

Marina Park Final Environmental Impact Report

Response to Comments
Errata

State Clearinghouse Number 2008051096

May 2010



Sirius Environmental

City of Newport Beach
Planning Department

**Marina Park
Final Environmental Impact Report**

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CHAPTER 1: INTRODUCTION

1.1 INTRODUCTION

This Final Environmental Impact Report (FEIR) has been prepared in accordance with the California Environmental Quality Act (CEQA) as amended (Public Resources Code Section 21000 et seq.) and CEQA Guidelines (California Administrative Code Section 15000 et seq.). According to CEQA Guidelines, Section 15132, a FEIR shall consist of:

- (a) The Draft Recirculated Environmental Impact Report (Draft REIR) or a revision of the Draft;
- (b) Comments and recommendations received on the Draft REIR either verbatim or in summary;
- (c) A list of persons, organizations, and public agencies comments on the Draft REIR;
- (d) The responses of the Lead Agency to significant environmental points raised in the review and consultation process; and
- (e) Any other information added by the Lead Agency.

This document contains responses to comments received on the Draft REIR for the Marina Park project during the public review period, which began January 25, 2010, and closed March 10, 2010, as well as errata to the Draft REIR. This document has been prepared in accordance with CEQA and the CEQA Guidelines and represents the independent judgment of the Lead Agency. This document and the Draft REIR comprise the Final EIR, in accordance with CEQA Guidelines, Section 15132.

1.2 PROCESS

As defined by Section 15050 of the CEQA Guidelines, the City of Newport Beach is serving as “Lead Agency,” responsible for preparing both the Draft and Final EIR for this project.

A Draft EIR for the Marina Park project was prepared and released for public review in February 2009. After considering public and agency comments on that draft, and in view of project modifications that occurred since release of the Draft EIR, the City of Newport Beach decided to prepare and recirculate a new Draft EIR.

The Draft Recirculated Environmental Impact Report (Draft REIR) was prepared in accordance with the California Environmental Quality Act (CEQA) to evaluate the potential environmental impacts associated with the implementation and development of Marina Park. The Draft REIR

document was prepared in conformance with CEQA (California Public Resources Code Section 21000 et seq.), the State CEQA Guidelines (California Code of Regulations, Title 14, Section 15000 et seq.), and the City of Newport Beach Implementation Procedures for CEQA. The Draft REIR includes a revised project description (to include three project phases) and analyses revised as appropriate to reflect the revised project description as well as revisions included to respond to comments received on the Draft EIR. The Draft REIR also includes, in a separate Section (8), detailed specific responses to all comments received on the Draft EIR.

The Draft REIR was circulated for a period of 45-days, beginning on January 25, 2010, and ending on March 10, 2010. Comments on the Draft REIR were received during the comment period, and those comments are set forth and are responded to in this Final EIR.

This Final EIR will be submitted to the City Council for certification. The City Council will review the Final EIR, together with consideration of the proposed project.

1.3 CONTENTS OF THE FINAL REIR

This Final EIR has been prepared in three parts. A description of each part is as follows:

- Chapter 1 provides a brief introduction to the Final EIR and its contents.
- Chapter 2 provides a list of commenting agencies, organizations and individuals as well as copies of each comment letter received.
- Chapter 3 provides responses to written comments made by both the public agencies and interested parties. Some of the comment letters received on the Draft EIR also provide comments on the project (not the anticipated environmental impacts). These project-related comments require no response in the EIR process, but the opinions expressed by the commenter will be forwarded to the City Council for their consideration in the project decision-making process. Chapter 3 also includes errata to the Draft REIR.

Consistent with state law (Public Resources Code 21092.5), responses to agency comments will be forwarded to each commenting agency at least 10 days prior to the last public hearing.

1.4 CEQA REQUIREMENTS REGARDING COMMENTS AND RESPONSES

CEQA Guidelines Section 15204 (a) outlines parameters for submitting comments, and reminds persons and public agencies that the focus of review and comment of Draft EIRs should be “on the sufficiency of the document in identifying and analyzing possible impacts on the environment and ways in which significant effects of the project might be avoided or mitigated. Comments are most helpful when they suggest additional specific alternatives or mitigation measures that would provide better ways to avoid or mitigate the significant environmental effects. At the same time, reviewers should be aware that the adequacy of an EIR is determined in terms of what is reasonably feasible. ...CEQA does not require a lead agency to conduct every test or perform all research, study, and experimentation recommended or demanded by commenters. When

responding to comments, lead agencies need only respond to significant environmental issues and do not need to provide all information requested by reviewers, as long as a good faith effort at full disclosure is made in the EIR.”

CEQA Guidelines Section 15204 (c) further advises, “Reviewers should explain the basis for their comments, and should submit data or references offering facts, reasonable assumptions based on facts, or expert opinion supported by facts in support of the comments. Pursuant to Section 15064, an effect shall not be considered significant in the absence of substantial evidence.” Section 15204 (d) also states, “Each responsible agency and trustee agency shall focus its comments on environmental information germane to that agency’s statutory responsibility.” Section 15204 (e) states, “This section shall not be used to restrict the ability of reviewers to comment on the general adequacy of a document or of the lead agency to reject comments not focused as recommended by this section.”

In accordance with CEQA, Public Resources Code Section 21092.5, copies of the written responses to public agencies will be forwarded to those agencies at least 10 days prior to certifying the environmental impact report. The responses will be forwarded with copies of this Final EIR, as permitted by CEQA, and will conform to the legal standards established for response to comments on Draft EIRs.

CHAPTER 2: COMMENTS ON THE DRAFT REIR

LIST OF COMMENTING AGENCIES, ORGANIZATIONS AND INDIVIDUALS

The public comment period for the Draft REIR extended from January 25, 2010 to March 10, 2010. The following is a list of agencies and persons that submitted comments on the Draft REIR during the public review period (Comment Letter 11 was received March 16, 2010, six days after the close of the comment period).

Letter No.	Organization	Commenter Name	Comment Date	Response Page Number
1	Environmental Quality Affairs Citizens Advisory Committee		February 23, 2010	3-1
2		Madelaine Whiteman	February 15, 2010	3-7
3	Orange County Transportation Agency		February 23, 2010	3-7
4	State of California, Department of Transportation, District 12	Chris Herre, Branch Chief	February 3, 2010	3-8
5	Southern California Gas Company		January 26, 2010	3-8
6	State of California, Department of Toxic Substances Control	Greg Holmes, Unit Chief	March 1, 2010	3-8
7	State of California, California State Lands Commission	Marina R. Brand, Acting Chief	March 3, 2010	3-8
8	Pier to Pier, Central Newport Beach Community Association	Louise Fundenberg, President	March 9, 2010	3-9
9		Tom Rossi, Resident	March 9, 2010	3-9
10	California Cultural Resource Preservation Alliance, Inc.	Patricia Marts, PhD, President	March 7, 2010	3-10
11	California Coastal Commission	Fernie Sy, Coastal Program Analyst II	March 10, 2010	3-10

To: Rosalinh Ung
Associate Planner
City of Newport Beach Planning Department
3300 Newport Blvd.
Newport Beach, CA 92658-8915

23 February 2010

From: Environment Quality Affairs Citizens Advisory Committee (EQAC)

Subject: Comments on Marina Park REIR dated January 2010

EQAC is pleased to take this opportunity to provide comments on the referenced REIR. Our comments are generally listed in their order of appearance in the documents with page and paragraph references as needed. We hope that they are constructive and assist the proponent in producing the best possible project for the City of Newport Beach.

2. Executive Summary

Page 2-5, 5.2-A: The conclusion under “Cumulative” in the first column should be “Potentially Significant.” The impact is mitigated to less than significant as indicated in the 3rd column of that box.

1-1

3. Project Description

Does the Girl Scout building that is to be demolished have any historic significance? If so, can it be saved, moved, etc?

1-2

Is there analysis to show that two half-court basketball courts are adequate? This is a very popular activity that appears to be in high demand, especially during good beach weather.

1-3

Need the pathways be paved? Have alternatives, such as environmentally sound composite decking material, been considered?

1-4

What is the anticipated timing for the beginning of Phase 3 construction after Phase 2 construction has been completed? In other words, are the interim Phase 2 improvements necessary, or can the project proceed from Phase 1 to Phase 3 and therefore not lose all the temporary Phase 2 improvements? Moreover, to what extent can the Phase 2 improvements be used by the public during the Phase 3 construction period? The less that the park can be used during the Phase 3 construction period, the less it makes sense for the temporary Phase 2 improvements.

1-5

Operation (pg. 3-19)-The Balboa Center “...would also be available for private functions on a rental basis.” To what extent? Clearly, rental events will conflict with peak period usage by the public, as both the rental events and public usage will be greatest on weekends.

1-6

Short-term harbor based users will be permitted to utilize the marina berths for up to 30 days. This duration seems excessive, and can lead to a few boats tying up the majority of the marina (which calls for only 23 berths) during peak season.

1-7

4. Environmental Setting

Clarification regarding the OLQA Church expansion (Table 4-1, pg.4-2) - The school is already 100% completed. However, the new church and gymnasium have yet to break ground. Does this affect any analysis?

1-8

5.1 Aesthetics

In response to previous EQAC concerns, the commitment to try to relocate existing mature trees at Veterans Park to accommodate repositioned tennis courts is positive (pg. 8-39). Also, use of low wattage lamps in the lighthouse (pp. 8-39,40) should be adequate to insure negligible impact on the adjacent properties.

Following are additional general comments regarding aesthetics:

1. In general, the environmental aesthetics described in the REIR is a major improvement over the current mobile home “park”. The removal of current vegetation and replacement with new vegetation is also a monumental improvement and will be more “green”.
2. The improvements will be a better use of the environment for more people, not just the few who reside in the mobile homes and the current visitors, as the new park will be open to all and will also draw more visitors, both from within and without our city: e.g. visiting vessels, an additional basketball court and improved tennis courts (reducing the number of tennis courts by ½ should please nearby residents with less noise and only two sets of court lights with new and improved hoods in place of four).
3. Environmental friendly and easy cleanup will result from new restrooms and washing machines.
4. Consideration of wind velocity and direction leads to cleaner air.
5. Permeable paving on parking lots is environmentally friendly and attractive.

1-9

5.2 Air Quality

Modeled data is used to determine the significance of environmental impacts and it seems that the observations taken for local air quality, and then used to generate all the modeled data, might be flawed. Observations taken in locations that seem less than relevant to the Marina Park project located on Newport Peninsula need to be justified (See Section 5.2.3

1-10

– Existing Conditions, “Local Air Quality”). The SCAQMD’s closest monitoring station for communities in its Central Orange County Coastal region is Source Receptor Area 18. This collection point for all current air quality data (except particulate matter pollutants, PM_{2.5} and PM₁₀) is located on Mesa Verde Drive in Costa Mesa, approximately 4 miles inland from the proposed Marina Park. The data collection point for PM_{2.5} and PM₁₀ is located in Mission Viejo, over 14 miles away.

For a project of this importance and given the obvious efforts expended by the writers of this REIR it would seem appropriate to obtain observations of current air quality conditions on or much closer to the site of the project. If use of portable testing equipment of precision needed to produce reliable on-site observations is not feasible or if experts needed to conduct the tests are not available this should have been explained. Or if the suitability of the data collected at these distant locations for producing data models was justified using appropriate SCAQMD references as support, then it would have been clear that the writers of the REIR took the initial DEIR reviewers’ comments to heart. As it stands this REIR provides no justification why local air quality data from these distant test sites is acceptable for use as the basis for all modeled data. This is clearly a shortcoming of this REIR and needs to be addressed.

1-10
cont .

Irrespective of the concern discussed above, the big picture for Air Quality painted by the REIR is one of minimal potential for findings of significant Air Quality issues by the Marina Park project. In fact, the only hard and binding guideline for determining significant air quality issues is the Air Resources Boards preliminary guidance (see page 5.2-9, paragraph 2) and City of Newport Beach’s own guideline concerning Green House Gas emissions. This guideline considers residential (including park) projects emitting ≤1,600 metric tons of CO₂ per year as less than significant, therefore requiring no further analysis. (See 5.2-1). The Marina Park project did not come even close to this threshold during either construction or operation, even without mitigation. Federal air quality standards, California Environmental Quality Act, Air Resource Board, and South Coast Air Quality Management District guidelines and checklists for evaluation resulted in almost no other concerns during the project’s three construction phases or during operation of the project, even without mitigation efforts.

1-11

In spite of this rosy outlook for the Marina Park project, there are a few questions and concerns in response to the REIR:

1. Page 5.2-11; paragraph headed by City of Newport Beach, last sentence – Are the words “do not” at the beginning of this sentence a typo? They seem to conflict with the intended meaning of the sentence.
2. Page 5.2-13, paragraph headed by Analytical Methodology – Over a dozen tables in Air Quality section of the REIR were prepared to present detailed analysis of emissions in order to determine significance during construction phases and operation of the Marina Park project. The data for federally identified criteria pollutants plus pollutants identified by the State of California were developed using modeling of the current air quality data collected for analysis. These modeling protocols include:

1-12

1-13

- URBEMIS 2007 Version 9.2 for air quality modeling and greenhouse gas emissions (except tugboat emission).
- CALINE4 for CO hotspot and vehicular traffic cumulative volumes for worst-case scenarios.

1-13
cont.

The production via modeling of this data is obviously a critical step needed to make determinations of significant environmental impacts, yet at no point in the this section of the REIR is an explanation offered why these modeling protocols were chosen, what they do, how they do it, possible alternatives or any statement concerning the accuracy of the modeled data. These concerns should be addressed.

3. Page 5.2-21; Project Emissions, Phase 3 – In order to estimate criteria pollutants in the operational phase of the Marina Park project the REIR assumes that 100 boats would taxi for one hour per day. These results were then modeled using the federal Environmental Protection Agency’s NONROAD model. The REIR confirms that a wide range of boats will be accommodated by the marina docks, berths and the City’s sailing programs. Boats up to 40 feet in length can be moored in the marina’s 23 slips. These larger boats all presumably have on-board propulsion systems. Boats ranging in size from small unpowered dingies to large 60 foot plus power boats will tie off on the marina’s 200 feet of floating docks. The REIR does state what boats make up the 100 boats that are estimated to taxi one hour per day. It doesn’t cite data that estimates the boats likely to use the 23 berths nor what type of power plants do they use. Larger boats tend to use diesel engines that generate a higher output of toxic air contaminates. None of these variables are addressed which leads to concern about the accuracy of the data generated for study.

1-14

4. Page 5.2-22; Carbon Monoxide Hotspot Analysis Phase – The REIR states that for the purpose of studying traffic generated CO hotspots, the intersections of Newport Blvd. @ Via Lido and Newport Blvd. @ 32nd Street were analyzed to develop estimates of 1-hour and 8-hour CO concentrations. Why were these two intersections chosen for study? The closest intersection (Newport Blvd @ 32nd Street) is ~ 3000 feet from the nearest corner of the Marina Park project. Wouldn’t a closer signalized intersection provide more relevant data? Please address this question.

1-15

Pages 5.2-37 & 38, Level of Significance After Mitigation – Mitigation Measures MM 5.2-I.1 through MM 5.2-I.4 are cited on page 5.2-37. Mitigation Measures 5.2-I.6, 5.2-I.8, 5.2-I.10 and 5.2-I.11 are cited on page 5.2-38. None of these mitigation measures are explained as are, for example, Mitigation Measures 5.2-A.1 through 5.2-A.3 on pg. 5.2-17. Please provide a brief explanation of these mitigation measures.

1-16

Air Quality emission calculations in Appendix C assume that construction activities would begin in 2009 and the project would be operational in 2010. Suggest that the emission calculations be updated as construction will not start under mid-2010 and not be completed until 2011.

1-17

Page 5.2-13, first paragraph under Analytical Methodology, about 2/3rds into the paragraph. The sentence that reads “The CO2 hotspot analysis used the CALINE4 model

1-18

...” should be revised to say “The CO hotspot analysis used the CALINE4 model ...” (not CO2). The RDEIR should be checked for other occurrences of this reference error and corrected throughout accordingly.

1-18
cont.

5.3 Biological Resources

Page 5.3-16 Text: “The placement of dredged material would have a significant impact on grunion if it took place during the peak spawning season”.

1-19

How will the construction timing be managed to reduce the potentially significant impact on grunion?

Page 5.3-19(MM 5.3-A.2) Text: “During Phase 3 project construction, the City of Newport Beach shall require that the use of sound abatement techniques be used to reduce noise and vibrations from pile-driving activities. At the initiation of each pile-driving event and after breaks of more than 15 minutes, the pile driving shall also employ a “soft-start” in which the hammer is operated at less than full capacity (i.e., approximately 40 to 60 percent energy levels) with no less than a 1-minute interval between each strike for a 5-minute period.

1-20

A biological monitor shall be on-site to monitor effects on marine mammals, including flushing responses and symptoms of stress or damage. The biological monitor shall also note (surface scan only) whether marine mammals are present within 100 meters (333 ft) of the pile driving and, if any are observed, temporarily halt pile driving until the observed mammals move beyond this distance”.

What other methods, beyond surface scan, have been considered for the biological resources monitoring portion of the MM? Why was surface scan chosen?

Page 5.3-21 Text: “the benthic community would re-colonize the sediments”.

1-21

What is the foundation for this assertion? What other sites with similar characteristics have been successful in re-colonization of the benthic community?

Page 5.3-22 Text: “In recognition of this potential impact, Phase 3 of the project includes the installation of circulation-enhancing devices in the marina (see Section 5.7 for a fuller discussion of the devices). These devices would improve water quality by raising dissolved oxygen concentrations and improving flushing times within the marina basin. Both the small size of the basin (1.7 ac) relative to Newport Bay and the installation of circulation enhancement devices would substantially reduce the magnitude of the impact. In the long term, the creation of an additional 0.9 acre of shallow water (the marina basin), would be beneficial to managed species in the Coastal Pelagics and Pacific Groundfish FMPs by increasing the amount of EFH available to them. Accordingly, direct impacts on managed species from operation of the marina would be less than significant”.

1-22

How will the success of the circulation- enhancing devices be measured? What will be done if the desired results are not achieved? | 1-22
cont .

These comments from the EQAC response on the original DEIR still apply: | 1-23

The EIR should analyze whether the use of non-native landscaping would have an impact on the marine environment. | 1-23

The Project Objectives are missing a critical component, i.e. the opportunity to showcase the bay setting and its habitat, and make it part of the visitor experience. | 1-24

What is impact of park lighting on night sky? Will it be more or less than current? How could that impact the ability of birds to nest at the site? | 1-25

5.4 Cultural Resources

The REIR includes a very conscientious and thorough analysis of any reasonable or likely disruption to any and all cultural resources in their study for this project. This evaluation includes their thoughtful responses to public comments of concern. Any potential steps that might need to be taken, should the pre-construction inspection of the site have missed a cultural resource, have been planned and implemented, if necessary. This includes the hiring of experts in the field to monitor this follow up to assure protection of the cultural resource. We see no potential need for mitigation measures for this section. | 1-26

The City’s approach to the project, in having an alternative to phase the work is both prudent and appropriate, given the economy, the city’s budget shortfall and public opinion on both. Additionally, the sequence of work in the three phases shows public minded planning.

5.6 Hazards and Hazardous Materials

Sediment Evaluation, pg. 5.6-4: The REIR does not clarify the depth of the core samplings at sites B & C. It simply restates the previous data with the confusing MLLW description of core depth. The document states that “the project would... consist of extensive excavation of the marina” (5.6-7). Both the terms “extensive excavation” and the MLLW (depth of core samplings) descriptions are vague and do not describe either the depth of the excavation or the level of contamination at that depth. | 1-27

Project Specific Analysis, pg.5.6-6, MM 5.6A states “approximately 3000 cubic yards of dredged material with elevated levels of mercury..... and 300 cubic yards of PCB contaminated soil would be transported by truck”. Since transporting more than 500 lbs, 55 gallons or 200 cubic feet of contaminated material requires a Hazardous Management Plan, will such a plan be submitted? (California Health and Safety Code, Chap. 6.95) | 1-28

Site Soil Investigations, pg.5.6-4 states that 300 cubic yards of soil at the project site are PCB contaminated, but does not state the levels (ppm) of the contamination. Please clarify. | 1-29

Accident Conditions, MM 5.6B (pg. 5.6-8 of the original DEIR): Concerns raised in response to the first draft of this DEIR regarding location of the project and heavy traffic in that area suggested need for the development of a time table for dredging, truck staging, barges and a traffic management plan. These have not been adequately addressed in this REIR. | 1-30

Project Specific Analysis, Pg. 5.6-8 restates the fact that the new marina will not include a maintenance area, but does not address the concerns raised regarding vessels in the marina disposing of accumulated waste. | 1-31

Page 5.6 11: The original DEIR stated: “the project will not constrict access...the onsite circulation system...”. No onsite circulation system plan was included in the document and therefore could not be evaluated. The new REIR does not include an onsite circulation system plan and cannot be evaluated. | 1-32

Appendix G contains hundreds of pages of reports on the core samples. What is the process for determining the significance of all that data? | 1-33

5.7 Hydrology and Water Quality

Page 5.7-8 3rd Paragraph 4th sentence: The study found that there would be adequate tidal flushing only about one quarter of the way into the basin... | 1-34

This is left as a significant and unacceptable impact on water quality. What design changes and/or mitigation measures have been considered to alleviate this problem? Are there other marinas in the Newport Bay that allow this condition to exist?

5.8 Land Use and Planning

Land Use Regulation

The adopted planning documents regulating land use within and around the project site are the City of Newport Beach General Plan, the City’s Local Coastal Land Use Plan (CLUP), and the Zoning Code.

Mitigation should be addressed regarding the following: | 1-35

- Section 4.4.2-3 of the CLUP, indicates that shoreline height limitations of 35 feet be regulated by the Zoning Code.

The Lighthouse height is proposed at 73 feet, over twice the height allowed. The REIR states that the Lighthouse is an “architectural feature” which exempts it from the City’s

Zoning Code restrictions. The REIR also states that the lighthouse’s purpose is to provide a point of reference and direct the public to the site.

Has an alternative design been provided for the public to consider? Furthermore, it is of greater concern since the REIR states that the City is planning to exempt the project from the provisions of it’s own zoning regulations.

1-35
cont.

- The findings regarding the consistency with the General Plan are also questionable, under LU 5.6.2 Form and Environment.

The REIR needs to address how it finds the 73-foot “architectural feature” compatible with the surrounding uses, and address the abrupt change in scale that is to be avoided, per this section of the General Plan.

5.9 Noise

Why do the limits for acceptable values in the Land Use Compatibility Matrix (Exhibit 5.9-1, pg. 5.9-2)) differ from those described as "clearly compatible" in the second paragraph on pg 5.9-3? This seems to conflict with the model results presented for year 2011 with and without the project as presented in Appendix I.

1-36

Table 5.9-10, pg. 5.9-16, gives the calculated construction noise (all phases of the project) at sensitive receptors. Estimates vary from a maximum of 92 dB at the residences along the west side of 18th Avenue, west of the project site, to a minimum of 66 dB at Newport Elementary, located southeast of the project site (Table 5.9-10). There is a concern that these noise levels for the duration of the construction will have a strongly deleterious impact on the sensitive receptors noted. Are there no mediations that can be achieved (e.g., noise attenuating barricades around the construction site, or at particular sites -- i.e., Newport Elementary School) that can address this serious negative impact?

1-37

Page 5.9-11 suggests pile driving will be present for a period of 2.5 months (although page 5.9-15 states 3 plus 14 weeks, or 17 weeks, i.e., 4.25 months) within a 12 month period (Phase 3 construction). Has some consideration been given to the timing of Phase 3 construction, to limit the negative impacts to Newport Elementary School children during the academic year? In general, what scheduling considerations have been given for the 24 months of all phases of construction regarding the sensitive receptors (i.e., Newport Elementary School). Considerable data exists suggesting such noise will impact the learning and development of such receptors during the mentioned construction periods. No specific discussion of this negative impact is made in the report.

1-38

5.11 Transportation and Traffic

Typo on page 5.11-1, heading 5.11.2, Regional/Local,
Line 2: Remove "very" and insert "every".

1-39

The REIR notes that parking spaces are for Marina Park and not for general public/beach goers. However, they don't present specific plans on how to control this situation.

1-40

Item A10-15 (pg. 8-37) - notes 159 parking spaces total will be created for the project. They note that "details regarding the Parking Management Plan (PMP)...would be determined during the final design of the project". Without the PMP now, it is impossible to determine the adequacy of the proposed 159 spaces or their utilization. At least a preliminary PMP should be presented at this point to allow evaluation of the parking provisions.

1-41

It is counter-intuitive that the traffic analyses show that the basic project and the cumulative effects result in "less than significant" traffic impacts for all cases considered (pg. 5.11-11). This is among the most congested areas in the city and one would expect significant periodic traffic congestion during all phases of the project and serious disruptions if the cumulative effects of overlapping Banning Ranch, Sunset Ridge and 2300 Newport Blvd. (Newport Bay Marina) projects are considered. We suggest that the analysts re-evaluate the traffic analysis assumptions (e.g. current background levels, current ICU and LOS for critical intersections, predicted project contributions, phasing of cumulative projects) to be sure that this project can be accomplished without any form of traffic mitigation.

1-42

6.0 Alternatives to the Proposed

The discussion of alternatives is too brief. At minimum, the impacts on each of the environmental resources should be discussed and compared to the proposed project. A matrix displaying the major characteristics and significant environmental effects of each alternative may be used to summarize the comparison (CEQA Guidelines 15126.6).

1-43

Conclusion

EQAC thanks you for the opportunity to comment on this significant project for the Balboa Peninsula and the City of Newport Beach. We recognize that it will yield major positive benefits for the residents and visitors to Newport Beach, including many boaters who are searching for expanded docking and mooring facilities, and we trust that our comments are helpful in accomplishing that goal.

From: Madelaine Whiteman [mailto:tomadelainew@gmail.com] **Sent:** Monday, February 15, 2010 4:25 PM **To:** Ung, Rosalinh **Subject:** Marina Park Plan

Dear Ms. Ung,

As a homeowner at 18th street and W. Balboa Blvd., I am concerned about the increased traffic flow and parking limitations both in the area now and once the Marina Park is built.

From the recent public notice, it appears that no parking lots will be built until Phase 3 of the project. If that is the case, I request that once the existing trailers are removed, that the summer parking restrictions along W. Balboa Blvd. be lifted to allow on street parking on Saturdays and Sundays. With more open space there will be more people using it. Parking is already a problem in the area. By allowing people to park on the street 7 days per week, it would help alleviate some of that potential problem rather than having people compete for the limited parking.

2-1

When Phase 3 is underway and close to completion, I also see the need for an easy and safe way enter the main parking lot whether that be a stop sign and left hand turn lane. If a lane is built, this will also remove existing street parking spaces from the street again reducing parking options in the area.

2-2

With much of the new activity of Phase 3 being near 18th street, Girl Scott House, Basket Ball Court, Children's play area and the picnic area, I hope that the relocation of the lot has more spaces then the current lot. People will tend to park in the first available and most convenient space that is open rather than drive a bit further and have to walk further to get to their destination as they will to get to the main parking lot.

2-3

I appreciate you taking the time to look at my concerns and hopefully take them into consideration.

Thank you,

Madelaine Whiteman



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Ms. Rosalinh Ung, Associate Planner
City of Newport Beach
330 Newport Boulevard
Newport beach, CA 92658-8915

CITY OF NEWPORT BEACH

**Subject: Marina Park Recirculated Environmental Impact report State
Celaringhouse Number 2008051096**

Dear Ms. Ung:

The Orange County Transportation Authority (OCTA) has reviewed the above referenced document. The following comment is provided for your consideration:

- On Page 5.11-15, it is incorrectly stated that the project frontage does not have any existing or proposed bus stops. Please indicate that an existing OCTA bus stop is located on westbound West Balboa Boulevard and 16th Street. For American Disability Act accessibility requirements, the sidewalk should be expanded to at least 8 feet wide and free of obstructions in the bus stop zone.

3-1

3-2

If you have any questions or comments, please contact Hal McCutchan by phone at (714) 560-5759 or by email at hmccutchan@octa.net.

Sincerely,

Charles Larwood
Manager, Transportation Planning

c: Mark Strickert, OCTA

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PLANNING DEPARTMENT**

Mr. Rosalinh Ung
City of Newport Beach
3300 Newport Boulevard
Newport Beach, California 92663

FEB 23 2010

File: IGR/CEQA
SCH#: 2008051096
Log #: 2071B
SR-1, and 55

CITY OF NEWPORT BEACH

Subject: Marina Park

Dear Ms. Ung,

Thank you for the opportunity to review and comment on **Draft Environmental Impact Report for the Marina Park Project**. The public park will provide for passive and active areas. The passive areas include an open lawn area and a water feature. The active areas will include a children's play area and basketball courts. The public short-term visiting vessel marina is proposed to accommodate visiting vessels for up to 30 days. The Balboa Center Complex (BCC) will include rooms for educational classes as well as community events. The BCC will have a restaurant situated on the second story and will include areas for marina rentals as well as room for sailing classes. There are two tennis courts proposed on the eastern portion of the site adjacent to 15th Street. In addition, an existing bathroom on the public beach adjacent to 19th Street is proposed to be renovated or reconstructed but the size of the bathroom facility will remain the same. The nearest State route to the project site is Pacific Coast Highway and SR-55.

4-1

The California Department of Transportation (Department), District 12 is a commenting agency on this project and has no comment at this time. However, in the event of any activity within the Department's right-of-way, an encroachment permit will be required.

Please continue to keep us informed of this project and any future developments, which could potentially, impact State transportation facilities. If you have any questions or need to contact us, please do not hesitate to call Damon Davis at (949) 440-3487.

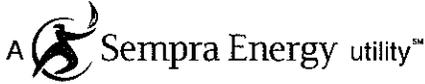
Sincerely,

Chris Herre, Branch Chief
Local Development/Intergovernmental Review

C: Terry Roberts, Office of Planning and Research



1919 S. State College Blvd.
Anaheim, CA 92806-6114



RECEIVED BY
PLANNING DEPARTMENT

JAN 29 2010

January 26, 2010

City of Newport Beach
3300 Newport Beach Blvd
Newport Beach, CA 92658-8915

CITY OF NEWPORT BEACH

Attention: Rosalinh Ung

Subject: Environmental Impact Report for the Proposed Marina Park.

Thank you for providing the opportunity to respond to this E.I.R. Document. We are pleased to inform you that Southern California Gas Company has facilities in the area where the aforementioned project is proposed. Gas service to the project can be provided from an existing gas main located in various locations. The service will be in accordance with the Company's policies and extension rules on file with the California Public Utilities Commission when the contractual arrangements are made.

This letter is not a contractual commitment to serve the proposed project but is only provided as an informational service. The availability of natural gas service is based upon conditions of gas supply and regulatory agencies. As a public utility, Southern California Gas Company is under the jurisdiction of the California Public Utilities Commission. Our ability to serve can also be affected by actions of federal regulatory agencies. Should these agencies take any action, which affect gas supply or the conditions under which service is available, gas service will be provided in accordance with the revised conditions.

5-1

This letter is also provided without considering any conditions or non-utility laws and regulations (such as environmental regulations), which could affect construction of a main and/or service line extension (i.e., if hazardous wastes were encountered in the process of installing the line). The regulations can only be determined around the time contractual arrangements are made and construction has begun.

Estimates of gas usage for residential and non-residential projects are developed on an individual basis and are obtained from the Commercial-Industrial/Residential Market Services Staff by calling (800) 427-2000 (Commercial/Industrial Customers) (800) 427-2200 (Residential Customers). We have developed several programs, which are available upon request to provide assistance in selecting the most energy efficient appliances or systems for a particular project. If you desire further information on any of our energy conservation programs, please contact this office for assistance.

Sincerely,

Eric Casares
Technical Services Supervisor
Pacific Coast Region - Anaheim



Department of Toxic Substances Control

Maziar Movassaghi, Acting Director
5796 Corporate Avenue
Cypress, California 90630



Arnold Schwarzenegger
Governor



Linda S. Adams
Secretary for
Environmental Protection

March 1, 2010

Ms. Rosalinh Ung
Associate Planner
City of Newport Beach Planning Department
3300 Newport Boulevard
Newport Beach, California 92658-8915
Rung@city.newportbeachca.gov

NOTICE OF AVAILABILITY OF A DRAFT RECIRCULATED ENVIRONMENTAL IMPACT REPORT FOR THE MARINA PARK PROJECT (SCH # 2008051096), ORANGE COUNTY

Dear Ms. Ung:

The Department of Toxic Substances Control (DTSC) has received your submitted Revised and re-circulated draft Environmental Impact Report (EIR) for the above-mentioned project. The following project description is stated in your document: "The Marina Park project site is located in the City of Newport Beach, Orange County, California. Specifically, the project site is located on the Balboa Peninsula, along Balboa Boulevard, south of a public beach and the Newport Bay, west of 15th Street, and east of 18th Street. The project site encompasses approximately 10.45 acres and is located between Balboa Boulevard on the south and Newport Bay on the north, and between 15th Street on the east and 19th Street on the west. The project site is currently occupied by the Marina Park mobile home park, Girl Scout House, community center, Las Arenas Park, the Southern California Edison parcel, Veteran's Park, tennis courts, an alley, sidewalks, the 19th Street restroom, beach, and the portion of the project site within Newport Bay. The project has been divided into three phases that could be individually implemented. The majority of the project site is designated Park and Recreation (PR) and zoned Planned Community (PC)".

DTSC provided comments on the project Notice of Availability of the original draft EIR on April 3, 2009; some of those comments have been addressed in the draft re-circulated Environmental Impact Report. Please ensure that the following comments will be addressed in the final EIR when and if any hazardous wastes are generated or contamination is found.

- 1) If it is determined that hazardous wastes are, or will be, generated by the proposed operations, the wastes must be managed in accordance with the California Hazardous Waste Control Law (California Health and Safety Code,

Division 20, Chapter 6.5) and the Hazardous Waste Control Regulations (California Code of Regulations, Title 22, Division 4.5). If it is determined that hazardous wastes will be generated, the facility should also obtain a United States Environmental Protection Agency Identification Number by contacting (800) 618-6942. Certain hazardous waste treatment processes or hazardous materials, handling, storage or uses may require authorization from the local Certified Unified Program Agency (CUPA). Information about the requirement for authorization can be obtained by contacting your local CUPA

- 2) If during construction/demolition of the project, the soil and/or groundwater contamination is suspected, construction/demolition in the area should cease and appropriate health and safety procedures should be implemented.
- 3) DTSC can provide guidance for cleanup oversight through an Environmental Oversight Agreement (EOA) for government agencies which would not be responsible parties under CERCLA, or a Voluntary Cleanup Agreement (VCA) for private parties. For additional information on the EOA or VCA, please see www.dtsc.ca.gov/SiteCleanup/Brownfields, or contact Ms. Maryam Tasnif-Abbasi, DTSC's Voluntary Cleanup Coordinator, at (714) 484-5489.

6-1
cont.

If you have any questions regarding this letter, please contact Mr. Rafiq Ahmed, Project Manager, at rahmed@dtsc.ca.gov or by phone at (714) 484-5491.

Sincerely,



Greg Holmes
Unit Chief
Brownfields and Environmental Restoration Program - Cypress Office

cc: Governor's Office of Planning and Research
State Clearinghouse
P.O. Box 3044
Sacramento, California 95812-3044
state.clearinghouse@opr.ca.gov

CEQA Tracking Center
Department of Toxic Substances Control
Office of Environmental Planning and Analysis
1001 I Street, 22nd Floor, M.S. 22-2
Sacramento, California 95814
ADelacr1@dtsc.ca.gov

CALIFORNIA STATE LANDS COMMISSION
100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202



PAUL D. THAYER, Executive Officer
(916) 574-1800 FAX (916) 574-1810
Relay Service From TDD Phone 1-800-735-2929
from Voice Phone 1-800-735-2922

RECEIVED BY
PLANNING DEPARTMENT

Contact Phone: (916) 574-1900
Contact FAX: (916) 574-1885

March 3, 2010

MAR 09 2010

File Ref: SCH# 2008051096

CITY OF NEWPORT BEACH
Rosalinh Ung, Associate Planner
City of Newport Beach
3300 Newport Boulevard
Newport Beach, CA 92658-8915

Subject: Draft Recirculated Environmental Impact Report for the Marina Park Project

Dear Ms. Ung:

The California State Lands Commission (CSLC) staff has reviewed the Draft Recirculated Environmental Impact Report (DREIR) for the proposed Marina Park project. For this project, the California State Lands Commission (Commission) is potentially both a Trustee agency and a Responsible agency under the California Environmental Quality Act (CEQA).

As general background, the State of California upon entering the Union on September 9, 1850, acquired nearly four million acres of land underlying the State's navigable and tidal waterways. Known as "sovereign lands," these lands include tidelands and submerged lands adjacent to the entire coast and offshore islands of the State from the ordinary high water mark to three nautical miles offshore. The State holds these lands for the benefit of all the people of California for statewide Public Trust purposes, which include waterborne commerce, navigation, fisheries, water-related recreation, habitat preservation, and open space. The State's sovereign land interests are under the jurisdiction of the CSLC. In addition, the CSLC has certain residual and review authority related to Public Trust issues for tide and submerged lands legislatively granted in trust to local jurisdictions (Public Resources Code (PRC) §§6301 and 6306). The CSLC also administers the Shipwreck and Historic Maritime Resources Program pursuant to PRC §§6309, 6313, and 6314.

The California Legislature, by statute, has granted in trust to the city of Newport Beach (City) the State's title to those filled and unfilled tide and submerged lands involving portions of the project area, pursuant to Chapter 74, Statutes of 1978, as amended with minerals reserved to the State. Any proposed uses involving granted tidelands must be consistent with the Public Trust and the City's granting statute(s).

The boundaries separating lands owned by the City in trust, pursuant to Chapter 74, from lands acquired by the City from private parties has not been established by agreement or litigation within the Project site. CSLC staff believes that it is necessary to resolve the title and boundary issues with the City prior to the Project going forward. Given the current Project plans it appears that a title settlement and exchange agreement may be necessary. We are available to discuss the resolution of the title and boundary issues with the City. Please contact Grace Kato, Public Land Management Specialist, at (916) 574-1227 or by e-mail at katog@slc.ca.gov or Jennifer Lucchesi, Staff Counsel, at (916) 574-0234 or by email at lucchej@slc.ca.gov for additional information.

7-1
cont.

Based on a review of the DREIR, the CSLC has a comment regarding Phase 3 of the proposed Marina Park project. The following comment was made in our letter dated June 18, 2008 on the Notice of Preparation of the Draft EIR, and we feel it is still necessary to address this issue:

- An evaluation should be made of potential submerged cultural resources in the project area. Any submerged archaeological site or submerged historic resource remaining in state waters for more than 50 years is presumed to be significant. The title to all abandoned shipwrecks and all archaeological sites and historic or cultural resources on or in the tide and submerged lands of California is vested in the state and under the jurisdiction of the CSLC.
- The CSLC maintains a shipwrecks database of known and potential vessels located on the state's tide and submerged lands; however, the location of many shipwrecks remains unknown. The recovery of objects from any submerged archaeological site or shipwreck requires a salvage permit under PRC § 6309. On statutorily granted tide and submerged lands, a permit may be issued only after consultation with the local grantee and a determination by the CSLC that the proposed salvage operation is not inconsistent with the purposes of the legislative grant.

7-2

If you have any questions involving the Shipwreck and Historic Maritime Resources Program please contact Staff Counsel Pam Griggs at (916) 574-1854 or by email at griggsp@slc.ca.gov. If you have questions on the environmental review, please contact Crystal Spurr at (916) 574-0743 or by e-mail at spurrc@slc.ca.gov.

Sincerely,



Marina R. Brand, Acting Chief
Division of Environmental Planning
and Management

cc: Office of Planning and Research
Robin Clauson, City Attorney
P. Griggs, CSLC
J. Lucchesi, CSLC
G. Kato, CSLC
C. Spurr, CSLC



March 9, 2010

City of Newport Beach
Planning Department
Attn: Rosalinh Ung, Associate Planner
3300 Newport Beach Boulevard
Newport Beach, CA 92658-8915

Rung@city.newport-beach.ca.us

Reference: DRAFT Marina Park Recirculated Environmental Impact Report dated January 2010

Dear Newport Beach Planning Department:

The Central Newport Beach Community Association (CNBCA), which represents over 300 member households on the Balboa Peninsula, is please to provide comments on the referenced Draft Recirculated EIR. Our Board of Directors and Association members are delighted that the City of Newport Beach continues to make progress on this important project.

Our comments on the document are as follows:

**Subsection 2.1 – Proposed Project; Subsection 3.4.1 – Phase 1; and
Subsection 3.4.2 – Construction, Phase 1**

There is concern that during Phase 1 and Phase 2, if existing closed gates on the alley at 16th Street and 18th Street (see Figure 1) are removed or are opened to enable vehicle through-traffic: (1) children playing in the existing tot lot at 16th Street will be exposed to hazardous traffic, (2) traffic will increase in the alley west of 18th Street which faces many residential bedrooms and garages with zero setback, (3) traffic will increase at the intersections of both 18th and 19th Streets and West Balboa Boulevard, both of which are difficult intersections for merging traffic, and (4) traffic will increase and back up on West Bay between 18th and 19th Streets. If additional vehicular access to the park is needed in Phases 1 and 2, removal of the fence behind the existing girl-scout house would provide an alternate vehicle access point.

We request that either the EIR specifically stipulate the assumptions which have been made regarding both the gates, and if they are to be removed or permanently opened to through-traffic in Phases 1 or 2, that an assessment and analysis of the related safety, noise, and traffic issues be added to this EIR . If the gates are to remain in place and closed, then the EIR should simply so state.

Central Newport Beach Community Association
Box 884 Newport Beach CA 92661-0884



Figure 1 - Alley Gates At 16th And 18th Streets If Removed Or Opened During Phases 1 Or 2 Would Substantially Impact Surrounding Neighborhoods

Specifically, Section 2.1 states (page 2-1): “Primary vehicular access to the project would be via West Balboa Blvd. at 16th Street and secondary access would be via and exit/entrance off 15th Street.” It is presumed that this only describes Phase 3 of the project after the existing tot lot at 16th Street has been relocated. Phase 1 or 2 of the project could be in place and do to unforeseen events (funding, scheduling, etc.), Phase 3 could be delayed resulting in the site functioning as a minimal park for an extended period of time. No mention was made of vehicle access to the site during these initial phases in Section 2.1 of the EIR.

In the case of the 18th Street gate, **residents in the neighborhood to the west (up the peninsula) of the proposed park have requested that the gate at 18th Street and Vilelle Place (the alley) remain closed to through-traffic during Phases 1 and 2.** This issue was expressed as far back in time as release of the DEIR for the hotel project. The concern is that the alley will become an alternate exit from the peninsula during high volume summer afternoon traffic. Cars entering the alley at 15th Street would end up backed up into the alley at 19th Street not only making it difficult to enter and exit garages on the alley, but also impacting noise levels for the many bedrooms which face the alley. The EIR should either stipulate that the existing chain link gate will remain closed during the first two phases or address the noise and traffic impact.

In the case of the 16th Street gate, families that use the existing playground on the site at 16th Street have expressed concern that through-traffic during Phases 1 and 2 of park development poses a hazard for children playing in the playground several feet from the alley. **We recommend that the EIR be modified to specifically stipulate that the existing chain link gate at 16th Street will remain closed during the first two phases until the tot lot is relocated in Phase 3.**

8-1
cont.

Central Newport Beach Community Association

Box 884 Newport Beach CA 92661-0884

If the foregoing design assumption in Phases 1 and 2 for the 16th Street gate is not stipulated in the EIR, then the EIR should identify the traffic hazard to children playing in the playground and an approach to mitigate the hazard—perhaps construction of a fence.

Some specific recommended changes regarding the two gates follow:

It is recommended that Subsection 2.1 – Proposed Project (page 2-1, last paragraph) include the following underlined sentence: “Furthermore, 18th and 19th Streets would still provide access to the public beach. The existing gates on Vilelle Place (the alley that divides the site) at 16th and 18th Streets will remain closed to through-traffic during Phases 1 and 2--except when opened for site development related construction equipment.”

Furthermore, it is recommended that Subsection 3.4.1 – Phase 1 (page 3-6, paragraph 2) should be modified as follows: “. . . The alley between the mobile home park and the beach would be restriped to provide 105 regular parking spaces and five handicapped spaces, ~~and removal of an existing gate near the American Legion facility would provide continuous vehicular access from 15th Street to 18th Street.~~ The existing chain link gates on the alley at both 16th and 18th Streets shall remain closed to through-traffic. Visitor access to the site during Phases 1 and 2 would remain unchanged at the entrance to the former mobile home park off of Balboa Boulevard. . . .”

In addition, it is recommended that the following underlined sentence should be added to Section 3.4.2 – Construction, Phase 1 (page 3-13, first paragraph): “. . . low landscape, and existing block wall along 18th Street, and appurtenant structures. The existing chain link gates on the alley at both 16th and 18th Streets shall remain. The existing trees . . .”

Subsection 3.4.3 – Operation, Balboa Center (page 3-19)

The second paragraph of this subsection refers to “. . . a range of ocean-based activities, expected . . .” **The term “harbor-based activities” would more accurately characterize activities of the Sailing Center** since none of the activities will likely occur in the open ocean.

Subsection 5.2.5 – Project Impact Analysis and Mitigation Measures, Localized Impact Analysis (page 5.2-15)

Descriptions of Closest Sensitive Receptors were incorrect in the Original DEIR. Changes were recommended, but descriptions in the RDEIR remain incorrect. Specifically, the RDEIR characterizes sensitive receptors west of the site as a hotel and mobile homes. There are no mobile homes across 18th Street from the site. There is, however, a single family residence of traditional construction and a hotel. The following underlined changes are recommended: “. . . There ~~are several mobile homes~~ is a single family residence and a hotel located to the West . . .”

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8-3

Central Newport Beach Community Association
Box 884 Newport Beach CA 92661-0884

On behalf of our Board of Directors and hundreds of member households, I would like to thank you for the opportunity to comment on the Draft Recirculated EIR.

A handwritten signature in black ink that reads "Louise Fundenberg". The signature is written in a cursive, flowing style.

Louise Fundenberg, President
Central Newport Beach Community Association

Cc: Mike Henn, Newport Beach City Council Member
Dave Kiff, Newport Beach City Manager

From: Tom Rossi [mailto:orco2lq@gmail.com] **Sent:** Tuesday, March 09, 2010 6:46 AM **To:** Ung, Rosalinh **Subject:** EIR Comments--Marina Park

Rosalinh: {lease accept the attached previously sent emails that reference my concerns regarding Marina Park and the related EIR. I trust you will note my comments before the March 10 deadline.

Thanks you.
Tom R. Rossi

Subject: RE: 1801 West Bay Matter

Thank you, Dave. I appreciate your taking time from your busy schedule to address my concerns. I trust I will remain id good hands knowing you are in the loop here.

Thanks again.
Tom Rossi

From: Kiff, Dave [mailto:DKiff@newportbeachca.gov] **Sent:** Tuesday, November 10, 2009 10:54 AM **To:** Tom Rossi; Wood, Sharon **Cc:** Henn, Michael **Subject:** RE: 1801 West Bay Matter

Hi Tom –

Actually, plans are not progressing. The Girl Scout Council still has their building plans on hold until their fiscal situation improves – you can imagine what the economy has done to non-profits like the Girl Scouts.

I still believe that they will work to reduce the height of their building, but they do not have the resources to do that plan redesign at this time. Similarly, they cannot build the building nor go through basic permitting.

All I can do is respectfully ask for your patience – there still will be time for review once they get started again. However, I'm not sure if that is 3, 12, or more months from now.

Dave

From: Tom Rossi [mailto:trro@roadrunner.com] **Sent:** Tuesday, November 10, 2009 9:33 AM **To:** merereader48@sbcglobal.net **Cc:** Kiff, Dave; Henn, Michael **Subject:** 1801 West Bay Matter

Considerable time has passed without an update to me. I have made previous inquiry with no response.. Kindly apprise me of the headway made regarding my concerns. I presume plans are progressing, and I was assured I would be kept informed and allowed ample time for review and input on this very sensitive matter.

What is up?!

Thank you.
Tom Rossi, Owner

From: "Tom Rossi" <trro@roadrunner.com>
Date: January 26, 2010 9:10:30 AM PST
To: "Kiff, Dave" <DKiff@newportbeachca.gov>, "Wood, Sharon" <SWood@newportbeachca.gov>
Cc: "Henn, Michael" <mhenn527@hotmail.com>
Subject: RE: 1801 West Bay Matter

I am in receipt of the most recent DREIR Notice. It appears the project continues to move along. My last correspondence from you (below) indicated the Girl Scout Building was on HOLD and therefore no further word existed regarding work on the related architectural plans progressing. I remain quite concerned about the building's height, massing, placement, etc causing a severe negative impact on my property located at 1801 West Bay Ave. Has anything changed? Is there any progress regarding my concerns?

From: Tom Rossi [mailto:trro@roadrunner.com] **Sent:** Tuesday, November 10, 2009 11:06 AM **To:** 'Kiff, Dave'; 'Wood, Sharon' **Cc:** 'Henn, Michael' **Subject:** RE: 1801 West Bay Matter

Thank you, Dave. I appreciate your taking time from your busy schedule to address my concerns. I trust I will remain in good hands knowing you are in the loop here.
Thanks again.
Tom Rossi

From: Kiff, Dave [mailto:DKiff@newportbeachca.gov] **Sent:** Tuesday, November 10, 2009 10:54 AM **To:** Tom Rossi; Wood, Sharon **Cc:** Henn, Michael **Subject:** RE: 1801 West Bay Matter

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What is up?!
Thank you.
Tom Rossi, Owner

From: "Tom Rossi" <trro@roadrunner.com>
Date: January 26, 2010 9:27:21 AM PST
To: "Kiff, Dave" <DKiff@newportbeachca.gov>, "Wood, Sharon" <SWood@newportbeachca.gov>
Cc: "Henn, Michael" <mhenn527@hotmail.com>
Subject: RE: 1801 West Bay Matter

Dave:

Thank you for your usual timely response time and update. I will follow your advice and continue to raise/document my concerns as you suggest. I don't want any surprises that leave my property and me with a negative impact.

Thanks again.

Tom

From: Kiff, Dave [mailto:DKiff@newportbeachca.gov] **Sent:** Tuesday, January 26, 2010 9:22 AM **To:** Tom Rossi; Wood, Sharon **Cc:** Henn, Michael **Subject:** RE: 1801 West Bay Matter

Hi Tom –

The recirculated DEIR envisions the same project, but addresses various things that were not included in the initial circulation.

There has been no change from the Girl Scout as to changing their design - they still seem to have no resources to either change the design or build the project. From my perspective, nothing has changed from when we last corresponded. You may still want to raise your concerns formally within the DEIR process. I am still hopeful that the Scouts will change the design – the question is when.

Dave

From: Tom Rossi [mailto:trro@roadrunner.com] **Sent:** Tuesday, January 26, 2010 9:11 AM **To:** Kiff, Dave; Wood, Sharon **Cc:** Henn, Michael **Subject:** RE: 1801 West Bay Matter

I am in receipt of the most recent DREIR Notice. It appears the project continues to move along. My last correspondence from you (below) indicated the Girl Scout Building was on HOLD and therefore no further word existed regarding work on the related architectural plans progressing. I remain quite concerned about the building's height, massing, placement, etc causing a severe negative impact on my property located at 1801 West Bay Ave. Has anything changed? Is there any progress regarding my concerns?

From: Tom Rossi [mailto:trro@roadrunner.com] **Sent:** Tuesday, November 10, 2009 11:06 AM **To:** 'Kiff, Dave'; 'Wood, Sharon' **Cc:** 'Henn, Michael' **Subject:** RE: 1801 West Bay Matter

Thank you, Dave. I appreciate your taking time from your busy schedule to address my concerns. I trust I will remain in good hands knowing you are in the loop here.

Thanks again.

Tom Rossi

From: Kiff, Dave [mailto:DKiff@newportbeachca.gov] **Sent:** Tuesday, November 10, 2009 10:54 AM **To:** Tom Rossi; Wood, Sharon **Cc:** Henn, Michael **Subject:** RE: 1801 West Bay Matter

Hi Tom –

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All I can do is respectfully ask for your patience – there still will be time for review once they get started again. However, I'm not sure if that is 3, 12, or more months from now.

Dave

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Considerable time has passed without an update to me. I have made previous inquiry with no response.. Kindly apprise me of the headway made regarding my concerns. I presume plans are progressing, and I was assured I would be kept informed and allowed ample time for review and input on this very sensitive matter.

What is up?!

Thank you.

Tom Rossi, Owner

9-1
cont.

From: Tom Rossi [mailto:orco2lq@gmail.com] **Sent:** Tuesday, March 09, 2010 6:53 AM **To:** Ung, Rosalinh **Subject:** Marina Park-Additional EIR Comments

Rosalinh: Please accept this email, its attachments, and the companion email I sent to you immediately prior this morning as my comments/concerns related to the Marina Park EIR.

Thank you for your anticipated and appreciated courtesy regarding my concerns.

Tom R. Rossi

9-1
cont.

April 7, 2009

**Planning Department
City of Newport Beach
3300 Newport Blvd
Newport Beach, CA 92663
Attn: Rosalinh Ung
Associate Planner
Planning Department
3300 Newport Blvd.
Newport Beach, CA 92658**

Re: Marina Park EIR Comments/Concerns

Ladies and Gentlemen:

I own the single family residence located at the corner of 18th Street & West Bay Avenue (1801 West Bay). I have observed and appreciate that great care has been given to ensuring the protection of view corridors, etc for the properties located on Balboa Blvd across the street from the Marina Park Project (“Project”). I believe that in some cases those views have even been substantially enhanced.

I believe it is a fair statement that my property above all others is very likely the most impacted by the proposed Project, and I believe that I am entitled to the same level of concern for my property by the City of Newport Beach and those involved with the design and implementation of the Project as has been given my Balboa Blvd neighbors.

I have on several previous occasions made inquiry at Project Committee meetings, and expressed my grave concerns to the Project architects, my councilmen (more than one over the years) and others regarding my view, quiet enjoyment and property value being negatively impacted by any structure or other use situated near my property or in conflict with my panoramic view which currently includes harbor lights, the hills at and around Newport Center/Spyglass Hill, etc.

Each time I inquired, I was informed that the Girl Scout Building would be a “low profile” single-level structure for “Girl Scout only” events but that there was not yet any design that definitively described the actual height, size, type and exact placement of the subject building. I was further

9-1
cont .

assured that my concerns would indeed be given appropriate and sensitive consideration as the Project's plans progressed.

As late as last Friday when I met personally with Mr. David Kiff at City Hall, I was informed that no such definition regarding my concerns exists. I believe this situation is inappropriate and should no longer be ignored. In my opinion, this matter should have been addressed long before now, and my patience has gone unrewarded.

In addition to view obstruction, my concerns regarding hours of operation, any rental or other use of the Girl Scout Building for private events such as parties or other non-Girl Scout-related activities remain unresolved. Obviously, any use that would place or generate additional parking/traffic burden (especially at early or late hours) close to my property would have a substantial negative impact on it. I was assured by the Committee that non-Girl Scout-related activities would not be allowed, but I have no concrete evidence of such restrictions. If such use restrictions exist, I would appreciate written confirmation of same at your earliest convenience.

In light of the foregoing, please accept this letter as my objection to the Project/EIR due to these issues being left unaddressed in a fair and equitable manner. I respectfully request your timely written response.

Thank you for your anticipated courtesy and attention to my concerns.

Yours truly,

Thomas R. Rossi

**CC: Mayor Edward D. Selich
Councilman Michael F. Henn**

9-1
cont.

THOMAS R. ROSSI

April 7, 2009

Rosalinh Ung
Associate Planner
Planning Department
City of Newport Beach
3300 Newport Blvd
Newport Beach, CA 92663

Re: Marina Park EIR Comments/Concerns

Ladies and Gentlemen:

I own the single family residence located at the corner of 18th Street & West Bay Avenue (1801 West Bay). I have observed and appreciate that great care has been given to ensuring the protection of view corridors, etc for the properties located on Balboa Blvd across the street from the Marina Park Project ("Project"). I believe that in some cases those views have even been substantially enhanced.

I believe it is a fair statement that my property above all others is very likely the most impacted by the proposed Project, and I believe that I am entitled to the same level of concern for my property by the City of Newport Beach and those involved with the design and implementation of the Project as has been given my Balboa Blvd neighbors.

On several previous occasions I made inquiry at Project Committee meetings, and expressed my grave concerns to the Project architects, my councilmen (more than one over the years) and others regarding my view, quiet enjoyment and property value being negatively impacted by any structure or other use situated near my property or in conflict with my panoramic view which currently includes harbor lights, the hills at and around Newport Center/Spyglass Hill, etc.

Each time I inquired, I was informed that the Girl Scout Building would be a "low profile" single-level structure for "Girl Scout only" events but that there was not yet any design that definitively described the actual height, size, type and exact placement of the subject building. I was further assured that my concerns would indeed be given appropriate and sensitive consideration as the Project's plans progressed.

3419 Via Lido, Suite 641
Newport Beach, CA 92663
Ofc. 949-675-5500 Fax 949-675-1400
www.RossiProperties.com

9-1
cont.

THOMAS R. ROSSI

As late as last Friday when I met personally with Mr. David Kiff at City Hall, I was informed that no such definition regarding my concerns exists. I believe this situation is inappropriate and should no longer be ignored. In my opinion, this matter should have been addressed long before now, and my patience has gone unrewarded.

In addition to view obstruction, my concerns regarding hours of operation, any rental or other use of the Girl Scout Building for private events such as parties or other non-Girl Scout-related activities remain unresolved. Obviously, any use that would place or generate additional parking/traffic burden (especially at early or late hours) close to my property would have a substantial negative impact on it. I was assured by the Committee that non-Girl Scout-related activities would not be allowed, but I have no concrete evidence of such restrictions. If such use restrictions exist, I would appreciate written confirmation of same at your earliest convenience.

In light of the foregoing, please accept this letter as my objection to the Project/EIR due to these issues being left unaddressed in a fair and equitable manner. I respectfully request your timely written response.

Thank you for your anticipated courtesy and attention to my concerns.

Yours truly,

Thomas R. Rossi

CC: Mayor Edward D. Selich
Councilman Michael F. Henn

9-1
cont.

THOMAS R. ROSSI

June 2, 2009

Mr. Dave Kiff
Assistant City Manager
City of Newport Beach
3300 Newport Blvd.
P.O. Box 1768
Newport Beach, CA 92658-8915

Re: Marina Park EIR Comments/Concerns

Dear Mr. Kiff:

I recently met with Mr. Timothy D. Bundy, Architect and Mr. Mark Reader, P.E. & Project Manager Public Works Department regarding the above-referenced matter. Mr. Reader instructed me to lodge my written concerns with you.

You may recall that I own the single family residence located at the corner of 18th Street & West Bay Avenue (1801 West Bay), and that I have grave concerns regarding the Girl Scout Building's ("Building") impact on my property.

To restate my concerns we discussed in your office prior to my meeting with Mr. Bundy and Mr. Reader, and that I embodied in my written EIR comments as you directed me to do, I have observed and appreciate that great care has been given to ensuring the protection of view corridors, etc for the properties located on Balboa Blvd across the street from the Marina Park Project ("Project"). I believe that in some cases those views have even been substantially enhanced.

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cont.

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Ofc. 949-675-5500 Fax 949-675-1400
www.RossiProperties.com

THOMAS R. ROSSI

My property above all others is very likely the most impacted by the proposed Building, and I believe that I am entitled to the same level of concern for my property by the City of Newport Beach and those involved with the design and implementation of the Project as has been given my Balboa Blvd neighbors.

I have on several previous occasions made inquiry at Project Committee meetings, and expressed my grave concerns to the Project architects, my councilmen (more than one over the years) and others regarding my view, quiet enjoyment and property value being negatively impacted by any structure or other use situated near my property or in conflict with my panoramic view which currently includes harbor lights, the hills at and around Newport Center/Spyglass Hill, etc. Each time I inquired, I was informed that the Girl Scout Building would be a “low profile” single-level structure for “Girl Scout only” events but that there was not yet any design that definitively described the actual height, size, type and exact placement of the subject building. I was further assured that my concerns would indeed be given appropriate and sensitive consideration as the Project’s plans progressed.

Much to my surprise, I have now determined that apparently the Building has a proposed roof height of twenty nine feet, with extensive horizontal massing as well. This will eliminate or substantially reduce the view my property currently enjoys by approximately eighty percent. This condition will cause extreme negative impact on my property value and is very unfair.

In addition to view obstruction, my concerns regarding hours of operation, any rental or other use of the Girl Scout Building for private events such as parties or other non-Girl Scout-related activities remain unresolved. Obviously, any use that would place or generate additional parking/traffic burden (especially at early or late hours) close to my property would have additional substantial negative impact on it. I was assured by the Marina Park Planning Committee that non-Girl Scout-related activities would not be

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cont.

THOMAS R. ROSSI

permitted, but I have no concrete evidence of such restrictions. If such use restrictions exist, I would appreciate written confirmation of same at your earliest convenience.

I certainly hope my concerns will be timely addressed and remedied. Please let me know what the next step will be for us to resolve this matter in an equitable and fair manner.

Thank you for your anticipated courtesy and attention to my concerns. I look forward to your written response.

Yours truly,

Thomas R. Rossi

CC: Mayor Edward D. Selich
Councilman Michael F. Henn

9-1
cont.

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California Cultural Resource Preservation Alliance, Inc.

**P.O. Box 54132
Irvine, CA 92619-4132**

**An alliance of American Indian and scientific communities working for
the preservation of archaeological sites and other cultural resources.**

RECEIVED BY

PLANNING DEPARTMENT

March 7, 2010

MAR 11 2010

Ms. Rosalinh Ung, Associate Planner
City of Newport Beach
3300 Newport Boulevard
Newport Beach, CA 92658-8915

CITY OF NEWPORT BEACH

Regarding: Marina Park Recirculated Environmental Impact Report (State Clearinghouse Number 2008051096)

Dear Ms. Ung:

Thank you for the opportunity to review the Marina Park Recirculated Environmental Impact Report (State Clearinghouse Number 2008051096) dated January, 2010.

We previously commented on the Draft Environmental Impact Report in a letter dated March 21, 2009. Although we continue to agree that no known cultural resources will be impacted by the proposed project, we reiterate here that buried and undiscovered, and therefore unknown cultural resources may be present on the project sight and directly impacted by ground disturbing construction activity.

We are disappointed that MM 5.4-B.1 does not include professional archaeological and Native American monitoring, and relies on the project proponent and their assignees (e.g. construction personnel) to report discoveries of "archaeological artifacts". The mitigation measure is not adequate to ensure that buried cultural resources, if present and unearthed by construction activity, are discovered and protected from further disturbance.

10-1

Furthermore, we take this opportunity to emphasize that cultural resources are more complex than "archaeological artifacts" alone, and may be prehistoric or historical (i.e. Spanish period or later). Additionally, given the very recent age (in geologic terms) of sediments on the peninsula, archaeological deposits of the late nineteenth and early twentieth century, and associated with non-Native-American people, are more likely than prehistoric Native American archaeological deposits. Given this, we strongly encourage monitoring by a professional archaeologist with demonstrated expertise in historical archaeology as well as prehistoric archaeology.

We note a great inconsistency in the analysis in that, although buried archaeological resources are much more likely than buried paleontological resources, MM 5.4-C.1 requires grading observation by a qualified paleontologist, but MM 5.4-B.1 does not require grading observation by a qualified archaeologist. If paleontological monitoring is warranted, then archaeological monitoring is clearly also warranted.

CCRPA

California Cultural Resource Preservation Alliance, Inc.

**P.O. Box 54132
Irvine, CA 92619-4132**

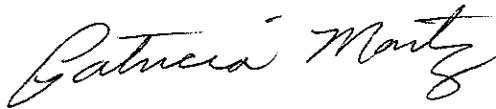
**An alliance of American Indian and scientific communities working for
the preservation of archaeological sites and other cultural resources.**

It is with great concern that we find no mitigation measure regarding the discovery of human remains. However unlikely, and despite the existence of laws which protect human remains, a mitigation measure regarding the discovery, reporting, and protection of human remains is absolutely necessary.

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In the interest of cultural resources preservation, we sincerely hope that our comments will be considered and that adequate mitigation measures pertaining to cultural resources will be included in a revision of the Environmental Impact Report. If the California Cultural Resources Alliance may be of assistance and if you have questions regarding our comments, please call me at (949) 559-6490, or email pmartz@calstatela.edu.

With concern for the preservation of cultural resources,



Patricia Martz, Ph.D.
President

CALIFORNIA COASTAL COMMISSION

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



RECEIVED BY
PLANNING DEPARTMENT March 10, 2010

MAR 16 2010

Rosalinh Ung, Associate Planner
City of Newport Beach
Planning Department
3300 Newport Boulevard
Newport Beach, CA 92658-8915

CITY OF NEWPORT BEACH

**Re: Marina Park Project
Recirculated Environmental Impact Report (SCH# 2008051096)**

Dear Ms. Ung,

Thank you for the opportunity to review the Recirculated Environmental Impact Report for the Marina Park Project. According to the Recirculated Environmental Impact Report, the proposed project will consist of construction of a the Balboa Center Complex consisting of a Multi-Purpose Building and Sailing Program Building, a Girl Scout House, parking areas, a park with tennis and basketball courts, beach and 23-slip marina basin on an existing public beach fronting (along Newport Bay) parcel that currently supports 57 mobile homes, the Neva B. Thomas Girl Scout House, the City of Newport Beach Community Center, a 21-stall metered parking lot, Las Arenas Park, a Southern California Edison parcel, Veteran's Park, an alley, a sidewalk, the 19th Street public restroom, a beach, and a portion of Newport Bay.

The proposed project is located within the Coastal Zone in the City of Newport Beach. The proposed development will require a Coastal Development Permit from the California Coastal Commission.

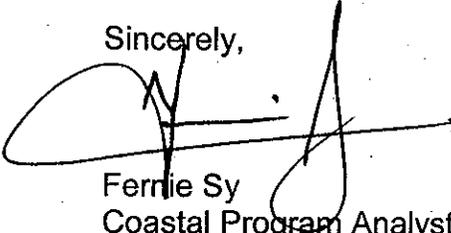
Coastal Commission staff commented on the previously circulated Environmental Impact Report in a letter dated April 13, 2009. Coastal Commission staff has the same concerns with this Recirculated Environmental Impact Report as those concerns identified in the April 13, 2009 letter. Thus, please address the comments in that April 13, 2009 letter (a copy of this letter has been included with this letter). The comments address the issue of the proposed project's consistency with the Chapter 3 policies of the California Coastal Act of 1976. The comments are preliminary and those of Coastal Commission staff only and should not be construed as representing the opinion of the Coastal Commission itself. The proposed project raises issues related to dredge and fill of open coastal waters/wetlands, water quality, hazards, biology, public access, visual impacts and consistency with the City of Newport Beach Land Use Plan (LUP).

Thank you for the opportunity to comment on the Recirculated Environmental Impact Report for the Marina Park Project. Coastal Commission staff requests notification of any future activity associated with this project or related projects. Please note, the comments provided herein are preliminary in nature. Additional and more specific

comments may be appropriate as the project develops into final form and when an application is submitted for a coastal development permit. Please feel free to contact me at 562-590-5071 with any questions.

11-1
cont.

Sincerely,

A handwritten signature in black ink, appearing to read 'Fernie Sy', with a large, sweeping flourish extending to the left.

Fernie Sy
Coastal Program Analyst II

Attachments: *Letter dated April 13, 2009*

Cc: State Clearinghouse

CALIFORNIA COASTAL COMMISSION

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



April 13, 2009

Rosalinh Ung, Associate Planner
City of Newport Beach
Planning Department
3300 Newport Boulevard
Newport Beach, CA 92658-8915

FILE COPY

**Re: Marina Park Project
Draft Environmental Impact Report (SCH# 2008051096)**

Dear Ms. Ung,

Thank you for the opportunity to review the Draft Environmental Impact Report for the Marina Park Project. According to the Draft Environmental Impact Report, the proposed project will consist of construction of the Balboa Center Complex consisting of a Multi-Purpose Building and Sailing Program Building, a Girl Scout House, a marine services building, parking areas, a park, beach and marina basin on an existing public beach fronting (along Newport Bay) parcel that currently supports 57 mobile homes, the Neva B. Thomas Girl Scout House, the City of Newport Beach Community Center, a 21-stall metered parking lot, Las Arenas Park, a Southern California Edison parcel, Veteran's Park, an alley, a sidewalk, the 19th Street public restroom, a beach, and a portion of Newport Bay.

The proposed project is located within the coastal zone in the City of Newport Beach. The proposed development will require a coastal development permit from the California Coastal Commission.

The following comments address the issue of the proposed project's consistency with the Chapter 3 policies of the California Coastal Act of 1976. The comments contained herein are preliminary and those of Coastal Commission staff only and should not be construed as representing the opinion of the Coastal Commission itself. As described below, the proposed project raises issues related to dredge and fill of open coastal waters/wetlands, water quality, hazards, biology, public access, visual impacts and consistency with the City of Newport Beach Land Use Plan (LUP).

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Below are the comments by Commission staff on the Draft Environmental Impact Report.

WETLANDSDredging and Fill

Based on the Draft EIR, the project site includes approximately 1.20 acres of intertidal coastal wetland and approximately 0.10 acres of subtidal coastal wetland. Also, the project includes approximately 62,000 cubic yards of dredging and states that a total of eight (8) preliminary candidates have been identified as potential sand disposal locations (The Draft EIR fails to indicate the final chosen site). In addition, the project will result in the onsite loss of 0.9 acres of supra-tidal (terrestrial) non-marine habitat and 0.66 acres of sandy intertidal habitat for the onsite creation of 1.56 acres of shallow water habitat. The loss of 0.66 acres of sandy habitat

would become shallow water habitat. Also, the proposed project will result in the depth modification of 0.1 acres of onsite shallow water habitat and 0.72 acre of offsite shallow water habitat.

The proposed project would result in the dredging and fill of open coastal waters/wetlands. Section 30108.2 of the Coastal Act defines "Fill" as the placement of earth or any other substance or material placed in a submerged area. Section 30233 of the Coastal Act limits the dredging and fill of wetlands and open coastal waters to seven uses and it appears that the proposed project does result in both "Dredging" and "Fill" of open coastal waters. Projects that propose the dredging and fill of wetlands and/or coastal waters, must demonstrate that the proposed impact would be allowable under the Coastal Act. If allowable the project must then provide adequate mitigation, preferably on-site. The EIR should include an analysis documenting how the proposed dredging and fill would qualify as allowable under the Coastal Act. Also, clarification should be made on whether or not the delineation of wetlands and coastal waters was based on Coastal Act standards or another agency's (i.e. Army Corps of Engineers) standard. If the habitat delineation and calculation of fill was not determined by Coastal Act definitions, then a revised biological analysis regarding the proposed fill should be conducted using the Coastal Act definitions. The City's Coastal Land Use Plan contains more description about wetland delineation procedures for Coastal Act purposes.

Should the proposed fill qualify as an allowable use, mitigation would be required for the loss of any wetlands and open coastal waters. The EIR should include a mitigation plan, which specifically identifies how the mitigation will be accomplished, and the alternatives evaluated in developing the mitigation plan.

Typically, the Commission prefers on-site mitigation to off-site mitigation. The Commission typically requires that mitigation be done at a 4:1 ratio. In addition, the applicant must be fully responsible for undertaking the mitigation. In this way, the Commission is assured that the mitigation will occur and it is clear who is responsible for undertaking and managing the mitigation. The EIR should discuss the mitigation that would be proposed. However, every effort should be made to choose an alternative that would be the least environmentally damaging, preferably avoiding coastal water/wetland impacts.

Sand Compatibility Report

As stated previously, the project includes dredging and the deposition of sand upon eight (8) potential sand disposal locations. These sand disposal locations were not identified, nor was the final disposal location identified. Staff assumes that a potential location would be the public beach found on the project site. Thus, please first identify this location and then provide a sand compatibility report for this location. Please also have the U.S. Army Corps of Engineers (USACOE) and Environmental Protection Agency (EPA) review the beach sampling to characterize the existing grain for compatibility with the borrow source material.

MARINA

The proposed marina will require construction of a new groin wall and bulkhead walls. This raises concerns regarding fill of open coastal waters/wetlands, effect on sand supply and coastal erosion. Is a new marina necessary at this location? In the Draft EIR, one of the identified project alternatives is "The No Marina Alternative." The document states that implementation of this alternative would eliminate the potential significant impacts on sandy

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intertidal habitat; as well as, the long-term water quality impacts associated with flushing of the proposed marina (to be discussed later). However, this alternative was not chosen. Please justify this decision and why the proposed project is considered the least environmentally damaging feasible alternative.

While staff has serious concerns with the proposed marina, further information regarding the proposed marina is still necessary if you wish to proceed with the project as submitted:

Groin Wall

The Draft EIR states that the proposed marina will be enclosed by a cement groin and include eighteen (18) pilings that will create hard bottom habitat. Section 30235 of the Coastal Act mandates that groin walls must be permitted in certain specified conditions. The Commission is concerned that this type of development can have an adverse impact on shoreline processes, could cause erosion, and could have adverse impacts on coastal access and recreation.

Additionally, Section 30233 of the Coastal Act limits the filling of coastal waters to seven allowable uses and requires that the least environmentally damaging feasible alternative is chosen and that feasible mitigation measures be provided to minimize adverse environmental effects. Sections 30230 and 30231 of the Coastal Act mandate that the quality of coastal waters and biological productivity be maintained.

Projects that propose the fill of wetlands and/or coastal waters, must demonstrate that the proposed impact would be allowable under the Coastal Act. If allowable the project must then provide adequate mitigation, preferably on-site. The EIR should include an analysis documenting how the proposed fill for the groin wall would qualify as allowable under the Coastal Act. Should the proposed fill qualify as an allowable use, mitigation would be required for the loss of any wetlands and open coastal waters. The EIR should include a mitigation plan, which specifically identifies how the mitigation will be accomplished, and the alternatives evaluated in developing the mitigation plan.

The document does not provide any studies that substantiate the need for the groin wall nor does it provide information on how it may impact coastal shoreline processes. Due to this, an engineering analysis prepared by a qualified engineering professional with expertise in coastal processes is required. Specifically, staff will need an evaluation of the proposed project's impact on sand supply, erosion rates, and adjoining property and determination. Also, an evaluation of whether the proposed project will require monitoring to assure that shoreline processes are not adversely impacted is required. In addition, an alternatives analysis should be prepared documenting alternatives to the proposed project and why the proposed project is considered the least environmentally damaging feasible alternative and potential mitigation measure to minimize adverse environmental effects. A possible alternative would be eliminating the construction of the marina, thus not requiring the groin wall. Another possible alternative could be construction of the marina without the groin wall.

Bulkhead

The Draft EIR states that the proposed marina will include new bulkheads. Section 30235 of the Coastal Act mandates that new bulkheads may only be constructed under specific circumstances, such as to protect existing structures. The Commission is concerned that this

11-1
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type of development can have an adverse impact on shoreline processes, could cause erosion, and could have adverse impacts on coastal access and recreation.

The materials submitted with your application do not substantiate the need to construct new bulkheads. Thus, please provide a study prepared by an appropriately licensed professional (i.e. engineer with expertise in coastal processes), which substantiates the need to construct new bulkheads. At minimum, the study must answer the following questions: Why must the proposed bulkheads be constructed?; How will the proposed bulkheads mitigate the circumstances, which requires the bulkheads to be constructed?; How will the proposed bulkheads affect coastal processes, including impacts upon shoreline sand supply?; Will the proposed bulkheads be connected to any existing bulkheads located adjacent to the project site? In addition, an alternatives analysis should be prepared documenting alternatives to the proposed project and why the proposed project is considered the least environmentally damaging feasible alternative and potential mitigation measure to minimize adverse environmental effects. A possible alternative would be eliminating the construction of the marina, thus not requiring the bulkheads. Please reference the attached memorandum titled *Applicants for Shorefront Development*.

Water Quality

The Regional Water Quality Control Board (RWQCB) has identified Lower Newport Bay as an impaired water body. As stated in the Draft EIR, implementation of the proposed marina would create a condition where there would be inadequate tidal flushing within the proposed marina and thus contribute to the impaired water body since long-term water quality within the proposed marina will be governed by its flushing capacity. Also stated in the Draft ER, a water quality analyses was conducted that indicated that tidal flushing rates would be poor and that flushing capacities are well below the EPA guideline. It states that inadequate tidal flushing in the marina basin would result in lowered dissolved oxygen levels, higher water temperatures, poor water transparency, potential eutrophication, and increased sedimentation. In addition, poor tidal flushing would also exacerbate water quality issues in this region of the bay since the tidal flushing rate in this part of the harbor is already poor outside the proposed marina in front of the swimming beach and the American Legion Post 291 Marina. Poor tidal flushing within the marina would result in a significant, long-term impact on Newport harbor water quality and would severely limit the colonization of marina habitats by plants, invertebrates, and fish. In order to deal with the adverse long-term water quality impacts due to poor tidal conditions, a mitigation measure consisting of installing mechanical devices within the marina basin design to enhance the movement and mixing of water within the basin has been proposed. One of the identified project alternatives in the Draft EIR is "The No Marina Alternative." The Draft EIR states that implementation of this alternative would eliminate the long-term water quality impacts associated with flushing of the project marina. However, this alternative was not chosen. Please justify this decision and why the proposed project is considered the least environmentally damaging feasible alternative.

Slips

The vessel marina is proposed to include 23 slips with full hook-ups for short-term overnight use (up to 30 days): 21 slips, 40-feet in length; and 2 slips, 57-feet in length. In addition, a 200-foot long dock will be provided along the outside edge of the marina. Also, a floating dock structure to support additional dinghy types of craft is proposed. What are the provisions for boats under

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40-feet to dock in this marina? In addition, how many spaces are available for boats under 30-feet? Additionally, the Draft EIR states that .59 spaces per berth will be used to park the marina. How was this parking standard determined?

HAZARDS

The proposed project includes development on a sandy beach adjacent to open coastal waters/wetlands. This type of development can be subject to wave hazards, flooding and erosion. When new development is not appropriately sited and designed, property owners often seek some type of shoreline protective device to protect the property from such hazards. While shoreline protective devices afford some protection to the structures behind them, these protective devices can also cause erosion hazards elsewhere and often have adverse visual impacts. Section 30253 of the Coastal Act requires that new development minimize risks to life and property in areas of high geologic, flood, and fire hazard and assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

Accordingly, the Coastal Act requires that new development minimize exposure to hazards from erosion, wave attack, wave run-up, flooding, and other coastal hazards. In order to evaluate whether the project minimizes exposure to such hazards, the Commission will need a hazards analysis of site, prepared by an appropriately licensed professional (normally a licensed civil or geotechnical engineer with expertise in coastal processes). The analysis should cover whether the site and the proposed development could be subject to erosion, wave attack or wave run-up, the frequency of occurrence, consequences and options for siting or designing the project to avoid or minimize impacts over the life of the structure. Structural life is normally taken to be 75 to 100 years.

This hazards analysis should consider initially future shoreline changes due to erosion, sea level rise, up and down coast structures, changes in nourishment projects, and any other factors that currently influence shoreline conditions at your project site. This analysis would be developed from historic records, examination of aerial photographs, beach surveys, published studies of shoreline change, anecdotal information, site visits and other information and knowledge that the professional can bring to the project. The most landward shoreline position should be used to determine hazard from wave attack, wave run-up and flooding. The design wave conditions for this part of the analysis can be based on historic or wave modeling, including future increases in water level due to sea level rise. For much of the coast, the 1982/83 or 1988 storms were the 100-year event, and these too can be used for design conditions, with adjustments for future changes in sea level.

The purpose of this analysis is to determine whether future storms may erode the site or flood or damage the proposed project. If so, the analysis should provide some information on the probability or frequency of erosion, flooding and damage. Alternative siting or design options should also be considered that would avoid, minimize or mitigate potential adverse effects.

Please be sure the analysis includes site specific details (e.g. maps) showing the seasonal location of the mean high tide line and with both winter and summer profiles with respect to the proposed development and the anticipated inland reach of erosion, wave run-up, and flooding over the life of the structure. In addition, the analysis must make a definitive determination as to whether there is any anticipated need for a shoreline protective device over the life of the

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proposed development. The analysis must also provide recommendations for the avoidance or minimization of hazards, if any, at the site.

BIOLOGY

The Draft EIR states that the project site contains several ornamental trees and shrubs that provide marginally suitable nesting habitat for migratory birds. The document also states that the California Least Tern does not breed or nest near the project site (the nearest California Least Tern nesting site is 2.5 miles west of the site) and that the Brown Pelican does not breed locally. While it appears that these two birds do not breed at the project site, what about other avian species? To determine this, please provide a history of nesting on the site by birds for the last 5-years.

PUBLIC ACCESS

American Legion

The Draft EIR states that public access to the project site will be via West Balboa Boulevard at 16th Street, and secondary access will be via 15th Street. Public access to the beach will be provided by walkways within the proposed park as well as an access provided along the western side of the proposed marina. Furthermore, 18th and 19th Street will continue to provide access to the public beach onsite. Adjacent to the project site and imbedded within the project site is the public tidelands leased to the American Legion. Public access along the waterfront through the area leased by the American Legion is not currently available. In order to provide continuous access to and along the bay, as currently proposed elsewhere in the project site, there should be access to and along the bay through the American Legion site. This would result in a continuous access to the bay along the bay from the western edge of the project site at 19th Street to eastern edge of the project site at 15th Street.

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Parking

The Draft EIR states that due to the site's close proximity to the beach, it is important that the proposed onsite parking spaces provide adequate parking for the users of the proposed Marina Park facilities. Furthermore, it states that the proposed on-site parking lots are intended for the project only and are not intended to provide additional beach parking. Please clarify this statement as a public bay-front beach is adjacent and part of the proposed project. Public access is an essential part of the Coastal Act and any adverse impact to access to the beach raises concerns.

VISUAL IMPACTS

The project site is located within the Shoreline Height Limitation zone, which establishes a maximum height limit of 35-feet. The main buildings proposed on the project site are within the 35-foot height limit. However, the sail feature on the Balboa Center Complex will exceed the shoreline height limitation with a height of 35-feet, 6-inches and the Lighthouse will exceed it with a height of 73-feet. The City's Zoning Code provides for exceptions to this height limit, including vertical architectural features, such as towers, spires, cupolas and steeples. However, the proposed height of the Lighthouse seems to be excessive as it will exceed the height limit by

38-feet, more than double the allowable height. The height of such a structure would impact coastal views. The Draft EIR justifies the height of the structure since the width of the lighthouse ranges from 18-feet at the Sailing Center roof (the width of the lighthouse at the base was not stated) to 8-feet at the top of the lighthouse and since 930-linear feet of waterfront area will be opened up with the project. Nevertheless, the height of such a structure would adversely impact public views as no other structure in the area would be close to this proposed height. It may also set an adverse precedent. Thus, please provide alternatives to the proposed Lighthouse that would not have such an adverse impact on public views, such as staying within the allowable height limit, and justify your choice of the alternative that would be the least environmentally damaging alternative.

LAND USE

The Sailing Program Building is planned to include a café, serving breakfast, lunch, and dinner daily. Seating will be provided for 56 customers (32 inside and 24 outside). Will this restaurant be an ancillary use to the facilities proposed on site or will it serve as a destination restaurant? Is adequate parking included for this component?

OTHER AGENCY APPROVAL

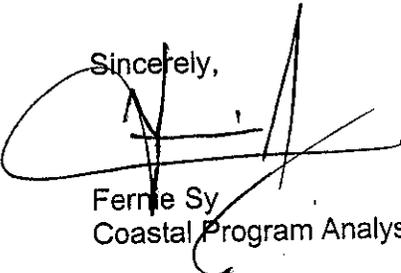
U.S. Fish and Wildlife Service (USFWS) and/or the California Department of Fish and Game (CDF&G) and State Lands Commission (SLC).

The Commission's regulations require that you submit evidence of review and approval of the proposed project from all local and state agencies for which a review and approval is required. If impacts to biological resources are occurring, a review and approval is typically required from the USFWS and/or the CDF&G. Evidence of these agencies review and approval (or verifications that no review is necessary) will need to be submitted with your application for a coastal permit.

Please also provide review of the project by the SLC.

Thank you for the opportunity to comment on the Draft Environmental Impact Report for the Marina Park Project. Commission staff request notification of any future activity associated with this project or related projects. Please note, the comments provided herein are preliminary in nature. Additional and more specific comments may be appropriate as the project develops into final form and when an application is submitted for a coastal development permit. Please feel free to contact me at 562-590-5071 with any questions.

Sincerely,



Fernie Sy
Coastal Program Analyst II

Attachments: *Applicants for Shorefront Development*

Cc: State Clearinghouse

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cont.

CHAPTER 3: RESPONSES AND ERRATA TO THE DRAFT REIR

Section 15088 of the CEQA Guidelines requires the Lead Agency (City of Newport Beach) to evaluate comments on environmental issues received from public agencies and interested parties who reviewed the Draft REIR and prepare written responses. This chapter provides written responses from the City of Newport Beach to all comments received on the Draft REIR.

In Chapter 2 comment letters and specific comments are given specific numbers for reference purposes. This chapter presents responses, numbered to correspond to each specific comment number identified in Chapter 2. Included at the end of Chapter 3 are errata to the Draft REIR. Where text of the Draft REIR is excerpted in this document, the text is indented and/or shown in italics. Changes to the Draft REIR text are shown in underlined text for additions and ~~strikeout~~ for deletions.

Responses

1. Environmental Quality Affairs Citizens Advisory Committee; February 23, 2010

1-1 Page 2-5, first column, Impact 5.2-A, the conclusion under Cumulative is corrected to read:

~~Less than~~ Potentially significant.

1-2 The Girl Scout building that is proposed to be demolished as part of the project does not have historic significance; it is not listed on the National Register of Historic Places, California Register of Historic Places, nor is it recognized by the City of Newport Beach Ad Hoc Historic Preservation Advisory Committee's Historic Resource Inventory list.

1-3 The demand for basketball courts would not increase as a result of the project nor would the project create new demand, therefore the project would not have an impact under CEQA. For the commenter's information: Las Arenas Park, currently located on the project site, contains one half-basketball court. The addition of another half court would double the opportunity for recreational basketball play compared to current conditions.

1-4 The use of paving on pathways has not been decided. The final design of the project will require the best materials suited for the volume of visitors expected to visit the park and community center. Because the project may seek to achieve a silver LEED certification (or equivalent), the design process would emphasize the use of environmentally sound products.

1-5 The exact construction timing for each phasing of the project has not been determined at this time. The phasing of the project is outlined in the Draft REIR so as to provide the City with the most flexibility and to allow the project to be implemented from Phase 1 through Phase 3 without any further environmental analysis. Should all regulatory agency permits be in place for Phase 3 construction, it could begin as soon as Phase 1 construction is completed. It is also possible that Phase 2 could begin immediately after Phase 1 construction is completed. During Phase 3 construction, Phase 1 or Phase 2 site would not be available to the public as it would be used as construction staging area for dredging of the marina and placement of needed fill dirt. The existing improvements/structures along Balboa Blvd. would be remaining open and available to the general public as long as possible.

1-6 Comment noted. The City will determine the availability for private rentals with consideration given to public demand and usage in general.

- 1-7 The 30-day length of stay is a maximum. The operational policies of the marina will be finalized in the next design phases of the project.
- 1-8 In the traffic analysis, trips from the unfinished portion of the OLQA Church Expansion are already accounted for and added to the background traffic condition of that area and therefore, will not require further analysis.
- 1-9 The commenter summarizes the aesthetic benefits anticipated from the proposed project. These comments are noted.
- 1-10 As the commenter notes, the closest SCAQMD air quality monitoring station is located approximately 4 miles inland from the site and the closest station with particulate matter data is located in Mission Viejo (14 miles from the site). The SCAQMD (the agency with expertise and jurisdiction over air quality issues in the Southern California Air Basin) considers data from these monitoring stations to be sufficiently representative of the project area. Given that air quality at these stations is well below State standards for all pollutants and given that the project is not anticipated to generate significant quantities of air pollutants, site-specific monitoring is not warranted.
- 1-11 In general the project would generate a net increase of relatively few trips and proposed buildings are relatively small, therefore project emissions are relatively small and below the SCAQMD thresholds of significance. The paragraph cited in this comment addresses greenhouse gas (GHG) emissions. Since the California Air Resources Board and SCAQMD have not identified thresholds of significance for GHG, the City of Newport Beach has studied the issue and identified a standard threshold (as discussed on p. 5.2-13 of the Draft REIR -- 1,600 metric tons of CO₂e per year) for use in the environmental documents in the City. As noted in the comment, project emissions would be below this threshold.
- 1-12 Page 5.2-11, first paragraph, last sentence, is revised as follows:
- Projects that ~~do not~~ exceed these thresholds would be considered to have significant impacts, and thus could be expected to impede the State's mandatory requirement under AB 32 to reduce statewide GHG emissions to 1990 levels by 2020.*
- 1-13 The air quality models used to model project emissions are the standard models used in most if not all environmental documents in Southern California. The models used are recommended by the SCAQMD (the agency responsible for air quality in the region) for use in environmental documents.
- 1-14 The comment implies that the emissions calculations ignored larger watercraft. However, the City evaluates the analysis' use of 100 boats (diesel pleasure craft, a mix of inboard and sterndrive engines generally between 25 and 40 horsepower but with some use of larger craft up to 2,000 horsepower) taxiing an average of one hour per day to be a very conservative approach to estimating emissions. The City's analysis is based on standard emission factors, vessel mix data, and City of Newport Beach Harbor Department experience and expertise. The City of Newport Beach considers the analysis to be conservative in its assumption of vehicle mix and hours of use.
- 1-15 The intersections selected for study were the ones that experienced the greatest traffic impact when viewed in the context of existing plus future traffic. Project emissions and background air pollutant concentrations are so low that a CO hot spot would not occur at any of the intersections

close to the project, either now or in the future. In addition, since the vehicle fleet is getting cleaner due to emission controls, CO levels in the region (including in the vicinity of the project site) are anticipated to decrease with time despite the anticipated increase in vehicle numbers.

1-16 *References to mitigation measures 5.2-1.1 through 5.2-1.14 on pages 5.2-37 and 5.2-38 and throughout the document are deleted.* These measures were included in the original Draft EIR but were deleted in the Draft REIR because the project does not result in emissions that exceed the City of Newport Beach GHG threshold (that was established since publication of the original Draft EIR, see discussions on pp. 5.2-13 and 5.2-30 of the Draft REIR and Tables 5.2-12, 5.2-13 and 5.2-16). Thus mitigation for GHG emissions is not necessary.

1-17 As noted above, vehicle emissions (including of construction equipment) become cleaner over time. Therefore, calculations assuming a project start in 2009 rather than 2010 are slightly more conservative (i.e. worst case) and therefore the calculations do not need to be redone.

1-18 Page 5.2-13, first paragraph under the subheading Analytical Methodology, the sixth sentence is revised as follows:

The CO₂ hotspot analysis used the CALINE4 model, which has several inputs.

1-19 The impact analysis acknowledges a potentially significant impact before mitigation. Accordingly, the Draft REIR imposes a mitigation measure, MM 5.3-A.1 (p. 5.3-19 of the Draft REIR), which addresses the potential impact by specifying the temporal window, March 31 to June 30 (during the time grunion spawn), during which beach placement activities could not occur.

1-20 Underwater diver surveys have been used on other projects when absolutely necessary, for example when the project is located in deep water. For the proposed project, however, underwater surveys are unnecessary because the shallow depth of the channel adjacent to the project site means that marine mammals would be easily spotted by surface scan. For that reason alternate monitoring methods were not considered.

1-21 As stated in the first paragraph on p. 5.3-21, the basis for the quoted statement is experience from other areas of Newport Bay; that experience is described in the biological study included as Appendix D.2.

1-22 There is no provision for monitoring the biological consequences of installing the circulation-enhancing devices. The Draft REIR did not find the potential impact of impaired circulation to be significant; the circulation-enhancing devices were referenced as being likely to alleviate a less-than-significant impact, not imposed as mitigation for a significant impact. Accordingly, no monitoring is required.

1-23 Lower Newport Bay is, and has been for many decades, entirely surrounded by ornamental landscaping consisting largely of non-native plants. No adverse effects of that condition have been documented, and there is thus no reason to believe that the minor increment of non-native terrestrial vegetation represented by the Marina Park project would have any adverse effects on the marine environment.

1-24 The commenter's views on additional objectives of the project are noted.

- 1-25 No birds are currently known to nest in the vegetation on the site, and, in any case, the only terrestrial bird species observed on the site are common, urban-adapted birds such as sparrows, house finches, crows, and mourning doves (Appendix D.1 of the RDEIR) for which the project site would not represent critical nesting habitat. The proposed project would not affect nesting opportunities since proposed landscaping would provide similar opportunities. No sensitive species use the site and there would be no suitable nesting habitat for such species with project implementation. The proposed project would not result in a significant increase in light or glare (p. 5.1-13 of the RDEIR). Accordingly, the nighttime light environment of the proposed project would not adversely affect nesting either by the urban bird species common to the area or by sensitive species.
- 1-26 The commenter's agreement with the approach taken to addressing cultural resource impacts in the Draft REIR is noted.
- 1-27 The Draft REIR summarizes the results of Newfield's *Dredged Material Evaluation* and references Appendix G.3. Please refer to the appendix for further explanation. The Marina will be excavated to a depth of -12 ft MLLW with another 2 feet of overdredge and another 6 inches to account for a factor of safety in the depth of the dredging process. The sediment sampling performed by Newfields analyzed sediments to a depth of -14.5 ft. MLLW. The Newfields report states that mercury were detected above EPA limits for disposal at the offshore disposal site designated as LA-3. These mercury concentrations were detected in the upper portion of area C (Areas A, B and C are defined in Figure 3 of Newfields report). The upper 2-3 ft. of the cores taken in area C consist of fine silts, and it is in those fine silts that mercury concentrations exceed EPA allowable limits for disposal to LA-3. This information is paraphrased from page 44 of Newfields report.
- 1-28 In Orange County, disclosure of information relating to the transportation of hazardous materials is required (Orange County Code, Title 4, Division 3, Article 4) for transporting more than 500 pounds or 55 gallons of contaminated material. In addition, under AB 2185 (California Health and Safety Code, Section 25500 et. sea.), any business that handles hazardous materials is required to submit a business emergency plan, which will be approved and maintained by the Orange County Fire Authority. City activities are undertaken in full compliance with all applicable laws, and the City will comply with this law as with all other applicable laws and regulations.
- 1-29 The Draft REIR summarizes the results of the *Site Assessment of the SCE Parcel*, which can be found in Appendix G.6. Page 6 of that report discusses the concentrations of PCBs found at various boring locations. Figure 3 of the report denotes those boring locations and maps the area within the SCE site that is recommended for soil excavation and removals.
- 1-30 This comment has been addressed in Section 3.4.2 – Construction, of the Draft REIR and Section 8 - Response to Comments on Draft EIR, in Response to Comment A11-16 of the Draft REIR. The proposed project includes various phases of construction activities. The construction phases would be scheduled so that a specific timetable for construction activities is established in advance once the project phasing has been identified. The City is aware of summer traffic patterns on the peninsula and will schedule the construction activities to take into account the summer traffic season.
- 1-31 The new marina would include pump-out stations for the disposal of sanitary wastes in to local sewer lines. As noted on p. 5.7-8 of the Draft REIR, vehicle maintenance facilities would not be

- provided in the Marina; maintenance activities would occur where proper facilities are provided and not on the project site. Wastes are not anticipated to accumulate.
- 1-32 Comment noted. The Phase 3 Site Plan shown as Exhibit 3-6 illustrates the overall building location, parking lot design and vehicular circulation for the entire site. The parking spaces and drive aisles including their turning radii have been designed to meet the City's standards. The onsite vehicular circulation is, therefore, adequate to accommodate the proposed project. The implementation of the parking management plan would ensure the entire parking lot operates properly and safety.
- 1-33 The process for evaluating core sample data is thoroughly described in the text of the Newfields report (Appendix G.3). Core samples are analyzed both through chemical analyses and bioassays using test organisms in accordance with published regulatory agency guidance (e.g., the Inland Testing Manual and the Ocean Testing Manual). The project-specific sampling and analysis plan will be submitted to the Corps of Engineers, the US EPA, and the Regional Water Quality Control Board for approval.
- 1-34 Mitigation Measure 5.7-A.2 (page 5.7-11) requires the City to include "mechanical devices within the marina basin to enhance the movement and mixing of water within the basin." These devices are required to meet EPA guidelines for adequate tidal flushing. One option is the use of oloids (a propeller-like device that is shown in appendix H.3). With this mitigation measure, tidal flushing impacts would be reduced to a less than significant level. The status of other marinas in Newport Bay with respect to tidal circulation is beyond the scope of this document.
- 1-35 The 73-foot lighthouse element is a slim architectural feature that would not block views but that would provide a point of identification along the coastline so that visitors could visually locate and identify the park. The City believes that such a feature is an appropriate form for a public facility, and is not proposing an alternative design. See also discussion on page 5.1-12 of the Draft REIR (excerpted below):

The architectural lighthouse feature would extend vertically to approximately 73 feet. Its height would contrast with the remainder of the site and surrounding structures, as its purpose is to provide a visual point of reference in the area and direct the public to a major public amenity. Because the width of the lighthouse would taper from 18 feet at its base to 8 feet at its top, the lighthouse would be a relatively minor horizontal element in comparison to the expanse of waterfront view (930 linear feet) opened by the proposed project. Therefore, the project would have a less than significant impact on the visual character of the site and its surroundings.

See also the discussion of Coastal Land Use Plan Policies 4.4.2-1, 4.4.2-2 and 4.4.2-3 on p. 5.8-27 of the Draft REIR (excerpted in part below):

The lighthouse feature's height, approximately 73 feet, would contrast with the remainder of the site and surrounding structures, as its purpose is to provide a visual point of reference in the area and direct the public to a major public amenity. The lighthouse would be a relatively minor horizontal element in comparison to the expanse of waterfront view (930 linear feet) opened by the proposed project and would be less obstructing to the view than the current horizontal mass of buildings. The project includes large setbacks from other uses thus avoiding any abrupt changes in scale. The extra height of the lighthouse would add to the unique character of the area by providing a focal point. Accordingly, the project would be consistent with this policy.

The main buildings proposed on the project site would be less than 35 feet in height as measured using the methodology specified in the Municipal Code. However, the proposed lighthouse feature would exceed the shoreline height limitation with a height of 73 feet. Policy 4.4.2-3 indicates that building envelopes should be regulated thorough the Zoning Code. The City's Zoning Code allows exceptions to the height limits for architectural features such as the proposed lighthouse tower. Therefore, the project is considered consistent with the Shoreline Height Limitation Zone and consistent with this policy.

The City Council and Council/Citizen's Committee on Marina Park Design, at various public meetings, have considered the design, size and height of the Balboa Complex, which includes the Multi-Purpose Building, the Sailing Program Building and the lighthouse feature. The consensus recommendation from both hearing bodies has been to maintain the height of both buildings within the Shoreline Height Limitation Zone of 35 feet and to allow architectural features (i.e. the lighthouse element) to exceed the 35-foot limit.

- 1-36 The second paragraph on p. 5.9-3 is consistent with Exhibit 5.9-1. Existing modeled noise levels are shown in Table 5.9-4 p. 5.9-6. The 24-hour CNEL (63 dBA at the Girl Scout House) is "clearly compatible" with the guidelines for institutional use (up to 65 dBA) and open space (up to 70 dBA). Noise modeling results are summarized in Table 5.9-6 and show that future noise levels with the project would increase at one location by 0.1 dBA at Newport Boulevard and 32nd Street, where noise levels would increase to 58.2 dBA (a level clearly compatible with even single-family residential use). While some of the modeled noise levels in the area do exceed the clearly compatible level for the most sensitive single-family residential uses that may be located in proximity to some of the modeled roadways, that is an existing condition that would not be appreciably worsened by the project.
- 1-37 Mitigation measures 5.9-D.1 through 5.9-D.4 require extensive mitigation to reduce construction noise, including properly maintained equipment and mufflers, noise shrouds and barriers for pile driving, location of stationary sources away from sensitive receptors, and restricting construction-related activities to hours indicated in the Municipal Code.
- 1-38 As noted on p. 3-18 of the Project Description, pile driving for the marina would require about 3.5 weeks of pile driving for guide piles and up to 10 weeks for sheet piles (for a total of 13.5 weeks, rounded to 14 weeks in the noise discussion on p. 3.9-15); building construction would require up to 3 weeks of pile driving for a total of up to 16.5 weeks (rounded to 17 weeks). The Newport elementary School is located 830 feet from the project site. As noted in Table 5.9-10 general construction noise levels would be approximately 66 dBA at the school. Noise from pile driving could increase noise levels to as much as 77 dBA without mitigation. Mitigation measure 5.9-D.2 requires the use of noise abatement technology (e.g. shrouds and barriers) to reduce noise from pile driving. Shrouds and barriers can be expected to reduce noise levels by 10 to 20 dBA, which would reduce pile driving noise at the school to 57 dBA to 67 dBA. Exterior to interior reduction in noise levels for typical construction is about 24 dBA.¹ Thus, interior noise levels at the school would be expected to be no more than 43 dBA, a level generally accepted as suitable for quiet activities such as reading and studying (as well as sleeping in residences).
- 1-39 Page 5.11-1, under the heading Regional/Local, second line, the word *very* is replaced with *every*.

¹ SAE AIR 1081- 1971 House Reduction Measurements (Reaffirmed April 1991, November 2007)

- 1-40 Options for how to control parking are discussed in the *Parking Management Plan* by Walker Consultants presented in Appendix J of the REIR.
- 1-41 The parking management plan is used to control and manage, for optimum efficiency, the parking spaces provided for the proposed project. The amount of parking provided for the proposed project is based on a combination factor/ratio of City's and ITE's (Institute of Transportation) parking standards that has been approved by the City Traffic Engineer. Table 5.11-7 of the Draft REIR provides the specific parking rates used for each component of the project and identifies the total spaces required for the project.
- 1-42 The purpose of an EIR is to identify impacts that could result from the project when added to existing conditions. Pre-existing impacted situations are not addressed except insofar as a project might make a condition *significantly* worse. Traffic impacts are analyzed for peak hours since that is when conditions are worst and when impacts would be most apparent. The Marina Park project, unlike an office building or residential project, would not generate most of its traffic during peak hours, rather trips would be spread across the day. The cumulative project list included in the analysis of this project is shown in Table 4-1 pp. 4-2 to 4-3. Banning Ranch and Sunset Ridge are both included as proposed projects; 2300 Newport is included as approved but 0% complete. The traffic analysis was performed by Austin-Foust and approved by the City Traffic Engineer. No additional analysis is necessary. The Draft REIR concludes that traffic impacts would be less than significant and no mitigation is needed.
- 1-43 CEQA requires that the alternatives discussion focuses on reducing identified significant adverse impacts of the project. The Draft REIR identified only one (potentially) significant impact on construction noise. Alternatives 1 (No Project) and 3 (No Marina) would avoid this impact. Alternative 2 would still have a potentially significant impact on construction noise (although less than the project). The Draft REIR adequately addresses and compares impacts of alternatives.

2. Madelaine Whiteman; February 15, 2010

- 2-1 The existing private mobile home parking lot will be re-striped for Phase 1 and Phase 2 of the proposed project to provide approximately 112 new public metered parking spaces. This will provide for a sufficient number of spaces for the initial phases without having to change the summer parking restrictions on Balboa Blvd.
- 2-2 The traffic study for the project recommends that a left-turn pocket from eastbound Balboa Blvd. into the parking lot driveway at 16th Street be provided. A STOP sign is not proposed or recommended at this intersection.
- 2-3 The existing public parking lot located at the northeast corner of Balboa Blvd. and 18th Street has 22 spaces. The existing lot next to the Girl Scout House has 6 spaces. The new parking lot near 18th Street, to be built as part of Phase 3, will have 26 parking spaces. In addition, 18th Street north of Balboa Boulevard will be widened to allow for an additional 8 on-street parking spaces adjacent to the new Girl Scout house.

3. OCTA; February 23, 2010

- 3-1 Page 5.11-5, Section 5.11-F in the paragraph discussing the Project Specific Analysis, the third sentence is replaced with the following:

There is an OCTA bus stop on westbound West Balboa Boulevard and 16th Street that would not be impacted by the project.

3-2 The sidewalk width will meet ADA requirements.

4. State of California, Department of Transportation, District 12, Chris Herre, Branch Chief; February 3, 2010

4-1 The requirement for an encroachment permit within any right-of-way under the jurisdiction of Caltrans is noted.

5. Southern California Gas Company; January 26, 2010

5-1 The availability of natural gas to the project site is noted.

6. State of California, Department of Toxic Substances Control, Greg Holmes, Unit Chief; March 1, 2010

6-1 As noted on pp. 5.6-6 to 5.6-7, project demolition and construction activities are anticipated to require the disposal of 300 cubic yards of PCB (polychlorinated biphenyl) contaminated soil and approximately 3,000 cubic yards of mercury contaminated dredge materials. Mitigation Measure 5.6-A.1 requires that on-site buildings to be demolished be tested to determine the presence of any lead-based paints, PCB's or asbestos. If found, any such contaminants would be properly disposed of at a landfill that accepts such waste. As noted on p. 5.6-6, operation of the project is anticipated to involve routine amounts of solvents, pesticides, and paints. All hazardous wastes would be handled in accordance with applicable regulations. Department of Toxic Substances Control (DTSC) oversight is not anticipated to be necessary, but should excavation activities encounter any unanticipated contaminants, the City of Newport Beach would consult with DTSC as appropriate.

7. State of California, California State Lands Commission, Marina R. Brand, Acting Chief, Division of Environmental Planning and Management; March 3, 2010

7-1 The role of the State Lands Commission as a Responsible Agency in providing jurisdictional review of the project is identified on pp. 3-21 and 5.8-1 of the Draft REIR. The background of tidelands trusts and leases in the City of Newport Beach is discussed on p. 5.8-1. The City of Newport Beach will address as appropriate the boundaries between City-owned land and land held in trust, in consultation with the California State Lands Commission (CSLC). The City of Newport Beach believes that the proposed park and marina are consistent with the Public trust and the City's granting statute(s).

7-2 Given the shallow depth of water in the area of the proposed marina (up to 12 feet), the relatively shallow depth of excavation (up to 5 feet below the depth of the current grade), and the disturbed nature of the project area, submerged cultural resources are not anticipated and none are known to be located on the site. With respect to potential beach nourishment sites, the dynamic, high-energy nature of the sites (i.e., ocean beach) makes the likelihood of intact marine archeological artifacts very remote. Furthermore, the placement of dredged material would not disturb any artifacts that might be present, given that those artifacts would be buried. No resources have been found in the vicinity of the project site or sand disposal locations. The Draft REIR notes on p. 5.4- 8 that, "[b]ased upon the high level of urbanization present within the project area and the resultant ground disturbance, in conjunction with the environmental setting (i.e., the project area

has been subject to historic-era disturbance from the movement of nearby ocean waters), there is a very low probability that significant, intact subsurface deposits would be uncovered during project construction. For this reason, archaeological monitoring during project construction is not recommended.” Mitigation Measure 5.4-B.1 is revised to require that a qualified archaeological monitor be available to supervise excavation activities in previously undisturbed soils (see response 10-1 below). The requirement for a salvage permit, should such artifacts be encountered, is noted.

8. Pier to Pier, Central Newport Beach Community Association, Louise Fundenberg, President, March 9, 2010

- 8-1 It is likely that the gates will be removed during construction, but a final decision has not been made. The design of the Phase 1 and 2 projects will incorporate pedestrian safety features, such as speed bumps, signage and/or fencing to address the traffic in the alley as appropriate and necessary. The addition of metered public parking between 15th and 18th Streets for the bay beach area is anticipated to reduce the circulation and volume of traffic on West Bay Avenue between 18th and 19th Streets. A vehicle exiting the new public parking aisle onto 18th Street would be able to turn left to access Balboa Boulevard. This would be a shorter and more direct route to Balboa Boulevard than through the Vilelle Place alley west of 18th Street. If necessary, traffic signs would be installed at 18th Street and Vilelle Place to restrict traffic from driving westbound into the Vilelle Place alley (residents excepted).

As indicated in Table 5.11-3, Proposed Project Trips, Phases 1 and 2 result in a decrease in trips when compared with the trips generated by the existing mobile homes on the site. Since the existing mobile homes on the site generate more peak hour and daily trips than Phases 1 and 2.

Section 2.1 is the Executive Summary of the EIR. A more detailed description of Phases 1 and 2 is included in the Project Description (p. 3-6 of the Draft REIR). Also as noted in the Transportation and Traffic section of the Draft REIR (p. 5.11-6) the traffic conditions for Phases 1 and 2 would result in a net decrease in traffic as compared to the existing mobile home park.

- 8-2 Page 3-19, under the subheading “Balboa Center,” the first sentence of the second paragraph is revised as follows:

The Sailing Program Building would support a range of ~~ocean~~ harbor-based activities...

- 8-3 Page 5.2-15, second paragraph, second sentence is revised as follows:

There ~~are several mobile homes~~ is a single-family residence and a hotel located to the west of the project site across 18th Street...

9. Tom Rossi, Resident, March 9, 2010

- 9-1 The commenters concerns are noted. Socioeconomic and property value impacts are not addressed by the California Environmental Quality Act (CEQA). CEQA addresses impacts to public views, particularly scenic highways and vistas. Impacts to public views are discussed on p. 5.1-9. Future views from Balboa Boulevard are shown in Exhibit 5.1-3. The Draft REIR finds that the proposed project would not have a significant impact on a scenic vista. The City of Newport Beach General Plan and Local Coastal Plan include a number of policies that seek to protect public views (see LU 1.6 discussed on p. 5.8-15, of the Draft REIR and Coastal Land Use Plan Policies 4.4.1-11, and 4.4.2-3 discussed on p. 5.8-27 of the Draft REIR).

As indicated on p 3-19, the Girl Scout House would operate in much the same way as the current Girl Scout House, “[d]uring the school year (mid-September through early June) the Girl Scout House would be used Monday through Thursday for troop meetings and adult leadership meetings from approximately 1:00 PM until 9:00 PM. Girl Scout troops would visit the facility for overnight stays from Friday afternoon through Sunday afternoon. The current facility is normally booked every weekend from September through June, a pattern which would be expected to continue in the new facility. During the summer season (mid-June through early September), the facility would be utilized 7 days per week for troop stays spanning 3 to 5 days.” As with the current facility, use of the building would be confined to Girl Scout-related activities.

10. California Cultural Resource Preservation Alliance, Inc., Patricia Martz, PhD, President, March 7, 2010

10-1 As discussed in response 7-2, above, given the disturbed nature of the project area, it is not anticipated that any resources are located on the site. However, to address the unlikely possibility that resources are present Mitigation Measure 5.4-B.1 is revised as follows:

MM-5.4-B.1 During Phase 3, a qualified archaeological monitor shall be available to supervise excavation activities in previously undisturbed soils. If archeological, historic or prehistoric artifacts are encountered during construction, the City of Newport Beach shall contact a Native American representative (as appropriate) and take measures to avoid the site, or shall record the site then cap or cover the site with a layer of soil before building over it. Alternatively, the City shall excavate the site under the supervision of a qualified archeologist in order to recover the scientifically consequential information relevant to the resource. In accordance with the Public Resources Code §5097.94, if human remains are found, the Orange County Coroner shall be notified within 24 hours of the discovery. If the Coroner determines that the remains are not recent, the Coroner will notify the Native American Heritage Commission in Sacramento to determine the most likely descendent for the area. The designated Native American representative shall then determine, in consultation with the City, the disposition of the human remains.

11. State of California, California Coastal Commission, Fernie Sy, Coastal Program Analyst II, March 10, 2010.

11-1 The commenter attaches his April 13, 2009 comment letter originally submitted as a comment on the Draft EIR. Detailed response to Coastal Commission staff comments contained in the April 13, 2009 comment letter are presented in Section 8, Responses to Comments on Draft EIR in the Draft REIR (see specifically Response to Comment A2 pp. 8-1 to 8-12). In particular, the project includes mitigation for the loss of 0.66 acres of sandy intertidal habitat and BMPs to address water quality. A Draft Delineation of Jurisdictional Waters and Wetlands (see **Appendix D.4**) indicates there are no wetlands on the project site. The determination of the wetland habitat used in the Draft REIR is based on both the Army Corps of Engineers definition and the California Coastal Commission criteria. Mitigation Measure MM 5.3-C.1 has been developed to mitigate the project’s impact on sandy intertidal habitat. As discussed in the responses to Coastal Commission staff comments starting on p. 8-1 of the Draft REIR and in the discussion of consistency with applicable Newport Beach Local Coastal Program Goals and policies (Table 8-2, pp. 5.8-23 to 5.8-27 of the Draft REIR) the project is consistent with the Newport Beach Local Coastal Program Coastal Land Use Plan and the California Coastal Act. All comments raised by the commenter are addressed in the Draft REIR. As no new concerns are raised in this letter, no further response is necessary.

Errata to the Draft REIR

Page 2-18. Impact 5.7-B. First and third columns, Project-Specific and Cumulative impacts should be “No impact” rather than “Less than significant impact” in all four locations.

Page 2-19. Impact 5.7-E. First and third columns, Project-Specific and Cumulative impacts should be “No impact” rather than “Less than significant impact” in all four locations.

Page 2-19. Impact 5.7-F. In the first column, the level of significance for both Project-Specific and Cumulative should be, “No impact” rather than, “Potentially significant impact.” In the second column under both Project-Specific and Cumulative, “No mitigation required” should replace “Implementation of Mitigation Measures MM 5.7-A.1 and MM 5.7-A.2 is required.” In the third column, for both Project-Specific and Cumulative, “No impact” should replace, “Less than significant impact.”

Page 2-23. Impact 5.9-D. Third column. Project-Specific level of significance after Mitigation should be, “Significant impact” rather than “Less than significant impact.”

Page 2-25. Impact 5.10-C. In the first column, the level of significance for both Project-Specific and Cumulative should be identified as, “No impact” rather than, “Less than significant impact.”

Page 5.6-6. The paragraph starting at the bottom of the page is revised as follows:

Project specific construction activities could result in a significant hazardous materials impact related to the discovery, removal, and disposal of hazardous demolition debris, but the long-term activities of the proposed project would not utilize or dispose of any hazardous materials of reportable quantities in its typical operations. Since hazardous materials impacts are localized a cumulative impact is not anticipated. Therefore, impacts related to construction activities would be cumulatively less than significant, but and impacts from the operational use of hazardous materials also would be less than significant.

Page 5.7-16, delete the last sentence of the first paragraph: ~~Accordingly, the proposed project would otherwise not substantially degrade water quality and there would be no impact.~~ Under the subheading “Mitigation Measures,” for both Project-Specific and Cumulative, replace “No Impact” with, “Implementation of Mitigation Measures MM 5.7-A.1 and MM 5.7-A.2 is required.” Under the subheading “Level of Significance After Mitigation” for both Project Specific and Cumulative, replace, “No impact” with, “Less than significant impact.”

Page 5.9-18. The following is added as a new last paragraph to the Noise section:

Airport/Airstrip Noise

The Initial Study determined that the project would have no impact with relation to airport or airstrip noise as no such facilities are located in the vicinity of the site. Therefore no additional analysis is provided in the Draft REIR.

Page 5.10-5, Impact 5.10-C (schools), second paragraph on the page, under the analysis subheading level of “Cumulative,” revise the paragraph as follows;

Implementation of the proposed project in addition to all other projects in the vicinity of the project site could add to the would not add a contribution to a cumulative impact on school personnel and facilities throughout the City of Newport Beach. However, the project’s contribution to the city wide impact on schools is considered less than significant because the project site would not be adding students to the district.

Page 5.10-5, under the subheading “Level of Significance After Mitigation” for Cumulative, replace, “Less than significant” with “No impact.”

Page 6-1, second paragraph under heading 6.2 No Project is revised as follows:

The No Project Alternative would avoid all of the construction impacts associated with the proposed project, including the potentially significant construction noise impacts as well as other less than significant impacts including air quality (exceedances of criteria pollutant standards and LSTs, health impact), biological resources (noise impacts on marine mammals, interference with grunion spawning and migratory bird nesting; loss of sandy intertidal habitat), and water quality (construction runoff and dredging turbidity), and noise (pile-driving and heavy construction equipment). It would also avoid all of the operational-phase impacts, including air quality (cumulative ozone and health impacts), geology (seismic risks), and water quality (poor circulation in the marina). The No Project Alternative would not achieve the provisions of the Coastal Act that encourage the maintenance and expansion of marine boating facilities and enhanced coastal access and coastal recreational opportunities.

Page 6-2, third paragraph under heading 6.3 Reduced Marina is revised as follows:

The Reduced Marina Alternative would reduce the magnitude of all of the construction and operational impacts identified for the proposed project. Nonetheless construction noise impacts of this alternative would remain potentially significant. (~~except the~~ Geological impacts related to seismic risks would not be reduced as those would be applicable primarily to the landside components of the project, and the impacts to sandy intertidal habitat, as those would occur in the part of the marina that would be built under either alternative.) In particular, this alternative would reduce potential water quality impacts during operation because the marina basin would be smaller and there would be fewer boats, and it would reduce traffic because there would be fewer trips generated by visiting mariners. Although the impacts would be reduced, they would not be avoided: the Reduced Marina Alternative would have all of the impacts of the proposed project (including potentially significant construction noise), but of a lesser duration/magnitude.

Page 6-3, the second paragraph under the subheading 6.4 – No Marina is revised as follows:

This alternative would eliminate the potentially significant construction noise impacts of the project (although there would still be piles driven for the buildings, the duration of pile driving would be much less and the activity would be farther from sensitive receptors). This alternative would avoid the degraded water quality that could occur in the marina. It would also reduce other impacts associated with marina construction, including noise from pile driving (although there would still be piles driven for the buildings, the duration of pile driving would be much less and the activity would be farther from sensitive receptors); water quality impacts from dredging and dredged material disposal; air quality impacts from construction equipment (although construction of the remainder of the project would still generate emissions, particularly in view of the need to import fill); and impacts on biological resources (noise impacts on marine mammals, interference with grunion spawning, loss of sandy intertidal habitat).

Page 7-1, the second paragraph is revised as follows:

It has been determined that, with implementation of the proposed project, and recommended mitigation measures, each of the project-related impacts identified in Section 5 of this document would be reduced to less than significant with the exception of construction noise. Construction noise would remain at least potentially significant (and is therefore identified as significant) after mitigation as a result of up to 17 weeks of pile driving.