

CALIFORNIA COASTAL COMMISSION

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

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Staff: Liliana Roman-LB
Staff Report: March 30, 2010
Hearing Date: April 14-16, 2010
Commission Action:



Item W8a

STAFF REPORT: REGULAR CALENDAR

- APPLICATION NUMBER:** 5-09-162
- APPLICANT:** Advanced Group 99-D (a.k.a. 'AERIE')
- AGENT:** Brion Jeannette Architecture
- PROJECT LOCATION:** 201-205 Carnation Ave, 207 Carnation Ave and a portion of 101 Bayside Place, City of Newport Beach (Orange County)
- PROJECT DESCRIPTION:** Demolition of an existing 13,688 sq. ft., 4-level, 14-unit apartment while retaining an on-grade stairway on the bluff face, demolition of a 2,810 sq. ft. single-family residence and construction of a new 61,709 sq. ft., 8-unit, 32-feet tall, 6-level condominium structure including four levels above grade and two subterranean levels, 25 parking spaces and common amenities including a fitness facility, lounge, patio, locker room, massage rooms, pool and space; hardscape and landscaping improvements; grading consisting of 25,240 cu. yds. of cut; demolition of an existing 4-slip floating dock structure and replacement with a new 8-slip floating dock and guest side-tie; lot line adjustment to merge two lots and a portion of a third lot into a single 61,284 sq. ft. lot for residential purposes; and tentative tract map to combine a 584 sq. ft. portion of 101 Bayside Place with the parcels identified as 201-205 Carnation Avenue and to subdivide the air space for eight residential condominium units.

LOCAL APPROVALS RECEIVED: Environmental Impact Report (SCH2007021054) certified by the City of Newport Beach on 7/14/09; Proposed Coastal Land Use Plan Amendment (LC2005-002); Approval in Concept dated 8/12/09; Tentative Tract Map (NT2005-004/TT16882) approved 8/12/09; Newport Beach Harbor Resources Dept. Approval in Concept dated 07/31/09.

OTHER AGENCY APPROVALS RECEIVED: Regional Water Quality Control Board 401 Water Quality Certification

SUBSTANTIVE FILE DOCUMENTS: See Exhibit #13

SUMMARY OF STAFF RECOMMENDATION: Staff recommends that the Commission **deny** the proposed water-side improvements, i.e., the dock replacement system since the development results in the fill of coastal waters without adequate mitigation and the potential for cumulative adverse impacts if similar dock expansions are approved in the area. Staff recommends that the Commission **approve** the land-side improvements, i.e., demolition of existing structures, combining lots, and construction of a 8-unit condominium structure with special conditions

pertaining to: 1) Public Rights; 2) Denial of Dock Replacement; 3) Assumption of Risk, Waiver of Liability and Indemnity; 4) Construction Responsibilities and Debris Removal; 5) Permanent Drainage and Runoff Control Plan; 6) No Future Blufftop or Shoreline Protection Devices; 7) Future Improvements; 8) Landscaping; 9) Restrictions on development Within View Corridor; 10) Covenants, Conditions & Restrictions; 11) City of Newport Beach Approval; 12) Construction/Development Phasing; 13) Conformance with Construction Management Plan; 14) Pool Protection Plan; and 15) Revised Final Plans. The primary issues associated with this development are fill of coastal waters, landform alteration, visual resources, biological resources and water quality.

Concurrent with the application for CDP 5-09-162 there is an associated Land Use Plan Amendment NPB-MAJ-1-09 to change land use designation of a 584 sq. ft. portion of the parcel at 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).

LIST OF EXHIBITS:

1. Location Map
2. Assessors Parcel Map
3. Topographic Survey
4. Zoning Map/Lot Line Adjustment/Categorical Exclusion Zone
5. Project Plans (land side development)
6. Dock Plans (water side development)
7. City of Newport Beach Definition of Predominant Line of Existing Development (PLOED)
8. Public Views of the Proposed Project
9. Proposed View Corridor
10. Conceptual Grading Plan
11. Conceptual Landscape Plan
12. Tentative Tract Map for Condominium Purposes
13. List of Substantive File Documents
14. Correspondence in Support and in Opposition

Click on this link to go to the exhibits.

STAFF RECOMMENDATION:

I. Staff Recommendation of Approval in Part and Denial in Part

Staff recommends that the Commission adopt the following two-part resolution. The motion passes only by affirmative vote of a majority of the Commissioners present.

A. MOTION:

“I move that the Commission adopt the staff recommendation to approve in part and deny in part CDP No. 5-09-162, by adopting the two-part resolution set forth in the staff report.”

B. RESOLUTION

Part 1: Approval with Conditions of a Portion of the Development

The Commission hereby **GRANTS**, as conditioned, a coastal development permit for the portion of the proposed project consisting of: demolition of an existing 13,688 sq. ft., 4-level, 14-unit apartment while retaining an on-grade stairway on the bluff face, demolition of a 2,810 sq. ft. single-family residence and construction of a new 61,709 sq. ft., 8-unit, 32-foot

tall, 6-level condominium structure, 31 parking spaces, common interior amenities, hardscape and landscaping improvements; grading consisting of 25,240 cu. yds. of cut; lot line adjustment; and tentative tract map to combine a portion of 101 Bayside Place with the parcels identified as 201-205 Carnation Avenue and to subdivide the air space for eight residential condominium units; and adopts the findings set forth below, on the grounds that, as conditioned, the approved development will be in conformity with the provisions of Chapter 3 of the California Coastal Act, will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act, and will not have any significant adverse effects on the environment within the meaning of the California Environmental Quality Act.

Part 2: Denial of the Remainder of the Development

The Commission hereby **DENIES** a coastal development permit for the portion of the proposed development consisting of: demolition of an existing 4-slip floating dock structure and replacement with a new 8-slip floating dock and guest side-tie; and adopts the findings set forth below, on the grounds that the development will not be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, would prejudice the ability of the local government having jurisdiction of the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act, and would result in significant adverse effects on the environment within the meaning of the California Environmental Quality Act.

II. STANDARD CONDITIONS:

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date this permit is reported to the Commission. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

1. PUBLIC RIGHTS

The Coastal Commission's approval of this permit shall not constitute a waiver of any public rights that exist or may exist on the property. The permittee shall not use this permit as evidence of a waiver of any public rights that may exist on the property.

2. SCOPE OF APPROVAL

This coastal development permit does not authorize demolition of the existing 4-slip floating dock structure and replacement with a new 8-slip floating dock and guest side-tie as has been authorized by the City of Newport Beach. Any demolition or replacement of the existing 4-slip floating dock shall require separate review and approval by the Commission.

3. ASSUMPTION OF RISK, WAIVER OF LIABILITY AND INDEMNITY

By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from liquefaction, erosion, landslide, tidal action, flooding, and sea level rise; (ii) to assume the risks to the applicants and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

4. CONSTRUCTION BEST MANAGEMENT PRACTICES

A. The permittee shall comply with the following construction-related requirements:

- (1) No construction materials, debris, or waste shall be placed or stored where it may be subject to wave, wind, rain, or tidal erosion and dispersion;
- (2) Any and all debris resulting from construction activities shall be removed from the project site within 24 hours of completion of the project;
- (3) Construction debris and sediment shall be removed from construction areas each day that construction occurs to prevent the accumulation of sediment and other debris which may be discharged into coastal waters;
- (4) Erosion control/sedimentation Best Management Practices (BMP's) shall be used to control dust and sedimentation impacts to coastal waters during construction. BMP's shall include, but are not limited to: placement of sand bags around drainage inlets to prevent runoff/sediment transport into coastal waters; and
- (5) All construction materials, excluding lumber, shall be covered and enclosed on all sides, and as far away from a storm drain inlet and receiving waters as possible.

- B.** Best Management Practices (BMP's) designed to prevent spillage and/or runoff of construction-related materials, sediment, or contaminants associated with construction activity shall be implemented prior to the onset of such activity. Selected BMP's shall be maintained in a functional condition throughout the duration of the project. Such measures shall be used during construction:
- (1) The applicant shall ensure the proper handling, storage, and application of petroleum products and other construction materials. These shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. It shall be located as far away from the receiving waters and storm drain inlets as possible;
 - (2) The applicant shall develop and implement spill prevention and control measures;
 - (3) The applicant shall maintain and wash equipment and machinery in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems. Washout from concrete trucks shall be disposed of at a location not subject to runoff and more than 50 feet away from a stormdrain, open ditch or surface water; and
 - (4) The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during construction.

5. PERMANENT DRAINAGE AND RUNOFF CONTROL PLAN

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit to the Executive Director, two (2) copies of a final Permanent Drainage and Runoff Control Plan for the post-construction project site, prepared by a licensed civil engineer or qualified water quality professional. The Plan shall include detailed drainage and runoff control plans with supporting calculations. The plans shall incorporate Best Management Practices (BMPs) including site design, source control and treatment control measures designed to reduce, to the maximum extent practicable, the volume, velocity and pollutant load of stormwater and dry weather flows leaving the developed site. The consulting civil engineer or water quality professional shall certify in writing that the final Permanent Drainage and Runoff Control Plan is in substantial conformance with the Final Water Quality Management Plan and the Storm Water Pollution Prevention Plan and the following minimum requirements:

- a. The plan shall demonstrate the use of distributed small-scale controls or integrated Best Management Practices (BMPs) that serve to minimize alterations to the natural pre-development hydrologic characteristics and conditions of the site, and effectively address pollutants of concern.
- b. Post-development peak runoff rate and average volume from the site shall be maintained at levels similar to pre-development conditions.
- c. Selected BMPs shall consist, or primarily consist, of site design elements and/or landscape based systems or features that serve to maximize site permeability, avoid directly connected impervious area and/or retain, infiltrate, or filter runoff from rooftops, driveways and other hardscape areas, where feasible.

- d. Landscaping materials shall consist primarily of native or other low-maintenance plant selections which have low water and chemical treatment demands. An efficient irrigation system designed based on hydrozones and utilizing drip emitters or micro-sprays or other efficient design should be utilized for any landscaping requiring water application.
- e. Runoff shall be discharged from the developed site in a non-erosive manner. Energy dissipating measures shall be installed at the terminus of outflow drains where necessary. The consulting engineer shall provide plan details and cross sections for any rock rip rap and/or other energy dissipating devices or structures associated with the drainage system. The drainage plans shall specify, the location, dimensions, cubic yards of rock, etc. for the any velocity reducing structure with the supporting calculations showing the sizing requirements and how the device meets those sizing requirements. The engineer shall certify that the design of the device minimizes the amount of rock and/or other hardscape necessary to meet the sizing requirements.
- f. Post-construction structural BMPs (or suites of BMPs) shall be designed to treat, infiltrate or filter the amount of stormwater runoff produced by all storms up to and including the 85th percentile, 24-hour storm event for volume-based BMPs, and/or the 85th percentile, 1-hour storm event, with an appropriate safety factor (i.e., 2 or greater), for flow-based BMPs.
- g. All BMPs shall be operated, monitored, and maintained in accordance with manufacturer's specifications where applicable, or in accordance with well recognized technical specifications appropriate to the BMP for the life of the project and at a minimum, all structural BMPs shall be inspected, cleaned-out, and where necessary, repaired prior to the onset of the storm season (October 15th each year) and at regular intervals as necessary between October 15th and April 15th of each year. Debris and other water pollutants removed from structural BMP(s) during clean-out shall be contained and disposed of in a proper manner.
- h. For projects located on a hillside, slope, or which may otherwise be prone to instability, final drainage plans should be approved by the project consulting geotechnical engineer.
- i. Should any of the project's surface or subsurface drainage/filtration structures or other BMPs fail or result in increased erosion, the applicant/landowner or successor-in-interest shall be responsible for any necessary repairs to the drainage/filtration system or BMPs and restoration of the eroded area. Should repairs or restoration become necessary, prior to the commencement of such repair or restoration work, the applicant shall submit a repair and restoration plan to the Executive Director to determine if an amendment or new coastal development permit is required to authorize such work.
- j. The final Permanent Drainage and Runoff Control Plan shall be in conformance with the site/ development plans approved by the Coastal Commission. Any changes to the Coastal Commission approved site/development plans required by the consulting civil engineer/water quality professional or engineering geologist shall be reported to the Executive Director. No changes to the Coastal Commission approved final site/development plans shall occur without an amendment to the coastal development permit, unless the Executive Director determines that no amendment is legally required.

6. NO FUTURE BLUFFTOP OR SHORELINE PROTECTION DEVICES

- A. By acceptance of this Permit, the applicant agrees, on behalf of himself and all successors and assigns, that no bluff or shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. 5-09-162 including, but not limited to, the structure, foundations, patios, balconies and any other future improvements in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, bluff retreat, landslides, sea level rise or other natural coastal hazards in the future. By acceptance of this Permit, the applicant/landowner hereby waives, on behalf of himself and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235.
- B. By acceptance of this Permit, the applicant/landowner further agrees, on behalf of himself and all successors and assigns, that the landowner(s) shall remove the development authorized by this Permit, including the residence, foundations, patios, balconies and any other future improvements if any government agency has ordered that the structures are not to be occupied due to any of the hazards identified above. In the event that portions of the development fall to the beach before they are removed, the landowner shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.

7. FUTURE IMPROVEMENTS

This permit is only for the development described in Coastal Development Permit No. 5-09-162. Additional development, including but not limited to construction of docks, piers, gangways, residences and associated structures and landscaping shall require an amendment to Permit No. 5-09-162 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government. In addition, pursuant to Title 14 California Code of Regulations Section 13253(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(b) shall not apply to the entire parcel. Accordingly, any future improvements to the development authorized by this permit, including but not limited to repair and maintenance activities identified as requiring a permit in Public Resources Section 30610(d) and Title 14 California Code of Regulations Sections 13252(a)-(b), shall require an amendment to Permit No. 5-09-162 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

8. REVISED LANDSCAPE PLANS

- A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the review and approval of the Executive Director, two (2) full sized sets of Revised Landscape Plans that demonstrate the following:
- (1) The plan shall demonstrate that:
- (a) All landscaping shall consist of native or non-native drought tolerant non-invasive plant species. No plant species listed as problematic and/or invasive by the California Native Plant Society (<http://www.CNPS.org/>), the California Invasive Plant Council

(formerly the California Exotic Pest Plant Council) (<http://www.cal-ipc.org/>), or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a "noxious weed" by the State of California or the U.S. Federal Government shall be utilized within the property. All plants shall be low water use plants as identified by California Department of Water Resources (See: <http://www.owue.water.ca.gov/docs/wucols00.pdf>). Any existing landscaping that doesn't meet the above requirements shall be removed;

- (b) Proposed landscaping shall not adversely impact public views of the bay, beach and ocean provided through the site. All landscaping within the view corridor to the bay, beach and ocean shall be comprised of plant species with a 3' high growth maximum that, at maximum growth (width/height), do not reduce, obstruct, or in any way interfere with, public views. The required Revised Landscape Plans shall provide information regarding the maximum height and width of the proposed landscaping vegetation. Landscaping shall be trimmed/maintained such that impacts upon public views are avoided. Once planted, if the Executive Director determines that any landscaping within the view corridor to the bay, beach and ocean is causing an impact upon public views, the applicant shall replace such landscaping with different plant species that meet the requirements of this special condition, as directed by the Executive Director;
 - (c) All planting shall provide 90 percent coverage of the designated landscaped area within 90 days and shall be repeated if necessary to provide such coverage; and
 - (d) All plantings shall be maintained in good growing condition throughout the life of the project, and whenever necessary, shall be replaced with new plant materials to ensure continued compliance with the landscape plan;
- (2) The plan shall include, at a minimum, the following components:
- (a) A map showing the type, size, and location of all plant materials that will be on the developed site, the temporary irrigation system, topography of the developed site, and all other landscape features, and
 - (b) A schedule for installation of plants.

B. The permittee shall undertake development in accordance with the approved plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

9. RESTRICTIONS ON DEVELOPMENT WITHIN THE VIEW CORRIDOR

No development other than the proposed bench, water fountain and landscaping shall be sited within the proposed 44-degree wide view corridor located at the corner of Ocean Blvd. and Carnation Ave. as generally depicted in Exhibit 9 of the staff report dated March 30, 2010. The landscaped area within the view corridor shall only be planted with low-growing native or non-native drought tolerant non-invasive vegetation that does not reduce, obstruct, or in any way interfere with public views through the view corridor, consistent with the requirements of Special Condition No. 8.

10. COVENANTS, CONDITIONS AND RESTRICTIONS (CC&R'S)

- A. The applicant shall establish covenants, conditions and restrictions (CC&R's), or an equivalent thereof, for the proposed residential development to, among other things, address maintenance of the public view corridor at the corner of Ocean Blvd. and Carnation Ave and to notify present and future owners of all the requirements of this coastal development permit. The CC&R's shall reflect the following requirements of this coastal development permit: 1) The location, presence of, and requirement to maintain the 44-degree wide view corridor at the proposed viewpoint at elevation 69-feet at the corner of Carnation Ave and Ocean Blvd. as shown on Exhibit 9 of this staff report and required pursuant to Special Condition No. 8 and 9; 2) long-term maintenance of the proposed park bench and drinking fountain; 3) the presence and content of a requirement identified in **Special Condition 7** of the permit regarding the need to obtain a coastal development permit for future development; and 4) the presence and content of a requirement identified in **Special Condition 6** of the permit regarding no future blufftop and shoreline protection devices; 5) the requirements identified in **Special Condition 5** of this permit relative to the permanent drainage and runoff control plan; 6) the requirements identified in **Special Condition 14** of the permit regarding pool protection plan; (7) the requirements identified in **Special Condition 3** of this permit relative to the assumption of risk, waiver of liability and indemnity; and (8) notice pursuant to **Special Condition 1** that the Commission's approval of the proposed development does not waive any public rights that may exist on the property. The CC&Rs shall specify that any amendment to the CC&Rs affecting implementation of the requirements of this permit does not become effective until the Executive Director determines that the amendment is consistent with the Conditions of this permit.
- B. As soon as an owner's association or similar entity comprised of the individual owners of the development is created, the applicant shall transfer responsibility for the easement areas to that entity.
- C. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, and prior to recordation of any CC&R's, parcel maps or tract maps associated with the approved project, said CC&R's and Tract and parcel maps shall be submitted to the Executive Director for review and approval. The Executive Director's review shall be for the purpose of ensuring compliance with the standard and special conditions of this coastal development permit. Any CC&R's, parcel map conditions or notes, or tract map provisions which the Executive Director determines are not consistent with any of the Conditions of this permit shall be modified to be consistent with the Conditions of the permit before recordation.

D. Simultaneous with the recording of the final tract map(s) approved by the Executive Director, the permittee shall record the covenants, conditions and restrictions approved by the Executive Director, against the property.

11. CITY OF NEWPORT BEACH APPROVAL

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, applicant shall provide to the Executive Director a copy of a permit issued by the City of Newport Beach, or letter of permission, or evidence that no permit or permission is required for the proposed placement of a park bench and water fountain within the public-right-of-way at the corner of Ocean Blvd. and Carnation Avenue. The applicant shall inform the Executive Director of any changes to the project required by the City of Newport Beach. Such changes shall not be incorporated into the project until the applicant obtains a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.

12. CONSTRUCTION/DEVELOPMENT PHASING

Consistent with the applicant's proposal, construction of the view corridor access improvements depicted on the final plans approved by the Executive Director pursuant to **Special Condition 15** shall be phased so that they are open and available to the public prior to or concurrent with initial occupation of the development approved by this coastal development permit.

13. REVISED FINAL CONSTRUCTION MANAGEMENT PLAN

PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the Executive Director's review and approval, a revised Construction Management Plan (CMP) which conforms to the requirements of the special conditions of this permit including but not limited to this coastal development permit not authorizing demolition of the existing 4-slip floating dock structure and replacement with a new 8-slip floating dock and guest side-tie. The applicant shall conform to the proposed Construction Management Plan dated 3/17/09 prepared by Brion Jeannette Architecture which addresses all aspects of the project construction phase (e.g., phasing, schedule, construction equipment, parking management, traffic control, air quality control, noise suppression measures, erosion/ sediment control and water quality).

14. POOL PROTECTION PLAN

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit, for review and approval of the Executive Director, two (2) full size sets of a pool protection plan prepared by an appropriately licensed professional that incorporates mitigation of the potential for geologic instability caused by leakage from the proposed pool. The pool protection plan shall incorporate and identify on the plans the follow measures, at a minimum: 1) installation of a pool leak detection system such as, but not limited to, leak detection system/moisture sensor with alarm and/or a separate water meter for the pool which is separate from the water meter(s) for the condominium structure to allow for the monitoring of water usage for the pool, and 2) use of materials and pool design features, such as but not limited to double linings, plastic linings or specially treated cement, to be used to waterproof the undersides of the pool and spa to prevent leakage, along with information regarding the past and/or anticipated success of these materials in preventing leakage; and where feasible 3) installation of a sub drain or other equivalent drainage

system under the pool that conveys any water leakage to an appropriate drainage outlet. The applicants shall comply with the final pool plan approved by the Executive Director.

15. REVISED FINAL PROJECT PLANS

- A. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the Executive Director's review and approval, two (2) full size sets of final project plans which conform with the requirements of the special conditions of this permit and indicate the final layout of all development including but not limited to: grading, buildings, water quality management system, decks and existing docks and piers. No work to the existing docks and piers is authorized by this coastal development permit approval. The plans shall be revised to include the following:
- (a) The portion of cantilevered decks within the proposed public view corridor as identified in Exhibit 9 at the corner of Ocean Blvd. and Carnation Ave. shall be removed from the plans.
 - (b) Depiction of all existing development on the site, including the existing dock configuration as no demolition or dock structure replacement is authorized.
 - (c) Depiction of proposed park bench and drinking fountain view corridor access improvements outside of the project property line on the public-right-of-way at the corner of Ocean Blvd. and Carnation Ave.
- B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

IV. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. PROJECT LOCATION & DESCRIPTION

1. Project Location

The project site is an approximately 1.4-acre site comprised of 201-205, 207 Carnation Avenue and a portion of 101 Bayside Place in the City of Newport Beach, Orange County (Exhibit 1). The site is surrounded by residential uses, bounded to the north by existing single-family residences and Bayside Place; to the east and southeast by Carnation Avenue and existing single-family residences, to the south is the large Channel Reef condominium complex with approximately 50 units and west of the site is the main entrance to Newport Bay from the Pacific Ocean and the eastern end of Balboa Peninsula.

The site consists of a steep coastal bluff lot on the west-side of the site (adjacent to Ocean Blvd.) which is subject to tidal action with a rocky intertidal area at the base of the bluff forming a small cove beach with natural rock outcroppings; and a coastal bluff on the north-side of the site (adjacent to Carnation Ave) which is not subject to tidal action due to the presence of existing homes at the toe of the bluff. The portion of the site subject to tidal action does not currently have any shoreline protection (i.e., bulkhead, seawall, etc). The bluff top and portions of bluff face are

developed with single and multi-family residential structures both on the subject site and adjacent to the site. The site is visible from the water along Newport Harbor and from public beach areas on Balboa Peninsula across harbor. The CLUP designates the intersection of Ocean Blvd and Carnation Ave (looking from the bluff out towards the bay) as a Public View Point.

The project site consists of two parcels (201-205 Carnation Avenue & 207 Carnation Avenue), both designated as Multiple-Unit Residential (RM – 20 units/acre), and a small portion (584 sq. ft.) of a third parcel at 101 Bayside Place which is designated Two-Family Residential (R-2 – 6 to 10 units/acre) in the City's Coastal Land Use Plan. The site is between the first public road and the sea (Newport Bay). The parcel at 201-205 Carnation Ave. is currently developed with a 13,688 sq. ft. 4-storey, 14-unit apartment building, an on-grade staircase down the bluff to a private cove beach, a 4-slip dock structure that extends beyond the private property line and into Newport Bay Channel and state coastal waters. The existing and proposed residential dock development extends beyond the property line to an area that is subject to the public easement in navigable waters. The property at 207 Carnation Avenue is developed with a single family residence. The 584 sq.ft. portion of 101 Bayside Place that is being incorporated into the subject site is not developed, though the remainder of the parcel has a single family residence on it that won't be involved in the proposed project.

Upon completion of the lot consolidation, the maximum density that would be permitted on the site is nine (9) dwelling units; the applicant proposes to construct eight (8) condominium units.

2. Project Description

The proposed project consists of demolition of all existing structures, impervious surfaces and dock structure with the exception of the circa 1961 bluff staircase and construction of a 61,709 sq.ft., 6-level (four above grade and two subterranean levels), 28' tall, 8-unit condominium building and new private boat marina that will accommodate 8 boats, plus a side tie for a ninth boat. Three residential levels will be visible from Carnation Ave. above the existing street grade. Four residential levels will be visible when viewed from Newport Bay. A 3-year (32-months) construction period is anticipated for both 'water-side' improvements (i.e. dock replacement) and the 'land-side' improvements.

Proposed Land-Side Development – 8 Unit Condominium Project

Land-side development consists of a proposed 61,709 sq. ft., 6-level (four above grade and two subterranean levels), 28' tall, 8-unit condominium building with 25 parking spaces, and common indoor amenities including a fitness facility, lounge, patio, pool. Approximately 25,240 cubic yards of cut will be required for the proposed development. Three residential levels will be visible from Carnation Ave. above the existing street grade. Four residential levels will be visible when the site is viewed from Newport Bay. See Exhibit 5 for land-side project plans. Proposed landscaping consists of drought tolerant, non-invasive plant species. The coastal bluff is proposed to be restored with plants native to coastal bluff habitat (Exhibit 11). The proposed project is designed to collect surface runoff via catch basins and drain pipes directed to the subterranean parking area where runoff will be treated with a filter system prior to discharge into Newport Bay. The applicant has submitted a Water Quality Monitoring Program (WQMP) and Storm Water Pollution Prevention Plan (SWPPP).

Based on City parking requirements, the project requires 16 parking spaces for residents and 4 parking spaces for guests, for a total of 20 parking spaces. As proposed, the project provides a total of 25 off-street parking spaces, exceeding the City requirement of 2 spaces per unit. At least two parking spaces are provided and designated for each unit, eight guest spaces, one service parking space and two golf cart parking spaces and motorcycle and bicycle accommodations.

Additionally, the project would create three (3) new on-street public parking spaces as the length of the driveway curb cut will be substantially reduced.

The pattern of existing development in the area involves development on the bluff face. In recognition of this pattern, the City's Coastal Land Use Plan (CLUP) contains policies that allow for bluff face development, provided that development complies with the 'predominant line of existing development' (PLOED). The City established a predominant line of existing visible surface bluff face development (PLOED) for the site at elevation 50.7 feet (See Exhibit 7). New visible surface development on the bluff face is proposed to be two feet higher than the PLOED at elevation 52.83 feet except for a dock access/emergency access exit at elevation 40.5 feet. The natural bluff façade will be maintained below the 50.7 foot elevation. The proposed subterranean basement and sub-basement levels will grade down to the 30 foot elevation, however, a trapezoidal section of natural bluff will remain so that the lowermost exposed visible surface of the development on the bluff face will be maintained at the PLOED with the exception of a dock exit/emergency exit from the basement level at elevation 44.48. Currently, the lowermost exposed visible surface of the existing 14-unit apartment building is at elevation 42.3 feet on the bluff face (See Exhibit 7, page 2 of 2) and the lowermost exposed visible surface of the existing single-family residence is approximately at the 70-foot elevation on the bluff (per the topographic survey).

As proposed, the project would enhance scenic views to the harbor and ocean from public vantage points by expanding an existing public view corridor at the southern end of the project site and providing a public bench and drinking fountain at this view corridor and creating a new view corridor at the northern end of the project site (Exhibit 9). However, the applicant's proposal includes new balcony/decks that intrude into the proposed expanded view corridor.

Additionally, the applicant is requesting a lot line adjustment and tentative tract map to combine a 584 sq. ft. portion of 101 Bayside Place with the two lots at 201-205 Carnation Avenue and 207 Carnation Ave into a single 61,284 sq. ft. lot for residential purposes; and subdivide the air space for eight residential condominium units (Exhibit 4).

Proposed Water-Side Development – Dock Demolition and New Expanded Dock Construction

The applicant is proposing to demolish an existing 4-slip dock structure accommodating 25' long vessels and construct a new dock system with 8-slips (1 per residential unit) and 1-side tie for guests with boats. Demolition will include the complete removal of all dock floats, gangways, and piles. Six (6) steel dock guide piles will be replaced with nineteen (19) new concrete piles (10 piles 16" diameter, 9 piles 24" diameter); an existing 20-foot long gangway will be demolished and replaced in a new configuration by a 44-foot gangway. An existing 10' x 14' gangway platform will be demolished and re-constructed in the same location and configuration, including replacement of four (4) steel piles, timber framing with metal connectors and a timber deck with timber railings. The pile supported wood pier walkway between the gangway platform and an existing concrete pad will be demolished and re-constructed in-kind (timber framing, timber deck and timber railings). The concrete piles supporting the wood pier walkway would receive concrete repairs. Existing stairs and safety rails providing access down the bluff face to an existing concrete pad that connects to the wood pier is proposed to be maintained. Proposed dock plans are included as Exhibit 6.

The proposed slips would accommodate two 40' long boats, two 45' long boats, two 55' long boats, one 155' long tie dock that may accommodate two to three more boats (depending on length) and one 50' long temporary visitor guest dock. The proposed docks are within the federal Pierhead Line. The Pierhead Line is 70-80 feet from the property line and the main channel is over 500 feet wide in this area (Exhibit 1, page 3 of 3). City policy allows boats to extend beyond the Pierhead Line no farther than the beam (maximum width) of the boat. Boats docked along the outboard slip

would be restricted by the City to a maximum beam of 24 feet to ensure that no encroachment into the harbor channel lanes would occur by large vessels docked along the outer slip. The City has determined that the proposed docks will not cause an impediment to navigation in the main channel.

The proposed boat dock facility accommodating 9 boats (8 permanently berthed boats and 1 guest slip) will be larger and involve more water coverage at approximately 3,448 sq. ft. compared to the 490 sq. ft. of existing water coverage with the current 4-dock facility. The proposed new dock would cover approximately 2,958 sq. ft. more open water than the existing dock. The proposed new dock configuration would result in 13 more piles than are currently in place for a total of 19 piles.

Public Response

Staff has received numerous letters in support and in opposition to the project proposed in CDP Application 5-09-162 (See Exhibit 14) prior to finalization of the staff report.

Nine letters were received in support of the project due to these project components, in no particular order: 1) increased public view corridor and public corridor amenities (water fountain & park bench); 2) three new on-street parking spaces due to the proposed shortened driveway; 3) lower number of residential units on the site; 4) undergrounding of overhead utilities; 5) drainage/water quality improvements; 6) bluff preservation; and 7) aesthetic design.

Approximately 17 letters in opposition including a petition with over 100 signatures expressing opposition to the project in 2008 when it was reviewed by the City, due to these project components, in no particular order: 1) substantial grading of the bluff resulting in a project that does not minimize bluff alteration; 2) condominium overdevelopment; 3) noise associated with high volume of truck trips during grading and overall construction activity impacts; 4) compliance with the Certified Land Use Plan; 5) large oversized structure, not compatible in scale with adjacent single-family residences; 6) intrusion of new docks into Newport Channel; 7) visual impacts caused by the bluff development and the expanded dock; and 8) public access impacts caused by berthing vessels beyond the pierhead line.

The findings below address concerns that are within the scope of the Coastal Act. Other concerns such as noise, air quality and construction phase related truck traffic are not within the scope of the Coastal Act. The City imposed mitigation measures to minimize those impacts through measures such as a Construction Management Plan.

B. APPROVAL FINDINGS AND DECLARATIONS

1. GEOLOGY/LANDFORM ALTERATION/SHORELINE PROTECTION

Section 30235 of the Coastal Act states, in relevant part:

Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply...

Section 30251 of the Coastal Act states, in relevant part:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas...

Section 30253 of the Coastal Act states, in relevant part:

New development shall:

- (1) Minimize risks to life and property in areas of high geologic, flood and fire hazard.*
- (2) 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.*

The City of Newport Beach Certified Land Use Plan (LUP) policies regarding natural landform protection may be used for guidance, but are not the legal standard of review.

LUP 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.

LUP Policy 4.4.3-9:

Where principal structures exist on coastal bluff faces along Ocean Blvd., Carnation Ave., and Pacific Dr., 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 principal and accessory improvements. The setback shall be increased where necessary to ensure safety and stability of the development.

The site consists of a steep coastal bluff lot on the west-side of the site (Ocean Blvd.) which is subject to tidal action with a rocky intertidal area at the base of the bluff forming a small cove beach with natural rock outcroppings; and a coastal bluff on the north-side of the site (Carnation Ave) which is not subject to tidal action due to the presence of existing single family residences at the toe of the bluff. The portion of the site subject to tidal action does not currently have any shoreline protection (i.e., bulkhead, seawall, etc); however, the single-family residences at the toe of the bluff have bulkhead protection from tidal action. The bluff top and portions of bluff face are developed with single and multi-family residential structures both on the subject site and adjacent to the site. The geologic units underlying the site include artificial fill (at maximum depths of 13 feet), marine and non-marine terrace deposits (at 16-19 feet below existing grades) and bedrock from the Monterey Formation. Subsurface water was not observed on the site.

The proposed project includes 25,240 cu. yds. of cut to accommodate basement and sub-basement levels (Exhibit 10). The basement foundation requires installation of sixty (60) caissons. The caissons are comprised of 14, 36" diameter caissons along the perimeter wall facing Carnation Avenue and 46, 30" diameter caissons along the remaining three perimeter walls. The proposed subterranean sub-basement elevation is 30 feet with the lowermost exposed face of structure daylighting on the slope at approximate elevation 52.8 feet. Excavations for and construction of subterranean levels propose to leave a trapezoidal (pillar) section of intact rock as part of the

exposed bluff face to approximate elevation 52.8 feet. The bedrock present on-site is generally massive, dense and well-cemented.

Project Site Geotechnical Report

The applicant submitted a Conceptual Grading Plan Review Report prepared by Neblett & Associates, Inc. dated September 30, 2008. The geotechnical investigation consisted of the review of available geologic literature, maps, aerial photographs, geotechnical reports and other geotechnical data for the site and surrounding area; geotechnical analysis of subsurface conditions as related to slope stability, geotechnical criteria for site grading, foundation design and construction of the proposed development. The report combined the findings from earlier 2003 and 2005 Neblett & Associates preliminary geologic and geotechnical investigation for the site. The underlying geologic units at the site include artificial fill to a depth of 13 feet derived from the underlying terrace deposits which range from approximately 16-19 feet below existing site grades, followed by Monterey Formation bedrock. The bedrock present on-site is considered to be generally massive, dense and well-cemented. The prevailing strike and dip orientation of the bedrock is into slope with respect to proposed excavation cuts, and therefore favorable from a slope stability standpoint. Based on the results of stability analyses provided by the geotechnical investigation, the site is considered to be grossly stable. A 1.93 factor of safety under static conditions was computed at the toe of excavation of proposed excavation for the sub-basement level and a 3.63 factor of safety under static conditions was computed at the base of excavation.

Wave erosion along the base of the slope and lateral retreat of the bedrock seacliff was considered unlikely over the next 75 years and no faults were located on the property. The report states that due to the resistant character of the bedrock materials of the bluff face the rate of surface erosion is very slow and not a factor in bluff retreat.

The west-facing bluff is composed of bedrock bluff resistant to weathering degradation, no open fractures or adverse bedding planes were observed that would jeopardize the bluff's integrity and stability. In view of the resistant nature of the bedrock bluff the geotechnical reports conclude that the remaining trapezoidal section of bedrock on the western bluff face will have sufficient strength to remain in place during the economic life of the proposed new structure. The Commission's staff geologist reviewed the submitted geotechnical report, preliminary grading and drainage plans and agreed with the report's conclusions.

Bluff Setback - Use of Predominant Line of Existing Development

In the City of Newport Beach, the Commission typically imposes a minimum bluff edge setback of 25 feet from the edge of the bluff for primary structures on bluff top lots subject to marine erosion (e.g. the enclosed living area of residential structures). However, the Commission has used a different approach in areas like Corona del Mar where there is already development on the bluff face. Specifically, the Commission has used the City's bluff setback LUP provision to maintain an equitable approach to setback conditions that are consistent with the prevailing patterns of development in Corona del Mar and that are appropriate given the relatively stable geology of the area. In the Corona del Mar community, the City's CLUP has specific policies permitting new *bluff face* development (i.e., no bluff edge setback) on lots with pre-existing bluff face development if determined to be consistent with the predominant line of existing development (PLOED), but only when no feasible alternative exists and when designed and constructed to minimize alteration of the bluff face, to not contribute to erosion of the bluff face and to be visually compatible with the surrounding area. These setbacks are deemed acceptable within this area of Corona del Mar based on the relatively stable, underlying bedrock of the bluffs in the area. The intent of the setback is to substantially reduce the likelihood of new development from grading down further and

altering the remaining bluff face (as substantial pre-Coastal Act development on the bluff face exists in this area of Corona del Mar). Furthermore, the intent of the PLOED setback is for the protection of public coastal view resources.

Pursuant to the Certified LUP Policy 4.4.3-8, the City established a predominant line of existing bluff face development (PLOED) for the site at elevation 50.7 feet (See Exhibit 7, page 1 of 2) by taking the median elevation of seven structures along Ocean Blvd and Carnation Ave. This PLOED is for the principal structures only¹. New visible surface development on the west bluff face is proposed to be two feet higher than the PLOED at elevation 52.83 feet except for a dock access/emergency access exit at elevation 40.5 feet. The natural bluff façade will be maintained below the 50.7 foot elevation. Currently, the lowest extent of the foundation visible on the bluff surface of the existing apartment building on the west bluff is at elevation 42.3 feet (NAVD 88) on the bluff face Exhibit 7, page 2 of 2. New development on the north bluff face is proposed to daylight at elevation 53.42 feet. The lowest extent of the visible surface development on the existing single-family residence on the north bluff is approximately at elevation 70 feet. Applying a PLOED at elevation 50.7 would not result in greater landform alteration on the west bluff, but would result in more grading and greater landform alteration of the north bluff face along Carnation Ave. About 16.5 vertical feet of bluff face would be removed along the Carnation Avenue portion of the site if the project is allowed to move forward using the PLOED in this area.

Both the Coastal Act and the policies of the CLUP require that landform alteration be minimized. The intent of the CLUP policies that permit continued development on the bluff face is intended to minimize further bluff alteration than that which has already taken place pre-Coastal Act. When the Commission evaluates development that may alter landforms in this area, it considers (1) past Commission action in the area, (2) the pattern of existing development, and (3) the likely impacts to the site under the existing categorical exclusion order that currently applies to property located along Carnation Avenue.² First, the Commission has granted coastal permits for residential development along Ocean Avenue where conforming to the existing pattern of development resulted in removal of some existing bluff face (uppermost area) and was found to minimize landform alteration (e.g. 5-02-203 [Tabak], 5-05-328 [Palermo], 5-03-100-[Halfacre]) because the lower portion of the bluff was preserved. Second, the existing pattern of development is also important here. All of the properties adjacent to the site along Ocean Avenue are developed in a manner that impacted the bluff face. Moreover, the properties to the north of the site along Carnation Avenue have also all involved bluff face development. Third, under the Commission-approved categorical exclusion order, the portion of this project site that is now 207 Carnation Avenue could be re-developed with a single family residence. The lot owner would be able to develop down the bluff to 10 feet from the bayside property line, which would result in bluff face development, similar to what exists further north along Carnation Avenue. Given all these factors, the staff finds the proposed development minimizes landform alteration, is consistent with the pattern of development in the area, and would result in less impact to the bluff than could otherwise occur on the Carnation Ave portion of the site under the categorical exclusion order.

Furthermore, the Commission finds that development on the upper portion of the bluff face is appropriate in this case because, as indicated in the geotechnical report, the geologic stability of the site is adequate to support the proposed development. Applying a PLOED setback would be

¹ The City did not attempt to identify a separate PLOED for accessory development.

² 215 Carnation Avenue falls within the boundaries of the Categorical Exclusion Order E-77-5 adopted by the Commission in 1977 for the demolition and/or construction of single-family and two-family residences and their appurtenant facilities in R1 thru R-4 zones. Structures are only subject to this exclusion if they provide two parking spaces and are designed so that the gross structural area, including storage, parking and stairways does not exceed 1.5 times the buildable area on non-conforming lots (4,000 sq. ft. of less) and in areas where a majority of the lots are non-conforming.

appropriate for the proposed project considering that the proposed new structure would not daylight lower down the bluff face than the lowest point of visible development on the existing pre-Coastal Act structure on this bluff.

Development Below the PLOED

The pattern of existing development in the area involves development on the bluff face. In recognition of this pattern, the City's Coastal Land Use Plan (CLUP) contains policies that allow for bluff face development, provided that development complies with the 'predominant line of existing development' (PLOED). The City established a predominant line of existing visible surface bluff face development (PLOED) for the site at elevation 50.7 feet (See Exhibit 7). New visible surface development on the bluff face is proposed to be two feet higher than the PLOED at elevation 52.83 feet except for a dock access/emergency access exit at elevation 40.5 feet. The natural bluff façade will be maintained below the 50.7 foot elevation.

The proposed subterranean basement and sub-basement levels will grade down to the 30 foot elevation, however, a trapezoidal section of natural bluff will remain so that the lowermost exposed visible surface of the development on the bluff face will be maintained at the PLOED with the exception of a dock exit/emergency exit from the basement level at elevation 44.48 feet. Currently, the lowermost exposed visible surface of the existing 14-unit apartment building is at elevation 42.3 feet on the bluff face (See Exhibit 7, page 2 of 2) and the lowermost exposed visible surface of the existing single-family residence is approximately at the 70-foot elevation on the bluff (per the topographic survey). The proposed dock exit/emergency from the basement level at elevation 44.48 feet is not in conformance with the established PLOED at 50.7 feet elevation, per LUP policies that are intended to permit improvements on the bluff face in Corona del Mar. The location of this exit on the bluff face may be considered a minor exception as locating the exit above the PLOED would not substantially minimize visual impacts and landform alteration on this portion of the project's bluff face as the exit is being located in an areas that has already been partly graded down in conjunction with the construction of the pre-Coastal bluff face stairway and has been designed to avoid any significant visual impact associated with the dock exit/emergency exit by creating a recessed feature which the applicant characterizes as "indistinguishable" from the existing topographic character of the bluff (See Exhibit 6 page 5 of 5).

As already noted, no new interior living space is proposed seaward of the proposed PLOED. However, decks are proposed to cantilever bayward of the PLOED. No additional grading would occur because the decks would be cantilevered from the proposed condominium structure. The City did not identify a PLOED for accessory development like decks in this case. However, the applicant has pointed out that accessory development on adjacent sites is located substantially bayward of the decks which are being proposed on this site. Since the proposed decks are landward of adjacent accessory development and doesn't result in any landform alteration, the decks can be found to be consistent with the pattern of development and their construction minimizes landform alteration. However, as discussed elsewhere in these findings a portion of some of the decks does result in impacts on a public view corridor, thus, some revisions to the deck design is needed to address visual resource issues.

Furthermore, the CLUP policies are used primarily as guidance and Section 30251 of the Coastal Act establishes the legal standard of review. In this case, taking into consideration the existing pattern of development in the area, the proposed development would minimize alteration of natural landforms and would be visually compatible with the character of the surrounding area as there currently is development below the bluff edge and below the predominant line of existing development.

Future Bluff and Shoreline Protection

The west-facing bluff along Ocean Blvd. at this site is subject to tidal action. In general, bluff lots are inherently hazardous. It is the nature of bluffs to erode. Bluff failure can be episodic, and bluffs that seem stable now may not be so in the future. Section 30253 of the Coastal Act requires that new permitted development shall not require construction of protective devices that would substantially alter natural landforms along bluffs and cliffs. The proposed development could not be recommended for approval and deemed consistent with Section 30253 of the Coastal Act *if* projected bluff retreat would affect the proposed development and necessitate construction of a protection device. A protective device may be a seawall at the base of the bluff, or a rock anchor system, or shotcrete wall on the bluff face. If new development necessitates future protection, the landform and shoreline processes could be dramatically altered by the presence of the protective system. Currently, the single-family residences constructed at the toe of the north bluff (Carnation Ave. side) are protected from tidal action by bulkheads along these Bayside Place lots.

The Coastal Act limits construction of these protective devices because they have a variety of negative impacts on coastal resources including adverse affects on sand supply, public access, coastal views, natural landforms, and overall shoreline beach dynamics on and off site, ultimately resulting in the loss of beach. In addition, the construction of a shoreline protective device to protect new residential development would conflict with Section 30251 of the Coastal Act which states that permitted development shall minimize the alteration of natural land forms, including coastal bluffs which would be subject to increased erosion from such a device.

As the project proposes complete redevelopment of the site, it can only be found consistent with Section 30253 of the Coastal Act if a shoreline/bluff protective device is not expected to be needed in the future. The applicant submitted a Coastal Hazard Study prepared by GeoSoils Inc., dated October 2006 which finds the site safe from flooding, erosion damage, wave runup hazard over the next 75 years (the economic lifetime of the project). As proposed, the project will not require the construction of shoreline protection devices that would substantially alter natural landform along the bluff or the rocky outcroppings as the proposed residential structure would be located above areas subject to wave and storm surge, seiches and/or tsunamis.

Furthermore, the applicant's geotechnical consultant has indicated that the site is grossly stable, that the project should be safe for the life of the project (75 years), and therefore, that no shoreline protection devices will be needed. The Commission's staff geologist reviewed the submitted geotechnical and coastal hazard studies and agreed with their conclusions. If not for the information provided by the applicant that the site is safe for development, the Commission could not conclude that the proposed development will not in any way "require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs." The proposed development appears to be safe from erosion on the basis of available information and is therefore consistent with Coastal Act section 30253(a). Nonetheless, the project would perpetuate exposure to threats from erosion by increasing the amount of development close to the bluff. The record of coastal development permit applications and Commission actions has also shown that geologic conditions change over time and that predictions based upon the geologic sciences are inexact. Even though there is evidence that geologic conditions change, the Commission must rely upon, and hold the applicant to the geotechnical analysis they submitted, which states that the site is safe for development without the need for protective devices. To minimize the project's potential future impact on shoreline processes, **Special Condition 6** prohibits construction of any future bluff or shoreline protective device(s) such as revetments, seawalls, cliff retaining walls, shotcrete walls, and other such construction that armors or otherwise substantially alters the bluff face to protect the proposed new development if approved pursuant to this CDP in the event that the

development is threatened with damage or destruction from waves, erosion, storm conditions, bluff retreat, landslides, sea level rise or other natural coastal hazards in the future.

Commission staff has received public comments regarding the project's alteration of the bluff face, specifically commenting that the project does not minimize alteration of coastal bluffs [natural land forms] to the maximum extent feasible as required by Section 30251 of the Coastal Act. However, staff believes that as conditioned does the project conform to Sections 30251 and 30253 of the Coastal Act.

Drainage

Regarding drainage on the site, the geotechnical report concludes that the proposed development should improve site drainage. As discussed in the section on water quality, proposed site drainage measures will re-direct existing site surface drainage away from the bluff, thereby further reducing potential bluff erosion. Landscaping is proposed to be drought tolerant, native coastal bluff vegetation with no permanent irrigation system. Additionally, as the applicant is proposing a basement level swimming pool, in order to prevent possible bluff instability caused by water saturated slopes, **Special Condition 14** requires a pool leak prevention and detection system. Such pool leak prevention and detection systems are typically required where new swimming pools are proposed in conjunction with development near a bluff.

Future Development

The proposed development is located within an existing developed area and is compatible with the character and scale of the surrounding area. However, the proposed project raises concerns that future development at the project site potentially may result in a development which is not consistent with the Chapter 3 policies of the Coastal Act. In order to ensure that development on the site does not occur which could potentially adversely impact the geologic stability concerns expressed in this staff report, the Commission imposes **Special Condition 7**. This condition informs the applicant that future development at the site requires an amendment to this permit (5-09-162) or a new coastal development permit. Future development includes, but is not limited to, structural additions, accessory structures, landscaping, and fencing.

As conditioned, the project is required to prohibit construction of protective devices (such as blufftop or shoreline protective devices) in the future; and to require that the landowner and any successor-in-interest assume the risk of undertaking the development. Only as conditioned does the Commission find that the development conforms to the requirements of Section 30253 of the Coastal Act regarding the siting of development in a hazardous location.

2. SCENIC VIEWS

Section 30251 of the Coastal Act states, in relevant part:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural

land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas...

The proposed project height will be approximately 9-feet higher than the existing multi-family structure and approximately 17-feet higher than the portion of the existing single-family structure currently on the site. The proposed project, although 9-feet higher than the existing tallest structure on the site, is in compliance with the certified Newport Beach Land Use Plan 28-foot height limit for this area. The proposed development will also be consistent with the height of other structures in the area which predominantly meet the City's 28-foot height limit in the area. The proposed structure is also substantially smaller than the pre-Coastal Act Channel Reef condominium development farther south at 2525 Ocean Blvd. on a 1.21 acre bayfront lot.³ The CLUP designates the intersection of Ocean Blvd and Carnation Ave as a Public View Point. Views of the harbor and Balboa Peninsula from Carnation Avenue and Ocean Blvd. presently exist along a 25 degree wide view corridor between the site's existing apartment structure and the abutting residential structure to the south at this Public View Point.

Proposed Public View Corridor from the Project's Street-Side

Currently, there is an existing 25-degree view corridor "cone" the tip of which starts at the corner of Ocean Blvd. and Carnation Avenue and expands to the corners of the existing 14-unit apartment building structure at 207 Carnation and single-family residence at 2495 Ocean Blvd. The applicant proposes to enhance public views out to the bay by increasing the existing 25-degree view corridor "cone" to a 44-degree wide (a 76% increase) corridor "cone" the tip of which starts at the corner of Ocean Blvd. and Carnation Avenue and expands to the corner of the proposed new structure at 207 Carnation and the existing single-family residence at 2495 Ocean Blvd. The applicant also proposes providing a park bench and drinking fountain at the public viewpoint at a 69-foot elevation, landward of the project property line on the public-right-of-way adjacent to the site. However, the proposed second level balcony deck for unit #3 of the proposed 9-unit condominium structure would encroach into this expanded public view corridor.

As the CLUP designates the intersection of Ocean Blvd and Carnation Ave as a Public View Point, and the entire site is proposed for redevelopment, it is feasible to restore and enhance visual quality at this intersection. The permitted development should be sited and designed to protect views to and along the ocean and scenic coastal areas beyond (West Jetty, Balboa Peninsula). As proposed, the second floor unit #3 balcony deck at approximately a 65-foot elevation would encroach into the view corridor. Therefore, the Commission is imposing **Special Condition 8** requiring revised project plans to remove the portion of the second floor deck within the proposed 44-degree view corridor. **Special Condition 10** requires the applicant to incorporate notice of the presence of the view corridor and the need to protect it in their CC&R's. Furthermore, **Special Condition 9** requires that no development other than the proposed park bench and drinking fountain be sited within the proposed view corridor and that vegetation within the view corridor be low-growing to avoid view impacts. Furthermore, **Special Condition 10** requires the project's CC&R's to address long-term maintenance of the proposed public view corridor and amenities at the corner of Ocean Blvd. and Carnation Ave. as well as reflect all of the special conditions of this coastal development permit pertaining to the proposed view corridor (i.e., location and presence).

Views of the Site from the Water

³ The Channel Reef building has about 48 residential units, in a building with 7 floors, all above grade.

The site is located at the entrance to Newport Beach harbor along the east jetty side and is highly visible from the water and from the west jetty on the Balboa Peninsula, specifically looking inland from the West Jetty View Park.

The proposed land-side development would result in a 61,709 sq. ft., 6-level (four above grade and two subterranean levels) 28' tall condominium complex. Three residential levels will be visible from Carnation Ave. above the existing street grade. Four residential levels will be visible when viewed from Newport Bay.

The City established a predominant line of existing development at an elevation of 50.7 feet which was considered to be 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 project does not extend below the 50.7 foot elevation except where it connects with an existing access staircase on the bluff face leading down to the docks and Carnation Cove at elevation 44.48 feet. The exit below the 50.7 elevation is recessed and screened from public view. The project aims to protect public views of the bluff by not altering the bluff face below the predominant line of existing development. The applicant is also proposing a landscape plan which includes the removal of non-native invasive plants from the natural bluff and re-planting with drought-tolerant, non-invasive plant species native to coastal bluff habitat.

Commission staff received letters with concerns regarding the mass and scale of the proposed project and its conformity with community character. Visual simulations of the project provided in the EIR for the project demonstrate that the proposed development will be consistent with the pattern of existing development in the area. The area is comprised mostly of single-family residences (ranging between 2,200 sq. ft. – 5,200 sq. ft.) and 2-4 unit condominium structures (ranging between 4,000 to 8,000 sq. ft.) on Carnation Ave and Bayside Place; and the much larger pre-Coastal Act, seven-storey, 48-unit Channel Reef condominium structure on Ocean Blvd. The proposed project is significantly smaller than the Channel Reef condominiums and meets the same height restriction as the single-family residences/condominiums on Carnation Ave. Therefore, the Commission finds that the project, as conditioned, will avoid adverse impacts to public views, conforms to community character, and is consistent with Section 30251 of the Coastal Act.

3. MARINE AND LAND RESOURCES

Section 30230 of the Coastal Act states:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231 of the Coastal Act states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation,

maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Section 30240 of the Coastal Act states:

- (a) *Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.*
- (b) *Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

Sensitive Habitats and Resources

A Biological Constraints Analysis was prepared by P&D Consultants, dated June 10, 2005 documenting the biological resources on the site and a Biological Impact Report for AERIE Residential Project was prepared by ICF Jones & Stokes dated December 2008. The studies found the dominant vegetation on the site to be ornamental plant species (i.e., English ivy, sweet fennel, umbrella sedge and fan palm) and remnant southern coastal bluff scrub community on the rocky outcrop along the northern project boundary extending into Newport Bay. The coastal bluff face is densely vegetated with ornamental species and native plants (i.e., California buckwheat, coastal prickly pear, California sagebrush, bush sunflower, lemonade berry and coastal goldenbush).

No terrestrial special status plant, animal or avian species that have the potential to occur at the project site were observed to exist on the project site during the biological surveys with the exception of the federal and state designated endangered California Brown Pelican. California Brown Pelicans are commonly observed locally and have acclimated to human activities. It is found foraging in Newport Bay year-round but does not breed locally. Temporarily increased turbidity associated with pile driving for the docks (discussed in the denial section) could potentially reduce foraging opportunities; however, the available open water habitat within Newport Bay would provide alternative foraging opportunities. As California Brown Pelicans do not breed on the mainland California coast; therefore, project implementation would not have an impact on nesting or overall foraging activities. The California Least Tern may use the proposed area for foraging. However, the California Least Tern population in Newport Bay nests on a small island within the Upper Newport Bay Ecological Reserve several miles from the proposed project site. Given the distance from the nesting site and the high levels of human activity already occurring at the proposed project site, the project would not have an impact on Least Tern nesting or overall foraging activities.

Based on the above, the proposed project would not affect federally-listed endangered or threatened species, or their critical habitat.

Bluff Habitat

The applicant submitted a landscaping plan proposing to remove non-native plants (i.e. iceplant, bougainvillea, arundo, acacia, myoporum) from the coastal bluff and replant with a hydroseed method and container plantings of drought-tolerant, bluff native plant species such as coastal Manzanita, sage, California brittlebush and lupine. Temporary irrigation of the natural bluff area is proposed for the first season then discontinued.

Project Impacts on Water Quality

Proposed changes to the landward portion of the project (i.e., demolition of existing development, grading, construction of new structures, hardscape and landscaping) will result in an increase of impervious surface area causing an increase of stormwater runoff from the landward portion project site. The site is currently approximately 22% impervious and 78% pervious, post-project construction, the site will consist of approximately 28% impervious surface and 72% pervious.

Although the proposed project would result in an increase in impervious area, the project will not change the existing off-site drainage patterns. Moreover, the total discharge from the site post-construction is estimated to be 1.95 cfs or a 15% reduction in surface runoff when compared to the existing 2.31 cfs. Improvements to the storm drain system will capture more runoff and reduce sheet flows that currently directly impact Newport Bay. As proposed, new filtration measures will be added to the storm drain system to improve water quality.

To match the existing flow to the 24" drainage pipe from the proposed site, drainage from the entire site will be directed to a pump vault designed to store, treat and discharge the peak flow at a reduced discharge rate, thereby reducing the discharge from the proposed condition to that of the existing condition. The maximum pump discharge allowed for the pump would be 0.50 cfs, which is slightly less than the 0.51 cfs currently being discharged. Runoff from the site currently simply drains northerly and westerly as sheetflow to Newport Bay and southerly off the property as sheetflow to the existing catch basin located just south of the project at the corner of Carnation Ave and Ocean Blvd. The runoff is then discharged westerly to Newport Bay.

The applicant has also submitted a Storm Water Pollution Prevention Plan (SWPPP) identifying potential pollutant sources, providing selected best management practices (BMPs) and proposed site monitoring for the project's construction phase, including construction phase sediment and erosion control plans and permanent post-construction BMPs (such as storm water filters) for the protection of water quality.

As discussed in the denial section, the dock project has unmitigated fill impacts and is therefore denied by Commission. Therefore the Commission imposes **Special Condition 15** to remove the dock component from the project plans and **Special Condition 13** to remove the dock construction component from the proposed Construction Management Plan.

The applicant proposes and **Special Condition 4** requires best management practices to ensure that water quality of Newport Bay is not impacted during construction. Additionally, the applicant proposes and **Special Condition 5** require compliance with the submitted Water Quality Management Plan (WQMP) and Storm Water Pollution Prevention Plan (SWPPP) to ensure that runoff from the site is appropriately managed to avoid pollution and erosion from entering Newport Bay post project construction. The Commission finds it necessary to identify the permittee's responsibilities regarding construction and the utilization of best management practices and has conditioned the project accordingly. Therefore, only as conditioned does the Commission find that the proposed project conforms to Sections 30230 and 30231 of the Coastal Act.

4. PUBLIC ACCESS AND RECREATION

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 30212 of the Coastal Act states, in relevant part:

- (a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:[...]
(2) adequate access exists nearby, ...*

Section 30252 of the Coastal Act states:

The location and amount of new development should maintain and enhance public access to the coast by (1) facilitating the provision or extension of transit service, (2) providing commercial facilities within or adjoining residential development or in other areas that will minimize the use of coastal access roads, (3) providing nonautomobile circulation within the development, (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation, (5) assuring the potential for public transit for high intensity uses such as high-rise office buildings, and by (6) assuring that the recreational needs of new residents will not overload nearby coastal recreation areas by correlating the amount of development with local park acquisition and development plans with the provision of onsite recreational facilities to serve the new development.

The proposed project is located seaward of the first public road and within coastal waters. The subject site consists of a coastal bluff lot with a cove beach and rocky intertidal area and is currently developed with a private residential 4-slip dock structure. Direct public access from the street to the bay is not currently available on site, however, the on-site cove beach (within the adjudicated private property line) is accessible to the public from the harbor (water) side.

The nearest access to a public beach is available approximately 700 feet south of the site at China Cove Beach and also at Corona del Mar State Beach approximately 1,500 feet south of the site. Begonia Park is a local bluff top park located approximately 550 feet northeast of the site. The nearest public access to the bay for boaters is at a public launch site approximately 1,500 feet northwest of the site at the Orange County Harbor Patrol facility.

Parking

When a private development does not provide adequate on-site parking, users of that development who arrive by automobile are forced to occupy public parking used by visitors to the coastal zone. Access to the closest public beach and a local recreation park is located within walking distance from the site. Public parking for these coastal resources are on-street along Ocean Blvd. The relative proximity of these public coastal access facilities to the project site gives good reason for the need for adequate parking for private development. Insufficient parking on the project site may result in users of that development taking up spaces that the public may use to access coastal resources. Thus, all private development must provide adequate on-site parking or alternative public transportation to minimize adverse impacts on public access.

Per City requirements, an 8-unit residential project requires 16 spaces for residents and 4 spaces for guests, a total of 20 spaces. As proposed, the project provides a total of 25 off-street parking spaces, exceeding the City requirement of 2 spaces per unit. The Commission has consistently found that two parking spaces are adequate to satisfy the parking demand generated by one individual residential unit. At least two parking spaces are provided and designated for each unit, eight guest spaces, one service parking space and two golf cart parking spaces and motorcycle and bicycle accommodations. Parking areas will be located on the first and second floor and in the basement and sub-basement levels with the use of vehicle elevators. Additionally, the project

would create three (3) new on-street parking public parking spaces as the length of the driveway curb cut will be substantially reduced.

To avoid parking impacts during the project construction phase, a Construction Traffic Management and Control Plan dated March 17, 2009 was prepared by Brion Jeannette Architecture indicating that off-site parking for construction crew and shuttle service to the site will be provided and on-street construction parking would be prohibited. Construction crew would park on-site once the proposed grading and subterranean parking garages constructed. The project construction staging area will also be on-site along the Carnation Ave. frontage. Street closures are not proposed. **Special Condition 13** requires the applicant conform to the proposed Construction Traffic Management and Control Plan.

As proposed and conditioned, the development is consistent with the Commission's typically applied parking standards and would not affect the public's ability to gain access to and/or to make use of the coast and nearby recreational facilities. Therefore, the Commission finds the proposed development consistent with the public access and recreation policies of the Coastal Act.

Public Rights

The Commission is not authorizing any new development in open coastal waters that would obstruct public use of or access to those waters. The proposed dock expansion would have significantly increased the amount of surface area covered in the Newport Bay channel. **Special Condition 7** clarifies that future development, including but not limited to new development associated with the site require review by the Commission. In addition, **Special Condition 1** affirms that approval of the proposed 8-unit condominium complex on the private lot does not constitute a waiver of any public rights that exist or may exist at the site. As conditioned, the proposed development will not have any new adverse impacts on public access to the coast or to nearby recreational facilities. Thus, as conditioned, the proposed development conforms with the public access and recreation policies of the Coastal Act including Section 30210.

C. UNPERMITTED DEVELOPMENT

Development has occurred on the subject site without benefit of the required coastal development permit consisting of vegetation removal on the coastal bluff in 2008. All work occurred on the bluff face or within 50 feet of the edge of a coastal bluff. A Notice of Violation was dated March 27, 2008 was mailed to the property owner at 205 Carnation Avenue. Brion Jeannette Architecture responded with a letter dated June 17, 2008 explaining the work conducted on the bluff and a survey documenting the existing condition of the vegetation on the site. Consequently, even if it were considered to be the sort of work that is normally associated with a single-family residence, the work that was undertaken constitutes development that requires a coastal development permit.

The applicant is proposing and **Special Condition 8** requires submittal of final revised landscaping plans providing re-vegetation of the bluff face with drought tolerant, non-invasive plants native to coastal bluff habitat.

Consideration of the permit application by the Commission has been based solely on the consistency of the proposed development with the policies of Chapter 3 of the Coastal Act. The certified Laguna Beach LCP was used as guidance by the Commission in reaching its decision. Approval of this permit does not constitute a waiver of any legal action with regard to the alleged unpermitted development, nor does it constitute admission as to the legality of any development undertaken on the subject site without a coastal development permit. The Commission's enforcement division will evaluate further actions to address unpermitted development not resolved under this permit.

D. DENIAL FINDINGS AND DECLARATIONS

1. MARINE AND LAND RESOURCES

Section 30233 of the Coastal Act states in part:

(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

(2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launch areas.

(3) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.

(6) Restoration purposes.

Fill of Coastal Waters

The proposed private residential dock expansion requires the demolition of an existing 4-slip dock structure with a total of 10 support piles and construction of a new 8-slip and 1-guest tie dock requiring placement of a total of 23 concrete piles (4 piles 14" diameter, 10 piles 16" diameter, 9 piles 24" diameter) in open coastal waters.

Demolition would include the complete removal of all dock floats, gangways, and piles. The existing six (6) 14" diameter steel dock guide piles are proposed to be replaced with nineteen (19) new concrete piles (10 piles 16" diameter, 9 piles 24" diameter); an existing 4' x 20' long gangway would be demolished and replaced in a new configuration by a 6' x 44' gangway; an existing 10' x 14' gangway platform will be demolished and re-constructed in the same location and configuration and the four (4) existing 14" diameter steel piles that support the gangway platform would also be demolished and replaced in-kind. The pile supported wood pier walkway between the gangway platform and an existing concrete pad will be demolished and re-constructed in-kind (timber faming, timber deck and timber railings). The concrete piles supporting the wood pier walkway are not proposed for demolition but would receive concrete repairs. The proposed boat dock facility would accommodate 9 boats (8 permanently berthed boats and 1 guest slip) will be larger and involve more water coverage at approximately 3,448 sq. ft. compared to the 490 sq. ft. of existing water coverage with the current 4-dock facility. The proposed new dock would cover approximately 2,958 sq. ft. more open water than the existing dock and would result in 13 extra new piles than are currently in place for a total of 23 piles (for support of the docks and gangway platform).

As proposed, the project results in the total placement of 19 dock support piles into the bay floor with a cumulative surface area of approximately 39.1 sq. ft. These dock float guide piles constitute fill of open coastal waters. Under Section 30233, the proposed project must be the least environmentally damaging alternative. Alternatives to the proposed project include no project, replacement of the dock in precisely the same configuration, or a change to the existing configuration.

Under the no project alternative, the applicant could pursue simple maintenance activity of the existing 4-slip dock structure. However, simple maintenance could not feasibly repair the docks,

nor bring them up to present engineering and safety standards. Simple maintenance would only prolong the condition of the existing docks. While the rate of deterioration would be reduced, further deterioration of the docks would not be fully abated. Safe use of the facility for marine recreational purposes would be precluded without replacement of the dock system. The second alternative is for replacement of the dock system in the same size and configuration. This would result in no new fill of coastal waters and would be the least environmentally damaging alternative. The applicant proposes to demolish the existing six (6) 14" diameter steel dock guide piles and replace them with nineteen (19) new concrete piles (10 piles 16" diameter, 9 piles 24" diameter) resulting in a cumulative surface area of approximately 39.1 sq. ft. of fill in coastal waters.

Special Status Marine Species - Eelgrass

Eelgrass and *Caulerpa taxifolia* surveys are typically required when a project proposes disturbance to the bottom of a waterway (e.g. for dock replacement projects involving removal or installation of new piles). Eelgrass (*Zostera marina*) is an aquatic plant consisting of tough cellulose leaves, which grows in dense beds in shallow, subtidal or intertidal unconsolidated sediments. Eelgrass is considered worthy of protection because it functions as important habitat for a variety of fish and other wildlife, according to the Southern California Eelgrass Mitigation Policy (SCEMP) adopted by the National Marine Fisheries Service (NMFS), the U.S. Fish and Wildlife Service (USFWS), and the California Department of Fish and Game (CDFG). For instance, eelgrass beds provide areas for fish egg laying, juvenile fish rearing, and waterfowl foraging. Sensitive species, such as the California least tern, a federally listed endangered species, utilize eelgrass beds as foraging grounds. The applicant provided a Marine Biological Impact Assessment for a Dock Renovation Project in Carnation Cove prepared by Coastal Resources Management, Inc., (CRM) dated May 12, 2008 and March 4th 2009. CRM conducted a marine biological survey in Carnation Cove in March 2005 to determine the distribution and abundance of eelgrass and other marine life within the site's submerged water areas. Eelgrass survey in 2005 mapped a total of 10,155.4 sq. ft. (0.233 acre) of eelgrass and 2007 surveys mapped 10,062 sq.ft. (0.231 acres). The small eelgrass cover was associated with baywide eelgrass habitat reductions observed between 2005-2007. Exhibit 6, page 3 of 5 provides a figure showing the location of eelgrass in the project area in relation to the dock expansion project. No direct losses of eelgrass are anticipated as a result of the dock expansion project. However, the project may have potential indirect long-term eelgrass habitat losses. The total surface area of the dock structures will be 3,448 sq. ft., a small portion of the existing eelgrass bed (approximately 30 sq. ft.) will potentially be affected by shading effects from vessels docked within the slips and due to the proposed wave-attenuating concrete dock structures. The reduction of eelgrass habitat as a consequence of shading is proposed to be mitigated by an eelgrass transplant program in accordance with the Southern California Eelgrass Mitigation Policy. Replacement of the dock structure in its current configuration or a smaller dock expansion project would most likely not result in potential eelgrass habitat loss caused by shading impacts.

The placement of piles in open coastal waters for the construction of a new boating facility is an allowable use under Section 30233(a)(3) of the Coastal Act "*where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects.*" However, at this time, the applicant has not proposed mitigation measures for the fill of the bay's soft sandy bottom that would result from the placement of 19 dock support piles into the bay floor (cumulative surface area of approximately 39.1 sq. ft.).

The existing dock provides private accommodations for up to four vessels for a 14-unit apartment building, the applicant is proposing to provide one dock slip for each of the proposed 8 condominium units. The adjacent single family residences also have dock structures which provide one dock slip per residence. As such, the Commission must consider the overall cumulative fill of

coastal water impacts such dock expansion projects would have if every multi-family bayfront structure were to expand dock structures to provide a slip per unit.

As proposed, the dock expansion component of the proposed development will have an adverse impact resulting in the unmitigated fill of coastal waters. Thus, the proposed development does not conform with Coastal Act Section 30233.

E. LOCAL COASTAL PROGRAM

Coastal Act section 30604(a) states that, prior to certification of a local coastal program ("LCP"), a coastal development permit can only be issued upon a finding that the proposed development is in conformity with Chapter 3 of the Act and that the permitted development will not prejudice the ability of the local government to prepare an LCP that is in conformity with Chapter 3.

The City of Laguna Beach Local Coastal Program was certified with suggested modifications, except for the areas of deferred certification, in July 1992. In February 1993 the Commission concurred with the Executive Director's determination that the suggested modification had been properly accepted and the City assumed permit issuing authority at that time.

The subject site is located within the Three Arch Bay area of deferred certification. Certification in this area was deferred due to issues of public access arising from the locked gate nature of the community. However, as discussed above, the proposed development will not further decrease or impact public access within the existing locked gate community. Therefore the Commission finds that approval of this project, as conditioned, will not prevent the City of Laguna Beach from preparing a total Local Coastal Program for the areas of deferred certification that conforms with and is adequate to carry out the Chapter 3 policies of the Coastal Act.

F. CALIFORNIA ENVIRONMENTAL QUALITY ACT

Section 13096 of the Commission's regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The City of Newport Beach Planning Department is the lead agency for California Environmental Quality Act (CEQA) purposes. On July 14, 2009 the City Council certified the Final Environmental Impact Report and a Statement of Overriding Considerations pursuant to CEQA Guidelines Section 15126(b). The Statement of Overriding Considerations is in regard to unavoidable adverse impacts associated with noise levels during the construction phase of the proposed project. Construction phase noise will not significantly disrupt wildlife or other Coastal Act resources and therefore, the Commission does not have the authority to address it. Although the EIR found unavoidable adverse impacts due to noise levels, those impacts do not raise Coastal Act concerns.

The project consists of the demolition of an existing 13,688 sq. ft., 4-level, 14-unit apartment while retaining an on-grade stairway on the bluff face, demolition of a 2,810 sq. ft. single-family residence and construction of a new 61,709 sq. ft., 8-unit, 32-foot tall, 6-level condominium structure including four levels above grade and two subterranean levels, 31 parking spaces and common amenities including a fitness facility, lounge, patio, locker room, massage rooms, pool and space; hardscape and landscaping improvements; grading consisting of 25,240 cu. yds. of cut; demolition of an existing 4-slip floating dock structure and replacement with a new 8-slip floating

dock and guest side-tie; lot line adjustment to merge two lots and a portion of a third lot into a single 61,284 sq. ft. lot for residential purposes; and tentative tract map to combine a 584 sq. ft. portion of 101 Bayside Place with the parcels identified as 201-205 Carnation Avenue and to subdivide the air space for eight residential condominium units.

Project alternatives reviewed and considered during the EIR process included a no project alternative, a reduced intensity alternative with three single-family residential projects, a reduced intensity alternative with a 5-unit multi-family residential project, and two alternatives of an 8-unit multiple-family residential project with reduced grading as described below:

- No Project Alternative – full occupancy of existing 14-unit apartment units and single-family residence, increases long-term project-related traffic trips due to greater site density, would not result in improvement to aesthetic character of the site, eliminates construction-related impacts, eliminates grading and landform alteration, eliminates view shed impacts caused by the expanded dock project, would not result in enhanced views from the public viewpoint at the corner of Ocean Blvd. and Carnation Ave., would not result in “state of the art” energy features, water quality upgrades, catch basin improvements and undergrounding of overhead power lines.
- 3-Single-Family Residences/3-Slip Dock Replacement – results in subdivision of the existing property into three single-family lots, each residence would consist of two above-grade living levels, basement level and roof deck, maintain a PLOED at elevation 50.7 feet; still result in improvement to aesthetic character of the site construction related impacts would not be reduced, if built to max building height would not result in enhanced views from the public viewpoint at the corner of Ocean Blvd. and Carnation Ave., reduces amount of grading to 10,000 cubic yards cut, up to 75 caissons would be required, view from harbor would be of three structures at the PLOED elevation of 50.7 feet, replacement of existing 3-slip dock with a new larger 3-slip dock accommodating larger vessels would eliminate some water view shed impacts caused by a significantly expanded dock project, would not result in increased on-street parking, would not result in “state of the art” energy features, water quality upgrades, catch basin improvements and undergrounding of overhead power lines.
- 5-Unit Multiple-Family Residential Project/5-Slip Dock Expansion - elimination of sub-basement and basement levels with basically the same four above grade levels, elimination of 25 caissons below the building perimeter due to change in foundation design, meet parking requirements for 5 units but eliminates extra guest parking, elimination of 12,240 cubic yards of excavation, still result in improvement to aesthetic character of the site, still result in enhanced views from the public viewpoint at the corner of Ocean Blvd. and Carnation Ave., would not result in “state of the art” energy features, water quality upgrades, catch basin improvements and undergrounding of overhead power lines, slight reduction in construction phase impacts,
- 8-Unit Multiple-Family Residential Project with Reduced Grading/8 Slip Dock Expansion – elimination of sub-basement level, elimination of 25 caissons, would require 9,229 cubic yards less grading; perimeter walls pulled back to 50.7 PLOED, still comply with parking requirements though extra guest parking spaces eliminated; still result in improvement to aesthetic character of the site, still result in enhanced views from the public viewpoint at the corner of Ocean Blvd. and Carnation Ave., would not result in “state of the art” energy features, water quality upgrades, catch basin improvements and undergrounding of overhead power lines.

With the proposed mitigation measures and required conditions, the proposed project would have no greater coastal resource impacts than the alternatives considered.

Mitigation measures were required for approval of this CEQA document. The Coastal Commission adopts additional mitigation measures, found below, to ensure that the portion of the proposed project that it is approving will conform to the requirements of the Coastal Act. The Commission is denying changes to the existing dock structure. The proposed project is located in an urban area. All infrastructure necessary to serve the site exists in the area. As conditioned, the proposed project has been found consistent with the public access, water quality, and biological policies of the Coastal Act. Mitigation measures include: special conditions related to 1) Public Rights; 2) Denial of Dock Replacement; 3) Assumption of Risk, Waiver of Liability and Indemnity; 4) Construction Responsibilities and Debris Removal; 5) Permanent Drainage and Runoff Control Plan; 6) No Future Blufftop or Shoreline Protection Devices; 7) Future Improvements; 8) Landscaping; 9) Restrictions on development Within View Corridor; 10) Covenants, Conditions & Restrictions; 11) City of Newport Beach Approval; 12) Construction/Development Phasing; 13) Conformance with Construction Management Plan; 14) Pool Protection Plan; and 15) Revised Final Plans.

As recommended to deny the dock expansion component of the project and as conditioned, there are no feasible alternatives or additional feasible mitigation measures available which would substantially lessen any significant adverse effect, which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and is consistent with the requirements of the Coastal Act and CEQA.