

CALIFORNIA COASTAL COMMISSION

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W13b

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STAFF REPORT: MATERIAL PERMIT AMENDMENT

Amendment

Application No.: 5-10-298-A3

Applicant: Advanced Group 99-D

Agent: Brion Jeannette Architecture

Project Location: 201-205 Carnation Ave, 207 Carnation Ave, and a portion of 101 Bayside Place, Newport Beach (Orange County) (APN: 199-064-55)

Description of Project
Previously Approved by
CDP No. 5-10-298:

Demolition of an existing 13,688 sq. ft., 4-level, 14-unit apartment building while retaining existing on-grade stairway on the bluff face and existing two-slip dock system; demolition of a 2,810 sq. ft. single-family residence, and construction of a new 51,124 sq. ft., 7-unit, 33-feet tall, 5-level condominium structure (three levels visible from grade/street level and all five levels visible from the seaward side) with 18 parking spaces and common amenities including a fitness facility, meeting room, patio, pool and spa; hardscape and landscaping improvements; grading consisting of 9,810 cu. yds. of cut; lot line adjustment to merge a 584 sq. ft. portion of 101 Bayside Place with the parcel identified as 201-205 Carnation Avenue and with the parcel identified as 207 Carnation Ave into one single 61,284 sq. ft. lot for residential purposes; and tentative tract map to subdivide the air space for seven residential condominium units.

**Description of Project
Approved by CDP Amendment
No. 5-10-298-A1 in 2013:**

Immaterial Amendment for construction of two additional caissons to the 31 already approved and for installation of three sewer ejector pumps.

**Description of Project
Approved by CDP Amendment
No. 5-10-298-A2 in 2013:**

Immaterial Amendment to re-design of the project's pool and spa including changes to the patio deck spaces of units 2 through 7 resulting in a total reduction of 781 sq. ft. of enclosed building area; 14 sq. ft. of additional grading; plus the addition of a 432 sq. ft. roof deck with parapet.

**Description of
Pending CDP Amendment
No. 5-10-298-A3:**

Installation of a new below-grade 4-inch fire line with utilities on the bluff from the 50.7-foot contour line to the point of connection at the pier/gangway at the waterside of the existing concrete pad to supply water for the installation of two fire hydrants on the dock.

Staff Recommendation: Approval with conditions.

SUMMARY OF STAFF RECOMMENDATION

The subject application requests installation of a new 4-inch diameter water pipeline buried down the bluff face from the 50.7-foot bluff contour line down to the bluff bottom to the point of connection at the pier/gangway at the waterside of the existing concrete pad in order to supply water for the installation of two fire hydrants on the residential dock shared by the seven (7) condominiums on the site.

The subject 7-unit condominium development known as the Aerie Development was approved by the Commission in 2011 by CDP 5-10-298. Prior to Commission approval of the CDP, the Aerie Development was reviewed and approved by the City of Newport Beach City Council on July 14, 2009 (PA 2005-196 and AIC 2010027). The City approval included a Fire Department-required condition to provide Class III standpipes (fire hydrants) on the proposed private residential docks included as part of the

residential project. The applicant did not include the dock demolition and re-construction as part of the land-side development under CDP 5-10-298, and submitted a CDP application for the water-side development separately. In 2013, the Commission approved CDP 5-12-214 for demolition of a 547 sq. ft. floating dock system and construction of a new 1,765 sq. ft. floating dock system. Although the City permit included special conditions requiring the applicant to provide fire hydrants on the dock in 2009, neither subsequent CDP application (CDP 5-10-298 for the land-side development and CDP 5-12-214 for the water-side development) included the required pipeline to supply water to the Fire Department-required dock fire hydrants.

Construction of the Aerie project is near completion. To comply with the City-required installation and operation of fire hydrants on the dock, the applicant is requesting this CDP Amendment 5-10-298-A3 to bury a 4-inch water pipeline with appropriate utilities from the City's main water line on Carnation Avenue, around the north bluff side of the building (outside of the building's footprint), down the west-facing bluff approximately parallel to existing private concrete stairs down the bluff face and down to the reconstructed private shared dock.

Staff is recommending approval of the proposed coastal development permit amendment with a modification of the underlying CDP Special Condition 14 regarding Final Project Plans and two new special conditions regarding construction phase pollution prevention and payment of permit amendment fees.

Commission staff recommends that the Commission **APPROVE** coastal development permit application 5-10-298-A3, as conditioned. The motion is on page 6. The standard of review is the Newport Beach LCP and the public access and recreation policies of the Coastal Act.

The Commission's regulations provide for referral of permit amendment requests to the Commission if:

- 1) The Executive Director determines that the proposed amendment is a material change, or
- 2) Objection is made to the Executive Director's determination of immateriality, and at least three Commissioners object to the executive directors' designation of immateriality at the next Commission meeting, or the Executive Director determines that the objection raises an issue of conformity with the Coastal Act or certified Local Coastal Program.

The Executive Director has determined that the proposed amendment is a material change that affects conditions required for the purpose of protecting coastal resources.

Section 13166(a) of the Commission's Regulations also calls for the Executive Director to reject a permit amendment request if it would lessen or avoid the intended effect of the previously approved permit.

The proposed amendment would not lessen the intended effect of Coastal Development Permit No. 5-10-298-A3 envisioned in the Commission's June 2011 action approving the project with conditions. Therefore, the Executive Director accepted the amendment request.

PLEASE NOTE THAT THIS WILL BE A VIRTUAL MEETING. As a result of the COVID-19 emergency and the Governor's Executive Orders N-29-20 and N-33-20, this Coastal Commission meeting will occur virtually through video and teleconference. Please see the Coastal Commission's Virtual Hearing Procedures posted on the Coastal Commission's webpage at www.coastal.ca.gov for details on the procedures of this hearing. If you would like to receive a paper copy of the Coastal Commission's Virtual Hearing Procedures, please call 415-904-5202.

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EXHIBITS

[Exhibit 1 – Vicinity Map](#)

[Exhibit 2 – Site Photographs](#)

[Exhibit 3 – Project Plans](#)

[Exhibit 4 – Certified LCP Bluff Setback Map #B-5, Carnation Avenue](#)

[Exhibit 5 – Vegetation Map/Landscape Plan approved under CDP 5-10-298](#)

I. MOTION AND RESOLUTION

Motion:

I move that the Commission **approve** the proposed amendment to Coastal Development Permit 5-10-298-A3 pursuant to the staff recommendation.

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

Resolution:

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

II. SPECIAL CONDITIONS

NOTE: Appendix B, attached, includes all standard and special conditions that apply to this permit, as approved by the Commission in its original action and modified and/or supplemented by all subsequent amendments, including this amendment number A3. All of the Commission's adopted special conditions, and any changes in the project description proposed by the applicant and approved by the Commission in this action, continue to apply in the most recently approved form unless explicitly changed in this action. This will result in one set of adopted standard and special conditions. New conditions and modifications to existing conditions imposed in this action are shown in the following section.

Unless specifically altered by this amendment, all standard and special conditions attached to Coastal Development Permit 5-10-298, as amended through amendment number A3 and reflected in Appendix B, remain in effect.

14. Modification of Special Condition No. 14 of Original Permit

Special Condition No. 14 of the original permit, CDP 5-10-298, shall be modified as indicated below. Language to be deleted is shown in ~~strikeout~~ and new language is shown **underlined and bold**.

FINAL PROJECT PLANS

A. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the

applicant shall submit, for the Executive Director's review and approval, two (2) full size sets of final revised project plans with City of Newport Beach Approval in Concept. The final revised project plans shall be in substantial conformance with the plans dated April 11, 2011 and submitted to the Commission on May 9, 2011 and conform to the requirements of the special conditions of this permit and indicate the final layout of all development including but not limited to: grading, buildings, water quality management system, decks and existing docks and piers. No work to the existing docks and piers is authorized by this coastal development permit approval. The plans shall be revised to include the following:

1. Depiction of all existing development on the site, including the existing bluff stairs and the existing dock system configuration as no demolition or work is proposed for the site below the 50.7' elevation contour and no dock structure replacement is authorized by this permit.
2. Depiction of proposed park bench and drinking fountain view corridor access improvements outside of the project property line on the public-right-of-way at the corner of Ocean Blvd. and Carnation Ave.
3. No development shall be sited seaward of the Predominant Line of Existing Development (PLOED) at elevation 50.70' (e.g., grading, enclosed living space, cantilevered decks, cantilevered patios, fences, guardrails and cantilevered pool areas).
4. No development (e.g. grading, foundations, structures, etc.) shall occur below the PLOED at elevation 50.70' except as follows: i) to install the 33 caissons/piles for the pile-supported retaining wall depicted on the amended Shoring Plan dated July 2, 2013 and any tieback anchors), ii) for 24" deep footings below the concrete slab bottom at 50.7' elevation to support structural internal and perimeter building foundation walls, iii) slab waterproofing systems between native soils and slab, iv) sewer to serve the proposed development; v) on site drainage pipes underneath the slab; vi) three sewer ejector pumps just inside the Carnation Avenue property line requiring excavation of three pits approximately 54 inches in diameter and 144 inches below the 50.70' elevation, **and vii) a 4" diameter fire line contained within a 24"x30" thrust block foundation.** These ancillary utility systems may be permitted no more than **36" 42"** below the concrete slab bottom at 50.7' elevation, with the exception of the three sewer ejector pumps. Perimeter building foundations shall not project beyond the exterior building walls. All ancillary utility and drainage lines shall be located landward of the bluff face and perimeter building foundations. Only the main utility line connections from the building to the City infrastructure lines may extend beyond the perimeter building foundations.
5. Grading of the bluff face shall be minimized wherever possible. No further grading of the north bluff face (Carnation Ave. bluff) than as proposed in the plans dated April 11, 2011 (the lowermost exposed visible surface of the development on the west bluff or "Ocean Blvd. bluff" at the 51.14' elevation,

approximately half a foot above the established PLOED at 50.70' elevation and on the north or "Carnation Ave. bluff" the lowermost exposed visible surface is at 61.31' elevation) **except for grading required for installation of a 4" diameter fire line contained within a 24"x30" thrust block foundation, as proposed in the Dock Hydrant Supply Piping Plan dated November 26, 2014 and submitted to the Commission on August 14, 2020.**

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

The following Special Condition No. 19 and Special Condition No. 20 are added to CDP 5-10-298-A3 as follows:

19. CONSTRUCTION POLLUTION PREVENTION PLAN.

PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT AMENDMENT A3, the applicant shall submit a Construction Pollution Prevention Plan (CPPP). The Plan shall describe the temporary BMPs the development will implement to minimize erosion and sedimentation during construction, and to minimize pollution of runoff and coastal waters by construction chemicals and materials. The Plan shall avoid use of plastic netting (such as polypropylene, nylon, polyethylene, polyester or other synthetic fibers) in temporary erosion and sediment control products in order to minimize wildlife entanglement and plastic debris pollution. To comply with the CPPP requirements of the certified IP Section 21.35.030 (C), the CPPP shall include a construction site map and a narrative description addressing, at a minimum, the following required components:

1. Construction Site Plan Map. A map delineating the construction site, construction phasing boundaries, and the location of all temporary construction-phase BMPs (such as silt fences, inlet protection, and sediment basins).
2. Description of BMPs to be Implemented to Meet All CPPP Requirements. A description of the BMPs that will be implemented to meet all the CPPP requirements and how these BMPs will minimize pollution of runoff and coastal waters during construction. Include calculations that demonstrate proper sizing of the BMPs.
3. Construction Phasing Schedule. A description and timeline of significant land disturbance activities including a schedule for installation and removal of temporary erosion and sedimentation control BMPs, and identification of any temporary BMPs that will be converted to permanent post-development BMPs.

20. CDP AMENDMENT APPLICATION FEE

PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT AMENDMENT 5-10-298-A3, the applicant shall pay the remaining balance of \$8,890 for the CDP material amendment application fee which is 50% of the fee for the original project according to current 2020/2021 fiscal year applicable fees.

III. FINDINGS AND DECLARATIONS

A. Project Location, Description and Background

PROJECT LOCATION

The project site (the “Aerie Development”) is an approximately 1.4-acre site comprised of 201-205, 207 Carnation Avenue, and a portion of 101 Bayside Place in the City of Newport Beach, Orange County ([Exhibit #1](#)). The original underlying CDP No. 5-10-298 included a lot line adjustment merging 201-205 and 207 Carnation Ave, and a small triangular portion of 101 Bayside Place and a parcel map for condominium purposes (7 units). After the lot merger and new parcel map for condominiums, the new address for the Aerie Development became 101 – 191 Carnation Avenue.¹

The site is surrounded by residential uses, bounded to the north by existing single-family residences and Bayside Place; to the east and southeast by Carnation Avenue and existing single-family residences, to the south by the large Channel Reef condominium complex with approximately 50 units; and west of the site by the main entrance to Newport Bay from the Pacific Ocean and the eastern end of Balboa Peninsula. The site is between the first public road and the sea (Newport Bay). It consists of a steep coastal bluff lot on the west-side of the site (adjacent to Ocean Blvd.) which is subject to tidal action with a rocky intertidal area at the base of the bluff forming a small cove beach with natural rock outcroppings; and a coastal bluff on the north-side of the site (adjacent to Carnation Ave) which is not subject to tidal action due to the presence of existing homes at the toe of the bluff. The portion of the site subject to tidal action does not currently have any shoreline protection (i.e. bulkhead, seawall, or revetment). The bluff top and portions of bluff face are developed with single and multi-family residential structures both on the subject site and adjacent to the site.

The site is visible from the water along Newport Harbor and from public beach areas on Balboa Peninsula across harbor. The City’s certified Coastal Land Use Plan (CLUP)

¹ The City approved individual numbers assigned to each unit (i.e., Common Area: 101 Carnation Ave, Unit 1: 179 Carnation Ave, Unit 2: 181 Carnation Ave, Unit 3: 183 Carnation Ave, Unit 4: 185 Carnation Ave, Unit 5: 187 Carnation Ave, Unit 6: 189 Carnation Ave, and Unit 7: 191 Carnation Ave).

designates the intersection of Ocean Blvd and Carnation Ave (looking from the bluff out towards the bay) as a Public View Point.

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

PROJECT DESCRIPTION

The applicant is requesting approval for the installation of a new 4-inch diameter water pipeline buried down the bluff face from the 50.7-foot bluff contour line to the bluff bottom to the point of connection at the pier/gangway at the waterside of the existing concrete pad. The pipeline would supply water to two Class III standpipes² (fire hydrants) to be installed on the residential dock system shared by the seven (7) condominiums on the site. Site photos are included as [Exhibit #2](#). Project plans for the proposed development are included as [Exhibit #3](#). Bluff areas impacted by the proposed development/construction will be restored per the landscaping plans as previously approved under CDP 5-10-298. These landscape plans are included as [Exhibit #5](#).

The subject 7-unit condominium known as the Aerie Development was reviewed and approved by the City of Newport Beach City Council on July 14, 2009 (PA 2005-196 and AIC 2010027). The City approval included a Fire Department-required condition to provide Class III standpipes (fire hydrants) on proposed private residential docks included as part of the residential project. As described in further detail below, in 2011 the Commission approved CDP 5-10-298 for construction of the Aerie project. The applicant did not include the dock demolition and re-construction as part of the land-side development, and submitted a CDP application for the water-side development separately. In 2013, the Commission approved CDP 5-12-214 for demolition of a 547 sq. ft. floating dock system and construction of a new 17,47 sq. ft. floating dock system. Although the City permits included a special condition requiring the applicant to provide fire hydrants on the dock in 2009, neither subsequent CDP application (CDP 5-10-298 for the land-side development and CDP 5-12-214 for the water-side development) included the required pipeline to supply water to the Fire Department-required dock fire hydrants.

Construction of the Aerie project is near completion. To comply with the required standpipes on the dock, the applicant is requesting to bury a 4-inch water pipeline with appropriate utilities from the City's main water line on Carnation Avenue, around the north bluff side of the building (outside of the building's footprint), down the west-facing

² A Standpipe System is a wet or dry system of piping, valves, outlets, and related equipment designed to provide water at specified pressures and installed exclusively for the fighting of fires. A Class III standpipe system is equipped with both 2.5 inch outlets and 1.5 inch outlets and hose.

bluff approximately parallel to existing stairs down the bluff face and down to the dock. Additionally, the 4" diameter water pipeline requires a "thrust block foundation" which means the pipe would be encased in a 24" x 30" concrete block. The bluff face would be graded to dig a trench 24"x30" in which to bury the 4" diameter pipe in concrete 6" below the bluff surface.

The applicant submitted a separate amendment to CDP 5-12-214 for the installation of the two fire hydrants on the floating docks and the continuation of the water supply pipeline into the fire hydrants.

PROJECT BACKGROUND – PRIOR PERMIT HISTORY

2011 – CDP 5-10-298 (Advanced Group 99-D) Demolition of an existing 13,688 sq. ft., 4-level, 14-unit apartment while retaining existing on-grade stairway on the bluff face and existing two-slip dock system, demolition of a 2,810 sq. ft. single-family residence, and construction of a new 51,124 sq. ft., 7-unit, 33-feet tall, 5-level condominium structure (three levels visible from grade/street level and all five levels visible from the seaward side) with 18 parking spaces and common amenities including a fitness facility, meeting room, patio, pool and spa; hardscape and landscaping improvements; grading consisting of 9,810 cu. yds. of cut; lot line adjustment to merge a 584 sq. ft. portion of 101 Bayside Place with the parcel identified as 201-205 Carnation Avenue and with the parcel identified as 207 Carnation Ave into one single 61,284 sq. ft. lot for residential purposes; and tentative tract map to subdivide the air space for seven residential condominium units.

In 2011, the Commission approved CDP 5-10-298 for a lot merger, the demolition of existing structures and construction of a 5-level, 7-unit condominium structure subject to eighteen (18) Special Conditions including a limitation on development (e.g. grading, foundations, structures, etc.) beyond the established bluff setback, in this case, below the Predominant Line of Existing Development (PLOED) established by the City of Newport Beach at the 50.70' elevation line. See Appendix B for a complete list of all of the underlying permit required special conditions. In order for the project to comply with the City's LUP policies with bluff setbacks, minimization of landform alteration and protection of visual resources, CDP 5-10-298 **Special Condition 14** was required to limit development below the PLOED. This special condition specifically states, "No development (e.g. grading, foundations, structures, etc.) shall occur below the PLOED at elevation 50.70' except as follows: i) to install the 33 caissons/piles for the pile-supported retaining wall depicted on the amended Shoring Plan dated July 2, 2013 and any tieback anchors), ii) for 24" deep footings below the concrete slab bottom at 50.7' elevation to support structural internal and perimeter building foundation walls, iii) slab waterproofing systems between native soils and slab, iv) sewer to serve the proposed development; v) on site drainage pipes underneath the slab; vi) three sewer ejector pumps just inside the Carnation Avenue property line requiring excavation of three pits approximately 54 inches in diameter and 144 inches below the 50.70' elevation. These ancillary utility systems may be permitted no more than 36" below the concrete slab bottom at 50.7' elevation, with the exception of the three sewer ejector pumps. Perimeter building foundations shall not project beyond the exterior building walls. All ancillary utility and drainage lines shall be located landward of the bluff face and

perimeter building foundations. Only the main utility line connections from the building to the City infrastructure lines may extend beyond the perimeter building foundations.”

2013 – CDP 5-10-298-A1 (Advanced Group 99-D) In 2013, the Commission approved an immaterial amendment for an additional two more caissons to the 31 already approved and installation of three sewer ejector pumps. The proposed addition of these new components required a revision of **Special Condition 14** which very specifically restricts the type of development that may occur below the 50.70’ contour/elevation. The sewer pumps were proposed to be installed at the front of the property just inside the property line along Carnation Avenue (far away from the bluff edge) and would require pits approximately 4.5 feet in diameter and 12 feet below the 50.7’ PLOED. Thus, the proposed changes to the approved plans did not conflict with the intent of **Special Condition 14** and would not result in any adverse impacts to coastal resources or access.

2015 – CDP 5-10-298-A2 (Advanced Group 99-D) In 2015, the Commission approved a second immaterial amendment for a re-design of the project’s pool and spa including changes to the patio deck spaces of units 2 through 7 resulting in a total reduction of 781 sq. ft. of enclosed building area; 14 sq. ft. of additional grading; plus the addition of a 432 sq. ft. roof deck with parapet. These project modifications did not require any changes to the underlying CDP special conditions, did not conflict with the intent or terms of the CDP and would not result in any adverse impact to coastal resources or public access and recreation.

The project proposed by this CDP amendment 5-10-298-A3, to provide a water supply to private residential dock fire hydrants, requires development below the established PLOED, grading of the bluff to bury the water pipeline, and thus additional landform alteration.

STANDARD OF REVIEW

The City of Newport Beach Local Coastal Program (LCP) was fully certified in 2016. The proposed project amends Commission-issued CDP 5-10-298 issued by the Coastal Commission prior to certification of the City’s LCP. An amendment to the CDP falls within the Coastal Commission’s retained permit jurisdiction. The standard of review for this amendment is the now-certified Newport Beach LCP and, because the project lies between the first public road and the sea, the public access and recreation policies of the Coastal Act.

B. Landform Alteration

The City of Newport Beach Certified Land Use Plan (LUP) includes several policies related to development on coastal bluffs:

LUP Policy 4.4.3-8:

Prohibit development on bluff faces, except private development on coastal bluff faces along Ocean Boulevard, Carnation Avenue and Pacific Drive in Corona del Mar determined to be consistent with the predominant line of existing development

or public improvements providing public access, protecting coastal resources, or providing for public safety. Permit such improvements only when no feasible alternative exists and when designed and constructed to minimize alteration of the bluff face, to not contribute to further erosion of the bluff face and to be visually compatible with the surrounding area to the maximum extent feasible.

LUP Policy 4.4.3-9:

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

Also, the certified Implementation Plan, Chapter 21.30 Property Development Standards, Section 21.30.015(D)(3) Waterfront Development Standards states,

3. Development Standards.

a. New development shall be designed and sited to assure stability and structural integrity and avoid destruction of the site and surrounding area by providing setbacks for principal structures that avoid the need for new or perpetuation of existing shoreline protective devices to the extent possible;

b. The minimum required top of slab/finished floor elevation for interior living areas of all new structures shall be as established by the Flood Insurance Rate Maps recognized by the Building Division as part of flood safety requirements and maps adopted by the Council (see Section 21.30.060 (B)(3) or higher where recommended by the Coastal Hazards report required by Section 21.30.015 (F) with acknowledgement of potential need for adaption measures in the future to address flood potential and sea level rise. Notwithstanding the building elevations established by the Flood Insurance Rate Maps, the minimum required top of slab elevation for interior living areas of all new structures shall be at least 9.00 (NAVD 88).;

c. The applicant and property owner shall acknowledge any hazards present at the site, assume the risk of injury and damage from such hazards, unconditionally waive any claim of damage or liability against the decision authority from such hazards, and to indemnify and hold harmless the decision making authority against any and all liability, claims, demands, damages, costs, expenses, and amounts paid in settlement arising from any injury or damage due to such hazards;

d. All nonconforming structures particularly when located on State tidelands or beaches available for public use shall be removed;

e. Any existing impediments to public access shall be removed, wherever possible;

f. New development shall protect, and where feasible, expand and complete lateral public pedestrian access along the waterfront with connectivity to beaches, street-ends and shoreline areas providing public access (see Chapter 21.30A (Public Access and Recreation).;

g. Development shall comply with 21.30.015 (E) – Development in Shoreline Hazardous Areas and 21.30.030 – Natural Landform and Shoreline Protection, as applicable.

h. New development and/or replacement structures shall be brought into conformity with current standards for setbacks from the shoreline, bluff and/or bulkhead.

Implementation Plan, Chapter 21.30 Property Development Standards, Section 21.30.015(E)(4) Waterfront Development Standards states in part,

4. Geologic Stability Report. In addition to the coastal hazards report required above, Coastal development permit applications for development proposed in shoreline areas of known or potential geologic or seismic hazards shall include a geologic geologic/soils/geotechnical report. The geologic/soils/geotechnical report shall use the methodology in Appendix A and include the following:

a. A statement of the preparer's qualifications;

b. Identification of geologic hazards affecting the site;

c. Identification of necessary mitigation measures;

d. A certification that the:

(1) Site is suitable for the proposed development;

(2) Development will have no adverse effect on the stability of the bluff, canyon, or shoreline;

(3) Development is expected to be reasonably safe from failure and erosion over its economic lifetime without reliance on existing or future protective structures for stability; and

(4) Adaptation options and mitigation measures have been incorporated to address potential risk without having to rely on existing protective structures or the need to install additional protective structures in the future.

Implementation Plan, Chapter 21.28 Overlay Coastal Zoning Districts, Section 21.28.040 states in part,

21.28.040 – Bluff (B) Overlay District

A. Applicability. This section applies to lots located in the Bluff (B) Overlay District as indicated on the Coastal Zoning Map. All development shall comply

with the applicable development standards (e.g., setbacks, height) of the underlying coastal zoning district in addition to the standards provided in this section. In situations where an inconsistency occurs between the development standards of the underlying coastal zoning district and the standards in this section the most restrictive standard shall prevail.

B. Uses Allowed. Land uses allowed in the Bluff (B) Overlay District are all those uses allowed in the underlying coastal zoning district.

C. Development Area Defined. For the purpose of this section the development area of a lot is an area delineated for the purpose of regulating the placement and location of structures. Each lot within the B Overlay District shall be divided into two or more development areas. Development areas are delineated on the Development Area Maps attached to the ordinance codified in this Implementation Plan and are consistent with the development areas listed in subsection (D) of this section, unless modified pursuant to subsection (O) of this section. The setbacks provided in Tables 21.18-2 and 21.18-3 in Section 21.18.030 (Residential Coastal Zoning Districts General Development Standards) are not used to determine development areas, but are only used to determine the maximum floor area limit for the lot, if applicable.

1. Development Area A — Principal and Accessory Structures. Area A allows for the development and use of principal and accessory structures. Accessory structures allowed in Areas B and C are allowed in Area A.

2. Development Area B — Accessory Structures. Area B allows for the development and use of accessory structures listed below. Principal structures are not allowed...

3. Development Area C—Limited Accessory Structures. Area C allows for the development and use of limited accessory structures. The following accessory structures are allowed in Area C:

a. Allowed Limited Accessory Structures. Area C allows for the development and use of limited accessory structures.

ii. Lots Subject to Marine Erosion. For lots located on bluffs subject to marine erosion, the following accessory structure are allowed in Area C, unless prohibited in subsection (D) of this section;

- 1) Drainage devices, only if not feasible to be placed elsewhere on the site.
- 2) Landscaping/temporary irrigation systems.
- 3) On-grade public stairways.
- 4) Underground utilities, only if not feasible to be placed elsewhere on the site.

- 5) Shoreline protective devices in compliance with Section 21.30.030(C)(3).

D. Location of Development Areas. The development areas are listed below and depicted in the referenced map exhibits adopted in Part 8 of this Implementation Plan. The placement of structures and grading is limited by development areas as defined in this section and in subsection (C) of this section. The development areas for each parcel are polygons established by the property lines and the following development lines (See Map Exhibits B-2 through B-9, attached to the ordinance codified in this Implementation Plan). Development areas may be modified pursuant to subsection (O) of this section. All contour lines refer to NAVD88 contours.

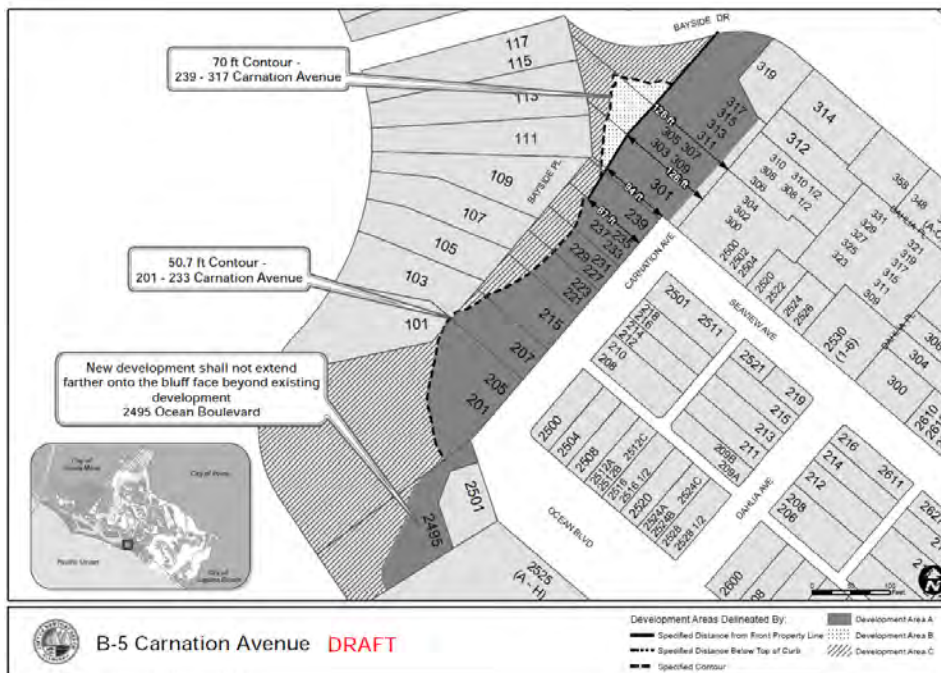
5. Map B-5—Carnation Avenue (Only 201-203 Subject to Marine Erosion).

a. Carnation Avenue (201-233).

- i. Development Area A. Between the front property line adjacent to Carnation Avenue and the 50.7-foot contour line.*
- ii. Development Area C. All portions of the lot not located in Area A.

F. Grading – All Development Areas. Grading in Development Area A is limited to the minimum necessary for the construction and placement of allowed structures.

Implementation Plan Chapter 21.80 Maps, Bluff Overlay Map B-5 Carnation Avenue



See [Exhibit 4](#) for full size Map.

The subject site is located on the lots identified as 201-205 and 207 Carnation Avenue and a small portion of 101 Bayside Place on the LCP Bluff Setback Map B-5 for Carnation Avenue, shown above. The original underlying CDP 5-10-298 included a lot line adjustment merging 201-205 and 207 Carnation Ave and a small triangular portion of 101 Bayside Place, and a parcel map for condominium purposes (7 units). After the lot merger and new parcel map for condominiums, the new address for the Aerie Development became 101 – 191 Carnation Avenue.

LUP Policy 4.4.3-9 allows for the continuation of development on coastal bluff faces where principal structures exist on coastal bluff faces along Ocean Blvd., Carnation Ave., and Pacific Dr., in Corona del Mar. It requires all new development to be sited in accordance with the Predominant Line of Existing Development (PLOED) for both principal and accessory improvements, in order to protect public coastal views. LUP Policy 4.4.3-8 prohibits development on coastal bluff faces but makes exceptions for private development along Carnation Ave and a few other areas of Corona del Mar determined to be consistent with the PLOED. Section 21.28.40(D)(5) (Bluff Overlay District) and the LCP Bluff Setback Map B-5, identifies the 50.7 ft. contour line which is the PLOED established by the City for this site, and uses it to delineate between Bluff Development Area A and Bluff Development Area C (there is no Area B along this portion of the Carnation bluff). In acknowledgement of the LUP policies allowing the continuation of bluff development on coastal bluff slopes, IP Section 21.28.040(C)(3)(a)(ii) limits the type of development allowed on the bluff face (i.e., Bluff Development Area C), on bluffs subject to marine erosion, to drainage devices, only if not feasible to be placed elsewhere on the site; landscaping/temporary irrigation systems; on-grade public stairways; and underground utilities, only if not feasible to be placed elsewhere on the site.

The underlying CDP 5-10-298 approval and subsequent CDP amendments did not include any work to the existing pre-Coastal Act private concrete step bluff stairway sited below the 50.7 ft. PLOED. Additionally, no work was proposed or approved to an existing concrete deck at the bottom of the bluff stairs on the sand of Carnation Cove.

The applicant requests this CDP Amendment 5-10-298-A3 in order to bury a 4" diameter water pipeline from the City's main water line on Carnation Avenue, around the north bluff side of the building (outside the building's footprint), down the west-facing bluff approximately parallel to existing stairs down the bluff face and down to the dock. The 4" diameter water pipeline requires a "thrust block foundation" which means the 4" diameter pipe would be encased in a 24" x 30" concrete block foundation. The bluff face would be graded to dig a trench 24" x 30" immediately adjacent to the condominium structure and the north side of the concrete stairs down the western bluff, in which to bury the 4" diameter pipe in concrete 6" below the bluff surface, and would be buried below grade on Carnation Cove below an existing concrete deck adjacent to the docks. The sawcut portion of the concrete deck would be backfilled with gravel and concrete slab replaced. No improvements were approved under the original CDP, and no improvements are proposed to the existing pre-Coastal concrete stairway as part of this CDP amendment. The proposed utility water line below the established PLOED would be allowable under the certified LCP only if no feasible alternative exists, and when designed and constructed to minimize alteration of the bluff face, to not contribute

to further erosion of the bluff face, and to be visually compatible with the surrounding area to the maximum extent feasible as required by LUP Policy 4.4.3-8.

The applicant asserts that the proposed dock fire hydrants are required by the City Fire Department to provide for public safety and protect life and property. The applicant further asserts that there is no other feasible method of providing water to the City Fire Department-required dock fire hydrants than the proposed buried thrust block foundation, as the pipe must carry highly pressurized water capable of fire extinguishing. According to the applicant, simply attaching the pipeline to the existing building structure, the existing concrete bluff stairs, and laid above the concrete deck on Carnation Cove would not result in the required water pressure for the dock fire hydrants. Due to the high water pressure of the 100 psi range fire line, the 4" diameter pipeline is required to be encapsulated in a concrete thrust and be buried a minimum of 3-feet below grade for protection. The applicant considered six project design alternatives:

- Alternative 1 – No Project Alternative
 - The fire hydrants are not typically a requirement of the City's Fire Department for individual residential boat docks. They are a requirement of larger private or public marinas. The City considers this floating dock system a private marina as it will be serving a maximum of seven (7) individual vessels. To eliminate the fire hydrants would put the fire fighters in a hazardous condition without the proper fire protection to fight a fire and would increase the risk of loss of life and property.
- Alternative 2 – Sea Water Pump to Supply Fire Hydrants
 - The City Fire Department requires that all standpipes be supplied from the municipal water supply line in order to provide a constant and reliable water flow rate with minimal residual pressure. The shallow sea floor at the dock site would not provide the constant high pressure required to fight a dock fire. Additionally, salt water corrodes pumps, valves and pipelines over time damaging the firefighting equipment and likely depositing metal sediments into the bay waters increasing water toxicity levels harmful to eelgrass and marine life.
- Alternative 3 – Install Pipeline On-Grade Adjacent to Existing Concrete Stairs
 - The water line must be incased in a concrete thrust block to provide the required pressure for firefighting. Burying the line encased in concrete, as proposed, also protects the line from damage. Damages where the water pressure from a line eruption could cause significant catastrophic erosion to the coastal bluff face.
- Alternative 4 – Install Pipeline Buried Below Existing Concrete Stairs
 - This option was not further explored by the applicant as a saw cut down the center portion of the 3-foot wide concrete stairs would be impractical and destroy the existing pre-Coastal Act stairs.
- Alternative 5 – Install Pipeline from Bayside Place (North-side sea level)
 - Bayside Place, located to the north of the subject site, provides access to single-family residences close to sea level at the toe of the bluff (approximately 60 feet below the Aerie condominiums). Running a water

supply pipeline from Bayside Place would require access through a private residential property and cutting through the 20-foot high natural rock outcrop for access to the Aerie dock system. This alternative would result in more landform alteration and habitat destruction than the preferred project.

- Alternative 6 – Install Pipeline down South-side of Coastal Bluff
 - The area on the south side of the project site consists of a steep rock outcropping with a slope of over 90%. To run the fire line from here would require mounting a large drill rig on the bluff face and coring through the steep slope and running it across the sandy beach Cove. This approach would cause significant bluff alteration, result in fill of coastal waters, and have an adverse impact to the sensitive habitat of the beach Cove.

The subject site is underlain by Monterey Formation bedrock. The bedrock present on site is generally massive, dense and well-cemented. The prevailing strike and dip orientation of the bedrock is into slope with respect to proposed excavation cuts, and therefore favorable from a slope stability standpoint. Stability analyses provided by the applicant during initial review of the original project indicated that the site is considered to be grossly stable with factors of safety well over the typically required 1.5 factor of safety. Slope stability refers to the condition of inclined soil or rock slopes to withstand or undergo movement. The stability of a slope is essentially controlled by the ratio between the available shear strength and the acting shear stress, which can be expressed in terms of a safety factor if these quantities are integrated over a potential (or actual) sliding surface. A slope can be grossly stable if a 1.5 safety factor can be computed along any potential sliding surface running from the top of the slope to its toe.

Wave erosion over the next 75 years along the base of the west-side bluff slope and lateral retreat of the bedrock seacliff was considered unlikely as the cove is within Newport Harbor and thus protected from large ocean wave action. Previously submitted geologic reports submitted by the applicant state that due to the resistant character of the bedrock materials of the bluff face the rate of surface erosion is very slow and not a factor in bluff retreat. Both the north and west facing bluffs are composed of bedrock bluff resistant to weathering degradation. No open fractures or adverse bedding planes were observed that would jeopardize the bluff's integrity or stability.

According to the waterfront development standards in IP Section 21.30.015(E)(4), the proposed development could not be recommended for approval and deemed consistent with the LCP unless the development can be safe from bluff failure and bluff erosion over its economic lifetime without reliance on future protective structures for stability and that the development will have no adverse effect on the stability of the bluff. Additionally, the LCP restricts construction of new shoreline or bluff protection devices for the protection of private utilities. A protective device may be a seawall at the base of the bluff, or a rock anchor system, or shotcrete wall on the bluff face. If new development necessitates future protection, the landform and shoreline processes could be dramatically altered by the presence of the protective system. Currently, the single-family residences constructed at the toe of the north bluff (on the Carnation Ave. side) are protected from tidal action by bulkheads along these Bayside Place lots. The Coastal Act limits construction of these protective devices because they have a variety

of negative impacts on coastal resources including adverse affects on sand supply, public access, coastal views, natural landforms, and shoreline beach dynamics on and off site, ultimately resulting in the loss of beach.

The City's IP Section 21.28.040 (Bluff Overlays) allows for the installation of underground utilities within Bluff Development Area C only if it is not feasible for such utilities to be placed elsewhere on the site. The project would also be allowed to be constructed below the established PLOED as it would be a public utility affording public safety while protecting coastal resources to the extent feasible in compliance with LUP Policy 4.4.3-8. Based on the applicant's review of alternatives, the proposed pipe placement is along the most gentle slope on the site making it the most accessible to laborers to hand dig the trench in which to bury the concrete thrust foundation and pipeline as opposed to staging heavy equipment on the bluff face along a different alignment. The LCP also requires that new development be constructed in a manner ensuring that it will not require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs. As originally conditioned, the underlying CDP already prohibits construction of protective devices (such as blufftop or shoreline protective devices) in the future, and requires that the landowner and any successor-in-interest assume the risk of undertaking the development. Only as conditioned does the Commission find that the development conforms to the requirements of the LCP regarding the siting of development in a hazardous location.

C. Biological Resources

City of Newport Beach Policies:

Implementation Plan, Chapter 21.30B (Habitat Protection), states in part:

21.30B.010 – Purpose

This Chapter is intended to:

- A. Protect environmentally sensitive habitat areas against any significant disruption of habitat values.
- B. Maintain and, where feasible, restore the biological productivity and the overall quality of coastal waters, streams, wetlands, estuaries, and lakes.
- C. Protect wetlands for their commercial, recreational, water quality, and habitat value.

21.30B.020 – Initial Site Resource Survey

Applicability. An initial site resource survey, recently prepared (within one year) identifying the presence or potential for wetlands or sensitive habitat, vegetation or wildlife species on the site shall be required for coastal development permit applications on a development site that:

- A. Is located within or within fifty-one hundred (5,100) feet of an Environmental Study Areas (ESA) indicated in Map 4-1 (Environmental Study Areas) in the Coastal Land Use Plan; or
- B. Contains southern coastal foredune or southern dune scrub habitats; or

C. Contains or is located within one hundred (100) feet of a delineated wetland, designated Environmentally Sensitive Habitat Area (ESHA), ESHA buffer, or wetland buffer; or

D. Contains or is located within one hundred (100) feet of a habitat area where there is substantial evidence of the presence of a wetland or ESHA.

Section 21.30B.030 – Environmentally Sensitive Habitat Areas

A. ESHA Designation. Any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments shall be designated as an environmentally sensitive habitat area (ESHA).

1. **Exceptions.** ESHAs do not include the following areas:

a. Existing developed areas; and

b. Existing fuel modification areas required by the City of Newport Beach Fire Department or the Orange County Fire Authority for existing, legal structures.

B. Protection Required. ESHAs shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed (see Section 21.30B.030 (F) (Limits on Land Uses)). Development in areas adjacent to ESHAs shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of the ESHA.

Biological studies of the project site submitted with the initial CDP application found the dominant vegetation on the site to be ornamental plant species (i.e., English ivy, sweet fennel, umbrella sedge and fan palm) and remnant southern coastal bluff scrub community on the rocky outcrop along the northern project boundary extending into Newport Bay. The coastal bluff face is densely vegetated with ornamental species and native plants (i.e., California buckwheat, coastal prickly pear, California sagebrush, bush sunflower, lemonade berry and coastal goldenbush). No terrestrial special status plant, animal or avian species that have the potential to occur at the project site were observed to exist on the project site during the biological surveys with the exception of the federal and state designated endangered California Brown Pelican. California Brown Pelicans are commonly observed locally and have acclimated to human activities. It is found foraging in Newport Bay year-round but does not breed locally. As California Brown Pelicans do not breed on the mainland California coast; project implementation would not have an impact on nesting or overall foraging activities. The California Least Tern may use the proposed area for foraging. However, the California Least Tern population in Newport Bay nests on a small island within the Upper Newport Bay Ecological Reserve several miles from the proposed project site. Given the distance from the nesting site and the high levels of human activity already occurring at the proposed project site, the project would not have an impact on Least Tern nesting or overall foraging activities. The terrestrial coastal bluff at the subject site was not

determined to qualify as ESHA; however, the Marine Biological Impact Assessment further makes the finding that:

“Carnation Cove supports an extremely diverse assemblage of plant and animal life due to its location near the Harbor Entrance Channel, and the combination of rocky outcrops and fine sands-to-silts substrates. This region of Newport Harbor shares many characteristics common to nearshore subtidal reef and sand bottom marine habitats and communities located off Corona del Mar. Carnation Cove is an important marine habitat that no longer exists in other areas of Newport Bay.”

Due to the rare nature of important marine habitat, Carnation Cove was determined to be ESHA. The proposed project is therefore located within one hundred (100) feet of a habitat area where there is substantial evidence of the presence of a wetland or ESHA.

CDP 5-10-298 included a “Existing Vegetation Map and Landscape Plan” to remove all non-native plant material (i.e. iceplant, bougainvillea, arundo, acacia, myoporum) from the coastal bluff and replant with a hydroseed method and container plantings of drought-tolerant, bluff native plant species such as coastal Manzanita, sage, California brittlebush and lupine, including temporary irrigation of the natural bluff for the first season, then discontinued. According to the applicant, the removal of non-native vegetation and planting of native plants appropriate to the coastal bluff habitat portion of the project has not yet been undertaken. The revegetation and restoration of the bluff, as authorized by CDP 5-10-298, would occur after the construction proposed under this CDP Amendment 5-10-298-A3.

The “Existing Vegetation Map and Landscape Plan” included as **Exhibit #5** to this staff report identifies fourteen (14) vegetation areas on the entire site, including areas along the north-facing bluff, the west-facing bluff, Carnation Cove, and the rock outcrop near coastal waters. The proposed additional grading for the installation of the fire hydrant water supply line along the north-facing bluff would take place within Vegetation Area #5 at the uppermost northwest corner of the property, an area identified as containing no native vegetation; Area #4 along the northwest side of the pedestrian stairs down the bluff, an area containing patches of Encelia plants and non-native brome, iceplant and clover; Area # 3 along the north-side of the concrete bluff stairs down the west-facing bluff contains some scattered patches of native mulefat and Encelia but is mostly dominated by non-native iceplant, clover, Arundo, myoporum and pittosporum; and Area #2 consisting of the area on the north side of the on-grade concrete deck, this area is dominated by native, prickly pear cactus, lemonade berry, sage, and Encelia.

The majority of the areas proposed to be graded along Vegetation Areas #5, #4, and #3 are currently dominated by non-native ornamental and invasive plants, thus grading in these areas (i.e., adjacent to the condominium structure’s foundation along the north-facing coastal bluff and along the north-side of the pedestrian stairs down the west-facing coastal bluff would not impact any existing sensitive native vegetation. Only Vegetation Area #2 contains sensitive coastal bluff vegetation, however, no grading is proposed within the vegetation area. Instead, the applicant proposes to sawcut the existing concrete slab deck and trench below the concrete deck and bury the water pipeline below the concrete deck, thus avoiding the native vegetation along the north

side of the concrete deck. After the grading/trenching for the installation of the buried pipeline, the bluff contours are proposed to be restored to pre-grading levels and the bluff vegetation restored with native coastal bluff vegetation.

Therefore, the Commission finds that the proposed development, as proposed, conforms to the certified LCP regarding protection of biological resources and sensitive habitat.

D. Scenic Resources

City of Newport Beach Coastal Land Use Plan, Coastal Views policies:

LUP Policy 4.4.3-8:

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

LUP Policy 4.4.1-1:

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

LUP Policy 4.4.1-2:

Design and site new development, including landscaping, so as to minimize impacts to public coastal views.

LUP Policy 4.4.1-3:

Design and site new development to minimize alterations to significant natural landforms, including bluffs, cliffs and canyons.

LUP Policy 4.4.1-5:

Where feasible, require new development to restore and enhance the visual quality in visually degraded areas.

Implementation Plan, Chapter 21.28 Overlay Coastal Zoning Districts, Section 21.28.040 Coastal Bluff Overlay [Please see section above for citation]

Implementation Plan, Chapter 21.30 Property Development Standards, Section 21.30.100(D) states in part:

D. Siting and Design. Development shall be sited and designed in accordance with the following principles, where applicable in order to meet the purpose of section: 1. Avoid or minimize impacts to public coastal views and, where feasible, restore and enhance the scenic and visual qualities of the coastal zone. 2. Development on the edges of public coastal view corridors, including those down public streets, shall be designed and sited to frame and accent public coastal views. 3. Clustering of buildings to provide open view and access corridors to the harbor. 4. Modulation of building volume and mass.

Implementation Plan, Chapter 21.30 Property Development Standards, Section 21.30.100(E) states in part,

E. Landform Alteration. Development shall be sited and designed to minimize the alteration of gullies, ravines, rock outcroppings, and other natural landforms and the removal of native vegetation. Site design and construction techniques include, but are not limited to, the following: 1. Siting development on the flattest area of the site, except when an alternative location is more protective of coastal resources. 2. Utilizing existing driveways and building pads to the maximum extent feasible. 3. Clustering building sites.

The LCP requires that landform alteration be minimized to ensure that the development does not impact scenic and visual qualities of natural landforms. The intent of the LUP policies that permit continued development on the bluff face is intended to minimize further bluff alteration. Corona del Mar is one of the few areas in the City where there is extensive development on the bluff face; specifically, residential development on Avocado Ave., Pacific Dr., Carnation Ave., and Ocean Blvd. The initial subdivision and development of these areas occurred prior to the adoption of policies and regulations intended to protect coastal bluffs and other landforms. Development in these areas is allowed to continue on the bluff face to be consistent with the existing development pattern and to protect coastal views from the bluff top. However, development on the bluff face is controlled to minimize further alteration. As noted above, the Commission has typically applied the City's PLOED determination when evaluating the visual and scenic impacts of bluff face development. Further, when the Commission evaluates whether proposed development alters landforms in this area and results in visual and scenic resource impacts, it considers past Commission action in the area and the pattern of existing development.

The project was originally conditioned under CDP 5-10-298 to not extend below the 50.70' line of elevation PLOED in an effort to protect public views of the bluff by not altering the bluff below the PLOED. CDP 5-10-298 was amended soon after its approval to add two additional caissons and installation of three sewer ejector pumps which would encroach approximately 12 feet below the PLOED. Amendment 5-10-298-

A1 was considered immaterial, as the sewer pumps were proposed to be installed at the front of the property just inside the property line along Carnation Avenue, far from the bluff edge. Thus, the proposed changes to the approved plans did not conflict with the intent of **Special Condition 14** and would not result in any adverse impacts to coastal resources or access.

As noted in the section above, in order to carry out the LUP policies allowing the continuation of bluff development on coastal bluff slopes, IP Section 21.28.040(C)(3)(a)(ii) specifically enumerates the type of development allowed on the bluff face (i.e., Bluff Development Area C) on bluffs subject to marine erosion to drainage devices, only if not feasible to be placed elsewhere on the site; landscaping/temporary irrigation systems; on-grade public stairways; and underground utilities, only if not feasible to be placed elsewhere on the site. The certified IP allows for underground utilities on the bluff face (i.e. Bluff Development Area C).

The proposed water pipeline for fire hydrant purposes is proposed to be buried 36" in the ground in order to reduce permanent visual impacts beyond the PLOED after project construction/installation. Only temporary visual impacts during the construction/grading activities are anticipated. However, the top of the 30" x 24" concrete thrust block to house and protect the pipe will only be 6" from the top soil; thus there is a risk of the concrete foundation becoming exposed due to erosion. The applicant is relying on revegetation of the area impacted by construction activities to avoid/lessen erosion and possible exposure of concrete block foundation. As discussed in the staff report section above, the proposed project will not result in direct adverse impacts to existing native bluff vegetation and will restore the bluff contours and replant the areas impacted by construction with native plants appropriate to a coastal bluff habitat, consistent with LUP Policy 4.4.1-1 to protect and, where feasible, enhance the scenic and visual qualities of the coastal zone, including public views to and along the ocean, bay, and harbor and to coastal bluffs and other scenic coastal areas.

Furthermore, the underlying CDP contains **Special Condition 16** requiring the applicant remedy any future visual impacts should any subsurface structures subsequently become exposed. The applicant is required to either restore the bluff or among other possible means, provide an aesthetic treatment of the exposed structures to match the appearance of surrounding terrain. Such actions would minimize the visual impact of any exposed structures to the greatest extent possible.

Thus, the project, as conditioned, is consistent with the Newport Beach scenic resources policies of the certified LCP.

E. Public Access and Recreation

Coastal Act Section 30210:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with

public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Coastal Act Section 30211, in part:

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Coastal Act Section 30224:

Increased recreational boating use of coastal waters shall be encouraged, in accordance with this division, by developing dry storage areas, increasing public launching facilities, providing additional berthing space in existing harbors, limiting non-water-dependent land uses that congest access corridors and preclude boating support facilities, providing harbors of refuge, and by providing for new boating facilities in natural harbors, new protected water areas, and in areas dredged from dry land.

Implementation Plan, Chapter 21.30A Public Access and Recreation, Section 21.30A.020 (Applicability)

- A. **Applicability.** This Chapter applies to all coastal development permit applications within the City's coastal zone.
- B. **Development Between the Nearest Public Road and the Sea.** Every coastal development permit issued for any development between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone shall include a specific finding that the development is in conformity with the public access and public recreation policies of Chapter 3 of the Coastal Act (see Section 21.52.015 (F)).

Implementation Plan, Chapter 21.30A Public Access and Recreation, Section 21.30A.030 (Protection and Provision of Public Access Required), states in part:

21.30A.030 – Protection and Provision of Public Access Required

- A. **General.** Maximum access, shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs, and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.
- B. **Protection of Existing Public Access.**
 - 1. Protection of Existing Public Access.** Development shall not interfere with public right of access to the shoreline or coastal bluffs where the rights have been acquired through use or legislative authorization, including, but not limited to the public accessways identified in the Coastal Land Use Plan. Public

access rights may include, but are not limited to, the use of dry sand and rocky beaches to the first line of terrestrial vegetation.

Because the proposed project is located between the first public road and the sea, in addition to the Newport Beach LCP, the Coastal Act public access and recreation policies are the standard of review. The subject site consists of a coastal bluff lot with a cove beach and rocky intertidal area and is developed with a 51,124 sq. ft., 7-unit, 33-foot tall, 5-level condominium structure (three levels visible from grade/street level and all five levels visible from the seaward side) with 18 parking spaces and a private residential dock structure capable of accommodating up to 7 vessels.

The existing boat docking system is a private dock and currently is not available for general public use. It does not currently provide nor inhibit public coastal access. Direct public access from the street to the bay is not currently available on site, however, the on-site cove beach (within the adjudicated private property line) is accessible to the public from the harbor side. The proposed project will not impact the public's ability to navigate or swim in State tidelands or access the Cove beach consistent with Coastal Act Section 30211. The nearest access to a public beach is available approximately 700 feet south of the site at China Cove Beach and also at Corona del Mar State Beach approximately 1,500 feet south of the site. Begonia Park is a local bluff top park located approximately 550 feet northeast of the site. The nearest public access to the bay for boaters is at a public launch site approximately 1,500 feet northwest of the site at the Orange County Harbor Patrol facility.

The proposed new development (i.e. installation of a water pipeline for dock fire hydrants) would not have any adverse impacts on public access or public recreation on the subject site. The proposed project, as conditioned, is consistent with the public access and recreation policies of Chapter 3 of the Coastal Act and the City's certified LCP.

F. Marine Resources/Water Quality

Implementation Plan, Chapter 21.35 Water Quality Control, Section 21.35.010 Overview of Water Quality Protection Plans states in part:

Development that requires a coastal development permit and has the potential for adverse water quality or hydrologic (i.e., due to changes in runoff flows) impacts to coastal waters shall in most cases require both a construction-phase plan and a post-development plan for water quality protection. The water quality protection plans are summarized as follows:

A. Construction-Phase Plan.

1. Construction Pollution Prevention Plan. A Construction Pollution Prevention Plan (CPPP; see Section 21.35.030, below) shall be required for development that requires a coastal development permit and

entails construction that has the potential for adverse water quality or hydrologic impacts to coastal waters. For the purposes of this section, construction includes clearing, grading, or other activities that involve ground disturbance; building, reconstructing, or demolishing a structure; and creation or replacement of impervious surfaces. The CPPP shall describe the temporary Best Management Practices (BMPs) the development will implement to minimize erosion and sedimentation during construction, and to minimize pollution of runoff and coastal waters by construction chemicals and materials.

Implementation Plan, Chapter 21.35 Water Quality Control, Section 21.35.030
Construction Pollution Prevention Plan states in part,

The Construction Pollution Prevention Plan (CPPP) shall describe the temporary BMPs the development will implement to minimize erosion and sedimentation during construction, and to minimize pollution of runoff and coastal waters by construction chemicals and materials. The level of detail provided to address the plan's requirements shall be commensurate with the type and scale of the development, and the potential for adverse water quality and hydrologic impacts to coastal waters.

A. Applicability of Construction Pollution Prevention Plan. A CPPP shall be required for development that requires a coastal development permit and entails construction that has the potential for adverse water quality or hydrologic impacts to coastal waters. For the purposes of this section, construction includes clearing, grading, or other activities that involve ground disturbance; building, reconstructing, or demolishing a structure; and creation or replacement of impervious surfaces.

C. Requirements of Construction Pollution Prevention Plan. The CPPP shall demonstrate that the development complies with the following requirements:

1. Minimize Erosion, Pollutant Discharge, and Non-Stormwater Runoff. During construction, development shall minimize erosion, the discharge of sediment and other pollutants, and non-stormwater runoff resulting from construction activities, through the use of temporary BMPs. Development shall implement the following types of construction-phase BMPs, as applicable to the project:

a. Erosion and Sediment Control BMPs. BMPs to minimize soil erosion and the discharge of sediment off-site or to coastal waters, including:

- (1) Erosion control BMPs to prevent soil from being eroded by water or wind (such as mulch, soil binders, blankets or mats, or temporary seeding).
- (2) Sediment control BMPs to trap and remove eroded sediment (such as fiber rolls, silt fences, straw bales, and sediment basins).
- (3) Tracking control BMPs to prevent vehicles leaving the

construction area from tracking sediment off-site (such as a stabilized construction exit, and street sweeping).

2. Stabilize Soil as Soon as Feasible. Soil stabilization BMPs (such as mulching, soil binders, erosion control blankets, or temporary seeding) shall be implemented on graded or disturbed areas as soon as feasible during construction, where there is a potential for soil erosion to lead to discharge of sediment off-site or to coastal waters.

3. Minimize Land Disturbance and Soil Compaction. Development shall minimize land disturbance during construction (e.g., clearing, grading, and cut-and-fill) and shall phase grading activities, to avoid increased erosion and sedimentation. Development shall minimize soil compaction due to construction activities, to retain the natural stormwater infiltration capacity of the soil.

4. Minimize Damage or Removal of Vegetation. Development shall minimize the damage or removal of non-invasive vegetation (including trees, native vegetation, and root structures) during construction, to achieve water quality benefits such as transpiration, vegetative interception, pollutant uptake, shading of waterways, and erosion control.

Special Condition #10 (Construction Phase Best Management Practices) of the underlying permit requires the applicant to comply with construction-related requirements related to storage of construction materials, mechanized equipment and removal of construction debris. Additionally, as part of **Special Condition #14** (Final Project Plans), the applicant submitted a Storm Water Pollution Prevention Plan (SWPPP); however, that SWPPP did not include any grading (both cut and fill activities) on the bluff face below the 50.7' elevation PLOED.

The proposed project would require additional grading (both cut and fill activities) of bluff soils and partial demolition and reconstruction of a concrete deck adjacent to the Cove beach. Thus, the project has a potential for discharge of polluted runoff from the project site into coastal waters both during construction. Thus, per the certified LCP any development that requires a coastal development permit and has the potential for adverse water quality impacts to coastal waters requires a construction-phase plan and in most cases, a post-development plan for water quality protection. In this case (the installation of a buried utility water pipeline), the development would not further change the hydrology of the site as it will not result in additional nonpermeable areas, and therefore, would not require a post-development plan for water quality protection. Therefore, **Special Condition 19** requires the applicant provide a Construction Pollution Prevention Plan in compliance with the certified LCP.

As conditioned, the project will minimize adverse impacts on coastal waters to the extent that it will not have a significant impact on marine resources, biological productivity or coastal water quality. Therefore, the Commission finds that the proposed development, as conditioned, is in compliance with the certified LCP regarding the

protection of water quality to protect marine resources, promote the biological productivity of coastal waters, and to protect human health.

G. Permit Fees

Coastal Act Section 30620(c)(1), in part:

The Commission may require a reasonable filing fee and the reimbursement of expenses for the processing by the Commission of an application for a coastal development permit...

Section 13055 of the California Code of Regulations sets the filing fees for coastal development permit amendments, and states in relevant part:

(a)(6)\$1,270.00 for immaterial amendments to coastal development permits, and fifty percent (50%) of the permit fee that would currently apply to the permitted development for material amendments to coastal development permits.

In this case, the proposed amendment is a material amendment. The amendment application was submitted on 8/14/20 and filed complete on 9/13/20, thus, the fee is based on the CDP application Filing Fee Schedule for the 2020/2021 fiscal year (Section 13055, subsection (a)(6) of the California Code of Regulations). The required fee is \$10,160 (\$12,700 for more than four attached units, plus a grading fee \$3,810 and a lot line adjustment fee of \$3,810 totaling \$20,320 which is then divided in half equals \$10,160). Because the applicant has already paid \$1,270, **Special Condition 20** requires the applicant to pay the balance of \$8,890 prior to issuance of the permit, consistent with the requirements of California Code of Regulations Section 13055(i).

H. California Environmental Quality Act (CEQA)

Section 13096 of Title 14 of the California Code of Regulations requires Commission approval of Coastal Development Permit applications to be supported by findings showing the approval, as conditioned, 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 Commission's regulatory program for reviewing and granting CDPs has been certified by the Resources Secretary to be the functional equivalent of CEQA. (14 CCR § 15251(c).)

In this case, the City of Newport Beach is the lead agency and the Commission is a responsible agency for the purposes of CEQA. The City of Newport Beach required the

proposed water supply line for fire safety as part of the overall Aerie Development. The Newport Beach City Council Resolution No. 2001-51 certified an EIR for the project on July 14, 2009. As a responsible agency under CEQA, the Commission has determined that the proposed project, as conditioned, is consistent with the City's certified Local Coastal Program and the public access and recreation policies of the Coastal Act. As conditioned, there are no feasible alternatives or additional feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project can be found consistent with the requirements of the Coastal Act to conform to CEQA.

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

City of Newport Beach LCP

CDP 5-10-298 (Advanced Group 99), CDP 5-10-298-A1 (Advanced Group 99)
Immaterial Amendment, CDP 5-10-298-A2 (Advanced Group 99) Immaterial
Amendment

CDP 5-12-214 (Advanced Group 99)

APPENDIX B - STANDARD AND SPECIAL CONDITIONS PURSUANT TO CPD NO. 5-10-298 THROUGH AMENDMENT NO. 5-10-298-A3

Note: Appendix B provides a list of all standard and special conditions imposed pursuant to Coastal Development Permit 5-01-097, as approved by the Commission in its original action and as modified and/or supplemented by this subject amendment number 5-01-097-A2. Any changes and new special conditions pursuant to amendment A2, from the previously approved special conditions are shown in **underline, bold**. Thus, this Appendix B provides an aggregate list of all currently applicable adopted special conditions.

STANDARD CONDITIONS AND SPECIAL CONDITIONS

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 applicant 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 of 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 applicant to bind all future owners and possessors of the subject property to the terms and conditions.

SPECIAL CONDITIONS:

1. PUBLIC RIGHTS

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

2. SCOPE OF APPROVAL

This coastal development permit does not authorize demolition of the existing 2-slip floating dock structure and/or replacement with a new 7-slip floating dock and guest side-tie as has been authorized by the City of Newport Beach. Any demolition, replacement or expansion of the existing 2-slip floating dock and dock related structures (i.e., piers, gangway) shall require separate review and approval by the Commission. No demolition or work is proposed to an existing pre-Coastal Act concrete step bluff stairway below the 50.7' elevation contour line.

3. ASSUMPTION OF RISK, WAIVER OF LIABILITY AND INDEMNITY

By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from liquefaction, erosion, landslide, tidal action, flooding, and sea level rise; (ii) to assume the risks to the applicants and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and

employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

4. CONSTRUCTION BEST MANAGEMENT PRACTICES

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

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

B. Best Management Practices (BMP's) designed to prevent spillage and/or runoff of construction-related materials, sediment, or contaminants associated with construction activity shall be implemented prior to the onset of such activity. Selected BMP's shall be maintained in a functional condition throughout the duration of the project. Such measures shall be used during construction:

- (1) The applicant shall ensure the proper handling, storage, and application of petroleum products and other construction materials. These shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. It shall be located as far away from the receiving waters and storm drain inlets as possible;
- (2) The applicant shall develop and implement spill prevention and control measures;
- (3) The applicant shall maintain and wash equipment and machinery in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems. Washout from concrete trucks shall be disposed of at a location not subject to runoff and more than 50 feet away from a storm drain, open ditch or surface water; and
- (4) The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during construction.

5. PERMANENT DRAINAGE AND RUNOFF CONTROL PLAN

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

- a) The plan shall demonstrate the use of distributed small-scale controls or integrated Best Management Practices (BMPs) that serve to minimize alterations to the natural pre-development hydrologic characteristics and conditions of the site, and effectively address pollutants of concern.
- b) Post-development peak runoff rate and average volume from the site shall be maintained at levels similar to pre-development conditions.
- c) Selected BMPs shall consist, or primarily consist, of site design elements and/or landscape based systems or features that serve to maximize site permeability, avoid directly connected impervious area and/or retain, infiltrate, or filter runoff from rooftops, driveways and other hardscape areas, where feasible.
- d) Landscaping materials shall consist primarily of native or other low-maintenance plant selections which have low water and chemical treatment demands. An efficient irrigation system designed based on hydrozones and utilizing drip emitters or micro-sprays or other efficient design should be utilized for any landscaping requiring water application.
- e) Runoff shall be discharged from the developed site in a non-erosive manner. Energy dissipating measures shall be installed at the terminus of outflow drains where necessary. The consulting engineer shall provide plan details and cross sections for any rock rip rap and/or other energy dissipating devices or structures associated with the drainage system. The drainage plans shall specify, the location, dimensions, cubic yards of rock, etc. for the any velocity reducing structure with the supporting calculations showing the sizing requirements and how the device meets those sizing requirements. The engineer shall certify that the design of the device minimizes the amount of rock and/or other hardscape necessary to meet the sizing requirements.
- f) Post-construction structural BMPs (or suites of BMPs) shall be designed to treat, infiltrate or filter the amount of stormwater runoff produced by all storms up to and including the 85th percentile, 24-hour storm event for volume-based BMPs, and/or the 85th percentile, 1-hour storm event, with an appropriate safety factor (i.e., 2 or greater), for flow-based BMPs.

- g) All BMPs shall be operated, monitored, and maintained in accordance with manufacturer's specifications where applicable, or in accordance with well recognized technical specifications appropriate to the BMP for the life of the project and at a minimum, all structural BMPs shall be inspected, cleaned-out, and where necessary, repaired prior to the onset of the storm season (October 15th each year) and at regular intervals as necessary between October 15th and April 15th of each year. Debris and other water pollutants removed from structural BMP(s) during clean-out shall be contained and disposed of in a proper manner.
- h) For projects located on a hillside, slope, or which may otherwise be prone to instability, final drainage plans should be approved by the project consulting geotechnical engineer.
- i) Should any of the project's surface or subsurface drainage/filtration structures or other BMPs fail or result in increased erosion, the applicant/landowner or successor-in-interest shall be responsible for any necessary repairs to the drainage/filtration system or BMPs and restoration of the eroded area. Should repairs or restoration become necessary, prior to the commencement of such repair or restoration work, the applicant shall submit a repair and restoration plan to the Executive Director to determine if an amendment or new coastal development permit is required to authorize such work.
- j) The final Permanent Drainage and Runoff Control Plan shall be in conformance with the site/ development plans approved by the Coastal Commission. Any changes to the Coastal Commission approved site/development plans required by the consulting civil engineer/water quality professional or engineering geologist shall be reported to the Executive Director. No changes to the Coastal Commission approved final site/development plans shall occur without an amendment to the coastal development permit, unless the Executive Director determines that no amendment is legally required.

6. NO FUTURE BLUFFTOP OR SHORELINE PROTECTION DEVICES

- A. By acceptance of this Permit, the applicant agrees, on behalf of itself and all successors and assigns, that no bluff or shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. 5-10-298 including, but not limited to, the structure, foundations, patios, balconies and any other future improvements in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, bluff retreat, landslides, sea level rise or other natural coastal hazards in the future. By acceptance of this Permit, the applicant/landowner hereby waives, on behalf of itself and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235.
- B. By acceptance of this Permit, the applicant/landowner further agrees, on behalf of itself and all successors and assigns, that the landowner(s) shall remove the development authorized by this Permit, including the residence, foundations, patios, balconies and any other future improvements if any government agency

has ordered that the structures are not to be occupied due to any of the hazards identified above. In the event that portions of the development fall to the beach before they are removed, the landowner shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.

7. FUTURE IMPROVEMENTS

This permit is only for the development described in Coastal Development Permit No. 5-10-298. Additional development, including but not limited to construction of docks, piers, gangways, decks, patios and associated structures, demolition and reconstruction of bluff stairway and landscaping shall require an amendment to Permit No. 5-10-298 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government. In addition, pursuant to Title 14 California Code of Regulations Section 13253(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(b) shall not apply to the entire parcel, newly created by the lot-line adjustment approved under this permit. Accordingly, any future improvements to the development authorized by this permit, including but not limited to repair and maintenance activities identified as requiring a permit in Public Resources Section 30610(d) and Title 14 California Code of Regulations Sections 13252(a)-(b), shall require an amendment to Permit No. 5-10-298 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

8. LANDSCAPE PLANS

- A. All landscaping shall consist of native or non-native drought tolerant non-invasive plant species. No plant species listed as problematic and/or invasive by the California Native Plant Society (<http://www.CNPS.org/>), the California Invasive Plant Council (formerly the California Exotic Pest Plant Council) (<http://www.cal-ipc.org/>), or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a "noxious weed" by the State of California or the U.S. Federal Government shall be utilized within the property. All plants shall be low water use plants as identified by California Department of Water Resources (See: <http://www.owue.water.ca.gov/docs/wucols00.pdf>). Any existing landscaping that doesn't meet the above requirements shall be removed;
- B. Proposed landscaping shall not adversely impact public views of the bay, beach and ocean provided through the site. All landscaping within the view corridor to the bay, beach and ocean shall be comprised of plant species with a 3' high growth maximum that, at maximum growth (width/height), do not reduce, obstruct, or in any way interfere with, public views. The required Revised Landscape Plans shall provide information regarding the maximum height and width of the proposed landscaping vegetation. Landscaping shall be trimmed/maintained such that impacts upon public views are avoided. Once planted, if the Executive Director determines that any landscaping within the view corridor to the bay, beach and ocean is causing an impact upon public views, the applicant shall replace such landscaping with different plant species that meet the requirements of this special condition, as directed by the Executive Director;

- C. All planting shall provide 90 percent coverage of the designated landscaped area within 90 days and shall be repeated if necessary to provide such coverage; and
- D. All plantings shall be maintained in good growing condition throughout the life of the project, and whenever necessary, shall be replaced with new plant materials to ensure continued compliance with the landscape plan;
- E. The permittee shall undertake development in accordance with the approved plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

9. RESTRICTIONS ON DEVELOPMENT WITHIN THE VIEW CORRIDOR

No development other than the proposed bench, water fountain and landscaping shall be sited within the proposed 44-degree wide view corridor located at the corner of Ocean Blvd. and Carnation Ave. as generally depicted in Exhibit 9 of the staff report dated May 26, 2011. The landscaped area within the view corridor shall only be planted with low-growing native or non-native drought tolerant non-invasive vegetation that does not reduce, obstruct, or in any way interfere with public views through the view corridor, consistent with the requirements of **Special Condition 8**.

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

- A. The applicant shall establish covenants, conditions and restrictions (CC&R's), or an equivalent thereof, for the proposed residential development to, among other things, address maintenance of the public view corridor at the corner of Ocean Blvd. and Carnation Ave and to notify present and future owners of all the requirements of this coastal development permit. The CC&R's shall reflect the following requirements of this coastal development permit: 1) The location, presence of, and requirement to maintain the 44-degree wide view corridor at the proposed viewpoint at elevation 69-feet at the corner of Carnation Ave and Ocean Blvd. as shown on Exhibit 9 of this staff report and required pursuant to **Special Condition 8 and 9**; 2) long-term maintenance of the proposed park bench and drinking fountain; 3) the presence and content of a requirement identified in **Special Condition 7** of the permit regarding the need to obtain a coastal development permit for future development; and 4) the presence and content of a requirement identified in **Special Condition 6** of the permit regarding no future blufftop and shoreline protection devices; 5) the requirements identified in **Special Condition 5** of this permit relative to the permanent drainage and runoff control plan; 6) the requirements identified in **Special Condition 14** of the permit regarding pool protection plan; (7) the requirements identified in **Special Condition 3** of this permit relative to the assumption of risk, waiver of liability and indemnity; (8) the requirements of **Special Condition No. 15** regarding bird strike hazard prevention; (9) the requirements of **Special Condition No. 16** relative to mitigation of the visual impact of future exposure of foundations and other subsurface structures; (10) the requirements of **Special Condition No. 17** prohibiting public access controls and restrictions on use of the public viewpoint; (11) the requirements of **Special Condition No. 18** relative to the permittees liability for costs and attorneys fees; and (12) notice pursuant to **Special Condition 1** that the Commission's approval of the proposed

development does not waive any public rights that may exist on the property. The CC&Rs shall specify that any amendment to the CC&Rs affecting implementation of the requirements of this permit does not become effective until the Executive Director determines that the amendment is consistent with the Conditions of this permit.

- B. As soon as an owner's association or similar entity comprised of the individual owners of the development is legally created and binding on all owners, the applicant shall transfer, and the owner's association or similar entity shall accept, responsibility for the easement areas indicated in this permit.
- C. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, and prior to recordation of any CC&R's, parcel maps or tract maps associated with the approved project, said CC&R's and Tract and parcel maps shall be submitted to the Executive Director for review and approval. The Executive Director's review shall be for the purpose of ensuring compliance with the standard and special conditions of this coastal development permit. Any CC&R's, parcel map conditions or notes, or tract map provisions which the Executive Director determines are not consistent with any of the Conditions of this permit shall be modified to be consistent with the Conditions of the permit before recordation.
- D. Simultaneous with the recording of the final parcel/tract map(s) approved by the Executive Director, the permittee shall record the covenants, conditions and restrictions approved by the Executive Director, against the property.

11. CITY OF NEWPORT BEACH APPROVAL

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

12. CONSTRUCTION/DEVELOPMENT PHASING

Consistent with the applicant's proposal, construction of a park bench and water fountain within the public-right-of-way at the corner of Ocean Blvd. and Carnation Avenue for view corridor access depicted on the final plans approved by the Executive Director shall be phased so that they are available to the public prior to or concurrent with initial occupation of the development approved by this coastal development permit.

13. POOL PROTECTION PLAN

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit, for review and approval of the Executive Director, two (2) full size sets of a pool protection plan prepared by an appropriately licensed professional that incorporates mitigation of the potential for geologic instability caused by leakage from the proposed pool. The pool protection plan shall incorporate and identify on the plans the follow

measures, at a minimum: 1) installation of a pool leak detection system such as, but not limited to, leak detection system/moisture sensor with alarm and/or a separate water meter for the pool which is separate from the water meter(s) for the condominium structure to allow for the monitoring of water usage for the pool, and 2) use of materials and pool design features, such as but not limited to double linings, plastic linings or specially treated cement, to be used to waterproof the undersides of the pool and spa to prevent leakage, along with information regarding the past and/or anticipated success of these materials in preventing leakage; and where feasible 3) installation of a sub drain or other equivalent drainage system under the pool that conveys any water leakage to an appropriate drainage outlet. The applicants shall comply with the final pool plan approved by the Executive Director.

14. FINAL PROJECT PLANS

- A. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the Executive Director's review and approval, two (2) full size sets of final revised project plans with City of Newport Beach Approval in Concept. The final revised project plans shall be in substantial conformance with the plans dated April 11, 2011 and submitted to the Commission on May 9, 2011 and conform to the requirements of the special conditions of this permit and indicate the final layout of all development including but not limited to: grading, buildings, water quality management system, decks and existing docks and piers. No work to the existing docks and piers is authorized by this coastal development permit approval. The plans shall be revised to include the following:
- 1) Depiction of all existing development on the site, including the existing bluff stairs and the existing dock system configuration as no demolition or work is proposed for the site below the 50.7' elevation contour and no dock structure replacement is authorized by this permit.
 - 2) Depiction of proposed park bench and drinking fountain view corridor access improvements outside of the project property line on the public-right-of-way at the corner of Ocean Blvd. and Carnation Ave.
 - 3) No development shall be sited seaward of the Predominant Line of Existing Development (PLOED) at elevation 50.70' (e.g., grading, enclosed living space, cantilevered decks, cantilevered patios, fences, guardrails and cantilevered pool areas).
 - 4) No development (e.g. grading, foundations, structures, etc.) shall occur below the PLOED at elevation 50.70' (except as follows: i) to install the 33 caissons/piles for the pile-supported retaining wall depicted on the amended Shoring Plan dated July 2, 2013 and any tieback anchors}, ii) for 24" deep footings below the concrete slab bottom at 50.7' elevation to support structural internal and perimeter building foundation walls, iii) slab waterproofing systems between native soils and slab, iv) sewer to serve the proposed development; v) on site drainage pipes underneath the slab; vi) three sewer ejector pumps just inside the Carnation Avenue property line requiring excavation of three pits approximately 54 inches in diameter and 144 inches below the 50.70' elevation; vii) a 4" diameter fire line contained within a 24"x30" thrust block foundation. These ancillary utility systems may be permitted no more than 42" below the concrete slab bottom at 50.7' elevation. These ancillary utility systems may be permitted

no more than 36" below the concrete slab bottom at 50.7' elevation, with the exception of the three sewer ejector pumps. Perimeter building foundations shall not project beyond the exterior building walls. All ancillary utility and drainage lines shall be located landward of the bluff face and perimeter building foundations. Only the main utility line connections from the building to the City infrastructure lines may extend beyond the perimeter building foundations.

- 5) Grading of the bluff face shall be minimized wherever possible. No further grading of the north bluff face (Carnation Ave. bluff) than as proposed in the plans dated April 11, 2011 (the lowermost exposed visible surface of the development on the west bluff or "Ocean Blvd. bluff" at the 51.14' elevation, approximately half a foot above the established PLOED at 50.70' elevation and on the north or "Carnation Ave. bluff" the lowermost exposed visible surface is at 61.31' elevation) except for grading required for installation of a 4" diameter fire line contained within a 24"x30" thrust block foundation, as proposed in the Dock Hydrant Supply Piping Plan dated November 26, 2014 and submitted to the Commission on August 14, 2020.
- B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

15. **BIRD STRIKE PREVENTION**

A. Ocean front glass railings, fences, screen walls and gates subject to this permit shall use materials designed to minimize bird-strikes with the railing, screen wall, fence, or gate. Such materials may consist, all or in part, of wood; metal; frosted or partially-frosted glass, Plexiglas or other visually permeable barriers that are designed to prevent creation of a bird strike hazard. Clear glass or Plexiglas shall not be installed unless an ultraviolet-light reflective coating and/or appliques (e.g. stickers/decals) specially designed to reduce bird-strikes by reducing reflectivity and transparency are also used. Any coating or appliques used shall be installed to provide coverage consistent with manufacturer specifications (e.g. one applique for every 3 foot by 3 foot area) and the recommendations of the Executive Director. Use of opaque or partially opaque materials is preferred to clear glass or Plexiglas and appliques. All materials, coatings and appliques shall be maintained throughout the life of the development to ensure continued effectiveness at addressing bird strikes and shall be maintained at a minimum in accordance with manufacturer specifications and as recommended by the Executive Director. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the permittee shall submit final revised plans showing the location, design, height and materials of glass railings, fences, screen walls and gates for the review and approval of the Executive Director. Said plans shall reflect the requirements of this special condition.

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

16. **FUTURE FOUNDATION/SUBSURFACE STRUCTURE EXPOSURE PLANS**

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

17. PROHIBITION ON PUBLIC ACCESS CONTROLS

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

18. LIABILITY FOR COSTS AND ATTORNEYS FEES

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

19. CONSTRUCTION POLLUTION PREVENTION PLAN

PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT AMENDMENT A3, the applicant shall submit a Construction Pollution Prevention Plan (CPPP). The Plan shall describe the temporary BMPs the development will implement to minimize erosion and sedimentation during construction, and to minimize pollution of runoff and coastal waters by construction chemicals and materials. The Plan shall avoid use of plastic netting (such as polypropylene, nylon, polyethylene, polyester or other synthetic fibers) in temporary erosion and sediment control products in order to minimize wildlife entanglement and plastic debris pollution. To comply with the CPPP requirements of the certified IP Section 21.35.030(C), the CPPP shall include a construction site map and a narrative description addressing, at a minimum, the following required components:

1. Construction Site Plan Map. A map delineating the construction site, construction phasing boundaries, and the location of all temporary construction-phase BMPs (such as silt fences, inlet protection, and sediment basins).
2. Description of BMPs to be Implemented to Meet All CPPP Requirements. A description of the BMPs that will be implemented to meet all the CPPP requirements and how these BMPs will minimize pollution of runoff and coastal waters during construction. Include calculations that demonstrate proper sizing of the BMPs.

3. Construction Phasing Schedule. A description and timeline of significant land disturbance activities including a schedule for installation and removal of temporary erosion and sedimentation control BMPs, and identification of any temporary BMPs that will be converted to permanent post-development BMPs.

20. CDP AMENDMENT APPLICATION FEE

PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT AMENDMENT A3, the applicant shall pay the balance of the CDP material amendment application fee which is \$8,890. The CDP material amendment fee is 50% of the fee for the original project according to currently applicable fees.