
**FINAL ENVIRONMENTAL IMPACT REPORT
FOR
35101 CAMINO CAPISTRANO, DANA POINT**



Prepared for:

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Community Development Department**
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TABLE OF CONTENTS

<u>Section</u>	<u>Page</u>
ES	FINAL EXECUTIVE SUMMARY
ES.1	Introduction ES-1
ES.2	Project Location and Regional Setting ES-2
ES.3	Project Characteristics ES-2
ES.4	Environmental Analysis ES-3
ES.5	Summary of Environmental Impacts & Mitigation Measures ES-4
ES.6	Alternatives ES-18
ES.7	Issues to be Resolved ES-20
1.0	MINOR CLARIFICATIONS TO RELATED DOCUMENTATION..... 1-1
1.1	Minor Clarifications 1-1
2.0	RESPONSE TO COMMENTS ON THE DRAFT EIR..... 2-1
2.1	Introduction 2-1
2.2	List of Written Comments Letters on the Draft EIR 2-1
2.3	Response to Comments 2-3
	Letter 1 - Barbara Gossett, Caltrans District 12 2-3
	Letter 2 - Paul Simons, Orange County Historical Commission 2-3
	Letter 3 - Carlos N. Olvera, Dana Point Historical Society 2-3
	Letter 4 - Barbara Force Johannes, Dana Point Historical Society 2-6
	Letter 5 - Mary Ann Comes & Mike Cotter, San Clemente Historical Society. 2-10
	Letter 6 - Doris I. Walker, Dana Point Historical Society 2-13
	Letter 7 - Henry “Hank” Thomas 2-14
	Letter 8 - Linda Zaccaro 2-15
	Letter 9 - Earl R. Wessell 2-16
	Letter 10- Valerie & Larry Read 2-16
	Letter 11 - Molly Matthews..... 2-17
	Letter 12 - Joe and Ruby Aragon 2-18
	Letter 13 - Judy Busch..... 2-18
	Letter 14 - Keith E. Johannes 2-18
	Letter 15 - Mary Crowl 2-20
	Letter 16 - Ross Teasley 2-20
	Letter 17 - Rodney J. Howorth..... 2-21
	Letter 18 - Kaye Crippen, Ph.D..... 2-22
	Letter 19 - Jacqueline Ayer 2-22
	Letter 20 - DP Times Online Reader Poll and Doheny House Petition 2-47

LIST OF TABLES

<u>Table</u>		<u>Page</u>
ES-1	Summary of Environmental Impacts & Mitigation Measures.....	ES-5

APPENDICES

Appendix A: Copies of Original Letters Received on the Draft EIR

FINAL EXECUTIVE SUMMARY

ES-1 INTRODUCTION

California Environmental Quality Act (CEQA)

This Final Environmental Impact Report (EIR) is prepared pursuant to Sections 15089, 15090, and 15132 of the *State CEQA Guidelines*. The City of Dana Point (City) is the CEQA lead agency. As the CEQA lead agency, the City is responsible for preparing a Final EIR before approving the demolition of the Doheny House located at 35101 Camino Capistrano, Dana Point, California (Project). Pursuant to Section 15132, the Final EIR for the Project shall consist of:

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

Pursuant to Section 15090(a), the City as the CEQA lead agency shall certify prior to approving the Project that:

- (1) The Final EIR has been completed in compliance with CEQA;
- (2) The Final EIR was presented to the decision-making body of the lead agency, and that the decision-making body reviewed and considered the information contained in the Final EIR prior to approving the Project; and
- (3) The Final EIR reflects the lead agency's independent judgment and analysis.

CEQA Initial Study, Notice of Preparation and EIR Certification

As required under CEQA, a Notice of Preparation (NOP) was prepared and circulated for the Project by the City. The NOP was publicly circulated for 30 days beginning on April 11, 2007; the circulation period ended on May 10, 2007. The Initial Study (IS) is included in the NOP (see **Appendix A** of the Draft EIR). The City identified the following environmental topics in the IS as being potentially significantly impacted by the implementation of the Project: aesthetics, air quality, biological resources, archaeological resources, historical resources, paleontological resources, geology and soils, hazards and hazardous materials, hydrology and water quality, land use and planning, noise, population and housing, public services, transportation and circulation,

and utilities. These environmental issues were analyzed in the fourteen environmental topic chapters (Sections 4.1 through 4.14) of the Draft EIR.

ES-2 PROJECT LOCATION AND REGIONAL SETTING

The project site is located at 35101 Camino Capistrano, where Camino de Estrella terminates at Camino Capistrano in the southwestern end of the City of Dana Point, County of Orange. **Figure 2-1** (Regional Vicinity Map) and **Figure 2-2** (Local Vicinity Map) of the Draft EIR both show the location of the project site.

The project site is situated on a flat bluff top that is developed with one single-family residential use. South and west of the project site are beach-front homes, Pacific Coast Highway, Capistrano Beach, and then ultimately the Pacific Ocean. Interstate Highway 5 (I-5) is located approximately 0.5 miles northeast of the project site. Coast Highway is a major arterial located directly downhill from the project site. Just west of Coast Highway is OCTA Metrolink tracks and then Beach Road. The City of San Clemente is located very close to the project site, approximately 0.10 mile inland. The City of San Juan Capistrano is located approximately 1 mile north of the project site.

As shown in **Figure 2-3** (Aerial Photograph of the Project Site) of the Draft EIR, the project area is characterized by sizeable one- and two-story residential units with architectural styles that vary from residence to residence. The local neighborhood consists of residential land uses, public parks (including Chloe Luke Overlook, a public access scenic vista), and the coastal bluff. The project site and neighboring properties have scenic views of the Pacific Ocean and the California coastline.

Figure 2-4 (Existing Site Plan) of the Draft EIR shows the existing location of the Doheny House as occupying the northern three parcels of the five parcel site. The southern two parcels are a side yard that connects to a back yard that runs the length of the house along the bluff. The side and back yards contain lawns, patios, walks, landscaping, and afford ocean views. The northern most portion of the back yard has a patio area approximately nine feet lower than the majority of the back yard.

The Doheny House (5,260 square feet) is generally a single-story, Spanish Colonial Revival style building. There is a two-story element behind the three car garage (640 square feet) which steps down from the street façade into a ravine. The body of the facades is the traditional stucco of the style, with wooden windows and doors. The roof is Spanish clay tile over a series of intersecting hip and gable roof forms which end at the building line with exposed 6x6 wooden beam tails. **Figure 2-5** (Exterior Elevations of the Doheny House) of the Draft EIR shows the existing exterior elevations of the Doheny House.

ES-3 PROJECT CHARACTERISTICS

The proposed project is the demolition of the Doheny House located at 35101 Camino Capistrano in the City of Dana Point and the reasonably foreseeable construction of five single-family residential dwelling units on the project site. **Figure 2-6** (Architectural Site Plan of the

Doheny House) of the Draft EIR shows the existing layout of the Doheny House. The proposed project would demolish and remove all structures on the project site, and clear and grub the project site of all vegetation except for the palm and pine trees. The project site would be rough graded to prepare the five separate parcels (see **Table 2-1** and **Figure 2-7** (Location of the Five Parcels on the Project Site) of the Draft EIR) for future development of five single-family residential dwelling units on the project site. Rough grading of the site may include: grading to approximate final elevations; property lines would be located and staked; cut and fill slopes would be correctly graded and located in accordance with the approved design; berms would be installed, if necessary; and required drainage slopes may be provided on the building pads. The demolition process would require approximately two weeks for its completion, and the rough grading would require one additional week. The proposed project would not construct any new houses on the project site. However, in response to community concerns that it is reasonably foreseeable, this EIR analyzes the impacts associated with the construction and occupancy of five new houses on the project site.

This project requires a conditional use permit (CUP) for the deletion of the Doheny House as a historical resource from the City of Dana Point Historic Resources Register (Dana Point Municipal Code § 9.07.250). In addition, a Coastal Development Permit Application will also be processed in conjunction with the proposed project. The proposed project, subject to an appeal to the City Council, may require regulatory approval from the California Coastal Commission only upon appeal by the same.

ES-4 ENVIRONMENTAL ANALYSIS

The Draft EIR identified five environmental categories (archaeological and paleontological resources, historical resources, geology and soils, traffic and circulation, and utilities) that may result in significant or potentially significant impacts. Most of these significant impacts can be avoided or minimized through the adoption of feasible mitigation measures. Only historical resource impacts would be significant, and cannot be completely avoided or minimized by the adoption of mitigation measures or alternatives. Mitigation measures have been identified in the Draft EIR to reduce or avoid the potentially significant impacts associated with archaeological resources, paleontological resources, geology and soils, traffic and circulation, and utilities.

Environmental Categories with Less-than-significant Residual Impacts After Mitigation

Archaeological and Paleontological Resources

Archaeological and paleontological resources were discussed in Section 4.3 of the Draft EIR. While no impacts would occur to archaeological or paleontological resources, potentially significant impacts to unknown buried cultural materials could occur if subsurface ground disturbance were to damage buried artifacts or features. Mitigation measure AP-1 would be implemented to reduce potentially significant impacts to a level less than significant.

Geology and Soils

Geology and soils were discussed in Section 4.5 of the Draft EIR. While no impacts would occur to direct fault rupture, design in accordance with Mitigation Measures (G-1 – G-19) and

Project Requirements would reduce the impact of ground shaking to less than significant. The site is anticipated to remain grossly stable. However, the natural bluff slope would be subject to surficial instability during seasons of heavy rainfall and during strong earthquakes. Proposed site improvements supported by foundation elements landward of the structural setback plane recommended herein should remain unaffected by future instability. Future compliance with the Mitigation Measures (G-1 – G-19) and Project Requirements, and existing regulations and standard construction techniques would reduce this impact to less than significant.

Traffic and Circulation

Traffic and circulation were discussed in Section 4.13 of the Draft EIR. There is a potential for impact during construction. Although the traffic and circulation impacts would be short-term, the implementation of mitigation measure T-1 would reduce potentially significant impacts to a level less than significant.

Utilities

Utilities were discussed in Section 4.14 of the Draft EIR. The Project is being designed to carry all storm water runoff from the developed areas to Camino Capistrano in order to reduce possible erosion to the bluff. Mitigation measure U-1 has been proposed to ensure there would be no off-site impact due to project site runoff. The implementation of mitigation measure U-1 would reduce potentially significant impacts to a level less than significant.

Environmental Categories with Significant Residual Impacts After Mitigation

Historical Resources

Historical resources were discussed in Section 4.7 of the Draft EIR. Even with the implementation of the mitigation measures HR-1 and HR-2 (presented in Section 4.7 of the Draft EIR) or the alternatives (presented in Section 6.0 of the Draft EIR), potentially unavoidable significant adverse impacts to a historical resource exist since the demolition of the Doheny House would change the existing conditions of the residence and compromise its overall architectural integrity as well as its historic integrity as it relates to the significant persons and events associated with its past, the Project would result in a substantial adverse change in the significance of a historical resource, would remain above the adopted thresholds, and would be unavoidable and significant.

ES-5 SUMMARY OF ENVIRONMENTAL IMPACTS AND MITIGATION MEASURES

The potential adverse impacts of the proposed demolition of the Doheny House and the reasonably foreseeable construction of five single-family residential dwelling units on the project site are summarized in **Table ES-1** (Summary of Environmental Impacts and Mitigation Measures) which provides a summary of the environmental impacts and mitigation measures that are described and analyzed in Section 4.0 of the Draft EIR.

**TABLE ES-1
SUMMARY OF IMPACTS, MITIGATION AND
LEVEL OF SIGNIFICANCE AFTER MITIGATION**

Impacts	Mitigation Measures	Level of Significance After Mitigation
Aesthetics		
<p>The current view of an existing single-family residence with mature vegetation and landscaping would be changed overtime to a view of five (5) single-family residences with associated landscaping. It is intended that the mature palm and pine trees currently on the project site be retained. This change in the view of the project site is not a significant impact because the five new single-family residences would be consistent in appearance with other single-family residences currently in the neighborhood.</p> <p>The proposed project would not physically affect Chloe Luke Overlook and its primary westerly view of the Pacific Ocean would not change.</p> <p>The five new single-family residences would not result in a new source of substantial light or glare within the immediate vicinity of the project site.</p>	<p>No mitigation measures are required.</p>	<p>Less than significant</p>
Air Quality		
<p>The proposed project would not conflict with or obstruct implementation of the AQMP.</p> <p>The proposed demolition of the Doheny House and the potential future construction of 5 single-family residential units on the project site would not generate emissions exceeding the SCAQMD significance thresholds for any pollutant.</p> <p>The proposed project's operational emissions would not exceed the SCAQMD significant thresholds for all criteria pollutants.</p> <p>The operation of the proposed project would not introduce significant new air emissions to the region because the proposed project would be consistent with the existing land use designation specified in the General Plan, and would not generate significant population growth in a regional scale.</p> <p>Impacts from CO hotspots would not occur because the proposed project would generate only 3 and 4 vehicle trips during the A.M. and P.M. peak hours, respectively.</p> <p>Operation of the proposed project would generate odors associated with residential activities; however, these types of odors are not considered objectionable odors that would affect large numbers of people.</p>	<p>No mitigation measures are required.</p>	<p>Less than significant</p>

Impacts	Mitigation Measures	Level of Significance After Mitigation
Biological Resources		
<p>The proposed project would have no impact on endangered, threatened, or rare species because the project site does not contain the physical and/or biological features of a landscape that the listed species require in order to survive and reproduce.</p> <p>Construction activities could affect raptors and other birds nesting in vegetation or other built structures in or adjacent to work areas. Trimming or removal of vegetation could destroy or disturb active nests. Equipment noise, vibration, lighting and other human-related disturbance could disrupt nesting, feeding or other life cycle activities, and could cause nest abandonment or nesting failure. A pre-construction survey for nesting birds prior to construction activities would reduce the impact to a level below significant.</p>	No mitigation measures are required.	Less than significant
Archaeological & Paleontological Resources		
<p>Because the project site has been subject to grading and other ground disturbing activities, the presence of archaeological resources is not anticipated. Nevertheless, mitigation is provided in the form of an on-site archeological monitor.</p> <p>Because the project site has been subject to grading and other ground disturbing activities, the presence of paleontological resources is not anticipated. Nevertheless, mitigation is provided in the form of an on-site paleontological monitor.</p>	<p>AP-1: The applicant shall submit written evidence to the satisfaction of the Director of Community Development that a certified archaeological / paleontological monitor has been retained to observe grading activities and salvage and catalogue fossils and artifacts as necessary. The certified paleontological / archaeological monitor shall be present at the pre-grade conference, shall establish procedures for archaeological / paleontological resource surveillance, and shall establish, in cooperation with the applicant, procedures for temporarily halting or redirecting work to permit sampling, identification, and evaluation of the findings.</p>	Less than significant
Historical Resources		
<p>The proposed project would demolish the Doheny House. Since the demolition would change the existing conditions of the residence and compromise its overall architectural integrity as well as its historic integrity as it relates to the significant persons and events associated with its past, the proposed project would result in a substantial adverse change in the significance of a historical resource.</p>	<p>HR-1: A comprehensive documentation program shall be completed on the residence by the project applicant prior to the commencement of the demolition process.</p> <p>Due to the local nature of its historic significance, procedures comparable to the Historic American Buildings Survey (HABS), which are often applied in similar documentation of historical buildings, do not appear to be an appropriate approach in this case. Instead, the recommended scope of work shall consist of detailed architectural description, photographic recordation, scaled mapping, and compilation of historical background to create a comprehensive record on the residence, thereby incorporating the findings of all previous studies on the Doheny House. The results of the documentation program shall be</p>	<p>Significant Unavoidable Impact</p> <p>In consideration of the historical significance of the Doheny House, the implementation of the mitigation measures would not fully mitigate the project's potential effect on this "historical resource." Thus, the proposed demolition of Doheny House or other substantial physical change to the residence would cause "a substantial adverse change in the significance of a historical resource."</p>

Impacts	Mitigation Measures	Level of Significance After Mitigation
	<p>curated at the appropriate local cultural resources information repositories for easy public access, such as the City of Dana Point and the Dana Point/Capistrano Beach Historical Society.</p> <p>HR-2: A local historic preservation group shall be afforded an opportunity to salvage any appropriate architectural components that have a high potential for re-use in the restoration or rehabilitation of other local historic buildings.</p>	
Geology and Soils		
<p>There is no potential for damage due to direct fault rupture at the proposed project site.</p> <p>Design in accordance with these measures as described in the Mitigation Measures and Project Requirements would reduce the impact of ground shaking to less than significant.</p> <p>The proposed project would result in a less than significant impact related to soil erosion or the loss of topsoil.</p> <p>The site is anticipated to remain grossly stable. However, the natural bluff slope will be subject to surficial instability during seasons of heavy rainfall and during strong earthquakes. Proposed site improvements supported by foundation elements landward of the structural setback plane recommended herein should remain unaffected by future instability. Future compliance with the Mitigation Measures and Project Requirements, and existing regulations and standard construction techniques will reduce this impact to less than significant.</p>	<p><u>Site Preparation and Grading</u></p> <p>G-1 General</p> <p>All grading should be performed in accordance with the Standard Grading Specifications in Appendix G (Refer to geotechnical report updates, dated December 7, 2007). Grading is anticipated to consist of minor cut and fill operations to construct the building pad and proposed site grades. All processing, over-excavation and recompaction should be observed, tested and approved in writing by a representative of the geotechnical investigation team (Geofirm).</p> <p>G-2 Remedial Grading</p> <p>Remedial Grading is recommended to include removal and recompaction of near surface porous and weathered nonmarine terrace deposits within the proposed building pad and in locations of other structural improvements, including landscaping.</p> <p>The recommended depth of over-excavation is 3 feet below existing grades or the proposed building pad elevation, whichever is greater. The recommended depth of over-excavation beneath hardscape elements is 2 feet. Locally deeper removals are possible and the actual depth of removal must be determined by the geologist during grading. Over-excavation should extend laterally at least 3 feet beyond the building foot print and 1 foot beyond hardscape elements.</p> <p>G-3 Removal of Existing Improvements</p> <p>Any existing trees and stumps, organic materials and/or construction debris in structural areas should be removed and disposed of offsite. Septic tanks/seepage pits, if encountered, should be cleaned of loose materials and backfilled with</p>	<p>Less than significant with the incorporation of the mitigation measures.</p>

Impacts	Mitigation Measures	Level of Significance After Mitigation
	<p>slurry.</p> <p>G-4 <u>Compaction Standard</u></p> <p>All onsite soil materials are anticipated to be suitable for re-use as compacted fill provided such materials should be placed at 140 percent of optimum moisture content and compacted under the observation and testing of the soil engineer to at least 90 percent of the maximum dry density as determined by ASTM D 1557-02.</p> <p>G-5 <u>Temporary Construction Slopes</u></p> <p>Temporary construction slopes may be cut vertically to 3 feet, with higher slopes laid back at 1:1 (horizontal:vertical).</p> <p>G-6 <u>Subsurface Reinforcement</u></p> <p>Stability analyses for the proposed subsurface reinforcement are presented in the referenced reports, except as revised for Lot 17 as attached in Appendix G (Refer to geotechnical report updates, dated May 15, 2008), and consisting of buried shear pin arrays constructed below the rear of the proposed houses. The shear pins for Lot 17 should consist of two rows of 3 feet diameter concrete pins, spaced 10 feet on center in both directions, and extending a minimum of 46 feet below slab subgrade (10 feet minimum into bedrock). The required factors of safety are achieved for the area of the proposed residence with the inclusion of the shear pin system. Shear pins should utilize 4500 psi concrete.</p> <p>The approximate location of the shear pin array across the rear of the building pads is depicted on Plate 1 (Refer to Appendix G, geotechnical report updates dated May 15, 2008). The Geotechnical Plot Plan and Cross-Sections are considered representative and may be used to scale the depths/locations of geologic units and the shear pin array.</p> <p><u>Structural Design of Foundations and Slabs</u></p> <p>G-7 <u>Conventional Foundations and Slabs-On-Grade</u></p> <p>Conventional foundations and slabs-on-grade should be designed in accordance with Section 1805.A8.2 of the 2007 California Building Code utilizing an effective plasticity index of 25. The minimum recommended slab thickness is 5 inches, and the maximum recommended reinforcing</p>	

Impacts	Mitigation Measures	Level of Significance After Mitigation
	<p>spacing is 16 inches, placed in both directions.</p> <p>It is recommended that interior footings be interconnected so that the structure will respond relatively monolithically to differential soil movement. Slabs should be underlain by 4 inches of ½ to ¾ inch open graded gravel. In moisture sensitive areas, slabs should also be underlain by a 15-mil thick vapor retarder/barrier (Stego Wrap or equivalent) placed over the gravel in accordance with the requirement of ASTM E:1745 and E:1643.</p> <p>Conventional spread footings in competent nonmarine terrace deposits or compacted fill may be designed for an allowable bearing value of 1500 pounds per square foot with a minimum width of 15 inches and a minimum embedment of 30 inches below the adjacent exterior grade and 18 inches below interior pad grade. The design value may be increased one-third for short duration wind or seismic loading. Settlement due to footing loads is anticipated to be within ¾ inch maximum and ½ inch differential and may occur over a horizontal distance of 25 feet.</p> <p>Lateral loads may be resisted by passive pressure forces and by friction acting on the bottom of footings. The allowable passive pressure forces may be computed using an equivalent fluid density of 150 pounds per cubic foot for competent nonmarine terrace deposits or compacted fill. A coefficient of friction of 0.25 may be used in computing the frictional resistance in nonmarine terrace deposits or compacted fill.</p> <p>G-8 <u>Moisture Content of Slab Subgrade Soils</u></p> <p>Presoaking of slab subgrade soils is required prior to construction of slabs. We recommend that subgrade soils be soaked to at least 140 percent of optimum moisture content to a minimum depth of 18 inches prior to placing visqueen.</p> <p>G-9 <u>Footing Reinforcement</u></p> <p>To resist adverse effects of tension cracking due to seismic shaking, a minimum of two No. 5 bars should be placed at the top and bottom of continuous footings.</p> <p>G-10 <u>Design of Retaining Walls:</u></p> <p>1. Structural Design of Retaining</p>	

Impacts	Mitigation Measures	Level of Significance After Mitigation
	<p>Walls</p> <p>Walls retaining level backfill may be designed using an equivalent fluid density of 30 pounds per cubic foot if such walls are backfilled with geotechnically approved, granular non-cohesive soils and are free to rotate during backfilling (refer to Figure 4 for backcut and backfill geometry from the geotechnical report updates, dated December 7, 2007 in Appendix G). Walls retaining onsite soils should be designed for an equivalent fluid pressure of 60 pounds per cubic foot. Wall rotation on the order of 0.1 percent of the wall height should be anticipated and considered in design of walls and adjacent hardscaping. Restrained walls should be designed for a pressure of 60 and 100 pounds per cubic foot equivalent fluid pressure for granular and onsite soils, respectively. Retaining wall design must consider topographic and structural surcharges.</p> <p>2. Subdrains</p> <p>The drainage scheme depicted on Figure 3 from the referenced reports or a geotechnically approved alternative should be used to control seepage forces behind retaining walls. Waterproofing of retaining walls is recommended and should be applied in accordance with the architect's specifications or those of a waterproofing consultant.</p> <p>3. Wall Excavations</p> <p>Wall excavations exposing bedrock and fill may be constructed vertically to 3 feet, with higher slopes laidback to 1:1 (horizontal:vertical).</p> <p><u>Hardscape Design and Construction</u></p> <p>G-11 Hardscape improvements located landward of the shear pin arrays may utilize conventional foundations embedded in compacted fill or competent native soils and should be designed in accordance with the foundation recommendations presented below. Possible flatwork bluffward of the residence may utilize conventional design if the risk of loss or damage due to possible instability is considered acceptable.</p> <p>Planters, fences, or garden walls constructed with a minimum embedment of 18 inches in compacted fill or competent native soils may be designed for an allowable bearing value of 1500</p>	

Impacts	Mitigation Measures	Level of Significance After Mitigation
	<p>pounds per square foot, and may utilize an allowable lateral bearing pressure of 150 pounds per cubic foot and a friction coefficient of 0.25.</p> <p>Concrete flatwork should be divided into as nearly square panels as possible. Joints should be provided at maximum 6 feet intervals to give articulation to the concrete panels. Landscaping and planters adjacent to concrete flatwork should be designed in such a manner as to direct drainage away from concrete areas to approved outlets. Planters located adjacent to principle foundation elements should be sealed and drained.</p> <p>Flatwork elements should be a minimum 5 inches thick (actual) and reinforced with No. 4 bars 16 inches on center both ways. A 12-inch reinforced thickened edge should also be utilized for significant elements. Subgrade presaturation to 140 percent of optimum is recommended to a depth of 18 inches.</p> <p>Large concrete patios within the bluff top setback area should be avoided as such may be irreparably damaged by possible bluff erosion. Softscape improvements should be considered as they may be more easily reconfigured or repaired in response to the retreating bluff edge.</p> <p>Landscape design should include provisions for subsurface drains beneath high water use areas. It is recommended that native or drought-tolerant plants be selected for general landscaping purposes to minimize irrigation requirements and consequent saturation of underlying soils. Irrigation and the use of turf grass, ice plant and similar shallow-rooted plants within the bluff setback shall be specifically prohibited.</p> <p><u>Utility Trench Backfill</u></p> <p>G-12 Utility trench backfill should be placed in accordance with Utility Trench Backfill Guidelines (Refer to Appendix G, geotechnical report updates, dated December 7, 2007). It is the owners and contractors responsibility to inform subcontractors of these requirements and to notify Geofirm when backfill placement is to begin. In addition, the owner or his/her representative should prepare a map on an ongoing basis which depicts the location of all underground utilities for inclusion in the as-built geotechnical report. If utility trenches are backfilled with highly permeable earth materials such</p>	

Impacts	Mitigation Measures	Level of Significance After Mitigation																								
	<p>as pea gravel, the trenches should be backfilled with slurry where they pass beneath house perimeter footings in order to preclude the seepage of yard water beneath the house.</p> <p><u>Seismic Structural Design</u></p> <p>G-13 Based on the geotechnical data and site parameters, the following is provided by the U.S. Geological Survey (USGS) (NEHRP, 2003) to satisfy the 2007 CDC design criteria:</p> <p>Site and Seismic Design Criteria for 2007 CBC</p> <table border="1" data-bbox="678 646 1003 1285"> <thead> <tr> <th>Design Parameters</th> <th>Recommended Values</th> </tr> </thead> <tbody> <tr> <td>Site Class</td> <td></td> </tr> <tr> <td>Site Longitude (degrees)</td> <td>D -117.6617</td> </tr> <tr> <td>Site Latitude (degrees)</td> <td>33.4530 1.503</td> </tr> <tr> <td>Ss (g) B</td> <td>0.541</td> </tr> <tr> <td>S1 (g) B</td> <td>1.503</td> </tr> <tr> <td>SMs (g) D</td> <td>0.811</td> </tr> <tr> <td>SM1 (g) D</td> <td>1.002</td> </tr> <tr> <td>SDs (g) D</td> <td>0.541</td> </tr> <tr> <td>SD1 (g) D</td> <td>1.0</td> </tr> <tr> <td>Fa</td> <td>1.5</td> </tr> <tr> <td>Fv</td> <td></td> </tr> </tbody> </table> <p><u>Concrete</u></p> <p>G-14 Laboratory test results indicate onsite soils have a negligible to moderate soluble sulfate content. It is recommended that a concrete expert be retained to design an appropriate concrete mix to address soluble sulfate content, the near marine environment, and water vapor transmission as well as the structural requirements. In lieu of retaining a concrete expert, it is conservatively recommended that the 2007 California Building Code, Section 1904.3 and ACI 318, Section 4.3 be utilized, which recommends a maximum water-cement ratio of 0.5 and a minimum compressive strength of 4000 psi.</p> <p><u>Foundation Plan Review</u></p> <p>G-15 In order to help assure conformance</p>	Design Parameters	Recommended Values	Site Class		Site Longitude (degrees)	D -117.6617	Site Latitude (degrees)	33.4530 1.503	Ss (g) B	0.541	S1 (g) B	1.503	SMs (g) D	0.811	SM1 (g) D	1.002	SDs (g) D	0.541	SD1 (g) D	1.0	Fa	1.5	Fv		
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Impacts	Mitigation Measures	Level of Significance After Mitigation
	<p>with recommendations of this report and as a condition of the issue of this report, the undersigned should review final foundation plans and specifications <u>prior</u> to submission of such to the building official for issuance of permits. Such review is to be performed only for the limited purpose of checking for conformance with the design concept and the information provided herein. This review shall not include review of the accuracy or completeness means or methods, coordination of the work with other trades or construction safety precautions, all of which are the sole responsibility of the Contractor. Geofirm's review shall be conducted with reasonable promptness while allowing sufficient time in our judgment to permit adequate review. Review of a specific item shall not indicate that Geofirm has reviewed the entire system of which the item is a component. Geofirm shall not be responsible for any deviation from the Construction Documents not brought to our attention in writing by the Contractor. Geofirm shall not be required to review partial submissions or those for which submissions of correlated items have not been received.</p> <p><u>Finish Grading and Surface Drainage</u></p> <p>G-16 All finished grades should assure that no water ponds in the vicinity of footings or adjacent to the bluff slope. All roofs should be guttered and discharge conducted away from the house and rear bluff slope in a nonerosive manner as specified by the project civil engineer or landscape architect. If a sump is utilized to deliver water from the rear patio areas to the street, it should be located landward of the shear pin arrays. Proper interception and disposal of all onsite surface discharge is presumed to be a matter of civil engineering or landscape architectural design.</p> <p>Maintenance of drainage, landscaping, and irrigation systems is required to ensure long term stability of hillside property. Guidelines for Maintenance of Hillside Homes Sites presented in Appendix G (geotechnical report updates, dated December 7, 2007). Irrigation within the rear bluff setback shall be specifically prohibited.</p> <p><u>Observation and Testing</u></p> <p>G-17 It is required (conditional to use of geotechnical report), that a geotechnical construction observation</p>	

Impacts	Mitigation Measures	Level of Significance After Mitigation
	<p>will be conducted by Geofirm to observe proper removal of unsuitable materials, that foundation excavations are clean and founded in competent material, to test for proper moisture content and proper degree of compaction of fill, to observe and test placement of wall and trench backfill materials, and to confirm design assumptions.</p> <p>A Geofirm representative shall visit the site at intervals appropriate to the state of construction, as notified by the Contractor, in order to observe the progress and quality of the work completed by the Contractor. Such visits and observation are not intended to be an exhaustive check or a detailed inspection of the Contractor's work but rather are to allow Geofirm, as an experienced professional, to become generally familiar with the work in progress and to determine, in general, if the work is proceeding in accordance with the recommendations of this report.</p> <p>Geofirm shall not supervise, direct or have control over the Contractor's work nor have any responsibility for the construction means, methods, techniques, sequences or procedures selected by the Contractor nor the Contractor's safety precautions or programs in connection with the work. These rights and responsibilities are solely those of the Contractor.</p> <p>Geofirm shall not be responsible for any acts or omissions of the Contractor, subcontractor, any entity performing any portion of the work, or any agents or employees of any of them. Geofirm does not guarantee the performance of the Contractor and shall not be responsible for the Contractor's failure to perform its work in accordance with the Contractor documents or any applicable law, codes, rules or regulations.</p> <p>These observations are beyond the scope of this investigation and budget and are conducted on a time and material basis. The responsibility for timely notification of the start of construction and ongoing geotechnically involved phases of construction is that of the owner and his contractor. Typically, at least 24 hours notice is required.</p> <p><u>Jobsite Safety</u></p> <p>G-18 Neither the professional activities of Geofirm, nor the presence of</p>	

Impacts	Mitigation Measures	Level of Significance After Mitigation
	<p>Geofirm's employees and subconsultants at a construction/ project site, shall relieve the General Contractor of its obligations, duties and responsibilities including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending and coordination the work in accordance with the contract documents and any health or safety precautions required by any regulatory agencies. Geofirm and its personnel have no authority to exercise any control over any construction contractor or its employees in connection with their work or any health or safety programs or procedures. The General Contractor shall be solely responsible for jobsite safety.</p> <p><u>Pre-Grade Meeting</u></p> <p>G-19 A pre-grade meeting should be held with representatives of the owner, contractor, architect, civil engineer, geotechnical engineer, engineering geologist, and building official prior to grading and/or construction to clarify any questions relating to the incorporation of geotechnical recommendations into grading construction and work sequence.</p>	
Hazards and Hazardous Materials		
<p>The proposed project would not create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials.</p> <p>The proposed project includes the potential construction of five new single-family residences that would use common everyday hazardous materials including household cleaning products and landscape products that would not create a significant hazard to the public or the environment through the reasonably foreseeable upset or accident conditions involving hazardous materials at the site.</p> <p>Short-term construction activities would include the demolition of the existing residence on-site. This home was constructed with some asbestos containing building materials, which is required to be removed and disposed of in compliance with existing regulations. The proposed project would not emit hazardous emissions or handle hazardous or acutely hazardous materials or substances as part of long-term project operations.</p> <p>The project site was not identified as a known hazardous materials site. There are no regulated hazardous materials operations on the project site, and no use of regulated</p>	<p>No mitigation measures required for this project.</p>	<p>Less than significant.</p>

Impacts	Mitigation Measures	Level of Significance After Mitigation
<p>hazardous materials needing disposal was noted.</p> <p>The proposed project would neither introduce substantial population that would interfere with an emergency response plan, nor significantly affect any transportation network.</p>		
Hydrology		
<p>The proposed project would have no impact on groundwater resources.</p> <p>During occupancy, the project site would drain more efficiently due to improved drainage features on-site that would be designed into the project, and the proposed project would maintain appropriate landscaping. The proposed project would have no affect on the well-established external drainage patterns of the area as the project site currently drains into them.</p> <p>The proposed project would not increase runoff from the project site such that flooding would result.</p> <p>The proposed project would design and comply with a SWPPP that would control erosion on the project site.</p>	<p>No mitigation measures required for this project.</p>	<p>Less than significant.</p>
Land Use and Planning		
<p>The project site consists of five lots that are zoned RSF 3, which allows for the development of single-family residential uses. The proposed project would demolish the existing residence on-site and the five existing individual parcels would be developed with single-family residences as allowed under the existing zoning and General Plan land use designations for the project site.</p>	<p>No mitigation measures required for this project.</p>	<p>Less than significant.</p>
Noise		
<p>Noise exposure from rail activities at the project site would not be significant.</p> <p>There would be no impact from groundborne vibration or groundborne noise during project construction.</p> <p>Roadway noise increase in the vicinity due to project-induced traffic would be imperceptible.</p> <p>Compliance with the policies identified in the City's Noise Ordinance would reduce the construction noise to less than significant levels.</p>	<p>No mitigation measures required for this project.</p>	<p>Less than significant.</p>
Population and Housing		
<p>The proposed project would add approximately 12 people to the population of the City which would not be a substantial growth in the City's population.</p> <p>The proposed project would not displace a substantial number of existing housing units which would necessitate the construction of</p>	<p>No mitigation measures required for this project.</p>	<p>Less than significant.</p>

Impacts	Mitigation Measures	Level of Significance After Mitigation
replacement housing elsewhere.		
Public Services		
<p>The addition of five single-family residences would not significantly affect the ability of the OCFA to provide fire protection services within the project area.</p> <p>Implementation of the proposed project would not result in a significant impact on police protection services because the proposed project would maintain existing land use designations and would not add a substantial number of new dwelling units.</p> <p>The addition of five single-family residences would not generate a substantial number of new students requiring expansion of CUSD educational services.</p>	No mitigation measures required for this project.	Less than significant.
Traffic and Circulation		
<p>The intersection of Camino de Estrella/ Camino Capistrano currently operates at an LOS A and would continue to do so with the addition of project trips. The proposed project trips are estimated to be approximately 38 trips per day and the daily volumes on the adjacent roadways would be well below the 10,000 vehicle threshold.</p> <p>Construction would interfere with local circulation.</p>	<p>T-1: A construction traffic management plan shall be prepared prior to the initiation of construction activities on-site and submitted to the City for review and approval. This plan shall contain the following items:</p> <ul style="list-style-type: none"> • A map documenting material and equipment staging and storage locations for all phases of construction (must be located on the project site). • A map documenting worker parking locations for all phases of construction (must be located on the project site). • Notification procedures for adjacent businesses, residents, property owners and public safety personnel for all major deliveries, detours, and land/or street closures that will affect traffic in the vicinity of the project. • Provisions for monitoring surface streets used for truck routes so that any damage and debris attributable to the trucks can be identified and corrected. • Signage plans documenting any detours for bicycle and pedestrian traffic. • Routing plans for construction vehicles and construction equipment from the project site. 	Less than significant with the incorporation of the mitigation measures.
Utilities		
<p>The SCWD sewage treatment plant is operating below its design capacity, and it is capable of handling the sewage generated by the proposed project.</p> <p>The proposed project is being designed to carry all storm water runoff from the</p>	<p>U-1: The proposed project shall adhere to the provisions for drainage improvements as identified in the Hydrology/ Hydraulics Study prepared for the proposed project by Toal Engineering, Inc. or other site-specific drainage</p>	Less than significant with the incorporation of the mitigation measures.

Impacts	Mitigation Measures	Level of Significance After Mitigation
<p>developed areas to Camino Capistrano in order to reduce possible erosion to the bluff. Mitigation has been proposed to ensure there would be no impact off-site due to project site runoff.</p> <p>The proposed project would be served by a landfill with sufficient permitted landfill capacity to accommodate the proposed project's solid waste disposal needs.</p>	<p>measures to the satisfaction of the City's engineer.</p>	

ES-6 ALTERNATIVES

The City has identified four potential project alternatives for in-depth evaluation in addition to the *No Project Alternative*. All five of the alternatives are described below.

No Project Alternative

Under this alternative, the Doheny House would remain in place at the project site. The difference between this alternative and the proposed project is that the proposed project would completely demolish the structure. Under the No Project alternative, the Doheny House and its city-recognized historical designation would be retained.

Maintain the Doheny House in its Current Location and Provide Development Opportunities on the Southern Two Parcels

The Maintain the Doheny House in its Current Location and Provide Development Opportunities on the Southern Two Parcels Alternative is the No Project/Reasonably Foreseeable On-site Development Alternative. This alternative describes the existing development opportunity on the project site. The Doheny House occupies the northern three parcels of the project site and the southern two parcels are comprised of fencing and landscaping. The southern two parcels can currently be developed under the existing conditions of the project site.

Partial Demolition of the Doheny House at its Current Location and Provide Development Opportunities on the Southern Two Parcels and the Northern Most Parcel

The Partial Demolition of the Doheny House at its Current Location and Provide Development Opportunities on the Southern Two Parcels and the Northern Most Parcel Alternative is similar to the Maintain the Doheny House in its Current Location and Provide Development Opportunities on the Southern Two Parcels Alternative in that it would provide development opportunities on the southern two parcels. This alternative differs in that it would add a development opportunity on the northern most parcel by demolishing the northern half of the Doheny House. The demolished areas would include: enclosed patio; maid's bedroom; guest room with guest bath; lower level bonus room with storage; two breezeways; and three-car garage. A new garage would be constructed adjacent to the remaining portion of the Doheny House on the space where the breezeway, nook, kitchen, and maid's bedroom are currently located. Approximately half of the Doheny House would be demolished and 2,720 square feet

would be retained. Historical features and design elements from the demolition of the garage structure would be utilized during the rebuilding process for the new garage.

Partial Demolition and Relocation of the Doheny House to the Southern Two Parcels and Provide Development Opportunities on the Northern Three Parcels

The Partial Demolition and Relocation of the Doheny House to the Southern Two Parcels and Provide Development Opportunities on the Northern Three Parcels Alternative consists of two primary phases: (1) modify and relocate the single-family home from the northern end of the project site to the southern end of the project site, and (2) remodel the house once it has been relocated. To relocate the house, a portion of the house would be demolished and a new foundation would be constructed, but no grading or compaction would be required. The new foundation would consist of caissons, grade beams and a raised foundation. The site would be geologically secured with 12 tie backs, approximately 15 feet towards the bluff from the house's new location. Relocation of the house would require approximately 60 to 90 days.

Following relocation, the house would be remodeled. The existing single-story house is approximately 5,260 square feet. Approximately half of the house would be demolished and 2,720 square feet would be retained. The demolished areas would include: enclosed patio; maid's bedroom; guest room with guest bath; lower level bonus room with storage; two breezeways; and three-car garage. A new garage would be constructed adjacent to the remaining portion of the Doheny House on the space where the breezeway, nook, kitchen, and maid's bedroom are currently located. Remodel of the house would necessitate structural and interior improvements and be designed so as to maintain as much of the home's historical integrity as possible. Historical features and design elements from the demolition of the garage structure will be utilized during the rebuilding process for the new square footage.

The relocated Doheny House would sit on the southern two parcels of the project site and the northern three parcels would be made available for development opportunities for three single-family residential units.

Partial Demolition and Relocation of the Doheny House to Another Site in Dana Point

The Partial Demolition and Relocation of the Doheny House to Another Site in Dana Point Alternative would include the preparation of five individual lots for development opportunities on the project site, and the relocation of the Doheny House to another site in the City. The Doheny House would be moved from the project site to an off-site property at 26472 Via California. The Via California off-site location is a corner lot, zoned RD14, which currently has an existing single-family dwelling and several detached accessory structures. It is a flat lot located on the seaward side of the San Diego (Interstate-5) Freeway. The existing single-family home and associated accessory structures would be demolished in order to relocate the Doheny house onto the Via California site.

With the relocation of the Doheny House to the Via California site, not all the required setbacks would be met per the residential development standards for the RD14 zone. Under the Partial Demolition and Relocation of the Doheny House to Another Site in Dana Point Alternative, the

relocated Doheny House would result in nonconforming front and rear yard setbacks in several areas.

A portion of the Doheny House would also be demolished, including the existing three car garage, the breezeway behind the kitchen, the guest house behind the garage, and the sun porch behind the living room. The roof tiles and doors on the existing garage would be salvaged and placed on a new two-car garage at the Via California site. Moving the Doheny House would entail cutting the house into four sections and moving each section along Camino Capistrano to Via California. The Doheny House would then be refurbished on the Via California site.

ES-7 ISSUES TO BE RESOLVED

Based on an Initial Study conducted for the initial Project request for the Doheny House site, the City determined that there were enough potential impacts to historical resources and considerable public comment to justify the processing of an Environmental Impact Report. The Draft EIR provided a detailed analysis of the potentially significant impacts from the proposed demolition of the Doheny House and the reasonably foreseeable construction of five single-family residential dwelling units on the project site.

1.0 MINOR CLARIFICATIONS TO RELATED DOCUMENTATION

1.1 Minor Clarifications

The following clarification is a revision to the text of the Draft EIR. This clarification is based on written letters of comment provided by responsible and review agencies, organizations, and individuals that were submitted to the City of Dana Point during circulation of the Draft EIR for public review. The errata are cross-referenced to Section 2.0, Responses to Comments on the Draft EIR.

Clarification

1. The following change to the text being made to the fifth paragraph under Section 2.1.1 Project Location on Page 2-1:

The number 5,014 is being changed to 5,260.

2. The following content has been added to the second paragraph under Section ES-6 Alternatives on page ES-19:

A new garage would be constructed adjacent to the remaining portion of the Doheny House on the space where the breezeway, nook, kitchen, and maid's bedroom are currently located.

3. The following clarification to the text is being added to the first paragraph under Section 2.3 Project Characteristics on Page 2.2:

The project site consists of five (5) separate parcels that are held in a single, private ownership and will be developed separately. The Doheny House is located on the northern portion of the project site.

2.0 RESPONSE TO COMMENTS ON THE DRAFT EIR

2.1 Introduction

Pursuant to sections 15086, 15087, and 15105 of the *State CEQA Guidelines*, the Draft EIR for the Project was publicly circulated or otherwise made available for public review and comment for a period of at least 45 days. The Draft EIR was made available for review and comment from October 13, 2008 through December 1, 2008.

The City received twenty-one (21) written comment letters for the Draft EIR within the public review period. To carry out the intent of *State CEQA Guidelines* Section 15088, the City has evaluated each written comment received, and has prepared written responses to address each environmental concern raised by the letters. Copies of all letters received are provided in Appendix A of the Final EIR.

2.2 List of Written Comment Letters on the Draft EIR

The City received twenty-one (21) written comment letters for the Draft EIR submitted within the public review period. These letters include one (1) agency comment, five (5) letters from organizations, and fifteen (15) letters from individuals.

Written comments were received from the following agency:

Letter No.	Commenter	Affiliation	Date Received
1	Barbara Gossett	Department of Transportation	October 28, 2008

Written comments were received from the following organizations:

Letter No.	Commenter	Affiliation	Date Received
2	Paul Simons	Orange County Historical Commission	October 31, 2008
3	Carlos N. Olvera	Dana Point Historical Society	November 24, 2008
4	Barbara Force Johannes	Dana Point Historical Society	November 26, 2008
5	Mary Ann Comes and Mike Cotter	San Clemente Historical Society	December 1, 2008
6	Doris I. Walker	Dana Point Historical Society	December 1, 2008

Written comments were received from the following individuals:

Letter No.	Commenter	Affiliation	Date Received
7	Henry “Hank” Thomas	Individual	October 13, 2008
8	Linda Zaccaro	Individual	October 14, 2008
9	Earl R. Wessell	Individual	October 20, 2008
10	Valerie and Larry Read	Individuals	October 17, 2008
11	Molly Matthews	Individual	November 8, 2008
12	Joe and Ruby Aragon	Individuals	November 10, 2008
13	Judy Busch	Individual	November 26, 2008
14	Keith Johannes	Individual	November 26, 2008
15	Mary Cowl	Individual	November 30, 2008
16	Ross Teasley	Individual	November 30, 2008
17	Rodney J. Howorth	Individual	December 1, 2008
18	Kaye Crippen Ph.D	Individual	December 1, 2008
19	Jacqueline Ayer	Individual	December 1, 2008
20	Doheny House Petition	Individuals	December 1, 2008
21	DP Times Online Reader Poll and Doheny House Petition	Individuals	December 1, 2008

2.3 Response to Comments

Letter 1: Barbara Gossett, Acting Branch Chief, Department of Transportation

Comment 1-1: Caltrans District 12 is a commenting agency on this project and has no comment at this time.

Response 1-1: The respondent's comment that Caltrans District 12 is a commenting agency on this project and that Caltrans has no comment at this time is hereby noted.

Comment 1-2: However, in the event of any activity in Caltrans' right-of-way, an encroachment permit will be required.

Response 1-2: The respondent's comment that "in the event there is any activity in Caltrans' right-of-way, that an encroachment permit will be required," and that Caltrans be kept informed on this project, and any future developments, which could potentially impact State transportation facilities is hereby noted.

Letter 2: Paul Simons, Chair, Orange County Historical Commission

Comment 2-1: The Doheny House clearly qualifies for protection and preservation and not for either demolition as stated in the Project Description or possible relocation from the present site.

The Doheny House is already a designated historic structure and is on the City of Dana Point's Historic Resource Register, this again indicates how important the Doheny House is in the History of Capistrano Beach/Dana Point and for this reason the Orange County Historical Commission recommends denial of demolition or moving the house to another site.

Response 2-1: These comments are acknowledged and are being forwarded to the decision-makers for their consideration.

Letter 3: Carlos N. Olvera, President Dana Point Historical Society

Comment 3-1: Item 1. Cumulative Impacts

One of the environmental elements analyzed for each resource is Cumulative Impacts and is included in the Historical Resources section 4.7.4. It is stated that the proposed project would not contribute to a cumulative impact for historical resources because the proposed project is the only local historic resource that is being affected by the project. Yet, on page 4.7-4, a fact is stated that as of 2000 at least 22 Doheny-built homes still exist in Capistrano Beach. The analysis should consider whether other historic structures in the area *have*

been or will be demolished within the foreseeable future [Code §21083(2), Guidelines 15065 (a)(3)]. Consider this: Many of the remaining 1928-built historic homes in Capistrano Beach may not fit the requirements of CEQA, as the Doheny House does, for historic preservation. This was the case when the Louise Leyden house was demolished in 1992. Note: The Leyden's originally lived in the Doheny house as this DEIR itself refers to the project as the Doheny-Leyden Palisades House. As a result, these twenty-two homes may not withstand a challenge to prevent demolition. A list of past, present, and probable future projects producing related or cumulative impacts, including, if necessary, those projects outside the control of the agency should be included in the EIR [see Guidelines §15130 (b)(1)(A)]. As a result the Doheny House may be the last 1928-built house standing. If this historic structure is degraded now, then all historic significance of Capistrano Beach will be lost forever. If this argument is not the case, then the EIR must discuss why not [Guidelines §15130 (a)].

Response 3-1: The proposed project will not contribute to a cumulative impact for historical resources because there are no other projects in the City that are proposed which would impact any City historical resource; the proposed project is the only project proposed that will affect a locally historic resource. Therefore, the project's incremental effects on historical resources will not combine with the effects of other projects on historical resources (i.e., it will not be cumulatively considerable) to cause a significant cumulative impact on historical resources.

As indicated in the Draft EIR starting on page 4.7-1, during the 1997 citywide historical resources survey, the Doheny House was noted as one of 63 buildings in the city that were deemed historically significant and eligible for listing in the City's Historic Resources Register (Wright and Stoddard 1997a). In addition, the 1997 study identified the Doheny House as one of two buildings among the 63 that were potentially eligible for listing in the National Register of Historic Places (*ibid.*). As such, it was singled out in the City's Historic Resources Ordinance for "additional protection" and automatically listed in the local Historic Resources Register regardless of owner consent (DPMC §9.07.250(c)(2); §9.07.250(d)(2)). None of the 63 historic buildings identified during this survey, however, has been formally included in the California Historical Resource Information System. Nor are any of these 63 buildings subject to being adversely impacted by a proposed project.

In addition, per Draft EIR page 4.7.-3, a field inspection of the Doheny House and its surroundings was conducted as part of the historical resource survey. To facilitate proper recordation and revaluation of the building, detailed notations and assembled preliminary photo-recordation of the structural/architectural characteristics and current conditions of the Doheny House and its associated features were made. In conjunction with the field inspection, a reconnaissance-level survey was also conducted of the surrounding area to examine and assess

the physical context of this property. The neighborhood in the immediate vicinity of the Doheny House consists predominately of single-family homes dating to the late 20th century, with only one notable, albeit altered, example comparable to the style and vintage of the Doheny House, located at 26821 Calle Hermosa. As products of later suburban development, most all of the nearby residences occupy smaller lots and are more modest in size and appearance than the Doheny House. As a result, the neighborhood does not demonstrate a coherent historic character that is consistent with the Doheny House's period of origin. Therefore, the proposed project would not contribute to a cumulative impact for historical resource issues because the proposed project is the only locally historic resource that is being affected in the City. (see page 4.7-9 of the Draft EIR)

Comment 3-2: Item 2. Alternative 6.6

On page 6-23, an alternative (section 6.6) of partial demolition and relocation of the Doheny House to another site in Dana Point is stated. In that discussion, the off-site location at 26472 Via California is reportedly under ownership and/or control by the applicant. Although this statement was true earlier this year, it is no longer the case as of October 2008. It is publicly known that the applicant has explored several lots in Dana Point on which to relocate the Doheny House, but without success. As such, this section, and all references to it, should be deleted. Or, a designated property must remain under the control of the applicant until the project is either approved or denied.

Response 3-2: As stated on page 6-23 of the Draft EIR, under this alternative (6.6) the Doheny house would be moved from the project site to an off-site property at 26472 Via California, which reportedly is under ownership and/or control of the applicant. This information was correct at the time the Draft EIR was released for public circulation and remained correct as of January 2009. That the off-site property may have recently been conveyed by the applicant does not diminish the fact that the Draft EIR properly evaluated this alternative as one which was capable of substantially lessening or avoiding a potentially significant impact of the project. Ownership of the alternative site is only one of many factors that may be taken into account when addressing the feasibility of the alternative. This one factor alone does not establish a fixed limit on the scope of the reasonable alternative.

Comment 3-3: Item 3. Qualification as a Historic Resource

Any alternative that is considered should include the analysis if the alternative will result in the structure being qualified for inclusion on the National Register of Historic Places as it can be with the "no project/no build" alternative. Properties eligible for historic designation are available for a formal determination of eligibility where the owner objects to actual listing, but the

property meets the criteria for listing [Guidelines §15064.5 (a)(3), the lead agency determination is the Dana Point General Plan, Urban Design Element, page 42]. Even where no governmental designation or determination of eligibility has been made, a property may have unquestioned historic or cultural significance. [See *Friends of the Waterworks v. City of Beverly Hills*; case No. C 640123, Los Angeles County Superior Ct., April 10, 1987].

Response 3-3: The Draft EIR on page 4.7-9 determined that the project site (Doheny House), meets CEQA's definition of a "historical resource." The Draft EIR in Appendix D, Cultural Resources Study, page 6 indicates that the project site was determined to qualify as a significant local resource with the potential for listing on the National Register of Historic Resources.

Comment 3-4: It should be noted that the geotechnical report indicates that the applicant will be requesting a variance to the bluff setback for the construction of the new homes. The permit for demolition should not be issued, if granted, until the permit for construction is approved. It is respectfully submitted that the DEIR be revised before the issue of the Final EIR.

Response 3-4: This comment is acknowledged and is being forwarded to the decision-makers for their consideration. The applicant is not requesting a variance for any construction at this time. For purposes of discussion to analyze the reasonable foreseeable construction of five (5) single-family dwelling units, the EIR included analysis of development on the project site. The potential of building five (5) single-family dwellings was analyzed which included a setback deviation from the 40-foot bluff top setback to 25 feet. Such a deviation is allowed by right per the Dana Point Municipal Code if supported by conclusive analysis in a geotechnical report that has been reviewed and approved by the City. Any future construction on any of the 5 lots is within the Coastal Overlay District and would require a separate Coastal Development Permit (CDP). Similarly, any deviation to the bluff top setback would also trigger additional review and hearing before the Planning Commission.

Letter 4: Barbara Force Johannes, VP & Preservation Chair, Dana Point Historical Society

Comment 4-1: (1) Is associated with events that have made a significant contribution to the broad patterns of California's history and cultural heritage.

Response 4-1: This comment presents additional information its preparer would like to be included in the Final EIR and it is being forwarded to the decision-makers for their consideration.

Comment 4-2: (2) Is associated with the lives of persons important in our past.

Response 4-2: This comment presents additional information its preparer would like to be included in the Final EIR and it is being forwarded to the decision-makers for their consideration.

Comment 4-3: (3) Embodies the distinctive characteristics of a type, period, region or method of construction, or represent the work of an important creative individual, or possesses high artistic values.

Response 4-3: This comment is acknowledged and is being forwarded to the decision-makers for their consideration.

Comment 4-4: The DEIR states that a review of findings from the previous studies and research conducted during the present study further indicate that the Doheny House possesses sufficient historical, architectural and aesthetic merits to be considered eligible for listing in the California Register under Criteria 1,2, and 3, with a local level of significance. The City of Dana Point needs to list the Doheny House on the California Register.

Response 4-4: This comment is acknowledged and is being forwarded to the decision-makers for their consideration.

Comment 4-5: In addition, the City Historic Resources Ordinance (City Municipal Code §9.07.250) includes policy based on the 1997 City of Dana Point Historic Architectural Resources Inventory as approved under Ordinance 01-02, February 27, 2001. This inventory identifies the Doheny House as one of two buildings in the area eligible for inclusion into the National Register of Historic Places. This finding has led to the home's inclusion in the Dana Point Historic Resources Register, the official local register.

Response 4-5: This information was discussed in the Draft EIR beginning on page 4.7-6.

Comment 4-6: If the Doheny House has met the City of Dana Point's criteria for protection as a historical resource in the community of Dana Point, can the City allow the demolition of a city-designated historical resource? The City of Dana Point would be in conflict with its own designation of the Doheny House as being historically significant, along with the protected Dolph House, under the City's Zoning Ordinance and General Plan. This declaration was made official in City letters to owners dated March 2001.

Response 4-6: As part of the proposed project, a Conditional Use Permit (CUP) for the deletion of the Doheny House as a historical resource from the City of Dana Point Historic Resources Register (Dana Point Municipal Code § 9.07.250) would be required.

Comment 4-7: The DEIR states that CEQA establishes that "a project that may cause substantial adverse change in the significance of historical resource is a project that may have a significant effect on the environment" (PRC§21084.1) "Substantial adverse change," according to PRC §5020.1(q), "means demolition, destruction, relocation or alteration such that the significance of a historical resource would be impaired. Demolition of the Doheny House would change the existing conditions of the residence and compromise its overall architectural integrity as well as its historic integrity to relate to the significant persons and events associated with the development of Capistrano Beach.

Response 4-7: The Draft EIR on page 4.7-10 does conclude that the demolition of the Doheny House or other substantial physical change to the residence would cause "a substantial adverse change in the significance of a historical resource."

Comment 4-8: There is only one alternative that complies with CEQA guidelines. The No Project/No Build Alternative will preserve the historic context of the overall setting and would not impact the local historical resource. The Doheny House estate can be advertised publicly, sold and restored as a private residence or restored by the developers into a historic Pacific view estate and then featured on the real estate market. The developers have never listed the house publicly, but only offered to give and/or move it to the City.

Response 4-8: This comment is acknowledged and is being forwarded to the decision-makers for their consideration.

Comment 4-9: Finally, the 4.7-4 Cumulative Impacts section of the DEIR states that the proposed project would not contribute to a cumulative impact for historical resource issues because the proposed project is the only locally historic resource that is being affected in the City. If the Doheny House is one of our two most important buildings and has been placed on the City of Dana Point Historic Resource Register by the City and is not protected from demolition, how can the twenty-one remaining Doheny houses be protected when there is less documentation and, therefore, no protection under CEQA guidelines?

Response 4-9: The proposed project would not contribute to a cumulative impact for historical resource issues because the proposed project is the only locally historic resource that is being affected in the City as of the end of the public comment period.

Please also refer to Response 3-1.

Development of other historical properties in the City are not linked to this project and is not a reasonably foreseeable consequence of the project as there is no residential development on those properties currently proposed for approval.

Comment 4-10: Local governments have allowed the Capistrano Beach Clubhouse and other Doheny buildings to be demolished in the past and there is no mention of this demolition of previous Doheny buildings in the DEIR. The future EIR must show how the allowed demolition of the most significant historic building extant in Capistrano Beach, the Doheny Palisades House No. 1, is not continuing a cumulative effect that would allow the remaining Doheny buildings to be lost over time. [Guidelines §15130 (a)]

Response 4-10: For a discussion of CEQA requirements for cumulative impacts please refer to Section 3.0 of the Draft EIR. This comment presents the opinion of its preparer and is being forwarded to the decision makers for their consideration.

Comment 4-11: The additional sources cited in this letter serve to strengthen the status of the Doheny House as a "historical resource" associated with the lives of persons important in our past and thus subject to CEQA regulations. The enclosed copy of Louise Leyden's letter is a source of information used by Doris Walker in her book *Home Port for Romance (1981)* and by Baum and Burnes, PhD in *The Dohenys and Capistrano Beach (2000)*.

Response 4-11: This comment is acknowledged and is being forwarded to the decision-makers for their consideration.

Comment 4-12: The DEIR states, "Accordingly, the Doheny House has met the city's criteria for protection as a historical resource in the community of Dana Point." To allow "Substantial adverse change," according to PRC §5020.1(q), or demolition of the Doheny House, would disavow the promise of the Community Core Value to preserve the heritage and historical value of the Capistrano Beach community, an understanding made before the City of Dana Point incorporated nearly twenty years ago.

Response 4-12: This comment presents the opinion of its preparer and is being forwarded to the decision-makers for their consideration.

Comment 4-13: The City of Dana Point General Plan Urban Design Element encourages persons planning development projects in the City to review the goals. Goal #2 states: "Preserve the individual positive character and identity of the City's communities." To do otherwise would break faith with the residents of Capistrano Beach who believed the following introduction: "The neighborhoods of Capistrano Beach are among Dana Point's oldest and most distinguished residential areas. Several houses with potential for historic designation, such as the Dolph Mansion in Dana Point and Doheny House are located here. The mature vegetation and distinct street landscape throughout the area create a strong identity ..." [Urban Design element, (GPA95-02©LCPA95-08)] Obviously, the proposed Doheny House demolition threatens the unique identity of Capistrano Beach.

Response 4-14: This comment is acknowledged and is being forwarded to the decision-makers for their consideration.

Letter 5: Mary Ann Comes, President and Mike Cotter, Vice President, San Clemente Historical Society

Comment 5-1: The San Clemente Historical Society supports the preservation of the historic Doheny House, a locally registered historic resource, and is opposed to its demolition or relocation. The Doheny House property abuts or nearly abuts the limits of the City of San Clemente, and is treasured by citizens of Dana Point as well as by citizens of the greater South Orange County area and beyond. Once this historic resource is gone, it's gone forever - a local cultural tragedy.

Response 5-1: This comment is acknowledged and is being forwarded to the decision-makers for their consideration.

Comment 5-2: The "substantive mandate" of the California Environmental Quality Act is as follows:

"§21002. Approval of projects; feasible alternatives."

"The Legislature ... declares that ...public agencies should not approve projects ... if there are feasible alternatives ... which would ... lessen the significant environmental effects of such projects"

Simply put - CEQA prohibits the demolition of an historic resource if there are feasible alternatives to demolition.

Response 5-2: This comment presents the opinion of its preparer which is based on a selected portion of the text of §21002 of CEQA. Following is the complete text of §21002:

"The Legislature finds and declares that it is the policy of the state 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, and that the procedures required by this division are intended to assist public agencies in systematically identifying both the significant effects of proposed projects and the feasible alternatives or feasible mitigation measures which will avoid or substantially lessen such significant effects.

The Legislature further finds and declares that in the event specific economic, social, or other conditions make infeasible such project

alternatives or such mitigation measures, individual projects may be approved in spite of one or more significant effects thereof.”

A full reading of §21002 of CEQA is necessary to ensure the decision-makers have all the information needed for their consideration. Based on a complete reading of §21002 CEQA does not summarily prohibit projects that have significant adverse impacts.

Comment 5-3: CEQA requires that the Draft Environment Impact Report contain a Project Description with "a statement of objectives sought by the proposed project." Additionally, the EIR must contain a "Discussion of Alternatives to the Proposed Project." Conceptually, project alternatives are considered, accepted or eliminated based on their success or failure to meet "most of the basic project objectives."

But the Project Objectives section of the Draft EIR for the Doheny House contains only a single sentence - arguably one of the shortest "project objectives" paragraphs in EIR history:

"2.2 Project Objectives

"The objective of the proposed project is the demolition of the single-family house located at 35101 Camino Capistrano within the City in order to provide development opportunities for the existing five parcels on the project site."

Incredibly, complete demolition of the Doheny House is not merely one of the "basic project objectives," - it's the only project objective!

Response 5-3: The Project Description is provided in Section 2.0 of the Draft EIR. The project characteristics described in Section 2.3 of the Draft EIR is based on the project application that was filed with the City. The project application identified a single action to be considered by the City: the demolition of the single-family house located at 35101 Camino Capistrano, known locally as the Doheny House. The Doheny House sits on five parcels as described in Section 2.1.2 of the Draft EIR. The goal of the project was to clear the existing five parcels on the property for their eventual sale. Although the project applicant was not applying to construct any single-family houses on the property after the site is cleared; it was clear that a reasonably foreseeable consequence of the project was the sale of the five parcels. Therefore, the City, in its capacity as lead agency, determined that the project objective was to clear the existing five parcels, by demolition of the existing structure or by its removal to another site, so that five single-family residential dwelling units could be constructed on the project site. Thus, the project objectives for determining feasible alternatives to the project included not only demolition of the existing historical structure,

but their removal to another site as well, which reflects the resource preservation concepts found in the City's General Plan.

Comment 5-4: None of the project alternatives in the Draft EIR call for the complete demolition of the Doheny House. Therefore, taking the process to its logical conclusion - all potentially feasible alternatives are automatically eliminated as unable to meet "most of the basic project objectives."

Response 5-4: Please see Response 5-2 that explains why there is a single project objective. In addition, please refer to Section 6.1.1 of the Draft EIR that describes the CEQA requirements for alternative analysis, and Section 6.1.2 that describes the City's rationale for selecting the alternatives analyzed in the Draft EIR.

Comment 5-5: With all due respect - The Project Objectives section of this draft EIR is a farce.

These Project Objectives make a mockery of the California Environmental Quality Act.

Acceptance of these project objectives would serve to eviscerate the reasonable provisions of CEQA.

These remarkably narrow Project Objectives would hardly seem to be legally defensible. Overly narrow project objectives that are defined so as to favor the developer and to preclude the feasibility of reasonable alternatives have been overruled by the Courts.

Response 5-5: These comments are acknowledged and are being forwarded to the decision-makers for their consideration.

Comment 5-6: Remy's 11th Edition *GUIDE TO CEQA* - cited as an authoritative source by the California Courts - in a section entitled, "**The Importance of Articulating Proper Project Objectives in Formulating a Range of Reasonable Alternative**" (sic) on page 589 states,

"The case law makes clear that well tailored objectives will further CEQA's intent as described in the Guidelines, but that overly narrow objectives may unduly circumscribe the agency's consideration of project alternatives. Thus, agencies should give careful consideration to the crafting of appropriate project objectives that take into account both public and private aims."

It would seem impossible to argue that the one-sentence project objective takes into account "both public and private aims."

GUIDE TO CEQA continues:

"When a project and its objectives are defined too narrowly, an EIR's treatment of alternatives may also be inadequate. Such a result occurred in *City of Santee v. County of San Diego* (4th Dist. 1989) 214 Cal. App. 3d 1438, 1455, [263 Cal. Rptr. 340]"

Response 5-6: The comment presents a statement that is general in nature and applies to the full spectrum of projects that are subject to CEQA. The main concern addressed in this statement is "that overly narrow objectives may unduly circumscribe the agency's consideration of project alternatives." The Project Objective as presented in the Draft EIR does clearly account for the "private aim" of the Project as defined in the project application that was submitted to the City. However, the Project Objective does not "unduly circumscribe the agency's consideration of project alternatives" because the Draft EIR fully analyzes five alternatives to the Project, including the removal of the historic structure off-site.

Please also see Response 5-3.

Comment 5-7: *GUIDE TO CEQA* also cites "Instructive NEPA Cases and Regulations" on page 591:

"The stated goal of a project necessarily dictates the range of 'reasonable' alternatives discussed in an EIS, and an agency cannot define its objectives in unreasonably narrow terms. *Carmel-by the Sea v. U.S. Department of Transportation* (9th Circ. 1997) 123 F. 3d 1142, 1155. Thus, a purpose and need statement that is too narrow may fail to provide for a reasonable range of alternatives...."

Response 5-7: NEPA does not apply to the Project.

Comment 5-8: It is more than obvious to the San Clemente Historical Society that the overly narrow Project Objectives in this Draft EIR must be rejected. It would seem impossible for them to withstand a court challenge.

Response 5-8: This comment is acknowledged and is being forwarded to the decision-makers for their consideration.

Letter 6: Doris Walker, 20-year Director, Dana Point Historical Society

Comment 6-1: No comment was made specific to the contents of the Draft EIR; information was presented on the history of the Doheny House and the Capistrano Beach community.

Response 6-1: This comment is acknowledged and is being forwarded to the decision-makers for their consideration along with the submitted attachments.

Letter 7: Henry “Hank” Thomas

Comment 7-1: To remove the house at 35101 Camino Capistrano, (AKA: Original Doheny House) along with most trees and mature vegetation, which has been in place 80+ years, so as to construct 5 houses, could possibly have a negative effect on the stability of the bluff/hillside and the loss/of bird/ wildlife sanctuaries and the visual pleasantness of the community.

Response 7-1: This comment is acknowledged and is being forwarded to the decision-makers for their consideration along with the submitted attachments.

Page 4.5-14 of the Draft EIR includes a discussion of the project site and whether it could be located on a geologic unit or soil that is unstable, or that could become unstable as a result of the project. As indicated in the Draft EIR, the location of the bluff top (see Figure 4.5-1 of the Draft EIR) and potential building setbacks impacting Lots 16 and 17 have shifted significantly from previous studies, resulting in revised building footprints. The revised footprint for Lot 16 is currently landward of the 1.5 factor of safety line determined in Reference 4 of the May 15, 2008 report (See Appendix G of the Draft EIR), and requires no new analyses or remediation for gross stability. Similarly, the footprint for Lot 17 has shifted landward but remains seaward of the 1.5 factor of safety line, requiring re-analysis and a revised shear pin array when an actual structure is proposed.

Stability analysis indicates stable conditions for new construction landward of the 1.5 factor of safety line adjacent to Camino Capistrano. Similarly, adequate future stability can be developed in areas located landward of the recommended shear array. Slope stability calculations supporting this conclusion and recommended setback criteria are presented in Appendix D of References 8, 9, and 10 (Lots 18, 19, and 20) and as updated herein in Appendix B (Lot 17) of the May 15, 2008 geotechnical update report (Refer to Appendix G of the Draft EIR). These analyses were based upon laboratory-determined shear strength for terrace deposits and bedrock, including data from nearby properties. Future compliance with the Mitigation Measures and Project Requirements identified in the Draft EIR starting on page 4.5-19, and existing regulations and standard construction techniques would reduce this impact to less than significant.

As indicated on page 4.4-6 of the Draft EIR, a low potential for occurrence was assigned to all endangered, threatened or rare plant and wildlife species listed in Table 4.4-1 of the Draft EIR because the project site does not contain the physical and/or biological features of a landscape that the listed species require in order to survive and reproduce. Therefore, the proposed project would have no impact on endangered, threatened, or rare species. In addition, as stated on Draft EIR page 4.4-7, the Migratory Bird Treaty Act (MBTA, 1918) protects the majority of migratory birds breeding in the U.S. regardless of their official

listing status. The provisions of this act govern the taking, killing, possession, transportation, and importation of migratory birds, their eggs, parts and nests. The law applies to the removal of nests occupied by migratory birds during the breeding season. It is therefore a violation of the MBTA to directly kill or destroy an active nest of any bird species covered by the MBTA.

Comment 7-2: Additionally the increased traffic impact of the auto traffic and possible air pollution generated by 5 new household vehicles could have a negative impact on the tranquility of the community in and about the busy (nearby) intersection.

Response 7-2: This comment is acknowledged and is being forwarded to the decision-makers for their consideration along with the submitted attachments.

As indicated in Draft EIR Table 4.13-4, the addition of project trips would not result in a decrease in Level of Service (LOS) at the project area intersection. Per Draft EIR page 4.13-4, this intersection would continue to operate at an acceptable LOS A under existing (Year 2007) conditions with the proposed project. Furthermore, it was estimated that the incremental project trips would be approximately 38 trips per day and the daily volumes on adjacent roadways would be well below the 10,000 vehicle threshold. Therefore, project long-term operational impact would be less than significant.

As stated on Draft EIR page 4.2-12, the proposed project's operational emissions would not exceed the SCAQMD significant thresholds for all criteria pollutants.

Comment 7-3: To remove the existing (Doheny) House landmark would have a visual, cultural and emotional negative effect on our community.

Response 7-3: This comment is acknowledged and is being forwarded to the decision-makers for their consideration.

Comment 7-4: I sincerely hope the salvation of the Doheny House landmark, in its present location and grandeur, will remain a priority of our community and City. It's a need for present and future generations.

Response 7-4: This comment is acknowledged and is being forwarded to the decision-makers for their consideration.

Letter 8: Linda Zaccaro

Comment 8-1: Would like to voice my opinion regarding the aforementioned destruction of an historical house valued by the community of Capistrano Beach and being put to ruins by the city of Dana Point. Without a sense of caring, there can be no sense of community.

Response 8-1: This comment is acknowledged and is being forwarded to the decision-makers for their consideration.

Comment 8-2: Five single family homes on an already precarious bluff of land that has collapsed within the last year. And does (sic) the tax payers pay for the landslide after the approval by the city? Or does the builder pay for the wreckage and inconvenience once it occurs maybe that should be part of the deal?? Like big government those involved today to ruin the land only leave it to their children and grandchildren to clean up. It is the duty of our generation to give a sense of caring and humanizing meaning to our community in which all members define themselves for future generations.

Response 8-2: Please see Response 7-1.

Comment 8-3: Why demolish an existing historical house?

Response 8-3: The owner of the property filed a project application with the City to demolish the Doheny House to allow for development opportunities on the five parcels upon which it sits. The application requires a CUP and CDP public hearing because it entails the removal of the house from the Dana Point Local Historic Resource Register.

Letter 9: Earl R. Wessell

Comment 9-1: My wife and I ask the City of Dana Point to condemn the property at 35101 Camino Capistrano in Capistrano Beach, CA, for use as a public library or other public use. The residents of Capistrano Beach are very far from any such public facilities.

Please initiate the condemnation process now.

Response 9-1: This comment is acknowledged and is being forwarded to the decision-makers for their consideration.

Letter 10: Valerie and Larry Read

Comment 10-1: This letter is in reference to the proposed demolition of the historic residence located at 35101 Camino Capistrano. My husband and I are opposed to this project.

This property, known locally as "The Doheny House", is one of the finest examples of Spanish hacienda-style architecture in Southern California. It is listed on the City's Historical Resources. No other house in Dana Point combines its history and its beauty.

The Environmental Impact Report acknowledges that "significant unavoidable adverse environmental effects related to an historical resource would occur as a result of the proposed project". The owners/developers propose tearing down the existing house in order to build five houses on the property. They hope to make a profit on their investment, despite the current state of real estate and decline in the stock market. The sensible solution is to wait till the market(s) improve, then find a buyer who wants to buy this beautiful house, renovate it, and live in it for the foreseeable future. Please don't even consider destroying this magnificent jewel of architecture. Do not allow greed to become the over-riding factor. Once the Doheny House is gone we can never get it back. We will have sold our soul for a mess of pottage.

Response 10-1: This comment is acknowledged and is being forwarded to the decision-makers for their consideration.

Letter 11: Molly Matthews

Comment 11-1: I surely hope that this house is just left alone. The right buyer at the right time, will come along and buy it and restore that entire property. It is so sad that all people seem to want is to take a piece of property and see how many homes they can build where there is currently one. It is all about greed; not about homes, family or preserving the neighborhood. It is about \$\$\$\$\$\$!!!!

Let that property be left alone. There are many of us who enjoy the beauty of the homes on the bluff and not the invasion of greed that destroys; especially when there is historical significance. That is what makes the community unique.

I have been in the RE industry for a long time. It is no secret that nothing is moving too quickly or at all in many cases. This is a special home and a wonderful piece of property. It should remain that way and not be built up and destroyed or moved just to make money.

This isn't about selling. The whole reason is about making as much profit as possible. Where are the values that we should have? Are there no scruples?

Someone will come along and restore that home on that sight. It may not be in the time frame of the "city" but it will happen. It should be allowed.

Sometimes patience is a virtue and preservation is a gift.

Response 11-1: This comment is acknowledged and is being forwarded to the decision-makers for their consideration.

Letter 12: Joe and Ruby Aragon

Comment 12-1: The victim is clear. Significant environmental effects!

As you know the EIR concludes that significant adverse environmental effects related to an historical resource would occur as a result of the above noted proposed project. You are well aware of the draft EIR discussion of the environmental effects of this project. The answer is clear: "DO NOT DESTROY A MAGNIFICANT HISTORIAL SITE. DO NOT LOSE THIS ONCE IN A LIFETIME OPPORTUNITY TO DO THE RIGHT THING." Look and see not only with you (sic) eyes but also with your heart. What you have here now is truly priceless.

You have a once in a lifetime opportunity to protect and preserve this magnificent historical site for you, for your children and your children's children.

Response 12-1: This comment is acknowledged and is being forwarded to the decision-makers for their consideration.

Letter 13: Judy Busch

Comment 13-1: The Pam Tappan petition denies the value and rights of property ownership. It's proposes to "save" the house from the usual constraints of the planning commission, and is financial bullying, brought by a few neighborhood NIMBY's. Should it succeed, it would be a legal "taking" without fair compensation.

I have no knowledge of who owns the subject property or their plans, but trust the Planning Commission to be fair.

I cherish private property rights and expect those rights to remain high in the minds of the Planning Commissioners. I expect our city to not be a part of a "taking" of private property by fiat that could come to a ridiculous end.

The Dana Point Historical Society and Ms. Tappan should pay a fair market price for the subject property that they want to control. Then they could keep that historic plaque attached to the beautiful white elephant.

Response 13-1: This comment is acknowledged and is being forwarded to the decision makers for their consideration.

Letter 14: Keith E. Johannes

Comment 14-1: I am writing in regard to the 35101 Camino Capistrano project more commonly known as The Doheny House. This is one of only two houses in Dana Point that are deemed eligible for National Register of Historic Places according to a previous survey commissioned and adopted by the City of Dana Point, as reviewed in the DEIR. It is my understanding that CEQA regulations mandate that "a resource shall be considered by the lead agency to be 'historically significant' if the resource meets the criteria for listing on the California Register of Historical Resources" (Title 14CCR§15064.5(a) (3)).

The City Planning Commission and the City Council cannot allow such an important part of our city history to be defaced, moved, or destroyed. To do so would put developer greed over community good.

Response 14-1: This comment is acknowledged and is being forwarded to the decision-makers for their consideration.

Comment 14-2: The Dana Point Times published (October 31, 2008) the results of an Online Reader Poll that reported 68% of the respondents choosing, "Don't you dare tear it down" as opposed to 9% who responded "Tear it down and build those houses". I am concerned because we have witnessed the loss of other important structures in Dana Point/Capistrano Beach by developers in the recent past. The city's identification of potential project alternatives for in-depth evaluation identifies The No Project/No Build Alternative as the only viable alternative that would not impact The Doheny House and gardens as local historical resource.

Response 14-2: This comment is acknowledged and is being forwarded to the decision-makers for their consideration.

Comment 14-3: To allow this project would invite the "cumulative impact" of destroying historical buildings, as has been done in the past with the Capistrano Beach Club, the Dana Villa and several historic homes, and open the door to developers who may demolish historical buildings elsewhere in Capistrano Beach/Dana Point. The DEIR states that, the proposed project would not contribute to a cumulative impact for historical resource issues because the proposed project is the only locally historic resource that is being affected in the City. On the contrary, if the City allows one-of its two potential listings on the National Register of Historic Places to be demolished then the City is establishing a precedent that historic resources can be swept aside in Dana Point and Town Center buildings could fall like dominoes in the future.

Response 14-3: The Draft EIRs "cumulative impact" analysis is consistent with *State CEQA Guidelines* Section 15130 (see Section 3.0 of the Draft EIR). This comment as

it regards "cumulative impact" presents the opinion of its preparer and is being forwarded to the decision-makers for their consideration.

Comment 14-3: The historical significance of this estate and the Doheny family in this community is often deliberately understated by the developers and is underrated in this Draft EIR. The Dohenys are the founding family of the Capistrano Beach area of Dana Point, who donated land for Doheny Beach State Park and they remained involved in this community longer than Ole Hanson did in our neighboring community of San Clemente and even slightly longer than Sidney Woodruff in Dana Point. San Clemente has preserved Casa Romantica and the Ole Hanson Beach Club while the Capistrano Beach Club was sadly allowed to be destroyed by developers. The City of Dana Point cannot afford to destroy one of the two buildings that it has deemed historically significant in the General Plan and Historic Ordinance without a loss of respect for its elected and appointed officials and the citizens who allowed it to happen. To destroy the Doheny House is to destroy the most visible remaining symbol of the history and character of Capistrano Beach. The only option available under this current draft EIR is the "No project/No Build Alternative" due to the established historical significance of the Doheny House.

Response 14-3: This comment is acknowledged and is being forwarded to the decision-makers for their consideration.

Letter 15: Mary Crowl

Comment 15-1: A belated comment but nonetheless heartfelt plea to you and the city to make every effort to consider the importance of the architecturally interesting and historically important Doheny House. These South Orange County cities have so little to show for their history and have so much reason to destroy what is there for more "revenue producing" developments. I realize the decision here rests upon the "environmental impact" but that, to me, is insignificant compared to the loss of what little history we have. I cannot comment upon the technicalities of the case, only the seriousness of the loss to the community of our connection with the past.

Response 15-1: This comment is acknowledged and is being forwarded to the decision-makers for their consideration.

Letter 16: Ross Teasley

Comment 16-1: The Doheny House is clearly established, both legally and culturally, as one of the most significant "Historical Resources" in Dana Point.

None of the proposed mitigation options in the DEIR report for this property will preserve this resource to the extent required by the Dana Point Municipal Code regarding Historical Resources.

According to that Municipal Code, the Historic Preservation Committee is the Planning Commission.

The Planning Commission is therefore charged with the following duty: "Undertake any other action or activity necessary or appropriate to the implementation of its powers or duties to fulfill the objectives of historic resource preservation." DP Municipal Code 9.07.250 (e) (3) (L)

The objectives of historic resource preservation are: "to preserve and enhance California's irreplaceable historic heritage as a matter of public interest so that its vital legacy of cultural, educational, recreational, aesthetic, economic, social, and environmental benefits will be maintained and enriched for present and future generations." (California Office of Historic Preservation)

Stewardship of public resources is an awesome responsibility, one that often pits current opportunities for financial exploitation against our duties as citizens to act as excellent ancestors.

In this case, the duties of the Planning Commission are clear. As the EIR concludes: "If the demolition or other substantial physical change to the building proceeds as the proposed, it would inevitably cause 'a substantial adverse change in the significance of a historical resource.'"

This EIR includes only one option which satisfies your duties to the current community of Dana Point, and which will add your name to the future list of honorable, excellent ancestors of Dana Point: the No Project alternative.

Response 16-1: This comment is acknowledged and is being forwarded to the decision-makers for their consideration.

Letter 17: Rodney J. Howorth

Comment 17-1: I would like to express my strong feelings about the future of the Doheny House at 35101 Camino Capistrano, Capistrano Beach. I won't go into a lot of detail, but want to say that we don't want to do something we would forever regret by demolishing this historical landmark, as many people regret that the Doheny-built Capistrano Beach Club was demolished circa 1970. These treasures and links to our past are few and far between and we must preserve them, even though I understand the desires of developers to a build highly dense new neighborhood for the potential profit they envision.

This demolition would be a very sad move for the surrounding neighborhood and for the entire community and legacy of Capistrano Beach. Look at our neighboring communities such as San Clemente and San Juan Capistrano and

their rich historical heritage that has been preserved, in lieu of profit driven development.

Response 17-1: This comment is acknowledged and is being forwarded to the decision makers for their consideration.

Letter 18: Kaye Crippen, Ph.D

Comment 18-1: My opinion is the #1-4 would be more desirable than option #5 with #1 being the most favorable.

History is an important part of Dana Point, OC, and the USA. Having this house in the original setting is important for future generations. #2 would be as far as I would want to move at this point.

Response 18-1: This comment is acknowledged and is being forwarded to the decision makers for their consideration.

Letter 19: Jacqueline Ayer

Comment 19-1: The following comments are tendered in response to the Draft EIR that was prepared by the City of Dana Point (hereafter referred to as "the City") pursuant to an application for a Conditional Use Permit and a Coastal Development Permit that will result in a total destruction of the historic Doheny House.

Response 19-1: This comment is acknowledged and is being forwarded to the decision-makers for their consideration.

Comment 19-2: Some of the comments provided below were previously submitted to the City during the Scoping Process, but were apparently ignored because they are certainly not reflected anywhere in the Draft EIR.

Response 19-2: The written comments received at the public scoping meeting by this commenter were presented in Appendix A of the Draft EIR (see page 8 of the Summary of Public Scoping Comments). Comments received from this commenter referenced: aesthetics, historical resources, land use and planning, and alternatives. Each CEQA comment received was appropriately responded to in the Draft EIR. In addition to the CEQA related comments, numerous opinions were expressed that were related solely to the project.

Comment 19-3: Other comments were developed in response to the City's erroneous assumption that the Project Applicant has a vested right to individually sell or develop the project site as 5 residential lots. Still other comments address the fact that none of the construction alternatives considered in the Draft EIR comply with the City's Zoning Code, and are therefore unsupportable under CEQA.

Response 19-3: This comment is acknowledged and is being forwarded to the decision-makers for their consideration.

The application filed with the City for the proposed project is solely for the demolition of the single-family house located at 35101 Camino Capistrano in order to provide development opportunities for the existing five parcels on the project site. The application, as filed, does not specify any intent for development on the project site. It is the intent of the applicant to sell the existing five parcels on the project site. Because it is reasonably foreseeable that five single-family residential dwelling units would eventually be constructed on the project site the Draft EIR fully evaluates the effects associated with such construction. The applicant was not legally required to submit a development plan with its project application. Any evaluation of specific development on the project site would be premature and speculative and this was not required by CEQA.

Comment 19-4: Pursuant to applicable CEQA provisions and in accordance with the published Notice of Availability, these comments are submitted in a timely manner and must therefore be included in the developing record of this proceeding.

Response 19-4: This comment is acknowledged and is being forwarded to the decision-makers for their consideration.

Comment 19-5: THE DRAFT EIR PROJECT OBJECTIVE AND PROJECT DESCRIPTION DO NOT COMPLY WITH CEQA

The project objective, project description, and project scope enumerated by the City in the Draft EIR is rife with deficiencies and fundamentally inconsistent with the fundamental purpose of CEQA:

The Stated Project Objective Does Not Comply With CEQA

The Draft EIR states that the project objective is to "demolish the existing Doheny House for the purpose of providing development opportunities within the project site. The development opportunities have been understood to be the reasonably foreseeable construction of five single-family residential dwelling units on the project site." While this project objective may be sufficient for the Applicant's purposes, it does not suffice for the purposes of CEQA. The City is reminded that outright demolition of the existing Doheny House is in direct conflict with numerous provisions of the General Plan, thus it cannot be articulated as an actual Project Objective pursuant to CEQA. Indeed, CEQA obligates the City to develop project objectives which balance the Applicant's request with the City's responsibility for furthering the goals and policies enumerated in the General Plan. In accordance with CEQA, the City should have developed a project objective which engenders at least some of the resource preservation concepts found in the General Plan such as "preserving historical resources as much as possible" or "requiring reasonable mitigation

measures where development may affect historic resources" or "retain and protect historical resources". The City has failed to develop an appropriate Project Objective statement, and instead simply adopted the Applicant's Project Objective. In so doing, the City has effectively abrogated their responsibility as Lead Agency under CEQA, and provided a substantial basis for legal challenge.

The City is also cautioned that project objectives which are improperly constrained and too narrowly defined generally result in an analysis of alternatives that is insufficiently broad to satisfy CEQA. In this instance, the stated project objective provides a basis for City decision-makers to reject all alternatives that do not demolish the Doheny House irrespective of any "environmentally superior" alternatives offered by the EIR. The City is advised that reliance upon this poorly developed and artificially constrained project objective as a means of justifying the partial or complete demolition of the Doheny House will not stand up to legal challenge.

Response 19-5: The project objective presented in Section 2 of the Draft EIR was prepared consistent with Section 15124(b) of the *State CEQA Guidelines* which states, "A statement of objectives sought by the proposed project. A clearly written statement of objectives will help the lead agency develop a reasonable range of alternatives to evaluate in the EIR and will aid the decision makers in preparing findings or a statement of overriding considerations, if necessary. The statement of objectives should include the underlying purpose of the project."

Section 15124(b) states that the project objectives that are included in the project description are to be the "objectives sought by the proposed project;" the guidance in this section does not mention "public objectives." The main concern addressed in this guideline is that overly narrow objectives may unduly circumscribe the lead agency's consideration of project alternatives. While the Project Objective as presented in the Draft EIR does clearly account for the "private aim" of the Project as it is defined in the project application that was submitted to the City, it does not "unduly circumscribe the lead agency's consideration of project alternatives" because the Draft EIR fully analyzes five alternatives to the Project.

Please also refer to Response 5-3.

Comment 19-6: *The Applicant's Proposed Project is Incomplete and Thus Inadequate for the Purposes of CEQA*

CEQA requires that a project consider the "whole of an action" which has the potential for resulting in a direct change in the environment. In this case, CEQA demands that the City contemplate both the demolition portion of the project AND the applicant's subsequent development plan, because both phases of this project will result in a direct change to the environment. However, the applicant has not disclosed any details of what is planned for the project site after demolition is complete. Conversations with City Planning Staff affirm that

the record reflects only the Applicant's intent to demolish the Doheny House. The Applicant has not applied for any development entitlements subsequent to the demolition action, nor has the property owner provided any information regarding what is planned for the project site after demolition is complete. Under these circumstances, both CEQA and the Permit Streamlining Act (PSA) instruct the City to deem the application incomplete, and take no further action unless and until the applicant provides a full and complete project description. These actions are necessary to ensure that the Applicant's proposed project is properly considered in its entirety, and that project alternatives which accurately reflect the Applicant's comprehensive project are properly developed. Unfortunately, the City has chosen to ignore these regulatory requirements, and has wasted time, resources, and money to process an application for a project which does not even comply with this most basic of CEQA requirements.

Response 19-6: The application filed with the City for the proposed project is solely for the demolition of the single-family house located at 35101 Camino Capistrano in order to provide development opportunities for the existing five parcels on the project site. The application, as filed, does not specify any intent for development on the project site. It is the intent of the applicant to sell the existing five parcels on the project site. Because it is reasonably foreseeable that five single-family residential dwelling units would eventually be constructed on the project site the Draft EIR fully evaluates the effects associated with such construction. The applicant was not legally required to submit a development plan with its project application. Any evaluation of specific development on the project site would be premature and speculative and this was not required by CEQA.

Comment 19-7: *The Draft EIR Speculates On The Applicant's Intention In Demolishing The Doheny House*

To make up for the applicant's incomplete project description, the City has attempted to "flesh out" the project by "guessing" what the applicant may do with the property once the Doheny House is demolished. The City speculates that the Applicant may want to sell (or develop) the project site as 5 residential lots, and has chosen to incorporate this unsubstantiated speculation in the project description. This approach demonstrates an appalling lack of understanding of the purpose and intent of CEQA. Pursuant to CEQA, the City is supposed to compel the Applicant to divulge the full extent of the proposed project. The City is *not* permitted to "manufacture" a project scope, or offer conjecture regarding the extent of a proposed project, or speculate on the Applicant's "end game".

The "project" that has been proposed by the Applicant and which must be considered by the City as Lead Agency is limited to demolition of the Doheny House. Period. Notwithstanding the City's failure to deem the project "incomplete", the only alternative to the proposed project which complies with CEQA and is contemplated in the Draft EIR is the "No Project" alternative. All other alternatives considered in the Draft EIR which seek to relocate or preserve

portions of the Doheny House are *not* supportable under CEQA. Why? Because the purpose of these other alternatives is to maximize development opportunities which the Applicant has not applied for! As Lead Agency, the City cannot favor any alternative that significantly impacts the Doheny House solely for the purpose of providing benefits that the Applicant has not requested and apparently does not seek.

It is simply astonishing that the City would prepare such an extensive CEQA document based on an incomplete project scope, a manufactured project description, and an improperly developed project objective. It is even more astounding that the CEQA "experts" hired by the City to prepare the EIR (Ultrasystems Environmental, hereafter referred to as "USE") do not recognize these obvious deficiencies. Instead USE's "expertise" has left the City open to substantial legal action.

Response 19-7: This comment is acknowledged and is being forwarded to the decision-makers for their consideration. However, it should be noted that the Draft EIR did not speculate as to what will be developed on site, but did deem it a reasonably foreseeable consequence of the Project that the removal or demolition of the existing structure would result in the construction of single-family residential dwelling units on the five parcels consistent with the surrounding area. The general impacts of such development were analyzed in the Draft EIR.

Comment 19-8: THE PROPOSED PROJECT IS IMPROPERLY SEGMENTED UNDER CEQA BECAUSE THE DRAFT EIR IGNORES ADDITIONAL DISCRETIONARY REVIEWS

Assuming *arguendo* that the Applicant intends to sell (or develop) the project site as 5 residential lots; the City is advised that additional discretionary reviews will be required to affect this purpose. Specifically, developing each of the 5 lots will require a variance from Section 9.09.030(e) of the Zoning Code (discussed in detail below). The City is further advised that these variance actions constitute discretionary reviews which are also subject to CEQA. Certainly, the Applicant's proposed demolition project and the City's speculated 5-lot residential project are inexorably linked; the 5-lot residential project cannot occur without the demolition project, and the demolition project is pointless without the 5-lot residential project. These two types of discretionary actions are interdependent, co-located at the same project site, and only separated by time. Thus, CEQA demands that they be considered together in a single EIR. The City has failed to combine these linked discretionary actions in their CEQA analysis of the Applicant's project, and had therefore improperly segmented the project in violation of Section 16003(h) of the CEQA Guidelines. This CEQA provision is intended to prohibit the "piecemealing" of projects; it requires the City to consider not only the discretionary project that is proposed, but also the known and attending discretionary actions that the project will precipitate. The City has failed to comply with this requirement.

Response 19-8: The proposed project does not include the development of the five existing parcels on the project site. The application before the City requests the demolition of the Doheny House located at 35101 Camino Capistrano. The proposed project requires a conditional use permit (CUP) for the deletion of the Doheny House as a historical resource from the City of Dana Point Historic Resources Register (Dana Point Municipal Code § 9.07.250). In addition, a Coastal Development Permit Application will also be processed in conjunction with the proposed project. The proposed project, subject to an appeal to the City Council, may require regulatory approval from the California Coastal Commission only upon appeal by the same.

Development applications may, or may not, be filed for one or more of the parcels on the project site sometime in the future. The timing of such applications is not within the control of the City and, given the state of the real estate market, may not occur for several years. The City agrees that any such applications will be subject to their own CEQA review. The City will make a decision when, and if, such applications are received regarding the proper CEQA documentation to be prepared.

Comment 19-9: DEMOLITION OF THE DOHENY HOUSE IS NOT CONSISTENT WITH THE GENERAL PLAN OR THE CITY'S LOCAL COASTAL PROGRAM

The applicant's proposed project is to demolish the Doheny House. The Draft EIR concludes (in Section 4.9.3) that this project is consistent with the City's adopted General Plan, despite the extensive historical protection provisions that are contained therein. The Draft EIR makes no attempt to reconcile the proposed demolition of Doheny House with the numerous General Plan Provisions which expressly protect the Doheny House. In particular, demolition of the Doheny House is NOT consistent with the Conservation/Open Space Element, the Urban Design Element, and the Land Use Element of the General Plan, and by extension the project is not consistent with the Local Coastal Program either. The proposed project cannot be approved until the City amends the General Plan and the Local Coastal Program to eliminate these inconsistencies. The following General Plan/Local Coastal Program provisions should be addressed in particular:

From the Conservation and Open Space Element of the General Plan: Page 19 states: "The historical and cultural assets of the community should be inventoried and preserved as much as possible". By approving the demolition of Doheny House, the City will not be acting to preserve the historical asset "as much as possible". In fact the opposite would be true. Prior to issuing a demolition permit, the City will be required to revise this General Plan provision; perhaps the following language will suffice: "The historical and cultural assets of the community should be inventoried, *but only preserved if convenient for the owners of these assets.*"

Response 19-9: The goal stated in the comment that "The historical and cultural assets of the community should be inventoried and preserved as much as possible" is a goal of the City. Consistent with the Conservation and Open Space Element of the General Plan a citywide historical resources inventory was completed in 1997 (Wright and Stoddard 1997a). As stated on page 4.7-1 of the Draft EIR, "During the 1997 citywide historical resources survey, the Doheny House was noted as one of 63 buildings in the city that were deemed historically significant and eligible for listing in the City's Historic Resources Register (Wright and Stoddard 1997a). In addition, the 1997 study identified the Doheny House as one of two buildings among the 63 that were potentially eligible for listing in the National Register of Historic Places (*ibid.*). As such, it was singled out in the City's Historic Resources Ordinance for "additional protection" and automatically listed in the local Historic Resources Register regardless of owner consent (DPMC §9.07.250(c)(2); §9.07.250(d)(2)). None of the 63 historic buildings identified during this survey, however, has been formally included in the California Historical Resource Information System."

As for the commenter's assertion that the project is inconsistent with the City's General Plan, general plans do not state specific mandates or prohibitions. Rather, they state "policies," and set forth "goals." Because these policies reflect a range of competing interests, the governmental agency is allowed to weigh and balance the plan's policies when applying them, and it has broad discretion to construe its policies in light of the plan's purposes. General plan policies relate to disparate issues, and most projects involve trade-offs between them. Such flexibility does not equate to "inconsistency." A project is "consistent" if, considering all its aspects, it will further those policies and does not obstruct their attainment. (See *Napa Citizens for Honest Government v. Napa County Bd. of Supervisors* (2001) 91 Cal. App. 4th 342, 378, 386; *Defend the Bay v. City of Irvine* (2004) 119 Cal. App. 4th 1261, 1268-69 ["We are not dealing with assaying of minerals here. Balance does not require equivalence, but rather a weighing of pros and cons to achieve an acceptable mix"]; *Families Unafraid to Uphold Rural etc. v. Board of Supervisors* (1998) 62 Cal. App. 4th 1332, 1336 ["A given project need not be in perfect conformity with each and every general plan policy"]; *San Franciscans Upholding the Downtown Plan v. City and County of San Francisco* (2002) 102 Cal. App. 4th 656, 678 [only "general harmony" is required].)

Please refer to Response 19-11 in regard to the General Plan policy related to historic resources.

It will be up to the City Council to determine whether the EIR's conclusion that the proposed project is consistent with the City's General Plan is correct. A governing body's conclusion that a particular project is consistent with the relevant General Plan carries a strong presumption of regularity that can be overcome only by a showing of abuse of discretion. Courts accord great

deference to a local agency's determination of consistency with its own General Plan, recognizing that the body which adopted the General Plan policies in its legislative capacity has unique competence to interpret those policies when applying them in particular situations. The decision will be upheld as long as the city officials considered the applicable policies and the extent to which the proposed project conforms with those policies. (See *Napa Citizens*, 91 Cal. App. 4th at 357; *Friends of Lagoon Valley v. City of Vacaville* (2007) 154 Cal. App. 4th 807, 816; *Sequoyah Hills Homeowners Assn. v. City of Oakland* (1993) 23 Cal. App. 4th 704, 717; *San Franciscans*, 102 Cal. App. 4th at 677-78.)

This comment is acknowledged and is being forwarded to the decision-makers for their consideration.

Comment 19-10: Page 22 [of the Conservation and Open Space Element] includes lands with historical significance in the list of "The most significant natural resources in Dana Point". Page 26 requires the use of mitigation measures to reduce significant impacts on historically sensitive lands (presumably to the point of non-significance). None of the construction alternatives described in the Draft EIR employ mitigation measures that will reduce project impacts to the point of non-significance, thus Page 26 of the General Plan must be revised clarify that mitigation measures intended to reduce significant impacts on historically sensitive lands are purely optional.

Response 19-10: The comment that mitigation measures are required to reduce significant impacts "presumably to the point of non-significance" is out of context. The purpose of mitigation measures is to avoid or substantially lessen significant impacts (CEQA Section 21002). The Draft EIR on page 4.7-9 provides two mitigation measures that address the project's significant impact on the historical resource. The Draft EIR on page 4.7-10 concludes, "In consideration of the historical significance of the Doheny House, the implementation of the mitigation measures would not fully mitigate the project's potential effect on this 'historical resource.' Thus, the proposed demolition of Doheny House or other substantial physical change to the residence would cause 'a substantial adverse change in the significance of a historical resource.'" "

Page 26 of the General Plan does not require an amendment due to this project as mitigation measures have been developed for the significant impact to an historical resource. Because the impact remains significant, the Planning Commission/City Council will have to adopt a Statement of Overriding Considerations to approve the Project.

Please also refer to Response 19-9.

Comment 19-11: GOAL 8 [of the Conservation and Open Space]: "Encourage the preservation of significant historical or culturally significant buildings, sites or features within the community." In approving the Doheny House demolition project, the City will not be acting in a manner which "encourages" protection of the Doheny House.

Response 19-11: The Conservation and Open Space Element has identified four policies to implement Goal 8.

Policy 8.1: Require reasonable mitigation measures where development may affect historical, archaeological or paleontological resources. (Coastal Act/30244, 30250) The Draft EIR has identified two reasonable mitigation measures that are consistent with SHPO standards.

Policy 8.2: Retain and protect resources of significant historical, archaeological, or paleontological value for education, visitor-serving, and scientific purposes. (Coastal Act/30244, 30250, 30253) A *Doheny Palisades House Adaptive Reuse Feasibility Study* was prepared in November 2005 which identified various adaptive reuse possibilities for the Doheny House. The Draft EIR provides this study in Appendix H. No public agency or private group has made an inquiry with the intent to reuse the Doheny House for education, visitor-serving, and scientific purposes. Under any of the reuse scenarios sufficient parking is not available to the property.

Policy 8.3: Development adjacent to a place, structure or object found to be of historic significance should be designed so that the uses permitted and the architectural design will protect the visual setting of the historical site. (Coastal Act/30250) This policy does not apply to the proposed project.

Policy 8.4: Develop and maintain a cultural resource inventory. Please refer to Response 19-9.

Comment 19-12: Judging from the Draft EIR, it appears the City has never "encouraged" the Applicant to preserve the Doheny House at all. The City has simply adopted the Applicant's demolition request as the EIR's project objective, and completely fabricated a subsequent development scenario. Prior to approving the Applicant's demolition project, Goal 8 of the Conservation and Open Space Element should be amended to read "Encourage the preservation of significant historical or culturally significant buildings, sites or features within the community *unless the property owner really really really wants to demolish the significant historical building, in which case encouragement is pointless*".

Response 19-12: This comment is acknowledged and is being forwarded to the decision-makers for their consideration. Please refer to Response 19-11 for a discussion of

Goal 8. Goal 8 and the four policies that support it of the General Plan do not require an amendment due to this project. The City has acted in accord with this goal; an adaptive reuse study has been prepared for the Doheny House to which no public agency or private group has made an inquiry with the intent to reuse the Doheny House for education, visitor-serving, and scientific purposes; and mitigation measures that are consistent with SHPO standards have been developed for the significant impact to an historical resource.

Please also refer to Response 19-9.

Comment 19-13: Policy 8.1 [of the Conservation and Open Space Element]: "Require reasonable mitigation measures where development may affect historical, archaeological or paleontological resources". The City is advised that the demolition of Doheny House will preclude the implementation of mitigation measures intended to protect the Doheny House pursuant this General Plan policy. Thus prior to approving demolition of the Doheny House, this policy must be amended. Perhaps the following language will suffice: "Require reasonable mitigation measures where development may affect historical, archaeological or paleontological resources *unless the owner wishes to demolish the resource in its entirety, in which case mitigation measures would be impossible to implement, and are therefore unnecessary*".

Response 19-13: Please refer to Responses 19-9, 19-10, and 19-12.

Comment 19-14: Policy 8.2 [of the Conservation and Open Space Element]: "Retain and protect resources of significant historical, archaeological, or paleontological value for education, visitor-serving, and scientific purposes". This policy specifically directs the City to *protect significant historical resources*. If the City elects to issue a demolition permit for the Doheny House, it will be taking specific action to NOT protect a significant historical resource, thus the City will act contrary to this General Plan Policy. Therefore, Policy 8.2 will require revision prior to issuance of a demolition permit; the following language is suggested: "*Try to retain and protect resources of significant historical, archaeological, or paleontological value for education, visitor-serving, and scientific purposes. If, after trying to protect the resource, the owner still insists upon demolishing the resource, then don't worry about it.*"

Response 19-14: Please refer to Responses 19-9 and 19-12.

Comment 19-15: From the Urban Design Element of the General Plan: Community Preservation Policy 2.4: "Establish a program to preserve buildings and sites of historical and architectural significance". Obviously, a partial or complete demolition of the Doheny House would not "preserve [historical] buildings or sites", so this policy will require revision before the City approves the Applicant's demolition project. Perhaps the following language is

appropriate: "Establish a program to preserve buildings and sites of historical and architectural significance. *However, the program need not preserve an historical resource if the property owner would rather demolish the resource*".

Response 19-15: Please also refer to Response 19-9.

The adoption of a Historic Resource Ordinance was enacted in 2001 to preserve the City's rich history and spectacular physical location. The program is voluntary. However, 23 of 63 homes are currently listed.

Comment 19-16: Page 42 [of the Urban Design Element] states "The neighborhoods of Capistrano Beach are among Dana Point's oldest and most distinguished residential areas. Several houses with potential for historic designation, such as the Dolph Mansion in Dana Point and Doheny House, are located here". Obviously, if the Doheny House is demolished, then it will no longer be located in the Capistrano Beach neighborhood, so the last sentence will have to be revised as follows: "Several houses with potential for historic designation, such as the Dolph Mansion in Dana Point and Doheny House, *were* located here, *however the Doheny House was demolished because the City considered it more appropriate to replace the historic Doheny House with 5 new residences*".

Response 19-16: Please also refer to Response 19-9.

Comment 19-17: Page 42 [of the Urban Design Element] indicates that the first Urban Design Concept identified for Capistrano Beach is "Preserve the scale and character of the existing residential neighborhoods". The proposed project contemplated by the City will replace a spacious, low-density historically significant residential development with a cramped, nonconforming residential development on 5 nonconforming parcels. Obviously, such a project will not "preserve the scale and character of the existing residential neighborhood", and is therefore inconsistent with this particular Urban Design Concept. Thus, this Design Concept will require revision prior before the City approves the Doheny House demolition project; perhaps the following language will suffice: "Preserve the scale and character of the existing residential neighborhoods *unless the property owner prefers not to do so*" (sic)

Response 19-17: The Draft EIR on page 4.7-3 describes the scale and character of the existing residential neighborhood in which the Doheny House is located. The Draft EIR states, "In conjunction with the field inspection, a reconnaissance-level survey was also conducted of the surrounding area to examine and assess the physical context of this property. The neighborhood in the immediate vicinity of the Doheny House consists predominately of single-family homes dating to the late 20th century, with only one notable, albeit altered, example comparable to the style and vintage of the Doheny House, located at 26821

Calle Hermosa. As products of later suburban development, most all of the nearby residences occupy smaller lots and are more modest in size and appearance than the Doheny House. As a result, the neighborhood does not demonstrate a coherent historic character that is consistent to the Doheny House's period of origin." The Doheny House in and of itself does not act to define the scale and character of the existing residential neighborhood in which it is located.

Please also refer to Response 19-9.

Comment 19-18: On Page 42 of the Urban Design Element, the second Urban Design Concept identified for Capistrano Beach is "Maintain existing residential development standards for yard setbacks, minimum lot size and building height". As discussed in detail below, the 5-lot residential project that the City speculates will replace the Doheny House does not comply with the minimum land area development standard mandated by the zoning code. Thus the City will be acting contrary to this particular Urban Design Concept should it approve the 5-lot residential project that is speculated. This section of the Urban Design Concept will require revision before the City can approve the project described in the Draft EIR; perhaps the following language will suffice: "Maintain existing residential development standards for yard setbacks, minimum lot size and building height *unless the property owner prefers not to do so*".

Response 19-18: Any future development on the project site would be required to comply with the City's General Plan's land use designations and policies, and with the City's Zoning Code. This section of the Urban Design Concept would not require amendment due to the proposed project. The site contains five (5) lots which are legal non-conforming as these were subdivided in 1928 as part of Tract 883. The lots are legal non-conforming relative to the City's RSF 3 zoning standards. Any reasonable foreseeable development would be subject to current zoning standards, including the construction of one dwelling unit per lot.

Comment 19-19: From the Land Use Element of the General Plan:
Page 2 of the Land Use Element establishes a land use goal for the "Preservation of developed and undeveloped portions of the City which have cultural, social and natural resource value to the City and its citizens". Presumably, the Doheny House is an established cultural resource in the Capistrano Beach area. The proposed project will not preserve this resource, so this particular Land Use goal will require revision before the City approves the project described in the Draft EIR. Perhaps the following language will suffice: "Preservation of developed and undeveloped portions of the City which have cultural, social and natural resource value to the City and its

citizens *unless an individual citizen does not support such preservation goals*".

Response 19-19: Please also refer to Response 19-9.

Comment 19-20: DEVELOPING 5 RESIDENCES ON THE PROJECT SITE IS INCONSISTENT WITH THE ZONING CODE, THE GENERAL PLAN, AND THE CITY'S LOCAL COASTAL PROGRAM, THUS IT DOES NOT SATISFY THE CITY'S CEQA OBLIGATION.

Section 4.9.3 of the Draft EIR asserts that "The project site consists of five lots that are zoned RSF 3, which allows for the development of single-family residential uses". Based on this pithy zoning analysis, the Draft EIR concludes that the proposed project is consistent with the City's Zoning Code and General Plan Land Use Element. However, the Draft EIR overlooks key Zoning and General Plan provisions which actually *preclude* construction of 5 residences on the project site; to wit:

Section 9.09.030(e) of the City Zoning Code firmly establishes that the minimum required land area per residential unit for RSF3 zoned districts is **11,667** square feet. This standard applies to ALL residential developments (including construction projects). Moreover, footnote 3 of Section 9.09.030(e) specifically prohibits "rounding up" to determine compliance with this particular development standard, and it provides the mathematical procedure whereby compliance is determined. By applying this mathematical procedure to lot 20 (at approximately 5,400 square feet), we find that the 5400 square foot parcel area divided by the 11,667 square foot minimum required area per dwelling unit results in a 0.46 dwelling unit value, which rounds *down* to 0 dwelling units permitted on this parcel. Applying this analysis to the other parcels that underlie the project site reveals that none of them comply with Section 9.09.030(e) of the Zoning Code. In fact, on average, these lots are approximately *half* the size required by the Zoning Code. Thus the City's stated project objective to construct 5 residences on the project site actually violates the Zoning Code (and by extension, the Local Coastal Program). In fact, the Zoning Code limits the total number of residences permitted on the project site to a maximum of 2.

Response 19-20: This is a legal issue rather than an environmental issue under CEQA, and thus no response is required. Nevertheless, it should be noted that future development on the project site would be required to comply with the City's Zoning Code. The Doheny House is located on five existing lots that were created in 1928 as part of Tract 883.

Comment 19-21: Similarly, the residential development standards enumerated in the adopted General Plan will not permit the development of 5 individual residences on the project site. The Land Use Element of the General Plan clearly specifies

that, for the project site, the Maximum allowable density for development *on individual parcels* is 3.5 dwelling units per net acre of land (defined as 35,000 square feet). The construction of one residence on each parcel will result in a developmental density exceeding 5 du/net acres per parcel. This does not conform to the General Plan, nor by extension does it comply with the City's Local Coastal Program.

Response 19-21: The Draft EIR on page 2-2 identifies that there are five separate parcels on the project site. It is reasonably foreseeable that one residential unit could be developed on each of the five separate parcels. Any future development on any of the five parcels on the project site would be required to comply with the City's General Plan.

Comment 19-22: From conversations with City Planning Staff, it appears the City believes the applicant has a vested right to sell or develop 5 individual parcels without regard for Zoning Code development standards or General Plan density restrictions. The City has concluded that the Applicant possesses these development privileges "by right". However, the City is very much mistaken on this point. California's "vested rights" doctrine allows a property owner to develop a parcel based on zoning regulations in effect at the time a building permit is issued, not at the time a parcel is created. Since 1971 (and perhaps even earlier), the courts have affirmed time and again that the development of existing parcels must ALWAYS comply with current zoning requirements such as minimum lot size standards. In some cases (such as *Hill v. City of Manhattan Beach*, 6 Cal. 3d 279), the court decision effectively prohibited the sale of a parcel which did not comply with the current zoning ordinance until a variance was obtained.

Response 19-22: This is a legal issue rather than an environmental issue under CEQA, and thus no response is required. Nevertheless, it should be noted that future development on the project site would be required to comply with the City's Zoning Code.

Comment 19-23: Further conversations with Planning Staff reveal that the City does think that Zoning Code development standards or General Plan development density restrictions apply to residential construction projects because they are not considered "development" projects. The City Planning Department seems to think that the term "development" as contemplated in the Zoning Code and the General Plan applies only to subdivisions, and does not encompass residential construction projects. However there is nothing in the City's Zoning Code or General Plan which supports this conclusion, and in fact there is abundant evidence that the City's "understanding" of what development means is completely erroneous.

The Zoning Code specifically defines a "Development Project" as

"Any project undertaken for the purpose of development. Development project includes a project involving *the issuance of a permit for construction or reconstruction*".

Response 19-23: This is a legal issue rather than an environmental issue under CEQA, and thus no response is required. Nevertheless, it should be noted that future development on the project site would be required to comply with the City's Zoning Code.

Comment 19-24: It is clear from this definition that the construction of a single family residence constitutes a development project, and is therefore subject to applicable residential development standards such as minimum lot area requirements. The Zoning Code further defines a "Coastal Development" as a

"change in the density or intensity of use of land, including, *but not limited to*, subdivision pursuant to the Subdivision Map Act".

Response 19-24: This is a legal issue rather than an environmental issue under CEQA, and thus no response is required. Nevertheless, it should be noted that future development on the project site would be required to comply with the City's Zoning Code.

Comment 19-25: Certainly the replacement of one single family residence with 5 single family residences constitutes a change of density AND intensity of the use of land even though it is not a subdivision. Thus the construction of 5 single family residences on the Doheny House project site is both a "Development Project" and a "Coastal Development". Moreover, the Zoning Code itself refutes the ridiculous notion that development standards apply only to subdivisions because the Zoning Code makes a clear distinction between development standards that apply exclusively to subdivision developments (such as lot width), and development standards that apply to all development projects (such as minimum land area required per dwelling unit).¹

Response 19-25: This is a legal issue rather than an environmental issue under CEQA, and thus no response is required. Nevertheless, it should be noted that future development on the project site would be required to comply with the City's Zoning Code.

Comment 19-26: *The General Plan* imposes "Development Density" restrictions which apply to both residential development projects as well as subdivisions. Nowhere in the General Plan is it stated or even implied that these development restrictions

¹ Development standards for RSF-3 zoned districts are found in Section 9.09.030 of the City Zoning Code. Subsections (a), (b), and (c) specify minimum lot size, lot width, and lot depth requirements for new subdivisions.

apply only to subdivisions. In fact, the General Plan clearly defines the "Maximum Development Density" as the "maximum allowable level of *development for individual parcels of land*".² It does not say "maximum allowable level of development *for individual parcels of land created by a subdivision project*".

Response 19-26: This is a legal issue rather than an environmental issue under CEQA, and thus no response is required. Nevertheless, it should be noted that future development on the project site would be required to comply with the City's Zoning Code.

Comment 19-27: From these examples, it is obvious that "development projects" encompass both residential construction as well as subdivision actions, thus both are subject to applicable Zoning Code development standards AND General Plan density restrictions. The bottom line: None of the 5 parcels on the project site that the City speculates the Applicant may want to sell (or develop) meets the 11,667 square feet minimum land area requirement, and neither the current nor the future owners of the parcels have a "development by right" or "vested right" to improve the individual parcels with single family residences. If the Applicant's ultimate goal is to sell 5 individual parcels after the Doheny House is demolished, then both the City and the Applicant are advised that such conveyances will create 5 unbuildable lots, in which case demolition of the Doheny House would serve no purpose at all.

Response 19-27: This is a legal issue rather than an environmental issue under CEQA, and thus no response is required. Nevertheless, it should be noted that future development on the project site would be required to comply with the City's Zoning Code.

Comment 19-28: THE PROPOSED PROJECT REPLACES AN EXISTING, CONFORMING USE WITH MULTIPLE NONCONFORMING USES AND SO DOES NOT COMPLY WITH CEQA

According to the Definition section of the City Zoning Code, each of the parcels that the City speculates may be developed or sold by the Applicant after demolition will be considered "Nonconforming" because it will not comply with applicable development standards in the Zoning Code.

Despite their nonconforming status, the lots described in Table 2-1 of the Draft EIR are properly developed with a conforming use, since the combined area of the north three lots (upon which the Doheny House is located) meets the minimum land area requirement of 11,667 sq. ft imposed by the Zoning

² Table LU-3 specifies that Parcels with a Residential 0-3.5 Land Use Designation have a maximum development density of 3.5 dwelling units per net acre. Footnote (a) clearly states that 3.5 du/net acre is the "Maximum allowable level of development/*or individual parcels of land*".

Code. The two remaining nonconforming lots are not developed. Therefore, the project site is currently occupied by a conforming use. Conversely, developing the Project Site with 5 residences located on 5 nonconforming lots will create 5 new nonconforming uses.³ Naturally, the City cannot permit demolition of the Doheny House for the express purpose of constructing 5 residences on the project site because it would replace a single conforming use with multiple nonconforming uses, which *defeats the entire purpose of the zoning code*. The City is certainly aware that an essential tenet of "Planning and Zoning" is to encourage the ultimate conversion of nonconforming uses to uses that are conforming. The Zoning Code itself reiterates this fundamental purpose.⁴ Thus the City's proposed project to replace one conforming use with 5 non-conforming uses is absurd and simply unsupportable.

Response 19-28: This is a legal issue rather than an environmental issue under CEQA, and thus no response is required. Nevertheless, it should be noted that future development on the project site would be required to comply with the City's Zoning Code.

Comment 19-29: THE INDIVIDUAL LOTS UNDERLYING THE PROJECT SITE DO NOT QUALIFY FOR ZONING VARIANCES TO MAKE THEM "BUILDABLE".

Presumably at this point, the City now understands that 5 new residences cannot be constructed on the project site without 5 separate variances, and that such variance actions require discretionary review and must be considered in the EIR that is prepared for the Doheny House demolition project. The Applicant will certainly apply for these variances prior to selling any individual parcels to assure prospective buyers that the lots are "buildable". However, the City is advised that the Zoning Code precludes the issuance of any variances for this purpose. Why? Because the City is unable to make any of the findings that are required by the Zoning Code in order to approve a variance request. In essence, the City has no basis for approving variances for the development 5 residences on nonconforming parcels underlying the project site. The stated purpose of the City's variance process is:

"to provide the City with a procedure to permit appropriately mitigated developments on property which is constrained, because of size, shape, topography, or other constraining factors, and where strict interpretation of the Code would deny the applicant property development rights which are granted to other properties within the same zoning district under similar physical conditions."

³ Each residential development would not conform with the development standards imposed by Section 9.09.030(e) of the Zoning Code, thus each residential development would constitute a nonconforming use.

⁴ See Section 9.63.010 of the City Zoning Code.

The existing "physical condition" of the project site is that it occupies a 31,250 square foot area and it consists of one residence located on 19,681 square feet and a vacant area that occupies 11,569 square feet. The project site has no size constraints or topography limitations that justify the granting of a variance request because it is sufficiently large to permit residential development which conforms to the Zoning Code. There are also no patterns of ownership which prevent the project site from being developed in accordance with the Zoning Code. More importantly, any variance granted by the City would convey extraordinary and unprecedented privileges to the Applicant which have never been enjoyed by any other property owners in the area. Why? Because rather than complying with the Zoning Code (which the Applicant can easily do), the Applicant would be granted 5 contiguous, commonly owned parcels which are (on average) *one-half* of the lot size demanded by the Zoning Code. The City's approval of such a request would be unprecedented, and it would pave the way other property owners in the area to request similar privileges. The City would have no basis for denying these future variance request (and indeed would be compelled to grant them) because precedence would be firmly established. In the end, the question becomes whether or not the Zoning Code actually matters; (sic) If the City is willing to ignore key development standards such as lot size merely because a property owner wants (but does not need) a variance, then why bother with a Zoning Code in the first place?

Response 19-29: This is a legal issue rather than an environmental issue under CEQA, and thus no response is required. Nevertheless, it should be noted that future development on the project site would be required to comply with the City's Zoning Code. Neither were variances requested as part of the project application nor are variances necessary for the lot sizes.

Comment 19-30: There are other reasons why the City cannot grant 5 separate variances for 5 contiguous, commonly owned parcels. For example, for each variance, the City must make ALL of the following findings (according to Section 9.67.050 of the Zoning Code):

That the strict or literal interpretation and enforcement of the specified regulation(s) would result in practical difficulty or unnecessary physical hardships inconsistent with the objectives of this Chapter – The Applicant can easily comply with a "strict or literal interpretation and enforcement" of the Zoning Code without any "practical difficulty" or "unnecessary physical hardship". Indeed, complying with the Zoning Code is consistent with the objectives of the Zoning Code, while granting the variances is not.

Response 19-30: This is a legal issue rather than an environmental issue under CEQA, and thus no response is required. Nevertheless, it should be noted that future development on the project site would be required to comply with the City's

Zoning Code. Neither were variances requested as part of the project application nor are variances necessary for the lot sizes.

Comment 19-31: *There are exceptional or extraordinary circumstances or conditions applicable to the subject property or to the intended use of the property which do not apply generally to other properties in the same zoning district –* The project site is not encumbered with an "exceptional or extraordinary circumstances or conditions" that do not also apply to all the other surrounding properties within the same zoning district. It would be different if the Applicant owned only one parcel which could not be enlarged due to the ownership patterns of adjacent properties; such a situation could perhaps constitute an "exceptional or extraordinary circumstance". That is not the case here, because the Applicant owns sufficient property to comply with the Zoning development standard.

Response 19-31: This is a legal issue rather than an environmental issue under CEQA, and thus no response is required. Nevertheless, it should be noted that future development on the project site would be required to comply with the City's Zoning Code. No variances were requested as part of the project nor are variances necessary for the lot sizes.

Comment 19-32: *That the strict or literal interpretation and enforcement of the specified regulation(s) would deprive the applicant of privileges enjoyed by the owners of other properties in the same zoning district with similar constraints –* The Applicant enjoys the same privileges, and is equally encumbered by the same Zoning Code restrictions as the surrounding property owners within the same zoning district. All of the surrounding property owners within the same zoning district appear to comply with the minimum lot size development standard except two parcels two to the north and two parcels to the south. However, these four parcels were developed long before the General Plan and the Zoning Code were adopted. There are no other similarly zoned properties in the area which are constrained in the manner that is contemplated by this finding, thus a strict interpretation of the Zoning Code does not deprive the Applicant of privileges that are enjoyed by others.

Response 19-32: This is a legal issue rather than an environmental issue under CEQA, and thus no response is required. Nevertheless, it should be noted that future development on the project site would be required to comply with the City's Zoning Code. No variances were requested as part of the project nor are variances necessary for the lot sizes.

Comment 19-33: *That the granting of the Variance will not constitute a grant of special privilege inconsistent with the limitations on other properties in the same zoning district with similar constraints –* First of all, the project site is not constrained in any way that prevents the Applicant from complying with the

Zoning Code. Under these circumstances, the granting of a variance is *implicitly* a privilege. Why? Because it permits the Applicant to avoid the requirements that everyone else must *meet for no reason other than the Applicant prefers not to meet the requirement*. Secondly, other properties that have been granted variances from the minimum lot size requirements were individually owned, nonconforming lots which simply could not be enlarged because the property owners did not own the adjacent properties. That is not the situation here; the Applicant owns all the contiguous Assessor Parcels that underlie the project site, and can therefore easily comply with the minimum lot size requirement mandated by the Zoning Code. If the City approves a variance for any nonconforming lots that is carved out of the project site, it will convey privileges to the Applicant that are not enjoyed by others because the Applicant is not required to comply with the Zoning Code while others are.

Response 19-33: This is a legal issue rather than an environmental issue under CEQA, and thus no response is required. Nevertheless, it should be noted that future development on the project site would be required to comply with the City's Zoning Code. No variances were requested as part of the project nor are variances necessary for the lot sizes.

Comment 19-34: *That the Variance request is made on the basis of a hardship condition and not as a matter of convenience* – There is certainly no evidence which suggests that the Applicant would endure any hardship if a variance request was denied; the property could still be developed with multiple single family dwellings. Of course, the Applicant may be inconvenienced by the possible reduction in profit that would result from selling only 2 conforming lots rather than 5 nonconforming lots. However, the Zoning Code makes it quite clear that the granting of a variance must be based on need, not convenience.

Response 19-34: This is a legal issue rather than an environmental issue under CEQA, and thus no response is required. Nevertheless, it should be noted that future development on the project site would be required to comply with the City's Zoning Code. No variances were requested as part of the project nor are variances necessary for the lot sizes.

Comment 19-35: *That the Variance approval places suitable conditions on the property to protect surrounding properties* – It is not possible to impose any conditions on the Applicant's proposed medium-density residential development which will make it suitable for (and therefore protective of) the surrounding low-density neighborhood.

Response 19-35: This is a legal issue rather than an environmental issue under CEQA, and thus no response is required. Nevertheless, it should be noted that future development on the project site would be required to comply with the City's

Zoning Code. No variances were requested as part of the project nor are variances necessary for the lot sizes.

Comment 19-36: *That granting of the Variance would be consistent with the policies of the Local Coastal Program certified land use plan – The City's adopted Local Coastal Program requires that the property be used for low-density residential development, not medium density residential development. Obviously, the variances sought by the applicant would not be consistent with the Local Coastal Program policies.*

Response 19-36: This is a legal issue rather than an environmental issue under CEQA, and thus no response is required. Nevertheless, it should be noted that future development on the project site would be required to comply with the City's Zoning Code. No variances were requested as part of the project nor are variances necessary for the lot sizes.

Comment 19-37: It is clear that the City is unable to make any of the findings that are necessary to issue a variance for one or more parcels that are carved out of the project site. Both the Applicant and the City should be disabused of any notion that the project site could be developed with 5 single family residences.

Response 19-37: This is a legal issue rather than an environmental issue under CEQA, and thus no response is required. Nevertheless, it should be noted that future development on the project site would be required to comply with the City's Zoning Code. No variances were requested as part of the project nor are variances necessary for the lot sizes.

Comment 19-38: THE PROJECT DOES NOT COMPLY WITH THE CITY'S DESIGN GUIDELINES

The City has developed Design Guidelines for discretionary projects which are intended (in part) to ensure that new development is compatible with Historic Resources (see page 16). These guidelines emphasize "achieving a compatible scale and positive relationship with historic craftsmanship" and further clarify that projects "should be respectful of the historic building or site". There is certainly no element of the proposed demolition project which is consistent with either of these guidelines. The Design Guidelines further instruct development projects to make a "diligent effort to retain the historic resource" to the extent feasibly possible. There are obviously-no project site feasibility issues which would preclude preservation of the Doheny House. Indeed, the Applicant's desire to demolish the Doheny House seems motivated entirely by profit. The proposed project is therefore fundamentally inconsistent with the historical resource preservation provisions of the City's Design Guidelines. Fortunately for the residents of Dana Point, the Applicant's request cannot be approved because it does not comply with CEQA, it violates the Zoning Code, it is inconsistent with the adopted General Plan, and it does not comply with the Local Coastal Program.

Response 19-38: This is a legal issue rather than an environmental issue under CEQA, and thus no response is required. Nevertheless, it should be noted that future development on the project site would be required to comply with the City's Zoning Code. Neither were variances requested as part of the project application nor are variances necessary for the lot sizes. There is no development proposed at this time. Future development on the property would require CDP approval.

Comment 19-39: THE PROJECT ALTERNATIVES PROPOSED IN THE DRAFT EIR CONFLICT WITH THE ZONING CODE, THE GENERAL PLAN, & THE LOCAL COASTAL PROGRAM

Not only has the City failed to develop a project description and project objective that complies with CEQA, it has also developed a slate of project alternatives which fail to comply with CEQA because they are inconsistent with the Zoning Code, the General Plan, and (by extension) the Local Coastal Program:

The "Maintain the Doheny House in its Current Location and Provide development (sic) Opportunities on the Southern Two Parcels" Alternative (hereafter referred to as Alternative 1): Neither of the two southern parcels described in the Draft EIR are conforming lots because they do not comply with the 11,667 square foot minimum size requirements imposed by Zoning Code Section 9.09.030(e). Thus Alternative 2 (which proposed to develop each of the southern lots individually) is not consistent with CEQA. In fact, merging lot 19 with lot 20 will not produce a conforming parcel, because the total combined area (11,569 square feet) still does not meet the lot area requirement mandated by the Zoning Code. This condition could perhaps be corrected by a simple lot-line adjustment between lot 18 and lot 19 (although the lot-line adjustment must ensure that the Doheny House complies with the side setback requirements mandated by the Zoning Code). In other words, combining lots 19 and 20 and processing a lot-line adjustment between lots 18 and 19 produces a version of Alternative 1 (hereafter referred to as "Modified Alternative 1") that complies with the Zoning Code and is therefore consistent with CEQA. Subject to these changes, the "Modified Alternative 1" should be considered the "Environmentally Superior" alternative under CEQA.

Response 19-39: The site contains five (5) lots which are legal non-conforming as these were subdivided in 1928 as part of Tract 883.

Comment 19-40: Despite the improperly drafted project description and project objective statements, the Draft EIR "sort of" agrees with this conclusion (see pages 6-6 and 6-17). However, the Draft EIR erroneously and improperly equates Alternative 1 with the "No Project" alternative. In point of fact, Modified Alternative 1 is NOT equivalent to the "No Project" alternative, because 1) it allows development opportunities on the project site and 2) it will impact the overall appearance and historical context of the Doheny House. The

advantage of "Modified Alternative 1" is that the environmental impact on the Doheny House could be considered "less than significant" for the purposes of CEQA.

Response 19-40: The alternative analysis provided in Section 6 of the Draft EIR is consistent with the requirements of CEQA. The No Project/No Build Alternative (Section 6.2 of the Draft EIR) is consistent with Section 15126.6(e)(3)(B), which states, "If the project is other than a land use or regulatory plan, for example a development project on identifiable property, the 'no project' alternative is the circumstance under which the project does not proceed. Here the discussion would compare the environmental effects of the property remaining in its existing state against environmental effects which would occur if the project is approved. If disapproval of the project under consideration would result in predictable actions by others, such as the proposal of some other project, this 'no project' consequence should be discussed. In certain instances, the no project alternative means 'no build' wherein the existing environmental setting is maintained. However, where failure to proceed with the project will not result in preservation of existing environmental conditions, the analysis should identify the practical result of the project's non-approval and not create and analyze a set of artificial assumptions that would be required to preserve the existing physical environment."

The Maintain the Doheny House in its Current Location and Provide Development Opportunities on the Southern Two Parcels Alternative (Section 6.3 of the Draft EIR) is the No Project/Reasonably Foreseeable On-site Development Alternative, and it is consistent with Section 15126.6(e)(3)(C), which states, "After defining the no project alternative using one of these approaches, the lead agency should proceed to analyze the impacts of the no project alternative by projecting what would reasonably be expected to occur in the foreseeable future if the project were not approved, based on current plans and consistent with available infrastructure and community services."

The Modified Alternative 1 described in the comment would be feasible if the two southern lots were purchased by the same person or entity and they requested a lot line adjustment from the City. The Modified Alternative 1 would lessen the overall impacts as one house would be built instead of two and the intent of the Maintain the Doheny House in its Current Location and Provide Development Opportunities on the Southern Two Parcels Alternative was to provide a worst-case analysis. Combining the two southern lots is not a project that would reasonably be expected to occur based on current plans and thus was considered speculative and was not analyzed in the Draft EIR.

Comment 19-41: The "Partial Demolition Of The (sic) Doheny House At Its (sic) Current Location And (sic) Provide Development Opportunities On The (sic) Southern

Two Parcels And The (sic) Northernmost Parcel" Alternative (hereafter referred to as Alternative 2):

Like the two southern parcels, the northernmost parcel described in the Draft EIR does not comply with the 11,667 square foot minimum size requirements imposed by Zoning Code Section 9.09.030(e). Thus Alternative 2 is not consistent with CEQA. Even if the two southern parcels were combined to provide a single buildable parcel ("Modified Alternative 1), the northernmost parcel could never be developed in conformance with the Zoning Code. Thus, Alternative 2 provides the same development opportunities that Modified Alternative 1 provides (by creating 2 conforming parcels), but it has substantially more significant environmental impacts. Because Alternative 2 effectively destroys the Doheny House without providing additional benefits beyond those provided by Modified Alternative 1 (which preserves the Doheny House), it should not be given further consideration in this proceeding.

Response 19-41: The site contains five (5) lots which are legal non-conforming as these were subdivided in 1928 as part of Tract 883.

Comment 19-42: The "Partial Demolition And (sic) Relocation Of The (sic) Doheny House To The (sic) Southern Two Parcels And (sic) Provide Development Opportunities On The (sic) Northern Three Parcels" Alternative (Hereafter referred to as Alternative 3):

The stated purpose of Alternative 3 is to allow the construction of 3 single family residences on the northernmost three lots described in the Draft EIR. This alternative ignores the fact that none of the 3 northernmost parcels comply with the 11,667 square foot minimum lot area standard established by Zoning Code Section 9.09.030(e). Therefore, this alternative is inconsistent with CEQA. It should be noted that the combined area of the three northernmost parcels is only 19,681 square feet, thus a conforming development on these combined parcels is limited to only one single family residence. Essentially, this alternative provides the same development opportunities that Modified Alternative 1 provides, (by creating 2 conforming parcels), but it has substantially more significant environmental impacts. Because Alternative 3 effectively destroys the Doheny House without providing additional benefits beyond those provided by Modified Alternative 1 (which preserves the Doheny House), it should not be given further consideration in this proceeding.

Response 19-42: The site contains five (5) lots which are legal non-conforming as these were subdivided in 1928 as part of Tract 883.

Comment 19-43: The "Partial Demolition And (sic) Relocation Of The (sic) Doheny House To (sic) Another Site In (sic) Dana Point" Alternative (Hereafter referred to as Alternative 4):

The stated purpose of this alternative is to allow the construction of 5 single family residences on the project site. In asserting this purpose, the Draft EIR simply ignores the fact that the 5 parcels described therein do not comply with the 11,667 square foot minimum lot area standard established by Zoning Code Section 9.09.030(e). Therefore, this alternative is inconsistent with CEQA. The entire area of the project site is only 31,250 square feet, thus conforming development of the project site is limited to only two single family residences. Essentially, this alternative provides the same number of residences that Modified Alternative 1 provides, but creates substantially more environmental impacts. Because Alternative 4 effectively destroys the Doheny House without providing additional benefits beyond those provided by Modified Alternative 1 (which preserves the Doheny House), it should not be given further consideration in this proceeding.

Response 19-43: The site contains five (5) lots which are legal non-conforming as these were subdivided in 1928 as part of Tract 883.

Comment 19-44: Taken together, the net effect of all the issues discussed above is that the only construction alternative that the City can approve pursuant to CEQA is the "Modified Alternative 1". All the other construction alternatives presented in the Draft EIR will destroy the Doheny House and generate substantially more environmental impacts *without providing any additional benefits to the Applicant*. Modified Alternative 1 meets the historical resource preservation provisions enumerated in the General Plan and complies with the development standards imposed by the General Plan, the Zoning Code, and the Local Coastal Program. It does not require a General Plan or Local Coastal Program amendment, nor does it entail any zoning variances (which would not be granted anyway, since the City cannot make the necessary findings required to approve such variances).

Response 19-44: This comment is acknowledged and is being forwarded to the decision-makers for their consideration.

Comment 19-45: THE CITY HAS NO BASIS FOR A CEQA STATEMENT OF OVERRIDING CONSIDERATIONS AND SO CANNOT APPROVE THE PROPOSED PROJECT.

The proposed project will cause significant, unmitigable environmental impacts to a unique and treasured historical resource. These impacts will not be reduced to a level of insignificance if Alternatives 2, 3, or 4 are approved in lieu of the proposed project. The City is certainly aware that there is a viable alternative to the proposed project which would avoid these significant impacts yet still provide the Applicant with residential development opportunities. Should the decision-makers proceed with the project as proposed or as described by alternatives 2, 3, or 4, CEQA requires that the City prepare a Statement of Overriding Considerations. This Statement must

clearly articulate the substantial benefits that are provided by the project, and clarify how these benefits outweigh the significant environmental impacts posed by the project. The Statement of Overriding Consideration must be developed from evidence in the record, and provide compelling proof of the specific legal, social, technological, economic, and other benefits that would be derived from the project if approved.

Response 19-45: The City will prepare a statement of overriding considerations as described in Section 15093 of the *State CEQA Guidelines* to reflect the ultimate balancing of competing public objectives should the City decide to approve the demolition of the Doheny House project that will cause a significant effect on an historical resource.

Comment 19-46: Certainly, the record developed pursuant to the Doheny House demolition project does not demonstrate that either the City or the residents of Dana Point will accrue any benefit from the demolition (or partial demolition or relocation) of the Doheny House. There is no evidence in the record that any legal, social, technological, or economic benefits will be derived from the project. Moreover, the financial gain that could accrue to the Applicant (and which does NOT constitute a project benefit) is limited by the Zoning Code, which permits only 2 residential units on the project site. In short, the record developed pursuant to this project will not support any Statement of Overriding Considerations that the City may be inclined to prepare.

Response 19-46: This comment is acknowledged and is being forwarded to the decision-makers for their consideration.

Letter 20: DP Times Online Reader Poll and Doheny House Petition

Letter 20 is a petition that was circulated and contains signatures of individuals that do not support the Project.