

CALIFORNIA COASTAL COMMISSION

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W18b

Filed:	8/28/12
180th Day:	2/24/13
270 th Day:	5/25/13
Staff:	L. Roman-LB
Staff Report:	3/21/13

STAFF REPORT: REGULAR CALENDAR

Application No.: 5-12-160

Applicant: Golf Realty Fund

Agent: D.B. Neish, Inc.

Project Location: 1602 E. Coast Hwy, Newport Beach (Orange County)

Project Description: Demolition of an existing 3,725 sq. ft. tennis clubhouse, 125 space surface parking lot and 18 out of 24 tennis courts and construction of a new 3,725 sq. ft. tennis clubhouse including pro shop, lobby, office and locker rooms, a new tournament size tennis court, swimming pool, storage shed and 38 parking spaces; Tentative Parcel Map to subdivide the two underlying lots into eleven lots; construction of 5 single family residences (from 2,201 – 6,384 sq. ft.) and 27 rental bungalows (from 570 – 2,485 sq. ft.) with a 2,170 sq. ft. Guest Center and 7,490 sq. ft. Spa/Fitness Center, Spa Bar, and 50 parking spaces; hardscape and drainage improvements and new landscaping on a 7 acre inland site formerly known as the Balboa Bay Racquet Club.

Staff Recommendation: Approval with conditions.

SUMMARY OF STAFF RECOMMENDATION

The applicant, Golf Realty Fund LP proposes in this coastal development permit application #5-12-160, the redevelopment of an existing 7 acre private tennis club site, formerly known as the Balboa Bay Racquet Club, including a Tentative Parcel Map to subdivide two underlying lots into eleven lots for the construction of 5 new single family residences and a 27 unit boutique hotel/rental bungalow development with a 2,170 sq. ft. Guest Center and 7,490 sq. ft. Spa/Fitness

Center, and Spa Bar, all to be made available for short-term rental opportunities for the general public. The redevelopment of the tennis club includes the demolition of the existing clubhouse, 18 out of 24 tennis courts, and surface parking and construction of a new 3,725 sq. ft. tennis clubhouse, pro shop, lobby, office and locker rooms, a tournament size tennis court, swimming pool, storage shed, plus hardscape, drainage improvements, and new landscaping. The proposed mixed use project would redevelop an existing private Tennis Club, and include new hotel (overnight accommodations) and residential uses. The proposed project is allowable at this site because the site is designated Mixed Use Horizontal/Parks and Recreation (MU-H/PR) in the certified Newport Beach Coastal Land Use Plan (Coastal LUP). The construction of overnight accommodations on this site which was previously a private club will not adversely impact the existing inventory of low-cost overnight accommodations available to the public since none currently exist on the site and, thus, none are being displaced by the proposed development. Furthermore, the site wasn't previously identified for priority visitor serving opportunities and would not have an adverse affect on priority visitor-serving opportunities in the area. CDP application 5-12-160 only applies to the 7 acre tennis club property.

Fee title interest in the property is jointly held by the applicant, Golf Realty Fund LP with the other 50% of the fee interest in the property belonging collectively to Fainbarg-Feuerstein Properties (comprised of the Fainbarg Family Trust, Mesa Shopping Center East LLC, and Mira Mesa Shopping Center West LLC), which is not a co-applicant on this application. This item was originally scheduled on the Commission's February 2013 agenda, however, the item was postponed and a 90 day extension from the 180th day deadline granted in order allow time for an arbitration judge to settle a dispute between owners of the property regarding a perceived exclusive right to act on behalf of all of the fee owner. This dispute was one 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 applicant that the existing ownership agreement gives Golf Realty Fund LP the legal ability to apply for this coastal development permit when staff filed the application as complete. Commission staff has been advised that the arbitration judge has ruled in favor of the applicant, Golf Realty Fund LP, however, the applicant has not yet submitted the official arbitration decision to staff to ensure that the applicant has the legal ability to comply with this permit's conditions of approval. Therefore, staff recommends the Commission impose **Special Condition 8** requiring the applicant 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. As of the date of this staff report, Commission staff was advised that the co-owners, Fainbarg-Feuerstein Properties do not oppose the proposed development.

Staff is recommending APPROVAL of the proposed project with eight (8) special conditions regarding: 1) Revised Final WQMP; 2) final drainage plan/runoff control plan; 3) Regional Water Control Board approval; 4) compliance with construction responsibilities and debris removal measures; 5) landscaping; 6) future improvements; 7) liability for costs and attorneys fees; and 8) 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.

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.

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APPENDICES

Appendix A – Substantive File Documents

EXHIBITS

- Exhibit 1 – Area Map
- Exhibit 2 – Vesting Tentative Tract Map
- Exhibit 3 –Existing Conditions Site Plan
- Exhibit 4 – Overview Master Plan and Parking Plan & Circulation Plan
- Exhibit 5 – Preliminary Landscape Plan
- Exhibit 6 – Tennis Clubhouse & Bungalow Spa Plans
- Exhibit 7 – Single Family Residences-“Villas” Plans
- Exhibit 8 – Guest Rental Units “Bungalows” and Guest Center Plans
- Exhibit 9 – Preliminary Precise Grading Plan and Erosion Control Plan
- Exhibit 10 – Post Construction WQMP Plan

I. MOTION AND RESOLUTION

Motion:

*I move that the Commission **approve** Coastal Development Permit No. 5-12-160 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 5-12-160 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 Adams, Streeter Civil Engineers, Inc., dated August 14, 2012 and prepared and certified by an appropriate professional revised to address the following:
 - All runoff for all of the proposed development that enters the storm drains shall be conveyed to filtration treatment systems to treat and remove pollutants from the runoff before discharge into coastal waters. 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 surface runoff into landscape areas, permeable paving, or other approved methods aimed to achieve a reduction in water runoff.
 - Direct rooftop downspout flows to vegetated/landscaped 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.
 - 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 consistent with the approved final plan, 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 drainage/runoff control plans for each of the proposed new lots to the Executive Director for review and approval. The drainage/run-off control plans shall demonstrate that at a minimum the project will assure that on all newly created lots:

- (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 all pollutants contained in the run-off prior to discharge;
- (5) 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;
- (6) 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,
- (7) 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. **Regional Water Control Board Approval.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall provide to the Executive Director a copy of a permit issued by the Regional Water Control Board, or letter of permission, or evidence that no permit or permission is required. The applicant shall inform the Executive Director of any changes to the project required by the Regional Water Control Board. Such changes shall not be incorporated into the project until the applicant obtains a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.
4. **Landscaping – Drought Tolerant, Non-Invasive Plants.** The applicant shall install landscaping in strict compliance with the landscape plan received on June 8, 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 subject site that does not conform to the above requirements shall be removed. The use of pesticides and herbicides shall be prohibited.
5. **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.

6. **Future Improvements.** This permit is only for the development described in Coastal Development Permit No. 5-12-160. 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. 5-12-160 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

7. **Liability for Costs and Attorneys Fees.** By acceptance of this permit, the Applicant (Golf Realty Fund) agrees 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.

8. **Proof of Legal Ability to Comply with Conditions.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall demonstrate his legal ability or authority to comply with all the terms and conditions of this coastal development permit by submitting information indicating approval from all record title property owners or 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 applicant's ability 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 1602 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 Mixed Use Horizontal/Parks and Recreation (MU-H/PR), the proposed mixed use project including a Tennis Club, rental bungalows and residential uses 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 a 7 acre inland site developed with "The Tennis Club" formerly known as the Balboa Bay Racquet Club, a private tennis club with 24 tennis courts, a 3,725 sq. ft. tennis clubhouse and 125 surface parking spaces (Exhibit #3, page 2). The applicant proposes demolition of 18 of the 24 tennis courts, demolition of the existing 3,725 sq. ft. tennis clubhouse and 125 space surface parking lot and construction of a new 3,725 sq. ft. tennis clubhouse including pro shop, lobby, office and locker rooms, retention of six tennis courts and construction of a new tournament size tennis court, swimming pool, and storage shed. Thirty-eight (38) parking spaces are proposed to accommodate the Tennis Club. Tennis clubhouse plans are included in Exhibit #6.

The applicant also proposes a Tentative Parcel Map to subdivide the two underlying lots into eleven lots. The Tentative Parcel Map is included as Exhibit #2. Numbered lots 1-5 would accommodate the construction of five single family residences referred to as “the villas” (ranging from 2,201 – 6,384 sq. ft.). Individual site plans for each of the proposed five single-family residences including floor plans and elevations are included in Exhibit #7. Lots 6 and 7 would accommodate the construction of a total of 27 small boutique hotel short-term guest rental units referred to as “the bungalows” ranging from 570 – 2,485 sq. ft. and ranging from single to two-story structures, each with private courtyards and jacuzzi spas. A 2,170 sq. ft. Bungalow Guest Center and 7,490 sq. ft. Spa/Spa Bar/Fitness Center is proposed for use of bungalow guests. Individual site plans for proposed bungalows including floor plans and elevations are included in Exhibit #8. Additionally, lettered lots A-D in the proposed Tentative Parcel Map comprise four more lots of common area open space/landscape and a new private street for access purposes to the proposed single-family residences and guest rental units.

Each residential lot will accommodate 4 parking spaces (two covered, two uncovered) for a total of 20 parking spaces. Fifty (50) parking spaces are proposed to accommodate the 27 rental bungalows and Spa/Fitness Center. Thirty-eight (38) parking spaces are proposed to accommodate the Tennis Club. The applicant has a parking easement with the adjacent Corporate Plaza Center for use of 188 surface parking spaces after hours and on the weekends. A parking and circulation plan is included as Exhibit #4.

New landscaping is proposed utilizing non-invasive, drought tolerant plant palette such as California oaks, California sycamores, sage, rosemary, bougainvillea, aloes and succulents amongst many other non-invasive, drought tolerant plant species. The proposed preliminary landscape plan is included as Exhibit #5.

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. A Water Quality Management Plan is proposed which incorporates some water quality BMPs to treat the surface runoff before discharge (described further below).

The Land Use Plan and Land Use and Development policies of the certified Coastal LUP designates the site as Mixed Use Horizontal (MU-H). This use is intended to provide for a “horizontally distributed mix of uses” which may include general commercial, offices, multi-family residential, visitor serving and marine-related uses and/or buildings that vertically integrate residential with commercial uses. Section 2.1.8 in the certified Coastal LUP directly addresses the Balboa Bay Tennis Club site as follows: “Located in Newport Center, the Balboa Bay Tennis Club is designated MU-H/PR. This is in recognition of the private recreational tennis courts and the potential development of short-term rental bungalows and a limited number of single-family homes.” Furthermore, Policy 2.1.8-1 states: “Allow the horizontal intermixing of short-term rental units and single-family homes with the expanded tennis club facilities. Permitted uses include those permitted by the MU-H and PR categories.” Therefore, the proposed project is consistent with the Coastal LUP and would not prejudice the City’s ability to prepare an LCP that is in conformity with Chapter 3 policies of the Coastal Act.

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

Fee title interest in the property is jointly held by the applicant, Golf Realty Fund LP with the other 50% of the fee interest in the property belonging collectively to Fainbarg-Feuerstein Properties (comprised of the Fainbarg Family Trust, Mesa Shopping Center East LLC, and Mira Mesa Shopping Center West LLC), which is not a co-applicant for this CDP application. There was a dispute between owners of the property regarding a perceived exclusive right to act on behalf of all of the fee owners. This dispute was one between co-owners and the primary issues do not involve the Coastal Act or the Coastal Commission. Commission staff had a phone conversation on March 14, 2013 with the applicant's agent who told staff that an arbitration judge has reached a resolution related to their Co-Owners Agreement dispute finding Golf Realty Fund as the Managing Owner and clarifying what powers are granted to the Managing Owner. However, the applicant has not yet submitted the official arbitration decision to staff to ensure that the applicant has the legal ability to comply with this permit's conditions of approval. With regard to the applicant's ability to comply with the conditions of approval of this permit, the Commission imposes **Special Condition 8** requiring the applicant demonstrate his 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.

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. Urban runoff can contain pollutants such as sediment, nutrients, oxygen-demanding substances, road salts, heavy metals, petroleum hydrocarbons, pathogenic bacteria, viruses, and pesticides.¹ Notably, significant adverse impacts on marine resources from polluted runoff include, but are not limited to, declines in aquatic biological populations (including anadromous fish), eutrophication, toxicity in marine organisms (including shellfish) and declines in aquatic vegetation.²

Under existing conditions, water runoff from the project site generally sheet flows in a southwesterly direction through the parking lot, which contains, at a minimum, heavy metals and petroleum hydrocarbons from vehicles on its surface, and is conveyed to the public storm drain ultimately discharging into Newport Harbor untreated, thereby causing adverse impacts on the biological productivity and quality of coastal waters.

The proposed redevelopment of the site, currently the Balboa Bay Racquet Club, includes demolition of all improvements (i.e., clubhouse, surface parking lots, tennis courts) on the site except for six out of 24 existing tennis courts offers the opportunity for state of the art water quality improvements. 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 applicant also provided a Water Quality Management Plan (WQMP) by Adams, Streeter, Civil Engineers, Inc. dated August 2012. The WQMP identifies 85.2% of the existing site as impervious; post-construction the proposed project would result in 72.9% impervious area, an overall reduction of 12.3% due to removal of the majority of tennis courts and an increase of pervious areas between the proposed new single family residences and rental bungalows (Exhibit #10).

The WQMP identifies 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 a bio-retention basin area at both of the proposed surface parking lots, construction of vegetated swales or vegetated filter strips between the proposed five residential "villas," collection of water runoff from proposed new streets and the rental "bungalows" via catch basins and treatment of runoff water through media filter at a single location before final discharge into the public storm drain (Exhibit #10). However, none of the actual structural BMPs proposed in the WQMP are depicted in the submitted architectural project plans or the submitted precise grading plans. The submitted Precise Grading Plans also

¹ State Water Resources Control Board, Urban Runoff Technical Advisory Committee Report (November 1994), page 2.

² Ibid.

prepared by Adams, Streeter, Civil Engineers, Inc. are dated May 2, 2008 and do not reflect any of the proposed WQMP BMPs; those grading plans simply show the location of proposed drain inlets and catch basins and depict roof drains all connected directly to drain pipes leading directly to the City's storm drain system. None of structural BMPs proposed in the WQMP are depicted in a detailed drainage plan showing grade contour elevations are not depicted on the proposed plans as proposed by the WQMP. It is unclear from the submitted plans whether building roof downspouts will be connected to vegetated swales/filter strips as proposed by the WQMP.

There are numerous opportunities for the creation of greater pervious areas that capture and allow increased percolation of water runoff into the ground, especially in the proposed residential parcels, such as construction of driveways and walkways using porous materials (crushed gravel, concrete grid, cobblestones) to allow increased percolation of runoff into the ground, of porous materials along driveways and on site infiltration. Therefore, **Special Condition 1** requires the applicant provide, prior to issuance of the coastal development permit, a final revised WQMP including an increased selection of water quality BMPs and the standards that must be met, including the standard that all runoff from the proposed development shall be treated to remove pollutants before any runoff enters 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., bio-retention basins in the parking lots, porous pavement materials where feasible such as patios, side yards, driveways and within parking lots) ensuring that the drainage plan effectively minimizes the adverse impact on coastal waters and marine resources from runoff from impervious surfaces through directing that runoff into infiltration systems. Furthermore, Special Condition 2 also requires an on-site media filter treatment system prior to discharge into the public 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 (as determined by the local historical record), 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 from fertilizers

and pesticides/herbicides 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 www.water.ca.gov/wateruseefficiency/docs/wucols00.pdf.

As submitted, new landscaping in the vicinity of the new clubhouse, villas and bungalows 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 4** 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 5**, 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.

Building heights for the proposed new structures range from 18’ above finished floor for “the bungalows,” 32’ for “the villas” and 30’ for the private tennis clubhouse. The proposed new clubhouse, single family residences and short-term rental bungalows and all other ancillary structures meet the City’s height limits for the area. The subject site is located at 1602 East Coast Hwy in the City of Newport Beach, access to the Newport Beach Tennis 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 tennis club clubhouse or the tennis courts 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 structures. 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. The proposed residential development is designed to be compatible with the character of existing residential development to the north along Granville and with a variety of large 2-story office buildings (e.g. at 1400 Newport Center Drive) to the south 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 site is not along the beach, on a coastal bluff, coastal cliff, coastal canyon or any other natural landform. The redevelopment of the site will not result in any significant alteration to natural landforms. Proposed grading consists of 11,500 cu. yds. of cut and 12,900 cu. yds. of fill (net import of 1,400 cu. yds.) across the 7 acre site for soil re-compaction preparation of the site for the proposed new improvements. The proposed grading will not alter any natural landform in any manner that would visually degrade the area. Furthermore, as previously stated, the proposed new clubhouse, ancillary structures and new residential 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 30213 of the Coastal Act states in relevant part:

Lower cost visitor and recreational facilities shall be protected, encouraged and where feasible, provided. Developments providing public recreational opportunities are preferred.

The Commission shall not: (1) require that overnight room rentals be fixed at an amount certain for any privately owned and operated hotel, motel, or other similar visitor-

servicing facility located on either public or private lands; or (2) establish or approve any method for the identification of low or moderate income persons for the purpose of determining eligibility for overnight room rentals in any such facilities.

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.*

Public Access to the Coast

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. There is no direct public access to the coast from the subject site adequate public access to the coast is (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.

Lower Cost Visitor and Recreational Facilities

The subject site is currently developed with a private tennis club facility. The applicant proposes to redevelop the private Tennis Club site with a mixed use project retaining the private tennis club use and include new hotel (overnight accommodations) and residential uses. The proposed project is allowable at this site because the site is designated Mixed Use Horizontal/Parks and Recreation (MU-H/PR) in the certified Newport Beach Coastal Land Use Plan (Coastal LUP). The construction of overnight accommodations on this site which was previously a private club will not adversely impact existing inventory of lower cost visitor overnight accommodations or recreational facilities available to the public.

Parking

When a private development does not provide adequate on-site parking, users of that development who arrive by automobile are forced to occupy public parking used by visitors to the coastal zone. Thus, all private development must provide adequate on-site parking to minimize adverse impacts on public access.

As proposed, the entire site will be re-developed; the existing 125 surface parking spaces on the site will be replaced by new development resulting in a loss of 17 parking spaces. Per City of Newport parking requirements, the development requires 77 parking spaces, the proposed project results in a total of 108 on-site parking spaces. The City of Newport Beach parking requirements are demonstrated on the chart below:

Use	Proposed Spaces Parking	Parking Spaces Required
Tennis Clubhouse/Spa	38 total	28
Hotel: 27 Bungalows	50 total	34
Residential: 5 Villas	20 total	2 enclosed spaces per residence , one open off-street guest parking space per residence

Total: 108 spaces proposed Total: 77 spaces required

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. 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 7** 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) #PA2005-140 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
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