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From Environment Quality Affairs Citizens Advisory Committee (EQAC)

Subject: Comments on Marina Park DEIR dated February 26, 2009

EQAC is pleased to take this opportunity to provide comments on the referenced DEIR. 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 result for the City of Newport Beach

2. Executive Summary

Refer to Table 2-1, Executive Summary Matrix (pp. 2-2 to 29). The logic in this Table is confusing or wrong.

Environmental Impacts under Project Specific or Cumulative (left side of Table) should lead to Mitigation Measures (center of Table) and result in improvements as noted in Level of Significance after Mitigation (right side of Table). For example, Air Quality Impact 5.2-A (pg. 2-4) is shown as potentially significant, leading to 3 mitigation measures, resulting in less than significant after mitigation. However, Air Quality Impact 5.2-1 (pg. 2-5, 6, 7, 8) is shown as less than significant, leading to 11 mitigation measures resulting in less than significant after mitigation. Shouldn't the original impact have been shown as potentially significant?

Cultural Resources Impact 5.4-A (pg. 2-11) is shown as no impact leading no mitigation resulting in less than significant after mitigation. Did no mitigation result in deterioration? Cultural Resources Impact 5.4-D (pg. 2-12) is shown as less than significant but cites a mitigation measure which could stop or delay the project for a significant period of time. Doesn't that make the Impact potentially significant?

Geology and Soils Impact 5.5-D (pg. 2-14) goes from potentially significant to no impact with no mitigation measures. How is this possible?

Hazards and Hazardous Materials Impact 5.6-G (pg. 2-16) asserts no project impact related to implementation of an "adopted emergency response plan or emergency evacuation plan". However, Balboa Blvd. is the main peninsula emergency response and evacuation route, and it will be occupied by trucks and construction equipment during significant portions of the development phase. This slow-moving traffic is a potentially significant impact and should be addressed with a specific mitigation measure assuring that there is always space on-site for all such project related equipment in the event that Balboa Blvd is needed for emergencies and/or Peninsula evacuations.

Land Use and Planning Impact 5.8-B (pg. 2-22) relates to project conflict “with any applicable land use plan...” and asserts a less than significant impact. How does this become no impact with no proposed mitigation?

Public Services Impact 5.10-D (pg. 2-25) is shown as Beneficial, but results in no impact after no mitigation. Shouldn't the final result be Beneficial?

5. Environmental Impact Analysis

5.1 Aesthetics

In general, the impact on environmental aesthetics is a major improvement for the proposed project area. The removal of current vegetation and replacement with new vegetation is also a monumental improvement and will be more “green” and visually appealing. However, the developer should consider the following comments in planning and mitigation for the project.

Open space

It is planned to replace the open green space (American Legion Park) next to the American Legion with two (2) public tennis courts. Included will be the elimination of 6 to 10 mature trees. Is there a way to save these mature trees?

Viewers

Viewers affected by the proposed changes will include those attending events within the American Legion facility and residential viewers on 15th Street. American Legion Park will be replaced by two tennis courts, including fencing, tennis netting and lights, in a location that is closer to residences than the existing courts. Court lights and glare will replace the current darkness. The EIR should analyze how residents will be affected by the additional light and noise and social occasions at the American Legion Hall will be disrupted by the additional noise and glare from the adjacent tennis courts.

Sailing Center and Lighthouse

The Balboa Center, at 35 feet, 6 inches, is over the 35-foot standard of height. The Lighthouse, at 73 feet, is double the Shoreline Height Requirement, adopted over 30 years ago, and will have a light at the top. The EIR should analyze the visual impacts of the building height and new light source to area residents.

5.2 Air Quality

Please provide an analysis and assessment of the local, immediately proximate impacts to Newport Beach residents. Any and all air quality impact analyses and assessments for Marina Park in Newport Beach appear to be inaccurate to the extent they factor in, or are based on, Local Air Quality Measurements taken at the Source Receptor Area (SRA) 18. For measurements on ozone and carbon monoxide, the closest SCAQMD air quality monitoring station for SRA 18 is in Costa Mesa at Mesa Verde Drive. Measurements of particulate matter pollutants (PM₁₀ and

PM_{2.5}) are drawn from a station in Mission Viejo. *See* 5.2-1 and 5.2-2, pages 5.2-10 through 5.2-11. These data do not represent actual Newport Beach air quality, or air quality on the Peninsula.

As the DEIR acknowledges, the South Coast Air Basin is designated as “non-attainment” because the ambient air quality for the area *already* exceeds the State and National standard for the particulate matter pollutants (PM₁₀ and PM_{2.5}), the State standards for ozone (1 hour), and the National standards for ozone (8 hour). *See* Page 5.2-11.

To address the proposed project’s impact on the existing noncompliance levels, the DEIR states that the ambient concentrations of pollutants are measured at the SRA station, and based upon these concentrations, a Localized Significance Threshold (“LST”) is developed, which in turn represents the “maximum emissions from a project that will not cause or contribute to an exceedance of the most stringent applicable state or national ambient air quality standard.” *See, e.g.,* Pages 5.2-25 through 5.2-29.

However, as addressed above, the SRA (and therefore LST figures) do not account for the projected cumulative construction and operational impacts of projects missing from Table 4.1 (pg, 4.5)-Aerie, Sunset Ridge, Banning Ranch. Thus, it appears that the DEIR’s conclusions that the maximum emissions from the impacts are less than significant (either before or after mitigation) cannot be not based on accurate data because the LSTs are not based on accurate data (See Section 7 of this report).

The DEIR is missing any analysis that incorporates the South Coast Air Quality Management District’s (SCAQMD) “all feasible measures” recommendation. It appears the EIR should be amended to include such discussions. In the beginning of the discussion on Air Quality, the EIR expressly states that the SCAQMD submitted a comment letter in response to the NOP on Marina Park.

One of the strong recommendations made by SCAQMD was that the Marina Park air quality analyses include:

“Implementation of all feasible measures beyond what is required by law to minimize or eliminate significant adverse air quality impacts”.

The DEIR states affirmatively that it “incorporated” that suggestion (*See* “5.2.1 Introduction” at page 5.2-1)

However, none of the analyses concerning air quality even mention any measures “beyond what is required by law,” and the *regional* air quality measurements. Instead of also looking at how an impact can be reduced by “measures beyond what is required by law,” most of the analyses conclude that the impact at issue amounts to “no impact” or is “less than significant” (and thus requires no mitigation of any sort) because it is consistent with a general plan “policy” or a guideline. This approach appears backwards and circumvents the spirit of the SCAQMD recommendation.

The concerns are underscored by the fact that the “legal” standards by which the EIR analyses determine compliance are in the context of the local air quality’s violations of both State and

National air quality standards. The EIR needs to identify what measures have been incorporated beyond those required by law.

Although the DEIR refers to two mitigation measures to be employed for the air quality impacts, it does not explain how these measures actually reduce the contaminants on the short-term (construction) or permanent (operational) bases. More information appears necessary.

5.3 Biological Resources

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

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.

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?

5.6 Hazards and Hazardous Materials

5.6.2 (pp5.6-5 to 5.6-6), Sediment Evaluation

This section describes core sampling done to test for hazardous materials. It describes Areas A,B & C as sites of core samples but fails to plot these locations on a map. Also, it describes the corings taking place above and below "the 0 feet MLLW". It fails to define this description. (Calls to the city failed to provide a definition.) This is troubling for two reasons.

1. Pg. 5.6-6 states "soils were tested based on their consistency to be deposited....." at various sites, but
2. 5.6-A (Pg 5.6-7) states that "during construction activities, the proposed marina area will be dredged to -12 MLLW". This would seem to indicate that they will be digging much deeper than the core samples (0 feet MLLW) and dredging samples noted on pg 5.6-6. It seems that deep core samples should be done considering the close proximity of the contaminated Rhine Channel and shipyard areas. Core samples should be obtained to identify potential hazardous materials at -12 feet MLLW (whatever that means)

Impact 5.6-B (pg 5.6-8) Accident Conditions - Project-Specific Analysis

Refers to "extensive excavation of the marina.....for a relatively limited time." This is vague and overly broad. The hazardous materials removed from the excavation will have to be removed from the site. Given the location of the project, heavy traffic will be an issue. Also, if a spill or truck accident occurs on W. Balboa Blvd. it could cause an extreme impact. The project site is quite a distance from the branching (alternative route) at W. Superior. The section further states that "because of the limited duration of these activities....the potential for hazard impact during these activities would be less than

significant". A detailed time table for dredging, truck staging, barges (if needed) and traffic management should be prepared and submitted before work begins.

Referring to the operational marina (pg 5.6-8) the DEIR states that "In addition, operation of limited-stay.....vessels to stay in the marina for up to 30 days. ...the marina would not include maintenance areas, vehicle boat wash areas, or fueling". How, then will these boats dispose of the waste accumulated over the course of their stay? This is indeed a hazardous consequence of the construction of this project

Cumulative (pg 5.6-8)-The DEIR states that "Impacts associated with project demolition....project could contribute to significant cumulative hazard.....related to asbestos and lead-based paint". Will they not be required to hire specialists to remove asbestos and lead paint before general demolition as is the case in all other construction projects?

Impact 5.6-G (pg 5.6-13) states that "the project will not constrict access...the onsite circulation system..." No onsite circulation system is included in the document and therefore, cannot be evaluated. Considering the location of the project, it is difficult to imagine that it will not seriously impact off-site circulation as well, especially traffic trying to leave the area.

5.7 Hydrology and Water Quality

Please provide stormwater runoff and drainage project analyses.

Grease – Mitigation Measures (pg 5.7-7)

How will pollutants not easily seen, like oil or grease, be handled?

Page 5.7.11 Project -Specific Analysis (pg 5.7-11, bottom of the second paragraph)
Use California native and California friendly plants for landscape management in the proposed vegetative bioswales and landscape biocells.

APPENDIX H: DRAINAGE AND WATER QUALITY INFORMATION

Page 7: Specific Industrials/Commercial Details

Third box down and to the right- Does the parking analysis include a restaurant? Of what size?

Page 16: Source Controls BMPs N15

Second box from bottom on the right- Shouldn't the streets and parking lots be cleaned once a week and not quarterly as planned?

Page 26

Will there be a wash down facility for small and large sailing boats? How will contaminated wastewater from this operation be controlled?

TC-32 Bioretention Table one

This data is based on work done 10-15 years ago. Is more recent data available?

5.8 Land Use and Planning

In the Executive Summary, Impact 5.8-B and in Section 5.8.4 the DEIR states that “the project would not conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to, the General Plan, Specific Plan, Local Coastal Program or Zoning Ordinance)...”

However, the DEIR states that the project is located within the 35 foot Shoreline Height Limitation Zone addressed under Chapter 4 of the CLUP, a component of the Local Coastal Program. In addition, the DEIR states that the project may require a Use Permit to allow the Community and Sailing buildings to exceed the base height limit of 35 feet and a Modification Permit to allow structures located on the site to exceed the 35 foot height limit per the zoning code.

The language should be revised in the Executive Summary and Section 5.8.4 to reflect these possible measures that could be required, and remove the language stating that “the project would not conflict with any applicable land use plan, policy, or regulation...”.

5.10 Public Services

Impact 5.10-D (pg. 5.10-6) deals with beneficial aspects of the proposed project with respect to overall increase in parkland. However, the DEIR does not deal with the negative consequences of elimination of 2 public tennis courts in an area where other public tennis courts are miles away. Elimination of these 2 courts is in direct contradiction to the assertion made on page 1-14 that the “proposed project will include new and expanded versions of all existing recreation facilities now found within the existing site.” Is there any evidence to show that these courts are not needed or underutilized?

In addition, the project plan requires demolition of the existing tennis courts and an adjacent Tot Lot, both of which are actively utilized and unique to the adjacent community. Since their loss during the project development phase would negatively affect the community and visiting users, it would be helpful to have a mitigation measure showing that the tennis courts and Tot Lot would be replaced and available prior to demolition of the existing facilities.

Would the project increase the need for lifeguard services, especially with the Tot Lot located close to the beach?

5.11 Transportation and Traffic

Page 5.11-1. Section 5.11.2 – First sentence calls for 19th Street, but the map on Exhibit 5.11-1 is showing 18th Street. Which is correct?

Page 5.11-7. Table 5.11-3: Net new trip number shows 352; however, on page 5.11.8 (at the top) it shows a net increase number of 477. Please explain the difference.

Page 5.11-12. Project – Specific Analysis Section: Primary access to project can't be via 17th Street by looking at the map on Exhibit 3-3 Site Plan. What is the intended primary access to the project?

Page 5.11-14. (third and fifth lines from the top)- Take out approximately 127 and approximately 26, but keep the hard 127 and 26 figures to agree with the total 153 parking places listed elsewhere in the DEIR.

Do the current 21 parking spaces remain during the construction and when the project is completed? These spaces are located at the curb and the sand facing the bay, between 18th & 19th Streets. Who is expected to use these spaces?

What provisions will be implemented to assure that ocean beach users will not consume parking spaces meant for Marina Park users?

It is likely that, during the construction phase of the project, the residents, businesses and visitors to the Peninsula will face a lot of congestion. A rigorous traffic management plan with strict enforcement should be implemented to assure that the traffic analysis is upheld and that construction will be limited to weekdays only during summer and holiday periods.

Will the project include provisions for a public launch ramp for small shallow boats? Will the existing facilities at 15th and 18th Streets remain?

7. Other CEQA Considerations

Significant data concerning cumulative impacts are missing, and thus revisions/amendments to the DEIR are required. The DEIR states that

“Cumulative impacts are defined as impacts created as a result of the combination of the project evaluated in the EIR together with other projects causing related impacts. “Cumulatively considerable” means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.” (See 4.2 Related Projects on page 4-1)

Pursuant to CEQA guidelines, the DEIR included a list of related projects obtained from the City of Newport Beach, dated September 2008 (See Table 4-1, page 4-5).

The Table of related projects fails to include three large current and probable projects: *Sunset Ridge*, *Aerie*, and *Banning Ranch*. All such projects are in the immediate area. In fact, they are closer to the proposed Marina Park development than are several of the projects in the City's list.

Thus, the cumulative impact analyses in this EIR lack crucial data. The analyses are dangerously inaccurate without such data. The EIR should be amended to include accurate analyses that consider these missing related projects. *This should be a concern for the accuracy of all impacts of the Marina Park project.*

Lastly, more data/information is needed concerning the environmental impacts of the project alternatives. Though CEQA guidelines do not require a DEIR's discussion of project alternatives to be as extensive as the analyses for the proposed project, the sparse discussion of the "Reduced Marina Alternative" provides no meaningful data for comparison and consideration. (See 6.3 "Reduced Marina Alternative," page 6-3).