CALIFORNIA COASTAL COMMISSION

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

W10b



ADDENDUM

March 8, 2011

TO: Coastal Commissioners and Interested Parties

FROM: South Coast District Staff

SUBJECT: ADDENDUM TO ITEM W10b, COASTAL COMMISSION PERMIT APPLICATION #5-10-

298 (Advanced Group 99-D) FOR THE COMMISSION MEETING OF March 9, 2011.

Revisions to Staff Report

Commission staff recommends the following revision to the language of Special Condition #14: Revised Final Project Plans clarifying the intent of the special condition. Deleted language is shown in strikethrough and new language is in **bold, underlined italic.** Staff proposes new language for Special Condition #14 on page 11 of the staff report as follows:

14. 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 revised project plans with City of Newport Beach Approval in Concept. The final revised project plans shall conform to 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) Any and all portions of the development seaward of the PLOED at elevation 50.70' (i.e., cantilevered decks, cantilevered patios and cantilevered pool areas) shall be set back behind a plane extended vertically from the PLOED.
 - (b) No grading/daylighting of structures on bluff face below and/or seaward of the PLOED at elevation 50.70'; all proposed structures, including but not limited to the pool and decks, shall be set back landward from the PLOED as necessary to avoid grading/daylighting of any structures on the bluff face below and/or seaward of the PLOED.
 - (c) Without variance, the height of the building shall not exceed the City of Newport Beach height limit of 28'/33' for the area.
 - (b) (d) Depiction of all existing development on the site, including the existing dock configuration as no demolition or dock structure replacement is authorized.
 - (c) (e) 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.

CALIFORNIA COASTAL COMMISSION

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



W10b

ADDENDUM

March 3, 2011

Click here to go to the first page of the staff report following the added correspondence.

TO: COMMISSIONERS AND INTERESTED PERSONS

FROM: South Coast District Staff

SUBJECT: ADDENDUM TO ITEM W10b, COASTAL COMMISSION PERMIT

APPLICATION #5-10-298 (Advanced Group 99-D) FOR THE COMMISSION

MEETING OF March 2011

Correspondence:

Staff received sixteen letters in support and eighteen letters including a letter signed by twenty-four residents identified as "Residents for Responsible Development" in opposition to the proposed project between February 23rd and March 3rd 2011.



RECEIVED
South Coast Region

MAR 2 - 2011

CALIFORNIA COASTAL COMMISSION 1140 S Coast Hwy 101 Encinitas, CA 92024

tel 760-942-8505 fax 760-942-8515 www.cosstlawgroup.com

March 2, 2011

Lilliana Roman South Coast District Office California Coastal Commission 200 Oceangate, 10th Floor Long Beach, CA 90802-4416

Via Email and Facsimile Lroman@coastal.ca.gov Fx: 562-590-5084

Re:

COMMUNITY OPPOSITION TO AERIE PROJECT, NEWPORT BEACH Agenda Item 10b, Application 5-10-298

Dear Ms. Roman:

Coast Law Group LLP represents the Coastal Environmental Rights Foundation ("CERF") as well as neighbors and citizens concerned with the current design of the proposed AERIE Project in Corona Del Mar. Newport Beach (the "Project"). The Project was denied by the Commission last year primarily based upon its failure to protect the seaside bluff upon which it is proposed, failure to minimize landform alteration, and because the structure's size and mass was inconsistent with the surrounding community. While the current version of the proposed Project has been nominally decreased in size, all of the prior issues remain relevant and support denial yet again.

While we continue to oppose the project, as a preliminary matter we would like to express support for staff's recommendation that: the proposed marina be denied; the Project remain above the 50.7" PLOED; and, that decks and other structures extending beyond the vertical plane of the PLOED be pulled eliminated. It is imperative that should a version of the Project be approved by the Commission, the applicant must be instructed that there would be NO allowed development below the 50.7 PLOED cutoff. This should explicitly include the swimming pool and any subsurface foundational elements (not including calssons). Revised plans should be required, with approval from the Executive Director.

We note the files of Commission staff did not appear to contain a complete set of plans and elevations for the Project, and thus it was quite difficult to discern the full extent of encroachment beyond the PLOED. This alone is reason to continue the matter and request additional documentation. Further, we noted the absence in the CCC files of any approval in concept from the City of Newport for the specific proposal before the CCC. Such documentation also supports continuance, but at the very least must be required prior to CDP issuance.

Most critical to the prior Project denial was the fact that there would be significant excavation into the very bluff the City's CLUP and the Coastal Act mandate be protected. While less than previously proposed, the current Project will result in excavation of bluff to between 20 and 24 feet below street grade. This "notch" will be substantially lower than any other property on Carnation Avenue, and is therefore quite inconsistent with the surrounding community character.

Sincerely,

COAST LAW GROUP

Marco A. Gonzalez

Attorney for CERF and Neighbors

CC:

Coastal Environmental Rights Foundation Various Commissioners

Received Mar-02-11 04:40pm

From-7609428515

To-California Coastal

Page 002

Advanced Group 99-D – Newport Beach Agenda Item 10b, Application 5-10-298 24 RESIDENTS FOR RESPONSIBLE DEVELOPMENT OPPOSED TO PROJECT

March 1, 2011

Via Facsimile: 562.590.5084
California Coastal Commission
c/o Liliana Roman
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416

RECEIVED
South Coast Region

MAR 3 - 2011

CALIFORNIA COASTAL COMMISSION

Re: Opposition to Aerie - 5-10-298

Residents for Responsible Development is a group which formed at the beginning of the Aerie project to lobby the City in an effort to protect this natural landform and to hold the City accountable for upholding the conditions of the City's Land Use Plan. The group is continuing its mission with the Coastal Commission in opposing this development. The names below are people who have asked to be included on this joint letter. All who have signed oppose the project and ask that the Coastal Commission to DENY this application.

The California Coastal Act requires new development on protected coastal bluffs to be <u>minimized</u>. Aerie proposes to replace two structures currently totaling 16,498 square feet with a massive structure more than three times larger. A 51,177 square foot development consisting of 7 condo units which average a ratio of 7,311 square feet per unit is anything but a 'minimized' development.

The Coastal Act requires new development to '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....' The latest iteration of the Aerie project still fails on all of the above requirements.

The Coastal Act also protects marine resources in Section 30230: '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.' Aerie is proposing a large marina dock system in an environmentally sensitive area with eelgrass beds and protected marine life. Additionally, the cove below Aerie is a popular recreational location for kayakers, paddle-boarders, swimmers and fishermen. All who have signed this letter also oppose the marina development and ask that the Coastal Commissioners DENY the marina as well as the land developments.

We urge you to DENY this project in its entirety. Thank you.

RFRD - See Attached List of Signatories to this Letter

Christine Vorobieff 301 Heliotrope Ave Corona del Mar, CA 92625

Pamela Lawrence 406 Jasmine Ave CdM

Michele Wilhite 322 Heliotrope Ave. Corona Del Mar, CA 92625

Michael J. Hoppe, Jr. Joan E. Hoppe 3501 Seaview Ave. Corona del Mar, CA 92625

Jane Hilgendorf 245 Heliotrope Ave. Corona del Mar, CA 92625

Andrea Hughes & Jerry Hughes **Newport Shores** Newport Beach, CA,

Patricia F. Parsons, Ph.D. 2525 Ocean Blvd. Corona del Mar, CA 92625

Ross Billings Janice Billings 314 Carnation Avenue Corona del Mar, CA 92625

Marilynn Collins 301 Carnation Avenue CdM 92625

Kathy Temple-Vrebalovich 1555 Sandcastle Dr CdM 92625

Chuck Daly Corona Del Mar, CA

Jeffrey & Marilyn Beck 303 Carnation Avenue CdM

Lisa & Joe Vallejo 2501 Ocean Blvd. Corona del Mar, CA

Kathy McIntosh 2495 Ocean Blvd CdM

Jinx & Bill Hansen 221 Goldenrod Avenue CdM, CA

Dr. Richard Kasper 3 Bordeaux **Newport Beach**

David Cord 2 Canyon Lane CdM 92625

Kent & Kathy Harvey 316 Poppy Corona del Mar

Dr. G. Wesley Hatfield 226 Jasmine Avenue Corona del Mar, CA 92625

Patricia Zorn 2525 Ocean Blvd. 3A CDM 92625

Gloria Hickman 4 Canyon Lane Corona dei Mar, CA

Joan Kaye 5 Canyon Lane Corona del Mar, CA

Tony Guanci 2525 Ocean Blvd. 6A CDM

Matthew Bush 2495 Ocean Blvd Corona del Mar, CA

Advanced Group 99-D – Newport Beach
Agenda Item 10b, Application 5-10-298
Marilyn Beck
Opposed to Project

March 2, 2011

Via Facsimile: 562-590-5084 to Staff Office Via US Mail to Coastal Commissioners

California Coastal Commission c/o Lillana Roman 200 Oceangate, 10th Floor Long Beach, CA 90802-4416 South Coast Region

MAR 3 - 2011

CALIFORNIA COASTAL COMMISSION

Dear Coastal Commission Staff and Commissioners:

t attended last year when this project came before you as at 61,709 sq feet and stated my opposition to it at the public hearing. The plans have been revised and it is before you again, now at 51,177 sq feet on 5 levels. I again wish to state my opposition to the project. Although the most egregious portions have been removed, ie the sub-basement and the car-elevators, there is still much about this proposed development that is non-compliant with the Coastal Act and with the City's LUP.

Missing Documentation:

The Applicant has submitted a set of plans with his application which appear to be more of a sales-pitch with a spin for approval rather than an open and frank record of what it is he is proposing to build. Missing from this application are elevations showing the north and west portions of the building. They appear to have been omitted because they show the sub-structure of the building and in particular the swimming pool which goes well below the 50.7′ PLOED. Only the east and south side elevations are included because these two views stay just below this line.

Staff reviewed the file and based its approval on this incomplete information. Because there are no elevations showing the pool accessory, which has a 'water line at 50.7' or the substructure of the entire project, including the caisson placement and the emergency exit, the Staff report makes an assumption about the level at which the project 'daylights'. There is no actual information on the plans to substantiate this determination. Simple math shows that the project must go further down than what has been assumed by the Staff report.

Height Limitation:

The Staff report states that the City code allows a height limit of 33'. This is incorrect. When asked about this, Jim Campbell, acting Planning Director stated that it was difficult to determine whether this roof line meets code or not. The City code has a limitation of 28' from the natural grade, which is open to interpretation. Because the roof line curves, this allows for an 'averaged' calculation. This issue should not be glossed over and the Staff report should not assume that the project meets City code on this issue. This is particularly concerning because Aerie as planned will be higher than all other properties on Carnation Avenue.

California Coastal Commissioners
Page 2

This is also not a point which should be left to the Planning Department at the City to review. The Planning Department gave approval to this project when it was first submitted at nearly 74,000 sq feet on 7 levels and allowed many code variances, including allowing a 30.5 PLOED based on the PLOED for Ocean Blvd (properties on Ocean have a curb height restriction) and a height allowance on Carnation (which has a 53.7 PLOED restriction), thus giving the project carte blanche.

Trapezoidal Bluff Stability:

This cannot be determined because no one has seen the plans which show the bluff cut out on all sides of the project. A few yards further down the Carnation bluff there was significant bluff failure during the January storms. A City sewer line broke in the process, homes were red-tagged and residents forced to leave until the line was repaired. See the attached photo. The bluff itself may be stable, but there is clearly a concern about bluff face slippage on the Carnation Bluff. These plans omit the elevations which would show the trapezoldal structure.

Non-conformance with Coastal Act Requirements:

51,177 square feet is massive for the neighborhood and for a protected coastal bluff. It is more than three times larger than the current structures on the property which together total 16,498 square feet. The project is not in keeping with the character of the neighborhood and no other condominium development anywhere in Corona del Mar has a ratio of 7,311 sq feet per unit. Most properties in the neighborhood range between 2000 and 5000 square feet. Indeed, if three 10,000 sq ft single family homes were built on the Aerie property the total square footage of development would only be 30,000 sq feet, not 51,177.

The Staff report used a pre-Coastal 1960's complex called Channel Reef as the standard for 'character of the neighborhood'. This is a poor standard of comparison. The Channel Reef building would never be allowed to be built today.

Aerie at 51,177 square feet is the largest development of any kind (residential or commercial) to be proposed in Corona del Mar since Channel Reef was built. There is nothing else to compare to it. It is completely inconsistent and out of character with the surrounding neighborhood and sets a very dangerous precedent for future developments along this bluff.

As I previously stated, Aerie rises to 33' on the Carnation side, higher than any other property on Carnation Avenue. It descends 5 levels on the harbor-facing side of the slope. The top of the bluff will be excavated to between 20 and 24 feet below the street, and lower than any other existing property on the Carnation bluff. This will result in the removal of 11,460 cubic yards of bluff. These facts are contained in the limited plans submitted. The rest is undetermined.

Based on just what the applicant submitted, this project fails to conform to the Coastal Act requirements to minimize development on a natural landform and is completely out of character with the surrounding area. It equally fails on every policy of Section 4 of the City of Newport Beach's LUP.

Marina:

Lam opposed to the marina for the same reasons I oppose the land project. It does not conform to Coastal Act policies or to the City's LUP. Aerie is proposing a large marina dock system in an environmentally sensitive area with eelgrass beds and protected marine life. Additionally, the Carnation

To: Liliana Roman Page 4 of 7 2011-03-03 00:06:08 (GMT) 15619484796 From: Jeffrey Ec.

California Coastal Commissioners
Page 3

Cove below Aerie is a popular recreational location for kayakers, paddle-boarders, swimmers and fishermen. The Marina will all but eliminate this recreational public resource.

Precedent:

At the January Coastal Commission meeting another local project came before the Commission, the Evensen project at 3225 Ocean Blvd (5-10-32). The project was denied by the Commission citing as the reasons that the project did not conform to the requirements of the Coastal Act, would set a precedent for future development and would require 'extraordinary engineering measures'. All of these same points apply to Aerie.

Conclusion:

I ask that the Commission consider all of the above concerns and make a determination that Aerie is too big, too invasive of the natural landform and overall does not comply with the standards set in the Coastal Act. Please DENY this project as proposed.

Sincerely,

Marilyn Beck

c: California Coastal Commission Staff

Marco Gonzalez, Esq

All California Coastal Commissioners & Alternatives of Record

Received Mar-02-11 05:17pm

Standards for Approval:

The California Coastal Act Article 6:

- Section 30251: '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: 'Minimization of adverse impacts' including 'destruction of the site ar
 surrounding area or in any way require the construction of protective devices that would
 substantially alter natural landforms along bluffs and cliffs.'

The Coastal Act Section 30230:

• 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.

City of Newport Beach CLUP:

- Section 4: Referring to development along the Carnation Bluff, the CLUP states "The Initial subdivision and development of these areas occurred prior to the adoption of the policies and regulations intended to protect coastal bluffs and other landforms. Development in these areas is allowed to continue on the bluff face to be consistent with the existing development pattern and to protect coastal views from the bluff top. However, development on the bluff face is controlled to minimize further alteration.
- Policy 4.4.3-8 states 'Permit such improvements only when no feasible alternative exists and when designed and constructed to minimize alteration of the bluff face... and to be visually compatible with the sucrounding area to the maximum extent feasible'.
- Policy 4.4.3-5: 'Require all new bluff top development... be set back from bluff edge in accordance with the predominant line of existing development.... this requirement shall apply to the principal structure and major accessory structures such as... pools."



Received Mar-02-11 05:17pm

From-15619484796

To-California Coastal

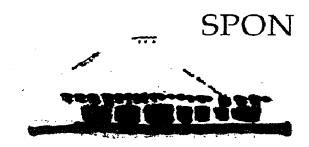
Page 006



Received Mar-02-11 05:45pm

From-15619484796

To-California Coastal



RECEIVED
South Coast Region

MAR 3 - 2011

CALIFORNIA COASTAL COMMISSION

March 2, 2011

Liliana Roman
California Coastal Commission
South Coast Area Office/Long Beach
200 Oceangate, Suite 1000
Long Beach, CA 90802

RE: Proposed Aerie Condominium Complex, Corona del Mar, CA.
Correspondence faxed to (562) 590-5084 and hard copy to follow- Please copy to staff and the members of the Coastal Commission

Honorable Commissioners:

On behalf of our organization, our community and our environment, we have reviewed the somewhat smaller April 2011 proposal and ask for you to deny this current application. We also ask that you deny the dock expansion as it makes an unprecedented expansion into Newport Bay. We are troubled by the City's Harbor Commission who wields a policy to have the staff reshape the entire findings of the Commissioners and we believe that this compromises Newport's Beach's ability to act as the Coastal Commission as is their plan with their Local Coastal Plan. The same is true of the City approving this smaller proposal. It still is in clear violation of policies that ask developers not to change bluff land forms.

The new proposal still decimates an unprecedented amount of bluff currently in view with the older present apartment. The new Aerie project always pushed their property rights over the General Plan policies to protect the bluff. The denial of the project handed down in your April 14 vote (7-5) marked the saving of an important coastal bluff and the making of a reasonable regulation that begins to address the excesses that have damaged this community.

P.O. Box 102 - Balboa island, CA 92662 - Telephone (949) 514-1686



Page 2 of 2

March 2, 2011

Liliana Roman California Coastal Commission

Please find that very little has changed and that the developer is simply shopping for the maximum development.

The best direction is that 'no loss of bluff, natural vegetation or less navigable bay leaves the developer plenty of land'- ask him to responsibly use it.

Sincerely,

Don Krotee AIA, Co Chair

Cc SPONPON Steering Committee Members, City of Newport Beach, Newport Bay Naturalists and Friends Board of Directors,

Ec John G. McClendon, Esq. Vallejo Gallery

P.O. Box 102 - Balboa Island, CA 92662 - Telaphone (949) 514-1686

Advanced Group 99-D – Newport Beach Agenda Item 10b, Application 5-10-298 William R. Hansen & Jinx L. Hansen Opposed to Project

March 2, 2011

California Coastal Commission c/o Liliana Roman South Coast Area Office/Long Beach 200 Oceangate, 10th Floor Long Beach, CA 90802

Via FAX (562) 590-5084

RE: Proposed Aerie Condominium Project

Dear Coastal Commission Staff & Commissioners:

RECEIVED South Coast Region

MAR 3 - 2011

CALIFORNIA COASTAL COMMISSION

We have reviewed the revised building plans prepared by Brion Jeannette Architecture and have met with James Campbell, Acting Planning Director, City of Newport Beach. The revised plans decrease the residential units from 8 to 7, reduce the total structure area by about 17% and reduce the proposed excavation by 55%.

However, the above grade structure area and mass are actually increased. The plan revisions simply eliminate below grade parking. Parking spaces are reduced from 33 to 18.

The revised plans are incomplete and do not contain sufficient information to determine the level of required excavation. For example, the swimming pool water surface is indicated to be at an elevation of 50.7', equating to the City designated PLOED. Clearly excavation will be significantly below the 50.7' PLOED, but cannot be determined from the revised plans. The staff report indicates the lowest level of the proposed structure to be 49.2' which appears to be in error considering the pool surface at 50.7'.

Balconies and patios are shown to cantilever beyond the vertical level of the PLOED, but dimensions are not shown on the revised plans. There will be a shadowing effect obscuring the remaining visual portion of the natural bluff; the full extent cannot be determined.

The structure size is out of character with the neighborhood and will dominate the visual orientation from Carnation Avenue, Ocean Boulevard as well as views to the Coastal Bluff from the Balboa Peninsula and Newport Harbor.

An added element of the Aerie Project is the 7 dock marina proposed to accommodate boat sizes ranging from 40' to 100' in length. The marina will block views to the natural land forms and scenic cove as well as discourage use and access to the adjacent public water area.

March 2, 2011 California Coastal Commission Proposed Aerie Condominiums Page -2-

We continue to be most concerned with the Newport Beach City Councils' disregard for the Natural Resources Element of the General Plan with specific reference to the following sections:

- NR 22 Maintain the intensity of development around Newport Bay to be consistent with the unique character and visual scale of Newport Beach.
 - NR 22.1 Regulation of Structure Mass Continue to regulate the visual and physical mass of structures consistent with the unique character and visual scale of Newport Beach.
- NR 23 Development respects natural landforms such as coastal bluffs.
 - NR 23.1 Maintenance of Natural Topography Preserve cliffs, canyons, bluffs, significant rock outcroppings, and site buildings to minimize alteration of the site's natural topography and preserve the features as a visual resource.

The mass, scale and floor area of the revised Aerie project continues to be out of character with the neighborhood. We respectfully request the Coastal Commission to deny the proposed Aerie condominiums and marina development. We believe the ultimate development of the property should be in accordance with the Coastal Act and the City's General Plan, reflecting the scale and character of the neighborhood as well as preserving the natural land form and public views.

Sincerely

William R. Hansen & Jinx L. Hansen

221 Goldenrod Avenue

Corona del Mar, CA 92625

Advanced Group 99-D - Newport Beach Agenda Item 10b, Application 5-10-298 JOANN LOMBARDO OPPOSED TO PROJECT

March 2, 2011

California Coastal Commission c/o Liliana Roman 200 Oceangate, 10th Floor Long Beach, CA 90802-4416

Re: Opposition to Aerie - 5-10-298

I am strongly opposed to the above referenced project. It proposes to cut into the natural landform of the Corona del Mar coastal bluff, forever altering a natural resource that has been in its place for millions of years. Worse yet, this project would set a dangerous precedent for future projects, threatening all our coastal bluffs with gross degradation.

The Coastal Act requires 'Protection of coastal bluff in minimizing natural land form alterations'. The re-designed Aerie project continues to maximize its development and destroys the natural land forms the Coastal Act is designed to protect.

The project applicant continues to demonstrate a disregard for the Coastal Act and the natural resources that belong to all of us in the state of California. Previously, the Commission had directed the applicant to remove the marina, the trapezoidal cut on the bluff face and to stay below the 50.7' line. This revised, "smaller" project continues to include a very large marina that does not adequately accommodate safe harbor movement and threatens the marine ecosystem. It continues to include a trapezoidal cut and to creep above the designated encroachment limit.

I urge you to deny this project, including the Marina.

Toquelon Sords

Thank you.

Joann Lombardo 2916 Clay Street

Newport Beach, CA 92663

Email: joann@jalcps.com

RECEIVED
South Coast Region

MAR 3 - 2011

CALIFORNIA COASTAL COMMISSION Advanced Group 99-D – Newport Beach Agenda Item 10b, Application 5-10-298

> Linda Martin 239 Carnation Ave. Corona del Mar, CA 92625 OPPOSED TO PROJECT

California Coastal Commission c/o Liliana Roman 200 Oceangate, 10th Floor Long Beach, CA 90802-4416

Re: Opposition to Aerie - 5-10-298

I am writing to express my opposition to the above referenced project. The California Coastal Act requires new development on protected coastal bluffs to be minimized. Aerie at 51,000 square feet consisting of 7 condo units which average a ratio of 7,311 square feet per unit is anything but a 'minimized' development. The Coastal Act requires 'Protection of coastal bluff in minimizing natural land form alterations'. The re-designed Aerie project continues to maximize its development and destroys the natural land forms the Coastal Act is designed to protect.

I urge you to deny this project, including the Marina.

Thank you.

Linda Martin 239 Carnation Ave. Corona del Mar, CA 92625 March 2, 2011

RECEIVED
South Coast Region

MAR 2 - 2011

California Coastal Commission Attention: Liliana Roman 200 Oceangate, 10th Floor Long Beach, California 90802-4416

CALIFORNIA COASTAL COMMISSION

Re: Aerie, Agenda item 10b
Application number 5-10-298

Kathleen McIntosh OPPOSED

Regarding the application for the re-designed 51,177 sq ft., 7 unit Aerie Condominium project I would like to address several issues.

The first issue is the fact that a complete set plans showing all elevations, grading, pool design, excavation, exact height, and numerous other details has not been provided to the City of Newport Beach, the California Coastal Commission or the concerned public which would seem to make this application and its review before the Coastal Commission invalid now or at any time prior to a complete set of plans being made available to all governing bodies and the public.

The second issue would be the inconsistency in the Aerie Plans regarding the lot size breakdown per application Title Sheet (T1) of plans created by Brion Jeanette stamped 12/21/10 requesting buildable floor area of 51,177 sq. ft.

Lot Size: 61,284 sq.ft.
Submerged Area 20,413 sq.ft.
Slope greater than 50% 11,926 sq.ft.

Far 1.5
Max Livable: 75,565 sq.ft.

Building floor area requested 51,177 sq.ft.

By my math calculations the usable lot is: 61,284 sq.ft.

Minus Submerged Area (20,413 sq.ft.)

Minus Slope greater than 50% (11,926 sq.ft.)

For a total of Times 1.5 FAR Of Total Usable Floor Area. 28,945 sq.ft. 43,418 sq.ft.

This number is 12.77% less than the total square feet of the proposed project. In other words, the developer has stated that the is allowed to build 74% more than he is allowed based upon his usable land, and he is requesting 14% more Floor Area than allowed.

Application for Coastal Development Permit, Section II, Item 3 shows a 8,570sq.ft. parking deduction, 42,607 sq.ft. gross floor area (less parking). Plan Title sheet shows 1,400 sq.ft. of parking deduction, 49,777 sq.ft. floor area (less parking). These figures seem to represent a missing 7,170 sq.ft. of space which is the equivalent of one and a half more units of development. This is another of the many inconsistencies with this application.

While it would appear that the developer is greatly reducing the size of his new redesigned structure from his original application to the City of Newport Beach for a 9 unit, condominium project of over 73,000 sq.ft. of floor area. I believe that this application is still over the allowable limit and would hope that the applicant will continue to redesign down to the allowable usable floor area as suggested by the Newport Beach Planning Department after the first application.

I guess that it is a common practice for developers to over scale projects and request more square footage than is allowable hoping that what subsequently appears to be a drastic reduction in the size and scale of the project, when requested by governing agencies to conform to local regulations, often results in the developer getting more than what should lawfully be allowed.

The third issue addresses the project construction cost on the CCC application of \$18,500,000.00 and related questions regarding these figures.

If the removal of 11,460 cubic yards of material is accurate that would mean 1,274 truck loads to Brea. Based on a figure of \$375/load dump fee for good usable soil versus rock, which is what will be removed from the site that would be approximately \$477,750.00. The rock, which is what makes up the majority of the Bluff will cost significantly more. This figure does not include the cost of excavation, grading or transportation to Brea.

The cost of construction less dump fees is then \$18,022,250/51,177 sq.ft. or approximately \$352.16/square foot which is roughly ½ (one half) of what a custom home costs to build. Aerie will have to have its units 100% finished out prior to building permit final inspection/sign off/cert of occupancy. Aerie units cannot be turned over to owners in a "cold shell" or unfinished form, which will greatly escalate project costs.

Additionally the cost of the proposed Marina and pool are unknowns. Are these costs included in the \$18,500,000.00. Is the project cost estimate derived from construction documents or just a "best guess" estimate at this time. Actual cost of construction plus land purchase price will likely make this project economically unfeasible.

If the development entity goes bankrupt during the course of construction the Bluff along Carnation Avenue may have an open wound in its face that bleeds mud, dirt, debris and other runoff into one of the cleanest area of Newport Harbor for years. Bluff failure along Carnation Avenue earlier this year would have resulted in debris and sewage flowing into Newport Harbor had this not occurred above Baysidé Cove verses the bay which this project will be above.

The fourth issue is the Marina. The proposed Marina is still wrong for this location and it my sincere hope that you on the Coastal Commission will follow the Staff recommendation and deny it. Please do not allow this area of the bay to be devastated by the construction of a Marina this size. The scenic visual quality of this important rock outcropping and natural bay will be forever ruined and rendered unusable to the general public who have enjoyed this area for kayaking, boating, swimming and beaching since the first days of Newport Beach There is a reason that all the homes on either side of the bay in this section of the Harbor have smaller docks and that the majority of boats on both sides in this arm of the Harbor are moved to other locations during the winter storm surge period. This year several boats and docks were uprooted by surge and broken up into other parts of the Harbor.

The proposed dock extends to the outer limit of the pierhead and will be capable of berthing at least a 100' yacht with a beam of 24' or more into public right of way in one of the narrowest parts of the Harbor. The guest/transient area is capable of accommodating at least 4 more boats, which will most likely become permanent fixtures for most of the year.

Please see attached dock proposal. Last year we saw the largest return of White Egrets—with more than 20 chicks in and on the rock outcropping the entire spring and summer. They are still spending time there.

I know that others will address the fact that the proposed project continues to be designed below the PLOED of 50.7'. The 50.7' PLOED for this project should be 53.7' as it is for other properties along Carnation Avenue but an "error" made by one of the planning staff caused some confusion and the 50.7' PLOED was then gifted to the applicant by the City. Please do not make another mistake and give away more of this Protected Coastal Bluff.

The encroachment of the proposed balconies beyond the PLOED is evident and cannot go unaddressed. The Staff report of the CCC recommended that the cantilevered balconies on the waterside of the proposed project be held back behind the PLOED of 50.7' and it appears that this has once again been ignored.

We all look forward to the reasonable redevelopment of this property with a project that is that is held to the same standards that property owners along the bluff side of Carnation Avenue and the waterside of Ocean Boulevard have been held to in the past.

Please deny application 5-10-298 at this time.

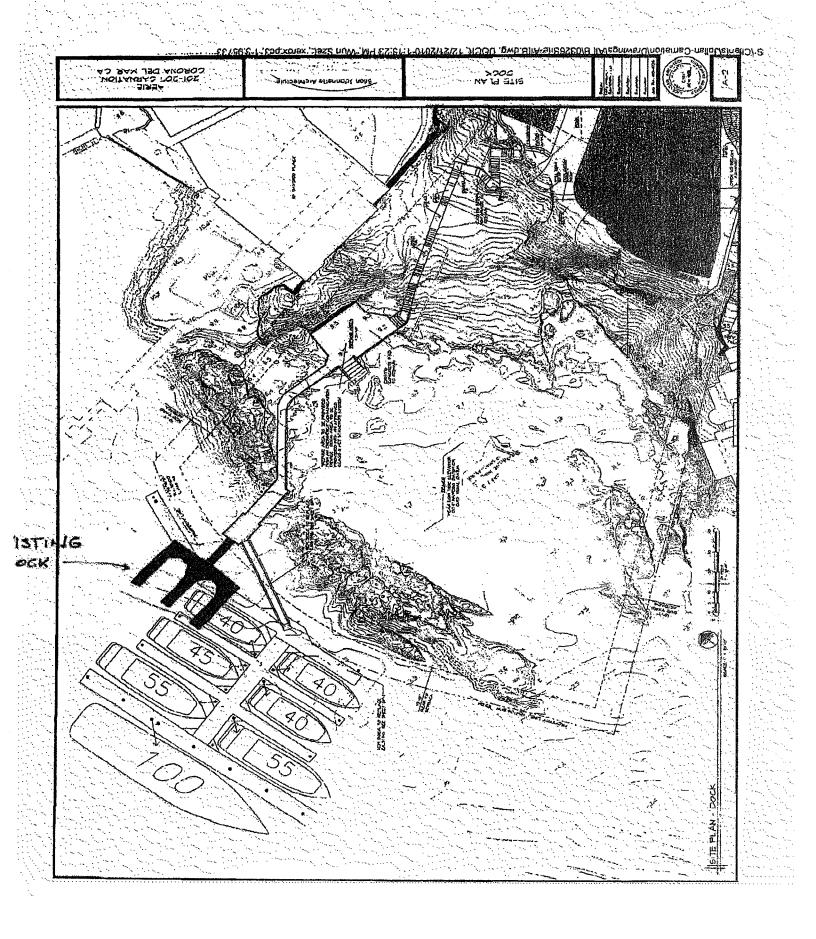
Thank you for your time and consideration.

Kattun MC Jutal

Kathleen McIntosh

2495 Ocean Blvd.

Corona del Mar, California 92625



March 2, 2011

Via facsimile: 562-590-5084 Via US Mail to Coastal Commissions

California Coastal Commission c/o Liliana Roman 200 Oceangate, 10th Floor Long Beach, CA 90802-4416

RE: Opposition to Aerie Permit Number: 5-10-298

Dear Coastal Commission staff and Commissioners.

Advanced Group 99-D- Newport Beach Agenda Item 10b, Application 5-10-298 Joe and Lisa Vallejo Opposed to project

RECEIVEDSouth Coast Region

MAR 3 - 2011

CALIFORNIA COASTAL COMMISSION

We are writing to express our opposition to the proposed Aerie condominium complex. We do not believe that the project is substantially changed from April 2010 when it was denied by the Commission, or from the project that was re-submitted but denied for a rehearing after the April denial.

The project is still in violation of the Coastal Act 30251, and will set a terrible precedent for the rest of the Carnation Ave. bluff and other coastal bluffs in California.

1. 1. The project is 51, 177 sq ft with 5 levels and still goes below the 50.7' PLOED given to the applicant by the City of Newport Beach. (The existing apartment building is 16,489 and with 2 levels, not 4 per the CCC notice). It is not substantially different from the earlier project that was 61,709 sq ft in that it is a massive structure that still requires extensive excavation of 11, 460 cu yds of a protected coastal bluff. The plans that the CCC staff based their recommendation of approval of the land portion of the project on are incomplete, and do not show the true amount of excavation or elevations, including below the pool, which is stated to go down to at least 44' or below, or elevations for the north and east portion of the building foundation. But the fact that the project was previously denied primarily for violating the Coastal Act 30251 through excavation and destruction of a protected coastal bluff, and damage or failure to the bluff face would still apply, and if approved, would set a lower, more dangerous PLOED for the rest of the Carnation bluff, and thus setting a terrible new precedent.

In past Newport Beach City Council meetings on this project we employed expert geologists to report and give testimony regarding the potential for bluff face failure caused by the excavation. This included Todd Porterfield from the Moote Group, and David H. Lee and Associates. Well-known Urban Planner and author John Martin also made a presentation. Jim Campbell, planning staff from Newport Beach neglected to mention these reports or testimony when directly asked by the Commission at the April meeting if he had any reason or knowledge to think the bluff face could fail. The project architect was discussing how well he can repair a

Mar 02 11 04:56p

damaged or destroyed bluff to look like a natural bluff using fake rock when the Commission asked if Mr.Campbell's opinion on this, and whether he had additional information.

It is easy to have experts rebut each other's expert opinions, but we hope you will choose to expert on the side of caution in your decision. As stated at that April meeting by one of the Commissioners, once the natural landform or bluff is damaged or destroyed, it is too late.

2. The project is in violation of many CLUP policies, and importantly policy 4.4.2-2 "Continue to regulate the visual and physical mass of structures consistent with the character and visual scale of Newport Beach".

This condominium complex is still massive at 51,177 sq ft on a 61,000 sq ft coastal bluff location where 66% is either submerged land or unbuildable slope.

To compare what 51,177 sq ft looks like, the White House is 55,000 sq ft, and the Spelling mansion is 56,500 on 5 acres.

Newport Beach and the beach community of Corona del Mar is made up of primarily single family homes and small condos. When the square footage of all of the properties on Carnation bluff is added together, it is still less than the proposed Aeric project!

3. We agree with CCC staff on condition 14, in which the cantilevered decks and pool be brought in to the vertical 50.7' PLOED. With such large decks and patios ranging from 10-14 feet, it would visually cover the natural bluff and block scenic views to and from the harbor and coastline.

From staff report: "This chart demonstrates that removing deck area located seaward of the PLOED addresses visual

impacts while retaining adequate deck and patio area for each unit. The Commission imposes

Special Condition 14 requiring all accessory structures (i.e., cantilevered decks, patio, pool)

placed behind a plane extended vertically from the 50.7' elevation, the agreed upon PLOED,

order to reduce the visual impact of cantilevered development over the coastal bluff."

4. We support staffs denial of the proposed marina and hope that you will deny this marina as it violates the Coastal Act, and would compromise the scenic and visual qualities of this coastal area of public importance.

Carnation Cove and its small beach are used by the public for recreation and should remain accessible to the public. The proposed marina would make it appear private. There is also a fishing spot for small boats in this area.

The cove is a thriving and protected marine habitat, and the historic rock outcroppings of Carnation Cove are considered a natural marine relic that would be obscured from public view with the proposed 7 boat slips and tie-up that could also accommodate 4 more boats.

Additionally, a marina in this narrow part of the harbor would negatively impact and change how boaters use the harbor. This could affect general use of the harbor as well as the Newport Beach Christmas Boat Parade, and with so many slips, including for a 100' vessel, it would cover and protrude into what is now free water. If approved it would also open the door for others to build large marinas further out into the harbor, even though this is a known and dangerous are subject to storm surge.

Please continue your valuable work as custodians of our coastal bluffs and DENY this project as proposed.

Sincerely,

Joe and Lisa Vallejo 2501 Ocean Blvd.

Corona del Mar, CA 92625

RECEIVEDSouth Coast Region

MAR 1 - 2011

CALIFORNIA COASTAL COMMISSION Advanced Group 99-D - Newport Beach Agenda Item 10b, Application 5-10-298 Barbara Power OPPOSED TO PROJECT

California Coastal Commission c/o Liliana Roman 200 Oceangate, 10th Floor Long Beach, CA 90802-4416

Re: Opposition to Aerie - 5-10-298

I am writing to express my opposition to the above referenced project. The California Coastal Act requires new development on protected coastal bluffs to be minimized. Aerie at 51,000 square feet consisting of 7 condo units which average a ratio of 7,311 square feet per unit is anything but a 'minimized' development. The Coastal Act requires 'Protection of coastal bluff in minimizing natural land form alterations'. The re-designed Aerie project continues to maximize its development and destroys the natural land forms the Coastal Act is designed to protect.

Lurge you to deny this project, including the Marina.

Thank you.

Barbara Power 300 Heliotrope Ave Carona del Mar, Ca .92625

RECEIVED 525 Octon Wind South Coast Region 2525 Octon Wind Patricia V. Zorn FB 2 8 2011 Carma del Mai, Ca COASTAL COMMISSION 949-673-1550 Dear Coastal Commission Hardon the fact In not Computar trained. This regards sermit number 5-10-,298, Sunday's Plat had an article regarding this permit. No mention was made about the size of slips In your letter of February 18 you mention dache and 7 sleps his not size of slips Ine dured and sailed small forts and a 46 ft Coursing Cutter. To head ate the wind tetake, dawn the main you need space. at law tike the space is limited, and needed to operate. I've auxed since 1971 à condoat over Channel Reef. Dur sliges un 35' long. Sence the 1920's my family ouried in the pensieva. I know the Bay - a treing. a 98 year ned native Colofinación



MAR 2 - 2011

Agenda Item No.: W10b Application No.: 5-10-298 William & Sandra Beckman OPPOSED

Ms. Lilliana Roman Coastal Program Analyst

CALIFORNIA COASTAL COMMISSION

Dear Ms Roman;

Please provide copies of this letter to the California Coastal Commissioner's preparing to consider the application for the revised, proposed Aerie Condominium Project Complex here in Corona Del Mar, CA, that is scheduled to go before the California Coastal Commission on March 9, 2011.

At the May 21, 2009 Newport Beach, CA Planning Commission meeting and again at Newport Beach Planning Commission Public Hearing on June 4, 2009 several alternatives for the Aerie Project were presented, including one with 8 smaller units (Alternate 8A - having gross square footage of 6,303 square feet per unit). Now this proposed Aerie Complex plan under Agenda Item No. W10b has 7 units with 7,311 square feet per unit !!!!!

At the Newport Beach City Council Meeting on July 22, 2009 we heard details about the Environmental Impact Report (EIR) for the proposed Aerie Project, that emphasized then that the Project (even Alternate A) is too big for the property at 201-205 & 207 Camation Avenue here in Corona Del Mar. This proposed complex under Agenda Item No. W10b to now create 7 residential units in 51,177square feet far exceeds the size of the Newport Beach Older Adult Social & Information Services (OASIS) Center rebuilt (36,500 square feet) and recently reopened, and approaches the size of the new Newport Beach City Hall presently under construction.

In April 2010 at the Coastal Commission hearing on the proposed Aerie Project, several Commissioners expressed concern over the excavation of the coastal bluff, and the Commission did not approve the Aerie Project, apparently for some of the following reasons.

- 1) The proposed Aerie Complex does not conform to the Coastal Land Use Plan to minimize alterations to the Coastal Bluffs here in Corona Del Mar, even though the Newport Beach Planning Commission, Planning Department and Newport Beach City Council (split vote decision) approve. The commissioners expressed concern over the excavation of the coastal bluff; essentially taking out the whole inside of the bluff at that location, requiring excavation of over 25,000 thousand cubic yards of sandstone and dirt underlying the bluff. This concern supposedly was minimized in the Environmental Impact Report (EIR).
- 2) Now under this revised proposal, the Aerie Project still continues to require excavation of gross amounts of the bluff site (now 11,460 cubic yards of the sandstone and dirt).
- 3) The proposed Aerie Complex does not conform to the City of Newport Beach's General Plan, its Land Use Policies, or the California Coastal Act which promise to protect our scenic and visual resources, even though the Newport Beach Planning Commission, Planning Department and Newport Beach City Council (split vote decision) approve.

Other bluff locations within 600 feet of the proposed Aerie Project (West side of intersection of Ocean Blvd. & Femleaf Avenue) show evidence of bluff runoff impact, which the Newport Beach Public Works Dept. is having to maintain on a temporary basis. And the heavy trucks hauling dirt and rock from the proposed Aerie Project will pass over that intersection as they proceed away from the Aerie site.

The proposed Complex does not conform to the size of other residences in this part of Corona Del Mar on Camation Avenue and other residences on nearby streets, even the though the Newport Beach Planning Commission, Planning Department and City Council for strange reasons seem to disagree with this or are unwilling to accept the fact that there few homes in Corona Del Mar of 7,311 square feet (51,177sq. ft. divided by 7 units).

Agenda Item No.: W10b Application No.: 5-10-298 William & Sandra Beckman OPPOSED

The construction of the proposed Complex will have a severe impact on those of us who live in Corona Del Mar between the only two streets to this site from Pacific Coast Highway. These are Ocean Boulevard and Seaview Avenue. The Architect, the Planning Commission, the Planning Department and the Newport Beach City Council (split vote decision) minimize these impacts to residents of Corona Del Mar.

The Architect/builders in their Construction Management Plan (CMP) have indicated that in order to achieve this gross size for the proposed Aerie Complex, they would have to excavate more than 25,000 cubic yards of dirt (and rocks) — now 11,460 cubic yards from the site to make room for the Complex' garage and lower Condo Unit. This will require at least 2,000 heavy truck loads of material be hauled out on Ocean Boulevard to the Pacific Coast Highway (then off 40 miles to the Brea/Olinda Landfill). Then over 800 heavy cement trucks will be hauling cement into the site on Seaview Avenue, over a period of twenty four (24) months on this narrow street.

The architect advised in his CMP, a truck can be loaded every 15 minutes, within each 8 hour work-day (7AM to 4PM). Thus there will be time to pack 32 truck loads each day. The Brea/Olinda Landfill is approximately 40 miles on freeways. We have traveled the proposed route and analyzed the minimum time required for a truck to make this trip to be one hour (60 Minutes), if there are no traffic jams on any of the Freeways involved. Round trip to Brea and return to Corona Del Mar thus will take two hours minimum.

The Architect advised that only 27 or 28 truck loads per day would be necessary to excavate to the depths he envisioned for the Project. After reviewing his CMP, we found that this number of heavy trucks loads will have to be close to 32 truck loads each work-day (7AM to 4PM) to move the 25,000 cubic yards of material. Apparently the Architect figured the average number based upon calendar days, rather than the 5-day workweek he proposed. This Phase 1 will also have to include the 60 loads of existing building debris/demolition material to be removed.

Per the CMP during this Phase I of the project, over 190 heavy cement trucks will be coming in on Seaview Avenue to the Aerie site to build the Caissons required to hold the building on the site. So there will be at least 2355 heavy truck loads to be moved in and out of Corona Del Mar on Seaview Avenue and Ocean Boulevard during the 126 day Phase 1 period from for the proposed project start date (was July 16, 2010 to January 10, 2011), resulting in an average of 18.7 heavy trucks per day proceeding through these narrow streets.

Even though the Draft EIR stated there would be <u>a</u> flag person on Camation Avenue so no trucks would queue on Camation Avenue, nothing is stated about the traffic interference and constant truck noise while trucks are sitting on Seaview Avenue, after their return from Brea/Olinda.

As shown on the CMP the combined Phase II and Phase III activities of the proposed Aerie Project (was during the period from 11 January, 2011 through September 12, 2011), there will be another 622 heavy loads of cement to be delivered to the site via Seaview Avenue, at a rate of 20 loads per work day, during Pour Events occurring for 3 to 5 work days for each Pour Event. And this doesn't take into account the trucks hauling in construction material for the building. Assume 6 day work weeks for these truck activities. Thus for nearly 42 weeks (3½ years) we will be subjected to persistent truck noise and movement on Ocean Boulevard and Seaview Avenue. Our home (for 33 years) is 100 feet from Ocean Boulevard (where the heavily loaded dirt trucks will traverse) and 150 feet from Seaview Avenue (where the heavily loaded cements trucks will traverse) and thus we will be subjected to this constant loud truck noise and traffic from early in the morning throughout the day for 3 ½ years!!!!!.

This is certainly a serious impact to those of us living here in Corona Del Mar while these heavy trucks are moving in and waiting to load on Seaview Avenue and moving out on Ocean Boulevard. This will severelly impact all residents living on the following streets in Corona Del Mar: Seaview Avenue, Ocean Boulevard, Camation Avenue, Dahlia Avenue, Femleaf Avenue, Goldenrod Avenue, Heliotrope Avenue, Iris Avenue, Jasmine Avenue, Larkspur Avenue and to Marguente Avenue (which is the only entrance or exit to Pacific Coast Highway from this part of Corona Del Mar) for the trucks.

1

Agenda Item No.: W10b Application No.: 5-10-298 William & Sandra Beckman OPPOSED

There are approximately 250 single family residences, 75 duplex residences and 10 apartment buildings in this group of Corona Del Mar homes – probably averaging 2-3 persons per unit/residence, totaling more than 750 people that will be severely impacted for 3 ½ years by construction of this oversized Aerie Complex..!!! Also impacted will be many other residents of Corona Del Mar, Newport Beach and Orange County.

This construction project will have a critical safety impact on beach visitors trying to reach or exit the Corona Del Mar State Beaches, with traffic backups on Marguerite Avenue and Pacific Coast Highway that we already experience every day. The entrance to the Corona Del Mar State Beaches on Ocean Boulevard is only 2 blocks from the traffic light at Pacific Coast Highway. That traffic signal at the Pacific Coast Highway (Route No. 1) permits left turns from the Beaches no more often then once every 2 ½ minutes. Typically five autos make each cycle on left turn to Pacific Coast Highway from Marguerite Avenue. And these heavy truck trips will incur dangers to pedestrian traffic crossing Pacific Coast Highway there as they walk to the beaches or are shopping in Corona Del Mar Village.

Further dangers will occur at the Goldenrod Avenue Footbridge and trucks traversing Seaview Avenue, for families walking to and from the beaches and to their homes in Corona Del Mar!!!!

If this proposed Complex is to be approved, the builder/contractors should be required to find an alternate method of moving the dirt (and rock), such as by loading it onto a sea-going barge in the Newport Harbor channel below the site. The builder/contractor should be required to find an alternate method of transporting cement to the site for the Caissons required for the site, such as having them poured at a remote site and transported via sea-going vessels, and unloaded and installed from the Newport Harbor channel below the site.

And furthermore the CMP does not indicate any activities that will require access to the Carnation Avenue site for building the associated Aerie boat dock, below in the Harbor Channel. This further over-building of the Aerie Condominium Complex will further impact us here in Corona Del Mar.

The EIR proposed that the construction workers be prohibited from parking on Carnation Avenue and Ocean Boulevard. This parking restriction will have to include No Parking for the workers on Dahlia Avenue, Fernleaf Avenue, Goldenrod Avenue, Heliotrope Avenue, Iris Avenue, Jasmine Avenue, Larkspur Avenue and to Marguerite Avenue. This is significant since all of these streets are narrow and have each side closed to parking one morning each week for street sweeping. The EIR advises that shuttle buses will be bringing the workers to the site. This will add an additional 15 to 25 vehicle trips to Seaview Avenue and Ocean Boulevard per working day. This will probably start at 6AM (assume the work-day starts at 7AM), with lunch break shuttle service and finish at 4 - 5PM. In addition we were told that vehicles for Project Managers and building inspectors would park anywhere near the proposed site, which will add to the impacts.

Please <u>do not approve</u> such a large construction project that will impact us who own property and live near the proposed Aerie Condominium Complex site.!!!

Respectfully,

William and Sandra Beckman,

Property owners of 206 & 206 1/2 Femleaf Avenue

Corona Del mar, CA 92625-3213

JAMES W & MAVIS B OBRIEN 315 IRIS AVENUE CORORNA DEL MAR, CALIFRNIA 92626

RECEIVED
South Coast Region

MAR 3 - 2011

March 2, 2011

CALIFORNIA COASTAL COMMISSION

Lillian Roman South Coast District Office California Costal Commission 200 Oceangate, 10th Floor Long Beach, CA 90802-4416

Re: AERIE CONDOMINUM PROJECT 5-10-298

Dear Ms Roman

We are long time residents of Corona del Mar having moved here in 1970 and owned two homes in the originally developed community. We are strongly opposed to the proposed project. Initially we object to the proposed excavation of the coastal bluff, to say nothing of the fact that 7 units with an average square footage of 7311 is a clear violation of the requirement of Coastal Land Use Plan and the Coastal Act that such projects minimize development..

We further believe that the project is incompatible with the balance of the local community. A multi level condo complex, with an average size in excess of 7,311 square feet for the seven condos seems to us to change he nature of a community built of 40 or 45 by 118 foot lots, where even the new constructions does not exceed 5,000 square feet.

We urge the staff to recommend a denial of the plan and further that the Commission itself reject the plan, following its hearing on the matter.

Very truly yours

Mayis and Irm Others



MAR 3 - 2011

CALIFORNIA COASTAL COMMISSION

Advanced Group 99-D – Newport Beach Agenda Item 10b, Application 5-10-298

> DIANE AND BILL MENNINGER OPPOSED TO PROJECT

California Coastal Commission c/o Liliana Roman 200 Oceangate, 10th Floor Long Beach, CA 90802-4416

Re:

Opposition to Aerie – 5-10-298

I am writing to express my opposition to the above referenced project. The California Coastal Act requires new development on protected coastal bluffs to be minimized. Aerie at 51,000 square feet consisting of 7 condo units which average a ratio of 7,311 square feet per unit is anything but a 'minimized' development. The Coastal Act requires 'Protection of coastal bluff in minimizing natural land form alterations'. The re-designed Aerie project continues to maximize its development and destroys the natural land forms the Coastal Act is designed to protect.

March 1, 2011

I urge you to deny this project, including the Marina.

Thank you.

Diane and Bill Menninger 2641 Circle Drive

Corona del Mar, Ca 92663

ERIC D. WELTON

2855 E. Coast Highway, Suite 200 Corona del Mar, CA 92625 (949) 675-6900 Phone (949) 675-6903 Fax

RECEIVED
South Coast Region

MAR 3 - 2011

CALIFORNIA COALIAL COMMISSION

March 2, 2011

California Coastal Commission South Coast District 200 Oceangate, 10th Floor Long Beach, CA 90802-4416

RE:

Permit Number: 5-10-298

Project Location: 201-205 & 207 Carnation & 101 Bayside Place

APN 052-013-12, 052-013-13

To Whom It May Concern:

As a nearby resident, I formally object to the above referenced project due the overall size and mass of the proposed structure.

Very truly yours,

Eric D. Welton

RECEIVEDSouth Coast Region

MAR 3 - 2011

CALIFORNIA COASTAL COMMISSION Advanced Group 99-D - Newport Beach Agenda Item 10b, Application 5-10-298 Pat Vranicar OPPOSED TO PROJECT

California Coastal Commission c/o Liliana Roman 200 Oceangate, 10th Floor Long Beach, CA 90802-4416

Re: Opposition to Aerie - 5-10-298

I am writing to express my opposition to the above referenced project. The California Coastal Act requires new development on protected coastal bluffs to be minimized. Aerie at 51,000 square feet consisting of 7 condo units which average a ratio of 7,311 square feet per unit is anything but a 'minimized' development. The Coastal Act requires 'Protection of coastal bluff in minimizing natural land form alterations'. The re-designed Aerie project continues to maximize its development and destroys the natural land forms the Coastal Act is designed to protect.

I urge you to deny this project, including the Marina.

Thank you.

Pat Vranicar pvcdm@aol,com



MAR 3 - 2011

CALIFORNIA COASTAL COMMISSION Advanced Group 99-D – Newport Beach Agenda Item 10b, Application 5-10-298 Donald F. Stoughton Opposed to the Aerie Project

California Coastal Commission c/o Liliana Roman 200 Oceangate, 10th Floor Long Beach, CA 90802-4416

North Burnethautheric

Re:

Opposition to Aerie – 5-10-298

I am writing to express my opposition to the above referenced project. As a 46 year resident of Corona Del Mar, I am especially concerned about the plans for an 8 slip marina. The California Coastal Act requires new development on protected coastal bluffs to be minimized. The impact on what is now an extremely attractive rocky outcropping and sand beach along the entrance channel to Newport Harbor would be devastating. Not only to the esthetics but it would impact the normal boating traffic in that area. Having served on The

Newport Harbor Commission committees for mooring realignment and Harbor Vision, and having sailed in the harbor for 67 years I feel qualified to voice an educated position. Thank you for considering my input.

Sincerely, Donald F Stoughton

3708 Ocean Blvd. Corona Del Mar

layer

RECEIVED South Coast Region

MAR 1 - 2011

Advanced Group 99-D - Newport Beach Agenda Item 10b, Application 5-10-298 Michele Dupuie DeWitt OPPOSED TO PROJECT

CALIFORNIA COASTAL COMMISSION

California Coastal Commission c/o Liliana Roman 200 Oceangate, 10th Floor Long Beach, CA 90802-4416

Re:

Opposition to Aerie - 5-10-298

9497322110

I am writing to express my opposition to the above referenced project. The California Coastal Act requires new development on protected coastal bluffs to be minimized. Aerie at 51,000 square feet consisting of 7 condo units which average a ratio of 7,311 square feet per unit is anything but a 'minimized' development. The Coastal Act requires 'Protection of coastal bluff in minimizing natural land form alterations'. The re-designed Aerie project continues to maximize its development and destroys the natural land forms the Coastal Act is designed to protect.

I urge you to deny this project, including the Marina.

Thank you.

213 Dahlia Avenue

Corona del Mar, CA 92625

Susan Simmons 3334 E. Coast Hwy., #166 Corona del Mar, CA 92625 ssimmons@apico.org

RECEIVED South Coast Region

February 23, 2011

FEB 2 3 2011

California Coastal Commission Ms. Sherilyn Sarb 200 Oceangate, 10th Floor Long Beach, CA 90802-4416 ssarb@coastal.ca.gov CALIFORNIA COASTAL COMMISSION

RE: AERIE 7 unit condominium project in Newport Beach, Application #: 5-10-298

Dear Ms. Sarb:

As a long-time resident of Corona del Mar, I cannot see any reason for the Coastal Commission to deny the application to build a beautiful structure on this site.

There may be temporary inconveniences necessitated by the construction process, but the finished product cannot do anything but enhance the property values of all surrounding structures, enhance the view from the water and help protect the environment below.

Indeed, I see this structure as a leader in demonstrating sustainable building methods, energy conservation and environmental protection.

I hope that the commission will look favorably on this project and give approval for its construction.

Sincerely,

Susan Simmons

CC: Ms. Liliana Roman - Iroman@coastal.ca.gov

RICHARD & REGINA HUNSAKER 117 Coral Avenue Newport Beach, CA 92662-1144

RECEIVED

South Coast Region

MAR 2 - 2011

February 27, 2011

Application Number 5-10-29 SUPPORT

CALIFORNIA COLLIAL COMMISSION

Ms. Sherilyn Sarb

CALIFORNIA COASTAL COMMISSION
200 Ocean gate, 10th Floor
Long Beach, CA 90802

Subject:

AERIE 7 Unit Condominium Project in Newport Beach.

APPLICANT: Advanced Group 99-D, A California Limited Partnership,

Attn, Mr. Richard Julian, President

Dear Ms. Sarb:

The AERIE Project includes a host of community benefits that are being provided by the applicant.

- 1. View Corridors Views from the "public view point" at Carnation Avenue and Ocean Boulevard will be enhanced by approximately 76 percent as a result of the Project. A public bench and drinking fountain will be added at this "public view point" to enhance the public viewing experience. The Project also includes a view "window" at the northerly property line, which currently does not exist.
- 2. New Public Parking. The Project will create three additional on Street public parking spaces that will accommodate visitors to the area, particularly during the peak summer/ tourist season.
- 3. Other improvements:
 - The Aerie Project reduces the number of dwelling units permitted by the existing zoning. There are 7 units in the Aerie project versus the 15 existing units.
 - Reduced traffic with reduced number of units.

Derrord

- The Aerie Project utilizes 19% of the site, preserving the remaining 81% as open space, twice the amount of open space required by code.
- The Project will implement state of the art water quality facilities. Storm flows from the Aerie Project will be treated before discharging into Newport Bay.

As a resident to Newport Beach I am in support of the Aerie Development as it will have a positive impact on the existing neighbor hood

Very truly yours

Richard Hunsaker

RH:tl (f\c\rh\2011\01-rh.doc)

Application Number: 5-10-298

SUPPORT

RECEIVEDSouth Coast Region

MAR 3 - 2011

CALIFORNIA COASTAL COMMISSION

California Coastal Commission Ms. Sherilyn Sarb 200 Oceangate, 10th Floor Long Beach, CA 90802-4416

RE: AERIE 7 unit condominium project in Newport Beach, Application #: 5-10-298

Dear Ms. Sarb:

I am a resident and a Realtor in Corona del Mar. I have specialized in the area for 22 years and I see the construction of Aerie as a significant benefit to the area. The designer has created a beautiful building and has enhanced the public view corridors from what is there now. In addition, the utility poles and wires will be put underground which will give unobstructed views for everyone and make the whole neighborhood look better!

Donna Wall

I am respectfully requesting your approval of this project. Sincerely,

Donna Wall DRE#00906939

Coldwell Banker Previews International Newport Beach, 92660 Cell 949-463-1187 **DAWSON & DAWSON**

JOHN HARLAN DAWSON (1907-1987)

KEITH ABBOT DAWSON

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

2660 EAST COAST HIGHWAY

CORONA DEL MAR, CALIFORNIA 92625

TELEPHONE (949) 720-9414

TELECOPIER (949) 759-9144

March 1, 2011

South Coast Region

MAR 2 - 2011

CALIFORNIA COASTAL COMMISSION

Ms. Sherilyn Sarb California Coastal Commission 200 Oceangate, 10th Floor Long Beach, CA 90802-4416

Re: Aerie Project

Application No.: 5-10-298

Dear Ms. Sarb:

This marks the second time that I have written in support of the Aerie Project. When the Project first came before the Coastal Commission in April of last year, it was the staff's recommendation to approve the land-side improvements but deny the water-side improvements. Despite the staff's recommendation, it is my understanding that the land-side improvements were denied by the Commission based on unsubstantiated concern for the stability of the bluff face. Nevertheless, the applicant has downsized the Project to specifically address the Commission's bluff stability concerns:

This has been an extremely long and difficult road for the applicant. He has gone above and beyond the call of duty every step of the way and has addressed the concerns of his neighbors and the community alike. He has repeatedly reached out to the community and has modified the design of the Project numerous times based on the recommendations of the Newport Beach Planning Commission, the Newport Beach City Council and now the Coastal Commission. Although a small band of detractors were apparently successful in their scheme to circulate half-truths about the Project which had the desired effect on the Coastal Commission's decision a year ago, I am hopeful, indeed confident, that the Commission has seen through the transparency of the opposition and has evaluated the Aerie Project on its many merits.

The Aerie Project will remove a 50-year old eye-sore at the entrance to Newport Harbor and replace it with a jewel fit for our "Crown of the Sea", and it will do so well within existing zoning and coastal requirements while protecting and preserving the natural visual resources. The design of the Project will

化邻氯 网络多数 医多种溶液 医鼻腔 经基础 化

California Coastal Commission Attn.: Ms. Sherilyn Sarb March 1, 2011

Page 2

greatly enhance the existing view corridor from the street level and will result in the removal of unsightly concrete, drain pipes and a meandering dilapidated staircase complete with badly rusted railings that have blighted the bluff face for years.

I sincerely regret that my wife and I are unable to travel to Santa Cruz to appear at the public hearing on March 9th to voice our support for the Aerie Project in person. Quite simply, our community deserves the Aerie Project, and the applicant deserves our sincere thanks for believing in our community for and his commitment to the future of Corona Del Mar.

Very Truly Yours,

DAWSON & BAWSON,

A Professional Corporation

ith A. Dawson

KAD/jj

cc: Liliana Roman Iroman@coastal.ca.gov

FEB 2 4 2011

JEFFREY M. VERDON LAW GROUP, LLP

ATTORNEYS AT LAW 800-521-0464

CALIFORNIA COASTAL COMMISSION

California Office:

Newport Gateway Towers 19800 MacArthur Boulevard, Suite 1000 Irvine, CA 92612 FAX (949) 263-1333 www.jmvlaw.com Nevada Office:

Of Counsel, Oshins & Associates, LLC 5955 Edmond Street, Suite 200 Las Vegas, NV 89118 FAX (702) 974-1888 www.oshins.com

February 24, 2011

Application Number: 5-10-298 SUPPORT

California Coastal Commission Ms. Sherilyn Sarb 200 Oceangate, 10th Floor Long Beach, CA 90802-4416 ssarb@coastal.ca.gov

RE: AERIE 7 Unit Condominium Project in Newport Beach, Application #: 5-10-298

Dear Ms. Sarb:

On March 9th, 2011, the California Coastal Commission will hold a hearing concerning the AERIE 7 Unit Condominium Project in Newport Beach. Unfortunately I will not be able to attend the hearing as I will be traveling overseas. However, because I believe this project is in the best interest of Newport Beach, I am writing to you in my support of the Project.

I believe that the completion of this project will be of great benefit to the public in Newport Beach. The "public view point" will become a wonderful place for the public to relax and enjoy the beautiful views, which have been increased by approximately 76 percent, including a new view "window" at the northerly property limit. The addition of a public bench and drinking fountain will also enhance the experience. The Project will move driveway and carport parking underground and out of sight and increase public parking by additional spaces. Because the project is reducing the number of units, this will also reduce the amount of traffic in the area.

The Project has been very sensitive to affecting the environment in the area, therefore, it has been designed utilizing "green" architecture criteria and energy efficient designs such as —

- using environmentally friendly and sustainable materials;
- implementing the most state of the art water quality plan available (endorsed by COASTKEEPERS), including upgraded catch basin and advanced water filtration devises; and
- maintaining the cove free of artificial debris, including plastic and Styrofoam which will help protect the marine life.

California Coastal Commission Re: Application No. 5-10-298 Page 2 February 24, 2011

In addition, the City of Newport Beach itself will receive benefits from this project by way of increased property tax rolls and creating jobs.

Thank you for your consideration in this matter and I hope you will give your approval of the AERIE 7 Unit Condominium Project in Newport Beach.

Sincerely,

JEFFREY M. VERDON LAW GROUP, LLP

JEFFRET M. VERDON, ESQ.

JMV:gg

CC: Ms. Liliana Roman - <u>lroman@coastal.ca.gov</u>

DAWSON & DAWSON

JOHN HARLAN DAWSON (1907-1987)

KEITH ABBOT DAWSON

A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
2660 EAST COAST HIGHWAY
CORONA DEL MAR, CALIFORNIA 92625

TELEPHONE (949) 720-9414

TELECOPIER (949) 759-9144

RECEIVED

South Coast Region

March 1, 2011

Ms. Sherilyn Sarb California Coastal Commission 200 Oceangate, 10th Floor Long Beach, CA 90802-4416

MAR 1 - 2011

Re: Aerie Project

Application No.: 5-10-298

CALIFORNIA COASTAL COMMISSION

Dear Ms. Sarb:

This marks the second time that I have written in support of the Aerie Project. When the Project first came before the Coastal Commission in April of last year, it was the staff's recommendation to approve the land-side improvements but deny the water-side improvements. Despite the staff's recommendation, it is my understanding that the land-side improvements were denied by the Commission based on unsubstantiated concern for the stability of the bluff face. Nevertheless, the applicant has downsized the Project to specifically address the Commission's bluff stability concerns.

This has been an extremely long and difficult road for the applicant. He has gone above and beyond the call of duty every step of the way and has addressed the concerns of his neighbors and the community alike. He has repeatedly reached out to the community and has modified the design of the Project numerous times based on the recommendations of the Newport Beach Planning Commission, the Newport Beach City Council and now the Coastal Commission. Although a small band of detractors were apparently successful in their scheme to circulate half-truths about the Project which had the desired effect on the Coastal Commission's decision a year ago, I am hopeful, indeed confident, that the Commission has seen through the transparency of the opposition and has evaluated the Aerie Project on its many merits.

The Aerie Project will remove a 50-year old eye-sore at the entrance to Newport Harbor and replace it with a jewel fit for our "Crown of the Sea", and it will do so well within existing zoning and coastal requirements while protecting and preserving the natural visual resources. The design of the Project will

California Coastal Commission Attn.: Ms. Sherilyn Sarb March 1, 2011

Page 2

greatly enhance the existing view corridor from the street level and will result in the removal of unsightly concrete, drain pipes and a meandering dilapidated staircase complete with badly rusted railings that have blighted the bluff face for years.

I sincerely regret that my wife and I are unable to travel to Santa Cruz to appear at the public hearing on March 9th to voice our support for the Aerie Project in person. Quite simply, our community deserves the Aerie Project, and the applicant deserves our sincere thanks for believing in our community for and his commitment to the future of Corona Del Mar.

Very Truly Yours,

DAWSON & DAWSON,

th A. Dawson

A Professional Corporation

KAD/jj

cc: Liliana Roman Iroman@coastal.ca.gov

Application Number: 5-10-298 SUPPORT

California Coastal Commission

Ms. Sherilyn Sarb

200 Oceangate, 10th Floor

Long Beach, CA 90802-4416

RECEIVED
South Coast Region

MAR 1 - 2011

CATIFORNIA COASTAL COMMISSION

RE: AERIE 7 unit condominium project in Newport Beach, Application #: 5-10-298

Dear Ms. Sarb:

We are very strongly in favor of this project for many reasons enumerated below.

The view allowed will be magnificent. I can hardly wait to be able to see over those bluffs. The public bench will provide a great spot for this experience.

Removal of the unsightly utility poles will provide much needed updating of the area as well as providing a safer conduit for utilities.

The units will add to our property tax roll. We are in need of more revenue and will all benefit from the additional taxes.

The jobs created by this project will have a great positive impact on our immediate community.

Sincerely.

Buly Caspu + Mary Cooper

Becky and Gary Cooper

2-27-11

KENT S. MOORE

210 CARNATION AVENUE CORONA DEL MAR, CALIFORNIA 92625 TELEPHONE: (949) 673-7692 FACSIMILE: (949) 673-7699 kentmoore@adelphia.net Mathicula Charles

February 27, 2011

RECEIVED
South Coast Region

MAR 1 - 2011

Ms. Sharilyn Sarb California Coastal Commission 200 Oceangate, 10th Floor Long Beach, CA 90802-4416

CALIFORNIA COASTAL COMMISSION

RE: AERIE 7 unit condominium project in Newport Beach, Application # 5-10-298

Dear Ms. Sarb:

I am writing you and the Commission once again to give my support to Mr. Richard Julian's Aerie project in Corona del Mar, CA. As I mentioned in my last letter, I have lived continuously at the corner of Ocean Blvd. and Carnation Ave., across from the proposed project, for over 40 years and have observed all new construction which has been undertaken in this area of the city.

This thoughtful development will greatly enhance our neighborhood and I urge the Commission to give its approval on March 9. Staff should be aware by now that most of the neighborhood is in agreement with the provisions of the current project modifications.

The project has again been reduced in size with three new street parking places being created along with an enhanced public viewpoint. I note, too, that a view "window" is also being created at the north side of the property. It should also be noted that there are several community benefits to be derived from this project which Mr. Julian voluntarily provided.

It is my hope and the hope of my neighbors that the Commission will give its permission for Aerie to finally move forward.

Please feel free to contact me if you have any questions.

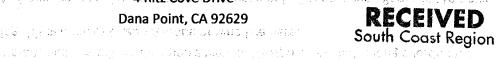
est. Luce

Sincerely,

Kent S. Moore

c. Ms. Liliana Roman

Turk i july 6 i je kodnje za rezistelje 1999.**G. Ross Roskamp** i postovja pograda jadegjeda je koj 1414 s^{um} za i na storenja je dostavena i je pr**44Ritz:Cove Drive** se sa pograda se sekon gadje pograda se Dana Point, CA 92629



February 26, 2011

MAR 1 - 2011

California Coastal Commission Ms. Sherilyn Sarb 200 Oceangate, 10th Floor Long Beach, CA 90802-4416

CALIFORNIA COASTAL COMMISSION

RE: AERIE 7 unit condominium project in Newport Beach, Application #: 5-10-298

Dear Coastal Commission Members:

Please approve this project. I have followed it for years and know the many changes the owner has made. Anyone who opposes the current plan it is not looking at it from the Coastal Commission's perspective.

Removing the old apartment building will finally open a view of Newport Bay that is long overdue for those who enjoy walking this section of Ocean Avenue or who live here.

Parking for the current 15 apartment units was not an issue when built 60 years ago. Replacing this eyesore with the new structure will finally resolve who gets to use the limited on-street parking at that intersection.

Sincerely,

G. Roskamp

February 28, 2011 SUPPORT **Application Number: 5-10-298**

RECEIVEDSouth Coast Region

MAR 1 - 2011

California Coastal Commission Ms. Sherilyn Sarb 200 Oceangate, 10th Floor Long Beach, CA 90802-4416

CALIFORNIA COASTAL COMMISSION

RE: AERIE 7 unit condominium project in Newport Beach, Application #: 5-10-298

Dear Ms. Sarb:

I have been following the AERIE project for many years and I enthusiastically support it and everything it stands for. I appreciate all of the diligent time and effort the developer, Rick Julian, and his team have put into this project. They have gained the support of the neighbors near and far and the respect of the entire community. AERIE will be a wonderful addition to beautiful Corona del Mar; a wonderful entrance piece to Newport Harbor; and a historic piece to our California Coastline. I urge you to FINALLY give ARIE its final deserving approval.

Thank You,

Jodie Cerruti

27492 Calle de la Rosa San Juan Capistrano, CA 92675

Tod and Peggie Parrott 3130 Breakers Drive Corona del Mar, CA 92625 949-673-2876

RECEIVED
South Coast Region
MAR 1 - 2011

CALIFORNIA COASTAL COMMISSION

February 28, 2011

Coastal Commission
Ms. Sherilyn Sarb
200 Oceangate 10th Floor
Long Beach, CA 90802

Re: Aerie 7 unit condominium project in NB App. #5-10-298

Dear Sir or Madame,

Since we appeared in front of the Coastal Commission a few years ago we walk the neighborhood to see if the current projects meet our personal standards for approval. We read with interest the article in the Daily Pilot regarding the project on Carnation and Ocean Blvd. a few blocks from our home currently in construction.

After walking through the project we want to fully support the owner/developer. The Brion Jeannette design is beautiful and we cannot understand how anyone could object especially when the Coastal Commission staff has approved the latest revision.

Ocean Blvd. has some amazing architectural masterpieces, a study for any serious architecture student or a venue for an architectural tour. This particular structure will re-vitalize a blighted property. Those tired apartment buildings have been an eyesore for much too long.

Again we state that we fully support the Aerie project as a significant improvement to the neighborhood.

Respectfully submitted,

Int with leggie farroll

Tod and Peggie Parrott



MAR 1 - 2011

JEFFREY M. VERDON LAW GROUP, LLP

ATTORNEYS AT LAW 800-521-0464 CALIFORNIA COASTAL COMMISSION

Newport Gateway Towers
19800 MacArthur Boulevard, Suite 1000
Irvine, CA 92612
FAX (949) 263-1333
www.jmvlaw.com

California Office:

Nevada Office:
Of Counsel, Oshins & Associates, LLC`
5955 Edmond Street, Suite 200
Las Vegas, NV 89118
FAX (702) 974-1888
www.oshins.com

February 24, 2011

Application Number: 5-10-298 SUPPORT

California Coastal Commission Ms. Sherilyn Sarb 200 Oceangate, 10th Floor Long Beach, CA 90802-4416 ssarb@coastal.ca.gov

of the strategy lights

RE: AERIE 7 Unit Condominium Project in Newport Beach, Application #: 5-10-298

Dear Ms. Sarb:

On March 9th, 2011, the California Coastal Commission will hold a hearing concerning the AERIE 7 Unit Condominium Project in Newport Beach. Unfortunately I will not be able to attend the hearing as I will be traveling overseas. However, because I believe this project is in the best interest of Newport Beach, I am writing to you in my support of the Project.

I believe that the completion of this project will be of great benefit to the public in Newport Beach. The "public view point" will become a wonderful place for the public to relax and enjoy the beautiful views, which have been increased by approximately 76 percent, including a new view "window" at the northerly property limit. The addition of a public bench and drinking fountain will also enhance the experience. The Project will move driveway and carport parking underground and out of sight and increase public parking by additional spaces. Because the project is reducing the number of units, this will also reduce the amount of traffic in the area.

The Project has been very sensitive to affecting the environment in the area, therefore, it has been designed utilizing "green" architecture criteria and energy efficient designs such as —

- using environmentally friendly and sustainable materials;
- implementing the most state of the art water quality plan available (endorsed by COASTKEEPERS), including upgraded catch basin and advanced water filtration devises; and
 - maintaining the cove free of artificial debris, including plastic and Styrofoam which will help protect the marine life.

California Coastal Commission Re: Application No. 5-10-298 Page 2 February 24, 2011

In addition, the City of Newport Beach itself will receive benefits from this project by way of increased property tax rolls and creating jobs.

Thank you for your consideration in this matter and I hope you will give your approval of the AERIE 7 Unit Condominium Project in Newport Beach.

Sincerely,

JEFFREY M. VERDON LAW GROUP, LLP

JEFFREY M. VERDON, ESQ.

JMV:gg

CC: Ms. Liliana Roman - <u>lroman@coastal.ca.gov</u>



FEB 2 8 2011

CALIFORNIA COASTAL COMMISSION

California Coastal Commission

Feb. 24, 2011

Ms. Sherilyn Sarb 200 Oceangate, 10th Floor Long Beach, CA 90802-4416

Subject: Aerie 7 unit condo project in Newport Beach, Appl. #: 5-10-298, SUPPORT

Dear Ms. Sarb,

This letter is in support of the subject project.

I think the design of the project enhances the view of existing bluff from the bay and certainly will be a welcome relief from the unsightly condition of the bluff face and apartment building as it exists today.

The view corridors and additional visitor parking are valuable public enhancements.

Overall, the project is well designed and will be an addition to the community, both for local residents as well as visitors from inland areas.

The project has been extensively redesigned to respond to community input.

ing the energy person of the source of the energy of t The energy of the energy of

I urge your support of the project as currently redesigned.

attorial subspecies to section and in the transfer

Regard

William R. Watt

160 Newport Center Dr. #155 Newport Beach, CA 92660

Cc: Ms. Liliana Roman

March 1, 2011

REFER TO FILE NO.: 64025.009

California Coastal Commission 200 Oceangate, 10th Floor Long Beach, CA 90802-4416 Attn: Sherilyn Sarb

RECEIVED South Coast Region

MAR 2 - 2011

CALIFORNIA COASTAL COMMISSION

Re: Application Number 5-10-298

Dear Commissioners:

I have followed closely the planning of the AERIE project which is being submitted under the above referenced application. In this regard, I encourage the approval of this project as presently designed to transform the existing use from its tired state into a truly green project which provides public benefits.

The primary importance to me is this project will significantly reduce its existing impact upon the waters of the Newport Harbor as evidenced by the endorsement from Coastkeeper.

In addition, the project substantially improves the public view of Newport Harbor and the Pacific Ocean from street level at the intersection of Carnation and Ocean as well as greatly enhancing the view from Newport Harbor.

I strongly urge the approval of this application so that the Newport community and its many visitors receive the numerous benefits which this project offers.

Very truly yours,

Stephen M. Kane Kone

SMK:Imn

S:\Steve\Mills-Advanced\Ltr.California Coastal Commission.AERIE.03.01.11.doc

CC: Mr. Rick Julian

Notation and the comment

ing ang ing terminang menggunan bermanan di kenanggan bermanan dianggan bermanan bermanan di salah sebagai seb Bermanan kenanggan bermanan bermanan bermanan bermanan kenanggan bermanan bermanan bermanan bermanan bermanan

California Coastal Commission Ms. Sherilyn Sarb 200 Oceangate, 10th Floor Long Beach, CA 90802-4416 Application Number: 5-10-298

AERIE, Newport Beach

In support of project

RECEIVED
South Coast Region

MAR 3 - 2011

CALIFORNIA COASTAL COMMISSION

Commissioners,

My home is located directly across the street from the proposed Aerie Project. Arguably our home is the most affected of all. I have seen the project go through many iterations primarily with Mr. Julian working tirelessly to appease a very few vocal and active opponents. My wife and I fully support the project. Fifteen existing units to a proposed seven is terrific.

There is a very few incredibly manipulative people who have an ongoing campaign of door knocking and e-blog in opposition. Several changes have occurred in the title of their opposition in which they do not even list their names, the latest is RFRD. I will testify to you that even some of the naysayers do not live in the immediate area even as far as being residents of another state. I will state un-categorically that the overwhelmingly majority of the people who live in the immediate area of the project are in total support of this class project. Especially important is replacing the old building which is an eye sore to the area with a LEEDS proposal structure. The vocal minority is an impediment to a well-designed and desired project.

This LEEDS project would appear to be one that the California Coastal Commission would use as an ideal example of listening to your suggestions and incorporating many wonderful benefits to the community. This has been done all the while trying to appease a definite minority of vocal semi-residents who have been against every attempt to satisfy them.

The state of the art energy improvement along with water catch basin upgrade and removal of overhead lines will benefit the entire neighborhood. An increased public view corridor as well as increased public parking is an additional benefit of this fine project.

All of the Coastal Commissions recommendations have been addressed and added to the City of Newport Beach restrictions to become a model of thoughtful improvement of our area and the coastline. Please see that Aerie is a fine example of thoughtful and reasonable improvement.

Thank you for your service to all the citizens of California,

Dr. Lloyd E. Rasner 2500 Ocean Blvd

Corona del Mar, CA 92625

California Coastal Commission Ms. Sherilyn Sarb 200 Oceangate, 10th Floor Long Beach, CA 90802-4416 Application Number: 5-10-298 **SUPPORT**

RECEIVEDSouth Coast Region

MAR 3 - 2011

CALIFORNIA COASTAL COMMISSION

You have for your consideration a project which has been greatly revised to meet the concerns that were expressed at the Coastal Commission last April when it was previously presented. I would urge you to approve the Aerie Project as it is presented to you at this time. I have been following the progress of this project since its inception, and I know that Rick Julian, the applicant, has listened to comments and has changed the project to address those concerns. This is after he has previously listened to the neighbors and the City of Newport Beach and changed the plans accordingly.

The project as presented at this time has reduced the number of units, eliminated the vehicular elevators, reduced the amount of excavation, and does not extend below the PLOED or above the height limits set by the City of Newport Beach. The result of those changes are positive for the neighborhood such as fewer truck trips resulting from the excavation, increased parking on the street, under grounding of the utility poles, and greatly enhancing the public view corridors including adding a public bench and drinking fountain. In addition to all that, part of the plan is to greatly enhance the existing storm drain system and upgrade the catch basin which is currently in very poor condition.

As a native of Orange County, over the last 60+ years, I have watched as development has changed our county from a rural, sleepy region to today's more energetic, dynamic urban destination. The Aerie Project currently on your agenda would leave more of the Coastal bluff uncovered than the ugly existing building currently on the site, and certainly not desecrate the Coastal bluff as the homes and buildings to the Southeast have done. The Commission's recommendations have been met and approval of this project should be a no brainer. It will enhance both the neighborhood and the Coastal bluff.

Thank you for your consideration,

Linda Rasner

2500 Ocean Blvd

Corona del Mar, CA 92625

CALIFORNIA COASTAL COMMISSION

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

Item W10b

Filed: December 21, 2010 49th Day: February 8, 2011 180th Day: June 19, 2011 Staff: Liliana Roman-LB Staff Report: February 24, 2011

Hearing Date: March 9-11, 2011

Commission Action:

STAFF REPORT: REGULAR CALENDAR

APPLICATION NUMBER: 5-10-298

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 51,177 sq. ft., 7-unit, 33-feet tall, 5-level condominium structure (three levels visible from grade/street level and all five levels visible from the seaward side) with 18 parking spaces and common amenities including a fitness facility, meeting room, patio, pool and spa; hardscape and landscaping improvements; grading consisting of 11,460 cu. yds. of cut; demolition of an existing 2-slip floating dock structure and replacement with a new 7-slip floating dock and guest side-tie; lot line adjustment to merge a 584 sq. ft. portion of 101

Bayside Place with the parcel identified as 201-205 Carnation Avenue and the parcel identified as 207 Carnation Ave into a single 61,284 sq. ft. lot for residential purposes; and tentative tract map to subdivide the

air space for seven residential condominium units.

LOCAL APPROVALS: 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

pending.

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

Quality Certification

SUBSTANTIVE FILE DOCUMENTS: See Appendix I at the end of the staff report

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, a significant expansion of water coverage and attendant shading effects, 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

5-10-298(Advanced Group 99-D) Regular Calendar Page 2 of 35

a 7-unit condominium structure with special conditions pertaining to: 1) Public Rights; 2) Denial of Dock Expansion: 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) Pool Protection Plan: 14) Revised Final Plans, 15) Bird Strike Prevention; 16) Future Foundation/Subsurface Structure Exposure Plans; 17) Prohibition on Public Access Controls; and 18) Liability for Costs and Attorney Fees. The primary issues associated with this development are fill of coastal waters, landform alteration, visual resources, biological resources and water quality.

STAFF NOTE: The Commission took action on a project at this site in April 2010, voting to deny CDP 5-09-162(Advanced Group 99-D) for proposed construction of a new 61,709 sq. ft., 8-unit, 32feet tall, 6-level condominium structure including three levels above street level and three levels that were below street level/subterranean (one of which daylighted on its seaward side), 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. At that hearing the Commission expressed concerns regarding the amount of proposed grading, landform alteration, bulk of proposed structure, and use of parking elevators. The applicant has modified the project after taking into consideration the Commission's concerns and comments from that previous action.

The applicant has worked with Commission staff to modify the project for Commission review. Staff recommends approval of the land-side improvements with revised plans to bring all development, specifically cantilevered decks, cantilevered patios, and cantilevered pool areas behind a plane extended vertically from the 50.7' elevation which is the Predominant Line of Existing Development (PLOED). Treating the PLOED as the setback for all development (including accessory cantilevered structures) would help to address the Commission's previous comments/concerns regarding the size/bulk of the proposed bluff top structure. Staff recommends denial of the water-side improvements due to unmitigated fill of coastal waters, water coverage/shading effects and due to the potential for cumulative adverse impacts if similar dock expansions are approved in the area.

The matrix below shows the Commissions' concerns/comments from the April 2010 hearing and the applicant's response to those comments/revisions to the project in this current CDP application:

Commissioners comments/concerns	Applicant's response in redesigned project
Protection of coastal bluff/minimize landform	-Reduced grading by 55%, 13,780 cu.yds. (was
alteration – size of cut for subterranean levels	25,240 now 11,460 cu.yds.).
maximizing size of development rather than "going	-Grading on north bluff reduced. Structure daylights
underground" to minimize the impact above on the	between elevations 65' and 70' along north bluff,
bluff top	instead of at 50.7 feet like the previous proposal.
	-Lowest level of proposed structure raised to
	elevation 49.20'/daylighting at 50.70' PLOED;
Development below the Predominant Line of	previously, lowest level proposed at elevation 30.0.'
Existing Development (PLOED) at the 50.70'	-Eliminated sub-basement and basement levels
contour line	below the PLOED, thereby eliminating 22' deep cut
	below PLOED. Total cut below existing grade/street
	level is now 20-24 feet deep.
Loss of the trapezoidal section of bluff façade left	-Eliminated grading of bluff for sub-basement and
intact in front of basement levels during	basement levels below the PLOED thereby

5-10-298(Advanced Group 99-D) Regular Calendar Page 3 of 35

construction and/or during life of project	eliminating trapezoidal bluff section on the west bluff -In effort to reduce grading/alteration of north bluff, a 15'-16' deep trapezoidal bluff wedge is created on the non-marine erosion north bluff
Mass of structure/above ground levels	-Reduced number of units by one -Reduced total sq. ft. by 10,532 (17% less), (Staff notes that most of the reduction in square footage is below grade and does not change appearance of structure)
Use of car elevators for entry into parking structure possibly causing on-street traffic/queuing problems	-Eliminated elevators/replaced with driveway ramp

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

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. 5-10-298, 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 51,177 sq. ft., 7-unit, 32-feet tall, 5-level condominium structure with 18 parking spaces and common amenities including a fitness facility, meeting room, patio, pool and spa; hardscape and landscaping

5-10-298(Advanced Group 99-D) Regular Calendar Page 4 of 35

improvements; grading consisting of 11,460 cu. yds. of cut; lot line adjustment and tentative tract map to combine a portion of 101 Bayside Place with the parcel identified as 201-205 Carnation Avenue and the parcel identified as 207 Carnation Ave and to subdivide the air space for seven 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 2-slip floating dock structure and replacement with a new 7-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. <u>Notice of Receipt and Acknowledgment.</u> 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. <u>Expiration.</u> If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. 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. <u>Interpretation.</u> Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
- 4. <u>Assignment.</u> 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. <u>Terms and Conditions Run with the Land.</u> 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.

5-10-298(Advanced Group 99-D) Regular Calendar Page 5 of 35

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 2-slip floating dock structure and replacement with a proposed new 7-slip floating dock and guest side-tie as has been authorized by the City of Newport Beach. Any demolition, replacement or expansion of the existing 2-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

5-10-298(Advanced Group 99-D) Regular Calendar Page 6 of 35

- (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 predevelopment 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

5-10-298(Advanced Group 99-D) Regular Calendar Page 7 of 35

- 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-ininterest 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 itself 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. 5-10-298 including, but not limited to, the structure, foundations, patios,

5-10-298(Advanced Group 99-D) Regular Calendar Page 8 of 35

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 itself 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 itself 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. 5-10-298. 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. 5-10-298 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, newly created by the lot-line adjustment approved under this permit. 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. 5-10-298 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

8. LANDSCAPE PLANS

- 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

5-10-298(Advanced Group 99-D) Regular Calendar Page 9 of 35

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;
- E. 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 February 24, 2011. 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 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 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; (8) the requirements

5-10-298(Advanced Group 99-D) Regular Calendar Page 10 of 35

of **Special Condition No. 15** regarding bird strike hazard prevention; (9) the requirements of **Special Condition No. 16** relative to mitigation of the visual impact of future exposure of foundations and other subsurface structures; (10) the requirements of **Special Condition No. 17** prohibiting public access controls and restrictions on use of the public viewpoint; (11) the requirements of **Special Condition No. 18** relative to the permittees liability for costs and attorneys fees; and (12) 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 legally created and binding on all owners, the applicant shall transfer, and the owner's association or similar entity shall accept, responsibility for the easement areas indicated in this permit.
- 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 parcel/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 a park bench and water fountain within the public-right-of-way at the corner of Ocean Blvd. and Carnation Avenue for view corridor access depicted on the final plans approved by the Executive Director shall be phased so that they are available to the public prior to or concurrent with initial occupation of the development approved by this coastal development permit.

5-10-298(Advanced Group 99-D) Regular Calendar Page 11 of 35

13. 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.

14. 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 revised project plans with City of Newport Beach Approval in Concept. The final revised project plans shall conform to 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) Any and all portions of the development seaward of the PLOED at elevation 50.70' (i.e., cantilevered decks, cantilevered patios and cantilevered pool areas) shall be set back behind a plane extended vertically from the PLOED.
 - (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.

15. BIRD STRIKE PREVENTION

A. Ocean front glass railings, fences, screen walls and gates subject to this permit shall use materials designed to minimize bird-strikes with the railing, screen wall, fence, or gate. Such materials may consist, all or in part, of wood; metal; frosted or partially-frosted glass, Plexiglas or other visually permeable barriers that are designed to prevent creation of a bird strike hazard. Clear glass or Plexiglas shall not be installed unless an

5-10-298(Advanced Group 99-D) Regular Calendar Page 12 of 35

ultraviolet-light reflective coating and/or appliqués (e.g. stickers/decals) specially designed to reduce bird-strikes by reducing reflectivity and transparency are also used. Any coating or appliqués used shall be installed to provide coverage consistent with manufacturer specifications (e.g. one appliqué for every 3 foot by 3 foot area) and the recommendations of the Executive Director. Use of opaque or partially opaque materials is preferred to clear glass or Plexiglas and appliqués. All materials, coatings and appliqués shall be maintained throughout the life of the development to ensure continued effectiveness at addressing bird strikes and shall be maintained at a minimum in accordance with manufacturer specifications and as recommended by the Executive Director. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT,** the permittee shall submit final revised plans showing the location, design, height and materials of glass railings, fences, screen walls and gates for the review and approval of the Executive Director. Said plans shall reflect the requirements of this special condition.

B. The permittee shall undertake development in accordance with the approval 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.

16. FUTURE FOUNDATION/SUBSURFACE STRUCTURE EXPOSURE PLANS

In the event any project features initially proposed to be subsurface subsequently become exposed to view from public vantage points including but not limited to the bay or beaches in the vicinity of the site, the permittee shall, through the coastal development permit process, seek to remedy the visual impact of the exposed structure(s) through, among other possible means, aesthetic treatment of the exposed structures such that they match the appearance of surrounding terrain to the extent feasible and minimize visual impact of the exposed structures.

17. PROHIBITION ON PUBLIC ACCESS CONTROLS

All public use and/or entry controls (e.g. gates, gate/guard houses, guards, fences, vegetation, signage, etc.) and any other kind of restriction on use by the general public of the public viewpoint (e.g. hours of operation, etc.) shall be prohibited. The viewpoint shall be open for use by the general public 24 hours per day.

18. LIABILITY FOR COSTS AND ATTORNEYS FEES

The Permittees shall reimburse the Coastal Commission in full for all Coastal Commission costs and attorneys fees -- including (1) those charged by the Office of the Attorney General, and (2) any court costs and attorneys fees that the Coastal Commission may be required by a court to pay -- that the Coastal Commission incurs in connection with the defense of any action brought by a party other than the applicant against the Coastal Commission, its officers, employees, agents, successors and assigns challenging the approval or issuance of this permit. The Coastal Commission retains complete authority to conduct and direct the defense of any such action against the Coastal Commission.

5-10-298(Advanced Group 99-D) Regular Calendar Page 13 of 35

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 City's certified Coastal Land Use Plan (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 2-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 proposed to be 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 seven (7) 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/concrete landing. An approximately two-year (25-month) construction period is anticipated for both 'water-side' improvements (i.e. dock expansion) and the 'land-side' improvements.

5-10-298(Advanced Group 99-D) Regular Calendar Page 14 of 35

Proposed Land-Side Development – 7 Unit Condominium Project

Land-side development consists of a proposed 51,177 sq. ft., 5-level (three levels visible from grade/street level and all five levels visible from the seaward side), 33' tall, 7-unit condominium building with 18 parking spaces, and common in-door amenities including a fitness facility, meeting room, patio, pool and spa. Approximately 11,460 cubic yards of cut will be required for the proposed basement and first floor of the development. The excavation will be a total of 20-24 feet deep from street level. Three residential levels will be visible from Carnation Ave. above the existing street grade. Five 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).

The City requires two parking spaces per unit and 0.5 per guest. As proposed, the project provides the required 14 spaces for residents and 4 spaces for guests, for a total of 18 off-street parking spaces. 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 as compared to the existing curb cut at the subject site.

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' (See Exhibit 7). New visible surface development on the bluff face is proposed to be at the PLOED at elevation 50.70.' The natural bluff will be maintained below the 50.7 foot elevation. As proposed, the lowest level finished floor is at the 49.20' elevation with the portion rising slightly so that it daylights on the west bluff face at 50.70' elevation. A 6' deep pool is proposed on the lowest level requiring further grading down to at least the 44' elevation, the pool's "water level" is proposed at the 50.70' elevation. The lowermost exposed visible surface of the development on the west bluff face will be maintained at the established PLOED at 50.70' elevation. 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 3) and the lowermost exposed visible surface of the existing single-family residence at 207 Carnation Avenue is approximately at the 70-foot elevation on the bluff (per the topographic survey). At 33' tall, the proposed bluff-top structure meets the City's 33' height limit in this area.

The applicant proposes to 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 at the corner of Ocean Blvd. and Carnation Avenue (i.e. the public viewpoint identified in the CLUP) 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 from Carnation Avenue (Exhibit 9).

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 at 207 Carnation Ave into a single 61,284 sq. ft. lot for residential purposes; and to subdivide the air space for seven residential condominium units (Exhibit 4).

5-10-298(Advanced Group 99-D) Regular Calendar Page 15 of 35

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

The applicant is proposing to demolish an existing 2-slip dock structure accommodating 25' long vessels and construct a new dock system with 7-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 Six (6) steel dock guide piles will be replaced with seventeen (17) new concrete piles (8 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. Existing pre-1961 stairs on the bluff face providing access to the existing docks and cove are proposed to be retained for future dock access. The stairs are proposed to connect at the lowest level of proposed new five-level structure (on the water side). No work is proposed or authorized on the existing stairs, stair railings, and existing pre-Coastal concrete pad referred to as a "refuge area" on project plans. Proposed dock plans are included in Exhibit 6.

The proposed slips would accommodate two 40' long vessels, two 45' long vessels, two 55' long vessels, one 100' long finger slip that may accommodate one 100' long vessel or two to three vessels (depending on length) and one 50' long side-tie finger for temporary visitor guest vessels. 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 vessels 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 studied the issue and determined that the proposed docks will not cause an impediment to navigation in the main channel.

The proposed boat dock facility accommodating 8± vessels (7 permanently berthed and at least 1 temporary guest vessel) will be larger and involve more water coverage at approximately 3,170 sq. ft. compared to the 490 sq. ft. of existing water coverage with the current 2-dock facility. The proposed new dock would cover approximately 2,680 sq. ft. more open water than the existing dock. These calculations are only for the dock structures and do not take into consideration the far larger water coverage resulting by docked vessels at each slip. The proposed new dock configuration would result in 11 more piles than are currently in place for a total of 17 piles.

B. APPROVAL FINDINGS AND DECLARATIONS

1. GEOLOGY/LANDFORM ALTERATION/SHORELINE PROTECTION

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

5-10-298(Advanced Group 99-D) Regular Calendar Page 16 of 35

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 (to maximum depths of 13 feet), marine and non-marine terrace deposits (16-19 feet below existing grades) and dense sandstone bedrock of the Monterey Formation.

The bedrock present on-site is generally massive, dense and well-cemented. The project proposes 11,460 cu. yds. of cut to accommodate the basement and first floor levels. The excavation for the basement level requires installation of a caisson shoring wall (31 caissons). The caissons are comprised of 19, 36" diameter caissons along the perimeter wall facing Carnation Avenue and 12, 30" diameter caissons along the north perimeter wall. The caisson shoring wall required for the excavation phase will not be removed but be kept in place, however, caissons are not required to support the foundation of the proposed building structure.

The proposed basement elevation is 49.20' with the lowermost exposed face of structure daylighting on both the west-facing bluff is proposed at elevation 50.70' and north-facing bluff ranging from elevation 50.7' to elevation 70.0'. Excavations for and construction of the basement level on along the north-facing bluff proposes to leave a 15-16' high wedge of intact rock as part of the exposed bluff face.

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

5-10-298(Advanced Group 99-D) Regular Calendar Page 17 of 35

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. Additionally, a letter from SoilWorks dated August 23, 2010 maintains that the aforementioned reports remain applicable to date for the subject project.

The underlying geologic units at the site include artificial fill to a maximum depth of 13 feet and terrace deposits which range from approximately in depth from 16-19 feet below the existing site grade, in turn underlain by Monterey Formation bedrock. The bedrock present on site is 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 of the proposed excavation for the originally proposed sub-basement level and a 3.63 factor of safety under static conditions was computed at the base of excavation. The factors of safety for the currently proposed project will equal or exceed these figures.

Wave erosion along the base of the west-side bluff 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.

Both the north and west facing bluffs are 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 any remaining trapezoidal section of bedrock on the non-marine erosion north-bluff face will have sufficient strength to remain in place during the economic life of the proposed new structure. The Commission's staff geologist has reviewed the submitted geotechnical reports, preliminary grading and drainage plans and agrees 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 Commission finds that development on the upper portion of the bluff face does not result in a geologic hazard in this case because, as indicated in the geotechnical report, the

5-10-298(Advanced Group 99-D) Regular Calendar Page 18 of 35

geologic stability of the site is adequate to support the proposed development. Applying a PLOED setback would be 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.

No new interior living space is proposed seaward of the PLOED. However, cantilevered decks are proposed seaward of the PLOED. No additional grading to the bluff would be necessary for decks cantilevered from the proposed condominium structure. The City did not identify a PLOED for accessory development like decks in this case. The applicant has pointed out that accessory development on adjacent sites is located substantially bayward of the decks which are being proposed on the site. Even though the proposed cantilevered decks are landward of adjacent accessory development and do not result in further landform alteration, the decks add to the visual mass of the structure above grade. Therefore, the Commission imposes **Special Condition 14** requiring all accessory structures (i.e., cantilevered decks, cantilevered patio and cantilevered pool) to be placed behind a plane extended vertically from the 50.7' elevation, the agreed upon PLOED. This issue is discussed more fully in the visual resources section below.

Future Bluff and Shoreline Protection

Section 30253 of the Coastal Act requires, in part, that new development be constructed in a manner that ensures that it will not require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs. 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. 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.

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). The applicant also submitted a "Coastal Hazard Study Update for 201-2-7 Carnation, Corona del Mar, CA" by GeoSoils dated December 2010 which finds that the proposed project design changes result in less potential impact from coastal hazards. 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

5-10-298(Advanced Group 99-D) Regular Calendar Page 19 of 35

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. This, as conditioned, the project conforms to Section 30253 of the Coastal Act.

Drainage

Section 30253 of the Coastal Act requires, in part, new development to neither create nore contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area. The applicant is taking drainage design measures to bring the development into further compliance with section 30253. 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 13** 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 (5-10-298) 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

5-10-298(Advanced Group 99-D) Regular Calendar Page 20 of 35

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 13-feet higher than the existing multi-family structure and approximately 20-feet higher than the portion of the existing single-family structure currently on the site. The proposed project, although 13-feet higher than the existing tallest structure on the site, meets the City of Newport Beach's Land Use Plan 28'/33' 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' 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. ¹

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 to provide a park bench and drinking fountain at the public viewpoint at a 69' elevation, landward of the project property line on the public-right-of-way adjacent to the site.

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). **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 and for the 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). Additionally, **Special**

¹ The Channel Reef building has about 48 residential units, in a building with 7 floors, all above grade.

5-10-298(Advanced Group 99-D) Regular Calendar Page 21 of 35

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 17** prohibits entry controls (e.g. gates, gate/guard houses, guards, fences, vegetation, signage, etc.) and any other kind of restriction on use by the general public of the public viewpoint (e.g. hours of operation, etc.), making the viewpoint available for use by the general public at all times.

Views of the Site from the Water

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 51,177 sq. ft., 5-level (three levels visible from grade/street level and all five levels visible from the seaward side along Newport Bay), 33' tall condominium complex. The surrounding area is mostly comprised 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.

Visual simulations of an older version of the project provided in the EIR study demonstrate that the then proposed development would be consistent with the pattern of existing development in the area. The project has since been modified to address Commission comments/concerns regarding the amount of grading into the bluff below the PLOED. The resulting project as proposed in this submittal is approximately 5' taller at 33' tall than the original proposal 28' tall reviewed in the EIR. The proposed project meets the same 33' height restriction as the single-family residences and condominiums on Carnation Ave and is significantly smaller than the Channel Reef condominiums on Ocean Blvd., all visible from Newport Bay.

Use of Predominant Line of Existing Development (PLOED) for Bluff Setbacks

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 only². New visible surface development is proposed to be at the 50.7 feet elevation PLOED. The dock exit is proposed from the lowest level on the west bluff at elevation 50.70 feet. No further cut/excavation is proposed below this level. The natural bluff will be maintained below the 50.7 foot elevation.

Currently, the lowest extent of the foundation visible on the bluff surface of the existing 14-unit apartment building (201-205 Carnation Ave) on the west bluff is at elevation 42.3 feet (NAVD 88) on the west bluff (Exhibit 7, page 2 of 3) and the lowermost exposed visible surface of the existing single-family residence (207 Carnation Ave) on the north bluff is approximately at the 70.0' elevation (per topographic survey, Exhibit 3). New development along most of the north bluff face is proposed to daylight at approximately elevation 65.0' and at elevation 70.0' at the highest level as the two lower levels of the structure will mostly be underground along the north bluff face. The proposed lowest level will grade down to the 49.20' elevation, the lowermost exposed visible surface of the development on the west bluff face will be maintained at the PLOED of 50.70' which will also be visible from the north bluff view. As proposed, applying a PLOED at elevation 50.70' would not result in greater landform alteration on the north bluff.

² The City did not attempt to identify a separate PLOED for accessory development such as decks.

5-10-298(Advanced Group 99-D) Regular Calendar Page 22 of 35

Both the Coastal Act, section 30251, in particular, and the policies of the CLUP require that landform alteration be minimized to ensure that the development does not impact scenic and visual qualities of natural landforms. 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. As noted above, the Commission has typically applied the City's PLOED determination when evaluating the visual and scenic impacts of bluff face development. Further, when the Commission evaluates whether proposed development alters landforms in this area and results in visual and scenic resource impacts, 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. 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 greater bluff face development, similar to what exists further north along Carnation Avenue.

As proposed, the project does not extend below the 50.70' elevation in an effort to protect public views of the bluff by not altering the bluff below the predominant line of existing development. In fact, along the north facing bluff, the applicant is proposing to preserve some bluff face that is located above the 50.7 foot elevation. 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.

As previously noted, no new interior living space is proposed seaward of the PLOED. However, decks/patio and pool are proposed to cantilever seaward of the PLOED. The City did not establish a different PLOED for accessory development like decks in this case. The decks add to the visual mass of the structure above grade. Following is a breakdown of proposed development seaward of the PLOED:

Location	Total Sq Footage	Sq Footage Seaward of PLOED	
Pool & Patio	Pool 162 SF/ Patio 899 SF	160 SF (combined pool & patio)	
Meeting Room Patio	811 SF	44 SF	
Unit 1 Deck	1,489 SF	657 SF	
Unit 2 Deck	703 SF	400 SF	
Unit 3 Deck	435 SF	201 SF	
Unit 4 Deck	586 SF	0 SF	
Unit 5 Deck	794 SF	0 SF	
Unit 6 Deck	866 SF	0 SF	
Unit 7 Deck	306 SF	0 SF	

³ 215 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.

5-10-298(Advanced Group 99-D) Regular Calendar Page 23 of 35

This chart demonstrates that removing deck area located seaward of the PLOED addresses visual impacts while retaining adequate deck and patio area for each unit. The Commission imposes **Special Condition 14** requiring all accessory structures (i.e., cantilevered decks, patio, pool) to be placed behind a plane extended vertically from the 50.7' elevation, the agreed upon PLOED, in order to reduce the visual impact of cantilevered development over the coastal bluff. Therefore, as conditioned, the Commission finds the proposed development consistent with past permit approvals in this area, consistent with the pattern of development in the area, would result in less impact to the bluff than could otherwise occur on the north bluff (Carnation Ave portion of the site) under the categorical exclusion order and does not adversely impact scenic and visual qualities along the bluff face.

Future Exposure of Subsurface Structures

The proposed project includes subsurface structures including basement and shoring walls. For the most part, those structures are located along the inland portion of the property adjacent to the roads. So, except for an unforeseen catastrophic event, those structures wouldn't become exposed to public views. However, along the north facing bluff there is an area of the structure that would be below ground surface, and within 0 to 20 feet of the bluff face (i.e. there would be a 'wedge' of soil and rock between the wall of the structure and the bluff face. The applicants geologist has considered the effects of erosion and does not anticipate those structures would become exposed over the life of the proposed development. However, if they do become exposed, adverse public view impacts could result. Though, it should be noted that even if fully exposed, those structures would not extend below the PLOED at 50.7 feet. Nevertheless, in order to address the potential visual issue, the Commission imposes **Special Condition 16**, which requires the applicants to address the visual impacts if they do arise in the future.

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.

5-10-298(Advanced Group 99-D) Regular Calendar Page 24 of 35

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. As California Brown Pelicans do not breed on the mainland California coast; project implementation would not have an impact on nesting or overall foraging activities except for the proposed dock demolition and expansion (discussed in the denial findings). 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 Term 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.

The proposed project includes cantilevered decks with 42" tall glass guardrails over the coastal bluff. Due to the coastal bluff top location of the proposed deck glass guardrail there is a substantial risk of bird strikes to the glass railing. Glass walls are known to have adverse impacts upon a variety of bird species. Birds are known to strike glass walls causing their death or stunning them which exposes them to predation. Some authors report that such birds strikes cause between 100 million to 1 billion bird deaths per year in North America alone. Birds strike the glass because they either don't see the glass, or there is some type of reflection in the glass which attracts them (such as the reflection of bushes or trees that the bird might use for habitat). Some type of boundary treatment is typically required where the backyards of residences abut coastal bluffs. To provide further protection to coastal avian species, **Special Condition 15** requires the applicant submit final revised plans showing a treatment to the tempered glass screenwall to address bird strike issues, necessary to protect against significant disruption of habitat values.

5-10-298(Advanced Group 99-D) Regular Calendar Page 25 of 35

There are a variety of methods available to address bird strikes against glass. For instance, glass appliqués may be used or glass can be frosted or etched in a manner that renders the glass more visible and less reflective. In the case of fences, screen walls or guardrails, alternative materials can be used, such as wood, stone, or metal. Use of frosted or etched glass, wood, stone or metal material is preferable to appliqués because of the lower maintenance and less frequent replacement that is required. Thus, as conditioned, the proposed development is consistent with Section 30240.

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 (SWPP) 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.

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

5-10-298(Advanced Group 99-D) Regular Calendar Page 26 of 35

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 usch 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 2-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

5-10-298(Advanced Group 99-D) Regular Calendar Page 27 of 35

resources. Thus, all private development must provide adequate on-site parking or alternative public transportation to minimize adverse impacts on public access.

The City requires two parking spaces per unit and 0.5 per guest. Per City requirements, the project provides the required 14 spaces for residents and 4 spaces for guests, for a total of 18 off-street parking spaces. The Commission has consistently found that two parking spaces are adequate to satisfy the parking demand generated by one individual residential unit. Parking areas will be located on the basement and first level accessible by driveway ramp. 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 onstreet 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.

As proposed, 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 7-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. DENIAL FINDINGS AND DECLARATIONS

1. 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.

5-10-298(Advanced Group 99-D) Regular Calendar Page 28 of 35

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.

Section 30250 of the Coastal Act states in part:

(a) New residential...development...shall be located...where it will not have significant adverse effects, either individually or cumulatively, on coastal resources....

Fill of Coastal Waters

The proposed private residential dock expansion requires the demolition of an existing 2-slip dock structure with a total of 10 support piles and construction of a new 7-slip and 1-guest tie dock requiring placement of a total of 21 concrete piles (4 piles 14" diameter, 8 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 seventeen (17) new concrete piles (8 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 slips would accommodate two 40' long vessels, two 45' long vessels, two 55' long vessels, one 100' long finger slip that may accommodate one 100' long vessel or two to three vessels (depending on length) and one 50' long side-tie finger for temporary visitor guest vessels. 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 vessels 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 studied the issue and determined that the proposed docks will not cause an impediment to navigation in the main channel.

5-10-298(Advanced Group 99-D) Regular Calendar Page 29 of 35

Exist. Piles/Fill	Proposed Piles/Fill	Exist. Coverage	Proposed Coverage
Six 14" dia. steel	17 concrete piles	490 sq. ft.	3,170 sq.
guide piles	(8 piles 16" dia. and		·
	9 piles 24" dia.)		
6.5 sq. ft. fill	6.5 + 29.5 = 36 sq. ft. fill		

The proposed boat dock facility accommodating 8 vessels (7 permanently berthed and 1 temporary guest vessel) will be larger and involve more water coverage at approximately 3,170 sq. ft. compared to the 490 sq. ft. of existing water coverage with the current 2-dock facility. The proposed new dock would cover approximately 2,680 sq. ft. more open water than the existing dock. These calculations are only for the dock structures and do not take into consideration the far larger water coverage resulting by docked vessels at each slip. The proposed new dock configuration would result in 11 more piles than are currently in place for a total of 17 piles.

As proposed, the project results in the total placement of 17 dock support piles into the bay floor with a cumulative bay bottom area of approximately 36 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 2-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 seventeen (17) new concrete piles (8 piles 16" diameter, 9 piles 24" diameter) resulting in a cumulative surface area of approximately 36 sq. ft. of fill in coastal waters.

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." The Coastal Act aims to primarily avoid impact before considering possible mitigation of fill of coastal waters. At this time, the applicant has expressed numerous ideas for mitigation measures for the fill of the bay's soft sandy bottom that would result from the placement of 17 dock support piles into the bay floor (cumulative surface area of approximately 36 sq. ft.), such as developing a program to protect the Sand Dollar habitat in the cove, contributing funds for the establishment of a Sea Anemone Exhibit at Crystal Cove Beach, establishing a program to contribute to the cleanup of the Rhine Channel, or possibly contributing In-Lieu fees to the Eel Grass Replacement Program, however none of these proposals have been developed and submitted as a mitigation plan.

The existing dock provides private accommodations for two (2) vessels, or up to (4) four vessels utilizing side ties (if such side-tying is allowable) for the entire 14-unit apartment building, the applicant is proposing to provide at minimum one dock slip for each of the proposed seven (7) condominium units. The proposed 120-foot long finger may accommodate one (1) 100-foot vessel or between two (2) and four (4) smaller vessels. 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

5-10-298(Advanced Group 99-D) Regular Calendar Page 30 of 35

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.

Special Status Marine Species - Eelgrass

Eelgrass and Caulerpa taxilfolia 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 1 of 2 provides a figure showing the location of eelgrass in the project area in relation to the dock expansion project. However, staff notes that the eelgrass study is over 5 years old. Should the Commission approve any work to the dock system, an updated eelgrass study would be required. No direct losses of eelgrass are anticipated as a result of the proposed dock expansion project. However, the project may have potential indirect long-term eelgrass habitat losses due to shading effects from vessels docked within the larger 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.

Marine Environment Shading Impacts

Coastal Act Section 30230 requires that marine resources be maintained, enhanced, and where feasible, restored. Moreover, Coastal Act Section 30250 requires that new development be located where it will not have cumulative adverse effects on coastal resources. A coastal development permit may be issued if the project can ensure that the uses of the marine environment be carried out in a manner that will sustain the biological productivity of coastal waters. The biological productivity of coastal waters is highly dependent on sunlight for photosynthesis by eelgrass and "lower order" green algae, phytoplankton, and diatoms that form the basis of the marine food chain. As proposed, the project in no way sustains or enhances productivity of coastal waters but in fact reduces overall coastal productivity by covering an unnecessarily large area and will lead to cumulative adverse impacts on coastal waters.

The proposed boat dock facility will be larger and involve more water coverage at approximately 3,170 sq. ft. compared to the 490 sq. ft. of existing water coverage with the current 2-dock facility. Larger

5-10-298(Advanced Group 99-D) Regular Calendar Page 31 of 35

dock structures take up more of the bay's water area and create greater adverse effects on marine resources (e.g., shading and habitat displacement). As a consequence, there will also be a loss of bay bottom area exposed to adequate sunlight that is suitable for the growth of eelgrass and it will block more of the sunlight that marine resources such as phytoplankton, algae, and lower order biological resources need. Furthermore, there would be a loss of foraging habitat for sight foraging marine birds such as the state and federally listed California brown pelican which is found in the project vicinity. Although the coverage of bay surface area habitat associated with this project may seem small compared with the amount of open water surrounding it, it is a concern because of the impacts of the project itself and for cumulative impacts. The Commission limits the size of shoreline structures for to protect marine resources from adverse impacts of development in these bay areas.

Larger docks are also more damaging to marine resources than smaller docks because larger docks require more piles (fill of coastal waters). Although a few additional piles may not seem to create significant adverse impacts, the cumulative effect of allowing additional piles will add up over time. It should be remembered that there are hundreds of private residential boat docks in Newport Harbor. If each were permitted to increase the amount of fill, the overall effect would be a significant loss of coastal waters and soft bottom habitat. Therefore, docks associated with private development should be limited in size to preserve open water areas in bays thereby minimizing shading that causes adverse impacts to marine organisms that depend on sunlight and minimizing fill that displaces bay bottom habitat. Since the proposed dock does not minimize impacts, the Commission finds that element of the project is not consistent with Sections 30230 or 30250 of the Coastal Act.

D. <u>COSTS AND ATTORNEYS FEES</u>

Title 14, section 13055(g) of the California Code of Regulations authorizes the Commission to require applicants to reimburse the Commission for expenses incurred in processing CDP applications. Thus, the Commission is authorized to require reimbursement for expenses incurred in defending its action on the pending CDP application. Therefore, consistent with the Commission's regulations, the Commission imposes **Special Condition 18**, requiring reimbursement of any costs and attorneys fees the Commission incurs "in connection with the defense of any action brought by a party other than the Applicant/Permittee ... challenging the approval or issuance of this permit."

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 Land Use Plan for the City of Newport Beach was effectively certified on May 19, 1982. The certified LUP was updated on October 2005 and in October 2009. As conditioned, the portion of the proposed development which is being approved is consistent with Chapter 3 of the Coastal Act and with the certified Land Use Plan for the area. Approval of the project, as conditioned, will not prejudice the ability of the local government to prepare an LCP that is in conformity with the provisions of Chapter 3 of the Coastal Act. However, as one aspect of the project cannot be conditioned to be brought into conformance with the provisions of Chapter 3 of the Coastal Act, therefore, that aspect of the project is denied.

5-10-298(Advanced Group 99-D) Regular Calendar Page 32 of 35

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 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 51,177 sq. ft., 7-unit, 33-feet tall, 5- level condominium structure (three levels visible from grade/street level and all five levels visible from the seaward side) with 18 parking spaces and common amenities including a fitness facility, meeting room, patio, pool and spa; hardscape and landscaping improvements; grading consisting of 11,460 cu. yds. of cut; demolition of an existing 2-slip floating dock expansion to a new 7-slip floating dock and guest side-tie; lot line adjustment to merge two lots and a 584 sq. ft. portion of 101 Bayside Place with the parcels identified as 201-205 Carnation Avenue into a single 61,284 sq. ft. lot for residential purposes; and tentative tract map to combine to subdivide the air space for seven 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 abovegrade 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-

5-10-298(Advanced Group 99-D) Regular Calendar Page 33 of 35

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.

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 Expansion; 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) Pool Protection Plan; 14) Revised Final Plans, 15) Bird Strike Prevention; 16) Future Foundation/Subsurface Structure Exposure Plans; 17) Prohibition on Public Access Controls; and 18) Liability for Costs and Attorney Fees. With the proposed mitigation measures and required conditions, the proposed project would have no greater coastal resource impacts than the alternatives considered.

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.

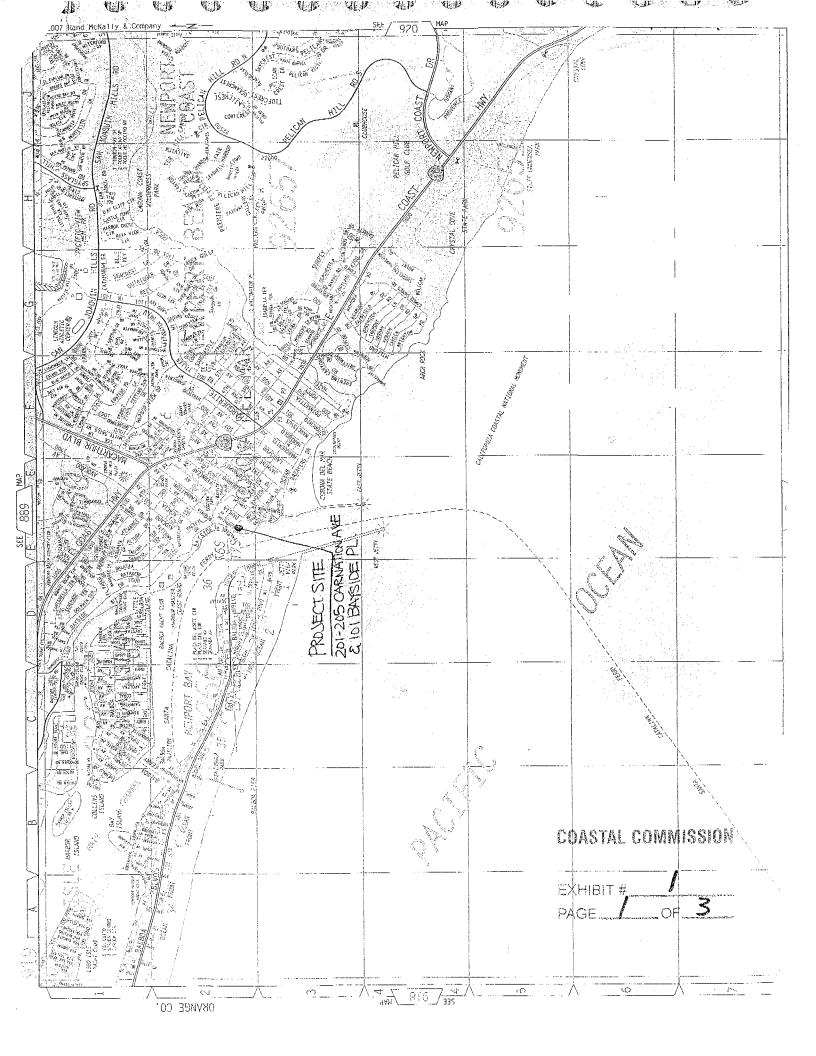
5-10-298(Advanced Group 99-D) Regular Calendar Page 34 of 35

APPENDIX I – LIST OF SUBSTANTIVE DOCUMENTS

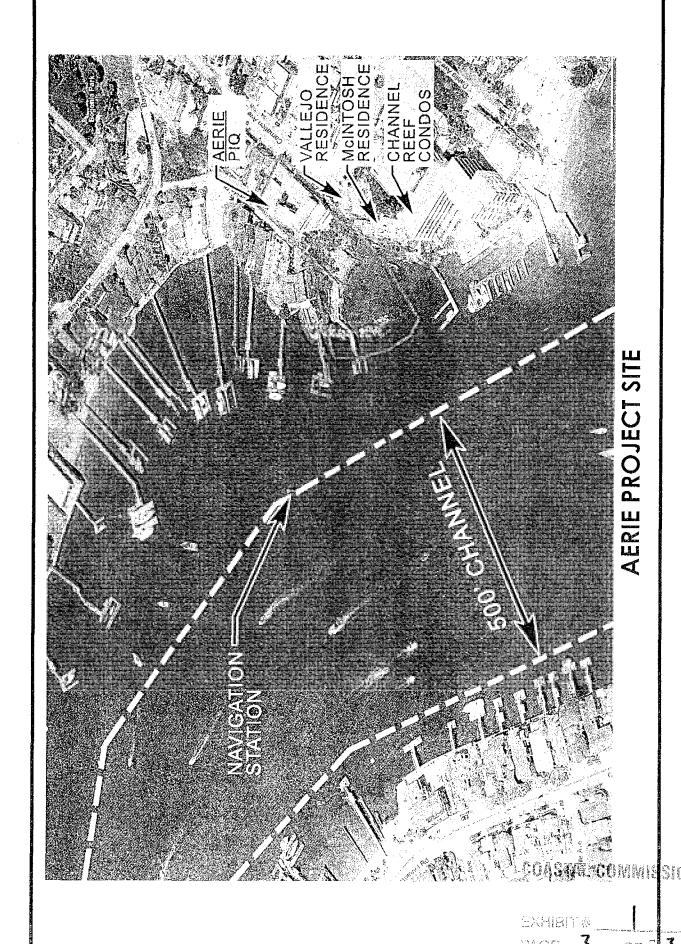
- 1. Keeton Kreitzer Consulting; Environmental Impact Report, SCH No. 2007021054, Aerie PA2005-196, March 2009.
- 2. Keeton Kreitzer Consulting; Mitigated Negative Declaration, SCH No. 2008051082, Aerie PA2005-196, 2008.
- 3. AEI Consultants; Pre-Demolition Asbestos/ Lead-Based Paint Survey, 201-207 Carnation Avenue; December 13, 2007.
- 4. Austin-Foust Associates, Inc.; Aerie Corona del Mar Condominium Project Traffic Assessment; March 4, 2009. (Please refer Appendix C in the EIR)
- Coastal Resource Management, Inc.; Eelgrass (Zostera Marina) Impacted Assessment for a Dock Renovation Project Located in Carnation Cove; May 12, 2008 (Revised March 4, 2009). (Please refer to Appendix J in the EIR)
- 6. Coastal Resource Management, Inc.; Sand Dollar Bed Exhibit; 2009.
- 7. GeoSoils, Inc.; Coastal Hazard Study; October 4, 2006.
- 8. GeoSoils, Inc.; Bluff and Shoreline Reconnaissance in the Vicinity of 201-207 Carnation Avenue, Corona del Mar; June 11, 2007.
- 9. GMU Geotechnical, Inc.; Summary Letter of third Party Geotechnical Review, Proposed Condominium Project; October 29, 2008.
- 10. Hunsaker & Associates Irvine, Inc.; Hydrology Analysis for Tentative Tract 16882; Februry 2, 2009.
- 11. Hunsaker & Associates Irvine, Inc.; Conceptual Water Quality Management Plan; December 30, 2007, Revised January 28, 2009.
- 12. Hunsaker & Associates Irvine, Inc.; Storm Water Pollution Prevention Plan; March 17, 2007; (Revised January 20, 2009).
- 13. Hunsaker & Associates Irvine, Inc.; Elevation Certification; April 12, 2007.
- 14. Hunsaker & Associates Irvine, Inc.; Water Quality Management Plan Exhibit; May 12, 2009.
- 15. ICF/ Jones & Stokes; Biological Impact Report for Aerie Residential Project; December 2008. (Please refer Appendix H in the EIR)
- 16. Brion Jeannette Architecture; Preliminary Construction Management Plan; October 30, 2008 (Revised December 23, 2008). (See refer to Appendix B in the EIR)
- 17. Brion Jeannette Architecture; Aerie Project Overview; May 8, 2006 (Revised February 15, 2007).
- 18. Leighton & Associates, Inc.; Preliminary Geotechnical Engineering Exploration and Analysis for the Proposed Aerie Dock Replacement; August 25, 2008 (Revised September 19, 2008).
- 19. LSA Associates, Inc.; Results of Cultural and Paleontological Resources Records Searches for the Carnation Villa Project; July 12, 2005.
- 20. Neblett & Associates, Inc.; Revised Plan Review and Response to Comments Aerie 8 Unit Condominium Project; December 19, 2008.
- 21. Neblett & Associates, Inc.; Conceptual Grading Plan Review Report, Condominium Project, TTM 16882; September 20, 2008.

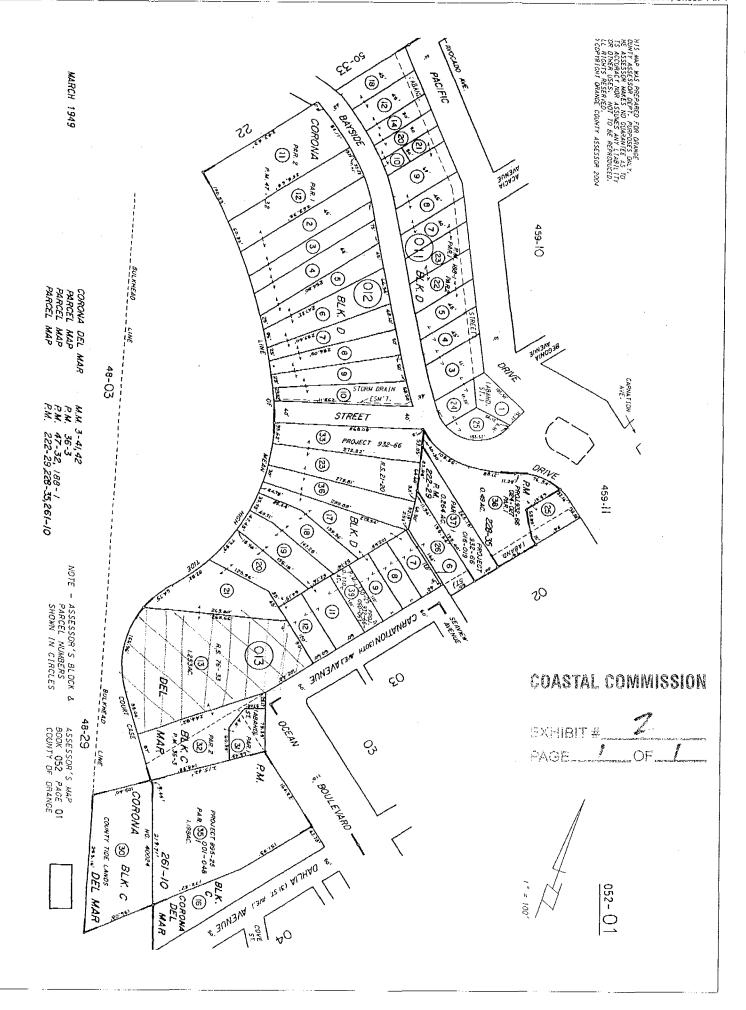
5-10-298(Advanced Group 99-D) Regular Calendar Page 35 of 35

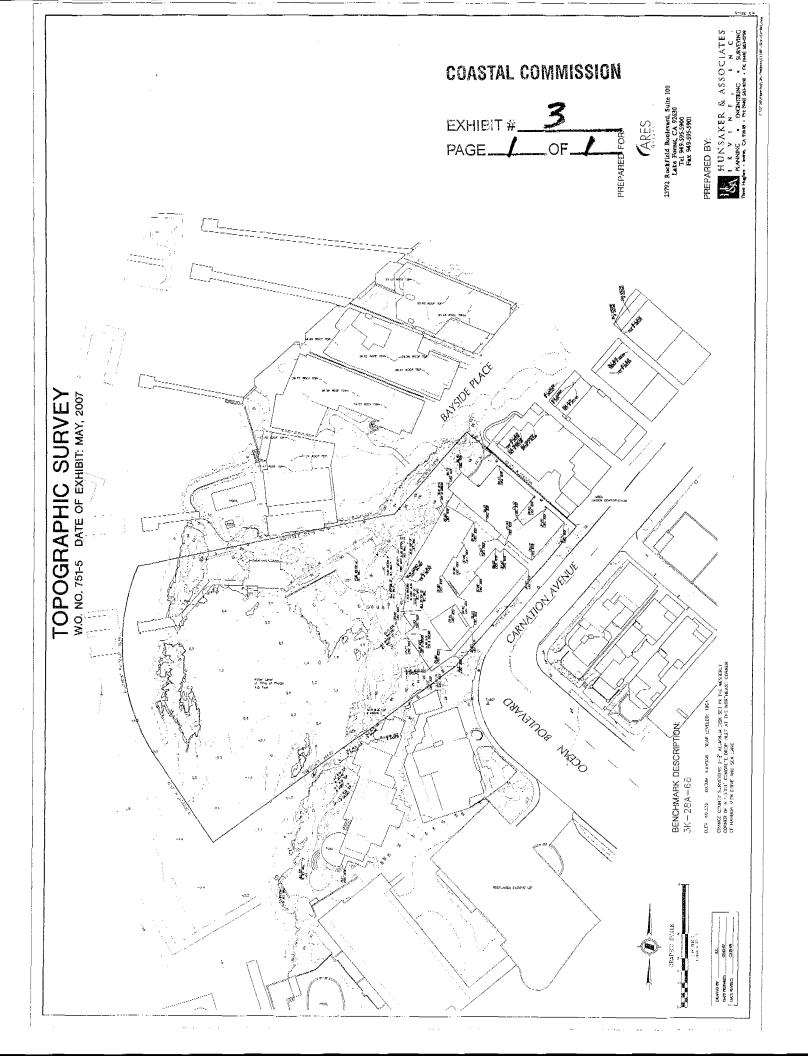
- 22. Neblett & Associates, inc.; 2007 CBC Seismic Design parameters (Update Letter Report); May 12, 2008.
- 23. Neblett & Associates, Inc.; Review of Architectural Plan; November 27 and December 17, 2007.
- 24. Noble Consultants; Coastal Engineering Assessment for the "Aerie" Dock Project (Letter Report); May 9, 2008.
- 25. P&D Consultants; Phase I Environmental Site Assessment; May 26, 2006.
- 26. P&D Consultants; Biological Constraints Analysis for Aerie Residential Project; June 10, 2005.
- 27. The Planning Center; Construction Noise and Vibration Study for: Aerie Residential Development; March 2009. (Please refer to Appendix F in the EIR)
- 28. Robert Mitchell & Associates; Existing Vegetation Map (Sheets L-I and L-2); April 25, 2008. (Please refer to Sheets L-I and L-2 in the AIC approved plans)
- 29. Synectecology; Aerie Residential Development Air quality Focused Analysis; December 22, 2008. (Please refer to Appendix D in the EIR)
- 30. Wieland Acoustics, Inc.; Environmental Noise Study for the Construction of the Proposed Carnation Cove Dock Replacement Project in the City of Newport Beach; March 12, 2009. (Please refer to Appendix E in the EIR)
- 31. Neblett & Associates, Inc.; Response to Comments (prepared by David H. Lee & Associates, Inc.); August 11, 2008.
- 32. SoilWorks; Conceptual Grading and Architectural Plan Review; August 9, 2010
- 33. SoilWorks; Transfer of Geotechnical Consultant of Record; August 23, 2010
- 34. GeoSoils, Inc.; Coastal Hazard Study Update for 201-207 Carnation, Corona del Mar, CA; December 21, 2010

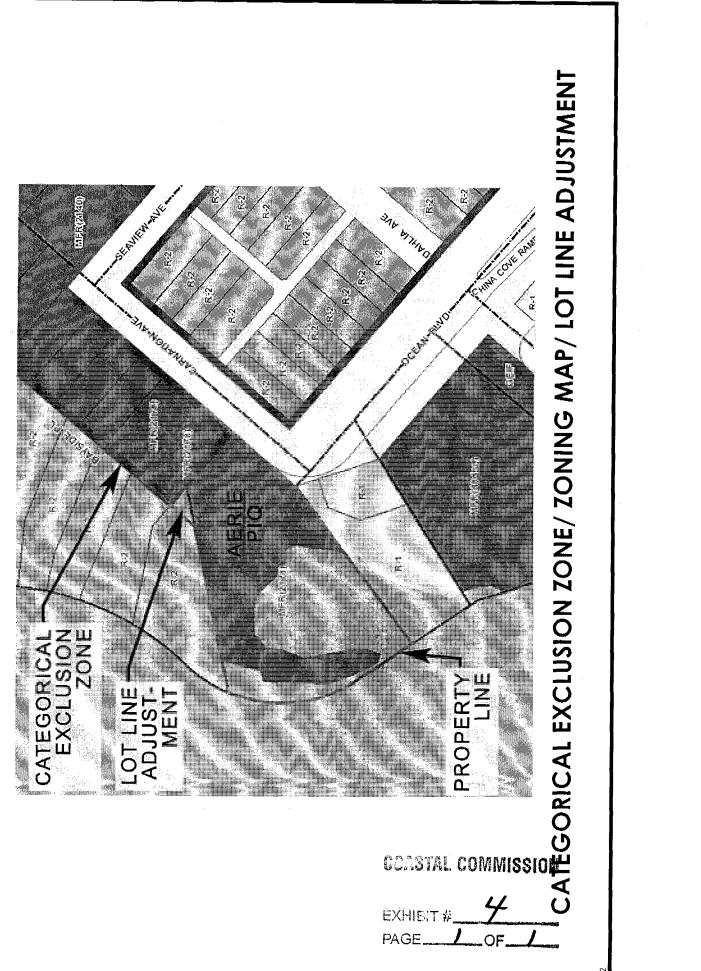


201-207 CARNATION AVENUE
CORONA DEL MARION ISSIONE Advanced Real Estate Services, Inc.
23792 Rockfield, Suite 100
Lake Forest, CA 92630 500 1000 PLOTIED BY: Jennifer Matter DAFE: Aug. 03, 2009 03:00:58 PM FILE: F-\0136\Planning\OA Project\Exhibits\Location Map Exhidwq

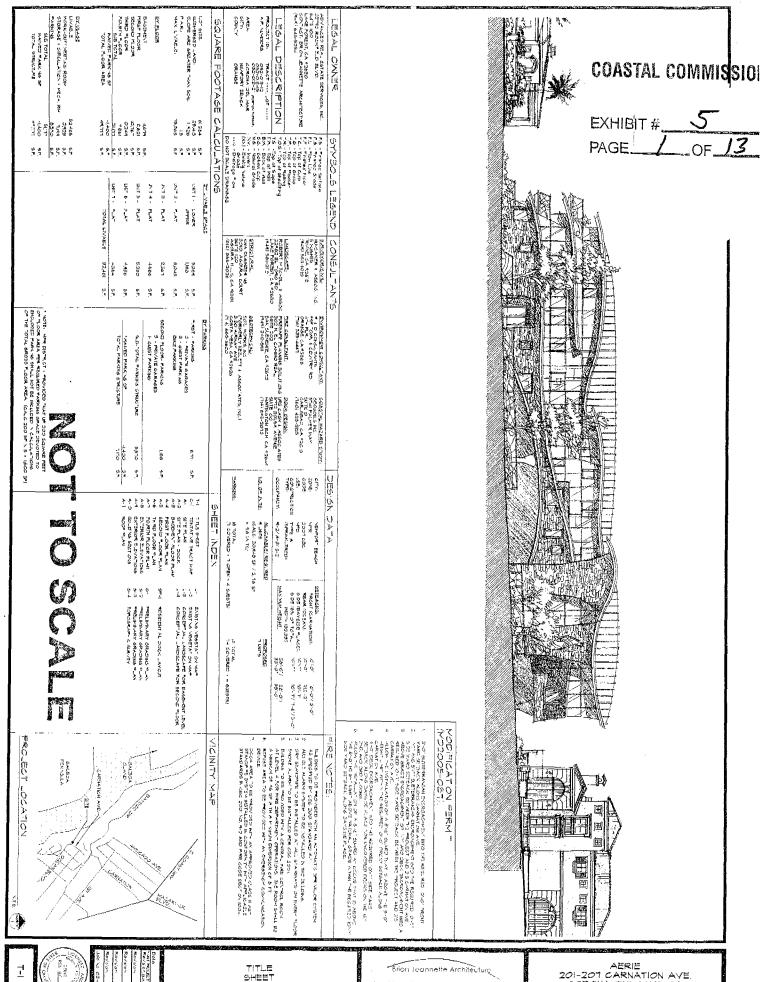








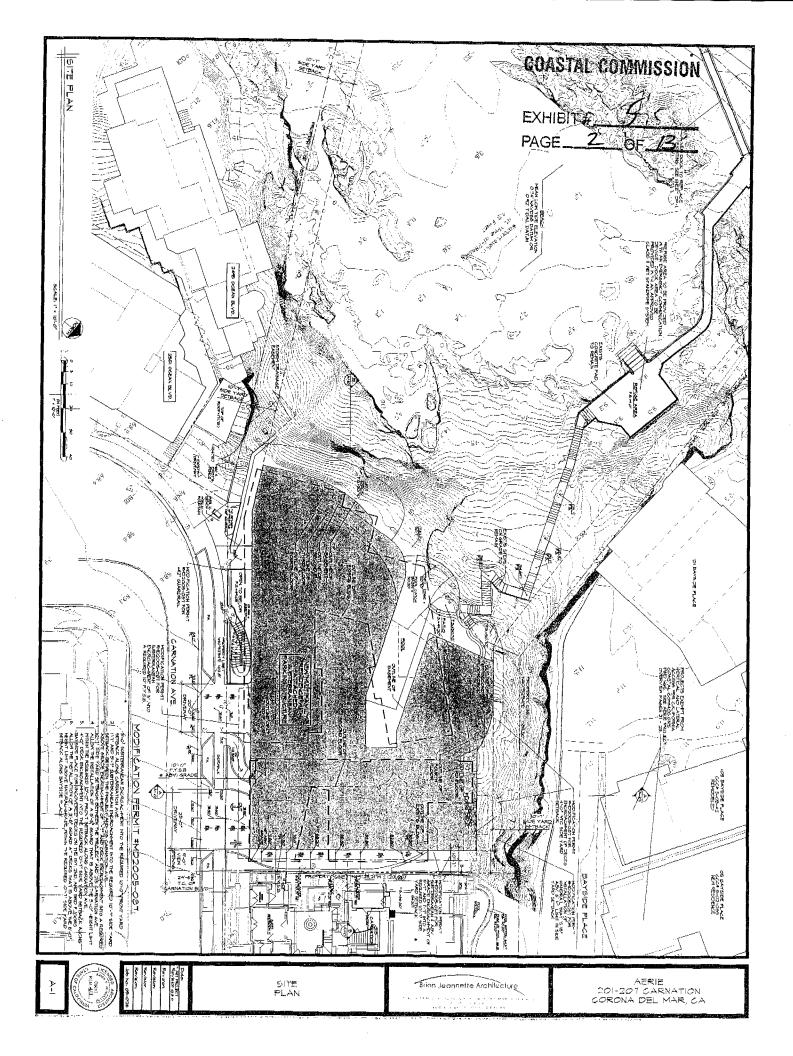
PAGE___

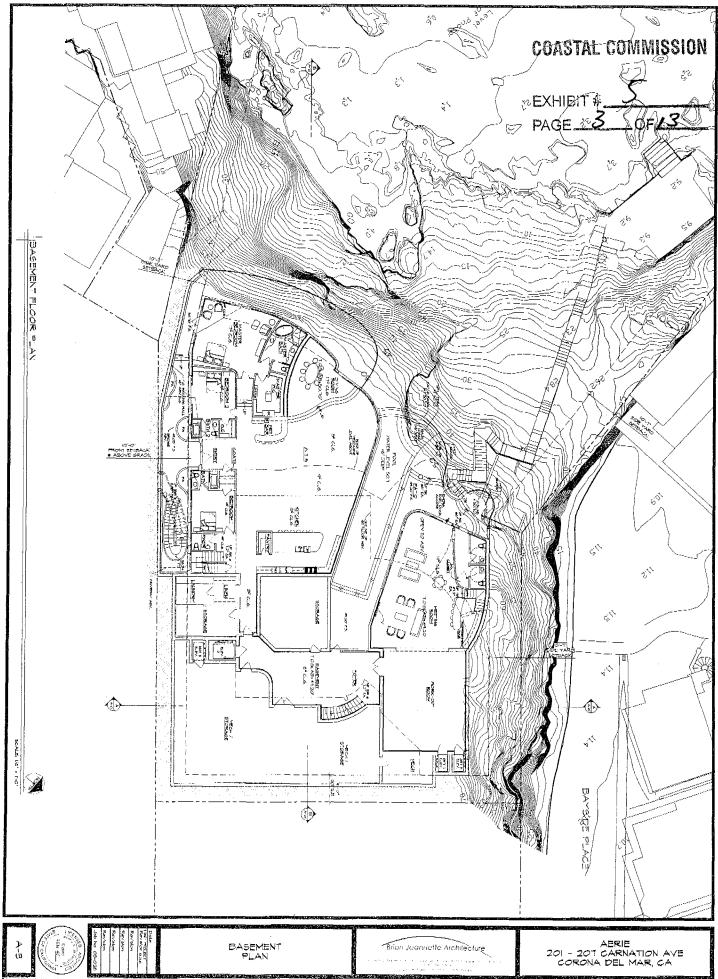


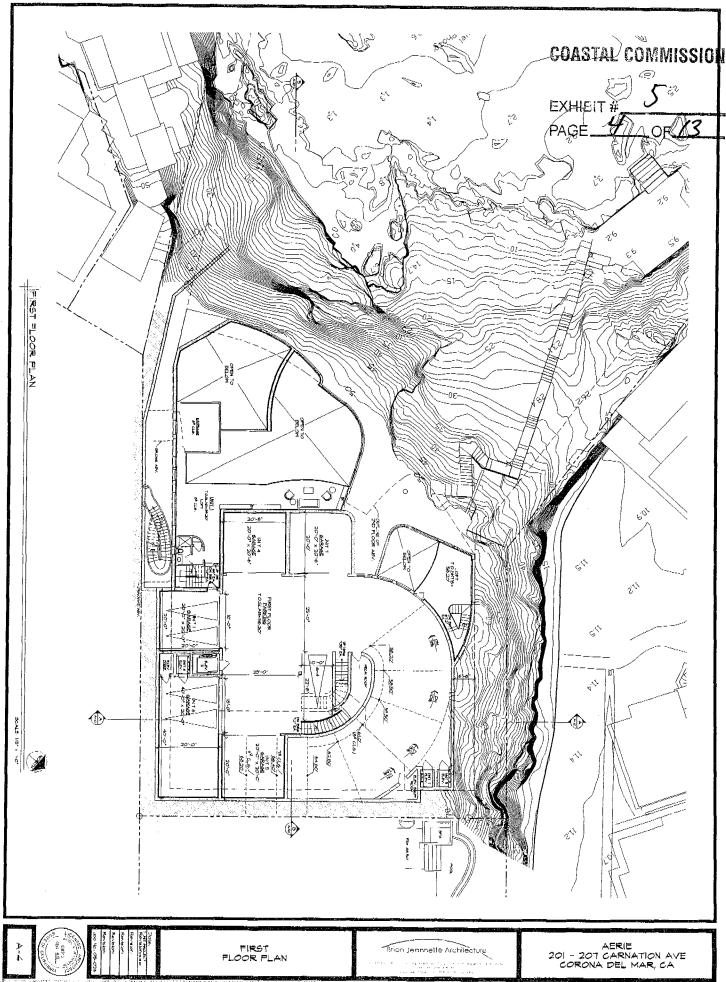


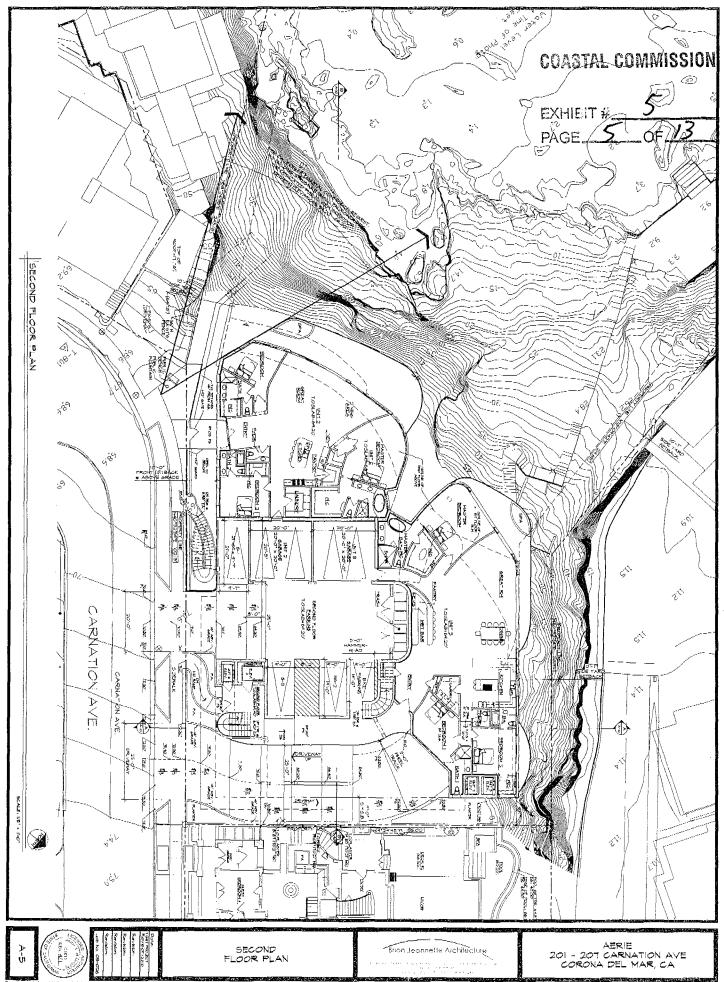


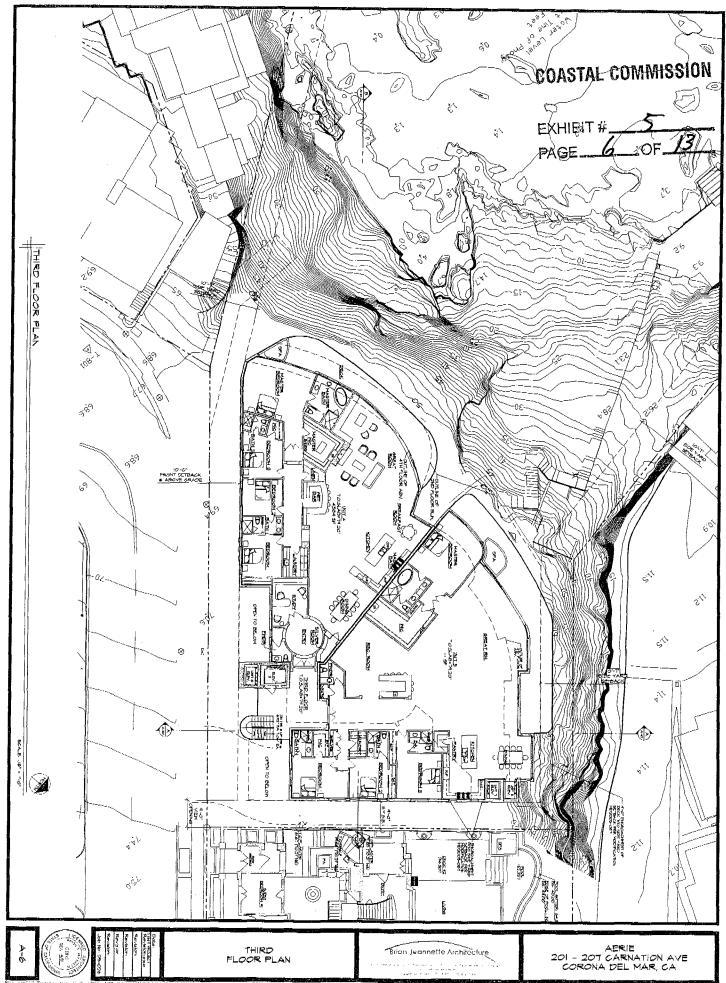


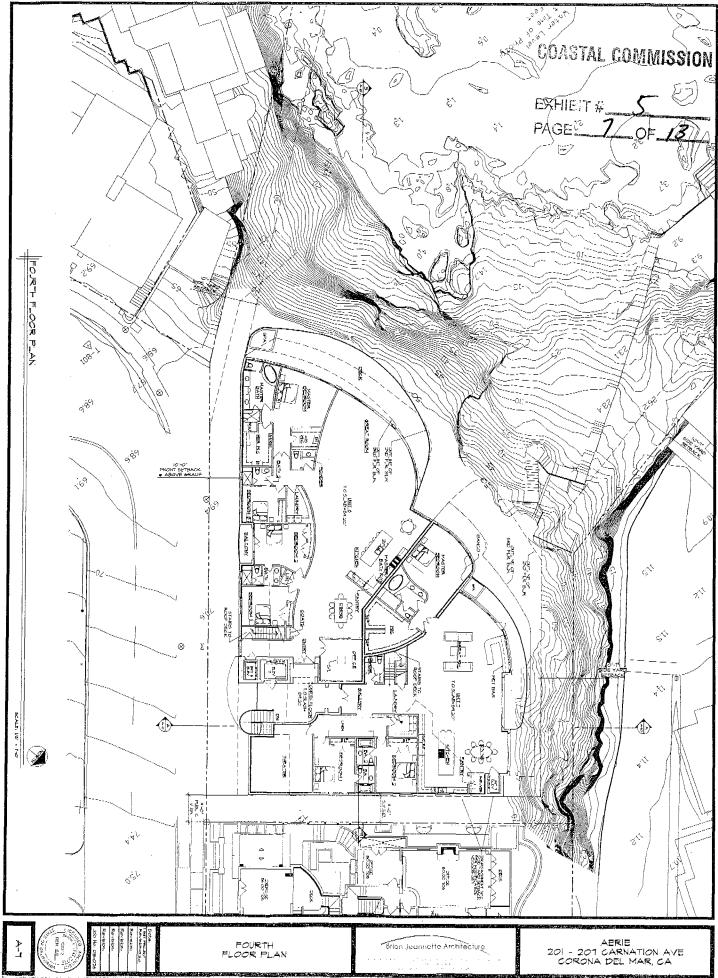


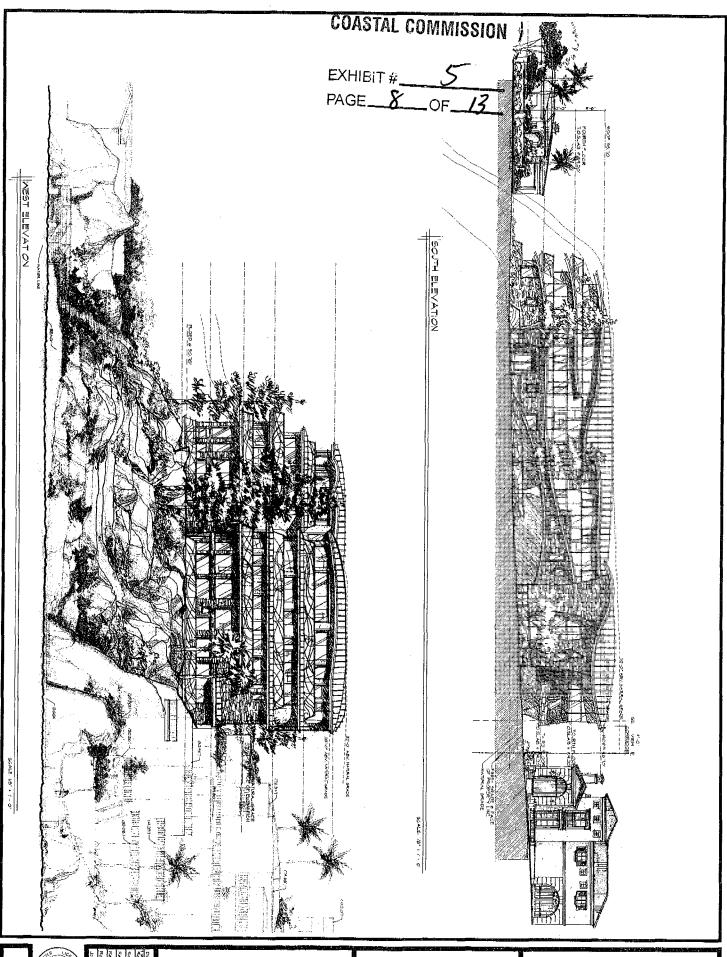








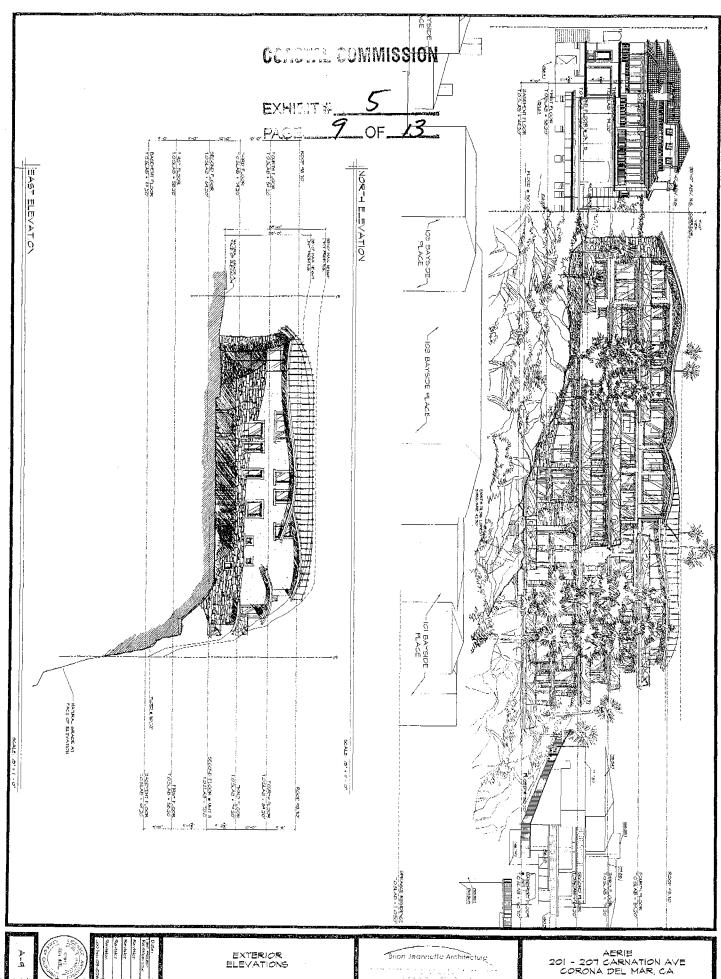


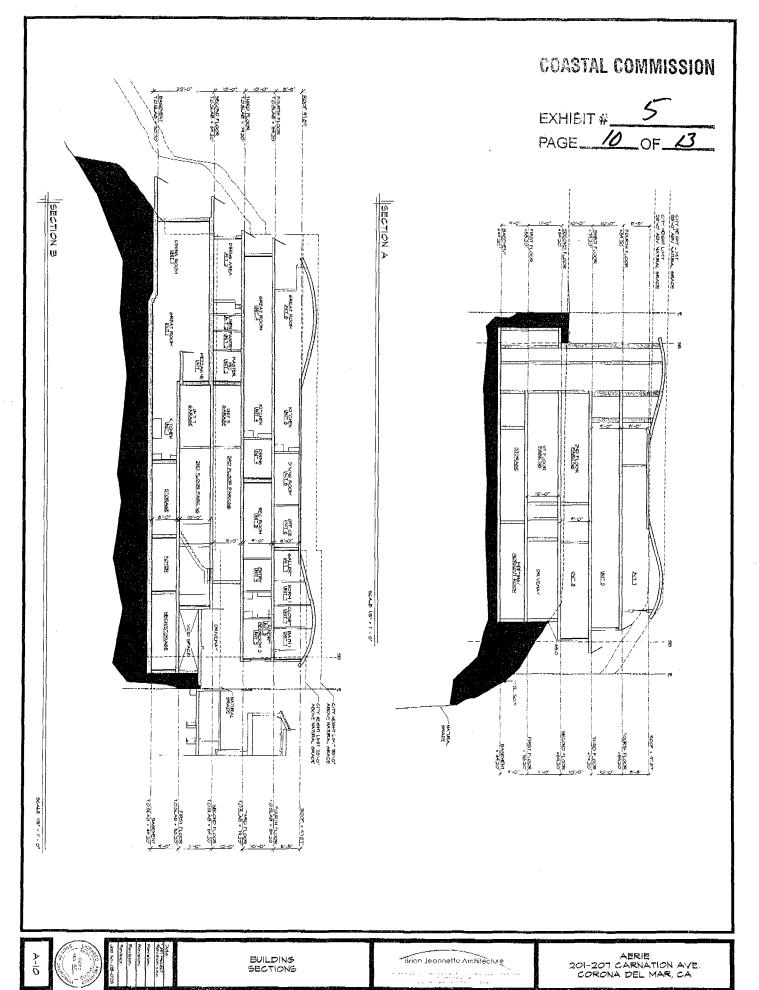


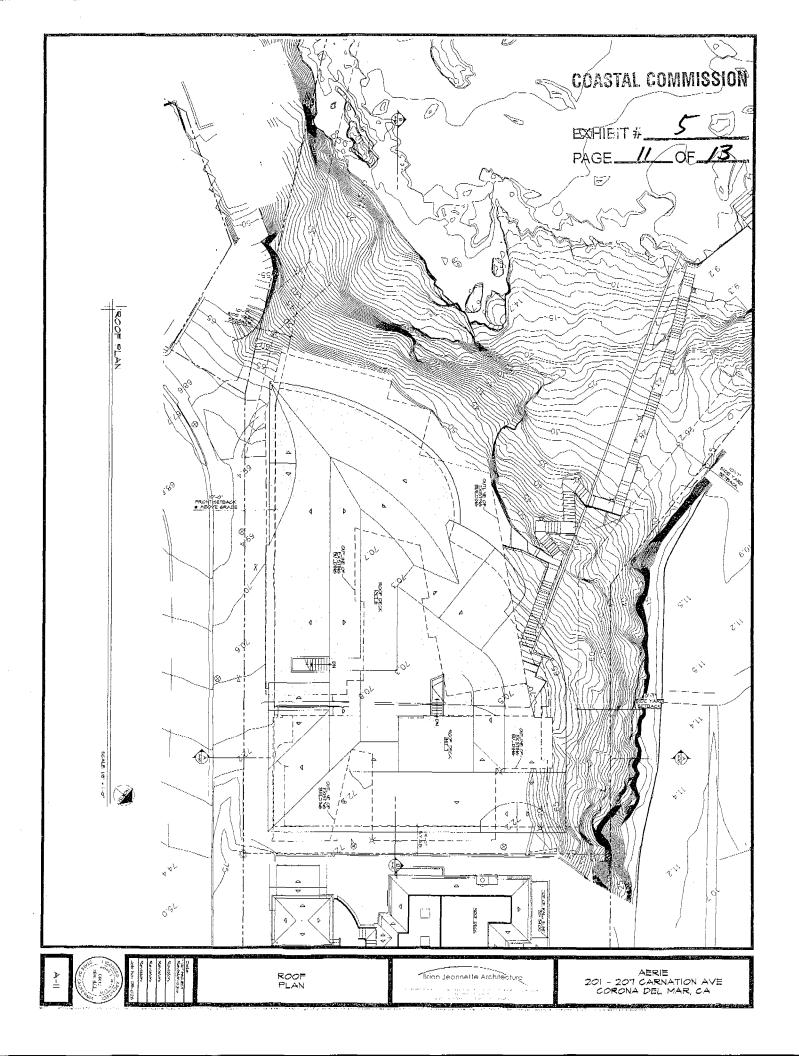


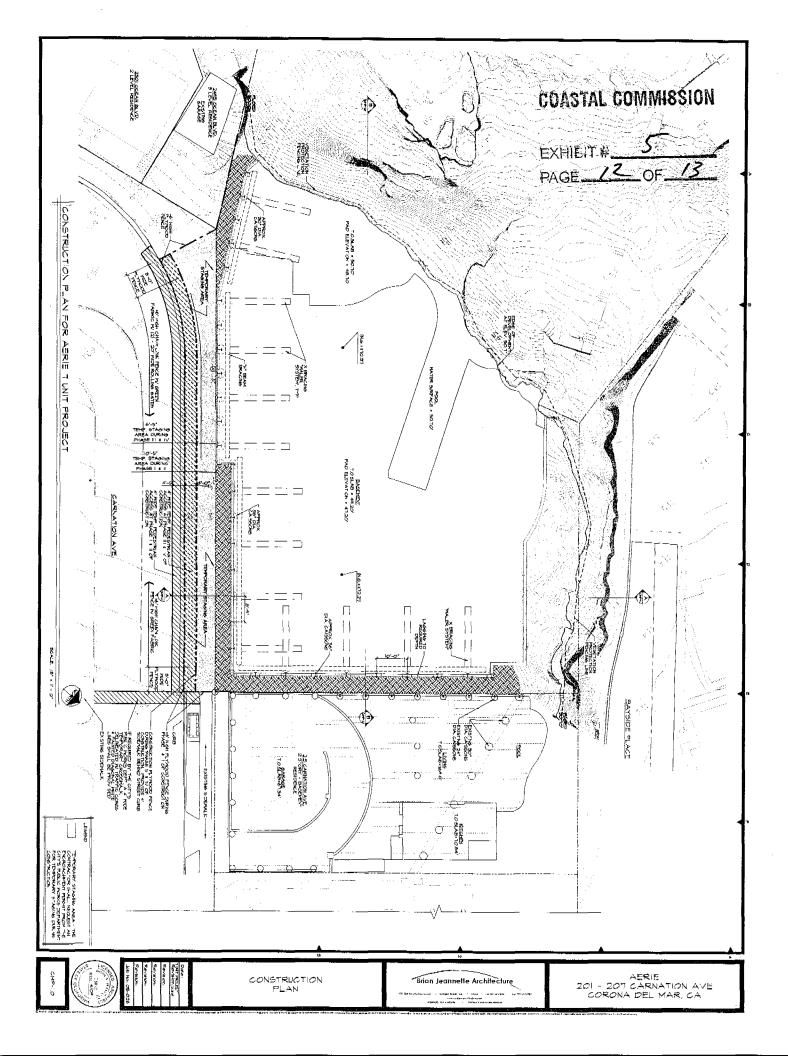


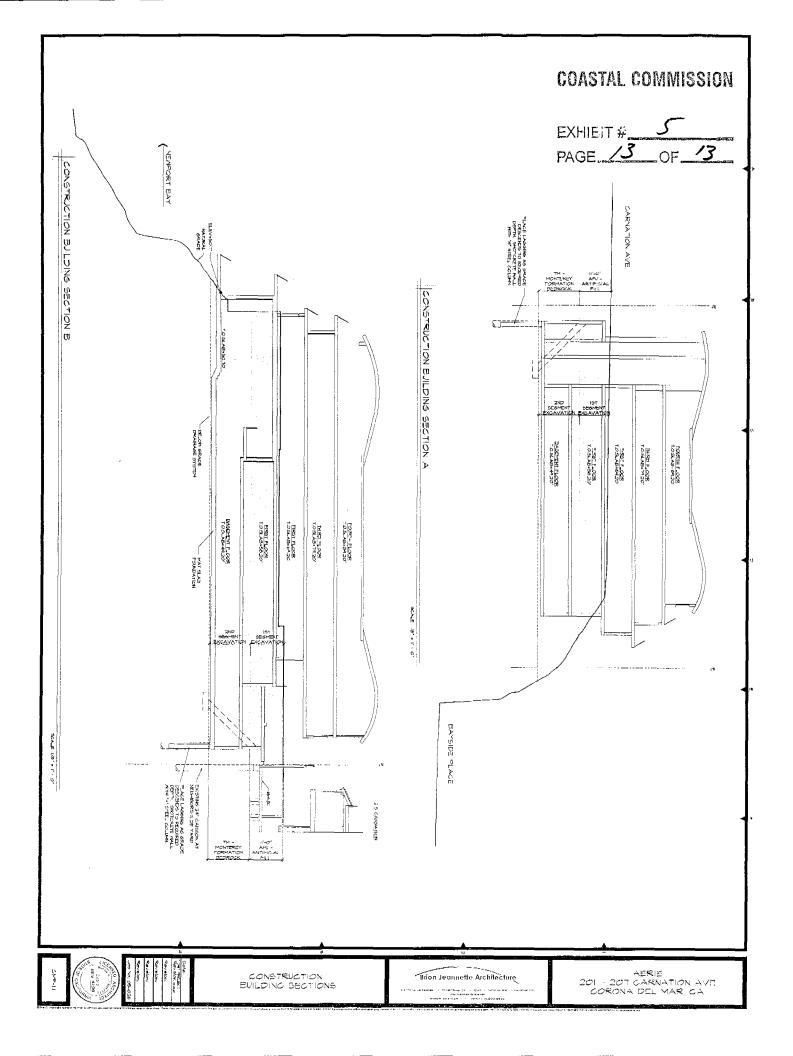


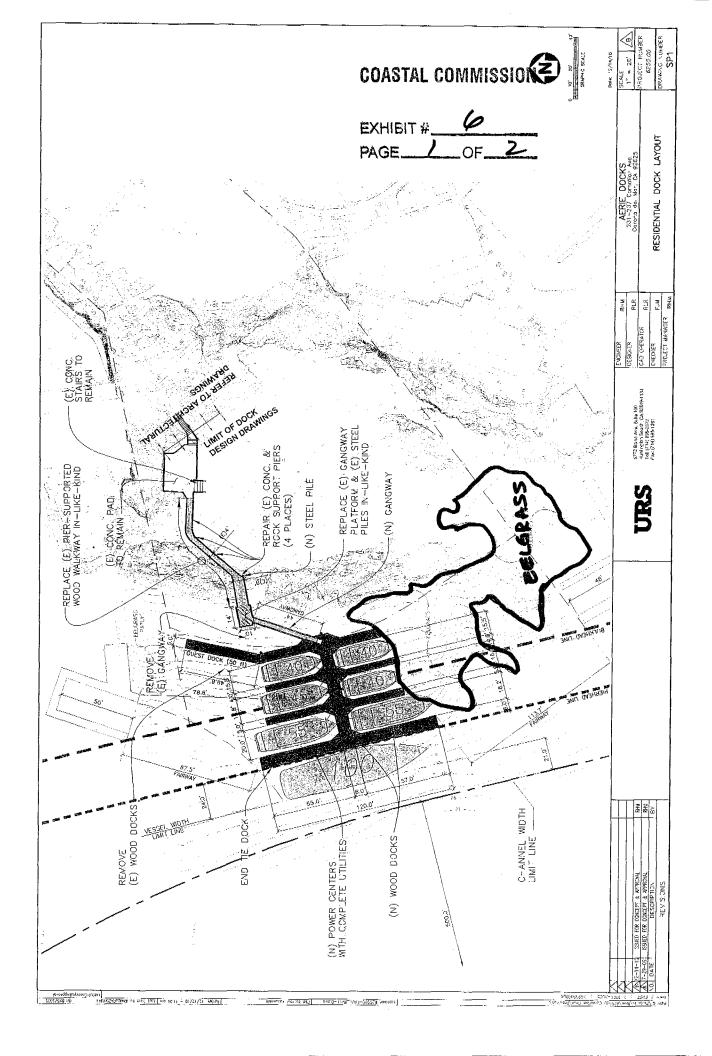


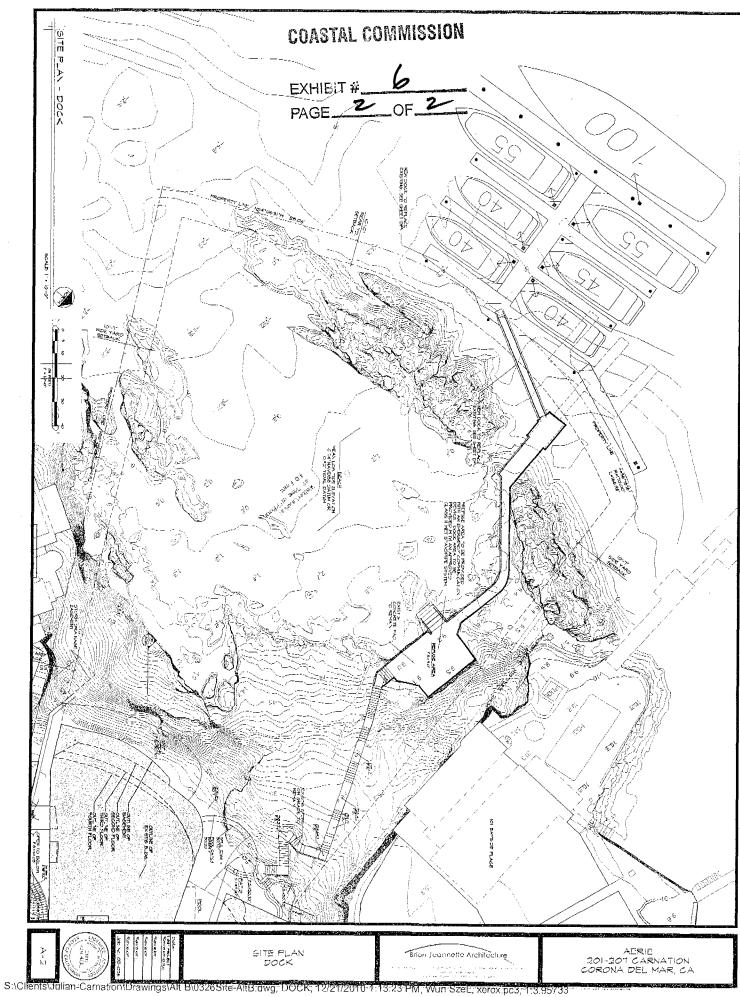


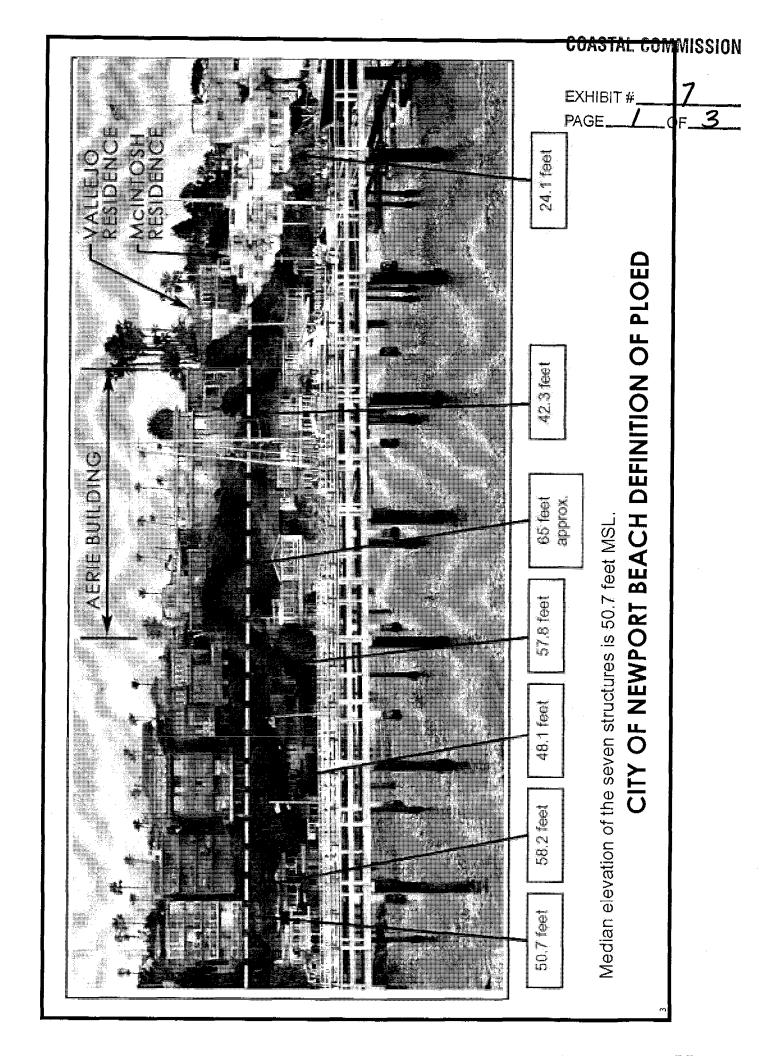


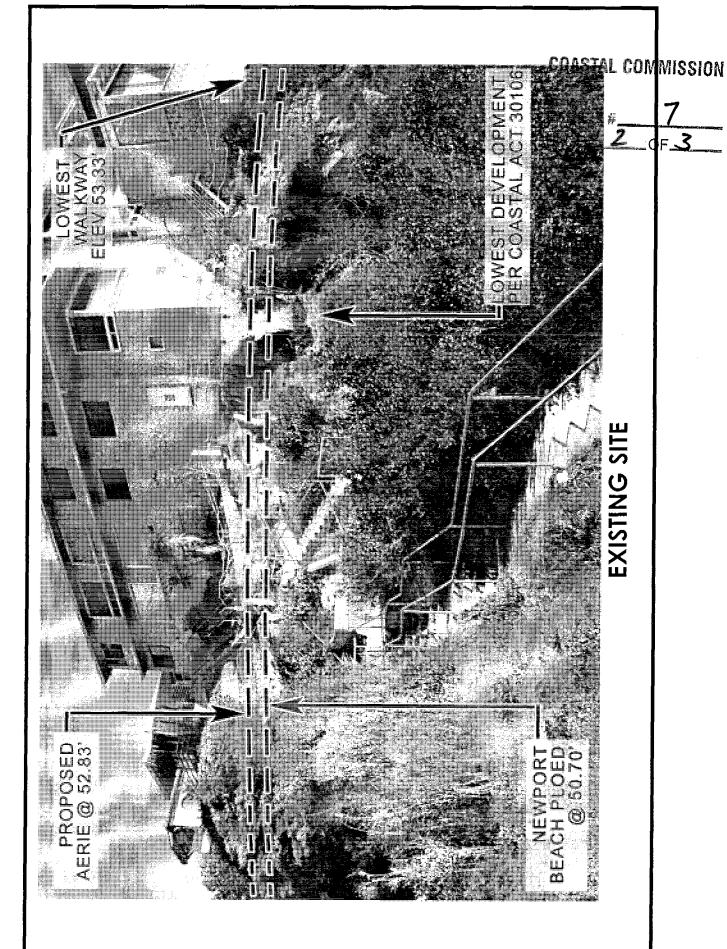












EXHIBIT#	<u></u>	7	
PAGE	3	_OF	3



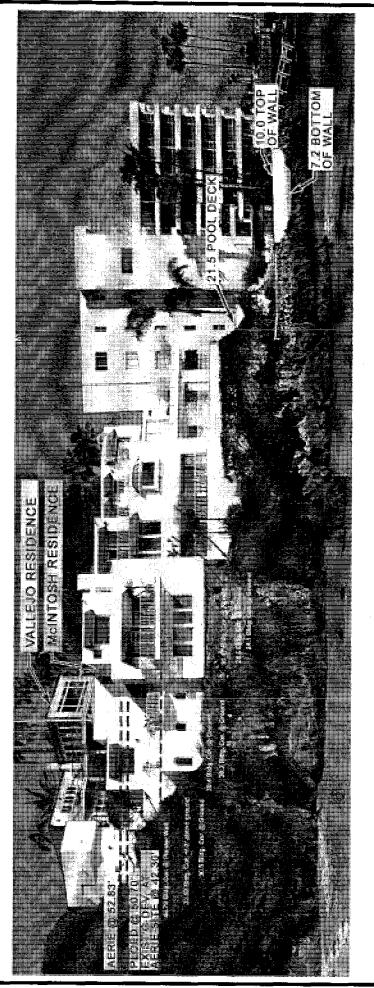
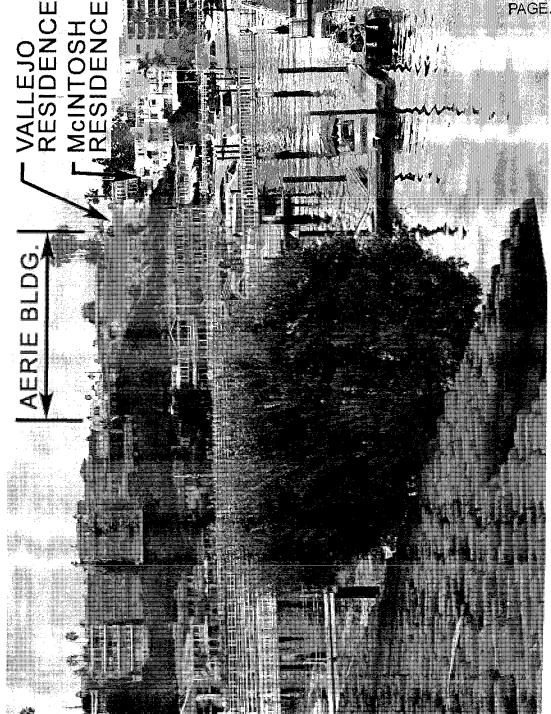
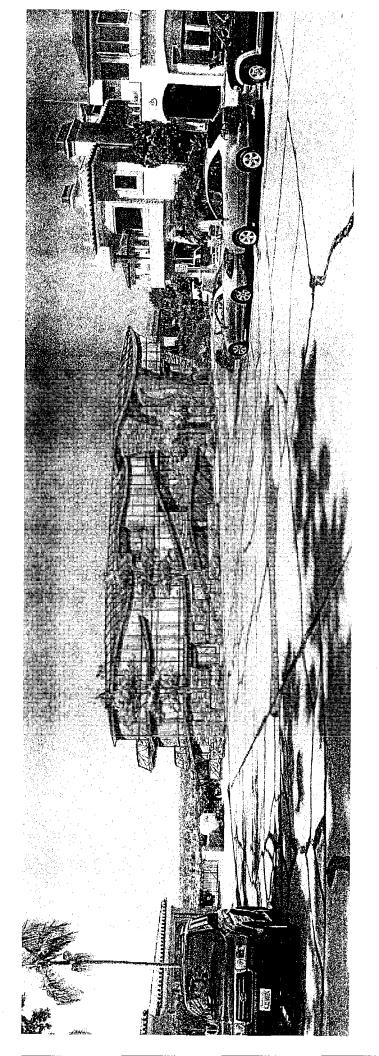


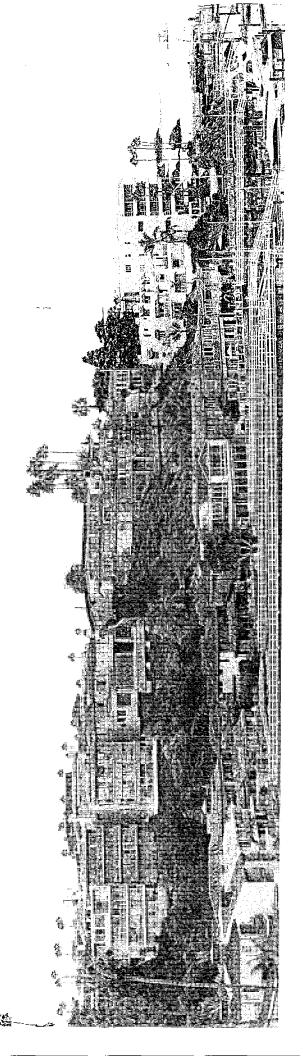
EXHIBIT #



TODAY'S VIEW 2010



EXHIBIT# 6



EXHIBIT# 8
PAGE 3 OF 3

South Coast Region
FEB 2 2011
CAUFORNIA
COASTAL CONVINISHOR

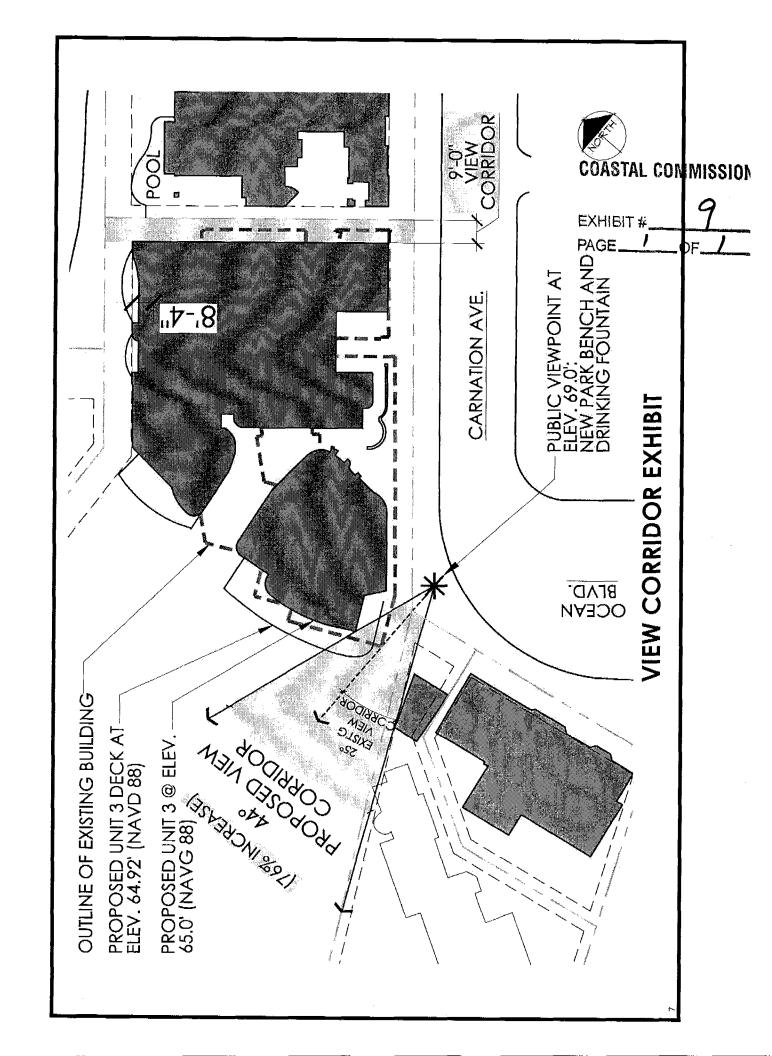
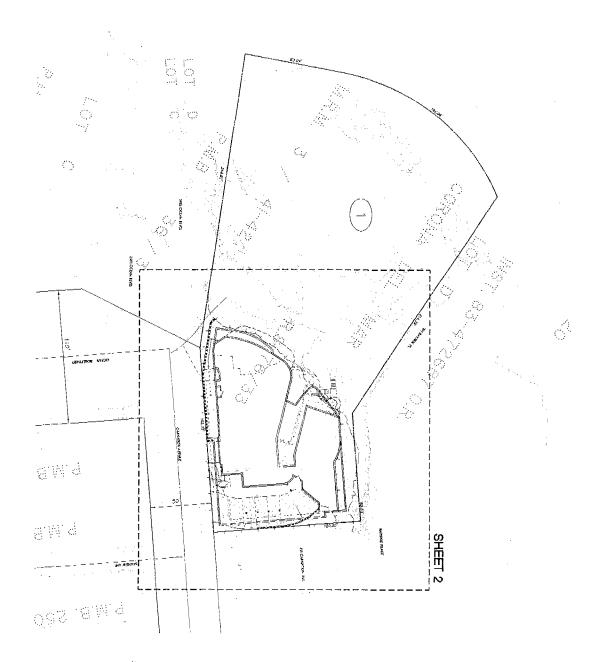


EXHIBIT # 10 PAGE 1 OF 3



CONCEPTUAL GRADING PLAN TTM NO. 16882







EARTHWORK QUANTITIES

CUT 11,4EC CY
CUL

10,460 CY

SITÉ ADDRESS

201, 205 & 207 CARRATION AVENCE
AND A PORTION OF 101 SAYSIDE PLACE,
CORCHA DEL MAR CA 92625



COASTAL COMMISSION EXHIBIT# PAGE. ... CARNATION AVENUE 50 BAYSIDE PLACE (<u>i</u>) GRADING PLAN CONCEPTUAL PREPARED FOR: PREPARED BY:

COASTAL COMMISSION PAGE_3 TOSLAS : PI Sep ruos Sold with which says can be out that says, was selected serves FOUNCE PLOCE WOO'U SHILL STEAT ROOM CAST SANTA Ę SECTION B 100 SECTION A SH 16 ROCH EARSON TO SKINST SCO. A TOWACIS 100 STITE OF THE PERSON NAMED IN COLUMN TO STATE OF THE PERSO MOTHER POSTS 200 Ē SECOND SECOND STORE THRUSH ACCOUNTS AND SELECTION AND SELECTION AND SELECTION ACCOUNTS AND SELECTION SEAD! 1 800 TO 1515. , 00 95 · IN 9/0. 02.04 - 07.30 V \$50.34 0.05 ATK - 90% C. TOR AS DASO PROPERTY OWNER:
ANYWOLD GROUP 95-D
23792 Promised Sources, Suite (Const. Agr. Source)
FROM: (349) 555-5500
FROM: (345) 555-5301 PREPARED FOR: ARES

ARES

ARES

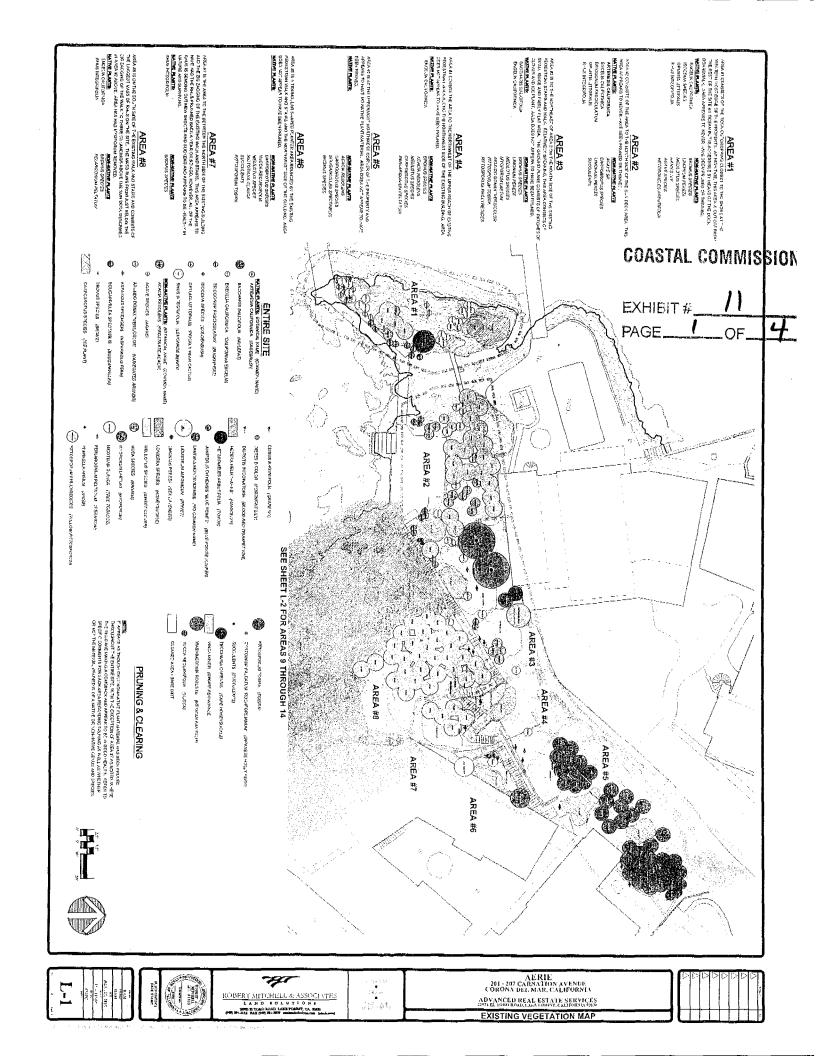
AREA

CONCEPTUAL
GRADING PLAN
TTM NO. 16882

Sheet 3 of 3

PREPARED BY:

12/11/10 SY NOT



ACTIC.

TO ATTERNATION OF THE DISTRIBUTION OF AREA #10
AREA PLANTE INSTANCE AREA ATTREASES FARENCE AREA PLANTE PLANTE AREA PLANTE AREA PLANTE AREA PLANTE AREA PLANTE AREA #12

SOLET "-E HORSTAN PLANDED PARKADOR THE SECTIONSET THE OF THE CONTROL RETURNATION OF THE CONTROL RETURNATION OF THE CONTROL AND APPEARS TO HAVE NO THE SECTION AND APPEARS TO HAVE NO THE PRUNING & CLEARING AREA #9 ACOMOSTO AREA #13
ASEAY WHERE THE EXHIBITS STORY FROM
"" VISSIANS CENDALICE SE PUNIT VACERAL AREA #11

AREA #11

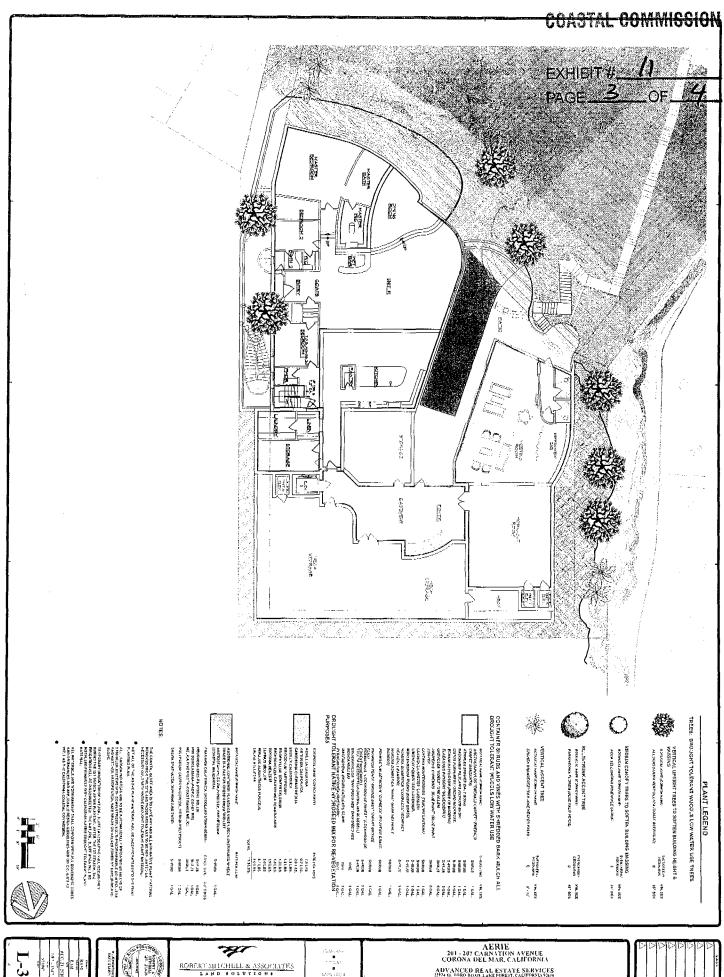
AND THE EXPING AND ALL OF THE EXPING AND ALL OF THE EXPING AND ALL OF THE EXPONENT ALTHUM, PROVED AND ALL OF THE EXPONENT ALTHUM, PROVED AND ALL OF THE EXPONENT ALTHUM AND ALL OF THE AND ALL OF TH ALLOSPORMA SONICA PORTECTION SOLUTION SOLUTION SOLUTION SOLUTION WISHINGTON WISHINGTON SOLUTION SOLUTI ACE MATINE PLANTA ANDRA SPECIES RAMMANI ACEMBANISTO SPARANI ACEMBANISTO PARANI ACEMBANISTO SPARETTS SUCCIONATORIA DASPICTAS SUCCIONATORIA MORNATURE PLANTS
ATTOROGONAL ASSUM
ATTOR NOCHATRE PLATE
ARCHORUS CHAENAS BLUC POWER
COUSTRUM LARCACIAI 2 PAGE WINDAMINOR STANGS ZERNAWAZE POSSAMETIC HANNEL MANAGEM (SOCIETY) authoran antigen antigenty (3) TOWNSTANCE SPORES MONEY CONT. LOUSTRUM MECHANISM
 LOUSTRUM MECHANISM
 LOUSTRUM MECHANISM
 Transportur B-ILLY REDICES - SPITCOW PIT TECHNORIA CAPENSIS NAME NOME YOURKE, S VUCCARECTARIENT UNICON CYATCHIUM BALCATUR ROC-FORDINALM → FESLARSONUM PELTATUM (G@GAMTOM) MELLICTUS SPECIES (SMEET DICYBR) G DIELES BICCOB ROBLINGWLITTA REPRESENTE SENDOR SERVICE DESCRIPTION OF THE PROPERTY OF THE P G BNECELA CALIFORNICA (CALIFORNIA ENCELIA) ENTIRE SITE

MINEPLAIRE BOXWAL WAZE (DONNOHWAVE)

O ARTEMESIA CALIFORNICA (SACEBRUSH) ⊕ ajzve species pagave; e- liscoprings/selection NON-NATIVE PLANTS: BOTANGAL MANG. (COMMON SAME) ADMON REDOUGNS: [PROSTRATE 4 0403] Princaperulingalax (nogley) CLEARED AREAL BARE DIRT BENNETTY AND AND STANKED CARROBROTUS SPECIES (ICE NUAVO) SUCCLERIES (SUCCEEDED) COOKANA GLALICA (TREE FORACCO. NEWWYPERREGISTRE - SUNDO SOTIE - SISHBILL OSTUBER OF CISS_SRHOVEHCLM (GENELLY) PSTANDESIGE SIT BYLOGOS VETT ANSENCE ARUUTO DONAK "YERSICOLOR" - "YERTERATED ARUNGO Drietowy vposlowys slave dove GARAL BARMING G2S G0078, VINCLANDORS SUCCESS. CALINE TILDEATS PROCESSES CYCLIS ERIOSONAM FASCICULATUM (BUCKZHEAC) Wabselling Sheepeder - Justines Sheepeder Swored sacads somes An Individual Service of the Service of the Service of AREA #13 SEE SHEET L-1 FOR AREAS 1 THROUGH 8 PRUNING & CLEARING AREA #10 AREA #12 AERIE 201 - 207 CARNATION AVENUE CORONA DEL MAR, CALIFORNIA ADVANCED REAL ESTATE SERVICES 2014 EL 1030 ROULARES 1000 CALIFOREU 1950 77 2,950,000 711 6 South To State of the State of L-2 ROBERT MITCHELL & ASSOCIATES

EARD # OF UTTORS

TOP BY THE STORM AND ADMINISTRATICAL THE PART PART FAX (H) PHONE MAINTENANCE THE PART COMP. EXISTING VEGETATION MAP







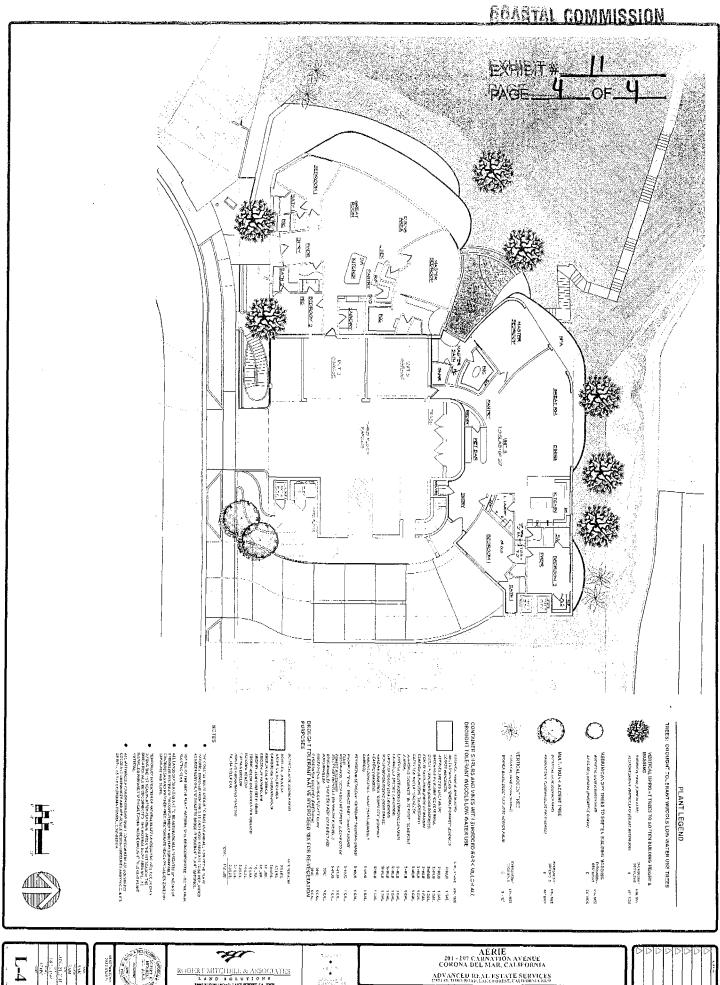






CONCEPTUAL LANDSCAPE FOR BASEMENT LEVEL













CONCEPTUAL LANDSCAPE FOR 2ND FLOOR LEVE



COASTAL COMMISSION EXHIBIT # PAGE. CARMATION, AVENUE 9 STREET SECTIONS GEAN BOWLENARD OCEYN BONTEAVED CARNATION AVENUE BAYSIDE PLACE e Mid TENTATIVE NO. 16882 FOR CONDOMINIUM PURPOSES PREPARED FOR: LEGAL DESCRIPTION WHAT COUNTY OFFICE CONTROL OF THAT IS SHELD CONTROL (ALL OF THAT IS A CONTROL OF THAT IS A CONT STATEMENT OF OWNERSHIP HEIDERS HE THE THE WAS MERSON OUT TO SHEET THE THE WAS MERSON OUT TO SHEET THE THE THE WAS TO SHEET WAS TO SHEE EARTHWORK QUANTITIES VICINITY MAP PREPARED BY: MAP DATE DENTITIES