

18 March 2008

To: Jaime Murillo, Associate Planner
City of Newport Beach Planning Department

From: Environmental Quality Affairs Committee

Subject: Comments on Hyatt Regency DEIR

Reference: Hyatt Regency Newport Beach expansion Environmental Impact
Report SCH NO. 2006121052, February 2008.

EQAC is pleased to submit the following comments on the referenced DEIR in hopes that these comments will help to make the final EIR as complete and responsive as possible. Our comments are presented in the order that items appear in the DEIR with appropriate paragraph and page references.

1. Executive Summary

Pg. 1-13, Table 1-1, item 5.4-1 states that “Limited testing of the new ballroom shall be conductedto avoid construction delays caused by unanticipated finds.....” Is this in addition to the test pits discussed earlier? Why does the ballroom area have to be treated differently than the rest of the project?

Pg. 1-24, Table 1-1, items 5.11-6 states that the “Parking Management Plan shall clearly identify how and where the 467 necessary parking places will be accommodated on-site during construction”. However, there is no mention of how the Parking Management Plan will deal with the construction crew parking. How will this be accommodated?

2. Introduction

Pg. 2-2, Section 2.3.2 lists 13 environmental factors that have been identified as potentially significant. However, only 10 of these have been summarized in Table 1-1, (pp. 1-7 to 1-24). It appears that 5.9, Noise, is probably on pg. 1-21 which is missing. The other 2 – Agriculture and Utilities and Service Systems – have been left out completely. Please provide pg. 1-21 and explain the 2 other deletions.

3. Project Description

Pg. 3-9, Table 3-1 does not show any reduction of available parking for the hotel (785 spaces). This may be true at completion, but a significant number of these spaces will be rendered unavailable/unusable during the demolition/construction phases (equipment storage, construction parking, material storage etc.). What provisions are included to assure continuous availability of the needed 785 hotel parking spaces?

Pg. 3-21 Para.1 describes the construction hours and discusses that there will be nighttime construction for approx 4-6 weeks. Does that time include rain days? Is there a way to do the work during the day so the noise and nighttime glare do not disturb the neighbors? Why? Will the nighttime construction occur simultaneously with the daytime construction? Will that mean that the area may have noise, air quality problems, glare and traffic problems for 18 + hours of the day?

Pg. 3-27, Fig. 3-10, Conceptual Fuel Modification Plan, shows TS-1 (time-share bldg. 1) has a corner of the bldg intruding into the blue zone- Special Treatment Zone- environmentally sensitive area adjacent to coastal sage scrub habitat. Is it allowable to build the building that close to the protected habitat? How large a buffer zone is needed to comply with the Coastal Commission?

Page 3-35: The table leads the reader to believe that there is only one issue that the Coastal Commission has to act on. The DEIR needs to address the issue of the timeshares within the Coastal zone and the steps needed for approval.

5.1 Aesthetics

Has the potential of parking lot lights on all levels of the proposed parking structure been considered from the view point of Sea Island residential community and the ESHA? It seems possible that the increased elevation of the proposed parking level may create a nighttime nuisance for the residents of Sea Island.

The EIR should analyze potential light and glare impacts from nighttime construction in Jamboree Road.

5.2 Air Quality

Page 5.2-16, Paragraph 1: The demolition and subsequent construction of a major portion of the existing site has the potential to cause a significant amount of “Fugitive Dust,” including dust and particulates from demolition of buildings and removal of grass from the golf course. This matter may include asbestos, chemicals, allergens or other harmful substances. Especially at risk are senior citizens living at the Bay View Landing apartment complex, who are sensitive receptors. In addition to this, a large number of individuals/groups routinely exercise very close to the project area, via Back Bay Drive (walkers, joggers, bike riders, etc.). On- site tennis courts, local walking trails, bike paths and the Back Bay Waterway are also busy with people exercising. Depending on the wind direction and wind speed, the “Fugitive Dust” and other airborne debris/ matter could have a negative impact on those individuals. Residents of Bay View Landing, Sea Island, Harbor Cove, Villa Point, and guests and/or visitors at The Dunes could be subject to these substances. The EIR should analyze the impacts of the release of these substances, and propose mitigation measures, as appropriate.

In addition, the use of diesel powered construction equipment at or near the project is a concern. What is the limitation on idling diesel equipment?

Page 5.2-16, Paragraph 4: Hyatt will be removing a large amount of grass (removal of the golf course), and other mature vegetation. Concrete and buildings will be taking the place of a large section of the golf course; this will result in a lack of vegetation and will have an increase of the global warming footprint of the project. The EIR should analyze the effect of removing vegetation and replacing it with new buildings.

Page 5.2-18, Table 5.2-9, Footnote 2, last bracketed sentence: The EIR should explain how 24 inches of freeboard is equivalent to covering all loads.

Page 5.2-18, Section – Impact 5.2-4: The EIR should identify routes for ingress and egress of all demolition and construction related traffic, assess the impacts and identify mitigation measures as necessary, with particular emphasis on minimizing impacts on Back Bay Drive.

No mention is made regarding the emissions control from the new 800-seat ballroom. Is the smoking area near the ballroom going to have sufficient filtration to prevent second hand smoke from escaping to the surrounding area?

5.3 Biological Resources

Pg. 5.3-7, Figures 5.3-2 to 4 would be more easily read if they were transparent overlays to the site map. It appears that the new timeshare buildings (fig 5.3-4) invade sensitive eco/ESHA areas (as shown in Fig 5.3-3, Gnatcatcher Observed Locations). The EIR should analyze the biological impacts of proposed building locations.

Fig 5.3-4 does not identify specific plantings that will be placed in the area, nor does it adequately describe what the area will contain after completion of the project.

It appears that sensitive eco areas were disturbed with the original construction of the hotel and golf course.

The outline for dealing with the area and creating the "buffer" with sensitive areas is not specific enough. If one were to use magnifying glass on figure 5.3-4 to read the fuel modification zones description, it would appear that the applicant does not intend to do an effective job in this area at all. Too broad, non-specific and ineffective are words that would adequately describe the entire plan for dealing with biological concerns on the project. The EIR should explain why a biologist should not be engaged to design, monitor and implement a mitigation and restoration plan, or at least design an effective "buffer" between construction and nature.

Disturbing the coastal sage is not the only issue. Much of the open space will be lost to the increased size of the buildings and hardscape. A biologist (not a biological monitor) should be an integral part of the design and monitoring team on an ongoing basis during the project.

The applicant has a real opportunity to create and maintain an effective ecological zone, restore native species to this area and mitigate the effects of the increased square footage of the hotel and timeshare buildings. This would not only benefit the local community, but the hotel could emphasize to its guests the operator's sensitivity to the local ecology.

5.5 Geology and Soils

Pg. 5.5-7 states that "Groundwater was encountered in numerous borings excavated during the geotechnical investigation of the project site. According to the geographical investigation, the historical depth in the project area is approximately 10 feet below grade surface (bgs). Groundwater was encountered in one of the boring excavations at a depth of approx, 7 feet bgs in the western portions of the hotel's main parking area, corresponding to a surface elevation of approx 13.5 feet above msl. Fluctuations of the groundwater level, localized zones of perched water, and soil moisture content should be anticipated during and following the rainy season or periods of locally intense rainfall or storm water runoff. Irrigation of landscaped areas can also cause fluctuation of local groundwater levels."

However, the Project Description on page 3.15, Figure 3-6 shows timeshare buildings with subterranean parking. Where are the mitigation measures that describe what will be done if/when they encounter groundwater during the excavation phase?

Are there special construction techniques that will be utilized in the building of the hotel's main parking area where they have already encountered groundwater at 7 feet bgs? Where are the mitigation measures they will implement for this area and others?

5.6 Hazards and Hazardous Materials

The Hazard & Hazardous Materials section begins at page 5.6-1 and ends at page 5.6-16. Pages 5.6-1 through 5.6-6 are devoted to a "review" of applicable federal and state "laws and programs." Then the DEIR identifies eight situations ("thresholds") that might cause a significant effect on the environment (*see* page 5.6-6). These are taken from CEQA guidelines, not from any other, local or regional standard, source or authority. The eight CEQA situations are labeled H-1 through H-8.

On Impacts H-1, H-3, H-6, and H-7, the DEIR is incomplete and needs more data

As the first matter of concern, the DEIR dismisses any discussion of H-1, H-3, H-6, and H-7 on the basis that the Initial Study "substantiates that impacts associated with the following thresholds would be less than significant." The problem with this avoidance of any discussion on the impacts caused by H-1, H-3, H-6 and H-7 conditions is that the Initial Study did not conclude or substantiate that impacts would be "less than significant." On the contrary, the Initial Study stated the following:

Regarding H-1, the Initial Study offered the conclusion (not any data or information of any kind) that "normal cleaning solvents and landscaping products" would be used. And it states that use "of these substances would be minimal" and the use would be "subject to approval by the Newport Beach Fire Department" as if to say therefore it is not a risk. (*see* p. 42 of Initial Study, Appendix A). The use of "minimal" is conclusory and merely someone's opinion - no standards by which the measure of "minimal" was reached are provided in the DEIR.

More importantly, the analysis addresses only post-demolition and post-development conditions. Construction will be going on for a few years, during which time there will, be regular handling

and transport of hazardous materials. There is no discussion of the potential impact, and therefore no discussion of mitigation measures.

Regarding H-3, the Initial Study states that the closest school is "approximately" one mile away from the site and therefore "no mitigation measures are necessary." Although this particular CEQA example is limited to concerns regarding schools, the conditions during demolition and construction will not only affect children. They will affect all people in and around the site in that 1/4-mile parameter. Therefore, one must ask the question, what is being done to address the impact of "hazardous emissions" or the handling of "hazardous or acutely hazardous materials, substances, or waste" within that 1/4 mile radius. The other "CEQA thresholds" do not specifically address such conditions.

Regarding H-7, the Initial Study did not provide any analysis of the impacts under the H-7 threshold. And there are several deficiencies in what little analysis was provided. First, the Initial Study states that, "Project review by the NBFDD is required. (see p. 43 of Initial Study, Appendix A). Yet this was never addressed in the DEIR. Second, the Initial Study refers to the "Newport Beach Emergency Management Plan" of 2004, and based upon that plan they do not "expect" the proposed project to "interfere" with the emergency response plans. However, by the Initial Study's own admission, the Emergency Response Plan is updated every three years, which means the Study was based on a city-wide plan that is already outdated by over a year.

Further, there is no discussion in there about the impact caused during the years of demolition and construction involving increased traffic and regular road blockage, to name but a few examples of conditions that would directly affect emergency response and emergency evacuation plans. Again, more information is needed.

On Impacts H-2 and H-8, the DEIR is incomplete and needs more data

Regarding H-2, the Initial Study states that, "further analysis in the EIR is necessary. Mitigation measures will be incorporated as needed." (see p. 42 of Initial Study, Appendix A). But then the DEIR does not provide a full analysis. The debris anticipated from the demolition activities is estimated to be in the range of 233 cubic yards of structural debris and 9,500 cubic yards of concrete, asphalt, and base material. According to the DEIR, the material will be "evaluated" for lead-based paint and ACM.

The first comment is that an analysis of the impact makes no sense until the materials have been evaluated, which could have been performed before the DEIR. The DEIR specifically states that "prior to demolition of the site, building materials will be carefully assessed for the presence of ACM..." and lead-based paint..." (see p. 5.6-13 of DEIR). So, instead of making guesstimations as to the levels and basing conclusions regarding mitigation measures on those guesstimations, why not require the hard data now so as to maximize knowledge on the hazardous materials that are going to affect the community?

Most importantly, the DEIR cites regulations concerning how the hazardous materials are to be handled, and based thereupon reaches the conclusion that no mitigation measures are needed. But there is no discussion of the details of the rules, the enforcement, the consequences of noncompliance, and no discussion of whether they can be complied with at this project -- and if not, what would be done to mitigate the impact for failure of compliance. In summary, the H-2 discussion is missing vital information on the issue of mitigation.

Regarding H-8, the Initial Study states that, "no impact from wild land fires would occur and no mitigation measures are necessary." The basis for that conclusion is that the City's General Plan Update classifies this area as a "low-to-no fire hazard." By the time of the drafting of the EIR, however, "moderate" hazards of wildfires were recognized. Despite this acknowledgement, the DEIR analysis is deficient insofar as it consists simply of a series of quoted passages from the Newport Beach Fire Protection Plan and relies on them as satisfying any need for mitigation. But the DEIR does not affirmatively state that the FPP passages comprise everything the City requires on this issue, and therefore the accuracy and totality of this analysis are questionable.

5.7 Hydrology and Water Quality

Pg. 5.7-17, Para. 4: The DEIR states that, "the City's storm drain system includes mechanisms that minimize flood hazards resulting from high-tide events". Which if any of these mechanisms are located within this project? Will these mechanisms be included in the new storm drain system being proposed?

Pg. 5.7-21, Para. 7 states, "The CLUP of the City of Newport Beach LCP was prepared in accordance with the California Coastal Act of 1976, approved by the California Coastal Commission in Oct. 2005 and adopted in Dec. 2005". This statement runs contrary to the statement below * made by the Coastal Commission on January 16, 2007 and leads the reader to believe that all necessary permits have been acquired and that the process is complete. Please explain the discrepancy.

* "The recently updated and certified 2005 City Of Newport Beach Coastal land Use Plan (LUP) does not specifically allow for limited use/fractional ownership "time share" units in the Visitor Commercial zone. Please be reminded that the CCC recognizes the certified Coastal Land Use Plan and not the City's General Plan for land use planning guidance within the coastal zone.....if such a proposal could be found consistent with Chapter 3 policies of the Coastal Act, the local government should prepare and submit an LUP amendment for (Coastal) Commission review and action. The proposed project will also require a coastal development permit from the (Coastal) Commission".

Pg. 5.7-26 Table 5.7-3 Construction BMP's (Best Management Practices) Under Erosion Control EC-13 Polyacrylamide- Exactly what is this product? How will it be used? Should it be used in an area that is not only close to the Bay, but also an ESHA zone? (Wikipedia states that, "Some research indicates that polyacrylamide can degrade under normal environmental conditions, releasing acrylamide, a known nerve toxin")

Pg. 5.7-28, para. 2 under Operational Phase- As proposed, the project would indirectly discharge into the upper Newport Bay via the MS4 at Back Bay Drive, owned and operated by the City of Newport Beach. Under the current Orange County MS4 Permit (municipal separate storm sewer system), no numerical effluent limitations are required for storm water discharges and no sampling or monitoring programs are required by the owner/developer. However, the long-term operation of the proposed project necessitates the implementation of post-construction BMP's to the maximum extent practicable to mitigate and abate pollutants that may compromise the Newport Bay's beneficial uses and water quality objectives.

Does this mean that no construction mitigation measures are planned- only post-construction? It seems that demolition/construction phase mitigation is needed.

Pg. 5.7 –33: Underground media filtration will be used in this project in Drainage Areas A, B, & C to provide treatment of sediment, nutrients, trash, oil, grease, etc.. Since this is not the only

project of this type, is it not time for the City to set up a schedule for inspection of such filters to ensure they are being maintained properly? Does the City already have such a program?

The document needs to state that there will be no black asphalt used.

5.8 Land Use and Planning

The Notice of Preparation (NOP) Initial Study, (IS,) received letters from the California Coastal Commission indicating, issues of concern that the staff (CCC) suggests should be addressed in the project EIR:

1. The recently updated and certified 2005 City Of Newport Beach Coastal land Use Plan (LUP) does not specifically allow for limited use/fractional ownership “time share” units in the Visitor Commercial zone..... The proposed project will also require a coastal development permit from the Commission.
2. The proposed project is adjacent to the Upper Newport Bay Ecological reserve and would be required to meet the City of N.B. Coastal LUP policies for coastal resource protection(provide appropriate buffer areas and setbacks, shield and direct exterior lighting away to minimize impacts to wildlife, prohibit new development that would necessitate fuel modification within Environmentally Sensitive Habitat areas (ESHA, etc).

Yet, when the reader goes to page 2.5, Table 2-1, NOP Comment Summary, they are taken to Section 5.3, Biological Resources, and 5.8, Land Use Planning only to find no answers to the above issues and comments.

The California Coastal Commission response to the NOP asks the following questions:

- 1.Is the proposed Project consistent with the Coastal Development Plan for this area?
- 2.Is the proposed project consistent with the with the City CLUP plan for this area?

Are these questions clearly answered in the DEIR?

The proposed Project, inclusive of the time-share units, is not consistent with CLUP plan for this area. What is the status of the DEIR approval process if an amendment to the CLUP is required for the proposed project?

5.9 Noise

Pg. 5.9-25, Impact 5.9-5: paragraphs 4 & 5 indicated noise impacts for Palisades Tennis Club (PTC) up to 30 dBA in excess of ambient noise during demolition/construction phases which could last up to 2 years.

The sound walls mentioned in 5.9.8 reduce dBA levels by only 5 to 6 dBA. The remaining noise levels would still be 24 dBA in excess of City allowable levels, and Impact 5.9-5 will remain Significant and Unavoidable.

These sound levels will certainly have a negative impact on PTC’s ability to act as a recreational and instructional facility, and on the entire adjacent community.

The sound walls proposed as mitigation are really only sound blankets on fences. Are other more effective physical sound barriers being considered? What about multiple blanketed fences? Considering the magnitude of this problem and the long duration of demolition/construction phases, more effective sound barriers should be sought.

The mitigations in 5.9.7 are general, considering potential impact on surrounding residents, PTC, users of Back Bay and Newport Dunes. What additional planning measures have been considered, e.g. phasing of demolition/construction work, to mitigate these impacts?

5.10 Public Services

Pg. 5.10-1, Para 2- The Nbfd currently employs 146 full-time and 170 seasonal employees to provide 24-hour protection and response to the City's residents and visitors. More description of the additional 170 seasonal employees would be helpful to determine their effectiveness in response times.

Para 3 – The paragraph starts with stating, “ The Nbfd also handles incidents associated with hazardous materials”. DEIR needs to explain more fully what this statement means in the context of a hazardous material incident vs. emergency as stated below.

It then ends with “In case of a hazardous materials emergency, Huntington Beach Fire Department or Orange County Fire Department is called” (It is officially called Orange County Fire Authority-not Department).

Since the Development is adjacent to the Bay, there could be an argument made for the necessity of a detailed plan of exactly what would happen if there was an accidental spill of a hazardous material into the bay, if not in this section, then somewhere in the DEIR, since all the mitigation measures are to be made available to the public.

The Initial Study, IS, done December 2006, brings up on page 29, Environmental Checklist:

“XIV. Public Services. Would the project result in substantial adverse physical impacts associated with ... the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public service”. This was listed as Potentially Significant Impact. Yet under Executive Summary page 1-22 sec 5.10 Public Services this has been changed to less than significant with no mitigation measures necessary.

The EIR should provide analysis demonstrating that the response times of both Fire and Police would not be impacted by the 23-month construction period, the lane closures for night construction, the approx 3500 truck trips x 2 trips per truck since the truck has to go in before it can go out, therefore approx 96 trips per day and 7000 total trips on very congested Jamboree Road?

5.11 Transportation and Traffic

Page 5.11-22, Paragraph 2, Last sentence: The DEIR must review the parking and queuing demand for events held at the new banquet/ball room.

Page 5.11-22, Table 5.11-7, 8 pm line item: Should read 358 and not 359, and should read 427 and not 426.

Page 5.11-22, Paragraph 4: Hyatt needs to address the issue of 127 parking spaces vs. the 140 spaces required by City of NB.

Page 5.11-22,23, Table 5.11-8:
8 am line item should be 105 & 22
10 am line item should be 77 & 50
3 pm line item should be 77 & 50
9 pm line item should be 124 & 3

Page 5.11-22,23, Table 5.11-9:
6 pm line item should be 580 & 332
7 pm line item should be 460 (ok) & 452

Page 5.11-24, Paragraph 1: This section points out the Jamboree Road closure for sewer improvements. The DEIR should analyze the traffic impact of this work at all hours and on the weekends.

Page 5.11-31, Section 5.11-6: The EIR should identify staging and parking locations for construction vehicles and equipment, and analyze the impacts on surrounding streets, including Jamboree Road, Back Bay Drive and Shellmaker Road.

9. Significant Irreversible Changes Due to the Proposed Project

Pg. 9-1, first bullet point, identifies a need for “ commitment of non-renewable energy resources and natural resources, such as lumber, steel.....” associated with the proposed project.

However, some of these negative impacts could be compensated by the implementation of proven, current “green building” principles including self-contained energy generation, use of environmentally friendly construction materials, water conservative plumbing etc. Are these concepts included in the architectural plans for the proposed project? Has the proponent considered application for some level of LEED (Leadership in Energy and Environmental Design) certification for the project?

Thank you for the opportunity to comment on this important project. We hope that the above inputs help in producing a better project for the developers as well as the surrounding community.