

CALIFORNIA COASTAL COMMISSION

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

W11a

Filed:	7/06/12
180th Day:	1/02/13
Staff:	L. Roman-LB
Staff Report:	11/20/12
Hearing Date:	12/12/12

STAFF REPORT: REGULAR CALENDAR

Application No.: 5-12-103

Applicants: Newport Beach Country Club Inc.
The Fainbarg Trust, et. al.

Agent: CAA Planning Inc.

Project Location: 1600 E. Coast Hwy, Newport Beach (Orange County)

Project Description: Demolition of an existing 23,460 sq. ft. golf course clubhouse, ancillary facilities and surface parking lot and construction of new facilities including a two-story, 47-foot tall clubhouse, a detached golf cart garage, a maintenance building, snack bar, starter shack and restrooms all resulting in a total of 69,088 sq. ft.; hardscape improvements to existing surface parking lot, and new landscaping on a 9 acre portion of a 131.5 acre inland site.

Staff Recommendation: Approval with conditions.

SUMMARY OF STAFF RECOMMENDATION

The applicants propose demolition of an existing 23,460 sq. ft. golf course clubhouse, ancillary facilities and surface parking lot associated with the Newport Beach Country Club and construction of a new facility including a two-story, 47-foot tall clubhouse, a detached golf cart garage, a maintenance building, snack bar, starter shack, restrooms (all adding up to a total of 69,088 sq. ft. for all the facilities). Hardscape improvements to existing surface parking lot resulting in a loss of 74 parking spaces and new landscaping on a 132 acre inland site are also proposed.

The item was scheduled on the Commission's October Regular Calendar; however, it was postponed per staff as new information was received from the non-applicant co-owner, Golf

Realty Fund, LP, regarding pending arbitration proceedings set for late October that may resolve an on-going dispute between the fee owners of the property about which owner is the managing owner and the scope of the authority of the managing owner under the terms of the tenancy-in-common agreement between the owners.

Newport Beach Country Club has a long term lease of the subject property. The co-applicants, Fainbarg-Feuerstein Properties (comprised of the Fainbarg Family Trust, Mesa Shopping Center East LLC, and Mira Mesa Shopping Center West LLC) collectively own 50% of the fee interest in the property. The other 50% fee title interest in the property is held by Golf Realty Fund LP. Non-applicant co-owner Golf Realty Fund, LP is opposed to the proposed project. This dispute is one between tenant and landlord(s) and between co-owners and the primary issues do not involve the Coastal Act or the Coastal Commission. With regard to the ownership dispute and the applicants' ability to apply for this permit, Commission staff relied on statements made by the applicants (comprised of the Fainbarg Family Trust, Mesa Shopping Center East LLC, and Mira Mesa Shopping Center West LLC) that the existing lease of the property and ownership agreement gives them the legal ability to apply for this coastal development permit when staff filed the application as complete.

Letters to the Commission dated October 8, 2012 from Cox Castle Nicholson LLP and Lane Powell (Exhibits 8 and 9, respectively) counselors to Golf Realty Fund, LP stated that the co-owners would be addressing issues related to their Co-Owners Agreement in arbitration proceedings in late October and reach a resolution to their dispute regarding who the Managing Owner is and what powers are granted to the Managing Owner. Counsel for Golf Realty Fund indicated on November 19, 2012 that the arbitrator may render his decision in early February, 2013, but likely no later than 90 days after the arbitrator receives responsive briefs from the parties on January 11, 2013. Thus, it is anticipated that the ownership dispute will be resolved within the two-year CDP authorization period. Even though staff has not received an update or any information that the co-owner Golf Realty Fund LP is in support of the pending coastal development permit application, due to the Permit Streamlining Act 180-day deadline, the item must be heard by the Commission at its December 2012 hearing. Therefore, the Commission imposes **Special Condition 7** requiring the applicants to demonstrate their legal ability or authority to comply with all the terms and conditions of this coastal development permit, prior to issuance of the coastal development permit. Further, Special Condition 7 requires the applicant shall submit information indicating approval from all owners or a judgment from the arbitrator or court of law establishing that the applicants can comply with the conditions of this coastal development permit.

Staff is recommending APPROVAL of the proposed project with seven (7) special conditions regarding: 1) Revised WQMP; 2) final drainage plan/runoff control plan; 3) compliance with construction responsibilities and debris removal measures; 4) landscaping; 5) future improvements; 6) liability for costs and attorneys fees; and 7) proof of legal ability to comply with conditions. The proposed development has been conditioned to assure the proposed project is consistent with the resource protection policies of the Coastal Act. The conditions also serve to mitigate possible significant adverse impacts under CEQA.

Section 30600(c) of the Coastal Act provides for the issuance of coastal development permits directly by the Commission in regions where the local government having jurisdiction does not

have a certified Local Coastal Program for the relevant area. The City of Newport Beach does not have a certified LCP. Therefore, the Coastal Commission is the permit issuing entity and the standard of review is Chapter 3 of the Coastal Act.

TABLE OF CONTENTS

I. MOTION AND RESOLUTION.....	5
II. STANDARD CONDITIONS.....	5
III. SPECIAL CONDITIONS.....	6
IV. FINDINGS AND DECLARATIONS.....	8
A. PROJECT LOCATION AND DESCRIPTION	10
B. WATER	
QUALITY.....	12
C. SCENIC & VISUAL RESOURCES.....	13
D. PUBLIC ACCESS.....	16
E. COST AND ATTORNEYS FEES	
...17	
F. LOCAL COASTAL	
PROGRAM.....	17
G. CALIFORNIA ENVIRONMENTAL QUALITY	
ACT.....	18

APPENDICES

Appendix A – Substantive File Documents

EXHIBITS

- Exhibit 1 – Area Map
- Exhibit 2 – Project Plans
- Exhibit 3 – Landscaping Plan
- Exhibit 4 – Technical Site Plan
- Exhibit 5 – Water Quality Management Plan Option 1 and Option 2
- Exhibit 6 – Correspondence in opposition dated September 5, 2012 from Chatten-Brown & Carstens on behalf of Friends for Good Planning and Response Letter from CAA Planning
- Exhibit 7 – Correspondence in opposition dated September 7, 2012 from Lane Powell Attorneys & Counselors on behalf of Golf Realty Fund LP and Response Letter from CAA Planning
- Exhibit 8 – Correspondence dated October 8, 2012 from Cox, Castle & Nicholson, LLP related to pending dispute between Landlord and Tenant of the subject site
- Exhibit 9 – Correspondence dated October 8, 2012 from Lane Powell Attorneys & Counselors on behalf of Golf Realty Fund LP related to pending dispute between Landlord and Tenant of the subject site
- Exhibit 10 - Correspondence dated October 8, 2012 from Chatten-Brown & Carstens on behalf of Friends for Good Planning

I. MOTION AND RESOLUTION

Motion:

*I move that the Commission **approve** Coastal Development Permit No. 5-12-103 pursuant to the staff recommendation.*

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution:

The Commission hereby approves Coastal Development Permit 5-12-103 for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and 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. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that will substantially lessen any significant adverse impacts of the development on the environment.

II. STANDARD CONDITIONS

This permit is granted subject to the following standard conditions:

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date 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. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be

perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

1. **Final Revised Water Quality Management Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit, for the review and approval of the Executive Director, a final Water Quality Management Plan, in substantial conformance with the Conceptual WQMP for the proposed project prepared by Fuscoe Engineering, dated July 21, 2008 and prepared and certified by an appropriate professional revised to address the following:
 - No untreated runoff shall be allowed to discharge into coastal waters.
 - Prevent increases in peak runoff rates to maintain pre-redevelopment flow rates or less.
 - Reduce the amount of surface runoff entering storm drains from the redeveloped portions of the site.
 - Direct excess surface runoff into landscape areas, permeable paving, or other approved methods aimed to achieve a reduction in water runoff.
 - Direct rooftop downspouts flows to vegetated or other permeable areas (i.e., turf or other landscaping), or into an infiltration bed engineered to accept the runoff in a non-erosive manner. Runoff shall not be required to be directed onto the golf course, however encouraged, and all other landscape areas are plausible destinations for runoff.
 - Prevent the introduction of pollutants from any source associated with the development or use of this project to the storm sewer or any natural drainage.
 - Incorporate effective site design and source control BMPs to prevent the introduction of pollutants, and maintain all structural and non-structural BMPs for the life of the project.
 - All trash storage areas shall be designed to incorporate appropriate structural or treatment control BMPs to prevent the distribution and transfer of trash to the surrounding areas or storm drain system, such as: incorporating screened/walled protection around trash collection or storage areas; diverting drainage from adjoining roofs and pavement area(s) to prevent run-on to any location where trash is collected and stored; locating storm drains away from trash storage areas, and providing connections to the sanitary sewer system where liquid effluent might originate from trash collection or storage areas; providing roofs, awnings, or attached lids on all trash containers to minimize direct precipitation and prevent rainfall from entering containers; posting of signs on all dumpsters informing users that hazardous materials are not to be disposed of therein.
 - BMPs shall be sized and designed to, at a minimum, treat 85th percentile storm events per the appropriate numeric criteria detailed in the Final Drainage Plan.

- Devise a maintenance plan that incorporates specific scheduled protocols to evaluate and maintain all structural and non-structural BMPs for the life of the project and a reporting plan that includes criteria for determining the status of each BMP at each scheduled evaluation (once every 3 months during the dry season (May through October) and once every month during the wet season (November through April)) and the action taken to remediate the ineffectiveness of any of the BMPs, if any, to comply with the standards in the WQMP and other relevant water quality regulatory authority. This report shall be submitted to the Executive Director of the Commission, for his review and approval, on an annual basis, with the first year of scheduled evaluations starting from the date of construction completion of the first water quality control device approved under this permit. If the Executive Director determines that the report reveals that the BMPs are not adequately protecting the water quality of coastal waters, then the Executive Director shall notify the applicants, in writing, of this deficiency. The applicant shall apply for a coastal development permit amendment within 30 days of the date on the Executive Director's written notice to address this deficiency in water quality control.

2. **Final Drainage Plan/Runoff Control Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit revised final plans to the Executive Director for review and approval. The drainage/run-off control plan shall demonstrate that at a minimum the project will assure that:

- (1) impervious surfaces are minimized and runoff infiltrated;
- (2) no increase in peak run-off rate from the site will result from construction of the project;
- (3) run-off from all roofs, patios, driveways and other impervious surfaces on the site shall be collected, treated and discharged to avoid ponding or erosion either on or off the site;
- (4) an on-site media filtration treatment system shall be installed to capture any pollutants contained in the run-off prior to discharge;
- (5) in order to prevent landscaping chemicals, oils, gas or other spills from entering the storm drain system, run-off from the maintenance/fuel facility area shall be directed to the sanitary sewer system;
- (6) runoff from the underground cart storage area shall be directed to a sanitary sewer system rather than the storm drain system;
- (7) runoff from all parking lots and driveways shall be directed into vegetated areas or treatment BMPs prior to discharge to a storm drain or natural channel;
- (8) volume based BMPs shall be sized appropriately; designed to treat runoff from a 24-hour, 85th percentile storm event; or the volume of annual runoff produced by the 85th percentile, 24-hour rainfall event (based on the County of Orange 85th Percentile Precipitation Isopluvial Maps); and,
- (9) flow based BMPs shall be sized appropriately; designed to treat the maximum flow rate from a rainfall intensity of 0.2 inch per hour rainfall

event for each hour of the storm; or the maximum flow rate of runoff produced by the 85th percentile hour rainfall intensity multiplied by a factor of two (based on the local historical rainfall record).

The revised plans shall, prior to submittal to the Executive Director, be prepared and certified by a qualified professional to ensure that they are consistent with the Commission's approval and with the recommendations of any required technical reports, including Special Condition 1.

The applicants 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.

3. **Landscaping – Drought Tolerant, Non-Invasive Plants.** The applicant shall conform to the landscape plan received on April 6, 2012 showing vegetated landscaped areas consisting of native plants or non-native drought tolerant plants, which are non-invasive. 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.water.ca.gov/wateruseefficiency/docs/wucols00.pdf>). Existing vegetation within the 9 acre area proposed to be redeveloped that does not conform to the above requirements shall be removed.
4. **Storage of Construction Materials, Mechanized Equipment and Removal of Construction Debris.** The applicants shall comply with the following construction-related requirements:
 - (a) No demolition or construction materials, debris, or waste shall be placed or stored where it may enter sensitive habitat, receiving waters or a storm drain, or be subject to wave, wind, rain, or tidal erosion and dispersion.
 - (b) No demolition or construction equipment, materials, or activity shall be placed in or occur in any location that would result in impacts to environmentally sensitive habitat areas, streams, wetlands or their buffers.
 - (c) Any and all debris resulting from demolition or construction activities shall be removed from the project site within 24 hours of completion of the project.
 - (d) Demolition or construction debris and sediment shall be removed from work areas each day that demolition or construction occurs to prevent the accumulation of sediment and other debris that may be discharged into coastal waters.
 - (e) All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day.

- (f) The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction.
- (g) Debris shall be disposed of at a legal disposal site or recycled at a recycling facility. If the disposal site is located in the coastal zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place unless the Executive Director determines that no amendment or new permit is legally required.
- (h) All stock piles and construction materials shall be covered, enclosed on all sides, shall be located as far away as possible from drain inlets and any waterway, and shall not be stored in contact with the soil.
- (i) Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems.
- (j) The discharge of any hazardous materials into any receiving waters shall be prohibited.
- (k) Spill prevention and control measures shall be implemented to ensure the proper handling and storage of petroleum products and other construction materials. Measures 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. The area shall be located as far away from the receiving waters and storm drain inlets as possible.
- (l) Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of demolition or construction-related materials, and to contain sediment or contaminants associated with demolition or construction activity, shall be implemented prior to the on-set of such activity
- (m) All BMPs shall be maintained in a functional condition throughout the duration of construction activity.

5. **Future Improvements.** This permit is only for the development described in Coastal Development Permit No. 5-12-103. Except as provided in Public Resources Code section 30610 and applicable regulations, any future development as defined in PRC section 30106, including, but not limited to, a change in the density or intensity of use land, shall require an amendment to Permit No. 5-12-103 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

6. **Liability for Costs and Attorneys Fees.** By acceptance of this permit, the Applicants (International Bay Clubs/Newport Beach Country Club Inc., Fainbarg-Feuerstein Properties comprised of The Fainbarg Family Trust, Mesa Shopping Center East LLC, and Mira Mesa Shopping Center West LLC) agree to 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 Applicants 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.

7. **Proof of Legal Ability to Comply with Conditions.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall demonstrate the applicants' legal ability or authority to comply with all the terms and conditions of this coastal development permit by submitting documentation that lessee-applicant has received consent from all owners of the subject property to proceed with the approved development or, alternatively, a judgment from an arbitrator or court of law establishing the applicant-owner's legal authority under the terms of the tenants-in-common agreement, recorded as document number 93-0393470 on June 11, 1993 in Orange County Recorder's Office, between the co-owners of the subject property to authorize the lessee to proceed with the approved development and comply with the terms and conditions of this coastal development permit.

IV. FINDINGS AND DECLARATIONS:

A. PROJECT LOCATION AND DESCRIPTION

The proposed project site is located at 1600 East Coast Hwy in the City of Newport Beach, Orange County (Exhibit 1). With the certified Newport Beach Coastal Land Use Plan ("Coastal LUP") designation of Parks and Recreation, the proposed project is allowable. No sensitive habitat areas are found on the site or in the project vicinity. The project is located within an existing urban area bordered by residential areas to the south and west and a commercial shopping area (Fashion Island) to the northeast. Access to the site is via Terrace Drive, a private road off of East Coast Hwy. Public access to the coast (Newport Bay) is available approximately a half mile southeast of the site at a pocket beach adjacent to the U.S. Coast Guard Station located at 1911 Bayside Drive.

The subject site is 132 acres and is developed with the Newport Beach Country Club, an existing 18-hole golf course, a 23,460 sq. ft. golf course clubhouse, ancillary facilities (2,010 sq. ft. maintenance building, 6,050 sq. ft. golf cart storage barn, snack bar, restrooms, starter shack) and 410 space surface parking lot. The golf clubhouse and parking lot occupy approximately 9 out of 132 total acres that comprise the site.

The Newport Beach Country Club is a private golf course originally constructed in 1954. The applicants (the Newport Beach Country Club as lessee and co-applicants, Fainbarg-Feuerstein Properties (comprised of the Fainbarg Family Trust, Mesa Shopping Center East LLC, and Mira Mesa Shopping Center West LLC) that collectively own 50% of the fee interest in the property) propose the demolition of all existing structures on a 9 acre portion of the lot: the 23,460 sq. ft. clubhouse and ancillary facilities, and construction of a new 69,088 sq. ft. facility including a two-story, 47-foot tall clubhouse with basement golf cart garage/barn, new landscaping in the vicinity of the clubhouse, a detached golf cart garage, a maintenance building, snack bar, starter shack, restrooms, reconstruction of surface parking lot resulting in a smaller parking lot with 336 parking spaces (loss of 74 spaces) and new parking lot drainage improvements. Grading consisting of 3,300 cu. yds. cut and 37,400 cu. yds. of import are proposed. No improvements

are proposed to the remaining 123 acres comprised of the golf course greens. Proposed project plans are included as Exhibit 2.

The proposed new 51,213 sq. ft., 47' tall two-story clubhouse lower level will contain a dining area, locker rooms, fitness center, golf shop, club and cart storage areas and employee lounge. All proposed new structures meet the City's height limits for the area (this site is located outside of the City's 35 ft. max Shoreline Height Limitation Zone). The second story would consist of banquet facilities, bar/lounge, offices, and meeting rooms. Additionally, a basement level golf cart garage/barn and repair shop is proposed to house 90 golf carts. The finished floor elevation of the golf clubhouse will be at 113' contour line, approximately 3' higher than the finish floor of the existing structure. Restroom facilities, starter shack and snack bar will be reconstructed at their present location. The proposed new freestanding maintenance facility will house a repair shop, equipment storage, offices and employee lounge, a maintenance yard and free-standing chemical storage area. The entire maintenance facility will be enclosed with an 8' tall masonry wall.

The proposed project would not prejudice the City's ability to prepare an LCP that is in conformity with Chapter 3 policies of the Coastal Act. The project did indeed require a City General Plan Amendment to allow for a 21,000 sq. ft. increase in the development intensity for the reconstruction of the golf clubhouse (from a development intensity of 35,000 sq. ft. to 56,000 sq. ft.). The new clubhouse is proposed to be 51,213 sq. ft. However, site is designated as Parks and Recreation in the certified Coastal LUP and the density/intensity of uses in the Parks and Recreation category in the certified Coastal LUP states that private uses in this category may include incidental buildings, such as maintenance equipment sheds, supply storage and restrooms, not included in determining intensity limits. For golf courses, these uses may also include support facilities for grounds maintenance and employees. Therefore, the reconstruction of the cart barn, snack bar, restroom facilities, maintenance facilities and starter shack (all totaling approximately 17,875 sq. ft.) are ancillary to the golf clubhouse and are specifically exempt from the development limits established in the General Plan and in the certified Coastal LUP. The proposed project is consistent with the certified Coastal LUP. No amendment to the Coastal LUP is required and the Coastal LUP does not contain a development limit similar to the General Plan.

New landscaping in the vicinity of the clubhouse and in the reconstructed parking lot is proposed utilizing non-invasive, drought tolerant plant palette such as strawberry trees, coast live oaks, toyon, New Zealand flax, sage, rosemary, bougainvillea, aloes and succulents amongst many other non-invasive, drought tolerant plant species.

No water quality improvement features currently exist on the subject site. Under existing conditions, water runoff from the project site generally sheet flows in a southwesterly direction through the parking lot and is conveyed to the public storm drain ultimately discharging into Newport Harbor untreated. There is no storm drain piping system on site. As proposed the project incorporates numerous water quality BMPs to treat the surface runoff before discharge (described further below).

Background - Dispute between owners of the property regarding a perceived exclusive right to act on behalf of all of the fee owners

This item was originally scheduled and noticed on the Commission's September hearing Consent Calendar. Prior to the hearing, staff received correspondence submitted September 6, 2012 by Chatten-Brown & Carstens on behalf of Friends for Good Planning raising concerns and requesting the item be placed on the Commission's Regular Calendar. The opposition letter and response from CAA Planning Inc., the applicants' agent is included as Exhibit 6. In order to fully respond to concerns raised in that letter and to provide an opportunity for public hearing, staff removed the item from the September 2012 Consent Calendar and placed the item on the Commission's October 2012 Regular Calendar.

The item was then scheduled on the Commission's October hearing on the Regular Calendar addressing the Coastal Act-related concerns the opposition raised in past correspondence in the staff report findings and recommended conditions; however, the item was postponed per staff a second time as new information was received regarding arbitration proceedings set for late October that may resolve a pending dispute between owners of the property regarding the applicant co-owner's perceived exclusive right to act on behalf of all of the fee owners.

Newport Beach Country Club has a long term lease of the subject property. The co-applicant owners, Fainbarg-Feuerstein Properties (comprised of the Fainbarg Family Trust, Mesa Shopping Center East LLC, and Mira Mesa Shopping Center West LLC) collectively own 50% of the fee interest in the property. The other 50% fee title interest in the property is held by Golf Realty Fund LP. There is a pending dispute between owners of the property regarding a perceived exclusive right to act on behalf of all of the fee owners. Golf Realty Fund LP, a co-owner, is opposed to the proposed project.

This dispute is one between tenant and landlord(s) and between co-owners and the primary issues do not involve the Coastal Act or the Coastal Commission. With regard to the ownership dispute and the applicants' ability to apply for this permit, the Commission staff relied on statements made by the applicants (comprised of the Fainbarg Family Trust, Mesa Shopping Center East LLC, and Mira Mesa Shopping Center West LLC) that the existing lease of the property and ownership agreement gives them the legal ability to apply for this coastal development permit when staff filed the application as complete.

Letters to the Commission dated October 8, 2012 from Cox Castle Nicholson LLP and Lane Powell (Exhibits 8 and 9, respectively) counselors to Golf Realty Fund, LP stated that the co-owners would be addressing issues related to their Co-Owners Agreement in arbitration proceedings in late October and reach a resolution to their dispute regarding who the Managing Owner is and what powers are granted to the Managing Owner. Counsel for Golf Realty Fund has indicated on November 19, 2012 that the arbitrator may render his decision February 1, 2013 but likely no later than 90 days after the arbitrator receives responsive briefs on January 11, 2013. Thus, it is anticipated that the ownership dispute will be resolved within the two-year CDP authorization period. Even though staff has not received an update or any information that the co-owner Golf Realty Fund LP is in support of the pending coastal development permit application, due to the Permit Streamlining Act 180-day deadline, the item must be heard by the Commission at its December 2012 hearing.

Coastal Act Section 30601.5 which states:

Where the applicant for a coastal development permit is not the owner of a fee interest in the property on which a proposed development is to be located, but can demonstrate a legal right, interest, or other entitlement to use the property for the proposed development, the commission shall not require the holder or owner of any superior interest in the property to join the applicant as co-applicant. All holders or owners of any other interests of record in the affected property shall be notified in writing of the permit application and invited to join as co-applicant. In addition, prior to the issuance of a coastal development permit, the applicant shall demonstrate the authority to comply with all conditions of approval.

Therefore, the Commission imposes **Special Condition 7** requiring the applicants to demonstrate their legal ability or authority to comply with all the terms and conditions of this coastal development permit, prior to issuance of the coastal development permit. The applicant shall submit information indicating approval from all owners or a judgment from the arbitrator or court of law establishing that the applicants can comply with the conditions of this coastal development permit. Counsel for Golf Realty Fund (co-owner in opposition to project) indicated on November 19, 2012 that the arbitrator may render his decision in early February, 2013, but likely no later than 90 days after the arbitrator receives responsive briefs from the parties on January 11, 2013.

B. WATER QUALITY

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 that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231 of the Coastal Act states:

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

Section 30232 of the Coastal Act states:

Protection against the spillage of crude oil, gas, petroleum products, or hazardous substances shall be provided in relation to any development or transportation of such materials. Effective containment and cleanup facilities and procedures shall be provided for accidental spills that do occur.

The proposed development has the potential for discharge of polluted runoff from the project site into coastal waters. Beach closures occurring throughout Orange County are typically attributed to polluted urban runoff discharging into Newport Harbor and the ocean through outfalls. As illustrated by these beach closures, polluted runoff negatively affects both marine resources and the public's ability to access coastal resources because the public is less inclined to recreate in coastal waters when the waters are impaired by polluted runoff from surrounding development.

As previously noted, no water quality improvement features currently exist on the subject site. Under existing conditions, water runoff from the project site generally sheet flows in a southwesterly direction through the parking lot and is conveyed to the public storm drain ultimately discharging into Newport Harbor untreated. There is no storm drain system on site.

The proposed redevelopment of the site including demolition and reconstruction of all buildings and repaving of the existing surface parking lot offers the opportunity for state of the art water quality improvements. The applicant has provided a Conceptual Water Quality Management Plan (WQMP) by Fuscoe Engineering identifying a range of possible Best Management Practices (BMPs) that may be applied to protect the biological productivity of coastal waters from adverse impacts due to water runoff from the site; such as incorporating landscaping into the parking lot, use of porous materials in certain areas, and treatment of runoff water through biofilters before final discharge into the public storm drain. Additionally, the applicant prepared a Stormwater Pollution Prevention Plan (SWPPP) to ensure that the construction phase of the project does not adversely impact the biological productivity and quality of coastal waters.

The WQMP provides two possible options, Option 1 provides four storm filters to treat runoff at four individual sub-drainage areas within the project site and provides for the use of porous pavement materials over the valet and clubhouse entry parking (approximately 13% of parking stalls); Option 2 provides a treatment alternative that treats the entire project drainage area at one downstream location at the southern corner of the main surface parking lot within the main storm drain line and an additional catch basin insert to pre-treat runoff from the maintenance yard. A submitted Technical Site Plan also by Fuscoe Engineering shows the location of proposed new storm drains and catch basins. However, as submitted the WQMP simply provides possible options but does not specifically settle on which BMPs will ultimately be selected. Furthermore, no actual structural BMPs are depicted in the submitted project plans.

Therefore, **Special Condition 1** requires the applicant provide, prior to issuance of the coastal development permit, a final revised WQMP specifying the final selection of water quality BMPs and the standards that must be met, including the standard that no untreated runoff shall enter coastal waters. The condition requires the applicant select water quality BMPs that minimize the amount of storm water runoff directed to the new proposed storm drains and to minimize the quantity of pollutants entrained in that runoff through a variety of design features such as directing the majority of runoff from the roofs into landscape areas, the use of porous/permeable pavement materials and other features and by implementing source control BMPs. Peak runoff

is required to be minimized to pre-development rates or better. BMPs are required to be sized and designed to treat all 85th percentile storm events. All structural and non-structural BMPs must be maintained for the life of the project.

Special Condition 2 requires the applicants provide, prior to issuance of the coastal development permit, a final drainage plan incorporating the selected BMP into the project plans. Special Condition 2 requires the final selected BMPs be depicted in the drainage plan (i.e., landscaping in parking lot, location of porous pavement within parking lot) ensuring that the drainage plan effectively minimizes impervious surfaces through infiltration. Furthermore, Special Condition 2 also requires an on-site biofilter treatment system prior to discharge into the public storm drains, and requires that run-off from the maintenance/fuel facility and cart barn be directed straight to the sewer system to prevent chemicals, oils, gases from entering the storm drains. Post-construction structural BMPs (or suites of BMPs) are required to 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.

Other sources of polluted runoff include over-watering, which sometimes occurs from installation of landscaping with a high water demand. Plants with a high-water demand are typically not well-suited to the Mediterranean climate of southern California, and therefore often require intense fertilization and application of pesticides/herbicides as a maintenance regime, in addition to regular irrigation. Thus, this type of landscaping can add pollutants to both dry weather and stormwater runoff. Therefore, the use of drought tolerant plants or low-maintenance landscaping is a preferred alternative.

The term “drought tolerant” is equivalent to the terms “low water use” and “ultra low water use” as defined and used by "A Guide to Estimating Irrigation Water Needs of Landscape Plantings in California" prepared by University of California Cooperative Extension and the California Department of Water Resources dated August 2000 and is available for review at <http://www.owue.water.ca.gov/landscape/pubs/pubs.cfm>.

As submitted, new landscaping in the vicinity of the clubhouse and in the reconstructed parking lot is proposed utilizing non-invasive, drought tolerant plant palette such as strawberry trees, coast live oaks, toyon, New Zealand flax, sage, rosemary, bougainvillea, aloes and succulents amongst many more. **Special Condition 3** requires the applicant conform to the proposed landscaping plan.

Additionally, to address water quality concerns during the project’s construction phase, the Commission imposes **Special Condition 4**, which requires the applicant to comply with construction-related requirements related to storage of construction materials, mechanized equipment and removal of construction debris.

As conditioned, the Commission finds that the proposed development conforms with Sections 30230, 30231 and 30232 of the Coastal Act regarding the protection of water quality to promote the biological productivity of coastal waters and to protect human health.

C. SCENIC AND VISUAL RESOURCES

Section 30251 of the Coastal Act states:

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. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

The proposed development includes a new 51,213 sq. ft., 47' tall two-story private clubhouse building which is to be elevated above current grade by the placement of 3 feet of fill. The proposed new clubhouse and all other ancillary structures meet the City's height limits for the area. The subject site is located at 1600 East Coast Hwy in the City of Newport Beach, access to the Newport Beach Country Club is via Irvine Terrace (a private road). East Coast Highway is not designated in the Coastal LUP as a Coastal View Road between Jamboree Road and MacArthur Boulevard where the subject site is located. There are no public views onto the country club clubhouse or the golf course from East Coast Highway and no scenic views looking towards the ocean from public vantage points north of site along other public roads will be impacted as they are at higher elevations than the proposed new 47' tall clubhouse. The Mitigated Negative Declaration stated that the proposed project will not result in a substantial visual impact, and would not result in any significant changes to views from Newport Center Drive north of Farallon, which is identified as a Coastal View Road in the Coastal LUP, because of the existing intervening development and heavy landscaping. The proposed development will be visually compatible with the character of the surrounding area, which includes a variety of large 2-story office buildings (e.g. at 1400 Newport Center Drive) and several high-rise office towers and hotels (e.g. at 900 Newport Center Drive).

The nearest Public View Point is identified within Irvine Terrace Park, which is located on the south side of East Coast Highway and south of the subject site. Views from Irvine Terrace Park are oriented southwest to the harbor and the ocean, the subject site, located inland, is not visible from the Park.

The Newport Beach Country Club has been in existence since 1954, at which time grading occurred on an inland terrace to develop the existing facilities. The site is not along the beach, on a coastal bluff, coastal cliff, coastal canyon or any other natural landform. The reconstruction of the golf clubhouse will not result in any significant alteration to natural landforms. Grading consisting of 3,300 cu. yds. of excavation and 37,400 cu. yds. of import are proposed in order to raise the existing finished floor of the new golf clubhouse by approximately three feet in order to provide ocean views from the second floor. That grading will not alter any natural landform in any manner that would visually degrade the area. Furthermore, as previously stated, the proposed new clubhouse and all other ancillary structures meet the City's height limits for the area and will have no adverse impact on public coastal views.

As proposed, the Commission finds that the development conforms to the scenic and visual protection policies of the Coastal Act.

D. PUBLIC ACCESS

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:

(1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,

(2) adequate access exists nearby,

Section 30252 of the Coastal Act states, in relevant part:

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.

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

As proposed, the existing surface parking lot will be repaved and reconfigured. Although the reconstructed surface parking lot will result in a loss of 74 parking spaces, the project still meets the local government's parking requirements. Per City of Newport parking requirements, the development requires 334 parking spaces, the proposed project results in a total of 336 parking spaces. The City of Newport Beach parking requirements are demonstrated on the chart below:

Use	Required Spaces Parking	Parking Spaces Required
18-Hole Regulation Golf Course	8 spaces/hole	144
Eating/Drinking	1 space/3 seats	146
Other: Office & Pro-Shop	4 spaces/1,000 sq. ft.	18
Maintenance Bldg	2 spaces/1,000 sq. ft.	18
Fitness Facility	1 space/250 sq. ft.	8

Total Parking Required: 334 spaces

Based on the applicant's statements, the current golf clubhouse facilities do not have the capacity to meet current demand of the existing private country club members. Annual charitable (open to the public) and member events allow for limited additional use of clubhouse facilities for meetings, luncheons, and dinners and that the increased capacity of the proposed new clubhouse is intended to serve and meet the needs of those events which have occurred regularly throughout the years. Therefore, even though the proposed new clubhouse building is larger, the proposed project doesn't change the parking demand during regular hours. The private country club is not proposing to increase its membership, therefore parking demand during regular hours is expected to remain the same. Parking for after hours special events which may be available to non-members such as weddings in the proposed new banquet facilities would still be accommodated on site as the parking spaces shared by daytime uses (golf course, pro shop, golf course maintenance, fitness facility) would be unused and available after hours. Note: these statements are directly from the applicant and not based on Commission analysis.

Access to the closest public beach or Newport Bay is available over half a mile southeast of the site at a pocket beach adjacent to the U.S. Coast Guard Station located at 1911 Bayside Drive. Any possible Country Club overflow parking spilling out onto on-street public parking is not anticipated to impact coastal access.

As the site is not near any primary coastal access points, construction related traffic is not anticipated to have an adverse impact on coastal access. Furthermore, as proposed, the approximately 21 days of truck trips anticipated during grading activities is limited to take place outside of the peak summer season and outside of peak traffic hours to avoid any possible adverse impacts on coastal access.

As proposed, the Commission finds that the development conforms to Section 30212 regarding maintenance and enhancement of public access.

E. COSTS AND ATTORNEYS FEES

Coastal Act section 30620(c)(1) authorizes the Commission to require applicants to reimburse the Commission for expenses incurred in processing CDP applications. *See also* 14 C.C.R. § 13055(e). Thus, the Commission is authorized to require reimbursement for expenses incurred in defending its action on the pending CDP application. Therefore, consistent with Section 30620(c), the Commission imposes **Special Condition 6** 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 Applicants challenging the approval or issuance of this permit."

F. 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 (LUP) 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 proposed development is consistent with Chapter 3 of the Coastal Act and with the certified LUP 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.

G. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 13096 Title 14 of the California Code of Regulations requires Commission approval of a coastal development permit application 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.

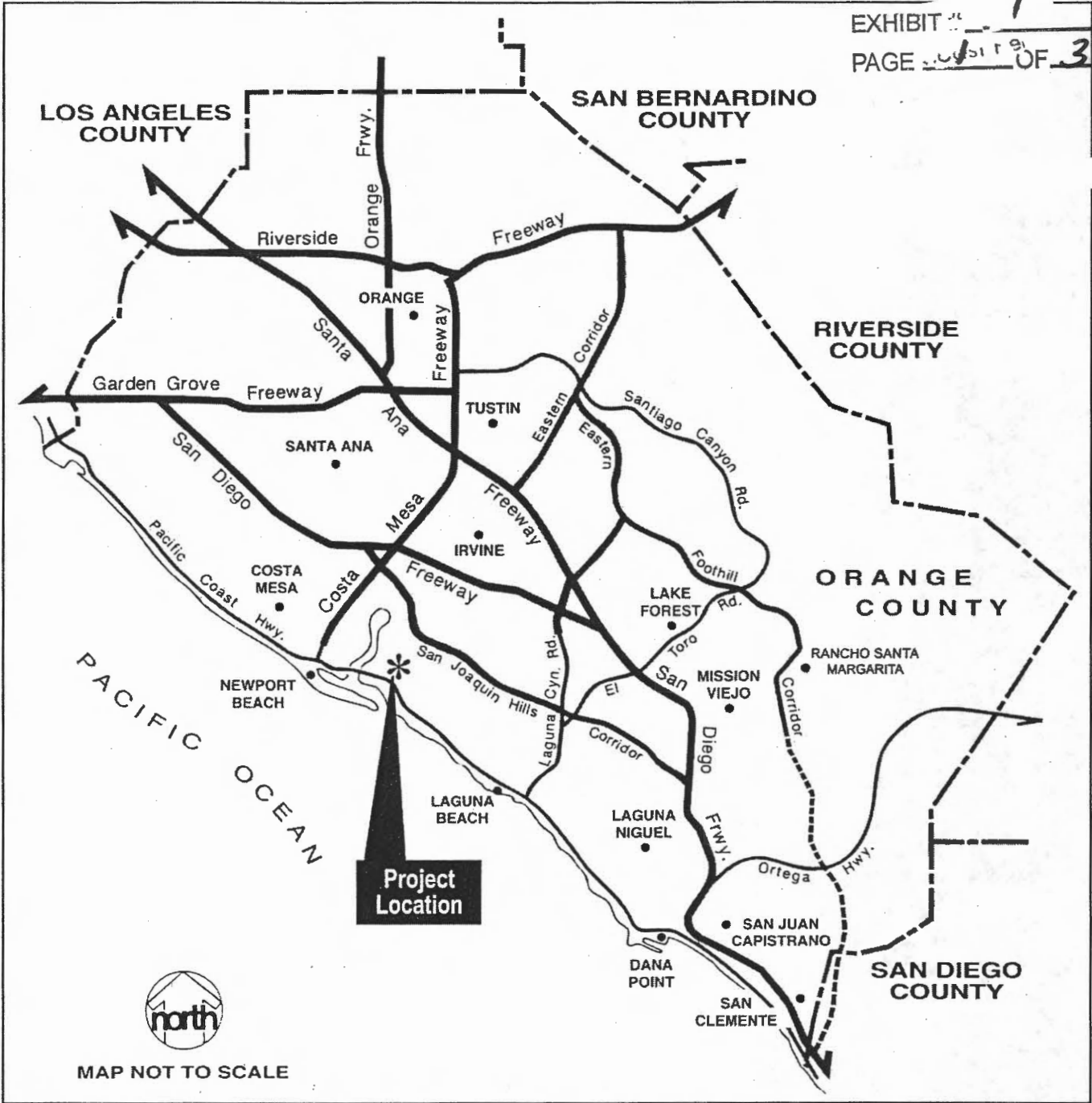
The City of Newport Beach is the lead agency responsible for CEQA review. As determined by the City, a Mitigated Negative Declaration (MND) #PA2008 152 was prepared in compliance with Article 6 of CEQA. The MND determined that although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because revisions made by or agreed to by the project proponent. Most environmental factors potentially affected by the project were determined to have no impact or a less than significant impact. Mitigation measures addressing for possible impacts to geology and soils require an erosion control plan submitted prior to City issuance of a grading permit and requiring final plans incorporate all recommendations of geotechnical reports. Mitigation measures were also imposed to minimize hazards associated with hazardous materials such as oil, gas, tar, cleaning solvents and other similar construction related materials; and with possible asbestos or lead contaminants encountered during demolition of existing structures through proper safety procedures. No water quality related mitigation measures were required in the MND as less than significant impacts to water quality would result through the implementation of proposed Water Quality Management Plan and Stormwater Pollution Prevention Plan. Furthermore, mitigation measures requiring a Construction Staging, Parking and Traffic Control Plan to address construction related traffic impacts.

The project is located in an urbanized inland area; development exists adjacent to the site. Coastal access is not available at the site. The project site does not contain any known sensitive plant or animal species, nor is it considered ESHA, therefore the impacts arising from the proposed project will be minimal. The proposed development has been conditioned to assure the proposed project is consistent with the resource protection policies of the Coastal Act. The conditions also serve to mitigate significant adverse impacts under CEQA. The conditions are: 1) Revised WQMP; 2) final drainage plan; 3) compliance with construction responsibilities and debris removal measures; 4) landscaping; 5) future improvements; 6) liability for costs and attorneys fees; and 7) proof of legal ability to comply with conditions. There are no other feasible alternatives or mitigation measures available which will lessen any significant adverse impact the activity would 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 can be found consistent with the requirements of the Coastal Act to conform to CEQA.

APPENDIX A

SUBSTANTIVE FILE DOCUMENTS

- 1) City of Newport Beach certified Coastal LUP
 - 2) City of Newport Beach Approval in Concept (AIC) 2012-011, PA2008-152
 - 3) Newport Beach Country Club Mitigated Negative Declaration (PA2008 152), State Clearinghouse Number 2010101027
 - 4) Conceptual Water Quality Management Plan, Newport Beach Country Club – New Clubhouse, Newport Beach, CA, July 21, 2008 prepared by Fuscoe Engineering
-



Vicinity Map

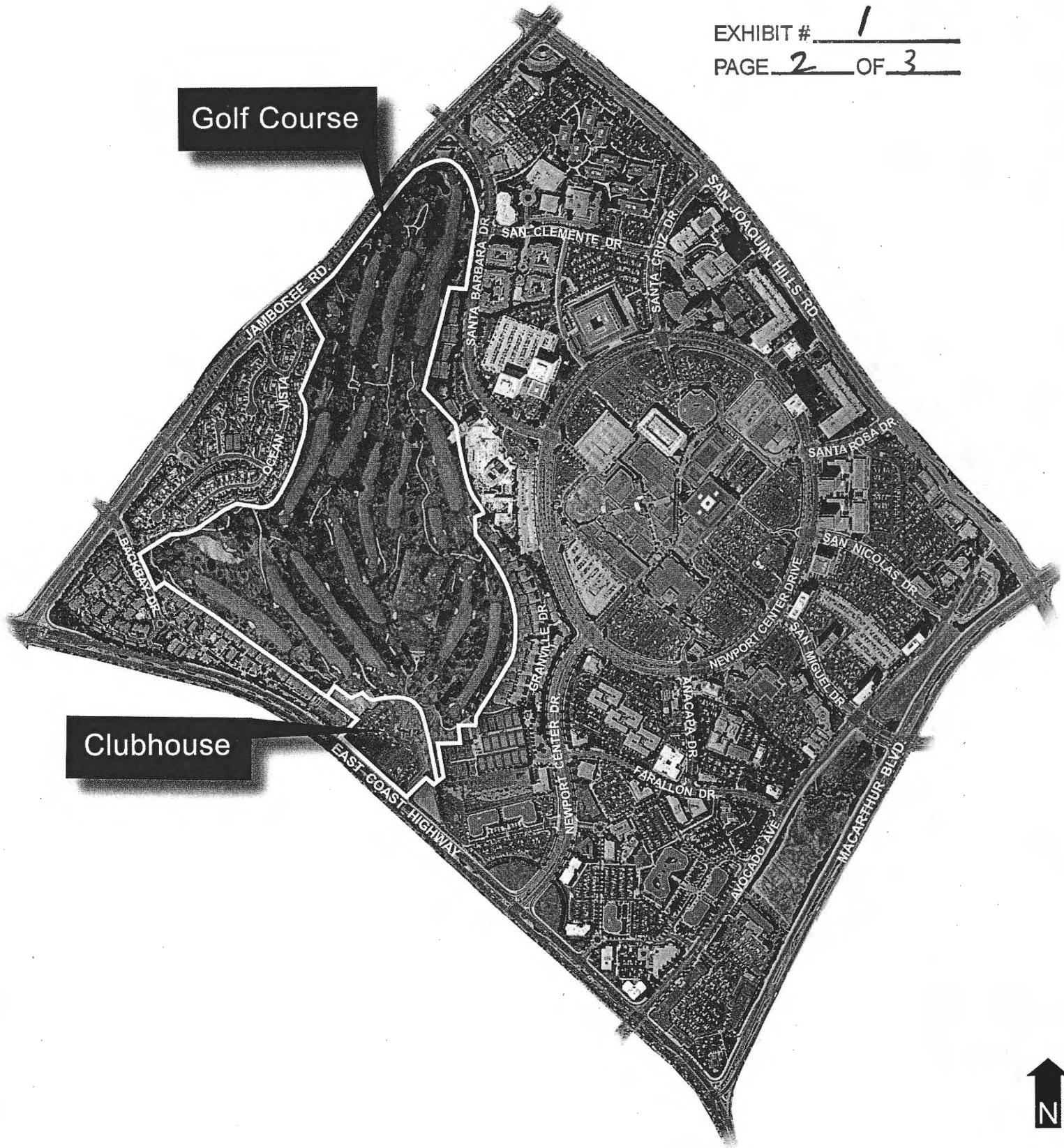
COASTAL COMMISSION

EXHIBIT # 1

PAGE 2 OF 3

Golf Course

Clubhouse

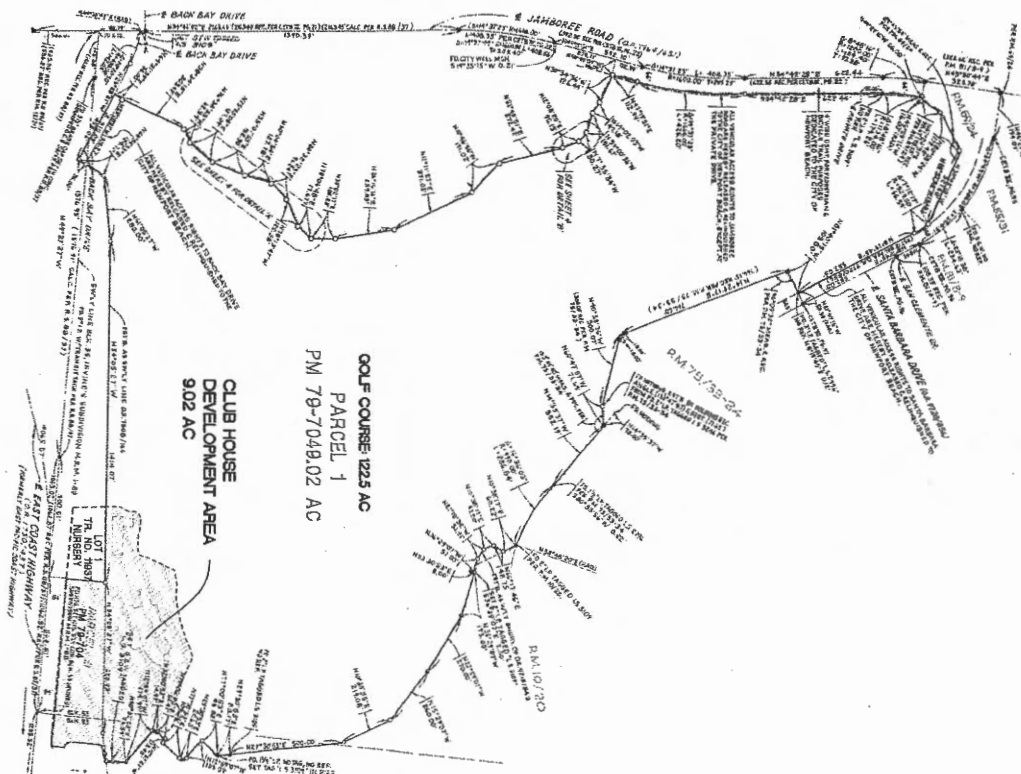


COASTAL COMMISSION

EXHIBIT # 1

PAGE 3 OF 3

EXISTING BOUNDARY FOR NEWPORT BEACH COUNTRY CLUB



ACREAGE SUMMARY	
GOLF COURSE	1225 AC
CLUBHOUSE	902 AC
DEVELOPMENT AREA	902 AC
TOTAL	3029 AC

TECHNICAL SITE PLAN
WITH ACCESS EASEMENT
12/09/2011

DEVELOPER
NEWPORT BEACH COUNTRY CLUB, INC.
1850 EAST COAST HIGHWAY
NEWPORT BEACH, CA 92660
(949) 844-8833
CONTACT: PERRY W. DICKEY
PRESIDENT/CEO

ENGINEER



FUSCOE
19455 Van Lennep, Suite 100
Newport Beach, CA 92660
(949) 844-8833
www.fuscoecorp.com

SHEET:

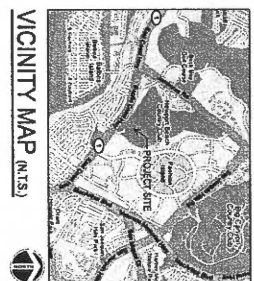
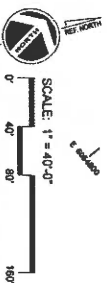
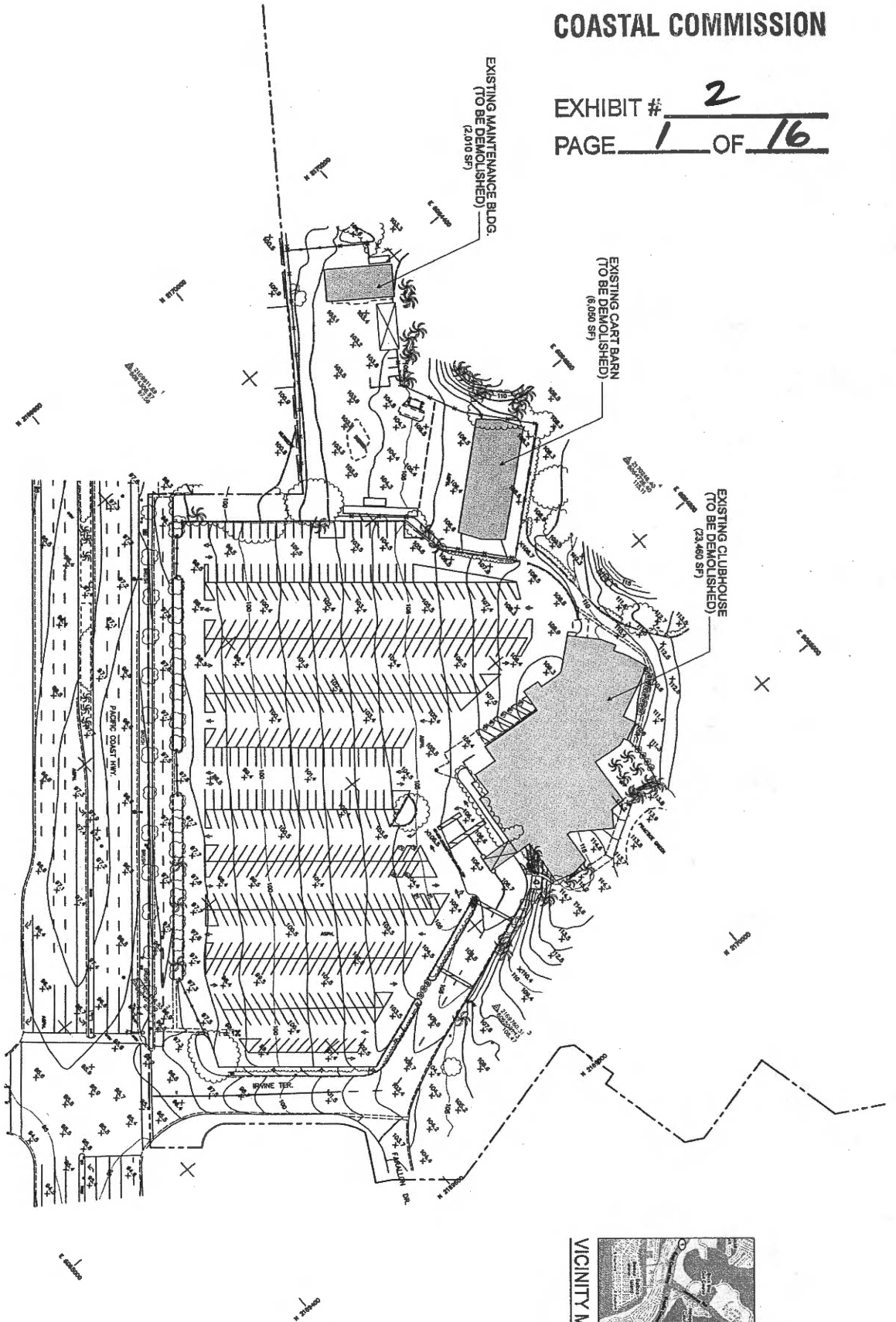
2
of
2

NO.	DATE	REVISIONS

SCALE: 1" = 200'

NEWPORT BEACH COUNTRY CLUB

NEWPORT BEACH, CALIFORNIA



08012

08-08-08
08-30-10
05-04-11

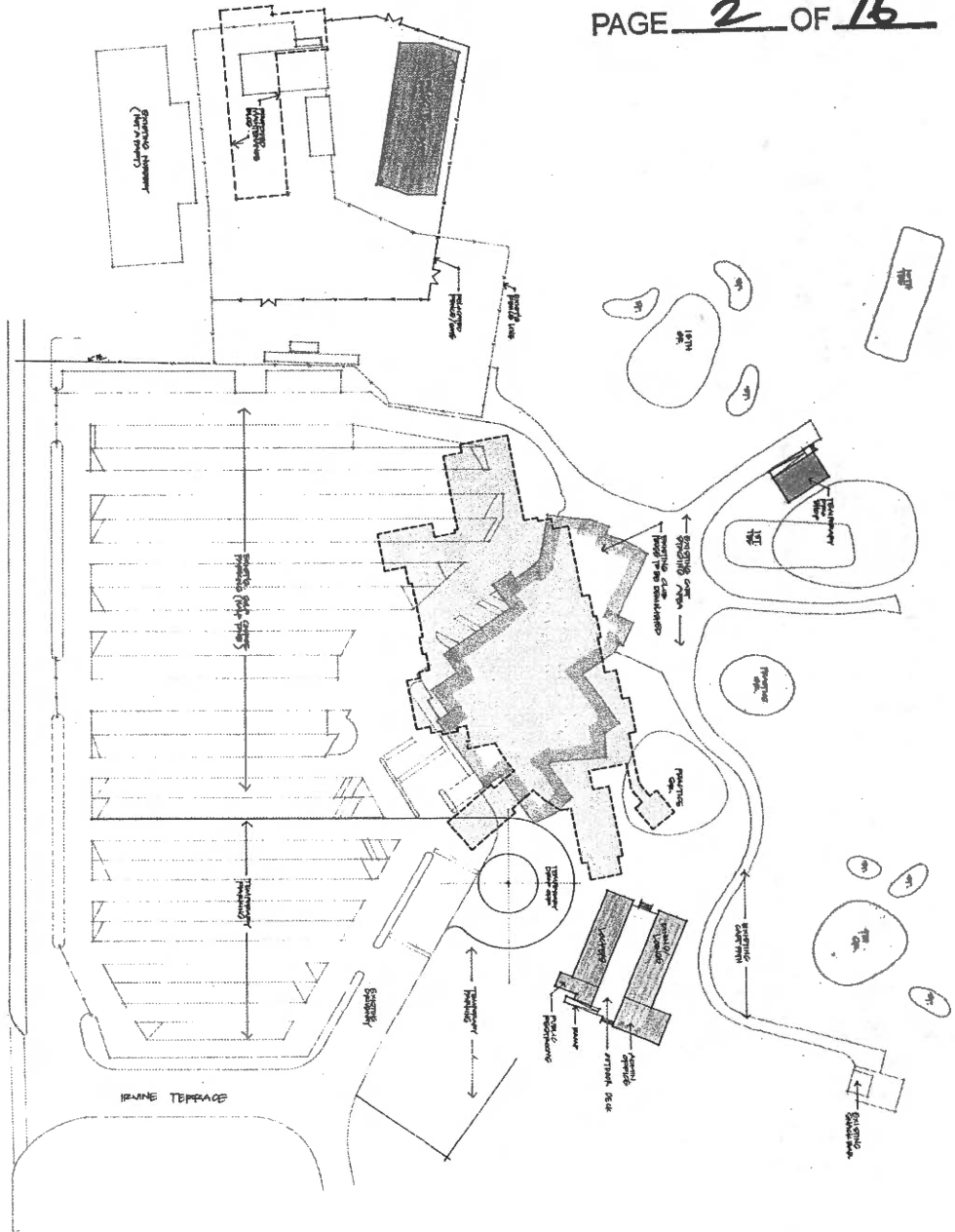
LEE & SAKAHARA
ARCHITECTS AIA
11000 JEFFERSON AVE., SUITE 200
NEWPORT BEACH, CA 92660
TEL: (949) 451-1111



EXISTING SITE PLAN /
DEMOLITION PLAN

A-1A

EXHIBIT # 2
PAGE 2 OF 16



NEWPORT BEACH COUNTRY CLUB

NEWPORT BEACH, CALIFORNIA

08012

09-22-10
05-04-11
09-07-11

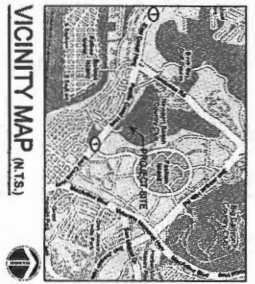
**LEE & SAKAHARA
ARCHITECTS AIA**
ARCHITECTURE PLANNING INTERIORS
1842 VON KROBACH AVE., SUITE 200
IRVINE, CA USA 92606-4827
PH: 949-261-1100 F: 949-261-1144

**keep
sdr**

TEMPORARY FACILITIES /
SITE PLAN
A-1B

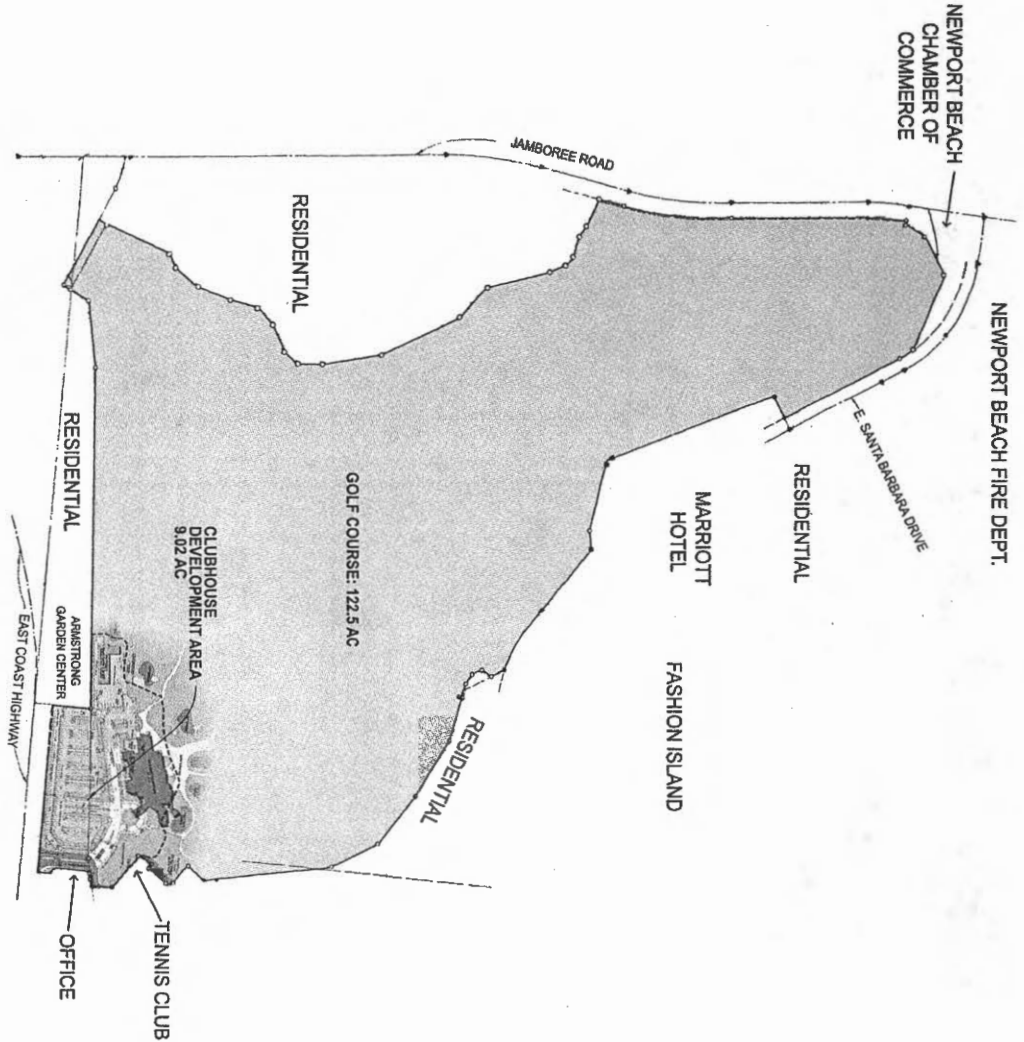
COASTAL COMMISSION

EXHIBIT # 2
PAGE 3 OF 16



NEWPORT BEACH COUNTRY CLUB

NEWPORT BEACH, CALIFORNIA



PROJECT DEVELOPMENT SUMMARY

EXISTING CLUBHOUSE		PROPOSED CLUBHOUSE	
Project Area:	Clubhouse: 20,702 sf 1st Floor: 2,178 sf 2nd Floor: 23,460 sf	Clubhouse: 30,693 sf 1st Floor: 20,630 sf 2nd Floor: 57,213 sf	
Cart Barn:	6,050 sf	Cart Barn & Bag Storage: 8,310 sf	
Maint. Building:	2,010 sf	Maint. Building: 8,565 sf	
Total Existing Area:	31,520 sf	Total Project Area: 69,008 sf	
Building Height:	Clubhouse: 23'-0" max Cart Barn: 12'-0"	Clubhouse: 46'-0" max Maint. Bldg.: 21'-0" max	
Site Area:	Gross Site = 131.52 acres	Gross Site = 131.52 acres	
Lot Coverage:	30,105 sf 131.52 ac = 0.525%	49,940 sf 131.52 ac = 0.872%	

Note:

- 1) Existing site area includes golf course.
- 2) Existing clubhouse building area from base-of existing four plot.
- 3) Existing cart barn and maintenance building areas are from measured areas.

GENERAL NOTES

- Building Occupancy Group: A-2
- Construction Type: Type V-B (Fully Sprinklered)
- IBCCBC 2006

REVISED OVERALL SITE PLAN
WITH ACCESS EASEMENT
A-2A

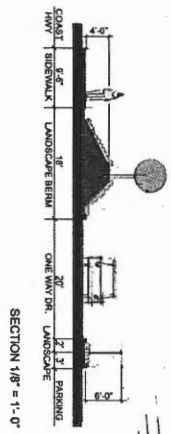
08012
10-11-11 11:22:10 08-08-08
12-12-11 04-12-11 03-20-09
08-04-11 03-27-09
08-07-11 06-19-09
08-18-11 03-30-10

LEE & SAKAHARA
ARCHITECTS AIA
10400 N. GARDEN AVE., SUITE 300
NEWPORT BEACH, CA 92659
TEL: 949.411.1100 F: 949.411.1141

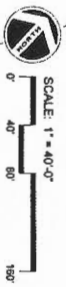
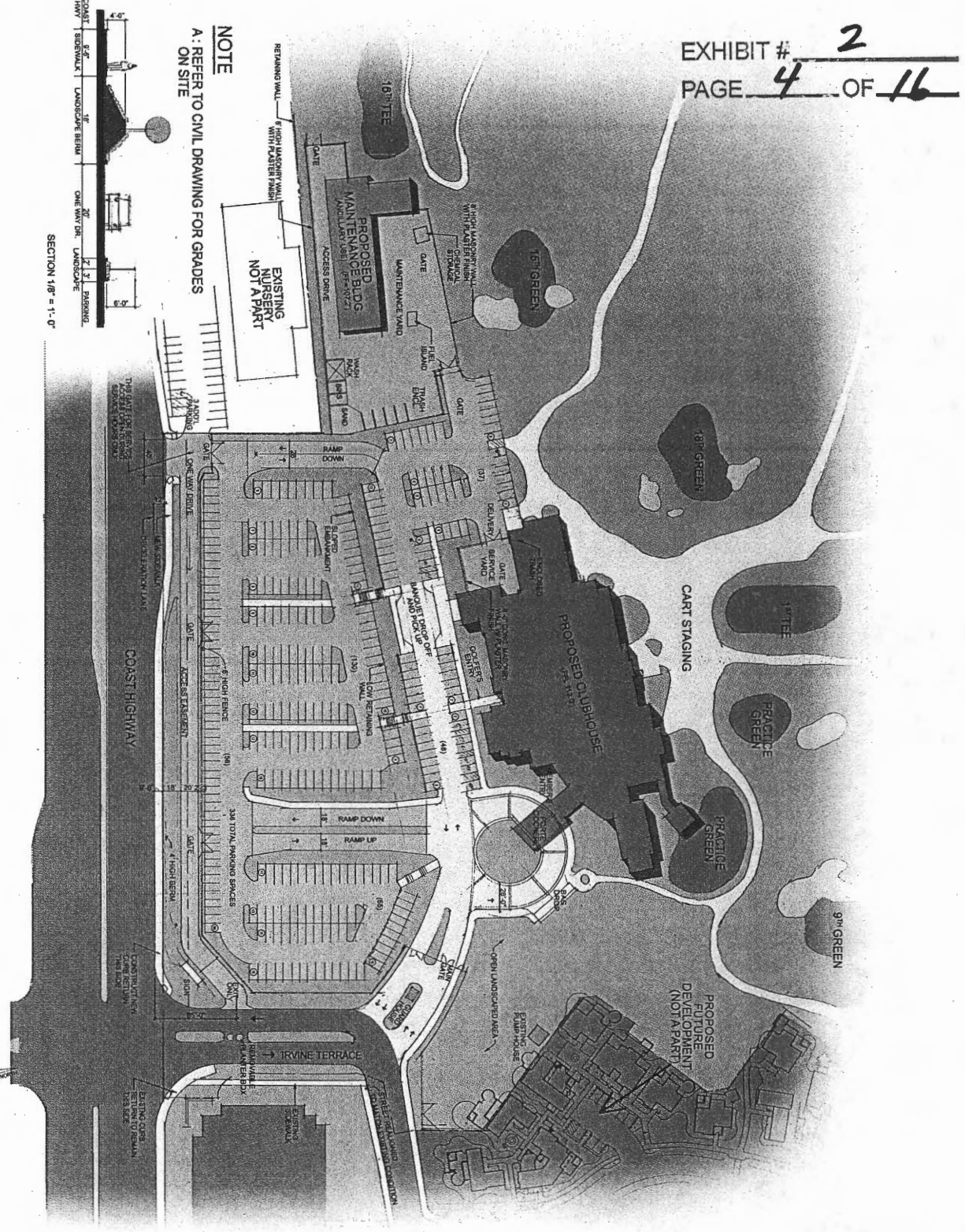


NEWPORT BEACH COUNTRY CLUB

NEWPORT BEACH, CALIFORNIA



NOTE
A: REFER TO CIVIL DRAWING FOR GRADES ON SITE



08012
11-16-11
12-01-11
12-05-11

LEE & SAKAHARA
ARCHITECTS, AIA
ARCHITECTS & PLANNERS
10000 VILLAGE PARK DRIVE, SUITE 200
NEWPORT BEACH, CA 92658-1141
TEL: 949.450.1141
FAX: 949.450.1141

- Building Occupancy Group: A-2
- Construction Type: Type V-B (Fully Sprinklered)
- IBC/CBC 2006

GENERAL NOTES

- 1) Gross Site Area includes golf course.
- 2) Existing clubhouse parking area from base of existing floor plan.
- 3) Existing car barn and maintenance building areas are from field measurements.

	EXISTING	PROPOSED
Project Area:	Clubhouse: 20,702 sq ft 1st Floor: 20,702 sq ft 2nd Floor: 23,480 sq ft	Clubhouse: 30,893 sq ft 1st Floor: 20,520 sq ft 2nd Floor: 51,213 sq ft
Club Barn:	6,050 sq ft	Club Barn & Bag Storage: 9,310 sq ft
Maint. Building:	2,070 sq ft	Maint. Building: 8,565 sq ft
Total Existing Area:	31,520 sq ft	Total Project Area: 69,088 sq ft
Clubhouse:	23'-0" max	Clubhouse: 48'-0" max
Maint. Bldg.:	18'-0"	Maint. Bldg.: 21'-0" max
Site Area:	131.52 acres	Gross Site Area: 131.52 acres
Lot Area:	30,105 sq ft	49,940 sq ft
Coverage:	131.52 ac = 0.322%	131.52 ac = 0.872%

PROJECT DEVELOPMENT SUMMARY

USE CATEGORY / ETC.	NUMBER OF SEATS REQUIRED	PARKING REQUIREMENT (STALLS)
Golf Uses:		
- Regulation Courses	18 holes	8 spaces per hole
Eating & Drinking Establishments:		
- Fine Dining	50 seats	1 stall / 3 seats
- Mixed Grill	80 seats	2 stalls / 1,000 sq ft
- Barbecue / Banquet Room	40 seats	1 stall / 35 sq ft
Other Uses:		
- Offices	2,290 sq ft	4 stalls / 1,000 sq ft
- Pro Shop	2,160 sq ft	2 stalls / 1,000 sq ft
- Maintenance	8,565 sq ft	18 stalls
- Health & Fitness	1,800 sq ft	1 stall / 250 sq ft
Facilities (small)		
Total parking required:		334
Parking provided:		
- Standard		327
- Special		3
Total parking provided:		330

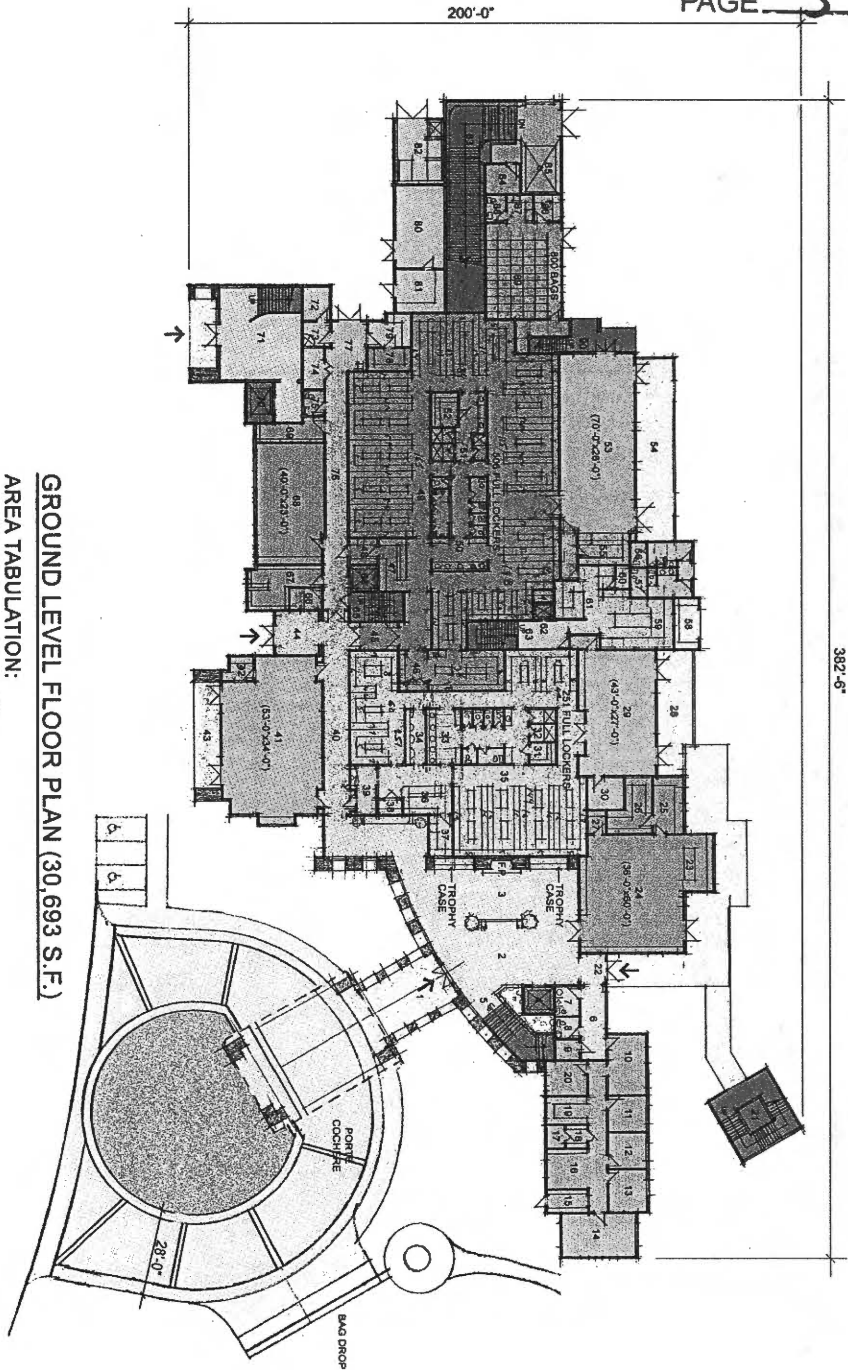
PARKING REQUIREMENTS

NEWPORT BEACH COUNTRY CLUB

NEWPORT BEACH, CALIFORNIA

GROUND LEVEL FLOOR PLAN (30,693 S.F.)

AREA TABULATION:
-UPPER LEVEL: 20,520 SF
-GROUND LEVEL: 30,693 SF
TOTAL: 51,213 SF



SCALE: 1/16" = 1'-0"

0' 16' 32' 64'

08012

08-07-11 09-08-08
08-18-11 12-23-08
08-18-11 08-18-11
08-04-11 08-04-11

LEE & SAKAHARA
ARCHITECTS AIA

LEE & SAKAHARA
ARCHITECTS AIA

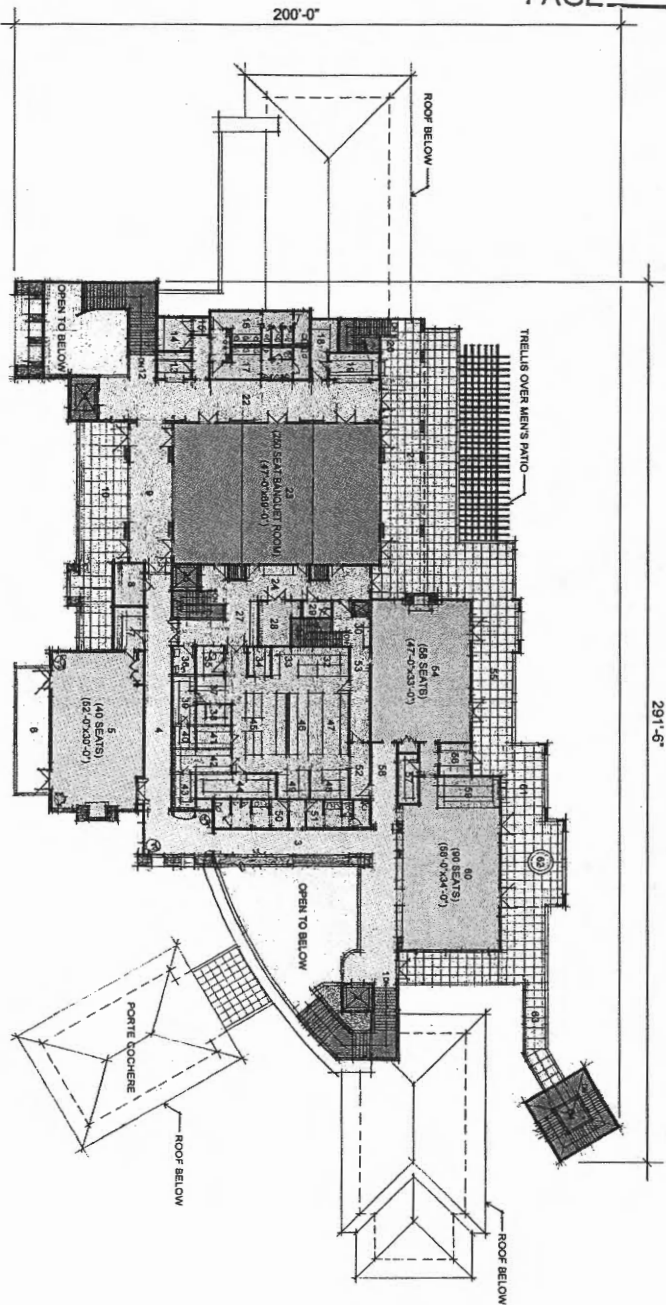
GROUND LEVEL
FLOOR PLAN

A-3

NEWPORT BEACH COUNTRY CLUB

- LEGEND
1. MENAGERIE'S ENTRY PERGOLA
 2. MENAGERIE'S LOBBY
 3. ELEVATOR
 4. GRAND STAIR
 5. MEN'S RESTROOM
 6. LADIES RESTROOM
 7. ELEVATOR EQUIPMENT ROOM
 8. MEN'S RESTROOM
 9. LADIES RESTROOM
 10. MEN'S RESTROOM
 11. LADIES RESTROOM
 12. MENAGERIE SALES
 13. CONTROLLER
 14. ASSISTANT GENERAL MANAGER
 15. PRESIDENT
 16. ACCOUNTING
 17. COMPUTER ROOM
 18. STORAGE
 19. BANQUET SALES
 20. STAIR TOWER
 21. STAIR TOWER
 22. GOLF COURSE ACCESS
 23. STAIR
 24. STAIR
 25. PRO OFFICE
 26. STORAGE
 27. STRESSING ROOM
 28. LADIES' CLOAK ROOM
 29. STORAGE
 30. LADIES' STEAM ROOM
 31. LADIES' STEAM ROOM
 32. LADIES' STEAM ROOM
 33. LADIES' VANITY
 34. LADIES' LOCKER ROOM
 35. ATTENDANT STIMAGE
 36. COAT CLOSET
 37. LADIES' LOCKER ROOM ENTRY
 38. CONDOURSE
 39. FITNESS CENTER
 40. FITNESS CENTER
 41. FITNESS CENTER
 42. FITNESS CENTER
 43. FITNESS CENTER
 44. GOLFERS' ENTRY
 45. MEN'S LOCKER ROOM ENTRY
 46. MEN'S LOCKER ROOM
 47. MEN'S LOCKER ROOM
 48. MEN'S LOCKER ROOM
 49. MEN'S LOCKER ROOM
 50. MEN'S LOCKER ROOM
 51. MEN'S LOCKER ROOM
 52. MEN'S LOCKER ROOM
 53. MEN'S LOCKER ROOM
 54. MEN'S LOCKER ROOM
 55. MEN'S LOCKER ROOM
 56. MEN'S LOCKER ROOM
 57. MEN'S LOCKER ROOM
 58. MEN'S LOCKER ROOM
 59. MEN'S LOCKER ROOM
 60. MEN'S LOCKER ROOM
 61. MEN'S LOCKER ROOM
 62. MEN'S LOCKER ROOM
 63. MEN'S LOCKER ROOM
 64. MEN'S LOCKER ROOM
 65. MEN'S LOCKER ROOM
 66. MEN'S LOCKER ROOM
 67. MEN'S LOCKER ROOM
 68. MEN'S LOCKER ROOM
 69. MEN'S LOCKER ROOM
 70. MEN'S LOCKER ROOM
 71. MEN'S LOCKER ROOM
 72. MEN'S LOCKER ROOM
 73. MEN'S LOCKER ROOM
 74. MEN'S LOCKER ROOM
 75. MEN'S LOCKER ROOM
 76. MEN'S LOCKER ROOM
 77. MEN'S LOCKER ROOM
 78. MEN'S LOCKER ROOM
 79. MEN'S LOCKER ROOM
 80. MEN'S LOCKER ROOM
 81. MEN'S LOCKER ROOM
 82. MEN'S LOCKER ROOM
 83. MEN'S LOCKER ROOM
 84. MEN'S LOCKER ROOM
 85. MEN'S LOCKER ROOM
 86. MEN'S LOCKER ROOM
 87. MEN'S LOCKER ROOM
 88. MEN'S LOCKER ROOM
 89. MEN'S LOCKER ROOM
 90. MEN'S LOCKER ROOM

NEWPORT BEACH COUNTRY CLUB
NEWPORT BEACH, CALIFORNIA



UPPER LEVEL FLOOR PLAN (20,520 S.F.)
AREA TABULATION:
-UPPER LEVEL: 20,520 SF
-GROUND LEVEL: 30,693 SF
TOTAL: 51,213 SF



SCALE: 1/16" = 1'-0"
0' 10' 20' 30' 40'

08012

09-08-08
12-18-08
05-04-11
09-07-11

UPPER LEVEL
FLOOR PLAN

A-4

LEE & SAKAHARA
ARCHITECTS AIA

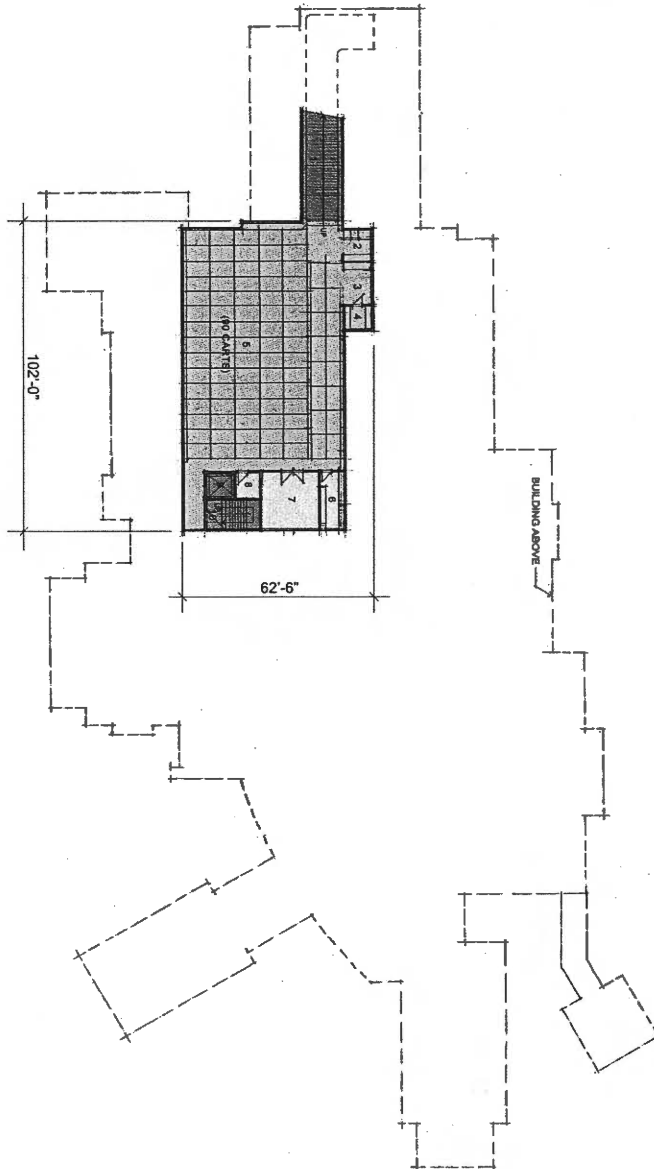
ARCHITECTURE PLANNING INTERIOR
DESIGN LANDSCAPE ARCHITECTURE
P.O. BOX 1100 / NEWPORT BEACH, CA 92658-1100
TEL: 949.261.1100 / FAX: 949.261.1101



NEWPORT BEACH COUNTRY CLUB

LEGEND

1. GRAND STAIR
2. CONDOULET
3. CONDOULET
4. CONDOULET
5. BOARD ROOM / PRIVATE DINING
6. TERRACE
7. TERRACE
8. STORAGE
9. OCEANSIDE RESTRICTION LOBBY
10. OCEANSIDE TERRACE
11. GRAND STAIR
12. GRAND STAIR
13. COAT ROOM
14. BRIDAL SUITE
15. CLOSET
16. MEN'S RESTROOM
17. MEN'S RESTROOM
18. SERVICE BAR
19. STORAGE
20. STAIR
21. STAIR
22. RESTRICTION LOBBY
23. BANQUET ROOM
24. SERVICE CORRIDOR
25. SERVICE CORRIDOR
26. STAIR
27. BANQUET SERVICE STATION
28. BANQUET STORAGE
29. BANQUET STORAGE
30. BANQUET STORAGE
31. STAIR
32. DRESS WASH
33. DRESS WASH
34. DRESS WASH
35. CLIENTS OFFICE
36. TOILET
37. ICE
38. LINEN STORAGE
39. LINEN STORAGE
40. WALK-IN REFRIGERATOR
41. WALK-IN REFRIGERATOR
42. WALK-IN REFRIGERATOR
43. REFRIGERATOR
44. REFRIGERATOR
45. REFRIGERATOR
46. COOK LINE
47. DRESS UP
48. DRESS UP
49. BAKERY
50. MEN'S RESTROOM
51. LADIES RESTROOM
52. SERVICE VESTIBULE
53. SERVICE VESTIBULE
54. FINE DINING ROOM
55. FINE DINING TERRACE
56. SERVICE STATION
57. SERVICE STATION
58. FINE DINING ENTRY
59. BAR
60. MIXED GRILLE
61. MIXED GRILLE
62. MIXED GRILLE
63. BRIDGE
64. STAIR TOWER



CART BARN (5,704 S.F.)
(ANCILLARY USE)

AREA TABULATION:
-CART BARN: 5,704 SF
-BAG STOR.(GROUND FLR.): 3,606 SF
TOTAL: 9,310 SF

- NEWPORT BEACH COUNTRY CLUB**
- LEGEND**
1. RAMP UP
 2. LAUNDRY / ICE / TOWEL STORAGE
 3. CART REPAIR SHOP
 4. PARTS STORAGE
 5. DEAD BULL STORAGE
 6. BULK STORAGE
 7. ELEVATOR EQUIPMENT STORAGE
 8. FREIGHT ELEVATOR
 9. STAIR
 10. STAIR



SCALE: 1/16" = 1'-0"
0' 16' 32' 64'

BASEMENT LEVEL
FLOOR PLAN
(ANCILLARY USE)

A-5

NEWPORT BEACH COUNTRY CLUB
NEWPORT BEACH, CALIFORNIA

08012

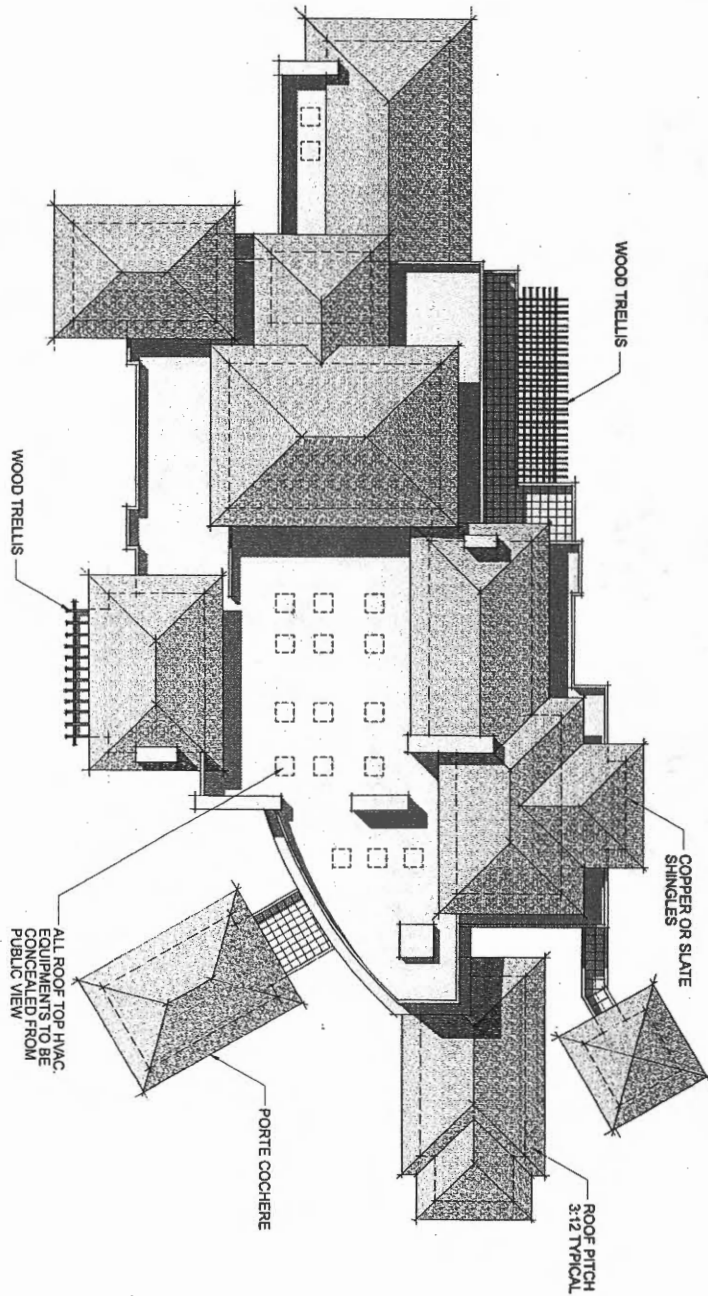
07-15-08
12-16-08
05-24-10
05-07-11

LEE & SAKAHARA
ARCHITECTS AIA
ARCHITECTURAL FLOOR PLAN
1000 N. GARDEN AVE., SUITE 200
NEWPORT BEACH, CA 92660-1544
PH: 949.261.1500 FAX: 949.261.1544



NEWPORT BEACH, CALIFORNIA

NEWPORT BEACH COUNTRY CLUB



SCALE: 1/16" = 1'-0"
0' 16' 32' 64'

08012

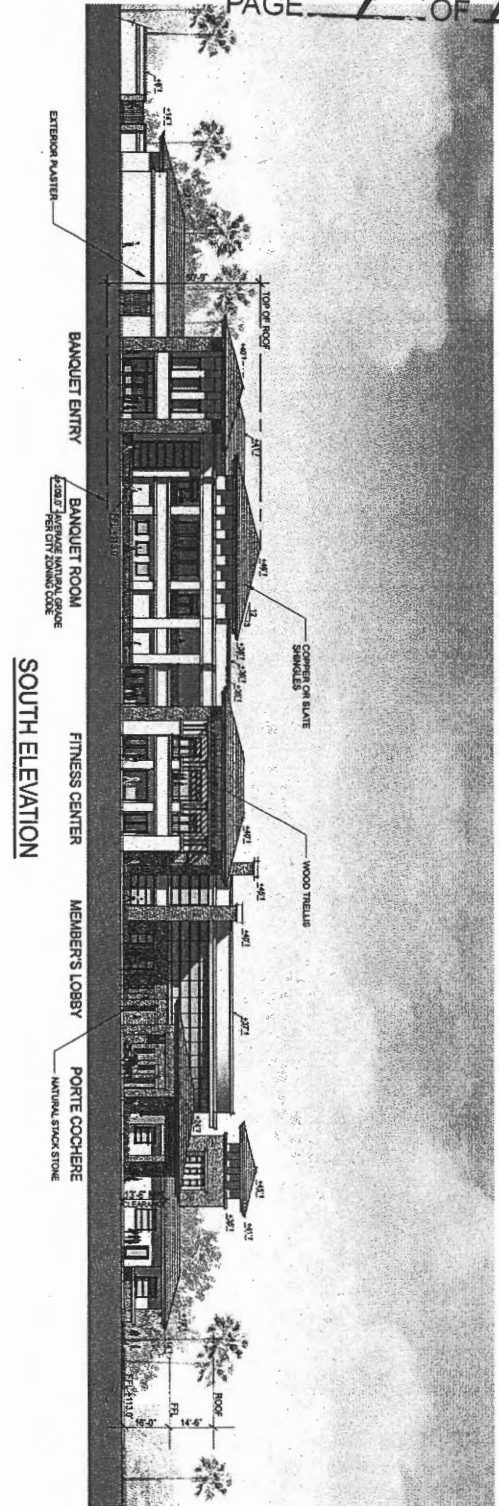
07-15-08
12-18-08
09-30-10
05-04-11
09-07-11

ROOF PLAN

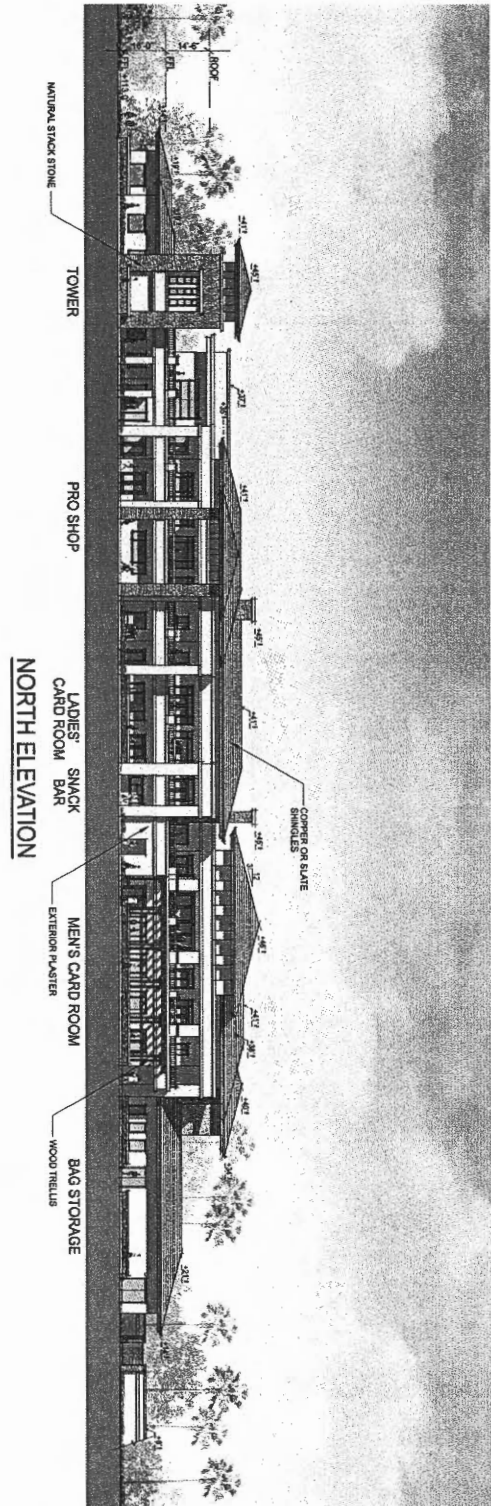
LEE & SAKYARA
ARCHITECTS AIA
10000 CALIFORNIA BOULEVARD, SUITE 200
NEWPORT BEACH, CALIFORNIA 92660
TEL: 949.417.1100 FAX: 949.417.1101



A-6



SOUTH ELEVATION



NORTH ELEVATION

NEWPORT BEACH COUNTRY CLUB

NEWPORT BEACH, CALIFORNIA

SCALE: 1/16" = 1'-0"

0" 16' 32' 64'

08012

08-07-11 07-14-08
08-18-11 12-23-08
04-12-11 08-30-10
08-04-11 08-04-11

ELEVATIONS

A-7

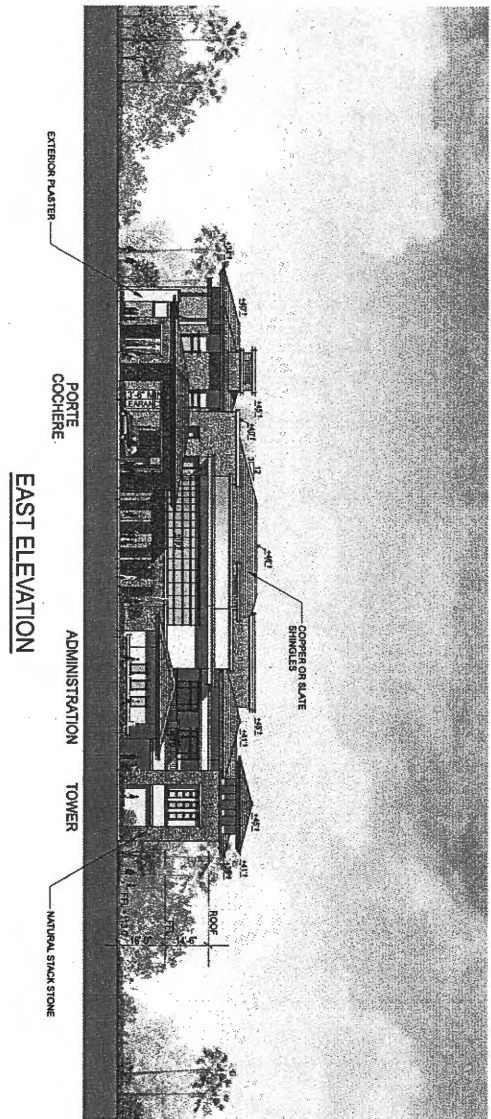
LEE & SAKAHARA
ARCHITECTS AIA

10001 VAN COTT BLVD., SUITE 200
NEWPORT BEACH, CALIF. 92660-1100
TEL: 949.261.1100 FAX: 949.261.1101

LEE & SAKAHARA
ARCHITECTS

NEWPORT BEACH COUNTRY CLUB

NEWPORT BEACH, CALIFORNIA



EAST ELEVATION



WEST ELEVATION

SCALE: 1/16" = 1'-0"
0" 16" 32" 64"

ELEVATIONS

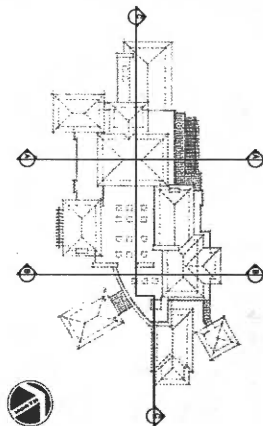
A-8

08012

09-07-11
08-19-11
07-15-08
12-23-08
08-25-10
05-04-11

LEE & SAKAHARA
ARCHITECTS AIA
ARCHITECTURAL DRAWING SERVICES
1000 VAN GORDON AVE., SUITE 200
NEWPORT BEACH, CA 92660-1144
PH: (949) 435-7700 FAX: (949) 435-1144



[illegible]

Architectural elevation drawing of the front of the building. The drawing shows a multi-story structure with a central section featuring a large, gabled roof. To the left, there is a section with a ramp labeled "RAMP DOWN TO CART STORAGE". The central section includes a "BANDIET ROOM" and a "KITCHEN". To the right, there is a section labeled "WOMEN'S LOCKER ROOM" and a "RICE TON". The drawing also shows a "MEN'S LOCKER ROOM" and a "CART PEN". The building is surrounded by trees and a fence. The drawing is labeled with various dimensions and structural details.

NEWPORT BEACH, CALIFORNIA

A-9

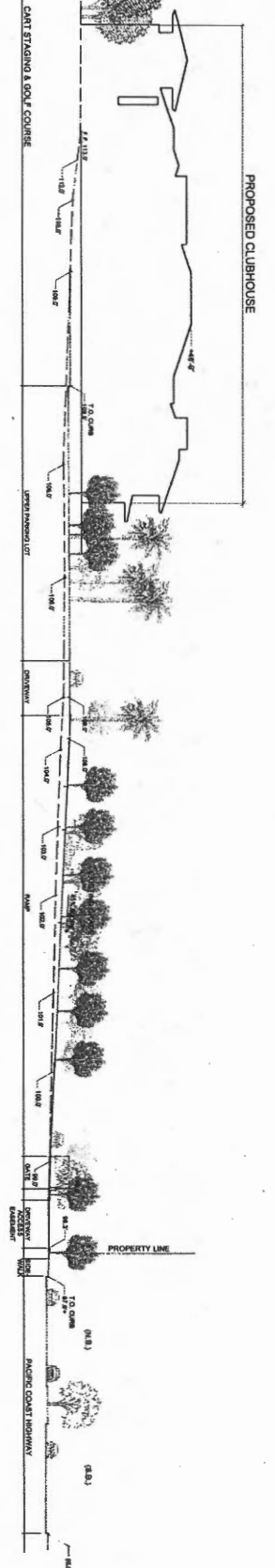
SCALE: 1/16" = 1'-0"

09-07-11	07-15-08
09-19-11	12-23-08
	09-30-10
	04-12-11
	05-04-11

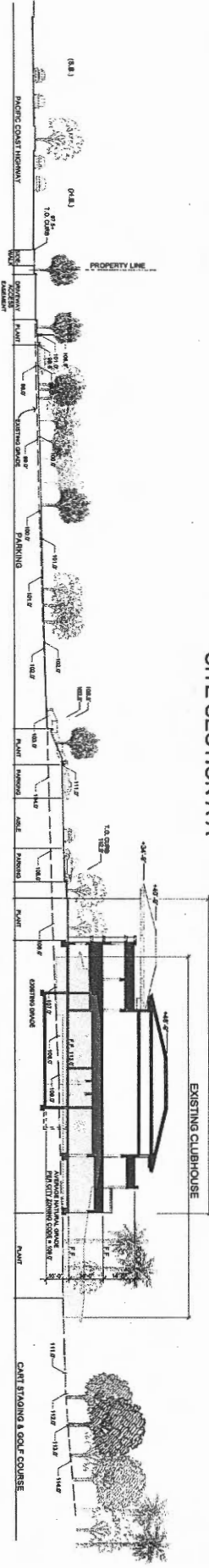
LEE & SAKAHARA
ARCHITECTS AIA

ARCHITECTURE PLANNING INTERIOR
16042 VON KARMAN AVE., SUITE 300
IRVINE, CA USA 92606-4927
PH: 949-261-1100 F: 949-261-1144

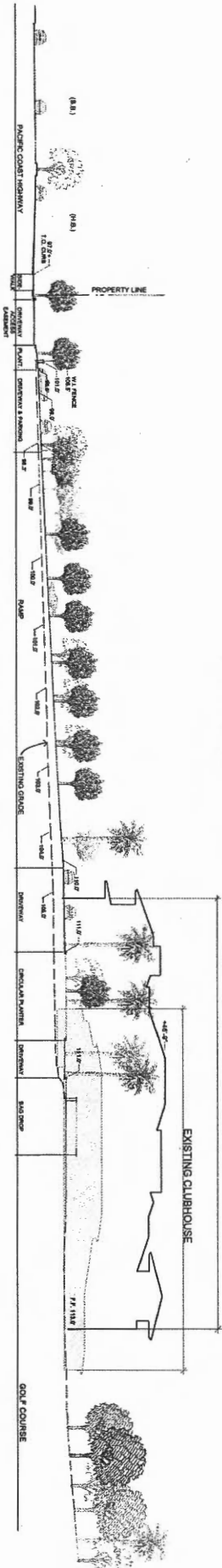
**Keep
Sick**



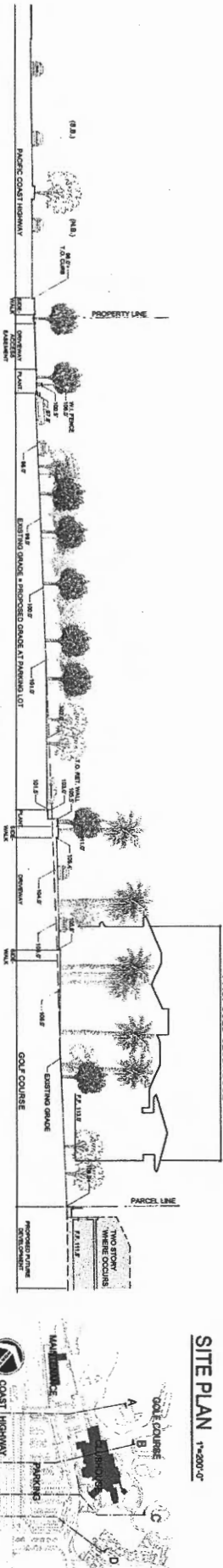
SITE SECTION A-A



SITE SECTION B-B



SITE SECTION C-C



SITE SECTION D-D

NEWPORT BEACH COUNTRY CLUB

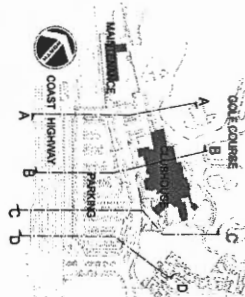
NEWPORT BEACH, CALIFORNIA

SCALE: 1" = 20'-0"

SITE SECTIONS

A-10

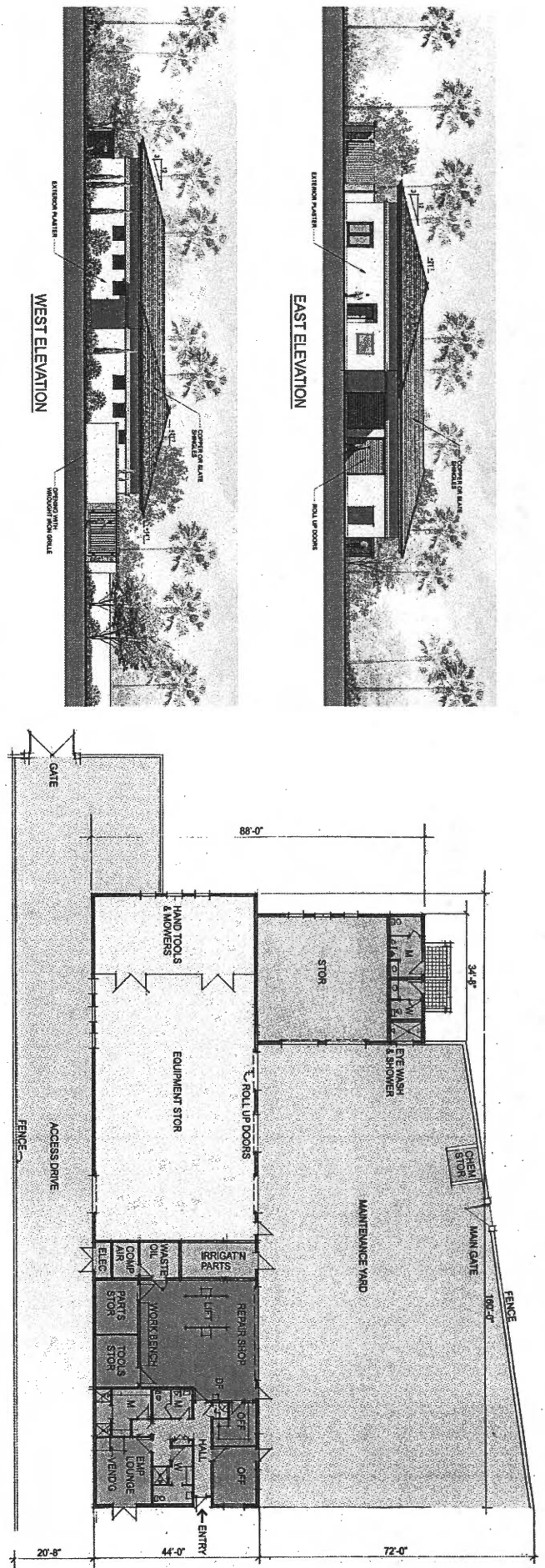
SITE PLAN 1"=200'-0"

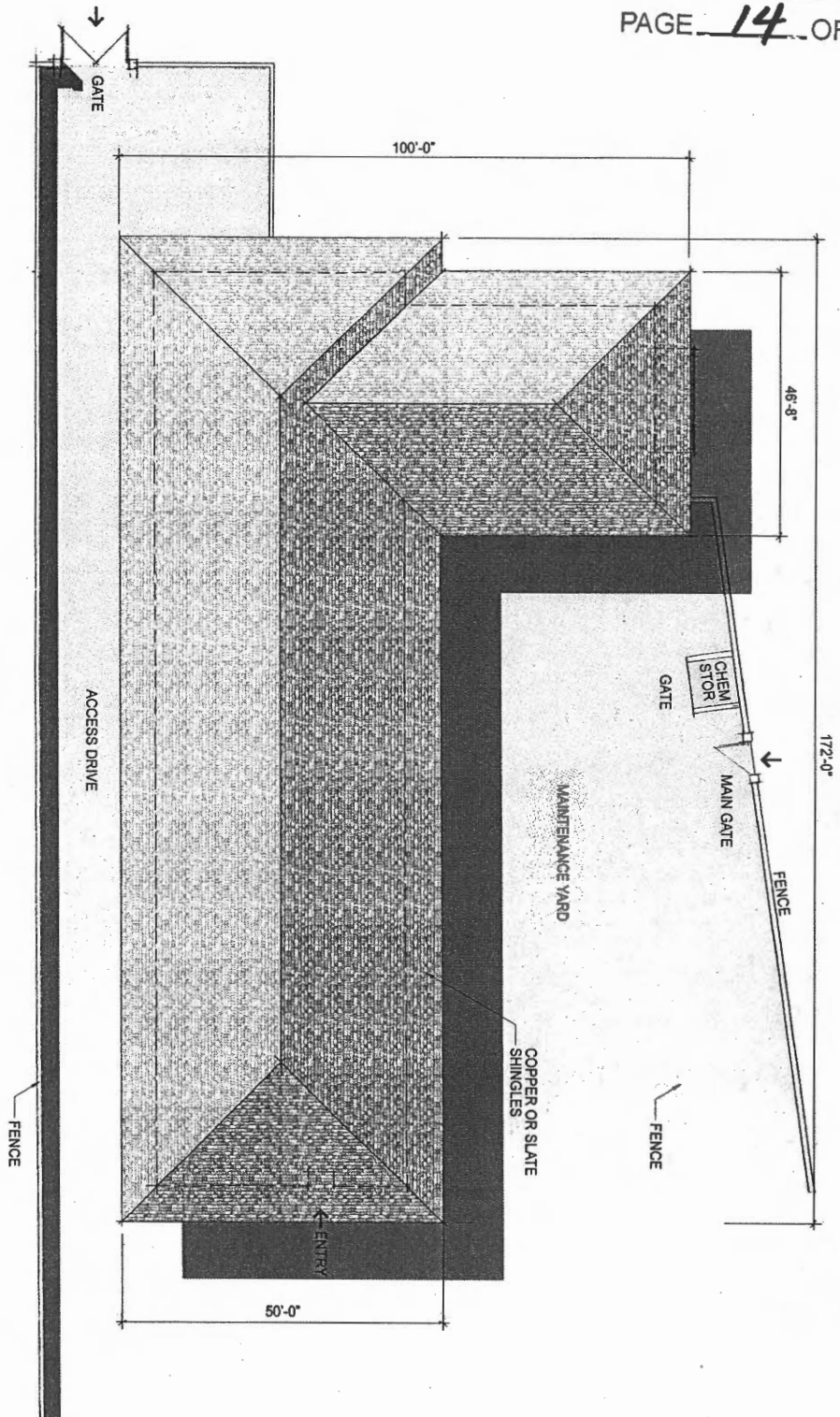


08012
08-17-11
08-18-11
08-19-11
08-20-11
08-21-11
08-22-11
08-23-11
08-24-11
08-25-11
08-26-11
08-27-11
08-28-11
08-29-11
08-30-11
08-31-11
09-01-11
09-02-11
09-03-11
09-04-11
09-05-11
09-06-11
09-07-11
09-08-11
09-09-11
09-10-11
09-11-11
09-12-11
09-13-11
09-14-11
09-15-11
09-16-11
09-17-11
09-18-11
09-19-11
09-20-11
09-21-11
09-22-11
09-23-11
09-24-11
09-25-11
09-26-11
09-27-11
09-28-11
09-29-11
09-30-11
09-31-11
10-01-11
10-02-11
10-03-11
10-04-11
10-05-11
10-06-11
10-07-11
10-08-11
10-09-11
10-10-11
10-11-11
10-12-11
10-13-11
10-14-11
10-15-11
10-16-11
10-17-11
10-18-11
10-19-11
10-20-11
10-21-11
10-22-11
10-23-11
10-24-11
10-25-11
10-26-11
10-27-11
10-28-11
10-29-11
10-30-11
10-31-11
11-01-11
11-02-11
11-03-11
11-04-11
11-05-11
11-06-11
11-07-11
11-08-11
11-09-11
11-10-11
11-11-11
11-12-11
11-13-11
11-14-11
11-15-11
11-16-11
11-17-11
11-18-11
11-19-11
11-20-11
11-21-11
11-22-11
11-23-11
11-24-11
11-25-11
11-26-11
11-27-11
11-28-11
11-29-11
11-30-11
11-31-11
12-01-11
12-02-11
12-03-11
12-04-11
12-05-11
12-06-11
12-07-11
12-08-11
12-09-11
12-10-11
12-11-11
12-12-11
12-13-11
12-14-11
12-15-11
12-16-11
12-17-11
12-18-11
12-19-11
12-20-11
12-21-11
12-22-11
12-23-11
12-24-11
12-25-11
12-26-11
12-27-11
12-28-11
12-29-11
12-30-11
12-31-11

LEE & SAWAHARA
ARCHITECTS AIA
1000 AVENUE OF THE STARS
SUITE 200
NEWPORT BEACH, CALIFORNIA 92660
TEL: 949.440.1111
WWW.LEEANDSAWAHARA.COM

LEE & SAWAHARA
ARCHITECTS AIA





ROOF PLAN



SCALE: 1/8" = 1'-0"
0 8 16 32'

MAINTENANCE BUILDING
ROOF PLAN
(ANCILLARY USE) A-12

NEWPORT BEACH COUNTRY CLUB

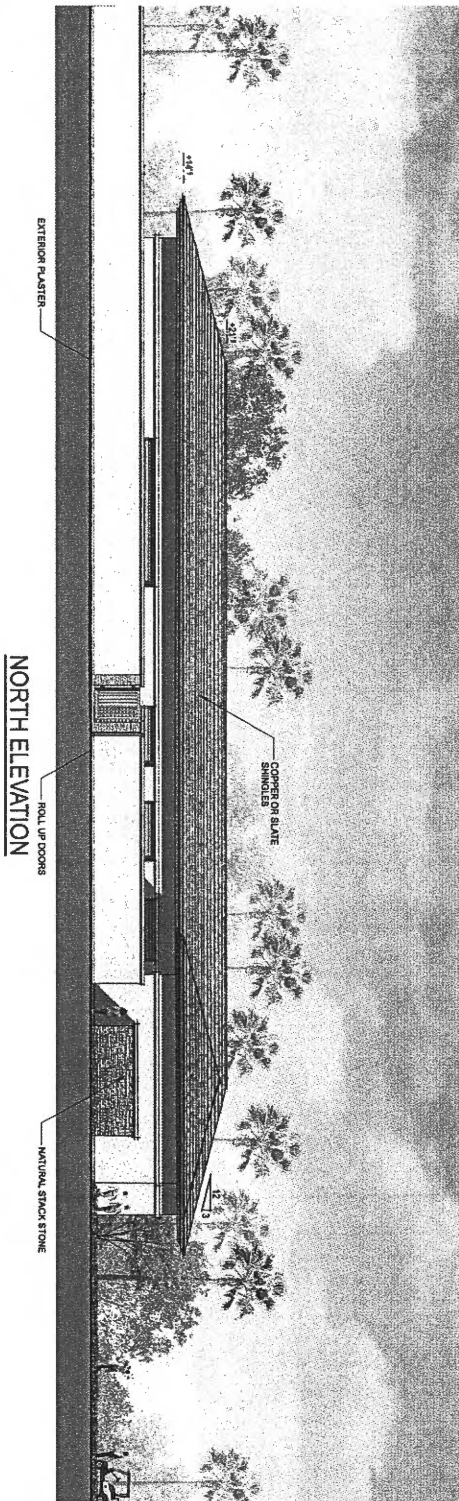
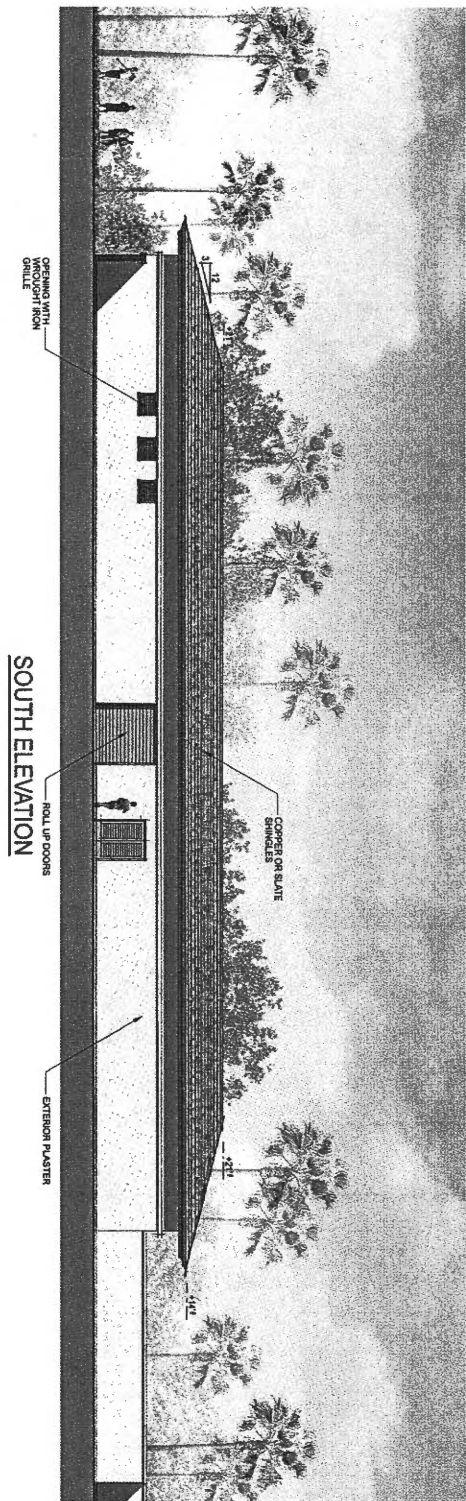
NEWPORT BEACH, CALIFORNIA

08012

07-15-08
08-02-10
08-16-11

LEE & SAKAHARA
ARCHITECTS AIA
ARCHITECTURAL PLANNING AND DESIGN
10000 S. GARDEN AVENUE, SUITE 100
DANA POINT, CALIFORNIA 92629
TEL: 949-343-1100 FAX: 949-343-1101





NEWPORT BEACH COUNTRY CLUB

NEWPORT BEACH, CALIFORNIA

SCALE: 1/8" = 1'-0"
0' 8' 16' 32'

08012

07-15-08
08-03-10
05-04-11
05-10-11

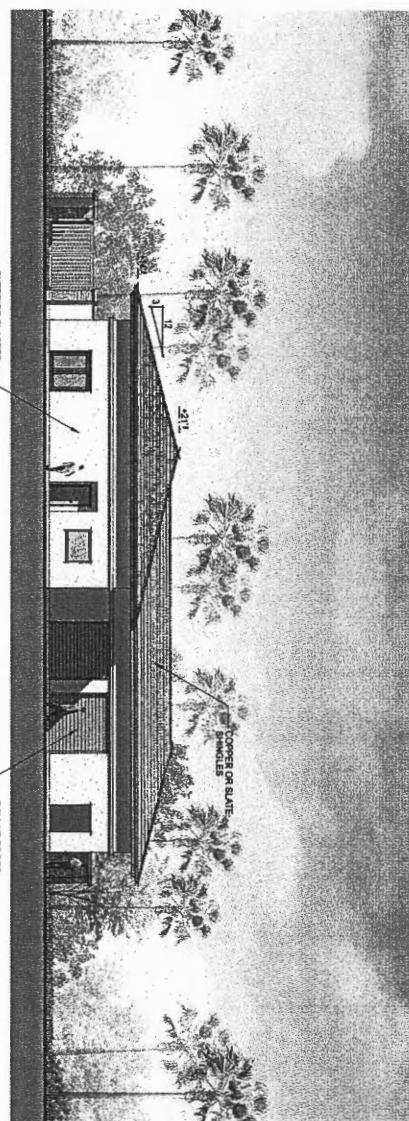
MAINTENANCE BUILDING
ELEVATIONS
(ANCILLARY USE) A-13

LEE & SAKAHARA
ARCHITECTS AIA
ARCHITECTS & INTERIORS
1000 VINTAGE DRIVE, SUITE 200
NEWPORT BEACH, CA 92660
TEL: 949-261-1100 FAX: 949-261-1101

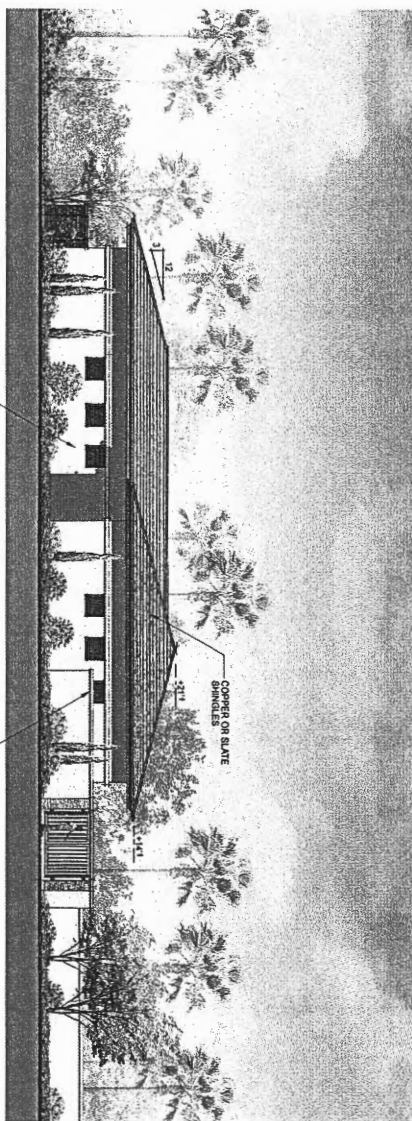


NEWPORT BEACH COUNTRY CLUB

NEWPORT BEACH, CALIFORNIA



EAST ELEVATION



WEST ELEVATION

SCALE: 1/8" = 1'-0"
0 8 16 24

MAINTENANCE BUILDING
ELEVATIONS
(ANCILLARY USE) A-14

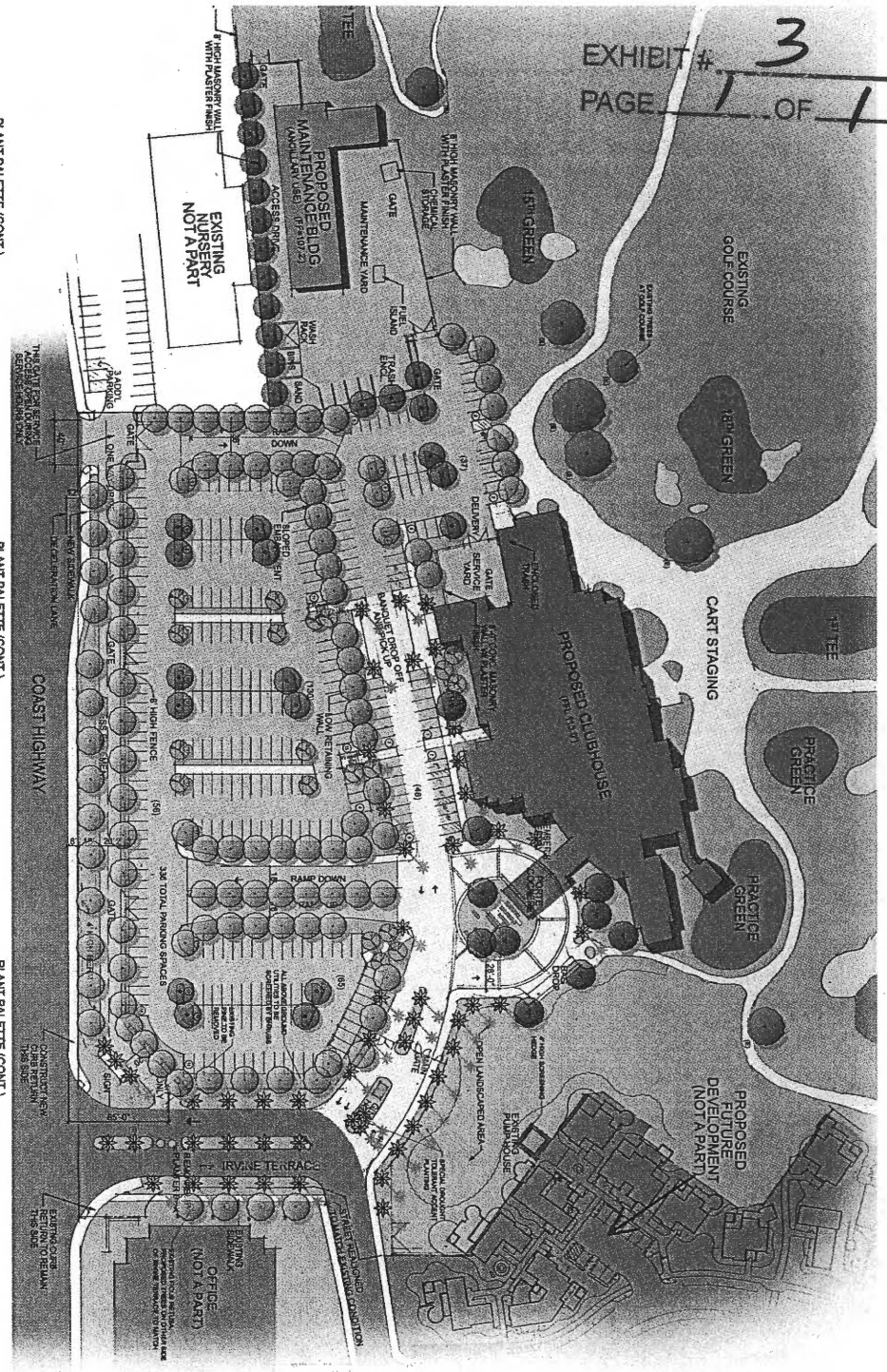
LEE & SAKAHARA
ARCHITECTS AIA

ARCHITECTURAL FIRM
10000 N. GARDEN AVENUE
SUITE 200
DANA POINT, CA 92629
TEL: 949.261.1100
WWW.LEE-AND-SAKAHARA.COM

07-15-08
08-15-08
09-15-11

08012

EXHIBIT # 3
PAGE 1 OF 1



PLANT PALETTE (CONT.)

SYMBOL	COMMON NAME	SIZE / SPACING	COMMENTS	PLANTING
	Yucca filifera	10' x 12' O.C.	MAINT.	LOW
	Yucca filifera	10' x 12' O.C.	MAINT.	LOW
	Yucca filifera	10' x 12' O.C.	MAINT.	LOW
	Yucca filifera	10' x 12' O.C.	MAINT.	LOW
	Yucca filifera	10' x 12' O.C.	MAINT.	LOW
	Yucca filifera	10' x 12' O.C.	MAINT.	LOW
	Yucca filifera	10' x 12' O.C.	MAINT.	LOW
	Yucca filifera	10' x 12' O.C.	MAINT.	LOW
	Yucca filifera	10' x 12' O.C.	MAINT.	LOW
	Yucca filifera	10' x 12' O.C.	MAINT.	LOW

PLANT PALETTE (CONT.)

SYMBOL	COMMON NAME	SIZE / SPACING	COMMENTS	PLANTING
	Yucca filifera	10' x 12' O.C.	MAINT.	LOW
	Yucca filifera	10' x 12' O.C.	MAINT.	LOW
	Yucca filifera	10' x 12' O.C.	MAINT.	LOW
	Yucca filifera	10' x 12' O.C.	MAINT.	LOW
	Yucca filifera	10' x 12' O.C.	MAINT.	LOW
	Yucca filifera	10' x 12' O.C.	MAINT.	LOW
	Yucca filifera	10' x 12' O.C.	MAINT.	LOW
	Yucca filifera	10' x 12' O.C.	MAINT.	LOW
	Yucca filifera	10' x 12' O.C.	MAINT.	LOW
	Yucca filifera	10' x 12' O.C.	MAINT.	LOW

PLANT PALETTE (CONT.)

SYMBOL	COMMON NAME	SIZE / SPACING	COMMENTS	PLANTING
	Yucca filifera	10' x 12' O.C.	MAINT.	LOW
	Yucca filifera	10' x 12' O.C.	MAINT.	LOW
	Yucca filifera	10' x 12' O.C.	MAINT.	LOW
	Yucca filifera	10' x 12' O.C.	MAINT.	LOW
	Yucca filifera	10' x 12' O.C.	MAINT.	LOW
	Yucca filifera	10' x 12' O.C.	MAINT.	LOW
	Yucca filifera	10' x 12' O.C.	MAINT.	LOW
	Yucca filifera	10' x 12' O.C.	MAINT.	LOW
	Yucca filifera	10' x 12' O.C.	MAINT.	LOW
	Yucca filifera	10' x 12' O.C.	MAINT.	LOW

PLANT PALETTE

SYMBOL	COMMON NAME	SIZE / SPACING	COMMENTS	PLANTING
	Yucca filifera	10' x 12' O.C.	MAINT.	LOW
	Yucca filifera	10' x 12' O.C.	MAINT.	LOW
	Yucca filifera	10' x 12' O.C.	MAINT.	LOW
	Yucca filifera	10' x 12' O.C.	MAINT.	LOW
	Yucca filifera	10' x 12' O.C.	MAINT.	LOW
	Yucca filifera	10' x 12' O.C.	MAINT.	LOW
	Yucca filifera	10' x 12' O.C.	MAINT.	LOW
	Yucca filifera	10' x 12' O.C.	MAINT.	LOW
	Yucca filifera	10' x 12' O.C.	MAINT.	LOW
	Yucca filifera	10' x 12' O.C.	MAINT.	LOW

NEWPORT BEACH COUNTRY CLUB

NEWPORT BEACH, CALIFORNIA

08012

08-20-11



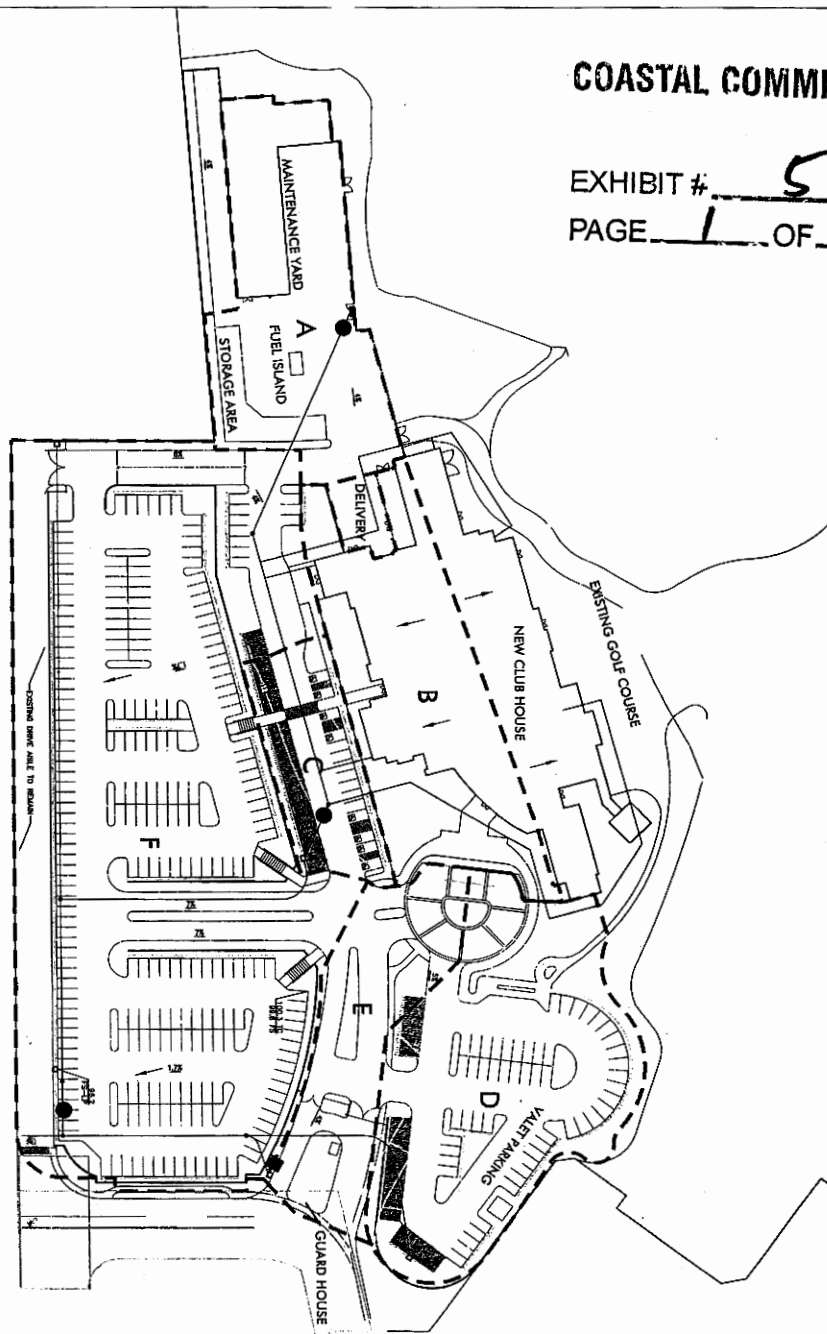
LEE & SAKAHARA
ARCHITECTS, AIA
ARCHITECTURAL PLANNING INTERIORS
1000 VAN WATMAN AVE. SUITE 200
FARMINGTON, CT 06031-1144
PH: 860-251-1100 F: 860-251-1144



COASTAL COMMISSION

EXHIBIT # 5
PAGE 1 OF 2

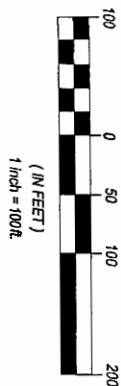
EAST COAST HWY.



LEGEND

- FLOW DIRECTION
- - - PROPOSED STORM DRAIN
- - - DRAINAGE BOUNDARY
- - - PERVIOUS PAVEMENT
- STORMFILTER
- FILTERBA UNIT

GRAPHIC SCALE



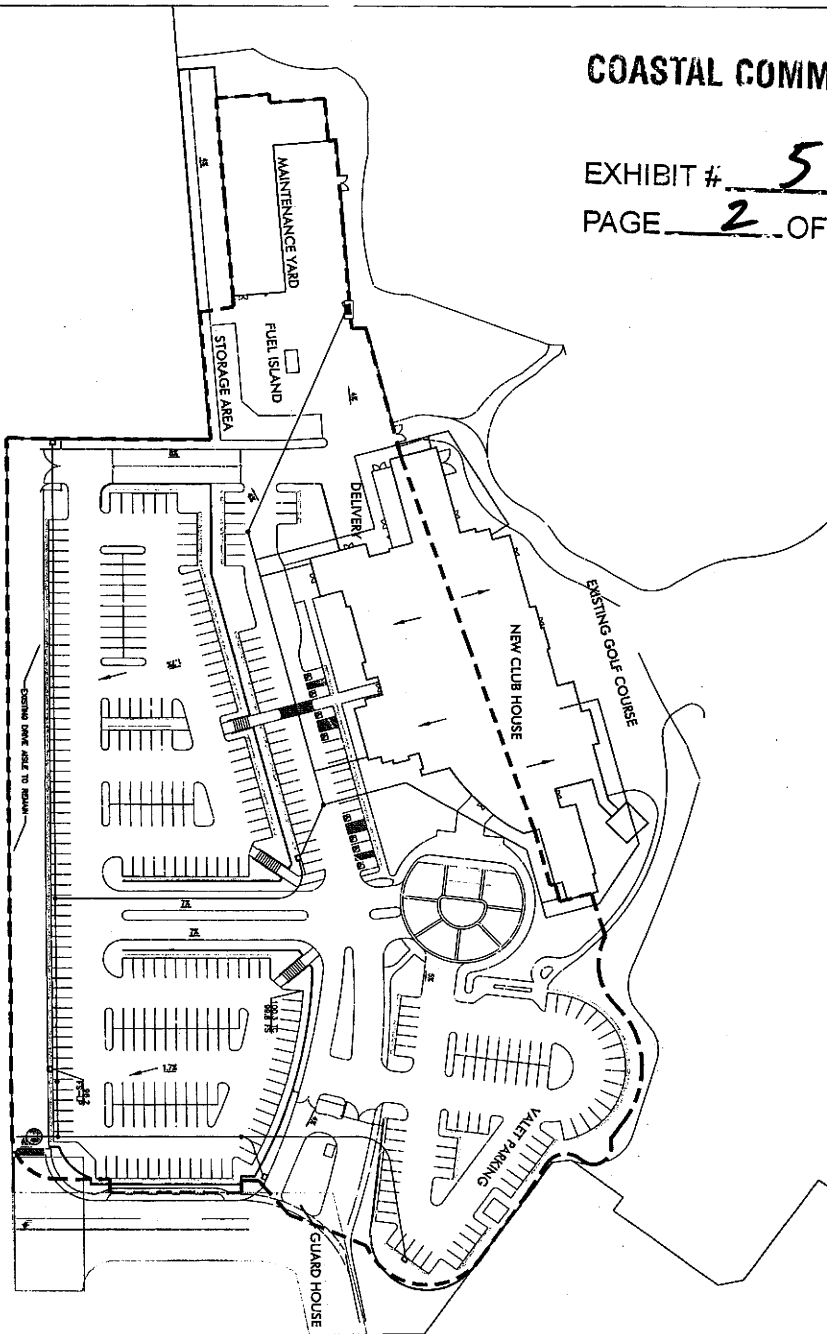
Scale: 1" = 100'
Exhibit Date: 5-18-09

WATER QUALITY
MANAGEMENT PLAN
OPTION 1
NEWPORT BEACH
COUNTRY CLUB

COASTAL COMMISSION

EXHIBIT # 5
PAGE 2 OF 2

EAST COAST HWY.



LEGEND

- FLOW DIRECTION
- PROPOSED STORM DRAIN
- DRAINAGE BOUNDARY
- STORMFILTER
- CATCH BASIN INSERT

CALIFORNIA
COASTAL COMMISSION

RECEIVED
South Coast Region

MAY 9 2012

GRAPHIC SCALE



1 inch = 100ft



Scale: 1" = 100'
Exhibit Date: 5-18-09

WATER QUALITY
MANAGEMENT PLAN
OPTION 2
NEWPORT BEACH
COUNTRY CLUB

CHATTEN-BROWN & CARSTENS

TELEPHONE: (310) 798-2400
FACSIMILE: (310) 798-2402

2200 PACIFIC COAST HIGHWAY
SUITE 318
HERMOSA BEACH, CALIFORNIA 90254
www.cbcearthlaw.com

EXHIBIT # 16
DPC@CBCEARTH.LAW.COM
PAGE 1 OF 62

September 5, 2012

RECEIVED
South Coast Region

SEP 06 2012

CALIFORNIA
COASTAL COMMISSION

California Coastal Commission
South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302

Re: Opposition to Approval of Coastal Development Approval for Newport
Beach Country Club, 1600 East Coast Highway; Agenda Item W 7b on
Wednesday September 12, 2012

Honorable Commissioners,

On behalf of the Friends for Good Planning, we object to the approval of the Newport Beach Country Club, Inc (NBCC Inc.) Coastal Development Permit application. This is scheduled to be heard on the consent calendar at the September 12, 2012 hearing.

As discussed below, no Coastal Development Permit should be issued until such time as adequate environmental documents can be prepared and an election to ratify the general plan amendment associated with the NBCC Project is held. The staff report refers to the Mitigated Negative Declaration (MND) as being adopted by the City of Newport Beach in compliance with the California Environmental Quality Act. (Staff Report, p. 11.) For the reasons explained below and currently pending in court, it was not. We ask that this matter be removed from the Consent Calendar, that you receive public testimony about it, and that you deny the application.

A. Litigation is Pending Over the City of Newport Beach's Approval of the Project.

We have reviewed the application and find that the applicant failed to inform you that the environmental review documents and project approval by the City of Newport Beach are the subject of pending litigation at this moment. Friends has sued the City and the applicant for legally defective approvals in *Friends for Good Planning v. City of Newport Beach (Newport Beach Country Club et al.)*, Orange County Superior Court Case no. 2012-00550274. That lawsuit is still pending. We are attaching a copy of the petition in that case. (Enclosure 1.)

B. The NBCC Project Violates the Coastal Act.

The Staff Report incorrectly asserts that the approval of this project is consistent with the City of Newport Beach's Land Use Plan and that it will not prejudice the ability of the local government to prepare an LCP that is in conformity with the Coastal Act. The General Plan's Land Use Element, and consequently its Coastal Land Use Plan, limits development on the project site to 35,000 square feet. (General Plan Land Use Element, p. 3-19.)¹ The Project is not consistent with the Coastal Land Use Plan or the Coastal Act because it proposes development of a 69,088 square foot facility. (Staff Report, p. 8.) Coastal Land Use Plan policies would be violated by the approval of development and creation of traffic in excess of what is contemplated by the General Plan's limitation of site development to 35,000 square feet. Excess traffic would interfere with coastal access.

The legislative policies expressed in the Coastal Act for development include:

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, [and] to minimize the alteration of natural land forms. . .

(Public Resources Code § 30251.) Courts have upheld the denial or conditioning of a coastal development permit based upon its impact on views and landforms. (*Paoli v. California Coastal Com.* (1986) 178 Cal.App.3d 544, 551-554, 223 Cal.Rptr. 792; *Bel Mar Estates v. California Coastal Com.* (1981) 115 Cal.App.3d 936, 940-942.) Approval of the Project in this case as proposed is contrary to the requirement of section 30251 of the Coastal Act to site and design development to protect views to and along the ocean and scenic coastal areas, and to preserve natural landforms.

The project would adversely impact the visual quality of the coastal zone. Visual simulation B in the MND shows a existing clear view of Newport Bay that would be obscured by the proposed NBCC Project. (Responses to Public Comments, pp. 24-25; City Council Staff Report, pp. 435-436.)

With its requirement for massive importation of 34,000 cubic yards of dirt to the project site to create an elevation of 10 feet over existing grade, the Project would violate the Coastal Act's protection against alteration of existing landforms. This landform alteration of landforms and massive importation of dirt appears to be unnecessary (other

¹ A copy of this portion of the Newport Beach General Plan is available at http://www.newportbeachca.gov/PLN/General_Plan/04_Ch3_LandUse_web.pdf. The relevant area is designated as "Anomaly No. 74" in Statistical Area L1 (Newport Center/Fashion Island) of the General Plan Land Use Element.

than perhaps to elevate the clubhouse above the level of the parking lot) since a different design of the NBCC Project could eliminate this substantial landform alteration and dirt importation.

C. Potentially Significant Impacts Require Further Mitigation Before Project Approval.

1. Special Conditions of Approval Impermissibly Defer Development and Implementation of Mitigation Measures for Water Quality Impacts.

The proposed finding of compliance with the California Environmental Quality Act (CEQA) on page 11 of the Staff Report makes the City of Newport Beach's non-compliance with CEQA relevant and necessary to examine. The finding is not limited to Coastal Act issues, but appears to cover all environmental impacts. The Commission's responsibilities for CEQA compliance cover all of the issues that the City of Newport Beach was responsible for and should have addressed. Therefore, our comments below address the insufficiency of the City's Mitigated Negative Declaration, and consequently this Commission's inability to rely on it for compliance with CEQA.

Staff Report Special Condition 1 states that a Revised Water Quality Management Plan (RWQMP) must be prepared and submitted prior to issuance of the Coastal Development Permit. (Staff Report, p. 5.) Special Condition 2 requires submission of drainage/run-off plans prior to permit issuance. However, these conditions impermissibly defer development of mitigation measures until after project approval. The RWQMP and drainage/run-off plan must be developed and reviewed now, prior to approval because there are potentially significant water quality impacts that must be mitigated. Unlike with most other similar matters where the local agency has sufficiently mitigated impacts, and its approval is not subject to pending litigation, in this case the Commission should not rely on the future mitigation of impacts to address what could be significant impacts.

The MND's analysis and mitigation of potential water quality impacts is not adequate because the formulation of actual mitigation measures is impermissibly deferred. All surface runoff from the NBCC Project site eventually discharges to Newport Bay to the west of the site. (MND, p. 57.) Newport Bay is listed as an "impaired" water body under Section 303(d) of the Clean Water Act with respect to metals, pesticides and priority organics. (MND, p. 59.) Given the massive amount of imported fill that is required by the NBCC Project, the MND confirms that "Changes in surface runoff are anticipated as a result of the development of the subject property as proposed that could result in potential impacts to water quality." (MND, p. 59.) To address these potentially significant impacts, the MND proposes two options: (1) individual drainage area treatment or (2) entire project drainage area treatment at one downstream location. However, the MND does not require either as a condition of

approval of the NBCC Project, nor address the efficacy of either measure. The MND defers the choice of mitigation measures to address potentially significant water quality impacts and does not require a "drainage and erosion control plan" to be prepared until the final plan check stage. Thus, the MND fails to comply with the requirement of CEQA for identification and mitigation of potentially significant water quality impacts *before* project approval.

If the City relies upon use of detention basins and filtering (which normally captures the first $\frac{3}{4}$ inch of rainfall during storm events) to reduce impacts from discharge of these contaminants into Newport Bay, that would not address the possibility that a storm event that exceeds $\frac{3}{4}$ of an inch may occur, thus overwhelming the mitigation measures. Since this MND provides no standard or retention goal, it is possible that mitigation measures designed in the future would fail to protect Newport Bay in the event of a large storm that exceeds $\frac{3}{4}$ inch of rainfall, or whatever retention goal is determined in the future.

The NBCC Project parking lot may be designed to direct all sheet flow to the municipal storm drain system and eventually into Newport Bay. Urban runoff typically contains oil, fertilizers, pesticides, herbicides, and other chemicals that would adversely impact Newport Bay upon discharge. Thus, the Project's increased permeable surfaces could have significant water quality impacts.

The potentially significant impacts to water quality could be reduced – possibly below a threshold of significance – by adopting Low Impact Development (LID) strategies. As explained by the Natural Resources Defense Council:

One of the primary goals of LID design is to reduce runoff volume by infiltrating rainfall water to groundwater, evaporating rain water back to the atmosphere after a storm, and finding beneficial uses for water rather than exporting it as a waste product down storm sewers. The result is a landscape functionally equivalent to predevelopment hydrologic conditions, *which means less surface runoff and less pollution damage to lakes, streams, and coastal waters.*

(Stormwater Strategies, Natural Resources Defense Council, available at <http://www.nrdc.org/water/pollution/storm/chap12.asp>, herein incorporated by reference.) Given the impaired status of Newport Bay, it is crucial that the NBCC Project incorporate strategies that allow for runoff to percolate through landscaping. Other potential mitigation measures that should be incorporated into the MND include:

- Reduction and disconnection of impervious surfaces from one another;

- Vegetated swales, buffers, and strips that allow runoff to percolate into the ground (*see, e.g.*, "Water Saving Solutions," NRDC, p. 2, available at <http://www.nrdc.org/water/lid/files/flid.pdf>) ;
- Use of green roofs (*Id.*, p. 4.);
- Permeable pavers and asphalt; and
- Soil amendments, where needed to allow percolation.

Additional information on LID strategies and mitigation is available on the LID website maintained by the U.S. Environmental Protection Agency (EPA), <http://www.epa.gov/owow/NPS/lid/#guide>. Extensive documentation touts the comparative environmental and economic benefits of Low Impact Development. Environmentally, LID-associated vegetation increases quality of life by greening communities, improves wildlife habitat, and decreases thermal pollution. ("Low Impact Development," U.S. Environmental Protection Agency, available at <http://www.epa.gov/owow/NPS/lid/>; Stormwater Strategies.) LID effectively reduces both runoff and pollution that enters downstream waterbodies. According to an NRDC study, "Researchers have shown the practices to be successful at removing common urban pollutants including nutrients, metals, and sediment." (Stormwater Strategies.) From an economic standpoint, LID costs less than conventional stormwater management systems because LID strategies rely on fewer pipes and less subterranean infrastructure that requires maintenance. (*Ibid.* 2) They also reduce energy use, decrease flooding, and improve property values. (*Ibid.*) Conversely, if Low Impact Development techniques are not used, the potentially significant impacts could remain significant.

2. The Traffic Analysis By the City in the MND is Deficient.

The traffic generated by the proposed NBCC Project is likely to be significant, but the City has not prepared adequate environmental review to support its approval of the NBCC Project. East Coast Highway, the main access for the proposed project, is also used by the public to gain access to the coast. Therefore, a project that causes significant, unmitigated impacts to East Coast Highway, interferes with coastal access.

Despite the analysis contained in the MND asserting no significant project-related traffic impacts (MND, p. 81), the MND does not sufficiently analyze the traffic that would be generated by the proposed NBCC Project. Instead, the MND asserts there would be no increase in traffic because, relying upon the ITE traffic tables for golf course

2 See also, Prince George's County, Maryland Department of Environmental Resources Programs and Planning Division, Low-Impact Development Design Strategies: An Integrated Design Approach, June 1999; Shaver, E., Low Impact Design Manual for the Auckland Regional Council, Auckland Regional Council, New Zealand, April, 2000; http://www.epa.gov/owow/NPS/lid/lid_hydr.pdf.

facilities, since the size of the golf course itself does not change, the calculation of traffic generation for the golf course allegedly remains the same. (MND p. 68) This analysis is too simplistic to fulfill the full informational disclosure requirements of CEQA. The proposed use of the facilities will change significantly as the public is allowed to use them, thus will significantly increase traffic activity. A traffic count of the existing facility should be done to establish the existing baseline traffic conditions. Then, an appropriate analysis based on the ITE manual should be chosen to analyze the increase in traffic that would be associated with changing the clubhouse use from a facility for members only at 23,460 square feet into a 56,000 square foot facility that would be open to usage by members of the public and would include a fitness center.

An appropriate way to evaluate the different sizes and uses of the clubhouse may be by using the ITE Manual's Recreational Community Center designation (Land Use category 495).³ Because public access would be allowed, viewing the NBCC Project as analogous to a Recreational Community Center may be appropriate since such centers include club facilities, meeting rooms, weightlifting and gymnastic equipment, locker rooms, and restaurants or snackbars, just like the proposed NBCC Project. (Enclosure 2.) If the Recreational Community Center designation were used, the ITE Manual shows trip generation for a 56,000 square foot facility is 1,288 daily trips.⁴ This projection is calculated as 22 trips for every 1000 square feet in accordance with the ITE Manual. (Encl. 1, p. 881.) It is a commonly accepted rule of thumb that 10% of daily trips generated would occur in the peak hour. Thus, there would likely be 128 trips generated in a peak hour. This peak hour trip generation exceeds the threshold of significance that requires preparation of an Environmental Impact Report. It also exceeds the Charter section 423 threshold for requiring an election to approve the amendment. Furthermore, there should be an analysis of peak traffic that would occur when special events are held.

3. The Air Quality and Traffic Impacts of Construction Traffic Are Not Sufficiently Analyzed, Acknowledged, or Mitigated.

The NBCC Project would require the import of enormous amounts of dirt- up to 39,055 cubic yards. (MND p. 80). This importation of dirt would require 2,604 heavy truck trips, apparently assuming the use of large 18 wheel vehicles. However, assuming the more likely case, that a rear-dump truck (with a capacity of 10 cubic yards) would be used rather than a bottom-dump truck (with a capacity of 14 cubic yards), analysis shows that 3,906 heavy truck trips would be required. (Enclosure 3.) Thus, the MND significantly understates the potential impact of heavy truck traffic.

The Response to Comments dated May 2011 and contained in the City Council

³ We attach as an enclosure the relevant pages of the ITE Manual. (See Enclosure 2.)

⁴ Additionally, 12,000 square feet of facilities related to bag storage and a maintenance building would generate 264 additional trips.

Staff Report for the January 2012 hearing states that the air quality analysis in the MND was based on an assumption of a 7-month construction schedule, but then for purposes of responding to a comment assumes the grading phase is reduced to 4 months. As a result, the Responses report, heavy truck trips could range from three trips per hour based on a 7 month schedule to five trips per hour based on a 4 month schedule. (Staff Report, p. 448.) That would represent 26 two way trips per day with a four month schedule- or 52 *truck trips per day for four months*. Such extensive truck usage of local streets could have extensive air quality, traffic, and public safety impacts.

Air quality impacts of the truck traffic for dirt importation could be significant. The diesel emissions from these trucks were not calculated in Air Quality Analysis technical appendix.

In *Brentwood Association for No Drilling, Inc. v. City of Los Angeles* (1982) 134 Cal.App.3d 491, the trial court found that "... there would be 'some adverse environmental implications' because *as many as four truck trips per day would be added to the Los Angeles public streets* to undertake this temporary drilling project. ... *Based on the truck traffic*, the court held the ... negative declaration, in effect, acknowledged that 'there is some impact on the environment which can be reduced'; accordingly, the court held the City had not proceeded in the manner required by law. (*Id.* at 499, emphasis added.) To a far greater extent than in *Brentwood Association* with its four truck trips per day, construction traffic associated with the NBCC Project at 52 truck trips per day would have adverse environmental implications for traffic, air quality, and public health in and around the NBCC Project site. No haul route maps are provided to show where dirt comes from and how it gets to site, and which areas are likely to be most heavily affected by the truck traffic. This impact must be addressed and mitigated.

The MND purports to mitigate this potentially significant impact by prescribing MM-10 (MND, p. 83), which requires "the applicant or contractor to prepare a Construction Staging, Parking and Traffic Control Plan." (Responses to Comments, p. 11; City Council Staff Report, p. 448.) This reliance on future preparation of a construction traffic control plan constitutes impermissibly deferred mitigation.

CEQA requires all mitigation measures for a project to be formulated during the environmental review process so their efficacy can be analyzed during environmental review. (*San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 669-670.) Courts have prohibited the deferral of mitigation measures because "[t]here cannot be meaningful scrutiny [of an environmental review document] when the mitigation measures are not set forth at the time of project approval." (*Oro Fino Gold Mining Corp. v. County of El Dorado* (1990) 225 Cal.App.3d 872, 884.) Additionally, any mitigation measure must be "fully enforceable through permit conditions, agreements, or other legally-binding instruments." (CEQA Guidelines § 15126.4(a)(2).)

The requirement of MM-10 for preparation of a Construction Staging, Parking, and Traffic Control Plan at some future point does not comply with CEQA's requirement that mitigation measures be formulated and set forth at the time of project approval.

4. Mitigation for Potentially Significant Access and Circulation Issues Is Impermissibly Deferred.

The MND does not sufficiently address and mitigate the potentially significant access and circulation issues that could occur. Mitigation Measures MM-8 and MM-9 are impermissibly deferred. MM-8 requires the circulation conflict at Irvine Terrace/Country Club Drive to be resolved by "Some combination or modification of both plans" that would reconcile the discrepancy between the two plans for use of the intersection. (MND, p. 83.) Plan modifications must be developed and set forth now, not at some future point. That analysis, since it is intended to analyze and resolve a potentially significant environmental impact, should be done as part of an environmental impact report.

Similarly, MM-9 states "the existing access easement shall be revised so as to relocate its intersection with Irvine Terrace 85 feet northerly of where it currently exists." (MND, p. 83.) It is our understanding that there is no currently existing access easement. It appears the access easement was terminated by a "Termination of Access Easement" as shown on County Records and recorded December 8, 1997. (Enclosure 4.) Apparently, NBCC believes, and the MND relies on this misinformation, that there is still an easement in existence. This is the type of factual issue that should be fully aired in an environmental impact report. The potentially significant land use impacts of requiring the tenant NBCC to provide public access to an adjoining property over property that NBCC does not own should be analyzed and mitigated. The easement was eliminated because the City had requested that it be abandoned "because the Second Access creates a hazardous traffic condition at the entry to Newport Beach Country Club and contributes to an unsightly condition along Pacific Coast Highway." (Encl. 3.) Requiring provision of the same, or an even larger easement, would thus have potentially significant traffic and visual quality impacts that must be analyzed and mitigated.

Conclusion

We request urge the Commission to deny approval of the Project. If the Commission proceeds with considering approval of the Project, we urge you to require the preparation of legally sufficient environmental impact report.

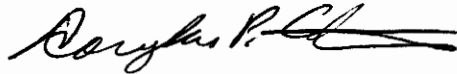
California Coastal Commission
Sep. 5, 2012
Page 9

COASTAL COMMISSION

EXHIBIT # 6
PAGE 9 OF 62

Thank you for your consideration of these views.

Sincerely,



Douglas P. Carstens

Enclosure:

1. Petition for Writ of Mandate- *Friends for Good Planning v. City of Newport Beach*,
2. ITE Trip Generation Manual, 7th Edition, pages 880-881
3. Chart showing comparison of dump truck types
4. Excerpt of "Termination of Access Easement" document

COASTAL COMMISSION

EXHIBIT # 6
PAGE 10 OF 62

Enclosure 1

1 CHATTEN-BROWN & CARSTENS
2 Jan Chatten-Brown, SBN 050275
3 Douglas P. Carstens, SBN 193439
4 Michelle Black, SBN 261962
5 2601 Ocean Park Blvd, Suite 205
6 Santa Monica, CA 90405
7 310.314.8040; Fax 310.314.8050

8 Attorneys for Petitioner,
9 Friends for Good Planning

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **FOR THE COUNTY OF ORANGE**

12 FRIENDS FOR GOOD PLANNING

13 Petitioner,

14 v.

15 CITY OF NEWPORT BEACH

16 Respondent.

17
18 NEWPORT BEACH COUNTRY CLUB,
19 INC; INTERNATIONAL BAY COMPANY
20 and

21 DOES 1 to 10,

22 Real Parties in Interest.
23
24
25
26
27
28

ELECTRONICALLY FILED

Superior Court of California,
County of Orange

02/27/2012 at 01:44:21 PM

Clerk of the Superior Court
By Natasha Dorfman, Deputy Clerk

COASTAL COMMISSION

EXHIBIT # 6
PAGE 11 OF 62

CASE NO.: 2012-00550274

(California Environmental Quality Act,
Pub. Res. Code §21000 et seq.)

PETITION FOR WRIT OF MANDATE

Judge: Kirk Nakamura

INTRODUCTION

1
2 1. Real Party in Interest Newport Beach Country Club, Inc., ("NBCC Inc.") which is
3 a wholly owned subsidiary of Real Party in Interest International Bay Company ("IBC"),
4 proposed a massive golf course clubhouse and commercial public banquet facilities, parking lot,
5 public frontage road, and maintenance building ("IBC Project") in the Newport Center area of
6 the City of Newport Beach ("City"). The City approved the IBC Project despite its violation of
7 the California Environmental Quality Act ("CEQA"), the Coastal Act, and its own General
8 Plan, Municipal Code, and Charter.

9 2. The IBC Project is intended to replace an existing approximately 23,000 square
10 foot golf clubhouse facility that is used by the Newport Beach Country Club's membership with
11 a 60,513 square foot facility. The City Municipal Code and General Plan allow for
12 noncommercial recreational facilities, but not for a commercial public banquet facility such as
13 is proposed as part of the IBC Project.

14 3. The IBC Project includes a general plan amendment to change the existing
15 restriction on development of the portion of Newport Beach Country Club property containing
16 the golf course ("the Golf Course Property") from a 35,000 square foot limit to a 56,000 square
17 foot limit. Including accessory buildings, the IBC Project would thus increase development on
18 the Golf Course Property up to 70,038 square feet, thus far exceeding the current limit of
19 35,000 square feet of development for the Golf Clubhouse plus 2,010 square feet for a
20 greenskeeper building, small snack shack, and golf course bathroom building, and generating a
21 substantial increase in traffic.

22 4. Under the City's Charter, the City's electorate must approve any major general
23 plan amendment that significantly increases traffic or allowable intensity of development. The
24 IBC Project is a major amendment but the City denied that its Charter required the electorate's
25 approval.

26 5. The massive IBC Project facility would require the importation of 34,000 cubic
27 yards of dirt to raise the proposed clubhouse and its surroundings 10 feet over existing grade.
28 The importation of this large amount of dirt to the site would require at least 2,604 heavy truck

trips, and as many as 3,906, on the streets of the City. These would have significant air quality, traffic, and public safety impacts.

6. The massive importation of fill dirt would alter drainage patterns on the IBC Project site and result in potentially significant adverse water quality impacts to the nearby Newport Bay. This bay is a precious water body, listed as impaired pursuant to the Clean Water Act due to existing pollution loads from urban runoff and other sources.

7. The IBC Project violates the Coastal Act because of its extensive alteration of the existing landform of the IBC Project site, its visual impacts in the Coastal Zone, its adverse water quality impacts, and its interference with coastal access.

8. Despite the potential traffic, circulation, air quality, water quality, aesthetic and other impacts, the City approved the project on the basis of a Mitigated Negative Declaration ("MND") that concluded there would be no significant impacts from the IBC Project. The MND improperly deferred the analysis and mitigation of various impacts.

9. Because the IBC Project violates the Coastal Act, CEQA, Planning and Zoning Law, and the City's Municipal Code, its approval must be declared void.

JURISDICTION

10. This Court has jurisdiction over this proceeding under sections 1094.5 and 1085 of the Code of Civil Procedure and sections 21168 and 21168.5 of the Public Resources Code.

PARTIES

11. Petitioner Friends for Good Planning ("Friends") is an unincorporated association. Friends is composed of area residents and activists including, but not limited to, members of the tennis club adjacent to the Golf Course Property, residents of Irvine Terrace, Founding Golf Club Members, and individuals throughout the community around the IBC Project site who are dedicated to good planning in Newport Beach and ensuring a fair application of state and local laws to all members of the community.

12. Respondent City of Newport Beach is a municipal corporation in the County of Orange.

13. Real Party in Interest Newport Beach Country Club, Inc. is the applicant for development approval identified in the City's Notice of Determination filed on January 26, 2012. Newport Beach Country Club, Inc. is a wholly owned subsidiary of International Bay Company. Newport Beach Country Club, Inc. has a long term leasehold of the land underlying the proposed project as tenant of the land's owner, Golf Realty Fund.

14. Real Party in Interest International Bay Company (IBC) is the owner of Real Party in Interest Newport Beach Country Club, Inc.

15. Real parties named as Does 1 to 10 are given fictitious names because their names and capacities are presently unknown to Petitioner.

STATEMENT OF FACTS

The Project and Project Site

16. The Golf Course Property is located within the Newport Country Club Planned Community (PC-47) Zoning District ("NBCC Planned Community District") and the General Plan Land Use Element category of Parks and Recreation (PR).

17. The Golf Course Property is located within the coastal zone and has the Coastal Land Use Plan category Parks and Recreation (PR).

18. The Golf Course Property currently contains a golf course with a 23,460 square foot clubhouse. The Golf Course Property sits on a portion of the NBCC Planned Community District. The NBCC Planned Community District also includes an adjacent property containing a tennis club that will be referred to as the "Tennis Club Property." The IBC Project proposes a plan of development only for the Golf Club Property, with no reference to coordinated planning of the Tennis Club Property.

History of Development Restrictions and of the Site

19. The existing golf clubhouse on the Golf Course Property was constructed in the 1950's. Many people within the City believe it no longer meets the needs of the Country Club membership. The Newport Beach Country Club holds national golf tournaments as well as numerous local and regional charitable events at the Golf Course Property.

1 20. The Golf Course Property is located within a Planned Community District. The
2 Planned Community designation encompasses both the Newport Beach Country Club facilities
3 that are on the Golf Course Property and the adjacent Tennis Club Property.

4 21. The subject property has a zoning designation of Planned Community (PC-47).
5 This Planned Community zoning designation was adopted in 1997 by Ordinance 97-10, as a
6 part of the City-wide amendment to the districting maps, in order to be consistent with the 1988
7 General Plan Land Use Element and Zoning Code. The City later assigned the Planned
8 Community with a number of 47 for tracking purposes. A planned community development
9 plan (PCDP) is proposed by the IBC Project for the Golf Club Property but not the entire
10 designated area of PC 47 because it omits reference to the Tennis Club Property.

11 22. The Golf Course and Tennis Club Properties are jointly served for ingress and
12 egress from Pacific Coast Highway by a road known alternatively as Clubhouse Drive or
13 Country Club Drive. This entry road is located upon the Newport Beach Country Club
14 property. Secondary access to the Armstrong Nursery property on the same stretch of Pacific
15 Coast Highway to the west would be provided by a new access road requirement under the IBC
16 Project approval to augment the existing two curb cuts for the Armstrong Nursery property. A
17 secondary access easement to the Armstrong Nursery had formerly existed along Pacific Coast
18 Highway, albeit in a different location. In 1996, the City had requested that this secondary
19 access easement to the Armstrong Nursery property be abandoned because it created a
20 hazardous traffic condition at the entry to Newport Beach Country Club and contributed to an
21 unsightly condition along Pacific Coast Highway. The owners of the Armstrong Nursery real
22 property concurred with the request and complied with the City's request to abandon the
23 easement. Subsequently, responding to requests by the residents of Irvine Terrace, the
24 managing owner of the Newport Beach Country Club property developed a master plan
25 showing replacement of the easement with landscaping along Pacific Coast Highway. The IBC
26 Project would require a new ingress road, a new curb cut, public sidewalk, and a deceleration
27 lane from Pacific Coast Highway for the Armstrong Nursery.

23. The City of Newport Beach is unique in having passed an initiative known as the "Greenlight Initiative" or, alternatively, as Measure S, designed to regulate the rate of growth in the City. In 2000, an overwhelming 63% of the City voted in favor of the initiative to amend the City's Charter. The Greenlight Initiative, now codified in Charter section 423, requires, among other things, a vote of the electorate to ratify the City Council's approval of any major amendment to the General Plan. As defined by the initiative, a major amendment significantly increases traffic, density, or intensity of development.

24. The NBCC Planned Community District was the subject of a November 2006 amendment to the City's General Plan which limited development on the site to 35,000 square foot golf clubhouse and existing 2,010 square foot greenskeeper building. This increase to 35,000 square feet for the golf course clubhouse was ratified by City voters. This amendment also changed the designation of the Tennis Club Property to MUH3/PR (Multi-Unit Housing/Public Recreational).

25. Municipal Code Section 15.45.020.A.2.c (Development Agreements) requires a development agreement for the IBC Project since it includes amendments to the General Plan and Zoning Code and construction of new non-residential development in Statistical Area L1 (Newport Center/Fashion Island). The proposed Development Agreement for the IBC Project specified the term of the agreement is for ten (10) years. Given that the site is within the Coastal Zone and that the City does not have a Certified Local Coastal Program, approval of the Development Agreement by the Coastal Commission would be necessary prior to it being valid and able to be executed and recorded.

Approval of the Project

26. The Golf Course Property is located at 1600 East Coast Highway, and legally described as Parcels 1 and 3 of Parcel Map No. 79-704 and a Portion of Back Bay Drive as Shown on Parcel Map No. 79-704. IBC filed an application in 2008 to request an approval to redevelop the existing golf clubhouse of the Newport Beach Country Club. The following approvals were requested or identified as required in order to implement the Project as proposed:

- 1 a. A General Plan Amendment to increase the allowable development limit in
2 Anomaly No. 74¹ in Statistical Area L1 (Newport Center/Fashion Island) of the
3 General Plan Land Use Element by 21,000 gross square feet, from 35,000 to
4 56,000 gross square feet.
- 5 b. A Planned Community Development Plan adoption to provide development
6 standards and design guidelines for the golf course and its ancillary uses,
7 pursuant to Chapter 20.35 of the Municipal Code.
- 8 c. A Site Development Review to allow the construction of 54,819 square-foot golf
9 clubhouse with the associated parking lot and maintenance facility, pursuant to
10 Section 4.3 of the Newport Beach Country Planned Community Development Plan. (The
11 proposed IBC Project would actually encompass 70,038 square feet of development since
12 it includes a cart barn, bag storage, and maintenance facilities.)
- 13 d. A Limited Term Permit (Temporary Structure and Uses) for the temporary
14 use/structure during the clubhouse reconstruction, pursuant to Section 20.60.015 of the
15 Municipal Code.
- 16 e. A Development Agreement pursuant to Section 15.45.020.A.2.c of the
17 Municipal Code which requires a development agreement as the project
18 includes amendments to the General Plan and Zoning Code and construction of
19 new non-residential development in Statistical Area L1 (Newport
20 Center/Fashion Island).

21 27. The proposed IBC Project represents a significant upgrade to the existing facility
22 with modern amenities for golf club members, but it was also intended to serve the greater
23 Newport Beach community during special golf events.

24 28. The IBC Project application was deemed complete on October 23, 2008; and
25 pursuant to Ordinance No. 2010-21, the application was considered and evaluated pursuant to
26 the Zoning Code in effect prior to November 25, 2010.

27 ¹ Various areas are identified in the City's General Plan as an "Anomaly" area for purposes of
28 assigning a specific maximum allowable amount of development to that area.

1 29. The City's Planning Commission held public hearings on the IBC Project
2 application on August 4, 2011, October 20, 2011, and November 17, 2011. At the October 21,
3 2011 public hearing, the Planning Commission unanimously agreed in a straw vote that the
4 frontage road should be removed from the IBC Project. However, at the November 17, 2011
5 hearing, the Planning Commission voted 4-3 to require public access along a new frontage road
6 for the Armstrong Nursery property.

7 30. Prior to the submittal of the IBC Project application, Golf Realty Fund, the Owner
8 of the Golf Club and Tennis Club Properties, had also submitted an application in 2002
9 (following a prior application in 2000) to obtain entitlement for a new clubhouse on the Golf
10 Club site, as well as to obtain entitlements for the Tennis Club Property at the same time
11 (Property Owner Proposal). The Property Owner Proposal included a 35,000 square foot golf
12 clubhouse, which was thus smaller than the IBC Project proposed clubhouse and within the
13 development limitation approved by the voters of the City in 2006. By replacing a number of
14 tennis courts on the Tennis Club Property with visitor serving uses, this proposal would result
15 in significantly reducing traffic generated from the NBCC Planned Community District area.
16 Additionally, it would not require the importation of 34,000 cubic yards of dirt, a significant
17 general plan amendment, or the placement of a frontage road along East Coast Highway as the
18 proposed IBC Project does.

19 31. Prior to the Planning Commission's consideration of the IBC Project, Petitioner
20 Friends for Good Planning on November 8, 2010 submitted a letter to the City objecting to
21 approval of the IBC Project. Friends objected to the IBC Project's failure to comply with the
22 City zoning ordinance's requirement that a planned community be planned in a coordinated,
23 comprehensive way. It noted that the IBC Project involved a commercial public banquet
24 facility and a golf clubhouse, not a banquet facility for a private golf clubhouse. It objected that
25 the IBC Project would not be compatible with surrounding land uses since commercial public
26 banquet use would require large asphalt parking areas and would create more traffic and noise
27 from loud parties than the existing use would. Friends objected that aesthetic impacts would be
28 significant and requested that view simulations be provided to aid in public understanding and

1 commenting. Friends also objected that traffic circulation would be adversely impacted
2 because ingress and egress for parking areas was not properly planned.

3 32. On October 20, 2011, the Planning Commission conducted a public hearing on
4 the IBC Project. During the hearing, the Commission expressed a lack of support for
5 maintaining the frontage road to the abutting Armstrong Nursery and a desire to hide the
6 proposed wrought iron fence along East Coast Highway behind additional landscaping.

7 33. In response to the Commission's concern about screening the proposed wrought
8 iron fence along East Coast Highway, the plans were modified to include a wider landscape
9 buffer. Although this revision addressed the Commission's concerns of screening the fence, the
10 plan did not eliminate the frontage road as desired by the Commission.

11 34. The managing owner of the Golf Course Property, Golf Realty Fund, protested
12 that the easement for the frontage road had been terminated and that any requirement that
13 included the placement of a frontage road, deceleration lane, and sidewalk as shown on the IBC
14 Project proposal require NBCC Inc. to dedicate land to public use when NBCC Inc. merely
15 leased the land, and did not own it.

16 35. Given the Commission's desire to approve the IBC Project without the frontage
17 road, staff recommended conditioning the application so that the preferred parking lot design
18 eliminated the frontage road (Condition #5). However, the City's staff report stated that it
19 cannot control the existence of the easement or require its elimination, and therefore stated if
20 the easement is proven to exist, the parking lot would be designed in conformance with an
21 attachment to the staff report, including that vehicle access would be limited to one-way east-
22 bound movements. The City added a condition (Condition #7) that would allow the
23 Community Development Director the ability to approve a modified design such that the layout
24 could resemble the layout set forth in the Property Owner Proposal.

25 36. The Planning Commission approved the IBC Project and adopted the Mitigated
26 Negative Declaration.

27 37. The IBC Project was next considered by the City Council.
28

1 38. At the City Council's January 24, 2012 hearing, Petitioner Friends submitted
2 verbal objections to the IBC Project that incorporated its prior objections and those of other
3 opponents of the IBC Project. Friends pointed out that the IBC Project failed to
4 comprehensively plan the entire site as required, that it required an election to approve the
5 general plan amendment required by the IBC Project, that an environmental impact report was
6 required because of the possibility of significant impacts with regard to traffic, parking, air
7 quality, access issues, aesthetics, landform alteration, and other impacts. Friends objected that
8 mitigation measures for potentially significant impacts were improperly deferred.

9 39. Over the opposition of members of Friends, the City adopted the Mitigated
10 Negative Declaration for the IBC Project and approved the General Plan Amendment required
11 for the IBC Project.

12 40. The City determined there would be no increase in morning or afternoon peak
13 hour trips as the overall size of the golf course on the Golf Course Property remained the same
14 and the technical guidance used by the City did not have separate trip rates for purposes of
15 traffic prediction for the proposed clubhouse and commercial public banquet facility.

16 41. The City determined that voter approval was not required, as it incorrectly
17 concluded the proposed General Plan Amendment represented an increase of only 21,000
18 square feet of development, and no increase to morning or afternoon peak hour vehicle trips.
19 Therefore, the City concluded the IBC Project did not exceed Charter Section 423 thresholds as
20 to require a vote of the electorate.

21 42. Despite the fact the ordinances for the IBC Project had not yet been approved, a
22 Notice of Determination regarding the City's approval of the IBC Project was posted on
23 January 26, 2012.

24 43. On February 9, 2012, Petitioner Friends submitted a letter to restate its objections
25 to the IBC Project and request that the City not approve the ordinances required for the IBC
26 Project.

27 44. On February 14, 2012, the City held the first reading of the Ordinances for the
28 IBC Project. The City scheduled the second reading for the ordinances on February 28, 2012.

1 Petitioner anticipates that the City will approve the second reading of the ordinances at the
2 February 28 hearing, which is after the filing of this petition. However, the approval of those
3 ordinances will be void for the reason set forth in this Petition.

4
5 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**
6 **AND INADEQUATE REMEDIES AT LAW**

7 45. Members of Friends for Good Planning objected to the Project in the
8 administrative process, and fully exhausted their administrative remedies. They wrote letters to
9 the City and appeared at public hearings raising the issues set forth herein.

10 46. Petitioner has no plain, speedy or adequate remedy in the course of ordinary law
11 unless this Court grants the requested writs of mandate and declaratory and injunctive relief. In
12 the absence of such remedies, the City's approval of the conditional use permit and Mitigated
13 Negative Declaration will form the basis for a project which will proceed in violation of state
14 law.

15 47. Petitioner has complied with Public Resources Code section 21167.7 by filing a
16 copy of this petition with the California Attorney General. A copy of that notice is attached as
17 Exhibit A.

18 48. Petitioner has complied with Public Resources Code section 21167.5 by providing
19 the City with notice of intention to commence the action. A copy of that notice is attached as
20 Exhibit B.

21 49. Petitioner elects to prepare the administrative record. A copy of that election is
22 attached as Exhibit C.

23 **FIRST CAUSE OF ACTION**

24 **(VIOLATION OF CALIFORNIA ENVIRONMENTAL QUALITY ACT)**

25 50. Petitioner incorporates all previous paragraphs as if fully set forth.

26 51. The City's approval of the Project resulted in several violations of the California
27 Environmental Quality Act ("CEQA").
28

Inadequate Project Description

52. Every negative declaration must contain a project description that gives a general description of the project's technical, economic, and environmental characteristics. A "curtailed, enigmatic or unstable project description draws a red herring across the path of public input." (*County of Inyo v. City of Los Angeles* (1981) 71 Cal.App.3d 185, 197-98.)

53. "The negative declaration is inappropriate where the agency has failed to provide an accurate project description or to gather information and undertake an adequate environmental analysis." (*City of Redlands v. County of San Bernardino* (2002) 96 Cal. App. 4th 398, 406, 410 [holding that a county violated CEQA by failing to provide an adequate project description].)

54. The Negative Declaration prepared for the IBC Project fails to provide a complete and meaningful project description.

55. The MND fails to provide a clear depiction of how the boundaries of the IBC Project relate to the boundaries of the entire NBCC Planned Community District. A description directly acknowledging that not all of the NBCC Planned Community District is included within IBC's proposed Project should have been set forth so that the IBC Project's compliance with planning regulations requiring comprehensive planning could be properly evaluated.

56. The IBC Project plans for only a 132 acre Planned Community, but does not acknowledge that the 1997 NBCC Planned Community District was for an area of 145 acres that included the adjacent Tennis Club Property.

57. The omission of the Tennis Club Property from the planning of the site was a significant omission because the Golf Club Property and the Tennis Club Property are contiguous areas that share the same access road from Pacific Coast Highway.

58. These deficiencies deprived the public of an adequate opportunity to review and comment on the impacts of the IBC Project.

59. The IBC Project description is also inadequate because it fails to completely disclose the potential future uses of the IBC Project, and therefore its potential environmental consequences. The IBC Project proponent stated its business plan involves expansion of its

1 banquet operations for the general public in addition to use by members of the golf club. There
2 is no indication of any limitation on the number of public or special events that might be held at
3 the expanded facilities. Without a description of the intensity of use of the property, there could
4 not be a meaningful analysis of operational impacts on traffic, noise, air quality, and parking
5 impacts among others. The City could not properly evaluate the compliance of the proposed
6 IBC Project with General Plan, Zoning Ordinance, and Coastal Land Use Plan restrictions that
7 were intended to ensure the Golf Course Property was used for visitor serving recreational and
8 open space, not public commercial banquet type activities.

9 60. Since the IBC Project description is both inadequate and incomplete, the MND's
10 impact analyses are also rendered inadequate and incomplete and are insufficient to adequately
11 inform decision makers and the public about the IBC Project's true environmental impacts.

12 61. Thus, the MND is inadequate, in violation of CEQA.

13 **The Fair Argument Standard Requires Preparation of an EIR**

14 62. CEQA prohibits a lead agency such as the City from approving a project that may
15 have a significant impact on the environment without first preparing, considering, and
16 certifying an EIR. The City violated CEQA by adopting a Mitigated Negative Declaration for
17 the IBC Project, despite substantial evidence supporting a fair argument that the IBC Project
18 may have a significant impact on the environment.

19 63. There is substantial evidence in the record to support a fair argument that the IBC
20 Project may have significant adverse effects on the environment, including, but not limited to,
21 the following impacts.

22 **The IBC Project's Impacts on Traffic Could be Significant.**

23 64. The IBC Project could have significant traffic impacts that were not addressed in
24 the MND.

25 65. Despite the analysis contained in the MND asserting no significant project-
26 related traffic impacts, the MND does not sufficiently analyze the traffic that would be
27 generated by the proposed IBC Project. Instead, the MND asserted there would be no increase
28 in traffic because, relying upon the Institute of Traffic Engineers ("ITE") Trip Generation

1 Manual traffic tables for golf course facilities, since the size of the golf course itself did not
2 change, so the calculation of traffic generation for the golf course allegedly remained the same.

3 66. This analysis is too simplistic to fulfill the full informational disclosure
4 requirements of CEQA. The proposed size and use of the facilities would change significantly
5 as they are more intensively used, which will significantly increase traffic activity. A traffic
6 count of the existing facility should be done to establish the existing baseline traffic conditions.
7 Then, the City should have analyzed the increase in traffic that would be associated with
8 changing the small clubhouse use from a facility for club members only at 23,460 square feet
9 into a large 56,000 square foot facility with a fitness center that would be open to usage by
10 members of the public. Additionally, even though the General Plan Amendment for the project
11 only allowed an upper limit of 56,000 square feet of development, the actual size of the
12 proposed IBC Project clubhouse and associated facilities would be 70,038 square feet, with the
13 cart barn, bag storage, maintenance, and other facilities included.

14 67. An appropriate way to evaluate the different sizes and uses of the clubhouse
15 would have been by using the ITE Trip Generation Manual's Recreational Community Center
16 designation (Land Use category 495). Because public access would be allowed, viewing the
17 IBC Project as analogous to a Recreational Community Center would be appropriate since such
18 centers include club facilities, meeting rooms, weightlifting and gymnastic equipment, locker
19 rooms, and restaurants or snack bars, just like the proposed IBC Project.

20 68. With usage of the Recreational Community Center designation, the ITE Manual
21 shows trip generation for a 56,000 square foot facility is 1,288 daily trips. This projection is
22 calculated as 22 trips for every 1000 square feet in accordance with the ITE Manual. It is a
23 commonly accepted rule of thumb that 10% of daily trips generated would occur in the peak
24 hour. Thus, there would be 128 trips generated in a peak hour. With 70,038 square feet of
25 development as proposed, there would be 1,540 daily trips generated, with 154 of them in the
26 peak hour. These peak hour trip generation rates, whether 128 trips or 154 trips, exceed the
27 threshold of significance that requires preparation of an Environmental Impact Report. It also
28 exceeds the Charter section 423 threshold for requiring an election to approve the amendment.

69. Furthermore, there should have been an analysis of peak traffic that would occur when special events are held.

70. Credible evidence that a project may have a significant impact is generally dispositive, even if contradicted. Therefore, an EIR should have been prepared and certified before the Project was approved.

71. The fair argument standard that traffic impacts might be significant has been met. Therefore, an EIR should have been prepared to fully and properly evaluate these issues.

The Project's Impacts on Circulation and Access Could be Significant.

72. The MND does not sufficiently address and mitigate the potentially significant access and circulation issues that could occur.

73. The IBC Project proposes the creation of an access road along Pacific Coast Highway. The owner of the property, Golf Realty Fund, opposed this and provided evidence in the form of a document record at the Los Angeles County Recorder's office showing that an easement for an access road had been terminated by a "Termination of Access Easement" as shown on County Records and recorded December 8, 1997.

74. The potentially significant land use impacts of requiring the tenant IBC to provide public access to an adjoining property (the Armstrong Nursery property) over property that IBC does not own should have been analyzed and mitigated as part of an EIR. That analysis should have been done before IBC Project approval, not deferred to a future review process.

75. The easement was eliminated because the City had requested that it be abandoned "because the Secondary Access creates a hazardous traffic condition at the entry to Newport Beach Country Club and contributes to an unsightly condition along Pacific Coast Highway." Requiring provision of the frontage road, even though in a different location from the prior planned secondary access, could thus have potentially significant traffic and visual quality impacts that should have been analyzed and mitigated in an EIR.

76. Mitigation measures MM-8 and MM-9 to address circulation issues were impermissibly deferred. Mitigation measure MM-8 requires the traffic circulation conflict at Irvine Terrace/Country Club Drive to be resolved by "Some combination or modification of

1 both plans" that would reconcile the discrepancy between the two plans (the IBC Project and
2 the Property Owner proposal) for use of the intersection. Plan modifications should have been
3 developed and set forth prior to IBC Project approval, not at some future point. That analysis,
4 since it is intended to analyze and resolve a potentially significant environmental impact, should
5 have been done as part of an environmental impact report.

6 77. Similarly, mitigation measure MM-9 states "the existing access easement shall be
7 revised so as to relocate its intersection with Irvine Terrace 85 feet northerly of where it
8 currently exists." Evidence submitted to the City showed there is no currently existing access
9 easement. The evidence showed the access easement was terminated.

10 **The Project's Impacts on Air Quality Could be Significant**

11 78. The Air Quality Analysis fails to disclose or analyze any diesel emissions from
12 truck trips associated with soil importation.

13 79. The Project would require importing up to 39,055 cubic yards of soil.

14 80. Movement of this soil would require between 2,604 and 3,906 truck trips,
15 depending upon the availability of bottom-dump or rear-dump trucks.

16 81. According to the Responses to Comments prepared for the MND, the Project
17 could result in up to 52 one-way truck trips per day to and from the IBC Project site during
18 grading.

19 82. As diesel particulate matter is associated with a host of environmental and public
20 health concerns, these truck trips could have a significant localized impact on air quality.

21 83. Courts have found significant adverse environmental implications from as few as
22 four truck trips per day. (*Brentwood Association for No Drilling, Inc. v. City of Los Angeles*
23 (1982) 134 Cal.App.3d 491.)

24 84. The fair argument standard that air quality impacts might be significant was met.
25 Therefore, an EIR should have been prepared.

26 **The Project's Impacts on Water Quality Could be Significant.**

27 85. All runoff from the IBC Project site discharges into Newport Bay, which is listed
28 as an "impaired" water body under Section 303 subd. (d) of the Clean Water Act.

1 86. The City provided no analysis of existing water quality conditions, or of the
2 impacts of the IBC Project on those conditions.

3 87. The IBC Project will drastically increase the site's impermeable surface area,
4 which will increase the amount of urban runoff produced on-site. Urban runoff typically
5 contains oil, fertilizers, pesticides, herbicides, and other harmful chemicals that contribute to
6 water pollution.

7 88. The IBC Project will also require the importation of up to 39,055 cubic yards of
8 soil.

9 89. While cities normally require on-site retention of the first ¾ inch of rainfall during
10 storm events, the MND and its mitigation failed to include any enforceable standards for
11 stormwater runoff capture.

12 90. Thus, the IBC Project may result in runoff that overwhelms IBC Project
13 mitigation during large storm events, resulting in increased pollution to Newport Bay.

14 91. Therefore, a fair argument exists that the IBC Project will have significant
15 impacts on water quality, and an EIR should have been prepared.

16 92. Despite the likelihood of significant water quality impacts, the MND prepared for
17 the IBC Project failed to analyze the Project's impacts on water quality.

18 93. The MND proposes two types of retention treatments as mitigation, but failed to
19 both analyze their efficacy or to require their imposition as a condition of IBC Project approval.

20 94. CEQA requires that mitigation measures be concrete and enforceable through
21 permit conditions, agreements, or other binding instruments. (CEQA Guidelines §
22 15126.4(a)(2).)

23 95. CEQA further requires that the efficacy of mitigation measures be analyzed
24 during the environmental review process.

25 96. As the MND failed to analyze the efficacy of the proposed mitigation measures
26 and to require imposition of the proposed mitigation measures, the IBC Project's approval
27 violates CEQA.
28

1 97. The IBC Project also fails to incorporate feasible Low Impact Development (LID)
2 measures that would likely reduce the IBC Project's potentially significant water quality
3 impacts.

4 98. Further, the MND defers the choice of mitigation measures to address likely
5 significant water quality impacts to a future, non-public process.

6 99. The MND does not require preparation of a "drainage and erosion control plan"
7 until after IBC Project approval.

8 100. Deferred mitigation violates CEQA. (*Endangered Habitats League v County of*
9 *Orange* (2005) 131 Cal. App. 4th 777, 793-94; Title 14 Cal. Code Regs. section
10 15126.4(a)(1)(B).)

11 **SECOND CAUSE OF ACTION**

12 **(DECLARATORY RELIEF REGARDING ELECTION REQUIREMENT)**

13 101. Petitioner incorporates all previous paragraphs as if fully set forth.

14 102. City Charter section 423 requires an election to approve any major amendment to
15 the City's General Plan. Charter section 423 states: "A "major amendment" is one that
16 significantly increases the maximum amount of traffic that allowed uses could generate, or
17 significantly increases allowed density or intensity. "Significantly increases" means over 100
18 peak hour trips (traffic), or over 100 dwelling units (density), or over 40,000 square feet of floor
19 area (intensity)."

20 103. The General Plan amendment portion of the IBC Project increases the maximum
21 allowable development on the site from a 35,000 square foot limit (approved by voters in a 2006
22 General Plan amendment) to a 56,000 square foot limit. This is a major amendment of the
23 General Plan that requires voter approval under Charter section 423 because of the increased
24 traffic generation associated with clubhouse and public banquet facilities.

25 104. By increasing the maximum allowable development to 56,000 square feet, and
26 allowing a change in use to a commercial public banquet facility that would generate more than
27 100 peak hour traffic trips, the IBC Project amendment represents a major amendment within
28 the meaning and intent of Charter section 423.

1 112. The golf club portion of the NBCC Planned Community District is designated
2 solely for Parks and Recreation uses under the General Plan.

3 113. The Zoning Ordinance defines "Park and Recreational Facilities" as
4 "Noncommercial parks, playgrounds, recreation facilities, and open spaces."

5 114. IBC has stated that in expanding its banquet operations for the general public, it is
6 simply expanding operations which have historically existed at the golf club. IBC intends to
7 use the golf clubhouse banquet facility for non-member public meetings and public banquets
8 extensively. Such general commercial public banquet uses are not permitted under the Zoning
9 Ordinance. To the extent that such commercial public banquet uses have historically existed at
10 the site, an abatement schedule should have been submitted and approved as part of the IBC
11 Planned Community text amendment. No such abatement schedule was submitted.

12 115. The Municipal Code provides that a Development Plan can be initiated by a
13 property owner "By the filing of a development plan application with the Department by the
14 owner(s) or authorized agent(s) of property for which the development plan is sought. If the
15 property is held in more than one ownership, all owners or their authorized agents shall join in
16 filing the application." (Municipal Code section 20.56.050.) However, the Golf Club Property
17 is owned by Golf Realty Fund. Golf Realty Fund did not join in the filing of the application for
18 the IBC Project. Therefore the application is void and should be stricken.

19 **FOURTH CAUSE OF ACTION**

20 **(VIOLATION OF COASTAL ACT)**

21 116. The Project is not consistent with the City's Coastal Land Use Plan or the
22 California Coastal Act.

23 117. Coastal Land Use Plan policies would be violated by the approval of development
24 and creation of traffic in excess of what is contemplated by the General Plan's limitation of site
25 development to 35,000 square feet.

26 118. The legislative policies expressed in the Coastal Act for development include:
27 "The scenic and visual qualities of coastal areas shall be considered and protected as a resource
28 of public importance. Permitted development shall be sited and designed to protect views to

1 and along the ocean and scenic coastal areas, [and] to minimize the alteration of natural land
2 forms." (Public Resources Code § 30251.) Courts have upheld the denial or conditioning of a
3 coastal development permit based upon its impact on views and landforms. (*Paoli v. California*
4 *Coastal Com.* (1986) 178 Cal.App.3d 544, 551-554; *Bel Mar Estates v. California Coastal*
5 *Com.* (1981) 115 Cal.App.3d 936, 940-942.)

6 119. Approval of the IBC Project in this case as proposed is contrary to the
7 requirement of section 30251 of the Coastal Act to site and design development to protect
8 views to and along the ocean and scenic coastal areas, and to preserve natural landforms.

9 120. The IBC Project would adversely impact the visual quality of the coastal zone.
10 Visual simulations show existing clear views of Newport Bay that would be obscured by the
11 proposed IBC Project.

12 121. The IBC Project's inclusion of a private gatehouse-guarded entry would restrict
13 public access in the Coastal Zone when efforts should be made to increase public visual and
14 physical access instead.

15 122. With its requirement for massive importation of 34,000 cubic yards of dirt to the
16 project site to create an elevation of 10 feet over existing grade, the IBC Project would violate
17 the Coastal Act's protection against alteration of existing landforms. This landform alteration
18 of landforms and massive importation of dirt appears to be unnecessary (other than perhaps to
19 elevate the clubhouse above the level of the parking lot) since a different design of the IBC
20 Project could eliminate this substantial landform alteration and dirt importation.

21 **PRAYER FOR RELIEF**

22 In each of the respects enumerated above, Respondent has violated its duties under law,
23 abused its discretion, and failed to proceed in the manner required by law.

24 WHEREFORE, Petitioner prays for relief as follows:

25 1. For an alternative and peremptory writ of mandate, commanding Respondent:

26 A. To set aside and vacate its adoption of the Mitigated Negative Declaration
27 for the IBC Project;

28 B. To set aside and vacate any approvals for the IBC Project based upon the

1 Mitigated Negative Declaration including but not limited to General Plan Amendment No.
2 GP2008-005, Planned Community Development Plan Amendment No. PC2008-001, Site
3 Development Review No. SD2011-003, Limited Term Permit No. XP2011-005, and
4 Development Agreement No. DA2010-005.

5 C. To prepare and certify a legally adequate EIR for the IBC Project so that
6 Respondent will have a complete disclosure document before it that will identify for the
7 decision-makers and public the potentially significant impacts of the IBC Project and enable the
8 formulation of realistic and feasible alternatives and mitigation measures to avoid those impacts;

9 2. For an order enjoining Respondent and Real Parties in Interest from taking any
10 action to construct or operate the IBC Project in any way that could result in a significant
11 adverse impact on the environment unless and until a lawful approval is obtained from
12 Respondent after the preparation and consideration of an adequate EIR;

13 3. For declaratory relief;

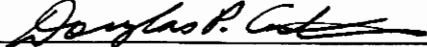
14 4. For reasonable attorneys fees;

15 5. For costs of the suit;

16 6. For such other and further relief as the Court deems just and proper.

17 DATE: February 27, 2012

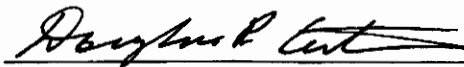
Respectfully Submitted,
CHATTEN-BROWN & CARSTENS

19 By: 
20 Douglas P. Carstens
21 Michelle Black
22 Attorneys for Petitioner
23 Friends for Good Planning
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
VERIFICATION

I, the undersigned, declare that I am the attorney for Friends for Good Planning, Petitioner in this action. Friends for Good Planning and its members are based in the City of Newport Beach in Orange County and are therefore absent from Los Angeles County, where my office is located. I have read the foregoing PETITION FOR WRIT OF MANDATE and I am informed and believe the matters therein to be true and on that ground allege that the matters stated therein are true.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 27th day of February 2012, in Santa Monica, California.



Douglas P. Carstens

COASTAL COMMISSION

EXHIBIT # 6
PAGE 34 OF 62

EXHIBIT A

CHATTEN-BROWN & CARSTENS

TELEPHONE: (310) 314-8040
FACSIMILE: (310) 314-8050

2601 OCEAN PARK BOULEVARD
SUITE 205
SANTA MONICA, CALIFORNIA 90405

E-mail:
MNB@CBCEARTHLAW.COM

February 27, 2012

COASTAL COMMISSION

By U.S. Mail

EXHIBIT # 6
PAGE 39 OF 62

Office of the Attorney General
1515 Clay Street / P.O. Box 70550
Oakland, CA 94612-0550

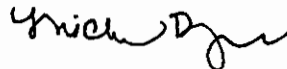
Re: Challenge to Approval of Mitigated Negative Declaration for Newport Beach
Country Club Golf Clubhouse Project
SCH No. 2010101027
Friends for Good Planning v. City of Newport Beach

Dear Attorneys General:

Enclosed please find a copy of the Petition for Writ of Mandate filed to challenge the City of Newport Beach's approval of a mitigated negative declaration for the construction of a new golf clubhouse and other development at the Newport Beach Country Club. The Project proposes to construct a new, 56,000 square foot clubhouse, a 336 space parking lot, and ancillary development that exceeds the amount of development permitted by the City's general plan. The Project may also violate the Coastal Act. Additionally, the Project may have significant impacts on traffic and circulation, air quality, land use, and water quality. Despite these potentially significant adverse impacts, the District failed to prepare an environmental impact report, as required by the California Environmental Quality Act.

Please call if you have any questions.

Sincerely,



Michelle N. Black

Enclosure: Petition for Writ of Mandate

COASTAL COMMISSION

EXHIBIT # 6
PAGE 35 OF 62

EXHIBIT B

TELEPHONE: (310) 314-8040
FACSIMILE: (310) 314-8050

CHATTEN-BROWN & CARSTENS
2601 OCEAN PARK BOULEVARD
SUITE 205
SANTA MONICA, CALIFORNIA 90405
www.cbcearthlaw.com

E-mail:
MNB@CBCEARTHLAW.COM

COASTAL COMMISSION

February 24, 2012

City Clerk
City of Newport Beach
3300 Newport Boulevard
Newport Beach, CA 92658-8915

EXHIBIT # 6
PAGE 37 OF 62

Re: Notice of Intent to Challenge Approval of Mitigated Negative Declaration
SCH No. 2010101027

Please take notice that on behalf of Friends for Good Planning, we intend to commence an action to challenge the City's approval of the mitigated negative declaration and golf course project proposed by Newport Beach Country Club, Inc., for which a Notice of Determination was posted on January 26, 2012.

Sincerely,



Michelle N. Black

COASTAL COMMISSION

EXHIBIT # 6
PAGE 38 OF 62

EXHIBIT C

COASTAL COMMISSION

EXHIBIT #

6

PAGE

39 OF 62

CHATTEN-BROWN & CARSTENS

Jan Chatten-Brown, SBN 050275

Douglas P. Carstens, SBN 193439

Michelle Black, SBN 261962

2601 Ocean Park Blvd, Suite 205

Santa Monica, CA 90405

310.314.8040; Fax 310.314.8050

Attorneys for Petitioner

FRIENDS FOR GOOD PLANNING

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

FRIENDS FOR GOOD PLANNING,

Petitioner,

v.

CITY OF NEWPORT BEACH

Respondent.

NEWPORT BEACH COUNTRY CLUB,
INC; INTERNATIONAL BAY COMPANY
and

DOES 1 to 10,

Real Parties in Interest.

) CASE NO.:

**NOTICE OF ELECTION TO PREPARE
THE ADMINISTRATIVE RECORD**


(CALIFORNIA ENVIRONMENTAL
QUALITY ACT; CALIFORNIA COASTAL
ACT)

1 Petitioner Friends for Good Planning hereby gives notice pursuant to Public Resource
2 Code section 21167.6 that Petitioner elects to prepare the administrative record in the above-
3 entitled action.

4
5 DATED: February 27, 2012

Respectfully Submitted,

CHATTEN-BROWN & CARSTENS

6
7
8 By: 
9 Douglas P. Carstens
10 Attorneys for Petitioner
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

COASTAL COMMISSION

EXHIBIT # 6
PAGE 41 OF 62

Enclosure 2

Land Use: 495

Recreational Community Center

Independent Variables with One Observation

The following trip generation data are for independent variables with only one observation. This information is shown in this table only; there are no related plots for these data.

Users are cautioned to use data with care because of the small sample size.

<u>Independent Variable</u>	<u>Trip Generation Rate</u>	<u>Size of Independent Variable</u>	<u>Number of Studies</u>	<u>Directional Distribution</u>
Members				
Weekday a.m. Peak Hour of Adjacent Street Traffic	0.01	14,000	1	62% entering, 38% exiting
Weekday p.m. Peak Hour of Adjacent Street Traffic	0.01	14,000	1	28% entering, 72% exiting
Weekday a.m. Peak Hour of Generator	0.03	14,000	1	58% entering, 42% exiting
Weekday p.m. Peak Hour of Generator	0.02	14,000	1	39% entering, 61% exiting
Saturday	0.07	14,000	1	50% entering, 50% exiting
Saturday Peak Hour of Generator	0.01	14,000	1	47% entering, 53% exiting
Sunday	0.15	14,000	1	50% entering, 50% exiting
Sunday Peak Hour of Generator	0.02	14,000	1	60% entering, 40% exiting
Employees				
Weekday	27.25	32	1	50% entering, 50% exiting
Weekday a.m. Peak Hour of Adjacent Street Traffic	2.66	32	1	72% entering, 28% exiting
Weekday p.m. Peak Hour of Adjacent Street Traffic	2.44	32	1	27% entering, 73% exiting
Weekday a.m. Peak Hour of Generator	3.50	32	1	38% entering, 62% exiting
Weekday p.m. Peak Hour of Generator	3.16	32	1	44% entering, 56% exiting
Saturday	18.34	32	1	50% entering, 50% exiting
Saturday Peak Hour of Generator	2.59	32	1	53% entering, 47% exiting
Sunday	12.03	32	1	50% entering, 50% exiting
Sunday Peak Hour of Generator	1.66	32	1	43% entering, 57% exiting
1,000 Square Feet Gross Floor Area				
Weekday	22.88	38	1	50% entering, 50% exiting

COASTAL COMMISSION

EXHIBIT # 6
PAGE 43 OF 62

Enclosure 3

Dump Trucks with Dirt on PCH 8 Hours a Day 3.25 to 2.35 Months

Truck Type	Rear Dump Truck	Bottom Dump Truck
Yards Per Truck	10 cu yds	14 cu yds
Total Truck Trips	3,906	2,790
Daily Trips - Assumes 15 Trucks, 4 cycles per day	60	60
Total Work Days	65	47
Total Months	3.25	2.35

COASTAL COMMISSION

EXHIBIT # 6
PAGE 49 OF 62

Enclosure 4

Recorded in the County of Orange, California
Gary L. Granville, Clerk/Recorder

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

NBCC LAND
One Upper Newport Plaza
Newport Beach, CA 92660

21.00
19970630399 4:29pm 12/08/97

COASTAL COMMISSION

005 22033011 22 42
T01 6 6.00 15.00 0.00 0.00 0.00 0.00

EXHIBIT # 6
PAGE 46 OF 62

TERMINATION OF ACCESS EASEMENT

THIS TERMINATION OF ACCESS EASEMENT is made as of November 30, 1996, by ARNOLD D. FEUERSTEIN and ALLAN FAINBARG (collectively referred to as "Owners"), who are the fee owners of the property located at 1500 E. Pacific Coast Highway, Newport Beach, California, legally described on Exhibit "A" attached hereto and incorporated herein by this reference (the "Property")

ARTICLE I RECITALS

A. The Property is partially served for ingress and egress by a secondary access road which runs parallel and adjacent to Pacific Coast Highway and is located upon the adjacent Newport Beach County Club property (the "Secondary Access").

B. The Property's rights to use the Secondary Access is by way of that certain non-exclusive easement and right of vehicular and pedestrian ingress and egress set forth in that certain instrument entitled "Declaration of Access Easement" dated as of September 29, 1992 and recorded on October 1, 1992 as Instrument No. 92-662452 in the Official Records of Orange County, California, as amended by that certain First Amendment to Declaration of Access Easement dated as of October 15, 1992 and recorded March 1, 1993 as Instrument No. 93-0139175 in the Official Records, such easement being described on Exhibit "B" attached hereto and incorporated herein by this reference ("the Existing Easement").

C. The City of Newport Beach has requested that the Existing Easement be abandoned because the Secondary Access creates a hazardous traffic condition at the entry to Newport Beach Country Club and contributes to an unsightly condition along Pacific Coast Highway, and Owners concur and are willing to comply with the City's request to abandon the Existing Easement.

D. Owners of the adjacent Newport Beach Country Club property intend to remove the Secondary Access through a portion of the Newport Beach Country Club property described in Exhibit "C" and replace it with landscaping along Pacific Coast Highway per Newport Beach Country Club Master Plan, Tentative Tract 15348, and a landscape plan approved by the City of Newport Beach. The result will be a significant aesthetic improvement along Pacific Coast Highway.

ARTICLE II
TERMINATION OF ACCESS EASEMENT

1. Owners hereby terminate and relinquish their rights in the Existing Easement.
2. Owners' termination of the Existing Easement is conditioned on the City of Newport Beach not prohibiting ingress and egress to the Property primary and direct access from the existing two Pacific Coast Highway curb cuts in front of the Property which have been in use for many years.

IN WITNESS WHEREOF, the undersigned have executed this instrument as of the date first above written.

OWNERS:

Arnold D. Feuerstein
Arnold D. Feuerstein

Allan Fainbarg
Allan Fainbarg



CAA PLANNING

EXHIBIT # 6
PAGE 48 OF 62

September 7, 2012

California Coastal Commission
South Coast Office
Attn: Liliana Roman
200 Oceangate, 10th Floor
Long Beach, CA 90802

Subject: Coastal Development Permit Application No. 5-12-103 (Agenda Item W 7b, September 12, 2012) - Newport Beach Country Club, 1600 East Coast Highway, Newport Beach

Dear Ms. Roman:

CAA Planning, Inc. (CAA Planning), on behalf of Newport Beach Country Club (NBCC), submits this letter response to the September 5, 2012 letter of opposition from Friends for Good Planning (Friends). The Friends letter fails to raise Coastal Act related concerns and CAA respectfully requests that Coastal Development Permit (CDP) Application No. 5-12-103 remain on the consent calendar at the September 12, 2012 hearing and be approved by the California Coastal Commission.

Specifically, Friends have indicated that the NBCC project is inconsistent with the Coastal Act with respect to views and landforms, contains deferred Water Quality mitigation, and is deficient in the environmental analysis areas of traffic, air quality and circulation. The following is a brief response to these issues. Attached hereto is a detailed response to Friends from February 14, 2012 that was prepared prior to the Newport Beach City Council's final action on the NBCC project. No new information has been raised by Friends and the analysis contained within the Staff Report remains adequate.

Coastal Act Consistency

The NBCC project is consistent with the goals and policies contained within Chapter 3 of the Coastal Act and wholly consistent with the Newport Beach Local Coastal Program Coastal Land Use Plan (LUP). The LUP designation for the site is Open Space with the stated objective to provide areas within the City for a range of public and private uses, including golf courses, to meet the recreation and open space needs of the community. The LUP does not specify square footage for the golf clubhouse, and no amendment to the LUP is required.

Views – Coastal Act Section 30251 states that scenic and visual qualities of coastal areas shall be considered and protected. There are no protected views in the immediate project area and East Coast Highway is not designated a scenic highway. The nearest Coastal View Road is Newport Center Drive north of Farallon, which is more than .25 mile from the clubhouse and at a higher elevation. Existing intervening development, heavy landscaping and topography prevent view impacts from Newport Center Drive. There are no impacts to public views. In addition, the clubhouse design includes varying rooflines, setbacks, and landscape materials to enhance views. Ocean views from the higher elevation areas of the private golf course exist and are a matter of great importance and pride to NBCC. Such ocean views from private locations throughout the golf course will be preserved.

Landform Alteration – Coastal Act Section 30253 focuses on the protection of natural landforms along bluffs and cliffs and specifically references protective devices. NBCC is not located near any bluff or cliff,



Ms. Liliana Roman
September 7, 2012
Page 2 of 2

and has been in existence since 1954 at which time grading occurred to develop the existing facilities. The reconstruction of the clubhouse will not impact "landforms" as none exist on the previously developed site. The project was designed with more than 39,000 cubic yards of fill, and an alternative requiring less fill material was developed and approved by the City to limit grading operations. Import of 34,055 cubic yards of fill will require 21 days of truck trips – and cannot occur during the summer or peak traffic periods. The clubhouse will be elevated approximately three feet higher than the finish floor of the existing clubhouse.

Water Quality – A water quality management plan (WQMP) was prepared for the project and special conditions require the submission of final WQMP and drainage plans prior to issuance of the CDP. Specific standards require the peak runoff rate to be improved from the pre-development condition by directing water runoff into landscape areas, permeable paving or other methods, directing rooftop downspouts into permeable areas or infiltration beds and requiring that run-off from the maintenance/fuel facility and the cart storage be treated then directed to a sanitary sewer system rather than the storm drain system. Water Quality mitigation is not deferred, and contains state of the practice components.

California Environmental Quality Act

While the City of Newport Beach's approval of the Mitigated Negative Declaration for the Project is the subject of a pending lawsuit, the plaintiff therein, Friends for Good Planning, has neither sought nor obtained an injunction or any other court order that would in any way prohibit or limit NBCC from pursuing Project approval from the Coastal Commission. In the absence of any such order, NBCC is fully authorized to pursue any and all Project approvals from any and all permitting authorities.

Conclusion

The Friends letter has not raised Coastal Act issues. NBCC concurs with the analysis contained with the Staff Report and the recommendation for approval, and requests that CDP Application No. 5-12-103 remain on the consent calendar at the September 12, 2012 hearing. The NBCC project will not result in impacts to public access, coastal views, or environmentally sensitive habitat areas. The project will result in a direct benefit to water quality by significantly reducing water runoff from the site and by treating all runoff with state of the practice methodologies. NBCC respectfully requests approval of this CDP application by the California Coastal Commission on September 12.

Sincerely,

CAA PLANNING, INC.

Shawna L. Schaffner
Chief Executive Officer

Attachment: February 14, 2012 CAA Planning, Inc. Response Letter to Friends for Good Planning

c: Kory Kramer



CAA PLANNING

February 14, 2012

Honorable Mayor Nancy Gardner and
Members of the City Council
City of Newport Beach
3300 Newport Boulevard
Newport Beach, CA 92663

Subject: Newport Beach Country Club (PA2008-152) - Response to Chatten-Brown & Carstens
February 9, 2012 Letter

Dear Ms. Gardner:

We apologize for sending a letter on the day of the City Council meeting. However, we received the letter from Mr. Douglas Carstens of Chatten-Brown & Carstens on February 13 and felt it warranted a detailed response. The late attempt by the Mr. Carstens, on behalf of Friends for Good Planning, to delay the Newport Beach Country Club project is frivolous. No new issues were raised and the City Council should not delay the second reading.

Following are responses to the letter requesting that the Newport Beach City Council deny approval of the Newport Beach Country Club project at the Council's second reading of the ordinances. The responses are in the order and are lettered as they appear in the letter.

A. Request for Notices and a Copy of the Notice of Determination

The City of Newport Beach posted the Notice of Determination on the City's website on January 30, 2012. An interested party can sign up for automatic notices through the City's website.

B. Voter Ratification of the General Plan Amendment is Required

The 2006 General Plan and Charter Section 423 do require voter approval for a major amendment increasing square footage by over 40,000 feet. The proposed General Plan Amendment would increase the development limit from 35,000 sq. ft. to 56,000 sq. ft., which is a 21,000 sq. ft. increase. Reconstruction of the cart barn, snack bar, restroom facilities, maintenance facilities and starter shack are ancillary to the golf clubhouse and are specifically exempt from the development limits established in the General Plan. Page 3-17 of the General Plan indicates that uses in the Parks and Recreation category may include "... parks (both active and passive), golf courses, marina support facilities, aquatic facilities, tennis clubs and courts, private recreation and similar facilities." The General Plan also states: "Private uses in this category may include incidental buildings, such as maintenance equipment sheds, supply storage and restrooms, not included in determining intensity limits. For golf courses, these uses may also



Mayor Gardner
February 14, 2012
Page 2 of 6

include support facilities for grounds maintenance employees." The General Plan is very clear that these incidental buildings are not counted against the intensity.

In addition, the City has very broad discretion in interpreting its own General Plan and other planning documents. "A city's determination that a project is consistent with the City's general plan 'carries a strong presumption of regularity.'"¹ Courts accord great deference to a local agency's determination of consistency with its general plan "because the body which adopted the general plan policies in its legislative capacity has unique competence to interpret those policies when applying them in its adjudicatory capacity."²

It has been clearly stated in the MND and subsequent responses to comments that the existing facility does not have the capacity to meet current demand of existing members, that annual charitable and member events allow for very limited additional usage for meetings, luncheons and dinners and that the increased capacity is intended to serve and meet the needs of those events which have occurred regularly over the years. Regardless, the project does not exceed the thresholds in Charter Section 423 requiring voter approval. A representative listing of tournaments and special events from previous years is included as Attachment 1.

C. Potentially Significant Impacts of the IBC Project Require Preparation of an Environmental Impact Report Before Project Approval

The letter provides no substantial evidence that the project may have a significant adverse impact on the environment. California courts have held that a "significant effect" is a substantial or potentially substantial, adverse change in physical conditions which exist within the area as defined in Public Resources Code Section 21060.5" (Bowman v. City of Berkeley, 122 Cal.App. 4th 572(2004).) While the fair argument test is a low standard of review, "it remains the [commenter's] burden to demonstrate by citation to the record the existence of substantial evidence supporting a fair argument of significant environmental impact" (Leonoff v. Monterey County Bd. Of Sups., 222 Cal.App.3d 1337, 1348 (1990).)

The commenter has failed to point to substantial evidence in the record to support a fair argument of significant adverse environmental impact from the project. (Porterville Citizens v. Porterville, 157, Cal.App. 4th 885, 899 (2007).) The commenter's assertion that an environmental impact report is required is not supported by the facts of the project, the analysis contained within the Mitigated Negative Declaration or the Responses to Comments, no new information has been presented, and a fair argument has not been raised.

¹ *Clover Valley Foundation v. City of Rocklin* (2011), 197 Cal.App.4th 238 and *Sequoiah Hills Homeowners Association v. City of Oakland* (1993) 23 Cal.App.4th 704 719-720 ("It is, emphatically, *not* the role of the courts to micromanage these development decisions. Our function is simply to decide whether the city officials considered the applicable policies and the extent to which the proposed project conforms with those policies, whether the city officials made the appropriate findings on this issue, and whether those findings are supported by substantial evidence.")

² *Banker's Hill, Hillcrest, Park West Community Preservation Group* (2006) 139 Cal. App.4th 249, 273 fn. 23



Mayor Gardner
February 14, 2012
Page 3 of 6

EXHIBIT # 6
PAGE 52 OF 62

1. Traffic Analysis in the MND is Deficient

The applicant is not proposing any uses that would result in an increase in trip generation as compared to the existing uses. The traffic analysis correctly utilized the ITE traffic tables specifically for golf course facilities. The Newport Beach Country Club golf clubhouse and the ancillary facilities are typical and appropriate for all major golf courses. Newport Beach Country Club is a private club and the public is permitted access to the golf course and facilities through the regular professional and charitable tournaments held there. Banquet facilities are available to participants and attendees of these functions. To the extent that the banquet room is available to the public, it would be inappropriate to evaluate traffic and parking impacts based on the ITE Manual's Recreational Community Center designation as the use is clearly that of a golf club. We are not introducing a new public use component. There will be no change relative to public use from the way the club is operating today. The golf clubhouse currently contains pro shop, meeting rooms, locker rooms and restaurant facilities. The addition of a 1,700 sq. ft. fitness facility is for the exclusive use of members. Therefore, the traffic analysis remains valid for the continued use of a golf course and updated golf clubhouse. For the reasons stated above the comment fails to raise a fair argument that the project will result in potentially significant traffic impacts and the preparation of an Environmental Impact Report is not warranted.

2. The Air Quality and Traffic Impacts of Construction Traffic Are Not Sufficiently Analyzed, Acknowledged or Mitigated

The commenter states that it is more likely that a rear-dump truck with a capacity of 10 cubic yards would be used than the 14 cubic yard capacity truck analyzed in the MND. There is no support provided for this assumption and a fair argument is not presented for the likelihood that commenter's assumption should be the basis for analysis. Since the public review of the MND, the project has been refined and the total importation has been reduced by 5,000 cubic yards. A four month schedule is anticipated for the grading/importation phase of the project. Specifically, the importation phase will last 21 days. Table 1 on page 33 of the MND contains daily estimated emissions and specifically notes that analysis of emissions from 39,055 cubic yards of import was included. The Construction Staging, Parking and Traffic Control Plan required in the MND will mitigate potential impacts to local streets. Dirt hauling trucks will be limited to off-peak travel hours and haul routes will be identified in the Plan. The City requires preparation of a Construction Staging, Parking and Traffic Control Plan as part of the City's approval process at a time closer to actual start of construction when a determination can be made about where imported soil is available and a specific route can be established.

For the reasons stated above the comment fails to raise a fair argument that the Project will result in potentially significant air quality and traffic impacts and the preparation of an Environmental Impact Report is not warranted.



Mayor Gardner
February 14, 2012
Page 4 of 6

EXHIBIT # 6
PAGE 53 OF 62

3. Mitigation for Potentially Significant Access and Circulation Issues Is Impermissibly Deferred

Mitigation Measure 9 is no longer applicable because the Planning Commission directed that regardless of the easement, the frontage road was the preferred arrangement with respect to achieving adequate circulation. Final design plans for the access easement were approved by the City Council in January 2012. The continuation of the access road was the preferred plan of the City after the applicant prepared plans showing the site plan with and without the easement. The road will be one-way out of the adjacent nursery providing a safer egress onto East Coast Highway via the signalized intersection at Irvine Terrace and East Coast Highway. Re-alignment of the intersection of the access road and Irvine Terrace was suggested and approved by the City's Traffic Engineer to address safety concerns. The access road has been in place for many years and its continued availability is not a new use requiring environmental review.

For the reasons stated above the comment fails to raise a fair argument that the Project will result in potentially significant access and circulation impacts and the preparation of an Environmental Impact Report is not warranted.

4. Water Quality Impacts Could Be Significant

In accordance with local requirements, a Conceptual Water Quality Management Plan (WQMP) was prepared to address potential water quality impacts related to construction and operational phases of the project. The WQMP is required to be updated prior to the issuance of grading permits and is not considered "deferred" mitigation because the Conceptual WQMP identified specific treatment options for the project. The City will review the WQMP prior to permit issuance to insure that the project will not violate any water quality standards during construction. Additional local and regional regulatory compliance will be required during construction and operation to further protect water quality.

The measures proposed in the MND also include Best Management Practices, a standard practice for regulatory compliance. Existing drainage was analyzed in the MND and the storm drain system has adequate capacity to handle the slightly increased storm runoff due to the project. The Final WQMP required prior to grading permit issuance will identify the option that will be incorporated into the project and the City will review the WQMP. Contrary to the comment in the Carstens letter, the project will be required to comply with all local and regional water quality regulations. Specifically, the MND states:

The applicant has prepared a Conceptual WQMP that identifies a range of BMPs and related water quality features to ensure that water quality impacts associated with the proposed project are reduced to an acceptable level. In addition, implementation of BMPs that will be included in the SWPPP will ensure that construction impacts are minimized. Similarly, BMPs will also be refined and incorporated into the project design to avoid post-construction impacts to water quality. Therefore, no significant impacts are anticipated and no mitigation measures are required.



Mayor Gardner
February 14, 2012
Page 5 of 6

EXHIBIT # 6
PAGE 54 OF 62

The MND also states:

As part of the final plan check review, the applicant is required to prepare an adequate drainage and erosion control plan that must be found to meet applicable City standards.

Therefore, the proposed measures incorporated into the project will protect water quality and prevent either construction or operational impacts. For the reasons stated above the comment fails to raise a fair argument that the Project will result in potentially significant water quality impacts and the preparation of an Environmental Impact Report is not warranted.

D. The IBC Project Violates the Coastal Act

The City has determined that the project is consistent with the intent of the General Plan, and has approved a General Plan Amendment that allows for a 21,000 sq. ft. increase in the development intensity for the reconstruction of the golf clubhouse.

Since the City does not have a fully certified Local Coastal Plan, the proposed project will be submitted to the Coastal Commission for review and approval. With regard to consistency with the Coastal Act and the Newport Beach Coastal Land Use Plan, the MND states:

Although East Coast Highway is not designated as a Coastal View Road between Jamboree Road and MacArthur Boulevard, a Public View Point is identified within Irvine Terrace Park, which is located south of that arterial and the subject property in the Corona del Mar service area. Views from this location are oriented to the west and not inland to the subject property. Designation of the location as a Public View Point is intended to preserve views of the harbor and ocean. Specifically, new development must restore and enhance the visual quality and protect and restore public views.

The proposed project is consistent with the Coastal Land Use Plan (CLUP). No amendment to the CLUP is required and the CLUP does not contain a development limit similar to the General Plan. In addition, the CLUP includes policies that are also intended to ensure that coastal views and development within the coastal zone is protected and enhanced. The MND stated that the proposed project will not result in a substantial visual impact, and would not result in any significant changes to views from Newport Center Drive north of Farallon, which is identified as a Coastal View Road, because of the existing intervening development and heavy landscaping. Moreover, the proposed reconstruction of the golf clubhouse incorporates design features including clubhouse building height, varying rooflines, setbacks, and landscape materials to protect the views intended by the Natural Resource Element policies. The view simulation referenced in the Carstens letter shows turf landscaping, a clubhouse and a parking lot. No coastal views are depicted in the view simulation, and not coastal views will be impacted.

Regarding landform alteration, it is generally accepted that landforms are naturally occurring features such as coastal bluffs, shoreline and hills. The Newport Beach Country Club has been in



Mayor Gardner
February 14, 2012
Page 6 of 6

existence since 1954, at which time grading occurred to develop the existing facilities. The reconstruction of the golf clubhouse will not impact "natural landforms" as none exist on the previously developed site.

The gatehouse-guarded entry will only be utilized for tournaments and special events to direct traffic and participants. As no public access to the shoreline exists via the golf course property, none will be restricted. The same opportunities for visual and physical access will remain as have existed since the property was developed. In fact, the raising of the building pad will allow for the provision of ocean views from the second floor where no views currently exist. There are no coastal resources, no view of the coast and no access impacted by the reconstruction of the golf clubhouse.

Finally, the height of the new golf clubhouse is proposed at 49' 6", within the City of Newport Beach height limit for the site.

Conclusion

No fair argument has been raised that the project may have a significant impact. The commenter has provided no specific information analogous to the project supporting the need for additional environmental analysis. The MND and Response to Comments were available for adequate public review. No new issues have been raised and it would be inappropriate to further delay the project.

Sincerely,

CAA PLANNING, INC.

Shawna L. Schaffner
Chief Executive Officer

Attachment: Tournament/Special Event List

c: Ms. Kimberly Brandt
Ms. Leonie Mulvihill
Mr. David Wooten

BANQUET ROOM

- Business Model for NBCC Unchanged
- Increase from existing banquet room by approximately 1,500 square feet
- Need for 250-Seat Banquet Room Based on Current Demand
 - Tournaments – 144 players (maximum) plus spouses/guests – approximately 250 seats
 - Special Events and Club Functions (including Member Tournaments)
 - Holidays (e.g., Easter, Mother's Day, Thanksgiving)

MONDAY TOURNAMENT BOOKING

SUMMARY 2011

<u>DATE</u>	<u>EVENT</u>	<u>BENEFITS (Charity/Organization)</u>
1/24/11	Toshiba Sponsor Day	Hoag Hospital Foundation
3/7/11	Toshiba Classic	Hoag Hospital Foundation
3/21/11	Cystic Fibrosis	Fundraiser
4/25/11	Skipper Dick Memorial	Fundraiser
5/2/11	Juvenile Diabetes Research	Non-profit fundraiser – child abuse
5/9/11	Child Help	Scholarship Fund
6/13/11	Class Fund	Fundraiser – Offer financial assistance to families of officers killed in the line of duty
6/27/11	Survivor's Memorial Fund	Richard Myles Johnson Foundation – funds Meaningful youth financial education projects/provides scholarships
8/15/11	RMJ Golf Classic	Scholarship fundraiser
8/29/11	O.C. Alumni Association/ Ernst Young	100% volunteer organization – all monies go to community charities
9/12/11	Drive for a Cause	Fundraiser for school
9/19/11	Sage Hill School	Fundraiser for school
10/3/11	St. Margaret's School	Fundraiser for school
11/14/11	Mariner's Christian School	Fundraiser for school

MEN'S 2011 TOURNAMENT SCHEDULE

COASTAL COMMISSION

EXHIBIT # 6
PAGE 58 OF 62

<u>DATE</u>	<u>EVENT</u>
1/15/11	Kick-Off Tournament
2/9/11	Men's Guest Day
3/5-14/11	Toshiba Tournament
3/16/11	Men's Toshiba Super Guest Day
3/20/11	Couples St. Patrick's Day Event
3/26-27/11	Partners Four Ball Spring Classic
4/30-5/1/11	Member-Member
5/6/11	Couples Twilight Golf
5/11/11	U.S. Open Qualifying
5/15/11	Couples Championship
5/21-22/11	Sr. & Super Sr. Club Championship
6/4, 5, 11, 12/11	Club Championship
6/17/11	Couples Twilight Guest Day
7/8/11	Couples Twilight
7/14-16/11	NBCC Regatta Member-Guest
8/10/11	Men's Guest Day
8/12/11	Couples Twilight Guest Day
September	President's Cup Month
10/26/11	Men's Breast Cancer Awareness Guest Day
10/30/11	Ghosts & Goblins Couples Tournament
11/5/11	Junior Club Championship
11/23/11	Turkey Shoot
12/7/11	PGA Pro-Am

LADIES' 2011 TOURNAMENT SCHEDULE

<u>DATE</u>	<u>EVENT</u>
1/4/11	Installation
2/3/11	Sadie Hawkins Invitational
2/17/11	General Meeting Play Day
3/20/11	Couples St. Patrick's Day Event
3/31/11	Ladies Guest Day
4/28/11	WSCGA Foundation Guest Day
5/6/11	Couples Twilight Golf
5/10, 12, 17, 19/11	Ladies Club Championship
5/11/11	U.S. Open Qualifying
5/15/11	Couples Championship
6/17/11	Couples Twilight Guest Day
6/21/11	Ladies Guest Day
7/8/11	Couples Twilight Golf
8/12/11	Couples Twilight Guest Day
8/17-19/11	Ladies Seahorse Classic
9/8/11	General Meeting Play Day
9/13, 15/11	Mary K. Browne
10/25/11	Breast Cancer Awareness Day
10/30/11	Ghosts & Goblins
11/3/11	Fall Guest Day
11/5/11	Junior Club Championship
11/15, 17/11	Ladies President's Cup
11/22/11	Turkey Shoot
12/6/11	Holiday Tournament

SPECIAL EVENTS 2010

<u>DATE</u>	<u>GROUP</u>	<u>EVENT</u>
1/12/10	British American Assoc.	Luncheon meeting
1/23/10	Wedding	Ceremony/reception
2/6/10	Helpmates	Reception
2/17/10	Amigos Viejos	OC Seniors networking group
3/17/10	7 C's Breakfast	OC Gentlemen's networking group
3/17/10	CDM Flower Club	Luncheon meeting
4/24/10	Memorial Service	Member celebration of life
4/30/10	Mrs. Phillips	Social reception
5/2/10	Ortega Family	Birthday party
5/8/10	Newkirk Family	Anniversary dinner reception
5/19/10	Memorial Service	Member celebration of life
5/22/10	Cal Poly Pomona	Fraternity Banquet
5/26/10	USC Fraternity	Luncheon
5/26/10	7 C's Breakfast	OC Gentlemen's networking group
5/26/10	CDM Cheerleading	Annual banquet
6/12/10	Beacon Bay	Association breakfast meeting
6/16/10	Amigos Viejos	OC Seniors networking group
6/26/10	Wedding	Ceremony/reception
6/27/10	Baroque Dinner Party	Dinner
7/12/10	Price Waterhouse Cooper	Employee party
7/29/10	British American Mixer	Networking mixer

SPECIAL EVENTS 2010, CONTINUED

<u>DATE</u>	<u>GROUP</u>	<u>EVENT</u>
8/1/10	Wedding	Ceremony/reception
8/14/10	Wedding	Ceremony/reception
8/18/10	Amigos Viejos	OC Seniors networking group
8/16/10	50 th Anniversary	Dinner
8/20/10	Wedding	Ceremony/reception
9/11/10	Wedding	Ceremony/reception
9/18/10	Estancia Reunion	High School Reunion
9/29/10	7 C's Breakfast	OC Gentlemen's networking group
10/6/10	British American Assoc.	Luncheon meeting
10/13/10	7 C's Breakfast	OC Gentlemen's networking group
10/23/10	Wedding	Ceremony/reception
10/26/10	7 C's Breakfast	OC Gentlemen's networking group
11/3/10	7 C's Breakfast	OC Gentlemen's networking group
11/13/10	Memorial Service	Member celebration of life
11/19/10	Wedding Rehearsal	Dinner
12/2/10	HSNO	Corporate Holiday Party
12/4/10	NB Newcomers	NB Social Holiday Party
12/11/10	Horizon Tech	Corporate Holiday Party
12/18/10	Meridian Link	Corporate Holiday Party
12/20/10	Northwestern Mutual	Corporate Holiday Party

BANQUET SPACE COMPARISON

Facility	Square Footage	Seats
Proposed Newport Beach Country Club	3,243	250
Seacliff Country Club	3,800	250
Island Hotel	6,600	400
Marriott Newport Center	7,920	636
Balboa Bay Club	7,450	500

COASTAL COMMISSION

EXHIBIT # 6
PAGE 62 OF 62

September 7, 2012

OVERNIGHT DELIVERY

Mr. Karl Schwing
California Coastal Commission
South Coast District Office
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416

RECEIVED
South Coast Region
SEP 10 2012
CALIFORNIA
COASTAL COMMISSION

Re: Coastal Development Permit Application, Newport Beach Country Club

Dear Mr. Schwing:

This office represents Golf Realty Fund, LP, which owns fifty percent (50%) of the fee interest in the property underlying the Newport Beach Country Club ("NBCC Golf Club"), which is the subject of the above referenced application. Golf Realty is also the Managing Owner pursuant to an Agreement Between Real Property Owners, dated September 30, 1992, which gives Golf Realty the sole and exclusive right to act on behalf of all of the fee owners of the subject property. Golf Realty's ownership and powers as Managing Owner apply equally to the adjacent Tennis Club at Newport Beach Country Club.

On its own behalf and as Managing Owner, Golf Realty strenuously opposes NBCC Golf Club's Coastal Development Permit Application (the "Coastal Commission Application").

In its April 5, 2012, submittal of the Coastal Commission Application, CAA Planning, Inc. ("CAA") acting as "agent" for the applicant has made material errors and omissions in its submittal.

- CAA failed to identify Golf Realty as 50% fee owner and Managing Owner of the entire property as required on page 7 of the Coastal Commission Application item number 1 *"The identity of all persons or entities which have an ownership interest in the property superior to that of the application must be provided."*
- CAA represents in their letter to the Commission that the Fainbarg Trust, Mesa Shopping Center East, LLC and Mira Mesa Shopping Center West, LLC, which represents the remaining ownership of the fee property were co-applicants, yet the alleged co-applicants did not sign the application and there is not a letter of authorization from Co-Owners giving CAA authority to sign on their behalf included in the Coastal Commission Application. However, it is irrelevant because as noted above Golf Realty is the sole Managing Property Owner with authority to act on

COASTAL COMMISSION

Mr. Karl Schwing
September 7, 2012
Page 2

EXHIBIT # 7
PAGE 2 OF 21

behalf of The Golf Club and Tennis Club at Newport Beach Country Club properties, a fact that the applicant and CAA is well aware.

- Further, the Coastal Commission Application is not even signed by the Tenant / Applicant or the recent new owners of the parent company that controls the applicant ("New Tenant"). This fact is important because my client has been repeatedly informed by the New Tenant that the Preliminary Plans that are part of the Coastal Commission Application have been abandoned and will never be built. The New Tenant have informed my client that they are starting over with a new architect who will address the aesthetic, water quality, traffic, comprehensive coordinated planning within the Planned Community (Tennis Club at NBCC) and use concerns of Landlord / Managing Owner and others.

From the outset Golf Realty Fund has informed CAA and Tenant of its opposition to Tenant's Preliminary Plans, which is the subject of the Coastal Commission Application both as Landlord and as Managing Property Owner. Under separate cover Golf Realty Fund will be sending you a letter describing the reasons and concerns that give rise to Managing Owner's opposition.

Based on the material omissions listed above the Coastal Commission Application should be denied in its entirety. At a minimum, the matter should be taken off the Consent Calendar scheduled for September 12, 2012 and rescheduled for public hearings so that the concerns of our client and other interested parties can be heard and considered by Coastal Commission staff.

Very truly yours,



Paul B. George

cc: Liliana Roman, Long Beach Staff
Sherilyn Sarb, Deputy Director
Teresa Henry, District Manager
Mary Shallenberger, Chair of California Coastal Commission
David Neish, DB Neish & Associates
Tim Paone, Cox Castle Nicholson
Robert O Hill, Golf Realty Fund



CAA PLANNING

September 14, 2012

California Coastal Commission
Attn: Karl Schwing
Supervisor, Regulation & Planning
South Coast Office
200 OceanGate, 10th Floor
Long Beach, CA 90802

RECEIVED
South Coast Region

SEP 14 2012

CALIFORNIA
COASTAL COMMISSION

Subject: Coastal Development Permit Application No. 5-12-103 - Newport Beach Country Club & Fainbarg-Feuerstein Properties, Newport Beach

Dear Mr. Schwing:

CAA Planning (CAA), acting as representative for International Bay Clubs, Inc (IBC), offers the following response to the September 7, 2012 letter from Paul B. George, Lane Powell, Portland, Oregon, representing Golf Realty Fund, LP (GRF). IBC regrets that GRF has chosen this late date – literally on the eve of the Coastal Commission hearing – to raise a largely procedural issue that has been at the center of a partner dispute for over 4 years. As is demonstrated below, GRF and its representative are simply wrong.

IBC is the parent entity of the long term Lessee of a premises (Newport Beach Country Club) (NBCC) and fee title to the lease premises is owned in part by GRF. As GRF readily concedes, it is the owner of only 50% of the fee interest in the property on which the NBCC project is located.

Who is the owner of the other 50% of the fee interest in that property? It is Fainbarg & Feuerstein Trust (The Fainbarg Trust, Mesa Shopping Center East, LLC and Mira Mesa Shopping Center West, LLC) (collectively, Trust), co-applicant with NBCC on this application - a fact that GRF's representative conveniently omits. In fact, not only did the Trust properly join as co-applicant with NBCC, it provided a letter with the application clearly indicating the controversy between GRF and itself, and alerting the Coastal Commission to the authority of NBCC – and the Trust – to make this application. A copy of that letter is attached.

Amazingly, GRF's representative does not even attempt to present their opposition with an eye towards the Coastal Act's requirements. Even a cursory review of the requirements of the Coastal Act amply demonstrates that GRF has no basis whatsoever to oppose the application on the grounds presented in the September 7, 2012 letter. The Coastal Act's clear and unmistakable language probably explains why reference to the appropriate statutory section was not made by GRF's representative, since it would have been clear that there could be no basis to their claims. For convenience, we present the applicable section of the Coastal Act below.



COASTAL COMMISSION

Mr. Karl Schwing
September 14, 2012
Page 2 of 4

EXHIBIT # 7
PAGE 3 OF 21

30601.5. Where the applicant for a coastal development permit is not the owner of a fee interest in the property on which a proposed development is to be located, but can demonstrate a legal right, interest, or other entitlement to use the property for the proposed development, the commission shall not require the holder or owner of any superior interest in the property to join the applicant as coapplicant. All holders or owners of any other interests of record in the affected property shall be notified in writing of the permit application and invited to join as coapplicant. In addition, prior to the issuance of a coastal development permit, the applicant shall demonstrate the authority to comply with all conditions of approval.

Here, the co-applicants are the Lessee in good standing under a lease lasting through 2067, and the 50% fee interest owner with authority to join the Coastal Development Permit Application and to authorize compliance with all conditions imposed by the Coastal Commission. Not only is nothing further required, but the Coastal Act prevents the Coastal Commission from requiring more.

In a letter to the Coastal Commission dated April 3, 2012, Mr. Perry Dickey, President/Chief Operating Office of NBCC, Mr. Dickey provided evidence of NBCC's legal interest in the property stating:

"NBCC is the lessee of the property commonly known as Newport Beach Country Club. The term of the lease extends to year 2067. Relevant excerpts from the Ground Lease showing NBCC's rights and obligations have been attached hereto. Also included is a copy of Fidelity National Title Company Preliminary Title Report identifying NBCC as the Lessee (page 9)."

The dispute between the co-equal owners is well-documented. A letter dated June 20, 2011 to the City of Newport Beach from the Fainbarg & Feuerstein Family Trust (50% owners of the property in question) summarizes the long-standing controversy between the property owners. This letter was provided as a part of the Coastal Development Permit Application. A reading of this letter demonstrates that GRF overstates its authority as Managing Partner, by failing to alert the Coastal Commission in its September 7, 2012 letter that its "managing authority" is strictly limited, and not plenary. But even if it were accurately stated, NBCC and Fainbarg-Feuerstein have fulfilled all that is required to do in order to properly present this application. A complete copy of the lease will be transmitted for review under separate cover.

GRF raises three issues answered with particularity below.

The issue of failure to identify all persons or entities which have an ownership interest in the property superior to that of the application [sic]. [Emphasis added]

We have emphasized the word "superior" to call attention to the fact that GRF has not demonstrated, and in fact does not possess, a superior interest as detailed in the June 20, 2011



COASTAL COMMISSION

Mr. Karl Schwing
September 14, 2012
Page 3 of 4

EXHIBIT # 7
PAGE 4 OF 21

letter previously referenced. As explained in the June 20, 2011 letter, GRF does not possess superior powers over the administration of the property and its leases. NBCC and the Fainbarg & Feuerstein Trust have, therefore, met the statutory and application requirements.

The issue of whether Fainbarg & Feuerstein should have signed the application, and whether CAA was authorized to sign on their behalf.

In their letter to the Coastal Commission of March 28, 2012, representatives of Fainbarg-Feuerstein interests (The Fainbarg Trust, Mesa Shopping Center East, LLC and Mira Mesa Shopping Center West, LLC) officially acknowledged their status as Co-Applicants for the Newport Beach Country Club CDP. It is our understanding that representatives of the Fainbarg-Feuerstein interests have provided a clarification letter to the Coastal Commission on CAA's ability to represent them with respect to the processing of the CDP Application.

The issue of whether the "New Tenant" should have signed the application, and whether the plans in the CDP are going to change.

CAA immediately notified the Coastal Commission staff of the stock acquisition of IBC when that transaction was completed. There is no "New Tenant" as GRF asserts. The tenant (Lessee) is *still* NBCC. While not relevant to this application, the transaction involved stock, and therefore no entity change occurred.

The plans that are the basis for the CDP application *have not changed* and have not been "abandoned." GRF's claim that the plans have been abandoned is false. Even so, the Coastal Act and its associated regulations provide a mechanism for processing amendment to permits, and that would be the appropriate procedure to make any input relevant to changes.

GRF has consistently attempted to wrest control from both the Lessee and the property owner and now brings this tiresome controversy to the Coastal Commission. For the reasons stated above, the Coastal Commission should reject the position stated in the GRF letter, and proceed with its normal review. The long-term dispute between the co-equal owners does not impact Coastal Commission's approval of a CDP. The Coastal Commission should proceed with review of the CDP uninterrupted in spite of the letter from GRF.

Sincerely,

CAA PLANNING, INC.

Shawna L. Schaffner
Chief Executive Officer



COASTAL COMMISSION

EXHIBIT # 7
PAGE 5 OF 21

Mr. Karl Schwing
September 14, 2012
Page 4 of 4

Attachments: Applicant's Legal Interest Letter dated April 3, 2012 [w/o attachments]
Letter to City of Newport Beach dated June 20, 2011
Co-Applicant Letter (Fainbarg-Feuerstein) dated March 28, 2012

c: Louise Warren, California Coastal Commission
Kory Kramer



COASTAL COMMISSION

EXHIBIT # 7
PAGE 6 OF 21

April 3, 2012

California Coastal Commission
Attn: Karl Schwing
200 Oceangate, 10th Floor
Long Beach, CA 90802

Subject: Newport Beach Country Club Coastal Development Permit Application
Applicant's Legal Interest in the Property

Dear Mr. Schwing:

Consistent with Section 13053.5 of the California Code of Regulations, this letter provides proof of applicant's legal interest in the Newport Beach Country Club (NBCC) for purposes of applying for a Coastal Development Permit. NBCC intends to reconstruct the golf clubhouse and ancillary facilities in accordance with the permitted development as approved by the City of Newport Beach.

NBCC is the lessee of the property commonly known as Newport Beach Country Club. The term of the lease extends to year 2067. Relevant excerpts from the Ground Lease showing NBCC's rights and obligations have been attached hereto. Also included is a copy of Fidelity National Title Company Preliminary Title Report identifying NBCC as the Lessee (page 9).

The attached serves as evidence that NBCC has legal authority to apply for a Coastal Development Permit as owner/operator of the Newport Beach Country Club and lessee of the property on which the Country Club is located.

Sincerely,

Perry Dickey
President/Chief Operating Officer
Newport Beach Country Club

Attachments: Ground Lease Dated November 11, 1992 (Excerpts)
Preliminary Title Report

THE
NEWPORT BEACH
COUNTRY CLUB

COASTAL COMMISSION

FAINBARG & FEUERSTEIN PROPERTIES
C/O FAINBARG FAMILY TRUST
129 W. WILSON STREET
SUITE 100
COSTA MESA, CA 92627
949-722-7400
949-722-8855 FAX

EXHIBIT # 7
PAGE 7 OF 21

RECEIVED BY
COMMUNITY

JUN 27 2011

DEVELOPMENT
CITY OF NEWPORT BEACH

Via: Certified Mail, Return Receipt Requested

June 20, 2011

Kimberly Brandt, Community Development Director
City of Newport Beach
3300 Newport Boulevard
Newport Beach, CA 92663

Re: Newport Beach Country Club
Former Balboa Bay Club Racquet Club

Dear Ms. Brandt:

The purpose of this letter is to officially inform the City of Newport Beach ("City") of the existence of a long standing dispute among the owners of the above referenced property regarding the appropriate development plan for these properties. This dispute has now escalated into litigation that is currently on-going. The undersigned parties own 50% of these properties, and they have not approved the development plan submitted by co-owner Golf Realty Fund ("GRF"), through Robert O Hill regarding these properties, and in fact, object to these plans. The undersigned did not join in or authorize the application submitted by Mr. O Hill, as we understand is *required* under the applicable Planned Community District Procedures, Section 20.56.050 (B)(1)(c).

The land owners of the Newport Beach Country Club ("NBCC") and the former Balboa Bay Racquet Club ("BBCRC") are separate entities and hold their interest outright as tenants-in-common. One tenant-in-common owner is GRF which we understand now owns fifty (50%) percent of each property and is managed by Mr. O Hill. The other landowners are the undersigned -the Fainbarg Family Trust ("FFT"), which owns twenty-five (25%) percent of each of the properties and is managed by Irving M. Chase, and the Mira Mesa Shopping Center-West, LLC and the Mesa Shopping Center-East, LLC ("Mira Mesa"), which also own twenty-five (25%) percent of each entity and are managed by Elliot Feuerstein.

The ownership dispute over the proper development of these two properties is between (1) Mr. O Hill, as manager of GRF on one side, and (2) Mr. Chase, as manager of FFT, and Mr. Feuerstein, as managing member of Mira Mesa, on the other side. It is thus a dispute of equals.

We understand that Mr. O Hill submitted proposed entitlements currently pending for the properties in the form of a Planned Community District Development Plan for the NBCC Planned Community District (the "PC Text"). This was done without our approval, and contains plans which we have told him in writing since February, 2008, that we do not and will not approve. We understand that Mr. O Hill has made repeated oral and written representations that he "owns" or "manages" the NBCC and the BBCRC properties. He does not.

First: Mr. O Hill manages through GRF only fifty (50%) percent of the two tenancies-in-common (NBCC and BBCRC).

Second: Under two written Agreement of Real Property Owners (the "Agreements"), O Hill was appointed as the "Managing Owner" with authority to manage only certain aspects of the two properties, such as paying ordinary expenses, and distributing the income from the properties. The

Agreements do not give Mr. O Hill any authority to pursue entitlements on his own or to spend money to develop same, and in fact expressly provide under Section 7(d) that "[e]xcept for protection of the Property or in the case of an emergency, no material sums shall be expended for capital improvements without prior written consent of Owners who hold a majority of the Interest in the property."

Currently, and since 2008, there has been a stalemate among the owners as to what development plan is appropriate for the jointly held properties. FFT and Mira Mesa believe that the entitlements sought in Mr. O Hill's PC Text regarding the BBCRC property are uneconomic, and are not in their best interests. Mr. O Hill cannot proceed with any development on BBCRC unilaterally. With regard to the NBCC property, there is in place a long term tenant, International Bay Clubs, Inc. ("IBC"), with 56 years remaining on its lease. IBC has its own plans for development, which are also before the City. It makes little sense to the undersigned to process Mr. O Hill's plan for NBCC given that none of us has a right to develop any plans for 56 years. We do not object to IBC's plans, however.

FFT and Mira Mesa request that the City suspend all processing of the PC Text entitlements for NBCC and BBCRC *filed by O Hill* until such time that the current litigation between O Hill, FFT and Mira Mesa is adjudicated or otherwise settled by the tenant-in-common ownership entities, and until *all* the property owners of the NBCC and BBCRC submit an application for entitlements, as the City regulations require.

FFT and Mira Mesa believe that the development entitlements currently proposed by Mr. O Hill will cause great harm to FFT and Mira Mesa, and therefore, FFT and Mira Mesa do not wish for their land to be burdened with development entitlements that they have not approved."

Sincerely yours,
Fainbarg Family Trust, UTD April 19, 1982,
Allan Fainbarg, Trustee

Allan Fainbarg, Trustee
By: Irving M. Chase

Mira Mesa Shopping Center-West, LLC
Mesa Shopping Center-East, LLC

Elliot Feuerstein
Elliot Feuerstein, Managing Member

cc: Allan Fainbarg
Arnold D. Feuerstein
Ryan Chase
Brett Feuerstein
John Olsen, Esq.
Gary Waldron, Esq.
Patrick Alford, City of Newport Beach
Rosalinh Ung, City of Newport Beach

COASTAL COMMISSION

EXHIBIT # 7
PAGE 8 OF 21

FAINBARG-FEUERSTEIN PROPERTIES
C/O S & A MANAGEMENT, LLC
129 W. WILSON STREET, SUITE 100
COSTA MESA, CA. 92627
(949) 722-7400
(949) 722-8855 FAX

COASTAL COMMISSION

EXHIBIT # 7
PAGE 9 OF 21

March 28, 2012

California Coastal Commission
Attn: Mr. Karl Schwing
Supervisor, Regulation & Planning
200 Oceangate, 10th Floor
Long Beach, CA. 90802

**Subject: Acknowledgement of Coastal Development Permit Co-Applicant by
Property Owner-Newport Beach Country Club**

Dear Mr. Schwing:

It is our understanding that the California Coastal Act, §30601.5 requires a property owner to either join as co-applicant on the Coastal Development Permit sought by a lessee, or decline to be co-applicant after an invitation. The applicant, International Bay Clubs is the lessee in good standing of the subject property referenced above, known as Newport Beach Country Club ("Property"). The lease term expires in 2067.

The undersigned represent fifty percent (50%) ownership of the underlying fee upon which this lease is located and, to the extent of our interest, consent to be co-applicants relative to the Coastal Development Permit pursuant to Section 30605.1 of the Coastal Act. We would appreciate being copied on all notices at the address above and will look forward to reviewing the proposed conditions of approval attendant to the Permit issuance.

For the avoidance of confusion, we are not agreeing to accept any financial obligations associated with the Coastal Development Permit, including the obligation for processing fees, permit fees, penalties fees, penalties or indemnity requirements, which will be the sole obligation of our lessee.

Sincerely,



The Fainbarg Trust
By Irving M. Chase, Trustee Counsel



Mesa Shopping Center East, LLC
Mira Mesa shopping Center West, LLC
By Elliot Feuerstein

cc: Mr. Perry Dickey, Newport Beach Country Club, Inc.

COASTAL COMMISSION

FAINBARG-FEUERSTEIN PROPERTIES
C/O S & A MANAGEMENT, LLC
129 W. WILSON STREET, SUITE 100
COSTA MESA, CA. 92627
(949) 722-7400
(949) 722-8855 FAX

EXHIBIT # 7
PAGE 10 OF 21

March 28,, 2012

Mr. Douglas Lee, CEO
Lee and Sakahara Architects
16842 Von Karman Ave., suite 300
Irvine, CA. 92606-4927

BY ELECTRONIC MAIL AND U.S. POST (CERTIFIED MAIL)

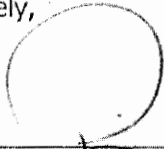
RE: New Newport Beach country Club Clubhouse Plan
Updated Schematic Plans and Preliminary Specifications Submittal

Dear Mr. Lee:


Thank you for your letter and plan sets relative to the request for approval for the above referenced project ("Project"). Please find attached a signed copy of the plan, pursuant to the GROUND LEASE (and its amendments) section 5.01(b), indicating our acceptance of the same.

We believe that the amended plan, as approved by the City represents a thoughtfully considered development project which allows our Tenant to continue to earn a fair return on investment, and is consistent with the existing rights under the GROUND LEASE. Specifically, we believe the changes that have been made to the plan, including a) the landscaping and median on Irvine Terrace, b) the driveway at the west end of the Property, c) the four foot landscaped berm beautifying the viewshed from Irvine Terrace, are beneficial to the Project and appropriate.

Sincerely,



The Fainbarg Trust
By Irving M. Chase, "Trustee Counsel"



Mesa Shopping Center East, LLC
Mira Mesa Shopping Center West, LLC
By Elliot Feuerstein

cc: Mr. Perry Dickey, Newport Beach Country Club, Inc.

GREGORY A. BUSCH, CPA ♦
TIMOTHY R. BUSCH, J.D., CPA ♦ □ ♦ ♦
GREGORY J. COBUCCI, J.D., LL.M. ♦ □
APRIL B. KIM, J.D. ♦ ♦
GREGORY E. LAMBOURNE, J.D.
GEORGE P. MULCAIRE, J.D., M.B.A., LL.M.
SHEILA M. MULDOON, J.D.
JOHN C. PEIFFER II, J.D., A.M.

INTERNET ADDRESS:
EMAIL@BUSCHFIRM.COM (E-MAIL)
WWW.BUSCHFIRM.COM (HOME PAGE)



The Busch Firm

Attorneys and Counselors at Law

RECEIVED 2532 Dupont Drive
South Coast Regional Center, Irvine, CA 92612-1524
PH. (949) 474-7368
FAX (949) 474-7732

SEP 17 2012

CALIFORNIA
COASTAL COMMISSION

ALSO LICENSED IN:
□ WASHINGTON, D.C.
♦ ♦ WASHINGTON
♦ MICHIGAN
♦ ♦ NEVADA
♦ NEW JERSEY
♦ TEXAS

♦ NOT LICENSED TO
PRACTICE LAW

COASTAL COMMISSION

September 13, 2012

California Coastal Commission
Attn: Louise Warren, Staff Counsel
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

EXHIBIT # 7
PAGE 11 OF 21

Re: Coastal Development Permit Application No. 5-12-103-Newport Beach Country
Club and Fainbarg-Feuerstin Properties, Newport Beach
Our File No. 6770.1002

Dear Ms. Warren:

Our office represents Newport Beach Country Club, the Co-Applicant on the above-referenced Coastal Development Application. Pursuant to your discussions with Shawna Shaffner of CAA Planning, I have enclosed a copy of that certain Ground Lease dated November 11, 1992, ("Ground Lease") between O Hill Properties, a California limited partnership, Allan Fainbarg, and Sara Fainbarg, as Trustees of the Fainbarg Family Trust dated April 19, 1982, and Mesa Shopping Center-East, a California general partnership as "Landlord" and The Newport Beach Country Club, Inc. ("NBCC") as "Tenant". The term of the Ground Lease expires on December 31, 2067.

Pursuant to the provisions of Article V and Article VI of the Ground Lease, the NBCC has the right to construct new improvements and/or make alterations to any existing improvements on the leased premises. NBCC is required to submit the plans and specifications described in Section 5.01(a) and (b) for Landlord's review and approval, in accordance with the terms of the Ground Lease, prior to commencing construction of any new improvements or substantial exterior alterations or additions to any existing improvements (emphasis added).

Section 5.10 of the Ground Lease provides that NBCC will obtain all necessary governmental permits prior to commencing construction of any improvements and does not require the Landlord's prior approval of NBCC's applications for such permits.

NBCC will provide any required materials for Landlord's review and approval at the appropriate time in accordance with the terms of the Ground Lease. Any submittals by NBCC to the Landlord will be in compliance with the permits and approvals obtained by NBCC. Until NBCC formally submits the necessary materials for the Landlord's approval, the provisions of Article V are not applicable. There is no basis under the Ground Lease for Golf Realty Fund's opposition to NBCC's application.

COASTAL COMMISSION

California Coastal Commission
September 13, 2012
Page 2

EXHIBIT # 7
PAGE 12 OF 21

Should you have any questions regarding the foregoing or need any additional information please do not hesitate to contact the undersigned.

Very truly yours,



GEORGE P. MULCAIRE

on behalf of

THE BUSCH FIRM

(949) 474-7368 Ext. 205

email: gmulcaire@buschfirm.com

efax: (978) 359-6394

GPM/gtv
cc: Karl Schwing
Supervisor, Regulation & Planning
South Coast Office
200 Oceangate, 10th Floor
Long Beach, CA 90802
ecc: Shawna Shaffner
eicc: KM; KJK
etckl: GPM:09:24:12

RECEIVED
South Coast Region

SEP 17 2012

FAINBARG-FEUERSTEIN PROPERTIES
C/O S & A MANAGEMENT, LLC
129 W. WILSON STREET, SUITE 100
COSTA MESA, CA. 92627
(949) 722-7400

CALIFORNIA
COASTAL COMMISSION

COASTAL COMMISSION

September 14, 2012

EXHIBIT # 7
PAGE 13 OF 21

California Coastal Commission
Attn: Karl Schwing
Supervisor, Regulation & Planning
South Coast District Office
200 Oceangate, 10th Floor
Long Beach, CA 90802

Subject: Coastal Development Permit Application No. 5-12-103 - Newport Beach Country Club & Fainbarg-Feuerstein Properties, Newport Beach - Co-Applicant Authorization

Dear Mr. Schwing:

The undersigned represent Mesa Shopping Center-East, LLC ("Mesa East") and Mira Mesa Shopping Center-West, LLC ("Mesa West") and The Fainbarg Family Trust who collectively own 50% of the fee interest in the property underlying the Newport Beach Country Club (Property).

This letter will confirm our status of co-applicants consistent with the March 28, 2012 letter we submitted to the Coastal Commission relative to the above-referenced Coastal Development Permit (CDP). This letter will also confirm that CAA Planning is authorized to take all necessary actions required to secure approval of the CDP.

We believe the September 7, 2012 from Mr. George on behalf of Golf Realty Fund, LP (GRF), (which owns 50% of the fee interest in the Property) contains a number of factual inaccuracies. Among those, GRF does not have "the sole and exclusive right to act on behalf of all the fee owners of the subject property." GRF was removed by the owners of the Property on August 16, 2011. Under Section 7(b) of the Agreement Between Real Property Owners, "at any time, the Managing Owner may be removed with cause *by the written election of the Owners* of a majority of the ownership interests not owned by the Managing Owner, and a new Managing Owner shall be appointed *by the Owners* who own a majority of the ownership Interests in the Property." A copy of the removal notice is attached. The current Managing Owner is the Fainbarg Family Trust.

California Coastal Commission
September 14, 2012

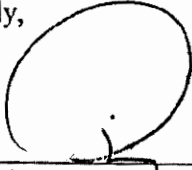
EXHIBIT # 7
PAGE 14 OF 21

Further, our Lease with the Newport Beach Country Club was signed by all fee owners as "Landlord", as the attachment of a portion of that Lease shows. Neither the Lease nor any other agreement provides GRF any exclusive authority over the Tenant or Property.

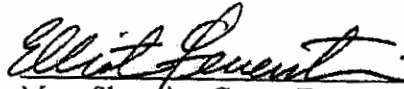
Lastly, as the tenant will confirm, it has no intention of abandoning this entitlement effort, and we would suggest that the Coastal Commission rely on the applicant for information in this regard, rather than GRF's agent.

We appreciate your consideration and would be pleased to provide any further information as necessary.

Sincerely,



The Fainbarg Trust
By Irving M. Chase, Trustee Counsel



Mesa Shopping Center East, LLC
Mira Mesa Shopping Center West, LLC
By Elliot Feuerstein

GROUND LEASE

EXHIBIT # 7
PAGE 15 OF 21

THIS GROUND LEASE (the "Lease") is made and entered into as of the 11th day of November, 1992, between O Hill Properties, a California limited partnership, Allan Fainbarg and Sara Fainbarg as Trustees of the Fainbarg Family Trust dated April 19, 1982 and Mesa Shopping Center-East, a California General Partnership having an office at One Upper Newport Plaza, Newport Beach, California 92660 ("Landlord") and The Newport Beach Country Club, Inc. a California corporation, having an office at 1600 East Coast Highway, Newport Beach, California 92660 ("Tenant").

R E C I T A L S

A. Landlord is or will be the owner of certain real property consisting of approximately one hundred thirty-two (132) acres of land and appurtenant easements and rights located in the City of Newport Beach (the "City"), California which real property is more particularly described in Exhibit "A" attached hereto and by this reference incorporated herein (the "Demised Premises").

B. Tenant desires to lease the Demised Premises from Landlord for the operation of a country club on the Demised Premises, including a golf course, driving range, a club house, locker rooms, parking areas and other related facilities presently existing (which leasehold improvements are the property of Tenant, subject to the terms of this Lease), and as shown on Exhibit "B" attached hereto and by this reference incorporated herein (the "Site Plan") together with other appurtenant easements and improvements on the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the demise of the Demised Premises and the rents, covenants and conditions herein set forth, Landlord and Tenant do hereby covenant, promise and agree as follows:

ARTICLE I
DEMISE OF PREMISES

Section 1.01. Landlord does hereby demise unto Tenant, and Tenant does hereby hire from Landlord, for the term hereinafter provided, the Demised Premises for the exclusive right of use by Tenant, Tenant's employees, concessionaires, licensees, agents, members, customers and invitees.

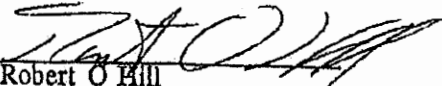
ARTICLE II
TERM

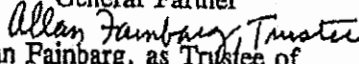
Section 2.01. The "Commencement Date" of this Lease shall be the date on

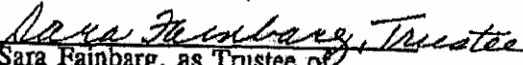
IN WITNESS WHEREOF, the parties have executed this Lease at Newport Beach, California as of the date first above written.

LANDLORD:

By O Hill Properties,
a California limited partnership
General Partner

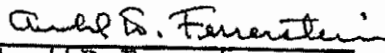
By: 
Robert O Hill
General Partner



Allan Fainburg, as Trustee of
The Fainburg Family Trust,
dated April 19, 1982


Sara Fainburg, as Trustee of
The Fainburg Family Trust,
dated April 19, 1982

Mesa Shopping Center-East
A California General Partnership

By:


Arnold D. Feuerstein
Managing General Partner


Elliot Feuerstein
Managing General Partner

COASTAL COMMISSION

NOTICE OF TERMINATION OF ROBERT O HILL NBCC LAND

EXHIBIT # 7
PAGE 17 OF 21

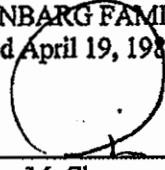
PLEASE TAKE NOTICE that on Aug. 16, 2011 the owners of a majority of the interests (not owned by the Managing Owner) of that certain property commonly identified as the Newport Beach Country Club (the "NBCC Land"), the legal description of which is attached hereto as Exhibit "A," elected to remove the Managing Owner, O Hill Capital, formerly known as O Hill Properties, the Golf Realty Fund LP, and Robert O Hill (collectively, "O Hill"), for cause (i.e., for fraud, gross negligence, or a material default of a material obligation of the Managing Owner pursuant to Section 7(b) of the Agreement executed September 30, 1992 and recorded June 11, 1993 (the "Agreement")), based upon the following conduct, each one of which is deemed a sufficient cause for removal:

1. For exceeding its authority as Managing Owner by continuing to process plans for entitlement of the NBCC land according to the PC Text or PC Plan submitted by O Hill to the City of Newport Beach after the other owners of the NBCC land made their objections to such plans.
2. For exceeding its authority as Managing Owner by continuing to expend material sums to process plans for improving the NBCC land according to the PC Text or PC Plan submitted by O Hill to the City of Newport Beach after the other owners of the NBCC land made their objections to such plans and the expenditure of funds to prepare and process such plans.
3. For exceeding its authority as Managing Owner by continuing to expend material sums of NBCC to process plans for improving the adjacent property (the "BBCRC land") according to the PC Text or PC Plan submitted by O Hill to the City of Newport Beach after the other owners made their objections to such plans and the expenditure of funds of NBCC to prepare and process such plans for the benefit of the other property.
4. For failing to disburse to the owners all rentals collected on lease of the NBCC land save for proper expenses pertaining to the NBCC land, and in particular using funds from NBCC operations to pay for plans and processing plans for NBCC and BBCRC instead of distributing such funds to the owners.
5. For exceeding its authority as Managing Owner by submitting the application of the PC Text or PC Plan to the City of Newport Beach without the required signature of the other owners of the NBCC land.
6. For exceeding its authority as Managing Owner by preparing plans for improvement for the NBCC land when under the lease of the NBCC land the current tenant has for the next 56 years the right to make plans and improvements on the NBCC land, and the tenant wishes to proceed with its own plans for improvement, which O Hill has opposed.


7. For exceeding its authority as Managing Owner by objecting to and unreasonably withholding consent to the current tenant's plans for improvement on the NBCC land because such plans were inconsistent with the competing plans O Hill had improperly prepared and submitted for the NBCC land.
8. For exceeding its authority as Managing Owner and acting dishonestly by submitting letters, applications and amendments to process plans for entitlement of the NBCC land to the City of Newport Beach which represented, including in affidavits signed by O Hill under penalty of perjury, that Golf Realty Fund was the only owner of the property involved, when O Hill knew that there were other owners, including the Fainburg Family Trust, dated April 19, 1982, Mesa Shopping Center-East, and Mira Mesa Shopping Center-West, and where the City regulations and forms required that the owners sign any such application.

The undersigned have agreed that Irving M. Chase, as representative of the trustee of The Fainburg Trust dated April 19, 1982, shall be appointed as the new Managing Member of the NBCC land pursuant to Section 7(b) of the Agreement, and hereby cast their votes for such election. The undersigned request that O Hill cast its vote for the new Managing Member pursuant to Section 7(b) of the Agreement.

FAINBURG FAMILY TRUST
dated April 19, 1982

By: 
Irving M. Chase, as Representative of Trustee of
The Fainburg Family
Trust, dated April 19, 1982

MESA SHOPPING CENTER-EAST,
a California General Partnership

By: 
Elliot Feuerstein
Managing General Partner

MIRA MESA SHOPPING CENTER-WEST,
a California General Partnership


By: 
Elliot Feuerstein
Managing General Partner

EXHIBIT "A"
LEGAL DESCRIPTION OF THE PROPERTY

Parcel 1:

Parcel 1, of Parcel Map No. 79-704, in the City of Newport Beach, County of Orange, State of California, as per map filed in Book 152, Pages 17-20, inclusive of Parcel Maps, in the office of the County Recorder of said County.

Parcel 2:

Parcel 2, of Parcel Map 79-704, in the City of Newport Beach, County of Orange, State of California, as per Map filed in Book 152, Pages 17 to 20 inclusive of Parcel Maps, in the Office of the County Recorder of Orange County.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California }

County of Orange }On 08/16/2011 before me, Susan L. Walters, a Notary Public
Date Here Insert Name and Title of the Officerpersonally appeared Irving M. Chase
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she/they~~/ executed the same in his/~~her/his~~/ authorized capacity(ies) and that by his/~~her/his~~/ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: Susan L. Walters
Signature of Notary Public

Place Notary Seal and/or Stamp Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Notice of Termination of Robert O Hill NBCC LandDocument Date: August 15, 2011Number of Pages: 3Signer(s) Other Than Named Above: Elliot Feuerstein

Capacity(ies) Claimed by Signer(s)

Signer's Name: Irving M. Chase

Signer's Name: _____

☐ Corporate Officer — Title(s): _____☐ Corporate Officer — Title(s): _____☐ Individual☐ Individual☐ Partner — ☐ Limited ☐ General☐ Partner — ☐ Limited ☐ General☐ Attorney in Fact☐ Attorney in Fact☐ Trustee☐ Trustee☐ Guardian or Conservator☐ Guardian or Conservator☒ Other: Representative
of the Trustee☐ Other: _____

Signer Is Representing: _____

Signer Is Representing: _____

Self

CALIFORNIA ALL-PURPOSE
CERTIFICATE OF ACKNOWLEDGEMENTEXHIBIT # 7
PAGE 21 OF 21

State of California

County of San DiegoOn August 16, 2011 before me, L. M. GAUT, Notary Public,
(Here insert name and title of the notary public)

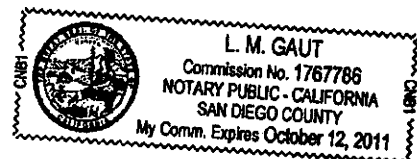
personally appeared ELLIOT FEUERSTEIN, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

L. M. Gaut
Signature of Notary Public

(Notary Seal)



COASTAL COMMISSION

COXCASTLE NICHOLSON

EXHIBIT #

8

PAGE

1

OF

22

Cox, Castle & Nicholson LLP
19800 MacArthur Boulevard, Suite 500
Irvine, California 92612-2480
P 949.260.4600 F 949.260.4699

Tim Paone
949.260.4655
tpaone@coxcastle.com

October 8, 2012

Liliana Roman
Coastal Program Analyst
California Coastal Commission
South Coast Office
200 Oceangate, 10th Floor
Long Beach, CA 90802

RECEIVED
South Coast Region

UCT 08 2012

CALIFORNIA
COASTAL COMMISSION

RE: CDP Application of Newport Beach Country Club and The Fainbarg Trust, et al.;
Item Th20c on Commission Agenda for October 11, 2012

Dear Ms. Roman:

Cox, Castle & Nicholson LLP is land use counsel to Golf Realty Fund, LP ("GRF"). Newport Beach Country Club, Inc ("NBCC") is a tenant on the property which is the subject of the CDP application (the "Application") and on which sits the Newport Beach Country Club (the "Golf Property"). GRF owns 50% of the fee interest in the Golf Property and, therefore, has a significant interest in what happens on the Golf Property.¹ GRF also is the "Managing Owner" of the Golf Property under a recorded "Agreement Between Real Property Owners" (the "Co-Owners' Agreement") between GRF's predecessor and the owners of the remaining 50% (25% each) interest in the Golf Property (the "GRF's Co-Owners"). A copy of the Co-Owners' Agreement is attached to this letter. GRF is the successor to O Hill Properties under the Co-Owners' Agreement, both as a party to that agreement and as the Managing Owner.

Unfortunately, the Commission has been presented with not just the Application, but also with a "Who's On First?" saga courtesy of parties representing GRF's Co-Owners. As a result of misleading information submitted to the Commission on behalf of GRF's Co-Owners, this appears to be a classic case of "You can't tell the players without a scorecard." Included among those misrepresentations is a bold and incorrect statement that GRF has been replaced as Managing Owner simply because GRF's Co-Owners have unilaterally declared that to be the case.

The obvious question is "Why should the Commission get in the middle of this private dispute?" The answer is that *it shouldn't*. However, because of misrepresentations on the face of the Application, Commission staff accepted the Application without realizing that GRF's Co-Owners

¹ GRF also owns 50% of the fee interest in the adjacent tennis club property and is the Managing Owner of that property as well. It should be noted that GRF's application for a CDP for the adjacent tennis club property has recently been accepted as complete by Commission staff and is expected to be heard by the Commission in December.

Liliana Roman
CCC South Coast
October 8, 2012

EXHIBIT # 8
PAGE 2 OF 22

did not have the authority to sign the Application as the "owner" of the Golf Property. After this was pointed out to Commission staff in a September 7 letter from Paul George of Lane Powell,² the applicant and GRF's Co-Owners simply made additional misleading attempts to position GRF's Co-Owners as having the authority to approve the Application on behalf of all owners of the Golf Property. To the contrary, only GRF has the authority to speak on behalf of ownership. So, thanks to the misrepresentations of GRF's Co-Owners, the Commission finds itself squarely in the middle of this private dispute.

If the Commission approves this Application, it will set a precedent for acting on a tenant's CDP application over the objections of the owner of the property. This is contrary to the Commission's long-standing practice and policy. Here are key facts we would ask the Commission to consider *before it undertakes discussion* of the merits of the Application:

- A September 14, 2012, letter from GRF's Co-Owners to Commission staff states that GRF's Co-Owners have "removed" GRF as Managing Owner of the Golf Property's ownership group. In reality, GRF's Co-Owners have done nothing more than to unilaterally declare a new Managing Owner. Under the Co-Owners' Agreement (see Section 26), the dispute leading to this self-serving declaration must be arbitrated. That has not occurred. The parties are addressing issues related to the Co-Owners' Agreement in arbitration proceedings which ***will occur in late October***.
- The Co-Owners' September 14 letter fails to mention that their attempt to enjoin GRF from taking the actions which they claim are cause for GRF's removal was *wholly rejected* by Judge Linda Marks in Orange County Superior Court.
- GRF remains the Managing Owner, as fully explained in Mr. George's September 7 letter to the Commission.

Separately, NBCC has distorted the facts with respect to its need to obtain its landlord's approval for its proposed improvements. (Consent to the improvements under the ground lease is, of course, a different issue than consent to the Application.) GRF would like the Commission to be aware of the following:

- In a September 13, 2012, letter from The Busch Firm, NBCC states that the ground lease does not require the landlord's consent to new improvements *until prior to commencing construction*. While GRF disagrees with NBCC's interpretation of the ground lease, that disagreement is not relevant to the Commission's actions because NBCC already has requested the landlord's consent, in writing, on several occasions. Each time, that request was denied. What is relevant are the following facts:
 - NBCC's numerous requests for the landlord's consent cited the specific consent requirement of the Ground Lease. There can be no denying they knew what they were requesting.

² GRF is also represented by the firm of Lane Powell, from whom the Commission received a letter dated September 7, 2012, correctly explaining the relationships between the various parties involved with this Application.

COASTAL COMMISSION

Liliana Roman
CCC South Coast
October 8, 2012

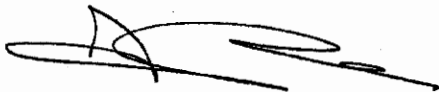
EXHIBIT # 8
PAGE 3 OF 22

- The current owners of NBCC only recently acquired NBCC and were not the owners of NBCC during the City's review of the project, when the Application was filed with the Commission, or when the requests for consent were made. Nonetheless, the NBCC entity is the tenant under the ground lease and that is not changed by the sale of its stock. The current owners of its stock are subject to NBCC's actions that occurred before their stock purchase.
- Even though the consent requests and denials occurred well "prior to commencing construction," "well prior" or "just prior" are both still "prior." NBCC cannot now pretend that its requests and GRF's denials never took place.

In conclusion, (1) GRF remains Managing Owner of the Golf Property, (2) under no scenario do GRF's Co-Owners constitute a majority of ownership in the Golf Property, (3) the true Managing Owner has not consented to the Application, and (4) consent to the improvements was requested by NBCC and that consent was denied.

GRF did not place this private dispute before the Commission, but nonetheless apologizes that it is now playing out within the Commission's process. GRF asks the Commission to either declare the Application incomplete or table it until NBCC has obtained the consent of the authorized agent of the majority of the owners of the Golf Property. That authorized agent is GRF and GRF alone.

Sincerely,



Tim Paone

Enclosure

cc: Karl Schwing
Hope Schmeltzer
Robert O Hill
David B. Neish

COASTAL COMMISSION

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO

EXHIBIT #
PAGE

8

4 OF 22

O Hill Properties
One Upper Newport Plaza
Newport Beach, CA 92660

THE ORIGINAL OF THIS DOCUMENT
WAS RECORDED ON 11-JUN-1993,
DOCUMENT NUMBER 93-0393470.
LEE A. BRANCH, COUNTY RECORDER
ORANGE COUNTY RECORDER'S OFFICE

CONFIRMED COPY
Not Compared with Original

(Space Above for Recorder's Use)

AGREEMENT BETWEEN REAL PROPERTY OWNERS
NEWPORT BEACH COUNTRY CLUB

Newport Beach, California

This Agreement Between Real Property Owners ("Agreement") is entered into by and between O Hill Properties, a California limited partnership ("O Hill"), the Fainbarg Family Trust dated April 19, 1982 ("FFT") and Mesa Shopping Center-East, a California general partnership ("Mesa"). O Hill, FFT and Mesa are sometimes referred to singularly as an "Owner" or "party" or collectively as the "Owners" or "parties".

RECITALS

A. The Owners desire to own, lease, manage, maintain, refinance, encumber and hold for investment, as tenants in common, that certain real property comprising approximately 132 acres with improvements thereon, commonly identified as Newport Beach Country Club located at 1600 East Pacific Coast Highway, in Newport Beach, California and legally described in Exhibit "A" attached (the "Property").

B. The Owners have discussed the co-ownership of the Property and have concluded that to avoid conveyancing and ownership problems created by death, marital or other dissolution, bankruptcy or insolvency, disputes and the like, it is in the best interest of each Owner that the holding of the Property be governed by an agreement which defines the rights and duties of each Owner in the form of this Agreement.

C. The Owners also believe it necessary and appropriate to have one Owner be the managing Owner for purposes of accounting and administration.

NOW, THEREFORE, in consideration of the foregoing Recitals and the conditions and covenants hereinafter contained, the Owners hereby agree as follows:

1. **AGREEMENT AS TENANTS IN COMMON.** The Owners agree to hold title to the Property as tenants in common to own, manage, maintain, lease, finance, refinance, and/or hold the Property for investment in accordance with the terms of the Agreement. The Owners may conduct such other activities with respect to the Property as are related to or compatible with the ownership of real estate. Subject to the provisions of this Agreement, each Owner retains the right to deal with his Interest in the Property (as defined in Section 3 below) as such Owner sees fit.

2. **TERM.** This Agreement shall become effective on the acquisition of the Property by the Owners, and shall continue thereafter until terminated pursuant to Section 13 below.

3. **TITLE TO THE PROPERTY; CONVEYANCES AND LIENS.** Concurrently with the recordation hereof, title to the Property shall be acquired by, and in the name of, the Owners as their interests appear in Exhibit "B" attached (each an "Interest") and shall thereafter be held in the name of the Owners as tenants in common. The Owners acknowledge and agree that the Property, or any interest therein, including any leasehold interest, any deed of trust granted or other encumbrances or liens placed thereon, may be granted, conveyed or so encumbered by the execution of the applicable instrument by each Owner, or if an Owner is obligated to convey, lease or encumber its interest in accordance with the terms of Section 4 of this Agreement and fails to do so within the time limits set forth herein, by the Managing Owner and the Additional Owner (both as defined in Section 7 below) in accordance with the powers of attorney granted to the Managing Owner and the Additional Owner as described in Section 7(c) below. Such conveyance or encumbrance by the Managing Owner and the Additional Owner under such powers of attorney shall be binding upon each Owner.

4. **FINANCING, REFINANCINGS, SALE AND LEASING.**

(a) The Owners acknowledge that concurrently with the acquisition of the Property, the Owners shall place financing on the Property which may have a balloon payment at the due date thereof (the "Acquisition Financing"). Each Owner acknowledges that there will be refinancings of the Acquisition Financing from time to time. The Managing Owner shall have the right to obtain such refinancing for the Property on then market rates and terms. Each Owner shall have a duty to fully cooperate and not interfere or impede, in any manner, in such refinancings including but not limited to signing appropriate documentation (e.g. notes, deeds of trust, assignments of rents and leases, guarantees and the like) within ten (10) days after being requested to do so by Managing

Owner. Each Owner shall be responsible for its respective share, as determined by its pro rata ownership Interest in the Property, of the payments of principal and interest and other costs owing under the Acquisition Financing and refinancings. The Acquisition Financing and refinancings, however, may be a joint and several obligation of the Owners.

Refinancing shall only be permitted within two (2) years of the due date of the financing which then encumbers the Property and the amount shall not materially exceed the remaining principal balance of the then existing loan balance plus refinancing related costs, unless the new loan is non-recourse to the Owners and is approved by sixty-five percent (65%) or more of the ownership Interests in the Property.

(b) The Managing Owner shall list the Property for sale and convey or otherwise transfer the Property if such transaction is approved by seventy percent (70%) or more of the ownership Interests in the Property. Each Owner shall have a duty to fully cooperate and not interfere or impede in any manner with such sale approved by seventy percent (70%) or more of the ownership Interests in the Property, including but not limited to the signing of a Grant Deed, sale agreements, assignment of leases and escrow instructions within ten (10) days after being requested to do so by Managing Owner. Any Owner who desires an exchange of its equity in the Property under Section 1031 of the Internal Revenue Code shall have the right to arrange for such exchange of its undivided ownership Interest, provided that under no circumstances shall the inability of any Owner to consummate such an exchange delay the sale of the Property. The other Owners, at no cost or expense shall cooperate in such exchange, however, no Owner shall be required to take title to an exchange or other property as a part of such duty to cooperate.

(c) Managing Owner may amend, terminate or extend the ground lease of the Property only with the prior written consent of the Owners of a majority of the ownership Interests in the Property. Each Owner shall execute any such amendment, termination or extension approved by a majority of the ownership Interests in the Property within ten (10) days after being requested to do so by Managing Owner.

(d) Any Owner who has a duty to execute any refinancing, sale or lease documentation and fails or refuses to do so shall be liable for all costs, liabilities, damages, claims and expenses including attorney's fees and legal costs which results to the other Owners from such failure or refusal.

5. LIMITATION OF OWNERS. Each Owner shall be subject to the following limitations:

(a) Each Owner hereby irrevocably waives any and all rights that such Owner may have to withdraw from the terms of this Agreement, maintain an action for the partition of the Property (unless Owners of 65% or more of the Interests in the Property join

or consent to such action), or otherwise force a sale of the Property during the term hereof, except as expressly provided herein.

(b) No Owner shall be entitled to interest on such Owner's contribution toward the purchase of the Property. No Owner shall have the right to withdraw or reduce such Owner's contribution toward the purchase of the Property. No Owner shall have the right to demand property other than cash in return for such Owner's contribution toward the purchase of the Property. No Owner shall have priority over any other Owner either as to the return of contributions toward the purchase of the Property or as to other distributions.

6. **CASH CALLS.** Each Owner shall pay (i) such Owner's share of losses and negative cash flow necessary to cover the costs of owning the Property in proportion to such Owner's respective Interest in the Property and (ii) any involuntary lien which encumbers an Owner's Interest (such as a tax, judgment or execution lien or an attachment) (a "Cash Call"). If an Owner fails to pay its Cash Call within twenty (20) days from the date set for such payment in a written notice that such amount must be paid from the Managing Owner (or any other Owner if the Managing Owner fails to send out a written notice when such Cash Call is necessary), such failure shall automatically constitute a granting by such Owner (a "Defaulting Owner") to the other Owners of the following alternative options in addition to all other remedies available at law: (i) the other Owners may advance the Defaulting Owner's required Cash Call, in the proportions agreed upon by such other Owners, and absent such an agreement, in the proportion which the Interest of an Owner desiring to make such advance bears to the Interests of all Owners desiring to make such advance, and the Defaulting Owner shall convey (or if necessary, the Managing Owner and any Additional Owner under the powers of attorney granted in Section 7(c) below shall convey) by grant deed a portion of Defaulting Owner's Interest in the Property in the proportion in which such advance bears to the Defaulting Owner's equity in the Property (the "Transferred Portion"). The determination of equity in the Property shall be based upon a ten percent (10%) capitalization rate of the preceding twelve (12) months net operating income, less the Defaulting Owner's prorata share of liens entered into by, or which encumber the Interests of, all of the Owners (the "Collective Liens") and outstanding or reasonably projected extraordinary expenses for the next one (1) year period. The Defaulting Owner shall remove liens from the title to the Transferred Portion so that the Transferred Portion conveyed to the Owners making such advance shall be free and clear of liens (except the Collective Liens). If the Defaulting Owner is unable to deliver free and clear title to the Transferred Portion, the other Owner's may purchase, at the same price paid for the Transferred Portion so much of the Interest of the Defaulting Owner (the "Additional

Portion") so that enough cash is generated to allow for the delivery of the Transferred Portion and the Additional Portion by the Defaulting Owner to the other Owners free and clear. If the Property is not subject to a long term ground lease or long term ground leases (of if any such leases are then in default beyond any curative period), the equity in the Property of the Defaulting Owner shall be 90% of the appraised value of the entire Property subject to all non monetary encumbrances thereof, based upon the highest and best use reasonably available for the Property, as determined by an independent MAI appraiser selected by a majority of the ownership Interests owned by the Non Defaulting Owners (the cost of which appraisal shall be charged to the Defaulting Owner) times the percentage Interest of the Defaulting Owner in the Property, and the Defaulting Owner's prorata share of the Collective Liens shall be subtracted therefrom; (ii) the other Owners may admit an additional owner upon the terms and conditions of this Agreement, which additional owner shall advance the Defaulting Owner's required Cash Call and receive a portion of the Defaulting Owner's Interest in the Property on the same basis as preceding subparagraph (i); (iii) the Managing Owner may borrow in the name of or on behalf of the Defaulting Owner the amount of the Cash Call and pledge or otherwise encumber the Interest in the Property of the Defaulting Owner to secure the loan, or (iv) the other Owners may advance to the Defaulting Owner the amount of such unpaid Cash Call owing by Defaulting Owner in which case a Promissory Note shall be executed by Defaulting Owner in favor of the other Owners who have advanced the Cash Call of the Defaulting Owner, a copy of which Promissory Note is attached as Exhibit "C" hereto and incorporated herein by this reference ("Promissory Note"). At the election of the Owners who make an advance to the Defaulting Owner, the Promissory Note shall be secured by a deed of trust upon the Defaulting Owner's entire interest in the Property, and the Defaulting Owner shall execute all documents reasonably necessary to effectuate such encumbrance.

If an expense, loss or damages are incurred by the Owners as the result of a Defaulting Owner not making a Cash Call on or before the date set for the Cash Call in the written notice sent out by the Managing Owner (or the other Owners, as applicable), the Defaulting Owner shall immediately pay such expense or loss in addition to any other damages caused by such failure.

7. MANAGING OWNER.

(a) The Owners hereby appoint O Hill and its successors and assigns as Managing Owner. The duties of Managing Owner shall be as follows:

(i) Managing Owner shall perform all of the duties of Managing Owner as set forth in this Agreement.

(ii) Managing Owner is authorized to take actions which are consistent with the terms of this Agreement, to carry out this Agreement including but not limited to the right to hire and/or retain on behalf of the Owners accountants, lawyers, appraisers, mortgage brokers, insurance agents and consultants which Managing Owner deems appropriate in its reasonable discretion.

(iii) Managing Owner shall approve and coordinate the payment of the expenses of the ownership of the Property.

(iv) Managing Owner shall maintain the books and records of the Owners at the principal business office of Managing Owner.

(v) Managing Owner shall have a fiduciary duty to prepare a written status and financial report for the Property and provide copies to each Owner within ninety (90) days after request from another Owner, and within seventy-five (75) days after the end of each calendar year.

(b) The Owners of a majority of the ownership Interests in the Property shall have the right to select a new Managing Owner in place of O Hill, its successors and assigns if Robert O Hill is no longer the person primarily responsible for the overall management of the entity which constitutes the Managing Owner. In the event a Managing Owner sells its entire interest in the Property or resigns as Managing Owner, the Owners by election of the Owners who own a majority of the Interests in the Property shall appoint a new Managing Owner. At any time, Managing Owner may be removed with cause by the written election of the Owners of a majority of the ownership Interests in the Property not owned by the Managing Owner, and a new Managing Owner shall be appointed by the Owners who own a majority of the ownership Interests in the Property. The votes cast by the Managing Owner in favor of a new Managing Owner may not be cast for the removed Managing Owner or any transferee of the removed Managing Owner's interests. If the removed Managing Owner does not vote to appoint a new Managing Owner within ten (10) days of being requested to do so by the other Owners, then the new Managing Owner shall be appointed by Owners of a majority of the ownership Interests in the Property not owned by Managing Owner. Such resignation or removal, and the new appointment shall be recorded in the office of the Orange County Recorder. In the event there is no Managing Owner, all actions of the Owners with respect to the Property shall require the unanimous written consent of the Owners. "Cause" as used herein shall mean fraud, gross negligence or a material default of a material obligation by Managing Owner. The reasons for removal of a Managing Owner shall be material and specifically stated in the written notice of removal.

(c) Managing Owner is hereby appointed as attorney in fact for each Owner for the purpose of taking all actions which are approved in writing by the requisite

percentage of ownership Interests in the Property or which the Managing Owner is otherwise allowed or authorized to take hereunder, including execution of deeds, deeds of trusts, notes, assignment of leases, assignments of rents and leases, guarantees, lease amendments, extensions or terminations, all in the name, place and stead and on behalf of each Owner with the same validity and effect as if such Owner had executed same. Each Owner specifically agrees to be bound by all actions validly taken under such power of attorney. This power of attorney is coupled with an interest and is irrevocable. Each Owner also hereby appoints each other Owner as attorney in fact for such Owner for purposes of acting as an additional signatory to any action undertaken by Managing Owner pursuant to the provisions of Section 4 hereof, and of the power of attorney granted Managing Owner herein (each, an "Additional Owner").

(d) Except for the protection of the Property or in the case of an emergency, no material sums shall be expended for capital improvements without the prior written consent of Owners who hold a majority of the Interests in the Property.

(e) As compensation for the duties of Managing Owner under this Agreement, Managing Owner shall be reimbursed reasonable out of pocket costs incurred and paid to unaffiliated third parties and shall receive an asset management fee which shall be equal to one-half percent ($\frac{1}{2}\%$) of the gross receipts from the operations of the Property, payable monthly. Managing Owner may deduct such amounts due Managing Owner or third parties from revenue received from the Property, but shall identify amounts charged to the Owners, on at least a quarterly basis.

(f) The Managing Owner shall not have the right to retain counsel at the Owner's expense for a dispute between the Owners, unless the dispute results from a breach or default under the terms of this Agreement by an Owner or the Owners, other than the Managing Owner.

8. **DISTRIBUTIONS.** Distributions of cash to the Owners shall be made as follows:

(a) Cash from operations shall be distributed to the Owners in accordance with their respective Interests in the Property on a monthly basis; provided, however, that the Managing Owner shall be entitled to maintain reasonable reserves for any future anticipated expenditures related to the ownership of the Property.

(b) Refinancing proceeds shall be distributed to the Owners in accordance with their respective Interests in the Property; provided, however, the Managing Owner shall be entitled to retain on behalf of the Owners the following refinancing proceeds: (i) such portion of the refinancing proceeds as the Owners of a majority of the Interests in the Property deem necessary for capital improvements to the Property, and (ii) such portion of

the refinancing proceeds as may be necessary to establish reasonable reserves for anticipated future expenditures of the Owners.

(c) Net proceeds from the sale of the Property shall be distributed to the Owners in accordance with their respective Interests in the Property. Net proceeds from the sale of the Property shall be defined as the gross proceeds from the sale of the Property, less (i) all costs associated with such sale, (ii) payment of any encumbrance against the Property (unless assumed by the buyer with seller released from liability thereon), (iii) payment of any other expenses related to ownership of the Property, and (iv) reasonable reserves for the payment of any future expenses related to the Property anticipated by the Managing Owner, during the one (1) year following the sale of the Property. The Managing Owner shall account for and distribute such reserve to the Owners within one (1) year following the sale of the Property, except to the extent that such reserve is still required to be maintained for a specific, then readily identifiable reasonably anticipated future expense. In the event the Managing Owner retains such reserves for a period in excess of 12 months for such specific purpose, such reserve shall be accounted for and distributed as soon as reasonably possible following satisfaction or elimination of the obligation for which the reserve was created.

(d) Notwithstanding Section 8(a), Section 8(b) and Section 8(c) to the contrary, (i) cash that would otherwise be distributed to an Owner shall instead be distributed to the other Owners to the extent provided in the Promissory Note, or to otherwise discharge all obligations of a Defaulting Owner under Section 6 above and (ii) the reserves retained under Section 8(a), Section 8(b) and Section 8(c) above shall not exceed \$100,000 in the aggregate, without the prior written consent of the Owners of a majority of the Interests in the Property.

9. **BOOKS AND RECORDS.** Such books of account and records as are maintained by or for the Property shall be kept at the principal business office of the Managing Owner and be open to inspection by any Owner or accredited representative of any Owner, at a reasonable time upon reasonable advance notice. Each Owner shall have the right to make a separate audit of such books and records of the Property at such Owner's own expense; provided, however, if the audit is requested by Owners of at least fifty percent (50%) of the Interests in the Property, the audit shall be at the expense of all of the Owners.

10. **CONTINUATION.** The bankruptcy, foreclosure, tax lien, attachment or execution of judgment or other involuntary lien, insanity, disability, distribution, death or dissolution of or against an Owner shall not terminate the effects of this Agreement. Upon

such an occurrence, the Interest in the Property of such Owner shall become vested in the guardian, administrator, executor, trustee, other legal representative or person or entity entitled to the Interest in the Property of such Owner, who shall acquire all of the rights and obligations provided in this Agreement and shall be subject to and bound by all of the terms and conditions of this Agreement; provided, however, in the case of involuntary liens, attachments, judgments or executions that such legal representative or person or entity shall be entitled only to receive distributions on account of such Interest in the Property as provided for in Section 8 above and shall have no management or other decision making authority.

11. INCOME TAX CONSEQUENCES. Each Owner acknowledges that the tax consequences of an investment in the Property is a matter upon which such Owner's own personal tax adviser must conclude. Each Owner shall bear the income tax consequences of such Owner's interest in the Property, which may be different than (i) such Owner's pro rata share of the purchase price of the Property as a result of the effects of a carryover basis in the Property, or (ii) such Owner's actual share of the cash distributions from the Property.

12. TENANCY IN COMMON - NOT A PARTNERSHIP. Each Owner agrees that the Ownership of the Property is a tenancy in common and not a partnership. Each Owner agrees to remain excluded from all of the provisions of Subchapter K of Chapter 1 of the Internal Revenue Code of 1986, as amended. Each Owner hereby covenants and agrees that each Owner shall report on such Owner's respective Federal and State income tax return, such Owner's respective share of items of income, deduction and credit which results from holding of its Interest in the Property, in a manner consistent with a tenancy in common commencing with the taxable year of the acquisition of the Property. No Owner shall notify the Commissioner of Internal Revenue (the "Commissioner") that such Owner desires that the Owners be treated as a partnership and that Subchapter K of the Code apply. Each Owner hereby agrees to indemnify and hold each other Owner free and harmless from all cost, liability, tax consequence and expense, including attorneys fees, which results from any Owner so notifying the Commissioner.

13. TERMINATION.

This Agreement shall be immediately terminated upon the happening of any of the following events:

- (a) The sale or other disposition of all of the Property.
- (b) The unanimous decision of the Owners that this Agreement be

terminated, in which event the Owners shall hold the Property as tenants in common and shall be governed by the law of the State of California.

(c) The purchase by one Owner of all the interests of the other Owners in the Property.

14. OPTION TO PURCHASE.

(a) If an Owner desires to sell its Interest in the Property or a portion of its Interest in the Property, O Hill and its successors, as consideration for its role in the acquisition of the Property, shall have a first right to purchase all or a portion of such Interest in the Property. A selling Owner shall notify O Hill in writing of the portion of the Interest selling Owner desires to sell and selling Owner's desired price for such Interest. O Hill shall have thirty (30) days from the date it receives proper written notice to notify selling Owner that it will purchase all or a specific portion of the Interest being offered for sale by selling Owner. O Hill and selling Owner shall meet and try to agree on a purchase price. If, after thirty (30) days, O Hill and selling Owner are unable to agree on a purchase price then, at their expense, each will retain an MAI appraiser to appraise the entire Property without discount for partial ownership subject to all non monetary encumbrances thereof, including but not limited to any ground lease of the Property, based upon the highest and best use reasonably available for the Property. Such appraisals shall be completed within sixty (60) days and exchanged between the parties. If the values of the two MAI appraisals are within five percent (5%) of each other, using the larger number as the denominator, the appraised value of the entire Property shall be an average of the two appraisals, less three percent (3%). If the two MAI appraisals are not within five percent (5%) of each other then the two (2) designated appraisers shall agree upon and retain a third appraiser who will be given the completed appraisals and all appropriate back-up valuing information and such third appraiser shall first attempt to mediate a compromise value between the three (3) appraisers. If the compromise on value cannot be reached between the three (3) appraisers within thirty (30) days then the third appraiser shall reach a conclusion as to value (which shall be not less than the lower of the two (2) appraisals, and no greater than the higher of the two appraisals) and the two closest conclusions as to value shall be averaged and the average, less three percent (3%) shall be deemed the appraised value of the entire Property. The purchase price shall be such appraised value times the ownership Interest percentage being sold, less the selling Owner's prorata share of any Collective Liens. The purchase shall be completed on or before one hundred and twenty (120) days after the purchase price is finally determined. The Interest being sold shall be delivered free and clear of all liens (except the Collective Liens). Any Interest of the selling Owner not purchased by O Hill may be purchased on the same basis by the other Owners. Such other

Owners shall elect to purchase such interest within ten (10) days after being advised in writing of the amount of the above determined purchase price. If the other Owners elect to purchase in the aggregate more than the Interest being offered, each Owner may purchase the portion of the Interest so offered as agreed upon by the other Owners desiring to purchase a portion of the offered Interest, and absent an agreement reached between them, each may purchase a percentage of the remainder of the Interest which the amount offered to be purchased by an Owner bears to the amount offered to be purchased by all Owners, but not less than that portion of the remainder of the Interest offered which the then Interest of such Owner bears to the then Interests of all Owners electing to purchase such remainder. Any interest not purchased by an Owner may be sold to a third party reasonably approved by the Managing Owner. If such sale does not occur within one (1) year after the purchase price is determined, the sale shall again be subject to the above provision.

(b) The following transfers ("Permitted Transferee") shall not be subject to the provisions of Section 14(a) above:

(i) A transfer to any lineal descendent of a current trustee or general partner of one of the Owners;

(ii) A transfer to a trust for the benefit of any lineal descendent of a current trustee or current general partner of any of the Owners;

(iii) A transfer to any successor trustee or distribution to a beneficiary, where one of the current Owners is a trust; and

(iv) A transfer to any partner or group of partners who consist of one of the current existing partners of an Owner, where such Owner is a partnership.

(c) The rights of O Hill and its successors under Section 14(a) above shall expire upon the sale of the Interest of O Hill to a person or entity in which O Hill, or a Permitted Transferee of O Hill, has no interest.

15. NOTICES. All notices under this Agreement must be in writing and shall be deemed to have been duly given if delivered personally or mailed, postage prepaid, by certified United States mail, return receipt requested, addressed to the Owner to be notified. Such notice shall be deemed to have been given as of the date so delivered, if delivered in person, or upon deposit thereof in the United States mail. For the purposes of notice, the addresses of the Owners until changed as hereinafter provided, shall be as set forth in Exhibit "B" attached hereto. Each Owner shall have the right to change the address to which notice to such Owner is to be given by giving written notice thereof to all other Owners. Managing Owner shall maintain a current list of each recognized Owner of the Property (as described in Section 19 below), and the address and percentage interest owned by each such Owner. Managing Owner shall provide such information to any Owner upon written request to do so.

16. **UNENFORCEABLE TERMS.** In the event that any provision of this Agreement shall be unenforceable or inoperative as a matter of law, the remaining provisions shall remain in full force and effect.

17. **TIME OF ESSENCE.** Time is the essence of this Agreement and the provisions contained herein and each and every provision hereof.

18. **AMENDMENTS.** This Agreement may be amended only by a written amendment signed by all Owners whose signatures shall be notarized and recorded in the County of Orange. Any amendment or modification of this Agreement shall be dated, and if any conflict arises between the provisions of said amendment or modification and provisions incorporated in earlier documents, the most recent provisions shall be controlling.

19. **BINDING EFFECT.** This Agreement shall inure to the benefit of and shall be binding upon the Property and the Owners and their respective heirs, successors, legal representatives and assigns. Each subsequent Owner of a portion of the Property shall be bound by the provisions hereof as if such subsequent Owner had assumed this Agreement. No subsequent Owner need be recognized as such until such subsequent Owner has given each other Owner written notice of the acquisition of such interest in the Property by such subsequent Owner pursuant to the notice provisions of Section 15 above, which each Owner and each subsequent Owner agrees to do or cause to be done.

20. **ENTIRE AGREEMENT.** This Agreement contains the entire agreement between the Owners and supersedes any prior or concurrent written or oral agreement between said parties concerning the subject matter contained herein. There are no representations, agreements, arrangements or understandings, oral or written, between or among the Owners relating to the subject matter contained in this Agreement, which are not fully expressed herein.

21. **GENDER.** All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as the identity of the person, persons, entity or entities may require.

22. **CAPTION HEADINGS.** Captions at the beginning of each numbered Section of the Agreement are solely for the convenience of the parties and shall not be deemed part of the context of this Agreement.

23. **NEGOTIATED TRANSACTION.** The provisions of this Agreement were negotiated by all of the parties hereto and said Agreement shall be deemed to have been drafted by all of the parties thereto.

24. **FURTHER ASSURANCES.** Each Owner hereby agrees to promptly sign any additional instruments or documents which are necessary or appropriate to carry out the intent and purpose of this Agreement.

25. **SPOUSES.** Some of the Owners are married and may in the future take title to an Interest in the Property with their respective spouses (the "Married Owners"). For the protection of the remaining Owners, any interest in the Property held by Married Owners shall be deemed to be held by the husband, as to an undivided one-half ($\frac{1}{2}$) interest and by the wife, as to an undivided one-half ($\frac{1}{2}$) interest. For the purpose of voting upon any issue upon which the Owners may vote pursuant to the terms and conditions of this Agreement, the husband and wife shall each be deemed to own an undivided one-half ($\frac{1}{2}$) interest in the interest of such Married Owners. Each Married Owner acknowledges and agrees that he/she shall do nothing to impede or impair the rights of the other Owners in an attempt to gain leverage upon his/her spouse. In the event an Owner takes title to an Interest in the Property solely in their name, they shall obtain and record a quitclaim deed from their respective spouses so that the Owner in whose name the Interest in the Property is held shall have the right, power and authority to deal with the Property alone and without the consent of his/her spouse. In the event that any such Owner fails to obtain such quitclaim deed and damages result to the remaining Owners, such Owner who so fails to obtain such quitclaim deed shall be liable for the resulting damages.

26. **ARBITRATION OF DISPUTES:** ALL DISPUTES ARISING UNDER THIS AGREEMENT WILL BE RESOLVED BY SUBMISSION TO ARBITRATION AT THE ORANGE COUNTY OFFICES OF JUDICIAL ARBITRATION & MEDIATION SERVICES, INC. ("JAMS") FOR BINDING ARBITRATION. THE PARTIES MAY AGREE ON A RETIRED JUDGE FROM THE JAMS PANEL. IF THEY ARE UNABLE TO AGREE, JAMS WILL PROVIDE A LIST OF THREE AVAILABLE JUDGES AND EACH PARTY MAY STRIKE ONE. THE REMAINING JUDGE WILL SERVE AS THE ARBITRATOR AT THE SETTLEMENT CONFERENCE. THE PARTIES AGREE THAT ARBITRATION MUST BE INITIATED WITHIN ONE YEAR AFTER THE CLAIMED BREACH OCCURRED AND THAT THE FAILURE TO INITIATE ARBITRATION WITHIN THE ONE-YEAR PERIOD CONSTITUTES AN ABSOLUTE BAR TO THE

INSTITUTION OF ANY NEW PROCEEDINGS. THE AGGRIEVED PARTY CAN INITIATE ARBITRATION BY SENDING WRITTEN NOTICE OF AN INTENTION TO ARBITRATE BY REGISTERED OR CERTIFIED MAIL TO THE OTHER PARTY AND TO JAMS. THE NOTICE MUST CONTAIN A DESCRIPTION OF THE DISPUTE, THE AMOUNT INVOLVED, AND THE REMEDY SOUGHT. IF AND WHEN A DEMAND FOR ARBITRATION IS MADE BY EITHER PARTY, THE PARTIES AGREE TO EXECUTE A SUBMISSION AGREEMENT, PROVIDED BY JAMS, SETTING FORTH THE RIGHTS OF THE PARTIES IF THE CASE IS ARBITRATED AND THE RULES AND PROCEDURES TO BE FOLLOWED AT THE ARBITRATION HEARING. THE ARBITRATOR SHALL, AT THE MOTION OF A PARTY, PERMIT AND ORDER SUCH DISCOVERY ON THE PART OF SUCH PARTY AS HE DETERMINES TO BE REASONABLE AND APPROPRIATE TO THE DISPUTE BEFORE HIM. NOTWITHSTANDING THE ABOVE, AT LEAST TWO WEEKS PRIOR TO THE ARBITRATION, EACH PARTY MUST MAKE A FULL DISCLOSURE TO THE OTHER PARTY OF (i) ALL DOCUMENTS TO BE PRESENTED BY SUCH PARTY AND (ii) ANY WITNESSES TO BE CALLED BY SUCH PARTY.

NOTHING IN THIS PARAGRAPH SHALL IN ANY WAY LIMIT OR OTHERWISE RESTRICT A PARTY'S RIGHT OR ABILITY TO OBTAIN INJUNCTIVE RELIEF OR APPOINTMENT OF A RECEIVER THROUGH THE COURT SYSTEM.

NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, EXCEPT AS PROVIDED HEREIN, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION

OF DISPUTES" PROVISION TO NEUTRAL ARBITRATION.

O Hill: [Signature] FFT: [AT] [ST] FCPT: [ADK]

27. **COST OF ENFORCEMENT.** Should any dispute arise between the parties hereto or their legal representatives, successors or assigns concerning any provision of this Agreement or the rights and duties of any person in relation thereto, the party prevailing in such dispute shall be entitled, in addition to such other relief that may be granted, to reasonable attorneys fees and legal costs in connection with such dispute. For purposes of this Paragraph, a dispute shall include, but not be limited to, an arbitration proceeding or a court action for injunctive relief.

28. **GOVERNING LAW.** This Agreement shall be governed by the laws of the State of California and the venue for any dispute shall be Orange County, California.

EXECUTED as of September ____, 1992, at Newport Beach, California.

Owners:

O Hill Properties, a
California limited partnership

By: [Signature]
Robert O Hill,
its General Partner

[Signature]
Allan Fainbarg, as Trustee of
The Fainbarg Family Trust,
dated April 19, 1982

[Signature]
Sara Fainbarg, as Trustee of
The Fainbarg Family Trust,
dated April 19, 1982

Mesa Shopping Center-East
A California General Partnership

EXHIBIT # 8
PAGE 19 OF 22

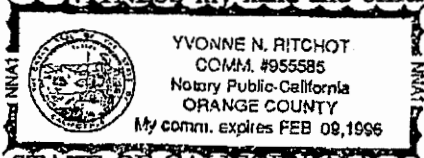
By: Arnold D. Feuerstein
Arnold D. Feuerstein
Managing General Partner

By: Elliot Feuerstein
Elliot Feuerstein
Managing General Partner

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss:

On Jan 27, 199³, before me, the undersigned, a Notary Public in and for said State, personally appeared Robert O Hill, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed the within instrument as General Partner of O Hill Properties, a California limited partnership, and acknowledged to me that such partnership executed the same.

WITNESS my hand and official seal.

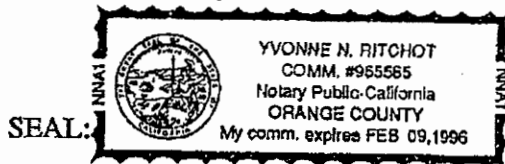


Yvonne N. Ritchot
Notary Public

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss:

On Nov 3, 1992, before me, the undersigned, a Notary Public in and for said State, personally appeared Allan Fainbarg, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed the within instrument.

WITNESS my hand and official seal.



Yvonne N. Ritchot
Notary Public

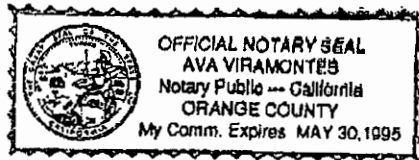
STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss:

EXHIBIT # 8
PAGE 20 OF 22

On Nov. 3, 1992, before me, the undersigned, a Notary Public in and for said State, personally appeared Sara Fainbarg, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed the within instrument.

WITNESS my hand and official seal.

SEAL:



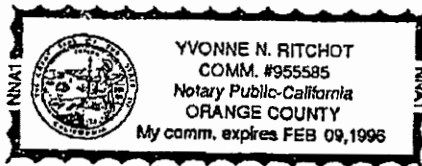
Ava Viramontes
Notary Public

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss:

On Nov 3, 1992, before me, the undersigned, a Notary Public in and for said State, personally appeared Arnold D. Feuerstein, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed the within instrument.

WITNESS my hand and official seal.

SEAL:



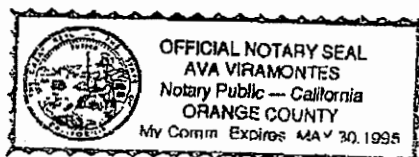
Yvonne N. Ritchot
Notary Public

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss:

On Nov. 3, 1992, before me, the undersigned, a Notary Public in and for said State, personally appeared Elliot Feuerstein, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed the within instrument.

WITNESS my hand and official seal.

SEAL:



Ava Viramontes
Notary Public

EXHIBIT "A"

LEGAL DESCRIPTION OF THE PROPERTY

Parcel 1:

Parcel 1, of Parcel Map No. 79-704, in the City of Newport Beach, County of Orange, State of California, as per map filed in Book 152, Pages 17-20, inclusive of Parcel Maps, in the office of the County Recorder of said County.

Parcel 2:

Parcel 3, of Parcel Map 79-704, in the City of Newport Beach, County of Orange, State of California, as per Map filed in Book 152, Pages 17 to 20 inclusive of Parcel Maps, in the Office of the County Recorder of Orange County.

EXHIBIT "B"

OWNERSHIP INTEREST IN THE PROPERTY

Name and Address of Owner	Interest in Property
Allan and Sara Fainbarg, Trustees of The Fainbarg Family Trust dated April 19, 1982 890 W. Baker Costa Mesa, CA 92626	25%
Mesa Shopping Center - East c/o Arnold Feuerstein 2293 W. Ball Road Anaheim, CA 92805	25%
With a copy of any notices to: Mesa Shopping Center-East c/o Elliot Feuerstein 8294 Mira Mesa Blvd. San Diego, CA 92126	
O Hill Properties One Upper Newport Plaza Newport Beach, CA 92660 Attn: Robert O Hill	50%



LANE POWELL
ATTORNEYS & COUNSELORS

COASTAL COMMISSION

EXHIBIT #

9

PAGE

1

OF

6

PAUL B. GEORGE

503.778.2145

georgep@lanepowell.com

October 8, 2012

**VIA ELECTRONIC MAIL
VIA OVERNIGHT DELIVERY**

California Coastal Commissions
c/o Liliana Roman, Long Beach Staff
South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302

RECEIVED
South Coast Region

UCT 10 2012

CALIFORNIA
COASTAL COMMISSION

Re: Coastal Development Permit for Newport Beach Country Club,
1600 East Coast Highway, Newport Beach;
Agenda Item Th20c on Thursday, October 11, 2012 (the "Project")

Honorable Commissioners:

Our firm represents Golf Realty Fund (GRF), the owner of a 50% fee interest in the subject property. GRF is the "Managing Owner" of Newport Beach Country Club per the Agreement Between Real Property Owners dated September 30, 1992 and recorded in the County of Orange as Document #93-0393470.

As noted on page 12 of the Coastal Commission Staff Report dated 9/20/12 (Staff Report) there is a pending dispute between fee co-owners regarding, among other issues, Managing Owner's denial of the very Project scheduled for a hearing before the Commission this Thursday. Our client has also filed a claim against Fainbarg and Feuerstein as co-owners for interference by encouraging and assisting Tennant/Applicant to obtain discretionary entitlements for the Project which we maintain is a breach of their fiduciary duty to GRF. Arbitration will commence on Monday, October 29, 2012 to resolve this dispute.

Attached to the Staff Report as Exhibit #7 is a letter dated September 14, 2012 from Fainbarg and Feuerstein Properties which states "The current Managing Owner is the Fainbarg Family Trust." This statement is untrue. Attached is a letter dated October 5, 2011 to Aaron Harp, Esq. City Attorney for the City of Newport Beach from Alan Kessel of Baker Hostetler, co-counsel for GRF, which states "Judge Marks of the Orange County Superior Court rejected Mira Mesa's (Feuerstein) attempt to prevent Golf Realty Fund's exercise of its rights and duties as Managing Owner of the NBCC Properties by denying Mira Mesa's Preliminary Injunction Motion, in its entirety." Fainbarg and Feuerstein cannot legally and unilaterally

COASTAL COMMISSION

California Coastal Commissions
October 8, 2012
Page 2

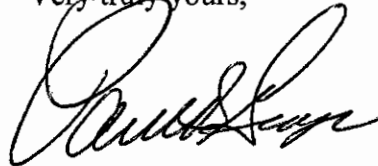
EXHIBIT # 9
PAGE 2 OF 6

proclaim themselves Managing Owner. GRF has been the Managing Owner for almost 20 years and remains Managing Owner of the fee interest at Newport Beach Country Club.

The Coastal Commission Regulations require the signature of the fee owner on the Coastal Commission Application. GRF, as Managing Owner, is the only party that could sign such an application. Under the circumstances, until this matter is resolved through the pending legal action, the Commission must treat the application as not having been signed by the fee-owner of the property.

We respectfully request, that after the public testimony, Agenda Item 20 scheduled this Thursday to be continued until for December 12-14, 2012 Commission Hearing by which time we expect a decision to be rendered by the JAMS Arbitrator, Judge Haley Fromholz.

Very truly yours,



Paul B. George

PBG

Enclosure

cc: Mary Shallenberger, Chair of California Coastal Commission
Sherilyn Sarb, Deputy Director, CCC
Karl Schwing, Orange Co. Area Supervisor, CCC
Teresa Henry, District Manager, CCC
David Neish, DB Neish & Associates
Tim Paone, Cox Castle & Nicholson
Alan Kessel, Esq., Baker Hostetler
Robert O Hill, Golf Realty Fund

709678.0001/5502494.1

COASTAL COMMISSION

EXHIBIT # 9
PAGE 3 OF 6

Baker & Hostetler LLP

800 Anton Boulevard
Suite 900
Costa Mesa, CA 92626-7221

T 714.754.6600
F 714.754.6611
www.bakerlaw.com

October 5, 2011

Alan J. Kessel
direct dial: 714.966.8828
akessel@bakerlaw.com

VIA ELECTRONIC MAIL AND PERSONAL DELIVERY
(aharp@newportbeachca.gov)

Aaron Harp, Esq.
City Attorney
City of Newport Beach
3300 Newport Boulevard
Newport Beach, CA 92663

**Re: Response to Waldron & Bragg, LLP's September 9 Letter Re Newport Beach
County Club (the "NBCC Properties")**

Dear Mr. Harp:

This office represents Golf Realty Fund, in the ongoing arbitration with Mesa Shopping Center-East, LLC, Mira Mesa Shopping Center West, LLC (collectively, "MSC"), the Fainbarg Family Trust ("FFT"), Elliot Feuerstein and Irving Chase (together with MSC and FFT, "Mira Mesa").

We are responding to the September 9, 2011 letter addressed to Kimberly Brandt and copied to you, sent by Mira Mesa's counsel, John Olson, in which Mr. Olson incorrectly asserts that Golf Realty Fund was removed as the "Managing Owner" of the NBCC Properties, and has no authority to act. Judge Marks of the Orange County Superior Court rejected Mira Mesa's attempt to prevent Golf Realty Fund's exercise of its rights and duties as Managing Owner of the NBCC Properties by denying Mira Mesa's Preliminary Injunction Motion, in its entirety. Enclosed for your convenience is a copy of the Notice of Ruling Denying Mira Mesa's Preliminary Injunction Motion.

Golf Realty Fund is, and continues to remain, the Managing Owner of the NBCC Properties under the "Agreements between Real Property Owners" attached to Mr. Olson's letter (collectively, the "Agreements"). In fact, Golf Realty Fund's authority to act on behalf of the NBCC Properties and their Owners, including the processing of the entitlements now pending before the City, was recently reconfirmed by Judge Marks in her denial of Mira Mesa's Preliminary Injunction Motion, which sought to enjoin the processing of those entitlements.

COASTAL COMMISSION

Aaron Harp, Esq.
October 5, 2011
Page 2

EXHIBIT # 9
PAGE 4 OF 6

As evidenced by the Court's denial of Mira Mesa's Preliminary Injunction Motion, FFT is *not* the Managing Owner of the NBCC Properties and subsequently has no right to speak or act on behalf of the NBCC Properties. Mira Mesa is being sued by Golf Realty Fund for the very conduct and interference epitomized by its counsel's September 9 letter, and that letter's false statements that Golf Realty Fund purportedly is no longer the Managing Owner.

I apologize for having to take your time to respond to Mira Mesa's September 9 letter, and hope that Mira Mesa and its counsel will chose to confine the parties' ongoing arbitration to its proper venue, and subsequently will refrain both from further involving the City in that dispute, and from further interfering with the City's pursuit of its duties regarding the NBCC Properties.

The City has taken the position that the parties' disagreement is a civil matter which is not for the City to resolve. That has been, and remains, the correct and appropriate response. We appreciate the City's measured approach.

Thank you for your time and consideration.

Very truly yours,



Alan J. Kessel

cc: Kimberly Brandt AICP, Community Development Director
Michael Torres, Esq. Deputy City Attorney
Leonie Mulvihill, Esq., Assistant City Attorney
David Kiff, City Manager
Dana Smith, Assistant City Manager
Rosalinh Ung, Associate Planner

Michael Toerge, Newport Beach Planning Commission
Bradley Hillgren, Newport Beach Planning Commission
Robert Hawkins, Newport Beach Planning Commission
Fred Ameri, Newport Beach Planning Commission
Kory Kramer, Newport Beach Planning Commission

Tim Paone, Esq.
John S. Olson, Esq.
Paul B. George, Esq.

COASTAL COMMISSION

EXHIBIT # 9
PAGE 5 OF 6

BAKER & HOSTETLER LLP
ALAN J. KESSEL (State Bar No. 130707)
VIKKI L. VANDER WOUDE (State Bar No. 180087)
600 Anton Boulevard, Suite 900
Costa Mesa, California 92626-7221
Telephone: (714) 754-6600
Facsimile: (714) 754-6611
Email: akesel@bakerlaw.com
Email: vvanderwoude@bakerlaw.com

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

MAY 23 2011

ALAN CARLSON, Clerk of the Court

LANE POWELL PC
PAUL B. GEORGE (California State Bar No. 55147)
601 SW Second Avenue, Suite 2100
Portland, Oregon 97204-3158
Telephone: (503) 778-2100
Facsimile: (503) 778-2200
Email: georgep@lanepowell.com

BY H. MITCHELL DEPUTY

Attorneys for Defendants ROBERT O HILL, an individual; GOLF REALTY FUND LP, a California limited partnership, formerly known as NEWPORT BEACH COUNTRY CLUB, A CALIFORNIA LIMITED PARTNERSHIP; and O HILL CAPITAL, A CALIFORNIA LIMITED PARTNERSHIP, formerly known as O HILL PROPERTIES, A CALIFORNIA LIMITED PARTNERSHIP

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

MESA SHOPPING CENTER-EAST, LLC,
et al.,

Plaintiffs,

v.

ROBERT O HILL, et al.,

Defendants.

Case No. 30-2011-00451572

Assigned For All Purposes To:
The Honorable Linda S. Marks
Department C-7

**NOTICE OF RULING RE PLAINTIFFS'
MOTION FOR PRELIMINARY
INJUNCTION AND NOTICE OF POST-
ARBITRATION STATUS CONFERENCE**

Hearing Date: May 20, 2011
Time: 10:30 a.m.
Dept: C-7

Post-Arbitration Status Conference

Date: January 19, 2012
Time: 8:45 a.m.
Dept: C-7

Complaint Filed: February 18, 2011
Trial Date: None

503587981.1

NOTICE OF RULING RE PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that, on May 20, 2011, at 10:30 a.m., the Motion for
3 Preliminary Injunction filed by Plaintiffs Mesa Shopping Center-East, LLC, Mira Mesa Shopping
4 Center-West, LLC, and the Fainbarg Trust Dated April 19, 1982 (collectively, "Plaintiffs"), came
5 on for hearing in Department C-7 of the above-entitled Court before the Honorable Linda S.
6 Marks, Judge presiding. Gary A. Waldron and John S. Olson of Waldron & Bragg, LLP,
7 appeared on behalf of Plaintiffs. Alan J. Kessel and Vikki L. Vander Woude of Baker &
8 Hostetler LLP appeared on behalf of Defendants Robert O Hill, Golf Realty Fund LP, and O Hill
9 Capital.

10 After considering the pleadings and papers filed with the Court, and hearing oral
11 argument, the Court denied Plaintiffs' Motion for Preliminary Injunction in its entirety.

12 PLEASE TAKE FURTHER NOTICE that the Court has scheduled a post-arbitration
13 status conference for January 19, 2012, at 8:45 a.m., in Department C-7 of the above-entitled
14 Court.

15
16 DATED: May 20, 2011

BAKER & HOSTETLER LLP

17
18 By: 

19 Alan J. Kessel

20 Attorneys for Defendants ROBERT O HILL,
21 an individual; GOLF REALTY FUND LP, a
22 California limited partnership, formerly known
23 as NEWPORT BEACH COUNTRY CLUB, A
24 CALIFORNIA LIMITED PARTNERSHIP;
25 and O HILL CAPITAL, A CALIFORNIA
26 LIMITED PARTNERSHIP, formerly known as
27 O HILL PROPERTIES, A CALIFORNIA
28 LIMITED PARTNERSHIP

CHATTEN-BROWN & CARSTENS

TELEPHONE: (310) 798-2400
FACSIMILE: (310) 798-2402

2200 PACIFIC COAST HIGHWAY
SUITE 318
HERMOSA BEACH, CALIFORNIA 90254
www.cbcearthlaw.com

E-mail:
DPC@CBCEARTHLAW.COM

October 8, 2012

COASTAL COMMISSION

RECEIVED
South Coast Region

OCT 09 2012

California Coastal Commission
South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302

EXHIBIT # 10
PAGE 1 OF 7 CALIFORNIA
COASTAL COMMISSION

Re: Opposition to Approval of Coastal Development Approval for Newport
Beach Country Club, 1600 East Coast Highway; Agenda Item Th20c on
Thursday October 11, 2012

Honorable Commissioners,

On behalf of the Friends for Good Planning, we object to the approval of the Newport Beach Country Club, Inc (NBCC Inc.) Coastal Development Permit application (the Project). The present letter is a summary of those objections, though we do not set forth all of them fully here.

1. Water Quality in Newport Bay Would Be Adversely Affected.

The Project adds additional asphalt from the existing condition without adding adequate area for storm water to percolate. Thus over six acres of asphalt for the parking lot proposed by the Project will not significantly reduce storm water into Newport Bay from the existing condition; instead it will increase storm water runoff into Newport Bay. There is a superior "Master Plan" prepared with the input of Founding Golf Club Members, the landlord (Golf Realty Fund), Tennis Club Members, the previous Tenant, and Coastal Commission staff many years ago. A copy of the superior Master Plan is attached. (Enclosure 1.) It provides five large landscaped areas with slot curbs parallel to the drainage pattern towards Pacific Coast Highway which will significantly reduce storm drain water into Newport Bay from the existing and proposed condition.

The Staff Report Special Condition states that a Revised Water Quality Management Plan (RWQMP) must be prepared and issued prior to the issuance of the Coastal Development Permit. (Staff Report, p. 6.) Special Condition 2 requires submission of drainage/run-off plans prior to permit issuance. However, these conditions impermissibly defer development of mitigation measures until after project approval. The RWQMP and drainage/run-off plan must be developed and reviewed now, prior to approval because there are potentially significant water quality impacts that must be mitigated. Friends for Good Planning believes that the Water Quality Plan should be

prepared now, subject public comment and review by the public, California Coastal Commission Staff, and Commissioners prior to Coastal Commission approval. For the better health to water quality in Newport Bay we believe this process is very important and will result in a far superior Project.

The Project would also have water quality impacts to Newport Bay not only because of the enlarged parking and driving area but more importantly the design of the parking area which puts almost all storm water into storm drains through its extensive alteration of the topography of the area.

2. Pacific Coast Highway Traffic Would Be Adversely Impacted.

The significant landform alterations proposed result in an unnecessary import of dirt requiring trucks importing dirt eight hours per day for 3.25 months on Pacific Coast Highway. The unnecessary importation of dirt would be an unaesthetic addition to the area.

3. Views of Open Space in the Coastal Zone Would Be Diminished.

There are views of the golf course including the flag on the 18th green and at the entry enjoyed by the public from Pacific Coast Highway which the Project virtually eliminates. Prior to approval a visual analysis should be prepared so that Coastal Commission Staff and the Commission can properly evaluate those public open space view impacts within the Coastal Zone.

New development must restore and enhance the visual quality and protect public open space views in the Coastal Zone, not permanently interfere with the views and view restoration.

4. The Project Size Would Violate the Coastal Land Use Plan.

The General Plan's Land Use Element, and consequently its Coastal Land Use Plan, limits development on the project site to 35,000 square feet. (General Plan Land Use Element, p. 3-19.)¹ The Project is not consistent with the Coastal Land Use Plan or

¹ A copy of this portion of the Newport Beach General Plan is available at http://www.newportbeachca.gov/PLN/General_Plan/04_Ch3_LandUse_web.pdf. The relevant area is designated as "Anomaly No. 74" in Statistical Area L1 (Newport Center/Fashion Island) of the General Plan Land Use Element and is limited to 35,000 square feet of development. The City's amendment of this limitation up to 56,000 square feet of development from 35,000 square feet is currently under challenge in Orange County Superior Court. (Staff Report, Exhibit 6, p. 11 of 62.)

the Coastal Act because it proposes development of a 69,088 square foot facility. (Staff Report, p. 1.) Coastal Land Use Plan policies would be violated by the approval of development and creation of traffic in excess of what is contemplated by the General Plan's limitation of site development to 35,000 square feet.

The Staff Report, borrowing an incorrect assertion from the applicant's letter almost verbatim (see Staff Report Exhibit 6, p. 54 of 62), states "no amendment to the Coastal LUP is required and the Coastal LUP does not contain a development limit similar to the General Plan." (Staff Report, p. 11.) However, as stated in the Coastal Land Use Plan:

The Coastal Land Use Plan was derived from the Land Use Element of the General Plan and is intended to identify the distribution of land uses in the coastal zone. The Land Use Element may contain more precise development limits for specific properties. Should a conflict exist, the land use intensity or residential density limit that is most protective of coastal resources shall take precedence. However, in no case, shall the policies of the Coastal Land Use Plan be interpreted to allow a development to exceed a development limit established by the General Plan or its implementing ordinances.

(Coastal Use Plan, p. 2-1, available at http://www.city.newport-beach.ca.us/PLN/LCP/Internet%20PDFs/CLUP_Part%202_Land%20Use%20and%20Development.pdf.) Since the Coastal Land Use Plan may not be interpreted to allow development to exceed the limit established in the General Plan, the Project may not be approved.

Conclusion

In summary, the Project violates the Coastal Act. We request the Commission deny approval of the Project because of its violations of the Coastal Act. If the Project is not denied, it should be continued at least until such time as a RWQMP has been prepared for the Project and for the superior plan, the Project proposes an alternative to eliminate the unnecessary import of tons of dirt on Pacific Coast Highway over the span of 1 1/2 months, a visual view analysis has been prepared from Pacific Coast Highway, and the Orange County Superior Court rules on the validity of the City's amendment of its General Plan limitations on development of the Project site and the environmental review supporting the Project approval.² If the Commission proceeds with considering approval of the Project, we urge you to require the preparation of a RWQMP and a public open space and view analysis from Pacific Coast Highway.

² A hearing of this case is currently scheduled for February 4, 2013.

California Coastal Commission
October 8, 2012
Page 4

COASTAL COMMISSION

EXHIBIT # 10
PAGE 4 OF 7

Thank you for your consideration of these views.

Sincerely,



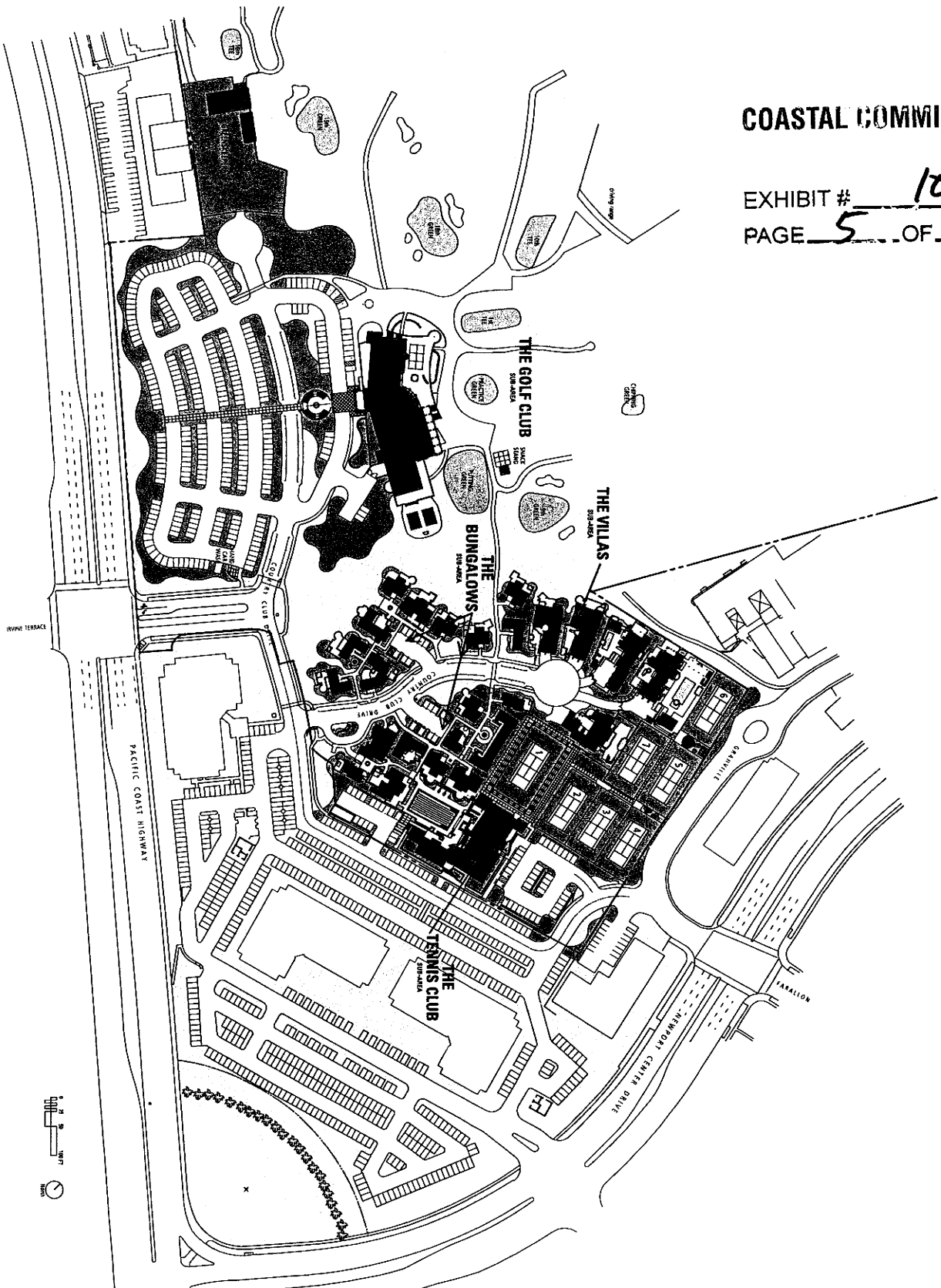
Douglas P. Carstens

Enclosure:

Master Plan, NBCC Planned Community with IBC & Property Owner's Plan
Comparison

COASTAL COMMISSION

EXHIBIT # 10
PAGE 5 OF 7



MASTER PLAN

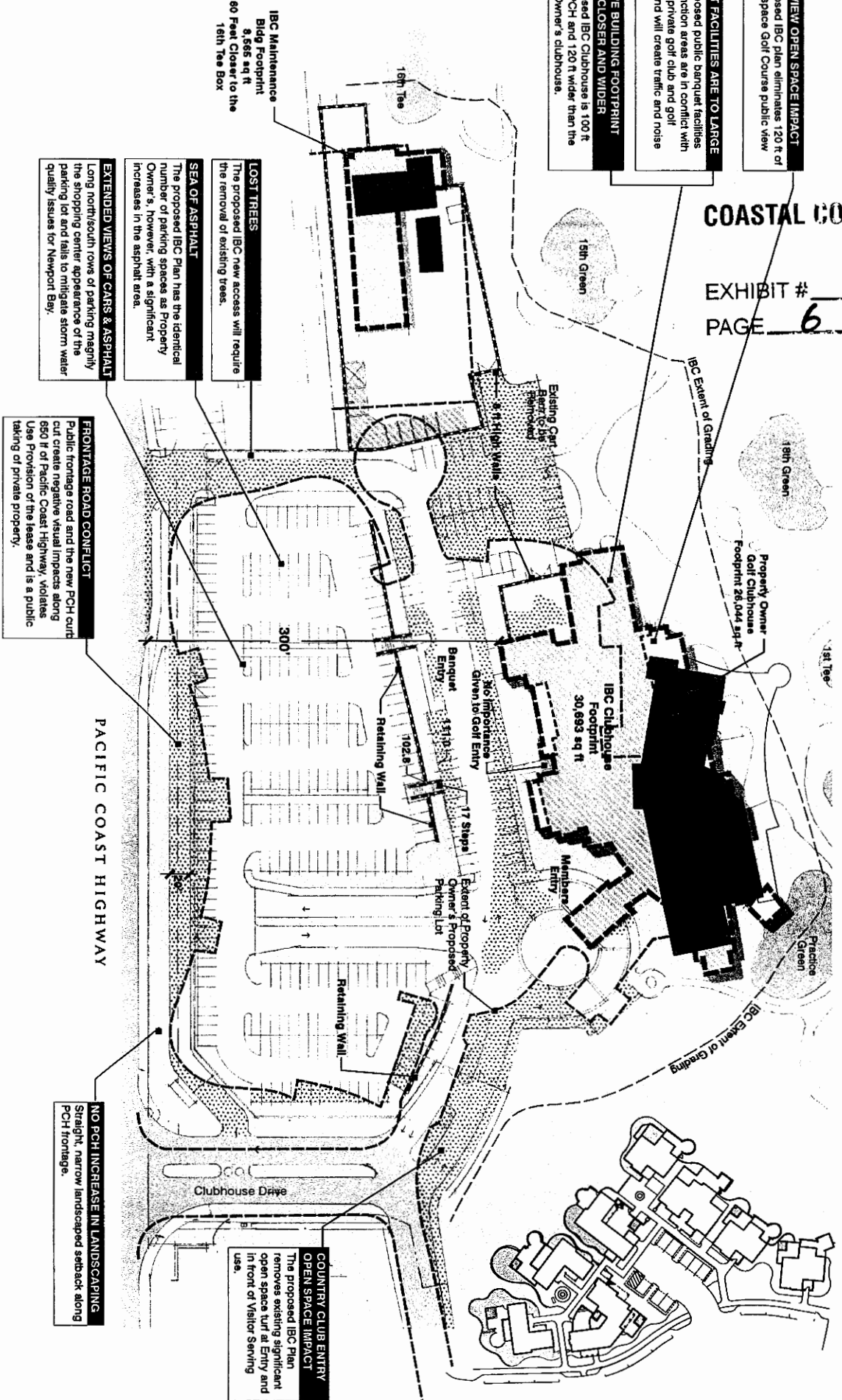
- THE GOLF CLUB - Sub-Area
 - Golf Clubhouse
 - snack stand
 - greenskeeper buildings
 - hand car wash area
- THE TENNIS CLUB - Sub-Area
 - 1 new stadium court
 - Tennis Clubhouse
- THE VILLAS - Sub Area
 - 5 single family homes
- THE BUNGALOWS - Sub Area
 - 27 guest rental units

NBCC
Planned Community

ARCHITECTURE
500 Broadway Laguna Beach CA 92651
949 376 1160 FAX 949 376 1560

EXHIBIT
1
1 OF 1

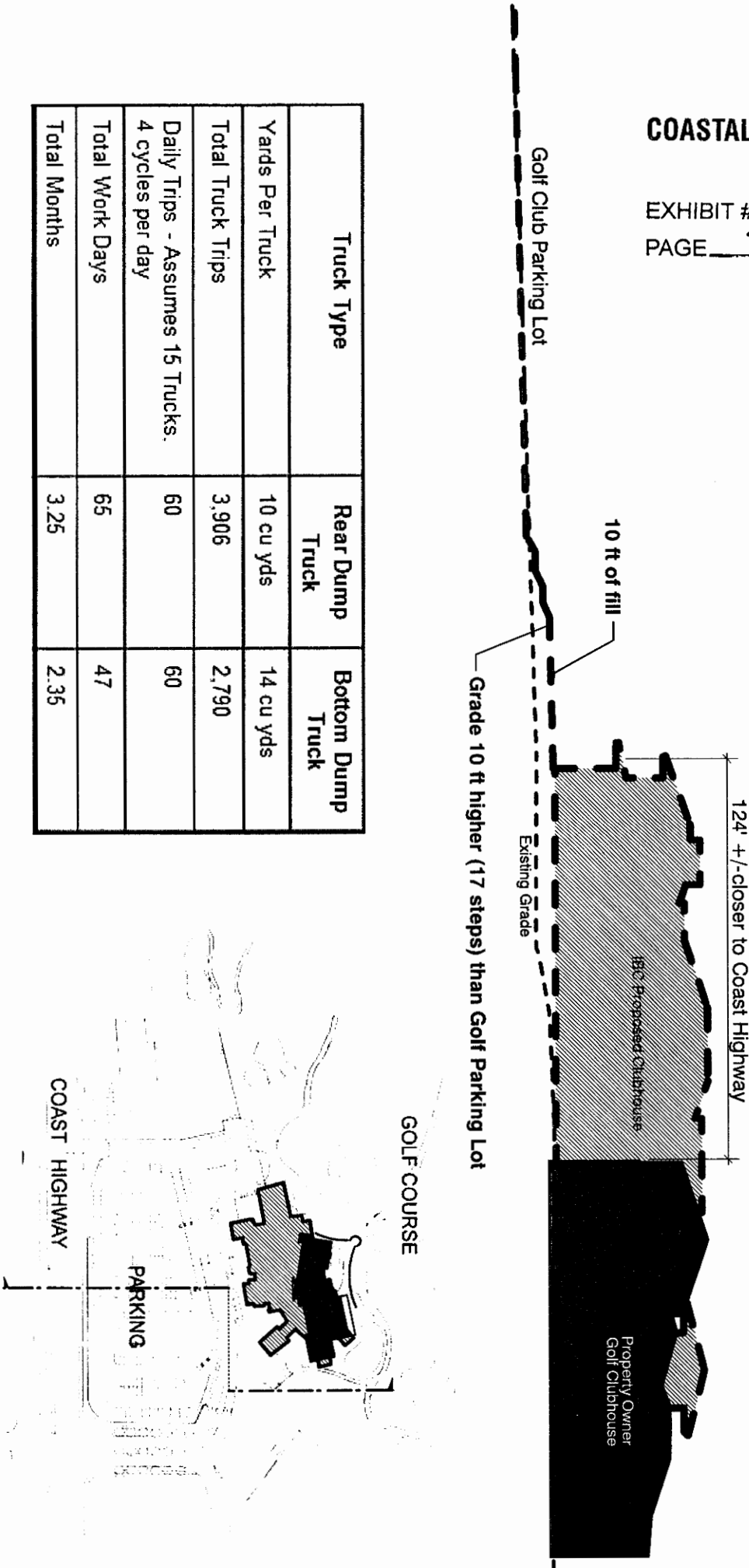
EXHIBIT # 10
PAGE 6 OF 7



COASTAL COMMISSION

EXHIBIT # 10
PAGE 1 OF 7

Truck Type	Rear Dump Truck	Bottom Dump Truck
Yards Per Truck	10 cu yds	14 cu yds
Total Truck Trips	3,906	2,790
Daily Trips - Assumes 15 Trucks, 4 cycles per day	60	60
Total Work Days	65	47
Total Months	3.25	2.35



GOLF CLUBHOUSE SITE SECTION COMPARISONS