feet)	Approximate Velocity Level, VdB	Approximate Velocity Level, VdB
Large bulldozer	87	12.5	80	93	72
Excavator (Small bulldozer)	58	12.5	80	64	43
Loader (Small bulldozer)	58	12.5	80	64	43
Loaded trucks	86	25	80	86	71
	Criteria			78	78

Caisson Drilling

Equipment	Approximate Velocity Level at 25 ft, VdB	Closest Distance (feet):	Average Distance (feet)	Approximate Velocity Level, VdB	Approximate Velocity Level, VdB
Caisson Drill	87	9	80	96	72
Back Hoe Loader (Small bulldozer)	58	9	80	67	43
Pumper	58	88	80	47	43
Loaded trucks	86	25	80	86	71
	Criteria			78	78

Concrete Pour

Equipment	Approximate Velocity Level at 25 ft, VdB	Closest Distance (feet):	Average Distance (feet)	Approximate Velocity Level, VdB	Approximate Velocity Level, VdB
Pumper	86	88	80	75	71
Concrete Mixer	86	88	80	75	71
	Criteria			78	78

¹. Determined based on use of jackhammers or pneumatic hammers that may be used for pavement demolition at a distance of 25 feet

Notes: RMS velocity calculated from vibration level (VdB) using the reference of one microinch/second.

Source: Based on methodology from the United States Department of Transportation Federal Transit Administration, *Transit Noise and Vibration Impact Assessment* (2006).

Construction Generated Vibration - Structural Damage Criteria

Structural Damage Criteria

Demolition

Equipment	Approximate RMS a Velocity at 25 ft, inch/second	Approximate RMS Velocity Level, inch/second	Closest Distance (feet):
Excavator (Small bulldozer)	0.003	0.010	11.5
Backhoe Loader(Small bulldozer)	0.003	0.010	11.5
Loaded trucks	0.076	0.076	25
	Criteria	0.200	

Excavation to 50 ft

Equipment	Approximate RMS a Velocity at 25 ft, inch/second	Approximate RMS Velocity Level, inch/second	Closest Distance (feet):
Large bulldozer	0.089	0.412	9
Excavator (Small bulldozer)	0.003	0.014	9
Loader (Small bulldozer)	0.003	0.003	25
Loaded trucks	0.076	0.076	25
	Criteria	0.200	

Excavation to 40 ft

Equipment	Approximate RMS a Velocity at 25 ft, inch/second	Approximate RMS Velocity Level, inch/second	Closest Distance (feet):
Large bulldozer	0.089	0.412	9
Ram Hoe	0.089	0.412	9
Loader (Small bulldozer)	0.003	0.014	9
Excavator (Small bulldozer)	0.003	0.014	9
Loaded trucks	0.076	0.076	25
	Criteria	0.200	

Excavation to 28 ft

Equipment	Approximate RMS a Velocity at 25 ft, inch/second	Approximate RMS Velocity Level, inch/second	Closest Distance (feet):
Large bulldozer	0.003	0.008	12.5
Ram Hoe	0.003	0.008	12.5
Loader (Small bulldozer)	0.003	0.008	12.5
Excavator (Small bulldozer)	0.003	0.008	12.5
Loaded trucks	0.076	0.076	25
	Criteria	0.200	

Caisson Drilling

Equipment	Approximate RMS a Velocity at 25 ft, inch/second	Approximate RMS Velocity Level, inch/second	Closest Distance (feet):
Caisson Drill	0.089	0.412	9
Back Hoe Loader (Small bulldozer)	0.003	0.008	12.5
Pumper	0.076	0.012	88
Loaded trucks	0.076	0.076	25
	Criteria	0.200	

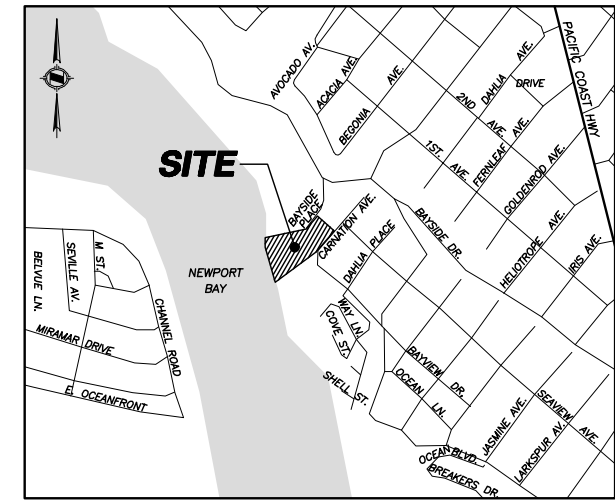
Concrete Pour

Equipment	Approximate RMS a Velocity at 25 ft, inch/second	Approximate RMS Velocity Level, inch/second	Closest Distance (feet):
Pumper	0.076	0.164	15
Loaded trucks	0.076	0.076	25
	Criteria	0.200	

NOTE: EXHIBIT IS CONCEPTUAL ONLY AND NOT TO SCALE. ALL FACILITIES TO BE LOCATED INSIDE THE "PREDOMINANT LINE OF DEVELOPMENT".

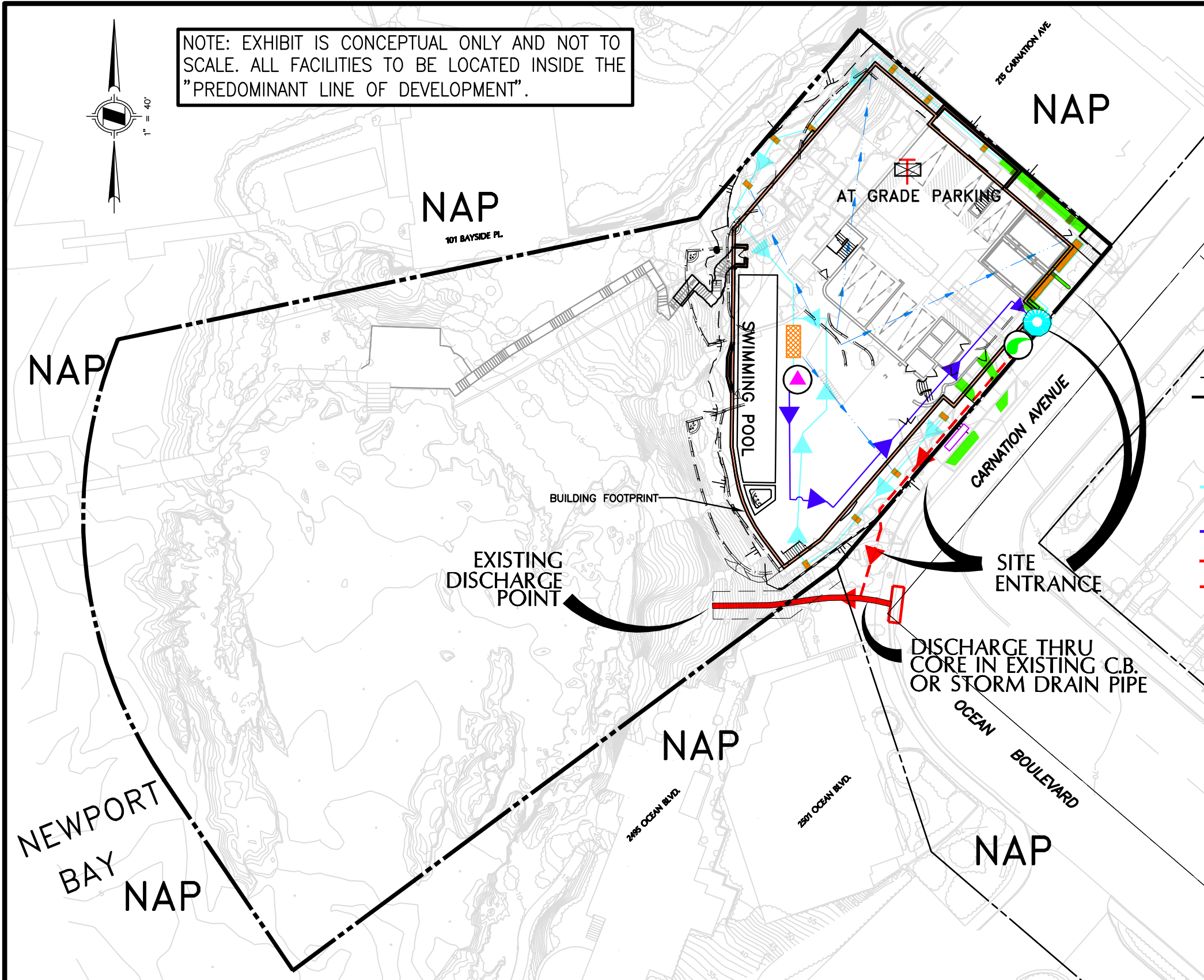
VICINITY MAP

NOT TO SCALE



LEGEND

- PROJECT BOUNDARY
- NAP** NOT A PART
- DIRECTION OF SURFACE FLOW
- GRAVITY FLOW LINES AND DIRECTION FOR ROOF AND AREA DRAINS
- STORMWATER FORCE MAIN
- PROPOSED CONNECTION TO EXISTING SD
- EXISTING STORM AND AREA DRAINS
- WET WELL AND STORMWATER PUMP
- STORMFILTER WATER QUALITY UNIT
- ABTECH SMART SPONGE PLUS INSERTS
- LANDSCAPE AREAS (PRIVATE) WITH BMP's: (MAINTAINED BY HOA)
- COMMON AREA EFFICIENT IRRIGATION
- COMMON AREA RUNOFF-MINIMIZING LANDSCAPE DESIGN
- AREA DRAINS (PRIVATE) WITH BMP: SD STENCILLING WHERE FEASIBLE
- EXISTING CATCH BASIN/AREA DRAINS
- TRASH ENCLOSURE-EXACT LOCATIONS TO BE DETERMINED
- ADS STORM WATER QUALITY UNIT OR EQUAL



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DATE PREPARED:
 5/12/09
 WO 751-5X

"AERIE"
 TENTATIVE TRACT MAP NO. 16882
 CORONA DEL MAR
 CITY OF NEWPORT BEACH, CA

WQMP
 EXHIBIT