

FINAL ENVIRONMENTAL IMPACT REPORT

BACK BAY LANDING PROJECT

CITY OF NEWPORT BEACH, CALIFORNIA



FEBRUARY 2014

FINAL ENVIRONMENTAL IMPACT REPORT

BACK BAY LANDING PROJECT

CITY OF NEWPORT BEACH, CALIFORNIA

STATE CLEARINGHOUSE #2012101003

Prepared For:

City of Newport Beach
3300 Newport Boulevard
Newport Beach, California 92663
Tel: 949.6443209
Contact: Jaime Murillo, Senior Planner

Prepared By:

PCR Services Corporation
One Venture, Suite 150
Irvine, California 92618

FEBRUARY 2014

Table of Contents

	Page
1.0 INTRODUCTION TO THE FINAL EIR	1-1
2.0 RESPONSES TO COMMENTS	2-1
3.0 CORRECTIONS AND ADDITIONS TO THE DRAFT EIR	3-1
4.0 MITIGATION MONITORING AND REPORTING PROGRAM	4-1

List of Figures

	Page
4.A-6 Visual Simulation View Locations	3-4
4.A-7 View Simulation #1	3-5
4.A-8 View Simulation #2	3-6
4.A-9 View Simulation #3	3-7
4.A-10 View Simulation #4	3-8
4.A-11 View Simulation #5	3-9
4.A-12 View Simulation #6	3-10
4.A-13 View Simulation #7	3-11
4.A-14 View Simulation #8	3-12

List of Tables

	Page
2-1 Summary of Comment Letters	2-1
4-1 Mitigation Monitoring and Reporting Program.....	4-3

This page intentionally left blank.

1. INTRODUCTION TO FINAL EIR

1.0 INTRODUCTION TO THE FINAL EIR

This Final Environmental Impact Report (FEIR) has been prepared in accordance with the California Environmental Quality Act (CEQA) as amended (Public Resources Code Section 21000 et seq.) and *CEQA Guidelines* (California Administrative Code Section 15000 et seq.). According to *CEQA Guidelines*, Section 15132, the FEIR shall consist of:

- (a) The Draft Environmental Impact Report (DEIR) or a revision of the Draft;
- (b) Comments and recommendations received on the Draft EIR either verbatim or in summary;
- (c) A list of persons, organizations, and public agencies commenting on the Draft EIR;
- (d) The responses of the Lead Agency to significant environmental points raised in the review and consultation process; and
- (e) Any other information added by the Lead Agency.

This document, in conjunction with the October 2013 Draft EIR, which is bound separately, constitute the Final EIR for the Back Bay Landing (the “proposed project”). As described in detail in Chapter 2.0, *Project Description*, of the Draft EIR, Bayside Village Marina, LLC, the project applicant, is seeking various legislative and administrative approvals for the future development of a mixed-use bayfront village, Back Bay Landing. The proposed project would lead to the development of an integrated, mixed-use village comprising of visitor-serving commercial, marine services, and limited residential uses on an improved but underutilized bayfront site on 6.974 acres in the City of Newport Beach. The applicant is seeking General Plan and Coastal Land Use Plan Amendments that would allow for limited residential use on the site through reallocation of density within an existing three-parcel subdivision (Parcel Map No. 93-111). The project applicant has also prepared and is seeking approval of the Back Bay Landing Planned Community Development Plan (PCDP), which will serve as the controlling zoning ordinance for the project site and provide a regulatory framework for the five Planning Areas that will comprise the 31.431-acre Parcel 3 of Parcel Map 93-111 (“Parcel 3”). Within the PCDP, the Back Bay Landing Design Guidelines will provide specific guidance for physical implementation of the project and assist the City and community with visualization of the architectural theme and character of the project. The applicant is also requesting approval of a Lot Line Adjustment and Traffic Impact Analysis. Specific project-level applications for a fully integrated, mixed-use development through a Site Development Plan and Coastal Development Permit (CDP) will be filed in the future.

Pursuant to CEQA Guidelines Section 15063, the City prepared an Initial Study which concluded that the proposed project could result in potentially significant environmental impacts and an EIR would be required. The City circulated a Notice of Preparation (NOP) of a Draft EIR for the proposed project to the State Clearinghouse and interested agencies and persons on October 1, 2012 for a 30-day review period ending on October 30, 2012 with a public scoping meeting held on October 17, 2012. Comments received on the NOP and comments received at the public scoping meeting were both considered in the preparation of the Draft EIR.

The Draft EIR was made available to various public agencies, citizen groups, and interested individuals for a 45-day public review period from October 4, 2013 through November 18, 2013. A Planning Commission

Public Hearing was held on December 19, 2013 to gather public comments on the Draft EIR. The Draft EIR was circulated to state agencies for review through the State Clearinghouse of the Governor's Office of Planning and Research. Copies of a Notice of Availability (NOA) of the Draft EIR were also sent to Responsible Agencies, other interested State and local government agencies, utilities, and other interested parties. Copies of the Draft EIR were available for review at the Newport Beach Public Library Central Library, Mariners Branch, Balboa Branch, and Corona del Mar Branch and via the internet at www.newportbeachca.gov/ceqadocuments.

Comment letters on the Draft EIR with specific responses are presented in Chapter 2.0, *Responses to Comments*, of this Final EIR. Any revisions to the Draft EIR based on these comments are contained in Chapter 3.0, *Corrections and Additions to the Draft EIR*, of this Final EIR in revision mode text (i.e., deletions are shown with ~~strikethrough~~ and additions are shown with double underline).

2. RESPONSES TO COMMENTS

2.0 RESPONSES TO COMMENTS

2.1 INTRODUCTION

Section 15132 of the CEQA Guidelines states that a Final EIR shall consist of: “(a) the Draft EIR or a revision of the draft; (b) comments and recommendations received on the Draft EIR either verbatim or in summary; (c) a list of persons, organizations, and public agencies commenting on the Draft EIR; and (d) the responses of the Lead Agency to significant environmental points raised in the review and consultation process.”

The Draft EIR was made available to various public agencies, citizen groups, and interested individuals for a 45-day public review period from October 4, 2013 through November 18, 2013. This chapter of the Final EIR presents the 14 comment letters received during the public comment period for the Draft EIR from public agencies, organizations, and/or private individuals. A list of commenters is provided below in **Table 2-1, Summary of Comment Letters**. The letters are assigned an alphabetical identifier, as indicated in Table 2-1. Each comment that requires a response within the letters has been assigned a number. For example, the first comment in Letter A would be Comment A-1, and the fourth comment in Letter B would be Comment B-4. The responses to each comment are then correspondingly numbered (i.e., Response A-1 and Response B-4).

2.2 RESPONSES AND COMMENTS

This section includes the nine comment letters received on the Draft EIR and the City’s responses. The presentation of the comments and responses follow Table 2-1.

Table 2-1

Summary of Comment Letters

Comment Letter	Commenter Name/Address
A	Scott Morgan Director, State Clearinghouse State of California Governor’s Office of Planning and Research State Clearinghouse and Planning Unit 1400 Tenth Street P.O. Box 3044 Sacramento, California 95812-3044
B	Scott Morgan Director, State Clearinghouse State of California Governor’s Office of Planning and Research State Clearinghouse and Planning Unit 1400 Tenth Street P.O. Box 3044 Sacramento, California 95812-3044
C	Fernie Sy Coastal Program Analyst II California Coastal Commission South Coast Area Office

Table 2-1 (Continued)**Summary of Comment Letters**

Comment Letter	Commenter Name/Address
	200 Oceangate, Suite 1000 Long Beach, CA 90802-4302
D	Maureen El Harake Branch Chief, Regional-Community-Transit Planning Department of Transportation District 12 3347 Michelson Drive, Suite 100 Irvine, CA 92612-8894
E	Mark G. Adelson Chief, Regional Planning Programs Section Santa Ana Regional Water Quality Control Board 3737 Main Street, Suite 500 Riverside, CA 92501
F	Daisy Covarrubias, MPA Senior Staff Analyst Orange County Sanitation District 10844 Ellis Avenue Fountain Valley, CA 92708
G	Polic Modanlou, Manager Strategic Land Planning Division OC Public Works/OC Planning Services 300 North Flower Street Santa Ana, California 92702-4048
H	David R. Law, AICP Senior Planner City of Irvine One Civic Center Plaza P.O. Box 19575 Irvine, California 92623-9575
I	Colin Kelly Staff Attorney Orange County Coastkeeper 3151 Airway Avenue, Suite F-110 Costa Mesa, California 92626
J	Nick R. Green President Citizens Advocating Rational Development
K	Patricia Martz, Ph.D. President California Cultural Resource Preservation Alliance, Inc. P.O. Box 54132 Irvine, California 92619-4132
L	Lawrence Van Pelt Bayside Improvement Committee
M	Debbie Stevens 1120 Sea Lane Corona Del Mar, California 92625
N	City of Newport Beach Environmental Quality Affairs Committee (EQAC)

Letter A



Edmund G. Brown Jr.
Governor

STATE OF CALIFORNIA
Governor's Office of Planning and Research
State Clearinghouse and Planning Unit



Ken Alex
Director

November 19, 2013

Jaime Murillo
City of Newport Beach
100 Civic Center Drive
Newport Beach, CA 92660

Subject: Back Bay Landing Project
SCH#: 2012101003

RECEIVED BY
COMMUNITY
NOV 25 2013
DEVELOPMENT
CITY OF NEWPORT BEACH

Dear Jaime Murillo:

The State Clearinghouse submitted the above named Draft EIR to selected state agencies for review. On the enclosed Document Details Report please note that the Clearinghouse has listed the state agencies that reviewed your document. The review period closed on November 18, 2013, and the comments from the responding agency (ies) is (are) enclosed. If this comment package is not in order, please notify the State Clearinghouse immediately. Please refer to the project's ten-digit State Clearinghouse number in future correspondence so that we may respond promptly.

Please note that Section 21104(c) of the California Public Resources Code states that:

"A responsible or other public agency shall only make substantive comments regarding those activities involved in a project which are within an area of expertise of the agency or which are required to be carried out or approved by the agency. Those comments shall be supported by specific documentation."

These comments are forwarded for use in preparing your final environmental document. Should you need more information or clarification of the enclosed comments, we recommend that you contact the commenting agency directly.

This letter acknowledges that you have complied with the State Clearinghouse review requirements for draft environmental documents, pursuant to the California Environmental Quality Act. Please contact the State Clearinghouse at (916) 445-0613 if you have any questions regarding the environmental review process.

Sincerely,

Scott Morgan
Director, State Clearinghouse

Enclosures

cc: Resources Agency

**Document Details Report
State Clearinghouse Data Base**

SCH# 2012101003
Project Title Back Bay Landing Project
Lead Agency Newport Beach, City of

Type EIR Draft EIR

Description The proposed project involves various legislative approvals for the future development of the Back Bay Landing Project (the "proposed project"), which is proposed to be an integrated, mixed-use waterfront village on 6.974 acres in the City of Newport Beach.

Lead Agency Contact

Name Jaime Murillo
Agency City of Newport Beach
Phone (949) 644-3209 **Fax**
email
Address 100 Civic Center Drive
City Newport Beach **State** CA **Zip** 92660

Project Location

County Orange
City Newport Beach
Region
Lat / Long
Cross Streets East Coast Highway at Bayside Drive
Parcel No. 440-132-60
Township **Range** **Section** **Base**

Proximity to:

Highways SR-1
Airports
Railways
Waterways Upper Newport Bay, Newport Harbor, Pacific Ocean
Schools
Land Use General Plan: Recreational and Marine Commercial CM 0.5 and CM 0.3
 Coastal Land Use Plan: CM-B (north of PCH); CM-A (south of East Coast Highway)
 Zoning: PC-9 (north of East Coast Highway); CM (south of East Coast Highway)

Project Issues Agricultural Land; Air Quality; Archaeologic-Historic; Coastal Zone; Drainage/Absorption; Flood Plain/Flooding; Geologic/Seismic; Noise; Public Services; Recreation/Parks; Schools/Universities; Sewer Capacity; Soil Erosion/Compaction/Grading; Solid Waste; Toxic/Hazardous; Traffic/Circulation; Vegetation; Water Quality; Water Supply; Wetland/Riparian; Growth Inducing; Landuse; Cumulative Effects; Aesthetic/Visual

Reviewing Agencies Caltrans, Division of Aeronautics; Department of Boating and Waterways; Department of Fish and Wildlife, Region 5; Department of Parks and Recreation; Department of Water Resources; California Highway Patrol; Caltrans, District 12; Air Resources Board; Regional Water Quality Control Board, Region 8; Native American Heritage Commission

Date Received 10/04/2013 **Start of Review** 10/04/2013 **End of Review** 11/18/2013

A-1
(cont.)

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 OceanGate, Suite 1000
Long Beach, CA 90802-4302
(562) 590-5071



Clear
11/18/13
E

November 18, 2013

Jaime Murillo, Senior Planner
City of Newport Beach
100 Civic Center Drive
Newport Beach, CA 92660

RECEIVED

NOV 18 2013

STATE CLEARING HOUSE

Re: Back Bay Landing
Environmental Impact Report (SCH# 2012101003)

Dear Mr. Murillo,

Thank you for the opportunity to review the Environmental Impact Report for the Back Bay Landing Project in the City of Newport Beach. According to the Environmental Impact Report, the proposal includes the construction of an integrated, mixed-use waterfront village on an approximately 7-acre portion of a 31.4 acre parcel located adjacent to Upper Newport Bay. The project also includes amendments to the General Plan and Coastal Land Use Plan (CLUP) to change the land use designations to a Mixed-Use Horizontal designation and a Planned Community Development Plan.

The proposed project is located within the Coastal Zone in the City of Newport Beach. The proposed development will require amendments to the City's Coastal Land Use Plan and a Coastal Development Permit from the California Coastal Commission.

The following comments address the issue of the proposed project's consistency with the Chapter 3 policies of the California Coastal Act of 1976. The comments contained herein are preliminary and those of Coastal Commission staff only and should not be construed as representing the opinion of the Coastal Commission itself. As described below, the proposed project raises issues related to land use, hazards and visual impacts.

A-2

The following are comments by Commission staff on the Environmental Impact Report.

LAND USE

It appears that a free standing residential use is anticipated for the project site. Residential uses are a lower priority use. Thus, such an independent use should be reconsidered. Additionally, additional residential uses are anticipated above the ground floor of higher priority uses (such as, visitor-serving commercial and marine service uses) to be located adjacent to the bay. While these residential uses are anticipated to be located above higher priority uses, the location of these residential uses should be reconsidered to be located as landward as possible.

Environmental Impact Report
Back Bay Landing
Page 2 of 2

HAZARDS

A new bulkhead is anticipated for future development of the Back Bay Landing project. Section 30235 of the Coastal Act only allows the construction of new bulkheads to protect existing structures. New development must be appropriately sited and designed so that no future shoreline protective devices are necessary. Thus, please discuss how the anticipated project/bulkhead is consistent with Section 30235 of the Coastal Act.

Has analysis of the anticipated bulkhead/project taken into account future sea level rise? If not, such an analysis should be conducted.

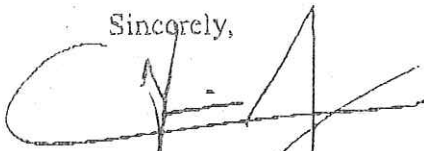
VISUAL IMPACTS

The project site is located within the Shoreline Height Limitation Zone of the Coastal Land Use Plan, which establishes a maximum height limit of 35-feet. A CLUP amendment is anticipated that would allow a single, up to 65-foot tall tower that would currently be inconsistent with the Shoreline Height Limitation Zone requirements. The height of such a structure would impact coastal views. Thus, please provide alternatives to the proposed tower that would not have such an adverse impact on public views, such as staying within the allowable height limit, and justify your choice of the alternative that would be the least environmentally damaging alternative and consistent with the pattern of the surrounding area.

A-2
(cont.)

Thank you for the opportunity to comment on the Environmental Impact Report for the Back Bay Landing Project. Commission staff request notification of any future activity associated with this project or related projects. Please note, the comments provided herein are preliminary in nature. Additional and more specific comments may be appropriate as the project develops into final form and when an application is submitted for a Coastal Land Use Plan Amendment and Coastal Development Permit. Please feel free to contact me at 562-590-5071 with any questions.

Sincerely,



Fennie Sy
Coastal Program Analyst II

Cc: State Clearinghouse

DEPARTMENT OF TRANSPORTATION
DISTRICT 12
3347 MICHELSON DRIVE, SUITE 100
IRVINE, CA 92612-8894
PHONE (949) 724-2000
FAX (949) 724-2019
TTY 711
www.dot.ca.gov



RECEIVED

*Flex your power!
Be energy efficient!*

NOV 15 2013

FAX & MAIL

STATE CLEARING HOUSE

November 7, 2013

Jaime Murillo
City of Newport Beach
3300 Newport Boulevard
Newport Beach, California 92658

*clear
11/10/13
e*

File: IGR/CEQA
SCH#: 2012101003
IGR Log #: 3089-C
SR-1

Dear Mr. Murillo,

Thank you for the opportunity to review and comment on the Draft **Environmental Impact Report (EIR) for the Back Bay Landing Project**. The proposed project involves various legislative approvals for the future development of the Back Bay Landing Project, which is proposed to be an integrated, mixed-use waterfront village on 6.974 acres in the City of Newport Beach generally located north of East Coast Highway and northwest of Bayside Drive in the western portion of the City. The nearest State route to the project is SR-1.

The Department of Transportation (Department) is a responsible agency on this project and we have the following comments:

1. The Department's Traffic Operations Branch requests all applicants to use the method outlined in the latest version of the Highway Capacity Manual (HCM) when analyzing traffic impacts on State Transportation Facilities. The use of HCM is preferred by the Department because it is an operational analysis as opposed to the Intersection Capacity Utilization (ICU) method, which is a planning analysis. In the case of projects that have direct impacts on State Facilities, the Department recommends that the traffic impact analysis be based on HCM method. Should the project require an encroachment permit, Traffic Operations may find the Traffic Impact Study based on ICU methodology inadequate resulting in possible delay or denial of a permit by the Department. The use of either Synchro or HCS software is preferred. All input sheets, assumptions and volumes on State Facilities including ramps and intersection analysis should be submitted to the Department for review and approval. The EIR should include appropriate mitigation measures to offset any potential impacts. The traffic impact on the state transportation system should be evaluated based on the Department's Guide for the Preparation of Traffic Impact Studies which is available at: <http://www.dot.ca.gov/hq/traffops/developserv/operationalsystems/reports/tisguide.pdf>
2. The document should include a discussion and address bicycles and pedestrians during the construction.

A-3

3. All geometric and accessibility design discussed on page 4.M-16 must meet CA-MUTCD and current ADA standards.

A-3
(cont.)

Please continue to keep us informed of this project and any future developments, which could potentially impact the State Transportation Facilities. If you have any questions or need to contact us, please do not hesitate to call Maryam Molavi at (949) 724-2267.

Sincerely,



MAUREEN EL HARAKE
Branch Chief, Regional-Community-Transit Planning
District 12

C: Scott Morgan, Office of Planning and Research

LETTER A

Scott Morgan
Director, State Clearinghouse
State of California
Governor's Office of Planning and Research
State Clearinghouse and Planning Unit
1400 Tenth Street
P.O. Box 3044
Sacramento, California 95812-3044

Comment A-1

This letter from the Governor's Office of Planning and Research State Clearinghouse and Planning Unit (State Clearinghouse) states that the City has complied with the State Clearinghouse review requirements for draft environmental documents. The comment also notes that the State Clearinghouse distributed the Draft EIR to state agencies for review and received comments from two of them: the California Coastal Commission and the Department of Transportation.

Comment A-2

This letter from the California Coastal Commission was included as an attachment to Letter A from the State Clearinghouse. This letter was also provided directly to the City and as such is included as Letter C in this Chapter with individual responses to comments raised in the letter provided below.

Comment A-3

This letter from the California Department of Transportation (Caltrans) was included as an attachment to Letter A from the State Clearinghouse. This letter was also provided directly to the City and as such is included as Letter D in this Chapter with individual responses to comments raised in the letter provided below.

This page intentionally left blank.

Letter B



EDMUND G. BROWN JR.
GOVERNOR

STATE OF CALIFORNIA
GOVERNOR'S OFFICE *of* PLANNING AND RESEARCH
STATE CLEARINGHOUSE AND PLANNING UNIT



KEN ALEX
DIRECTOR

November 26, 2013

RECEIVED BY
COMMUNITY

DEC 02 2013

Jaime Murillo
City of Newport Beach
100 Civic Center Drive
Newport Beach, CA 92660

DEVELOPMENT
CITY OF NEWPORT BEACH

Subject: Back Bay Landing Project
SCH#: 2012101003

Dear Jaime Murillo:

The enclosed comment (s) on your Draft EIR was (were) received by the State Clearinghouse after the end of the state review period, which closed on November 18, 2013. We are forwarding these comments to you because they provide information or raise issues that should be addressed in your final environmental document.

The California Environmental Quality Act does not require Lead Agencies to respond to late comments. However, we encourage you to incorporate these additional comments into your final environmental document and to consider them prior to taking final action on the proposed project.

Please contact the State Clearinghouse at (916) 445-0613 if you have any questions concerning the environmental review process. If you have a question regarding the above-named project, please refer to the ten-digit State Clearinghouse number (2012101003) when contacting this office.

Sincerely,

Scott Morgan
Director, State Clearinghouse

Enclosures

cc: Resources Agency

B-1



LATE
11/18/13
E



EDMUND G. BROWN JR.
GOVERNOR

MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

Santa Ana Regional Water Quality Control Board

November 25, 2013

Jaime Murillo
City of Newport Beach
100 Civic Center Drive
Newport Beach, CA 92660

RECEIVED

NOV 25 2013

STATE CLEARING HOUSE

DRAFT ENVIRONMENTAL IMPACT REPORT FOR BACK BAY LANDING PROJECT, UPPER NEWPORT BAY, CITY OF NEWPORT BEACH, SCH #2012101003

Dear Mr. Murillo:

Staff of the Regional Water Quality Control Board, Santa Ana Region (Regional Board) has reviewed the October 3, 2013 Draft Environmental Impact Report (DEIR) for the Back Bay Landing Project, a proposed mixed-use waterfront development (including a possible observation tower), in the City of Newport Beach (Project). The Project would develop a 6.974-acre portion of the 31.431-acre Parcel 3, located adjacent to the existing Bayside Village Marina along the southern shore of Upper Newport Bay (Bay).

Of the 6.974 acres:

- 6.332 acres are located immediately north of East Coast Highway between the Bayside Village Marina and Bayside Drive, and
- 0.642 acre extends beneath and south of the East Coast Highway Bridge, along the east side of the channel connecting Upper and Lower Newport Bay.

B-2

We request that the following comments be incorporated into the Final EIR, in order to protect water quality standards (i.e., water quality objectives and beneficial uses) identified in the Water Quality Control Plan for the Santa Ana River Basin, 1995, as amended (Basin Plan):

1. Permanent impacts to waters of the state and water quality standards should be avoided to the maximum extent possible, and temporary and permanent impacts must be mitigated for where such impacts are unavoidable. Mitigation sites must be protected from other uses by appropriate restrictive land use instruments. The Final EIR should analyze and discuss how the following beneficial uses of Upper Newport Bay, as listed in the Basin Plan, will be protected by the Project's proposed mitigation measures:

- Estuarine Habitat (EST),
- Shellfish Harvesting (SHEL),
- Commercial and Sportfishing (COMM),
- Marine Habitat (MAR),
- Spawning, Reproduction, and Development (SPWN),
- Wildlife Habitat (WILD),
- Preservation of Biological Habitats of Special Significance (BIOL),
- Rare, Threatened, or Endangered Species (RARE),
- Water Contact Recreation (REC1), and
- Non-Contact Water Recreation (REC2).

CAROLE H. BESWICK, CHAIR | KURT V. BERCHTOLD, EXECUTIVE OFFICER

2. Three components of the Project identified by the DEIR (Executive Summary, p.1) appear to entail activities - dredging or discharge of fill to, or shading areas of - waters subject to federal jurisdiction under the Clean Water Act (CWA) or Rivers and Harbors Act of 1899 (RHA). These are:
 - Construction of a minor inlet channel from the existing Bayside Village Marina, for launches from "a future dry-stack boat storage facility" that would rack up to 140 boats (DEIR p.2-14); and
 - Installation of a bulkhead and sheetpile barrier into the mudflat, with backfill landward of the barrier and toward and upon the beach, to form a 12-ft wide promenade along the Bay. This public-access promenade would extend between the boundary of the Bayside Village Mobile Home Park and the Project entrance at Bayside Drive; and
 - The Project appears to anticipate (Figure 2-9), a floating dock(s) at the bulkhead to provide access to small boats; a tethered dock would impact any submerged habitat by shading it.

Board staff believes that a study is necessary as part of the environmental analysis of the project to identify areas within the Project footprint that are subject to regulation pursuant to the CWA or the RHA. This study should include a Jurisdictional Delineation (JD) of waters subject to the CWA. The findings of the study and JD should be reported in the final EIR. Discrete locations within the Project site that are subject to federal jurisdiction need to be identified in the Final EIR, along with exhibits and tables showing their area, in acres, their biological character and current uses, and their length with respect to frontage on water.

If there are parts of the project that are subject to the CWA or the RHA, the Project will require Regional Board CWA Section 401 Water Quality Standards Certification (Certification) as a prerequisite to the U.S. Army Corps of Engineers (Corps) issuing a CWA Section 404 "Dredge and Fill" Permit or RHA permit for the project. All Project components (summarized above) needing Certification would be covered in one Certification application for this Project.

B-2
(cont.)

3. The final EIR must specify mitigation measures for impacts to wetlands or waters of the state and the U.S. that will be impacted by the Project, in the manner that the DEIR has generally identified a 1.2:1 ratio of eelgrass replacement for activities conducted within 15 feet of identified eelgrass or conducted toward least tern nesting season (Mitigation Measure Table ES-1, Mitigation Measures C-6, C-7). Board staff generally concurs with the DEIR that all eelgrass mitigation should be conducted in concert with the City of Newport Beach Eelgrass Protection and Mitigation Plan for Shallow Waters in Lower Newport Bay (this plan is currently being revised). However, we note that the City's Eelgrass Protection and Mitigation Plan is geared to the needs of owners of private docks, not commercial developments; should eelgrass be affected by the Project, the Southern California Eelgrass Mitigation Policy will control how eelgrass impacts are to be addressed.
4. The final EIR should reflect that the bulkhead/sheetpile seawall will likely become a new attachment substrate for various shellfish, including native Olympia oysters, which have attached to local seawalls. In the final EIR, the lead agency is encouraged to consider how the bulkhead could be designed to support shellfish habitat that offsets harvesting for consumption in the Bay, and that enables distribution of spat around the Bay, thereby supporting and protecting SHEL, SPWN, and MAR. The final EIR should also address monitoring for invasive shellfish so that timely control measures may be taken.
5. Mitigation Measure G-2 states that dredging will be discussed with the Corps and the California Department of Fish and Wildlife (CDFW) during the permit process, including disposal requirements for dredged spoils found to contain residue of DDT and other organochlorine pesticides. If there are other pollutants of concern that the dredged spoils have been, or will be, assessed for, those pollutants should be identified in the final EIR. The final EIR should indicate the likely locations for the placement or disposal of dredged spoils. The final EIR should reflect that dredged material disposal locations and monitoring programs have been, or will be, selected in consultation with the Corps, USEPA, and the

other agencies that coordinate to determine appropriate sites for disposal of dredged spoils. The final EIR also should consider the potential loss of intertidal mudflat habitat due to dredging and filling and identify mitigation alternatives for this loss.

6. The final EIR should take note of the Basin Plan's water quality objectives for turbidity. The Basin plan establishes the following maximum turbidity increases over natural turbidity, due to controllable water quality factors: for waters with 0-50 Nephelometric Turbidity Units (NTU), 20 percent; for waters with 50-100 NTU, 10 NTU; and for waters greater than 100 NTU, 10 percent. These objectives will be used to determine if Project construction or operating activities are causing or contributing to violations of water quality standards. Board staff commends the Project's expected use of a silt curtain during construction, to be lowered to specific levels above and below the waterline, around dredging equipment (type of dredge is not specified). This practice, and others, will be necessary to ensure that the Basin Plan's turbidity objectives are met throughout the construction period.
7. The final EIR should recognize that Upper/Lower Newport Bay and San Diego Creek have been listed, pursuant to Clean Water Act Section 303(d), as impaired by various pollutants and that Total Maximum Daily Loads (TMDLs) have been adopted by the Regional Board to address these impairments. The following group of adopted and anticipated TMDLs are applicable to the Project site:
 - Siltation (sediments) and nutrient TMDLs for Lower Newport Bay, Upper Newport Bay, San Diego Creek Reach 1, and San Diego Creek Reach 2.
 - A fecal coliform (pathogen) TMDL has been adopted for Lower Newport Bay and Upper Newport Bay. A diazinon/chlorpyrifos TMDL has been adopted for Upper Newport Bay and San Diego Creek, Reach 1.
 - TMDLs are 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). TMDLs for toxic pollutants, including selenium, were promulgated by the U.S. Environmental Protection Agency in June 2002.
 - TMDLs for organochlorine compounds (particularly DDT, chlordane, and PCBs) are anticipated for all four of these water bodies (as well as Newport Bay's Rhine Channel) (with toxaphene also targeted in San Diego Creek Reaches 1 and 2).

The TMDLs can be found on the TMDL page at <http://www.swrcb.ca.gov/rwgcb8/>. Design features and BMPs proposed by the Project that will contribute to compliance with TMDLs specific to Upper and Lower Newport Bay should be identified in the Project's final EIR and WQMP.

8. Mitigation Measure G-1 covers a tank removal and remediation plan for potential soil and groundwater contamination from an existing 550-gallon underground storage tank. Board staff concurs with statements in the DEIR that written comments and approval of this plan would need to be provided to the City of Newport Beach Community Development Department before a grading permit was to be issued. Further, the DEIR anticipates that the Project will involve dewatering and will require appropriate permitting with a sampling program (DEIR Mitigation Measure G-3). In order to conduct dewatering activities, the applicant must obtain authorization under the Regional Board's waste discharge requirements Order No. R8-2007-0041, amended by R8-2009-0045 (NPDES No. CAG918002) and subsequent iterations, specific to dewatering and groundwater cleanup activities within the San Diego Creek/ Newport Bay watershed. This general permit establishes a program for the purpose of reducing discharges of selenium, nutrients, sediment, petroleum hydrocarbons, volatile organic compounds, metals, and other pollutants during dewatering activities. For additional information, we encourage reviewing this Order on our website or contacting our Permitting and Compliance Section staff at (951) 782-4130.

B-2
(cont.)

9. The Final EIR should clarify in detail the sentence in the "No Project" Alternative descriptions (pgs. ES-11, 13, Table ES-2) stating that, "...the No Project/No Build Alternative would result in greater impacts than the proposed project regarding visual character (aesthetics), hazardous materials releases and listed hazardous materials site (hazards and hazardous materials), since the proposed project would provide beneficial effects for these issue areas." This statement implies that the proposed Project site on Upper Newport Bay, which, in its current condition lacks remediation for its underground storage tank and un-described pollutant releases (p. ES-13), poses a greater risk of "hazardous materials releases" than if the site were to be developed as proposed. This conclusion appears to be inconsistent with the finding that the undeveloped site is considered to be the Environmentally Superior Alternative (p. ES-13).

If you have any questions, please contact Glenn Robertson at (951) 782-3259 or Glenn.Robertson@waterboards.ca.gov, or me at (951) 782-3234 or Mark.Adelson@waterboards.ca.gov

Sincerely,



Mark G. Adelson, Chief
Regional Planning Programs Section

Cc: State Clearinghouse
U.S. Army Corps of Engineers, Los Angeles – Stephanie Hall
California Coastal Commission - Fernie Sy
California Department of Fish and Game, Los Alamitos office – Mary Larson

X: madelson/CEQA/DEIR- City of Newport Beach- Back Bay Landing - GSR_22Nov13_mga.doc

B-2
(cont.)

This page intentionally left blank.

LETTER B

Scott Morgan
Director, State Clearinghouse
State of California
Governor's Office of Planning and Research
State Clearinghouse and Planning Unit
1400 Tenth Street
P.O. Box 3044
Sacramento, California 95812-3044

Comment B-1

This letter from the State Clearinghouse acknowledges that comments from a third state agency, the Santa Ana Regional Water Quality Control Board (RWQCB), was received after the close of the state agency review period, but indicates that the City may still consider the comments in the Final EIR.

Comment B-2

This letter from the RWQCB was included as an attachment to Letter B from the State Clearinghouse. This letter was also provided directly to the City and as such is included as Letter E in this Chapter with individual responses to comments raised in the letter provided below.

This page intentionally left blank.

Letter C

Nov-18-13 01:38pm From-California Coastal

+5625905084

T-876 P.002/003 F-778

STATE OF CALIFORNIA – NATURAL RESOURCES AGENCY

EDMUND G. BROWN, JR, Governor

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 Oceanside, Suite 1000
Long Beach, CA 90802-4302
(562) 590-5071



November 18, 2013

Jaime Murillo, Senior Planner
City of Newport Beach
100 Civic Center Drive
Newport Beach, CA 92660

**Re: Back Bay Landing
Environmental Impact Report (SCH# 2012101003)**

Dear Mr. Murillo,

Thank you for the opportunity to review the Environmental Impact Report for the Back Bay Landing Project in the City of Newport Beach. According to the Environmental Impact Report, the proposal includes the construction of an integrated, mixed-use waterfront village on an approximately 7-acre portion of a 31.4 acre parcel located adjacent to Upper Newport Bay. The project also includes amendments to the General Plan and Coastal Land Use Plan (CLUP) to change the land use designations to a Mixed-Use Horizontal designation and a Planned Community Development Plan.

The proposed project is located within the Coastal Zone in the City of Newport Beach. The proposed development will require amendments to the City's Coastal Land Use Plan and a Coastal Development Permit from the California Coastal Commission.

The following comments address the issue of the proposed project's consistency with the Chapter 3 policies of the California Coastal Act of 1976. The comments contained herein are preliminary and those of Coastal Commission staff only and should not be construed as representing the opinion of the Coastal Commission itself. As described below, the proposed project raises issues related to land use, hazards and visual impacts.

The following are comments by Commission staff on the Environmental Impact Report.

LAND USE

It appears that a free standing residential use is anticipated for the project site. Residential uses are a lower priority use. Thus, such an independent use should be reconsidered. Additionally, additional residential uses are anticipated above the ground floor of higher priority uses (such as, visitor-serving commercial and marine service uses) to be located adjacent to the bay. While these residential uses are anticipated to be located above higher priority uses, the location of these residential uses should be reconsidered to be located as landward as possible.

C-1

C-2

Environmental Impact Report
Back Bay Landing
Page 2 of 2

HAZARDS

A new bulkhead is anticipated for future development of the Back Bay Landing project. Section 30235 of the Coastal Act only allows the construction of new bulkheads to protect existing structures. New development must be appropriately sited and designed so that no future shoreline protective devices are necessary. Thus, please discuss how the anticipated project/bulkhead is consistent with Section 30235 of the Coastal Act.

C-3

Has analysis of the anticipated bulkhead/project taken into account future sea level rise? If not, such an analysis should be conducted.

VISUAL IMPACTS

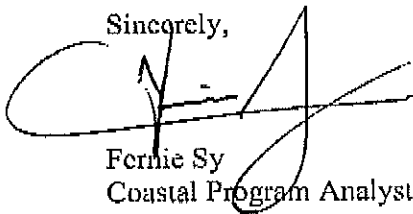
The project site is located within the Shoreline Height Limitation Zone of the Coastal Land Use Plan, which establishes a maximum height limit of 35-feet. A CLUP amendment is anticipated that would allow a single, up to 65-foot tall tower that would currently be inconsistent with the Shoreline Height Limitation Zone requirements. The height of such a structure would impact coastal views. Thus, please provide alternatives to the proposed tower that would not have such an adverse impact on public views, such as staying within the allowable height limit, and justify your choice of the alternative that would be the least environmentally damaging alternative and consistent with the pattern of the surrounding area.

C-4

Thank you for the opportunity to comment on the Environmental Impact Report for the Back Bay Landing Project. Commission staff request notification of any future activity associated with this project or related projects. Please note, the comments provided herein are preliminary in nature. Additional and more specific comments may be appropriate as the project develops into final form and when an application is submitted for a Coastal Land Use Plan Amendment and Coastal Development Permit. Please feel free to contact me at 562-590-5071 with any questions.

C-5

Sincerely,



Fernie Sy
Coastal Program Analyst II

Cc: State Clearinghouse

LETTER C

Fernie Sy
Coastal Program Analyst II
California Coastal Commission
South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302

Comment C-1

The Commission's comment is correct that the Chapter 3 policies of the California Coastal Act (Public Resources Code Section 30200 et. Seq.) is the standard of review. However, the City's certified Coastal Land Use Plan serves as policy guidance on the CEQA "project," which is the proposed General Plan and Coastal Land Use Plan Amendments.

Comment C-2

The proposed General Plan Amendment and Coastal Land Use Plan ("CLUP") Amendment would reallocate existing General Plan/LUP residential density on this parcel, Parcel Map No. 93-111, within Parcels 1 and 2 to Parcel 3 of Parcel Map No. 93-111. Per the CLUP Policy 2.1.9-1 text amendment, "A minimum of 50% of the residential units shall be developed in mixed-use buildings with non-residential use on the ground floor."

While no specific project is proposed at this time, the Coastal-dependent uses allowed in the current CM (0.5) and CM-A land use and coastal land use designations have priority for the future project. The FAR designation for residential is additive to the current 0.5 FAR for CM Recreational and Marine Commercial uses on the site. The coastal-dependent uses include new dry stack storage and launching facilities, public kayak and stand-up paddleboard rentals and boat launching facilities, as well as waterfront retail and marine-related commercial uses.

Comment C-3

As stated in Table 4.I-2, *Coastal Land Use Plan Consistency Analysis*, on page 4.I-23 in Section 4.I, *Land Use*, of the Draft EIR, both City CLUP Policy 2.8.6-8 and Coastal Act section 30235 limit the use of shoreline protective devices to the minimum required to protect existing development and are also specifically permitted under Coastal Act 30235 when "required to serve coastal-dependent uses or protect existing structures or public beaches in danger of erosion and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply"

The proposed future seawall/bulkhead would have to be permitted through both the City and Coastal Commission, as part of any future specific project and would not be used to enlarge or expand area for new development.

Moreover, the proposed seawall/bulkhead is necessary – consistent with Coastal Act section 30235 – to serve as protection for existing Coastal-dependent uses (current marina and marina parking) as well as proposed dry stack storage and launching facilities and a City water main vault in jeopardy from continued bayfront erosion. The seawall will also provide improved bayfront access and protection/support for the new 12-foot public access walkway.

Comment C-4

The proposed coastal view tower would not adversely impact any designated public coastal views (set forth in General Plan Natural Resources Element NR-3 and depicted in Figure 4.A-1 in Section 4.A, *Aesthetics/Visual Resources*, of the Draft EIR), as demonstrated in View Simulations #1 through 7 contained in Draft EIR Section 4.A and will be designed and located such that its mass will not significantly obstruct any public views. Minor revisions to the view simulations have been completed, and one new simulation has been prepared, with the revised/additional figures provided in Chapter 3, *Corrections and Additions to the Draft EIR*, of this Final EIR. As noted previously, based on the revised and additional simulations, view impacts associated with the proposed project would be less than significant.

Additionally, the ADA-accessible public view tower will significantly increase public access and view opportunities by increasing view opportunities to see Newport Harbor and coastal vistas of the bay and surrounding coastal zone.

Comment C-5

The commenter requests notification for any future activity related to the proposed project or related projects, and indicates that comments provided are preliminary and additional comments may be forthcoming once future applications for the Coastal Land Use Plan Amendment and/or Coastal Development Permit are submitted.

DEPARTMENT OF TRANSPORTATION

DISTRICT 12
3347 MICHELSON DRIVE, SUITE 100
IRVINE, CA 92612-8894
PHONE (949) 724-2000
FAX (949) 724-2019
TTY 711
www.dot.ca.gov

RECEIVED BY
COMMUNITY

NOV 15 2013



Flex your power!
Be energy efficient!

DEVELOPMENT
CITY OF NEWPORT BEACH

FAX & MAIL

November 7, 2013

Jaime Murillo
City of Newport Beach
3300 Newport Boulevard
Newport Beach, California 92658

File: IGR/CEQA
SCH#: 2012101003
IGR Log #: 3089-C
SR-1

Dear Mr. Murillo,

Thank you for the opportunity to review and comment on the Draft **Environmental Impact Report (EIR) for the Back Bay Landing Project**. The proposed project involves various legislative approvals for the future development of the Back Bay Landing Project, which is proposed to be an integrated, mixed-use waterfront village on 6.974 acres in the City of Newport Beach generally located north of East Coast Highway and northwest of Bayside Drive in the western portion of the City. The nearest State route to the project is SR-1.

D-1

The Department of Transportation (Department) is a responsible agency on this project and we have the following comments:

1. The Department's Traffic Operations Branch requests all applicants to use the method outlined in the latest version of the Highway Capacity Manual (HCM) when analyzing traffic impacts on State Transportation Facilities. The use of HCM is preferred by the Department because it is an operational analysis as opposed to the Intersection Capacity Utilization (ICU) method, which is a planning analysis. In the case of projects that have direct impacts on State Facilities, the Department recommends that the traffic impact analysis be based on HCM method. Should the project require an encroachment permit, Traffic Operations may find the Traffic Impact Study based on ICU methodology inadequate resulting in possible delay or denial of a permit by the Department. The use of either Synchro or HCS software is preferred. All input sheets, assumptions and volumes on State Facilities including ramps and intersection analysis should be submitted to the Department for review and approval. The EIR should include appropriate mitigation measures to offset any potential impacts. The traffic impact on the state transportation system should be evaluated based on the Department's Guide for the Preparation of Traffic Impact Studies which is available at: <http://www.dot.ca.gov/hq/traffops/developserv/operationalsystems/reports/tisguide.pdf>

D-2

2. The document should include a discussion and address bicycles and pedestrians during the construction.

D-3

3. All geometric and accessibility design discussed on page 4.M-16 must meet CA-MUTCD and current ADA standards.

D-4

Please continue to keep us informed of this project and any future developments, which could potentially impact the State Transportation Facilities. If you have any questions or need to contact us, please do not hesitate to call Maryam Molavi at (949) 724-2267.

D-5

Sincerely,



MAUREEN EL HARAKE
Branch Chief, Regional-Community-Transit Planning
District 12

C: Scott Morgan, Office of Planning and Research

LETTER D

Maureen El Harake
Branch Chief, Regional-Community-Transit Planning
Department of Transportation
District 12
3347 Michelson Drive, Suite 100
Irvine, CA 92612-8894

Comment D-1

This comment acknowledges receipt of the Draft EIR and notes the basic details of the proposed Back Bay Landing Project. This comment also indicates that as a Responsible Agency under CEQA, Caltrans has specific comments on the Draft EIR.

Comment D-2

This comment provides guidance on the preparation of traffic impact analyses to meet Caltrans' standards. The analysis presented in the EIR complies with this guidance, as discussed in Section 4.M, *Transportation/Traffic*, of the Draft EIR, with detailed traffic analysis data provided in Appendix K.

Comment D-3

The commenter suggests that the EIR should evaluate temporary impacts to bicycle and pedestrian access and facilities during construction activities. While this issue is not specifically addressed in the Draft EIR, as discussed in Section 4.M, *Transportation/Traffic*, construction activities would almost exclusively be limited to the project site where no public pedestrian or bicycle access currently exists. The only activities that would occur off-site during construction activities, which could potentially affect existing bicycle and pedestrian facilities, would be roadway widening on Bayside Drive, intersection improvements at the Bayside Drive/East Coast Highway intersection, or construction of the relocated water pipeline in East Coast Highway or Bayside Drive. While these construction-related activities would occur within or adjacent to the public right-of-way, and could temporarily affect some existing sidewalks or bike lanes in the immediate vicinity, implementation of Mitigation Measure G-7 would require that adequate public access for bicycles and pedestrians along Bayside Drive and East Coast Highway be maintained throughout construction activities (i.e., through temporary detours, signage, and/or barriers). In addition, closures to East Coast Highway will require coordination with Caltrans and potentially an Caltrans Encroachment Permit.

Comment D-4

Comment noted. Future improvements, subject to Site Development Review once a specific project is proposed, would be designed to meet CA-MUTCD and ADA accessibility standards.

Comment D-5

The commenter requests notification for any future developments that could affect State Transportation Facilities.



Letter E



EDMUND G. BROWN JR.
GOVERNOR

MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

RECEIVED BY

COMMUNITY

DEC 02 2013

DEVELOPMENT
CITY OF NEWPORT BEACH

Santa Ana Regional Water Quality Control Board

November 25, 2013

Jaime Murillo
City of Newport Beach
100 Civic Center Drive
Newport Beach, CA 92660

DRAFT ENVIRONMENTAL IMPACT REPORT FOR BACK BAY LANDING PROJECT, UPPER NEWPORT BAY, CITY OF NEWPORT BEACH, SCH #2012101003

Dear Mr. Murillo:

Staff of the Regional Water Quality Control Board, Santa Ana Region (Regional Board) has reviewed the October 3, 2013 Draft Environmental Impact Report (DEIR) for the Back Bay Landing Project, a proposed mixed-use waterfront development (including a possible observation tower), in the City of Newport Beach (Project). The Project would develop a 6.974-acre portion of the 31.431-acre Parcel 3, located adjacent to the existing Bayside Village Marina along the southern shore of Upper Newport Bay (Bay).

E-1

Of the 6.974 acres:

- 6.332 acres are located immediately north of East Coast Highway between the Bayside Village Marina and Bayside Drive, and
- 0.642 acre extends beneath and south of the East Coast Highway Bridge, along the east side of the channel connecting Upper and Lower Newport Bay.

We request that the following comments be incorporated into the Final EIR, in order to protect water quality standards (i.e., water quality objectives and beneficial uses) identified in the Water Quality Control Plan for the Santa Ana River Basin, 1995, as amended (Basin Plan):

1. Permanent impacts to waters of the state and water quality standards should be avoided to the maximum extent possible, and temporary and permanent impacts must be mitigated for where such impacts are unavoidable. Mitigation sites must be protected from other uses by appropriate restrictive land use instruments. The Final EIR should analyze and discuss how the following beneficial uses of Upper Newport Bay, as listed in the Basin Plan, will be protected by the Project's proposed mitigation measures:

- Estuarine Habitat (EST),
- Shellfish Harvesting (SHEL),
- Commercial and Sportfishing (COMM),
- Marine Habitat (MAR),
- Spawning, Reproduction, and Development (SPWN),
- Wildlife Habitat (WILD),
- Preservation of Biological Habitats of Special Significance (BIOL),
- Rare, Threatened, or Endangered Species (RARE),
- Water Contact Recreation (REC1), and
- Non-Contact Water Recreation (REC2).

E-2

2. Three components of the Project identified by the DEIR (Executive Summary, p.1) appear to entail activities - dredging or discharge of fill to, or shading areas of - waters subject to federal jurisdiction under the Clean Water Act (CWA) or Rivers and Harbors Act of 1899 (RHA). These are:
 - Construction of a minor inlet channel from the existing Bayside Village Marina, for launches from “a future dry-stack boat storage facility” that would rack up to 140 boats (DEIR p.2-14); and
 - Installation of a bulkhead and sheetpile barrier into the mudflat, with backfill landward of the barrier and toward and upon the beach, to form a 12-ft wide promenade along the Bay. This public-access promenade would extend between the boundary of the Bayside Village Mobile Home Park and the Project entrance at Bayside Drive; and
 - The Project appears to anticipate (Figure 2-9), a floating dock(s) at the bulkhead to provide access to small boats; a tethered dock would impact any submerged habitat by shading it.

Board staff believes that a study is necessary as part of the environmental analysis of the project to identify areas within the Project footprint that are subject to regulation pursuant to the CWA or the RHA. This study should include a Jurisdictional Delineation (JD) of waters subject to the CWA. The findings of the study and JD should be reported in the final EIR. Discrete locations within the Project site that are subject to federal jurisdiction need to be identified in the Final EIR, along with exhibits and tables showing their area, in acres, their biological character and current uses, and their length with respect to frontage on water.

E-3

If there are parts of the project that are subject to the CWA or the RHA, the Project will require Regional Board CWA Section 401 Water Quality Standards Certification (Certification) as a prerequisite to the U.S. Army Corps of Engineers (Corps) issuing a CWA Section 404 “Dredge and Fill” Permit or RHA permit for the project. All Project components (summarized above) needing Certification would be covered in one Certification application for this Project.

3. The final EIR must specify mitigation measures for impacts to wetlands or waters of the state and the U.S. that will be impacted by the Project, in the manner that the DEIR has generally identified a 1.2:1 ratio of eelgrass replacement for activities conducted within 15 feet of identified eelgrass or conducted toward least tern nesting season (Mitigation Measure Table ES-1, Mitigation Measures C-6, C-7). Board staff generally concur with the DEIR that all eelgrass mitigation should be conducted in concert with the City of Newport Beach Eelgrass Protection and Mitigation Plan for Shallow Waters in Lower Newport Bay (this plan is currently being revised). However, we note that the City’s Eelgrass Protection and Mitigation Plan is geared to the needs of owners of private docks, not commercial developments; should eelgrass be affected by the Project, the Southern California Eelgrass Mitigation Policy will control how eelgrass impacts are to be addressed.

E-4

4. The final EIR should reflect that the bulkhead/sheetpile seawall will likely become a new attachment substrate for various shellfish, including native Olympia oysters, which have attached to local seawalls. In the final EIR, the lead agency is encouraged to consider how the bulkhead could be designed to support shellfish habitat that offsets harvesting for consumption in the Bay, and that enables distribution of spat around the Bay, thereby supporting and protecting SHEL, SPWN, and MAR. The final EIR should also address monitoring for invasive shellfish so that timely control measures may be taken.

E-5

5. Mitigation Measure G-2 states that dredging will be discussed with the Corps and the California Department of Fish and Wildlife (CDFW) during the permit process, including disposal requirements for dredged spoils found to contain residue of DDT and other organochlorine pesticides. If there are other pollutants of concern that the dredged spoils have been, or will be, assessed for, those pollutants should be identified in the final EIR. The final EIR should indicate the likely locations for the placement or disposal of dredged spoils. The final EIR should reflect that dredged material disposal locations and monitoring programs have been, or will be, selected in consultation with the Corps, USEPA, and the

E-6

other agencies that coordinate to determine appropriate sites for disposal of dredged spoils. The final EIR also should consider the potential loss of intertidal mudflat habitat due to dredging and filling and identify mitigation alternatives for this loss.

E-6
(cont.)

6. The final EIR should take note of the Basin Plan's water quality objectives for turbidity. The Basin plan establishes the following maximum turbidity increases over natural turbidity, due to controllable water quality factors: for waters with 0-50 Nephelometric Turbidity Units (NTU), 20 percent; for waters with 50-100 NTU, 10 NTU; and for waters greater than 100 NTU, 10 percent. These objectives will be used to determine if Project construction or operating activities are causing or contributing to violations of water quality standards. Board staff commends the Project's expected use of a silt curtain during construction, to be lowered to specific levels above and below the waterline, around dredging equipment (type of dredge is not specified). This practice, and others, will be necessary to ensure that the Basin Plan's turbidity objectives are met throughout the construction period.

E-7

7. The final EIR should recognize that Upper/Lower Newport Bay and San Diego Creek have been listed, pursuant to Clean Water Act Section 303(d), as impaired by various pollutants and that Total Maximum Daily Loads (TMDLs) have been adopted by the Regional Board to address these impairments. The following group of adopted and anticipated TMDLs are applicable to the Project site:

- Siltation (sediments) and nutrient TMDLs for Lower Newport Bay, Upper Newport Bay, San Diego Creek Reach 1, and San Diego Creek Reach 2.
- A fecal coliform (pathogen) TMDL has been adopted for Lower Newport Bay and Upper Newport Bay. A diazinon/chlorpyrifos TMDL has been adopted for Upper Newport Bay and San Diego Creek, Reach 1.
- TMDLs are 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). TMDLs for toxic pollutants, including selenium, were promulgated by the U.S. Environmental Protection Agency in June 2002.
- TMDLs for organochlorine compounds (particularly DDT, chlordane, and PCBs) are anticipated for all four of these water bodies (as well as Newport Bay's Rhine Channel) (with toxaphene also targeted in San Diego Creek Reaches 1 and 2).

E-8

The TMDLs can be found on the TMDL page at <http://www.swrcb.ca.gov/rwqcb8/>. Design features and BMPs proposed by the Project that will contribute to compliance with TMDLs specific to Upper and Lower Newport Bay should be identified in the Project's final EIR and WQMP.

8. Mitigation Measure G-1 covers a tank removal and remediation plan for potential soil and groundwater contamination from an existing 550-gallon underground storage tank. Board staff concurs with statements in the DEIR that written comments and approval of this plan would need to be provided to the City of Newport Beach Community Development Department before a grading permit was to be issued. Further, the DEIR anticipates that the Project will involve dewatering and will require appropriate permitting with a sampling program (DEIR Mitigation Measure G-3). In order to conduct dewatering activities, the applicant must obtain authorization under the Regional Board's waste discharge requirements Order No. R8-2007-0041, amended by R8-2009-0045 (NPDES No. CAG918002) and subsequent iterations, specific to dewatering and groundwater cleanup activities within the San Diego Creek/ Newport Bay watershed. This general permit establishes a program for the purpose of reducing discharges of selenium, nutrients, sediment, petroleum hydrocarbons, volatile organic compounds, metals, and other pollutants during dewatering activities. For additional information, we encourage reviewing this Order on our website or contacting our Permitting and Compliance Section staff at (951) 782-4130.

E-9

9. The Final EIR should clarify in detail the sentence in the "No Project" Alternative descriptions (pgs. ES-11, 13, Table ES-2) stating that, "...the No Project/No Build Alternative would result in greater impacts than the proposed project regarding visual character (aesthetics), hazardous materials releases and listed hazardous materials site (hazards and hazardous materials), since the proposed project would provide beneficial effects for these issue areas." This statement implies that the proposed Project site on Upper Newport Bay, which, in its current condition lacks remediation for its underground storage tank and un-described pollutant releases (p. ES-13), poses a greater risk of "hazardous materials releases" than if the site were to be developed as proposed. This conclusion appears to be inconsistent with the finding that the undeveloped site is considered to be the Environmentally Superior Alternative (p. ES-13).

E-10

If you have any questions, please contact Glenn Robertson at (951) 782-3259 or Glenn.Robertson@waterboards.ca.gov, or me at (951) 782-3234 or Mark.Adelson@waterboards.ca.gov

Sincerely,



Mark G. Adelson, Chief
Regional Planning Programs Section

Cc: State Clearinghouse
U.S. Army Corps of Engineers, Los Angeles – Stephanie Hall
California Coastal Commission - Fernie Sy
California Department of Fish and Game, Los Alamitos office – Mary Larson

X: madelson/CEQA/DEIR- City of Newport Beach- Back Bay Landing - GSR_22Nov13_mga.doc

LETTER E

Mark G. Adelson
Chief, Regional Planning Programs Section
Santa Ana Regional Water Quality Control Board
3737 Main Street, Suite 500
Riverside, CA 92501

Comment E-1

The commenter states that the RWQCB has reviewed the Draft EIR and has a number of comments, and briefly summarizes the proposed project.

Comment E-2

The commenter suggests that the EIR should identify ways in which beneficial uses of affected receiving water bodies would be protected during future construction and operation of proposed uses on-site. As discussed on pages 4.H-23 through 4.H-30 in Section 4.H, *Hydrology and Water Quality*, of the Draft EIR, the proposed project would be required to prepare and implement a project-specific Stormwater Pollution Prevention Plan (SWPPP) and operational Water Quality Management Plan (WQMP) in order to address various pollutants of concern during construction and operation of on-site uses, respectively. Implementation of the SWPPP and WQMP would ensure that future project-related stormwater discharges do not adversely affect the beneficial uses of Upper Newport Bay or San Diego Creek.

Comment E-3

The commenter states that the EIR should specifically identify impacts related to activities and improvements that could affect resources subject to the federal Clean Water Act (CWA) and Rivers and Harbors Act (RHA). However, as discussed in Chapter 2, *Project Description*, of the Draft EIR, the proposed project only entails legislative and administrative approvals for a future development that has yet to be designed. The land use and zoning amendments and other approvals associated with the proposed project would not result in any specific development from which the exact nature and extent of impacts to such resources can be reliably determined. In the absence of such project details (e.g., footprints, location of specific improvements, etc.), it is not possible to provide the information requested in the EIR at this stage of planning. However, as noted by the commenter and discussed in the Draft EIR, a future project would require further project-specific analysis to determine impacts and applicable mitigation measures to address them, and would also be required to obtain permits from affected resource agencies.

Comment E-4

Comment noted. See Response to Comment E-3 above. Given the current lack of specific information regarding a future development on-site pursuant to the proposed legislative and administrative approvals, it is not possible to specifically identify the extent and severity of impacts to wetlands or waters of the United States. As discussed on page 4.C-41 in Section 4.C, *Biological Resources*, of the Draft EIR, Mitigation Measure

C-12 requires that impacts to wetlands or other jurisdictional features from a future development project on-site would require mitigation “that includes, but is not limited to, on- or off-site creation, restoration, or enhancement of wetland habitat, subject to review and approval by affected resource agencies.” Additionally, future development activities that could potentially adversely affect eelgrass in the vicinity of the project site would be carried out in accordance with the latest Southern California Eelgrass Mitigation Policy in effect at the time a specific project is brought forth.

Comment E-5

As discussed in Chapter 2, *Project Description*, of the Draft EIR, the proposed future bulkhead/seawall would be constructed above the highest high tide elevation in Newport Bay (7.1 feet above mean lower low water [+7.1 feet MLLW]) at an elevation of +7.86 feet MLLW, which is well above the current high tide. As such, the proposed future bulkhead/seawall would not provide habitat potential for shellfish or other species along the majority of the project waterfront. However, the proposed water inlet for the dry stack boat storage and service facility in Planning Area 1 would require dredging and shoring with sheet piles around the inlet to maintain the channel, which would provide potential submerged habitat for such species. However, as noted previously, at this time no specific development has been proposed such that the design of the bulkhead/seawall could be evaluated for its potential to support shellfish habitat and beneficial uses related to shellfish populations in Newport Bay.

Comment E-6

Mitigation Measure G-2 specifically addresses these specific organochlorine pesticides, given their historic prolific use and persistence and accumulation in sediments. It is not known at this time whether these or other constituents exist in submerged soils near the project site. Further, as discussed throughout the Draft EIR and above, no specific development is currently proposed from which the nature, location, and extent of dredging activities that may be required as part of a future project. Similarly, it is not known at this time if any impacts to intertidal mudflats from future project implementation would occur given the current location of this habitat type as shown in Figure 4.C-1, in Section 4.C, *Biological Resources*, of the Draft EIR. Given that the various offshore habitats are subject to ongoing natural processes that change the extent and location of each habitat type over time, as well as the lack of specific information about future development on-site, it is not appropriate to speculate on the specific potential effects of the future project on such resources in the EIR.

Comment E-7

As noted in Table 4.H-3 in Section 4.H, *Hydrology and Water Quality*, of the Draft EIR, turbidity is listed as one of the pollutants of concern for a future development project on-site, and as such the analysis of potential water quality impacts addresses this and other issues related to suspended solids/sediment. Implementation of the future project-specific SWPPP and WQMP would address turbidity and other water quality impairments through placement of silt screens and/or other BMPs required by these water quality control plans. Further, as noted above, the nature, location and extent of future dredging activities on-site (if required) would be determined at a future date once a particular development project is proposed, from which evaluation of the specific dredging activities to be employed could be provided. At this stage of

planning, however, such specific information regarding dredging impacts, and the exact nature of the measures to address them, cannot be determined.

Comment E-8

Table 4.H-2 in Section 4.H, *Hydrology and Water Quality*, of the Draft EIR lists the various TMDLs for those water bodies potentially affected by future on-site development: Upper Newport Bay and Lower Newport Bay. The closest (southernmost) reach of the San Diego Creek is located nearly three miles north (upstream) of the project site at the closest point. Despite the fact that Upper Newport Bay is a tidally influenced water body, the potential for pollutant discharges from the project site to reach receiving waters three miles upstream in San Diego Creek is considered remote. However, the Draft EIR identifies BMPs to be included in the project-specific WQMP to address the various TMDLs listed by the commenter for Upper and Lower Newport Bay. These measures would be implemented, as appropriate, to ensure that future development on-site does not contribute to exceedances of any of the listed TMDLs.

Comment E-9

Comment noted. Future remediation of existing contamination, if it exists, and any necessary dewatering activities, would be carried out in accordance with applicable RWQCB waste discharge requirements, as well as other applicable requirements of affected regulatory agencies.

Comment E-10

The commenter asserts that the fact that the No Project Alternative, as discussed in detail in Chapter 6, *Alternatives*, of the Draft EIR, has greater impacts than the proposed project relative to visual character, hazardous materials releases, and listed hazardous materials sites is inconsistent with the finding that the No Project Alternative is identified as the Environmentally Superior Alternative. However, the No Project Alternative, despite the greater impacts to these three specific issues, has much fewer and reduced environmental impacts than the proposed project for the vast majority of issues evaluated in the EIR. As such, although the No Project Alternative would not remediate potential contamination associated with the existing on-site 550-gallon underground storage tank (UST) and would not improve the site's visual character with a new, unified architectural design and associated landscaping and other improvements, it would reduce all other impacts when compared to the proposed project. Accordingly, the No Project Alternative is concluded to be the Environmentally Superior Alternative.

This page intentionally left blank.

Letter F

Orange County Sanitation District

10844 Ellis Avenue, Fountain Valley, CA 92708
(714) 962-2411 www.ocsewers.com

RECEIVED BY

COMMUNITY

NOV 18 2013

DEVELOPMENT
CITY OF NEWPORT BEACH

November 14, 2013

Jaime Murillo, Senior Planner
City of Newport Beach
3300 Newport Blvd.
Newport Beach, CA 92663

SUBJECT: Draft Environmental Impact Report for the Back Bay Landing Project

Thank you for the opportunity to review and comment on the Draft Environmental Impact Report the Back Bay Landing Project in the City of Newport Beach.

The proposed project is planning to construct a mixed-use development that would encompass a combination of residential, commercial and storage units on East Coast Highway between Bayside Drive and the Bayside Marina. The proposed project site is adjacent to the Orange County Sanitation District's Bay Bridge Pump Station and within the jurisdiction of OCSD.

F-1

Based on the proposed layout of the development, the OCSD pump station would be surrounded by retail stores, a restaurant, and residential units. As such OCSD would like to suggest the following item as a mitigation measure for the proposed development. Relocate the Bay Bridge Pump Station within the proposed development site to mitigate impacts associated with aesthetics, noise, vibration, air quality, etc.

- 1) Aesthetics: relocating the pump station would create a cohesive and consistent look.
- 2) Air quality: while we take extreme efforts to mitigate odors emanating from the facility, they do occur on occasion and can be perceived by sensitive receptors as a nuisance. Relocating the pump station would create a greater distance between the restaurant, retail store, and homes and thus diminish the probability of pump station odor being bothersome.
- 3) Noise: there is a stand-by generator onsite that starts automatically in case of power failure. In addition the generator is tested on a monthly basis to ensure its functioning properly.
- 4) Vibration: slight vibration may occur in the area when the pumps are in use. This activity occurs regularly throughout the day.
- 5) Maintenance and future improvements: the facility is a critical pumping station that is maintained on a regular basis and accessed during emergencies; as such adequate space is required to allow large vehicles access to the station and existing access cannot be blocked.

F-2

- Serving:
- Anaheim
- Brea
- Buena Park
- Cypress
- Fountain Valley
- Fullerton
- Garden Grove
- Huntington Beach
- Irvine
- La Habra
- La Palma
- Los Alamitos
- Newport Beach
- Orange
- Placentia
- Santa Ana
- Seal Beach
- Stanton
- Tustin
- Villa Park
- Yorba Linda
- County of Orange
- Costa Mesa Sanitary District
- Midway City Sanitary District
- Irvine Ranch Water District





Jaime Murillo
Page 2
November 14, 2013

Also, please note that any construction dewatering operations that involve discharges to the local or regional sanitary sewer system must be permitted by OCSD prior to discharges. OCSD staff will need to review/approve the water quality of any discharges and the measures necessary to eliminate materials like sands, silts, selenium, and other regulated compounds prior to discharge to the sanitary sewer system. A sewer connection permit will also be required.

F-3

Thank you for the opportunity to comment on the proposed development. For planning issues regarding this project, please contact me at (714) 593-7119.

Daisy Covarrubias

Daisy Covarrubias, MPA
Senior Staff Analyst

DC:sa
EDMS:003981090/1.8g

LETTER F

Daisy Covarrubias, MPA
Senior Staff Analyst
Orange County Sanitation District
10844 Ellis Avenue
Fountain Valley, CA 92708

Comment F-1

The commenter acknowledges receipt of the Draft EIR and briefly summarizes the proposed project and notes the location of the sewage pump station adjacent to the project site under the jurisdiction of the Orange County Sanitation District (OCSD).

Comment F-2

The commenter suggests that in order to address any potential future compatibility issues with on-site uses, the existing OCSD pump station along East Coast Highway adjacent to Planning Area 1 should be relocated to another location within project site. The proposed Planned Community Development Plan (PCDP) allows for the future relocation of the pump station within Planning Area 1 as part of future project implementation; however, should this occur, the exact location of the relocated pump station would be determined once a specific project design is brought forth. Nonetheless, as discussed in Chapter 2, *Project Description*, Section 4.A, *Aesthetics/Visual Resources*, Section 4.B, *Air Quality*, Section 4.J, *Noise*, of the Draft EIR, the proposed project would not result in significant impacts relative to visual quality or character, odors, noise and vibration, or vehicle access, and therefore additional mitigation relative to the OCSD pump station is not necessary. However, relocation of the pump station could offer benefits to future development, as noted by the commenter, and as such future relocation of this facility is allowable under the proposed PCDP.

Comment F-3

Comment noted. The commenter indicates that any necessary construction dewatering for future development involving discharges to the local or regional sanitary sewer system must be permitted by OCSD, that OCSD must review and approve the water quality of any such discharges, and that a sewer connection permit for future development would also be required.

This page intentionally left blank.

Letter G



Shane L. Silsby, P.E., Director
300 N. Flower Street
Santa Ana, CA 92703
P.O. Box 4048
Santa Ana, CA 92702-4048
Telephone: (714) 667-8800
Fax: (714) 967-0896

RECEIVED BY
COMMUNITY

NCL 13-049

NOV 22 2013

DEVELOPMENT
CITY OF NEWPORT BEACH

November 19, 2013

Ms. Jamie Murillo, Senior Planner
City of Newport Beach
100 Civic Center Drive
Newport Beach, California 92660

SUBJECT: Notice of Availability of a Draft Environmental Impact Report for the Back Bay Landing Project

Dear Ms. Murillo:

The County of Orange has reviewed the Notice of Availability of a Draft Environmental Impact Report for the Back Bay Landing Project located in City of Newport Beach and has no comments at this time. We would like to be advised of any further developments on the project. Please continue to keep us on the distribution list for future notifications related to this project.

G-1

Sincerely,

Polin Modanlou, Manager
Strategic Land Planning Division
OC Public Works/OC Planning Services
300 North Flower Street
Santa Ana, California 92702-4048
Polin.modanlou@ocpw.ocgov.com

PM/yj

This page intentionally left blank.

LETTER G

Polic Modanlou, Manager
Strategic Land Planning Division
OC Public Works/OC Planning Services
300 North Flower Street
Santa Ana, California 92702-4048

Comment G-1

Comment noted. The commenter indicates that Orange County Public Works (OCPW) has reviewed the Draft EIR and has no comments at this time.

This page intentionally left blank.



Letter H

Community Development

cityofirvine.org

City of Irvine, One Civic Center Plaza, P.O. Box 19575, Irvine, California 92623-9575

(949) 724-6000

October 31, 2013

RECEIVED BY

COMMUNITY

NOV 08 2013

DEVELOPMENT
CITY OF NEWPORT BEACH

Mr. Jamie Murillo
Senior Planner
City of Newport Beach
3300 Newport Boulevard
Newport Beach, CA 92663

**Subject: Notice of Availability and Draft Environmental Impact Report (DEIR) –
Back Bay Landing Project**

Dear Mr. Murillo:

City of Irvine staff has received and reviewed the information provided for the referenced project and has no comments at this time. Thank you for the opportunity to review and comment on the proposed project. If you have any questions, I can be reached at 949-724-6314, or by email at dlaw@cityofirvine.org.

H-1

Sincerely,

David R. Law, AICP
Senior Planner

cc: Bill Jacobs, Principal Planner (via email)

This page intentionally left blank.

LETTER H

David R. Law, AICP
Senior Planner
City of Irvine
One Civic Center Plaza
P.O. Box 19575
Irvine, California 92623-9575

Comment H-1

Comment noted. The commenter indicates that City of Irvine has reviewed the Draft EIR and has no comments at this time.

This page intentionally left blank.

Letter I



O R A N G E C O U N T Y
COASTKEEPER®

3151 Airway Avenue, Suite F-110
Costa Mesa, CA 92626
Phone 714-850-1965
Fax 714-850-1592
www.Coastkeeper.org

November 15, 2013

Sent via e-mail

c/o Jaime Murillo, Senior Planner
City of Newport Beach
100 Civic Center Drive
Newport Beach, CA 92660
Telephone: 949-644-3209
jmurillo@newportbeachca.gov

RE: Back Bay Landing Project Draft Environmental Impact Report

Dear Mr. Jaime Murillo, and City of Newport Beach:

Orange County Coastkeeper (“Coastkeeper”) is an environmental organization with the mission to protect and promote sustainable water resources that are swimmable, drinkable, and fishable. I write on behalf of our collective membership to express our concerns with the Draft Environmental Impact Report (“DEIR”) as required by the California Environmental Quality Act (“CEQA”)¹ for the Back Bay Landing Project (“Project”) by the City of Newport Beach (“City”).

I-1

I. The DEIR improperly segments consideration of the Project and thus fails to fully discuss the Project’s potential environmental impacts.

The Project is improperly segmented for purposes of CEQA approval. An environmental impact report (“EIR”) should be prepared with a sufficient degree of analysis to provide decisionmakers with information which enables them to make a decision which intelligently takes account of environmental consequences.² To do this, an EIR must describe the environmental impacts of all reasonably foreseeable activities associated with the project. Furthermore, courts have disapproved of the practice of “chopping a large project into many little ones.”³ For this reason, “where the lead agency could describe the project as either the adoption of a particular regulation or as a development proposal which will be subject to several governmental approvals, the lead agency shall describe the project as the development proposal for the purpose of environmental analysis.”⁴

I-2

¹ Cal. Pub. Resources Code § 21000 et seq.

² Cal. Code Regs. tit. 14, § 15151.

³ *City of Santee v. County of San Diego*, 214 Cal. App. 3d 1438, 1452 (1989).

⁴ *Id.*, citing Cal. Code Regs. tit. 14, § 15378(c)-(d).

The DEIR fails to fully discuss the Project’s potential environmental impacts because it improperly segments the project into successive legislative approvals. The DEIR states:

Bayside Village Marina, LLC, the project applicant, is seeking legislative approvals⁵ for the future development of the Back Bay Landing Project (herein referred to as the “proposed project”). The Back Bay Landing project is proposed to be an integrated, mixed-use waterfront village on 6.974 acres in the City of Newport Beach.⁶

Based on the above language, the DEIR should fully analyze the potential environmental impacts of the building of the mixed-use waterfront village, not merely analyze the potential impacts of granting the legislative approvals.

The DEIR repeatedly states that it will not fully consider certain potential environmental impacts because the DEIR is not intended to fully address actually building the Project. For instance, the DEIR section on Biological Resources states:

[T]he currently proposed actions are legislative and minor administrative approvals only. No approvals which would directly allow site development are proposed at this time. Future development in accordance with the legislative approvals is addressed in this EIR, to the extent possible based on the available information. Due to the legislative approval level of detail, no Site Development Review or construction level details are available and future development is analyzed at a general level based on the development standards and design guidelines in the PCDP.⁷

I-2
(cont.)

In addition, the DEIR fails to quantify the impacts that could be caused to both subtidal unvegetated habitat and subtidal vegetated habitat by building a bulkhead wall because “project plans are currently in a conceptual design phase.”⁸ Similarly, the DEIR states that the impacts on wetlands associated with dredging a new water inlet cannot be quantified because, “the specific design of future improvements has not been determined.”⁹

The analysis in the DEIR ignores the requirement that the DEIR, “must examine all phases of a project, including planning, construction, and operation.”¹⁰ As stated above, the purpose of an EIR is to examine the impacts of actually building a project, not merely of the first round of governmental approvals necessary to build it. Rather than carefully examining the impacts of building the project, the DEIR discusses them in general terms, avoiding discussing the details of potential impacts by stating the DEIR was written too early in the development process for the necessary level of detail¹¹ or that other approvals will likely be necessary later.¹²

⁵ The project applicant seeks approval of amendments to the Newport Beach General Plan and Coastal Land Use Plan, as well as a Traffic Impact Analysis. DEIR at ES-7.

⁶ Id. at 1-1.

⁷ Id. at 4.C-1.

⁸ Id. at 4.C-20.

⁹ Id. at 4.C-22.

¹⁰ Id. at 1-2.

¹¹ Id. at 1-1.

¹² Id. at 4.C-22.

The DEIR must be revised to properly analyze the impacts of project construction. One way that this could be done would be to create more concrete plans for construction before adopting a new DEIR and allowing for public comment. Alternatively, the City could adopt the current DEIR as final, but commit to doing a new or supplementary EIR at a later date prior to beginning construction. However the City chooses to proceed, the final EIR must provide the public and the decisionmakers (the City) with information which is detailed enough to enable them to make a decision which intelligently takes account of the project’s environmental consequences.¹³

The DEIR should be revised to more fully analyze potential impacts to eelgrass and require more substantial monitoring and mitigation of those potential impacts.

There are eelgrass beds scattered throughout the submerged portion of the project area. “For many species, eelgrass beds are an essential biological habitat component for at least a portion of their life cycle, providing resting and feeding sites along the Pacific Flyway for avian species, and nursery sites for numerous species of fish.”¹⁴ Because of its importance as habitat, impacts to eelgrass can have a cascading effect that impacts many other species, making protection of eelgrass a crucial part of protecting the ecosystem as a whole. Thus, it is important that the public and the City have accurate information about the potential impacts to eelgrass.

In addition to naturally occurring eelgrass beds in the project area, Coastkeeper is also currently conducting eelgrass restoration work on the western edge of the project area. Significant funding for Coastkeeper’s restoration work has been provided by both public and private sources. The potential impacts of the project could adversely impact the work Coastkeeper is doing to restore this important ecological resource and waste taxpayers’ dollars that have already been committed to the restoration.

The DEIR fails to adequately describe potential impacts to eelgrass. As discussed above, the DEIR fails to attempt to quantify potential impacts to eelgrass which could be caused by construction of a bulkhead wall because the plans are not detailed enough at this point in time.¹⁵ Furthermore, the DEIR states that it is not necessary to analyze these impacts in detail in the DEIR because they will be addressed by later permitting requirements.¹⁶ For the same reasons discussed in the section above, these reasons do not justify such a rudimentary analysis of potential impacts. Therefore, the DEIR must be revised to analyze potential impacts of construction of the Project at an acceptable level of detail.

The DEIR must be revised to provide for increased eelgrass monitoring during construction. Mitigation measure C-5 requires the placement of buoys to mark the boundaries of eelgrass beds during construction.¹⁷ However, the boundaries of the eelgrass beds may change during construction because, as described above, Coastkeeper is currently conducting eelgrass restoration work in the project area. Thus, buoys which accurately marked the eelgrass beds when they were placed might not be accurate later on during construction. While Coastkeeper approves of the use of pre-and post-construction eelgrass surveys, these are not sufficient for monitoring harm to eelgrass. Without monitoring of eelgrass during construction of the Project, the surveys can function only to quantify how much eelgrass has been damaged, rather than prevent further damage during construction. Thus, the DEIR must be revised to include an eelgrass monitoring program during construction.

¹³ Cal. Code Regs. tit. 14, § 15151.

¹⁴ DEIR at 4.C-9.

¹⁵ Id at 4.C-20.

¹⁶ Id.

¹⁷ Id. at ES-19.

The DEIR should also be revised to include a more definite mitigation plan for eelgrass with more stringent requirements for mitigation of impacts to eelgrass, including requiring the use of silt curtains. Construction of the project could lead to substantial soil erosion,¹⁸ which could cause impacts to eelgrass. However, the DEIR states that no mitigation of soil erosion is necessary because the Project would necessarily comply with regulatory requirements.¹⁹ This is not a sufficient level of detail for discussion of potentially significant impacts. In addition, the DEIR states that “any impacts to eelgrass shall be mitigated through specific measures to be required by the City at the Site Development Review stage.”²⁰ The DEIR must provide a more detailed mitigation plan requiring specific measures. For instance, while the DEIR states that a silt fence may be used for mitigation of impacts to eelgrass,²¹ the DEIR should be revised to require use of silt curtains, due to the seriousness of the potential soil erosion. Delaying detailed discussion of specific mitigation measures until the Site Development Review would not provide the public and decisionmakers enough information to make informed judgments about the Project.

I-3
(cont.)

The DEIR’s replacement ratio for eelgrass mitigation is insufficient. Under the Southern California Eelgrass Mitigation Policy (“SCEMP”), which is administered jointly by federal and state agencies, destruction of eelgrass beds should be mitigated by a minimum replacement ratio of 1.2:1 (i.e. the area of new eelgrass beds would be a minimum of 1.2 times that of the destroyed eelgrass beds).²² However, this ratio is only a minimum requirement for mitigating eelgrass destruction. The eelgrass beds that will be affected by the Project are located within the Upper Newport Bay Marine Conservation Area (“MCA”). Due to the delicate nature of the ecosystem in the MCA and the state policy of preserving it for the benefit of the ecosystem as a whole,²³ the minimum replacement ratio required by the SCEMP is not sufficient in this case. Therefore, the DEIR should be revised to call for a minimum replacement ratio of 2:1 for any eelgrass that is damaged by construction of the Project.

II. The DEIR must be revised to include a minimum of a 100 foot buffer between wetlands and any development.

The Project underestimates significant impacts to wetlands because it fails to account for the impermissibly small buffer area between wetlands and development. According to the California Coastal Commission, there should be undeveloped areas, or buffer areas, surrounding wetlands which:

I-4

...act to protect the wetland from the direct effects of nearby disturbance (both acute and chronic), and provide necessary habitat for organisms that spend only a portion of their life in the wetland such as amphibians, reptiles, birds, and mammals. A buffer area should be an integral component of any proposed development project located within or adjacent to a wetland.... Buffer width should be a minimum of 100 feet (CCC, 1981). In some cases, such as when a species requires habitat adjacent to a wetland for part of its life or when

¹⁸ Id. at ES-28.

¹⁹ Id.

²⁰ Id. at ES-20.

²¹ Id. at ES-19.

²² Id. at 4.C-40.

²³ See Section III, “The DEIR must be revised to properly describe and mitigate impacts to Upper Newport Bay Marine Conservation Area,” below.

nearby development poses increased hazards to a wetland or wetland species, larger buffer areas should be considered.²⁴

The DEIR identifies several areas within the project area that likely meet the Coastal Commission's criteria for wetlands. The Coastal Commission has a "one parameter definition" of wetlands.²⁵ This means that, where there is wetland vegetation, soil, or hydrology, the Coastal Commission will find that there are wetlands present.²⁶ The DEIR acknowledges that several locations in the project area likely satisfy, at the very least, both the vegetation and soil parameters.²⁷

The project described in the DEIR fails to meet the 100 foot buffer requirement between the development and the wetlands. According to the DEIR's maps showing the relative distances between a bulkhead wall that is likely to be built and areas of wetlands in the project area, the new wall will be separated from the wetlands by approximately 25 feet at their farthest apart, and significantly closer at certain points.²⁸ This, of course, is only a quarter the distance required by law.

The DEIR fails to account for significant impacts to wetlands which could result from the lack of a 100 foot buffer. The buffer is crucial to protection of important wetland habitats.²⁹ The DEIR claims that building the bulkhead wall within 25 feet of the wetlands would not result in habitat loss because the wetlands are not in jurisdictional waters.³⁰ Whether the wetlands are or are not located in jurisdictional waters is immaterial to the fact that the Coastal Commission retains inherent authority to protect wetlands located in the Coastal Zone. Thus, the DEIR must more fully analyze potential harms to the wetlands and, if necessary, detail mitigation that would be required.

The gross infringement on the legally required buffer between development and wetlands must be corrected in order to prevent serious impacts to the wetlands. Furthermore, while the DEIR fails to consider what mitigation would be necessary to remedy the effects of building the bulkhead wall so close to the wetlands, conducting mitigation after the fact is simply not sufficient to remedy habitat loss that was needlessly caused by flouting Coastal Commission regulations that are designed to protect precious wetland habitats. Instead of building the bulkhead wall perilously close to wetland habitat, the Project's plans should be redrawn to place the bulkhead wall 100 feet away from the wetlands, complying with the Coastal Commission's minimum buffer requirements.

III. The DEIR must be revised to properly describe and mitigate impacts to Upper Newport Bay Marine Conservation Area.

Parts of the project area fall within the Upper Newport Bay Marine Conservation Area ("MCA"). This can be seen clearly by comparing the maps of the project area contained in the DEIR³¹ with a map of the

²⁴ California Coastal Commission, *Procedural Guidance for the Review of Wetland Projects in California's Coastal Zone* ("Procedural Guidance"), <http://www.coastal.ca.gov/wetrev/wetch1.html>, attached as "Attachment A: California Coastal Commission Procedural Guidance."

²⁵ California Coastal Commission, *Wetlands Briefing Background Information Handout* ("Wetlands Briefing"), 2011, attached as "Attachment B: California Coastal Commission Wetlands Briefing."

²⁶ Cal. Code Regs. tit. 14, § 13577.

²⁷ DEIR at 4.C-11.

²⁸ Id. at 4.C-23-24.

²⁹ Procedural Guidance.

³⁰ DEIR at 4.C-22.

³¹ Id. at 2-3 to 2-5.

MCA.³² The maps show that a significant part of the project area's submerged area lies within the southern reaches of the MCA.

Despite the fact that the Project lies partially within the MCA, the DEIR fails to analyze potential impacts to the MCA. In fact, the DEIR's section on impacts to biological resources only discusses the MCA for a single perfunctory paragraph, mainly to summarize the legal effect of the MCA. While various sections of the DEIR do discuss impacts to biological resources that are located within the MCA, the DEIR does so in a piecemeal fashion, and never does so within the broader context of those resources' importance within the MCA.

The DEIR must be revised to consider impacts to the MCA as a whole. Marine Conservation Areas like the MCA are a type of Marine Protected Area ("MPA") which are established under California law.³³ MPAs are marine reserves which are designed to act as a cohesive system to protect entire marine ecosystems. In fully protected marine reserves, scientists have observed many benefits, including higher abundance, larger and more fertile individuals, and more resilient marine populations.³⁴ Because the MCA is designed to protect the entire Upper Newport Bay ecosystem, it is imperative that any potential impacts to the area's marine resources be examined not only in isolation, but also in the context of their impact on the ecosystem of the MCA as a whole. Thus, the DEIR must be revised to include analysis of the Project's potential impacts on the MCA as a whole.

The DEIR should be revised to require the installation of a sewage pumpout facility to mitigate significant impacts to the MCA that could be caused by the addition of boat slips to the marina.

The construction of new boat slips will increase the strain on Upper Newport Bay's existing pumpout sewage system, which have limited capacity. All harbors in California are No Discharge Zones ("NDZ").³⁵ Thus, boaters that utilize the Project's marina will have to travel beyond the NDZ to empty their vessel's holding tank or empty the holding tank at a pumpout station. However, the marina currently has limited pump out facilities, and these could be pushed past capacity by the addition of more slips described in the DEIR. Because the plans do not call for additional pump out facilities to account for the increased boat traffic, the City runs the risk that the harbor's recreational boaters will be unable to adequately service and maintain their boats' waste holding tanks. Pumpout station scarcity may result in boat owners being unable to thoroughly service the boat's holding tank, which in turn may result in either, the illicit discharge of the vessel's waste or an unintended waste overflow of the holding tank into the harbor. Either result can endanger the health of the harbor's water quality and the sensitive habitat of the MCA.³⁶

The DEIR should be revised to require the Project to install a pumpout system that is capable of meeting the facility's needs created by adding slips to the marina. Because water quality in the delicate ecosystem of the MCA is so important, the DEIR must discuss how to mitigate the potentially significant impacts that could be caused by sewage spills. The best way to mitigate for overstressed pumpout facilities is to create additional pumpout facilities. Furthermore, because the potential impacts of the added slips could extend

³² California Department of Fish and Wildlife, *California Marine Protected Areas*, attached as "Attachment C: Map of Marine Conservation Area."

³³ Cal. Pub. Res. Code § 36602 (e).

³⁴ Roberts and Sargent, "Fishery Benefits of Fully Protected Marine Reserves: Why Habitat and Behavior are Important," *Natural Resource Modelling*, volume 15, number 4 (Winter 2002), attached as "Attachment D: Fishery Benefits of Fully Protected Marine Reserves."

³⁵ Orange County Coastkeeper, *Harbor Pumpout Report*, 2002, attached as "Attachment E: Harbor Pumpout Report."

³⁶ *Id.*

beyond the boundaries of the marina, the new pumpout facilities should be available for use by the public, not just by those boaters who rent slips at the marina. By creating a public sewage pumpout facility, the Project can prevent harmful sewage spills while helping to increase the public's ability to responsibly enjoy the Upper Newport Bay.

I-6
(cont.)

IV. The DEIR should be revised to require that the Project have zero stormwater discharge.

Current water quality issues in Upper Newport Bay are too serious for the project to be allowed to contribute a new source of pollution to the bay. Under section 303 (d) of the Clean Water Act, when water quality issues compromise the designated beneficial uses of a particular receiving water body, that water body must be listed as “impaired” and placed under a Total Maximum Daily Load, which is an estimate of the total amount of a certain pollutant the water body can receive without exceeding water quality standards.³⁷ Upper Newport Bay is subject to TMDLs for several pollutants, including chlordane, copper, DDT, indicator bacteria, metals, nutrients, PCBs, pesticides, sediment toxicity, and sedimentation/siltation.³⁸ Furthermore, as discussed above, the MCA is designed to protect an important and fragile marine ecosystem. As such, protection of the water quality in Upper Newport Bay is extremely important. For this reason, the California State Water Resources Control Board (“SWRCB”) is currently developing standards for State Water Quality Areas, which would require heightened water quality protection in MPAs.

The DEIR fails to require adequate mitigation for potentially significant impacts to water quality in the MCA which could be caused by the construction of new stormwater discharge facilities. The DEIR calls for the creation of a new stormwater collection system which might drain to a new outlet to the Bay.³⁹ This could significantly impact water quality in the MCA by increasing the amount of pollutants draining there from the Project. The DEIR states that impacts caused by this would be less than significant because the Project would comply with all applicable regulatory requirements.⁴⁰ The DEIR makes broad statements about using Low Impact Development (“LID”) best management practices (“BMPs”) to limit the amount of stormwater which is discharged from the facility, but states that specific BMPs will not be chosen until future regulatory approvals are needed.⁴¹ As discussed above, this improperly delays consideration of mitigation measures until well after the CEQA process is concluded.

I-7

The DEIR should be revised to require that no stormwater be discharged from the Project when it is operational during a storm smaller than a 100 year storm event. Coastkeeper is pleased that the DEIR calls for implementation of LID BMPs. However, because stormwater discharged from the Project would immediately enter the delicate ecosystem of the MCA, the DEIR should require specific BMPs, including installation of a large cistern, in order to ensure that no stormwater is discharged from the facility into Upper Newport Bay during any storm event less significant than a 100 year storm event.

³⁷ DEIR at 4.H-2.

³⁸ Id. at 4.H-15.

³⁹ Id. at 4.N.1-25.

⁴⁰ Id.

⁴¹ Id.

V. The DEIR should be revised to ensure sufficient public parking for access to public trust resources.

Under the public trust doctrine, certain lands “are owned by the state in trust for the public, for their use for commerce, navigation, fishing, recreation, or for the purpose of preserving the property in its natural state.”⁴² The doctrine also protects the public’s rights to use public trust lands for recreational boating,⁴³ portage,⁴⁴ hunting, bathing, and preserving public trust lands in their natural state.⁴⁵ Inherent in the right to use these lands is the right of physical access to them.⁴⁶ Lands subject to the public trust include tidelands and other navigable waters.⁴⁷

The public has a right to access the coastline at the Project for recreation. Because the Upper Newport Bay is a navigable water, as well as a tideland, it is subject to the public trust. Therefore, the public has a right of physical access to the bay for the purpose of recreation.

The DEIR should be revised to ensure there is sufficient free public parking available for members of the public to exercise their right to access the Upper Newport Bay. While the DEIR states that the Project will include public parking,⁴⁸ it includes no details about how many parking spaces would be open to non-residents of the Project and how many of those public parking spaces would be free of charge. The DEIR should be revised to include an analysis of how many free public parking spaces would be necessary to ensure adequate public access to public trust resources for recreation purposes, and to guarantee that amount of free public parking is in fact provided by the Project.

Conclusion

Coastkeeper recognizes the economic stimulus and recreational opportunities that the Project could provide to Newport Beach. As an organization with members from many different walks of life, Coastkeeper encourages environmentally responsible development which could benefit the community. We have submitted these comments in an effort to ensure that the Project goes forward in the most sustainable manner possible for the benefit of all who live, work, or recreate in Orange County. Please feel free to contact Coastkeeper with any questions or concerns at 714-850-1965.

Regards,

Colin Kelly
Staff Attorney
Orange County Coastkeeper

⁴² *State of California v. Superior Court (Lyon)*, 29 Cal. 3d 210, 226 (1981).

⁴³ *Bohn v. Albertson*, 107 Cal. App. 2d 738, 757 (1951).

⁴⁴ *Hitching v. Del Rio Woods Recreation and Park District*, 55 Cal. App. 3d 560, 563 (1976).

⁴⁵ *Marks v. Whitney*, 6 Cal. 3d 251, 259 (1971).

⁴⁶ *Lane v. City of Redondo Beach*, 49 Cal. App. 3d 251, 257 (1975).

⁴⁷ *Lyon*, 29 Cal. 3d at 227.

⁴⁸ DEIR at 4.L-36.

LETTER I

Colin Kelly
Staff Attorney
Orange County Coastkeeper
3151 Airway Avenue, Suite F-110
Costa Mesa, California 92626

Comment I-1

Comment noted. The commenter describes their organization and states that comments on the Draft EIR are provided in the letter.

Comment I-2

The commenter is confusing what has been characterized as “segmentation,” with permissible tiering. The Back Bay Landing Project Draft EIR properly complies with CEQA in tiering the analysis of the project’s impacts so that the City can “focus upon the issues ripe for decision at each level of environmental review.” Cal. Pub. Resources Code § 21093(a).

The CEQA Statute includes the Legislature’s findings and purpose of the tiering of EIRs “will promote construction of needed housing and other development projects by (1) streamlining regulatory procedures, (2) avoiding repetitive discussions of the same issues in successive environmental impact reports, and (3) ensuring that environmental impact reports prepared for later projects which are consistent with a previously approved policy, plan, program, or ordinance concentrate upon environmental effects which may be mitigated or avoided in connection with the decision on each later project.” Cal. Pub. Resources Code § 21093(a). CEQA also provides that EIRs “shall be tiered whenever feasible, as determined by the lead agency” to achieve this purpose. Cal. Pub. Resources Code § 21093(b).

To ensure that the EIR addressed the environmental impacts of all reasonably foreseeable activities associated with the legislative approvals, as noted in the comment letter (on page 1, section I, first paragraph), the Draft EIR notes that “[F]uture development in accordance with the legislative actions addressed in this EIR is also addressed in this EIR, to the extent possible based on the available information.” (page 1-2 of the Draft EIR). As noted in the Draft EIR, no specific development proposal has been prepared at this time. Thus, consistent with the fundamental CEQA concept of tiering, the Draft EIR follows the CEQA Guidelines regulation on the required degree of specificity:

The degree of specificity required in an EIR will correspond to the degree of specificity involved in the underlying activity which is described in the EIR. (emphasis added)

(a) An EIR on a construction project will necessarily be more detailed in the specific effects of the project than will be an EIR on the adoption of a local general plan or comprehensive zoning ordinance because the effects of the construction can be predicted with greater accuracy.

*(b) An EIR on a project such as the **adoption or amendment of a comprehensive zoning ordinance or a local general plan** [emphasis added] should focus on the secondary effects that can be expected to follow from the adoption, or amendment, **but the EIR need not be as detailed as an EIR on the specific construction projects that might follow.** (emphasis added)*

California Code of Regulations, Title 14, Section 15146.

For example, the analysis presented in Section 4.A, *Aesthetics/Visual Resources*, of the Draft EIR relies in part on visual simulations that were prepared for a conceptual project based on the development standards and design guidelines contained in the proposed PDCP, which are considered representative of a future project given the allowable density, setbacks, building heights, architectural styles, and other design elements that would be implemented as part of future development. Additionally, the evaluation of biological resources impacts presented in Section 4.C, *Biological Resources*, of the Draft EIR assesses impacts to nearby resources in a general sense, as it is based on a conceptual project that lacks detailed development plans, and therefore it is not possible to specify the exact location and severity of impacts to particular resources. However, general mitigation strategies are provided, as appropriate, to either address impacts directly or require further project-specific analysis at such time specific details become available. Similarly, the analysis of impacts related to air quality, greenhouse gas emissions, noise, and traffic are based on the maximum allowable development and various project features contained in the project's PCDP. While no specific development is currently contemplated, these analyses assume the maximum development scenario represented by the conceptual project, and as such they represent a "worst-case" scenario that allows flexibility in future project design assuming the PCDP's maximum development limits evaluated in the Draft EIR are not exceeded.

The commenter cites to the CEQA Guidelines definition of a "project" and focuses on how the project is defined. This focus is misplaced, as, regardless of how the Back Bay Landing Project is characterized, the Draft EIR complied with CEQA in tiering the analysis and in analyzing the future development that could occur consistent with the requested legislative approvals. "For purposes of environmental analysis," which is the phrase used in the CEQA Guidelines definition of "project" cited in the comment, the Draft EIR stated that it also analyzed the future development that could occur, and then throughout each of the Draft EIR topics in Chapter 4, the EIR included analysis of future development. That analysis, throughout Chapter 4 of the Draft EIR, satisfies Guidelines section 15378(d)'s reference to environmental analysis of development.

"For purposes of environmental analysis," the Draft EIR analyzed the effects of future project development consistent with the proposed Mixed Use land use and Planned Community zoning designations, to the extent feasible based on available information. This has been properly done in accordance with CEQA Guidelines section 15378, and with fundamental CEQA concepts on tiering, as explained above. Contrary to the comment, the Project is described and its impacts are analyzed consistently with CEQA. No improper segmentation has occurred.

The fact that certain specific impacts cannot be quantified in the EIR is entirely consistent with CEQA's tiering concept and regulations. As stated in the CEQA Guidelines and quoted above, CEQA recognizes and allows for a different level of analysis for a specific construction project and other types of actions (see Cal. Code Regs. tit. 14, § 15146 quoted above). The commenter's attempt to characterize the Draft EIR as having been prepared "too early" ignores the entire concept of tiering and the Legislature's finding that tiering

accomplishes important state goals and that EIRs should be tiered wherever feasible. Cal. Pub. Resources Code § 21093. Contrary to the comment (page 2, last paragraph of Comment Letter I) citing to the Draft EIR's statement on what is required in a Project EIR, the Draft EIR does "examine all phases of a project, including planning, construction, and operation." The only difference is that the Draft EIR examines these phases at a level of detail commensurate with the level of detail available at this time, consistent with CEQA tiering principles (see discussion above).

Although there are no specific development projects proposed at this time, and thus project-specific details of certain impacts are not available, the Draft EIR evaluated the potential impacts and made significance conclusions based on known information. For example, the Draft EIR concludes that "the proposed project would avoid any permanent adverse impacts to wetlands and marine resources, with the possible exception of limited impacts related to construction of a new water inlet in Planning Area 1. Further, impacts "associated with future bulkhead construction are not considered to be significant given the bulkhead wall placement outside of the ACOE and CCC jurisdiction, avoidance of eelgrass habitat, and the general lack of other high value habitat resources in the project area." (page 4.C-42 of the Draft EIR).

Moreover, mitigation measures have been included for potentially significant effects, including potentially significant biological effects. These mitigation measures, including measures C-1 through C-12 for biological resources, will mitigate potential effects to biological resources to less than significant levels but may require additional CEQA documentation to evaluate project-specific impacts to such resources.

In response to the commenter's suggestion to "create more concrete plans for construction before adopting a new Draft EIR," the suggestion is inconsistent with the Legislature's intent in adopting tiering for EIRs.

Relative to the commenter's suggestion that if the City does adopt the current Draft EIR as final that it commit to "doing a new or supplementary EIR at a later date prior to beginning construction," the commenter ignores not only CEQA provisions for tiering but also the fact that several discretionary approvals are required before construction could begin. Section 9 of Chapter 2, starting on page 2-40, lists those future discretionary approvals. These include a Site Development Review by the City of Newport Beach and processing of a Coastal Development Permit (CDP) through the California Coastal Commission. As the Lead Agency, when a Site Development Review or other project-specific permit applications are submitted in the future, the City must and will comply with CEQA in determining the appropriate level of CEQA review at that time, including following CEQA section 21094 to examine potential significant effects based on the Site Development Review.

Comment I-3

As noted in Mitigation Measure C-5: "Prior to construction, the boundaries of the eelgrass beds, located near shore of the Back Bay Landing site, shall be staked with ridged [sic] PVC markers or self-centering buoys visible at all tide heights. The contractor shall protect, replace and maintain the markers/buoys as needed to ensure that they remain in place and properly stake the boundaries of the eelgrass beds until the City certifies that all construction activities are complete."

The buoy locations will be based on the results of the pre-construction eelgrass survey completed during the eelgrass growing season (generally March through October) and in compliance with the Southern California

Eelgrass Mitigation Policy (SCEMP), or other applicable plan. Additional monitoring may be coordinated with the regulatory agencies during the project's entitlement process, but at this time no additional eelgrass surveys are being proposed during construction. Appropriate BMPs will be deployed to monitor and maintain the location of the buoys (as described in Mitigation Measure C-5). Mitigation Measure C-6 further commits that during shoreline work within 15 feet of eelgrass, which may involve construction of a bulkhead, dredging activities, or other in-water work, eelgrass shall be protected by specific techniques to be determined by the City prior to construction. Similarly, the techniques will be negotiated as part of the project's entitlement process and may include, but are not limited to, silt curtains deployed above the eelgrass and below the shoreline work area as determined to be necessary and appropriate to the impacts at the next level of approval by the City.

Upon completion of the project, a post-construction eelgrass survey will be performed pursuant to the SCEMP that will indicate the amount of eelgrass mitigation that is required. Additionally, it is likely that the agencies will require two years of monitoring following construction to note any gradual or indirect change in eelgrass distribution/presence that may be affected by implementation of the proposed project.

The Draft EIR includes a mitigation ratio of 1.2:1, which as noted is consistent with the SCEMP. More stringent ratios may be required and negotiated as part of the project's entitlement process, but at this time the proposed project will maintain a minimum commitment of 1.2:1.

Comment I-4

As stated above, the project involves legislative approvals for a future mixed use bayside village with a focus on continuation of coastal-dependent uses (expanded dry boat storage, marina parking and other CM uses), all to be located landward of the mean high water line.

Under Public Resources Code section 30233(a) the diking, filling, or dredging of open coastal waters or wetlands shall be permitted ... where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, in order to maintain existing navigational channels, vessel berthing and boat launching ramps and for public service purposes, including pipelines and existing intake and outfall lines and certain uses listed. In addition, under PRC section 30240 coastal-dependent uses are allowed within environmentally sensitive habitat areas.

The project site exists today as a fully improved, although significantly underutilized, existing coastal-dependent land use, with boat ramps, marina parking and limited dry boat storage, all within 25 feet or closer to the identified potential wetlands or waters in areas below mean high water as depicted in Draft EIR Figure 4.C-4. Furthermore, the existing Commission-certified Coastal Land Use Plan and General Plan allow up to approximately 136,000 square feet of CM uses on the site.

The commenter's reference to a 100-foot buffer is based solely on Commission procedural guidance. The guidance states that it was written to "integrate ecological concepts and policies." In referencing the 100-foot buffer, the guidance states that the Commission has "typically" required 100 foot buffers (footnote 13), a description of typical practice, but the guidance is just that, a guidance, which is not based on any requirement of the law. The purpose of the buffer, as the quotation in the comment itself makes clear, is to protect wetlands from direct effects of disturbance and to provide habitat for organisms using the wetlands.

The key issue therefore is whether there will be any significant project impacts to wetlands or habitat that require the 100-foot buffer. The facts documented in the Draft EIR demonstrate that no significant wetland impacts will occur and there will be no significant impacts to organisms using the wetlands. Therefore, no additional buffer is required to protect the biological integrity of the wetlands and the project is consistent with the purposes of the buffer articulated in the guidance document attached to the comment. Since the Draft EIR documents that, contrary to the comment, no significant impacts to wetlands would result from the lack of a 100-foot buffer, the City concludes that a 100-foot buffer is not necessary to reduce or avoid a significant impact and that the proposed buffer is adequate to avoid such significant impact. Therefore, under CEQA, no additional buffer is required.

The project is consistent with Coastal Land Use Plan Policy 4.2.2-3, which provides that smaller wetland buffers may be allowed where it can be demonstrated that a 100-foot-wide buffer is not possible due to site-specific constraints and the 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. Given the developed nature of the project site and existing proximity to potential wetland resources, the associated lack of undeveloped land adjacent to the waterfront that could be utilized for a buffer area, the limited nature of project-related physical impacts to the majority of the waterfront (aside from the proposed water inlet), and the fact that providing such a buffer would render the project infeasible, it is determined that a 100-foot wide buffer is not biologically required nor is it possible to implement such a buffer and meet the project objectives, due to site-specific constraints. Additionally, the future development of proposed uses (with the exception of construction of the water inlet) would not locate urban development any closer to potential wetland resources than under existing conditions. Lastly, the proposed bulkhead/seawall would function as a buffer by placing development at an elevation well above potential wetland areas, and would be amply protective of the biological integrity of the wetland given the existing activities occurring within the Bayside Village Marina and the anticipated type and intensity of future disturbance (i.e., water inlet construction and dry stack boat storage operations).

Comment I-5

As noted in Section 2(3a) of Draft EIR, maintenance dredging, habitat restoration, research and education programs, maintenance of artificial structures, and operation and maintenance of existing facilities inside the conservation area is allowed pursuant to any required federal, state and local permits, or activities pursuant to the California Code of Regulations §630, Ecological Reserves, or as otherwise approved by the California Department of Fish and Wildlife. As part of the project's future entitlement permitting process, evaluation of potential impacts within the MCA will be performed. Moreover, the regulatory agencies may impose more stringent mitigation measures to offset potential impacts that would result from implementation of the potential project.

Comment I-6

With regard to impacts to sewage pumpout facilities associated with the future dry stack boat storage facility, the commenter suggests that increased boat activities related to the proposed project would create additional demands on the various public pumpout facilities in Upper Newport Bay and Newport Harbor. However, as a standard practice, the proposed dry stack boat storage facility would provide private on-site sewage pumpout services for all vessels prior to being retrieved from the water for storage. Text will be added to Subsection 6, Project Design Features, in Chapter 2, *Project Description*, of the Draft EIR that

describes the anticipated facilities and operations at the proposed dry stack boat storage facilities. Refer to Chapter 3, *Corrections and Additions to the Draft EIR*, of this Final EIR for text to be added to the Draft EIR.

Comment I-7

The City shares CoastKeeper's goal of improving water quality over existing conditions and reducing sources of pollution into the Upper Newport Bay. Under existing conditions, all runoff from the existing parking lot and marina operations goes completely untreated into the Upper Newport Bay. Pollutants include sediments, oil/grease, heavy metals, hydrocarbons, nutrients and pathogens, which discharge directly into the Bay with no upstream treatment measures. Implementation of the project would incorporate biotreatment of 80% of the average annual runoff into the bay for all predicted pollutants from the project site resulting in an improvement to project water quality into the Upper Newport Bay. In accordance with the 2011 Model WQMP and accompanying Technical Guidance Document, applicants must identify all TMDL's entering all impaired water bodies, and list the specific pollutants as Primary Pollutants of Concern (POC). Once identified as a POC, Low Impact Development (LID) Best Management Practices (BMPs) must be selected that incorporate medium to high pollutant removal effectiveness for those pollutants that are anticipated to be part of the proposed project runoff. The Preliminary WQMP satisfies this requirement.

The Upper Newport Bay Marine Conservation Area documentation was reviewed and no water quality standards were identified.

The comment states that the Draft EIR fails to provide adequate mitigation for significant water quality impacts which could be caused by the construction of new stormwater discharges, and that specific BMPs will not be chosen until future regulatory approvals are needed. However, the Preliminary WQMP (Appendix H) does identify specific biotreatment BMPs including drainage management areas, biotreatment BMPs selected in accordance with the 2011 Model WQMP, minimum sizes and footprints needed and total treatment provided. The comment also states the Draft EIR be revised to require that a "zero stormwater discharge" standard apply to the proposed project when it is operational during a storm event smaller than a 100-year storm event and specifically requests the installation of a large cistern to capture storm event flows up to the 100-year storm event.

As part of the LID Hierarchy analysis provided in Preliminary WQMP, harvest and use calculations were performed which included an evaluation of collecting storm water runoff into a temporary holding device (i.e., cistern) and reusing the stormwater for irrigation purposes. The analysis showed that for an 85th percentile storm event (0.7-inch rainfall), the volume of runoff is 92,445 gallons and drawdown time would be 226 days (7.4 months). Any storm events occurring within the seven month period would either completely bypass the cistern or partially bypass the system. A 2-year storm is approximately three times the size of the 85th percentile storm event and would take well over a year to draw down. A 100-year storm event is over five times greater than the 85th percentile storm event indicating multi-year drawdown times which is highly infeasible and inefficient. The 2011 Technical Guidance Document provides a 30-day drawdown threshold for evaluating feasibility for collecting stormwater onsite and reusing. If the drawdown time exceeds 30 days, harvest and use is considered infeasible and is not required and should not be used. Doubling the amount of landscaping would still result in significant drawdown times well above the 30-day threshold even for the smallest storm event (85th percentile event). Design and collection of a cistern to hold the 100-year storm event is infeasible in many ways including insufficient water demand to reuse the water in a timely manner, inability to capture storm events that follow the first "cistern filling" event, septic

conditions for long term water storage and inconsistencies with Orange County Flood Control drainage requirements. Based on the infeasibility assessment for collection of stormwater and reuse onsite and the proposed biotreatment BMPs that will effectively which treat the pollutants of concern, the zero stormwater discharge request will not be implemented.

Comment I-8

The commenter states that the Draft EIR “includes no details about how many parking spaces would be open to non-residents of the Project and how many of those public parking spaces would be free of charge. The DEIR should be revised to include an analysis of how many free public parking spaces would be necessary to ensure adequate public access to public trust resources for recreation purposes, and to guarantee that amount of free public parking is in fact provided by the Project.” Enhancing public coastal access at the site is one of the stated objectives of the proposed project, and public parking would be provided on-site to facilitate this goal. However, although the proposed project requires that off-street parking be provided on the site for proposed uses as summarized in Table 3, Parking Requirements, of the PCDP, the specific type (fee parking or otherwise), number, and location of parking spaces would not be determined until a particular development project is brought forth. The specific details regarding on-site parking for residents, commercial tenants, commercial patrons, and the general public would be determined as part of the future Site Development Review process. In addition, free access to the waterfront would be provided by the bayfront promenade and trail.

Comment I-9

Comment noted. The commenter states that their organization recognizes the potential benefits of the proposed project, but that it should be implemented in a sustainable manner. This comment does not raise any specific environmental issues or comments on the Draft EIR.

This page intentionally left blank.

Letter J



Jaime Murillo
City of Newport Beach
100 Civic Center Drive
Newport Beach, CA 92660

Re: Back Bay Landing Project

SCH #: 2012101003

Dear Mr. Murillo,

The undersigned represents Citizens Advocating Rational Development (“CARD”), a non-profit corporation dedicated to issues in development and growth.

J-1

This letter contains comments on the Draft Environmental Impact Report on the Back Bay Landing Project, in accordance with CEQA and the Notice of Completion and Availability. Please ensure that these comments are made a part of the public record.

ENERGY

The DEIR does not discuss any requirements that the Project adopt energy saving techniques and fixtures, nor is there any discussion of potential solar energy facilities which could be located on the roofs of the Project. Under current building standards and codes which all jurisdictions have been advised to adopt, discussions of these energy uses are critical; the construction and operation of a mixed-use waterfront village on 6.974 acres, will devour copious quantities of electrical energy, as well as other forms of energy.

J-2

WATER SUPPLY

The EIR (or DEIR – the terms are used interchangeably herein) does not adequately address the issue of water supply, which in California, is a historical environmental problem of major proportions.

J-3

What the DEIR fails to do is:

1. Document wholesale water supplies;
2. Document Project demand;
3. Determine reasonably foreseeable development scenarios, both near-term and long-term;
4. Determine the water demands necessary to serve both near-term and long-term development and project build-out.
5. Identify likely near-term and long-term water supply sources and, if necessary, alternative sources;
7. Identify the likely yields of future water from the identified sources;
8. Determine cumulative demands on the water supply system;
9. Compare both near-term and long-term demand to near-term and long-term supply options, to determine water supply sufficiency;
10. Identify the environmental impacts of developing future sources of water; and
11. Identify mitigation measures for any significant environmental impacts of developing future water supplies.
12. Discuss the effect of global warming on water supplies.

There is virtually no information in the DEIR which permits the reader to draw reasonable conclusions regarding the impact of the Project on water supply, either existing or in the future.

For the foregoing reasons, this EIR is fatally flawed.

AIR QUALITY/GREENHOUSE EMISSIONS/CLIMATE CHANGE

The EIR lacks sufficient data to either establish the extent of the problem which local emissions contribute to deteriorating air quality, greenhouse emissions or the closely related problem of global warming and climate change, despite the fact that these issues are at the forefront of scientific review due to the catastrophic effects they will have on human life, agriculture, industry, sea level risings, and the many other serious consequences of global warming.

J-3
(cont.)

J-4

This portion of the EIR fails for the following reasons:

1. The DEIR does not provide any support or evidence that the Guidelines utilized in the analysis are in fact supported by substantial evidence. References to the work of others is inadequate unless the document explains in sufficient detail the manner and methodology utilized by others.
2. Climate change is known to affect rainfall and snow pack, which in turn can have substantial effects on river flows and ground water recharge. The impact thereof on the project's projected source of water is not discussed in an acceptable manner. Instead of giving greenhouse emissions and global warming issues the short shrift that it does, the EIR needs to include a comprehensive discussion of possible impacts of the emissions from this project.
3. Climate change is known to affect the frequency and or severity of air quality problems, which is not discussed adequately.
4. The cumulative effect of this project taken with other projects in the same geographical area on water supply, air quality and climate change is virtually missing from the document and the EIR is totally deficient in this regard.

For the foregoing reasons, the EIR is fatally flawed.

ALTERNATIVE ANALYSIS

The alternative analysis fails in that the entire alternatives-to-the-project section provides no discussion of the effects of the project, or the absence of the project, on surrounding land uses, and the likely increase in development that will accompany the completion of the project, nor does it discuss the deleterious effects of failing to update the project upon those same surrounding properties and the land uses which may or have occurred thereon.

Thank you for the opportunity to address these factors as they pertain to the referenced DEIR.

Very truly yours,

CITIZENS ADVOCATING RATIONAL DEVELOPMENT

NICK R. Green

President

J-4
(cont.)

J-5

This page intentionally left blank.

LETTER J

Nick R. Green
President
Citizens Advocating Rational Development

Comment J-1

The commenter describes the organization they represent and notes that comments on the Draft EIR are provided in accordance with CEQA. This comment does not raise any environmental issues or specific comments on the Draft EIR.

Comment J-2

The issues evaluated in the Draft EIR did not include impacts to energy resources, as this is not a topic addressed by the City's Initial Study Checklist, as shown in Appendix A of the Draft EIR. While this issue is not addressed in the Draft EIR, given the size and scope of the proposed future improvements, it is anticipated that future development would be well within the service capabilities of affected utilities.

Comment J-3

The proposed project's impacts on water supplies and water infrastructure are discussed in detail in Section 4.N, *Utilities and Service Systems*, of the Draft EIR. As concluded in the Draft EIR, the water demands of future development on-site pursuant to the proposed legislative approvals would be within the City's projected supplies as evaluated in the City's Urban Water Management Plan (UWMP). The UWMP identifies the various water sources and available supplies during normal, single-dry, and multiple-dry years, and also addresses potential effects of global climate change on future water supplies.

Comment J-4

The analyses of air quality and greenhouse gas (GHG) emissions impacts provided in Section 4.B, *Air Quality*, and Section 4.F, *Greenhouse Gas Emissions*, of the Draft EIR were conducted in accordance with the latest guidance from the South Coast Air Quality Management District (SCAQMD) and other regulatory agencies. Supporting data for the air quality and GHG emissions modeling are provided in Appendix B and Appendix F, respectively, of the Draft EIR. While the assessment of impacts related to air quality and GHGs is based on established thresholds provided by affected regulatory agencies, it is not appropriate for the EIR to speculate on the specific future secondary effects that may occur as a result of project-related emissions, as such emissions represent a very small increment of overall emissions in the region.

Comment I-5

The environmental impacts of the proposed project are discussed in detail in Chapter 4, *Environmental Impact Analysis*, of the Draft EIR. Chapter 6, *Alternatives*, of the Draft EIR evaluates the impacts of each alternative, including the No Project Alternative, for each environmental issue relative to the impacts of the proposed project. As such, the Draft EIR does, in fact, evaluate the effects of the proposed project and project alternatives on the surrounding land uses, including cumulative effects associated with future growth within the City.

Letter K



California Cultural Resource Preservation Alliance, Inc.

**P.O. Box 54132
Irvine, CA 92619-4132**

**An alliance of American Indian and scientific communities working for
the preservation of archaeological sites and other cultural resources.**

November 4, 2013

Jamie Murillo, Senior Planner
City of Newport Beach
100 Civic Center Drive
Newport Beach, CA 92660

RECEIVED BY
COMMUNITY
NOV 06 2013
DEVELOPMENT
CITY OF NEWPORT BEACH

Dear Mr. Murillo,

Thank you for the opportunity to review the Draft Environmental Impact Report for the Back Bay Landing Project. We agree that given that there are existing buildings and deep fill in the project area, monitoring during construction by a qualified archaeologist is the only feasible way to determine whether archaeological deposits are present. However, it is difficult to preserve archaeological resources in place once they are discovered during construction.

If an archaeological site is significant because it contains important scientific information, it also contains religious and cultural values for Native American descendants. These values can't be mitigated through archaeological excavations. This is why Appendix K of the California Environmental Quality Act states that preservation is the preferred treatment of archaeological sites and "Preservation may also avoid conflict with religious or cultural values of groups associated with the site."

We understand that preservation under these circumstances presents a challenge, but strongly recommend that in the event significant archaeological features or human remains are discovered, a sincere attempt will be made to preserve them in place.

Sincerely,

Patricia Martz, Ph.D.
President

K-1

This page intentionally left blank.

LETTER K

Patricia Martz, Ph.D.
President
California Cultural Resource Preservation Alliance, Inc.
P.O. Box 54132
Irvine, California 92619-4132

Comment K-1

Comment noted. The commenter states that in-place preservation is the preferred treatment method for any archaeological or Native American resources discovered during future project implementation, and requests that a sincere attempt be made to preserve any such resources in place.

This page intentionally left blank.

Letter L

Jaime Morillo, Senior Planner
City of Newport Beach
100 Civic Center Drive
Newport Beach, CA 92660

Dear Jaime;

November 1, 2013

This letter is submitted in response to our review of the Back Bay Landing Draft Environmental Impact Report. We are the Bayside Improvement Committee (BIC) which represents the 272 homes in Bayside Village Mobile Home Park (BVMHP) regarding the Back Bay Landing (BBL) Development.

At the Public Scoping Meeting held on October 17, 2012 our committee submitted an 18 page document summarizing seven areas of concern to our community. These included: Parking, Storage, Security, Noise Abatement, Traffic, Boundary Walls and Public Access Requirements. We were pleased to see that our concerns regarding Parking, Security, Noise Abatement, Traffic and "Loss of community amenities associated with conceptual waterfront pedestrian access alternative" were included and discussed in the Draft EIR. The issues of Storage and Boundary walls were not discussed but we understand that this current process is seeking legislative approval only thus any construction related plans will be addressed when actual development plans are submitted and able to be reviewed.

L-1

However, even with the lengthy documentation in Chapter 5 (Figure 4.I-1 and Tables 4.I-2 and 4.I-5) of why the "alternative connection" of Back Bay Landing to The Dunes using the Marina Road was "infeasible," we understand the applicant was at one point requested to submit Time, Place and Manner restrictions for this alternative. It troubles our committee to learn that despite our well documented concerns regarding the Marina Road alternative, and the fact that the applicant does not even want this alternative, that there was any interest or efforts made trying make this alternative "feasible" with time, place and manner restrictions. Since no such discussion appears in the Draft EIR, we must assume that City Staff ultimately supports the documentation in Chapter 5 of why this alternative was determined to be "infeasible." We would appreciate a response with your assurances that this is the case.

Sincerely,

Lawrence Van Pelt
Bayside Improvement Committee

This page intentionally left blank.

LETTER L

Lawrence Van Pelt
Bayside Improvement Committee

Comment L-1

The commenter expresses concern that the alternate bayfront access alignment considered but rejected from further analysis in Chapter 6, *Alternatives*, of the Draft EIR could potentially be included as part of future development on-site. However, as suggested by the commenter and concluded in the Draft EIR, this access option is considered infeasible and therefore was not evaluated further in the Draft EIR and would not be included in the project's requested approvals.

This page intentionally left blank.

Letter M

*Debbie Stevens
1120 Sea Lane
Corona Del Mar, CA 92625*

November 8, 2013

Mr. Patrick Alford
City of Newport Beach
3300 Newport Blvd.
Newport Beach, California 92663

SUBJECT: Comments on Back Bay Landing Draft EIR

Dear Mr. Alford:

I have reviewed the Draft Environmental Impact Report (EIR) for the Uptown Newport Project. My comments on the Draft EIR are summarized below.

COMMENTS APPLICABLE TO THE ENTIRE DRAFT EIR

- There are numerous places in the Draft EIR where it is stated that the specific permits necessary are not known at this time and no approvals that would require such permits are being requested at this time (e.g., page 2-41). This may be a point worth noting in the EIR, however, it is irrelevant to the EIR as the environmental impacts of the entire action must be evaluated.

M-1

BASIS FOR CUMULATIVE ANALYSIS

- Tables 3-1 and 3-2. It does not appear that the list of projects identified in the Approved Project List table or the Cumulative Project List table are evaluated in any of the cumulative impact sections of the EIR in any detailed manner. CEQA Guidelines indicate that “the cumulative impact from several projects is the change in the environment which results from the incremental impact of the project when added to other closely related past, present, and reasonable foreseeable probably future projects. Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time.” (CEQA Guidelines §15355(b)). Therefore, the project impacts along with past, present and reasonably foreseeable future projects must be evaluated.
- Page 3-2. The geographic extent of cumulative Greenhouse Gas (GHG) emission impacts is larger than the South Coast Air Basin and would more appropriately be California or farther as the impacts are on global climate change.

M-2

M-3

PROJECT DESCRIPTION

- Page 2-16 through 2-39: Development Standards and Project Design Features. How are the development standards and Project Design Features enforced? The Draft EIR assumes that these standards and design features have been included in the project and evaluates the project impacts, assuming implementation of these standards/features. Therefore, these standards and features need to be enforced on the development of all aspects of the proposed project. Otherwise, environmental impacts associated with the proposed project could be greater than evaluated. M-4
- Page 2-36, Sustainability Features. Is reclaimed water currently available on the site? M-5

AIR QUALITY

- Page 4.B-15, Table 4.8-3. Table 4.8-3 lists the recent ambient air quality data for monitoring stations in the region. This table should be revised to include the most recent ambient air quality data which is 2012 (see <http://www.aqmd.gov/smog/historicaldata.htm>). M-6
- Page 4.B-18, 3rd paragraph and page 4.B-30, 1st paragraph. The EIR analysis indicates that the SCAQMD LST screening tables for a five acre site were used to evaluate the potential localized impacts of emissions during construction activities even though the site is approximately seven acres. This methodology is inappropriate and may underestimate air quality impacts on adjacent areas. As indicated by the SCAQMD, “In the event that the project area exceeds five acres, it is recommended that lead agencies perform project-specific air quality modeling for these larger projects.” (<http://www.aqmd.gov/ceqa/handbook/LST/LST.html>). Therefore, air quality modeling using an appropriate air model (e.g., AERMOD) should be conducted to determine actual localized air quality impacts. This is especially important given that residents are located immediately adjacent to the project site and associated construction activities. M-7
- Page 4.B-39, Cumulative Impacts. The air quality cumulative impact analysis should be stronger. The geographic scope of the cumulative air quality impacts is defined as the South Coast Air Basin (page 3-2). However, there is no mention of the air quality in the South Coast Air Basin in the air quality cumulative impact analysis and no mention of the projects in Tables 3-1 and 3-2, i.e., the cumulative project list. Further, CEQA Guidelines indicate that the “cumulative impact from several projects is the change in the environment which results from the incremental impact of the project when added to other closely related past, present, and reasonable foreseeable probably future projects. Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time.” (CEQA Guidelines §15355(b)). There is no mention or evaluation of the cumulative impacts of past, present, or reasonably foreseeable future projects on air quality in the Draft EIR. M-8

GREENHOUSE GAS EMISSIONS

- Page 4.F-17, Project Design Features. These project design features need to be enforced as they are used to justify that the project is not will not be operated under “Business As Usual” conditions. M-9
- Page 4.F-28 and 4.F-29, Cumulative Impacts. The GHG emissions cumulative impact analysis needs to be stronger. The geographic scope of the cumulative GHG emissions impacts is defined as the South Coast Air Basin (page 3-2). However, there is no mention of the GHG emissions in the South Coast Air Basin in the cumulative impact analysis and no mention of GHG emissions from the cumulative projects listed in Tables 3-1 and 3-2. Further, CEQA Guidelines indicate that the “cumulative impact from several projects is the change in the environment which results from the incremental impact of the project when added to other closely related past, present, and reasonable foreseeable probably future projects. Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time.” (CEQA Guidelines §15355(b)). There is no mention or evaluation of the cumulative impacts of past, present, or reasonably foreseeable future projects on GHG emissions in the Draft EIR. M-10
- Page 4.F-32, Level of Significance After Mitigation. The GHG emission impact analysis concluded that the impacts due to implementation of the proposed project were potentially significant and imposed a number of mitigation measures. As the Draft EIR indicates “It is not possible to quantify the reductions from all of the mitigation measures due to limited data.” Nonetheless, arbitrary GHG emissions reductions were assumed and applied to the proposed project impacts (Table 4.F-7). GHG emission reductions should only be assumed were the mitigation measures can be enforced and monitored. For example, if the GHG emission reductions assuming a pass-by-reduction in vehicle trips are taken into account to reduce the GHG emission impacts from significant to less than significant they must be enforced, and the project should be limited to 2,060 trips per day or less. An arbitrary reduction in GHG emissions associated with electricity, natural gas, water conveyance, and waste has been assumed in Table 4.F-7. Again, the GHG emission reductions should only be assumed were the mitigation measures can be enforced and monitored. It appears that the GHG emission impacts associated with the proposed project would remain significant, unless the assumed emission reductions in Table 4.F-7 are imposed and enforced. M-11

HAZARDS

- Page 4.G-19, Cumulative Impacts. The hazards cumulative impact analysis needs to be stronger. The geographic scope of the cumulative hazard impacts is defined as the central coastal portion of Orange County (page 3-2). The CEQA Guidelines indicate that the “cumulative impact from several projects is the change in the environment which results from the incremental impact of the project when added to other closely related M-12

past, present, and reasonable foreseeable probably future projects. Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time.” (CEQA Guidelines §15355(b)). There is no mention or evaluation of the cumulative impacts of past, present, or reasonably foreseeable future projects on hazard impacts in the Draft EIR.

M-12
(cont.)

LETTER M

Debbie Stevens
1120 Sea Lane
Corona Del Mar, California 92625

Comment M-1

Refer to Response to Comment I-2 above. Necessary approvals for the proposed project are listed on pages 2-40 and 2-41 in Chapter 2, *Project Description*, of the Draft EIR. The Draft EIR evaluates the impacts of the proposed legislative approvals and the potential future development that could occur on-site pursuant to those approvals to the extent adequate information is available to evaluate impacts. The various analyses presented in the Draft EIR assess the impacts of a conceptual future project, for which no specific design has been determined; as such, particular details necessary to evaluate the extent or severity of various impacts are not currently available. Therefore, the Draft EIR analyzes the entire action of the proposed project to the extent feasible and appropriate.

Comment M-2

As discussed in Chapter 3, Basis for Cumulative Analysis, of the Draft EIR, the analysis of cumulative impacts in each respective section of the Draft EIR is based on the appropriate geographical context of each issue being evaluated. For instance, air quality impacts are evaluated in the context of the South Coast Air Basin, as the thresholds employed for the analysis are based on the Basin-wide attainment goals for various pollutants, while cumulative aesthetics/visual resources impacts are based on those related projects within the same field of view as the proposed project such that they could contribute to cumulative effects. The cumulative analysis is intended to evaluate the impacts of the proposed project in conjunction with future growth, but CEQA does not require that the individual effects of each related project be analyzed in detail in the EIR (*CEQA Guidelines* Section 15130(b)).

Comment M-3

The commenter indicates that the appropriate geography for the evaluation of GHG emissions impacts is the entire state of California or a larger area, as impacts have global effects. While this statement is not incorrect, current guidance regarding GHG emissions analysis does not allow for meaningful assessment of the global climate effects of any one particular development. As stated on page 4.F-28 in Section 4.F, *Greenhouse Gas Emissions*, of the Draft EIR:

Due to the complex physical, chemical, and atmospheric mechanisms involved in global climate change, it is not possible to predict the specific impact, if any, to global climate change from one project's relatively small incremental increase in emissions... Therefore, it is not possible or meaningful to calculate emissions from each of the identified related projects and compare that with a numeric threshold or reduction target.

Comment M-4

The development standards and project design features noted in Chapter 2, *Project Description*, of the Draft EIR are features of the proposed project, which are included in the proposed PCDP. As stated in the Project Description, the PCDP, once approved, would provide the functional “zoning” regulations to guide future development on the project site. As such, the PCDP’s development standards and design guidelines, as well as other project features, would be enforceable as are any other requirements of the City’s Municipal Code.

Comment M-5

Reclaimed water is not currently available on the site. As stated on page 4.N.1-11 in Section 4.N, *Utilities and Service Systems*, of the Draft EIR:

The City has investigated future sites or locations for reclaimed water, but there are limitations to the availability of reclaimed connections. The City is looking into the possibility of inter-district reclaimed water transfers to provide reclaimed water to some associations and recreation facilities.

Although not currently available on-site, it is possible that reclaimed water service may be provided to the project site at some time in the future. As such, the proposed PCDP allows for the use of reclaimed water (if available) for landscaping irrigation or other non-potable applications in order to offset potable water demand.

Comment M-6

Comment noted. At the time the analysis was prepared following filing of the project Notice of Preparation (October 2012), the 2012 monitoring data was not available from the SCAQMD. As such, the air quality monitoring data presented in the Draft EIR was the latest data available at the time the Draft EIR was prepared and therefore is considered adequate.

Comment M-7

The LST analysis in the Draft EIR is highly conservative, in that it calculates emissions from activities expected to occur over the entire 6.97-acre site and considers impacts as if those emissions occurred on a five-acre site. This is conservative and therefore acceptable methodology, because it assesses impacts as if more emissions are generated closer to off-site receptors than would actually happen. Thus, dispersion modeling is not required to validate the conclusions reached in the Draft EIR.

Comment M-8

The cumulative impact assessment contained in the Draft EIR is adequate. Existing and historical trends in Basin-wide air quality are discussed in detail in the Draft EIR, please see pages 4.B-9 through 4.B-16 of the

Draft EIR. Air quality planning is conducted by the SCAQMD based on the maximum day inventory of non-attainment pollutants and their precursors. The timing of construction and operation of any of the related projects, although reasonably foreseeable, is fluid and, for most of the projects listed, out of the control of the City. Thus it is highly speculative as to the extent the related projects would overlap with the proposed project.

Comment M-9

Refer to Response to Comment M-4. Project Design Features are required per the proposed PCDP, and as such, upon approval of the PCDP, these requirements would be enforceable by the City for any future development on the project site.

Comment M-10

The cumulative impact assessment contained in the Draft EIR is adequate. As stated on page 4.F-28 in Section 4.F, *Greenhouse Gas Emissions*, of the Draft EIR "...it is not possible or meaningful to calculate emissions from each of the identified related projects and compare that with a numeric threshold or reduction target." CEQA grants Lead Agencies the latitude to determine if GHG assessments should be conducted on a qualitative or quantitative basis, and the Draft EIR clearly states the methodology by which cumulative impacts would be considered as follows, as stated on pages 4.F-16 and 4.F-17 of the Draft EIR: "Further, if a project results in emissions less than the applicable project-level quantitative threshold and implements design and operational strategies consistent with an applicable GHG reduction policy (i.e. CALGreen requirements), it is considered to have a less than significant impact with respect to its contribution to the cumulative impact of global climate change. These criteria are consistent with Appendix G draft amendments discussed above." Thus, the cumulative impact assessment is adequate as presented.

Comment M-11

Statements regarding the methodology used to calculate the efficacy of the GHG reduction measures have been added to the Final EIR for clarity. This information was available in the technical appendix of the Draft EIR, and represents well established protocols. Thus, the GHG emission reduction calculations are not arbitrary. The mitigation measures presented in the Draft EIR are enforceable through the Mitigation Monitoring and Report Program (MMRP), and their inclusion in the calculations is warranted. Scientific analyses contained in EIRs is always based, in part, on sound engineering judgments, such as project-related credit for pass by trips, utility usage rates, and similar widely accepted data. Mitigation measures are not needed in association with these well-documented assumptions.

Comment M-12

As discussed on page 4.G-19 in Section 4.G, *Hazards and Hazardous Materials*, of the Draft EIR:

All related projects listed in a government hazardous materials database would require site-specific investigations and remediation (if necessary) to adequately address existing hazardous materials

impacts to the satisfaction of the regulatory agencies with jurisdiction over the site, thereby precluding the potential for adverse physical effects related to hazardous materials health risks.

There are no listed hazardous materials sites in close proximity to the project site, with the exception of the Mobil station located to the southeast across East Coast Highway east of Bayside Drive, which is discussed in detail under Impact 4.G-1. Given the nature of associated development and the distance of the various related projects from the project site, there would be little potential for hazardous materials conditions to contribute to cumulative effects in conjunction with the proposed project. Hazardous materials assessments and remediation efforts for individual related projects, if warranted, would be carried out on each respective project site to the satisfaction of affected regulatory agencies. As such, no further analysis in this regard is warranted.

Letter N

The comments were submitted by members of the City's Environmental Quality Affairs Committee (EQAC) on or before November 14, 2013. An EQAC meeting was scheduled to be held on November 14, 2013, and included on the meeting agenda was an item to review and approve EQAC comments on the Back Bay Landing Draft Environmental Report. However, a quorum of the EQAC members was not present on November 14, 2013 and therefore there was no action taken to review and finalize comments. The following include all comments submitted on or before November 14, 2013, but it should be noted that none of the comments represent official comments by the EQAC.

SECTION 0.0: EXECUTIVE SUMMARY

Page ES-4. While I assume the community would be on board with a community tower, is there an alternative to this that would still provide viewing area if local residents object? – TG | N-1

Page ES-5. Newport contains a wide variety of architecture and community character. Mentioning that it will be in line with the general character of Newport is very vague. - TG | N-2

Page ES-6. The Lido area commercial plan seems similar to the landing. The community might be hesitant to create another area where restaurants and businesses have a tough time thriving. - TG | N-3

Page ES-6. The type of boats that would be stored is vague. The location makes it seem as though it would be boats on the smaller side. - TG | N-4

Page ES-8 (Subsection (3)). Driving through the area or looking at it on google satellite shows that the trailer park area is already close to capacity. Push back from owners be pushed closer to relocated units may be upset. – TG | N-5

Page ES-16 (Candidate, Sensitive, and Special Status Species). The proposed length of project seems as though there is no question that it would overlap with the breeding season. - TG | N-6

SECTION 2.0: PROJECT DESCRIPTION

Restaurants: why are they as far away from the water as possible and located at PCH / Bayside instead? Wouldn't waterfront dining be a better draw? – CM | N-7

The decorative 8-foot high masonry wall separating the project from the mobile home park: what does it mean by "decorative"? What are the specifics in this regard, and the accompanying landscaping? – CM | N-8

Building heights: where do the 35/40 foot and the 26/31 foot maximums come from? How were these maximum heights derived? – CM | N-9

Page 2-25. Is not clear from prose and exhibits whether the 12' wide Bayfront Promenade/Trail will have portions of the path strictly designated for pedestrians that are separate from the Bicycle path portions. That is, if I understand correctly, this plans to extend a highly used cycling trail by biking sport enthusiasts (riding at high speeds despite posted speed restrictions), and the intermingling of Bike and Pedestrian traffic may not be safe. The artist depiction on Fig. 2-17 suggests no separation of these two kinds of traffic. This might cause hazards that | N-10

outweigh the promotion of a “people scaled pedestrian friendly community” (p. 4.B-38, Table 4B-9).

N-10
(cont.)

Suggestion: A curb bisecting the path and running the length of the Promenade could serve to separate the two forms of traffic and address this problem (models for this kind of thing exist – one example that works well is the very busy pedestrian and bike path along English Bay and Stanley Park in Vancouver B.C., Canada). - KJ

Page 2-8 (General Plan Amendment). The 2006 General Plan approved land use designation of (RM) for Parcels 1 and 2 seems to be inaccurate. Is the surplus density of 75 residential dwelling units accurate? – JY

N-11

Page 2-8 (Subsection 1 (a)). Again looking at the plausibility of relocating trailers in to an already impacted area. – TG

N-12

Page 2-15, (Traffic). People will be less concerned with the end product traffic and more concerned with the traffic that construction will cause. – TG

N-13

Page 2-21 (Table 2-3). The parking ratio requirements in Table 2-3 seem to show an inadequate amount of parking coverage during peak periods. (i.e., Summer months, holiday events. - JY

N-14

Page 2-35 (Public Improvements). Is there any idea how much of improvement the upgraded OCSD facility will be? – TG

N-15

Page 2-39 (Project Objectives), Fourth Bullet. It does not seem accurate nor in the general spirit of the General Plan to necessitate new housing opportunities within the project site. – JY

N-16

Page 2-40 (Necessary Approvals). Any target dates for approvals? – TG

N-17

SECTION 4.0: AESTHETICS/VISUAL RESOURCES

65 foot coastal viewing tower: have the views of the nearby residents been taken into account? A very tall tower, lit at night, will dominate the sky line in that area. Moreover, how will the tower be accessed by pedestrian traffic as it will be situated in the middle of the vehicle traffic roundabout? – CM

N-18

Views: How will the 65 foot tower not have an adverse effect on the scenic vista of the back bay or harbor? – CM

N-19

Page 4.A-13 (Views/Scenic Vistas) The EIR fails to identify and address the substantial adverse effect the project may have on the scenic vista from Public View Corridor 8 (Fig. 2-4). The EIR fails to provide a View Simulation from the focal point/main viewing area of Castaways Park. This area is narrowly identified in View Simulation 5, but this viewpoint should not be construed as a true depiction of the scenic vista views from View Corridor 8. - JY

N-20

Page 4.A-28 (Artificial Light). The EIR does not address new light sources from patio/balcony areas of residential structures. – JY

N-21

SECTION 4.C: BIOLOGICAL RESOURCES

Page: 4.C-9. Would smaller animals be harmed during the dredging portion of the construction. I would imagine they wouldn't all relocate. - TG | N-22

Page 4.C-11 (Sensitive Species): Tern breeding grounds 2 miles away seems sufficient enough mitigation for the proposed project. – TG | N-23

Page 4.C-16 (Mammals). What mitigation techniques would be used if mammals don't easily relocate themselves. Complete shutdown until they move? - TG | N-24

Page 4.C-17 (Stormwater). Is there sufficient deterrents for employees of the construction company not to commit any improper disposal? - TG | N-25

Page 4.C-20.(Subtidal Vegetated Habitat). If the eelgrass preservation is a concern why not just state that the patches will be marked. - TG | N-26

SECTION 4.E: GEOLOGY AND SOILS

Page 4.E-4 (Soil Corrosivity). The EIR fails to offer mitigation for the corrosion potential to buried ferrous metal. Although the EIR states further testing should take place during construction, this should not be offered as a means to mitigate any risk to possible structure collapse. – JY | N-27

Page 4.E-7 (Liquefaction). The Liquefaction possibility is countered by several mitigation measures, but it seems as though none of them are certain. Is this a concern? - TG | N-28

Page 4.E-10 (Failure). The EIR fails to identify specific Mitigation measures to resolve substantial adverse effects that exist from Seismic-related ground failure, including liquefaction. The EIR states that with implementations of the recommendations in the Preliminary Geotechnical Study, they would need to be refined in a “design-level analysis”; the analysis should be made available to determine whether substantial adverse effects exist. - JY | N-29

Page 4.E-10 (Failure). The EIR does not discuss the substantial adverse impact that the future design feature of a water inlet may have on the site soil. – JY | N-30

SECTION 4.F: GREENHOUSE GAS EMISSIONS

The estimated maximum of “3,271 metric tons” of CO₂e per year (p. 4.F-20, paragraph 3) differs from the subtotal of the same measure cited in Table 4.F-3 (p. 4.F-21). | N-31

The Table 4.F-7 level of mitigated CO₂e levels (=3,010) still exceed the SCAQMD draft screening threshold of 3,000 metric tons of CO₂e per year. Why is the “Exceeds Threshold?” response listed as “No”? Is there some acceptable amount of variance that allows 3,010 to be under the 3,000 threshold? - KJ | N-32

SECTION 4.J: NOISE

Page 4.J-3 (Municipal Code). There looks to be an error in the bold reference section. - TG

N-33

Page 4.J-20 (On-Site Construction Noise). The threshold established does not adequately address the significant impact on-site construction noise will have on the area. Although construction is temporary in nature and in turn exempt from excessive noise levels, the EIR should provide a more accurate means to mitigate these noise levels. Estimated duration of work activity and smaller windows for heavy machine operations may help mitigate. – JY

N-34

Page 4.J-22 (Off-site Construction Noise). It seems as though the 15ft noise barrier wall wouldn't help this either since the trucks would have to come and go. – TG

N-35

Page 4.J-36. The 15ft wall may be objected by residents and businesses around the area for aesthetic reasons. – TG

N-36

SECTION 4.K: POPULATION AND HOUSING

The project will have limited population and housing impact, regardless of whether the proposed project plan is adopted or if the heavier residential alternative is adopted. - JO

N-37

Project will have a limited impact on employment once construction is complete, slightly less so if the heavier residential alternative is adopted. - JO

N-38

Impact will skew the housing/job ratio further, but the absolute impact is not significant given the magnitude of the project (250 jobs, 49 housing units). - JO

N-39

Overall impact in this area is less than significant, so no mitigation measures are required. – JO

N-40

SECTION 4.L: PUBLIC SERVICES

No significant impact on fire and emergency response services. The project would not have an impact on overall response times or service levels, and would be served out of existing facilities. -JO

N-41

No significant impact on provision of police services. Given its small size, the project would not have an impact on police response times and service levels, and would be served out of existing facilities. – JO

N-42

No significant impact parks and recreation facilities, as the small size of the project is unlikely to lead to incremental demand for park and recreational services (and the site could potentially add in this regard with the addition of trail access). - JO

N-43

No impact on schools given the size of the project and limited incremental population/housing growth. (The site will be served through existing facilities at Lincoln Elementary and Corona Del Mar High school). - JO

N-44

No impact of library services given the small size of the project. -JO

N-45

The project is consistent with existing regulatory frameworks, including the General Plan and Municipal code. - JO

N-46

Summary- limited impact in this area, requiring no mitigation. Alternative project plans would reduce impacts slightly, but overall impact would be limited given magnitude of the project's footprint. –JO | N-47

SECTION 4.N: UTILITIES AND SERVICE SYSTEMS

As currently proposed, the project would require the construction of new water facilities on the site, including a new 8 inch water line that would serve the project and tie into the existing 12 inch water line on Bayside Drive. The project would also require the abandonment of removal of an existing 30 inch water line traversing the property. This removal is already considered a high priority for the city, however, and replacement would be considered beneficial. There are two alternatives currently under consideration for the removal and replacement of the line. - JO | N-48

The project would have a minimal impact on wastewater treatment requirements, or require new wastewater facility construction. There will be a temporary impact during construction, but this will not result in an increased wastewater flow that would require new capacity. - JO | N-49

The site will require the construction of new storm water drainage facilities, including several new outlets and a new drain system for the eastern portion of the site. Per the PDCP, the project would also include Low Impact Development features including storm planters, permeable pavement, etc. - JO | N-50

Solid waste will result from demolition and construction during the project's construction and development phase. Waste materials from the construction process will be disposed of at the FRB Landfill. The volume is not expected to be significant, or to generate the need for additional landfill capacity. – JO | N-51

During the project's operational phase, the amount of water generated will be small- equivalent to .003 percent of FRB daily landfill capacity. - JO | N-52

Question/Note: There is no discussion of electric and gas utility impact from the project- will the developer be paying for all interconnects? Are there any additional impacts in this regards? - JO | N-53

Summary: Overall impact from the project will be less than significant, but the project – along with others- will contribute to cumulative need for more water/wastewater capacity. Mitigation measures include city water connection and wastewater connection fees, as well as a requirement that the project contract with a waste disposal company that recycles demolition and construction wasters during the construction phase. The adoption of alternatives here would have a limited impact in regards to the impacts of the project upon Public Services. - JO | N-54

SECTION 5.0: ALTERNATIVES

Page 5-3 (Alternative Locations). The only one listed is the Dunes. Is there any other places outside the dunes that might be acceptable. – TG | N-55

SECTION: OTHER MANDATORY CEQA CONSIDERATONS

Page 6-2 (Growth Inducing Impacts). While there is a cap imposed on the area, a thriving commercial and residential area would likely spur prospects of growth nearby. – TG | N-56

Page 6-6 (Aesthetics). Is it possible that the PCH Scenic Route designation may take place before the Back Bay Landing Approvals? - TG

N-57

LETTER N

City of Newport Beach Environmental Quality Affairs Committee (EQAC)

Comment N-1

The sentiments of the surrounding community regarding the proposed tower is not germane to the EIR. As such, no further analysis is required.

Comment N-2

This comment does not raise any environmental issues or specific comments on the Draft EIR. As such, no further analysis is required.

Comment N-3

The acceptance of the project by the community and economic viability of proposed land uses are not germane to the EIR. As such, no further analysis is required.

Comment N-4

A more detailed discussion of the dry stack boat storage facility and associated operations will be added to the EIR Project Description, which indicates that boats would range between 20 to 42 feet in length. See additional text provided in Chapter 2, *Corrections and Additions to the Draft EIR*, of this Final EIR.

Comment N-5

Potential opposition to the project by nearby residents is not germane to the EIR. As such, no further analysis is required.

Comment N-6

Comment noted. Given the anticipated length of future construction activities on-site, it is likely that some component of the construction effort would occur during the least tern breeding season. However, Mitigation Measure C-1 in Section 4.C, *Biological Resources*, of the Draft EIR would be implemented, as appropriate, at such time a future development project is approved for construction in order to preclude significant impacts to least terns during the breeding season.

Comment N-7

This comment does not raise any environmental issues or specific comments on the Draft EIR. As such, no further analysis is required.

Comment N-8

The 8-foot wall described by the commenter is a feature of the proposed PCDP, and therefore is only conceptual in nature at this time and specific details regarding the design of the wall are not available. However, the specific design details of future improvements pursuant to the proposed PCDP would be reviewed by the Planning Commission as part of the Site Development Review process. This comment does not raise any environmental issues or specific comments on the Draft EIR. As such, no further analysis is required.

Comment N-9

The height limits in the proposed PCDP reflect the base and maximum height limits in the City's Zoning Code for non-residential development in the Shoreline Height Limitation Zone. This comment does not raise any environmental issues or specific comments on the Draft EIR. As such, no further analysis is required.

Comment N-10

As noted previously, per the project's PCDP, the proposed 12-foot-wide bayfront promenade would be accessible to both pedestrians and bicyclists. However, the specific design of the promenade as part of a future development project, has not yet been determined. Nonetheless, the design and functionality of the promenade would be addressed as part of future Site Development Review, at which time specific design features intended to ensure pedestrian and bicycle safety (e.g., striping, curbs, railings, or other separation devices) would be evaluated.

Comment N-11

As stated on page 2-8 in Chapter 2, Project Description, of the Draft EIR, "Based on the 2006 General Plan approved land use designation (RM) on Parcels 1 and 2, there is a surplus density of 75 residential dwelling units (current General Plan land use density of 345 units minus the existing 270 residential units within Parcels 1 and 2)."

Comment N-12

Comment noted. This comment does not raise any environmental issues or specific comments on the Draft EIR. As such, no further analysis is required.

Comment N-13

The community's degree of concern regarding project-related traffic is not germane to the EIR. This comment does not raise any environmental issues or specific comments on the Draft EIR. As such, no further analysis is required.

Comment N-14

The proposed PCDP's parking requirements are intended to provide adequate parking for the various allowable uses as part of a future project on-site, including during peak demand periods. While these parking requirements would be applied to a future development, no details regarding the specific mix of land uses or when and how associated peak periods of parking demand may occur such that this effect can be analyzed at this level of planning. However, the parking supply for future development pursuant to the proposed PCDP would be reviewed by the Planning Commission as part of the Site Development Review process to ensure that adequate off-street parking is provided.

Comment N-15

The proposed PCDP provides that the improvements to the OCSD pump station would be subject to the Site Development Review process and the PCDP's Design Guidelines. As such, the future design is anticipated to be consistent with that of the proposed future mixed-use project. This comment does not raise any environmental issues or specific comments on the Draft EIR. As such, no further analysis is required.

Comment N-16

The statement of project objectives in the Draft EIR is intended to help the City as the Lead Agency under CEQA to develop a reasonable range of project alternatives to evaluate in the EIR. This comment does not raise any environmental issues or specific comments on the Draft EIR. As such, no further analysis is required.

Comment N-17

The exact timing of project-related approvals cannot be reliably determined at this time. As such, it is not necessary or appropriate to speculate on the specific timing of future approvals in the Draft EIR.

Comment N-18

As stated on pages 4.A-10 and 4.A-11 in Section 4.A, *Aesthetics/Visual Resources*, of the Draft EIR, effects on private views are not considered significant under CEQA, though the Draft EIR does acknowledge that future development of proposed uses could partially obstruct private views at some locations. However, as no public views would be substantially obstructed or otherwise adversely affected, impacts would be less than significant.

With regard to the public coastal view tower, the tower itself would not involve any unnecessarily intense nighttime lighting, but would be illuminated by low-level accent lighting and ground-based light sources angled upward to accentuate this architectural icon. Such lighting would be directed entirely onto the tower structure and would not cause off-site light spill or create a nuisance for surrounding uses. The tower would be illuminated in accordance with the PCDP's lighting standards and would also be subject to future Site Development Review, in order to ensure that tower-related lighting does not adversely affect nearby light-sensitive land uses or habitat areas.

Pedestrian access to the proposed view tower would be provided via one or more crosswalks at the project roundabout feature, which may include special signage, lighting, or other features in order to enhance pedestrian safety. The design of the roundabout and associated crosswalk(s) would be addressed as part of future Site Development Review, at which time specific design features intended to ensure pedestrian safety would be evaluated.

Comment N-19

As discussed in Section 4.A, *Aesthetics/Visual Resources*, of the Draft EIR, proposed future development pursuant to the proposed PCDP would not represent a substantial portion of the field of view as viewed from various public viewpoints in the area. Therefore the proposed tower itself would only incrementally contribute to the project's overall view impacts, which were determined to be less than significant. Also refer to the revised visual simulations provided in Chapter 3, *Corrections and Additions to the Draft EIR*, of this Final EIR.

Comment N-20

A new view simulation, **Figure 4.A-14**, *View Simulation #8*, and discussion of associated view impacts have been prepared and are included in Chapter 3, *Corrections and Additions to the Draft EIR*, of this Final EIR. As shown in Figure 4.A-14 and discussed in the text addition to page 4.A-25 of the Draft EIR, view impacts of the proposed project are comparable to those in **Figure 4.A-11**, *View Simulation #5*, also provided in Chapter 3 of this Final EIR. The proposed project would not represent a substantial obstruction to existing public views from identified scenic viewpoints in the area, including the focal point/viewing area (flagpole area) at Castaways Park. Impacts to scenic vistas, therefore, would be considered less than significant.

Comment N-21

The proposed PCDP requires that a detailed lighting plan for any future development on-site to be submitted with the Site Development Review application. The lighting plan shall illustrate how all exterior lighting is designed to reduce unnecessary illumination of adjacent properties, conserve energy, minimize detrimental effects on sensitive environmental areas, and provide minimum standards for safety. The PCDP lighting standards would, at a minimum, require shielding of all light sources, prohibit off-site light spill, establish performance standards for light levels at adjacent uses, require preparation of a project-specific photometric study, and provide specifications for light fixtures to be incorporated into the project design.

Comment N-22

As discussed in Section 4.C, *Biological Resources*, of the Draft EIR, the impacts to various species and habitats in the project area would generally be addressed through implementation of applicable mitigation measures or compliance with existing regulations. However, the extent and severity of impacts to specific resources cannot be determined at this time, as no detailed design plans for future development on-site are currently available. Nonetheless, it is anticipated that some marine resources could be physically affected by future dredging activities, should they be required, but these impacts are expected to be limited to the immediate area where dredging activities would occur and would be temporary in nature. It should be noted that dredging activities for the Bayside Village Marina is currently allowable per the NBMC, and as such incidental impacts to some intertidal habitat, and the species that it contains, currently occurs in proximity to the project site. Mitigation measures are provided in Section 4.C that would minimize adverse effects to such resources during future project implementation. Furthermore, subsequent project-related studies that establish the nature and location of marine resources and the specific extent of impacts to them would be conducted prior to the Site Development Review process.

Comment N-23

Comment noted. This comment does not raise any environmental issues or specific comments on the Draft EIR. As such, no further analysis is required.

Comment N-24

As required by Mitigation Measure C-3 in Section 4.C, *Biological Resources*, of the Draft EIR, all in-water work would be halted in the event that marine mammals are observed in proximity to construction activities.

Comment N-25

As required by Mitigation Measure C-10 in Section 4.C, *Biological Resources*, of the Draft EIR, a project-specific SWPPP would be required to be implemented throughout construction activities on-site. The SWPPP would include BMPs for litter control and containment of all potential pollutants on the project site. The requirements of the SWPPP are enforceable by the City of Newport Beach and Santa Ana RWQCB. Thus, unauthorized pollutant releases are not anticipated to occur.

Comment N-26

As required by Mitigation Measure C-5 in Section 4.C, *Biological Resources*, of the Draft EIR, “the boundaries of the eelgrass beds, located near-shore of the Back Bay Landing site, shall be staked with ridged PVC markers or self-centering buoys visible at all tide heights.”

Comment N-27

Corrosive soils can damage subsurface utilities and structures that are not properly treated. Although it is acknowledged that some near-surface on-site soils are considered moderately corrosive to ferrous metals, and thus could potentially result in damage to future structures or utilities, the exact location and extent of such soils has not been determined. Any future development, as required by Mitigation Measure E-1 in Section 4.E, *Geology and Soils*, of the Draft EIR, would be required to comply with an approved, project-specific Geotechnical Study based on future site investigation and detailed engineering plans. The future project-specific Geotechnical Study will identify all project-related geotechnical hazards, including corrosive soils, and provide detailed recommendations that would be required to be incorporated into the project design and construction techniques, as applicable. As such, corrosive soils are not anticipated to create a significant hazard to future development on-site.

Comment N-28

Refer to Response to Comment N-27 above. Design-specific mitigation measures to address liquefaction potential and other seismic risks cannot be determined at this time given the lack of a specific project design.

Comment N-29

Refer to Response to Comment N-27 above.

Comment N-30

As would be the case for the entirety of the project-related waterfront, the proposed new water inlet for the dry stack boat storage and service area would be supported by a new bulkhead/seawall, which would provide structural support and protection for future on-site improvements. Subject to the recommendations and requirements of a future project-specific Geotechnical Study, the bulkhead/seawall and other components of the water inlet feature would not create a hazard to people or structures related to ground stability or ground failure.

Comment N-31

The City acknowledges the typo on page 4.F-20. The correct value is 3,160 metric tons CO₂e. The text will be modified to reflect the correct number, as shown in Chapter 3, *Corrections and Additions to the Draft EIR*, of this Final EIR.

Comment N-32

With respect to project impacts after mitigation, Table 4.F-7 in Section 4.F, Greenhouse Gas Emissions, of the Draft EIR, the net increase in GHG emissions should be compared to the SCAQMD's numeric thresholds. This

appears two lines below the 3,010 project-related emission total, correctly calculated to be 2,867 metric tons CO₂e.

Comment N-33

The City acknowledges the typo on page 4.J-3. Text will be modified to correct this error, as shown in Chapter 3, *Corrections and Additions to the Draft EIR*, of this Final EIR.

Comment N-34

As noted on page 4.J-5 in Section 4.J, *Noise*, of the Draft EIR, construction noise is exempt from the City's numeric noise levels as long as construction is limited the time between 7 a.m. and 6:30 p.m. on weekdays, and between the hours of 8 a.m. and 6 p.m. on Saturdays. Therefore, the significance of the resultant noise is not in question, and does not need to be mitigated. Nonetheless, as noted on page 4.J-22 of the Draft EIR, construction-related noise levels could reach as high as 92 dBA at the closest sensitive receptors (residential uses) for short durations during the excavation phase. However, such noise levels would only occur incidentally during the construction process and only at the closest sensitive receptor locations when equipment is operating at or near the property line. The majority of construction activities would occur in other areas of the project site at sufficient distance from these sensitive receptors such that noise impacts would be substantially reduced. Furthermore, as also noted on page 4.J-22, although not required due to the City's exemption of construction noise impacts, Mitigation Measure J-1 would require the installation of temporary 15-foot noise barriers along the project site perimeter in proximity to residential uses (i.e., Bayside Village and Linda Isle) in order to reduce construction-related noise. As such, construction-related noise is considered less than significant.

Comment N-35

As stated on page 4.J-22 in Section 4.J, *Noise*, of the Draft EIR, "traffic noise levels generated by truck trips would increase traffic noise levels along Bayside Drive by 1.5 dBA, which is below the significance threshold of 2 dBA..." Thus, no further mitigation is needed.

Comment N-36

Objections of the community regarding the appearance of temporary 15-foot noise barrier during construction activities is not germane to the EIR. As such, no further analysis is necessary.

Comment N-37

Comment noted. The commenter summarizes the analysis presented in the Draft EIR. As such, no further analysis is required.

Comment N-38

Comment noted. The commenter summarizes the analysis presented in the Draft EIR. As such, no further analysis is required.

Comment N-39

Comment noted. The commenter summarizes the analysis presented in the Draft EIR. As such, no further analysis is required.

Comment N-40

Comment noted. The commenter summarizes the analysis presented in the Draft EIR. As such, no further analysis is required.

Comment N-41

Comment noted. The commenter summarizes the analysis presented in the Draft EIR. As such, no further analysis is required.

Comment N-42

Comment noted. The commenter summarizes the analysis presented in the Draft EIR. As such, no further analysis is required.

Comment N-43

Comment noted. The commenter summarizes the analysis presented in the Draft EIR. As such, no further analysis is required.

Comment N-44

Comment noted. The commenter summarizes the analysis presented in the Draft EIR. As such, no further analysis is required.

Comment N-45

Comment noted. The commenter summarizes the analysis presented in the Draft EIR. As such, no further analysis is required.

Comment N-46

Comment noted. The commenter summarizes the analysis presented in the Draft EIR. As such, no further analysis is required.

Comment N-47

Comment noted. The commenter summarizes the analysis presented in the Draft EIR. As such, no further analysis is required.

Comment N-48

Comment noted. The commenter summarizes the analysis presented in the Draft EIR. As such, no further analysis is required.

Comment N-49

Comment noted. The commenter summarizes the analysis presented in the Draft EIR. As such, no further analysis is required.

Comment N-50

Comment noted. The commenter summarizes the analysis presented in the Draft EIR. As such, no further analysis is required.

Comment N-51

Comment noted. The commenter summarizes the analysis presented in the Draft EIR. As such, no further analysis is required.

Comment N-52

Comment noted. The commenter summarizes the analysis presented in the Draft EIR. As such, no further analysis is required.

Comment N-53

The issues evaluated in the Draft EIR did not include impacts to energy resources, as this is not a topic addressed by the City's Initial Study Checklist, as shown in Appendix A of the Draft EIR. While this issue is

not addressed in the Draft EIR, given the size and scope of the proposed future improvements, it is anticipated that future development would be well within the service capabilities of affected utilities.

Comment N-54

Comment noted. The commenter summarizes the analysis presented in the Draft EIR. As such, no further analysis is required.

Comment N-55

The alternative site at the adjacent Newport Dunes resort that is discussed in Chapter 6, *Alternatives*, of the Draft EIR, was considered due to the fact that it is a waterfront property operated under the same ownership as the project site and thus could potentially accommodate a similar mix of coastal-dependent and coastal-related development as the proposed project. The general lack of availability and cost premium associated with waterfront coastal property, particularly in southern California, would generally preclude the financial feasibility of acquiring another waterfront property in the area that could be developed with the proposed uses when compared to developing such uses on property already operated by the applicant. For this reason, only one alternative site was identified for discussion in the Draft EIR.

Comment N-56

As discussed in Section 4.K, *Population, Housing, and Employment*, of the Draft EIR, project-related growth would be within the official growth projections for the area provided by the Southern California Association of Governments (SCAG). As such, the future implementation of proposed uses is not expected to result in growth not already anticipated in regional SCAG plans or the City's General Plan.

Comment N-57

Speculation regarding the timing of a possible future scenic route designation for East Coast Highway is not germane to the EIR. Caltrans has a specific nomination process and criteria for the designation of state Scenic Highways. As no effort to designate any portion of East Coast Highway as a state Scenic Highway is currently underway, such official designation prior to future project-related approvals is not expected.

3. CORRECTIONS AND ADDITIONS TO THE DRAFT EIR

3.0 CORRECTIONS AND ADDITIONS TO THE DRAFT EIR

3.1 INTRODUCTION

Corrections and Additions to the Draft EIR are a function of the comments received on the Draft EIR and clarifications made by staff. Comments were provided by both public agencies and the general public. Where comments resulted in modifications to information contained in the Draft EIR this information is presented as Corrections and Additions to the Draft EIR. The Corrections and Additions section provides a means by which the corrections and other changes in the Draft EIR text are presented in one place.

3.2 CORRECTIONS AND ADDITIONS

The corrections and additions to the Draft EIR are presented below. A line through text indicates it has been deleted, while double underlined text is text that has been added.

Executive Summary

1. **Page ES-32. In Table ES-1, *Summary of Project Impacts and Mitigation Measures*, modify text as follows:**

Mitigation Measure F-11: Prior to issuance of a grading or building permit, the City of Newport Beach Director of Community Development, or designee, shall verify that project plans and specifications include a statement that construction equipment shall be shut off when not in use, and shall not idle for more than 15 minutes, and that vehicles greater than 10,000 pounds shall be shut off when not in use and shall not idle for more than 5 minutes.

Chapter 2.0 – Project Description

1. **Page 2-39. In response to Comments I-6 and N-4 requesting additional details regarding the proposed dry stack boat storage facility, add the following text after first paragraph:**

c. Dry Stack Boat Storage Operations

The dry boat storage building would be designed as an enclosed “boat house,” which can store up to 140 boats of mixed sizes. An innovative storage racking system would allow maximum flexibility for vessel heights and lengths. The boat house building would be configured into a series of three separate structures scaled to be compatible with existing development along East Coast Highway. In addition, the building would be designed with three different roof heights to allow for a viewing corridor to Upper Newport Bay from East Coast Highway. As noted above, a small water inlet with a retractable walkway bridge is proposed to provide for the launching and storage for boats housed within the dry stack boat storage facility. The design of the inlet is intended to minimize public walkway access conflicting with boat launching operations, and would provide a focal point of visitor interest.

The enclosed dry boat storage building is designed to protect vessels from water and sun damage from ultraviolet radiation. The secured building design would allow power boats to be stored on multiple racks

until the boater tenant requests to use it. A marine forklift designed to handle boats would lift the boat off its rack and place the vessel into the water. The boat would be secured to a floating dock while awaiting the arrival of the boater. The project owner would offer concierge service whereby the boat user/tenant may call ahead for his or her boat to be placed in the water. Boat provisioning (food and beverage service) would also be offered; however, there are no boat fueling facilities proposed on-site. As the boat launching process is expected to take up to 45 minutes, advance notification by boat owners/tenants would be encouraged.

Once docked and the boat is unloaded, all returning boats would be lifted out of the water by the forklift and placed in a land-side staging area, or “corral”, and provided with a proper vessel wash-down, rinse, engine flush, and pump-out of on board holding tanks, before being returned to its slot.

The “boathouse” is envisioned to store a range of power boat sizes (generally 20-40 feet in length) and types (outboard, inboard, and or inboard/outboard engine drives), and the proposed “rack” design will be able to handle boats up to 42 feet length overall, although there are some shorter and heavier boats that the facility would not accommodate. This would depend on the boat’s weight distribution so each prospective tenant would need to review each vessel with management. The innovative adjustable “rack” system would provide the ability to store taller boats than nine feet in height and eight feet in width. Future new retrieval racking solution technologies would be evaluated and considered for implementation once project approvals are secured.

An automatic fire protection system would be utilized in the dry stack structure pursuant to National Fire Protection Association (NFPA) 303, *Fire Protection Standards for Marinas and Boatyards*, which requires that indoor rack storage of boats include an installed, approved automatic fire-extinguishing system throughout the building. Additionally, the local fire authority having jurisdiction over the facility (i.e., Newport Beach Fire Department [NBFDD]) may require additional fire protection standards for portable extinguishers, water supplies, hydrants, hoses, and other facilities and equipment. Chapter 7 of NFPA 303, *Fire Protection Standards for Marinas and Boatyards*, provides several precautions to be taken in dry stack occupancies both indoors and outdoors, which would be incorporated into the dry stack boat storage building design. These include:

1. Drain plugs shall be removed (in sprinkled buildings).
2. Fuel tank valves shall be closed.
3. Batteries shall be disconnected or master battery switch turned off.
4. Portable power cords prohibited.
5. Charging of batteries prohibited.
6. Repairs of boats in racks are prohibited.

Section 4.A – Aesthetics/Visual Resources

1. **Page 4.A-13. Modify text in the first paragraph under Impact 4.A-1 as follows in order to reference new and renumbered figures:**

The proposed legislative approvals would allow for the future development of a mixed-use residential/commercial project on the project site, subject to future project-specific Site Development

Review. However, the proposed project would allow for a maximum development scenario based on development standards and design guidelines provided in the project's PCDD, a conceptual plan for which is shown in Figure 2-4, *Conceptual Site Plan*, in Chapter 2, *Project Description*, of this Draft EIR. Based on the conceptual design presented in Figure 2-2, view simulations of a future development on-site were prepared to illustrate the view impacts of the future project. The view locations utilized for the various view simulations are illustrated below in Figure 4.A-6, *Visual Simulation View Locations*. The view simulations are presented in Figures 4.A-~~67~~ to 4.A-~~142~~ and discussed individually below.

2. **Page 4.A-16.** In order to accurately illustrate the view locations depicted in project visual simulations in one figure, insert new figure, Figure 4.A-6, *Visual Simulation View Locations*, after Figure 4.A-5.
3. **Page 4.A-17 through 4.A-23.** To accurately illustrate the location and 65-foot height of the proposed coastal view tower (original simulations incorrectly illustrated the tower with a height of 55 feet), replace Figures 4.A-6 through 4.A-12 with revised visual simulations renumbered as Figures 4.A-7 through 4.A-13.
4. **Page 4.A-24.** In response to Comment N-20 requesting a new view simulation from the flagpole area of Castaways Park, insert new figure, Figure 4.A-14, *Visual Simulation #8*, after Figure 4.A-13.
5. **Page 4.A-25.** Add the following text before the first paragraph:

View Simulation #8 – Figure 4.A-14, *View Simulation #8*, below, depicts views with and without a future on-site development from the flagpole area at Castaways Park across the Upper Newport Bay channel. As shown in Figure 4.A-14, foreground views of the Upper Newport Bay channel, Pearson's Port Fish Market, Bayside Village Marina, and Bayside Village Mobile Home Park would remain unobstructed by future development. Mid-range views of East Coast Highway, Newport Dunes resort, Back Bay View Park, Fashion Island, and urban development and associated landscaping further east and south of the project site (i.e., uses along Bayside Drive, in Promontory Point, and Newport Harbor) would remain generally unaffected by project implementation, with only a portion of East Coast Highway (adjacent to the project site) obstructed from view at this location. Long-range views of the San Joaquin Hills and Pacific Ocean would not be affected by future development.

Section 4.F – Greenhouse Gas Emissions

1. **Page 4.F-20.** In order to correct a typographical error identified in Comment N-31, modify text in the second paragraph from the bottom as follows:

As shown in **Table 4.F-3, *Annual Greenhouse Gas Emissions***, net GHG emissions resulting from vehicle, water conveyance, waste disposal, electricity, and natural gas usage associated with operation of the proposed project plus amortized construction GHG emissions were estimated to be a maximum of ~~3,2713,160~~ metric tons CO_{2e} per year.



- PRELIMINARY WORKING DRAFT -



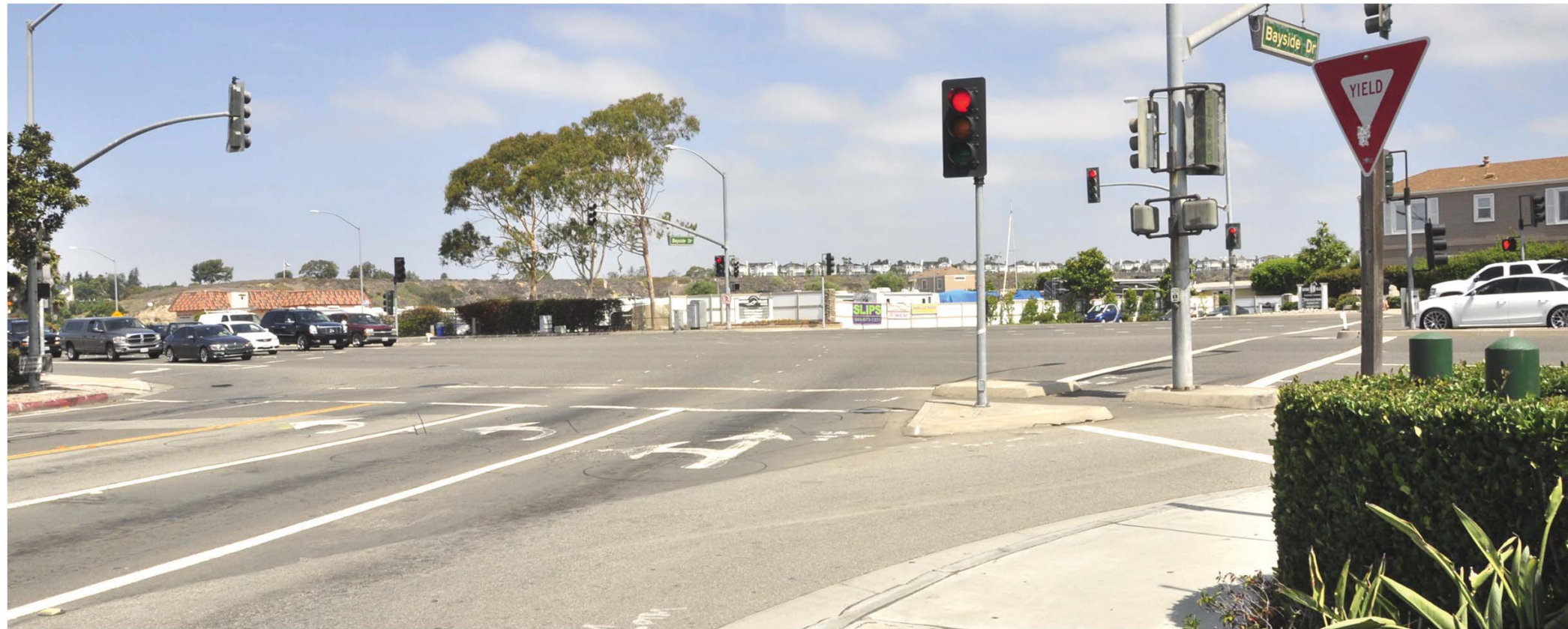
Visual Simulation View Locations

Back Bay Landing

Source: Stoutenboroug Architects and Planners, 2013.

FIGURE

4.A-6



Site Photo at the corner of PCH & Bayside Dr

December 4, 2013



Key Plan

View location #1 depicted in key plan above.

Note:

This view simulation is a computer generated artist's concept.
Final architectural design will be determined at future approvals.



View Simulation #1 at the corner of PCH & Bayside Dr



Site Photo from the bridge along Pacific Coast Highway

December 4, 2013



Key Plan

View location #2 depicted in key plan above.

Note:

This view simulation is a computer generated artist's concept. Final architectural design will be determined at future approvals.



View Simulation #2 from the bridge along Pacific Coast Highway



December 4, 2013



Key Plan

View location #3 depicted in key plan above.

Note:

This view simulation is a computer generated artist's concept.
Final architectural design will be determined at future approvals.



View Simulation #3 from Bay Bridge



Site Photo from Castaways

December 4, 2013



Key Plan

View location #4 depicted in key plan above.

Note:

This view simulation is a computer generated artist's concept.
Final architectural design will be determined at future approvals.





Site Photo from Castaways

December 4, 2013



Key Plan

View location #5 depicted in key plan above.

Note:

This view simulation is a computer generated artist's concept.
Final architectural design will be determined at future approvals.



View Simulation #5 from Castaways



Site Photo from Castaways

December 4, 2013



Key Plan

View location #6 depicted in key plan above.

Note:

This view simulation is a computer generated artist's concept.
Final architectural design will be determined at future approvals.



View Simulation #6 from Castaways



Site Photo from the bridge along Pacific Coast Highway

December 4, 2013



Key Plan

View location #7 depicted in key plan above.

Note:

This view simulation is a computer generated artist's concept.
Final architectural design will be determined at future approvals.



View Simulation #7 from the bridge along Pacific Coast Highway



Site Photo from Castaways Park

December 4, 2013



Key Plan

Note:

This view simulation is a computer generated artist's concept. Final architectural design will be determined at future approval



View Simulation from Castaways Park

2. Page 4.F-31. In the second to last paragraph modify mitigation measure text as follows:

Mitigation Measure F-11: Prior to issuance of a grading or building permit, the City of Newport Beach Director of Community Development, or designee, shall verify that project plans and specifications include a statement that construction equipment shall be shut off when not in use, ~~and shall not idle for more than 15 minutes, and that vehicles greater than 10,000 pounds shall be shut off when not in use and shall not idle for more than 5 minutes.~~

3. Page 4.F-32. In order to clarify how GHG mitigation reductions were applied and to provide a reference to the GHG technical appendix, per comment M-11, modify text in the last paragraph under Subsection 6, *Level of Significance After Mitigation*, as follows:

Implementation of these mitigation measures would reduce GHG emissions from the proposed project. The project's mitigated emissions are shown in **Table 4.F-7, *Mitigated Annual Greenhouse Gas Emissions***. The reasonably expected efficacy of the various GHG-reducing Mitigation Measure was calculated according to guidance developed by the California Air Pollution Control Officer Association (CAPCOA), and details are provided in the CalEEMod printouts contained in Appendix F of the Draft EIR. Nonetheless, it is not possible to quantify the reductions from all of the mitigation measures due to limited data and since there is no specific development proposed at this time. For example, while Mitigation Measure F-147 would support and encourage ridesharing and transit incentives for the construction crew users of the site to utilize low emitting vehicles, it not possible to determine the number of project site visitors-construction crew members that would choose to do so. No reduction credit was therefore given for that Mitigation Measure. Thus, the GHG reductions shown in Table 4.F-7 provide a reasonably conservative estimate of the actual reductions that would occur with implementation of the mitigation measures.

Section 4.J – Noise

1. Page 4.J-3. In order to correct a typographical error noted in Comment N-33, modify text in the last paragraph as follows:

The City of Newport Beach's Noise Regulations are provided in Chapter 10.26 of the Newport Beach Municipal Code (NBMC). The NBMC provides exterior/interior noise standards and specific noise restrictions, exemptions, variances for noise sources. **Table 4.J-1**~~Error! Reference source not found.~~, *City of Newport Beach Allowable Exterior Noise Levels*, below, summarizes the City's exterior noise standards. Several of these requirements are applicable to the proposed project and are discussed below.

4. MITIGATION MONITORING AND REPORTING PROGRAM

4.0 MITIGATION MONITORING AND REPORTING PROGRAM

This Mitigation Monitoring and Reporting Program (MMRP) has been prepared for the Back Bay Landing Project (the “proposed project”) in compliance with Section 21081.6 of the Public Resources Code and Section 15097 of the CEQA Guidelines, which is required for all projects where an Environmental Impact Report (EIR) or Mitigated Negative Declaration has been prepared. Section 21081.6 of the Public Resources Code states: “ ...the [lead] agency shall adopt a reporting or monitoring program for the changes made to the project or conditions of project approval, adopted in order to mitigate or avoid significant effects on the environment...[and the program] shall be designed to ensure compliance during project implementation.” The City of Newport Beach is the Lead Agency for the proposed project.

This MMRP identifies the mitigation measures prescribed in the Final EIR to reduce the proposed project’s potentially significant environmental impacts to a less than significant level. The MMRP for the proposed project will be in place through all phases of project implementation. The City shall be responsible for administering the MMRP activities to its staff, other City departments (e.g., Public Works Department), consultants, and/or contractors. The City will also ensure that mitigation monitoring is documented through reports and that deficiencies are promptly corrected. The designated environmental monitor (e.g., City building inspector, project contractor, certified professionals, etc., depending on the provisions specified below) will track and document compliance with mitigation measures, note any problems that may result, and take appropriate action to remedy problems. The MMRP lists mitigation measures according to the same numbering system contained in the EIR sections. Each mitigation measure is categorized by topic, with an accompanying discussion of the following:

- The monitoring phase of the project during which the mitigation measure should be monitored (i.e., Operation, Construction, or Prior to Construction Activities);
- The monitoring frequency of the mitigation measures (i.e., during periodic field inspection); and
- The enforcement agency (i.e., the agency with the authority to enforce the mitigation measure).

The MMRP is included as **Table 4-1**, *Mitigation Monitoring and Reporting Program*, below.

This page is intentionally blank.

Table 4-1

Mitigation Monitoring and Reporting Program

<i>Mitigation Measure</i>	<i>Implementation Documentation</i>	<i>Timing</i>	<i>Monitoring Activity</i>	<i>Responsible Monitor</i>	<i>Compliance Verification Signature</i>	<i>Date</i>
Biological Resources						
<p>Mitigation Measure C-1: At the time of Site Development Review, the City shall require actions to prevent impacts to least terns if the construction schedule overlaps with the least tern breeding season of April 1 – September 15. The specific actions will be determined at the time of Site Development Review and will be based on conditions at that time, including least tern foraging. The actions will meet a standard of mitigating impacts to the least tern to a less than significant level, and may include the following types of actions.</p> <ul style="list-style-type: none"> ▪ Daily monitoring by a qualified biologist within 500 feet of construction activities once terns have arrived in the nesting colony (typically early April). ▪ Contractor delay in commencing work if terns are present and actively foraging (e.g. searching and diving) within the work area. ▪ Alternative distances and actions if it can be demonstrated that continuing construction within less than 500 feet and implementation of other construction period methods will not cause an adverse impact to the least tern. <p>Should adverse impacts to terns occur (e.g. agitation or startling during foraging activities), construction shall cease until least terns have left the project site.</p>	Construction schedule	At time of Site Dev. Review	Review and approve construction schedule	Planning	_____	_____
		During Construction	Inspection	Project Biologist	_____	_____
<p>Mitigation Measure C-2: The developer or a designated representative shall ensure that impacts to migratory raptor and songbird species are avoided through one or more of the following methods: (1) vegetation removal activities shall be scheduled outside the nesting season for raptor and songbird species (nesting season typically occurs from February 15 to August 31) to avoid potential impacts to nesting species (this will ensure that no active nests will be disturbed and that habitat removal could proceed rapidly); and/or (2) Any construction activities that occur during the raptor and songbird nesting season shall require that all suitable habitat be thoroughly surveyed for the presence of nesting raptor and songbird species by a qualified biologist before commencement of clearing. If any active nests are detected, a buffer of at least 300 feet (500 feet for raptors) shall be delineated, flagged, and</p>	Construction schedule	At time of Site Dev. Review	Review and approve construction schedule	Planning	_____	_____
		During Construction	Inspection/Survey	Project Biologist	_____	_____

Table 4-1 (Continued)

Mitigation Monitoring and Reporting Program

<i>Mitigation Measure</i>	<i>Implementation Documentation</i>	<i>Timing</i>	<i>Monitoring Activity</i>	<i>Responsible Monitor</i>	<i>Compliance Verification Signature</i>	<i>Date</i>
avoided until the nesting cycle is complete as determined by the qualified biologist to minimize impacts. The developer or designated representative shall submit proof of compliance with this measure to the City of Newport Beach Community Development Department prior to tree removal activities on-site.						
Mitigation Measure C-3: During construction activities when dredging or other in-water work is occurring, a qualified biologist shall conduct daily monitoring within 500 feet of construction activities. The contractor shall halt work if any observations of marine mammals are made. Work shall not re-commence until a qualified biologist determines that the mammal(s) have left the area.	Construction Specifications	During Construction	Inspection	Project Biologist	_____	_____
Mitigation Measure C-4: If in-water construction vessel traffic is needed, the vessels shall not exceed existing ambient speed for the area.	Construction Specifications	During Construction	Inspection	Project Biologist	_____	_____
Mitigation Measure C-5: Prior to construction, the boundaries of the eelgrass beds, located nearshore of the Back Bay Landing site, shall be staked with ridged PVC markers or self-centering buoys visible at all tide heights. The contractor shall protect, replace and maintain the markers/buoys as needed to ensure that they remain in place and properly stake the boundaries of the eelgrass beds until the City certifies that all construction activities are complete.	Construction Specifications	During Construction	Inspection	Project Biologist	_____	_____
Mitigation Measure C-6: During shoreline work within 15 feet of eelgrass, which may involve construction of a bulkhead, dredging activities, or other in-water work, eelgrass shall be protected by specific techniques to be determined by the City prior to construction. Techniques may include, but are not limited to, silt curtains deployed above the eelgrass and below the shoreline work area as determined to be necessary and appropriate to the impacts at the next level of approval by the City.	Construction Specifications	During Construction	Inspection	Project Biologist	_____	_____
Mitigation Measure C-7: Any impacts to eelgrass shall be mitigated through specific measures to be required by the City at the Site Development Review stage. Examples of eelgrass mitigation include conformance to the City of Newport Beach Eelgrass Plan and to the requirements of the SCEMP, which mandates a minimum replacement	Construction Specifications	During Construction	Inspection	Project Biologist	_____	_____

Table 4-1 (Continued)

Mitigation Monitoring and Reporting Program

<i>Mitigation Measure</i>	<i>Implementation Documentation</i>	<i>Timing</i>	<i>Monitoring Activity</i>	<i>Responsible Monitor</i>	<i>Compliance Verification Signature</i>	<i>Date</i>
ratio of 1.2:1 for eelgrass impacts (NMFS 1991, revision 11), to the extent those plans are in effect and relevant and applicable to the site conditions at such time as construction of the bulkhead is proposed. In accordance with the requirements of the SCEMP, a pre-construction eelgrass survey shall be completed by a qualified biologist within 60 days prior to initiation of demolition or construction activities at the site. This survey shall include both area and density characterization of the beds. A post-construction survey shall be performed by a qualified biologist within 30 days following project completion to quantify any unanticipated losses to eelgrass habitat. Impacts shall then be determined from a comparison of pre- and post-construction survey results. Impacts to eelgrass, if any, would require mitigation as defined in the SCEMP. If required following the post-construction survey, a mitigation planting plan shall be developed, approved by the City and NMFS, and implemented to offset losses to eelgrass.	Pre-construction Eelgrass Report	Prior to Construction	Offshore Survey	Project Biologist	_____	_____
Mitigation Measure C-8: Not more than 90 days prior to the initiation of construction activities near the shoreline, a survey for the invasive seaweed <i>Caulerpa taxifolia</i> shall be conducted by a certified <i>Caulerpa</i> surveyor to determine the presence or absence of the species in the area affected by future construction and/or dredging activities.	Pre-construction Eelgrass Report	90 Days Prior to Construction	Offshore Survey	Project Biologist	_____	_____
Mitigation Measure C-9: The project shall conform to the approved storm water pollution prevention plan (SWPPP) and shall incorporate construction-related erosion/sediment control Best Management Practices as detailed in project plans for a future development on-site. These include, but are not limited to: installation and maintenance of an erosion/sediment barrier, covering stockpiled material prior to rain events, maintenance of equipment to prevent runoff of grease and oil into adjacent waters, and providing equipment and staff as required to repair and/or implement erosion/sediment control measures.	SWPPP Report	At time of Site Dev. Review	Review and approve SWPPP	Planning	_____	_____
Mitigation Measure C-10: The project shall conform to the approved storm water pollution prevention plan (SWPPP) and shall incorporate construction-related erosion/sediment control Best Management Practices as detailed in the project plans for a future development on-site. These include, but are not limited to: installation and maintenance of an erosion/sediment barrier, covering stockpiled material prior to rain events,	Construction Specifications	During Construction	Inspection	Planning	_____	_____

Table 4-1 (Continued)

Mitigation Monitoring and Reporting Program

<i>Mitigation Measure</i>	<i>Implementation Documentation</i>	<i>Timing</i>	<i>Monitoring Activity</i>	<i>Responsible Monitor</i>	<i>Compliance Verification Signature</i>	<i>Date</i>
maintenance of equipment to prevent runoff of grease and oil into adjacent waters, and providing equipment and staff as required to repair and/or implement erosion/sediment control measures.						
Mitigation Measure C-11: During shoreline work, a turbidity curtain shall be deployed above the water line and below the shoreline work area in order to minimize adverse water quality-related impacts to jurisdictional waters.	Construction Specifications	During Construction	Inspection	Planning	_____	_____
Mitigation Measure C-12: A project-specific jurisdictional delineation shall be conducted for future on-site development as part of the Site Development Review process once a development application is submitted. The jurisdictional delineation shall determine the nature and extent of impacts to jurisdictional features resulting from future development, including impacts related to dredging required for the construction of a new water inlet for the proposed dry stack boat storage facility in Planning Area 1. Based on the nature and extent of impacts identified, mitigation shall be provided that includes, but is not limited to, on- or off-site creation, restoration, or enhancement of wetland habitat, subject to review and approval by affected resource agencies.	Jurisdictional Delineation Report	At time of Site Dev. Review	Review and approve construction plans	Planning	_____	_____
		During Construction	Inspection	Project Biologist/Regulatory Specialist	_____	_____
Cultural Resources						
Mitigation Measure D-1: A qualified archaeologist shall be retained by the applicant to review grading plans and geotechnical information and prepare a monitoring plan for all ground-disturbing activities in previously undisturbed soils and sediments. A qualified archaeologist is defined as an archaeologist meeting the Secretary of the Interior Professional Qualification Standards for Archaeology. Ground-disturbing activities include primary construction-related activities and any associated secondary activities for support services such as utilities. In the event that archaeological resources are identified during monitoring or unexpectedly during excavations in fill sediments, all work proximal to the discovery shall halt until the qualified archaeologist has evaluated the find. If the archaeologist determines that the find is significant or may qualify as significant, the archaeologist shall prepare a treatment plan. If the find is prehistoric or includes Native American materials, affiliated Native	Selection of qualified archaeologist, review of grading plans and geotechnical information, preparation of a monitoring plan	Plan check prior to issuance of a grading permit During Construction	Approval of selected qualified archaeologist and review and approval of grading plans, geotechnical information and monitoring plan Inspection	Planning Project Archeologist	_____	_____

Table 4-1 (Continued)

Mitigation Monitoring and Reporting Program

<i>Mitigation Measure</i>	<i>Implementation Documentation</i>	<i>Timing</i>	<i>Monitoring Activity</i>	<i>Responsible Monitor</i>	<i>Compliance Verification Signature</i>	<i>Date</i>
American groups shall be invited to contribute to the treatment plan. Results of monitoring and any archaeological treatment shall be reported in an appropriate technical report to be filed with the applicant, the City of Newport Beach, and the CHRIS-SCCIC. The applicant, in consultation with the lead agency and archaeologist, shall designate repositories (e.g. museums) in the event that resources are recovered.						
Mitigation Measure D-2: A qualified paleontologist shall be retained by the applicant to perform periodic inspections of excavation and grading activities on the project site where excavations into the older Quaternary Alluvium, Capistrano Formation, and/or Monterey Formation may occur. The frequency of inspections shall be based on consultation with the paleontologist and shall depend on the rate of excavation and grading activities, the materials being excavated, and if found, the abundance and type of fossils encountered. Monitoring shall consist of visually inspecting fresh exposures of sediment for larger fossil remains and, where appropriate, collecting wet or dry screened sediment samples of promising horizons for smaller fossil remains. If a potential fossil is found, the paleontologist shall be allowed to temporarily divert or redirect grading and other excavation activities in the area of the exposed fossil to facilitate evaluation and, if necessary, salvage. At the paleontologist's discretion and to reduce any construction delay, the grading and excavation contractor shall assist in removing rock samples for initial processing. Any fossils encountered and recovered shall be prepared to the point of identification and catalogued before they are donated to their final repository. Accompanying notes, maps, and photographs shall also be filed at the repository. Following the completion of the above tasks, the paleontologist shall prepare a report summarizing the results of the monitoring and fossil finds, if any, the methods used in these efforts, as well as a description of the fossils collected and their significance, if any. The report shall be submitted by the applicant, the City of Newport Beach, the Natural History Museum of Los Angeles County, and representatives of other appropriate or concerned agencies.	Selection of qualified paleontologist, periodic inspections of excavation and grading activities	Plan check prior to issuance of a grading permit During Construction	Approval of selected qualified paleontologist, review and approval of grading plans, and completed periodic inspections	Planning Project Paleontologist	_____	_____

Table 4-1 (Continued)

Mitigation Monitoring and Reporting Program

<i>Mitigation Measure</i>	<i>Implementation Documentation</i>	<i>Timing</i>	<i>Monitoring Activity</i>	<i>Responsible Monitor</i>	<i>Compliance Verification Signature</i>	<i>Date</i>
<p>Mitigation Measure D-3: If human remains are unearthed during construction activities, State Health and Safety Code Section 7050.5 requires that no further disturbance shall occur until the County Coroner has made the necessary findings as to origin and disposition pursuant to Public Resources Code Section 5097.98. If the remains are determined to be of Native American descent, the County Coroner has 24 hours to notify the Native American Heritage Commission (NAHC). The NAHC shall then identify the person(s) thought to be the Most Likely Descendent of the deceased Native American, who shall then help determine what course of action shall be taken in dealing with the remains. The Applicant shall then take additional steps as necessary in accordance with CEQA Guidelines Section 15064.5(e) and Assembly Bill 2641.</p>	<p>Selection of qualified archaeologist, periodic inspections of excavation and grading activities</p>	<p>During construction</p> <p>Prior to issuance of occupancy</p>	<p>Complete periodic inspections</p>	<p>Contractor</p> <p>Project Archeologist</p>	<p>_____</p>	<p>_____</p>
<p>Geology and Soils</p>						
<p>Mitigation Measure E-1: Prior to issuance of a grading permit, the Applicant shall submit to the City of Newport Beach Community Development Department, Building Division Manager or his/her designee for review and approval, a site-specific, design-level geotechnical investigation prepared for each development parcel by a registered geotechnical engineer. The investigation shall comply with all applicable State and local code requirements and:</p> <ul style="list-style-type: none"> a) Include an analysis of the expected ground motions at the site from known active faults using accepted methodologies; b) In consideration of the subterranean construction planned for the parking structure, include an evaluation of the groundwater table and its fluctuations through the installation of shallow observation wells. c) Determine structural design requirements as prescribed by the most current version of the California Building Code, including applicable City amendments, to ensure that structures can withstand ground accelerations expected from known active faults; d) Determine the final design parameters for walls, foundations, foundation slabs, utilities, roadways, parking lots, sidewalks, and 	<p>Geotechnical investigation</p>	<p>Prior to issuance of a grading permit</p>	<p>Review and approve geotechnical investigation</p>	<p>Building Division Manager</p>	<p>_____</p>	<p>_____</p>

Table 4-1 (Continued)

Mitigation Monitoring and Reporting Program

<i>Mitigation Measure</i>	<i>Implementation Documentation</i>	<i>Timing</i>	<i>Monitoring Activity</i>	<i>Responsible Monitor</i>	<i>Compliance Verification Signature</i>	<i>Date</i>
<p>other surrounding related improvements.</p> <p>Project plans for foundation design, earthwork, and site preparation shall incorporate all of the mitigations in the site-specific investigations. The structural engineer shall review the site-specific investigations, provide any additional necessary measures to meet Building Code requirements, and incorporate all applicable recommendations from the investigation in the structural design plans and shall ensure that all structural plans for the project meet current Building Code requirements.</p> <p>The City's registered geotechnical engineer or third-party registered engineer retained to review the geotechnical reports shall review each site-specific geotechnical investigation, approve the final report, and require compliance with all geotechnical requirements contained in the investigation in the plans submitted for the grading, foundation, structural, infrastructure and all other relevant construction permits.</p> <p>The City shall review all project plans for grading, foundations, structural, infrastructure and all other relevant construction permits to ensure compliance with the applicable geotechnical investigation and other applicable Code requirements.</p>						
Greenhouse Gas Emissions						
<p>Mitigation Measure F-1: Prior to issuance of a building permit, the Project Applicant shall demonstrate that the design of the proposed buildings or structures would exceed the Title 24 California Building Standards energy code requirements, based on the 2008 Energy Efficiency Standards, by 15 percent.</p>	Project plans	Prior to issuance of a building permit	Review and approve plans	Planning Building	_____ _____	_____ _____
<p>Mitigation Measure F-2: Prior to issuance of a building permit, the Project Applicant shall demonstrate that the design of the proposed buildings or structures incorporates ENERGY STAR®-rated, energy efficient T-8 high-output fixtures, and/or compact fluorescent light (CFL), light-emitting diode (LED) and/or other comparable lighting fixtures. This measure shall apply to all exterior and publicly accessible interior lighting fixtures at the project site, including those outside the building envelope (e.g., on-site parking areas and walkway lighting). Documentation of compliance with this measure shall be provided by the project engineer to the City of Newport Beach Director of Community Development, or designee, for review and approval. Installation of the identified design features or equipment will be</p>	<p>Review and approval of grading plans</p> <p>Installation of identified design features or</p>	<p>Prior to issuance of a building permit</p> <p>Prior to issuance of a certificate of occupancy</p>	<p>Review and approve plans</p> <p>Inspection</p>	<p>Planning</p> <p>Building</p>	<p>_____ _____</p> <p>_____ _____</p>	<p>_____ _____</p> <p>_____ _____</p>

Table 4-1 (Continued)

Mitigation Monitoring and Reporting Program

<i>Mitigation Measure</i>	<i>Implementation Documentation</i>	<i>Timing</i>	<i>Monitoring Activity</i>	<i>Responsible Monitor</i>	<i>Compliance Verification Signature</i>	<i>Date</i>
confirmed by the City of Newport Beach Director of Community Development, or designee, prior to issuance of a certificate of occupancy.	equipment					
Mitigation Measure F-3: Prior to issuance of a building permit, the Project Applicant shall demonstrate that the operation of outdoor lighting is limited by the use of time-controlled exterior lighting. Documentation of compliance with this measure shall be provided by the project engineer to the City of Newport Beach Director of Community Development, or designee, for review and approval. Installation of the identified design features or equipment will be confirmed by the City of Newport Beach Director of Community Development, or designee, prior to issuance of a certificate of occupancy.	Project plans and	Prior to issuance of a building permit	Review and approve plans	Planning	_____	_____
	Installation of identified design features or equipment	Prior to issuance of certificate occupancy	Inspection	Building	_____	_____
Mitigation Measure F-4: Prior to issuance of a building permit, the Project Applicant shall demonstrate that the design of the proposed buildings or structures incorporates heating, cooling, and lighting devices and appliances that meet or exceed ENERGY STAR® rated standards. Documentation of compliance with this measure shall be provided by the project engineer to the City of Newport Beach Director of Community Development, or designee, for review and approval. Installation of the identified design features or equipment will be confirmed by the City of Newport Beach Director of Community Development, or designee, prior to issuance of a certificate of occupancy.	Project Plans	Prior to issuance of a building permit	Review and approve plans	Planning	_____	_____
	Installation of identified design features or equipment	Prior to issuance of a certificate of occupancy	Inspection	Building	_____	_____
Mitigation Measure F-5: Prior to issuance of a building permit, the Project Applicant shall demonstrate that the design of the proposed buildings or structures incorporates enhanced insulation such that heat transfer and thermal bridging is minimized in structures that will be mechanically heated and/or cooled. Documentation of compliance with this measure shall be provided to the City of Newport Beach Director of Community Development, or designee, for review and approval. Installation of the identified design features or equipment will be conducted by the contractor and confirmed by the City of Newport Beach Director of Community Development, or designee, prior to issuance of a certificate of occupancy.	Project Plans	Prior to issuance of a building permit	Review and approve plans	Planning	_____	_____
	Installation of identified design features or equipment	Prior to issuance of a certificate of occupancy	Inspection	Building	_____	_____

Table 4-1 (Continued)

Mitigation Monitoring and Reporting Program

<i>Mitigation Measure</i>	<i>Implementation Documentation</i>	<i>Timing</i>	<i>Monitoring Activity</i>	<i>Responsible Monitor</i>	<i>Compliance Verification Signature</i>	<i>Date</i>
Mitigation Measure F-6: Prior to issuance of a certificate of occupancy, the City of Newport Beach Director of Community Development, or designee, and the Project Applicant will document and verify, installation of the identified design features or equipment designed to limit air leakage through the structure or within the heating and cooling distribution system to minimize energy consumption in structures that will be mechanically heated and/or cooled.	Installation of identified design features or equipment	Prior to issuance of a certificate of occupancy	Inspection	Planning Building	 	
Mitigation Measure F-7: Prior to issuance of a building permit, the Project Applicant shall demonstrate that the design of the proposed buildings or structures incorporates water-efficient products (bathroom sink faucets, low-flush urinals, dual-flush toilets, etc.) that meets or exceeds the CALGreen requirements. Documentation of compliance with this measure shall be provided to the City of Newport Beach Director of Community Development, or designee, for review and approval. Installation of the identified design features or equipment will be confirmed by the City of Newport Beach Director of Community Development, or designee, prior to issuance of certificate of occupancy.	Project Plans Installation of identified design features or equipment	Prior to issuance of a building permit Prior to issuance of a certificate of occupancy	Review and approve plans Inspection	Planning Building	 	
Mitigation Measure F-8: The project applicant shall provide designated parking for alternative fueled, hybrid, or electric vehicles. City of Newport Beach Director of Community Development, or designee, will verify compliance and confirm implementation during construction.	Project Plans	Prior to issue of building permit	Review and approve plans and inspection	Planning	 	
Mitigation Measure F-9: The Project Applicant shall provide designated on-site bicycle parking areas and bicycle racks accessible to residents, employees, and commercial uses. City of Newport Beach Director of Community Development, or designee, will verify compliance and confirm implementation during construction.	Project Plans	Prior to issue of building permit	Review and approve plans and inspection	Planning	 	
Mitigation Measure F-10: Prior to issuance of a grading or building permit, the project plans and specifications shall include a statement that delivery of construction equipment and materials will be scheduled such that queuing of trucks on and off site shall be minimized. The requirement will be implemented by the contractor and verified by the City of Newport Beach Director of Community Development, or designee.	Project plans and specifications with notes/statement	Prior to issuance of a grading or building permit	Review and approve plans	Planning	 	

Table 4-1 (Continued)

Mitigation Monitoring and Reporting Program

<i>Mitigation Measure</i>	<i>Implementation Documentation</i>	<i>Timing</i>	<i>Monitoring Activity</i>	<i>Responsible Monitor</i>	<i>Compliance Verification Signature</i>	<i>Date</i>
Mitigation Measure F-11: Prior to issuance of a grading or building permit, the City of Newport Beach Director of Community Development, or designee, shall verify that project plans and specifications include a statement that construction equipment shall be shut off when not in use, and shall not idle for more than 5 minutes.	Project plans and specifications with notes/statement	Prior to issuance of a grading or building permit	Review and approve plans	Planning	_____	_____
Mitigation Measure F-12: Prior to issuance of a grading or building permit, the City of Newport Beach Director of Community Development, or designee, shall verify that project plans and specifications include a statement that the Construction Contractor shall select the construction equipment used on site based on low-emission factors and high-energy efficiency and that all construction equipment will be tuned and maintained in accordance with the manufacturer's specifications.	Project plans and specifications with notes/statement	Prior to issuance of a grading or building permit	Review and approve plans	Planning	_____	_____
Mitigation Measure F-13: Prior to issuance of a grading or building permit, the City of Newport Beach Director of Community Development, or designee, shall verify that project plans and specifications include a statement that the Construction Contractor shall utilize electric or alternative-fuel powered equipment in lieu of gasoline or diesel powered engines where feasible.	Project plans and specifications with notes/statement	Prior to issuance of a grading or building permit	Review and approve plans	Planning	_____	_____
Mitigation Measure F-14: Prior to issuance of a grading or building permit, the City of Newport Beach Director of Community Development, or designee, shall verify that project plans and specifications include a statement that the Construction Contractor shall support and encourage ridesharing and transit incentives for the construction crew.	Project plans and specifications with notes/statement	Prior to issuance of a grading or building permit	Review and approve plans	Planning	_____	_____
Hazards and Hazardous Materials						
Mitigation Measure G-1: A removal and treatment/remediation plan for the existing on-site 550-gallon UST shall be prepared by the Project Applicant for submittal to the Santa Ana Regional Water Quality Control Board (SARWQCB) and other appropriate agencies determined appropriate in consultation with the SARWQCB for review and approval. The plan shall include but not be limited to monitoring of excavation by a certified environmental consultant to identify and sample groundwater and soils that may be contaminated; and excavation, treatment and disposal of	Removal and treatment/remediation plan	Prior to issuance of a grading permit	Review and approval removal and treatment/remediation plan	Planning	_____	_____

Table 4-1 (Continued)

Mitigation Monitoring and Reporting Program

<i>Mitigation Measure</i>	<i>Implementation Documentation</i>	<i>Timing</i>	<i>Monitoring Activity</i>	<i>Responsible Monitor</i>	<i>Compliance Verification Signature</i>	<i>Date</i>
contaminated groundwater/soil in compliance with applicable regulatory requirements. Written verification from the SARWQCB of approval of a dewatering plan/management plan completion shall be submitted to the City of Newport Beach Community Development Department prior to issuance of grading permit.						
Mitigation Measure G-2: If dredging of the bay occurs, disposal requirements for the dredged materials, which may contain elevated levels of dichlorodiphenyltrichloroethane and dichlorodiphenyldichloroethylene (DDT and DDE) pesticide contamination, shall be confirmed with the appropriate regulatory agencies during the 404 permit process (i.e., Santa Ana Regional Water Quality Control Board and California Department of Fish and Game).	404 permit	Prior to issuance of a grading permit	Issuance of 404 permit	Planning	_____	_____
Mitigation Measure G-3: If dewatering activities occur on-site during future redevelopment, samples shall be obtained from the water and analyzed for volatile organic compounds (VOCs) and oxygenates to ensure that they do not exceed applicable discharge requirements. Should the samples exceed VOC, oxygenates or any other applicable discharge requirement, a dewatering plan shall be prepared by the Project Applicant for submittal to the Santa Ana Regional Water Quality Control Board (SARWQCB) and other appropriate agencies determined appropriate in consultation with the SARWQCB for review and approval. The plan shall include but not be limited to sampling of groundwater that may be contaminated; and treatment and disposal of contaminated groundwater in compliance with applicable regulatory requirements. Written verification from the SARWQCB of approval of a dewatering plan completion shall be submitted to the City of Newport Beach Community Development Department prior to issuance of grading permit.	Dewatering plan	Prior to issuance of a grading permit	Review and approve dewatering plan	Planning	_____	_____
Mitigation Measure G-4: Prior to issuance of demolition permits, the Project Applicant shall conduct an asbestos survey of the of all on-site structures and submit verification to the City of Newport Beach Community Development Department prior that a certified asbestos abatement contractor has properly removed asbestos in accordance with procedural requirements and regulations of South Coast Air Quality Management District Rule 1403.	Asbestos survey and submit verification	Prior to issuance of demolition permits	Complete and approve asbestos survey	Planning Building	_____ _____	_____ _____

Table 4-1 (Continued)

Mitigation Monitoring and Reporting Program

<i>Mitigation Measure</i>	<i>Implementation Documentation</i>	<i>Timing</i>	<i>Monitoring Activity</i>	<i>Responsible Monitor</i>	<i>Compliance Verification Signature</i>	<i>Date</i>
Mitigation Measure G-5: Prior to issuance of demolition permits, the Project Applicant shall submit verification to the City of Newport Beach Community Development Department prior that a lead-based paint survey has been conducted at all existing structures located on the project site. If lead-based paint is found, the Project Applicant shall follow all procedural requirements and regulations for proper removal and disposal of the lead-based paint.	Verification of lead-based paint survey	Prior to issuance of demolition permit	Complete, review, and approve verification	Planning Building	_____	_____
Mitigation Measure G-6: Prior to the issuance of a grading permit, the Project Applicant shall prepare a Construction Management Plan for implementation during construction of the project. The plan shall be subject to final approval by the City of Newport Beach Director of Community Development.	Construction Management Plan	Prior to issuance of a grading permit	Review and approve Construction Management Plan	Planning	_____	_____
Mitigation Measure G-7: The Project Applicant shall prepare a Traffic Control Plan that identifies all traffic control measures, signs, and delineators to be implemented by the construction contractor throughout the duration of construction activities associated with the project. The plan shall identify any temporary lane closures and identify alternative travel routes. The plan shall be subject to final approval and issuance of a Temporary Street and Sidewalk Closure Permit by the City of Newport Beach Public Works Department.	Traffic Control Plan	Prior to issuance of a grading permit	Review and approve Traffic Control Plan	Public Works	_____	_____
Mitigation Measure G-8: Prior to construction, the Project Applicant shall consult with the City of Newport Beach Police and Fire Departments to disclose and identify temporary closures and alternative travel routes, in order to ensure adequate access for emergency vehicles when construction activities would result in temporary lane or roadway closures.	Identification of temporary closures and alternative travel routes	Prior to construction	Approve temporary closures and alternative travel routes	NBPD and NBFD	_____	_____

Noise

Table 4-1 (Continued)

Mitigation Monitoring and Reporting Program

<i>Mitigation Measure</i>	<i>Implementation Documentation</i>	<i>Timing</i>	<i>Monitoring Activity</i>	<i>Responsible Monitor</i>	<i>Compliance Verification Signature</i>	<i>Date</i>
<p>Mitigation Measure J-1: Temporary noise barrier shall be used to block the line-of-site between the construction equipment and the noise-sensitive receptors during project construction, as follows:</p> <ul style="list-style-type: none"> ▪ Provide a temporary 15-foot tall noise barrier along the eastern boundary of Planning Area 1 to reduce construction noise at mobile home uses across Bayside Drive (Location R1). ▪ Provide a temporary 15-foot tall noise barrier along the northern boundary of Planning Area 1 to reduce construction noise at mobile home uses immediately to the north (Location R2). ▪ Provide a temporary 15-foot tall noise barrier along the south boundary of the Boat Service and Marina Related office construction site (Planning Area 2) to reduce construction noise at single-family residential uses on Linda Isle to the south (Location R3). 	Contract language and notes on grading and building plans	Plan check prior to issuance of a grading permit or a building permit	Review and approve grading plans and building plans for inclusion	Planning	_____	_____
<p>Mitigation Measure J-2: As required by City of Newport Beach Noise Element, an acoustical analysis of the architectural plans of the proposed residential building shall be prepared by a qualified acoustical engineer, prior to issuance of building permits, to ensure that the building construction (i.e., exterior wall, window, and door) would provide adequate sound insulation to meet the acceptable interior noise level of 45 dBA CNEL.</p>	Acoustical analysis of architectural plans	Prior to issuance of building permits	Review and approve acoustical analysis	Planning	_____	_____
Transportation/Traffic						
<p>Mitigation Measure M-1: Sight distance at the project accesses shall be reviewed with respect to City of Newport Beach standards in conjunction with the preparation of final grading, landscaping, and street improvement plans.</p>	Final grading, landscaping, and street improvement plans	Prior to issuance of grading permits or building permit	Review and approve final grading, landscaping, and street improvement plans	Public Works	_____	_____

Table 4-1 (Continued)

Mitigation Monitoring and Reporting Program

<i>Mitigation Measure</i>	<i>Implementation Documentation</i>	<i>Timing</i>	<i>Monitoring Activity</i>	<i>Responsible Monitor</i>	<i>Compliance Verification Signature</i>	<i>Date</i>
Mitigation Measure M-2: On-site traffic signing and striping shall be implemented in conjunction with detailed construction plans for the project and as approved by the City of Newport Beach.	Detailed construction plans	Prior to issuance of grading permits or building permit	Review and approve detailed construction plans	Public Works	_____	_____
Mitigation Measure M-3: Final design of the optional secondary access ("right turn in" only lane on East Coast Highway) shall accommodate bicycle use along the corridor and shall require coordination with and the approval of the California Department of Transportation, the Orange County Transportation Authority, and the Orange County Sanitation District. The driveway for the Orange County Sanitation District shall be relocated so as not to interfere with the proposed "right turn in" only lane. Based on the posted speed limit of 50 miles per hour, and assuming partial deceleration of 10 miles per hour in the through lane, the recommended length of the deceleration lane is 315 feet.	Detailed construction plans	Prior to issuance of grading permits	Review and approve detailed construction plans	Public Works	_____	_____
Utilities and Service Systems						
Mitigation Measure N-1: Prior to the issuance of certificates of occupancy, the project Applicant shall pay the required City water connection fees as set forth in the Municipal Code (Section 14.12).	City water connection fee payment	Prior to issuance of certificates of occupancy	Receipt of required City water connection fees	Building	_____	_____
Mitigation Measure N-2: Prior to the issuance of certificates of occupancy, the project Applicant shall pay the required OCSD sewer connection fees as set forth in the Municipal Code (Section 14.24.050) which are utilized to fund wastewater treatment and regional wastewater conveyance improvements associated with new development.	OCSD sewer connection fee payment	Prior to issuance of certificates of occupancy	Receipt of required OCSD sewer connection fees	Building	_____	_____

Table 4-1 (Continued)

Mitigation Monitoring and Reporting Program

<i>Mitigation Measure</i>	<i>Implementation Documentation</i>	<i>Timing</i>	<i>Monitoring Activity</i>	<i>Responsible Monitor</i>	<i>Compliance Verification Signature</i>	<i>Date</i>
<p>Mitigation Measure N-3: Prior to the issuance of any demolition or construction permit, the project Applicant shall provide a copy of the receipt or contract indicating that the construction contractor shall only contract for waste disposal services with a company that recycles demolition and construction-related wastes. The contract specifying recycled waste service shall be presented to the Municipal Operations Department prior to approval of certificate of occupancy.</p>	<p>Copy of the receipt or contract</p>	<p>Prior to issuance of any demolition or construction permit Prior to approval of certificate of occupancy</p>	<p>Obtain copy of the receipt or contract</p>	<p>Public Works</p>	<p>_____</p>	<p>_____</p>
<p>Mitigation Measure N-4: In order to facilitate on-site separation and recycling of construction related wastes, the construction contractor shall provide temporary waste separation bins on-site during demolition and construction activities.</p>	<p>Provide waste separation bins</p>	<p>During construction</p>	<p>Proof of waste separation bins</p>	<p>Public Works</p>	<p>_____</p>	<p>_____</p>



PCR IRVINE

One Venture, Suite 150
Irvine, California 92618
TEL 949.753.7001
FAX 949.753.7002

PCR SANTA MONICA

201 Santa Monica Boulevard, Suite 500
Santa Monica, California 90401
TEL 310.451.4488
FAX 310.451.5279

PCR PASADENA

80 South Lake Avenue, Suite 570
Pasadena, California 91101
TEL 626.204.6170
FAX 626.204.6171

pcrinfo@pcrnet.com
www.pcrnet.com