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From: Environmental Quality Affairs Citizens Advisory Committee (EQAC)

Subject: Aerie Draft Environmental Impact Report (DEIR) dated March 2009

EQAC is pleased to have this opportunity to comment on the Subject DEIR in the hopes that our comments will lead to the best possible project for the City of Newport Beach, the neighbors and the applicant. Our comments follow in the order of appearance in the DEIR as far as possible.

1.0 Executive Summary

The Construction Management Plan (CMP) is referenced frequently and often cited pertaining to mitigation measure. The note at the bottom of pg. 1-6 which refers to the CMP is confusing. Is the CMP incorporated by reference in the DEIR and is it to be considered part of the DEIR, and therefore binding on the proponent?

3.0 Project Description

The project includes removal of existing 4 docks at channel level (25-foot class boats) and expansion to 8 slips plus one side tie-dock which will "accommodate boats up to 100-foot in length". As shown in Exhibit 3-17 (pg. 3-25), the new docks extend considerably farther into the boating channel than the original docks and the provision for 100-foot boat maneuvering in the busy channel seems problematic. (Note that the USCG Cutter Narwhal is 13 feet shorter at 87 feet and employs a crew of ten). The DEIR deals with this potential problem under Harbor and Bay Element HB 9.2 (pg 4.1-11) by stating that this new dock facility will not "adversely affect safe navigation within the harbor". However, no harbor traffic analysis is included to support this assertion. Are such studies or analysis available to assure that channel boating operations and safety are not compromised?

4.0 Environmental Analysis

4.1 Land Use

pg.4.1-8, LU1.1 The modern style of this architecture is out of character for this area, especially as viewed from Carnation Avenue.

pg.4.1-8, LU 1.3 The small beach area at the foot of this project will be hard to see with the construction of a 60' gangplank, a larger dock and the possibility of the docking of large vessels. This will be a loss of a visual resource from the water.

pg.4.1-9, LU 2.5 Because of the configuration of the new dock, it appears that 100' vessels will be close to encroaching on boating lanes. There may be a need to limit the size of vessels docked on channel side of the dock.

pg.4.1-9, LU 3.2, Who will pay to underground existing utility lines?

pg.4.1-12, CE 7.1.8, Is there any way to ensure that the residents of Aerie will use the provided garages rather than the street? Using an elevator to park for a short time seems unrealistic.

pg. 4.1-13, NR 3.11, What will be the effect of long term runoff on the harbor?

pg. 4.1-14, NR 11.3, How will the loss of eelgrass be mitigated? Specifics?

pg. 4.1-19, 2.2.1-2 Diagram of planned improvement to catch basin?

pg. 4.1-19, 2.7.1, It would be helpful to have a larger diagram of planned subterranean land encroachments.

pg. 4.1-42, 3.20, How will the sand dollar colony be protected during the construction of the dock? Specifics?

4.3 Air Quality

The document describes (in extreme detail) the existing conditions and State regulations concerning the construction phase. There is no real schedule to facilitate evaluation of the ability of the construction crews to comply with these standards.

4.4 Noise

What types of noise restrictions will be placed on residents within the completed condominium complex? For example, portable balcony Jacuzzis have appeared recently that are not controlled by existing noise codes. These have minimal plumbing and electrical needs and represent noise pollution that is currently not covered by noise codes. The proponent should take steps to limit these and similar internal noise sources to eliminate future operational controversy within the project or adjacent to it.

Pg 4.4-24: Vibration from construction will be "felt" for a total of 25 work days during the project. This is an unavoidable negative impact and should be so noted.

A comment about the DEIR's implied appropriateness of a 65 dBA criterion for residential noise:

Note, Table 4.4-1, shows noise levels of 65-70 dBA CNEL are considered inappropriate (or, "C = normally incompatible") for all residential categories shown. This makes

excellent sense and is consistent with the literature which clearly states, for example, that "... sound pressure levels exceeding 55 dB(A) ... are disturbing to sleep ..." [1] and, noise from, for example, highway traffic -- typically 70 dB(A) -- is considered "intrusive".

Despite the data shown in Table 4.4-1, this DEIR sets as an acceptable criterion for residential noise at 65 dBA CNEL (as stated throughout the document). Levels of 65 dB(A) are at the threshold for noise classified as both "normally compatible" and "normally incompatible" for residential categories, and exceed the every category of allowable residential noise level standards for the city as shown in Table 4.4-2.

Section 9.3.10 describes that none of the increases from noise impacts due to project traffic will exceed 65 dBA CNEL, and the DEIR "...anticipates no significant long-term cumulative noise impacts ..." due to the project. However, there should be a better characterization of how the current ranges of average daytime noise levels in the area (see Table 4.4-3).

Section 9.3.10 concludes: "The greatest increase in ambient noise would occur during the construction phases ..." and that these will "... result in significant impacts in the neighborhood." They then conclude that vehicle-trip noises associated with the completed project are projected to be minimal and not significant contributors to long-term traffic noise
(adding only an estimated 47 vehicles per day onto the circulation network). This conclusion seems unrealistically optimistic, and is based on the report's questionable acceptance of a 65dBA standard for appropriate residential noise levels.

In light of the especially liberal 65dBA criterion discussed above, and the existing ambient noise levels reported, we feel the project's long-term noise impacts are better characterized as unmitigated negative impacts of the project, since the net result will be to substantially raise the area's average daytime noise levels by adding the sort of traffic noise known to be especially disruptive and resulting in stronger negative reactions due to its vibration characteristics and low frequency components. For additional technical data, refer to "Guidelines for Community Noise" The World Health Organization - expert taskforce meeting held in London, United Kingdom, in April 1999. It bases on the document entitled "Community Noise" that was prepared for the World Health Organization and published in 1995 by the Stockholm University and Karolinska Institute. Available at http://www.who.int/docstore/peh/noise/guidelines2.html.

This project sets a bad precedent, taking the opposite view and inflating that which is considered an acceptable standard, even beyond what is recommend by City standards. The impacts of Aerie should be stated as unmitigated negative impacts so as to avoid a tendency to inflate allowed noise impacts of future projects.

4.5 Aesthetics

The proposed project will result in a major addition of reflective glass to the bluff compared with what is there now (see Exhibits 4.5-4 and 4.5-16). Under Light and Glare (pg. 4,5-29) the DEIR states that selection of appropriate building materials results in "no significant glare impact from building finish materials" and that "no mitigation measure are required". However, it is well known that at sunset this area "lights up" with window reflections. Has the proponent considered a mitigation measure to minimize this effect?

4.6 Drainage and Hydrology

Page 4.6-6 4.6.4.2 Long-Term Operational Impacts, First Paragraph

Is the added swimming pool capable to treat all the ingredients from a storm flow?

Page 4.6-8 4.6.4.2 Long-Term Operational Impacts, Third Paragraph

What is the storm drain design capacity? Shouldn't that number be in this section as well as having input from the City Engineer?

Page 4.6-9 4.6.4.2 Routine Non-Structural BMPs N1

What is sanitary sewage outflow?

Add "and dripping" to "dumping oil" in line 3.

Page 4.6-9 4.6.4.2 Routine Non-Structural BMPs N11

include in addition to reporting.

Page 4.6-10 4.6.4.2 Routine Structural BMPs Second last line of the page:

What are "Abtech Smart Sponge Plus" drains?

Page 4.6-11 4.6.4.2 Routine Structural BMPs Fourth line of the page:

How will pool water be safely disposed of properly?

Page 4.6-12 4.6.5 Mitigation Measures Water Quality

What is "maximum extent practicable"?

4.7 Biological Resources

A map of the existing vegetation on the site should be provided, including the vegetation that was removed according to the Notice of Violation. See page 1, footnote. The coastal bluff vegetation on the site should be shown before the violation occurred and what is there now. For example, the footnote says the lemonadeberry is growing back. What

about the encelia that was removed? How will the existing lemonadeberry survive under the overhang of the deck? The biology report does not address this impact. A mitigation measure should provide that the existing vegetation will not be removed or damaged and that it will survive and flourish after the project is built.

Coastal bluff scrub is considered ESHA by the Coastal Commission. The EIR should show the boundaries of the coastal bluff scrub on the project site and appropriate buffers such as 50 feet which is required for ESHA under the Newport Beach CLUP. Page 1 of the biology report identifies a "remnant southern coastal bluff scrub community on the rocky outcrop along the northern project boundary extending into Newport Bay", but it ignores the coastal bluff scrub on the bluff face, including lemonadeberry, buckwheat, and encelia. This is also coastal bluff scrub and is ESHA that needs to be protected by protecting the vegetation that is now in place and making sure it will survive the deck overhanging it.

The wetlands discussion on page 4.7-5 does not address the Coastal Commission upholding the one-parameter definition, such as vegetation (three parameter wetland definition is vegetation, hydric soil, and hydrology). In early April, the Coastal Commission refuted the Glenn Lukos biologist's attempts to ignore the one-parameter definition in a wetland in an RV storage lot in Huntington Beach, which used the same arguments present in this report.

What is the water source for the umbrella sedge, e.g. 30 inch drain pipe, seepage out of the bluff face from an aquiclude? In any case there appears to be a 190 square foot wetland that meets the Coastal Commission one parameter definition. It should be protected in place, with a buffer, which is 100 feet in the Newport Beach CLUP.

The sand dollar issue needs more examination. Where else in Newport Bay are sand dollars found? The EIR should locate and describe the other locations. Page 4.7-8 states "...the occurrence of intertidal populations of the species within Newport Bay is unique and rare. The population survives in this location because wave motion/wave energy is moderate, sediments are sandy to silty sand, and tidal exchange is excellent." Will the dock cause changes to the wave motion/wave energy, sediments and tidal exchange? The biology report only makes a condition about signage and not taking specimens out of the marine environment. The changes in the environment including the pollution and changes to wave motion/energy, sediments and tidal exchange need to be stated, analyzed, and mitigated.

The eelgrass issue needs further analysis. The report refers to studies in 2005 and 2007, but now it is 2009. Has the eelgrass gotten more or less numerous and how much of the dock area is now occupied by eelgrass? What is the mitigation policy for eelgrass that grows back under the boats?

Pg 4-7-17: The report states that putting the piles in a single row that is parallel and not perpendicular to sand transport will mean that sand transport is not affected. However, the pattern of sand transport is not included in the report. Sand transport varies with the

season and direction of the swells which come from different directions according to the time of year. This might affect the sedimentation in Carnation Cove as well.

There is a disconnect between page 4.7-4 where the federally endangered tidewater goby is "potentially occurring within the region", but then in Table 4.7-2, it says: "No potential: Extirpated from Orange County"