



Final • August 2014

Lido House Hotel Environmental Impact Report



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A Baker Company

Screencheck Draft EIR Completed:	<u>April 18, 2014</u>
Public Review Draft EIR Completed:	<u>April 28, 2014</u>
Final EIR Completed:	<u>August 19, 2014</u>

FINAL ENVIRONMENTAL IMPACT REPORT

LIDO HOUSE HOTEL

SCH NO. 2013111022

Lead Agency:



CITY OF NEWPORT BEACH
100 Civic Center Drive
Newport Beach, California 992660

Contact: Mr. James Campbell, Principal Planner
Community Development Department
949.644.3210
jcampbell@newportbeachca.gov

Prepared by:



RBF CONSULTING
14725 Alton Parkway
Irvine, California 92618-2027
Contacts: Mr. Glenn Lajoie, AICP
Mr. Edward Torres, INCE
949.472.3505

August 19, 2014

JN 137892

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1.0 Introduction



1.0 INTRODUCTION

In accordance with the *California Environmental Quality Act Guidelines* (CEQA Guidelines) Section 15088, the City of Newport Beach, as the lead agency, has evaluated the comments received on the Lido House Hotel Environmental Impact Report (Draft EIR).

The Draft EIR for the proposed Lido House Hotel Project (herein referenced as the project) was distributed to potential responsible and trustee agencies, interested groups, and organizations. The Draft EIR was made available for public review and comment for a period of 45 days. The public review period for the Draft EIR established by the CEQA Guidelines commenced on April 29, 2014 and ended on June 13, 2014.

The Final EIR consists of the following components:

- Section 1.0 – Introduction
- Section 2.0 – Responses to Comments
- Section 3.0 – Mitigation Monitoring and Reporting Program
- Section 4.0 – Errata

Due to its length, the text of the Draft EIR is not included with this document; however, it is included by reference in this Final EIR. None of the corrections or clarifications to the Draft EIR identified in this document constitutes “significant new information” pursuant to Section 15088.5 of the CEQA Guidelines. As a result, a recirculation of the Draft EIR is not required.



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2.0 Response to Comments



2.0 RESPONSE TO COMMENTS

In accordance with the *California Environmental Quality Act Guidelines* (CEQA Guidelines) Section 15088, the City of Newport Beach, as the lead agency, evaluated the written comments received on the Draft Environmental Impact Report (DEIR) (State Clearinghouse No. 2013111022) for the Lido House Hotel Project (herein referenced as the project) and has prepared the following responses to the comments received. This Response to Comments document becomes part of the Final EIR for the project in accordance with CEQA Guidelines Section 15132.

A list of public agencies and individuals that provided comments on the Draft EIR is presented below. Each comment has been assigned a letter number. Individual comments within each communication have been numbered so comments can be cross-referenced with responses. Following this list, the text of the communication is reprinted and followed by the corresponding response.

Commenter	Letter Number
<u>Agencies</u>	
State Clearinghouse – Scott Morgan, Director (June 13, 2014)	1
Native American Heritage Commission – Katie Sanchez (May 9, 2014)	2
Orange County Public Works – Polin Modanlou (May 5, 2014)	3
City of Irvine – David R. Law, AICP (May 27, 2014)	4
<u>Public</u>	
Russell Singer (April 30, 2014)	5
Katherine Johansen (June 11, 2014)	6
Jim Mosher (June 13, 2014)	7
Lido Partners (June 13, 2014)	8
Kathryn H. K. Branman (June 11, 2014)	9
<u>Comments Received After Close of Public Review</u>	
Orange County Transportation Authority – Angel Lin (June 17, 2014)	10
Southern California Edison – Jenelle Godges (June 13, 2014)	11
Lido Partners (July 16, 2014)	12
Law Offices of Robert C. Hawkins – Robert C. Hawkins (July 17, 2014)	13



EDMUND G. BROWN JR.
GOVERNOR

STATE OF CALIFORNIA
GOVERNOR'S OFFICE of PLANNING AND RESEARCH
STATE CLEARINGHOUSE AND PLANNING UNIT

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KEN ALEX
DIRECTOR

JUN 16 2014

DEVELOPMENT
CITY OF NEWPORT BEACH

June 13, 2014

James Campbell
City of Newport Beach
100 Civic Center Drive
Newport Beach, CA 92660

Subject: Lido House Hotel
SCH#: 2013111022

Dear James Campbell:

The State Clearinghouse submitted the above named Draft EIR to selected state agencies for review. On the enclosed Document Details Report please note that the Clearinghouse has listed the state agencies that reviewed your document. The review period closed on June 12, 2014, and the comments from the responding agency (ies) is (are) enclosed. If this comment package is not in order, please notify the State Clearinghouse immediately. Please refer to the project's ten-digit State Clearinghouse number in future correspondence so that we may respond promptly.

Please note that Section 21104(c) of the California Public Resources Code states that:

"A responsible or other public agency shall only make substantive comments regarding those activities involved in a project which are within an area of expertise of the agency or which are required to be carried out or approved by the agency. Those comments shall be supported by specific documentation."

1-1

These comments are forwarded for use in preparing your final environmental document. Should you need more information or clarification of the enclosed comments, we recommend that you contact the commenting agency directly.

This letter acknowledges that you have complied with the State Clearinghouse review requirements for draft environmental documents, pursuant to the California Environmental Quality Act. Please contact the State Clearinghouse at (916) 445-0613 if you have any questions regarding the environmental review process.

Sincerely,


Scott Morgan
Director, State Clearinghouse

Enclosures
cc: Resources Agency

**Document Details Report
State Clearinghouse Data Base**

SCH# 2013111022
Project Title Lido House Hotel
Lead Agency Newport Beach, City of

Type EIR Draft EIR

Description The City plans to lease the majority of the project site for the development of a 130-room Lido House Hotel. The proposed hotel would also include meeting rooms, accessory retail spaces, a restaurant, lobby bar, rooftop bar, guest pool and recreational areas, and all required appurtenant facilities including, but not limited to on-site parking, landscaping, utilizes, and adjoining public improvements. The hotel would be no larger than 99,625 gross sf. The project would also provide 143 surface parking spaces and would accommodate additional parking through active parking management including valet parking service. The proposed structures would be ~4 stories with architectural features up to 58.5 feet in height. The project would also include public open spaces consisting of pedestrian plazas, landscape areas, and other amenities proposed to be located along Newport Boulevard and 32nd Street.

Lead Agency Contact

Name James Campbell
Agency City of Newport Beach
Phone (949) 644-3210 **Fax**
email
Address 100 Civic Center Drive
City Newport Beach **State** CA **Zip** 92660

Project Location

County Orange
City Newport Beach
Region
Lat / Long 33° 36' 59.90" N / 117° 55' 47.70" W
Cross Streets Newport Blvd. & 32nd Street
Parcel No. Multiple
Township 6S **Range** 10W **Section** 28 **Base** SBB&M

Proximity to:

Highways SR 55, SR 1
Airports John Wayne
Railways
Waterways Newport Bay, Pacific Ocean
Schools Newport ES, Newport Harbor HS
Land Use Occupied by the Former Newport Beach City Hall Complex and existing Newport Beach Fire Department Fire Station No. 2.
GPLU - Public Facilities (PF)
Z: Public Facilities (PF)

Project Issues Agricultural Land; Air Quality; Archaeologic-Historic; Biological Resources; Coastal Zone; Drainage/Absorption; Flood Plain/Flooding; Forest Land/Fire Hazard; Geologic/Seismic; Minerals; Noise; Population/Housing Balance; Public Services; Recreation/Parks; Schools/Universities; Septic System; Sewer Capacity; Soil Erosion/Compaction/Grading; Solid Waste; Toxic/Hazardous; Vegetation; Traffic/Circulation; Water Quality; Water Supply; Wetland/Riparian; Wildlife; Growth Inducing; Landuse; Cumulative Effects; Other Issues

Document Details Report
State Clearinghouse Data Base

Reviewing Agencies Resources Agency; California Coastal Commission; Department of Fish and Wildlife, Region 5; Office of Historic Preservation; Department of Parks and Recreation; Department of Water Resources; Resources, Recycling and Recovery; California Highway Patrol; Caltrans, District 12; Air Resources Board; Regional Water Quality Control Board, Region 8; Department of Toxic Substances Control; Native American Heritage Commission

Date Received 04/29/2014 **Start of Review** 04/29/2014 **End of Review** 06/12/2014



1. RESPONSES TO COMMENTS FROM STATE OF CALIFORNIA OFFICE OF PLANNING AND RESEARCH, STATE CLEARINGHOUSE, JUNE 13, 2014.

- 1-1 This comment indicates that the State Clearinghouse submitted the Draft EIR to selected State agencies for review and that the comment period for the Draft EIR has concluded. The comment indicates that the lead agency complied with the public review requirements for draft environmental documents pursuant to CEQA. As such, the comment does not provide specific comments regarding information presented in the Draft EIR, and no further response is necessary. The comment also indicates that comments from responsible or other public agencies are enclosed and responses to those comments are provided in response to those letters.

STATE OF CALIFORNIA

Edmond G. Brown, Jr., Governor

NATIVE AMERICAN HERITAGE COMMISSION

1550 Harbor Blvd., Suite 100
 West SACRAMENTO, CA 95691
 (916) 373-3710
 Fax (916) 373-5471



May 9, 2014

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STATE CLEARING HOUSE

James Campbell
 City of Newport Beach
 100 Civic Center Drive
 Newport Beach, CA 92660

RE: SCH# 2013111022 Lido House Hotel, Orange County.

Dear Mr. Campbell:

The Native American Heritage Commission (NAHC) has reviewed the Notice of Completion (NOC) referenced above. The California Environmental Quality Act (CEQA) states that any project that causes a substantial adverse change in the significance of an historical resource, which includes archeological resources, is a significant effect requiring the preparation of an EIR (CEQA Guidelines 15064.5(b)). To comply with this provision the lead agency is required to assess whether the project will have an adverse impact on historical resources within the area of project effect (APE), and if so to mitigate that effect. To adequately assess and mitigate project-related impacts to archaeological resources, the NAHC recommends the following actions:

- ✓ Contact the appropriate regional archaeological Information Center for a record search. The record search will determine:
 - If a part or all of the area of project effect (APE) has been previously surveyed for cultural resources.
 - If any known cultural resources have already been recorded on or adjacent to the APE.
 - If the probability is low, moderate, or high that cultural resources are located in the APE.
 - If a survey is required to determine whether previously unrecorded cultural resources are present.
- ✓ If an archaeological inventory survey is required, the final stage is the preparation of a professional report detailing the findings and recommendations of the records search and field survey.
 - The final report containing site forms, site significance, and mitigation measures should be submitted immediately to the planning department. All information regarding site locations, Native American human remains, and associated funerary objects should be in a separate confidential addendum, and not be made available for public disclosure.
 - The final written report should be submitted within 3 months after work has been completed to the appropriate regional archaeological Information Center.
- ✓ Contact the Native American Heritage Commission for:
 - A Sacred Lands File Check. **SFL Check Completed with Negative Results**
 - A list of appropriate Native American contacts for consultation concerning the project site and to assist in the mitigation measures. **Native American Contacts List attached**
- ✓ Lack of surface evidence of archeological resources does not preclude their subsurface existence.
 - Lead agencies should include in their mitigation plan provisions for the identification and evaluation of accidentally discovered archeological resources, per California Environmental Quality Act (CEQA) Guidelines §15064.5(f). In areas of identified archaeological sensitivity, a certified archaeologist and a culturally affiliated Native American, with knowledge in cultural resources, should monitor all ground-disturbing activities.
 - Lead agencies should include in their mitigation plan provisions for the disposition of recovered cultural items that are not burial associated, which are addressed in Public Resources Code (PRC) §5097.98, in consultation with culturally affiliated Native Americans.
 - Lead agencies should include provisions for discovery of Native American human remains in their mitigation plan. Health and Safety Code §7050.5, PRC §5097.98, and CEQA Guidelines §15064.5(e), address the process to be followed in the event of an accidental discovery of any human remains and associated grave goods in a location other than a dedicated cemetery.

2-1

Sincerely,

Katy Sanchez
 Associate Government Program Analyst



2. RESPONSES TO COMMENTS FROM NATIVE AMERICAN HERITAGE COMMISSION, DATED MAY 9, 2014.

2-1 This comment provides an introduction to the comment letter regarding the Native American Heritage Commission's (NAHC) jurisdiction and responsibilities related to Native American resources. It also provides an overview of CEQA requirements in regards to archaeological resources.

The proposed project site is located within a highly developed area and has been completely disturbed. As such, impacts related to archaeological resources are not expected to occur. However, as stated within Section 5.4, *Cultural Resources*, of the Draft EIR, in the unlikely event that buried cultural resources or human remains are discovered during excavation activities, Mitigation Measures CUL-1 and CUL-2 would be implemented. As such, a less than significant impact would occur in this regard.

As the proposed project includes an amendment to the Newport Beach General Plan and Coastal Land Use Plan, it is subject to the Native American consultation process mandated by SB 18. The City has previously conducted SB 18 consultation for the project site as part of the environmental documentation for the City Hall Reuse Project.¹ During the previous SB 18 consultation, the City received an inquiry from one tribal representative. The Native American representative indicated that he could coordinate monitoring services during grading/construction if it is determined that such monitoring is required. The tribal representative did not indicate any knowledge of the presence of any significant cultural or archaeological resources on the project site.

¹ City of Newport Beach, *City of Newport Beach City Hall Reuse Project Initial Study/Negative Declaration*, November 2012. It should be noted that this Initial Study/Negative Declaration (IS/ND) was prepared for the City Hall Reuse Project and brought to the City Council for consideration; however, the IS/ND was not adopted.



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DEVELOPMENT
CITY OF NEWPORT BEACH

May 5, 2014

Mr. James Campbell, Principal Planner
City of Newport Beach/Community Development Department
100 Civic Center Drive
Newport Beach, California 92660

SUBJECT: Notice of Availability of the Draft Environmental Impact Report for the Lido House Hotel

Dear Mr. Campbell:

The County of Orange has reviewed the Notice of Availability of the Draft Environmental Impact Report for the Lido House Hotel located in City of Newport Beach and has no comments at this time. We would like to be advised of any further developments on the project. Please continue to keep us on the distribution list for future notifications related to this project.

3-1

Sincerely,

Polin Modanlou, Manager
Strategic Land Planning Division
OC Public Works/OC Planning Services
300 North Flower Street
Santa Ana, California 92702-4048
Polin.modanlou@ocpw.ocgov.com

PM/yj



**3. RESPONSES TO COMMENTS FROM ORANGE COUNTY PUBLIC WORKS,
DATED MAY 5, 2014.**

- 3-1 This comment states that Orange County Public Works has reviewed the Draft EIR and has no comments at this time. This agency will be apprised of any further material developments in the proposed project. No further action is required.



Community Development

cityofirvine.org

City of Irvine, One Civic Center Plaza, P.O. Box 19575, Irvine, California 92623-9575

(949) 724-6000

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JUN 02 2014

DEVELOPMENT
CITY OF NEWPORT BEACH

May 27, 2014

Mr. James Campbell
Principal Planner
City of Newport Beach
100 Civic Center Drive
Newport Beach, CA 92660

Subject: Draft Environmental Impact Report – Lido House Hotel

Dear Mr. Campbell:

City of Irvine staff has received and reviewed the information provided for the referenced project and has no comments at this time.

Thank you for the opportunity to review and comment on the proposed project. Staff would appreciate the opportunity to review any further information regarding this project as the planning process proceeds.

If you have any questions, I can be reached at 949-724-6314, or at dlaw@cityofirvine.org.

Sincerely,

David R. Law, AICP
Senior Planner

Cc: Bill Jacobs, Principal Planner (via email)
Sun-Sun Murillo, Supervising Transportation Analyst (via email)

4-1



4. RESPONSES TO COMMENTS FROM THE CITY OR IRVINE, DATED MAY 27, 2014.

- 4-1 This comment states that the City or Irvine has reviewed the Draft EIR and has no comments at this time. This agency will be apprised of any further material developments in the proposed project. No further action is required.

Port Properties, Inc.

P.O. Box 485

Laguna Beach, California 92652

Office: (949)494-6629 * Fax: (949)494-5747 * Cell: (949)280-4336

E-Mail: RussellSinger@gmail.com

April 30, 2014

James Campbell
CITY OF NEWPORT BEACH, PLANNING DIVISION
100 Civic Center Dr.
Newport Beach, CA 92660

Re: Lido House Hotel / EIR

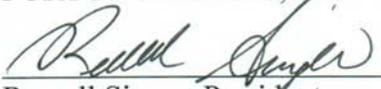
Dear Mr. Campbell,

Port Properties, Inc. owns the property at 3315-3345 Newport Blvd., Newport Beach which is across the street from the proposed development. It was not that many years ago that the City remodeled and eliminated several public parking *angled* spaces in front of City Hall *on Newport Blvd.* Those parking spaces, having been removed has made parking all the more difficult for my tenants and their customers.

Please accept this letter as our request to have as much non-exclusive parking as possible for the new development and take a page out of Corona Del Mar and make the parking rates more reasonable (perhaps free is not practical) to encourage consumers to shop and patronize the businesses in the area. Thank you for your consideration.

Sincerely,

PORT PROPERTIES, INC.



Russell Singer, President



5. RESPONSES TO COMMENTS FROM RUSSELL SINGER, DATED April 30, 2014.

- 5-1 The comment points out that parking is difficult for 3315-3345 Newport Boulevard, which is a property across Newport Boulevard from the proposed project. This comment requests non-exclusive parking and a reduction in parking fees to encourage customers to patronize businesses in the area. Parking for the proposed project will be available for patrons and visitors of the hotel and many of those persons will likely patronize nearby area businesses on-foot. The City's pricing structure of public parking is not under the purview of the Draft EIR and the pricing structure for project parking is not subject to City ordinances. The proposed project would not result in the net loss of on-street parking in the project vicinity. Sixteen of the existing, angled, metered parking spaces on the north side of 32nd Street would remain available to the general public. The City is also considering relocating a portion of the existing, angled, metered parking on the north side of 32nd Street (just south of the old City Council Chambers) further to the east in front of St. James Church, which is located just west of Lafayette Road. Currently, there is excess street capacity along 32nd Street (just west of Lafayette Road) that would be modified in order to accommodate angled parking spaces along the north side of 32nd Street in front of the church and travel lanes. This would also pull the curb line along the project site south and 32nd Street would be restriped with the intent to modestly "straighten" out the westbound traffic lane to improve vehicle maneuvering.

June 11, 2014

TO: Mr. James Campbell
Principal Planner, Community Development
City of Newport Beach
100 Civic Center Drive
Newport Beach, CA 92660



RE: EIR for Lido House Hotel: Public Comments
SCH No. 2013111022

I own and live at 601 Lido Park Drive, Unit 3B in Newport Beach, CA. I appreciate the opportunity to provide comments on the above referenced Environmental Impact Report (EIR) for the proposed Lido House Hotel.

I have several concerns that do not seem to be addressed in the Draft EIR. My primary concerns relate to traffic, noise, and view impacts from the project.

Traffic and Noise

I am concerned that the EIR doesn't address the traffic impact of the project on the streets adjacent to the project; particularly the intersections of Via Lido/Lafayette/32nd St. It appears that the only intersections studied in the EIR were main-line intersections. The closest intersections to Via Lido/Lafayette/32nd St. that was studied in the EIR appears to be Newport Blvd/Via Lido or Newport Blvd/32nd St. Unless project related traffic (whether construction or operation) is going to be prohibited from local streets surrounding the project, the traffic study should have looked at circulation changes in the local streets immediately surrounding the project site. This should be corrected in the Final EIR.

6-1

The traffic study does not address the impact of increased traffic accessing the proposed project by way of Via Lido to Lafayette/32nd St. While it may not be the 'preferred' route to the project site, visitors or vendors coming down Newport Blvd. may make the left at Via Lido, particularly if there is a backup on Newport Blvd. or if vendor access to the hotel is provided on the 'back side' of the hotel. Lafayette/32nd St. at Via Lido has residential use, and these residents will experience an increase in traffic and concomitant noise levels above what they currently experience. Since the traffic study did not look at this intersection we can't determine what traffic increase there will be as a result of the proposed project. Since there was no traffic increase predicted here, the noise study could not include the increased traffic noise in its results. If substantial vendor traffic takes this route during overnight hours, residences in the area will be subject to increased nighttime disturbances.

6-2

While the noise study included a noise monitoring station on Via Lido for ambient noise measure, the study did not include Via Lido as a roadway segment for existing traffic noise levels in Table 5.8-4 or future noise scenarios in Table 5.8-11. This should be corrected in the Final EIR. Given the residential uses immediately

6-3

adjacent to Via Lido (southeast of Battaglia) and those adjacent to Via Lido/Lafayette/32nd St., any substantial traffic increase in this area would likely result in a finding of significance related to noise.

6-3

To insure that traffic and noise impacts from construction do not impact the residences along Via Lido or near the Via Lido/Lafayette/32nd St. intersection, the following should be designated as 'Local Streets' (prohibited for use by construction delivery vehicles in mitigation measure TRA-1): 1) Via Lido southeast of Via Oporto; 2) Lafayette Rd.; and 3) 32nd St between Via Oporto and Lafayette Rd.

6-4

Should a corrected traffic/noise study find that there is significant noise increase along Via Lido or at the Via Lido/Lafayette/32nd St. intersection, a new mitigation measure should be adopted to prohibit vendor trucks (during operation of the proposed project) from utilizing the Via Lido/Lafayette/32nd St. route to the project site, particularly during overnight hours.

The proposed increase in traffic along northbound Newport Blvd at the PCH Bridge warrants dedicated (striped) crosswalks on northbound Newport Blvd connectors to both northbound and southbound PCH. There currently is no "yield" sign or striped crosswalks at these locations, although there is a wide paved sidewalk that accommodates bike and pedestrian traffic.

6-5

Views

The proposed project will be four stories and 58.5 feet in height. The City's ordinance limits are 35 feet in height. While the proposed project may not impact public/scenic vistas, it is situated in such a way that it will impede partial ocean views from residences located on the north side of 601 Lido Park Drive, levels 3-9. The impact of this project on the views from this location were not studied, only the impact of the view from areas located at considerable distance away. This should be addressed in the Final EIR.

6-6

Thank you again for the opportunity to provide comments on the EIR for the proposed Lido House Hotel.

Katherine Johansen
601 Lido Park Drive, #3B
Newport Beach, CA 92663



6. RESPONSES TO COMMENTS FROM KATHERINE JOHANSEN, DATED JUNE 11, 2014.

6-1 Based on the project land use, access points, project trips generated, and anticipated travel patterns, the number of project-related trips entering the Lafayette/32nd Street intersection is anticipated to be negligible, and therefore the intersection was not identified for analysis. The proposed hotel will be highly visible from Newport Boulevard. Therefore, hotel guests are forecast to access the site from Newport Boulevard via Finley Avenue or 32nd Street since these access points would be more readily apparent for visitors unfamiliar with the project vicinity.

Hotel employees and vendors are also anticipated to access the project site from Newport Boulevard via Finley Avenue or 32nd Street since this is the shortest route from Newport Boulevard. Furthermore, delivery vehicles typically avoid peak traffic hours or other times when there is congestion on a delivery route, and therefore vendor delivery vehicles are not expected to access the site when or if Newport Boulevard is congested. If for some reason deliveries are made during times of congestion on Newport Boulevard, the number of vendor delivery vehicles that might divert through the Lafayette/32nd Street intersection is not enough to warrant traffic analysis of the intersection.

Lastly, the City's established thresholds of significance only apply to signalized study intersections. Even if the Lafayette/32nd Street intersection were to be analyzed, there are no City established thresholds of significance for stop-controlled intersections by which to evaluate the significance of the project impact.

6-2 As noted in Table 5.8-11, *Future Noise Scenarios*, of the Draft EIR, the highest noise level increase associated with project-related traffic would be 0.3 dBA on 32nd Street east of Newport Boulevard. This would primarily be due to vehicles utilizing the project access point along 32nd Street. As noted above, the number of project-related vehicles that might access the site from 32nd Street from Vial Lido/Lafayette would be negligible, and would be far less than the number of vehicles associated with the 0.3 dBA increase. Further, traffic volumes would generally have to double to produce a noticeable increase in noise (3.0 dBA or above).² As such impacts in this regard would be less than significant.

6-3 The noise measurement that was taken along Via Lido was to establish a baseline for the area and determine the difference in noise levels from this site to the project site. The measurement established that noise levels along Via Lido are lower than on the project site (primarily due to traffic along Newport Boulevard). Hence, the measurement demonstrated that noise produced on site (i.e., parking lots, rooftop bar, etc.) would be masked by traffic noise emanating along Newport Boulevard, and would not affect the residences along Via Lido. Furthermore, as noted in Response 6-1 above, project-related traffic volumes in the Via Lido area would be negligible as the majority of vehicles would access the project site along Newport Boulevard.

² California Department of Transportation, *Traffic Noise Analysis Protocol – Technical Noise Supplement*, November 2009.



- 6-4 Construction-related vehicles would access the site along Newport Boulevard, and travel along Newport Boulevard to 32nd Street, and then access the site along from 32nd Street. As noted in Mitigation Measure N-1, construction routes would avoid residential areas. Furthermore, construction activities that produce noise levels in excess of the City's standards would be limited to 7:00 a.m. and 6:30 p.m. on weekdays, 8:00 a.m. and 6:00 p.m. on Saturdays; construction is prohibited on Sundays and/or federal holidays
- 6-5 The comment suggests a need to provide marked crosswalks or vehicle "yield" signs where northbound Newport Boulevard pedestrians cross the ramps connecting Newport Boulevard to Coast Highway due to project-related traffic. These roadway features are not controlled by the City and are regulated by the California Department of Transportation. Although the project is expected to slightly increase traffic through this area, the number of trips is not expected to increase potential risks to warrant the suggested improvements. Additionally, the project is not expected to increase the number of pedestrians who use the northbound sidewalks.
- 6-6 To the extent that the comment is focused on views from existing, private homes, it is worth noting that CEQA does not require that private views be considered in an EIR. Additionally, General Plan and Coastal Land Use Plan policies protect public views from identified vantages and do not protect private views. With that said, the majority of the units located on levels three through nine at 601 Lido Park Drive are facing Newport Bay, away from the project site. Those units that face the Pacific Ocean, to the west, do not include direct views toward the project site, such that the new building would obstruct all views to the ocean (although some partial views may be partly obscured). Further, as discussed in Impact Statement AES-3, page 5.2-35, last paragraph, *the increase of building heights (up to 58.5 feet) would not result in a substantial change in the character of the area, as surrounding buildings (particularly to the north and east of the project site [which include 601 Lido Park Drive]) include structures that can range from 12 to 110 feet. The proposed building heights for portions of the structure located along Newport Boulevard and 32nd street (up to 30 feet in height) would be similar to height as the surrounding buildings to the west and south (generally ranging in height from 11 to 35 feet). Thus, with implementation of the recommended Mitigation Measure AES-2 (which would ensure compliance with the Lido Village Design Guidelines), implementation of the proposed project would result in less than significant impacts pertaining to a degradation of character/quality at the project site and surrounding area.*

JUN 13 2014

Lido House EIR

The following comments on "PUBLIC REVIEW DRAFT ENVIRONMENTAL IMPACT REPORT -- LIDO HOUSE HOTEL (SCH# 2013111022)" are submitted on June 13, 2014, by:

Jim Mosher (jimmosher@yahoo.com), 2210 Private Road, Newport Beach 92660 (949-548-6229)

1. The proposed project includes proposed new entitlements which *in addition* to 99,625 square feet of hotel, according to Tables LU2 and 2.1.1-1 on page 3-15 *also* allow (at the same time) 99 dwelling units and an unlimited amount of municipal facilities.
 - a. This seems to me to be a poorly thought out request.
 - b. I am unable to discern how 99 dwelling units and unlimited municipal facilities are needed to meet the project *Goals and Objectives* specified in Section 1.3.
 - c. Even the hotel entitlement request seems peculiar in that it may create the only land in Newport Beach entitled for a major hotel without a General Plan limit on the allowed number of hotel rooms.

2. The entitlement request described in the previous comment appears to be incorrectly analyzed in the draft EIR.
 - a. Footnote 3 on page 5.5-22 (regarding *Traffic/Circulation*) says that analyzing the impacts of the hotel use alone is sufficient because "*Residential and commercial land uses would generate slightly fewer trips than the hotel use when considering the mix of land uses.*" However, the preparer of the EIR seems not to understand the project that the decision making bodies are being requested to be approved allows the hotel *and* the dwelling units *and* the unlimited municipal facilities, all on the subject site at the same time.
 - b. As a result of that misunderstanding, the only analysis of the impacts of the 99 dwelling units I am able to find is in Section 7.3 (as the "*Mixed Use*" *Alternative*), where the dwelling units are treated as a potential development separate from (and without) the hotel. Since Table 7-4 concludes that even as a separate project the impacts of 99 dwelling units would be equal to or greater in every category considered when compared to those generated by the hotel, surely the two built together, not to mention along with an unlimited amount of municipal facilities, will generate a level of impacts that is not disclosed in the draft EIR.
 - c. I am unable to find any analysis of the impact of retaining and adding unlimited municipal facilities to this site, as the requested land use change would permit. Does the baseline include unlimited municipal facilities?

7-1

7-2

3. The fifth bullet point on page 2-3 directs the reader to Section 7.0 (*Alternatives*) for “*Consideration of a hotel of similar capacity with accommodations to lower cost visitors and a hotel respecting the constraints of the 35-foot Shoreline Height Limitation Zone.*”
- a. I find there an *Alternative 2 – “Reduced Density” Alternative* which consists of a three-floor 108 room hotel with “*the same basic building footprint, architecture, open space areas, and vehicular access as the proposed project.*” But I am unable to find anything in the description of that alternative which ensures the design being considered would fall within the 35-foot height limitation.
 - b. I am unable to find anything in Section 7.0 about a design that would accommodate lower-cost visitors – or what changes in impacts would be associated with accommodating lower-cost visitors. The only discussion of that issue I am able to find is in Table 5.1-3, where the hotel project, as proposed, is simply declared to be “consistent” with Coastal Land Use Plan Policy 2.3.3-1.
4. I was surprised to notice the first bullet point on page 5.1-13, which seems meant to imply the *Lido Village Design Guidelines* encourage “*increased building heights on the City Hall Site.*”
- a. My recollection of the Neighborhood Revitalization process is that the Citizens Advisory Panel that helped shape the *Design Guidelines* was told to treat the City Hall site as a “white hole,” the details of whose future use and development would be determined by some other process, and that they should not attempt to define or limit it.
 - b. As a result, the only reference to the “City Hall Design Area” I can find is on pages 2-12 and 2-13 of the *Design Guidelines*, which deal only with desirable “Edge Conditions.” “Vertical elements” along the street-facing edge are suggested as an opportunity for way-finding and orientation. I would not interpret that as a mandate for increase building heights – certainly not for buildings exceeding the Shoreline Height Limitation.
 - c. Whatever the intent of the *Design Guidelines* may be, as noted by California Coastal Commission staff in their comments on the *Notice of Preparation* (Section 11.1), the *Guidelines* – for the City Hall site or for Lido Village in general – have never been reviewed or certified by the Coastal Commission as to compliance with the Coastal Act.

7-3

7-4



7. RESPONSES TO COMMENTS FROM JIM MOSHER, DATED JUNE 13, 2014.

7-1 Development of the project site would be limited to the maximum density/intensity limits identified by the proposed entitlements, if approved. More specifically, development of the project site would be limited to 99 dwelling units and 15,000 square feet of commercial uses or a 99,625 square foot hotel, or any combination of dwelling units and hotel rooms provided it does not exceed 99 dwelling units or 99,625 square feet of hotel use. Although the proposed entitlements (General Plan Amendment, Coastal Land Use Plan Amendment, and Zoning Code Amendment) would allow for a combination of commercial, visitor accommodations, residential and/or civic uses on the project site, the development potential would be limited by the height limitations, building setbacks, parking, and other development standards. Therefore, development of the site would not be unlimited. In addition, any development proposed at the site would be reviewed for consistency with the various regulatory documents, including the Newport Beach Local Program Coastal Land Use Plan and Newport Beach General Plan.

The project site is currently being considered for development of a 99,625 square foot hotel and is therefore analyzed within the Draft EIR. The project objectives support development of the site with the boutique hotel use, as proposed.

7-2 As stated, although the proposed entitlements (General Plan Amendment, Coastal Land Use Plan Amendment, and Zoning Code Amendment) would allow for a combination of commercial, visitor accommodations, residential and/or civic uses on the project site, the maximum development potential would be limited by the height limitations, building setbacks, parking, and other development standards. Therefore, development of the site would not be unlimited. In addition, any development proposed at the site would be reviewed for consistency with the various regulatory documents, including the Newport Beach Local Program Coastal Land Use Plan and Newport Beach General Plan. The project site is currently being considered for development of a 99,625 square foot hotel with no residential use and is therefore analyzed within the Draft EIR. Any modifications to the proposed project, as considered within the Draft EIR, would be reviewed in the context of the proposed hotel development in accordance with CEQA Guidelines Section 15162. If necessary, subsequent environmental analysis would be prepared to address any future project modifications.

The project site is currently developed with municipal facilities. The No Project/No Build Alternative represents development of the project site with municipal facilities. Although municipal facilities would not be restricted or included in any development limit that is identified for residential, commercial, and hotel uses, development of the project site would be limited by the height limitations, building setbacks, parking, and other development standards. Therefore, development of the site with unlimited municipal facilities is not an accurate assessment of the development potential of the site and CEQA does not require an analysis of speculative development. Should the proposed hotel project be abandoned in the future for some unknown reason and should the City choose to propose a different



municipal project, subsequent environmental analysis would be prepared to address that future project.

- 7-3 The Reduced Density Alternative would reduce the overall height of the building to be consistent with the current height limitation. An Alternative to provide lower-cost visitor facilities is not specifically identified, as the project would be consistent with the Coastal Land Use Plan Policy 2.3.3-1, as concluded on page 5.1-23 of the Draft EIR. As discussed on Draft EIR page 5.1-23, although the project does not include limited use overnight accommodations, the project would not eliminate or interfere with lower-cost visitor or recreational facilities within the area. To the extent that there is an impact to lower-cost accommodations, the City will create a lower-cost accommodation improvement grant program where existing or proposed developments could provide expanded opportunities for lower-cost overnight visitor accommodations or recreational uses. In addition, the project would provide public recreational opportunities within public open space areas, pedestrian paths, landscape areas, and other amenities along Newport Boulevard and 32nd Street.
- 7-4 The bullet points identified on page 5.1-13 of the Draft EIR, as referenced in the comment, are directly restated from page 2-4 of the *Lido Village Design Guidelines*, December 2011, which identifies the goals for the City Hall site.

The comment is correct that page 2-12 and 2-13 of the *Lido Village Design Guidelines* addresses City Hall edge conditions. However, as stated, page 2-4 of the *Lido Village Design Guidelines* identifies specific goals for City Hall, which includes “Provide for increased building heights on the City Hall Site with emphasis on mixed use zoning”. It should be noted that the *Design Guidelines* establishes these goals and provide non-regulatory design guidance only. Implementation of the *Design Guidelines* occurs through approval of development consistent with the *Design Guidelines* when consistent with applicable General Plan, Coastal Land Use Plan, and Coastal Act policies.

The comment is correct in that the *Lido Village Design Guidelines* have not been reviewed by the California Coastal Commission. The proposed project would be reviewed by the California Coastal Commission (CCC) for conformance with the Coastal Act, as the project would require an amendment of the City’s Certified Coastal Land Use Plan and a Coastal Development Permit (CDP).

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June 13, 2014

Via Email: jcampbell@newportbeachca.gov
Via UPS Overnight

Mr. James Campbell, Principal Planner
 City of Newport Beach
 Community Development Department
 100 Civic Center Drive
 Newport Beach, California 92660



Re: Comments of Lido Partners on the Draft Environmental Impact Report for the Lido House Hotel dated April 28, 2014

Dear Mr. Campbell:

We represent Lido Partners, the owner of the Via Lido Plaza property situated immediately north of the proposed Lido House Hotel development ("Project"). We appreciate the opportunity to comment on the Draft Environmental Impact Report for the Project dated April 28, 2014 ("Draft EIR"). In contrast to the original site plan submitted by the Project Applicant to the City of Newport Beach ("City") in July 2013,¹ the Project now includes the closure of an alley that runs north/south and connects Via Lido Plaza with 32nd Street (the "32nd Street Alley"). As explained in this Firm's comments on the Notice of Preparation dated December 5, 2013, the 32nd Street Alley is very important to Lido Partners, as it provides the only access for large fire, safety and delivery vehicles to Via Lido Plaza.

The Draft EIR is legally deficient because it fails to adequately analyze several impacts related to the closure of the 32nd Street Alley. These deficiencies include:

- Failing to analyze a feasible alternative that would retain the Alley and fulfill most or all of the Project's objectives;
- Providing an inadequate project description by inaccurately describing the importance and role of the 32nd Street Alley, in a manner that is unclear and misleading;
- Incorrectly stating that Via Lido Plaza will retain adequate emergency access after the Alley is closed;
- Failing to analyze the impacts arising from displaced delivery truck traffic and parking;
- Ignoring the Project's conflicts with local land use plans that control traffic, parking, and protect existing neighborhood land uses;

8-1

¹ City of Newport Beach City Council Staff Report, July 9, 2013, Agenda Item No. 13 at 3, (hereinafter "City Council Staff Report, July 9, 2013"), available at <http://ecms.newportbeachca.gov/Web/0/doc/495898/Page1.aspx>

- Failing to analyze the potential physical changes to the environment arising from the economic impacts of closing the 32nd Street Alley.

In addition, the Draft EIR suffers from broader legal deficiencies. The Project's Traffic Impact Analysis and Parking Study are inadequate because they contain numerous technical errors and fail to account for obvious Project impacts. The Draft EIR also fails to adequately describe and analyze the impacts arising from the demolition of old City Hall and the construction of the Project, and impermissibly defers mitigation of the significant impacts of the construction and demolition activities.

8-1

I. BACKGROUND OF VIA LIDO PLAZA AND THE 32ND STREET ALLEY

Via Lido Plaza, located at 3415 Via Lido, Newport Beach, California 92663, has been continuously operated as a commercial center since the late 1930s. It lies at the heart of Lido Village, described by the City as "the primary thematic gateway for Newport Beach's Balboa Peninsula."² Like the Project, which proposes to redevelop the adjacent former City Hall complex into a boutique hotel and mixed use facilities, Via Lido Plaza plays a crucial role "to revive Lido Village as a vibrant destination, and mixed-use entertainment hub for surrounding neighborhoods such as Lido Island, West Newport, Balboa Peninsula, and Greater Newport Beach."³

Vehicles can access Via Lido Plaza from three entrances: two tight driveways off Finley Avenue and Via Lido, and the 32nd Street Alley that connects Via Lido Plaza with 32nd Street to the south. The 32nd Street Alley has been in continuous use as an access to Via Lido Plaza for at least 75 years. For at least the past thirty years, the City has approved site plans, building permits, conditional use permits, and other approvals and entitlements related to the development and use of the Via Lido Plaza property, allowing delivery trucks to access Via Lido Plaza through the 32nd Street Alley. The City has filed a legal action to challenge Lido Partners' claim that it has an irrevocable license or an equitable easement in the 32nd Street Alley. The legal deficiencies in the Draft EIR identified below do not turn on whether a license or easement exists, and are distinct from the legal claims at issue in the litigation.

8-2

Because the configuration of Via Lido Plaza effectively prohibits large vehicles from entering Via Lido Plaza through Finley or Via Lido, continued access to the 32nd Street Alley is critical for the continued operation of the property. The width, length and limited turning radius of large fire, safety, and delivery trucks prevent them from successfully executing the quick double turn from Newport Boulevard to Finley Avenue and then into Via Lido Plaza, or entering the property on Via Lido.⁴

It is not practicable to modify the Finley or Via Lido entrances so that they could accommodate large vehicle access. Even if it were possible, such modifications would be extensive and expensive, and would likely require removing a substantial number of parking stalls. This would result in insufficient parking spaces for the Via Lido Property to meet City requirements. Routing deliveries or emergency services through the Finley entrance would also have the potential to seriously disrupt pedestrian traffic

² City of Newport Beach, Lido Village Design Guidelines at 2-1 (December 2011) ("Lido Village Design Guidelines").

³ Lido Village Design Guidelines at 2-1.

⁴ See Attachment A, Via Lido Plaza: Without 32nd Street Access (hereinafter "Attachment A"). As depicted on Attachment A, large trucks cannot enter on Via Lido or Finley without hitting the existing hardscaping and landscaping.

and operations at the proposed Lido House Hotel, due to large vehicles having to execute two tight turns in the proximity of the hotel entrance, restaurant, and valet facilities.⁵

In contrast, large trucks have been using the 32nd Street Alley to access Via Lido Plaza for decades. Closing the 32nd Street Alley will seriously impair Via Lido Plaza's ability to contribute to the vibrant development of Newport Beach. If emergency vehicles and delivery trucks cannot access Via Lido Plaza, the property becomes much less attractive to potential tenants. The Project will also displace vehicle traffic that routinely uses the 32nd Street Alley onto adjacent City streets, and could negatively impact area parking.

8-2

II. LEGAL DEFICIENCIES RELATED TO THE CLOSURE OF THE 32ND STREET ALLEY

A. The Draft EIR Fails to Analyze An Alternative That Preserves Access to Via Lido Plaza Through the 32nd Street Alley

California Public Resources Code section 21002.1(a) requires an EIR "to identify alternatives to the project" and "indicate the manner in which . . . significant effects can be mitigated or avoided." The California Environmental Quality Act ("CEQA") Guidelines at 14 California Code of Regulations, section 15126.6 expand on this duty, requiring an EIR to "describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project," even if those alternatives would impede attainment of project objectives to some degree or would be more costly.⁶ In *Watsonville Pilots Assn. v. City of Watsonville*, the court stated that "the purpose of an alternatives analysis is to allow the decision maker to determine whether there is an environmentally superior alternative that will meet most of the project's objectives," and that "the key . . . is to identify alternatives that meet most of the project's objectives but have a reduced level of environmental impacts."⁷

Here, an obvious Project alternative would be a hotel development that creates synergies with Lido Village's existing commercial centers, and lessens significant impacts by preserving emergency and delivery vehicle access through the 32nd Street Alley. As more thoroughly discussed below, preserving Alley access would decrease the Project's significant impacts related to traffic, emergency access, and inconsistency with applicable land use plans. Preserving access for delivery and emergency vehicles would avoid a situation where Via Lido Plaza would become unattractive to commercial tenants, which could lead to a chain of vacancies and urban decay. Keeping the 32nd Street Alley would obviate the need to modify the Plaza's other entrances (which would exacerbate parking impacts), and continuing to route emergency and delivery traffic through the Alley would reduce traffic, noise, air quality, and greenhouse gas ("GHG") impacts when compared to the Project. Such an alternative would more faithfully adhere to the City's land use plans that promote responsible development and protect existing property uses contributing to the economic development of Lido Village.

8-3

The Draft EIR recognizes that *such an alternative is feasible, but inexplicably fails to evaluate it*: "[t]he Applicant has also investigated the feasibility of including an access gate that would only be open to use by delivery vehicles to and from Via Lido Plaza . . . [a]lthough the installing [sic] this access gate has

⁵ See Attachment A.

⁶ 14 CCR § 15126.6(a), (b).

⁷ 183 Cal. App. 4th 1059, 1089 (2010).

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proven feasibly [sic], it is not under consideration . . .”⁸ Among the Project’s several goals and objectives include revitalizing Lido Village (which includes Via Lido Plaza) by “creating a catalytic development consistent with the Lido Village Design Guidelines that enhances economic activity and contributes to Newport Beach’s reputation as a premier destination for shopping . . .”⁹ The Project’s pedestrian-oriented, boutique hotel development seeks to benefit residents and visitors through shopping, entertainment, and public space features.¹⁰ The final Project objective is to create City revenue through lease payments and a transient occupancy tax.¹¹ All these goals and objectives can be accomplished by a Project alternative that envisions a boutique hotel development and preserves the 32nd Street Alley. Indeed, the site plan presented to the City Council on July 9, 2013 by the hotel developer preserved the 32nd Street Alley.¹² Even if accommodating the Alley would result in a hotel footprint that is slightly smaller, there is no reason why such an alternative was not considered. The Draft EIR has already analyzed a “reduced density” hotel alternative that would include 108 hotel rooms, rather than the proposed Project’s 130 rooms.¹³ The Draft EIR found that the Reduced Density Alternative “fulfill[s] all of the project’s objectives,” but has only a single downside, relative to the Project—it creates a little less City revenue through lease payments and taxes.¹⁴ This strongly suggests that Project goals will continue to be met by scaling back the project minimally to accommodate Via Lido Plaza’s use of the 32nd Street Alley.

8-3

Preserving the 32nd Street Alley would not unreasonably complicate hotel development or issues surrounding on-site parking. According to the Draft EIR, allowing emergency and delivery vehicles to access Via Lido Plaza through the Alley might cost the Project two or three off-street parking stalls.¹⁵ This is not substantial, given the fact that the Project already proposes on-site parking capacity that is insufficient under the City ordinance; the Draft EIR requires the Project to provide an additional 16 public parking spaces at an off-site location.¹⁶ At the same time, the Draft EIR also recognizes that “[i]t is not anticipated that the hotel would require more than the 148 [on-site] parking spaces proposed, with the exception of nights with banquet usage.”¹⁷

8-4

In sum, it is feasible for the hotel development and 32nd Street Alley to coexist, with the hotel continuing to fulfill Project objectives and the Alley strengthening other Project objectives, such as contributing to the City’s reputation for shopping. Failing to analyze a feasible alternative that preserves the 32nd Street Alley compromises the entire Draft EIR under CEQA. For instance, in *Watsonville Pilots Association*, the court held that the City of Watsonville violated CEQA because the EIR failed to analyze a reduced development alternative that met project objectives, but avoided or lessened environmental impacts.¹⁸ The Draft EIR should therefore evaluate a new alternative (or revise and clarify the Reduced Density Alternative) that preserves the 32nd Street Alley, reduces traffic and parking impacts, promotes greater consistency with local land use plans and policies, and preserves the economic viability of Via

8-5

⁸ Draft EIR at 3-14.

⁹ *Id.* at 3-18.

¹⁰ *Id.*

¹¹ *Id.*

¹² City Council Staff Report, July 9, 2013 at 3.

¹³ See Draft EIR at 7-16 to 7-21.

¹⁴ *Id.* at 7-21, 7-28.

¹⁵ *Id.* at 3-14, 5.5-47.

¹⁶ *Id.* at 5.5-47.

¹⁷ *Id.* at 5.5-48.

¹⁸ 183 Cal. App. 4th at 1089-90.

Lido Plaza by ensuring adequate delivery and emergency access. Furthermore, the City should select this alternative as the environmentally superior alternative, and modify the Project accordingly. This modification would meet all of the Project's objectives and would both revitalize former and accommodate existing land uses that continue to play an important role in the redevelopment of Lido Village.¹⁹

8-5

B. The Project Description is Inadequate Because the Description of the Role of the 32nd Street Alley is Unclear and Misleading

Title 14 of the California Code of Regulations, section 15124 requires that a Draft EIR include a project description containing specific information about the project so that decision-makers and the public can understand the full scope of the project and its related impacts.²⁰ In *Santiago County Water Dist. v. County of Orange*, the court held an EIR inadequate where it failed to describe key components of a mining project, which had the effect of masking the true extent of the project's environmental impacts.²¹

Here, the Draft EIR glosses over the very important fact that the Project will close the 32nd Street Alley and take away related property rights that have been continuously used and have served adjacent properties for many decades. The Draft EIR inaccurately states in the Traffic section that "[t]he project would not require the complete closure of any public or private streets or roadways during construction."²² The EIR obliquely and misleadingly references the closure of the 32nd Street Alley by stating that at some undefined point during "project implementation" the Project would close an "existing driveway" used only by Via Lido Plaza delivery trucks.²³ Implying that the 32nd Street Alley is simply a private driveway is inaccurate; the Alley was first dedicated for public use in 1927, came under City ownership in 1946, and has continued to be used for decades thereafter. Although the Draft EIR states that the Alley has been historically gated,²⁴ the gate was installed only about 14 years ago, and throughout that period it has routinely been opened by truck drivers making deliveries to Via Lido Plaza. Furthermore, the gate has remained continuously open for at least the last two years, because of the closure of the old City Hall.

8-6

The Draft EIR's failure to openly disclose the role of closing the 32nd Street Alley stands in stark contrast to the City's statements made in court filings in its lawsuit to quiet title to the Alley. In those papers, the City has asserted that clarifying its right to close the Alley *is necessary for the proposed Project to proceed*.²⁵ Failing to include the Alley's closure in the project description affects the rest of the Draft EIR's analysis, and precludes a full analysis of the associated impacts that arise from that closure.

¹⁹ See Draft EIR at 7-21 (stating how a reduced density alternative would "attain all of the project's objectives").

²⁰ *Dry Creek Citizens Coalition v. County of Tulare*, 70 Cal. App. 4th 20, 26 (1999).

²¹ 118 Cal. App. 3d 818, 829-30 (1981).

²² Draft EIR at 5.5-40.

²³ *Id.*

²⁴ *Id.*

²⁵ See Complaint ¶ 14, *City of Newport Beach v. Lido Partners*, No. 30-2014-00715029-CU-OR-CJC (Compl. filed Apr. 7, 2014).

C. The Draft EIR Inadequately Analyzes the Impact of the Closure of the 32nd Street Alley on Emergency Access

The Draft EIR states that the Newport Beach Fire Department "has evaluated the permanent closure of [the 32nd Street Alley] and determined that the closure would not affect emergency access" ²⁶ In fact, however, emergency access for Via Lido Plaza will be severely compromised, and the Draft EIR ignores the potential impacts to the existing Fire Station to the east of the Project that could affect emergency service across the City.

8-7

Under the CEQA Guidelines, a project may create a significant adverse environmental impact with respect to transportation or traffic if it substantially increases hazards due to a design feature or results in inadequate emergency access. ²⁷ The Circulation Element of the City's General Plan requires projects to ensure efficient and safe access for emergency vehicles. ²⁸

To assist with its review of fire, safety, and emergency access issues, Lido Partners engaged Fire Protection Planner Dana Kemper of Firesafe Planning Solutions to review the Draft EIR and additional Project-related materials. Mr. Kemper's conclusions are attached to this comment letter as Attachment C, and are incorporated by reference herein. The major deficiencies in the Draft EIR's analysis on emergency access include the following:

- **Closing the 32nd Street Alley will limit effective emergency access to Via Lido Plaza.** Closing the 32nd Street Alley will eliminate the fastest and most feasible way for fire and safety vehicles to respond to an emergency at Via Lido Plaza. Via Lido Plaza will only be accessible by Via Lido, and would be entirely inaccessible through the Finley Avenue entrance. ²⁹ The Draft EIR has made no effort to quantify the adverse impacts resulting from impaired or delayed emergency access to Via Lido Plaza.
- **Via Oporto does not meet City standards for a fire apparatus access roadway.** The Draft EIR incorrectly states that access to the Fire Station can be accommodated along Via Oporto. ³⁰ Under the Newport Beach Fire Department Guidelines, a street with parking on both sides, like Via Oporto, must be at least 36 feet wide to provide sufficient fire access. Via Oporto does not fit this guideline for street widths and should not be considered an access point into the Fire Station. While the Fire Station's engine and truck can use the front entrance facing 32nd Street, the paramedic unit must access the rear of the Fire Station, which, under the Project, would no longer be possible from any point except Via Oporto. ³¹ The Draft EIR must be revised to account for access to the

8-8

8-9

²⁶ Draft EIR at 5.5-40, *see also id.* at 5.5-51 to 5.5-52; 5.10-17; 5.12-28.

²⁷ Draft EIR at 5.5-19; *see also* CEQA Guidelines, Appendix G, XVI.(d), (e). Appendix G is an environmental checklist that agencies use to determine whether a project will have a significant effect on the environment and whether it is necessary to prepare a negative declaration or an EIR. 14 CCR § 15063(f).

²⁸ City of Newport Beach General Plan, Circulation Element at 7-14 (hereinafter "Circulation Element").

²⁹ Attachment C, Letter from D. Kemper, Firesafe, to G. Hart, Paul Hastings LLP, dated June 13, 2014, regarding Comments to the Lido House Hotel Draft EIR at 2 (hereinafter "Attachment C").

³⁰ Draft EIR at 5.10-17.

³¹ *See* Attachment C at 1.

Fire Station being limited to one access point, and analyze and mitigate the impacts to the paramedic unit. Depending on the size of the emergency vehicle, access may not be possible through any other entrance.³²

8-9

- **Limiting access to the Fire Station to 32nd Street could delay the City's ability to respond to emergencies.** The Project proposes to modify certain features of the Fire Station property, which will compromise the City's ability to respond to emergencies. Eliminating the Alley will render the Fire Station's rear entrance unusable for large vehicles. Fire trucks will no longer be able to travel up the Alley and pull in the rear of the building, which is considered a safer way to park fire trucks. Instead, fire trucks will now have to back into the Fire Station from 32nd Street, thereby clogging traffic and creating noise disturbances from back-up alarms. Additionally, if the Fire Station's bay door failed in the down position, the engine and truck would need to back out of the rear doors. It is unlikely this maneuver could be accomplished without moving all of the firefighters' private vehicles in the rear parking lot. Further delays could result if a paramedic was on call (and unavailable) during an emergency that necessitated the moving of his or her vehicle.³³

8-10

- **The 32nd Street access to the Fire Station is unsafe.** Project modifications to 32nd Street will make it less safe for use by fire and passenger vehicles. First, the Project will "narrow" 32nd Street from approximately three lanes to two lanes, leaving less room for fire trucks to get in and out of the Fire Station.³⁴ Second, the Project's landscaping improvements (trees, etc.) will reduce the line-of-sight between vehicles traveling on 32nd Street and fire trucks entering or exiting the Fire Station.³⁵ Finally, because the hotel plans to route its own large delivery trucks through the narrow gated access immediately west of the Fire Station,³⁶ 32nd Street will suddenly have to accommodate Project delivery trucks, fire trucks, and passenger traffic making a series of delicate maneuvers in a narrowed street, within approximately 150 feet of each other.

8-11

D. The Draft EIR Fails to Analyze, and Mitigate, the Impacts of the 32nd Street Alley Closure on Displaced Delivery Truck Traffic and Reduced Parking at Via Lido Plaza and the Fire Station

8-12

The validity of an EIR "depends in large part upon whether it provides the information necessary for the [lead agency] and the public to understand the nature and environmental consequences of the Project."³⁷ Title 14, California Code of Regulations section 15126.4(a)(1) requires a draft EIR to "describe

³² See Attachment A.

³³ Attachment C at 2.

³⁴ *Id.* at 2.

³⁵ *Id.* at 3.

³⁶ See Lido House Hotel, Service Access Analysis, available online in Lido House Hotel folder on City's website, Lido House Hotel subfolder, Sheet 14 (*Lido House Hotel folder available starting at <http://www.newportbeachca.gov/index.aspx?page=1347>*).

³⁷ *Napa Citizens for Honest Gov. v. Napa County Bd. of Supervisors*, 91 Cal. App. 4th 342, 356 (2001).

feasible measures which could minimize significant adverse impacts” attributable to a project.³⁸ The Draft EIR fails to account for the traffic, parking, noise, air quality, GHG and other impacts that will arise when delivery and emergency vehicles are forced to access Via Lido Plaza through alternate means after the 32nd Street Alley is closed.

8-12

The Draft EIR’s Traffic Impact Analysis evaluates trip generation rates arising from the Project’s proposed hotel use only, and does not analyze extra traffic attributable to large emergency and delivery vehicles displaced from the 32nd Street Alley.³⁹ This oversight is particularly critical considering that the Draft EIR recognizes that the Project will cause the largest increase in traffic at the intersection of Newport Boulevard and Finley Avenue—congestion that will be further exacerbated if emergency and delivery trucks are also forced to use the Newport/Finley intersection to access Via Lido Plaza.⁴⁰ Failing to account for increased emergency and delivery truck traffic on surrounding streets and intersections will necessarily require a revised analysis of other CEQA elements, such as noise, air quality and GHGs.

8-13

The Draft EIR’s finding of a “less than significant impact” with respect to “hazards due to a design feature . . . or incompatible uses” fails to consider the significant impacts on safety and traffic that would occur at Via Lido Plaza.⁴¹ Forcing large vehicles to use the Finley or Via Lido entrances to Via Lido Plaza would snarl traffic in several respects. Via Lido is the only road connecting the City with Via Lido Isle, which is home to approximately 1,800 City residents. As presently configured, the Via Lido driveway is too small to accommodate the entry of large trucks.⁴² There is also no traffic signal at the Via Lido entrance, and trucks turning out of Via Lido Plaza would have to make wide swings, disrupting passenger vehicles in the Plaza driveway and blocking or delaying traffic on Via Lido in both directions.⁴³ The Finley entrance is simply too tight for a large truck to negotiate, and even if the driveway was modified, threading a large truck from Newport, on Finley, and into Via Lido Plaza would interfere with guests arriving and leaving the proposed Lido House Hotel.⁴⁴ Even if a truck could access Via Lido Plaza through Finley, it would have no choice but to exit on Via Lido, compromising Newport, Finley, and Via Lido.⁴⁵

8-14

Closing the 32nd Street Alley will also likely affect area parking in ways that the Draft EIR fails to consider. Substantially modifying Via Lido Plaza’s remaining entrances to safely accommodate the reduced maneuverability of large vehicles (even assuming that is possible) would likely eliminate existing parking stalls. This could place Via Lido Plaza out-of-compliance with City parking regulations and require additional off-site parking. The proposed Project also appears to reduce parking at the Fire Station from 14 spots down to approximately 7 spots, which will force Fire Department staff and visitors to find parking elsewhere. Eliminating side street parking on Via Oporto (to accommodate the new Fire Station entrance) requires City Council action, which the Draft EIR does not appear to consider. The

8-15

³⁸ See also Cal. Pub. Resources Code § 21002 (declaring policy of California that public agencies “should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects[.]”).

³⁹ See Draft EIR at 5.5-22 to 5.5-23; Traffic Impact Analysis at 9-10.

⁴⁰ See Draft EIR at 5.5-24, Table 5.5-8; Traffic Impact Analysis at 11.

⁴¹ Draft EIR at 8-7 to 8-8; see Attachment B, Letter from S. Bhattacharjee, P.E., Translutions, Inc. to G. Hart, Paul Hastings LLP, dated June 12, 2014, re: Review of Environmental Impact Report for Lido House Hotel at 1 (hereinafter “Attachment B”).

⁴² See Attachment A.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

Draft EIR fails to recognize the significant impacts resulting from decreased parking at Via Lido Plaza and the Fire Station, and fails to make any attempt to mitigate these significant impacts or determine that such mitigation is infeasible.

8-15

E. The 32nd Street Alley Closure Causes the Project to Conflict With Applicable Land Use Plans

1. The Project Causes Traffic and Parking Impacts That Conflict with Applicable Land Use Plans

Project approvals and findings that are inconsistent with applicable land use plans can result in significant environmental impacts.⁴⁶ According to *Pfeiffer v. City of Sunnyvale City Council*, an EIR must "identify and discuss any inconsistencies between a proposed project and the governing general plan."⁴⁷

The City's General Plan contains several goals and policies related to traffic and parking. The Land Use Element provides that "[N]ew development shall be coordinated with . . . standards for acceptable traffic level of service."⁴⁸ According to the Circulation Element, "the City needs to control and limit truck traffic to minimize the noise and other impacts on residents, avoid undue damage to infrastructure and minimize the potential for traffic congestion."⁴⁹ Goal 1.3 further aims for "[t]ruck routes that support goods movement to and from land use in the City while minimizing adverse impacts to residents or businesses," and follows with related policies to ensure trucks stay off residential streets by providing appropriately designed and maintained roadways to safely accommodate truck travel.⁵⁰ City policy further aims to "[i]mprove and enhance the aesthetic quality of alleys without impacting service access."⁵¹ Regarding parking, the Land Use Element, the Circulation Element, and the City's Local Coastal Program Land Use Plan all require new developments to provide adequate parking conveniently located to serve tenants, business patrons, guests and visitors.⁵²

8-16

Here, removing access through the 32nd Street Alley and rerouting truck traffic to City streets conflicts with applicable land use plans. The Project would cause increased traffic throughout Lido Village and (by decreasing parking at Via Lido Plaza and the Fire Station) limit the amount of parking in an already congested area of the City. Truck traffic displaced to Finley, Via Lido, or Newport Boulevard will increase noise and traffic impacts near primary and secondary pedestrian corridors identified and protected by the Lido Village Design Guidelines.⁵³ Rather than enhancing the quality of the 32nd Street Alley, the Project would erase it altogether, forcing more truck traffic onto surface streets. Simply put, the

⁴⁶ See CEQA Guidelines, Appendix G, Section IX (land use and planning); Draft EIR at 5.1-13. See also *Endangered Habitats League v. County of Orange*, 131 Cal. App. 4th 777, 798 (2005) (finding EIR inadequate because it did not analyze traffic in accordance with particular method specified by general plan).

⁴⁷ 200 Cal. App. 4th 1552, 1566 (2011) (citations and emphasis omitted).

⁴⁸ City of Newport Beach General Plan, Land Use Element at 3-9 ("Land Use Element").

⁴⁹ Circulation Element at 7-7.

⁵⁰ Circulation Element at 7-12.

⁵¹ Land Use Element at 3-56.

⁵² Land Use Element at 3-58; Circulation Element at 7-29; City Coastal Land Use Plan at 2-78.

⁵³ Lido Village Design Guidelines at 2-6 to 2-7 (highlighting pedestrian corridors).

effects associated with closing the 32nd Street Alley run contrary to nearly all of the City's policies related to traffic and circulation.

8-16

Additionally, the Draft EIR's Parking Study concluded that the total parking spaces needed to adequately serve the Project is 152 spaces.⁵⁴ But the Project plans on providing only 148 off-street parking spaces, which conflicts with the City's General Plan and Coastal Land Use Plan requiring adequate parking.⁵⁵ If Via Lido Plaza is forced to eliminate its own parking spaces to accommodate emergency and delivery access, Lido Village's parking shortfalls will be even further exacerbated. As recognized by the City's land use plans and related policies, it is unreasonable for adjacent property owners like Lido Partners to bear the brunt of parking impacts caused by the Project. Because the Project's significant traffic and parking impacts conflict with applicable land use plans, they accordingly require further analysis and mitigation in the Draft EIR.

8-17

2. The Project's Closure of the 32nd Street Alley Conflicts With Existing Land Use Plans and Permitting Ordinances Designed to Protect Adjacent Property Uses

The City has stated that the Project's goal is to revitalize Lido Village in such a way that "enhances economic activity."⁵⁶ But the Project will create a significant adverse economic impact on Via Lido Plaza, particularly the anchor tenant of West Marine, conflicting with applicable land use plans and City ordinances that protect land uses of existing property owners. The Draft EIR fails to analyze or mitigate the significant impacts caused by these conflicts.

Under the City's General Plan, the City requires that "new development within existing commercial districts centers and corridors . . . complement existing uses."⁵⁷ Policy LU 3.2, titled "Growth and Change," allows for "re-use and infill with uses that are complementary in type, form, scale and character" with existing neighborhoods and districts.⁵⁸ "[B]uildings and properties [should] be designed to ensure compatibility within and as interfaces between neighborhoods, districts, and corridors."⁵⁹ The City also aims to "[a]ccommodate uses that maintain or enhance Newport Beach's fiscal health and account for market demands, while maintaining and improving the quality of life for current and future residents."⁶⁰ The City seeks to "[e]ncourage a local economy that provides adequate commercial, office, industrial, and marine-oriented opportunities that provide employment and revenue to support high-quality community services."⁶¹ Marine-related uses along the bay front are encouraged, and new developments should "avoid impacts to existing coastal-dependent and coastal-related developments;" in such a case, "full consideration" must be given to land uses on adjacent properties.⁶² Two "cornerstones" of the Lido Village Design Guidelines are to "[p]romote connectivity throughout the Village" and to "[c]onsider economic realities and viability."⁶³ Under the Design Guidelines, one of the specific goals for the City Hall

8-18

⁵⁴ Draft EIR at 5.5-47.

⁵⁵ *Id.*; see also City Coastal Land Use Plan Policy at 2-78.

⁵⁶ Draft EIR at 3-18.

⁵⁷ Land Use Element at 3-54.

⁵⁸ *Id.* at 3-9.

⁵⁹ *Id.* at 3-61.

⁶⁰ *Id.* at 3-7.

⁶¹ *Id.* at 3-6.

⁶² *Id.* at 3-10.

⁶³ Lido Village Design Guidelines at 2-2.

site (where the Project is proposed to be built) is to "maximize[] value without compromising existing owners and their tenant mixes."⁶⁴

8-18

Further protection is afforded by City ordinances regulating the issuance of Planned Development Permits and Site Development Reviews, which the Project will require to proceed.⁶⁵ For a Planned Development Permit, the City would have to determine that the project, as conditioned, "will not have a substantial adverse effect on surrounding properties or allowed uses."⁶⁶ During Site Development Review, the City must "ensure safe and convenient access and circulation for pedestrians and vehicles,"⁶⁷ and find that a proposed development is "[n]ot detrimental to the harmonious and orderly growth of the City, nor endangers, jeopardizes, or otherwise constitutes a hazard to the public convenience, . . . interest, . . . or general welfare of persons residing or working in the neighborhood of the proposed development."⁶⁸

8-19

The Project also conflicts with the City's General Plan, Lido Village Design Guidelines, and permitting ordinances because it will compromise the existing use and layout of Via Lido Plaza, which depends on the 32nd Street Alley for financial viability and public safety. Delivery and emergency access for Via Lido Plaza is very important, whether the tenant is West Marine (as it is now) or a grocery store (as it was for several decades, and could be again in the future). For a large commercial center, having the flexibility to accommodate several potential uses is key to servicing the Newport Beach community, particularly where the area's character is changing (e.g., new residential development is being constructed nearby on Via Lido⁶⁹). The Draft EIR fails to consider that closing the Alley will disadvantage West Marine, a maritime goods store that services the marine uses along the bay front. Without sufficient delivery access, the Project would also severely limit the ability of Via Lido Plaza to host a grocery store or any other large-scale business that caters to growing residential use or would be attractive to hotel and beach guests. As demonstrated above, the Project will also impair emergency access to Via Lido Plaza, which will seriously concern tenants and prospective tenants. Because adjacent commercial centers are protected by the City's land use plans, policies, and development ordinances, the Draft EIR must thoroughly analyze and mitigate the significant impacts caused by the Project's effect on adjacent and maritime-oriented property uses.

8-20

F. The Draft EIR Fails to Analyze or Mitigate the Significant Physical Changes From Economic Impacts on Via Lido Plaza That Will Result From Closing the Alley

Under 14 California Code of Regulations, section 15064(e), when a project's economic or social effects cause an adverse physical change to the environment, this change is to be disclosed and regarded as a significant effect in the same manner as any other physical change resulting from the project. According to *Citizens Assn. for Sensible Development of Bishop Area v. County of Inyo*, to the

8-21

⁶⁴ Lido Village Design Guidelines at 2-4.

⁶⁵ Draft EIR at 5.1-53.

⁶⁶ City Municipal Code § 20.52.060(F)(4).

⁶⁷ City Municipal Code § 20.52.080(A)(3).

⁶⁸ City Municipal Code § 20.52.080(F)(3).

⁶⁹ Draft EIR at 3-4. Additional residential development, such as the multi-family development contemplated for 3303 and 3355 Via Lido, could change the character of Lido Village. Limiting the use of Via Lido Plaza by closing the 32nd Street Alley would negatively and unreasonably impact uses sought by the changing community.

extent that “potential is demonstrated” for urban decay and/or physical deterioration to be indirect environmental effects of a proposed project, an agency must consider these issues in an EIR.⁷⁰

Here, if the Project closes the 32nd Street Alley, the layout and design of the remaining entrance driveways into Via Lido Plaza effectively prohibit large emergency and delivery trucks from accessing the center’s loading dock at the rear of the main commercial building. Without sufficient delivery or emergency access, Via Lido Plaza becomes much less valuable, as the Plaza would be unusable for many tenants like markets or grocery stores, which have occupied the space in the past. Reconfiguring the Via Lido Plaza driveways on Finley and Via Lido would be very expensive and would likely result in the loss of parking spaces, potentially putting Via Lido Plaza out of compliance with City parking requirements. The Project essentially places Via Lido Plaza in a “lose-lose”—without sufficient delivery access, or sufficient parking, the property may be unattractive for many tenants, leading to long-term vacancies, decreased economic activity, and potential decay of the entire Lido Village area. The Draft EIR fails to analyze the physical consequences of the adverse economic effects that will arise from closing the 32nd Street Alley, including the potential for business closures and vacancies to start an economic chain reaction leading to physical deterioration of the surrounding area.⁷¹

8-21

III. THE DRAFT EIR’S TRAFFIC IMPACT ANALYSIS IS LEGALLY INADEQUATE

Beyond the specific deficiencies described above related to the impacts of closing the 32nd Street Alley, the Draft EIR contains more general legal deficiencies, particularly with respect to its analysis of traffic impacts. The Draft EIR relies on the Lido House Hotel Traffic Impact Analysis (“Traffic Impact Analysis”) and Parking Study for the Lido House Hotel (“Parking Study”) included in Appendix 11.3 to support its traffic and parking impact analysis.⁷² The Traffic Impact Analysis and Parking Study contain several technical errors that render the Draft EIR’s conclusions and estimates on traffic and parking unreliable. Correcting these errors will likely reveal significant traffic and parking impacts that require mitigation and recirculation of the Draft EIR.

To assist with its review of traffic and parking issues, Lido Partners engaged traffic engineer Sandipan Bhattacharjee, P.E., principal of Translutions, Inc, to review the adequacy of the Draft EIR and relevant appendices. Mr. Bhattacharjee’s conclusions are attached to this comment letter as Attachment B, and are incorporated by reference herein. The major deficiencies in the Traffic Impact Analysis include the following:

⁷⁰ 172 Cal. App. 3d 151, 171 (1985); see generally *Bakersfield Citizens for Local Control v. City of Bakersfield* 124 Cal. App. 4th 1184, 1204-13 (2004) (holding that EIR improperly omitted any meaningful consideration of whether two retail shopping center projects could cause a “ripple of store closures and consequent long-term vacancies that would eventually result in general deterioration and decay within and outside the market area of the two shopping centers.”); *Citizens Assn.*, 172 Cal. App. 3d at 170-71 (holding that lead agency should consider whether a new shopping center would start an economic chain reaction that would lead to physical deterioration of the downtown area).

⁷¹ See *Bakersfield Citizens for Local Control*, 124 Cal. App. 4th at 1208 (finding sufficient evidence for the EIR to consider whether a retail project’s impacts on shopping center could start a “chain reaction that ultimately results in urban decay”).

⁷² See Draft EIR at 5.5-1 (stating that Traffic/Circulation section is based on the Traffic Impact Analysis and the Parking Study).

- **The Traffic Impact Analysis fails to analyze beach and weekend traffic.** The Draft EIR should perform a weekend and peak season analysis to more accurately evaluate the Project's impacts on City traffic. Limiting the analysis to weekday traffic masks the Project's true traffic impacts, because Saturday traffic for the hotel is expected to be approximately 18% higher than during the week, and peak hotel use is likely to coincide with the City's busy summer beach season.⁷³ Traffic generated by the Project will be substantially different than that generated by the former City Hall, which generated typical commuter traffic and was closed on weekends and holidays.⁷⁴ For instance, the intersection of Newport and Finley will be expected to handle much more weekend traffic than it has in the past, because during the peak weekend travel periods it will have to accommodate customers shopping at Via Lido Plaza and guests checking into Lido House Hotel. These traffic impacts also have the potential to interfere with and overburden Via Lido Plaza's recorded easement that connects the shopping center with Newport Boulevard. **8-22**
- **The "peak hour" traffic analyzed in the Traffic Impact Analysis does not correspond to actual peak conditions.** The Traffic Impact Analysis analyzes p.m. "peak hour" traffic from 4 p.m. to 6 p.m. Due to the City's traffic patterns, however, the afternoon "peak hour" actually occurs around 2 p.m.⁷⁵ The Traffic Impact Analysis must be updated to accurately reflect existing conditions. **8-23**
- **The City failed to measure traffic field counts at the right time of year.** The City's Traffic Phasing Ordinance requires that current field counts should be taken between February 1 and May 31.⁷⁶ According to the Draft EIR, however, traffic counts were taken in October 2013,⁷⁷ which is inconsistent with City code. The City must perform traffic field counts at the right time of year. **8-24**
- **The Draft EIR's Intersection Capacity Utilization ("ICU") analysis is inadequately explained.** In Table 5.5-16, several intersections show the "without project" ICU as higher than the "with project" ICU, corresponding with Level of Service ("LOS") worksheets that traffic volumes under "with project" conditions are less than traffic volumes under "without project" conditions. This counterintuitive result should be explained. Additionally, comparing Tables 5.5-19 and 5.5-20 shows that the delay under the General Plan Buildout without project conditions is less than forecasted for 2018 Cumulative with project conditions. The Draft EIR should explain whether the traffic **8-25**

⁷³ Attachment B at 1.

⁷⁴ Similarly, mitigation measure TRA-2 requires a Parking Management Plan to restrict parking for in-demand parking spaces only from 6:00 a.m. to 6:00 p.m. Monday through Friday. Draft EIR at 5.5-48. This mitigation measure ignores the fact that restrictions on weekend parking are likely to be necessary, too. See Attachment B at 4.

⁷⁵ Attachment B at 2.

⁷⁶ City Municipal Code, Chapter 15.40, Appx. A, § 3(d)(i).

⁷⁷ Draft EIR at 5.5-6.

analysis is expecting a reduction in traffic volumes between 2018 and the General Plan Buildout.⁷⁸

8-25

- **The Traffic Impact Analysis underestimates traffic impacts by failing to perform an accurate Highway Capacity Manual (“HCM”) analysis.** The Traffic Impact Analysis fails to account for several variables required by the HCM, resulting in an artificially low estimation of traffic impacts. First, the Traffic Impact Analysis fails to apply Peak Hour Factors (“PHF”) when evaluating Caltrans intersections. The Traffic Impact Analysis also fails to account for minimum green times and pedestrian crossings at these intersections. Applying the proper PHF and pedestrian crossing times is necessary to determine whether a significant traffic impact will result. Second, the 2010 HCM automatically reports LOS F for any intersection where the volume to capacity (“V/C”) ratio exceeds 1.0. The Project’s Traffic Impact Study incorrectly reports LOS E at several locations where V/C ratios are greater than 1. Third, the LOS sheets included in the Traffic Impact Analysis fail to include the lost time values required for evaluating Caltrans intersections by the 2000 HCM, in Chapter 10, Ex. 10-17. The Traffic Impact Analysis must be revised to account for each and all of these missing factors at the applicable intersections and highways; failing to do so underestimates the traffic impacts that the Project is likely to cause or contribute.⁷⁹

8-26

- **The Draft EIR fails to adequately mitigate existing significant traffic impacts.** Based on the Caltrans Guide for the Preparation of Traffic Impact Studies, Section II, “if an existing State highway facility is operating at less than the appropriate target LOS, the existing MOE [measures of effectiveness] should be maintained.” Based on the Draft EIR’s Table 5.5-21, intersections 3 and 6 indicate increases in a.m. peak hour traffic. Table 5.5-21 wrongly concludes “no” for “significant impact,” even though these intersections are already operating at less than the appropriate target LOS. Traffic impacts at intersections already operating below an appropriate LOS must be mitigated to bring conditions to pre-Project levels of service.⁸⁰ The Draft EIR fails to require any such mitigation.

8-27

- **The Draft EIR fails to adequately analyze cumulative traffic impacts.** According to 14 California Code of Regulations, section 15355(b), an EIR must analyze cumulative impacts result from “individually minor but collectively significant projects taking place over a period of time.” In two respects, the Draft EIR fails to analyze traffic impacts that are cumulatively significant.

8-28

- **Increasing traffic impacts that are already significant.** Under *Los Angeles Unified School Dist. v. City of Los Angeles*, a project that results in an increase to an impact that already exceeds established thresholds of significance contributes to a cumulative impact.⁸¹ A proper traffic analysis using the methodologies described above will show that significant traffic impacts already exist. The

⁷⁸ Attachment B at 3.

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ 58 Cal. App. 4th 1019, 1024-28 (1997).

Project's contribution to these significant impacts requires an analysis of the cumulative impacts, the application of appropriate mitigation or avoidance under 14 California Code of Regulations, section 15130(b)(5), and the recirculation of the Draft EIR.⁸²

- o **Failing to analyze future residential projects.** According to 14 California Code of Regulations, section 15130(b), a draft EIR must evaluate related or cumulative impacts produced from future projects. According to the Draft EIR, "[t]he City has approved an application for a multiple-family residential development at 3303 and 3355 Via Lido," replacing current office and institutional uses.⁸³ The Draft EIR and Traffic Impact Analysis, however, improperly omit these nearby residential developments from their cumulative impacts analyses.⁸⁴ Replacing office and institutional land uses with residential uses, particularly so close to the Project, will necessarily result in changed traffic patterns around the Project site, but these and related impacts are not analyzed in the Draft EIR. 8-28

- **The Traffic Impact Analysis is missing daily and peak hour count sheets.** The Draft EIR states that "[d]aily and peak hour count sheets are provided in Appendix 11.3."⁸⁵ This is incorrect, as Appendix 11.3 fails to contain daily count sheets.⁸⁶ 8-29

- **The Traffic Impact Analysis fails to study the southbound direction of Newport Boulevard at 28th Street.** The intersection of 28th Street and Newport Boulevard is listed as one of the study intersections. Newport Boulevard is split into two one-way streets at that location. The Traffic Impact Analysis analyzes only the northbound direction of Newport Road. This oversight should be corrected, and the southbound direction should be analyzed as well. 8-30

- **The Parking Study's comparison to L'Auberge Del Mar and Estancia fails to consider whether meeting space use contributed to parking levels.** In an attempt to justify the Project's inadequate on-site parking, the Parking Study applies the City's parking code to L'Auberge Del Mar and Estancia and concludes that these facilities, if within the City's jurisdiction, would technically require parking in considerable excess of surveyed conditions. But the Parking Study's analysis fails to state whether either facility's ballroom or meeting spaces were in use when the parking surveys were conducted. If they were not, these surveys very likely underestimate the true parking conditions of each hotel. Here, even if the Project hotel was at only 90% capacity, the guest demand combined with restaurant parking would exceed the number of on-site parking spaces, without accounting for parking used by hotel staff, City residents using hotel services, or visits generated by ballroom events.⁸⁷ 8-31

⁸² Attachment B at 3.

⁸³ Draft EIR at 3-4.

⁸⁴ See *id.* at 4-2 to 4-4, Table 4-1.

⁸⁵ *Id.* at 5.5-6.

⁸⁶ Attachment B at 2.

⁸⁷ *Id.* at 4.

- **The Parking Study fails to analyze problems of improper parking at Via Lido Plaza.** Beach visitors, particularly in the summer season, often improperly park at Via Lido Plaza for reasons unrelated to patronizing the shopping center. Lido Partners currently has an application into the City for the erection of parking gates at the Via Lido and Finley Avenue entrances to Via Lido Plaza to help alleviate this problem and ensure sufficient parking remains for Via Lido Plaza shoppers and tenants. The City, however, has been delaying its consideration of Lido Partners' application. This parking problem is likely to be exacerbated once the Project draws additional vehicles into the Lido Village area. Indeed, whenever the Lido House Hotel will be under-parked, visitors will have no nearby place to park other than at Via Lido Plaza. The Parking Study and Draft EIR fail to adequately account for or control parking that will inevitably spill over into Via Lido Plaza once the Project's insufficient on-site parking is at capacity, or when the removal of Fire Station or street parking leads to improper parking at Via Lido Plaza.

8-32

IV. THE DRAFT EIR'S ANALYSIS OF DEMOLITION AND CONSTRUCTION ACTIVITIES IS LEGALLY INADEQUATE

Another general deficiency in the Draft EIR that goes beyond the specific issues associated with the closure of the 32nd Street Alley is the woefully inadequate description and analysis of the construction and demolition activities necessary to construct the Project. These activities could have a substantial impact on Via Lido Plaza, but the Draft EIR does not provide sufficient information to determine the true nature and extent of these impacts.

A. The Project Description Fails to Adequately Describe and Analyze Demolition and Construction Activities

The Project description fails to sufficiently describe the process related to the demolition of the old City Hall complex and construction of the proposed Project. According to *Santiago County Water District v. County of Orange*, "[a]n accurate . . . project description," including a description of necessary construction activities, "is the *sine qua non* of an informative and legally sufficient EIR."⁸⁸ Here, the Draft EIR mentions demolition and construction activities in three brief sentences, and notes simply that the Project will be constructed in one phase, that demolition will obviously take place before construction, and that construction will take fourteen months.⁸⁹ The Draft EIR neglects to provide any other information on demolition and construction activities, save for some vague and contradictory information on the number of truck trips required for hauling material to and from the Project site. In light of the substantial impacts expected to result from redeveloping a 185,000 square foot site in a dense beach community, CEQA requires a more thorough description of the processes, equipment, and efforts involved in demolition and construction.

8-33

While the Draft EIR anticipates that exporting demolished materials will require 276 total haul truck trips,⁹⁰ it is unclear what types of demolition activity will take place, what equipment will be used, what sorts of materials will be transported away from the site, whether those materials pose any safety or traffic risks, and what types of vehicles will be used in demolition and how they will access the property.

⁸⁸ 118 Cal. App. 3d. 818, 830 (1981).

⁸⁹ Draft EIR at 3-18.

⁹⁰ *Id.* at 5.5-20.

The Draft EIR also anticipates at least 922 total haul truck trips to import soil onto the site—approximately 44 trips per day.⁹¹ But other figures within the Draft EIR suggest that approximately 2,188 trips will be needed to haul soil—a nearly 140% increase.⁹² Regardless of which figures are correct, the Draft EIR fails to explain why such a massive amount of soil needs to be imported onto the Project site, how and where such soil will be unloaded, and how the soil will be managed as to avoid significant impacts to neighboring properties. For instance, while thousands of trucks of soil are likely to generate substantial dust, the Draft EIR fails to adequately analyze or mitigate for the resultant dust impacts. The Draft EIR also fails to account for the number of trucks carrying building materials and everything else (besides soil) needed to build a hotel project.

8-33

Simply put, there is no meaningful analysis of the impacts on the Lido Village community (including Via Lido Plaza) that are anticipated to occur during the Project's fourteen month construction, what impacts are acceptable and what impacts are unacceptable, and how the Project proposes to mitigate those significant impacts for the surrounding community. The Draft EIR should more adequately analyze the noise, traffic, air quality, and GHG impacts to surrounding residential and commercial developments arising from the demolition of old City Hall and construction of the Project.⁹³

B. The Draft EIR Improperly Defers Mitigation for the Significant Impacts Related to Demolition and Construction Activities

While an EIR can evaluate mitigation that could reduce a project's significant environmental impacts, 14 California Code of Regulations, section 15126.4(a)(1)(B) states that "[f]ormulation of mitigation measures should not be deferred until some future time." If an agency commits at the time of project approval to devising specific mitigation measures in the future, it must provide specific performance standards or guidelines for this future mitigation in the EIR.⁹⁴ If a lead agency does determine that formulation of a mitigation measure must be deferred, it should explain why deferral is appropriate. Under *City of Long Beach v. Los Angeles Unified Sch. Dist.*, "[i]mpermissible deferral of mitigation measures occurs when an EIR puts off analysis or orders a report without either setting standards or demonstrating how the impact can be mitigated in the manner described in the EIR."⁹⁵ In *San Joaquin Raptor Rescue Ctr. v. County of Merced*, the court found mitigation improperly deferred when no reason for the deferral was given.⁹⁶

8-34

Here, the Draft EIR improperly defers mitigation for the significant impacts expected to result from the demolition of the old City Hall complex and the construction of the Project. While such a massive construction effort will clearly result in impacts to noise, air quality, GHGs, and other impacts requiring analysis under CEQA, the Draft EIR establishes no performance standards or guidelines as to how such impacts are to be measured, evaluated, or mitigated. Instead, the Draft EIR improperly defers analysis

⁹¹ *Id.*

⁹² *Id.* at 5.8-17.

⁹³ See *id.* at 1-1 (explaining that the City relocated City Hall staff from the Project site to the new Civic Center in April 2013).

⁹⁴ See, e.g., *Communities for a Better Env't v City of Richmond* 184 Cal. App. 4th 70, 95 (2010) (emphasizing that "the time to analyze the impacts of [a project] and to formulate mitigation measures to minimize or avoid those impacts was during the EIR process, before [a project is] brought to the Planning Commission and City Council for final approval.").

⁹⁵ 176 Cal. App. 4th 889, 915-16 (2009) (citations omitted).

⁹⁶ 149 Cal. App. 4th 645, 670-71 (2007).

and mitigation of the construction and demolition traffic and other impact issues to an ill-defined "Construction Management Plan." This is a classic case of impermissible deferred mitigation, because the Draft EIR "does no more than require a report be prepared and followed . . . without setting any standards,"⁹⁷ other than very basic limits on hauling during off-peak hours and a general directive to "avoid traffic disruptions."⁹⁸

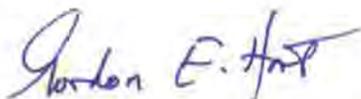
Without any standards, it is impossible to determine whether implementation of the Construction Management Plan will effectively mitigate the significant impacts caused by demolition and construction. Regarding traffic, for example, while demolition and construction will generate hundreds or thousands of truck trips, the Draft EIR impermissibly defers construction phasing and the identification of truck routes to the Construction Management Plan.⁹⁹ Deferring the analysis of construction vehicle traffic to a later date casts doubt upon the efficacy of the Draft EIR's entire traffic analysis, particularly when construction alone is expected to generate between 1,200 and 2,400 truck trips into a tightly constrained community like Lido Village. The Draft EIR must undertake an analysis of and mitigate these significant impacts now and cannot defer its CEQA responsibilities to a later time.

8-34

V. CONCLUSION

We appreciate your consideration of the legal deficiencies described above, and ask that the Draft EIR be revised and recirculated to more faithfully analyze and mitigate the Project's significant environmental impacts. Specifically, we ask that the City analyze an alternative as described above that would minimally reconfigure the Hotel to preserve the 32nd Street Alley, and that the City select this alternative as the Environmentally Superior alternative and modify the Project accordingly.

Sincerely,



Gordon E. Hart
of PAUL HASTINGS LLP



Buck B. Endemann
of PAUL HASTINGS LLP

⁹⁷ See *Endangered Habitats League, Inc. v. County of Orange*, 131 Cal. App. 4th 777, 794 (2005). For instance, the EIR does not restrict the number of daily construction trips or require any other best practices, unlike what was found sufficient for mitigating the impacts of dirt hauling in *Endangered Habitats League*. See *id.*

⁹⁸ Draft EIR at 5.5-20 to 5.5-21.

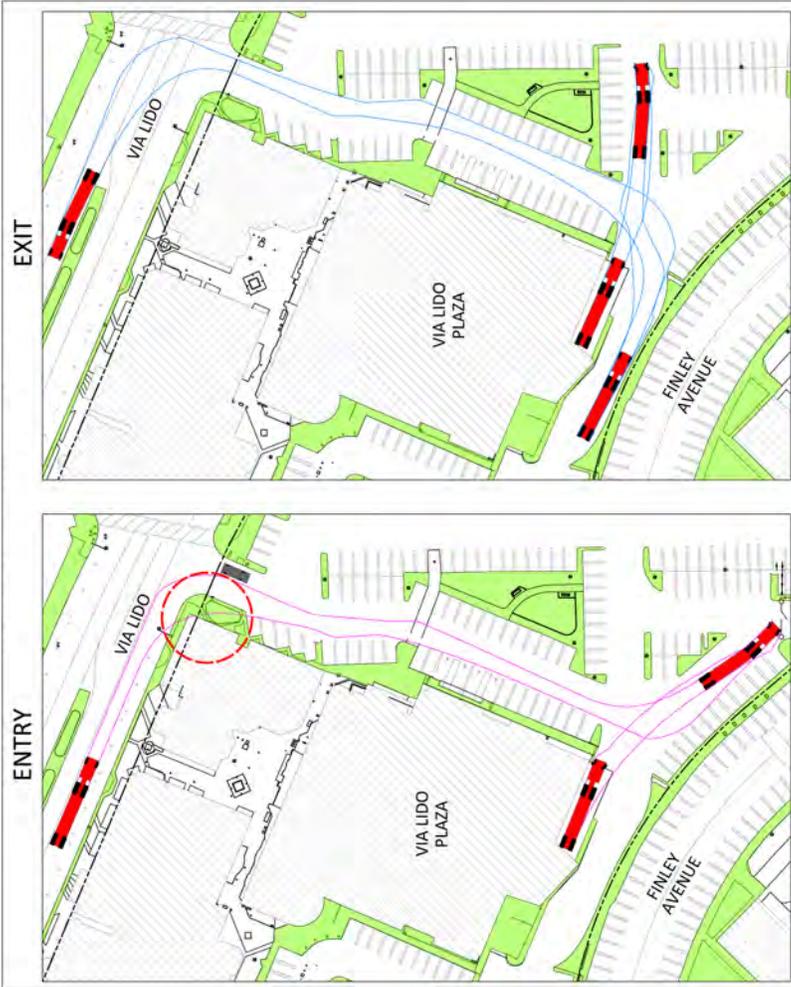
⁹⁹ *Id.* at 5.5-21.

ATTACHMENT A

VIA LIDO PLAZA: WITHOUT 32nd STREET ACCESS

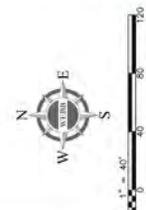
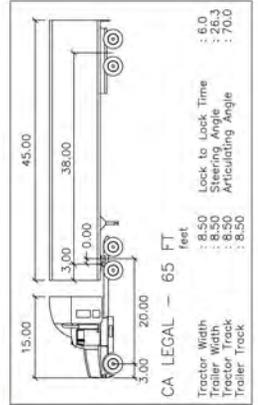
STANDARD CALIFORNIA LEGAL 65' TRACTOR-TRAILER

VIA LIDO ACCESS



LEGEND

- MEDIAN / ISLAND / SIDEWALK
- EXISTING BUILDING
- CA LEGAL 65' TRACTOR-TRAILER
- PASSENGER VEHICLE
- INBOUND VEHICLE PATH
- OUTBOUND VEHICLE PATH
- RIGHT-OF-WAY LINE
- CONFLICT AREA



ATTACHMENT B

June 12, 2014

Mr. Gordon E. Hart, Partner
Paul Hastings LLP
55 Second Street, Twenty-Fourth Floor,
San Francisco, California 94105

Subject: Review of Environmental Impact Report for Lido House Hotel

Dear Mr. Hart:

Translutions, Inc. (Translutions) is pleased to present this letter summarizing our findings from the review of the Draft Environmental Impact Report (EIR), the underlying Traffic Impact Analysis (TIA), and Parking Study for the proposed Lido House Hotel in the City of Newport Beach.

General Comments

1. We recognize that City policy emphasizes the avoidance of overbuilding traffic infrastructure to respond to periods of peak beach traffic. The Circulation Element of the General Plan states, "Summertime beach traffic has been a challenge for Newport Beach since the 1920's. During June, July and August, weekend traffic near the beach and harbor is substantially higher than typical spring/fall ("shoulder season") or winter conditions. Volumes on impacted roadways generally increase by almost 30 percent, but summertime beach traffic occurs at different times than the typical weekday business or school related traffic during most of the year. The two locations with weekend volume increases of more than 30 percent during the summer are Newport Boulevard south of Coast Highway (75 percent) and Balboa Boulevard east of 20th Street (75 percent) on the Peninsula". (*Newport Beach General Plan, Circulation Element at 7-3 "Circulation Element"*). The Circulation Element also states that "This Circulation Element continues longstanding Newport Beach policies of using the shoulder season for transportation planning, sizing the circulation system to meet the needs of City residents and businesses, and maintaining the character of the community. While these policies may prevent the City from achieving a desired level of service at all locations at all hours, they also protect Newport Beach from building oversized roads to serve weekend summer beach traffic or traffic generate outside of our borders and our control. Instead, policies in this Element encourage improvements to the regional system that will provide more capacity outside Newport Beach and reduce the number of through travelers that drive on our local streets". (*Circulation Element at 7-3 to 7-4*). That said, the City collecting weekday traffic information ignores the fact that peak Project traffic and peak beach traffic may coincide on the weekends. Unlike the traffic generated by businesses or schools, hotels generate approximately 18 percent more traffic on Saturdays than they do during the week (10.5 trips on Saturday compared to 8.92 for a weekday). Likewise, on Saturdays, the p.m. peak hour of traffic generation for a hotel during a weekend is 0.87, whereas for weekdays it is 0.74, again an increase of about 18 percent. These trip generation numbers are based on the Institute of Transportation Engineers' *Trip Generation*, 9th Edition, the same source used for trip generation calculations in the TIA. The Circulation Element recognizes that the Project area sees some of the highest increases in summertime weekend traffic. (*Circulation Element at 7-3*). Due to the primarily vacation-related use of the hotel, the Draft EIR could potentially understate impacts because of the higher trip generation and higher traffic volumes on the adjacent streets. Unlike summer beach traffic or traffic generated by through travelers which are generated by other Cities, the City has the ability to exercise some measure of control over a City-led Project that will generate traffic within the City's borders. Moreover, traffic at the adjacent Via Lido Plaza is highest during weekends, which makes it even more important for weekend traffic ramifications of the Project to be analyzed, particularly at the intersections of Newport Blvd. and Via Lido, Finley Ave., and 32nd Street.
2. The Draft EIR makes the statement that the alley connection to Via Lido Plaza has been historically gated (*Draft EIR at 5.5-40*). In fact, the gate was installed in the year 2000. In addition, truck drivers are able to open the gate for deliveries. The implied meaning that the connection is rarely used is incorrect.
3. Further, in Section 8, the Draft EIR states that the project would not "Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)" (*Draft EIR at 8-7 to 8-8*). This

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finding is true only if one focuses narrowly on the Project. When adjacent properties are considered, closing the alley used for deliveries to the Via Lido Plaza will significantly impact the safety of visitors to the retail center since the turning radii at the other entrances to the existing shopping center do not allow safe turning of trucks. Keeping the alley connection to Via Lido Plaza open will help alleviate this condition.

8-38

4. The Draft EIR finds that the project would not result in inadequate emergency access. (Draft EIR at 5.5-40 to 5.5-41). While true for the Project itself, emergency access to the Via Lido Plaza will be severely affected. Keeping the alley connection to Via Lido Plaza open will help alleviate this condition.
5. The Draft EIR states "Daily and peak hour count sheets are provided in Appendix 11.3" (Draft EIR at 5.5-6). However, daily count sheets are not included in the Traffic Analysis in Appendix 11.3.
6. The Traffic Impact Study analyzes p.m. "peak hour" traffic from 4 p.m. to 6 p.m., (Draft EIR at 5.5-6) when actual conditions suggest that peak p.m. traffic occurs at 2 p.m. Due to the traffic patterns in the City of Newport Beach, and due to the absence of daily count data, an analysis of PeMS data for SR-55 near 22nd Street was conducted to verify accuracy of information provided in the traffic analysis. The PeMS data shows the following:

8-39

8-40

Hour	Flow (Veh/Hour)	Data Quality	
		# Lane Points	% Observed
06/03/2014 14:00	3,572	48	83.0
06/03/2014 15:00	3,538	48	100.0
06/03/2014 16:00	3,452	48	100.0
06/03/2014 17:00	3,366	48	100.0
06/03/2014 18:00	3,022	48	100.0
06/03/2014 19:00	2,731	48	100.0
06/04/2014 14:00	3,622	48	100.0
06/04/2014 15:00	3,542	48	100.0
06/04/2014 16:00	3,526	48	100.0
06/04/2014 17:00	3,356	48	100.0
06/04/2014 18:00	2,913	48	100.0
06/04/2014 19:00	2,636	48	100.0
06/05/2014 14:00	3,522	48	100.0
06/05/2014 15:00	3,486	48	100.0
06/05/2014 16:00	3,522	48	100.0
06/05/2014 17:00	3,240	48	100.0
06/05/2014 18:00	2,892	48	100.0
06/05/2014 19:00	2,836	48	100.0

8-41

The above table shows that the p.m. peak hour for Newport Beach does not occur during the traditional peak hour of 4:00 to 6:00 p.m. The analysis uses trip generation rates for "peak hour of adjacent street traffic" but potentially does not analyze peak hour of adjacent street traffic. Please provide daily count data for streets in the vicinity of the project to identify peak hours and revise analysis for the actual peak hour based on daily segment counts to disclose impacts during the actual peak hour.

Intersection Capacity Utilization (ICU) Analysis:

1. Table 5.5-16: Several locations show that the “without project” ICU is higher than the “with project” ICU. Upon review of the LOS worksheets, it appears that the traffic volumes under “with project conditions” are less than the traffic volumes under “without project conditions.” Please explain. **8-42**
2. A comparison of Tables 5.5-19 and 5.5-20 shows that the delay under General Plan conditions is less than that for 2018. Is the traffic analysis expecting a reduction in traffic volumes between 2018 and General Plan Buildout? Please explain. **8-43**

Highway Capacity Manual (HCM) Analysis

1. **Peak Hour Factors:** The analysis using HCM methodology does not include Peak Hour Factors (PHF), resulting in the use of traffic counts that are artificially low and not reflective of the actual peak analysis required by Caltrans. A review of traffic counts shows that several locations have PHFs of less than 0.95 for the whole intersection. Essentially, the analysis discounts traffic volumes by more than 5% in the analysis. Please note that Caltrans recommends the use of observed peak hour factors for existing and near term scenarios and recommends the use of 0.92 from the Highway Capacity Manual when existing peak hour data is not available or for future analyses when the existing PHFs are less than 0.92. The change in PHF could change an intersection from satisfactory to unsatisfactory operations. **8-44**
2. **Pedestrian Crossing Time:** The HCM analysis does not provide minimum green times. While the allocation of green time to the major streets allows enough time for pedestrians to cross the minor streets, the allocation of green time to the minor street movements do not allow pedestrians enough time to cross the major streets. For example, at the intersection of Orange Street/W Coast Highway, the time allocated for Orange Street is 7%, or less than 7 seconds since the cycle length is 100 seconds. W Coast Highway has seven lanes (including the one right turn lane) at that intersection. Based on the *California Manual of Uniform Traffic Control Devices 2012 Edition (MUTCD) FHWA's MUTCD 2009 Edition* as amended for use in California, Chapter 4-E, using a pedestrian walk speed of 3.5 feet per second is recommended. For pedestrians to cross safely, the minimum time required to safely cross W Coast Highway at the intersection of Orange Street/W Coast Highway is 24 seconds. The minimum green time should be at least 28 seconds for the minor street movements. This will change the findings of the Draft EIR since less time will be allocated to the major movements and could result in unsatisfactory traffic operations for the intersections. The lack of minimum green time and an allocation of less than the time needed for safe pedestrian crossing was noticed in multiple intersections. **8-45**
3. **Reported LOS.** HCM 2000 states “*A critical v/c ratio greater than 1.0 indicates that the overall signal and geometric design provides inadequate capacity for the given flows*”, and recommends that additional analyses over longer time periods be conducted. HCM 2010 automatically reports LOS F for any intersection where the v/c is greater than 1.0. Here, the Draft EIR and Traffic Impact Study incorrectly report LOS E at several locations where the V/C ratios are higher than 1.0. For example, under General Plan conditions, at the intersection of Newport Blvd (NS) / W Coast Hwy (EW), the delay is 76 seconds when the v/c is 1.177 (*Traffic Impact Study, Appx. G at GP+P AM at 5-1*). This is even more erroneous at the intersection of Newport Boulevard (SR-55)/19th Street where the reported LOS is LOS D when the V/C ratio is 1.041 (*Traffic Impact Study, Appx. G at GP+P AM at 9-1*). Since the demand is higher than the available capacity, it is counterintuitive that the intersection would operate at LOS E. It is recommended that the analysis be based on HCM 2010 instead of HCM 2000, or at the very least reporting as LOS F intersections where the v/c ratio is greater than 1.0. Correcting this analysis will result in additional impacts from the project. **8-46**
4. Under *Los Angeles Unified Sch. Dist. v City of Los Angeles* (1997) 58 Cal. App. 4th 1019, and *Communities for a Better Env't v California Resources Agency* (2002) 103 Cal.App. 4th 98, a project that results in an increase to an impact that already exceeds established thresholds of significance contributes to a cumulative impact. As a result of items 1-3 above, there will be findings of new cumulative impacts, if not direct project impacts, requiring a recirculation of the environmental document. **8-47**

Parking Analysis

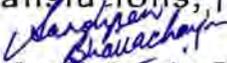
1. The proposed design appears to take away some parking spaces that are currently used by the Fire Department. Where will Fire Station employees and visitors to the Fire Station park? **8-48**

2. The analysis for L'Auberge Del Mar applied to Lido House Hotel is deceptive. The analysis claims that "Newport Beach code would require 795 parking stalls, but the highest observed parking need was 173 stalls." However, it is unclear if L'Auberge's ball room was in use at the time the survey was conducted. If the ball room was not in use, the application of Newport Beach Code would require 186 spaces, which is very close to the observed parking demand. Use of the ballroom would likely drive the parking need higher. It should be noted that the proposed Lido House Hotel does not include a large ball room, the major parking generator for the L'Auberge Del Mar hotel. **8-49**
3. The selection of Estancia La Jolla is similarly flawed because of the meeting rooms. If the meeting rooms were not being used during the parking surveys (or partially used), the parking demand would be approximately 297 per code, not as far off from the observed demand of 243 parked vehicles. **8-50**
4. Even if 90% of the rooms are in use with one car parked per room, the parking demand would be 117 cars. An additional 35 parked vehicles for the restaurant would lead to 152 parked vehicles, a shortfall in parking without even accounting for hotel staff. This doesn't even include parking needs from the spa and retail, when a stated project objective is to provide such services to residents as well as hotel guests (*Draft EIR at 7-2*). **8-51**
5. TRA 2: The mitigation measure requiring the development of a Parking Management Plan does not address these issues. Although the analysis states that weekend parking demand is higher, the parking restrictions are applied only to weekdays. **8-52**
6. One of the mitigation measures is "*Encourage on-site employee parking by providing free parking on-site...*" Since the project is under parked, employees parking on-site will only make the parking situation worse. **8-53**
7. It is likely that the parking will overflow onto the Via Lido Plaza and hamper operations of the retail center. What analysis has been done to prevent that from occurring? **8-54**

We hope you will find this information helpful. Should you have any questions, please don't hesitate to call me at (949) 232-7954.

Sincerely,

translutions, Inc.


Sandipan Bhattacharjee, P.E., AICP
Principal

ATTACHMENT C



June 13, 2014

Gordon E. Hart, Partner
Paul Hastings LLP
55 Second Street, Twenty-Fourth Floor,
San Francisco, CA 94105

Subject: **Comments to the Lido House Hotel Draft EIR:**

Dear Mr. Hart,

Firesafe Planning Solutions was asked to provide comments for the Draft EIR for the Lido House Hotel located in Newport Beach, CA. The comments are to address fire department operations, impacts, and access. Our comments are based on information received from Paul Hastings LLP, Newport Beach Fire Department Guidelines and Standards, Google Earth, and the Newport Beach Website, Projects / Environmental Document Download Page, which includes:

- Via Lido Plaza: Without 32nd Street Access Standard California Legal 65' tractor Trailer
- Lido House Hotel – Sheet 10, Open Space Diagram
- Lido House Hotel - Sheet 13, Fire Department Site Access Analysis
- Lido House Hotel - Sheet 14, Service Access Analysis
- Lido House Hotel Notice of Preparation 110413, Conceptual Site Layout

Based on the materials above we are providing you with these comments:

- Newport Beach Fire Department Guideline, C.01, is their standard for fire access, lanes, gates, and barriers. In this guideline they give a minimum roadway width of 20 feet with no parking allowed. To have parking on one side of the street it would have to be 32 feet wide and to have parking on both sides the street has to be 36 feet wide. The new layout of the hotel takes out the access to Fire Station #2 from the alley that goes from Finley Avenue to 32nd Street. This leaves access to the station only off of Via Oporto and 32nd Street. However, with parking allowed on Via Oporto, this street does not fit the guideline for street widths and should not be considered as the access road to the Fire Station #2 as indicated in the draft EIR. The fire station houses an engine, truck and paramedic unit. While the engine and truck can respond out of the front of the fire station, the paramedic unit must use the rear access. Via Oporto does not meet the city standards for a fire apparatus access roadway.

- With limited access to Fire Station #2, there will be a need for fire apparatus to back into the fire station from 32nd Street rather than pull straight through. This presents a safety issue as pulling through the station is a safer operation for the firefighters. This issue becomes even greater with the plan to narrow the street in front of the fire station. Additionally, were the apparatus bay door to fail in the down position, the engine and truck would need to be backed out of the rear of the fire station in order to be available for response. It is unlikely that this could be accomplished without moving all of the firefighter's private vehicles in order to make the required turns. If any of them are already on a call (paramedic unit runs a large number of calls without the engine or truck). It might be impossible for the unit to get out of the station and would be out of service until the firefighters returned or the apparatus bay door could be opened. Figure 1 shows the proposed and Figure 2 the existing access.



Figure 1



Figure 2

8-56

- Access to the commercial area off of Via Lido and bordering the hotel property to the north is a concern with the project as configured. Currently there is the ability to use the alley between Finley Avenue and 32nd Street to directly access the commercial site. By eliminating the alley access there will be only one way for fire apparatus to get into the parking lot due to the truck turning radius, and that is off of Via Lido. Access off of Finley Avenue through the parking lot would have to be changed in order to utilize that as access into the commercial site. The apparatus would have to make a 90 degree turn into the 14 foot drive aisle due to the center median at the Finley access. This assumes

8-57

that the apparatus enter from Newport Blvd. than traveling through the two gates within the parking lot between this point and the fire station.

8-57

- There will be a reduction of parking at the fire station from 15 to 7 stalls. Though this is not an emergency response issue it does affect the day to day functions at the station. There will not be enough on-site parking for the crew members with their current staffing configuration of 1 truck, 1 engine, and a medic unit. Off-site parking will be needed and will impact the surrounding area. This will be an even bigger issue at the time when one crew comes on duty to relieve another. The removal of parking stalls also does not allow for visitor parking to the station.

8-58

- The improvements on 32nd Street will include street trees which will reduce the “line of sight” view of the fire station for those traveling on 32nd Street and the view of traffic when entering or exiting the fire stations. While the apparatus apron is extended by the new plan, it does place obstacle in the view of the emergency vehicles that are not present today. Additionally, the street in front of the fire station today is essentially three lanes wide and makes turns into and out of the apparatus bays safer. This will be reduced to a two lane travel under the proposed project.

8-59

Firesafe has provided this analysis and concludes that the changes envisioned by the project will add additional response delays to the any emergency in the Lido Plaza area and will generally make the responses from Fire Station #2 more difficult and less timely. If you have any questions, please feel free to contact myself or my staff on this issue.

Sincerely,



Dana Kemper
Fire Protection Planner



8. RESPONSES TO COMMENTS FROM LIDO PARTNERS, DATED JUNE 13, 2014.

8-1 This comment contains introductory or general information. Please refer to Responses 8-2 through 8-59.

8-2 As described in the Draft EIR, project implementation would close an existing driveway across the project site that has previously been used by the public and occupants and invitees of the adjacent Via Lido Plaza shopping center including use by delivery trucks. The City holds fee title to the project site by virtue of a Corporation Grant Deed recorded in the Orange County Recorder's Office on or about March 11, 1946, as Instrument No. 11950 in Book 1404, Page 129 of the Official Records of Orange County, California. The project site includes a portion of a former alley established by Tract Map No. 907, recorded in Book 28, Pages 25 to 36, inclusive, of Miscellaneous Maps of Orange County, California. The portion of the former alley is referred to as the "32nd Street Alley" by the commenter.

Although the 32nd Street Alley was initially dedicated to the City for public use by virtue of Tract Map No. 907, on or about February 4, 1946, the City Council adopted Resolution No. 3280, which vacated the 32nd Street Alley. The Resolution Ordering Vacation was recorded in the Orange County Recorder's Office on or about March 11, 1946, as Instrument No. 11947 in Book 1400, Page 189 of the Official Records of Orange County, California. After the Resolution Ordering Vacation was recorded, all of the public alleys, streets and easements described therein reverted back to the owners of the underlying fee interests of the adjoining properties, which as to the 32nd Street Alley, is the City.

In 1964, and pursuant to Civil Code Section 813, the City Council for the City approved a Notice of Consent to Use Land ("Notice of Consent"), which was recorded in the Orange County Recorder's Office on or about March 19, 1964 as Instrument No. 17042 in Book 6969, Page 444 of the Official Records of Orange County, California. The purpose of the Notice of Consent was (and is) to advise users of these access roads that their use is consensual and revocable at the will of the owner of the City Property. Under Civil Code Section 813, the City may revoke the Notice of Consent at any time by recording a notice of revocation.

In December 2013, the commentator responded to the Notice of Preparation of a Draft Environmental Impact Report for the project by claiming that the project interfered with its easement rights to the 32nd Street Alley. In April 2014, the City filed a quiet title action in the Orange County Superior Court seeking a judicial determination as to the rights, if any, of Via Lido Plaza to use the 32nd Street Alley, if any. This action is currently pending. The City does not intend to revoke its consent or close the driveway until the City receives a judicial determination that Lido Partners has no right of access from the City's property, other than its permissive use that may be revoked by the City at any time.

The comment states that the project will:



“seriously impair Via Lido Plaza’s ability to contribute to the vibrant development of Newport Beach. If emergency vehicles and delivery trucks cannot access Via Lido Plaza, the property becomes much less attractive to potential tenants.”

Although project implementation will close access to Via Lido Plaza from the 32nd Street Alley, the project will not preclude access to Via Lido Plaza by emergency vehicles and delivery trucks.

Historically, the access point to Via Lido Plaza from the abandoned alley was gated and used by delivery trucks; however, access to the Via Lido Plaza is also provided from Finley Avenue and Via Lido. During preparation of the Draft EIR, the Newport Beach Fire Department evaluated the permanent closure of this access and determined that the closure would not impair or otherwise affect emergency access, as adequate fire access to Via Lido Plaza is provided from Newport Boulevard, Via Lido, and from onsite parking areas that would be accessed by the two existing vehicular driveways. Thus, impacts were determined to be less than significant in this regard. As to delivery trucks, once installed the gate was kept closed but opened for large truck deliveries associated with the former supermarket use. After the supermarket closed, the gate was left opened for all vehicular traffic and it remains open most if not all the time. The City acknowledges that large delivery trucks have accessed Via Lido Plaza from 32nd Street using the existing driveway across the project site for many years consistent with the Notice of Consent. The City disagrees with the comment that suggests that inadequate emergency vehicle and delivery truck access would result with project implementation. The Fire Department presently has access to Via Lido Plaza parking areas from Finley Avenue and Via Lido and would not rely upon the existing gated vehicular access location leading to a driveway across the project site to 32nd Street.

The City acknowledges that closure of the driveway will require that the operations at Via Lido Plaza facilitate delivery traffic at either of the other two driveways. The turning radius graphic included with the comment letter as Attachment A does show the difficulty of the largest delivery truck attempting to make a right turn from the #2 lane of eastbound Via Lido without using the entire driveway on Via Lido Plaza. In reviewing the access exhibit provided in Attachment A of the comment letter, the City acknowledges that access for the largest delivery truck from Newport Boulevard/Finley Avenue through the existing parking lot entry may not be feasible due to the design features installed by the owners of Via Lido Plaza. However, these design features do not preclude access by trucks that are smaller and more maneuverable. The City concurs that egress from the truck dock on the Via Lido property to Via Lido is viable, as shown in the upper middle view of the same referenced exhibit. However, the City respectfully takes exception to the entry analysis from Via Lido as shown on the truck turn study provided in Attachment A of the comment letter. The exhibit assumes a vehicle is present in the northbound exit lane of the Via Lido Plaza driveway, thereby restricting access. While a vehicle in this position would restrict access, the same condition exists while entering from 32nd Street to the existing driveway (refer to Exhibit 1, Existing Conditions, which was prepared by Fuscoe Engineering and is included in



Attachment 1 of this response³). If the assumption is that vehicles are in fact in this position, access to the Via Lido Plaza from both streets is not feasible even in the existing condition. This assumption is speculative and unrealistic. The comments to the Draft EIR also imply that current access is taken from the existing gated vehicular access location leading to a driveway across the project site to 32nd Street. Both the truck turn study provided in Attachment A of the comments letter, as well as the Exhibits in the Fuscoe Engineering study (refer to Attachment 1 of this response), show that the truck envelopes encroach into the adjacent, opposing lane when entering from either Via Lido or 32nd Street. Fuscoe Engineering found no scenario where encroachment into the opposing lane would not occur in either the existing or proposed conditions, from either street. A more practical scenario is that there is no vehicle in the opposing lane, or if there is, a delivery truck would wait until the vehicle cleared the lane.

Entry access from Via Lido also appears to be an easier maneuver than using the 32nd Street driveway entry as it requires only a single backing maneuver (refer to [Exhibit 2A](#), [Ingress](#), which is included in Attachment 1 of this response) while the 32nd Street entry indicates a three point turn is required for access to the truck dock. As an alternate access scenario, Fuscoe Engineering also routed a truck from eastbound 32nd Street, north onto Lafayette Road and northwest onto Via Lido (refer to [Exhibit 2B](#), [Ingress](#), which is included in Attachment 1 of this response). This path provides access to the Via Lido property from the westbound left lane of Via Lido, avoiding entering Via Lido from Newport Boulevard. Access to the truck dock facility located in Via Lido Plaza is viable from Via Lido from either direction, and would provide easier truck movement on the Via Lido property than is possible by using the 32nd Street driveway as Fuscoe Engineering's analysis indicates that truck traffic can readily enter from Via Lido without interference. It should also be noted that scuff marks on the existing curb returns indicate that vehicle tires have rubbed the curb face in the past. If upon final design the City considers it necessary to address this minor access limitation from Via Lido, the existing driveway approach curb aprons would be improved to accommodate a larger radius using current City of Newport Beach standards as guidelines to provide additional room for maneuvering.

- 8-3 The comment indicates that a project that preserves emergency and delivery access for Via Lido Plaza to 32nd Street would lessen significant impacts and should have been considered as a project alternative. The comment speculates as to the ramifications of closing the driveway between Via Lido Plaza and 32nd Street by suggesting that closure would lead to urban decay. As analyzed in the Draft EIR, removal of this driveway would not result in inadequate emergency access. Additionally, delivery truck access to Via Lido Plaza is available from Finley Avenue and Via Lido Drive. The comment also states that a hotel development that preserves emergency and delivery access for Via Lido Plaza will create “synergies with Lido Village’s existing commercial centers” but provides no factual support for this assertion. This comment does not relate to an environmental impact. Rather, it

³ Fuscoe Engineering generated four sheets illustrating the existing condition, ingress travel for the proposed condition (two sheets) and egress travel for the proposed condition. The truck turning envelopes were generated using Transoft Solutions, Inc., AutoTurn Professional 3D, version 8.1. The turning envelopes were plotted on an orthographic, geo-referenced image and existing topographic survey information of the existing city hall site.



reflects the commentator's preference that the Via Lido Plaza delivery trucks pass through the City's property and ignores its effect on the hotel operations and guests.

As noted in the comment and in the Draft EIR, CEQA requires an EIR to analyze a reasonable range of alternatives that would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project. Only those impacts found significant and unavoidable are relevant in making the final determination of whether an alternative is environmentally superior or inferior to the proposed project. The impact analyses within the Draft EIR determined that the proposed project would not result in any significant and unavoidable impacts and all potential impacts were reduced to a less than significant level. The Draft EIR found that with mitigation, impacts to traffic/circulation and emergency access would be reduced to a less than significant level. Therefore, an alternative that preserved the existing gated vehicular access location leading to a driveway across the project site to 32nd Street was not conducted and is not required under CEQA. The Draft EIR notes that gated driveway access is not part of the proposed project.

The City acknowledges that an EIR needs to discuss a range of reasonable alternatives. (See, 14 Cal Code Regs §15126.6(a), (c).) However, an EIR that discusses a reasonable range of alternatives is not deficient simply because it excludes other potential alternatives from its analysis. (City of Maywood v Los Angeles Unified Sch. Dist. (2012) 208 CA4th 362; Cherry Valley Pass Acres & Neighbors v City of Beaumont (2010) 190 CA4th 316).

- 8-4 Refer to Responses 8-2, 8-3 and 8-31. The City has requested a judicial determination as to the Via Lido Plaza's right to access from the City's property. Until such a judicial determination is made, the City intends to exercise its rights to determine how its property is managed and used. Retaining the existing gated vehicular access location leading to a driveway across the project site to 32nd Street is not part of the proposed project. As analyzed in the Draft EIR, removal of this driveway would not result in inadequate emergency access. Additionally, access to Via Lido Plaza for vehicles and truck deliveries is available from Finley Avenue and Via Lido Drive. However, the City does not intend to revoke its consent or close the driveway until the City receives a judicial determination that Lido Partners has no right of access from the City's property, other than its permissive use that may be revoked by the City at any time.
- 8-5 Refer to Response 8-3 and 8-4, above. The Draft EIR determined that all potential impacts from the project would be mitigated to a less than significant level. CEQA requires an analysis of a reasonable range of alternatives that would reduce the significant effects of the project and attain the basic the project objectives. As there are no significant impacts associated with the proposed project, CEQA does not require the City to consider an alternative that preserved the existing gated vehicular access location leading to a driveway across the project site to 32nd Street.
- 8-6 The modifications to the 32nd Street access are shown in Exhibit 3-3, Concept Layout, on page 3-6 and are described in Section 3.0, Project Description, under the heading Vehicular Access



and Parking, on page 3-14. The closure of the existing gated vehicular access location leading to a driveway across the project site to 32nd Street is also indicated in Section 5.5, Traffic/Circulation, on page 5-5-22. The project description also explains that the Applicant has investigated the feasibility of including an access gate that would only be open to use by delivery vehicles to and from Via Lido Plaza. However, as explained in the project description, it is not under consideration as part of the project application and is not a component of this project.

As described in Response 8-1, the existing gated vehicular access location leading to a driveway across the project site to 32nd Street is not classified by the City as an alley or other roadway. Rather, the City provided for use of this area pursuant to a Notice of Consent that is subject to revocation by the City at any time. Therefore, as described in Section 5.5, Traffic/Circulation, of the Draft EIR, the proposed project would not require the closure of any public or private streets or roadways, but rather it does close a driveway that the City allows the public to use. The City consented to the public's use of the driveway in question in 1964 but this consent is a revocable and does not constitute a permanent right of access as suggested by the comment.

The comment inaccurately describes the City's position in the Complaint filed on April 7, 2014 (City of Newport Beach v. Lido Partners, No. 30-2014-00715029-CU-OR-CJC). In fact, Paragraph 14 referenced in the comment letter states:

In or around July 2013, the City began processing a proposal for the redevelopment of the City Property. The proposal contemplates the development of an upscale, boutique hotel on the former City Hall Complex. The proposal envisions that the City would lease the majority of the City Property for implementation of the development. While the proposed development will not interfere with Defendants' use of the Finley Easement, the continued use of the Disputed Area [by] Defendants (and their guests and invitees) may significantly impair or restrict the redevelopment of the City Property.

8-7 This comments notes that a third-party review has been conducted regarding emergency access. Please refer to Responses 8-8 through 8-11 below for detailed responses.

8-8 The need for the access between Finley Avenue and 32nd Street to directly access the commercial site was carefully evaluated by the Newport Beach Fire Department. Access is a critical concern to the fire department and the ability to access improved property in a manner that meets the minimum requirements of the California Fire Code is essential.

In this case, it should be noted that the alley access was not a condition of approval during the entitlement process for Via Lido Plaza. Adequate and code compliant access is currently available, and has been repeatedly provided over the years, through the parking areas accessed off of Finely Avenue and Via Lido or directly from these two streets as well as Newport Boulevard. As a practical point the alley access would likely never be used by Fire Station No. 2 personnel to access the commercial center. To do so would be to introduce unneeded and unnecessary response delays based upon the configuration of the respective



- sites. There will be no degradation in response time to the commercial center with this project's proposed changes.
- 8-9 Via Oporto was designed and constructed before Newport Beach Fire Department Guideline C.01 was established. As such, the access roadway is considered preexisting and non-conforming to today's standards. In the City of Newport Beach, many such roads exist; which is common throughout the state of California. City staff has been in active discussion with the Fire Department on this specific issue. Increasing the width of the travel lane for that portion of Via Oporto adjacent to Fire Station No. 2 is being considered. The distance traveled by any apparatus responding out of the North Bay to reach 32nd Street would be unchanged with the proposed modifications. Given no change in distance, there is no reasonable or measurable way to state that response times would change.
- 8-10 Fire Apparatus do not currently pull through the station; all apparatus back in. While apparatus door failure is always a possibility, the designs of such systems provide alternate methods to open and close apparatus doors in the event of a power outage of mechanical failure. This is true of every apparatus door located in any of the City's eight fire stations.
- 8-11 The proposed changes to the front of Fire Station No. 2 on 32nd Street are a welcomed improvement by the Newport Beach Fire Department. By realigning 32nd Street and extending the apron area in front of the station outward from the station towards 32nd Street, line of sight of oncoming traffic in both directions would be improved. This would result in increasing not only the safety of the responding crews, but also their visibility to oncoming traffic, which would in turn decrease and not increase, the response times out of the station. The intersection of 32nd Street and Via Oporto is uncontrolled and relies upon yielding traffic to allow fire apparatus to merge onto 32nd Street during an emergency response and the increased visibility of provided by the project will improve safety.
- 8-12 Refer to Response 8-2, above. The DEIR concludes that the impacts associated with the project, which contemplates no driveway access to Via Lido Plaza, would not significantly affect circulation in the area and impacts to traffic, parking, noise, air quality, GHG, and other impact areas would be negligible.
- 8-13 Refer to Response 8-2, above. Although a negligible amount of trucks and emergency vehicles may be rerouted, the volume would be minimal and would not create a significant impact to adjacent City streets and parking.
- 8-14 The Draft EIR analyzed project impacts associated with hazards due to a design feature in Section 8.0, *Effects Found Not To Be Significant*, and determined that there would be no impacts in this regard. Vehicular access to Fire Station No. 2 is proposed to occur from Via Oporto through a new curb cut and driveway and existing access on 32nd Street for Fire Station No. 2 would remain unchanged. The comment also notes that there is no traffic signal at the Via Lido Drive entrance. However, there is also no traffic signal at the 32nd Street project driveway either. Therefore, use of the Via Lido entrance would not create an additional disruption to traffic in the area. Also, refer to Response 8-2, above.



- 8-15 Fire Station No. 2 is located just east of the project site, along 32nd Street. The proposed design includes relocating some of the existing parking spaces along the west side of the building. These spaces will be removed and the spaces to the north of the building will be realigned to provide additional spaces. This has been carefully designed with the Newport Beach Fire Department, and has been determined to meet their needs. There would be no impacts to the Newport Beach Fire Department or surrounding parking. Furthermore, since the parking provided for the proposed site would result in no parking overflow, no off-site locations (i.e., Via Lido Plaza) would be impacted. Please also refer to response 8-16.
- 8-16 An analysis of project's consistency with the City's General Plan and Local Coastal Plan is provided within Section 5.1, *Land Use and Relevant Planning*, of the Draft EIR. As described in the Draft EIR, the project would include active parking management, including valet services in order to ensure adequate parking would be provided on-site to meet demand. The project would also be required to comply with Municipal Code Section 20.40.070, Development Standards for Parking Areas, which would ensure that adequate dimensions, clearances, and access are available for use of the parking spaces. The Land Use analysis within the Draft EIR found that the proposed project complies with the goals and objectives of the Coastal Act, Newport Beach General Plan, and Newport Beach Municipal Code. In addition, the project would be consistent with the Lido Village Design Guidelines.

The proposed project would not displace vehicle traffic onto adjacent City streets and parking would not be impacted. Additionally, due to the lack of routine vehicle use, closure of this driveway would also not result in increased traffic and noise impacts near pedestrian corridors in the Lido Village Design Guidelines. Fire Station No. 2 would continue to have access from 32nd Street with a new access provided from Via Oporto. In addition, the proposed project would maintain the existing vehicular access to Via Lido Plaza at Finley Avenue and Via Lido Drive.

The project modifications would not significantly impact traffic, circulation, or parking associated with Fire Station No. 2. The project's application materials were reviewed by the Newport Beach Fire Department, which determined that the project's design is acceptable.

- 8-17 Refer to Responses 8-2, 8-3 and 8-16, above. The proposed project would provide active parking management, including valet services in order to ensure adequate parking would be provided on-site to meet demand. The project plans include 148 parking spaces and can accommodate more than 152 spaces when necessary by parking additional cars in drive aisles subject to the City Traffic Engineer's approval of a valet operations plan that excludes general patron access to the parking area. The project would also be required to comply with Municipal Code Section 20.40.070, Development Standards for Parking Areas, which would ensure that adequate dimensions, clearances, and access are available for use of the parking spaces. Additionally, refer to Responses 8-2 and 8-3, above. The proposed project would not result in significant impacts to emergency access or preclude delivery truck access, and therefore, Via Lido Plaza would not need to make any physical changes to their site that would result in the removal of parking. The comment also suggests that Via Lido Plaza has a parking shortfall but in fact, Via Lido Plaza current surplus has a 20-space



parking surplus based upon City parking requirements and current uses while recognizing past permit history.

- 8-18 An analysis of project consistency with the City's existing land use plan and permitting ordinances is provided within Section 5.1, *Land Use and Relevant Planning*, of the Draft EIR. The Draft EIR specifically analyzes consistency with General Plan Policy LU 3.2. The proposed site layout, building architecture, and landscaping is planned to be consistent with the Lido Village Design Guidelines and the City's goals to revitalize Lido Village Master Plan.

The project would promote connectivity and enhance pedestrian access along Newport Boulevard and 32nd Street through public open space areas, pedestrian paths, and landscaped areas, providing a transition from Newport Bay to the Pacific Ocean. The pathway along Newport Boulevard would lead from the beach and the intersection of Newport Boulevard and 32nd Street to Finley Avenue, connecting with Lido Village.

- 8-19 This comment cites sections of the City's Municipal Code pertaining to planned development permits and site development reviews. The proposed project would comply with the City's Municipal Code and would be required to undergo all required site development review and obtain all applicable permits.

- 8-20 Refer to Responses 8-2, 8-3, 8-18, and 8-19 above. Via Lido Plaza is will remain accessible from Finley Avenue and Via Lido Drive. As analyzed in the Draft EIR and described above, elimination of the access to Via Lido Plaza via 32nd Street would not create a safety hazard. As set forth in the Draft EIR concludes, the project's impact, if any, on Via Lido Plaza is not an impact that is either significant or required to be analyzed or mitigated under CEQA. No evidence has been provided to support the commenter's assumption that the project will disadvantage West Marine or limit Via Lido Plaza's ability to host a grocery store or "other large-scale business that caters to growing residential use or would be attractive to hotel and beach guests." However, even assuming there was substantial evidence to support this assumption, in determining whether an environmental impact is significant, the question is whether a project will affect the environment of persons in general, not whether a project will affect particular persons. (*See, Eureka Citizens for Responsible Gov't v City of Eureka* (2007) 147 CA4th 357, 376; *Mira Mar Mobile Community v City of Oceanside* (2004) 119 CA4th 477, 492.)

- 8-21 Refer to Responses 8-2 and 8-3, above. Via Lido Plaza is will remain accessible from Finley Avenue and Via Lido Drive. As analyzed in the Draft EIR and described above, elimination of the access to Via Lido Plaza via 32nd Street would not create a safety hazard. As access to Via Lido Plaza from Finley Avenue and Via Lido Drive would remain, the Draft EIR concludes that the impacts of the project's physical changes (the closure of the access to Via Lido Plaza) are not significant and will not result in a loss of truck or emergency access. It may not reflect the operational preference of Via Lido Plaza, but it does not preclude such access. As such, it will not result in economic changes that will have impact on the environment



- 8-22 The weekday analysis contained in the traffic impact analysis is adequate as adjacent roadway traffic volumes are typically higher on weekdays than on weekends during the shoulder season analyzed and Saturday traffic for the hotel is not expected to be 18 percent higher than during the weekday. The 18 percent increase cited in Attachment B of the comment letter is incorrectly based on rates for trips generated per *occupied* room. These rates should only be utilized when occupancy rate information is available. When utilizing daily rates for trips generated per room, the Saturday trip generation is only about one-quarter percent higher than weekday trip generation (8.19 for Saturday compared to 8.17 for weekdays).

The weekday peak hour conditions analyzed in the traffic impact analysis for the shoulder season is consistent with City policy. As stated in Attachment B of the comment letter, City policy “emphasizes the avoidance of overbuilding traffic infrastructure to respond to periods of peak beach traffic” by utilizing the shoulder season (typical spring/fall conditions) for transportation planning. Analyzing and mitigating for beach traffic conditions would be contrary to City policy and may result in overbuilt transportation facilities that damage the character of the community.

The suggestion that the project results in traffic impacts that have the potential to interfere with the Finley Easement is speculative at best. In fact, the Finley Easement recognizes that the Finley Avenue driveway may be used by the public to access the Via Lido Plaza property. The Finley Easement also expressly reserved the City’s right to use the driveway for public street purposes.

- 8-23 The City of Newport Beach Traffic Phasing Ordinance defines the morning and evening peak hour periods as the four consecutive 15 minute periods from 7:00 a.m. to 9:00 a.m. (morning) and the four consecutive 15 minute periods from 4:00 p.m. to 6:00 p.m. (evening) with the highest traffic volumes. Accordingly, evening peak hour period traffic counts were collected from 4:00 p.m. to 6:00 p.m. and the four consecutive 15 minute periods with the highest traffic volumes were utilized in the traffic impact analysis.

The source data (in Attachment B of the comment letter) used to support a peak hour period occurring around 2:00 p.m. is based on data for a single location at SR-55 near 22nd Street. This data point is not representative of the City’s traffic patterns because:

- SR-55 at this location is not located within the City boundaries or the study area of the traffic impact analysis;
- The data presented is from June 3 through June 6, which is outside the shoulder season utilized for transportation planning in the City of Newport Beach;
- A single location may not be representative of the overall area; and
- SR-55 at this location is a freeway, which may experience different traffic patterns than non-freeway facilities comprising the study area.

- 8-24 The City had collected field counts between February and May as required by the Traffic Phasing Ordinance; however, as stated on page 7 of the traffic impact analysis (refer to [Appendix 11.3](#) of the Draft EIR), new peak period traffic movement counts were collected



in October 2013 because the project site (former City Hall Complex) was still occupied at the time the City of Newport Beach collected traffic counts between February and May. Utilizing the City collected traffic counts would not have been representative of existing conditions since the project site was no longer occupied by the City Hall Complex at the time the traffic study was prepared.

It should also be noted that the October 2013 traffic counts utilized for the traffic impact analysis are consistent with the intent of City policy to use the shoulder season (typical spring/fall conditions) for transportation planning (Newport Beach General Plan, page 7-3).

- 8-25 Table 5.5-16, Forecast General Plan Buildout With Project Conditions AM/PM Peak Hour Intersection LOS, of the Draft EIR summarizes the Intersection Capacity Utilization (ICU) and Level of Service (LOS) for General Plan buildout with project conditions. As noted in the comment, some study intersections are shown to experience a slight decrease in volume to capacity, or in other words an improvement in operations, with the addition of the proposed project.

This occurs because the General Plan buildout analysis accounts for buildout of the City of Newport Beach according to the General Plan Land Use designations. As illustrated on the City of Newport Beach General Plan Land Use Map and Zoning Map, the project site is designated and zoned Public Facilities (PF). For General Plan buildout without project conditions, the traffic impact analysis assumes the project site would have continued to generate trips similar to the former City Hall Complex. As shown in Table 5.5-14, Project Trip Generation Comparison, of the Draft EIR, the proposed 130-room hotel would generate fewer trips than the former City Hall Complex. Therefore, some of the study intersections are logically forecast to operate slightly better for General Plan buildout with project conditions due to the proposed 130-room hotel generating fewer trips than the former City Hall Complex.

Table 5.5-19, State Highway Forecast Year 2018 Cumulative With Project Conditions, and Table 5.5-20, State Highway Forecast General Plan Buildout Without Project Conditions AM/PM Peak Hour Intersection LOS, illustrate that the delay for General Plan buildout without project is generally greater than forecast cumulative with project conditions; however, there are six study intersections that do experience a decrease in delay. This can be attributed to the difference in methodologies for deriving forecast traffic volumes for cumulative with project conditions compared to forecast General Plan buildout conditions. The forecast cumulative with project conditions traffic volumes are developed by manually adding trips from background traffic growth, individual cumulative projects, and the proposed project to existing traffic volumes conservatively not accounting for any interaction between each of the cumulative growth components. The General Plan buildout without project conditions traffic volumes are based on the Newport Beach Traffic Analysis Model (NBTAM) which does take into account the interaction between future land uses, so it is possible for the traffic volumes at some of the study intersections in the General Plan without project conditions analysis scenario to be less than study intersection traffic volumes for the cumulative with project analysis scenario.



8-26 The *Guide for the Preparation of Traffic Impact Studies* (2002) is a general guide for statewide Caltrans policy which states that the Highway Capacity Manual methodology should be used to evaluate signalized intersections, but does not provide specific input parameters. The State Highway analysis has been prepared consistent with other traffic impact studies that have been approved by the City of Newport Beach. Furthermore, the Draft EIR was distributed to Caltrans for review and no comments were received.

8-27 As shown in Table 5.5-17, *State Highway Existing With Project Conditions AM/PM Peak Hour Intersection LOS*, of the Draft EIR, all existing State Highway study intersections are shown to operate at an acceptable Level of Service (LOS A, B, or C). Therefore, the traffic impact analysis is correct in identifying no significant traffic impacts related to existing deficiencies.

8-28 There is a distinction between deficient intersection operation and a significant impact. The impact thresholds and significance criteria established by the City of Newport Beach, City of Costa Mesa, and Caltrans agencies have been clearly defined in Section 5.5.3 of the Draft EIR. The agency-established thresholds of significance allow for situations where project traffic may contribute to a deficient intersection; however, the impact is not considered significant if the project contribution is below a certain threshold. As documented in the Draft EIR, the proposed project is not forecast to trigger any agency-established thresholds of significance for traffic impacts.

The 3303 and 3355 Via Lido residential project (Lido Villas project) is an approved project and is not included in the cumulative traffic analysis because implementation of the Lido Villas project would “result in a net decrease in the amount of traffic the project site contributes to area intersections and roadway segments, indicating that the project would result in a slight improvement to the performance of area intersections and roadway segments as compared to existing conditions” (*Mitigated Negative Declaration for the Lido Villas Residential Development* at page 5-106).

8-29 Daily counts were not conducted for the Draft EIR. Reference to daily traffic count worksheets is a typographical error on page 5.5-6 of the Draft EIR and should only refer to “peak hour count sheets”.

8-30 The southbound direction of Newport Boulevard at 28th Street is an unsignalized, stop-controlled intersection. The City of Newport Beach has no thresholds of significance for unsignalized intersections. Therefore, the project would not have a significant impact at the southbound Newport Boulevard at 28th Street intersection and the intersection was not identified for analysis.

8-31 As noted in Section 5.5, Traffic/Circulation, of the Draft EIR, the two similar sites surveyed were chosen because they were very similar to the proposed hotel and also in part because hotel occupancy information was available. The hotel occupancy at the time of survey for the L’Auberge Del Mar was at a minimum of 76 percent and the banquet areas were in use during the days surveyed. The Estancia La Jolla was at a minimum of 73 percent occupancy with the banquet areas in use during the times of surveys.



Hotel parking demand is sometimes determined as a number of parking stalls per hotel room. This can serve to determine an approximate parking need, especially for sites without a lot of additional uses, such as large banquet areas. For resort type hotels, there are often uses that operate semi-independently from the hotel rooms, such as the banquet facilities.

The parking analysis studied numerous resort hotels throughout Orange County and found that a room rate of 0.8 spaces per room is typically adequate. This peaks at approximately midnight, when room usage is at the highest. However, this 0.8 per room parking rate does not include banquet usage. If the spaces per room were to be raised to include the banquet usage, that would create an unnecessary parking need during the night and when banquet areas are not in use. Therefore, determining the number of parking spaces required per use, and the time of day needs is the most accurate way to determine the parking needs of the site, and to make sure there is not excess parking provided that is not necessary for the site and allows for efficient use of all stalls. Determining the parking need for each individual use is the most accurate way to predict the parking needs of the site. The banquet areas were in use at the time of the survey, and Stantec (the preparer of the Parking Study) was in communication with the hotels when choosing the weekend to count the parking, assuring a high usage weekend. The meeting spaces were also in full use. Both hotels have meeting rooms and event space, and both were in use during our counts. Specifically, the L'Auberge has a large ballroom, in addition to the other meeting and event space. The sample hotels have confirmed that during the surveys all spaces were in use with meetings, weddings, and special events.

Stantec calculated the parking needs for the hotel with one car per room and 35 parked cars for the restaurant, for a need of 152 parked vehicles. However, there is not a need for one car per hotel room. Neither of the hotels surveyed for this parking study, nor any of the previous resort hotels studied by Stantec staff have required more than 0.8 parking stalls per hotel room. For example, the City of Anaheim has approved numerous parking studies for resort hotels and determined that this rate is adequate. It is also noted that the spa and retail uses would require high parking demands, as a stated project objective is to provide services to residents as well as hotel guests. However, both of these facilities are recommended to provide parking at the rate indicated by the City code, during the hours when they are in use. The City code requirements are in place to provide the required number of parking spaces, and these numbers would be adequate to meet the needs of both hotel guests, along with visitors and residents.

8-32 Please refer to Responses 8-16 and 8-31.

8-33 Construction activities associated with the proposed project are described and analyzed throughout the Draft EIR, including in Section 5.5, *Traffic/Circulation*, Section 5.6, *Air Quality*, and Section 5.8, *Noise*. As described in the Draft EIR, demolition would involve removal of the former Newport Beach City Hall Complex. Demolition and project construction would require various pieces of off-road equipment including, bore/drill rigs, concrete/industrial saws, crawler tractors, off-highway tractors, rough terrain forklifts, rubber tired loaders, and tractors/loaders/backhoes during demolition; graders, excavators,



tractors/loaders/backhoes and rubber tired loaders during grading; pavers, rollers, and paving equipment during paving; cranes, tractors/loaders/backhoes, and forklifts during building construction; and air compressors during architectural coating. Assumptions associated with truck trips for demolition and soil hauling were based on the mass of buildings to be demolished and the earthwork requirements provided by the project applicant and included in the project plans.

An analysis of the demolished material is included in Draft EIR Section 5.10, *Hazards and Hazardous Materials*. As described in the Draft EIR, the potential for asbestos containing materials (ACM) and/or lead-based paints (LBPs) exists on-site. However, these impacts would be reduced to less than significant levels with the implementation of Mitigation Measures HAZ-1 through HAZ-5, which require compliance with National Emission Standards for Hazardous Air Pollutants (NESHAP) and other measures for the proper handling of demolished materials.

The comment identifies a discrepancy in the construction haul truck trips. Construction haul trips are based on various construction activities including demolished material export, soil import and export, material deliveries, etc. Construction truck trips are identified in Section 5.5, *Traffic/Circulation*, Section 5.6, *Air Quality*, and Appendix 11.4, *Air Quality/Greenhouse Gas Emissions Data*. The proposed project would still require the import of 7,379 cubic yards of soil. However, it would only require 922 soil hauling trips rather than 2,188 trips.

Fugitive dust associated with project construction is quantified and analyzed in Section 5.6.4 (Impacts and Mitigation Measures). Table 5.6-5, *Maximum Daily Pollutant Emissions During Construction*, depicts the fugitive dust emissions that would occur from project construction (including demolition, soil hauling, and earthwork activities). The maximum particulate matter concentration would be 10.72 pounds per day (lbs/day) for PM₁₀ and 6.68 lbs/day for PM_{2.5} in construction Year 1. Emissions in construction Year 2 would be lower than Year 1. Emissions in each year are well below South Coast Air Quality Management District (SCAQMD) thresholds of 150 lbs/day for PM₁₀ and 55 lbs/day for PM_{2.5}. Additionally, although the unmitigated particulate matter levels are below the SCAQMD thresholds, Mitigation Measures AQ-1 and AQ-2 are recommended to ensure compliance with SCAQMD rules and to reduce fugitive dust even further. Refer to Draft EIR Section 5.6, *Air Quality*, for a detailed discussion of all construction-related emissions including fugitive dust.

As described above, air emissions are analyzed in the Draft EIR and were determined to be less than significant. Construction activities were also analyzed in Section 5.8, *Noise*, and Section 5.5, *Traffic/Circulation*. Construction noise impacts were determined to be less than significant with adherence to the Municipal Code *Section 10.28.040* requirements and compliance with the recommended Mitigation Measure N-1. Mitigation Measure N-1 would reduce short-term construction noise impacts by requiring mobile equipment to be muffled and requiring best management practices for hauling activities. Construction traffic impacts were also determined to be less than significant with the implementation of Mitigation



Measure TRA-1. Mitigation Measure TRA-1 would minimize traffic and parking impacts upon the local circulation system through the implementation of a construction management plan. The construction management plan would include, but not be limited to the following measures: prohibit construction worker parking along local streets, identify appropriate haul routes to avoid traffic disruptions, and limit hauling activities to off-peak hours.

- 8-34 The comment incorrectly assumes the Draft EIR defers mitigation. In fact, the Draft EIR provides several verifiable mitigation measures with performance standards to ensure that all potential impacts (including demolition) are reduced to a less than significant level; refer to Response 8-34, above.

For example, as described above, all construction activities would be required to implement Mitigation Measure TRA-1, which requires a construction management plan that would include measures to minimize traffic and parking impacts upon the local circulation system. These measures would address various topics including traffic controls for street closures, routes for construction vehicles, hours for transport activities, and various others. As required by CEQA, this measure has a timing mechanism (i.e., prior to the issuance of any grading and/or demolition permits) and performance standards (i.e., Mitigation Measure TRA-1 requires the Construction Management Plan to address specific topics and include specific requirements/prohibitions).

Additional mitigation measures related to construction include Mitigation Measures AQ-1, AQ-2, N-1, HAZ-1, HAZ-2, HAZ-3, HAZ-4, HAZ-5, HWQ-1, HWQ-2, HWQ-3, and HWQ-4, among others. All of these measures specifically address the project and include timing and performance standards as required by CEQA.

- 8-35 Refer to Response 8-2, above. It should be noted that the turning radius graphic (included in Attachment A) does not analyze the turning radius of the existing gated access location at Via Lido Plaza via 32nd Street. The driveway entrance on Via Lido Drive has a larger turning radius than the existing gated access location at Via Lido Plaza via 32nd Street. As the radius from both entries are similar, removal of the driveway access to Via Lido Plaza via 32nd Street would not significantly affect access to Via Lido Plaza. Modification of the Via Lido Street access and removal of existing parking spaces would not be required as this access is similar to the access to Via Lido Plaza via 32nd Street.
- 8-36 Refer to Response 8-22, above. When utilizing daily rates for trips generated per room, the Saturday trip generation is only about one-quarter percent higher than weekday trip generation (8.19 for Saturday compared to 8.17 for weekdays). The weekday peak hour conditions analyzed in the traffic impact analysis for the shoulder season is consistent with City policy.
- 8-37 Refer to Responses 8-2 and 8-6, above. The discussion within the Draft EIR acknowledges that the driveway has been used for deliveries. Additionally, the description is accurate as the gate currently exists at this location.



- 8-38 Refer to Responses 8-7 and 8-2, above. During preparation of the Draft EIR, the Newport Beach Fire Department evaluated the permanent closure of this driveway and determined that closure would not affect emergency access, as adequate fire access to Via Lido Plaza is provided from Newport Boulevard, Via Lido, and private parking areas accessed by two existing vehicular driveways.
- 8-39 Refer to Response 8-2, above. The Newport Beach Fire Department determined that closure of the driveway would not affect emergency access.
- 8-40 Refer to Response 8-29 above. This reference will be corrected in the Final EIR.
- 8-41 Refer to Response 8-23, above. The traffic analysis was prepared in accordance with the City of Newport Beach Traffic Phasing Ordinance.
- 8-42 Refer to Response 8-25, above. The decrease in intersection capacity utilization (ICU) during with project conditions is due to the change in land uses, which would have fewer trips. Additionally, different methodologies were used for these forecast scenarios.
- 8-43 Refer to Response 8-25, above. The change in traffic volumes is due to changes in land uses and different methodologies.
- 8-44 Refer to Response 8-26, above. The Highway Capacity Manual methodology was used for signalized intersections; however this manual does not provide specific input parameters. The analysis was prepared consistent with other traffic impact studies that have been approved by the City of Newport Beach.
- 8-45 Refer to Response 8-26, above. The Highway Capacity Manual methodology was used for signalized intersections. The analysis was also prepared consistent with other traffic impact studies that have been approved by the City of Newport Beach.
- 8-46 Refer to Response 8-26, above. The Highway Capacity Manual methodology was used for signalized intersections, and the modeling is consistent with other traffic impact studies that have been approved by the City of Newport Beach. It should also be noted that the Draft EIR was distributed to the California Department of Transportation during the 45-day public review period, and no comments were received from that agency.
- 8-47 Refer to Response 8-27, above. There is a distinction between deficient intersection operation and a significant impact. As documented in the Draft EIR, the proposed project is not forecast to trigger any agency-established thresholds of significance for traffic impacts.
- 8-48 Refer to Response 8-16, above. The project modifications would not significantly impact traffic, circulation, or parking associated with Fire Station No. 2. The project's application materials were reviewed by the Newport Beach Fire Department, which determined that the project's design is acceptable.



- 8-49 Refer to Response 8-31, above.
- 8-50 Refer to Response 8-31, above.
- 8-51 Refer to Response 8-31, above.
- 8-52 As discussed in Section 5.5, *Traffic/Circulation*, of the Draft EIR, implementation of a Parking Management Plan (Mitigation Measure TRA-2) that includes restricted parking, time limit parking, parking guide signage, and addresses staff parking would ensure that parking is managed on-site, reducing potential impacts associated with parking supply during peak demand to a less than significant level. Furthermore, it should be noted that the parking management plan would apply at any times deemed necessary by the hotel and the City, likely including both weekends and weekdays. Refer to Response 8-17, above.
- 8-53 The comment indicates that employees parking on-site would make parking inadequate. The parking estimated includes all employees, as well as other users of the site. Therefore, employees are included in all parking calculations and estimates for uses at the site. The intent is to encourage employees to use these spaces, as they have been included when determining the parking count, and to make sure they are not parking at other locations off-site.
- 8-54 Refer to Response 8-32, above.
- 8-55 Refer to Response 8-9, above.
- 8-56 Refer to Response 8-10, above.
- 8-57 Refer to Responses 8-2 and 8-8, above. The project's application materials were reviewed by the Newport Beach Fire Department, which determined that the project's design is acceptable.
- 8-58 Refer to Response 8-16, above. The project modifications would not significantly impact traffic, circulation, or parking associated with Fire Station No. 2. The project's application materials were reviewed by the Newport Beach Fire Department, which determined that the project's design is acceptable.
- 8-59 Refer to Response 8-11, above.



Attachment 1 – Fuscoe Engineering Memorandum



Irvine
San Diego
Ontario
Los Angeles
El Centro
Danville

June 27, 2014

Mr. Anthony Wrzosek
Vice President, Planning & Development
R.D. Olson Development
2955 Main Street, Third Floor
Irvine, CA 92614

Re: Response to Comments to Lido House Hotel Draft EIR from Paul Hastings, LLP, Delivery Truck Access to Via Lido Plaza

Dear Mr. Wrzosek;

At the direction of R.D. Olson Development, Fuscoe Engineering to review comments received from Paul Hastings, LLP to the Lido House Draft EIR. Our review was limited to analyzing delivery truck access to the Via Lido Plaza property to the north of the proposed Lido House Hotel. Below is a summary of our study.

Fuscoe Engineering generated four sheets illustrating the existing condition, ingress travel for the proposed condition (two sheets) and egress travel for the proposed condition. The truck turning envelopes were generated using Transoft Solutions, Inc., AutoTurn Professional 3D, version 8.1. The turning envelopes were plotted on an orthographic, geo-referenced image and existing topographic survey information of the existing city hall site.

In reviewing the access exhibit, which appears to be prepared by Webb, we concur that access from Newport Boulevard/Finley Avenue through the existing parking lot entry is not feasible, even in its present configuration as shown on the truck turn study provided with the Paul Hastings, LLP comments. We also concur that egress from the truck dock on the Via Lido property to Via Lido is viable, as shown in the upper middle view of the same referenced exhibit.

We respectfully take exception to the entry analysis from Via Lido as shown on the truck turn study provided with the comments. The exhibit assumes a vehicle is present in the northbound exit lane of the Via Lido Plaza driveway, restricting access. While we concur that a vehicle in this position would restrict access, the same condition exists while entering from 32nd Street to the existing driveway (refer to Fuscoe's 'Existing Conditions' Exhibit 1). If the assumption is vehicles are in this position, access to the Via Lido property from both

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streets is not feasible even in the existing condition. The comments to the draft EIR imply that current access is taken from 32nd Street through the existing driveway. Both the truck turn study provided with the Paul Hastings, LLP comments and Fuscoe's exhibit, show that the truck envelopes encroach into the adjacent, opposing lane when entering from either via Lido or 32nd Street. Fuscoe found no scenario where encroachment into the opposing lane would not occur in either the existing or proposed conditions, from either street. A more practical scenario would not have a vehicle in the opposing lane. A delivery truck would simply wait until the vehicle cleared the lane.

Using the entry from Via Lido for ingress also appears to be a simpler maneuver than using the 32nd Street driveway entry. The entry from Via Lido required a single backing maneuver (refer to Fuscoe's 'Ingress' Exhibit 2A) while the 32nd Street entry indicates a three point turn is required for access to the truck dock.

As an alternate access scenario, Fuscoe also routed a truck from eastbound 32nd Street, north onto Lafayette Road and northwest onto Via Lido (refer to Fuscoe's 'Ingress' Exhibit 2B). This path provides access to the Via Lido property from the westbound left lane of Via Lido, avoiding entering Via Lido from Newport Blvd.

In summary, it is our opinion that access to the truck dock facility located on the Via Lido property is viable from Via Lido, and may be easier than using the 32nd Street driveway.

The Fuscoe study indicates truck traffic can readily enter from Via Lido without interference. However, scuff marks on the existing curb returns indicate that vehicles have scraped the curb face in the past. We would recommend improving the existing driveway approach curb aprons to larger radii, using current City of Newport Beach standards as guidelines to provide more room for maneuvering.

We hope that the information herein is beneficial. Please contact me if you have any questions at (949) 474-1960.

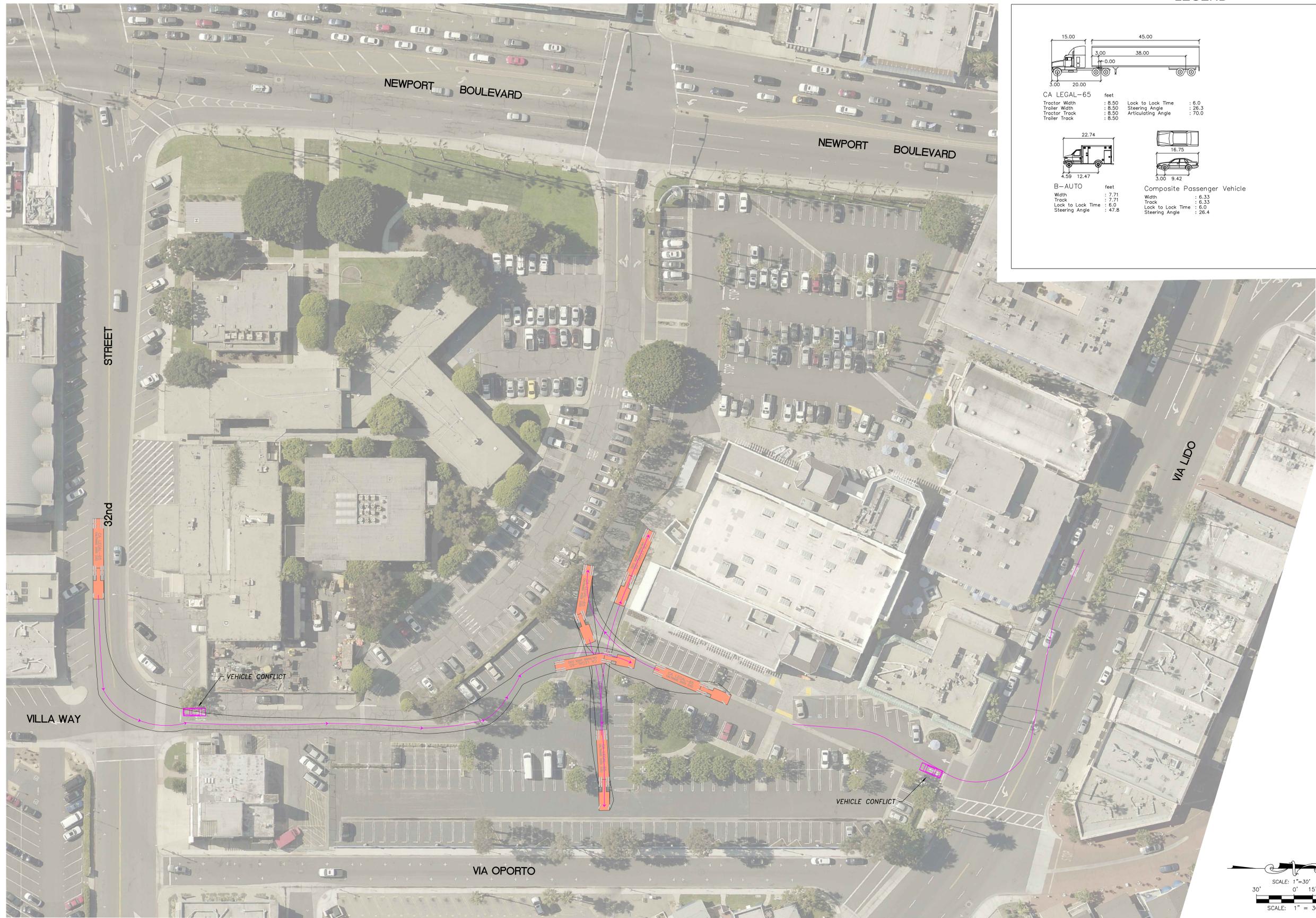
Sincerely,

FUSCOE ENGINEERING, INC.

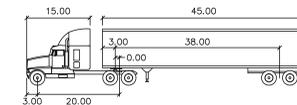
Mark Nero, P.E.
Project Manager

enclosures

TRUCK TURN STUDY - OLD CITY HALL & VIA LIDO PLAZA



LEGEND



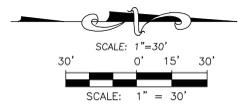
CA LEGAL-65 feet	
Tractor Width	: 15.00
Tractor Track	: 20.00
Tractor Offset	: 3.00
Trailer Length	: 38.00
Trailer Overhang	: 0.00
Tractor Overhang	: 3.00
Lock to Lock Time	: 6.0
Steering Angle	: 26.3
Articulating Angle	: 70.0



B-AUTO feet	
Width	: 7.71
Track	: 7.71
Lock to Lock Time	: 6.0
Steering Angle	: 47.8



Composite Passenger Vehicle	
Width	: 6.33
Track	: 6.33
Lock to Lock Time	: 6.0
Steering Angle	: 26.4



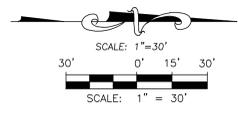
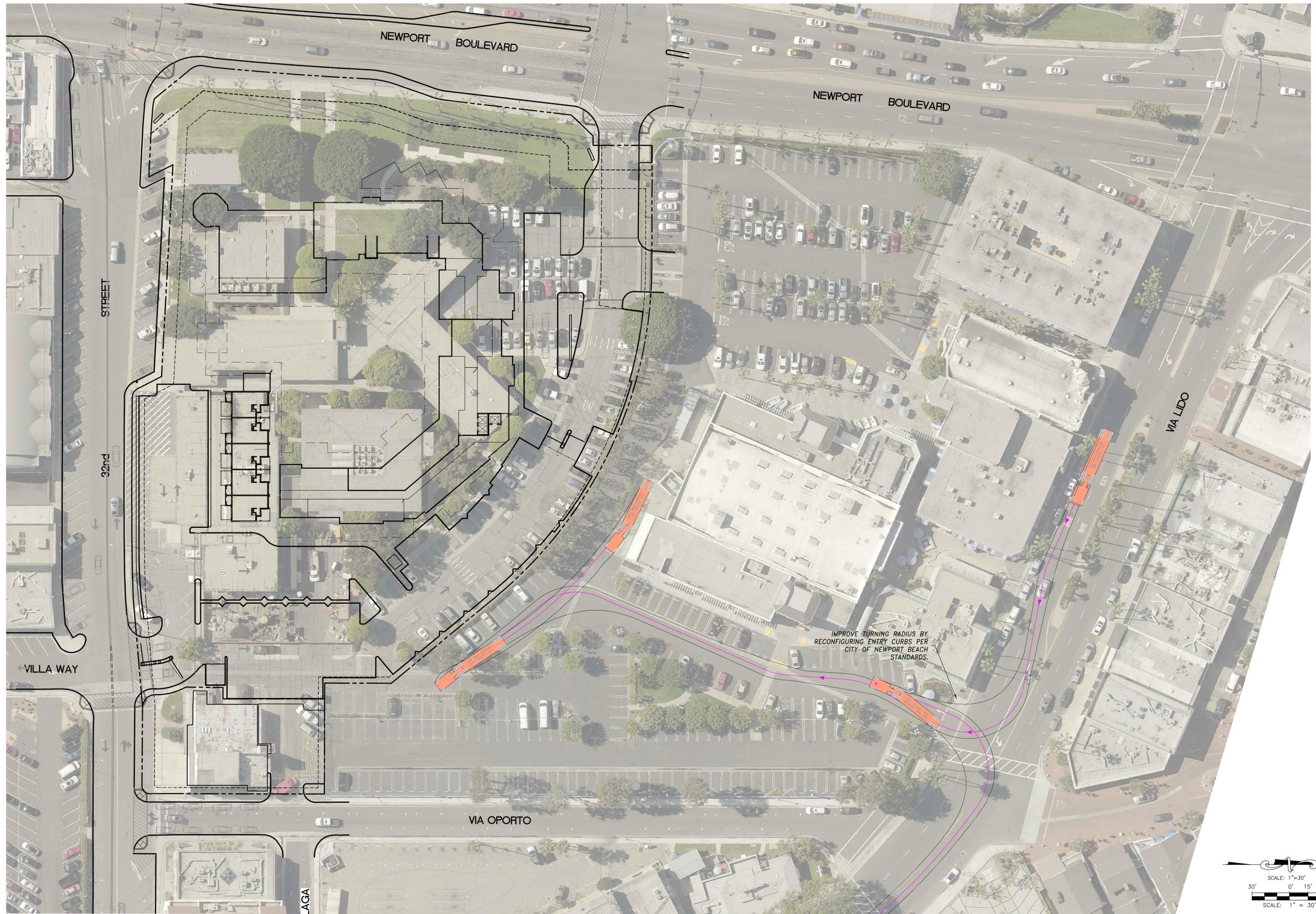
NO.	DATE	REVISION

TRUCK TURN STUDY
 of: **LIDO HOUSE HOTEL**
3300 NEWPORT BOULEVARD
NEWPORT BEACH, CALIFORNIA
 for: **R.D. OLSON DEVELOPMENT**

FUSCOE ENGINEERING
 16795 Von Karman, Suite 100, Irvine, California 92606
 tel 949.474.1960 • fax 949.474.5315 • www.fuscoe.com

DATE: JUNE 27, 2014
 SCALE: 1" = 20"
 DRAWN BY: M.N.
 CHECKED BY: M.N.
SHEET 1 OF 1

TRUCK TURN STUDY - LIDO HOUSE HOTEL & VIA LIDO PLAZA



NO.	DATE	REVISION

TRUCK TURN STUDY

of: **LIDO HOUSE HOTEL
3300 NEWPORT BOULEVARD
NEWPORT BEACH, CALIFORNIA**

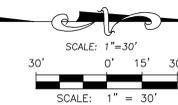
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TRUCK TURN STUDY - LIDO HOUSE HOTEL & VIA LIDO PLAZA

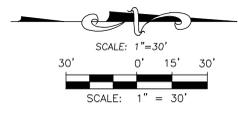
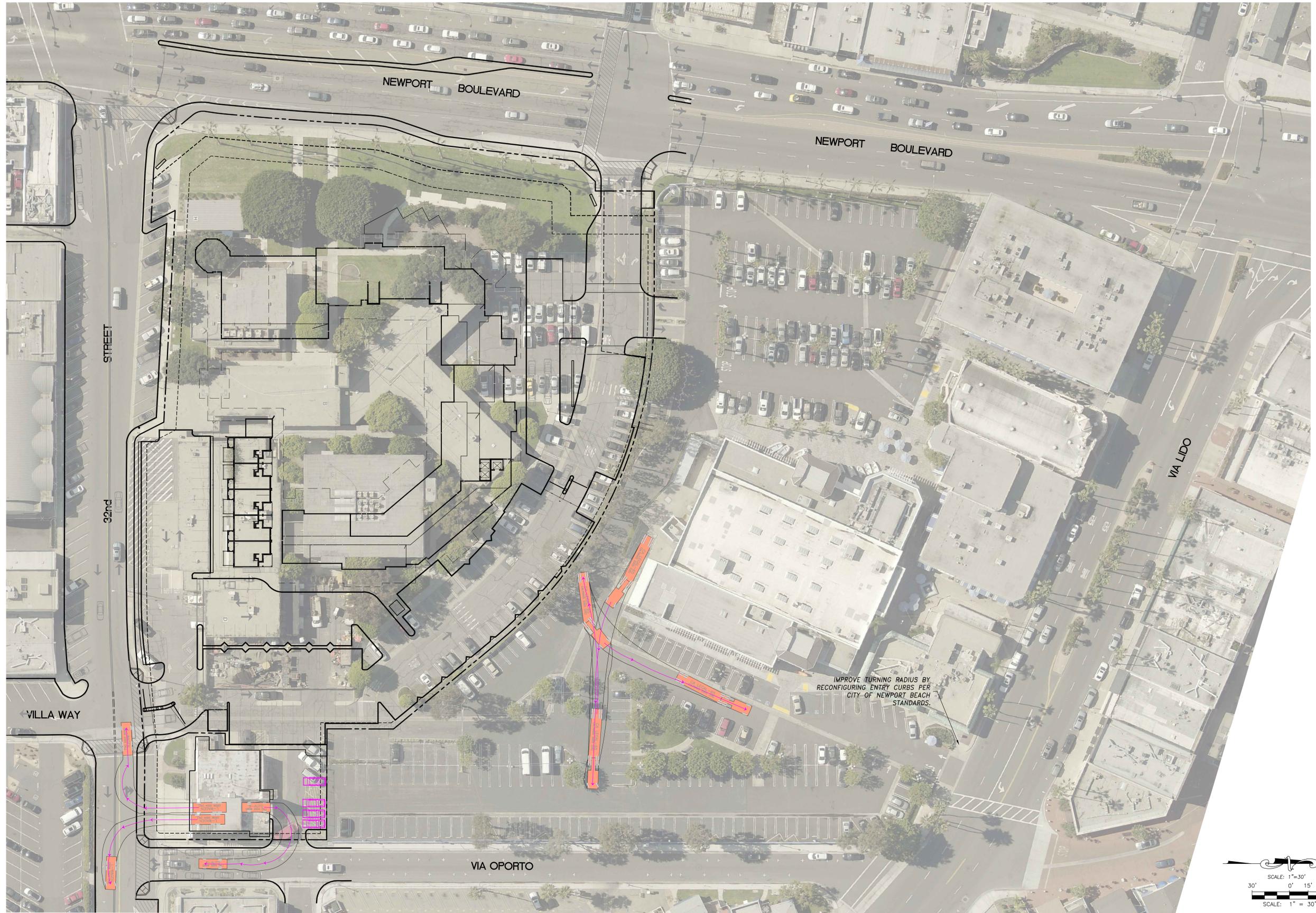


NO.	DATE	REVISION

TRUCK TURN STUDY	
of:	LIDO HOUSE HOTEL 3300 NEWPORT BOULEVARD NEWPORT BEACH, CALIFORNIA
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TRUCK TURN STUDY - LIDO HOUSE HOTEL & VIA LIDO PLAZA



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tel 949.474.1960 • fax 949.474.5315 • www.fuscoe.com

DATE: JUNE 27, 2014
SCALE: 1" = 20'

DRAWN BY: M.N.
CHECKED BY: M.N.
SHEET 1 OF 1

Comments on Draft EIR re: Lido House Hotel

Study Session June 5, 2014

Commenter – Kathryn H. K. Branman



The below comments were prepared by me in anticipation of delivering them to the Planning Commission and Staff at the Study Session on 6/5. Because of timing, I had to leave before I could speak. For this reason, I am submitting them to you now, with the request that they be included in the minutes as comments/questions from the audience.

I want to go on the record as objecting to the manner in which the June 5 Memorandum re: PA2013-217 and PA2012-031 was made available to the public. This document was not on the City website prior to the Study Session. Nevertheless, the slick Powerpoint presentation shared at the beginning of the Study Session showed these proposed Amendments were finalized well in advance and should have been made available to the general public in time for the public to read, understand and comment on them at the 6/5 Study Session. To the uninitiated, this looks like deliberate obfuscation and I want to register my objection to this behavior by City staff and the Planning Commission.

9-1

Zoning:

- 1. Why has the zoning not been changed? This was recommended and is necessary to go forward with the hotel project. It is still zoned "public facilities". **9-2**
- 2. Why is there still a reference to "mixed use/residential or hotel". **9-3**
- 3. Mixed use/Residential is strongly opposed by the community. We continue to oppose any persistent reference to this language. **9-4**
- 4. The EIR has internal inconsistencies in this respect which need to be corrected after the zoning is changed. **9-5**
- 5. If LHH is not the project then we want another hotel to be the project – not some mixed use or residential use. **9-6**
- 6. Why has the Coastal Land Use Plan not been amended at this juncture? **9-7**
- 7. Has the City's failure to deliberately pursue these zoning changes contributed to the delays we seem to be seeing (completion now pushed to 2018)? Forecast should be 2017. **9-8**

Goals & Objectives:

- 1. What is the reference to "Assembly"? If this contemplates events such as weddings at the hotel, then that language, like "special event opportunities" should be used. If other special events, those should be identified by the hotel. **9-9**
- 2. What is meant by the "extended stay" identification for suites and villas? The public strongly opposes the concept of a residential use in connection with the hotel. A guest **9-10**

can stay as long as they wish but marketing these suites or villas in this manner is not a use we want to encourage – leads in a direction that is undesirable.

9-10

3. Why is the goal a “viable” hotel? We want a hugely successful, money-making hotel that will operate in this location forever and give rise to other successful operations in nearby areas like Lido Marina Village.

9-11

Lido Design and Architecture:

1. Lido Village Design Guidelines are not regulatory and should not be set forth as such - do not belong here.

9-12

2. Need explanation of the view limit

9-13

3. Land use amendments cannot be combined with the ERI for this project – there is no Lido Village Master Plan.

9-14

4. Name of the hotel should not include the word, “house”. The imagery unfortunately connotes uses we are trying to eliminate, not the concept of “cozy”. The direction we should be going in is “resort”.

9-15

5. Ficus trees, if eliminated, could allow for shifts in food service set-up which would make for a more efficient hotel operation.

9-16

Alternative Uses to this Project:

1. There is no better use for this land than the hotel (and if not LHH then another high-end hotel should be identified). The reasons this project was selected need to be spelled out with particularity.

9-17

2. It is not environmentally better to reduce the density of the project. We need the rooms planned in order for the project to be successful. This reference should be eliminated.

9-18

3. The old City Hall had just as great a burden on parking and traffic with visitors, city-owned vehicles and employees as this hotel will have – perhaps even more.

9-19

4. If the Coastal Development Plan is pursued, this discussion will be rendered moot.

9-20

5. We do not need another park or public facility in this location. Such uses will not complement the Lido Marina Village revitalization.

9-21

General Observation: We need a better understanding of why the negotiation of the Ground Lease is taking so long. Perhaps the City should include a Right of First Refusal for Olson in the Lease. Including land use amendments in the DEIR needs to be explained.

9-22



9. RESPONSES TO COMMENTS FROM KATHRYN H. K. BRANMAN, DATED JUNE 11, 2014.

9-1 The Lido House Hotel Draft EIR and supporting materials were posted to the City's web site at the start of the public review period (April 29, 2014) at the following link:

<http://www.newportbeachca.gov/index.aspx?page=1347>

The memorandum and PowerPoint that is mentioned in the comment letter were merely summaries of the information and findings contained within the Draft EIR. No new information was presented that was not already available to the public.

9-2 In April 2012, the City Council directed staff to prepare necessary amendments of the General Plan, Coastal Land Use Plan, and Zoning Code to support re-use of the site for a variety of potential land uses. Initially, uses considered included commercial, residential, and/or civic uses that could include a community center, public plazas, a fire station and/or public parking. The proposed Lido House Hotel was not part of the project at that time.

Between June and September of 2012, the City had a market and economic feasibility analysis prepared for visitor accommodations. Ultimately, the City Council included visitor accommodations in the proposed land use plan and Zoning amendments and directed staff to issue a Request for Qualifications ("RFQ") to gauge what interest there was for development of either a mixed-use project or hotel development.

The City continued to process the proposed amendments separately from the RFQ process and prepared an Initial Study/Mitigated Negative Declaration (IS/MND) for the amendments without a development project. The amendments and IS/MND were considered by the Planning Commission in January of 2013. The Commission recommended approval of the proposed amendments; however, the City Council was not asked to take action on the amendments due to the approaching submission of development proposals. To date, no final action on the land use plan and zoning amendments has occurred.

The City received 15 statements of qualifications in response to the City's RFQ, and in January 2013, the City Council selected 6 teams (3 hotel developers and 3 mixed-use/housing developers) to prepare development proposals. Three proposals were submitted (2 hotels and 1 mixed-use project) in April of 2013, and in July 2013, after extensive public comment, the City Council selected R.D. Olson as the development team to pursue a hotel project. The City Council executed an Exclusive Negotiating Agreement with R.D. Olson and established an ad-hoc negotiating committee consisting of Council Members Hill and Selich. After that meeting, the ad-hoc committee, staff, and R.D. Olson conducted negotiations related to the terms of a long-term lease. Those negotiations are ongoing and have not been concluded. R.D. Olson submitted a Site Development Review and Conditional Use Permit applications consistent with their proposal and applicable Zoning Codes. The City decided to prepare an Environmental Impact Report (EIR) for the



- proposed hotel development and the proposed amendments rather than process the hotel proposal separately. The prior IS/MND is no longer being considered and the ground lease will be considered by the City Council after they take action to certify the Draft EIR and approve the proposed amendments and hotel applications (if appropriate).
- 9-3 Please refer to Responses 7-1 and 7-2.
- 9-4 This comment is noted. The project site is currently being considered for development of a 99,625 square foot hotel and is therefore analyzed within the Draft EIR. The project objectives support development of the site with the boutique hotel use, as proposed. Please refer to Responses 7-1 and 7-2.
- 9-5 Please refer to Response 9-4.
- 9-6 Please refer to Response 9-4.
- 9-7 Please refer to Response 9-2.
- 9-8 As discussed in Response 9-2, the proposed amendments were analyzed in the Draft EIR, and will be considered by the City Council along with the proposed project. As noted in the Draft EIR, the project's opening year would be 2018. The decision to postpone consideration of the proposed amendments to evaluate the amendments together with the proposed Lido House Hotel in the Draft EIR was necessary to comply with the California Environmental Quality Act. It also allows the City to more thoroughly evaluate potential environmental impacts of the overall project. Any delays in the ultimate redevelopment of the project attributable to the decision to prepare the Draft EIR were considered necessary. Completion of the project in 2017 is not considered likely due to typical processing times with the California Coastal Commission.
- 9-9 As noted on page 3-7 of the Draft EIR, the project would include a ballroom and meeting areas including a lawn area where periodic events (i.e., meetings, weddings, corporate functions, etc.) could occur.
- 9-10 The extended stay portion of the proposed hotel would be similar to other extended stay hotels. No long-term usage would be provided, and the extended stay guest suites and villas would not operate as a residence. Additionally, no form of fractional or time share ownership is proposed.
- 9-11 This comment is noted. As mentioned in Section 3.4, *Goals and Objectives*, in the Draft EIR, "viable" is in terms of the financial stability of the hotel operations. A hugely successful, money-making hotel would be presumed to be a commercially viable hotel.
- 9-12 Please refer to Response 7-4.



- 9-13 Coastal Land Use Plan Policy 4.4.2-1 establishes a 35-foot height limit for areas along the shore including the project site. The origins of the policy date back to the early 1970's when taller development trends were viewed threatening views of the bay and shore as well as a change in community character. Policy 4.4.2-1 along with other view protection policies provided in the General Plan only applies to public views from designated vantages. Private views are not protected. As discussed in Section 5.2, *Aesthetics/Light and Glare*, of the Draft EIR, implementation of the proposed project will have a less than significant impact on public views. Please also refer to Response 6-6.
- 9-14 The City decided to prepare an Environmental Impact Report (EIR) for the proposed hotel development and the proposed amendments rather than process the hotel proposal separately consistent with the California Environmental Quality Act. The preparation of the Draft EIR allows the City to more thoroughly evaluate potential environmental impacts of the overall project. Please also refer to Responses 7-1 and 7-4.
- 9-15 This comment refers to a suggested change to the name of the hotel. No environmental concerns are brought forth in this comment.
- 9-16 As discussed in the Draft EIR, the two existing large ficus trees along Newport Boulevard are considered City Landmark Trees, and are integrated into the project's design and will be protected in place during construction. The commenter suggests that removing these trees may facilitate food service operations.
- 9-17 This comment is noted and no specific environmental concerns are brought forth. Please also refer to Response 7-3.
- 9-18 This comment is noted and no specific environmental concerns are brought forth. Please also refer to Response 7-3.
- 9-19 As noted in Section 5.5, *Traffic and Circulation*, in the Draft EIR, the proposed project would not result in any significant impacts related to traffic and parking.
- 9-20 CEQA Guidelines 15126.6 requires an EIR to analyze a reasonable range of alternatives that would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project. Only those impacts found significant and unavoidable are relevant in making the final determination of whether an alternative is environmentally superior or inferior to the proposed project. The impact analyses within the Draft EIR determined that the proposed project would not result in any significant and unavoidable impacts and all potential impact were reduced to a less than significant level.
- 9-21 This comment is noted. Please refer to Response 9-21.
- 9-22 This comment is noted and no specific environmental concerns are brought forth. Lease negotiations are ongoing and have not been completed cannot be concluded before action



on the Draft EIR and action on the proposed land use plan and zoning amendments and the pending Site Development Review and Conditional Use Permit applications. Please also refer to Response 9-2.

From: Angel Lin [<mailto:alin@octa.net>]
Sent: Tuesday, June 17, 2014 5:10 PM
To: Campbell, James
Cc: Dan Phu
Subject: Lido House Hotel EIR Comments

Hi James,

Thank you for the opportunity to review Lido House Hotel Environmental Impact Report. I realized the comments were due Friday, June 13, I would greatly appreciate if you would consider the comments below:

Cooperative work with OCTA staff to determine optimal placement and design of bus transit facilities in and around the project area is recommended. The design of these amenities can be aesthetically incorporated into the project while satisfying accessibility standards set forth by the Americans with Disabilities Act (ADA). Additionally, since project construction could pose significant impacts to transit service, mitigation measures should be employed to minimize any potential disruptions in transit services. Please contact OCTA Stops and Zones at 714-560-5816 to coordinate any bus stop improvements or construction closures.

Thank You,

Angel Lin | Transportation Analyst | OCTA
alin@octa.net | 714.560.5493 direct | 714.560.5794 fax

The information in this e-mail and any attachments are for the sole use of the intended recipient and may contain privileged and confidential information. If you are not the intended recipient, any use, disclosure, copying or distribution of this message or attachment is strictly prohibited. If you believe that you have received this e-mail in error, please contact the sender immediately and delete the e-mail and all of its attachments.

10-1



10. RESPONSES TO COMMENTS FROM OCTA, DATED JUNE 17, 2014.

- 10-1 This comment pertains to the potential impacts to the existing Orange County Transportation Authority (OCTA) bus stop at Newport Boulevard and Finley Avenue. It should be noted that the existing bus stop facilities would not be removed or impacted during project-related construction and operational activities. Any work in the public right-of-way requires City Public Works Department review, and approval of an encroachment permit. When the permit involves or affects OCTA facilities, the City initiates a consultation process with OCTA. Should the existing bus stop facilities be enhanced to be more compatible with the proposed project, the City will consult with OCTA Stops and Zones group.



Jenelle Godges, Region Manager
Local Public Affairs
7333 Bolsa Avenue
Westminster, CA 92683

RECEIVED BY
COMMUNITY
JUN 23 2014
DEVELOPMENT
CITY OF NEWPORT BEACH

June 13, 2014

James Campbell, Principal Planner
City of Newport Beach
100 Civic Center Drive
Newport Beach, CA 92660
jcampbell@newportbeachca.gov

Re: Lido House Hotel

Dear Mr. Campbell:

Southern California Edison (SCE) appreciates the opportunity to provide review and comment on the Draft Environmental Impact Report (EIR) for the Lido House Hotel. The proposed project would develop a 130-room Lido House Hotel, which would also include meeting rooms, accessory retail spaces, a restaurant, lobby bar, rooftop bar, guest pool and recreational areas, and all required appurtenant facilities including, but not limited to on-site parking, landscaping, utilities, and adjoining public improvements. The hotel would be no larger than 99,625 gross square feet

SCE is the electrical service provider for the City of Newport Beach and maintains an electrical system that consists of a network of electrical facilities (transmission, distribution, and supporting appurtenances) within the City. SCE has not evaluated the electric service requirements for the proposed project. Based on the scope of the project, it may require upgrades to SCE's electric system and infrastructure. To initiate the service evaluation, SCE requests that the project developer contact our Local Planning Department at (714) 895-0244.

SCE has reviewed the Draft EIR for the proposed project and has no further comments. If you have any questions regarding this letter, please do not hesitate to contact me at Jenelle.Godges@sce.com or (714) 895-0271.

Regards,

11-1


Jenelle Godges
Local Public Affairs Region Manager
Southern California Edison Company



11. RESPONSES TO COMMENTS FROM SCE, DATED JUNE 13, 2014.

- 11-1 This comment is noted. As noted in Section 5.12, *Public Services and Utilities*, the proposed project is assumed to require 1,905 MWh of electricity per year. In comparison to SCE's annual electricity output, the project-related electricity demand would represent an insignificant portion of the existing demand. Due to the relatively small electricity demand of the proposed project, it is anticipated that SCE would be able to handle the new load(s) in both time and quantity. However, the Applicant will coordinate with Southern California Edison's (SCE) Local Planning Department to determine if any project specific upgrades (i.e. new or larger transformers or related equipment) would be required for the project.

1(415) 856-7000
gordonhart@paulhastings.com
buckendemann@paulhastings.com

July 16, 2014

RECEIVED BY
COMMUNITY
JUL 17 2014
DEVELOPMENT
CITY OF NEWPORT BEACH
77670.00004

VIA EMAIL: JCAMPBELL@NEWPORTBEACHCA.GOV
VIA UPS OVERNIGHT

Mr. James Campbell, Principal Planner
City of Newport Beach
Community Development Department
100 Civic Center Drive
Newport Beach, California 92660

Re: Comments on the Final EIR for the Lido House Hotel Project

Dear Mr. Campbell:

On behalf of Lido Partners, we submit the following comments on the Final Environmental Impact Report ("Final EIR") for the Lido House Hotel ("Project") proposed to be developed on the former City of Newport Beach ("City") City Hall property. In particular, this letter focuses on the City's responses to the package of comments and expert reports we submitted on behalf of Lido Partners on June 13, 2014.¹

I. INTRODUCTION AND SUMMARY

The City's responses suffer from the adverse effects of an obvious "rush job" to produce the document before the previously-scheduled July 17th Planning Commission hearing. In our experience, it is virtually unprecedented to hold a hearing on a Final EIR barely a month after the close of the public comment period on the Draft EIR for a controversial project. Even more egregious is providing the public and the Planning Commissioners only four business days to review the Final EIR before the hearing. The Final EIR was posted on the City's website Friday afternoon, July 11th, which we learned by checking the City's website—no direct notice was provided to us as a commenter that the City's response to comments was available. Frankly, this rush to judgment gives the impression that the City is acting more like an advocate on behalf of a project on its own property that would produce substantial lease income for the City than a neutral decision maker exercising its independent judgment to ensure that CEQA's legal requirements are being scrupulously followed.

Our June 13th comments demonstrated that the Draft EIR failed to analyze and mitigate for significant environmental impacts arising from the closure of an alleyway linking 32nd Street with Via Lido Plaza (the "32nd Street Alley"), and also failed to adequately analyze a number of other impacts unrelated to the closure of the 32nd Street Alley. As discussed below, the City's responses unwittingly reinforce our position that the EIR is riddled with serious errors. In addition, the responses disclose startling new information that all large delivery vehicle traffic to Via Lido Plaza will be re-routed to Via Lido, a busy street that provides the primary access to Lido Isle and its 1,800 residents, without providing any analysis of the significant impacts of this major change in traffic patterns.

¹ Lido Partners continues to stand by its comments submitted to the City on June 13, 2014. Any issues raised or not raised in this letter do not waive any of the serious concerns communicated in Lido Partners' June 13 letter.

12-1

Mr. James Campbell, Principal Planner
July 16, 2014
Page 2

In sum, the City's responses fail to provide the meaningful analysis required in response to specific evidence showing that the Project will have several significant environmental impacts not considered in the Draft EIR, thus jeopardizing the adequacy of the Final EIR. For these reasons, the City should correct the errors in the EIR, and recirculate it so the public has sufficient time to review and comment upon the significant new information raised in the Response to Comments. Specifically, the City has failed to provide a reasoned, good faith analysis of several issues, including but not limited to the following:

- The City's new information regarding its intentions with respect to the closure of the 32nd Street Alley in light of the pending litigation exacerbates the problem that the Project Description is not "finite, stable, and accurate."
- The City contends that Via Lido Plaza will have sufficient delivery access by using only the Via Lido driveway, despite acknowledging that turning safely into this driveway can be done only from the westbound lane of Via Lido. The responses ignore several key differences between Via Lido and the existing access from 32nd Street, however, and overlook that delays on Via Lido are more likely to be encountered and more likely to disrupt the surrounding community.
- The City's responses disclose for the first time that safe entry into Via Lido Plaza will require all large delivery trucks to turn left from Newport Boulevard onto 32nd Street, then left again at Lafayette, then left again at Via Lido, and then left again into Via Lido Plaza. Because the City has never analyzed the significant traffic impacts of this circuitous route with regard to the Lido Isle community, this new information requires the recirculation of the EIR.
- The City's inadequate responses to Lido Partners' comments on the Lido House Hotel Traffic Impact Analysis ("Traffic Impact Analysis") and Parking Study for the Lido House Hotel ("Parking Study") confirm that both such analyses are fatally flawed.
- Regarding the insufficiency of emergency access to Via Lido Plaza, the City simply refers back to prior, non-specific, and unattributed discussions with the Newport Beach Fire Department, which supposedly previously assured the City that the Project would not significantly affect emergency access. The Response to Comments provides no evidence to support this conclusion, and fails to provide a reasoned analysis to justify rejecting the conclusions of the independent fire safety expert Firesafe Planning Solutions that were included with Lido Partners' comments to the Draft EIR.
- While a lead agency must evaluate comments on a draft EIR and prepare written responses disposing of any "significant environmental issue," the City improperly chose to ignore several of Lido Partners' comments that indicated serious deficiencies in the EIR's analysis.

12-1

II. THE CITY MUST PROVIDE A DETAILED, WELL-REASONED ANALYSIS IN RESPONSE TO SPECIFIC COMMENTS CRITICIZING A DRAFT ENVIRONMENTAL IMPACT REPORT

A lead agency must evaluate comments on a draft EIR and prepare written responses describing the disposition of any "significant environmental issue" raised by commentators. Cal. Pub. Resources Code § 21091(d). The requirement to respond to comments helps ensure that a lead agency "fully consider[s] the environmental consequences of a decision before it is made, that the decision is well

12-2

Mr. James Campbell, Principal Planner
July 16, 2014
Page 3

informed and open to public scrutiny, and that public participation in the environmental review process is meaningful.” *City of Long Beach v. Los Angeles Unified School Dist.*, 176 Cal. App. 4th 889, 904 (2009) (citations omitted).

The lead agency is required to provide specific responses when a public comment raises an objection about a specific environmental issue. 14 Cal. Code Regs. §§ 15088(c), 15204(a). “Such responses must include a description of the issue raised ‘and must particularly set forth in detail the reasons why the particular comments and objections were rejected and why the [agency] considered the development of the project to be of overriding importance.’” *Dunn-Edwards Corp. v. South Coast Air Quality Management District*, 19 Cal. App. 4th 519, 534 (1993) (citations omitted). “The requirement of a detailed analysis in response ensures that stubborn problems or serious criticism are not ‘swept under the rug.’” *Santa Clarita Org. for Planning v. County of L.A.* 106 Cal. App. 4th 715, 723 (2003) (citation omitted). Detailed responses must provide a reasoned, good faith analysis of the comment received, because “[c]onclusory statements unsupported by factual information” frustrate CEQA’s informational purpose and may render the EIR legally inadequate. 14 Cal. Code Regs. § 15088(c); see *Flanders Found. v. City of Carmel-by-the-Sea*, 202 Cal. App. 4th 603, 615-617 (2012) (invalidating EIR because of insufficient responses to comments and finding that the City’s “effort to conjure up reasons now is too late.”). Well-reasoned responses are particularly important when experts have submitted critical comments on a project. See *Berkeley Keep Jets Over the Bay Comm. v. Board of Port Commr’s*, 91 Cal. App. 4th 1344, 1367 (2001) (invalidating Final EIR where defendant Port “perfunctorily discredited” plaintiff’s expert without providing any contrary analysis).

12-2

III. THE CITY’S RESPONSE TO COMMENTS IS DEFICIENT AND FAILS TO FULLY CONSIDER THE PROJECT’S ENVIRONMENTAL CONSEQUENCES

A. The City’s Muddled Responses Regarding Its Intentions With Regard To The Closure of the 32nd Street Alley In Light Of The Pending Litigation Exacerbate The Problem That The Project Description Is Not “Finite, Stable, and Accurate”

In our June 13 comments, we accurately, and unequivocally, stated that “[t]he legal deficiencies in the Draft EIR . . . do not turn on whether a license or easement exists, and are distinct from the legal claims at issue in the litigation.” By contrast, the City’s responses regarding the relevance of the property rights disputed in the litigation are equivocal and confusing. Response 8-2 states, “[t]he City does not intend to revoke its consent or close the driveway until the City receives a judicial determination that Lido Partners has no right of access to the City’s property, other than its permissive use that may be revoked by the City at any time.” However, Response 8-4 states, “Until such a judicial determination is made, the City intends to exercise its rights to determine how its property is managed and used,” and then states that retaining access to the 32nd Street Alley is “not part of the proposed project.” Reconciling these statements is not easy, but the most logical conclusion appears to be that if the City loses its lawsuit and Lido Partners does not consent to the closure of the 32nd Street Alley, then the Project cannot be built.

12-3

However, given the fact that the original proposal for the Project did not assume the closure of the 32nd Street Alley, we find it difficult to believe that the developer and the City would not find a way to proceed with the Project if they were unable to close the 32nd Street Alley. Therefore, we think it is disingenuous, and inconsistent with CEQA’s public disclosure requirements, for the City to not disclose to the public how the Project would be modified if it loses its litigation and is unable to close the 32nd Street Alley.

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B. The City's Insistence That Via Lido Can Accommodate Large Truck Traffic Ignores the Obvious Differences Between 32nd Street and Via Lido

In several of its responses, the City acknowledges that large trucks cannot access Via Lido Plaza from the Finley Avenue entrance and justifies closing the 32nd Street Alley by suggesting that using the Via Lido entrance for delivery and emergency access will be just as convenient as the existing access from the 32nd Street Alley.² This assumption misunderstands several crucial differences between Via Lido and 32nd Street.

1. Via Lido Is A Much Busier Road Than 32nd Street

Via Lido is a busy street that is the primary thoroughfare and access point for the 1,800 people that live on Lido Isle. At the point of entrance into Via Lido Plaza, which lacks a traffic signal, Via Lido has five lanes of traffic, including a dedicated left turn lane, and must accommodate incoming and outgoing customer traffic to Via Lido Plaza and Lido Marina Village, the large commercial center to the north. There is also substantial pedestrian traffic there, including over the crosswalk at the conjunction of Via Oporto, Via Lido, and the entrances to Via Lido Plaza and Lido Marina Village. Any extra traffic or disruptions on Via Lido, particularly if large tractor-trailer delivery trucks are rerouted to Via Lido, have the potential to significantly impact a great number of people, including disrupting the nearby Via Lido/Via Oporto intersection used by City paramedic units and causing back-up issues at the Via Lido/Newport Boulevard intersection. 32nd Street, on the other hand, is a much less traveled, two lane side road, which is one of many reasons why the 32nd Street Alley works so well for large trucks pulling in and out of Via Lido Plaza.

12-4

2. Entering Via Lido Plaza From Via Lido is Much More Difficult Than Entering From 32nd Street

The City admits that it takes only a single car exiting Via Lido Plaza from the Via Lido driveway to completely block *all* large truck access to Via Lido Plaza.³ The City tries to sidestep this significant impact by building a strawman, noting that a vehicle exiting the 32nd Street Alley could also cause the same effect. But this ignores the reality that the Via Lido entrance is used heavily by shoppers and visitors, and is thus much more likely to be clogged with cars and pedestrians that will constantly restrict delivery access and cause trucks to idle in the middle of Via Lido for the time it takes the entrance to clear. On the other hand, even the City recognizes that, even after Project completion, the 32nd Street

12-5

² See, e.g., Final EIR at 2-51 to 2-54 (Response Nos. 8-2, 8-3); 2-56 (Response No. 8-14); 2-58 to 2-59 (Response No. 8-21).

³ Final EIR at 2-52 (Response No. 8-2); Final EIR, Attachment 1 at 1, Exs. 2A, 2B (hereinafter "Fusco Engineering Memo"). The City and Lido Partners also agree that large delivery vehicles could not use the Finley Avenue entrance to access Via Lido Plaza. See Final EIR at 2-52 (Response No. 8-2); Fusco Engineering Memo at 1. The City claims, however, that Finley Avenue does "not preclude access by trucks that are smaller and more maneuverable." Final EIR at 2-52 (Response No. 8-2). This Response misses the point, however. Via Lido Plaza's commercial tenants depend on delivery vehicles of all sizes, including large delivery trucks, to deliver anything from boats (West Marine) to foodstuffs (the several restaurant tenants). Putting aside whether wholesalers could even honor a tenant's request for a smaller delivery vehicle, the main loading dock in the rear of Via Lido Plaza is sized to accommodate the unloading of large delivery vehicles.

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Alley “lacks routine vehicle use,”⁴ therefore posing a much lower risk of creating significant traffic impacts from idled delivery trucks. The City’s argument that neither the Via Lido entrance nor the 32nd Street Alley has a traffic signal is similarly specious⁵—given the differences in configuration and use, the 32nd Street Alley requires no traffic signal to offer safe, regular access to Via Lido Plaza. In short, the City’s comparison of Via Lido and 32nd Street fails to offer any meaningful evaluation of the suitability of Via Lido for delivery truck access to Via Lido Plaza, where more traffic and longer wait times will lead to significant traffic impacts.

Assuming that an exiting vehicle eventually clears the Via Lido driveway, the City’s own consultant confirms that truck access from Via Lido will be disruptive and potentially unsafe. According to Exhibits 2A and 2B of the Fuscoe Engineering Memo, a truck traveling eastbound on Via Lido would need to swing into the left lane to make the right turn into Via Lido Plaza. Because the wide swings required to maneuver a large truck into position could tie up three lanes of traffic at once, resulting in an unsafe condition, this access can hardly be considered feasible or practical. While entering Via Lido Plaza from westbound Via Lido may be technically possible, a large truck would risk clipping a vehicle in the opposite left-turn lane that was waiting to turn into Lido Marina Village.⁶ Under both scenarios, access to Lido Marina Village to the north of Via Lido Plaza is impacted.

The City also admits that the Via Lido entrance is too narrow, and that the curb bears existing scuff marks where vehicles have failed to execute the turn with sufficient clearance.⁷ Exhibits 2A and 2B to the Fuscoe Engineering Memorandum confirm the hazards presented by this narrow entrance, showing that a large truck entering from Via Lido would clip the valet kiosk and any car parked in the first or last parking stalls that front the eastern face of Via Lido Plaza. The City’s own experts therefore contradict the City’s assertion that “Via Lido Plaza would not need to make any physical changes to their site that would result in the removal of parking.”⁸ Although the City proposes improving the Via Lido entrance and curb to accommodate the entry of larger vehicles,⁹ it offers no binding mitigation measure to mitigate this traffic and circulation impact to a level of less than significant.

Finally, even assuming that a large delivery vehicle manages to enter Via Lido Plaza from Via Lido, there are additional impacts associated with accessing Via Lido Plaza’s loading dock. While the City claims that accessing the loading dock from Via Lido is preferable because it requires a “single backing maneuver,”¹⁰ this ignores the fact that entry through Via Lido places truck traffic directly in front of the Via Lido Plaza storefronts (including anchor tenant West Marine), clogging the parking lot and placing a hazard between customers and their vehicles. Moreover, the current traffic patterns within Via Lido Plaza have worked without any necessary mitigation for over 50 years; for the City now to suggest that terminating the 32nd Street Alley access will somehow improve circulation is nonsensical.

⁴ Final EIR at 2-57 (Response No. 8-16).

⁵ Final EIR at 2-56 (Response No. 8-14).

⁶ Fuscoe Engineering Memo, Exs. 2A, 2B.

⁷ Final EIR at 2-53 (Response No. 8-2). The City also appears to confuse the concepts of driveway width and turning radius. See Final EIR at 2-64 (Response No. 8-35). While the Via Lido entrance (28.9 feet) is wider than the 32nd Street Alley entrance (21.2 feet), trucks making a right from Via Lido will be forced to make a tighter turn than trucks turning left from 32nd Street, due to the difference in turning radii attributable to right turns and left turns.

⁸ Final EIR at 2-58 (Response No. 8-17).

⁹ Final EIR at 2-53 (Response No. 8-2).

¹⁰ *Id.*

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3. The Increased Use of Via Lido and the Via Lido Entrance to Via Lido Plaza is Significant New Information That Requires Recirculation of the EIR

If significant new information is added to an EIR during the public comment and response period, the EIR must be recirculated for further review and comment. Cal. Pub. Resources Code § 21092.1; 14 Cal. Code Regs. § 15088.5(a), (d). "A decision not to recirculate an EIR must be supported by substantial evidence in[] the administrative record." 14 Cal. Code. Regs. § 15088.5(e).

Here, the City's responses disclose for the first time that large delivery trucks can safely access Via Lido Plaza only from the westbound lane of Via Lido, which will cause significant traffic hardships. This new piece of significant information was never mentioned in the Draft EIR or any other Project document, and will likely come as an unwelcome surprise to the 1,800 people on Lido Isle who must now compete with tractor-trailer trucks on the main access road to the island. Because Via Lido is a busy road, and because the Via Lido entrance is unable to safely and efficiently receive large vehicles without significant blockage, disruption, and delay, these trucks have the potential to cause significant impacts to both vehicle and pedestrian traffic. The revelation that Via Lido and Lafayette—which have rarely if ever been used by delivery trucks servicing Via Lido Plaza—will now service *all* large truck traffic is new information that requires recirculating the EIR for additional review and comment.¹¹

12-6

C. The City's Response to Lido Partners' Comments on the Traffic Impact Study and Parking Analysis Confirms That Both Studies Are Fatally Flawed

To assist with its review of the City's Response to Comments, Lido Partners engaged traffic engineer Sandipan Bhattacharjee, P.E., principal of Translutions, Inc., to review the adequacy of the City's responses and the Fuscoe Engineering Memo. Mr. Bhattacharjee's conclusions are attached to this response as Attachment A, and are incorporated by reference herein. The major deficiencies in the City's Response, which should be corrected and recirculated for additional public comment, include the following:

- **The City ignores the specific input parameters in the Highway Capacity Manual ("HCM"), thus underestimating current traffic impacts.** Despite the City recognizing that Caltrans recommends using the HCM,¹² the City somehow overlooks the specific input parameters that the HCM requires, including saturation flow rates, minimum green times and pedestrian timing requirements, and peak hour factors. Chapter 10 of the HCM 2000 contains various input parameters, and Chapter 16 explains how to use the parameters to perform the methodology accurately. The City's failure to use input parameters, or to further analyze intersections where the v/c ratio is greater than 1.0, underestimates the Project's true traffic impacts. That the City has performed incorrect traffic analyses in the past, and that Caltrans overlooked the error in this instance, does not give any measure of validation to the City's error.¹³ The City's analysis remains incomplete and wrong, and underestimates true traffic impacts.

12-7

¹¹ Additionally, the City should recirculate the EIR due to the fatal flaws in the Traffic Impact Analysis, discussed below.

¹² Final EIR at 2-61 (Response No. 8-26), 2-65 (Response Nos. 8-44 to 8-46).

¹³ See *id.* (claiming that the Traffic Impact Analysis was performed consistent with the City's other studies, and observing that Caltrans submitted no comments on the Traffic Impact Analysis).

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- **City Response No. 8-27 refers to the wrong table.** Lido Partners' commented that the Draft EIR, Table 5.5-21, wrongly concluded "no significant impact" for intersections 3 and 6. In response, the City pointed to a different table, Table 5.5-17 as evidence that there are no existing traffic impacts relating to existing deficiencies.¹⁴ The City's response completely misses the point, however, as Table 5.5-21 estimates *long-term* traffic deficiencies under the general plan build-out, while Table 5.5-17 measures existing conditions at the (shorter term) completion of the Project.¹⁵ Table 5.5-17 has nothing to with whether a significant impact will occur at intersections 3 and 6 with respect to the long time horizon of the general plan build-out. Table 5.5-21 therefore remains incorrect and misleading, and should be corrected. In any event, with regard to existing conditions at the time the Project is completed, Table 5.5-17 likely underestimates traffic impacts due to the City's failure to conduct a proper HCM analysis. 12-8
- **The City misunderstands the cumulative impact analysis for traffic.** In its comments, Lido Plaza explained that the City is not free to pile traffic into intersections simply because those intersections are already experiencing deficient levels of service. Under the City's misguided understanding, however, significant traffic impacts occur only if the addition of Project-generated trips causes the peak hour level of service ("LOS") to move from LOS A, B, or C, to LOS D, E, F.¹⁶ Under the City's theory, adding any number of cars to an intersection already operating at LOS D, E, or F could never cause a significant impact. Quite simply, that analysis makes no sense and is legally wrong. *See, e.g., Los Angeles Unified School Dist. v. City of Los Angeles*, 58 Cal. App. 4th 1019, 1024-28 (1997) (holding that a project that resulted in an increase to traffic that already exceeded established thresholds of significance contributes to a cumulate impact). 12-9
- **The City wrongly claims that significant traffic impacts cannot exist if they cannot be measured by a City-determined threshold.** The City claims that because unsignalized, stop-controlled intersections have no City-determined thresholds of significance, the City was justified in failing to analyze the southbound direction of Newport Boulevard at 28th Street.¹⁷ This is incorrect. An intersection should be analyzed as a study intersection regardless of whether the City has a standard of significance, as significant impacts can still occur in the absence of a City-issued threshold. *See, e.g., 14 Cal. Code Regs. § 15065* (requiring a mandatory finding of significance if substantial evidence indicates that any of the conditions in subsections (a) through (c) are present); *Oakland Heritage Alliance v. City of Oakland*, 195 Cal. App. 4th 884, 896 (2011) (describing Appendix G of the CEQA Guidelines as an "Environmental Checklist Form" that may be used in determining whether a project could have a significant effect on the environment). 12-10
- **The City refuses to acknowledge that a weekend traffic analysis will more accurately estimate the Project's traffic impacts.** The City's factors used to calculate daily rate trips ignore the fact that the Project, as a resort hotel, is likely to have much greater occupancy on the weekends than during the week (unlike most other hotels).¹⁸ After accounting for *occupied* rooms, the trip generation rate for weekends is significantly higher than for weekdays. Because peak hotel use is likely to correspond with peak beach traffic (and peak shopping at Via Lido 12-11

¹⁴ Final EIR at 2-61 (Response No. 8-27).

¹⁵ Draft EIR at 5.5-36 (Table 5.5-17), 5.5-39 (Table 5.5-21).

¹⁶ Final EIR at 2-61 (Response Nos. 8-27, 8-28).

¹⁷ Final EIR at 2-61 (Response No. 8-30).

¹⁸ Final EIR at 2-64 (Response No. 8-36).

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Plaza), the City should conduct a weekend traffic analysis. While City policy may prefer basing traffic assumptions on “shoulder season,” the City fails to provide any overriding considerations explaining why the City should ignore the most significant traffic impacts to be caused by the Project, which undoubtedly will occur on weekends during the summer.

12-11

- **The City improperly uses approved plan conditions to define the CEQA baseline.** In trying to clarify why several intersections showed the “without project” intersection capacity utilization (“ICU”) as higher than the “with project” ICU, the City states that “[t]his occurs because the General Plan buildout analysis accounts for buildout of the City of Newport Beach according to the General Plan Land Use designations.”¹⁹ Justifying Project traffic by claiming that the old City Hall would have generated fewer trips is a purely academic exercise, however, particularly where a new City Hall facility has been completed on the other side of town. Further, determining the environmental baseline by using an approved general plan condition, rather than actual existing environmental conditions, violates CEQA. *See Environmental Planning and Information Council v. County of El Dorado*, 131 Cal. App. 3d 350, 354 (1982) (stating that “CEQA nowhere calls for evaluation of the impacts of a proposed project on an existing general plan; it concerns itself with the impacts of the project on the environment, defined as the existing physical conditions in the affected area.”).
- **The City’s analysis of traffic displaced from the 32nd Street Alley is inconsistent.** The City inaccurately states that delivery truck traffic will not be displaced from the 32nd Street Alley onto nearby streets, or states (without evidence or supporting analysis) that such displacement will be “negligible.”²⁰ The City’s statements are contradicted by the Fuscoe Engineering Memo, however, which shows an “alternative access scenario” where trucks are routed from eastbound 32nd Street, north onto Lafayette Road, northwest onto Via Lido, before finally turning left into Via Lido Plaza from the westbound lane of Via Lido.²¹ Because the 32nd Street Alley provides direct access to the rear of Via Lido Plaza, there is currently no reason for delivery trucks to take the circuitous 32nd Street/Lafayette/Via Lido route (requiring *three additional* left turns) suggested by Fuscoe Engineering. Under all circumstances, forcing trucks to use the Via Lido entrance would necessarily result in the displacement of vehicles to City streets that otherwise would not have such truck traffic.²² Doing so will also exacerbate traffic on Via Lido, the major access road for Lido Isle.
- **The City’s responses to parking comments are inconsistent and incomplete.** Although the City claims that “[Via Lido Plaza] would not be impacted” because “the parking provided for the proposed site would result in no parking overflow,” this is clearly wrong.²³ In fact, the City has

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12-14

¹⁹ Final EIR at 2-60 (Response No. 8-25), 2-65 (Response No. 8-42).

²⁰ Final EIR at 2-56 to 2-57 (Response Nos. 8-13, 8-16).

²¹ Fuscoe Engineering Memo at 2.

²² Under similar reasoning, the City also claims that greater hotel traffic impacting the Finley easement is “speculative at best.” Final EIR at 2-59 (Response No. 8-22). But while most employees at the old City Hall complex used the 32nd Street entrance, the area of the Finley easement will serve as the hotel’s main entrance. On weekends, when combined traffic to the hotel and Via Lido Plaza will be heaviest, there is a substantial risk of traffic problems at the Finley entrance, potentially overburdening the easement.

²³ See Final EIR at 2-57 (Response No. 8-15).

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admitted that on-site parking will be inadequate to accommodate the hotel's banquet facilities.²⁴ Regarding the Parking Study, the City's comments indicate confusion over whether or not parking is adequate. On one hand, the City claims that parking is adequate assuming a 1:1 car:room ratio and 35 parked cars for the restaurant.²⁵ But the City also admits that the Project's retail uses are likely to drive high non-guest parking demand,²⁶ and sidesteps parking adequacy during banquet events.²⁷ While Lido Partners commented on the question of staff parking, the City provided no concrete answers.

12-14

D. The City Fails to Provide Any Meaningful Information on its Communications with the Newport Beach Fire Department

As discussed in Lido Partners' comments on the Project's Draft EIR, closing the 32nd Street Alley would negatively impact emergency access to Via Lido Plaza and the Fire Station located to the east of the Project site. Both Lido Partners and the City agree that closing the 32nd Street Alley would reduce emergency access to the interior of the Via Lido Property by 50%, as the Finley Street entrance is too small to accommodate any emergency vehicle larger than an ambulance.²⁸ Lido Partners also noted that Via Oporto does not meet City standards for a fire apparatus access roadway.

In response, the City merely states that the Newport Beach Fire Department evaluated the permanent closure of the 32nd Street Alley and determined that the closure would not impair or otherwise affect emergency access to Via Lido Plaza.²⁹ The City also claims that any modifications to the Fire Station, including the reduction of parking by approximately 50%, "[have] been determined to meet [the Fire Department's] needs."³⁰

12-15

Significantly, the City fails to attribute or provide the source of these comments from the Fire Department or provide any specific support for their substance. Lido Partners submitted a report from independent fire safety experts that raised serious questions about the safety ramifications of terminating the 32nd Street Alley. It is hardly sufficient for the City to say in response that it spoke to some unknown person at the Fire Department before these comments were even received, and that this person said that closing the 32nd Street Alley was acceptable. While there is no disputing that the Finley Avenue entrance is too narrow for fire trucks, and that closing the 32nd Street Alley removes one of only two ways for larger emergency vehicles to access Via Lido Plaza, the City provides no reasoned response as to how the Fire Department response time to Via Lido Plaza will not be degraded. Nor does the City make available any correspondence or documentation from the Fire Department showing that the appropriate analyses and evaluations were performed.

²⁴ See Draft EIR at 5.5-48 ("It is not anticipated that the hotel would require more than the 148 parking spaces proposed, *with the exception of nights with banquet usage.*") (emphasis added); see also Final EIR at 2-62 (Response No. 8-31) ("However, this 0.8 per room parking does not include banquet usage.").

²⁵ Final EIR at 2-62 (Response No. 8-31).

²⁶ *Id.*

²⁷ *Id.*

²⁸ Fuscoe Engineering Memo at 1.

²⁹ Final EIR at 2-52 (Response No. 8-2), 2-55 (Response No. 8-8), 2-56 (Response No. 8-11), 2-65 (Response Nos. 8-38, 8-39), 2-66 (Response No. 8-57).

³⁰ Final EIR at 2-57 (Response Nos. 8-15, 8-16), 2-65 to 2-66 (Response Nos. 8-48, 8-58).

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The City also admits that Via Oporto is non-conforming by modern fire and safety standards, and that this non-conformity has spurred discussions with the Fire Department to widen Via Oporto.³¹ But widening Via Oporto is not included as a mitigation measure. Moreover, the City ignored Lido Partners' request to clarify how paramedic units will access the Fire Station from Via Oporto, and fails to respond to Lido Partners' comment that the confluence of hotel delivery traffic, fire trucks, and passenger traffic on 32nd Street presents a public safety issue. Because the City simply states that the Fire Department has approved closing the 32nd Street Alley, but fails to provide any further details, the public has no way of knowing whether the Fire Department is aware of or considered the unintended effects that such a closure would have. The City's responses also do not satisfactorily address parking impacts arising from the reconfiguration of the Fire Station. While the City states that the Newport Beach Fire Department has approved its reduction in parking by approximately 50%, there is no analysis or explanation of how this reduction could possibly continue to meet the needs of the fire station, accommodate shift changes, or be sufficient for visitors.³²

12-16

In sum, where the City stands to profit significantly from a development project on City land, and the public raises specific questions regarding public safety, the City cannot satisfy its CEQA responsibilities by simply referring to conclusory statements from unnamed City employees.³³ This opaqueness renders the Final EIR legally inadequate. See 14 Cal. Code Regs. § 15151 (requiring EIR to make a "good faith effort at full disclosure.").

12-17

E. The City Ignores Several Comments Indicating Severe Deficiencies in the Project's Environmental Analysis

The City's Response to Comments ignores several of Lido Partners' other comments on specific environmental issues. Those omissions include but are not limited to:

- **The City fails to analyze a feasible alternative to closing the 32nd Street Alley.** While acknowledging that preserving the 32nd Street Alley is feasible, the City offers no explanation why the Draft EIR failed to analyze an alternative that preserved the 32nd Street Alley, such as the project configuration depicted in the July 2013 Project site plan. The City's response instead argues that retaining the 32nd Street Alley would negatively affect hotel operations and guests.³⁴ This response is precisely backwards, as CEQA's purpose is to evaluate a Project's impacts on the environment, not the environment's impacts on the Project. Nor has the City pointed to anything in the Project's objectives that suggests incompatibility with the 32nd Street Alley. The City also claims that "[o]nly those impacts found significant and unavoidable are relevant in making the final determination of whether an alternative is environmentally superior or inferior to the proposed project."³⁵ If this were the case, however, the City would *never* have to analyze any

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³¹ Final EIR at 2-56 (Response No. 8-9).

³² See Final EIR at 2-57 (Response No. 8-15).

³³ In another example, in response to Lido Partners' comment regarding the potential for narrowing of 32nd Street and new landscaping to cause traffic and visibility issues at the Fire Station, the City states that these changes were "welcomed" by the Fire Department. Final EIR at 2-56 (Response No. 8-11). There is no indication that the Fire Department is a subject matter expert in this sort of traffic analysis, however, and no indication why the City's traffic engineer failed to respond to Via Lido's comment.

³⁴ Final EIR at 2-57 (Response No. 8-17).

³⁵ Final EIR at 2-54 (Response No. 8-3).

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feasible alternatives so long as it concluded that the Project, as proposed, would have no significant environmental impacts. The City's *post hoc* rationalization confuses CEQA's requirement to consider a reasonable range of alternatives with the requirement to identify the environmentally superior alternative. See 14 Cal. Code Regs. § 15126.6 (establishing guidelines for developing a reasonable range of alternatives); *Laurel Heights Improvement Ass'n v. Regents of Univ. of Cal.*, 47 Cal. 3d 376, 400-01 (1988) (holding that an EIR must discuss a reasonable range of alternatives even if the project's significant environmental impacts will be avoided or reduced by mitigation measures).

12-18

- **The City fails to offer any meaningful response on the Project's inconsistency with local land use plans.** Rather than respond to Lido Partners' critiques of the Project's compliance with local land use plans, the City simply refers back to the same inadequate analysis in the Draft EIR.³⁶ The City has no meaningful rebuttal to Lido Partners' comments that the effects associated with closing the 32nd Street Alley run contrary to nearly all of the City's policies related to traffic and circulation. Under the City's Land Use Element and other applicable local land use plans, "full consideration" must be given to land uses on adjacent properties. The City completely fails to explain how the Project gave any consideration to Via Lido Plaza—except to admit that while preserving the 32nd Street Alley is feasible, it should instead be closed for reasons that remain unclear. While the City claims that "[n]o evidence has been provided" to support the assumption that the Project will disadvantage West Marine or limit Via Lido Plaza's ability to host a grocery store,³⁷ the City admits that extinguishing the 32nd Street Alley will leave only the Via Lido entrance as a possible truck access point to the property. As described above, however, there are numerous problems with requiring large trucks to use the Via Lido entrance, which make such use impractical and unsafe. The Project at a minimum will require a significant change in how Via Lido Plaza is serviced by truck delivery. But that effect on Via Lido Plaza is simply ignored in the EIR.

12-19

- **The City is unable to clarify demolition and construction activities associated with the Project.** While Lido Partners commented that the Project failed to sufficiently describe the process of demolition and construction, the City's Response merely recites the equipment to be used in demolition and construction efforts.³⁸ The City continues to fail to explain why the Project requires so much soil, how the 900+ soil hauling trips will access the Project site, and how many non-soil truck trips will be required to transport building materials. Each of these omissions compounds the failures of the Traffic Impact Analysis to accurately measure the increased traffic attributable to the Project. Regarding deferred mitigation, the City does not offer any additional specificity or measureable criteria to ensure that demolition and construction impacts will be measured, evaluated, or mitigated, or any reason why mitigation must be deferred to the Construction Management Plan.

12-20

IV. CONCLUSION

Lido Partners is disappointed that the City has provided such an inadequate amount of time for the public to address the continuing deficiencies in the Project's environmental analysis. The City's

³⁶ See, e.g., Final EIR at 2-58 (Response No. 8-18).

³⁷ Final EIR at 2-58 (Response No. 8-20).

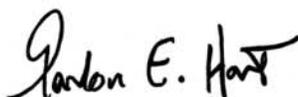
³⁸ Final EIR at 2-62 to 2-63 (Response No. 8-33).

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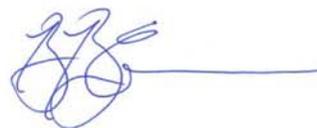
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Response to Comments fails to provide the meaningful analysis required in response to specific evidence showing that the Project will have several significant environmental impacts not considered in the Draft EIR. For these reasons, the City should correct the errors in the EIR, and recirculate it so the public has sufficient time to review and comment upon the significant new information raised regarding the traffic on Via Lido.

Sincerely,



Gordon E. Hart
of PAUL HASTINGS LLP
GEH:BBE



Buck B. Endemann
of PAUL HASTINGS LLP

ATTACHMENT A



July 16, 2014

Mr. Gordon E. Hart, Partner
Paul Hastings LLP
55 Second Street, Twenty-Fourth Floor,
San Francisco, California 94105

Subject: Review of Environmental Impact Report for Lido House Hotel

Dear Mr. Hart:

Translutions, Inc. (Translutions) has reviewed the responses made by the City on comments made on the Draft Environmental Impact Report (EIR), the underlying Traffic Impact Analysis (TIA), and Parking Study for the proposed Lido House Hotel in the City of Newport Beach. Below are our evaluation and follow up comments on the responses:

Response 8-26: The *Guide for the Preparation of Traffic Impact Studies (2002)* is a general guide for statewide Caltrans policy which states that the Highway Capacity Manual methodology should be used to evaluate signalized intersections, but does not provide specific input parameters. The State Highway analysis has been prepared consistent with other traffic impact studies that have been approved by the City of Newport Beach. Furthermore, the Draft EIR was distributed to Caltrans for review and no comments were received.

The fact that Caltrans recommends using the HCM, by itself, means that HCM procedures should be followed. HCM specifically includes saturation flow rates, minimum green times, and PHFs. Chapter 10 of the HCM2000 (Page 10-8) states "*In the absence of field measurements of peak-hour factor (PHF), approximations can be used. For congested conditions, 0.92 is a reasonable approximation for PHF. For conditions in which there is fairly uniform flow throughout the peak hour but a recognizable peak does occur, 0.88 is a reasonable estimate for PHF.*"

Response 8-27: As shown in Table 5.5-17, *State Highway Existing With Project Conditions AM/PM Peak Hour Intersection LOS*, of the Draft EIR, all existing State Highway study intersections are shown to operate at an acceptable Level of Service (LOS A, B, or C). Therefore, the traffic impact analysis is correct in identifying no significant traffic impacts related to existing deficiencies.

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12-22

Due to the incorrect PHFs and minimum green times, the analysis is incorrect. Anyone driving the intersections will agree that the average stopped delays at the intersections are greater than 35 seconds during peak hours.

12-22

Response 8.28: There is a distinction between deficient intersection operation and a significant impact. The impact thresholds and significance criteria established by the City of Newport Beach, City of Costa Mesa, and Caltrans agencies have been clearly defined in Section 5.5.3 of the Draft EIR. The agency-established thresholds of significance allow for situations where project traffic may contribute to a deficient intersection; however, the impact is not considered significant if the project contribution is below a certain threshold. As documented in the Draft EIR, the proposed project is not forecast to trigger any agency-established thresholds of significance for traffic impacts.

The response is inadequate. The EIR states that *Caltrans "endeavors to maintain a target LOS at the transition between LOS C and LOS D on State highway facilities"; it does not require that LOS D (shall) be maintained. For this analysis, the following traffic threshold of significance is utilized:*

A significant project impact occurs at a State Highway study intersection when the addition of project-generated trips causes the peak hour level of service of the study intersection to change from acceptable operation (LOS A, B, or C) to deficient operation (LOS D, E or F).

12-23

Although the first part of the statement in the EIR is correct, the second part related to significant impact is not a threshold established by Caltrans, the owner of the facility. The threshold stated in the EIR for Caltrans facilities, "*A significant project impact occurs at a State Highway study intersection when the addition of project-generated trips causes the peak hour level of service of the study intersection to change from acceptable operation (LOS A, B, or C) to deficient operation (LOS D, E or F)*" is not a Caltrans threshold, but an arbitrary threshold created by the City. Based on this threshold, if a State Highway operates at unsatisfactory conditions (LOS D or worse), a project could add as many cars as it wishes without having an impact.

Therefore, the significant project impact criteria selected is incorrect. It would mean that if a facility is operating at LOS F, a project could add thousands of cars and not have an impact. Since Caltrans does not have a sliding scale of impact determination (unlike Newport Beach and Costa Mesa, which allow an increase in v/c ratio), a cumulative impact would occur by the addition of any trips to a Caltrans facility.

Response 8-30: The southbound direction of Newport Boulevard at 28th Street is an unsignalized, stop controlled intersection. The City of Newport Beach has no thresholds of significance for unsignalized intersections.

12-24

Therefore, the project would not have a significant impact at the southbound Newport Boulevard at 28th Street intersection and the intersection was not identified for analysis.

12-24

Absence of a City determined threshold does not mean that an impact cannot occur. When thresholds of significance are not present, the guidance from Appendix G of the CEQA Guidelines apply.

Response 8-36: Refer to Response 8-22, above. When utilizing daily rates for trips generated per room, the Saturday trip generation is only about one-quarter percent higher than weekday trip generation (8.19 for Saturday compared to 8.17 for weekdays). The weekday peak hour conditions analyzed in the traffic impact analysis for the shoulder season is consistent with City policy.

Hotels generally have a higher occupancy rates during weekdays, whereas the trip generation data shows a slight increase in weekend trips. The "hotel" use in this case is mostly for vacation purposes, and therefore, it is likely that more rooms will be occupied during weekends. Please see attached pages from the ITE Trip Generation, 9th Edition, the same manual used in the TIA, which compares data for occupied rooms. The trip generation rate (based on occupied rooms) is significantly higher during weekends than on weekdays. Due to the nature of this hotel, it is anticipated that weekend trips will be significantly higher and therefore a weekend analysis should be conducted, especially since background (non-project) trips are also higher during the weekend.

12-25

Response 8-42: Refer to Response 8-25, above. The decrease in intersection capacity utilization (ICU) during with project conditions is due to the change in land uses, which would have fewer trips. Additionally, different methodologies were used for these forecast scenarios.

This response appears to mean that the traffic analysis includes a comparison of the proposed project with the General Plan which includes the City Hall in the model. This has been deemed to be improper based on CEQA case law. Based on *Environmental Planning and Information Council (EPIC) v. County of El Dorado County*, 131 Cal.App.3d 350, 182 Cal.Rptr. 317 an approved plan conditions does not define the CEQA Baseline. Further, *City of Carmel-by-the-Sea v. County of Monterey*, 183 Cal.App.3d 229 Court of Appeal, Sixth District, rules that existing zoning and zoned density do not define the baseline.

12-26

Response 8-44: Refer to Response 8-26, above. The Highway Capacity Manual methodology was used for signalized intersections; however this manual does not provide specific input parameters. The analysis was prepared consistent with other traffic impact studies that have been approved by the City of Newport Beach.

12-27

It is interesting that the response states that "this manual [HCM] does not provide specific input parameters". The HCM (2000) has approximately 1200 pages of information. Chapter 10 of the HCM2000 (Page 10-8) states *"In the absence of field measurements of peak-hour factor (PHF), approximations can be used. For congested conditions, 0.92 is a reasonable approximation for PHF. For conditions in which there is fairly uniform flow throughout the peak hour but a recognizable peak does occur, 0.88 is a reasonable estimate for PHF."* Therefore, the HCM *does* include specific input parameters, which the traffic analysis for the project has ignored.

12-27

Response 8-45: Refer to Response 8-26, above. The Highway Capacity Manual methodology was used for signalized intersections. The analysis was also prepared consistent with other traffic impact studies that have been approved by the City of Newport Beach.

12-28

Page 16-5 of the HCM (2000) states "If pedestrian timing requirements exist, the minimum green time for the phase is indicated and provided for in the signal timing". Since the intersections around the project have significant pedestrian activity, minimum green times should be input in the analysis. Else, the analysis shows a much better level of service on paper whereas the reality in this case, would be much worse.

Response 8-46: Refer to Response 8-26, above. The Highway Capacity Manual methodology was used for signalized intersections, and the modeling is consistent with other traffic impact studies that have been approved by the City of Newport Beach. It should also be noted that the Draft EIR was distributed to the California Department of Transportation during the 45-day public review period, and no comments were received from that agency.

12-29

An analytical error *not* being noticed does not make the analysis correct. According to the HCM, a v/c ratio greater than 1.0 (*at least*) requires additional analysis. Stating that the analysis is consistent to other analyses in the City of Newport Beach does not mean that the analysis is correct.

Response 8-47: Refer to Response 8-27, above. There is a distinction between deficient intersection operation and a significant impact. As documented in the Draft EIR, the proposed project is not forecast to trigger any agency-established thresholds of significance for traffic impacts.

12-30

The City is correct in stating that there is a distinction between deficient intersection operation and a significant impact. However, there is a difference between a direct project impact (i.e. based on the sliding scale of impact determination used

by the City of Newport Beach and Costa Mesa) and cumulative impacts. If a facility operates at unsatisfactory LOS under existing conditions (or any without project condition) and a project adds traffic to the unsatisfactory operations, a cumulative impact occurs. This statement is based on *Los Angeles Unified Sch. Dist. v City of Los Angeles* (1997) 58 Cal. App. 4th 1019, and *Communities for a Better Env't v California Resources Agency* (2002) 103 Cal.App. 4th 98, which ruled that a project that results in an increase to an impact that already exceeds established thresholds of significance contributes to a cumulative impact.

Further, for Caltrans facilities, the significance criteria selected by the City is incorrect. It would mean that if a facility is operating at LOS F, a project could add thousands of cars and not have an impact. Since Caltrans does not have a sliding scale of impact determination (unlike Newport Beach and Costa Mesa, which allow an increase in v/c ratio), a cumulative impact would occur by the addition of any trips to a Caltrans facility. Although there might not be direct significant impacts from the project, significant cumulative impacts are likely to be shown if the analysis is conducted correctly.

We hope you will find this information helpful. Should you have any questions, please don't hesitate to call me at (949) 232-7954.

Sincerely,

translutions, Inc.


Sandipan Bhattacharjee, P.E., AICP
Principal

12-30

Land Use: 310 Hotel

Description

Hotels are places of lodging that provide sleeping accommodations and supporting facilities such as restaurants, cocktail lounges, meeting and banquet rooms or convention facilities, limited recreational facilities (pool, fitness room), and/or other retail and service shops. Some of the sites included in this land use category are actually large motels providing the hotel facilities noted above. All suites hotel (Land Use 311), business hotel (Land Use 312), motel (Land Use 320) and resort hotel (Land Use 330) are related uses.

Additional Data

Studies of hotel employment density indicate that, on the average, a hotel will employ 0.9 employees per room.¹

Thirty studies provided information on occupancy rates at the time the studies were conducted. The average occupancy rate for these studies was approximately 83 percent.

The hotels surveyed were primarily located outside central business districts in suburban areas.

Some properties contained in this land use provide guest transportation services such as airport shuttles, limousine service, or golf course shuttle service, which may have an impact on the overall trip generation rates.

The sites were surveyed between the late 1960s and the 2000s throughout the United States.

For all lodging uses, it is important to collect data on occupied rooms as well as total rooms in order to accurately predict trip generation characteristics for the site.

Trip generation at a hotel may be related to the presence of supporting facilities such as convention facilities, restaurants, meeting/banquet space and retail facilities. Future data submissions should specify the presence of these amenities. Reporting the level of activity at the supporting facilities such as full, empty, partially active, number of people attending a meeting/banquet during observation may also be useful in further analysis of this land use.

Source Numbers

4, 5, 12, 13, 18, 55, 72, 170, 187, 254, 260, 262, 277, 280, 301, 306, 357, 422, 436, 507, 577, 728

¹ Buttke, Carl H. Unpublished studies of building employment densities, Portland, Oregon.

Hotel (310)

Average Vehicle Trip Ends vs: Occupied Rooms On a: Saturday

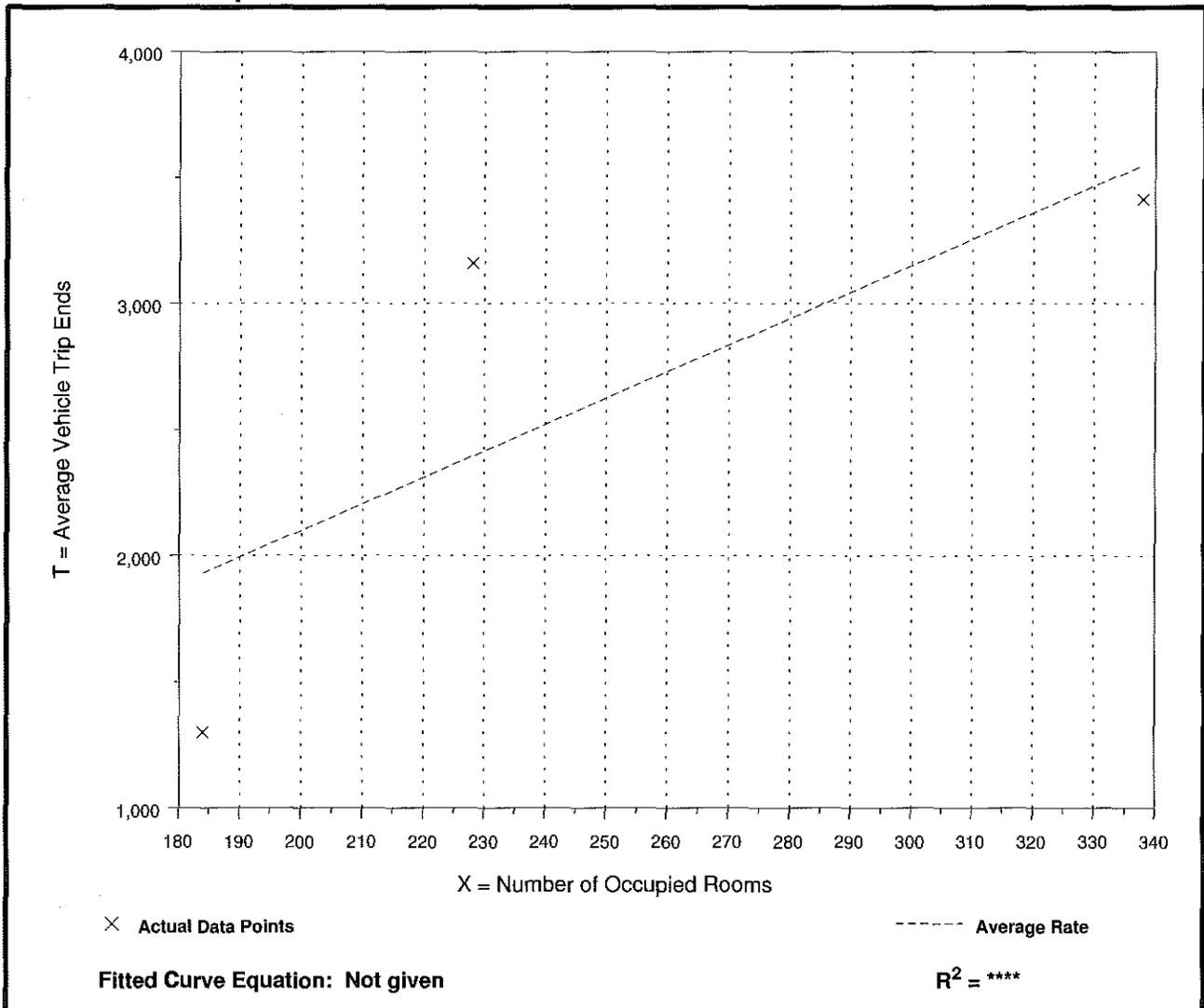
Number of Studies: 3
 Average Number of Occupied Rooms: 250
 Directional Distribution: 50% entering, 50% exiting

Trip Generation per Occupied Room

Average Rate	Range of Rates	Standard Deviation
10.50	7.07 - 13.86	4.11

Data Plot and Equation

Caution - Use Carefully - Small Sample Size





12. RESPONSES TO COMMENTS FROM LIDO PARTNERS, DATED JULY 16, 2014.

- 12-1 *CEQA Guidelines* Section 15088 requires the lead agency to provide written responses to a public agency on comments made by that public agency at least 10 days prior to certifying an environmental impact report. As noted in the comment, the Final EIR was posted on the City's website on July 11, 2014.

It should be noted that the Final EIR (including the response to public comments) was mailed on July 22, 2014 and received by all commenters on July 23, 2014. The Final EIR was distributed to all commenters, including public agencies and private parties. The project is scheduled to be heard at the City's August 11, 2014 Planning Commission Hearing. The City's Planning Commission is a recommending body for this project and the City Council will make the final decision whether or not to certify the project. The City Council hearing is tentatively scheduled for September 9, 2014. As indicated above, the Final EIR was available to the Planning Commission 30 days before the Planning Commission meeting and the Final EIR was provided to the all commenters 19 days before the Planning Commission hearing. Furthermore, the Final EIR was published 60 days before the tentative September 9 City Council hearing date, more than complying with the 10 day standard in *CEQA Guidelines* Section 15088. Although the City Council hearing date is tentative at this time, the final hearing date will be formally noticed.

The remainder of this comment contains introductory or general information. Please refer to Responses 12-2 through 12-30.

- 12-2 The commenter's June 13, 2014 letter was fully addressed in the July 11, 2014 Final EIR pursuant to Section 15088 of the *CEQA Guidelines*. Final EIR Section 2, Response to Comments, includes 59 individual responses to issues raised in the commenter's June 13, 2014 letter (refer to Responses 8-1 through 8-59 in the Section 2, Response to Comments, of the Final EIR). The responses addressed individual comments in the three attachments to the comment letter as well. Responses to technical issues such as traffic, truck movements/circulation, and emergency access were addressed by the appropriate technical personnel, which consisted of traffic engineers, civil engineers, and the Newport Beach Fire Department.
- 12-3 The comment suggests that Responses 8-2 and 8-4 within the Final EIR are in some way in conflict. As described in the Draft EIR, project implementation would close an existing driveway across the project site that has previously been used by the public and occupants and invitees of the adjacent Via Lido Plaza shopping center. This access has included use by delivery trucks. Use of the driveway was granted in 1964 with the City approving and recording a "Notice of Consent" for use of the driveway pursuant to Civil Code Section 813. The purpose of the Notice of Consent was (and is) to advise users of these access roads that their use is consensual and revocable at the will of the owner of the City Property. Under Civil Code Section 813, the City may revoke the Notice of Consent at any time by recording a notice of revocation. As indicated in the Final EIR, the City does not intend to revoke its



consent or close the driveway until the City receives a judicial determination that Lido Partners has no right of access from the City's property, other than its existing permissive use pursuant to the Notice of Consent. If the City is unsuccessful in the quiet title action, the City would implement development of the site consistent with the judicial determination, and speculating as to how the project would be modified in advance of a judicial determination is not a CEQA disclosure issue. Potential future modifications of an approved project would be subject to review and approval by the City and potentially the Coastal Commission and may require additional analysis in accordance with applicable local regulations and CEQA.

- 12-4 As noted in Response 8-12 of the Final EIR, although a negligible amount of trucks and emergency vehicles may be re-routed, the volume would be minimal and would not create a significant impact to adjacent City streets and parking. Additionally, as noted in the comment, Via Lido has five lanes of traffic, including a dedicated left turn lane at the Lido Plaza entry. Although Via Lido has more traffic than 32nd Street, it also has more capacity. 32nd Street only has one lane in each direction, which has less capacity for vehicles during truck ingress/egress. Additionally, as indicated in Response 8-2, evidence exists that trucks currently access Via Lido Plaza from Via Lido.
- 12-5 Refer to Response 12-4, above. The Truck Turning Study prepared by Fuscoe Engineering is intended to show only that a vehicle in the egress lane of the northerly Via Lido Plaza driveway at Via Lido or the existing City Hall driveway at 32nd Street would prevent large truck traffic from entering until the vehicle clears the lane.

The statement included in the comment in the third paragraph of the section stating "the City's own consultant confirms that truck access from Via Lido will be disruptive and potentially unsafe" is false. Neither Fuscoe Engineering, nor any other consultant made any such comment either on the exhibits or in the narrative response. The negligible volume of trucks entering Via Lido Plaza would not lead to long wait times and significant traffic impacts on Via Lido.

Regarding west bound traffic on Via Lido into the Via Lido Plaza, and the statement "a large truck would risk clipping a vehicle in the opposite left-turn lane that was waiting to turn into Lido Marina Village", the existing opposing driveways to Lido Marina Village and Villa Lido Plaza are offset from each other and the potential to clip a vehicle turning left into Lido Marina Village, by a west bound vehicle turning left into Villa Lido Plaza exists; however the volume of trucks entering is minimal and the potential for conflicting left turn movements is negligible (refer to Exhibits 2A & 2B, *Ingress*, prepared by Fuscoe Engineering and is included in Attachment 1 of this response⁴).

⁴ As a follow up to their June 27, 2014 Truck Turn Study, Fuscoe Engineering generated additional sheets (dated July 28, 2014) depicting the ingress and egress to Lido Plaza, including the existing condition, ingress travel for the proposed condition and egress travel for the proposed condition. The truck turning envelopes were generated using Transoft Solutions, Inc., AutoTurn Professional 3D, version 8.1. The turning envelopes were plotted on an orthographic, geo-referenced image and existing topographic survey information of the existing city hall site.



The City takes exception to the statement in the fourth paragraph "...showing that a large truck entering from Via Lido would clip the valet kiosk and any car parked in the first or last parking stalls that front the eastern face of Via Lido Plaza." The kiosk mentioned is an umbrella that is encroaching into the fire lane as indicated by the red curbs on both sides of the drive aisle. Such a condition should not be used as limiting criteria. In any case the umbrella can be moved to a location that does not encroach, effectively removing this issue. Fuscoe Engineering adjusted the ingress drive simulations from Via Lido slightly easterly to clearly show that the truck envelopes do not encroach into the parking areas. The vehicle near the kiosk, shown in the image is not parked fully into the parking space and should not be considered as an indication of the location of a typically parked vehicle. No parking within the Via Lido Plaza would need to be changed as a result of truck entry from Via Lido.

- 12-6 The fact that large delivery trucks can safely access Via Lido Plaza from Via Lido is not "significant new information." As indicated in Response 8-2 of the Final EIR, evidence exists that trucks currently access Via Lido Plaza from Via Lido. Furthermore, the commenter has provided no evidence that trucks do not already access Via Lido Plaza from Via Lido. The commenter also does not provide any substantiation to contradict the Draft EIR and does not show that there would be a significant number of trucks would access Via Lido Plaza and cause vehicle conflicts.

The closure of the existing gated vehicular access location leading to a driveway across the project site to 32nd Street is also indicated in Section 5.5, *Traffic/Circulation*, on page 5-5-22 of the Draft EIR. The project description also explains that the Applicant has investigated the feasibility of including an access gate that would only be open to use by delivery vehicles to and from Via Lido Plaza. However, as explained in the project description, it is not under consideration as part of the project application and is not a component of this project.

It should be noted that the neither the Truck Turning Study nor any responses indicated that all truck traffic would go through the intersection of Via Lido and Lafayette Road or that the large trucks would only access Via Lido Plaza from the westbound lane of Via Lido. These routes were depicted in the Truck Turning Study as alternatives to using eastbound Via Lido.

- 12-7 The Highway Capacity Manual (HCM) methodology was followed for signalized intersections as recommended by Caltrans with respect to the analysis equations and calculations of delay. While Chapter 10 of the HCM 2000 provides estimated values for certain input parameters, the application of the parameters in question varies from jurisdiction to jurisdiction depending on local characteristics or standard practice as determined by the reviewing agency. For the Lido House Hotel Traffic Impact Analysis, the HCM input parameters applied are consistent with those assumed for other projects in the City of Newport Beach which have been reviewed by Caltrans District 12. Additionally, the saturation flow rate used in the analysis is consistent with the estimated value provided in the Highway Capacity Manual, so that particular input parameter has not been "overlooked."

The sections containing the Intersection Capacity Utilization (ICU) analysis methodology do provide additional analysis of all the study intersections analyzed using the HCM



methodology, including those study intersections where the volume to capacity (v/c) ratio exceeds 1.0. As shown in these sections, the project was found to result in no significant impacts at the study intersections where the v/c ratio exceeds 1.0.

The HCM input parameters applied in the analysis are appropriate for planning purposes and are consistent with what has been historically deemed acceptable by Caltrans District 12.

- 12-8 As stated in the Caltrans *Guide for the Preparation of Traffic Impact Studies (2002)*:
“If an existing [emphasis added] State highway facility is operating at less than the appropriate target LOS, the existing [emphasis added] MOE should be maintained.”

The original response to this comment (Response 8-27 of the Final EIR) refers to Table 5.5-17 to show that for existing conditions, all study intersections are operating at the appropriate target LOS or better. Therefore, the claim made in Comment 8-27 that “these intersections [study intersections 3 and 6] are already operating at less than appropriate LOS must be mitigated to bring conditions to pre-Project levels of service” is incorrect. The *Guide for the Preparation of Traffic Impact Studies (2002)* does not discuss mitigating to pre-Project levels of service for the future conditions, as shown in Table 5.5-21.

As discussed in Response 12-7, the HCM analysis provided is appropriate for planning purposes and is consistent with what has been acceptable by Caltrans District 12.

- 12-9 The proposed project is not forecast to “pile traffic into intersections.” As documented in the Lido House Traffic Impact Analysis in the Draft EIR (Exhibit 8a and 8b), the proposed project is forecast to assign less than 50 peak hour trips to any State highway study intersection analyzed, which is relatively low compared to existing and forecast traffic volumes at the State highway study intersections, and results in delay changes of one second or less to the deficient study intersections for future conditions.

The Caltrans guidelines state that if an intersection is already operating below the target LOS for existing conditions, the existing MOE (delay in seconds/vehicle) should be maintained. If an existing intersection is deficient and the project increases the delay, then it is considered a significant impact. As shown in the Existing Plus Project analysis, there are no impacts. Caltrans guidelines do not provide explicit thresholds for future (cumulative) conditions when an intersection is already deficient. As discussed in Response 8-25, the project only adds one second or less delay to the study intersections, and in some cases decreases delay.

Even if Caltrans required that the project maintain pre-project levels of service (LOS) for study intersections operating below the appropriate LOS for future conditions, the addition of the proposed project trips to such study intersections is not forecast to result in a significant impact based on the pre-project levels of service being maintained as described below.

Table 5.5-19 of the Draft EIR shows that for cumulative conditions, the only intersection forecast to operate at deficient LOS is study intersection #3 (Superior Avenue at Balboa



Boulevard/West Coast Highway); with the addition of project trips, the same study intersection is forecast to continue operating at pre-project LOS. Furthermore, the addition of project trips to study intersection #3 is forecast to result in no change in delay compared to pre-project conditions.

Table 5.5-21 of the Draft EIR shows that for General Plan buildout conditions, study intersections #3, #6, #14, and #18 are forecast to operate at deficient LOS; with the proposed project, these same study intersections are forecast to continue operating at pre-project LOS. For forecast General Plan buildout conditions, the change in delay at the deficient study intersections is generally in the fractions of one second, with two of the deficient study intersections forecast to experience a decrease in delay, as a result of the project's change in traffic patterns.

- 12-10 Based on transportation/traffic checklist item A in Appendix G of the *CEQA Guidelines*, which considers whether the project would conflict with an applicable plan, ordinance, or policy establishing measures of effectiveness for the performance of the circulation system, the proposed project is forecast to result in no significant impact at the southbound Newport Boulevard/28th Street intersection since there are no applicable plans, ordinances, or policies establishing measures of effectiveness for the performance of unsignalized intersections in the City of Newport Beach. Therefore, this intersection was not identified as a study intersection. The findings of the project's impacts and mitigation measures with regard to other transportation/traffic guidance from Appendix G of the *CEQA Guidelines* are addressed in [Section 5.5.4](#) of the Draft EIR and are not affected by the exclusion of the southbound Newport Boulevard/28th Street intersection as a study intersection.
- 12-11 The trip generation for the proposed project was appropriately based on trips generated per room as provided in the *ITE Trip Generation Manual, 9th Edition, 2012*. Trip generation for hotels is commonly calculated based on the number of rooms provided, not the estimated number of occupied rooms. Although *ITE Trip Generation Manual, 9th Edition, 2012* provides weekend trip generation rates on a per occupied room basis, it specifies to use caution due to the small sample size (based on only three studies).

As previously noted in Response 8-22 of the Final EIR, the Lido House Hotel Traffic Impact Analysis has adequately analyzed the project's traffic impacts during the weekday peak hours of the shoulder season (i.e., the time between the high and low season) in accordance with City policy, which acknowledges and intentionally does not require analysis of weekend summer conditions. The Lido House Hotel Traffic Impact Analysis has therefore adequately followed the CEQA guidelines requiring consideration if the proposed project would conflict with an applicable plan, ordinance, or policy establishing measures of effectiveness for the performance of the circulation system. The "overriding considerations" for not requiring analysis of weekend summer traffic conditions are built into City policy (see City of Newport Beach General Circulation Element, Page 7-3, last paragraph).



- 12-12 The actual existing environmental conditions required by CEQA are contained in the Draft EIR; the existing conditions scenario ([Table 5.5-4](#) of the Draft EIR) defines the baseline for project specific impact evaluation and the forecast year 2018 cumulative without project conditions scenario ([Table 5.5-9](#) of the Draft EIR) defines the environmental baseline for cumulative impact evaluation. General Plan buildout without and with project conditions volumes are based on the Newport Beach Traffic Analysis Model (NBTAM) which accounts for the redistributed trips associated with General Plan buildout conditions, which include the location of the new City Hall complex. It should be noted that the analysis includes an existing plus project scenario, cumulative plus project scenario, as well as the General Plan plus project scenario. The project's traffic impacts were analyzed for all of these scenarios.
- 12-13 The alternative access scenario exhibit only shows that a truck route via 32nd Street to Lafayette Road and Via Lido is possible. The opinion that displaced delivery truck traffic would be negligible is based on the fact that for typical neighborhood shopping centers, deliveries do not occur on a daily basis, and when deliveries do occur, they are typically during off-peak hours when the roadway system has more than sufficient capacity. Emergency vehicle trips to a neighborhood shopping center occur even less frequently than delivery truck trips. Therefore, the re-routing of delivery truck traffic and emergency vehicle trips is not likely to affect the peak hours analyzed.
- 12-14 A parking study was prepared by Stantec and the findings were incorporated into [Section 5.5, Traffic and Circulation](#) of the Draft EIR (the parking study was also included in [Appendix 11.3, Traffic Impact Analysis/Parking Study](#) in the Draft EIR as well). The parking study indicated that all of the proposed hotel uses would have adequate parking on-site, including the hotel, restaurants, retail, and banquet usage. The rates were based on survey of similar hotels, all with similar banquet and retail uses and the parking would meet all of the on-site needs. Non-hotel uses, such as the retail uses, are recommended to provide parking at the rate indicated by the City code, during the hours when they are in use. The City code requirements are in place to provide the required number of parking spaces, and these numbers would be adequate to meet the needs of both hotel guests, along with visitors and residents. Additionally, as described in the Draft EIR, the project would include active parking management, including valet services in order to ensure adequate parking would be provided on-site to meet demand, especially during large events and banquets.
- 12-15 Assistant Fire Chief Kevin Kitch has evaluated the overall project including the closure of the 32nd Street driveway. He and his staff have participated with the review of the proposed project in his capacity as the City of Newport Beach's Fire Code Official (Fire Marshal). Assistant Chief Kitch has determined that the removal of the 32nd Street driveway will not degrade emergency access to Via Lido Plaza. Adequate emergency access to Via Lido Plaza is currently provided and will continue to be provided from Newport Boulevard, Via Lido, and from onsite parking areas that are and will continue to be accessed by the two existing vehicular driveways from Finley Avenue and Via Lido.

The comment states that, *“Both Lido Partners and the City agree that closing the 32nd Street driveway would reduce emergency access to the interior of the Via Lido property by 50%, as the Finley Street entrance*



is too small to accommodate any emergency vehicle larger than an ambulance.” The comment goes on to state that, “there is no disputing that the Finley Avenue entrance is too narrow for fire trucks, and that closing the 32nd Street Alley removes one of only two ways for larger emergency vehicles to access Via Lido Plaza.”

The City does not agree with these comments. The commenter cites correspondence prepared by Fuscoe Engineering dated June 27, 2014 (Attachment 1 to the responses to Letter 8 in the FEIR), in support of the comment. The Fuscoe Engineering letter addresses delivery truck access to Via Lido Plaza and does not discuss emergency vehicle access to the Plaza. Assistant Chief Kitch finds this comment inaccurate as despite the fact that the Finley Avenue access is preexisting and non-conforming in terms of width, access by all types of Fire Department emergency vehicles is presently achieved and the project does not impact this access. Emergency vehicle access through the conforming Via Lido driveway is presently unobstructed. Emergency vehicle access to on-site parking areas would not rely upon the existing gated vehicular access location leading to a driveway access across the project site to 32nd Street (refer to Responses 8-2 and 8-16 in the Final EIR).

Assistant Chief Kitch also disputes the commenter’s unsupported claim that Fire Department response times will be degraded by the closure of the 32nd Street driveway. According to Fire Marshal Kitch, the driveway access would likely never be used by Fire Station No. 2 personnel to access the commercial center. To do so would be to introduce unneeded and unnecessary response delays based upon the configuration of the respective sites. Chief Kitch believes there will be no significant degradation in response times to the commercial center with this project’s proposed changes. Response times will remain within Newport Beach Fire Department response objectives that are provided in the Section 5.12.1 of the Draft EIR (page 5.12-1). The distance traveled by any apparatus responding out of the North Bay to reach 32nd Street would be unchanged with the proposed modifications. Given no change in distance, there is no reasonable or measurable way to state that response times would change.

- 12-16 The comment states that, “the City admits that Via Oporto is nonconforming by modern fire and safety standards, and that this non-conformity has spurred discussions with the Fire Department to widen Via Oporto.” The comment incorrectly states the City’s response provided in the Final EIR (Response 8-9 on page 2-56). Response 8-9 states:

“Via Oporto was designed and constructed before Newport Beach Fire Department Guideline C.01 was established. As such, the access roadway is considered preexisting and non-conforming to today’s standards. In the City of Newport Beach, many such roads exist; which is common throughout the state of California. City staff has been in active discussion with the Fire Department on this specific issue. Increasing the width of the travel lane for that portion of Via Oporto adjacent to Fire Station No. 2 is being considered. The distance traveled by any apparatus responding out of the North Bay to reach 32nd Street would be unchanged with the proposed modifications. Given no change in distance, there is no reasonable or measurable way to state that response times would change.” (emphasis added)



There are and have been no discussions to widen Via Oporto, but rather discussions have occurred related to the possible need to modify the proposed plan to widen the travel lane between the parked cars to better facilitate an EMT truck to travel from the new Fire Station driveway south in Via Oporto to 32nd Street. The widening of the travel lane can be achieved by narrowing of the abutting sidewalks or relocating street parking spaces.

Historically, Fire Station No. 2 has operated with limited parking areas. When City Hall was in operation, fire personnel had approximately 9 spaces available to it. Other spaces near the station were used to park City Hall pool cars available for use by City employees. The station property itself never accommodated full parking for all personnel during the shift change. Operationally, the oncoming shift would park at City Hall or on the street until the outgoing shift left. Staff would relocate the vehicles to available on-site parking spaces when possible. When the City replaced the EMT truck that operated from the station, it was necessary to store the vehicle in the parking area due to its larger size and the limited number of available bays, and the parking lot was re-striped accommodating 5 vehicles. After City Hall staff was relocated, station personnel did not have to rely on the use of street parking as they had access to the City Hall parking lots. The current plan for the reconfigured fire station parking area accommodates 7 vehicles and it can be expanded to 8 spaces. Additionally, parking on the extended 32nd Street apron can accommodate 2 additional vehicles while not affecting truck or apparatus pull out. While it would be desirable to accommodate full parking for a shift change, continuing the historic practice where vehicles are temporarily parked nearby is an acceptable operational issue and does not constitute a significant environmental impact.

- 12-17 As described on page 5.12-28 of the Draft EIR, the Newport Beach Fire Department has evaluated the permanent closure of this driveway and it will not affect emergency access as adequate fire access to Via Lido Plaza is provided from Newport Boulevard, Via Lido and private parking areas accessed by two existing vehicular driveways. Access to all portions of Via Lido Plaza would be met by either public roadways such as Newport Boulevard and Via Lido or by private roadways off of Finley Avenue and Via Lido.

This discussion in the Draft EIR includes a footnote citation that indicates that Kevin Kitch, Assistant Chief, Life Safety Services Division, Newport Beach Fire Department, reviewed the project on January 2, 2014; also refer to Response 12-15. Additionally, the written correspondence is provided in the Draft EIR in Appendix 11.9, Utility Correspondence. Additional responses regarding the traffic analysis were provided by the City Traffic Engineer, Tony Brine.

Comments provided by the Newport Beach Fire Department are based on their previous experience and current operations for providing emergency services. As stated in Response 8-8 in the Final EIR, adequate and code compliant access is currently available, and has been repeatedly provided over the years, through the parking areas accessed off of Finley Avenue and Via Lido or directly from these two streets as well as Newport Boulevard. The 32nd Street Driveway access is unlikely to ever be used by Fire Station No. 2 personnel to access the commercial center. To do so would be to introduce unneeded and unnecessary response



delays based upon the configuration of the respective sites. There will be no degradation in response time to the commercial center with this project's proposed changes.

- 12-18 Refer to Response 8-3 in the Final EIR. As noted in the Draft EIR, CEQA requires an EIR to analyze a reasonable range of alternatives that would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project. The comment speculates as to the ramifications of closing the driveway between Via Lido Plaza and 32nd Street. Additionally, CEQA requires the analysis of a reasonable range of alternatives and is not required to consider every conceivable alternative to a project. The "rule of reason" requires the EIR to set forth only those alternatives necessary to permit a reasoned choice. The alternatives must be limited to ones that would avoid or substantially lessen any of the significant effects of the project. The Draft EIR does not identify any significant and unavoidable impacts related to the closure of the 32nd Street driveway. Therefore, an alternative to closing the 32nd Street driveway was not considered.

As described in Section 7, *Alternatives to the Proposed Project* of the Draft EIR, the proposed project would not result in any significant and unavoidable impacts. All potential impact were reduced to a less than significant level. However, the Draft EIR included an analysis a reasonable range of alternatives, including reduced density, mixed-use, and two no build alternatives.

- 12-19 As noted in Response 8-16, an analysis of project's consistency with the City's General Plan and Coastal Land Use Plan is provided within Section 5.1, *Land Use and Relevant Planning*, of the Draft EIR.

The comment argues that the project is inconsistent with the City's policy related to traffic and circulation and specifically cites Goal 1.3 of the Circulation Element. An analysis has been completed to show that trucks can safely access Via Lido Plaza at the entrance off of Via Lido. Goods movement generally refers to regional transport of goods and not necessarily deliveries to a single shopping center. Nonetheless, nothing associated with the proposed project, including the closure of the 32nd Street Driveway would prevent goods movement and truck access to Via Lido Plaza. The proposed project would not require Via Lido Plaza to make any physical changes to their site.

The comment also argues that there are numerous problems with requiring large trucks to use the Via Lido entrance. However, as described in Response 8-2 in the Final EIR, trucks using the 32nd Street driveway would experience the same conflicts as with the Via Lido entrance.

- 12-20 The project would require the import of approximately 7,379 cubic yards of soil for grading of the site. The project also requires cut and fill on-site, and additional soil (i.e., import) is typically needed for compaction and/or to adjust the grade. The import of this amount of soil would require 922 truck trips. It should be noted that these are round trips. This number of truck trips was mentioned in the analysis because it represents the greatest number of truck trips associated with construction. However, the analysis accounted for



vehicle trips (including worker trips and material deliveries) associated with all phases of construction. For example, the project would require approximately 10 to 70 worker trips per day and up to 31 vendor round trips per day (depending on phase). Each of these trips and various other aspects of the anticipated construction activities were analyzed within the Draft EIR.

Mitigation Measure TRA-1 requires a construction management plan. Nothing in this mitigation measure would be considered deferral under CEQA. As indicated in the Draft EIR and described in Response 8-34 in the Final EIR, all construction activities would be required to implement Mitigation Measure TRA-1, which requires a construction management plan that would include measures to minimize traffic and parking impacts upon the local circulation system. These measures would address various topics including traffic controls for street closures, routes for construction vehicles, hours for transport activities, and various others. As required by CEQA, this measure has a timing mechanism (i.e., prior to the issuance of any grading and/or demolition permits) and performance standards (i.e., Mitigation Measure TRA-1 requires the Construction Management Plan to address specific topics and include specific requirements/prohibitions). The Construction Management Plan would also identify the routes that the construction vehicles (including haul) trucks would utilize. Mitigation Measure TRA-1 limits the hours for hauling and/or the transport of oversize loads to off-peak hours to avoid traffic conflicts. The use of local streets would be prohibited and haul trucks entering or exiting public streets are required to yield to public traffic at all times.

12-21 Refer to Response 12-7, above.

12-22 Refer to Response 12-7, above. It is important to note, the average delay reported and corresponding intersection Level of Service includes vehicles that pass through an intersection without stopping. Effective signal coordination can enable a large number of vehicles to move through an intersection without stopping, thereby offsetting a significant amount of delay experienced by stopped vehicles.

12-23 Refer to Response 12-9, above. The statement that “a cumulative impact would occur by the addition of any trips to a Caltrans facility” is not a Caltrans threshold.

12-24 Refer to Response 12-10, above.

12-25 Refer to Response 12-11, above.

12-26 Refer to Response 12-12, above.

12-27 Refer to Response 12-7, above. Response 8-44 refers to and intends to reiterate Response 8-26 indicating that the Caltrans *Guide for the Preparation of Traffic Impact Studies (2002)* does not provide specific input parameters. As noted in Response 12-7, while Chapter 10 of the HCM 2000 provides estimated values for certain input parameters, the application of the



parameters in question varies from jurisdiction to jurisdiction depending on local characteristics or standard practice as determined by the reviewing agency.

- 12-28 Refer to Response 12-7, above. As explained in Response 12-7, the HCM input parameters applied in the analysis are appropriate for planning purposes and are consistent with what has been historically deemed acceptable by Caltrans District 12. Our understanding is that Caltrans District 12 has not required pedestrian timing as an HCM input parameter for planning purposes such as traffic impact studies because utilizing pedestrian minimum green timing requirements would present an overly conservative analysis in which pedestrians are assumed to cross each leg of a study intersection on every cycle during the peak hours.
- 12-29 Refer to Response 12-7, above. As explained in Response 12-7, the HCM input parameters applied in the analysis are not an analytical error. The HCM input parameters applied in the analysis are appropriate for planning purposes and are consistent with what has been historically deemed acceptable by Caltrans District 12.
- 12-30 Refer to Response 12-9, above.



Attachment 1 – Fuscoe Engineering Memorandum
(July 28, 2014)



Irvine
San Diego
Ontario
Los Angeles
El Centro
Danville

July 28, 2014

Mr. Anthony Wrzosek
Vice President, Planning & Development
R.D. Olson Development
2955 Main Street, Third Floor
Irvine, CA 92614

Re: Response to Comments to Lido House Hotel Final EIR from Paul Hastings, LLP, Sections III.B.2 and a Portion of III.C as Noted Below

Dear Mr. Wrzosek;

At the direction of R.D. Olson Development, Fuscoe Engineering reviewed comments received from Paul Hastings, LLP to the Lido House Final EIR. Our review was limited to the sections listed above and only to those portions where Fuscoe Engineering has expertise. Both sections relate to truck access to and from Villa Lido Plaza. The narrative below is our response to those sections.

Fuscoe Engineering previously generated four sheets illustrating the existing condition (one sheet), ingress travel for the proposed condition (two sheets) and egress travel for the proposed condition (one sheet). The truck turning envelopes were generated using Transoft Solutions, Inc., AutoTurn Professional 3D, version 8.1. The turning envelopes were plotted on an orthographic, geo-referenced image and existing topographic survey information of the existing city hall site. In responding the access issues from Finley Street, Fuscoe subsequently generated two additional exhibit sheets showing the largest vehicle that can ingress from Finley Street and the largest vehicle that can egress to Finley Street.

Section III.B.2.

The ingress exhibit (Exhibit 1) prepared by Fuscoe is intended to show only that a vehicle in the egress lane of the northerly Via Lido Plaza driveway at Via Lido or the existing city hall driveway at 32nd Street will prevent large truck traffic from entering until the vehicle clears the lane. Any conclusions regarding impacts on pedestrians and general vehicle traffic is best left to a qualified Traffic Engineer familiar with the area and its associated traffic patterns.

We respectfully take exception to the comment in the third paragraph of the section stating "the City's own consultant confirms that truck access from Via Lido will be disruptive and potentially unsafe". Fuscoe made no such comment either on the exhibits or in the narrative response.

full circle thinking®

Regarding west bound traffic on Via Lido into the Via Lido Plaza (Exhibits 2A & 2B), the statement "a large truck would risk clipping a vehicle in the opposite left-turn lane that was waiting to turn into Lido Marina Village". The existing opposing driveways to Lido Marina Village and Villa Lido Plaza are offset from each other and the potential to clip a vehicle turning left into Lido Marina Village, by a west bound vehicle turning left into Villa Lido Plaza, exists with or without the proposed development.

We take exception to the statement in the fourth paragraph "...showing that a large truck entering from Via Lido would clip the valet kiosk and any car parked in the first or last parking stalls that front the eastern face of Via Lido Plaza." The kiosk mentioned is an umbrella that is encroaching into the fire lane as indicated by the red curbs on both sides of the drive aisle. Such a condition should not be used as limiting criteria. In any case the umbrella can be moved to a location that does not encroach, effectively removing this issue. Fuscoe adjusted the ingress drive simulations from Via Lido slightly easterly to clearly show that the truck envelopes do not encroach into the parking areas. The vehicle near the kiosk, shown in the image is not parked fully into the parking space and should not be considered as an indication of the location of a typically parked vehicle. No parking within the Via Lido Plaza would need to be changed as a result of truck entry from Via Lido.

Section III.C – seventh (7th) bullet point. "The City's analysis of traffic displaced from the 32nd Street Alley is inconsistent"

Fuscoe takes exception to the statement "The City's statements are contradicted by the Fuscoe Engineering Memo,...". The alternative access scenario exhibit only shows that a truck route via 32nd Street to Lafayette Road and Via Lido is possible and makes no claim as to present or future traffic impacts on these streets.

Additional Study Sheets

Fuscoe was asked to investigate what size service vehicle could enter from the Finley Street entrance to Via Lido Plaza (sheets 5 and 6). Our investigations indicate that 30-foot truck can ingress from this entry point. However the same vehicles cannot egress via this entry due to the existing parking lot medians interfering with the required maneuvering area. The largest service trucks that can egress to Finley Street are panel trucks similar to FedEx or UPS size delivery vehicles.

We hope that the information herein is beneficial. Please contact me if you have any questions at (949) 474-1960.

Sincerely,

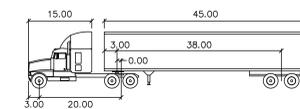
FUSCOE ENGINEERING, INC.

Mark Nero, P.E.
Project Manager

enclosures

TRUCK TURN STUDY - OLD CITY HALL & VIA LIDO PLAZA

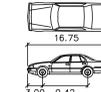
LEGEND



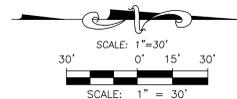
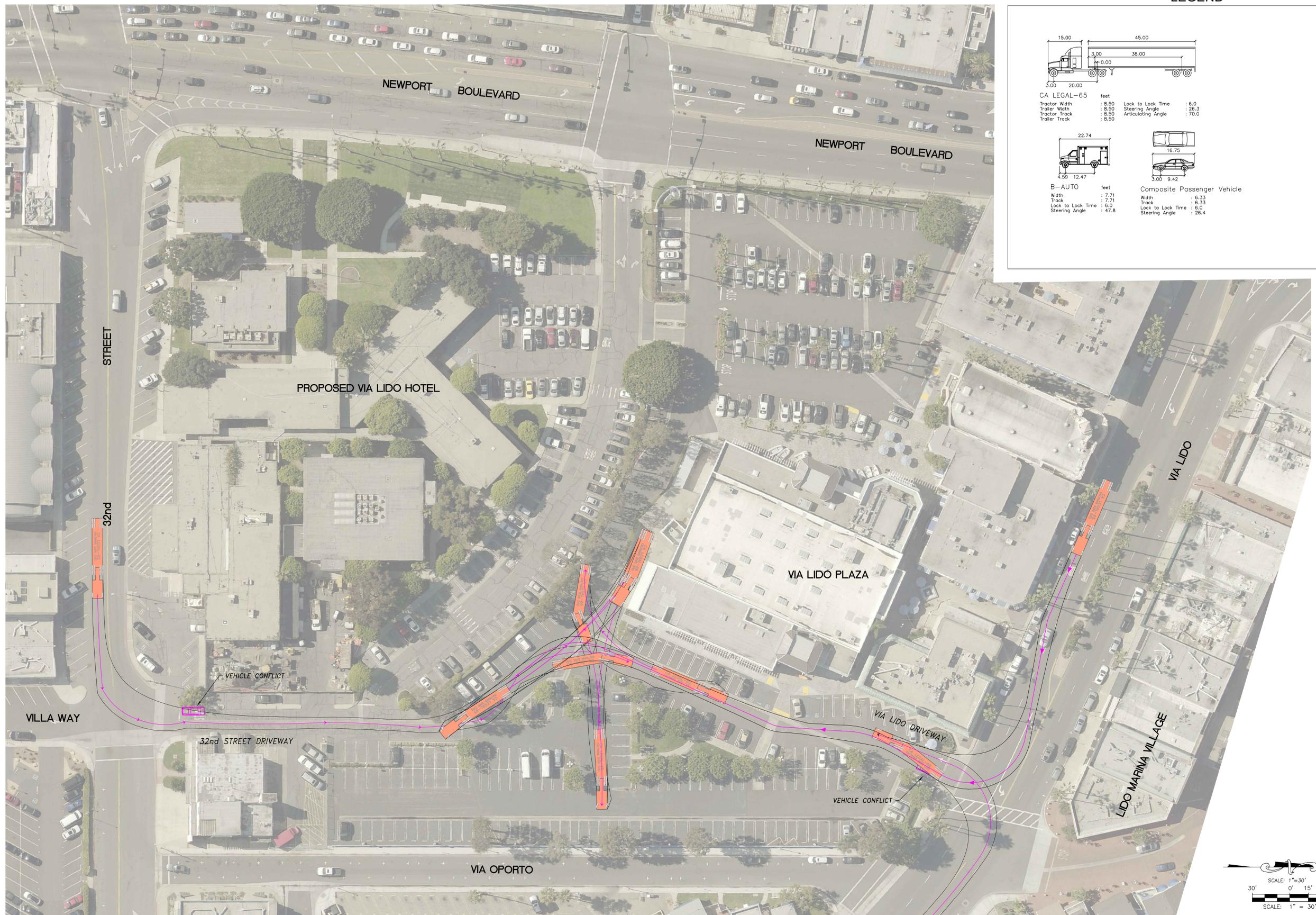
CA LEGAL-65		feet	
Tractor Width	: 8.50	Lock to Lock Time	: 6.0
Tractor Track	: 8.50	Steering Angle	: 25.3
Trailer Track	: 8.50	Articulating Angle	: 70.0



B-AUTO		feet	
Width	: 7.71	Lock to Lock Time	: 6.0
Track	: 7.71	Steering Angle	: 47.8



Composite Passenger Vehicle		feet	
Width	: 6.33	Lock to Lock Time	: 6.0
Track	: 6.33	Steering Angle	: 26.4

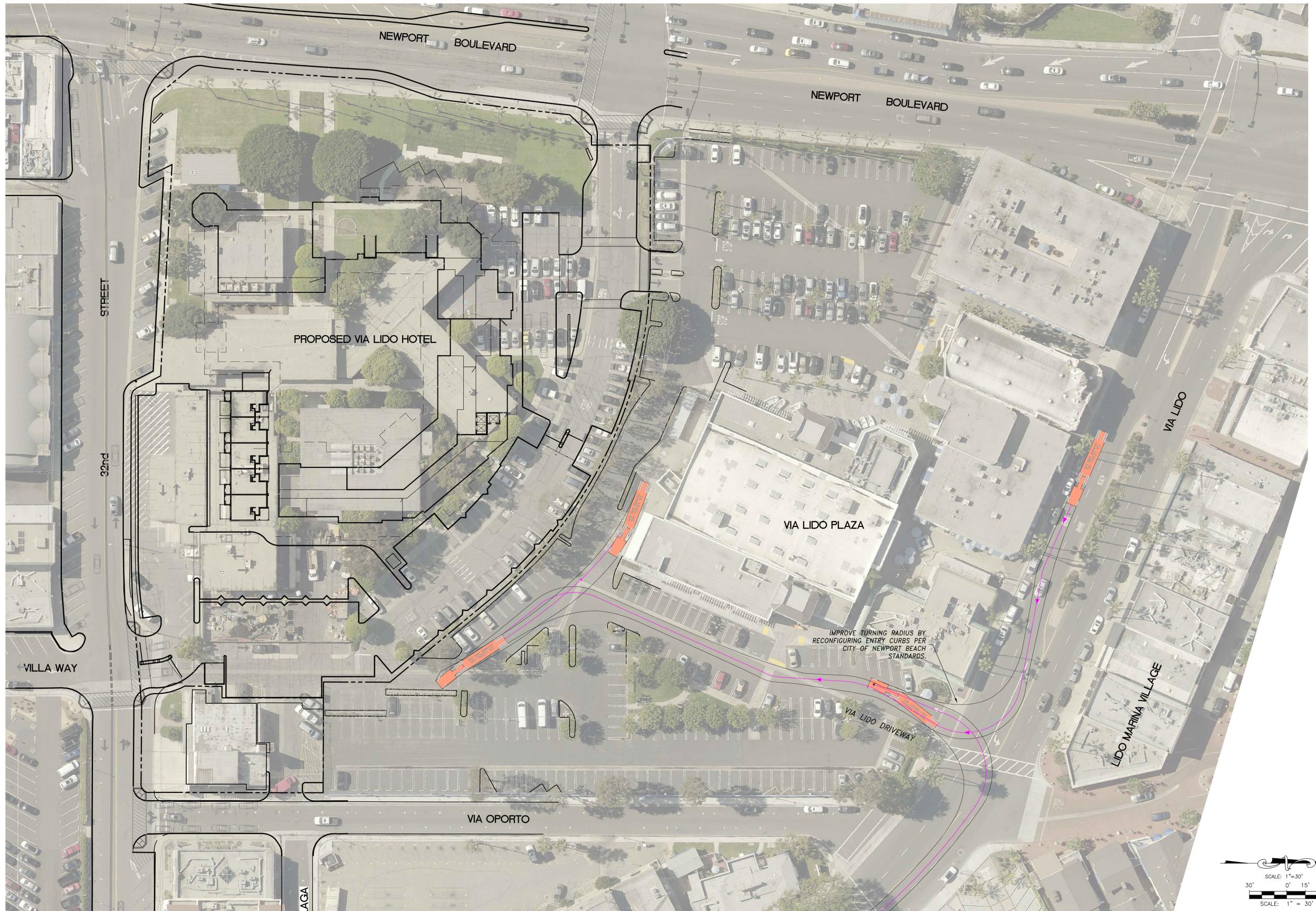


NO.	DATE	REVISION

TRUCK TURN STUDY	
of:	LIDO HOUSE HOTEL 3300 NEWPORT BOULEVARD NEWPORT BEACH, CALIFORNIA
for:	R.D. OLSON DEVELOPMENT

16795 Van Karman, Suite 100, Irvine, California 92606
tel 949.474.1960 • fax 949.474.5315 • www.fuscoe.com

TRUCK TURN STUDY - LIDO HOUSE HOTEL & VIA LIDO PLAZA



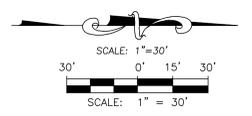
NO.	DATE	REVISION

TRUCK TURN STUDY

of: **LIDO HOUSE HOTEL
3300 NEWPORT BOULEVARD
NEWPORT BEACH, CALIFORNIA**

for: **R.D. OLSON DEVELOPMENT**

TRUCK TURN STUDY - LIDO HOUSE HOTEL & VIA LIDO PLAZA



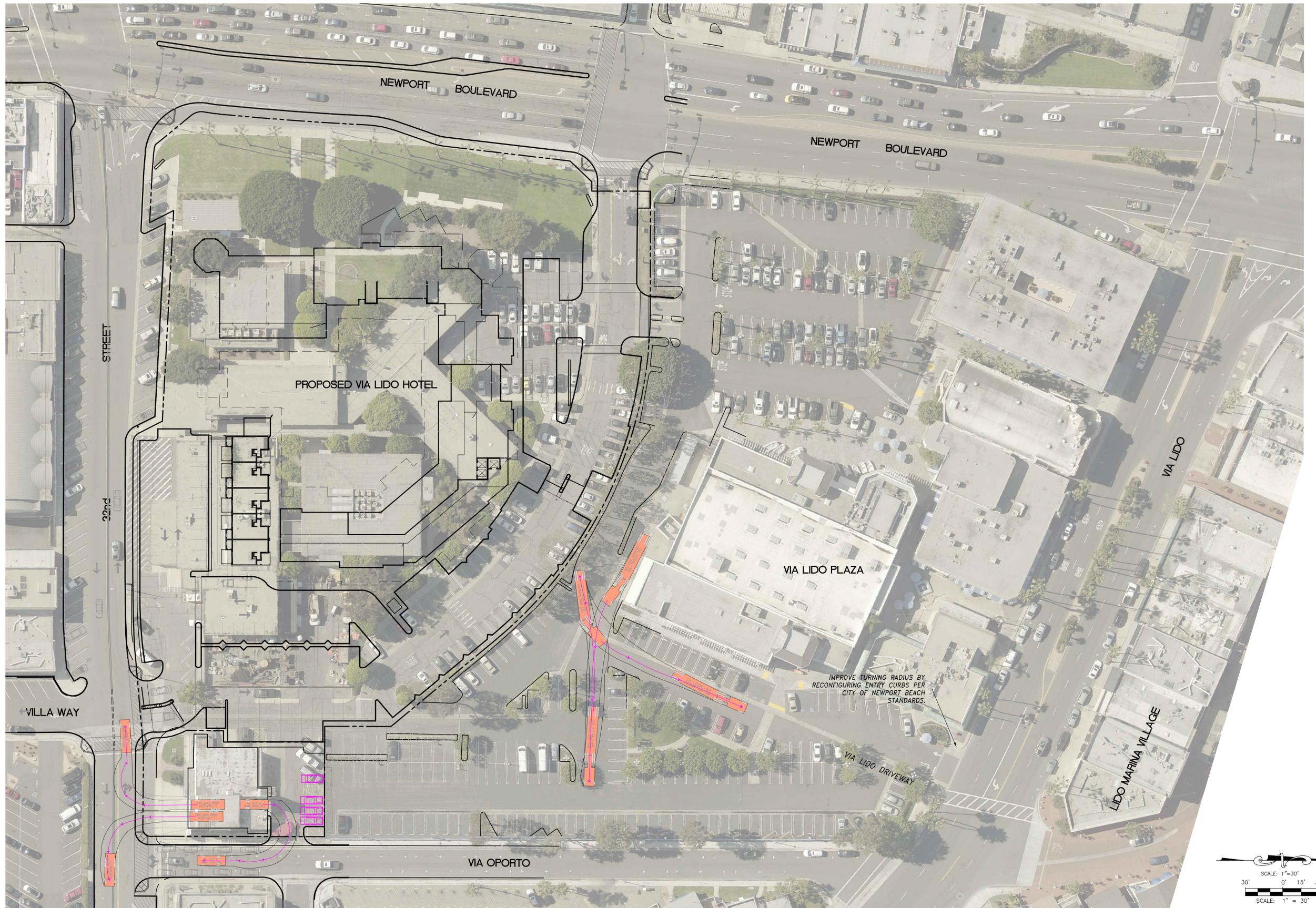
NO.	DATE	REVISION

TRUCK TURN STUDY

of: **LIDO HOUSE HOTEL
3300 NEWPORT BOULEVARD
NEWPORT BEACH, CALIFORNIA**

for: **R.D. OLSON DEVELOPMENT**

TRUCK TURN STUDY - LIDO HOUSE HOTEL & VIA LIDO PLAZA

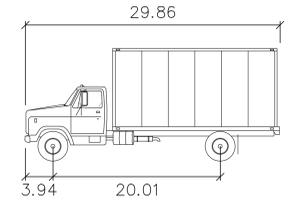


NO.	DATE	REVISION

TRUCK TURN STUDY	
of:	LIDO HOUSE HOTEL 3300 NEWPORT BOULEVARD NEWPORT BEACH, CALIFORNIA
for:	R.D. OLSON DEVELOPMENT

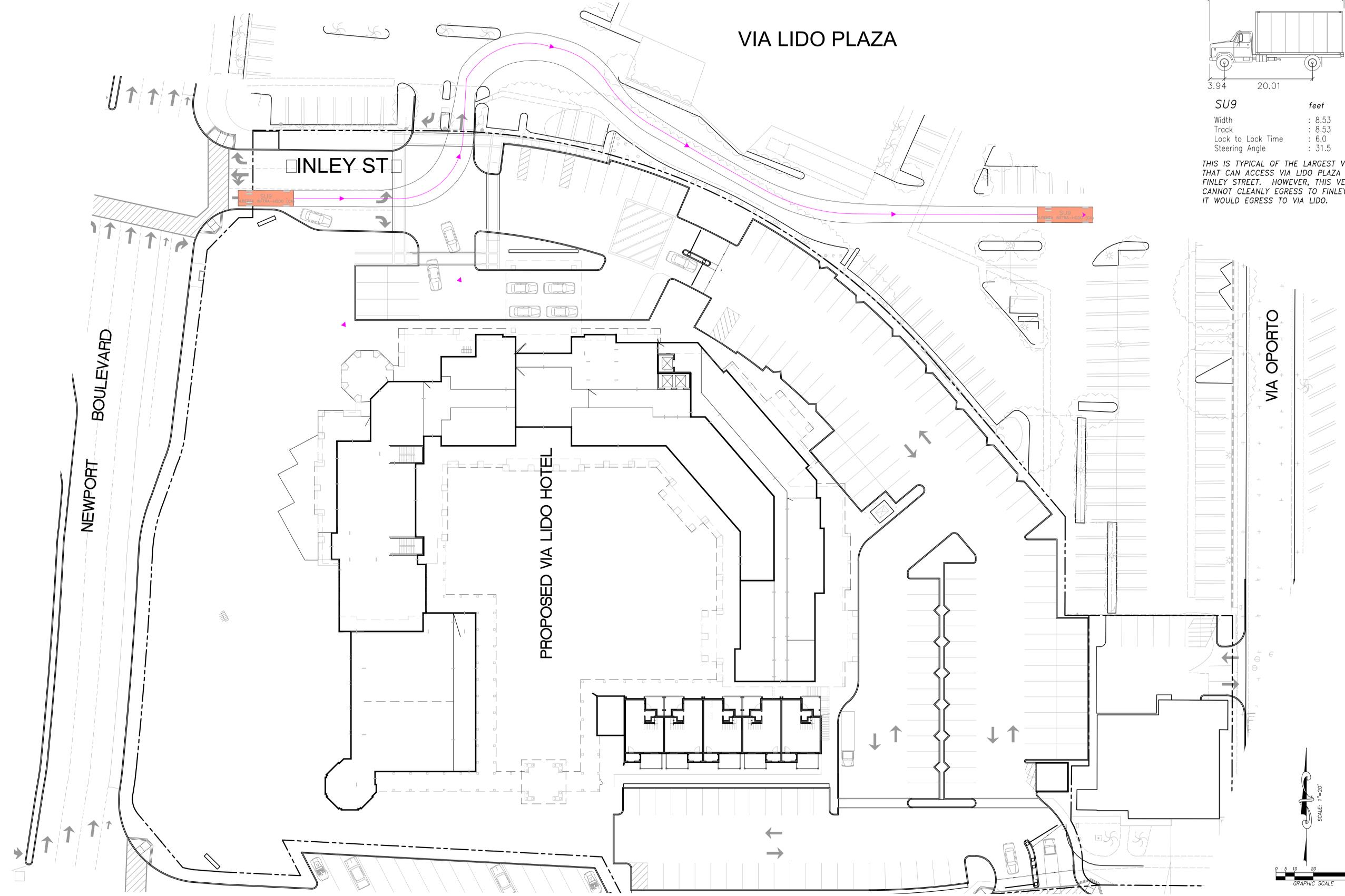
16795 Van Karman, Suite 100, Irvine, California 92606
tel 949.474.1960 • fax 949.474.5315 • www.fuscoe.com

TRUCK TURN STUDY - LIDO HOUSE HOTEL & VIA LIDO PLAZA INGRESS VIA FINLEY STREET

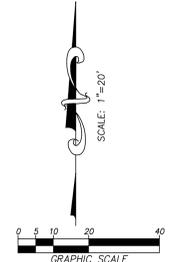


SU9		feet
Width	:	8.53
Track	:	8.53
Lock to Lock Time	:	6.0
Steering Angle	:	31.5

THIS IS TYPICAL OF THE LARGEST VEHICLE THAT CAN ACCESS VIA LIDO PLAZA FROM FINLEY STREET. HOWEVER, THIS VEHICLE CANNOT CLEARLY EGRESS TO FINLEY STREET. IT WOULD EGRESS TO VIA LIDO.



INGRESS



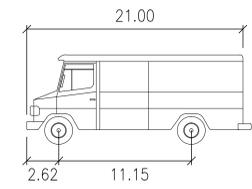
NO.	DATE	REVISION

TRUCK TURN STUDY
of: **LIDO HOUSE HOTEL**
3300 NEWPORT BOULEVARD
NEWPORT BEACH, CALIFORNIA
for: **R.D. OLSON DEVELOPMENT**



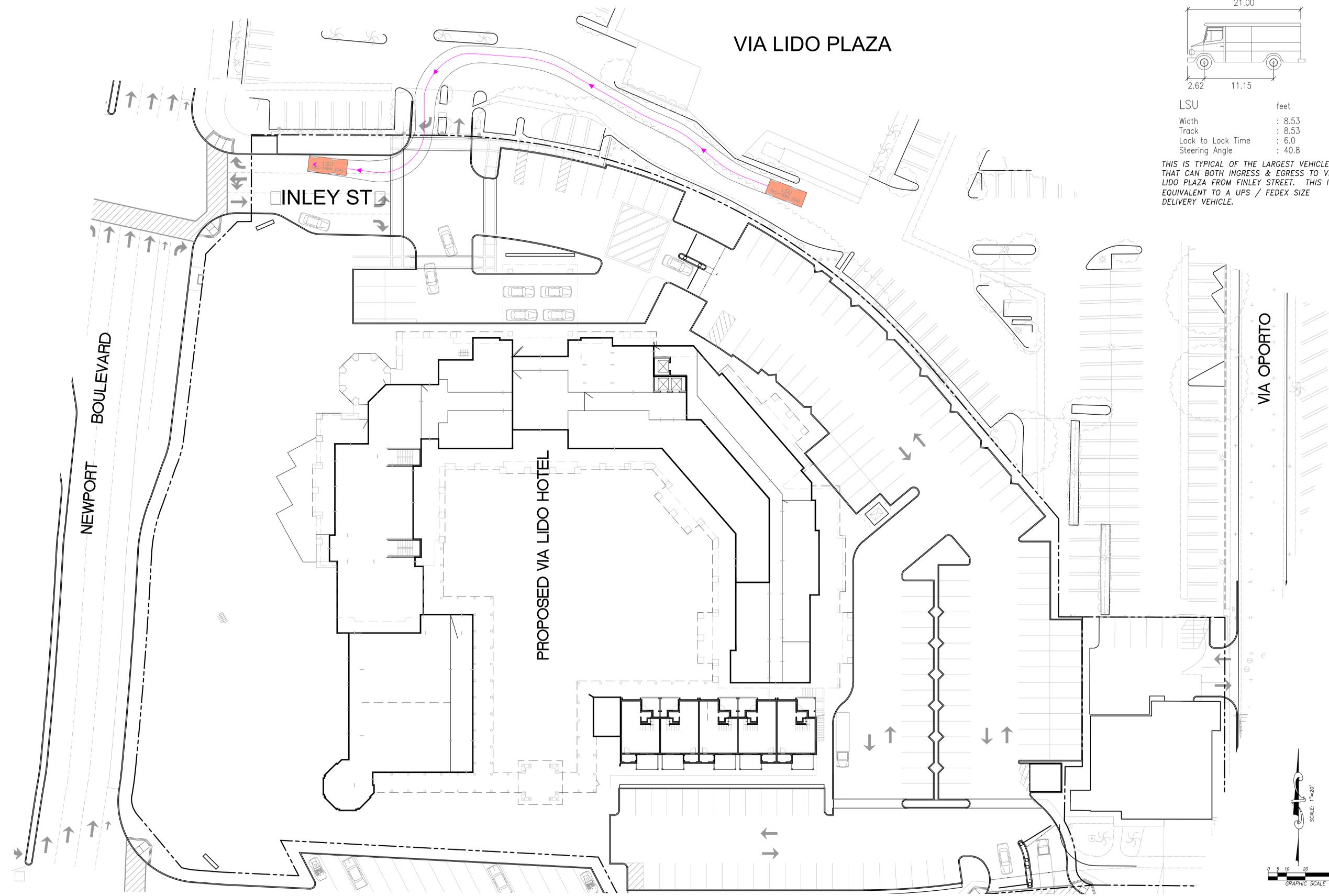
DATE: JULY 25, 2014
SCALE: 1" = 20'
DRAWN BY: M.N.
CHECKED BY: M.N.
SHEET 5 of 6

TRUCK TURN STUDY - LIDO HOUSE HOTEL & VIA LIDO PLAZA EGRESS TO FINLEY STREET



LSU	feet
Width	: 8.53
Track	: 8.53
Lock to Lock Time	: 6.0
Steering Angle	: 40.8

THIS IS TYPICAL OF THE LARGEST VEHICLE THAT CAN BOTH INGRESS & EGRESS VIA LIDO PLAZA FROM FINLEY STREET. THIS IS EQUIVALENT TO A UPS / FEDEX SIZE DELIVERY VEHICLE.



INGRESS

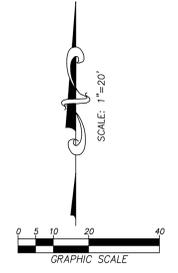


NO.	DATE	REVISION

TRUCK TURN STUDY
 of: LIDO HOUSE HOTEL
 3300 NEWPORT BOULEVARD
 NEWPORT BEACH, CALIFORNIA
 for: R.D. OLSON DEVELOPMENT



DATE: JULY 25, 2014
 SCALE: 1" = 20'
 DRAWN BY: M.N.
 CHECKED BY: M.N.
SHEET 6 OF 6



LAW OFFICES OF ROBERT C. HAWKINS

July 17, 2014

Via Facsimile only

Bradley Hilgrin, Chair
Members of the Planning Commission
c/o James E. Campbell, Principal Planner
Department of Community Development
City of Newport Beach
100 Civic Center Plaza, Second Floor, Bay "C"
Newport Beach, California 92660

Re: **Comments on the Final Environmental Impact Report ("FEIR") for the Lido House Hotel and the Generic Project aka City Hall Reuse Project (the "Projects").**

Greetings:

Thank you for the opportunity to comment to comment on the captioned matter. This firm represents Friends of Dolores, a community action group dedicated to ensuring compliance with state and local laws including the California Environmental Quality Act, Public Resources Code sections 21000 et seq., Friends of City Hall, a community action group dedicated the preservation of the "City Hall" site for civic purposes, and other community groups in the City in connection with the captioned matter.

We offer these comments in the hopes of improving the FEIR and the Project, clarifying the nature and the scope of the Projects and the Project Description, and drawing the Commission's attention to issues that the Commission first raised in the initial Draft and Final Mitigated Negative Declaration ("MND").

13-1

First, we congratulate the City on the FEIR: unlike the previous MND, the FEIR is not italicized. The FEIR is much easier to read. Nonetheless, the FEIR has problems as discussed below.

Second, please find attached hereto as Exhibit "A," our comments on the Final Mitigated Negative Declaration for the original City Hall Re-use Project. Given that the Projects have not really changed—that is, the FEIR still analyzes the Project as proposed and analyzed in the Draft Mitigated Negative Declaration for the City Hall Reuse Project, we incorporate those earlier comments herein. Also, we incorporate all other comments on the DEIR and the FEIR to the extent that they supplement and do not contradict these comments.

Third, as the Commission well remembers, the MND was a disaster which the City saw fit to abandon: it was in all italics and impossible to read; it failed to analyze crucial Project features; it engaged in piecemeal analysis; and it failed to analyze fully the Projects' impacts and mitigation measures.

13-2

Unfortunately, for all of its promise, the FEIR continues down the old disastrous path. As the Commission remembers, Commissioner Tucker asked at the hearing on the MND and the Projects, why

doesn't the City wait until they have an applicant and a project that it can analyze rather than conducting environmental review on the legislative proposals? We welcomed and agreed with Commissioner Tucker's common sense approach.

Now the City has spent hundreds of staff hours and thousands of tax dollars to determine that a hotel use is the appropriate use for the former City Hall site. The Executive Summary appears to embrace this approach and describes the Project as a hotel project. Unfortunately, the DEIR does not continue this approach: it analyzes two projects: the Lido House Hotel; or a mixed use residential and commercial use (the "Generic Project"). The City determined that it would pursue a hotel use when it spent time and money seeking applicants to submit proposals. The City Council also decided on the applicant which is the applicant here. Why is the City continuing to analyze the Project as residential/mixed use? Given that the City has a project and a developer, why delay site development review for another approval?

13-2

All of these impermissibly delays the full environmental review that must occur now and engages in piecemeal analysis which is forbidden by the California Environmental Quality Act, Public Resources Code sections 21000 et seq. As Commissioner Tucker asked long ago, why don't we wait for a project and a developer? The City has satisfied these issues, why delay the environmental review of site development review for another hearing? Such review must be done now for the chosen Project which is the title of the FEIR, the Lido House Hotel and not some amorphous Generic Project that various Council Members may favor.

Correlatively, the FEIR impermissibly ignores the impacts of the Generic Project. For instance, in Response to Comment 8-3 regarding the need to preserve emergency access to Via Lido Center, the FEIR states that Comment 8-3 reflects "... reflects the commentator's preference that the Via Lido Plaza delivery trucks pass through the City's property and ignores its effect on the hotel operations and guests." However, this Response ignores the impacts of the Generic Project which is also part of the Project. The FEIR repeatedly ignores the Generic Project and analyzes the impacts of the Lido House Hotel Project. However, if the Project is approved and the FEIR is certified, the Generic Project will be approved and its impacts will be regarded as completely analyzed. However, the FEIR fails to do this: it focuses solely on the Lido House Hotel Project.

13-3

Fourth, the Project involves a land lease between the City and the proposed developer of the Lido House Hotel. Also, the Generic Project will also involve a lease. Yet, the FEIR does not include any form lease for the Generic Project or a lease for the Lido House Hotel. Given that the lease is part of the Project, the FEIR must analyze the lease and its impacts on the environment including the change in possessory interests, the term of these possessory interests, remedies on default including the ability to seize the Hotel in the event of a default and the inability of the City to operate the hotel. All of these are part of the Lido House Hotel Project and the Generic Project: a full description of the Project includes the terms of these agreements. Indeed, the lease is the same as a development agreement which is part of any development project and which is part of the review of the hearing authority. For instance, in the approval for North Newport Center, the Planning Commission reviewed the environmental document and the project which included a development agreement. The same must happen here: because the lease is part of the Project, the Commission and the public need to review and comment on this part of the Project. Without it, the Project description is fatally incomplete. See Save Tara v. City of West Hollywood (2008) 45 Cal. 4th 116.

13-4

Fifth, as indicated in our earlier comments, the Project's height will create significant aesthetic impacts including light and glare, and shade and shadow impacts. As to the former, light and glare, the Lido House Hotel Project and the Generic Project will expose visitors and guests/residents to lights from passing vehicles on Balboa Blvd. These impacts likely may be able to be mitigated the FEIR contains no such mitigation measures now. As to the shade and shadow impacts, the FEIR concedes that the Project will have such impacts but regards them as temporary because the sun and therefore the shadows move. If this analysis were adequate, there would be no shade impacts. Moreover, as we earlier commented, the Project shade and shadows will affect the Project's own open space and will make the area dark and dingy. It will also affect the outdoor diners at the area restaurants in the vicinity. Although the DEIR's discussion of aesthetic impacts concludes that these are not shade sensitive uses, that conclusion is incorrect. The shade and shadows from the Projects will adversely affect outdoor dining in the area as well as the commercial experience at Via Lido Plaza including the new West Marine store. The FEIR must be revised and recirculated to address these impacts.

13-5

Sixth, also highlighted in our earlier comments, the FEIR employs the wrong environmental baseline with which to determine the Projects' impacts. This error continues the erroneous practice employed in the MND. The DEIR is not even candid as to its use of the erroneous environmental baseline; the July 17, 2014 Staff Report for the Commission ("2014 Commission Staff Report") is somewhat more candid but nonetheless continues to analyze the Project's land use impacts with the incorrect standard. That Report states:

"Absent a specified maximum intensity, the 'plan to plan' analysis would indicate that changes to the site's intensity would not require voter approval; however, when the General Plan Update was approved in 2006, the City commissioned a traffic study that assumed that the existing City Hall site would be expanded to 75,000 square feet. Therefore, staff has conservatively used the 2006 General Plan Update traffic assumption for the purpose of analyzing the Charter Section 423 thresholds."

13-6

2014 Commission Staff Report, handwritten pages 11-12. The DEIR uses this same "plan to plan" comparison to determine land use impacts, see DEIR, Table 5-4, page 5.4-50 Source Note that the 2006 General Plan is the basis for the Land Use Analysis Table 5-4. This use of the 2006 General Plan with the non-existing but planned 75,000 square feet to analyze the Projects' impacts violates the requirements of CEQA: It requires that the analysis compare the impacts of the proposed Projects with the conditions on the ground today, that is without the non-existent 75,000 square feet proposed in the 2006 General Plan. Communities for a Better Environment v. South Coast Air Quality Management District (2010) 48 Cal. 4th 310 ("South Coast AQMD").

Seventh, the FEIR also continues to use improperly the Lido Village Design Guidelines as standards for approval rather than suggested guidelines. The DEIR recognizes their proper role:

"The Lido Village Design Guidelines (December 2011) (Design Guidelines) are to be used as a guide by owners who intend to renovate or rehabilitate existing structures, are planning for new construction, or have decided to make significant exterior or site improvements to property, or by the City while reviewing plans for approval or planned public improvements."

13-7

exterior or site improvements to property, or by the City while reviewing plans for approval or planned public improvements.”

DEIR, page 5.1-12. However, the DEIR confusingly employs these Guidelines as regulatory standards with which projects must be determined to be consistent:

“The Design Guidelines provide a basis for the evaluation and review of the applications by property owners or tenants to the City of Newport Beach. **These Guidelines are not regulatory and are intended to be a component of the City’s development review process where projects must be found consistent”**

DEIR, page 5.1-13. This last sentence is internally contradictory: if the Guidelines are not regulatory, then a project need not be consistent with them. Yet, the final clause maintains that all projects including the Projects must be found consistent with the Guidelines. These Guidelines have never had environmental review, environmental hearings, nor any regulatory approvals, e.g. Coastal Commission approval.

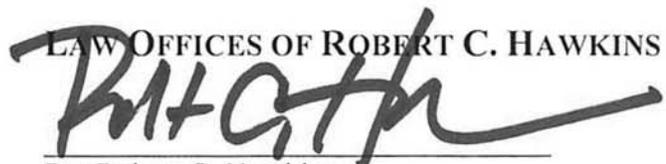
The DEIR continues this erroneous use of these Guidelines by stating that, because the Project must comply with the Guidelines, the Project has no impact on land use, aesthetics and other environmental resources. This might be true if the Guidelines had been subjected to environmental review and their standards were determined to enhance the environment or at least have no significant impact on the environment. The City did not conduct such a review and cannot now employ these Guidelines as an analytical tool or mitigation tool for the Project.

The FEIR contains numerous other errors and omissions. It is not ready for prime time. On behalf of the clients note above, we urge the Commission to reject the Projects and the FEIR, and return the FEIR and the Projects to Staff and the Applicants for further study and review, for revision of the FEIR and recirculation for public comment and review.

Thank you, again, for the opportunity to comment on the FEIR. Please provide us with notice of any responses to these comments and with notices of any and all hearings on the captioned project. Further, this is also a written request for notices pursuant to the California Environmental Quality Act, specifically, Public Resources Code Section 21092.2. Specifically, pursuant to Section 21092.2, we request that you provide us with a copy of any and all notices required pursuant to Public Resources Code Section 21080.4, 21083.9, 21092, 21108 and 21152 relating to the captioned Project..

Of course, should you have any questions, please do not hesitate to contact me.

Sincerely,

LAW OFFICES OF ROBERT C. HAWKINS

By: Robert C. Hawkins

RCH/kw

cc: Leilani Brown, City Clerk (Via Facsimile Only)

Exhibit "A"

LAW OFFICES OF ROBERT C. HAWKINS

March 26, 2013

Via Facsimile Only

Keith Curry, Mayor
Members of the City Council
c/o Leilani Brown, City Clerk
City of Newport Beach
3300 Newport Blvd.
Newport Beach, California 92663

Re: **Additional and Further Comments on the Final Mitigated Negative Declaration ("FMND") for the City Hall Reuse Project (the "Project").**

Greetings:

Thank you for the opportunity to comment on the captioned matter. This firm represents Newport Residents United Again, a community group based on the original Newport Residents United which lobbied in the early 1970s to establish the original height limit for the Coastal Zone, the Friends of Dolores, a community action group dedicated to ensuring compliance with state and local laws including the California Environmental Quality Act, Public Resources Code sections 21000 et seq., Friends of City Hall, a community action group dedicated the preservation of the "City Hall" site for civic purposes, and others in the City in connection with the captioned matter.

13-8

We have commented on the captioned DMND several times and offer these additional further comments on the captioned document.

First, although we have repeatedly requested that you provide us with all notices in connection with the captioned matter, we have yet to receive any such notices. Please comply with the requirements of the California Environmental Quality Act, Public Resources Code sections 21000 et seq. Again, as throughout this process, the City has failed to provide us with notice required by CEQA and other laws.

Second, the Response to our January 17, 2013 Letter Comment 4 states that:

"This comment suggesting that the IS/MND was unreadable is the only comment received that indicated the reviewer had difficulty reading and understanding the information and analysis presented in the document. The IS/MND was distributed to the State Clearinghouse, the California Coastal Commission and other responsible public agencies and/or interested individuals and organizations. With the single exception of this commenter, the City did not receive any comments from any other recipient of the IS/MND that indicated reviewers had difficulty reading the document or that it prevented them from understanding the findings and recommendations included in the environmental analysis. Recirculation of the IS/MND is not necessary."

13-9

Final MND, page 1 of Responses to our January 17, 2013 letter. This is incredible. It is also factually incorrect.

At the January 17, 2013 hearing, all of the public commenters criticized the readability of the DMND. Moreover, at the hearing, staff reported on the project and then introduced the MND preparer, Mr. Keeton Kreitzer. Mr. Kreitzer discussed the MND.

The very first question asked of the EIR preparer, Keeton Kreitzer, concerned the italicized document. Chairman Michael Toerge asked: "**Why was the document in italics?**" (Emphasis in the original.) Mr. Kreitzer responded that he had a computer glitch and the entire document printed in italics. He said that it was not to mislead, to confuse or to make the document less readable. Chair Toerge responded that "**it certainly did make the document much less readable.**" See audio minutes of the January 17, 2013 meeting (the audio minutes are not measured so we cannot provide a location in the audio minutes) (Emphasis supplied). Other members of the public including Jim Mosher and Denys Obermann also criticized the readability of the document. Given these comments including the Planning Commission Chair's comments, the document must be recirculated for public review and comment.

13-9

We note that the City has attempted to cure this defect retroactively by providing the FMND in non-italic font. Unfortunately, this is not appropriate and cannot cure the problem. The public commented on the italicized document, and the italics made the document unreadable. The City Council will now have the luxury of the non-italicized document but the public was not given this opportunity during the public comment period which closed the day after Christmas 2012. Given that the City has now circulated a non-italicized version of the document, the City must recirculate this reformatted document for public review and comment.

As for the Responses to Comment Nos. 5 and 6, although they state that they are analyzing the Project's impacts on the worst case scenario, the Responses fail to do this. First, the proposed shade-shadow analysis was not part of the DMND, and the public has not had the opportunity to review and comment on this study. The FMND without italics and with the shade study must be revised and recirculated for public review and comment.

Second, the shade study is incomplete. The Project description includes increasing the Shoreline Height Limits from thirty-five (35') feet to fifty-five (55') with sloping roofs and elevator towers to sixty (60') feet and architectural features to sixty-five (65') feet. The shade analysis displays only shade for the fifty-five (55') feet, not the higher sloped roofs, elevator towers and architectural features.

13-10

Moreover, no one verifies that the shadows are correct and that the analysis correctly shows the shadows generated at the site and surrounding areas. This City has suffered from unscrupulous persons who have fudged height issues: Andrew Goetz; the entitlement persons for the Mormon Temple; and others. We need a reliable shade analysis to evaluate the potential impacts of the Project, not some seat-of-the-pants, rush-rush analysis.

Third, even this seat-of-the-pants, rush-rush shade analysis shows shade impacts: the open space on the Project site will be permanently shaded. As we indicated in our original comment letter, the DMND states:

“The purpose of allowing buildings, structures and architectural elements to exceed 35 feet is to promote vertical clustering resulting in increased open space and architectural diversity while protecting existing coastal views and providing new coastal view opportunities.”

DMND, page 11 (Emphasis omitted to make the quote easier to read.) See also Response to Coastal Commission Comment No. 4 (“Additionally, the purpose for allowing taller buildings is clearly described within the draft amendment; ‘...to promote vertical clustering resulting in increased publically accessible on-site open space and architectural diversity while protecting existing coastal views and providing new coastal view opportunities.’”

However, Response to Supplemental Comment No. 6 states:

“It is important to note that the City of Newport Beach has determined that shadow sensitive uses include, but are not limited to, residential, recreational and park areas, plazas, schools, and nurseries. Furthermore, the City considers that a significant impact related to shadows occurs when 50 percent of shadow sensitive use or area is in shade/shadow for at least 50 percent of the time between 9:00 a.m. and 3:00 p.m. Pacific Standard Time (PST) between late October and early April or between 9:00 a.m. and 5:00 p.m. Pacific Daylight Time (PDT) between early April and Late October.”

13-10

Section 7.0 of the FMND, page 2. However, the seat-of-the-pants, rush-rush shade analysis fails to analyze the impacts on the Project site open space areas, e.g. the park areas. The FMND recognizes these as shade sensitive areas, but the analysis shows that this area will be in shade for most of the day. Yet, the FMND fails to recognize or appreciate this Project impact.

At the January 27, 2013 Planning Commission, we commented regarding such impacts. Planner Campbell stated that Project impacts on the Project site were not impacts that needed to be analyzed, addressed, or mitigated. However, the FMND is replete with analysis of such impacts including impacts regarding air quality and noise. For instance, Section 4.8(e) concerning Hazards considers and discusses whether the Project will expose Project residents to hazards including noise. Section 4.12(a) discusses the potential impact that the Project may create by exposing Project residents to unwanted noise. Section 4.3(e) discusses the potential that the Project may expose residents to objectionable odors.

13-11

Here, the Project and its huge shadow eliminates the benefit of the open space included in the Project Description and which necessitates the Project’s need to exceed the height limit. The Project’s exceeding the height limit actually will create a significant and unmitigated impact: the shadow which undercuts and destroys the benefit of the open space. This is a significant Project impact which requires mitigation. Indeed, it likely will require modification of the Project to comply with the current height limits which likely will have no such shade impacts.

13-12

Fourth, the Shoreline Height Ordinance and Limitation arose due to citizen action. In the early 1970s, a group of Newport Beach residents including Joe and Judy Rosener formed "Newport Residents United ("NRU")." According to Allen Beek who testified on behalf of NRU when the Council passed the height limit, one of the reasons NRU proposed the height limit was the construction of the massive condominium towers near the Lido Isle Bridge. However, FMND maintains that the Project with its height exceeding the current ordinance is consistent with these large condominiums which gave rise to the height ordinance in the first place. For instance, the discussion of Aesthetics notes:

"Several other taller residential, office, and a mixed use building are also located in the vicinity of the project and within the view."

FMND, page 28. See also Response to Coastal Commission Comment No. 4 Also, see Exhibits 4.1-1 through -7 which show that the only building penetrating the Shoreline Height Limit is the 601 Lido Condominiums and 611 Lido Park Condominiums which led to the Shoreline Height Ordinance. Further, Exhibits 4.1-8 through -11 also show projects built before the Shoreline Height Ordinance which are not in the vicinity of the Project but are on Pacific Coast Highway in an area known as Mariner's Mile.

13-13

The other structures reference in the graphic entitled "Lido Village Building Height Analysis" in Response to Coastal Commission Comment No. 4 show that the vast majority of structures in the vicinity of the Project are within the Shoreline Height Limit, not in excess of those limits. Only two properties shown on this Analysis are as high or higher than the proposed Project: 601 Lido Condominiums and 611 Lido Park Condominiums.

The FMND cannot use these anomalies to show consistency with surrounding development. Indeed, the Mariner's Mile projects are not in the vicinity of the Project site and should not be considered at all. Further, the 601 Lido Condominiums is unusual as shown in the Exhibits 4.1-1 through -7. Without more, these anomalies cannot in and of themselves set the standard. The standard is far lower: it is the current Shoreline Height Limit of thirty-five (35') feet.

Fifth, as indicated in our original comments, the FMND refers to the Lido Village Design Guidelines as regulatory. See Mitigation Measure 4.1-1 and other references in the FMND which state that the Guidelines "prescribe" standards of development. These references occur throughout the FMND. Nonetheless, Response to Comment No. 15 states that:

"The characterization in the Draft IS/MND that the guidelines as regulatory in nature was unintentional. Rather, the discussion of the Lido Village Design Guidelines was intended to illustrate that future development must be found to be consist with the design guidelines for approval."

13-14

FMND, Response to Friends' December 26, 2013, page 10. This is very confusing. The first sentence in this Response suggests that the Guidelines are not regulatory; the second states that the Guidelines are regulatory. The City cannot have it both ways: if the Project must be found to be consistent with the Guidelines, then they are regulatory. If they are not regulatory, then the Project need not be consistent with the Guidelines. Given that the FMND relies upon the

regulatory understanding of the Guidelines, the Guidelines are part of the Project and must be analyzed in the FMND.

Indeed, Response to our January 17, 2013 letter Comment No. 9 concerning the Guidelines states that:

“It is acknowledged that the Lido Village Design Guidelines are **not regulatory**. As indicated in the guidelines, the City of Newport Beach is responsible for design review and project implementation. Project must adhere to adopted General Plan, zoning policies, and regulations, which outline requirements specific for individual parcels within Lido Village, including the City Hall property. **Nonetheless, the Lido Village Design Guidelines are intended to influence the theme and character of that development.** To that end, the guidelines addressed all aspects of future land use that may occur within Lido Village, including edge conditions, pedestrian connection, open space, sustainability, architecture, landscaping, etc., to ensure that the objectives articulated in the document are achieved. In addition, **guidance** is also provided to achieve the desired visual character and aesthetic quality within Lido Village, even though all improvements occurring with the affected area are subject to applicable regulations and permitting process imposed by the City’ General Plan, zoning code and related ordinances, and other related regulatory requirements. Finally, the guidelines are intended to provide design guidance for future development and redevelopment “...with the assurance that others who follow will be held to the same or similar unifying set of standards.” Thus, while they are not regulatory, they include guidance for promoting compatibility and minimizing land use conflicts through the implementation of planning and design solutions that also reduce potential adverse effects.”

13-14

FMND, Response to January 17, 2013 Comment No. 9, page 4 (Emphasis supplied.) Again, this does not really address the question. This Response recognizes that the Guidelines are not regulatory and only provide guidance. However, if so, then how can the FMND rely on compliance with the Guidelines to mitigate Project impacts? See Mitigation Measure 4.1-1. They cannot. Hence, the FMND contains an analysis which requires further discussion regarding the Guidelines and their mitigation of the Project’s impacts. Indeed, as we indicated in our December 26, 2013 Comment, the Project really includes the Guidelines, and the environmental document must be revised to address this aspect of the Project.

Sixth, the FMND fails to analyze the Project’s impacts on the existing environment. That is, it improperly compares the Project’s impacts, not to the existing environment, but on a hypothetical General Plan environment. This is legal error.

Recently, the California Supreme Court decided the CEQA issue of environmental baseline. In Communities for a Better Environment v. South Coast Air Quality Management Dist. (2010) 48 Cal. 4th 310 (“South Coast AQMD”), the Supreme Court held that the environmental baseline is CEQA is generally the existing conditions on the ground. There, the South Coast Air Quality Management District prepared a negative declaration for a refiner project by Conoco-Philips. Among other things, the District argued that the environmental

13-15

baseline was maximum output of the refinery which had valid permits to operate it at the site even though the refinery had yet to be built. Among other things, ConocoPhillips argued that failure to use the maximum permitted operations as a baseline would violate ConocoPhillips vested rights and contravene CEQA's statute of limitations.

The Court reviewed the case law and stated:

A long line of Court of Appeal decisions holds, in similar terms, that the **impacts of a proposed project are ordinarily to be compared to the actual environmental conditions existing at the time of CEQA analysis**, rather than to allowable conditions defined by a plan or regulatory framework. This line of authority includes cases where a plan or regulation allowed for greater development or more intense activity than had so far actually occurred, n6 as well as cases where actual development or activity had, by the time CEQA analysis was begun, already exceeded that allowed under the existing regulations. n7 In each of these decisions, the appellate court concluded the baseline for CEQA analysis must be the "existing physical conditions in the affected area" (*Environmental Planning & Information Council v. County of El Dorado, supra*, 131 Cal. App. 3d at p. 354), that is, the "real conditions on the ground" (*Save Our Peninsula Committee v. Monterey County Bd. of Supervisors, supra*, 87 Cal.App.4th at p. 121; *see City of Carmel-by-the-Sea v. Board of Supervisors, supra*, 183 Cal. App. 3d at p. 246), rather than the level of development or activity that could or should have been present according to a plan or regulation."

13-16

Id. at 320-21. The Court held that:

"Applied here, this general rule leads to the conclusion the District erred in using the boilers' maximum permitted operational levels as a baseline. By treating all operation of the boilers within the individual limits of their permits to be part of the environmental setting, or baseline, the District ensured that no emissions from increased boiler operation would be considered an environmental impact so long as no single boiler operated beyond its permitted capacity."

Id. at 322. See *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2012) 205 Cal. App. 4th 552 petition for review granted 2012 Cal. LEXIS 7556 (to the opposite effect; opinion was depublished pending the Supreme Court review).

Hence, under South Coast AQMD, the FMND uses an improper baseline to assess impacts including traffic impacts. The FMND states:

"When the City's General Plan Update was approved in 2006, the City had commissioned a traffic study that assumed that the existing City Hall site would be expanded to 75,000 square feet. Therefore, based on the General Plan 2006 Update traffic (land use) assumption used to analyze the traffic impacts associated with the project site, the City determined that such future redevelopment/reuse of the City Hall Complex property would not require voter approval for the purpose of analyzing the Charter Section 423 thresholds."

FMND, page 112. The FMND uses this "General Plan" analysis to determine the baseline for the Project instead of the existing conditions on the ground today which is 54,000 square feet including the Fire Station. See City Council Study Session presentation, page 2. This does not comply with the requirements of CEQA and with the direction of the South Coast AQMD Court. Indeed, it inflates the traffic generated under existing conditions and lessens the traffic impacts of the project. The FMND must be revised to consider the Project's impacts on traffic and other issues based upon a comparison with the existing conditions. Likely, the Project will generate substantially more traffic than existing conditions.

Moreover, the FMND seems confused on this point. In Response to our December 26, 2013 Comment No. 34, the FMND states that:

"Fire Station No. 2 is an existing use that currently generates traffic to and from the site as a result of home-to-work trips. Those trips currently exist and are reflected in the baseline traffic for the Project."

FMND, Response to Comment No. 34, page 14. However, it is unclear under the General Plan baseline whether or not the Fire Station traffic was not allocated to another site.

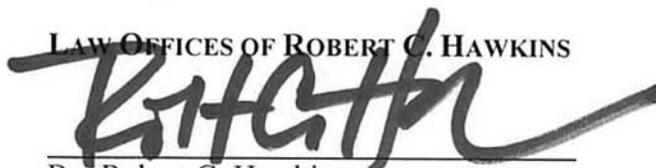
In conclusion, the FMND is totally inadequate. Good and sound policy reasons and good planning require the preparation of an EIR. Such an EIR would analyze correctly the existing environmental setting including the 54,000 square foot current City Hall structure, would clearly state the Project objectives which include adequate open space for this public site, would analyze all impacts including shade impacts, would include adequate mitigation, would include a discussion of Project alternatives which is necessary for the Project to go forward, and would allow the City to override any significant unmitigated impacts.

Thank you, again, for the opportunity to comment on the FMND. As before and although ignored for this hearing, **PLEASE PROVIDE US WITH NOTICE OF ANY RESPONSES TO THESE COMMENTS IN A NON-ITALICIZED FORMAT AND WITH NOTICES OF ANY AND ALL HEARINGS ON THE CAPTIONED PROJECT AND FMND.**

Of course, should you have any questions, please do not hesitate to contact me.

Sincerely,

LAW OFFICES OF ROBERT C. HAWKINS



By: Robert C. Hawkins

RCH/kw

cc: Leilani Brown, City Clerk (Via Facsimile Only)

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Client/Matter: Friends

Date: March 26, 2013

Documents: Comments on CC Agenda Item No. 11: FMND re City Hall Reuse Project

Pages: 7*

COMMENTS: Original will follow as indicated.

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13. RESPONSES TO COMMENTS FROM LAW OFFICES OF ROBERT C. HAWKINS, DATED JULY 17, 2014.

- 13-1 The commenter states that the text of the Draft EIR is legible, as it is not written in italic font throughout. The commenter also incorporates an earlier comment letter submitted for the previously prepared Negative Declaration (not adopted) for a past project at the project site (as discussed in detail on pages 3-4 and 3-5, Section 3.2, *Background and History*, of the Draft EIR). Refer to Responses 13-8 through 13-17.
- 13-2 The City currently has a specific development application that has been submitted for the project site, which is described in detail throughout Section 3.3, *Project Characteristics*, of the Draft EIR. Contrary to what the Commenter suggests regarding two development scenarios considered as part of the proposed project, the Draft EIR only considers one development application for a new hotel. As illustrated on Exhibit 3-3, *Conceptual Site Plan*, of the Draft EIR, the project analyzed includes a new 99,625 square-foot hotel comprised of guestrooms, public areas, and back of house (operational) areas. Guestrooms and suites, including a Presidential Suite and extended stay suites and villas, would occupy levels two through four. The rooftop patio would include a bar area, fire pit, and cabanas and provide views of the bay and ocean. Other project-specific features included in Section 3.3 and analyzed in the Draft EIR include the proposed architecture, open space and landscaping, and vehicular access and parking. As required by CEQA, the proposed entitlements required as part of the application for the project must also be considered in the environmental clearance document, which have been discussed in Section 3.3 of the Draft EIR as well. It should be noted that, as required by *CEQA Guidelines* Section 15126.6, *Consideration and Discussion of Alternatives to the Proposed Project*, a mixed use development scenario was considered as part of Section 7.0, *Alternatives to the Proposed Project*, of the Draft EIR. *CEQA Guidelines* Section 15126.6, requires an EIR to describe a range of reasonable alternatives to the project, which would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives. Per *CEQA Guidelines* Section 15126, the Draft EIR included an analysis of a reasonable range of alternatives, including reduced density, mixed-use, and two no build alternatives.
- 13-3 The Draft EIR considered the full scope of the application, as submitted to the City of Newport Beach, and does not include any other potential project entitlement clearances not discussed. Thus, no further environmental clearance documentation is required, upon certification of the EIR, for the project, as proposed. Refer to Response 13-2 pertaining to the proposed project analyzed as part of the Draft EIR; no Generic Project was considered, but rather a specific site plan (the proposed Lido House Hotel), as illustrated in Exhibit 3-3, *Conceptual Site Plan*, of the Draft EIR was analyzed.

The commenter suggests that the Draft EIR analyzes the development of a Generic Project (as the proposed project), which is not the case. As discussed in Response 9-2, the City Council selected R.D. Olson as the development team to pursue a hotel project at the project site. The City Council executed an Exclusive Negotiating Agreement with R.D. Olson and R.D. Olson has submitted a Site Development Review and Conditional Use



Permit application consistent with their proposal and applicable Zoning Codes, which is the subject of this EIR. Thus, implementation of the proposed project, as discussed in the Draft EIR would not result in the development of a Generic Project, as suggested by the commenter, but rather the development of the hotel as proposed.

- 13-4 As described on page 3-19 of Section 3.6, *Agreements, Permits, and Approvals*, of the Draft EIR, a Lease was considered in the Draft EIR as part of the proposed project. Lease negotiations are ongoing and have not been completed. Refer to Response 9-2.
- 13-5 Increased heights at the project site would result in similar lighting conditions as structures of similar or higher building height in the project vicinity. Further, new shade/shadow conditions were considered on page 5.2-35 of the Draft EIR, which concluded that, as illustrated in Exhibit 5.2-12, *Proposed Shade/Shadow Patterns*, shade/shadow impacts would be minimal, for a short period of time, and the areas shaded are not considered to be shadow-sensitive (as these areas consist of surface parking lot and a portion of a commercial-retail building). Thus, impacts in this regard are less than significant, as described in the Draft EIR.

As illustrated on Exhibit 5.2-12, *Proposed Shade/Shadow Patterns*, of the Draft EIR, the on-site public use area along Newport Boulevard would only be shaded in the morning hours. Thus, the proposed public use areas along the western portion of the project site are not anticipated to experience substantial shade as a result of the proposed structure. Further, as depicted on Exhibit 5.2-12 of the Draft EIR, no shading of adjacent outdoor diners associated with restaurant uses would result from the proposed structure; no impacts would result in this regard. The adjacent retail store (West Marine) would be partially shaded; however, this use is not considered to be shadow-sensitive.

With regard to increased vehicle headlights along Balboa Boulevard and surrounding residential uses, the project would not result in an increase in vehicles (or associated vehicle headlights) traveling along Balboa Boulevard (as illustrated on Exhibit 7, *Forecast Percent Trip Distribution of Proposed Project*, of Appendix 11.3, *Traffic Impact Analysis/Parking Study*, of the Draft EIR). Further, as discussed on page 5.2-38 of the Draft EIR, vehicle headlights are a source of nighttime lighting that was considered in the light and glare analysis for the proposed project. Increased vehicle headlights along Newport Boulevard and 32nd Street would appear similar to the existing lighting conditions currently experienced. Thus, impacts in this regard would be less than significant.

- 13-6 The *City of Newport Beach General Plan* was adopted July 25, 2006 (as amended periodically) and is the City's guide for community decision-making. Appendix G of the *CEQA Guidelines* contains the Environmental Checklist form that was used during the preparation of this EIR. Accordingly, a project may create a significant adverse environmental impact if it would: 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) adopted for the purpose of avoiding or mitigating an environmental effect. Thus, the Draft EIR considers the project's consistency



- with the City’s adopted General Plan, as described in Impact Statements LU-1 through LU-5, which includes Table 5.1-4, *General Plan Policy Consistency Analysis*. It should be noted that the environmental analysis presented throughout the Draft EIR considers the project impacts compared to the existing “on-the-ground” conditions, and does not analyze the project via a “plan-to-plan” analysis approach. As discussed in Section 3.1.2, *Project Setting (Existing Conditions)*, 60,600 square feet of administration/office floor area (previously used to support the former City of Newport Beach City Hall), and the existing Fire Station No. 2 that is approximately 7,100 square feet, were considered in the Draft EIR. The existing baseline condition that was utilized in the Draft EIR acknowledged that City Hall staff has been relocated to the new Civic Center located at Newport Center in April of 2013. It is noted that the City continues limited use of the property and various buildings including community use of the former City Council Chambers for assembly purposes. Also, the Draft EIR considered Fire Station No. 2 as currently on-site, staffed, and operational.
- 13-7 Refer to Response 7-4 pertaining to the City’s *Design Guidelines*.. As discussed in Section 5.1, *Land Use and Relevant Planning*, and Section 5.2, *Aesthetics/Light and Glare*, where the project considers consistency with the *Design Guidelines*, it is in the context of describing the project’s consistency with applicable land use plans and policies as well as describing the City’s intent for the visual character in the area. This consistency analysis describes the City’s intent for the character/quality of the area and whether or not the project is consistent with that intent or not. The *Design Guidelines* are described as guidelines were applicable and not regulatory requirements. Further, it should be noted that page 5-1 of the *Design Guidelines* states that within the City of Newport Beach’s Zoning Code, there are requirements for development and new land uses to adhere to *Design Guidelines*. Section 20.16.020, paragraphs C through E, require land owners to follow *Design Guidelines* or criteria as a condition of approval. Refer to Response 7-4 pertaining to Coastal Commission approval.
- 13-8 The commenter has attached a letter (Exhibit “A” of Letter 13) that was previously submitted as part of the Negative Declaration on March 26, 2013. The City of Newport Beach has previously reviewed and responded to these comments. Per the request of the commenter, this attached letter (Exhibit “A”) has been responded to, to the extent that it is applicable to this EIR in Responses 13-9 through 13-17 below.
- 13-9 The commenter has requested to be notified on all public correspondence for the project, as required by CEQA and other laws. Notification to the public of circulation of the Draft EIR has been conducted consistent with the *CEQA Guidelines Section 15087(a)(1)*. Refer to Response 13-1 pertaining to the legibility of the Draft EIR.
- 13-10 Refer to Response 13-5 pertaining to the shade/shadow impact analysis presented in the Draft EIR.
- 13-11 Refer to Response 13-5 pertaining to the shade/shadow impact analysis presented in the Draft EIR.



- 13-12 Refer to Response 13-5 pertaining to the shade/shadow impact analysis presented in the Draft EIR.
- 13-13 Page 5.2-11 of the Draft EIR specifically describes the existing heights of the surrounding development, as currently constructed. As discussed on the last paragraph of page 5.2-35 of the Draft EIR, project implementation would alter the visual character of the site and its surroundings, as the former Newport Beach City Hall Complex would be replaced with the proposed hotel and associated parkways/landscaping. Surrounding land uses provide a mix of uses consistent with retail/restaurant and hotel uses focused toward a more visitor-oriented character. The proposed project, with the proposed setbacks to Newport Boulevard and 32nd Street, is considered compatible in massing and scale to the surrounding uses. Further, the increase of building heights (up to 58.5 feet) would not result in a substantial change in the character of the area, as surrounding buildings (particularly to the north and east of the project site) include structures that can range from 12 to 110 feet. The proposed building heights for portions of the structure located along Newport Boulevard and 32nd street (up to 30 feet in height) would be similar to height as the surrounding buildings to the west and south (generally ranging in height from 11 to 35 feet). Thus, with implementation of the recommended Mitigation Measure AES-2 (which would ensure compliance with the *Design Guidelines*), implementation of the proposed project would result in less than significant impacts pertaining to a degradation of character/quality at the project site and surrounding area.
- 13-14 Refer to Response 13-7.
- 13-15 Refer to Response 13-6.
- 13-16 Refer to Response 13-6. As discussed in Section 5.5, *Traffic/Circulation*, of the Draft EIR, the project's traffic-related impacts were compared to the existing "on-the-ground" conditions, and not a "Plan-to-Plan" analysis.
- 13-17 Refer to Response 13-16. Traffic associated with the existing on-site Fire Station No. 2 are included in the existing traffic counts conducted as part of the Draft EIR. The analysis assumes that this use would remain on-site during operations of the proposed project, as discussed in Section 5.5, *Traffic/Circulation*, of the Draft EIR.



3.0 Mitigation Monitoring and Reporting Program



3.0 MITIGATION MONITORING AND REPORTING PROGRAM

The California Environmental Quality Act (CEQA) requires that when a public agency completes an environmental document which includes measures to mitigate or avoid significant environmental effects, the public agency must adopt a reporting or monitoring program. This requirement ensures that environmental impacts found to be significant will be mitigated. The reporting or monitoring program must be designed to ensure compliance during project implementation (Public Resources Code Section 21081.6).

In compliance with Public Resources Code Section 21081.6, Table 1, *Mitigation Monitoring and Reporting Checklist*, has been prepared for the Lido House Hotel Project (the project). This Mitigation Monitoring and Reporting Checklist is intended to provide verification that all applicable Conditions of Approval relative to significant environmental impacts are monitored and reported. Monitoring will include: 1) verification that each mitigation measure has been implemented; 2) recordation of the actions taken to implement each mitigation; and 3) retention of records in the Lido House Hotel project file.

This Mitigation Monitoring and Reporting Program delineates responsibilities for monitoring the project, but also allows the City flexibility and discretion in determining how best to monitor implementation. Monitoring procedures will vary according to the type of mitigation measure. Adequate monitoring consists of demonstrating that monitoring procedures took place and that mitigation measures were implemented. This includes the review of all monitoring reports, enforcement actions, and document disposition, unless otherwise noted in the Mitigation Monitoring and Reporting Checklist (Table 1). If an adopted mitigation measure is not being properly implemented, the designated monitoring personnel shall require corrective actions to ensure adequate implementation.

Reporting consists of establishing a record that a mitigation measure is being implemented, and generally involves the following steps:

- The City distributes reporting forms to the appropriate entities for verification of compliance.
- Problems or exceptions to compliance will be addressed to the City as appropriate.
- Periodic meetings may be held during project implementation to report on compliance of mitigation measures.
- Responsible parties provide the City with verification that monitoring has been conducted and ensure, as applicable, that mitigation measures have been implemented. Monitoring compliance may be documented through existing review and approval programs such as field inspection reports and plan review.



- The City prepares a reporting form periodically during the construction phase and an annual report summarizing all project mitigation monitoring efforts.
- Appropriate mitigation measures will be included in construction documents and/or conditions of permits/approvals.

Minor changes to the Mitigation Monitoring and Reporting Program, if required, would be made in accordance with CEQA and would be permitted after further review and approval by the City. No change will be permitted unless the Mitigation Monitoring and Reporting Program continues to satisfy the requirements of Public Resources Code Section 21081.6.



Table 1
MITIGATION MONITORING AND REPORTING CHECKLIST

Mitigation Number	Mitigation Measure	Implementation Responsibility	Timing	Monitoring Responsibility	Timing	VERIFICATION OF COMPLIANCE		
						Initials	Date	Remarks
AESTHETICS								
AES-1	Prior to issuance of any grading and/or demolition permits, whichever occurs first, a Construction Management Plan shall be submitted for review and approval by the Director of Community Development. The Construction Management Plan shall, at a minimum, indicate the equipment and vehicle staging areas, stockpiling of materials, fencing (i.e., temporary fencing with opaque material), and haul route(s). Staging areas shall be sited and/or screened in order to minimize public views to the maximum extent practicable. Construction haul routes shall minimize impacts to sensitive uses in the City.	Applicant/ Contractor	Prior to Issuance of Grading/ Demolition Permits	Director of Community Development	Prior to Issuance of Grading/ Demolition Permits			
AES-2	Prior to issuance of a building or grading permit for new construction, the Landscape Concept Plan and Plant Palette shall be submitted to the Director of Community Development for review and approval. Landscaping shall complement the proposed site design and surrounding streetscape and must also be consistent with the Lido Village Design Guidelines.	Applicant/ Contractor	Prior to Issuance of Grading or Building Permits	Director of Community Development	Prior to Issuance of Grading/ Construction Permits			
AES-3	All construction-related lighting shall be located and aimed away from adjacent	Applicant/ Contractor	Prior to Issuance of	Director of Community	Prior to Issuance of Grading			



Mitigation Number	Mitigation Measure	Implementation Responsibility	Timing	Monitoring Responsibility	Timing	VERIFICATION OF COMPLIANCE		
						Initials	Date	Remarks
	residential areas and consist of the minimal wattage necessary to provide safety and security at the construction site. A Construction Safety Lighting Plan shall be approved by the Director of Community Development prior to issuance of the grading or building permit application.		Grading or Building Permit	Development	Permit/ During Construction			
BIOLOGICAL RESOURCES								
BIO-1	To the extent feasible, all vegetation removal activities shall be scheduled outside of the nesting season (typically February 15 to August 15) to avoid potential impacts to nesting birds. However, if initial vegetation removal occurs during the nesting season, all suitable habitat shall be thoroughly surveyed for the presence of nesting birds by a qualified biologist prior to commencement of clearing. If any active nests are detected, a buffer of at least 300 feet for raptors shall be delineated, flagged, and avoided until the nesting cycle is complete as determined by the City.	Applicant/ Contractor	Prior to vegetation removal	Director of Community Development	Prior to Issuance of a Grading Permit; During Construction			
BIO-2	The City shall locate an existing <i>Ficus benjamina</i> tree or other suitable tree into a City park and dedicate the tree in the name of William Lawrence "Billy" Covert. Should an appropriate tree not be found, the City shall attempt to transplant the existing tree or plant a new tree of the same variety at an appropriate location.	City Recreation and Senior Services, Municipal Operations Department, and Community Development	Prior to Issuance of Grading/ Demolition Permits	Recreation and Senior Services, Municipal Operations Department, and Community Development	Prior to Issuance of Grading/ Demolition Permits			



Mitigation Number	Mitigation Measure	Implementation Responsibility	Timing	Monitoring Responsibility	Timing	VERIFICATION OF COMPLIANCE		
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	The re-dedicated tree shall have a permanent marker or plaque. Every effort shall be made to involve the Covert family in this process.	Department		Department				
BIO-3	Because the Freedom Tree also cannot be effectively transplanted, the City shall locate an existing tree in a very prominent location within a City park or at the new Civic Center and dedicate it as The Freedom Tree. An appropriate permanent marker or plaque shall be provided and the dedication should be accomplished with community and veterans groups' participation.	City Recreation and Senior Services, Municipal Operations Department, and Community Development Department	Prior to Issuance of Grading/ Demolition Permits	C Recreation and Senior Services, Municipal Operations Department, and Community Development Department	Prior to Issuance of Grading/ Demolition Permits			
BIO-4	Because the Walter Knott Tree and the California Bicentennial Tree cannot be effectively transplanted, the City shall locate an existing tree within a City park and dedicate it in the name of Walter and Cordelia Knott. The City shall also locate an existing tree in a prominent location within a City park or at the new Civic Center and dedicate it in honor of the State of California. The re-dedicated trees shall have permanent markers and every effort shall be made to involve the Knott family and the community in the process.	City Recreation and Senior Services, Municipal Operations Department, and Community Development Department	Prior to Issuance of Grading/ Demolition Permits	Recreation and Senior Services, Municipal Operations Department, and Community Development Department	Prior to Issuance of Grading/ Demolition Permits			
CULTURAL RESOURCES								
CUL-1	An archaeologist and a Native American Monitor appointed by the City of Newport Beach shall be present during earth removal or disturbance activities	Applicant/ Contractor	During Grading	Director of Community Development	Prior to Issuance of a Grading Permit; During Grading			



Mitigation Number	Mitigation Measure	Implementation Responsibility	Timing	Monitoring Responsibility	Timing	VERIFICATION OF COMPLIANCE		
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	related to rough grading and other excavation for utilities. If any earth removal or disturbance activities result in the discovery of cultural resources, the Project proponent's contractors shall cease all earth removal or disturbance activities in the vicinity and immediately notify the City selected archaeologist and/or Native American Monitor, who shall immediately notify the Director of Community Development. The City selected archaeologist shall evaluate all potential cultural findings in accordance with standard practice, the requirements of the City of Newport Beach Cultural Resources Element, and other applicable regulations. Consultation with the Native American Monitor, the Native American Heritage Commission, and data/artifact recovery, if deemed appropriate, shall be conducted.							
CUL-2	An Orange County Certified Paleontologist appointed by the City of Newport Beach shall prepare a Paleontological Resource Monitoring and Mitigation Program prior to earth removal or disturbance activities at the project site. The City selected paleontologist shall be present during earth removal or disturbance activities related to rough grading and other excavation for utilities. Paleontological monitoring shall include inspection of exposed rock units during	Community Development Director	Prior to Earth Removal or Disturbance Activities	Community Development Department/ Applicant/ Contractor	Prior to Earth Removal or Disturbance Activities/ Upon Discovery of Paleontological Resources			



Mitigation Number	Mitigation Measure	Implementation Responsibility	Timing	Monitoring Responsibility	Timing	VERIFICATION OF COMPLIANCE		
						Initials	Date	Remarks
	<p>active excavations within sensitive geologic sediments. If any earth removal or disturbance activities result in the discovery of paleontological resources, the Project proponent's contractors shall cease all earth removal or disturbance activities in the vicinity and immediately notify the City selected paleontologist who shall immediately notify the Community Development Director. The City selected paleontologist shall evaluate all potential paleontological findings in accordance with the Paleontological Resource Monitoring and Mitigation Program Monitoring, standard practice, the requirements of the City of Newport Beach Historic Resources Element, and other applicable regulations. Upon completion of the fieldwork, the City selected paleontologist shall prepare a Final Monitoring and Mitigation Report to be filed with the City and the repository to include, but not be limited to, a discussion of the results of the mitigation and monitoring program, an evaluation and analysis of the fossils collected (including an assessment of their significance, age, geologic context), an itemized inventory of fossils collected, a confidential appendix of locality and specimen data with locality maps and photographs, and an appendix of curation agreements and other appropriate</p>							



Mitigation Number	Mitigation Measure	Implementation Responsibility	Timing	Monitoring Responsibility	Timing	VERIFICATION OF COMPLIANCE		
						Initials	Date	Remarks
	communications.							
TRAFFIC/CIRCULATION								
TRA-1	<p>Prior to Issuance of any grading and/or demolition permits, whichever occurs first, a Construction Management Plan shall be submitted for review and approval by the Community Development Department/City Traffic Engineer. The Construction Management Plan shall, at a minimum, address the following:</p> <ul style="list-style-type: none"> Traffic control for any street closure, detour, or other disruption to traffic circulation. Identify the routes that construction vehicles will utilize for the delivery of construction materials (i.e., lumber, tiles, piping, windows, etc.), to access the site, traffic controls and detours, and proposed construction phasing plan for the project. Specify the hours during which transport activities can occur and methods to mitigate construction-related impacts to adjacent streets. Require the Applicant to keep all 	Applicant/ Contractor	Prior to Issuance of Grading/ Demolition Permits	Community Development Department; City Traffic Engineer	Prior to Issuance of Grading/ Demolition Permits; During Construction			



Mitigation Number	Mitigation Measure	Implementation Responsibility	Timing	Monitoring Responsibility	Timing	VERIFICATION OF COMPLIANCE		
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	<p>haul routes clean and free of debris, including but not limited to gravel and dirt as a result of its operations. The Applicant shall clean adjacent streets, as directed by the City Engineer (or representative of the City Engineer), of any material which may have been spilled, tracked, or blown onto adjacent streets or areas.</p> <ul style="list-style-type: none"> Hauling or transport of oversize loads shall be allowed between the hours of 9:00 AM and 3:00 PM only, Monday through Friday, unless approved otherwise by the City Engineer. No hauling or transport will be allowed during nighttime hours, weekends, or Federal holidays. Use of local streets shall be prohibited. Haul trucks entering or exiting public streets shall at all times yield to public traffic. If hauling operations cause any damage to existing pavement, streets, curbs, and/or gutters 							



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	<p>along the haul route, the applicant shall be fully responsible for repairs. The repairs shall be completed to the satisfaction of the City Engineer.</p> <ul style="list-style-type: none"> All constructed-related parking and staging of vehicles shall be kept out of the adjacent public roadways and shall occur on-site or in public parking lots. <p>This Plan shall meet standards established in the current California Manual on Uniform Traffic Control Device (MUTCD) as well as City of Newport Beach requirements.</p>							
TRA-2	<p>Prior to issuance of Certificates of Occupancy, the applicant shall submit a Parking Management Plan for review and approval by the Community Development Department. The Parking Management Plan shall, at a minimum, include the following and be implemented at all times:</p> <ul style="list-style-type: none"> Restrict all on-site parking spaces to either a time limit or a valet parking arrangement. Restrict access to on-site parking areas (with the exception of visitor parking by the hotel 	Applicant/ Contractor	Prior to Issuance of Certificates of Occupancy	Community Development Department	Prior to Issuance of Certificates of Occupancy			



Mitigation Number	Mitigation Measure	Implementation Responsibility	Timing	Monitoring Responsibility	Timing	VERIFICATION OF COMPLIANCE		
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	<p>lobby) to either valet staff, or guests and visitors only through a manned gate, a gate with intercom access, or a gate that reads the room keys.</p> <ul style="list-style-type: none"> • Restrict parking for in-demand parking spaces by time limits. The time limit should apply from 6:00 AM to 6:00 PM Monday through Friday. • Post signs at locations where motorists can be redirected from curb parking or desirable parking areas to convenient off-street lots and structures. • Encourage on-site employee parking by providing free parking on-site or providing incentives for using alternative modes of transportation, such as providing free or discounted bus passes; an employee bike rack, entering employees who take the bus, carpool, walk, or ride a bicycle in a monthly raffle; providing a monthly stipend for bicycle commuting; providing carpool parking spaces, or other incentives. 							



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						Initials	Date	Remarks
AIR QUALITY								
AQ-1	<p>Prior to issuance of any Grading Permit, the Community Development Department shall confirm that the Grading Plan, Building Plans, and specifications stipulate that, in compliance with SCAQMD Rule 403, excessive fugitive dust emissions shall be controlled by regular watering or other dust prevention measures, as specified in the SCAQMD's Rules and Regulations. In addition, SCAQMD Rule 402 requires implementation of dust suppression techniques to prevent fugitive dust from creating a nuisance off-site. Implementation of the following measures would reduce short-term fugitive dust impacts on nearby sensitive receptors:</p> <ul style="list-style-type: none"> All active portions of the construction site shall be watered at least twice daily to prevent excessive amounts of dust; Pave or apply water every three hours during daily construction activities or apply non-toxic soil stabilizers on all unpaved access roads, parking areas, and staging areas. More frequent watering 	Applicant/ Contractor	Prior to Finalization of Grading Plans, Building Plans, and Specifications; During Construction	Community Development Department	Prior to Finalization of Grading Plans, Building Plans, and Specifications; During Construction			



Mitigation Number	Mitigation Measure	Implementation Responsibility	Timing	Monitoring Responsibility	Timing	VERIFICATION OF COMPLIANCE		
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	<p>shall occur if dust is observed migrating from the site during site disturbance</p> <ul style="list-style-type: none"> Any on-site stockpiles of debris, dirt, or other dusty material shall be enclosed, covered, or watered twice daily, or non-toxic soil binders shall be applied; All grading and excavation operations shall be suspended when wind speeds exceed 25 miles per hour; Disturbed areas shall be replaced with ground cover or paved immediately after construction is completed in the affected area; Track-out devices such as gravel bed track-out aprons (3 inches deep, 25 feet long, 12 feet wide per lane and edged by rock berm or row of stakes) shall be installed to reduce mud/dirt trackout from unpaved truck exit routes. Alternatively a wheel washer shall be used at truck exit routes; On-site vehicle speed shall be 							



Mitigation Number	Mitigation Measure	Implementation Responsibility	Timing	Monitoring Responsibility	Timing	VERIFICATION OF COMPLIANCE		
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	<p>limited to 15 miles per hour;</p> <ul style="list-style-type: none"> All material transported off-site shall be either sufficiently watered or securely covered to prevent excessive amounts of dust prior to departing the job site; and Trucks associated with soil-hauling activities shall avoid residential streets and utilize City-designated truck routes to the extent feasible. 							
AQ-2	All trucks that are to haul excavated or graded material on-site shall comply with State Vehicle Code Section 23114 (Spilling Loads on Highways), with special attention to Sections 23114(b)(F) and (e)(4) as amended, regarding the prevention of such material spilling onto public streets and roads. Prior to the issuance of grading permits, the Applicant shall coordinate with the Community Development Department on hauling activities compliance.	Applicant and Contractor	Prior to Issuance of a Grading Permit, During Construction	Community Development Department	Prior to Issuance of a Grading Permit; During Construction			
NOISE								
N-1	Prior to issuance of any Grading Permit or Building Permit for new construction, the Community Development Department shall confirm that the Grading Plan, Building Plans, and	Applicant/ Contractor	Prior to Issuance of Grading or Building Permit	Community Development Department	Prior to Issuance of Grading or Building Permit			



Mitigation Number	Mitigation Measure	Implementation Responsibility	Timing	Monitoring Responsibility	Timing	VERIFICATION OF COMPLIANCE		
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	<p>specifications stipulate that:</p> <ul style="list-style-type: none"> All construction equipment, fixed or mobile, shall be equipped with properly operating and maintained mufflers and other State required noise attenuation devices. The Applicant shall provide a qualified "Noise Disturbance Coordinator." The Disturbance Coordinator shall be responsible for responding to any local complaints about construction noise. When a complaint is received, the Disturbance Coordinator shall notify the City within 24-hours of the complaint and determine the cause of the noise complaint (e.g., starting too early, bad muffler, etc.) and shall implement reasonable measures to resolve the complaint, as deemed acceptable by the City Development Services Department. The contact name and the telephone number for the Disturbance Coordinator shall be clearly posted on-site. 							



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	<ul style="list-style-type: none"> When feasible, construction haul routes shall be designed to avoid noise sensitive uses (e.g., residences, convalescent homes, etc.). During construction, stationary construction equipment shall be placed such that emitted noise is directed away from sensitive noise receivers. Construction activities that produce noise shall not take place outside of the allowable hours specified by the City's <i>Municipal Code Section 10.28.040</i> (7:00 a.m. and 6:30 p.m. on weekdays, 8:00 a.m. and 6:00 p.m. on Saturdays; construction is prohibited on Sundays and/or federal holidays). 							
GEOLOGY AND SOILS								
GEO-1	All grading operations and construction shall be conducted in conformance with the recommendations included in the geotechnical report for the proposed project site prepared by GMU Geotechnical, Inc., titled <i>Report of Geotechnical Investigation, Lido House Hotel – City Hall Site Reuse Project, 3300 Newport Boulevard, City of Newport Beach, California</i>	Contractor	Prior to Commencement of Grading Activities	City Building Official or Designee	Prior to Commencement of Grading Activities/ During Construction			



Mitigation Number	Mitigation Measure	Implementation Responsibility	Timing	Monitoring Responsibility	Timing	VERIFICATION OF COMPLIANCE		
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	<p>(December 4, 2013) (included in <u>Appendix 11.6</u> of this EIR and incorporated by reference into this mitigation measure). Design, grading, and construction shall be performed in accordance with the requirements of the City of Newport Beach Building Code and the California Building Code applicable at the time of grading, appropriate local grading regulations, and the recommendations of the project geotechnical consultant as summarized in a final written report, subject to review by the City of Newport Beach Building Official or designee prior to commencement of grading activities.</p> <p>Recommendations in the <i>Report of Geotechnical Investigation, Lido House Hotel – City Hall Site Reuse Project, 3300 Newport Boulevard, City of Newport Beach, California</i> are summarized below.</p> <p><u>Site Preparation and Grading</u></p> <p>The project site shall be precise graded in accordance with the City of Newport Beach grading code requirements (and all other applicable codes and ordinances) and the following recommendations. The geotechnical aspects of future grading plans and improvement plans shall be reviewed by a Geotechnical Engineer</p>							



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	<p>prior to grading and construction. Particular care shall be taken to confirm that all project plans conform to the recommendations provided in this report. All planned and corrective grading shall be monitored by a Geotechnical Engineer to verify general compliance with the following recommendations.</p> <ul style="list-style-type: none"> <i>Demolition and Clearing.</i> Prior to the start of the planned improvements, all materials associated with the existing buildings to be removed, including footings, floor slabs, and underground utilities, shall be demolished and hauled from the site. The existing asphalt pavement sections, which are inadequate and severely damaged, shall also be demolished. The old asphalt and base materials generated from the removal of the existing pavement sections shall be either recycled or collected and hauled off-site. <p>All significant organic and other decomposable debris shall be removed if on-site dredge fill materials are used as new compacted fill. Any oversize</p>							



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	<p>rock materials generated during grading shall be collected and hauled off-site. Cavities and excavations created upon removal of subsurface obstructions, such as existing buried utilities, shall be cleared of loose soil, shaped to provide access for backfilling and compaction equipment, and then backfilled with properly compacted fill.</p> <p>If unusual or adverse soil conditions or buried structures are encountered during grading that are not described within the <i>Report of Geotechnical Investigation, Lido House Hotel – City Hall Site Reuse Project, 3300 Newport Boulevard, City of Newport Beach, California</i>, these conditions shall be brought to the immediate attention of the project geotechnical consultant for corrective recommendations.</p> <ul style="list-style-type: none"> • <u>Corrective Grading – Buildings.</u> Existing dredge fill materials shall be overexcavated to a depth of at least four feet below the existing grades and these excavated materials shall be 							



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	<p>replaced as properly compacted fill placed at a minimum relative compaction of at least 92 percent as determined by American Society for Testing and Materials (ASTM) Test Method D 1557 and at 2 percent above optimum moisture content.</p> <ul style="list-style-type: none"> • <u>Corrective Grading – Exterior Parking, Driveway, and Hardscape Areas.</u> In order to provide adequate support of proposed exterior improvements such as parking lots and driveways, and hardscape features such as patios, walkways, stairways and planter walls, the existing ground surfaces in these areas shall be overexcavated to a depth of at least two feet below the existing grades and shallow foundations. These excavated materials can then be replaced as properly compacted fill at a minimum relative compaction of at least 92 percent as determined by ASTM Test Method D 1557 at 2 percent above optimum moisture content. 							



Mitigation Number	Mitigation Measure	Implementation Responsibility	Timing	Monitoring Responsibility	Timing	VERIFICATION OF COMPLIANCE		
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	<p><u>Temporary Slope Stability</u></p> <p>During site grading, temporary laid back slopes up to approximately 4 to 5 feet in height are expected to be created during the construction of proposed low retaining walls. Temporary slopes to a maximum height of 4 feet may be cut vertically without shoring subject to verification of safety by the contractor. Deeper excavations shall be braced, shored or, for those portions of the sidewalls above a height of 4 feet, sloped back no steeper than 1:1 (horizontal to vertical). In addition, no surcharge loads shall be allowed within 10 feet from the top of the temporary slopes. All work associated with temporary slopes shall meet the minimal requirements as set forth by the California Division of Occupational Safety and Health (CAL/OSHA).</p> <p><u>Post Grading and Ground Improvement</u></p> <ul style="list-style-type: none"> • <u>Utility Trenches.</u> <ul style="list-style-type: none"> - <u>Utility Trench Excavations.</u> Soils above the groundwater level shall be laid back at a maximum slope ratio of 1.5:1, horizontal to vertical. In addition, surcharge loads shall 							



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	<p>not be allowed within 10 feet of the top of the excavations.</p> <p>For deeper trenches, groundwater will be encountered and the contractor shall develop an approach for dewatering, shoring, and addressing shallow groundwater conditions. Sumping and pumping of free water from open excavations is not expected to result in dry and stable trench conditions due to the close proximity of the adjacent bay; therefore, a dewatering system shall be designed, installed, and operated by an experienced company specializing in groundwater dewatering systems.</p> <p>The dewatering system shall be capable of lowering the groundwater surface to a depth of 5 feet below the bottom of the trenches. Before implementing a dewatering system, a dewatering test program shall be conducted to evaluate the</p>							



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	<p>feasibility and efficiency of the proposed dewatering system. Dewatering shall be performed and confirmed by potholing or other means prior to trench excavation. Dewatering operations shall also comply with all NPDES regulations.</p> <p>Temporary shoring shall be required below the water table where saturated soils are encountered or where vertical trench sidewalls are desired. Shoring shall consist of metal, plywood, and/or timber sheeting supported by braces or shields. Lateral pressures considered applicable for the shoring design will depend on the type of shoring system selected by the contractor and whether the site is dewatered. Specific design values shall be calculated once the type of shoring is determined.</p> <p>The contractor shall retain a qualified and experienced registered engineer to design any shoring systems in accordance with CAL/OSHA</p>							



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	<p>criteria. The shoring engineer shall evaluate the adequacy of the shoring design parameters provided in the <i>Report of Geotechnical Investigation, Lido House Hotel – City Hall Site Reuse Project, 3300 Newport Boulevard, City of Newport Beach, California</i> and make appropriate modifications as necessary. The design shall consider local groundwater levels and that groundwater levels may change over time as a result of tidal influences.</p> <p>- <i>Utility Trench Subgrade Stabilization.</i> Prior to pipeline bedding placement, the trench subgrades shall be firm and unyielding. If unsuitable subgrade soils are encountered, the contractor shall consult with the project Geotechnical Engineer to provide subgrade stabilization. Stabilization may generally consist of the placement of crushed rock or processed miscellaneous base. Crushed rock, if used, shall be encased in filter fabric. Specific recommendations would be</p>							



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	<p>dependent on actual conditions encountered.</p> <ul style="list-style-type: none"> - <i>Utility Trench Backfill.</i> Backfill compaction of utility trenches shall be such that no significant settlement would occur. Backfill for all trenches shall be compacted to at least 92 percent relative compaction subject to sufficient observation and testing. Flooding in the trench zone is not recommended. If native material with a sand equivalent less than 30 is used for backfill, it shall be placed at near-optimum moisture content and mechanically compacted. Jetting or flooding of granular material shall not be used to consolidate backfill in trenches adjacent to any foundation elements. <p>Where trenches closely parallel a footing (i.e., for retaining walls) and the trench bottom is located within a 1 horizontal to 1 vertical plane projected downward and</p>							



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	<p>outward from any structure footing, a minimum 1½-sack concrete slurry backfill shall be utilized to backfill the portion of the trench below this plane. The use of concrete slurry is not required for backfill where a narrow trench crosses a footing at about right angles.</p> <ul style="list-style-type: none"> • <u>Surface Drainage.</u> Surface drainage shall be carefully controlled to prevent runoff over graded sloping surfaces and ponding of water on flat pad areas. All drainage at the site shall be in minimum conformance with the applicable City of Newport Beach codes and standards. <p><u>Foundation Design</u></p> <p>The following preliminary foundation design recommendations are provided based on anticipated conditions at the completion of anticipated grading; however, these recommendations are based on conceptual plans that may be revised during the plan check process. Ultimate construction and grading within the project site shall be in accordance with all applicable provisions of the grading</p>							



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	<p>and building codes of the City of Newport Beach, the applicable CBC, and all of the recommendations of the project civil and geotechnical consultants involved in the final site development.</p> <ul style="list-style-type: none"> • <u>Geotechnical Design Parameters for Mat Foundations.</u> To minimize the adverse effects of earthquake-induced settlements and provide repairable foundation systems after the design earthquake, structural mat slab(s) are recommended to support the proposed structures. - <u>Corrective Grading.</u> Existing fill and alluvial soils shall be excavated beneath the entire footprint of the structures to a minimum depth of at least 4 feet below the planned mat foundation. Removals shall extend laterally to at least 5 feet from the base of the outside of the mat foundation. Artificial fill/alluvium derived from the excavated soils shall be compacted to a minimum of 92% relative compaction per ASTM 1557. - <u>Design Parameters.</u> An 							



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	<p>allowable net static bearing capacity of 2,000 pounds per square foot may be used for design of the mat foundation(s). A lateral sliding coefficient of 0.35 is recommended. The mat thickness and amount of reinforcement shall be determined by a Registered (Structural) Engineer in the State of California.</p> <ul style="list-style-type: none"> • <u>Moisture Vapor Barriers.</u> Due to the existing shallow groundwater table, a vapor barrier equivalent to Stego 15 shall be utilized and installed in accordance with the <i>Report of Geotechnical Investigation, Lido House Hotel – City Hall Site Reuse Project, 3300 Newport Boulevard, City of Newport Beach, California.</i> • <u>Water Vapor Transmission.</u> The moisture vapor barrier is intended only to reduce moisture vapor transmissions from the soil beneath the concrete and is consistent with the current standard of the industry for construction in 							



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	<p>southern California. It is not intended to provide a “waterproof” or “vapor proof” barrier or reduce vapor transmission from sources above the barrier. Sources above the barrier include any sand placed on top of the barrier (i.e., to be determined by the project structural designer) and from the concrete itself (i.e., vapor emitted during the curing process).</p> <ul style="list-style-type: none"> • <u>Floor Coverings.</u> Prior to the placement of flooring, the floor slabs shall be properly cured and tested to verify that the water vapor transmission rate (WVTR) is compatible with the flooring requirements. • <u>Concrete.</u> Minimum Type II/V cement along with a maximum water/cement ratio of 0.50 and a minimum compressive strength of 4,000 psi shall be used for all structural foundations in contact with the on-site soils. In addition, wet curing of the concrete as described in American Concrete 							



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	<p>Institute (ACI) Publication 308 shall be considered. All applicable codes, ordinances, regulations, and guidelines shall be followed in regard to designing a durable concrete with respect to the potential for detrimental exposure from the on-site soils and/or changes in the environment.</p> <ul style="list-style-type: none"> • <u>Site Wall and Retaining Wall Design Criteria.</u> <ul style="list-style-type: none"> - <u>Retaining Wall Design Parameters.</u> Retaining walls shall be designed in accordance with the calculations provided in the <i>Report of Geotechnical Investigation, Lido House Hotel – City Hall Site Reuse Project, 3300 Newport Boulevard, City of Newport Beach, California.</i> - <u>Screen Walls.</u> For standard screen walls on flat ground, footings shall be a minimum of 24 inches deep below the lowest outside adjacent grade. Wall foundations shall be reinforced with two #4 bars top and bottom, and joints in 							



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	<p>the wall shall be placed at regular intervals on the order of 10 to 20 feet. The wall foundation shall be underlain by at least a 2-foot-thick section of engineered fill.</p> <ul style="list-style-type: none"> • <u>Pole Foundations.</u> Pole foundations shall be at least 18 inches in diameter and at least 3 feet deep; however, the actual dimensions shall be determined by the project structural engineer based on the design parameters provided in the <i>Report of Geotechnical Investigation, Lido House Hotel – City Hall Site Reuse Project, 3300 Newport Boulevard, City of Newport Beach, California.</i> • <u>Swimming Pool and Spa Recommendations.</u> <ul style="list-style-type: none"> - <u>Allowable Bearing and Lateral Earth Pressures.</u> The pool and spa shells may be designed using an allowable bearing value of 1,500 pounds per square foot. Due to the low expansive nature of the on-site soils, pool and spa walls 							



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	<p>shall be designed assuming that an earth pressure equivalent to a fluid having a density of 75 pounds per cubic foot is acting on the outer surface of the pool walls. Pool and spa walls shall also be designed to resist lateral surcharge pressures imposed by any adjacent footings or structures in addition to the above lateral earth pressure.</p> <ul style="list-style-type: none"> - <i>Settlement.</i> It is anticipated that the swimming pool would be underlain by engineered fill. The swimming pool shall be supported by a minimum of 2 feet of engineered fill. The project structural engineer shall consider resisting buoyancy forces due to the potential groundwater table oscillations, which may occur during the life time of the pool. - <i>Temporary Access Ramps.</i> All backfill placed within temporary access ramps extending into the pool and spa excavations shall be 							



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	<p>properly compacted and tested in order to mitigate excessive settlement of the backfill and subsequent damage to concrete decking or other structures placed on the backfill.</p> <ul style="list-style-type: none"> - <i>Pool and Spa Bottoms.</i> If unsuitable soils are encountered, the bottom of the pool or spa excavation may need to be overexcavated and replaced to pool subgrade with compacted fill. As an alternative, the reinforcing steel in the area of a transition area may be increased to account for the differences in engineering properties and the potential differential behavior. - <i>Plumbing.</i> All plumbing and spa fixtures shall be absolutely leak-free. Drainage from deck areas shall be directed to local area drains and/or graded earth swales designed to carry runoff water to the adjacent street. Heavy-duty pipes and flexible couplings shall be used for the pool plumbing system to minimize leaking 							



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	<p>which may produce additional pressures on the pool shell. A pressure valve in the pool bottom shall be installed to mitigate potential buildup of pressure.</p> <ul style="list-style-type: none"> - <i>Cement Types.</i> For moderately corrosive soils, cement shall be Type II/V and concrete shall have a minimum water to cement ratio of 0.50. • <u><i>Pool and Spa Decking.</i></u> - <i>Thickness and Joint Spacing.</i> Concrete pool and spa decking shall be at least 5 inches thick and provided with construction joints or expansion joints every 6 feet or less. All open construction joints in pool and spa decking shall be sealed with an approved waterproof, flexible joint sealer. Pool and spa decking shall be underlain by a layer of crushed rock, gravel, or clean sand having a minimum thickness of 5 inches. 							



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	<ul style="list-style-type: none"> - <i>Reinforcement.</i> Concrete pool and spa decking shall be reinforced with No. 4 bars spaced 18 inches on centers, both ways. The reinforcement shall be positioned near the middle of the slabs by means of concrete chairs or brick. Reinforcing bars shall be provided across all joints to mitigate differential vertical movement of the slab sections. Structurally tying the decking to the pool wall is highly recommended and would require structural reinforcement of the decking and consideration for additional loading on the pool wall. If doweling is not performed, differential movement shall be anticipated. - <i>Subgrade Preparation.</i> Subgrade soils below concrete decking shall be compacted to a minimum relative compaction of 92% and then thoroughly watered to achieve a moisture content that is at least 2% over optimum. This moisture 							



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	<p>content shall extend to a depth of approximately 12 inches into the subgrade soils and be maintained in the subgrade during concrete placement to promote uniform curing of the concrete. Moisture conditioning shall be achieved with sprinklers or a light spray applied to the subgrade over a period of several days just prior to pouring concrete. Soil density and presoaking shall be observed, tested, and accepted by a Geotechnical Engineer prior to pouring the concrete.</p> <ul style="list-style-type: none"> • <u>Concrete Flatwork Design.</u> <ul style="list-style-type: none"> - <u>Thickness and Joint Spacing.</u> Concrete walkways and patios shall be at least 4 inches thick and provided with construction joints or expansion joints every 5 feet or less. Concrete walkways and patios shall be underlain by a 4-inch-thick layer of Class 2 crushed aggregate base (CAB), crushed miscellaneous base (CMB), or clean sand 							



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	<p>having a sand equivalent of at least 30, which shall then be placed on top of the soil subgrade, moisture conditioned to at least 2% over optimum moisture, and compacted to at least 90% relative compaction.</p> <p>- <i>Reinforcement.</i> Concrete walkways and patios shall be reinforced with No. 3 bars spaced 18 inches on centers, both ways. The reinforcement shall be positioned near the middle of the slabs by means of concrete chairs or brick. Reinforcing bars shall be provided across all joints to mitigate differential vertical movement of the slab sections. Walkways and patios shall also be dowelled into adjacent curbs using 9-inch speed dowels with No. 3 bars or 1/2-inch steel or fiberglass bars at 18 inches on centers. If doweling is not performed, differential movement shall be anticipated.</p>							



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	<ul style="list-style-type: none"> - <i>Subgrade Preparation.</i> The subgrade soils below concrete walkways and patios shall be compacted to a minimum relative compaction of 92% and then thoroughly watered to achieve a moisture content that is at least 2% over optimum. This moisture content shall extend to a depth of approximately 12 inches into the subgrade soils and be maintained in the subgrade during concrete placement to promote uniform curing of the concrete. Moisture conditioning shall be achieved with sprinklers or a light spray applied to the subgrade over a period of several days just prior to pouring concrete. Soil density and presoaking shall be observed, tested, and accepted by a Geotechnical Engineer prior to pouring the concrete. • <u><i>Pavement Design Considerations.</i></u> <ul style="list-style-type: none"> - <i>Asphalt Pavement Design.</i> Based on an anticipated R-value of 40, which shall be obtained 							



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	<p>after precise grading of pavement subgrade areas, the following pavement thicknesses shall be anticipated:</p> <table border="1"> <thead> <tr> <th>Location</th> <th>R-Value</th> <th>Traffic Index</th> <th>Asphalt Concrete (inches)</th> <th>Aggregate Base (inches)</th> </tr> </thead> <tbody> <tr> <td>Car Parking Stalls</td> <td>40</td> <td>4.0</td> <td>3.0</td> <td>4.0</td> </tr> <tr> <td>Drive Aisles</td> <td>40</td> <td>5.5</td> <td>4.0</td> <td>6.0</td> </tr> </tbody> </table> <p>Asphalt pavement structural sections shall consist of CMB or CAB and asphalt concrete materials (AC) of a type meeting the minimum City of Newport Beach requirements. The subgrade soils shall be moisture conditioned to a minimum 2% above the optimum moisture content to a depth of at least 6 inches, and compacted to at least 92% relative compaction (per ASTM 1557). The CMB or CAB and AC should be compacted to at least 95% relative compaction (per ASTM 1557).</p> <p>- Concrete Pavement Design. Driveways and appurtenant</p>	Location	R-Value	Traffic Index	Asphalt Concrete (inches)	Aggregate Base (inches)	Car Parking Stalls	40	4.0	3.0	4.0	Drive Aisles	40	5.5	4.0	6.0							
Location	R-Value	Traffic Index	Asphalt Concrete (inches)	Aggregate Base (inches)																			
Car Parking Stalls	40	4.0	3.0	4.0																			
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	<p>concrete paving, such as trash receptacle bays, would require Portland cement concrete (PCC) pavement. Assuming a Traffic Index (TI) of 6 to 7, a design section of 8 inches of PCC over 6 inches aggregate base (AB) shall be adequate. The AB shall be Class 2 compacted to a minimum of 95% relative compaction as per ASTM D 1557.</p> <p>- <i>Full Depth Reclamation (FDR) Alternative Pavement for Parking Areas.</i> For re-grading of parking areas it is recommended that the most efficient pavement rehabilitation alternative to replacement with a conventional asphalt over base pavement section would be to utilize what is called "full depth reclamation" (FDR) utilizing a 12-inch-thick section of site reclaimed on-site AC and AB mixed with 6% cement to provide the new base for a new 4-inch-thick AC layer to be paved on top.</p>							



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	<p>- <i>Permeable Interlocking Concrete Pavement (PICP).</i> The structural base thickness for permeable interlocking concrete pavers in designated parking areas shall be designed by the project civil engineer in order to meet storage requirements. This minimum section assumes a TI of up to 6.3 (assumes a TI of 5.5 for the mixed use of the drive areas in this portion of the site) and calls for a 3 1/8 inch (80 mm) concrete paver, over compacted layers of 2 inches of bedding course sand (ASTM No. 8 aggregate), over 4 inches of ASTM No. 57 stone as open-graded base, over 6 inches of ASTM No. 2 stone as open-graded sub base, over a Class 1 geotextile fabric (highest strength) per AASHTO M-288. A Class 1 geotextile fabric (highest strength) shall be placed both vertically at the sides of all PICP excavations and on top of the compacted subgrade soil below the stone sub-base layer in order to protect the bottom and sides of the open-</p>							



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	<p>graded base and sub-base. This geotextile fabric must meet AASHTO M-288 Class 1 geotextile strength property and subsurface drainage requirements (see attached Table 3-3 and Table 3-4 from Page 31 of the ICPI Design Manual (2011) for AASHTO M-288 requirements).</p> <ul style="list-style-type: none"> - <i>Concrete Interlocking Vehicular and Pedestrian Pavers.</i> Portions of the project site would utilize 3 1/8-inch-thick (80 mm.) vehicular concrete interlocking pavers placed on a section of at least 1-inch-thick bedding sand. These vehicular pavers are also planned in order to provide City of Newport Beach Fire Department vehicle access capable of supporting 72,000 pounds of imposed loading. The on-site soil subgrade in these site vehicular areas shall be scarified to a depth of 6 inches, moisture conditioned to at least 2% above the optimum moisture content, and compacted to at least 92% relative compaction. A 							



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	<p>geotextile fabric such as Mirafi 600X or equivalent shall be placed on top of the compacted subgrade across the entire vehicular interlocking paver area. Based upon the on-site soils having an estimated R-value of 40, a 12-inch-thick layer of Class 2 CAB, CMB, or equivalent shall be moisture conditioned to at least optimum moisture and compacted to at least 95% relative compaction in order to support the interlocking pavers. Concrete bands adjacent to the vehicular interlocking pavers shall consist of a design section of 8 inches of PCC over at least 6 inches of AB or equivalent, moisture conditioned to at least optimum moisture, and compacted to at least 95% relative compaction.</p> <p>In certain designated site pedestrian areas, 2³/₈-inch-thick (60 mm.) concrete interlocking pavers placed on a section of at least 1-inch-thick bedding sand are</p>							



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	<p>planned. Prior to the installation of the pavers and bedding sand in these pedestrian areas, the on-site soil subgrade shall be scarified to a depth of 6 inches, moisture conditioned to at least 2% above the optimum moisture content, and compacted to at least 92% relative compaction. A 4-inch-thick layer of Class 2 CAB, CMB, or equivalent shall then be placed on top of the soil subgrade, moisture conditioned to at least optimum moisture, and compacted to at least 95% relative compaction in order to support the interlocking pavers in these pedestrian areas.</p> <p><u>Geotechnical Observation and Testing</u></p> <p>Additional site testing and final design evaluation shall be conducted by the project geotechnical consultant to refine and enhance the recommendations contained in <i>Report of Geotechnical Investigation, Lido House Hotel – City Hall Site Reuse Project, 3300 Newport Boulevard, City of Newport Beach, California</i> during the</p>							



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	<p>following stages of construction and precise grading:</p> <ul style="list-style-type: none"> • During site clearing and grubbing. • During all site grading and fill placement. • During removal of any buried lines or other subsurface structures. • During all phases of excavation. • During shoring installation. • During installation of foundation and floor slab elements. • During all phases of corrective, ground improvement, and precise grading including removals, scarification, ground improvement and preparation, moisture conditioning, proofrolling, overexcavation, FDR treatment, and placement and compaction of all fill materials. 							



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	<ul style="list-style-type: none"> • During backfill of structure walls and underground utilities. • During pavement and hardscape section placement and compaction. • When any unusual conditions are encountered. <p>Grading plan review shall also be conducted by the project geotechnical consultant and the Director of the City of Newport Beach Building Department or designee prior to the start of grading to verify that the recommendations developed during the geotechnical design evaluation have been appropriately incorporated into the project plans. Design, grading, and construction shall be conducted in accordance with the specifications of the project geotechnical consultant as summarized in a final report based on the CBC applicable at the time of grading and building and the City of Newport Beach Building Code. On-site inspection during grading shall be conducted by the project geotechnical consultant and the City Building Official to ensure compliance with geotechnical specifications as incorporated into project plans.</p>							



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GEO-2	Prior to issuance of a building permit, the City of Newport Beach Building Official or designee shall verify that the City has retained the services of a licensed corrosion engineer to provide detailed corrosion protection measures. Where steel may come in contact with on-site soils, project construction shall include the use of steel that is protected against corrosion. Corrosion protection may include, but is not limited to, sacrificial metal, the use of protective coatings, and/or cathodic protection. Additional site testing and final design evaluation regarding the possible presence of significant volumes of corrosive soils on site shall be performed by the project geotechnical consultant to refine and enhance these recommendations. On-site inspection during grading shall be conducted by the project geotechnical consultant and City Building Official to ensure compliance with geotechnical specifications as incorporated into project plans.	City Building Official	Prior to Issuance of a Building Permit	City Building Official or Designee	Prior to Issuance of a Building Permit			
HAZARDS AND HAZARDOUS MATERIALS								
HAZ-1	Prior to demolition activities, an asbestos survey shall be conducted by an Asbestos Hazard Emergency Response Act (AHERA) and California Division of Occupational Safety and Health (Cal/OSHA) certified building inspector to determine the presence or absence of	Applicant	Prior to Demolition Activities	Community Development Department	Prior to Demolition Activities			



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	asbestos containing-materials (ACMs). If ACMs are located, abatement of asbestos shall be completed prior to any activities that would disturb ACMs or create an airborne asbestos hazard. Asbestos removal shall be performed by a State certified asbestos containment contractor in accordance with the South Coast Air Quality Management District (SCAQMD) Rule 1403.							
HAZ-2	If paint is separated from building materials (chemically or physically) during demolition of the structures, the paint waste shall be evaluated independently from the building material by a qualified Environmental Professional. If lead-based paint is found, abatement shall be completed by a qualified Lead Specialist prior to any activities that would create lead dust or fume hazard. Lead-based paint removal and disposal shall be performed in accordance with California Code of Regulation Title 8, Section 1532.1, which specifies exposure limits, exposure monitoring and respiratory protection, and mandates good worker practices by workers exposed to lead. Contractors performing lead-based paint removal shall provide evidence of abatement activities to the City Engineer.	Applicant	During Demolition Activities	Community Development Department	During Demolition Activities			
HAZ-3	Any transformers to be removed or relocated during grading/construction activities shall be evaluated under the	Contractor	Prior to Utility Relocation Activities	Contractor/ Southern California	Prior to Utility Relocation Activities			



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	purview of the local utility purveyor (Southern California Edison) in order to confirm or deny the presence of PCBs. In the event that PCBs are identified, the local utility purveyor shall identify proper handling procedures regarding potential PCBs.			Edison				
HAZ-4	The Contractor shall verify that all imported soils, and on-site soils proposed for fill, are not contaminated with hazardous materials above regulatory thresholds in consultation with a Phase II/Site Characterization Specialist. If soils are determined to be contaminated above regulatory thresholds, these soils shall not be used as fill material within the boundaries of the project site, unless otherwise specified by a regulatory agency that has jurisdiction to oversee hazardous substance cleanup (e.g., Department of Toxic Substances Control, Regional Water Quality Control Board, Orange County Health Care Agency, etc.).	Contractor	During Construction	Community Development Department	During Construction			
HAZ-5	If unknown wastes or suspect materials are discovered during construction by the contractor that are believed to involve hazardous waste or materials, the contractor shall comply with the following: <ul style="list-style-type: none"> • Immediately cease work in the vicinity of the suspected 	Contractor	During Construction	Community Development Department	During Construction			



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	<p>contaminant, and remove workers and the public from the area;</p> <ul style="list-style-type: none"> • Notify the Building Official of the City of Newport Beach; • Secure the area as directed by the Building Official; and • Notify the Orange County Health Care Agency's Hazardous Materials Division's Hazardous Waste/Materials Coordinator (or other appropriate agency specified by the City Engineer). The Hazardous Waste/Materials Coordinator shall advise the responsible party of further actions that shall be taken, if required. 							
HYDROLOGY AND WATER QUALITY								
HWQ-1	Prior to Grading Permit issuance and as part of the project's compliance with the NPDES requirements, a Notice of Intent (NOI) shall be prepared and submitted to the State Water Resources Quality Control Board (SWRCB), providing notification and intent to comply with the State of California General Permit.	Applicant	Prior to Issuance of Grading Permit	Community Development Department	Prior to Issuance of Grading Permit			
HWQ-2	The proposed project shall conform to the requirements of an approved Storm	Applicant	During Construction	Community Development	During Construction			



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	Water Pollution Prevention Plan (SWPPP) (to be applied for during the Grading Plan process) and the NPDES Permit for General Construction Activities No. CAS000002, Order No, 2009-0009-DWQ, including implementation of all recommended Best Management Practices (BMPs), as approved by the State Water Resources Quality Control Board (SWRCB).			Department				
HWQ-3	Upon completion of project construction, the project applicant shall submit a Notice of Termination (NOT) to the State Water Resources Quality Control Board (SWRCB) to indicate that construction is completed.	Applicant	Prior to Issuance of a Building Permit	Community Development Department	Prior to Issuance of a Building Permit			
HWQ-4	Prior to issuance of a grading permit, the project applicant shall submit a Final Water Quality Management Plan for approval by the City Building Official that complies with the requirements of the latest Orange County Public Works Drainage Area Management Plan.	Applicant	Prior to Issuance of a Grading Permit	Building Official or designee	Prior to Issuance of a Grading Permit			



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4.0 Errata



4.0 ERRATA

Changes to the Draft Environmental Impact Report (Draft EIR) are noted below. A double-underline indicates additions to the text; strikeout indicates deletions to the text. Changes have been analyzed and responded to in Section 2.0, *Response to Comments* of the Final EIR. The changes to the Draft EIR do not affect the overall conclusions of the environmental document. Changes are listed by page and, where appropriate, by paragraph.

These errata address the technical comments on the Draft EIR, which circulated from April 29, 2014 through June 13, 2014. These clarifications and modifications are not considered to result in any new or substantially greater significant impacts as compared to those identified in the Draft EIR. Any changes referenced to mitigation measures contained in the Draft EIR text also apply to Section 1.0, *Executive Summary* and Section 5.0, *Environmental Analysis* of the Draft EIR. All mitigation measure modifications have been reflected in Section 4.0, *Mitigation Monitoring and Reporting Program* of the Final EIR.

- AES-1 Prior to issuance of any grading and/or demolition permits, whichever occurs first, a Construction Management Plan shall be submitted for review and approval by the Director of Community Development Services. The Construction Management Plan shall, at a minimum, indicate the equipment and vehicle staging areas, stockpiling of materials, fencing (i.e., temporary fencing with opaque material), and haul route(s). Staging areas shall be sited and/or screened in order to minimize public views to the maximum extent practicable. Construction haul routes shall minimize impacts to sensitive uses in the City.
- AES-3 All construction-related lighting shall be located and aimed away from adjacent residential areas and consist of the minimal wattage necessary to provide safety and security at the construction site. A Construction Safety Lighting Plan shall be approved by the Director of Community Development ~~City Engineer~~ prior to issuance of the grading or building permit application.
- CUL-1 An archaeologist and a Native American Monitor appointed by the City of Newport Beach shall be present during earth removal or disturbance activities related to rough grading and other excavation for utilities. If any earth removal or disturbance activities result in the discovery of cultural resources, the Project proponent's contractors shall cease all earth removal or disturbance activities in the vicinity and immediately notify the City selected archaeologist and/or Native American Monitor, who shall immediately notify the Director of Community Development Services. The City selected archaeologist shall evaluate all potential cultural findings in accordance with standard practice, the requirements of the City of Newport Beach Cultural Resources Element, and other applicable regulations. Consultation with the Native American Monitor, the Native American Heritage Commission, and data/artifact recovery, if deemed appropriate, shall be conducted.



TRA-1 Prior to Issuance of any grading and/or demolition permits, whichever occurs first, a Construction Management Plan shall be submitted for review and approval by the Community Development ~~Director~~ Department/City Traffic Engineer. The Construction Management Plan shall, at a minimum, address the following:

- Traffic control for any street closure, detour, or other disruption to traffic circulation.
- Identify the routes that construction vehicles will utilize for the delivery of construction materials (i.e., lumber, tiles, piping, windows, etc.), to access the site, traffic controls and detours, and proposed construction phasing plan for the project.
- Specify the hours during which transport activities can occur and methods to mitigate construction-related impacts to adjacent streets.
- Require the Applicant to keep all haul routes clean and free of debris, including but not limited to gravel and dirt as a result of its operations. The Applicant shall clean adjacent streets, as directed by the City Engineer (or representative of the City Engineer), of any material which may have been spilled, tracked, or blown onto adjacent streets or areas.
- Hauling or transport of oversize loads shall be allowed between the hours of 9:00 AM and 3:00 PM only, Monday through Friday, unless approved otherwise by the City Engineer. No hauling or transport will be allowed during nighttime hours, weekends, or Federal holidays.
- Use of local streets shall be prohibited.
- Haul trucks entering or exiting public streets shall at all times yield to public traffic.
- If hauling operations cause any damage to existing pavement, streets, curbs, and/or gutters along the haul route, the applicant shall be fully responsible for repairs. The repairs shall be completed to the satisfaction of the City Engineer.
- All constructed-related parking and staging of vehicles shall be kept out of the adjacent public roadways and shall occur on-site or in public parking lots.

This Plan shall meet standards established in the current California Manual on Uniform Traffic Control Device (MUTCD) as well as City of Newport Beach requirements.

TRA-2 Prior to issuance of Certificates of Occupancy, the applicant shall submit a Parking Management Plan for review and approval by the Community Development ~~Director~~ Department. The Parking Management Plan shall, at a minimum, include the following and be implemented at all times:



- Restrict all on-site parking spaces to either a time limit or a valet parking arrangement.
- Restrict access to on-site parking areas (with the exception of visitor parking by the hotel lobby) to either valet staff, or guests and visitors only through a manned gate, a gate with intercom access, or a gate that reads the room keys.
- Restrict parking for in-demand parking spaces by time limits. The time limit should apply from 6:00 AM to 6:00 PM Monday through Friday.
- Post signs at locations where motorists can be redirected from curb parking or desirable parking areas to convenient off-street lots and structures.
- Encourage on-site employee parking by providing free parking on-site or providing incentives for using alternative modes of transportation, such as providing free or discounted bus passes; an employee bike rack, entering employees who take the bus, carpool, walk, or ride a bicycle in a monthly raffle; providing a monthly stipend for bicycle commuting; providing carpool parking spaces, or other incentives.

AQ-1 Prior to issuance of any Grading Permit, the ~~Director of Public Works and the Building Official~~ Community Development Department shall confirm that the Grading Plan, Building Plans, and specifications stipulate that, in compliance with SCAQMD Rule 403, excessive fugitive dust emissions shall be controlled by regular watering or other dust prevention measures, as specified in the SCAQMD's Rules and Regulations. In addition, SCAQMD Rule 402 requires implementation of dust suppression techniques to prevent fugitive dust from creating a nuisance off-site. Implementation of the following measures would reduce short-term fugitive dust impacts on nearby sensitive receptors:

- All active portions of the construction site shall be watered at least twice daily to prevent excessive amounts of dust;
- Pave or apply water every three hours during daily construction activities or apply non-toxic soil stabilizers on all unpaved access roads, parking areas, and staging areas. More frequent watering shall occur if dust is observed migrating from the site during site disturbance
- Any on-site stockpiles of debris, dirt, or other dusty material shall be enclosed, covered, or watered twice daily, or non-toxic soil binders shall be applied;
- All grading and excavation operations shall be suspended when wind speeds exceed 25 miles per hour;
- Disturbed areas shall be replaced with ground cover or paved immediately after construction is completed in the affected area;



- Track-out devices such as gravel bed track-out aprons (3 inches deep, 25 feet long, 12 feet wide per lane and edged by rock berm or row of stakes) shall be installed to reduce mud/dirt trackout from unpaved truck exit routes. Alternatively a wheel washer shall be used at truck exit routes;
- On-site vehicle speed shall be limited to 15 miles per hour;
- All material transported off-site shall be either sufficiently watered or securely covered to prevent excessive amounts of dust prior to departing the job site; and
- Trucks associated with soil-hauling activities shall avoid residential streets and utilize City-designated truck routes to the extent feasible.

AQ-2 All trucks that are to haul excavated or graded material on-site shall comply with State Vehicle Code Section 23114 (Spilling Loads on Highways), with special attention to Sections 23114(b)(F) and (e)(4) as amended, regarding the prevention of such material spilling onto public streets and roads. Prior to the issuance of grading permits, the Applicant shall coordinate with the ~~appropriate City of Newport Beach Engineer~~ Community Development Department on hauling activities compliance.

HAZ-5 If unknown wastes or suspect materials are discovered during construction by the contractor that are believed to involve hazardous waste or materials, the contractor shall comply with the following:

- Immediately cease work in the vicinity of the suspected contaminant, and remove workers and the public from the area;
- Notify the ~~City Engineer~~ Building Official of the City of Newport Beach;
- Secure the area as directed by the ~~City Engineer~~ Building Official; and
- Notify the Orange County Health Care Agency's Hazardous Materials Division's Hazardous Waste/Materials Coordinator (or other appropriate agency specified by the City Engineer). The Hazardous Waste/Materials Coordinator shall advise the responsible party of further actions that shall be taken, if required.