

**CALIFORNIA COASTAL COMMISSION**

South Coast Area Office  
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(562) 590-5071

**W 7a**

March 30, 2010

**TO:** Commissioners and Interested Persons

**FROM:** Sherilyn Sarb, Deputy Director, South Coast District Orange County Area  
Teresa Henry, District Manager, South Coast District  
Karl Schwing, Supervisor, Regulation & Planning, Orange County Area  
Liliana Roman, Coastal Program Analyst

**SUBJECT:** Major Amendment Request No. 1-09 to the City of Newport Beach Certified Land Use Plan (For Public Hearing and Commission Action at the April 14-16, 2010 hearing in Ventura).

**SUMMARY OF LUP AMENDMENT REQUEST NO. 1-09**

The subject LCP Amendment is a request by the City of Newport Beach to amend the Certified Land Use Plan (LUP) by changing the land use designation of a 584 sq. ft. portion of a single parcel located at 101 Bayside Place from RH-D (High Density Residential) which allows 50.1 to 60 dwelling units per acre to RM-A (Medium Density Residential) which allows 6.1 to 10 dwelling units per acre. A separate lot line adjustment would combine this 584 sq. ft. portion of this parcel with two other parcels for purposes of enabling multi-family residential development. The proposed land use designation for the 584 sq. ft. portion of the site is the same land use designation applied to the larger parcels to which this portion of the site will be combined.

**SUMMARY OF STAFF RECOMMENDATION**

Staff is recommending that the Commission, after public hearing:

Approve the Land Use Plan Amendment, as submitted.

The motion to accomplish this recommendation is found on page 2. As proposed, the LUP amendment meets the requirements of and is in conformity with the Chapter 3 policies of the Coastal Act.

**STANDARD OF REVIEW**

The standard of review for the proposed Land Use Plan amendment, shall be conformance with and satisfaction of the requirements of the Chapter 3 policies of the Coastal Act.

**SUMMARY OF PUBLIC PARTICIPATION**

Section 30503 of the Coastal Act requires public input in Local Coastal Program development. During the preparation, approval, certification, and amendment of any local coastal program, the public, as well as all affected governmental agencies, including

special districts, shall be provided maximum opportunities to participate. Prior to submission of a local coastal program for approval, local governments shall hold a public hearing or hearings on that portion of the program which has not been subjected to public hearings within four years of such submission. The City held a Planning Commission Hearing on 6/04/2009 and a City Council hearing on 7/14/2009 regarding the proposed LUP amendment.

All City staff reports were made available for public review in the Planning Department and in the Newport Beach Public Library. Public hearing notices were mailed to property owners of record for the parcels that are the subject of the amendment as well as parcels within a 1,000 foot radius (including occupants).

### **ADDITIONAL INFORMATION**

Copies of the staff report are available online on the Coastal Commission's website at [www.coastal.ca.gov](http://www.coastal.ca.gov) or at the South Coast District office located in the ARCO Center Towers, 200 Oceangate, Suite 1000, Long Beach, 90802. To obtain copies of the staff report by mail, or for additional information, contact Liliana Roman in the Long Beach office at (562) 590-5071. The City of Newport Beach contact for this LCP amendment is Jim Campbell, Principal Planner, who may be reached at (949) 644-3200.

### **EXHIBITS**

1. Vicinity Map
2. City Council Resolution No. 2009-52 approved on July 14, 2009
3. Graphic Depicting Zoning District Change

### **I. STAFF RECOMMENDATION**

#### **A. Approve the Land Use Plan Amendment as Submitted**

**MOTION:** *I move that the Commission certify Land Use Plan Amendment No. 1-09 to the City of Newport Beach Local Coastal Program as submitted by the City of Newport Beach.*

### **STAFF RECOMMENDATION TO CERTIFY:**

Staff recommends a **YES** vote. Passage of this motion will result in certification of the land use plan amendment as submitted and adoption of the following resolution and findings. The motion to certify as submitted passes only upon an affirmative vote of a majority of the appointed Commissioners.

### **RESOLUTION TO CERTIFY LAND USE PLAN AMENDMENT AS SUBMITTED:**

The Commission hereby certifies Land Use Plan Amendment No. 1-09 as submitted by the City of Newport Beach and adopts the findings set forth below on grounds that the

amendment will meet the requirements of and be in conformity with the policies of Chapter 3 of the Coastal Act. Certification of the land use plan amendment complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the plan on the environment, or 2) there are no further feasible alternatives and mitigation measures that would substantially lessen any significant adverse impacts on the environment that will result from certification of the land use plan.

## **II. PROCEDURAL PROCESS (LEGAL STANDARD FOR REVIEW)**

### **Standard of Review**

The standard of review for land use plan amendments is found in Section 30512 of the Coastal Act. This section requires the Commission to certify an LUP amendment if it finds that it meets the requirements of, and is in conformity with, the policies of Chapter 3 of the Coastal Act. Specifically, Section 30512(c) states: *“The Commission shall certify a land use plan, or any amendments thereto, if it finds that a land use plan meets the requirements of, and is in conformity with, the policies of Chapter 3 (commencing with Section 30200). Except as provided in paragraph (1) of subdivision (a), a decision to certify shall require a majority vote of the appointed membership of the Commission.”*

### **Procedural Requirements**

Pursuant to Section 13551(b) of Title 14 of the California Code of Regulations, a local government’s resolution for submittal of a proposed LUP amendment must indicate whether the local coastal program amendment will require formal local government adoption after Commission approval, or is an amendment that will take effect automatically upon the Commission’s approval pursuant to Public Resources Code Sections 30512, 30513 and 30519. The City of Newport Beach’s submittal indicates that this LUP amendment, if approved as submitted, will take effect upon Commission certification. Approval of the amendment with modifications will require subsequent action by the City.

## **III. FINDINGS**

The following findings support the Commission's approval of the proposed LUP Land Use Plan amendment as submitted. The Commission hereby finds and declares as follows:

### **A. Amendment Description**

The City of Newport Beach has requested to amend the Certified Land Use Plan (LUP) changing the designation of a 584 sq. ft. portion of a single parcel located at 101 Bayside Place from RH-D (High Density Residential) which allows 50.1 to 60 dwelling units per acre to RM-A (Medium Density Residential) which allows 6.1 to 10 dwelling units per acre. The LUP amendment was approved by the City of Newport Beach City Council on July 14, 2009, with a corresponding General Plan Amendment and a Zone Code Amendment to

ensure consistency between all local land use regulations. A separate lot line adjustment would combine this 584 sq. ft. portion of this parcel with two other parcels for purposes of multi-family residential development. The proposed amendment of the Land Use Plan land use designation for the 584 sq. ft. portion of the site will result in a land use designation the same as the larger 60,700 sq. ft. portion of the site (e.g., Medium Density Residential, RM-A which allows 6.1 to 10 dwelling units per acre).

The proposed project under a separate CDP application is for an 8-unit residential project which is below the maximum permissible density established by the RM-A (Medium Density Residential - 6.1 to 10 dwelling units per acre), lot line adjustment to combine two lots with a portion of a third lot, and tentative tract map for condominium purposes.

**B. Land Use Plan Amendment: Consistency with Chapter 3 Policies of the Coastal Act**

The proposed LUP amendment would change the land use designation of a 584 sq. ft. portion of a single parcel located at 101 Bayside Place from RH-D (High Density Residential) which allows 50.1 to 60 dwelling units per acre to RM-A (Medium Density Residential) which allows 6.1 to 10 dwelling units per acre.

The Coastal Act policies applicable to the proposed change in the land use designation of a portion of an existing parcel are:

Section 30210 of the Coastal Act states:

*In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.*

Section 30221 of the Coastal Act states:

*Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.*

Section 30222 of the Coastal Act states:

*The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.*

The existing land use designation for the parcel containing the subject 584 sq.ft. is RH-D (High Density Residential) which allows 50.1 to 60 dwelling units per acre. The subject site and the adjacent surrounding parcels are all designated for residential uses. This area has not been designated in the certified Land Use Plan as a visitor-serving location and adequate land area designated for high-priority public and commercial recreational uses is available within the City of Newport Beach to meet the requirements of Section 30222.

The proposed change in land use designation to RM-A (Medium Density Residential) which allows 6.1 to 10 dwelling units per acre, will result in a lower density for the allowable residential use on the site. Any proposed development of the parcel must accommodate adequate on-site parking to serve the demand of the proposed uses such that on-street parking available for beach users will not be adversely affected. Section 30210 of the Coastal Act requires that maximum access be provided. Approval of the proposed decrease in residential density on this site will not result in any adverse effects on public access.

Therefore, for the reasons outlined above, the Commission finds that as proposed, the LUP amendment can be found to be consistent with Sections 30210, 30221 and 30222 and all the public access and recreation policies of the Coastal Act.

**C. California Environmental Quality Act (CEQA)**

Section 21080.5 of the California Environmental Quality Act (CEQA) exempts local governments from the requirement of preparing an environmental impact report (EIR) in connection with a local coastal program (LCP). The Commission's Local Coastal Program review and approval procedures have been found by the Resources Agency to be functionally equivalent to the environmental review process. Thus, under Section 21080.5 of CEQA, the Commission is relieved of the responsibility to prepare an environmental impact report for each local coastal program submitted for Commission review and approval. Nevertheless, the Commission is required, when approving a local coastal program, to find that the local coastal program does conform with the provisions of CEQA.

In conjunction with the proposed AERIE project that this LUP amendment would enable, the City prepared and adopted an Environmental Impact Report (EIR) (SCH#2007021054). The City determined, pursuant to Sections 15162 and 15163 of the State CEQA guidelines, that no subsequent or supplemental EIR was necessary for the proposed amendments to the Coastal Land Use Plan because the proposed LUP amendment is consistent with the General Plan Update and the proposed LUP amendment presents no new effects that could occur that were not examined in the project EIR, and there was no evidence - in their view - that new mitigation measures would be required. The EIR found that, with mitigation, most environmental impacts associated with the proposed AERIE project (and by association the proposed Coastal Land Use Plan amendment) would be reduced to less than significant levels. However, the EIR did conclude that the project would have significant adverse impacts that could not be reduced through mitigation to less than significant levels, thus, the City adopted a Statement of Overriding Consideration

for these impacts. The unavoidable adverse impacts identified were noise impacts resulting from construction activities.

Furthermore, the individual AERIE project will require coastal development permits issued by the Coastal Commission (until such time as the City receives full LCP certification). Throughout the coastal zone, specific impacts associated with individual development projects are assessed through the coastal development permit review process; thus, an individual project's compliance with CEQA would be assured.

As outlined in this staff report, the LUP amendment is consistent with the Chapter 3 policies of the Coastal Act including the public access, public recreational, and public view policies, as proposed. Thus, the Commission finds that the proposed LUP amendment meets the requirements of and conforms with the Chapter 3 policies of the Coastal Act. Therefore, the Commission finds that approval of the LUP amendment as proposed will not result in significant adverse environmental impacts under the meaning of CEQA. Therefore, the Commission certifies LUP amendment request 1-09 as proposed.



RESOLUTION NO. 2009-51

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH CERTIFYING THE FINAL ENVIRONMENTAL IMPACT REPORT (SCH. NO. 2007021054) FOR GENERAL PLAN AMENDMENT NO. GP2005-006, COASTAL LAND USE PLAN AMENDMENT NO. LC2005-002, CODE AMENDMENT NO. CA2005-009, NEWPORT TRACT NO. NT2005-004 (TRACT 16882), MODIFICATION PERMIT NO. MD2005-087 AND COASTAL RESIDENTIAL DEVELOPMENT PERMIT NO. CR2005-002 FOR PROPERTY LOCATED AT 201-205, 207 CARNATION AVENUE AND 101 BAYSIDE PLACE (PA 2005-196) ACCORDANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT AND STATE AND LOCAL GUIDELINES, MAKING CERTAIN FINDINGS AND DETERMINATIONS THERETO, APPROVING A MITIGATION MONITORING AND REPORTING PROGRAM.**

**WHEREAS**, an application was filed by Advanced Real Estate Services, Inc. with respect to property located at 201-205, 207 Carnation Avenue, and 101 Bayside Place to construct an 8-unit residential condominium development on a 1.4 acre site ("Project"). The application includes:

1. General Plan Amendment No. GP2005-006 to change the land use designation of a 584 square-foot portion of a parcel identified as 101 Bayside Place from RT (Two-Unit Residential) to RM (Multiple-Unit Residential, 20 dwelling units per acre).
2. Coastal Land Use Plan Amendment No. LC2005-002 to change the Coastal Land Use Plan designation of the same 584 square-foot portion of a parcel identified as 101 Bayside Place from RH-D (High Density Residential - 50.1 to 60 dwelling units per acre) to RM-A (Medium Density Residential - 6.1 to 10 dwelling units per acre).
3. Code Amendment No. CA2005-009 to change the zoning designation of the 584 square-foot portion of a parcel identified as 101 Bayside Place from R-2 (Two-Family Residential) to MFR (Multifamily Residential, 2178 square feet per unit).
4. Newport Tentative Tract Map No. NT2005-004 (TTM16882) to combine the 584 square-foot portion of a parcel identified as 101 Bayside Place with parcels identified as 201-205 Carnation Avenue and 207 Carnation Avenue, and to subdivide the air space for 8 residential condominium units.
5. Modification Permit No. MD2005-087 to permit a 5-foot subterranean building encroachment and 42-inch high protective guardrails within the required 10-foot front setback along Carnation Avenue; subterranean and above grade building encroachments of 5 feet and 1-foot, 7-inches into a required 10-foot, 7-inch side yard setback between the project and 215 Carnation; and three balconies and one at grade landing each with protective guard rails that exceed the maximum height of 6 feet from natural grade within the required 10-foot, 7-inch side yard abutting Bayside Place.

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6. Coastal Residential Development Permit No. CR2005-002 to allow demolition of the existing dwelling units within the Coastal Zone pursuant to Chapter 20.86 of the Municipal Code, and

**WHEREAS**, on February 22, 2007, April 5, 2007, and May 17, 2007, the Planning Commission held noticed public hearings in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California, at which time the applications, project and a draft Mitigated Negative Declaration were considered. Notice of time, place and purpose of the public hearing was given in accordance with law and testimony was presented to and considered by the Planning Commission at the hearing. At the conclusion of the public hearing, the Planning Commission adopted Resolution No. 1723 recommending adoption of a draft Mitigated Negative Declaration (MND) and approval of the applications to the City Council; and

**WHEREAS**, on August 14, 2007, the City Council held a noticed public hearing in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California, at which time the applications, project and a draft Mitigated Negative Declaration were considered. Notice of time, place and purpose of the public hearing was given in accordance with law and testimony was presented to and considered by the City Council at the hearing. At the conclusion of the public hearing the City Council identified the predominant line of existing development (PLOED) at 50.7 feet North American Vertical Datum of 1988 (NAVD88) after considering the position of existing development on the bluff face in relation to Carnation Avenue and its elevation above Newport Bay. Since the proposed project was not consistent with the PLOED as required by the policies of the 2005 Coastal Land Use Plan, further consideration of the proposed project was postponed until such time that the project was revised to conform to the PLOED; and

**WHEREAS**, subsequent to the August 14, 2007, City Council hearing, the applicant revised the proposed project in accordance with the PLOED as established by the City Council. Additionally, the applicant further revised the project to include a proposed dock structure. A revised Mitigated Negative Declaration was prepared in accordance with the California Environmental Quality Act; and

**WHEREAS**, on February 21, 2008, the Planning Commission held noticed public hearings in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California, at which time the applications, the revised project and a revised draft Mitigated Negative Declaration were considered. Notice of time, place and purpose of the public hearing was given in accordance with law and testimony was presented to and considered by the Planning Commission at the hearing. At the conclusion of the public hearing, the Planning Commission adopted Resolution No. 1751 recommending adoption of a revised draft Mitigated Negative Declaration (MND) for the revised project and approval of the applications to the City Council; and

**WHEREAS**, on June 19, 2008, the Planning Commission held noticed public hearings in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California, at which time the applications, the revised project and a ~~revised draft~~ **COASTAL COMMISSION**

Mitigated Negative Declaration were considered. Notice of time, place and purpose of the public hearing was given in accordance with law and testimony was presented to and considered by the Planning Commission at the hearing. At the conclusion of the public hearing, the Planning Commission adopted Resolution No. 1761 recommended adoption of a draft Mitigated Negative Declaration (MND) for the revised project and approval of the applications to the City Council; and

**WHEREAS**, on July 8, 2008, the City Council held a noticed public hearing in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California, at which time the applications, revised project and a revised draft Mitigated Negative Declaration were considered. Notice of time, place and purpose of the public hearing was given in accordance with law and testimony was presented to and considered by the City Council at the hearing. The City Council expressed several concerns including the project's potential visual impact on the area and the City Council took no action; and

**WHEREAS**, subsequent to the City Council hearing on July 8, 2008, the City and the applicant mutually agreed that an Environmental Impact Report would be prepared for the project pursuant to the California Environmental Quality Act; and

**WHEREAS**, a draft Environmental Impact Report (SCH#2007021054) has been prepared pursuant to the California Environmental Quality Act, Public Resources Code §§21000, et seq. ("CEQA"), the State CEQA Guidelines, and City Council Policy K-3. The DEIR was circulated for a 45-day comment period beginning on March 20, 2009, and concluding on May 4, 2009. Comments and responses to the comments were considered by the Planning Commission in its review of the proposed project; and

**WHEREAS**, on May 21, 2009, and on June 4, 2009, the Planning Commission held a noticed public hearing in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California, at which time the applications, project and a draft Environmental Impact Report (SCH#2007021054) were considered. Notice of time, place and purpose of the public hearing was given in accordance with law and testimony was presented to and considered by the Planning Commission at the hearing. At the conclusion of the public hearing, the Planning Commission adopted Resolution No. 1787 rescinding its prior resolutions regarding the project and recommending certification of the DEIR, adoption of a Statement of Overriding Considerations and Project approval; and

**WHEREAS**, staff of the City of Newport Beach has prepared full and complete responses to comments received on the DEIR, and on July 2, 2009, distributed the responses in accordance with Public Resources Code Section 21092.5; and

**WHEREAS**, the City Council of the City of Newport Beach, California, held a duly noticed public hearing on July 14, 2009, to consider: (1) the certification of the Final EIR, (2) the adoption of certain findings and determinations and adoption of a statement of overriding considerations; and (3) the adoption of a Mitigation Monitoring and Reporting Program; and

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**WHEREAS**, the Final EIR for the Project was presented to the City Council, as the decision making body of the lead agency, for certification as having been completed in compliance with the provisions of CEQA and State and local guidelines implementing CEQA; and

**WHEREAS**, the City Council has read and considered the environmental documentation comprising the Final EIR, including the comments and the responses to comments, and has found that the Final EIR considers all potentially significant environmental effects of the Project and is complete and adequate, and fully complies with all requirements of CEQA and of the State and local CEQA Guidelines; and

**WHEREAS**, prior to action on this Project, the City Council has considered all significant environmental effects and the Project Alternatives identified in the Final EIR and has found that all potentially significant environmental effects of the Project have been lessened or avoided to the extent feasible; and

**WHEREAS**, CEQA and the CEQA Guidelines provide that no public agency shall approve or carry out a project for which an EIR has been completed and which identifies one or more significant effects of the project unless the public agency makes written findings for each of the significant effects, accompanied by a statement of facts supporting each finding; and

**WHEREAS**, CEQA and the CEQA Guidelines require, where the decision of the City Council allows the occurrence of significant environmental effects which are identified in the Final EIR, but are not mitigated, the City Council must state in writing the reasons to support its action based on the evidence in the administrative record; and

**WHEREAS**, the City Council has determined that the Project is consistent with the General Plan and Zoning Regulations of the City of Newport Beach; and

**WHEREAS**, the City Council finds that judicial challenges to the City's CEQA determinations and approvals of land use projects are costly and time consuming. In addition, project opponents often seek an award of attorneys' fees in such challenges. As project applicants are the primary beneficiaries of such approvals, it is appropriate that such applicants should bear the expense of defending against any such judicial challenge, and bear the responsibility for any costs, attorneys' fees, and damages which may be awarded to a successful challenger.

**THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH DOES HEREBY RESOLVE AS FOLLOWS:**

**SECTION 1.** Based on its review and consideration of the Final EIR, all written communications and oral testimony regarding the Project which have been submitted to and received by the City Council, the City Council certifies that the Final EIR, consisting of the Draft EIR (Exhibit A), Responses to Comments (Exhibit B) and Errata (Exhibit C) for the Project has been completed in compliance with CEQA and the State and local CEQA Guidelines. The City Council, having final approval authority over the Project, adopts and certifies as complete and adequate the Final EIR, which reflects the

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independent judgment and analysis. The City Council further certifies that the Final EIR was presented to the City Council and that the City Council reviewed and considered the information contained in it and the full administrative record prior to approving the Project.

**SECTION 2.** To the fullest extent permitted by law, applicant and property owner shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of this Project including, but not limited to, the approval of the General Plan Amendment No. GP2005-006, Coastal Land Use Plan Amendment No. LC2005-002, Code Amendment No. CA2005-009, Newport Tract No. NT2005-004 (TTM 16882), Modification Permit No. MD2005-087 and Coastal Residential Development Permit No. CR2005-002 and/or the City's related California Environmental Quality Act determinations, the certification of the Environmental Impact Report, the adoption of a Mitigation Program, and/or statement of overriding considerations for this Project. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by the applicant or property owner, City, and/or the parties initiating or bringing such proceeding. The applicant and property owner shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

**SECTION 3. CEQA Findings of Fact.** Pursuant to CEQA Guidelines §15091, the City Council has reviewed and hereby adopts the CEQA Findings of Fact as shown on the attached Exhibit "D" entitled "CEQA Findings of Fact," which exhibit is incorporated herein by reference.

**SECTION 4. Mitigation Monitoring and Reporting Program.** Pursuant to CEQA Guidelines §15097, the City Council has reviewed and hereby adopts the "Mitigation Monitoring and Report Program" which is included as Exhibit "E", which exhibit is incorporated herein by reference.

**SECTION 5. Location and Custodian of Record of Proceedings.** The Planning Department of the City of Newport Beach, located at 3300 Newport Boulevard, Newport Beach, California 92263, is hereby designated as the custodian of the documents and other materials which constitute the record of proceedings upon which the City Council's decision is based, which documents and materials shall be available for public inspection and copying in accordance with the provisions of the California Public Records Act (California Government Code §§6250 et seq.).

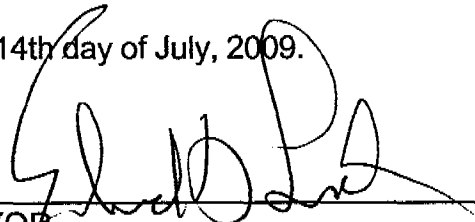
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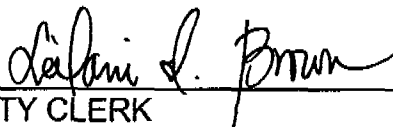
**SECTION 6. Notice of Determination.** The Planning Director shall cause the filing of a Notice of Determination with the County Clerk of the County of Orange and with the State Office of Planning and Research within five working days of this approval.

**SECTION 7. Certification, Posting and Filing.** This resolution shall take effect immediately upon its adoption by the City Council of the City of Newport Beach, and the Secretary to the City Council shall certify to the vote adopting this resolution and shall cause a certified copy of this resolution to be filed.

**PASSED, APPROVED, AND ADOPTED** this 14th day of July, 2009.

  
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MAYOR

ATTEST:

  
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CITY CLERK



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**RESOLUTION NO. 2009- 52**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH ADOPTING A STATEMENT OF OVERRIDING CONSIDERATIONS AND APPROVING GENERAL PLAN AMENDMENT NO. GP2005-006, COASTAL LAND USE PLAN AMENDMENT NO. LC2005-002, NEWPORT TRACT NO. NT2005-004 (TRACT 16882), MODIFICATION PERMIT NO. MD005-087 AND COASTAL RESIDENTIAL DEVELOPMENT PERMIT NO. CR2005-002 FOR PROPERTY LOCATED AT 201-205, 207 CARNATION AVENUE AND 101 BAYSIDE PLACE (PA 2005-196).**

**WHEREAS**, an application was filed by Advanced Real Estate Services, Inc. with respect to property located at 201-205, 207 Carnation Avenue, and 101 Bayside Place to construct an 8-unit residential condominium development on a 1.4 acre site ("Project"). The application includes:

1. General Plan Amendment No. GP2005-006 to change the land use designation of a 584 square-foot portion of a parcel identified as 101 Bayside Place from RT (Two-Unit Residential) to RM (Multiple-Unit Residential, 20 dwelling units per acre).
2. Coastal Land Use Plan Amendment No. LC2005-002 to change the Coastal Land Use Plan designation of the same 584 square-foot portion of a parcel identified as 101 Bayside Place from RH-D (High Density Residential - 50.1 to 60 dwelling units per acre) to RM-A (Medium Density Residential - 6.1 to 10 dwelling units per acre).
3. Code Amendment No. CA2005-009 to change the zoning designation of the 584 square-foot portion of a parcel identified as 101 Bayside Place from R-2 (Two-Family Residential) to MFR (Multifamily Residential, 2178 square feet per unit).
4. Newport Tentative Tract Map No. NT2005-004 (TTM16882) to combine the 584 square-foot portion of a parcel identified as 101 Bayside Place with parcels identified as 201-205 Carnation Avenue and 207 Carnation Avenue, and to subdivide the air space for 8 residential condominium units.
5. Modification Permit No. MD2005-087 to permit a 5-foot subterranean building encroachment and 42-inch high protective guardrails within the required 10-foot front setback along Carnation Avenue; subterranean and above grade building encroachments of 5 feet and 1-foot, 7-inches into a required 10-foot, 7-inch side yard setback between the project and 215 Carnation; and three balconies and one at grade landing each with protective guard rails that exceed the maximum height of 6 feet from natural grade within the required 10-foot, 7-inch side yard abutting Bayside Place.
6. Coastal Residential Development Permit No. CR2005-002 to allow demolition of the existing dwelling units within the Coastal Zone pursuant to Chapter 20.86 of the Municipal Code; and

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**WHEREAS**, on February 22, 2007, April 5, 2007, and May 17, 2007, the Planning Commission held noticed public hearings in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California, at which time the applications, project and a draft Mitigated Negative Declaration were considered. Notice of time, place and purpose of the public hearing was given in accordance with law and testimony was presented to and considered by the Planning Commission at the hearing. At the conclusion of the public hearing, the Planning Commission adopted Resolution No. 1723 recommending adoption of a draft Mitigated Negative Declaration (MND) and approval of the applications to the City Council; and

**WHEREAS**, on August 14, 2007, the City Council held a noticed public hearing in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California, at which time the applications, project and a draft Mitigated Negative Declaration were considered. Notice of time, place and purpose of the public hearing was given in accordance with law and testimony was presented to and considered by the City Council at the hearing. At the conclusion of the public hearing the City Council identified the predominant line of existing development (PLOED) at 50.7 feet North American Vertical Datum of 1988 (NAVD88) after considering the position of existing development on the bluff face in relation to Carnation Avenue and its elevation above Newport Bay. Since the proposed project was not consistent with the PLOED as required by the policies of the 2005 Coastal Land Use Plan, further consideration of the proposed project was postponed until such time that the project was revised to conform to the PLOED; and

**WHEREAS**, subsequent to the August 14, 2007, City Council hearing, the applicant revised the proposed project in accordance with the PLOED as established by the City Council. Additionally, the applicant further revised the project to include a proposed dock structure. A revised Mitigated Negative Declaration was prepared in accordance with the California Environmental Quality Act; and

**WHEREAS**, on February 21, 2008, the Planning Commission held noticed public hearings in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California, at which time the applications, the revised project and a revised draft Mitigated Negative Declaration were considered. Notice of time, place and purpose of the public hearing was given in accordance with law and testimony was presented to and considered by the Planning Commission at the hearing. At the conclusion of the public hearing, the Planning Commission adopted Resolution No. 1751 recommending adoption of a revised draft Mitigated Negative Declaration (MND) for the revised project and approval of the applications to the City Council; and

**WHEREAS**, on June 19, 2008, the Planning Commission held noticed public hearings in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California, at which time the applications, the revised project and a revised draft Mitigated Negative Declaration were considered. Notice of time, place and purpose of the public hearing was given in accordance with law and testimony was presented to and considered by the Planning Commission at the hearing. At the conclusion of the public hearing, the Planning Commission adopted Resolution No. 1761 recommended,

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adoption of a draft Mitigated Negative Declaration (MND) for the revised project and approval of the applications to the City Council; and

**WHEREAS**, on July 8, 2008, the City Council held a noticed public hearing in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California, at which time the applications, revised project and a revised draft Mitigated Negative Declaration were considered. Notice of time, place and purpose of the public hearing was given in accordance with law and testimony was presented to and considered by the City Council at the hearing. The City Council expressed several concerns including the project's potential visual impact on the area and the City Council took no action; and

**WHEREAS**, subsequent to the City Council hearing on July 8, 2008, the City and the applicant mutually agreed that an Environmental Impact Report would be prepared for the project pursuant to the California Environmental Quality Act; and

**WHEREAS**, a draft Environmental Impact Report (SCH#2007021054) has been prepared pursuant to the Environmental Quality Act (CEQA), the State CEQA Guidelines, and City Council Policy K-3. The DEIR was circulated for a 45-day comment period beginning on March 20, 2009, and concluding on May 4, 2009. Comments and responses to the comments were considered by the Planning Commission in its review of the proposed project; and

**WHEREAS**, on May 21, 2009, and on June 4, 2009, the Planning Commission held a noticed public hearing in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California, at which time the applications, project and a draft Environmental Impact Report (SCH#2007021054) were considered. Notice of time, place and purpose of the public hearing was given in accordance with law and testimony was presented to and considered by the Planning Commission at the hearing. At the conclusion of the public hearing, the Planning Commission adopted Resolution No. 1787 rescinding its prior resolutions regarding the project and recommending certification of the DEIR, adoption of a Statement of Overriding Considerations and Project approval; and

**WHEREAS**, In accordance with the California Environmental Quality Act (CEQA) (Cal. Pub. Res. Code §§21000, et seq.) and its implementing State regulations (CEQA Guidelines) (14 Cal. Reg. §§15000, et seq.), the City of Newport Beach prepared Environmental Impact Report (SCH#2007021054). The purpose of the EIR is to analyze the potential impacts of the proposed Project and all of its component applications. The City Council considered and certified the Final Environmental Impact Report on July 14, 2009 by adopting certain CEQA Findings of Facts and a Statement of Overriding Considerations contained within Resolution No.2009-\_\_\_, which are hereby incorporated by reference, and

**WHEREAS**, the City Council recognizes that judicial challenges to the City's CEQA determinations and approvals of land use projects are costly and time consuming. In addition, project opponents often seek an award of attorneys' fees in such challenges. As project applicants are the primary beneficiaries of such approvals,

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it is appropriate that such applicants should bear the expense of defending against any such judicial challenge, and bear the responsibility for any costs, attorneys' fees, and damages which may be awarded to a successful challenger; and

**WHEREAS**, the project site has two separate land use designations assigned by the Land Use Element of the General Plan (584 square-feet is designated RT (Two-Unit Residential) and the remaining portion of the site, 60,700 square-feet, is designated RM (Multi-Unit Residential, 20 dwelling units per acre). The proposed amendment changing the land use designation of the 584 square-foot portion of the site to match the remainder of the site will numerically allow 1 additional unit; however, the density limitation as dictated by the Zoning Ordinance is more restrictive as it excludes submerged lands and slopes in excess of 50% from the calculation. The density of the proposed project is below the resulting maximum density permitted by the General Plan (28 dwellings) and is consistent with the maximum density allowed by the existing MFR zone (9 units). The residential condominium project is consistent with the proposed Multi-Family Residential land use designation and is consistent with residential developments within the area; and

**WHEREAS**, Charter Section 423 requires that all proposed General Plan Amendments be reviewed to determine if the square footage (for non-residential projects), peak hour vehicle trip, or dwelling units thresholds would be exceeded as the means to determine whether a vote by the electorate would be required to approve the General Plan Amendment. Pursuant to Council Policy A-18, voter approval is not required as the proposed General Plan Amendment represents an increase of 1 dwelling unit and an increase of 1 A.M. and 1 P.M. peak hour trip. Additionally, no prior amendments have been approved within Statistical Area F3 and, therefore, the project and prior amendments do not cumulatively exceed Charter Section 423 thresholds as to require a vote of the electorate; and

**WHEREAS**, the proposed project subject to conditions of approval is consistent with General Plan Policy LU5.1.9 inasmuch as building elevations that face public streets need to be treated to achieve the highest level of urban design and neighborhood quality. Architectural treatment of building elevations and the modulation of mass are to convey the character of separate living units or clusters of living units, avoiding the appearance of a singular building volume. Street elevations are to be provided with high quality materials and finishes to convey quality. Roof profiles are modulated to reduce the apparent scale of large structures and to provide visual interest and variety. Parking areas are designed to be integral with the architecture of the development. Usable and functional private open space for each unit is incorporated as each unit has an outdoor deck or patio that may include a fire pit and spa. Common open space that creates a pleasant living environment with opportunities for recreation is also included. Private storage areas for each unit are also provided. The project design incorporates building articulation, roof modulation and a diverse architectural style. Although specific exterior finishes or building materials are not identified at this time, the applicant and architect are committed to providing the highest quality project commensurate with the expense of the project and appropriate to their target buyer; and

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**WHEREAS**, the proposed project subject to conditions of approval is consistent with General Plan Policy LU 5.1.8 that requires adequate enclosed parking considering the number of bedrooms. One unit has 2 bedrooms, five units have 3 bedrooms, one unit has 4 bedrooms and one unit has 5 bedrooms. Five of the units have other rooms that could be modified and used as bedrooms and the unit sizes range from 2,662 to 4,990 square feet. The project provides two spaces for each of 2 units without vehicle lifts, and three spaces for each of 6 units with vehicle lifts. Six guest parking spaces, one service vehicle space and 2 golf cart spaces are provided for a total of 31 covered, vehicle spaces. An area for motorcycle or bicycle parking is also included. Provided parking is in excess of the minimum required pursuant to the Zoning Code (2.5 parking spaces per unit or a total of 20 spaces for 8 units proposed); and

**WHEREAS**, the proposed project is consistent with General Plan Policy CE7.1.8 and Policy CE7.1.1 as well as Coastal Land Use Policy 2.9.3-1 that require new development to avoid the use of parking configurations or parking management programs that are difficult to maintain and enforce and that new development is required to provide adequate, convenient parking for residents. All parking is enclosed on site with access to lower parking levels taken from two vehicle elevators. Five of the six guest parking spaces and parking for one unit are located at street level where access to the vehicle elevators is not necessary. No gates are planned that could possibly inhibit access to the street-level parking. Only seven of the eight units and one guest parking space will require the use of the vehicle elevators. The below-grade parking configuration accessed by elevators is sufficiently convenient in that two vehicle elevators to access the garage are proposed, which will reduce vehicle wait times to avoid significant conflicts entering or exiting the elevators. Emergency power generators are required so that vehicle access is maintained if electrical power is lost. The vehicle maneuvering areas within the parking areas meet or will be modified prior to the issuance of a building permit consistent with applicable standards required by the City Traffic Engineer; and

**WHEREAS**, the Land Use and Natural Resources Elements of the General Plan contain general policies regarding the protection of public views, visual resources, coastal bluffs and other natural resources and the Coastal Land Use Plan (CLUP) reflects these same policies and includes additional policies that expand upon the topics addressed in the Land Use and Natural Resources Elements of the General Plan and are applicable only within the Coastal Zone such that a finding of consistency with the CLUP is an implicit finding of consistency with the Land Use Element of the General Plan. Accordingly, based upon facts in support of findings that the project is consistent with the relevant CLUP policies as indicated below, the project is determined to be consistent with all resource protection policies within the Land Use and Natural Resources Elements; and

**WHEREAS**, the Coastal Land Use Plan (CLUP) designates the majority of the site RM-A (Medium Density Residential - 6.1 to 10 dwelling units per acre) and a 584 square-foot portion of the site is designated RH-D High Density Residential - 50.1 to 60 dwelling units per acre. The proposed amendment of the land use designation for the 584 square-foot portion of the site will result in a land use designation the same as the

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larger portion of the site and will numerically increase the maximum permissible project density by 1 unit, from 13 to 14, but not the maximum permissible density pursuant to the RM-A Zoning for the site; and

**WHEREAS**, the proposed project is consistent with applicable policies within Chapter 2 (Land Use and Development) of the Coastal Land Use Plan based upon the following:

***Policy 2.7-1. Continue to maintain appropriate setbacks and density, floor area, and height limits for residential development to protect the character of established neighborhoods and to protect coastal access and coastal resources.***

The project conforms to the height limit of the MFR zone and no deviation is proposed. The project proposes 61,709 gross square feet, below the maximum 75,868 square feet allowed by the existing MFR zone standard. The proposed project does not exceed the 28/32 foot height limitation of the Zoning Code. The proposed 8-unit project is below the maximum permissible density established by the RM-A (Medium Density Residential - 6.1 to 10 dwelling units per acre). Setback encroachments are primarily subterranean and would not impact the character of the area. The above-ground encroachments are minor in nature. The project provides a 9-foot setback area to the north abutting 215 Carnation Avenue creating a public view where none presently exists due to current site conditions. The setback proposed will provide adequate separation from the building to the north and the encroachments will not impact fragile resources as the encroachments are located on the opposite side of the building away from the bluff and bay.

***Policy 2.7-2. Continue the administration of provisions of State law relative to the demolition, conversion and construction of low and moderate-income dwelling units within the coastal zone.***

Government Code Section 65590 (Mello Act) regulates the demolition or conversion of low and moderate income units within the Coastal Zone. All units were vacated in December of 2001 and only a caretaker and the applicant's family reside at the project site. No low or moderate income residents currently reside within the project and, therefore, Government Code Section 65590 is not applicable.

***Policy 2.8.1-1. Review all applications for new development to determine potential threats from coastal and other hazards.***

***Policy 2.8.1-2. Design and site new development to avoid hazardous areas and minimize risks to life and property from coastal and other hazards.***

***Policy 2.8.1-3. Design land divisions, including lot line adjustments, to avoid hazardous areas and minimize risks to life and property from coastal and other hazards.***

A Grading Plan Review Report prepared by Neblett & Associates, August 2005, the Coastal Hazard Study prepared by GeoSoils Inc., dated October 2006, a Stormwater Pollution Prevention Plan prepared by Hunsaker and Associates dated March 17, 2007.

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a report titled Bluff and Shoreline Reconnaissance by GeoSoils Inc., dated June 11, 2007, and a third party review of all geotechnical reports prepared by GMU Geotechnical, Inc. dated October 29, 2009, collectively support that potential hazards due to seismic ground shaking, coastal bluff retreat due to erosional forces and tsunamis are minimal. Seismic issues are mitigated with the implementation of the Building Code and coastal bluff retreat is not expected to impact the project during the 75 year economic life of the building. Inundation by wave action or tsunami is considered very remote and the proposed residential improvements are well above wave action.

**Policy 2.8.1-4.** *Require new development to assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*

**Policy 2.8.3-1.** *Require all coastal development permit applications for new development on a beach or on a coastal bluff property subject to wave action to assess the potential for flooding or damage from waves, storm surge, or seiches, through a wave uprush and impact reports prepared by a licensed civil engineer with expertise in coastal processes. The conditions that shall be considered in a wave uprush study are: a seasonally eroded beach combined with long-term (75 years) erosion; high tide conditions, combined with long-term (75 year) projections for sea level rise; storm waves from a 100-year event or a storm that compares to the 1982/83 El Niño event.*

**Policy 2.8.6-10.** *Site and design new structures to avoid the need for shoreline and bluff protective devices during the economic life of the structure (75 years).*

**Policy 2.8.7-3.** *Require applications for new development, where applicable [i.e., in areas of known or potential geologic or seismic hazards], to include a geologic/soils/geotechnical study that identifies any geologic hazards affecting the proposed project site, any necessary mitigation measures, and contains a statement that the project site is suitable for the proposed development and that the development will be safe from geologic hazard. Require such reports to be signed by a licensed Certified Engineering Geologist or Geotechnical Engineer and subject to review and approval by the City.*

A Grading Plan Review Report prepared by Neblett & Associates, August 2005, the Coastal Hazard Study prepared by GeoSoils Inc., dated October 2006, a Stormwater Pollution Prevention Plan prepared by Hunsaker and Associates dated March 17, 2007, a report titled Bluff and Shoreline Reconnaissance by GeoSoils Inc., dated June 11, 2007, and a third party review of all geotechnical reports prepared by GMU Geotechnical, Inc. dated October 29, 2009, collectively indicate that the project will not be subject to nor contribute to erosion, geologic instability, geologic hazard nor require shoreline protective devices during the economic life of the structure (75 years).

**Policy 2.8.6-9.** *Require property owners to record a waiver of future shoreline protection for new development during the economic life of the structure (75 years) as a*

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condition of approval of a coastal development permit for new development on a beach, shoreline, or bluff that is subject to wave action, erosion, flooding, landslides, or other hazards associated with development on a beach or bluff. Shoreline protection may be permitted to protect existing structures that were legally constructed prior to the certification of the LCP, unless a waiver of future shoreline protection was required by a previous coastal development permit.

A waiver of future shoreline protective devices is included as a condition of approval.

**Policy 2.9.3-10** Require new development to minimize curb cuts to protect on-street parking spaces and close curb cuts to create new public parking wherever feasible.

The project will reduce the width of existing curb cuts creating 3 additional street spaces available to the public.

**WHEREAS**, the proposed project is consistent with Chapter 3 (Public Access) of the Coastal Land Use Plan based upon the following:

**Policy 3.1.1-1.** Protect, and where feasible, expand and enhance public access to and along the shoreline and to beaches, coastal waters, tidelands, coastal parks, and trails.

**Policy 3.1.2-1.** Protect, and where feasible, expand and enhance public access to and along coastal bluffs.

**Policy 3.1.2-2.** Site, design, and maintain public access improvements in a manner to avoid or minimize impacts to coastal bluffs.

**Policy 3.1.1-11.** Require new development to minimize impacts to public access to and along the shoreline.

**Policy 3.1.1-9.** Protect, expand, and enhance a system of public coastal access that achieves the following:

- Maximizes public access to and along the shoreline;
- Includes pedestrian, hiking, bicycle, and equestrian trails;
- Provides connections to beaches, parks, and recreational facilities;
- Provides connections with trail systems of adjacent jurisdictions;
- Provides access to coastal view corridors;
- Facilitates alternative modes of transportation;
- Minimizes alterations to natural landforms;
- Protects environmentally sensitive habitat areas;
- Does not violate private property rights.

**Policy 3.1.1-24.** Encourage the creation of new public vertical accessways where feasible, including Corona del Mar and other areas of limited public accessibility.

**Policy 3.1.1-13.** Require a direct dedication or an Offer to Dedicate (OTD) an easement for lateral public access for all new shorefront development causing or contributing to

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adverse public access impacts. Such dedication or easement shall extend from the limits of public ownership (e.g. mean high tide line) landward to a fixed point seaward of the primary extent of development (e.g. intersection of sand with toe or top of revetment, vertical face of seawall, dripline of deck, or toe of bluff).

**Policy 3.1.1-14.** Require a direct dedication or an Offer to Dedicate (OTD) an easement for vertical access in all new development projects causing or contributing to adverse public access impacts, unless adequate access is available nearby. Vertical accessways shall be a sufficient size to accommodate two-way pedestrian passage and landscape buffer and should be sited along the border or side property line of the project site or away from existing or proposed development to the maximum feasible extent.

**Policy 3.1.1-24.** Encourage the creation of new public vertical accessways where feasible, including Corona del Mar and other areas of limited public accessibility.

**Policy 3.1.1-26.** Consistent with the policies above, provide maximum public access from the nearest public roadway to the shoreline and along the shoreline with new development except where (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources or (2) adequate access exists nearby.

**Policy 3.1.1-27.** Implement public access policies in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following:

- Topographic and geologic site characteristics;
- Capacity of the site to sustain use and at what level of intensity;
- Fragility of natural resource areas;
- Proximity to residential uses;
- Public safety services, including lifeguards, fire, and police access;
- Support facilities, including parking and restrooms;
- Management and maintenance of the access;
- The need to balance constitutional rights of individual property owners and the public's constitutional rights of access.

The project site has no dedicated public access easements or physical access to the coastal bluff or bay. No abutting vertical or lateral public access presently exists that would connect to any access that might be considered within the development. The steep topography of the site makes vertical access a safety concern and access for the disabled problematic to achieve. Public support facilities presently do not exist nor are they planned and parking in the area is constrained. Lastly, access through the site would be in close proximity to residential uses.

The lower portion of the bluff face (below 50.7 feet MSL), submerged lands and tidelands will remain in their existing condition, with the exception of the construction of a new dock system to replace the existing one. Public access to the sheltered cove from

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the water will not be affected due to the location of the proposed dock system. Access to the designated view point at the end of Carnation Avenue will also remain unaffected and the public view from that point and Ocean Boulevard will be enhanced with project approval with the installation of a bench and/or other public amenity at the corner to improve the experience. The project will create 3 new parking spaces along Carnation Avenue with the reduction in the width of the existing driveway approaches. These new public parking spaces will enhance access to the area. With the reduction in residential density and the fact that no access rights or prescriptive access rights exist, the project will not impact or impede public access.

Public access to the bay is currently provided in the vicinity at China Cove, Lookout Point and at a street-end located in the 2300 block of Bayside Drive. These access points are located approximately 450 feet to the east, 1,125 feet to the east and approximately 480 feet to the northwest, respectively. Based upon the forgoing, requiring public access easements or outright dedication of land for public access is not necessary; and

**WHEREAS**, the proposed project is consistent with Policy 4.1.3-1 of the Coastal Land Use Plan that states "Utilize the following mitigation measures to reduce the potential for adverse impacts to ESA natural habitats from sources including, but not limited to, those identified in Table 4.1.1." Only Subsections E, F, G, and N are applicable to the proposed project as the other subsections are inapplicable as they relate to different physical and operational aspects of Newport Bay.

*E. Limit encroachments into wetlands to development that is consistent with Section 30233 of the Coastal Act and Policy 4.2.3-1 of the Coastal Land Use Plan.*

The residential portion of the project will not encroach into wetlands or open coastal waters. The expanded boating facility (replacement docks) is a permitted encroachment within open coastal waters pursuant to Section 30233 of the Coastal Act and Policy 4.2.3-1 that specifically allows new or expanded boating facilities, including slips, access ramps, piers, and marinas in open coastal waters provided that the impacts of construction are appropriately mitigated. Adequate measures are contained within the Environmental Impact Report and are required as conditions project approval.

*F. Regulate landscaping or revegetation of blufftop areas to control erosion and invasive plant species and provide a transition area between developed areas and natural habitats.*

A condition of approval requires all non-native plantings on the bluff to be removed and revegetation of the bluff face is regulated to only allow native and non-invasive plantings indigenous to the California coastal bluff environment.

*G. Require irrigation practices on blufftops that minimize erosion of bluffs.*

An irrigation plan is required pursuant to conditions of approval for the project and temporary irrigation on the bluff face may only be to be installed to establish vegetation.

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*N. Prohibit invasive species and require removal in new development.*

A condition of approval requires all non-native plantings on the bluff to be removed and revegetation of the bluff face is regulated to allow only native and non-invasive plantings indigenous to the California coastal bluff environment; and

**WHEREAS**, the proposed project is consistent with the following policies of Chapter 4 (Coastal Resource Protection) based upon the following:

**Policy 4.3.1-5.** *Require development on steep slopes or steep slopes with erosive soils to implement structural best management practices (BMPs) to prevent or minimize erosion consistent with any load allocation of the TMDLs adopted for Newport Bay.*

**Policy 4.3.1-6.** *Require grading/erosion control plans to include soil stabilization on graded or disturbed areas.*

**Policy 4.3.1-7.** *Require measures be taken during construction to limit land disturbance activities such as clearing and grading, limiting cut-and fill to reduce erosion and sediment loss, and avoiding steep slopes, unstable areas, and erosive soils. Require construction to minimize disturbance of natural vegetation, including significant trees, native vegetation, root structures, and other physical or biological features important for preventing erosion or sedimentation.*

**Policy 4.3.2-22.** *Require beachfront and waterfront development to incorporate BMPs designed to prevent or minimize polluted runoff to beach and coastal waters.*

**Policy 4.3.2-23.** *Require new development applications to include a Water Quality Management Plan (WQMP). The WQMP's purpose is to minimize to the maximum extent practicable dry weather runoff, runoff from small storms (less than 3/4" of rain falling over a 24-hour period) and the concentration of pollutants in such runoff during construction and post-construction from the property.*

An Erosion and Sediment Control Plan, Stormwater Pollution Prevention plan and a Water Quality Management Plan are required by conditions of approval and they must include best management practices to ensure that erosion is controlled to the maximum extent feasible; and

**WHEREAS**, the proposed project is consistent with Policy 4.4.3-4. of the Coastal Land Use Plan that states "On bluffs subject to marine erosion, require new accessory structures such as decks, patios and walkways that do not require structural foundations to be sited in accordance with the predominant line of existing development in the subject area, but not less than 10 feet from the bluff edge. Require accessory structures to be removed or relocated landward when threatened by erosion, instability or other hazards."

No new accessory structures are proposed. The policy also requires that accessory structures be removed or relocated landward when threatened by erosion, instability or other hazards. A condition of approval is included such that the existing accessory

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structures (concrete pad, staircase and walkway) will be removed if threatened by erosional processes in the future; and

**WHEREAS**, the proposed project is consistent with Policy 4.4.3-11 of the Coastal Land Use Plan that states "Require applications for new development to include slope stability analyses and erosion rate estimates provided by a licensed Certified Engineering Geologist or Geotechnical Engineer."

A Grading Plan Review Report prepared by Neblett & Associates, August 2005, the Coastal Hazard Study prepared by GeoSoils Inc., dated October 2006, a Stormwater Pollution Prevention Plan prepared by Hunsaker and Associates dated March 17, 2007, a report titled Bluff and Shoreline Reconnaissance by GeoSoils Inc., dated June 11, 2007, and a third party review of all geotechnical reports prepared by GMU Geotechnical, Inc. dated October 29, 2009, collectively indicate that the project will not be subject to nor contribute to erosion, geologic instability, geologic hazard nor require shoreline protective devices during the economic life of the structure (75 years); and

**WHEREAS**, the proposed project is consistent with the following policies of Chapter 4 (Coastal Resource Protection) that regulate the protection of public views based upon the following:

**Policy 4.4.1-1.** *Protect and, where feasible, enhance the scenic and visual qualities of the coastal zone, including public views to and along the ocean, bay, and harbor and to coastal bluffs and other scenic coastal areas.*

**Policy 4.4.1-2.** *Design and site new development, including landscaping, so as to minimize impacts to public coastal views.*

**Policy 4.4.1-4.** *Where appropriate, require new development to provide view easements or corridors designed to protect public coastal views or to restore public coastal views in developed areas.*

**Policy 4.4.1-6.** *Protect public coastal views from the following roadway segments...Ocean Boulevard. (Figure 4-3 of the CLUP identifies the intersection of Carnation Avenue and Ocean Boulevard as a "view point.")*

**Policy 4.4.1-7.** *Design and site new development, including landscaping, on the edges of public coastal view corridors, including those down public streets, to frame and accent public coastal views.*

**Policy 4.4.2-2.** *Continue to regulate the visual and physical mass of structures consistent with the unique character and visual scale of Newport Beach.*

**Policy 4.4.2-3.** *Implement the regulation of the building envelope to preserve public views through the height, setback, floor area, lot coverage, and building bulk regulation of the Zoning Code in effect as of October 13, 2005 that limit the building profile and maximize public view opportunities.*

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A public view presently exists over the southeastern portion of the site from Ocean Boulevard and Carnation Avenue to the south and southwest between the existing 14-unit apartment building and improvements on the adjoining property to the southeast. The siting of the proposed building would provide a greater separation between these buildings than exists today. Presently, the horizontal view window measures 25 degrees and with the project, the view window will increase to 44 degrees. Based upon the visual simulations prepared for the project presented within the Environmental Impact Report, the public view from Ocean Boulevard to the west will be improved due to the position of the proposed building.

Although the proposed building is taller than the existing building, there is no public view over the buildings; therefore, the taller building proposed will not impact a public view. The project is consistent with the 28/32-foot height limitation zone of the Zoning Code as demonstrated by the project plans and verified by staff, and with other building envelope restrictions with the exception of setback encroachments as proposed.

Based upon the visual simulations prepared for the project presented within the Environmental Impact Report, and since the residential portion of the proposed will not extend below 50.7 feet MSL and is consistent with the predominant line of existing development as identified by the City Council on August 14, 2007, impacts to public views of the site from the south, west and from Begonia Park are not significantly impacted so as to be inconsistent with CLUP policy.

The visual impact of the proposed docks as depicted in the project visual simulations presented within the Environmental Impact Report do not represent a significant impact. The expanded docks with boats create a transient impediment to viewing the project bluff and rocks depending upon the viewer's location. The closer to the site the viewer is, the more prominent the boats in the docks would be in a particular view; however, views of the project site would be provided as one "cruises" in and out of the harbor and the bluff, rocks and cove below the proposed residential building are not being physically altered or covered.

The proposed residential building provides a 9-foot setback to the property line abutting 215 Carnation Avenue. Improvements within this setback area are low to the ground and would not be high enough to obstruct public views from Carnation Avenue to the west. This view does not presently exist given existing site improvements to be removed with project construction. Other setback encroachments are below the grade of the street and would not impact a public view. Project encroachments into the required side yard setback abutting Bayside Place do impact public views from Begonia Park or other vantage points from the northwest as the balconies and walkway do not project beyond the silhouette of the remainder of the building that conforms to setback regulations. No other public views exist from the street through the site due to the position of the current buildings. Therefore, the proposed project will not have an impact upon existing public views through the site to the south and west. The recordation of a public view easement to protect the public views over the site from Ocean Boulevard and Carnation Avenue is required as a condition of approval; and

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**WHEREAS**, the proposed project is consistent with the following policies of Chapter 4 (Coastal Resource Protection) as they related to the scenic and visual qualities of the coastal zone and to minimizing the alteration of the coastal bluff based upon the following:

**Policy 4.4.1-1.** *Protect and, where feasible, enhance the scenic and visual qualities of the coastal zone, including public views to and along the ocean, bay, and harbor and to coastal bluffs and other scenic coastal areas.*

**Policy 4.4.1-2.** *Design and site new development, including landscaping, so as to minimize impacts to public coastal views.*

**Policy 4.4.1-3** *Design and site new development to minimize alterations to significant natural landforms, including bluffs, cliffs and canyons.*

**Policy 4.4.3-8.** *Prohibit development on bluff faces, except private development on coastal bluff faces along Ocean Boulevard, Carnation Avenue and Pacific Drive in Corona del Mar determined to be consistent with the predominant line of existing development or public improvements providing public access, protecting coastal resources, or providing for public safety. Permit such improvements only when no feasible alternative exists and when designed and constructed to minimize alteration of the bluff face, to not contribute to further erosion of the bluff face, and to be visually compatible with the surrounding area to the maximum extent feasible.*

**Policy 4.4.3-9.** *Where principal structures exist on coastal bluff faces along Ocean Boulevard, Carnation Avenue and Pacific Drive in Corona del Mar, require all new development to be sited in accordance with the predominant line of existing development in order to protect public coastal views. Establish a predominant line of development for both principle structures and accessory improvements. The setback shall be increased where necessary to ensure safety and stability of the development.*

**Policy 4.4.3-12.** *Employ site design and construction techniques to minimize alteration of coastal bluffs to the maximum extent feasible, such as:*

- A. *Siting new development on the flattest area of the site, except when an alternative location is more protective of coastal resources.*
- B. *Utilizing existing driveways and building pads to the maximum extent feasible.*
- C. *Clustering building sites.*
- D. *Shared use of driveways.*
- E. *Designing buildings to conform to the natural contours of the site, and arranging driveways and patio areas to be compatible with the slopes and building design.*
- F. *Utilizing special foundations, such as stepped, split level, or cantilever designs.*
- G. *Detaching parts of the development, such as a garage from a dwelling unit.*

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*H. Requiring any altered slopes to blend into the natural contours of the site.*

The City Council has interpreted Policies 4.4.3-8 and 4.4.3-9 to mean that development on bluff faces is prohibited, except private development on coastal bluff faces along Ocean Boulevard, Carnation Avenue and Pacific Drive in Corona del Mar determined to be consistent with the predominant line of existing development. Additionally, public improvements on coastal bluff faces that are allowable are those that provide public access, protect coastal resources, or provide for public safety when no feasible alternative exists and when they are designed and constructed to minimize alteration or further erosion of the bluff face and are visually compatible with the surrounding area to the maximum extent feasible. In all cases where the predominant line of existing development is used to establish a development limit, it shall not be the only criteria used for this purpose. All coastal land use policies shall be considered in determining the appropriate extent of new development and size of new structures. The City Council made these clarifications by adopting Coastal Land Use Plan Amendment No. 2007-003, which has not yet been considered by the California Coastal Commission.

Existing development of the site is located on the face of a coastal bluff. Identification of the project site as a coastal bluff is based upon the professional opinion of Sidney Neblett, a Certified Engineering Geologist. The coastal bluff transitions from northwest-facing to southwest-facing roughly southwest of the intersection of Ocean Boulevard and Carnation Avenue almost bisecting the project site. This transition point extends down to the northwest to the western extent of a small pocket beach unofficially known as Carnation Cove. North of the transition point of this bluff, is a series of residential structures developed on Carnation Avenue between 42 and 58 feet NAVD88. East of the transition point along Ocean Boulevard is a series of residential structures that were developed much farther down the bluff face with several at the water's edge. The City Council reviewed this existing development pattern at a noticed public hearing on August 14, 2007, and determined that the predominant line of existing development is 50.7 NAVD88, which is similar to and consistent with the development pattern established by the project site and development to the north along Carnation Avenue. The visible portion of the residential component of the project does not extend below the 50.7 NAVD88 contour except where it connects with an existing access staircase on the bluff face leading to the docks below. The exit below the 50.7 NAVD88 contour is recessed and screened from public view. The project minimizes alteration of the coastal bluff and protects public views of the coastal bluff by not altering the bluff face below the predominant line of existing development and preserving the majority of the visible bluff. The project is required to blend any altered slopes outside of the building footprint to the natural contours, native rocks or soils of the site. For these reasons, the project protects the scenic and visual qualities of the coastal zone, minimizes alteration of the bluff and is consistent with CLUP Policies 4.4.1-1, 4.4.1-2, 4.4.1-3, 4.4.3-8, 4.4.3-9, 4.4.3-12 and Coastal Land Use Plan Amendment No. LC2007-003; and

**WHEREAS**, the granting of the Modification Permit allowing above grade and below grade encroachments into the front and side yard setbacks is necessary due to practical difficulties associated with the property and that the strict application of the

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Zoning Code results in physical hardships that are inconsistent with the purpose and intent of the Zoning Code for the following reasons:

The site is irregular in shape, has steep topography and has submerged lands which make it difficult to design a project at the density proposed while providing required parking and avoiding significantly altering the bluff. Approximately 43% of the site is submerged or has slopes in excess of 50%. The requirement to provide on-site parking requires that a significant portion of the building area be allocated for the parking, thereby reducing available area for residential units. The required side yard setback is also larger than the required front yard setback and the application of this standard represents a practical difficulty given the relatively small buildable area available on the entire site; and

**WHEREAS**, the granting of the Modification Permit allowing above grade and below grade encroachments into the front and side yard setbacks will be compatible with the existing development in the neighborhood and the granting of the permit application will not adversely affect the health or safety of persons residing or working in the neighborhood of the property and will not be detrimental to the general welfare or injurious to property or improvements in the neighborhood for the following reasons:

The requested encroachments within the front yard setback, with the exception of the 42-inch high protective guardrails, will be entirely subterranean and will not be visible. The proposed guardrails will have an open design allowing visibility through while providing adequate protection to pedestrians on the public sidewalk from falling over the proposed (and allowable) retaining wall located within the required front yard setback. Building encroachments within the required side yard setback on levels below the street will not be visible. The requested above-grade, 1-foot, 7 inch, building encroachment in the required side yard setback adjacent to 215 Carnation Avenue will provide a 9-foot setback that will create a public view from Carnation Avenue. This public view presently does not exist given the location and nature of existing improvements. The provided setback exceeds typical 4-foot setbacks between buildings along Carnation Avenue. This 9-foot setback will provide sufficient separation between the project and the abutting residence to the north. The encroachments of balconies, including protective guard railings, within the side setback abutting Bayside Place will not impact these residents given the change in topography, the separation provided by Bayside Place, a private roadway, and the fact that these residences are oriented toward Newport Bay and not project. The encroachments within the side setback abutting Bayside Place also do not encroach within a public view from Begonia Park or other vantage points from the west any more than the proposed building does which is compliant with the setback. The encroaching balconies and guard railings will encroach into private views of residents to the north on Carnation Avenue, but the majority of the view to the west and southwest will remain unchanged; and

**WHEREAS**, Newport Tract No. 2005-004 (TTM16882) can be approved based upon the following findings:

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1. The modified project is consistent with the current land use designation including the proposed amendment. The project is consistent with Land Use Element Policy LU5.1.9 regarding the character and quality of multi-family residential development. The project is consistent with Land Use Element and Natural Resources Element policies related to the protection of public views, visual resources, coastal bluffs and other natural resources based upon the project's consistency with the Coastal Land Use Plan. The site is not subject to a specific plan. Minimum lot sizes established by the Zoning Ordinance are also maintained as required by the City Subdivision Code. The tentative tract map, pursuant to the conditions of approval, is consistent with the Newport Beach Subdivision Code (Title 19) and applicable requirements of the Subdivision Map.
2. The buildable area of the site is relatively small compared to the entire 1.4 acre site. The development of the site is not likely to be subject to coastal erosional processes or hazards during the 75-year economic life of the project. No earthquake faults were found on-site and there is not likely to be an incidence of landslide, lateral spreading, subsidence, liquefaction, or collapse of soils on-site or near the site given site soil conditions. These factors indicate that the site is suitable for the development proposed.
3. The design of the subdivision and proposed improvements, subject to the provisions of the Construction Management Plan, standard conditions, applicable Building, Grading and Fire Ordinances, conditions of approval and mitigation measures will not cause substantial environmental damage nor substantially and avoidably injure fish or wildlife or their habitat based upon the Environmental Impact Report (SCH# 2007021054) with the exception of short-term construction-related noise. Pursuant to Public Resources Section 21081, a Statement of Overriding Considerations (Exhibit A) identifies that feasible mitigation measures and alternatives to the proposed do not exist and that the benefits associated with the project outweigh short-term significant noise impact.
4. The tract map would recombine two lots and a small portion of a third lot and subdivide the planned airspace of the proposed building for residential condominium purposes. The subdivision is not expected to cause serious public health problems given the use of typical construction materials and practices. No evidence is known to exist that would indicate that the proposed subdivision will generate any serious public health problems. All mitigation measures as outlined in the Environmental Impact Report and the Building, Grading and Fire Codes will be implemented to ensure the protection of public health.
5. The proposed subdivision will not conflict with easements, acquired by the public at large, because a utility and sewer easement that affects the site is presently not in use and can be abandoned. The design of the proposed subdivision will avoid and protect in place an existing storm drain easement and storm drain. The storm drain easement will appear on the final map. Public utility easements for utility connections that serve the project site are present and will be modified, if necessary, to serve the proposed project.

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6. The site is not subject to a Williamson Act contract.
7. The subdivision is subject to Title 24 of the California Building Code that requires new construction to meet minimum heating and cooling efficiency standards depending on location and climate. The Newport Beach Building Department enforces Title 24 compliance through the plan check and field inspection processes. The site has a western exposure and incorporates curved roof elements that will provide some shading of windows and passive solar cooling. Significant exterior wall segments are below grade which will benefit from passive cooling.
8. The subdivision is consistent with Section 66412.3 of the Subdivision Map Act and Section 65584 of the California Government Code regarding the City's share of the regional housing needs although the proposed subdivision will have the effect of reducing the residential density on the site from 15 units to 8 units. The reduction is insignificant given the City's current housing supply and projected housing needs. Although the reduction in units does not assist the City in reaching its production goals, no affordable housing units are being eliminated based upon the fact that the project was not occupied by low or moderate income households. The reduction in density is consistent with existing density limitations of the Municipal Code.
9. Wastewater discharge into the existing sewer system will be consistent with existing residential use of the property, which does not violate Regional Water Quality Control Board (RWQCB) requirements.
10. The proposed subdivision is entirely within the coastal zone and the site is not presently developed with coastal-related uses, coastal-dependent uses or water oriented recreational uses that would be displaced by a non-priority use. The project site is constrained by topography and public access exists nearby making on-site vertical and lateral access unnecessary. Public access to the area is enhanced as a result of increasing public parking opportunities on Carnation Avenue afforded by 3 on street parking spaces to be added with closure of existing driveway curb cuts. The position of the proposed building enhances public views from Ocean Boulevard and Carnation Avenue by increasing the view angle between the development on the project site and adjacent development as well as creating a view corridor between the proposed building and 215 Carnation Avenue where a public view presently does not exist. The modified project developed in accordance with the conditions of approval will minimize alteration of the coastal bluff and preserve the scenic and visual quality of the coast by preserving the bluff below 50.7 feet NAVD88. Lastly, the project will not impact sensitive marine resources with the implementation of the conditions of approval including the mitigation measures identified in the AERIE Environmental Impact Report (SCH#2007021054); and

**WHEREAS**, the project includes the demolition of 15 dwelling units within the Coastal Zone within 2 buildings and pursuant to Chapter 20.86 of the Zoning Code, units proposed for demolition and occupied by low or moderate income households must be replaced if such replacement is determined to be feasible. The 15 units are not occupied by low or moderate income households and, therefore, no replacement units

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are required. Households potentially meeting the low or moderate income limits were not evicted for the purpose of avoiding a replacement requirement within the previous 12 months.

**THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH DOES HEREBY RESOLVE AS FOLLOWS:**

**Section 1.** The recitals above are hereby declared to be true, accurate, and correct.

**Section 2.** The City Council finds that notice of this hearing was provided in conformance with California law and the Municipal Code of the City of Newport Beach.

**Section 3.** The City Council hereby finds that the Administrative Record which was considered by the City Council in adopting this Resolution consists, without limitation, of all documents, correspondence, testimony, photographs, and other information presented or provided to the Planning Director, Planning Commission, City Council and City including, without limitation, testimony received at City Council and Planning Commission meetings, staff reports, agendas, notices, meeting minutes, police reports, correspondence, and all other information provided to the City and retained in the files of the City, its staff and attorneys (except for attorney/client communications, work product and other privileged documents), and such is hereby incorporated by reference into the Administrative Record and is available upon request ("Administrative Record").

**Section 4.** To the fullest extent permitted by law, applicant and property owner shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of this Project including, but not limited to, the approval of the General Plan Amendment No. GP2005-006, Coastal Land Use Plan Amendment No. LC2005-002, Newport Tract No. 2005-004 (TTM 16882), Code Amendment No. CA2005-009, Modification Permit No. MD2005-087 and Coastal Residential Development Permit No. CR2005-002 and/or the City's related California Environmental Quality Act determinations, the certification of the Environmental Impact Report, the adoption of a Mitigation Program, and/or statement of overriding considerations for this Project. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by the applicant or property owner, City, and/or the parties initiating or bringing such proceeding. The applicant and property owner shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

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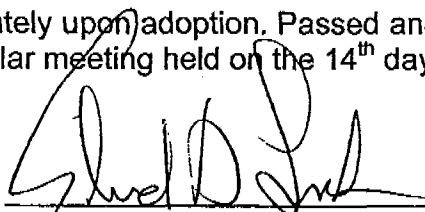
**Section 5.** Pursuant to CEQA Guidelines Section 15093, the City Council has reviewed and hereby adopts the Statement of Overriding Considerations to adverse environmental impacts, attached also as Exhibit "A" entitled "Statement of Overriding Considerations," which exhibit is incorporated herein by reference.

**Section 6.** Based on the aforementioned findings, the City Council hereby approves General Plan Amendment No. GP2005-006 per Exhibit "B", Coastal Land Use Plan Amendment No. LC2005-002 per Exhibit "C", Newport Tract No. NT2005-004 (TTM 16882), Modification Permit No. MD2005-087 and Coastal Residential Development Permit No. CR2005-002 (PA 2005-196) subject to conditions of approval attached as Exhibit "D".

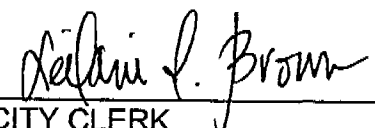
**Section 7.** The Planning Director is hereby directed to submit Coastal Land Use Plan Amendment No. LC2005-002 to the California Coastal Commission for review and approval. The change of the Coastal Land Use Plan designation of the project site shall only become effective upon the approval of Coastal Land Use Plan Amendment No. 2005-002 by the California Coastal Commission.

**Section 8.** Pursuant to Section 13518 of the California Code of Regulations this Coastal Land Use Plan Amendment No. LC2005-002 shall take effect automatically upon Coastal Commission action unless the Coastal Commission proposes modifications. In the event that the Coastal Commission proposes revisions, this Land Use Plan amendment shall not take effect until the City Council adopts the Commission modifications and all the requirements of Section 13544 of the California Code of Regulations are met.

This resolution shall take effect immediately upon adoption. Passed and adopted by the City Council of Newport Beach at a regular meeting held on the 14<sup>th</sup> day of July, 2009.

  
\_\_\_\_\_  
MAYOR

ATTEST:

  
\_\_\_\_\_  
CITY CLERK



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Exhibit "A"

CEQA STATEMENT OF OVERRIDING CONSIDERATIONS  
REGARDING THE  
FINAL ENVIRONMENTAL IMPACT REPORT  
FOR THE  
AERIE PROJECT

STATE CLEARINGHOUSE NO. 2007021054

A. Introduction

The City of Newport Beach is the Lead Agency under CEQA for preparation, review and certification of the Final EIR for Aerie project. As the Lead Agency, the City is also responsible for determining the potential environmental impacts of the proposed Project and which of those impacts are significant, and which can be mitigated through imposition of mitigation measures and project design features to avoid or minimize those impacts to a level of less than significant. CEQA then requires the Lead Agency to balance the benefits of a proposed action against its significant unavoidable adverse environmental impacts in determining whether or not to approve the proposed Project. Public Resources Code Section 21081(b) requires that where a public agency finds that specific economic, legal, social, technological, or other considerations make infeasible the mitigation measures or alternatives identified in an EIR and thereby result in significant unavoidable effects, the public agency must also find that overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects of the project.

In making this determination the City is guided by CEQA Guidelines Section 15093 which provides as follows:

1. CEQA requires the decision-making agency to balance, as applicable, the economic, legal, social, technological, or other benefits of a proposed project against its unavoidable environmental risks when determining whether to approve the project. If the specific economic, legal, social, technological, or other benefits of a proposal project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered "acceptable."
2. When the lead agency approves a project which will result in the occurrence of significant effects which are identified in the final EIR but are not avoided or substantially lessened, the agency shall state in writing the specific reasons to support its action based on the final EIR and/or other information in the record. The statement of overriding considerations shall be supported by substantial evidence in the record.

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3. If an agency makes a statement of overriding considerations, the statement should be included in the record of the project approval and should be mentioned in the notice of determination. This statement does not substitute for, and shall be in addition to, findings required pursuant to Section 15091.

Pursuant to Public Resources Code Section 21081(b) and the State CEQA Guidelines Section 15093, the City has balanced the benefits of the proposed Project against the following unavoidable adverse impacts associated with the proposed Project and has adopted all feasible mitigation measures with respect to these impacts. The City also has examined alternatives to the proposed Project, none of which both meet the Project Objectives and is environmentally preferable to the proposed Project for the reasons discussed in Section 6 of these findings.

The City Council of the City of Newport Beach, having reviewed the Final EIR for Aerie project, reviewed all written materials within the City's public record, and heard all oral testimony presented at public hearings, adopts this Statement of Overriding Considerations. The City has balanced the benefits of the Project against its significant unavoidable adverse environmental impacts in reaching its decision to approve the Project.

**B. Significant Unavoidable Adverse Environmental Impact**

Although the vast majority of potential Project impacts have been avoided or mitigated, as described in Section 5 of these findings, there remains one Project impact for which complete mitigation is not feasible. Specifically, although the project will comply with the City's Noise Control Ordinance and will incorporate project features included in the Construction Management Plan, including the preparation of a construction schedule that minimizes potential construction noise impacts, which have been prescribed to further reduce construction noise during the length construction phase, the Project's short-term noise impacts (Impact 4.4-1) will remain significant and unavoidable.

**C. Overriding Considerations**

The City, after balancing the specific economic, legal, social, technological, and other benefits of the proposed Project, has determined that the unavoidable adverse environmental impact identified above is considered acceptable due to the following specific considerations which outweigh the unavoidable, adverse environmental impact of the proposed Project.

1. ***Promote the Neighborhood's Architectural Diversity and Enhance its Overall Aesthetic Quality:*** The Project's state-of-the-art design will reflect the architectural diversity of the community and add distinction to the harbor and the neighborhood. It will also enhance the overall aesthetic quality of the neighborhood by replacing a deteriorating 60-year old structure with a high-quality residential project utilizing unique modern

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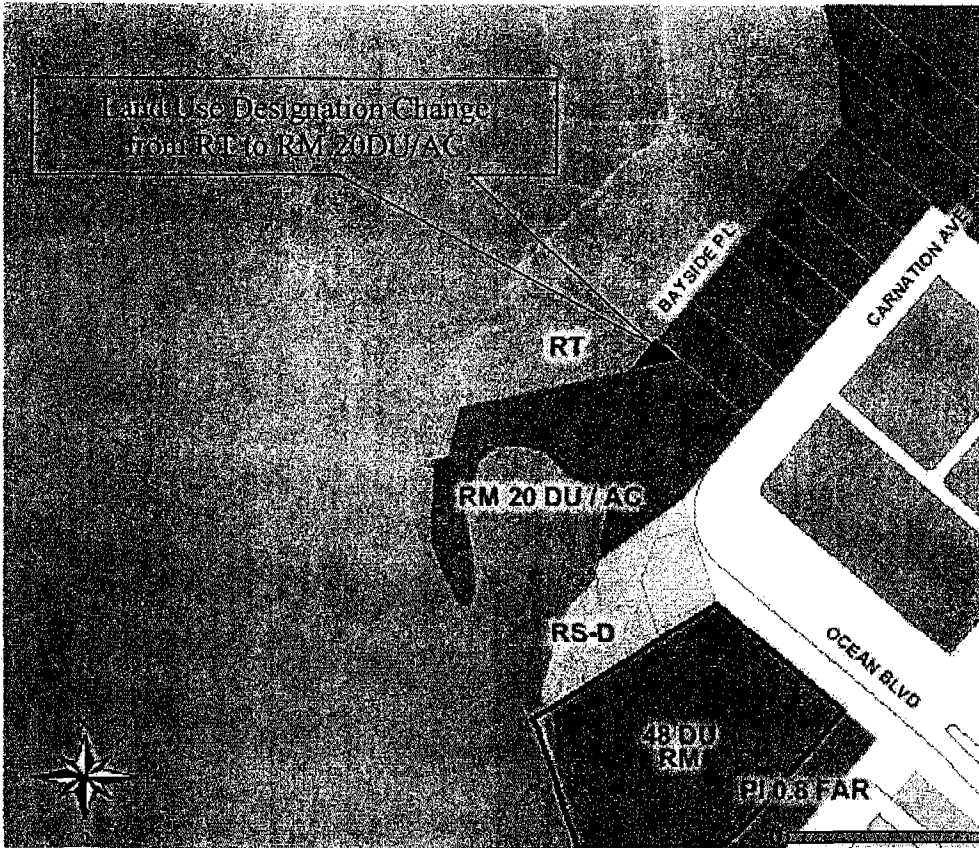
design principles. Specific aesthetic improvements include (a) the elimination of conventional garage doors for all units, (b) the concealing of all parking from street view, (c) significant landscape and streetscape enhancements, and (d) the removal and undergrounding of two existing power poles on Carnation Avenue, as well as their associated overhead wires.

2. ***Incorporate Advanced Energy Efficiency Features:*** The Project will replace an energy inefficient structure typical of mid-20th Century development with an advanced, highly efficient structure. Among other things, the Project will incorporate energy-saving, sustainable, and environmentally sensitive technology, construction techniques, water quality treatment elements, and other features designed to conserve energy and/or improve the existing environment to a greater degree than required by current applicable regulations.
3. ***Provide New Public Parking Spaces:*** The Project will enhance public access to the coast by creating three new public street parking spaces adjacent to the Project site because the length of the curb cut on the Project site will be substantially reduced.
4. ***Enhance Public Views from the Project Site:*** The Project will enhance scenic views to the harbor and the ocean from designated public vantage points in the immediate neighborhood by (a) significantly expanding the existing public view corridor at the southern end of project site, (b) creating a new public view corridor at the northern end of the project site, (c) removing two existing power poles on Carnation Avenue, as well as the associated overhead wires, all of which presently impact views from certain perspectives, (d) replacing the existing poles and overhead wiring by undergrounding the new wiring, and (e) providing a public bench and drinking fountain at the corner of Carnation Avenue and Ocean Boulevard to enhance the public viewing experience.
5. ***Enhance Public Views from Newport Harbor:*** The Project will enhance public views of the Project site from the harbor by (a) maintaining all visible development above the predominant line of existing development, (b) incorporating 207 Carnation Avenue into the project, which presently is within the Categorical Exclusion Zone and would not be subject to the PLOED if not part of the project, (c) replacing the existing outdated apartment building with modern, organic architecture with articulated facades to conform to the topography of the bluff, and (d) replacing the unsightly cement and pipes and the non-native vegetation on the bluff face with extensive native vegetation.
6. ***Minimize Building Height:*** The Project will minimize encroachment into private views by maintaining a maximum building height on average four feet below the zoning district's development standards.

7. **Improve Hydrology for Both the Project Site and the Drainage Area:** Project implementation will result in a reduction in storm flows generated on the Project site. In addition, the Project includes the upgrading of the existing deficient catch basin to ensure that adequate capacity exists to accommodate storm flows within the drainage area.
  
8. **Increase Property Values and Property Tax Revenues:** Project implementation will result in the redevelopment of the site eliminating an apartment building built in 1949 and a single family home built in the 1950's. The existing development has a lower taxable value when compared to the value the proposed project will generate, thereby increasing tax revenues.

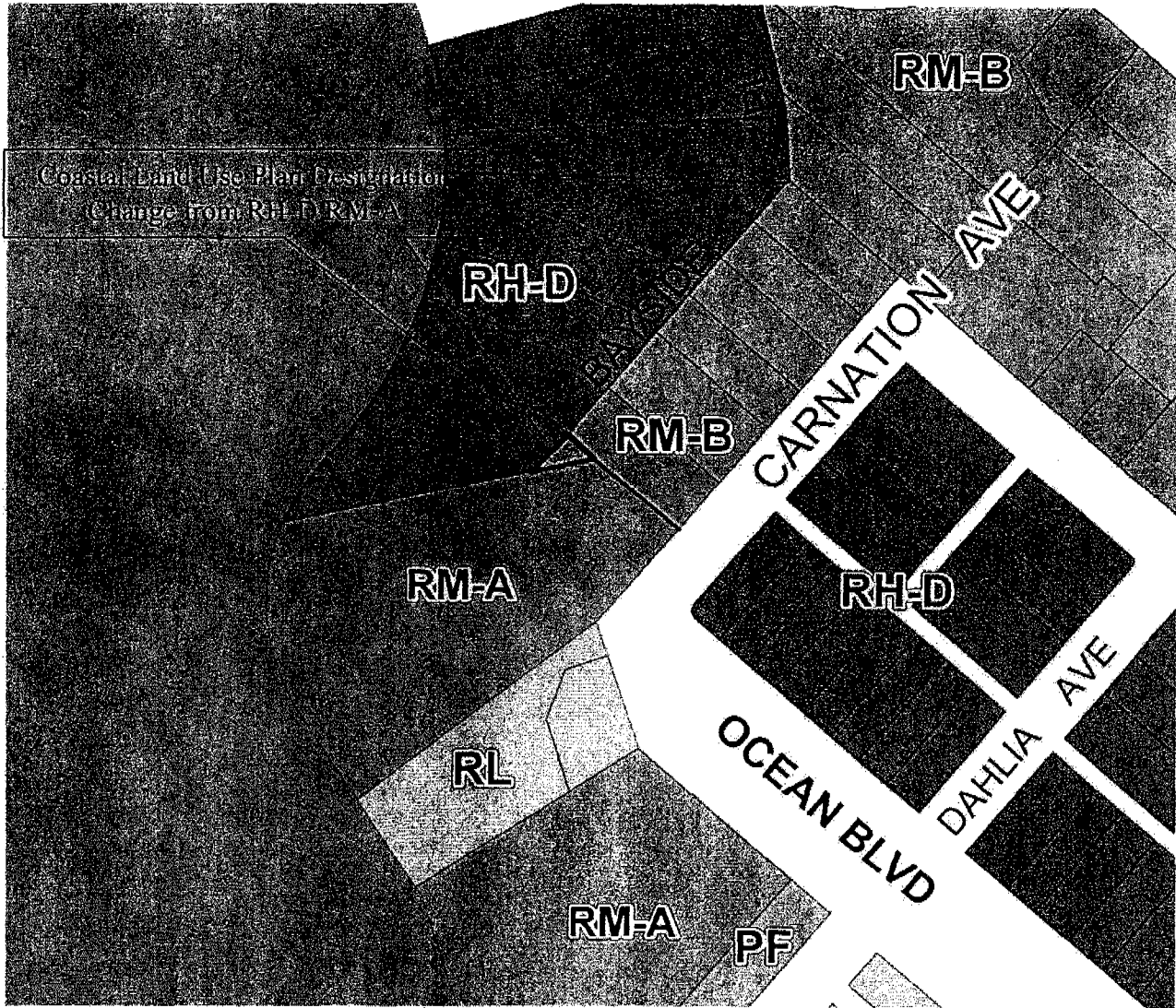
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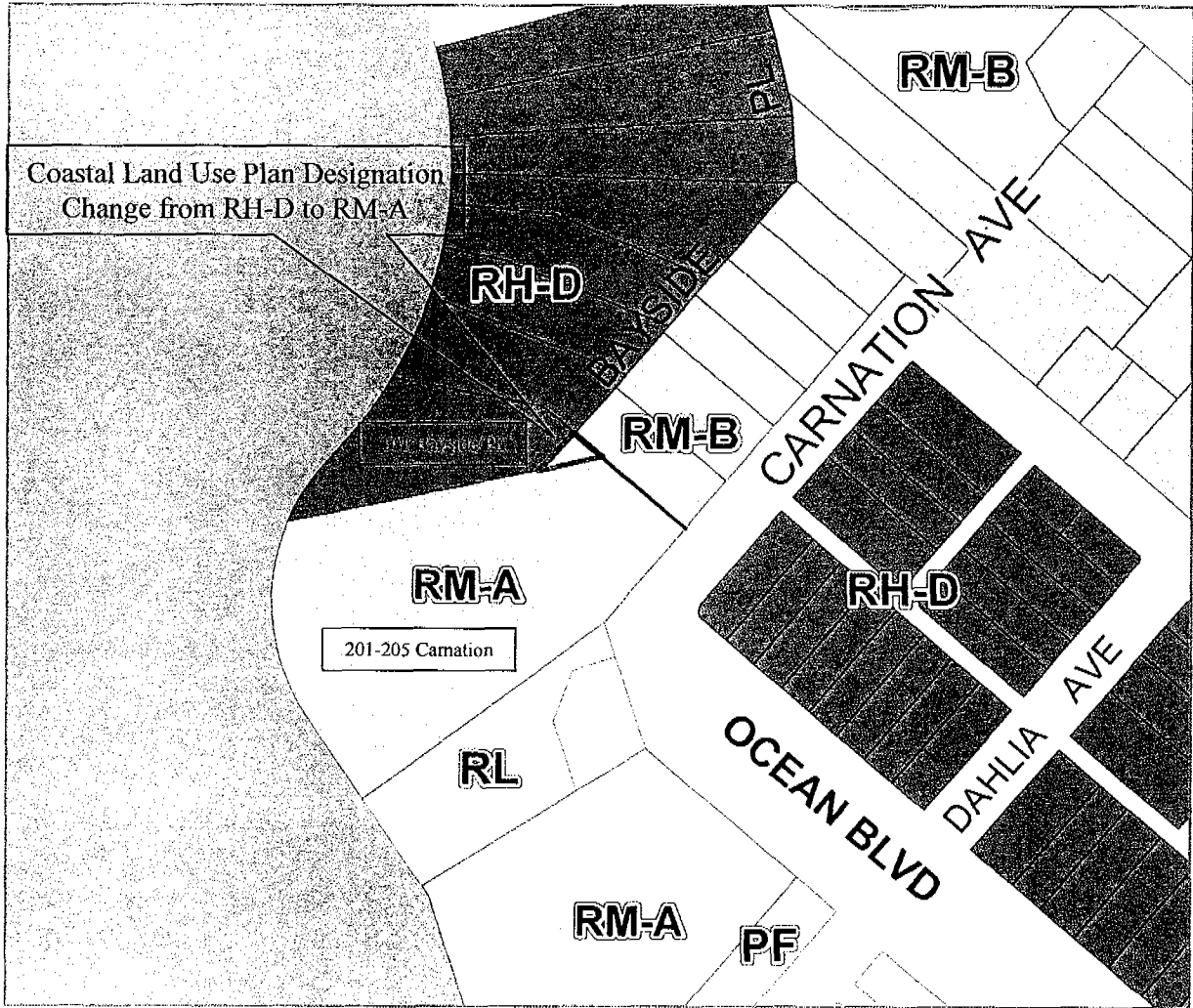
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