

RESOLUTION NO. 2025-28

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA AUTHORIZING A LEASE AGREEMENT BETWEEN LAS ANIMAS CONCRETE AND BUILDING SUPPLY, INC. (DBA LAS ANIMAS CONCRETE, MARINA); AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT ON BEHALF OF THE CITY, SUBJECT TO FINAL REVIEW AND APPROVAL BY THE CITY ATTORNEY; AND AUTHORIZING THE FINANCE DIRECTOR TO MAKE NECESSARY ACCOUNTING AND BUDGETARY ENTRIES.

WHEREAS, On August 9, 2005, the City, acting as the agent of the Fort Ord Reuse Authority (“FORA”), entered into that certain “Lease Agreement for Concrete Batch Plant” (the “Interim Lease”).

WHEREAS, On August 31, 2005, the City accepted a Quitclaim Deed from FORA for real property which included the property leased to the Las Animas Concrete’s predecessor, Las Animas Concrete, LLC (LAC LLC). The Interim Lease continued as a direct lease from the City through the Redevelopment Agency of the City of Marina (“RDA”).

WHEREAS, The Interim Lease terminated on February 5, 2006 upon the execution of a 5-year Lease Agreement for Concrete Batch Plant which was effective that date (“Lease”).

WHEREAS, On September 29, 2008, the RDA and LAC LLC entered into Amendment No. 1 to Lease for Concrete Batch Plant (“Amendment No. 1”), which provided for: (1) changing the title of the 5-Year Lease to “Lease Agreement for Concrete Batch Plant”; amending the term of the 5-Year Agreement to provide for a term of seven (7) years commencing on February 5, 2006 and terminating February 4, 2013, contingent upon the term of the Use Permit; granting to LAC LLC a conditional right and option to extend the term of the 5-year Lease for an additional period of two (2) years following the expiration date of February 4, 2013.

WHEREAS, On March 10, 2011, by Quitclaim Deed, the RDA granted the real property which is the subject of the Lease Agreement for Concrete Batch Plant to the City.

WHEREAS, On July 3, 2012, the City and LAC LLC entered into a Second Amendment to the Lease Agreement for Concrete Batch Plant (“Amendment No. 2”), which provided for: (1) changing the term of the Agreement to eleven (11) years, commencing on February 5, 2006, and terminating on February 4, 2017; (2) establishing that LAC LLC shall have no option to extend the term of the Lease; and (3) establishing that the Lease terminated at any time by mutual agreement of the parties with thirty (30) days prior written notice. The Lease, thus, terminated by its own terms on or about February 6, 2017.

WHEREAS, In 2023, LAC LLC met with the City to discuss renewal of its lease, and in reviewing the permit history for this site, staff discovered that the Use Permit was expired and informed LAC LLC that a new Use Permit would be required to continue operating at the premises that is the subject of the lease.

WHEREAS, On October 19, 2023, LAC LLC submitted application materials for a new Conditional Use Permit (CU 23-002) (“CUP”) to allow Tenant to continue operation for up to three (3) years with one (1) additional year for decommissioning the batch plant located on the subject property.

WHEREAS, On or about May 30, 2024, LAC LLC dissolved and the business was transferred to Las Animas Concrete & Building Supply, Inc., DBA Las Animas Concrete, Marina, prior to that dissolution.

WHEREAS, On August 9, 2024, the City of Marina submitted the draft Initial Study (IS) and Negative Declaration (ND) for the Las Animas Batch Concrete Processing Use Permit Project to the State Clearing House (SCH No: 2024080409) with a state and local 30-day review period.

WHEREAS, On October 24, 2024, the City of Marina Planning Commission (“Planning Commission”), at a duly noticed public hearing, considered all of the information presented to it, including the staff report and information submitted at the public hearing by interested persons. The Planning Commission adopted Resolution No. 24-20, approving the CUP to allow continued operation of the Batch Plant subject to conditions of approval, including entering into a new lease agreement with the City.

NOW THEREFORE BE IT RESOLVED that the City Council of the City of Marina does hereby:

1. Incorporate the recitals listed above as if fully set forth herein.
2. Authorize a lease agreement between the City and Las Animas Concrete and Building Supply, Inc. (DBA Las Animas Concrete, Marina) from the period beginning on the date of execution and terminating on December 31, 2026, but which provides that tenant will cease operations of the batch plant on or before December 31, 2025. Thereafter, from January 1, 2026, the tenant will have up to twelve months to dismantle operations and return the site to its pre-lease condition in 2005;
3. Authorize the City Manager to execute the lease agreement on behalf of the City, subject to final review and approval by the City Attorney; and
4. Authorize the Finance Director to make necessary accounting and budgetary entries.

PASSED AND ADOPTED by the City Council of the City of Marina at a regular meeting duly held on the 15th day of April 2025, by the following vote:

AYES, COUNCIL MEMBERS: McAdams, McCarthy, Biala, Delgado

NOES, COUNCIL MEMBERS: None

ABSENT, COUNCIL MEMBERS: Visscher

ABSTAIN, COUNCIL MEMBERS: None

Bruce Delgado, Mayor

ATTEST:

Anita Sharp, Deputy City Clerk

LEASE

FOR CONCRETE BATCH PLANT

BETWEEN

**THE REDEVELOPMENT AGENCY OF THE
CITY OF MARINA**

AND

LAS ANIMAS CONCRETE, LLC

5-YEAR LEASE AGREEMENT FOR CONCRETE BATCH PLANT

THIS LEASE AGREEMENT (the "Lease" or sometimes the "Agreement"), is made and entered into by and between the **REDEVELOPMENT AGENCY OF THE CITY OF MARINA**, a public body corporate and politic (the "RDA"), and **LAS ANIMAS CONCRETE**, a California limited liability company (the "Tenant") on February 5, 2006, the RDA and the Tenant are sometimes referred to herein collectively referred to as the "Parties," as follows:

Recitals:

This Lease is entered into with reference to the following facts and circumstances, which are hereby found and determined by the parties:

A. On August 9, 2005, the City of Marina (the "City"), acting as the agent of the Fort Ord Reuse Authority ("FORA"), entered into that certain "Lease Agreement for Concrete Batch Plant" (the "Interim Lease").

B. On August 31, 2005, the RDA accepted a Quitclaim Deed from the Fort Ord Reuse Authority ("FORA") for real property which includes the property leased to the Tenant by the Interim Lease, which continued as a direct lease from the City, through the RDA, to the Tenant.

C. The Interim Lease will terminate on February 4, 2006, or upon the execution of this Lease, whichever occurs first.

D. The real property consists of approximately 1.8 acres (the "Premises" or the "Property").

E. Tenant desires to continue to occupy and utilize the Premises as a site for operating the Tenant's Concrete Batch Plant (the "Batch Plant").

F. It is mutually agreed that this Lease is upon and subject to the following terms, covenants, conditions and provisions and Tenant covenants, as a material part of the consideration of this Lease, to keep, perform and comply with each and all of said terms, covenants, conditions and provisions to be kept, performed and complied with, and this Lease is made upon the condition of such performance and compliance.

Terms and Conditions

1. **Purpose.** The purpose of this Lease is to facilitate redevelopment, reuse and maintenance of land within the City and on former Fort Ord.

2. **Premises.**

a) The RDA hereby delivers to Tenant, and Tenant hereby accepts from the RDA this Lease for exclusive possession and use of the Premises and facilities, described as 80,714 square feet of minimally improved, graded land, located near Ninth Street, Fifth Avenue, Sixth Avenue and Imjin Parkway in Marina, County of Monterey, California, as identified as 499 Ninth Street and as shown on Exhibit A, which is attached hereto and by this reference made a part hereof.

b) The large structure located adjacent to the Premises, formerly used by the U.S. Army as the Fort Ord Stockade, is not included in the leasehold created herein. The Tenant is responsible for securing the Stockade facility and its guard towers to prevent entry by the public.

3. **Use.**

a) Tenant shall use the Property as the site for construction and operation of its Batch Plant, which use will include importing and storing at any given time approximately 150 cubic yards of rock and sand to be used to make concrete. The component parts of the Batch Plant will be assembled on the Premises to mix raw materials used to formulate concrete. Other facilities and components of the Batch Plant may include a temporary office trailer, temporary storage containers material bunkers and hoppers, two detached 55-foot tall silos, a 125-foot long conveyor, and a 40-foot by 10-foot lined wash/settling pond. Tenant's use of the Premises shall include loading sand and coarse aggregate into a portable plant which will then dispense these products into mixer trucks for delivery to job sites located off the Premises.

b) The City, previous to entering into the Interim Lease, permitted Tenant to form and pour up to ten (10) small concrete foundation piers and to install electrical conduit on the Premises. Tenant agrees to pay the City for all costs, damages or other expenses including, but not limited to, any legal costs and attorney's fees, if any, as they may be incurred by the City as a result of Tenant's pre-Lease activities on the property.

c) Any and all materials classified as hazardous under federal regulations and used in Tenant's activities on the Premises shall be identified to the satisfaction of the RDA and the City as to identity, type and quantity and shall be stored, used and disposed of in accordance with all local, state and federal regulations. Tenant shall not use the Premises for any other purpose without the prior written consent of the RDA, such consent not to be unreasonably withheld.

4. **Use of Mixer Trucks.** Generally, an average of six (6) concrete mixer trucks will be dispatched from the Premises, with fluctuations in the number of daily trips by the mixer trucks due to the seasonal nature of the construction activities being served. Mixer trucks shall use only those routes to and from the Batch Plant as have been designated by the City and make all reasonable effort to avoid any impact on the operation of the Marina Equestrian Center by not using the narrow streets around the Equestrian Center.

5. **Hours of Operation.** Tenant shall operate the Batch Plant Monday through Saturday only and shall conform its conduct of all activities on and around the Premises to the provisions of Chapter 9.24 of the City's Municipal Code, entitled "Noise Regulations." Given the nature of the work, on occasion permission to work on Sunday may be granted at the sole discretion of the City Manager or his or her designee to the extent that such permission may be lawfully granted.

6. **Term.** The term of this Agreement shall be for five (5) years, commencing on February 5, 2006. This Lease may be terminated at any time by mutual agreement of the parties with thirty (30) days prior written notice.

Conditional Option to Extend Term. Tenant is hereby granted the conditional right and option to renew and extend the term of this Lease for an additional period of two (2) years only, following the expiration date hereof, February 4, 2011, provided that upon that on execution of such option this Lease is still in full force and effect at the time and that Tenant is not in default under any of the terms of this Lease. The option may be exercised by the Tenant by its giving written notice of its intent to exercise the option to the RDA Executive Director not sooner than one year and not later than six months prior to the expiration of the initial term hereof. The terms and conditions of the extended two (2) year option to extend the term of the Lease shall be the same as are provided herein, except that the monthly rent to be paid by the Tenant for the optional term shall be based upon the RDA's determination, in its sole discretion, of the then current fair market value for other similar industrial properties in the local area.

7. **Reservation & Easements.**

a) **Easements and Reservations.**

(i) The Premises are subject to all valid and existing recorded outstanding liens, licenses, leases, easements, and any other encumbrances made for the purpose of roads, streets, utility systems, rights-of-way, pipelines, and/or covenants, exceptions, interests, liens, reservations, and agreements of record.

(ii) The Property is subject to public utility easements as set forth in such area master plans as may be developed or approved by the City. Such public utility easements, together with the right to enter thereon, for any purpose in connection with the construction or maintenance of improvements and facilities located thereon are hereby reserved by the RDA and the City for the benefit of itself and for the benefit of all other persons or entities occupying buildings on former Fort Ord properties. In connection with the fire lanes, Tenant agrees that it will not cause or permit any vehicle, or other equipment to be parked within the boundaries of such fire lanes or use the fire lanes in a manner which would interfere with equipment and personnel traversing same in the course of fire suppression activities

(iii) The Army reserves a perpetual unassignable right to enter the Property for the specific purpose of treating or removing any unexploded shells, mines, bombs, or other such devices deposited or caused by the Army. Based on a review of existing records and available information, the land proposed for lease is not known to contain unexploded ordnance. In the event a tenant should discover any ordnance on the Property, it shall not attempt to remove or destroy it, but shall immediately notify the local Police Department and the Directorate of Law Enforcement at the Presidio of Monterey and competent Army or Army-designated explosive ordnance personnel will be dispatched promptly to dispose of such ordnance at no expense to the Tenant.

(iv) The Army, its officers, agents, employees, contractors and subcontractors, in accordance with section 120(h) of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), as amended, reserve a right of access to any and all portions of the Property for purposes of environmental investigation, remediation, or other corrective actions found to be necessary after the date of the conveyance of the Property. Tenant agrees to cooperate in good faith to minimize any conflict between necessary environmental investigation and remediation activities and Tenant's operations. Any inspection, survey, investigation, or other response or remedial action will to the extent practicable, be coordinated with representatives designated by the RDA or the City. Pursuant to this reservation, the Army and its officers, agents, employees, contractors, subcontractors shall have the right (upon reasonable notice to the Tenant and the City to enter upon the Property, and perform surveys, drillings, test pitting, borings, data and/or record compilation, and other activities related to environmental investigation, and to carry out remedial or removal actions as required or necessary under applicable authorities, including but not limited to installation of monitoring and extraction wells, and other treatment facility.

(v) The Army reserves a nonexclusive easement to allow continued access for itself and the regulatory agencies to permit necessary groundwater monitoring at wells located on the Property and the installation of new treatment or monitoring wells if required for the pump and treat operations. Furthermore, tampering with the groundwater monitoring wells is prohibited.

(vi) Access for USA Media Group, LLC, or its successor in interest, for TV cable lines is reserved.

(vii) The RDA reserves the right to install, lay, construct, maintain, repair and operate or facilitate the operation of such sanitary sewers, drains, storm water sewers, pipelines, manholes, and connections; water, oil and gas pipelines, telephone, telegraph and electrical power lines; and the appliances and appurtenances necessary or convenient in connection therewith, in, over, upon, through, across and along any and all portions of the Premises. RDA shall restore any of Tenant's improvements altered or disturbed due to RDA's exercise of any rights under this section to substantially the same condition in which they existed prior to the RDA's entry on to the Premises.

8. **Time and Place of Payment of Rent.** Tenant must pay rent and all other charges, fees or other obligations due to the RDA or the City under this Lease every month in advance on or before the first day of the month during the term of this Lease at the office of the City Finance Director, City Hall, 211 Hillcrest Avenue, Marina, California 93933. The rent for certain months of this Lease may be pro-rated. For purposes of calculating and pro-rating rent or other charges due, each month will be considered to have 30 days.

9. **Rent.** The monthly rent for this Lease shall consist of a base plus percentage of gross sales. The base shall be \$3,228.56, which is calculated on the basis of four cents (\$0.04) per square foot of land. In addition to the base, Tenant shall pay one quarter of one percent (0.25%) of their monthly gross sales up to a maximum of \$3,228.56. The maximum monthly rental charge (base plus percentage of gross sales) of \$6,457.12 represents the equivalent of eight cents (\$0.08) per square foot of land. Documentation of gross sales shall be submitted monthly with the understanding that the Tenant shall not be obligated to provide documentation of their gross sales for any month in which they have paid the maximum monthly rental charge. In accordance with the Implementation Agreement between FORA and the City, the monthly rent shall be shared equally between the City and FORA.

10. **Performance Deposit.** Tenant has paid to the City the sum of \$5,000.00, deposited with the City's funds in an interest bearing account as partial security for the payment of rent, loss or damage or other payments due under this Lease. In the event the RDA or the City are required to utilize this deposit, or any portion thereof, during the term of the Lease, Tenant within ten (10) days of such use shall deposit an additional sum sufficient to restore the performance deposit to the amount set forth herein. This performance deposit, or any remaining portion, will be returned to Tenant with interest earned thereon at the termination of the Agreement, after any deduction for payment of any obligations of Tenant due and owing to the RDA or the City under any provisions of this Agreement.

11. **Delinquency Charge.** Tenant acknowledges that the late payment of rent or other amounts due under this Lease will cause the RDA to incur accounting and other processing costs not contemplated by this Lease, the exact amount of which is extremely difficult and impracticable to fix. Therefore, should any payments due under this Lease remain unpaid ten (10) days after the due date of such payment, a penalty of 10% shall be added to any payments past due and owing. RDA and Tenant agree that this late charge represents a fair and reasonable estimate of costs that the City will incur by reason of the late payment of rent or other charges by the Tenant. Acceptance of any such late charge shall not constitute a waiver of Tenant default with respect to the overdue amount, nor prevent the RDA from exercising any of the other rights and remedies available to it by reason of such default. Interest on any unpaid fees, charges and any penalty shall accrue at the rate of 1.5% per month thereafter until paid.

12. **Fort Ord Reuse Authority Fees.** Tenant shall be responsible for payment of development fees assessed by FORA, if any, and shall furnish evidence to the RDA that all such fees have been paid. Tenant shall comply with all FORA regulations which pertain to the payment of prevailing wages for projects within FORA's jurisdiction.

13. **Commissions.** Neither the RDA nor the City shall be liable for the payment of any brokerage commissions of fees associated with this Lease to engineers, contractors, real estate consultants or attorneys working on Tenant's behalf.
14. **Possessory Interest.** Tenant shall meet all expenses and payments in connection with the use of the Premises and the rights and privileges herein granted including any possessory interest tax created by this Lease, permits and license fees, it being understood by Tenant that although the public property is held in public ownership, Tenant's interest therein may be taxable as a possessor interest (California Revenue & Taxation Code §107 *et seq*). Tenant shall pay personal property taxes, if any, levied on Tenant's inventory, furnishings, or trade fixtures. Tenant may, at its sole expense and cost, contest any tax or fee. All taxes, fees, assessments, charges, etc. shall be paid prior to their delinquency date and satisfactory evidence that such taxes have been paid shall be furnished to the RDA or the City.
15. **Joint Assessment.** If the Premises are not separately assessed, Tenant's liability shall be an equitable portion of the possessory interest taxes for all of the land and improvements included within the tax parcel assessed, such proportion to be determined by the RDA from the respective valuations assigned in the assessor's work sheets or such other information as may be reasonably available. The RDA's reasonable determination thereof, in good faith, shall be conclusive.
16. **Department of the Army Quitclaim Deed Terms.** This Lease, and the use of the Premises covered hereby, shall be subject to the terms, conditions and restrictions set forth in the "Quitclaim Deed for a Portion of University Village Parcels" (the "Quitclaim Deed") from FORA to the RDA, recorded at the Office of the Monterey County Recorder on September 1, 2005 (Series #2005091639). Any such use of the premises shall and must be consistent with the terms, conditions and restrictions of the Quitclaim Deed. Tenant, by signing this Lease, acknowledges that it has received and reviewed a copy of the Quitclaim Deed and will abide by its terms.
17. **Mitigated Negative Declaration & Use Permit.** This Lease and Tenant's use of the Premises shall be subject to the terms, conditions and restrictions set forth in the Mitigated Negative Declaration adopted by the City's Planning Commission on June 23, 2005, and the Use Permit approved by the City's Planning Commission on November 10, 2005. All mitigation measures contained in the Mitigated Negative Declaration are hereby incorporated into this Lease by this reference.
18. **Post-Acquisition Tenancy.** Tenant acknowledges that the tenancy created by this Lease is a post-acquisition tenancy under state and federal relocation law. As such, Tenant is not eligible to receive relocation benefits upon termination. City or RDA will inform Tenant concerning the projected displacement date required for future development of the Property.
19. **Termination by Prior Right of the United States.** Neither RDA nor the City make any representation of the title and if, for any reason, the Lease should terminate because of prior rights reserved by the United States Government, then all improvements and property brought onto the Premises by Tenant shall be removed by Tenant within sixty (60) days of exercise of said prior rights.

20. **Property Rules & Regulations.** From and after the date first written above, the RDA releases to Tenant the use of the Property and Tenant accepts the Property, and agrees to comply with all of the following conditions:

a) With respect to activities related to the Property, the Tenant covenants for itself, its successors and assigns, that the Tenant, and such successors and assigns, shall not discriminate upon the basis of race, color, religion, sex, age, handicap, or national origin in the use, occupancy, sale or lease of the Property, or in their employment practices conducted thereon in violation of the provisions of Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. Section 2000d); the Age Discrimination Act of 1975 (42 U.S.C. Section 6102); and the Rehabilitation Act of 1973, as amended, (29 U.S.C. Section 794). The RDA or City shall be deemed beneficiaries of this covenant without regard to whether RDA remains the owner of any land or interest therein in the locality of the leased Property, and either shall have the right to enforce this covenant in any court of competent jurisdiction. In the event of breach of any of the above nondiscrimination covenant, RDA shall have the right to terminate this Agreement and to reenter and repossess the Premises and hold the same as if this Lease had never been made or issued.

b) Tenant agrees that it shall insert these provisions regarding nondiscrimination in any agreement by which the Tenant grants a right or privilege to any person, firm or corporation to render accommodations or services to the public.

c) Tenant will not do or permit to be done upon the premises any act or thing which constitute waste or nuisance and agrees that within seventy-two (72) hours from receiving written notice by the RDA or City that such condition exists, to abate or otherwise cause said condition to be cured. In the event Tenant has not taken corrective action within seventy-two (72) hours, the City may enter and abate said condition at the expense of Tenant without any liability whatsoever to City for monetary loss of Tenant or others.

d) Tenant shall have the right, at its expense, to place in or on the Premises a sign or signs identifying Tenant. Sign or signs shall be of a size, shape and design, and at a location or locations, approved in advance by the City and in conformance with any overall directional graphics or sign program established by the City. City's approval shall not be withheld unreasonably. Notwithstanding any other provision of this Lease, any signs shall remain the property of Tenant. Tenant shall remove, at its own expense, all lettering, signs and placards so erected on the Premises upon termination of this Lease.

e) Tenant shall have the right, at its expense, to place in or on the Premises fencing, trade fixtures, furnishings, personal property, equipment and materials necessary to any use authorized hereunder. Said fencing, trade fixtures, furnishings, personal property, equipment and materials will remain the property of Tenant and will be removed upon termination of Tenant's occupancy.

f) Tenant will comply with all federal, state and local laws, rules and regulations which may apply to the conduct of the activities provided for and authorized hereunder. Tenant will maintain in effect and post in a prominent place all necessary or required licenses, including a City of Marina Business License, or permits, prior to commencing operations. Tenant shall be

responsible for any improvements required for permit approval. Neither the RDA nor City shall have any obligation to make any such required improvements. In the event Tenant cannot or elects not to undertake any improvements required for permit approval as required by federal, state or local laws, rules and regulations, in that event Tenant shall provide thirty (30) days written notice of its intention to vacate the Premises and to terminate this Lease.

g) Tenant will prepare an Emergency Action/Fire Protection Plan. A current plan shall be kept on file with the City's Department of Public Safety.

h) Tenant agrees at its own expense to keep and maintain upon the Premises such portable fire extinguishers of such number type and material as may be prescribed from time to time by the regulations of the City's Department of Public Safety.

i) Any damage to the Premises as a result of Tenant's activities shall be repaired and Premises shall be returned to its condition as of August 5, 2005, the commencement date of the Interim Lease, with the following exceptions: a) reasonable wear and tear; b) damage by the elements not caused by Tenant's negligence and c) those improvements and modification for which permits have been issued by the City and which have been approved as completed and signed off by the City's building inspector.

j) Tenant shall, in good faith use its best efforts to efficiently utilize the facilities covered by this Lease in a competent and efficient manner and remain cognizant that a primary purpose for the RDA in entering into this Lease is to promote the rehabilitation, maintenance and development of former Fort Ord properties.

21. Acceptance of Premises.

a) Tenant understands that the Premises were formerly used by the federal government as part of an Army base, that surrounding lands which were also part of such Army base have, in the past been found to contain concentrations of volatile organic chemicals which exceed standards prescribed by the environmental agencies and the state and federal governments. (The groundwater beneath former Fort Ord Parcels E4.1.1, E4.2, E4.3.1, and E17 is contaminated with volatile organic compounds ("VOCs"), primarily trichloroethene ("TCE"), associated with Operable Unit 2 ("OU2"). The maximum estimated concentration of TCE in the groundwater beneath the Property is 43.7 ug/L.) Tenant shall not interfere with any response action being taken on the Property or interrupt, relocate, or interfere with any remediation system now or in the future located on, over, through, or across any portion of the Property.

b) The Tenant is hereby informed and does acknowledge that pesticides may be present on the Property. To the best of the RDA's knowledge, the presence of pesticides does not currently pose a threat to human health or the environment, and the use and application of any pesticide product was in accordance with its intended purpose.

c) The Tenant is hereby informed and does acknowledge that friable and nonfriable asbestos or asbestos-containing material ("ACM") have been found on Fort Ord property, as described in the Environmental Baseline Survey and the referenced asbestos survey. The interior asbestos does not present a "release or threat of release into the environment" as defined by CERCLA.

d) The Tenant covenants and agrees that its use of the Property will be in compliance with all applicable laws relating to asbestos; and that neither the RDA, the City nor FORA assume any liability for future remediation of asbestos or damages for personal injury, illness, disability, or death, which arises from exposure after the date of this Lease, arising from or incident to the purchase, transportation, removal, handling, use, disposition, or other activity causing or leading to contact of any kind whatsoever with asbestos on the Property, whether the Tenant have properly warned or failed to properly warn the individual(s) injured.

e) Unprotected or unregulated exposures to asbestos in product manufacturing, shipyard, building construction workplaces have been associated with asbestos-related diseases. Both the Occupational Safety and Health Administration ("OSHA") and the EPA regulate asbestos because of the potential hazards associated with exposure to airborne asbestos fibers. Both OSHA and EPA have determined that such exposure increases the risk of asbestos-related diseases, which include certain cancers and which can result in disability or death.

f) The Tenant acknowledges that it has inspected the Property as to its asbestos content and condition and any hazardous or environmental conditions relating thereto. The Tenant shall be deemed to have relied solely on its own judgment in assessing the overall condition of all or any portion of the Property, including, without limitation, any asbestos hazards or concerns.

g) No warranties, either express or implied, are given with regard to the condition of the Property, including, without limitation, whether the Property does or does not contain asbestos or is or is not safe for a particular purpose. The failure of the Tenant to inspect, or to be fully informed as to the condition of all or any portion of the Property offered, will not constitute grounds for any claim or demand against the United States, FORA, the RDA or the City, with respect to any asbestos hazards or concerns.

h) The Tenant further agrees to indemnify and hold harmless the United States and the RDA and the City, its councils, boards, commissions, officers, agents and employees, from and against all suits, claims, demands or actions, liabilities, judgments, costs and attorneys' fees arising out of, or in any manner predicated upon, exposure to asbestos on any portion of the Property which exposure occurs after this conveyance of the Property to the Tenant or any future remediation or abatement of asbestos or the need therefor. The Tenant's obligation hereunder shall apply whenever the United States, the RDA or the City incur costs or liabilities for actions giving rise to liability under this Section.

i) The Tenant is hereby informed and does acknowledge that all buildings on Fort Ord property, which were constructed or rehabilitated prior to 1978, are presumed to contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly.

j) Tenant acknowledges that RDA has granted to Tenant the right to review all maps and records of the old Army base presently on file in the office of the City's Planning Department as well as the right to inspect the Premises and perform any tests of the soils and improvements thereon or the groundwater thereunder, all in order to afford Tenant a full and complete opportunity to investigate and determine whether the Premises can be used for the purposes intended.

22. **No Warranty.** Tenant further understands and agrees that no representation, statement, or warranty, express or implied, has been made by or on behalf of the RDA or the City as to the condition of the Premises or the suitability of the Premises for the intended use, save and except for the representation and warranty that neither the RDA or any City officer, employee, or agent has caused any condition of pollution or contamination which may now exist. Such representation and warranty, however, shall not extend to any condition of pollution or contamination caused by the federal government, the Tenant or by any other contractor or tenant of RDA or City. Tenant agrees to accept the premises in their present condition and "as is" with respect to all conditions which may now exist. Moreover, Tenant agrees to waive any claim or right of action against the RDA or the City which Tenant now has or hereafter may acquire arising out of the condition of the soils or the groundwater underlying the property, including but not limited to any claim of indemnity which Tenant may have by reason of costs incurred by Tenant arising out of the abatement or cleanup of any pollution or contamination condition discovered on the premises hereinafter required under applicable state, federal or city laws or regulations save and except for a claim or right of action arising out of a condition of pollution or contamination caused by an officer, employee or agent of the RDA or the City.

23. **Hazardous Materials Study.**

a) Prior to its occupancy of the Premises, Tenant may, at its sole option but without obligation and at its sole cost and expense, arrange for a hazardous materials study of the property. RDA shall provide Tenant any documents, drawings and data in its possession relating to environmental analysis of the property. Tenant and RDA agree that, upon occupancy, neither the RDA or the City shall have any further obligation under this Lease to remove any hazardous materials in, on or under the property, including any required remediation identified in any study Tenant may chose to make, prior to, or after Tenants occupancy of the premises.

b) In the event that hazardous materials are discovered on or under the property which materially affect Tenant's ability to safely utilize the Premises for the purpose provided for herein, neither the RDA, the City nor the Tenant shall have any liability for removal of anything not brought onto the premises by Tenant and Tenant may terminate this agreement upon thirty (30) days prior written notice to the RDA.

24. **Hazardous Substances.** Pursuant to California Health and Safety Code §25359.7, Tenant shall notify RDA in writing within a reasonable time, of any material release of hazardous substances and of any hazardous substances that have come to be located on or beneath the property.

25. **Removal.** Prior to the expiration of this Lease or when terminated earlier by either party in accordance with its terms, Tenant shall at its sole expense, remove all items of personal property, brought onto the premises by the Tenant as defined by state or federal law.
26. **Inspection of Records.** Tenant shall make available for inspection to the RDA or the City, all records relating to the release, mitigation and cleanup for any hazardous substances on the premises.
27. **Compliance.** Tenant shall comply with all federal, state and local laws and regulations relating to hazardous materials and wastes, and shall timely comply with the orders of any governmental agencies relating thereto or shall provide thirty (30) days prior written notice of its intent to exercise its rights as provided herein to vacate the Premises and terminate this Lease.
28. **Right to Inspect.** The RDA or the City, in its proprietary capacity, agrees to give reasonable notice in accordance with the general laws of the City, prior to entering upon and inspecting the Premises at any time.
29. **Improvements to Property.** During the term of this Lease, Tenant must not make any additions or alterations to the Premises without the prior written consent of the City, such consent not to be unreasonably withheld. Moreover, upon receiving consent to make an addition or alteration to the improvements on the property, and except as provided herein, Tenant shall not commence work on the construction or installation of such added or altered improvements until plans and specifications for same have been submitted to and approved by the City's Department of Public Works and other Department as may be required.
30. **Performance and Payment Bonds.** Tenant shall cause to be made, executed and delivered to RDA prior to the date of commencement of any work in or on the Premises, performance and payment bonds approved as to form and as to surety by the RDA, with Tenant's contractor or contractors as principal, and the RDA and the City specifically named as additional insureds, each in the sum of one hundred percent (100%) of the amount of the contract for all work costing in excess of \$10,000.00 for a) the said required work in accordance with the approved plans and specifications and b) to provide that if Tenant or its contractor or contractors fail to pay for any materials, provisions or other supplies, used in or upon, for or about the performance of the work to be done, or for any work or labor thereon of any kind, that the surety will pay the same, in an amount not exceeding the sum specified in the bond, and also, in case suit is brought upon the bond, a reasonable attorney's fee as set by the court.
31. **Title to Improvements.** Upon termination of this Lease all additions or alterations to the Premises made by Tenant will remain the Tenant's property; provided, however, that upon termination of this Agreement, the RDA will have the option to require Tenant to promptly remove any or all of its property and to restore the Premises to substantially the same condition as it was on August 9, 2005, all at Tenant's sole cost and expense.

32. **Tenant's Obligations Under this Lease.**

- a) Maintenance, dust control, sweeping and keeping clear of refuse. Tenant will promptly repair any damage to sidewalks, driveways, asphalt parking areas, or components, or to other paved surfaces when such damage is caused by Tenant or its invitees.
- b) Tenant shall arrange for trash and waste removal services.
- c) Other general maintenance and upkeep of the premises not specified herein.

33. **Destruction of Substantial Damage of Premises.** If, during the term of this Lease, the Premises or any part thereof are substantially damaged or destroyed by a fire or other casualty beyond Tenant's control (but not including damage caused by the wilful acts or negligence of Tenant or Tenant's employees which damage Tenant shall promptly repair, replace or restore at Tenant's sole cost and expense), this Lease shall terminate. Tenant shall be released thereby without further obligation to the RDA or the City upon surrender of possession of the premises, except for obligations which have theretofore accrued and are then unpaid or unperformed.

34. **Provision of Utilities.**

a) During the term of this Lease, Tenant shall have the right to connect the Premises and facilities appurtenant thereto to the existing utilities at its sole cost and expense. Tenant shall arrange for and pay for the installation of required meters for electric, gas and water and shall pay any connection fees. The City shall make available to Tenant maps in its possession showing the location of sewer, water, electrical, gas and telephone lines located near the Premises. Tenant shall be responsible for arranging and paying for all utilities required to serve the Premises. The RDA will use its best efforts to continue all utility services as they presently exist, but cannot and does not guarantee that there will be no interruptions of service at all and Tenant hereby waives any rights or claims it may have resulting from temporary interruptions of service. To the extent it has knowledge, the RDA or the City will provide notice of any work scheduled which may interrupt the utility service to the property.

b) If RDA or the City are unable to provide access to utility service facilities due to the imposition of any limit on consumption or on the construction of additional utility facilities, or the allocation or curtailment of utility facilities or service by law or regulation, neither of them shall have any obligation hereunder.

35. **Payment of Utilities.** Tenant agrees to pay directly to the utility providers for all utility services provided under the terms of any contract between the Tenant and the utility provider and to the City for all utility services provided under the terms of any contract between the RDA or the City and a utility provider which serve the Premises through existing lines and connections. Tenant shall not be responsible to pay for any existing or preexisting utility charges incurred by

others. Tenant shall be responsible to provide and pay for all new connection equipment and any fees required. Tenant shall pay all utility charges within twenty (20) days of receipt of invoice and shall provide evidence of payment when requested to do so in writing by the RDA. In the event Tenant fails to pay any utility bill when due, the RDA may, at its option, pay the same and collect from Tenant's performance deposit the amounts so disbursed, plus interest at the rate of 1½% per month or fraction thereof.

36. **Compliance with Regulations of Local Agencies.** It shall be the responsibility of the Tenant under this Lease to contact, consult and comply with any regulation applicable to Tenant's activities on the Property which are now or may be promulgated by a local public or private utility provider or regulator having jurisdiction over activities or utility services, including, but not limited to, the Marina Coast Water District, the Monterey Regional Water Pollution Control Agency, Pacific Gas & Electric Company, Monterey Bay Unified Air Pollution Control District and the Fort Ord Reuse Authority.

37. **Indemnity.**

a) Tenant and RDA agree that the RDA and the City, their respective councils, boards and commissions, officers, employees, agents, and volunteers should, to the extent permitted by law, be fully protected from any loss, injury, damage, claim, lawsuits, cost, expense, attorneys fees, litigation costs, defense costs, court costs or any other cost arising out of or in any way related to the performance of this Agreement. Accordingly, the provisions of this indemnity provision are intended by the parties to be interpreted and construed to provide the fullest protection possible under the law to the RDA and the City. Tenant acknowledges that RDA would not enter into this agreement in the absence of the commitment from Tenant to indemnify and protect RDA and City as set forth here.

b) To the full extent permitted by law, Tenant shall defend, indemnify and hold harmless the RDA and the City, its council, boards and commissions, officers, employees, agents, and volunteers, from any liability, claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, reasonable attorney fees incurred by RDA or the City, court costs, interest, defense costs including expert witness fees and any other costs or expenses of any kind whatsoever without restriction or limitation incurred in relation to, as a consequence of or arising out of or in any way attributable actually, allegedly or impliedly, in whole or in part to the performance of this Lease. All obligations under this provision are to be paid by Tenant as they are incurred by the RDA or the City.

c) Without affecting the rights of the RDA or the City under any provision of this Lease or this Section, Tenant shall not be required to indemnify and hold harmless RDA or the City, as set forth above, for liability attributable to the sole fault of RDA or the City, provided such sole fault is determined by agreement between the parties or the findings of a court of competent jurisdiction. This exception will apply only in instances where either the RDA or the City is shown to have been solely at fault.

d) The obligations of Tenant under this or any other provision of this Lease will not be limited by the provisions of any workers' compensation act or similar act. Tenant expressly waives its statutory immunity under such statutes or laws as to RDA and the City, their respective councils, boards and commissions, officers, employees, agents, and volunteers.

e) Tenant agrees to obtain executed indemnity agreements with provisions identical to those set forth in this section from any assignee, subcontractor or any other person or entity involved by, for, with or on behalf of Tenant in the performance or subject matter of this Lease. In the event Tenant fails to obtain such indemnity obligations from others as required here, Tenant agrees to be fully responsible according to the terms of this Section.

f) Failure of the RDA to monitor compliance with these requirements imposes no additional obligations on RDA and will in no way act as a waiver of any rights hereunder. This obligation to indemnify and defend RDA and City as set forth herein is binding on the successors, assigns, or heirs of Tenant and shall survive the termination of this Lease or this Section.

38. **Insurance.** Tenant is the insuring party, and as such agrees that it will provide and it will require its contractors to provide insurance in accordance with the requirements set forth here. The following coverages will be provided by Tenant and maintained on behalf of the RDA and the City and in accordance with the requirements set forth herein.

a) **Commercial General Liability/Umbrella Insurance.** Primary insurance shall be provided on an ISO or ACCORD form acceptable to the RDA (in no event will RDA accept an endorsement form with an edition date later than 1990). Total limits shall be no less than one million dollars per occurrence for all coverages and two million dollars general aggregate. RDA and the City and their respective councils, boards and commissions, officers, employees, agents and volunteers shall be added as additional insureds using an ISO or ACCORD additional insured endorsement form (in no event will RDA accept an endorsement form with an edition date later than 1990). Coverage shall apply on a primary non-contributing basis in relation to any other insurance or self-insurance, primary or excess, available to the RDA or the City or any agent of RDA or the City. Coverage shall not be limited to the vicarious liability or supervisory role of any additional insured. Umbrella Liability Insurance (over primary) shall apply to bodily injury/property damage, personal injury/advertising injury, at a minimum, and shall include a "drop down" provision providing primary coverage above a maximum \$25,000.00 self-insured retention for liability not covered by primary policies but covered by the umbrella policy. Coverage shall be following form to any underlying coverage. Coverage shall be provided on a "pay on behalf" basis, with defense costs payable in addition to policy limits. There shall be no cross liability exclusion. Policies shall have concurrent starting and ending dates.

b) **Business Auto/Umbrella Liability Insurance.** Primary coverage shall be written on an ISO or ACCORD business auto coverage form acceptable to the City including symbol 1 (Any Auto). Limits shall be no less than five hundred thousand dollars (\$500,000.00) per accident. Starting and ending dates shall be concurrent. RDA and the City, their councils, boards and

commissions, officers, employees, agents and volunteers shall be added as additional insureds using an ISO or ACCORD additional insured endorsement form (in no event will RDA accept an endorsement form with an edition date later than 1990).

c) **Workers' Compensation/Employers' Liability.** Workers' compensation and employers' liability coverage shall be written on a policy form providing workers' compensation statutory benefits as required by law and if Tenant has any employees. Employers' liability limits shall be no less than one million dollars (\$1,000,000.00) per accident or disease. Employers' liability coverage shall be scheduled under any umbrella policy described above. Unless otherwise agreed, this policy shall be endorsed to waive any right of subrogation as respects the RDA or the City, their respective councils, boards and commissions, officers, employees, agents and volunteers.

d) Tenant and RDA further agree as follows:

i) This section supersedes all other sections and provisions of this Lease to the extent that any other section or provision conflicts with or impairs the provisions of this section.

ii) Nothing contained in this Section is to be construed as affecting or altering the legal status of the parties to this Lease. The insurance requirements set forth in this Section are intended to be separate and distinct from any other provision in this Lease and shall be interpreted as such.

iii) All insurance coverage and limits provided pursuant to this Lease shall apply to the full extent of the policies involved, available or applicable. Nothing contained in this Lease or any other agreement relating to the RDA or the City or their operations limits the application of such insurance coverage.

iv) Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only and is not intended by any party to be all inclusive, or to the exclusion of other coverage, or a waiver of any type.

v) For purposes of insurance coverage only, this Lease will be deemed to have been executed immediately upon any party hereto taking any steps that can be deemed to be in furtherance of or towards performance of this Lease.

vi) All general or auto liability insurance coverage provided pursuant to this Lease, or any other agreements pertaining to the performance of this Lease, shall not prohibit Tenant, Tenant's employees, or agents from waiving the right of subrogation prior to a loss. Tenant hereby waives all rights of subrogation against the RDA and City.

vii) Unless otherwise approved by RDA, Tenant's insurance shall be written by insurers authorized to do business in the State of California with a minimum "Best's" Insurance Guide Rating of "A:VII." Self-insurance will not be considered to comply with these insurance specifications.

viii) In the event any policy of insurance required under this Lease does not comply with these requirements or is canceled and not replaced, RDA has the right but not the duty to obtain the insurance it deems necessary and any premium paid by RDA or City will be promptly reimbursed by Tenant.

ix) Tenant agrees to provide evidence of the insurance required herein, satisfactory to RDA, consisting of certificate(s) of insurance evidencing all of the coverages required and an additional endorsement to Tenant's general liability, auto and umbrella liability policies using ISO or ACCORD forms. Certificate(s) are to reflect that the insurer will provide thirty (30) days notice of any cancellation of coverage. Tenant agrees to require its insurer to modify such certificates to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, and to delete the word "endeavor" with regard to any notice provisions. Tenant agrees to provide complete copies of policies to RDA upon request.

x) Tenant shall provide proof that policies of insurance required herein expiring during the term of this Lease have been renewed or replaced with other policies providing at least the same coverage. Such proof will be furnished at least two weeks prior to the expiration of the coverages.

xi) Any actual or alleged failure on the part of the RDA or any other additional insured under these requirements to obtain proof of insurance required under this Lease in no way waives any right or remedy of RDA or City or any additional insured, in this or any other regard.

xii) Tenant agrees to require all subcontractors or other parties hired for this project to provide general liability insurance naming as additional insureds all parties to this Lease. Tenant agrees to obtain certificates evidencing such coverage and make reasonable efforts to ensure that such coverage is provided as required here. Tenant agrees to require that no contract used by any subcontractor, or contracts Tenant enters into on behalf of RDA, will reserve the right to charge back to RDA or City the cost of insurance required by this Lease. Tenant agrees that upon request, all agreements with subcontractors or others with whom Contractor contracts with, will be submitted to RDA for review. Failure of RDA to request copies of such agreements will not impose any liability on RDA or the City, their respective councils, boards and commissions, officers, employees, agents and volunteers.

xiii) As Tenant is a Limited Liability Company, general liability coverage must be amended so that the Limited Liability Company and its Managers, Affiliates, employees, agents and other persons necessary or incidental to its operation are insureds.

xiv) Tenant agrees to provide immediate notice to RDA and the City of any claim or loss against Tenant that includes RDA or the City as a defendant. Neither the RDA nor the City shall assume any obligation or liability by such notice, but each has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve the RDA or the City.

39. **Review of Insurance Coverage.** RDA is entitled at any time during the term of this Lease to review the type, form and coverage limits of the insurance requirements. If in the opinion of the RDA, the insurance provisions of this Lease are not sufficient to provide adequate protection for the RDA or the City and the members of the public, the RDA may require Tenant to maintain insurance sufficient to provide such adequate protection. Insurance requirements shall be applied uniformly to all parties engaged in similar-type operations on former Fort Ord properties, and such requirements shall be consistent with industry standards. RDA shall notify Tenant in writing of any changes in the insurance provisions necessary to provide adequate protection. If Tenant does not deposit acceptable certificates evidencing valid insurance policies acceptable in form and content to the RDA, incorporating such changes within sixty (60) days of receipt of such notice this Lease will be in default. The procuring of such policy of insurance will not be construed to be a limitation upon Tenant's liability nor as a full performance of its part of the indemnification provisions of this Agreement; Tenant's obligation being, notwithstanding said policy or policies of insurance, the full and total amount of any damage, injury or loss caused by the negligence or neglect connected with its operations under this Lease.

40. **Liens and Claims.** Tenant shall not suffer or permit to be enforced against the RDA's title to the property, or any part thereof, any lien, claim or demand arising from any work of construction, repair, restoration, maintenance or removal as herein provided, or otherwise arising (except liens, claims or demands suffered by or arising from the actions of the RDA or the City).

41. **Tenant to Pay Liens & Claims.** Tenant shall pay all such liens, claims and demands before any action is brought to enforce same against said land. Tenant agrees to hold RDA and City and said land free and harmless from all liability for any and all such liens, claims or demands, together with all costs and expenses in connection therewith.

42. **Payment of Liens & Claims by RDA.** Should Tenant fail or refuse to pay any lien, claim, or demand arising out of the construction, repair, restoration maintenance and use of the Premises or any other claim, charge or demand which Tenant has agreed to pay under the covenants of this Lease, Tenant shall, within thirty (30) days written notice from RDA to Tenant of its said encumbrance, pay and discharge the same or shall furnish to RDA, in a form satisfactory to RDA, sufficient security for such lien, claim or demand and all costs and expenses in connection therewith. Should Tenant or its said encumbrancer within said thirty (30) day period, not pay and discharge said lien, claim or demand, or not provide said security to RDA, then City RDA, at its option, either treat such failure or refusal as a breach of or default under this Lease, or may pay any such lien, claim, charge or demand, or settle or discharge any action

therefore or judgement thereon, and all costs, expenses and other sums incurred or paid by RDA in connection therewith must be repaid to RDA by Tenant upon written demand, together with interest thereon at the rate of 10%, per annum from the date of payment until repaid, and any default in such repayment will constitute a breach of the covenants and conditions of this Lease.

43. **Assignments, Transfers and Encumbrances.** Tenant shall not sell, assign, transfer, or encumber this Agreement or any interest of Tenant in and to the property without the prior written consent of the RDA, such consent not to be unreasonably withheld. It is expressly agreed between the RDA and Tenant that Tenant shall not pledge any interest in this Agreement to secure repayment of any debt.

44. **Compliance with Laws, Permits and Licenses.** Tenant's business will be conducted and maintained in strict compliance with all applicable laws, ordinances, regulations, and other requirements of federal, state, county, city or other governmental agencies having jurisdiction over the Premises. Similarly, Tenant will obtain and pay for all necessary permits, licenses and other consents for the operation of Tenant's business including a City of Marina Business License. A refusal or failure by the City to issue any permit, license or approval sought by the Tenant shall not constitute a breach of this Lease, whether or not any such refusal or failure was wrongful. Tenant's sole remedy for a wrongful refusal or failure by the City to issue any permit, license or approval sought by Tenant shall be a petition for writ of mandate; and such a refusal or failure by the City shall not give rise to an action for money damages by the Tenant. Tenant represents and warrants that it has full power and authority to enter into this Lease and perform hereunder, and holds all permits and licenses which are required by law or regulation for complete performance in accordance with the terms of this Lease.

45. **Independent Status.** Tenant is an independent entity. Tenant is solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors, if any. Nothing in this Lease will be construed as creating a partnership or joint venture between City and Tenant. Neither Tenant nor its officers, employees, agents or subcontractors shall obtain any rights to retirement or other benefits which accrue to City employees.

46. **Dispute Resolution.** The parties agree that if any dispute arises over the interpretation or performance of this Lease, the parties will first attempt to negotiate any such dispute informally. If such informal negotiation fails, and if the parties mutually agree at the time, the parties may then submit the dispute for formal mediation to the American Arbitration Association (AAA) or the Judicial Arbitration and Mediation Services (JAMS), or such other mediation service as the parties may mutually agree upon. Expenses of such mediation shall be shared equally between the parties.

47. **Confidentiality.** To the extent allowed by law, the RDA shall not disclose Tenant's financial statement or confidential financial position, or any records which are the basis of the gross sale portion of the rent calculation. Tenant acknowledges that the RDA is a municipal corporation and has limited powers to withhold information from the public.

48. **Attorney's Fees and Costs.** Should the dispute of the parties not be resolved by negotiation or mediation, and in the event it should become necessary for either party to enforce or interpret any of the terms and conditions of this Lease by means of court action or administrative enforcement, the laws of the State of California shall govern the interpretation of the terms and conditions of this Lease and such action shall be brought in a court of proper jurisdiction in Monterey County. The prevailing party, in addition to any other remedy at law or in equity available to such party, will be awarded all reasonable costs and reasonable attorney's fees in connection therewith, including the fees and costs of experts reasonably consulted by the attorneys for the prevailing party.

49. **Litigation Involving Agreement.** In the event the RDA or the City are made a party to any litigation concerning this Lease or the premises by reason of any act or omission by Tenant, Tenant shall hold the RDA and City harmless from all loss or liability, including reasonable attorney's fees, incurred by the RDA or City in such litigation.

50. **Bankruptcy and Insolvency.** If Tenant, at any time during the term of this Lease, becomes insolvent, or if proceedings in bankruptcy are instituted by or against Tenant, or if Tenant is adjudged bankrupt or insolvent by any court, or if a receiver or trustee in bankruptcy or a receiver of any property of Tenant is appointed in any suit or proceeding brought by or against Tenant, or if Tenant makes any assignment for the benefit of creditors, then in each and every case, this Lease and the rights and privileges granted hereunder will immediately cease, terminate and be forfeited and canceled provided, however, that if Tenant, within six (6) days after the filing and service on Tenant of any involuntary petition in bankruptcy or for appointment of a receiver, commences proper proceedings to dismiss or deny the petition or vacate the receivership and expeditiously pursues and diligently exhausts all proper remedies toward that end, the bankruptcy or receivership may not constitute a default until the entry of a final determination adverse to Tenant.

51. **Force Majeure; Waiver.** Tenant will not be in default under this Lease in the event that the activities of Tenant are temporarily interrupted for any of the following reasons: riots; war or national emergency declared by the President or Congress and affecting the City of Marina; sabotage; civil disturbance; insurrection; explosion; natural disasters such as floods, earthquakes, landslides; strikes, lockouts and other labor disturbances or other catastrophic events which are beyond the reasonable control of Tenant. "Other catastrophic events" does not include the financial ability of Tenant to perform or failure of Tenant to obtain any necessary permits or licenses from other governmental agencies or the right to use facilities of any public entity where such failure occurs because Tenant has failed to exercise reasonable diligence.

52. **Abandonment.** Tenant must not vacate or abandon the Property or any part of the Premises for a period in excess of thirty (30) days during any time during the term of this Lease. If Tenant abandons, vacates or surrenders the premises or is dispossessed by process of law or otherwise, any property belonging to Tenant and left on the property may be deemed, at the option of City, to be abandoned. Upon relinquishing possession, Tenant will be in default of this Lease and RDA is entitled to terminate this Lease and Tenant's rights in and to the Premises in the manner hereinafter provided by this Lease.

53. **Default.** Tenant will be deemed in default under this Lease:

- a) Upon breach of any of the covenants and conditions of the Quitclaim Deed from the United States with respect to discrimination on the grounds of race, creed, color, national origin, sex, or age; with respect to economic discrimination; with respect to physical disability; with respect to the sale, assignment, transfer, encumbrance, or subletting of the property which is the subject matter of this Lease without the RDA's prior written consent; with respect to the bankruptcy or insolvency of Tenant; or, with respect to any other covenant or condition of this Lease, which breach cannot be cured, within forty-eight (48) hours upon being given notice thereof by RDA.
- b) Upon failure to pay any fees or any other consideration required under this Lease to be paid by Tenant to RDA within ten (10) days following the date those obligations are due, or upon failure to provide evidence of the insurance when due, within forty-eight (48) hours after being given notice thereof by RDA.
- c) Upon the breach of any of Tenant's other duties and obligations under this Lease, which breach can be cured, if such breach is not cured within forty-eight (48) hours after being given written notice thereof by RDA.

54. **Remedies on Default**

- a) **RDA's Right to Terminate Lease.** Upon Tenant's default of this Lease, RDA is entitled, after reasonable notice to Tenant which notice provides Tenant with the statutorily required minimum time to cure any default in rent and which provides a reasonable time to cure any other type of default, to terminate this Lease as well as Tenant's rights in and to the Premises, to enter upon and retake possession of the Premises, including all improvements thereon and facilities appurtenant thereto, by legal proceedings or otherwise, and to recover from Tenant, at the time of such termination, the excess, if any, of the amount of any rent to be paid by Tenant under this Lease.
- b) **Other Remedies.** All rights, options, and remedies of RDA contained in this Lease will be construed and held to be cumulative and not one of them will be exclusive of the other, and RDA will have the right to pursue any one or all of such remedies or any other remedy or relief which may be provided for by law, whether or not stated in this Lease.

55. **Waiver of Default.** Any waiver by RDA of a default of this Lease arising out of the breach of any of the covenants, conditions, or restrictions of this Lease will not be construed or held to be a waiver of any succeeding or preceding default arising out of a breach of the same or any other covenant, condition, or restriction of this Lease.

56. **City's Right of Entry.** The City, in its proprietary capacity, reserves the right to inspect the Premises and agrees to give reasonable notice in accordance with the general laws of the City, prior to entering upon and inspecting the Premises at any time. Tenant shall permit City and any agents and employees of City to enter the Premises at all reasonable times for the purpose of

inspecting the same, or for the purpose of posting notices of non-responsibility for improvements, alterations, additions, or repairs, without any rebate of fees and without any liability to Tenant for any loss of occupation or quiet enjoyment of the Premises thereby occasioned. The City will attempt to provide 24-hours notice to Tenant prior to any such non-emergency entry.

57. **Notices.** All notices required or permitted to be given under this Lease shall be in writing and must be personally delivered or United States certified mail, postage prepaid, return receipt requested, addressed as follows:

To RDA: Redevelopment Agency of the City of Marina
City Hall
Office of the Executive Director
211 Hillcrest Avenue
Marina, California 93933
Telecopier: (831) 384-9148

Copy to: City Attorney
City of Marina
Law Offices of Robert R. Wellington
857 Cass Street, Suite D.
Monterey, California 93940
Telecopier Number: (831) 373-7106

To Tenant: Las Animas Concrete, LLC
Attn: Mr. Bart J. Bruno
192 Healy
Marina, California 93933
Telecopier Number: (831)883-1372

or to such other address as either party may from time-to-time designate by notice to the other given in accordance with this Section. Notice will be deemed effective on the date personally served or, if mailed, three business days from the date such notice is deposited in the United States mail.

58. **Amendment or Modification.** This Lease may be amended, altered or modified only by a writing, specifying such amendment, alteration or modification, executed by authorized representatives of both of the parties hereto.

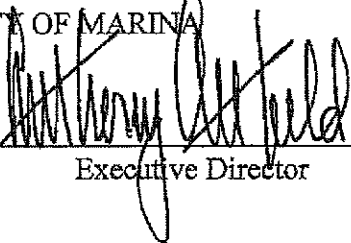
59. **Construction of Lease.** Whenever the singular number is used in this Lease and when required by the context, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders. If there is more than one Tenant designated in or signatory to this Lease, the obligations hereunder imposed upon Tenant are joint and several; and the term "Tenant" as used herein refers to each and every of said signatory parties, severally as well as jointly.

60. **Covenant & Condition.** Each term and provision of this Lease performable by Tenant or by the RDA shall be construed to be both a covenant and a condition.
61. **Time.** Time is and shall be of the essence of each term and provision of this Lease.
62. **Heirs and Successors.** All of the covenants, agreements, conditions and undertakings herein contained shall apply to and bind the representatives, heirs, executor, administrators, or successors-in-interest of all the parties hereto and all the parties hereto will be jointly and severally liable hereunder.
63. **Further Actions.** Each of the parties agree to execute and deliver to the other such documents and instruments, and to take such actions, as may reasonably be required to give effect to the terms and conditions of this Lease including such information and reports as may be required by the RDA or City for inclusion in any report to the Army or FORA.
64. **Interpretation.** This Lease has been negotiated by and between the representatives of both parties. Accordingly, any rule of law (including Civil Code §1654) or legal decision that would require interpretation of any ambiguities in this Lease against the party that has drafted it is not applicable and is waived. The provisions of this Lease shall be interpreted in a reasonable manner to affect the purpose of the parties and this Lease.
65. **Captions.** Titles or captions of the sections contained in this Lease are inserted only as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provision of it.
66. **Severability.** If any of the provisions of this Lease are determined to be invalid or unenforceable, those provisions shall be deemed severable from the remainder of this Lease and will not cause the invalidity or unenforceability of the remainder of this Lease, unless this Lease without the severed provisions would frustrate a material purpose of either party in entering into this Lease.
67. **Waiver.** No waiver of any right or obligation of either party hereto will be effective unless made in a writing, specifying such waiver and executed by the party against whom such waiver is sought to be enforced. A waiver by either party of any of its rights under this Lease on any occasion will not bar the exercise of the same right on any subsequent occasion or of any other right at any time.
68. **Counterparts.** This Lease may be executed in two or more counterparts, each of which will be deemed an original, but any of which will be deemed to constitute one and the same instrument.

69. **Entire Agreement.** This Lease constitutes the entire and complete agreement between the parties regarding the subject matter hereof, and supersedes all prior or contemporaneous negotiations, understandings or agreements of the parties, whether written or oral, with respect to the subject matter.

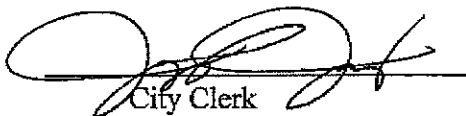
IN WITNESS WHEREOF, this Lease has been executed by the duly authorized officers or representatives of each of the parties.

REDEVELOPMENT AGENCY OF THE
CITY OF MARINA

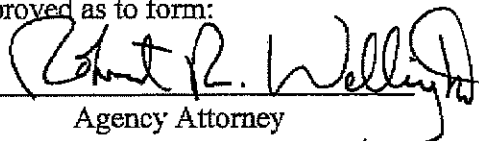
By: 
Executive Director

Date: 1.26.06

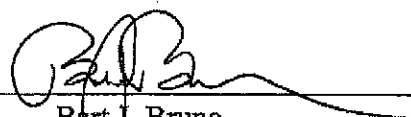
Attest:


City Clerk

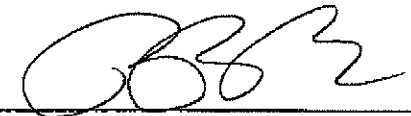
Approved as to form:


Agency Attorney

LAS ANIMAS CONCRETE, LLC

By: 
Bart J. Bruno
Its: Member

Date: 1/25/06

By: 
Paul B. Bruno
Its: Chief Financial Officer

Date: 1/25/06

EXHIBIT TO BE ATTACHED

EXHIBIT A

A PLAT OF THE PROPERTY
WHICH IS THE SUBJECT OF THIS AGREEMENT

EXHIBIT A

EXHIBIT B

Σ 80,714

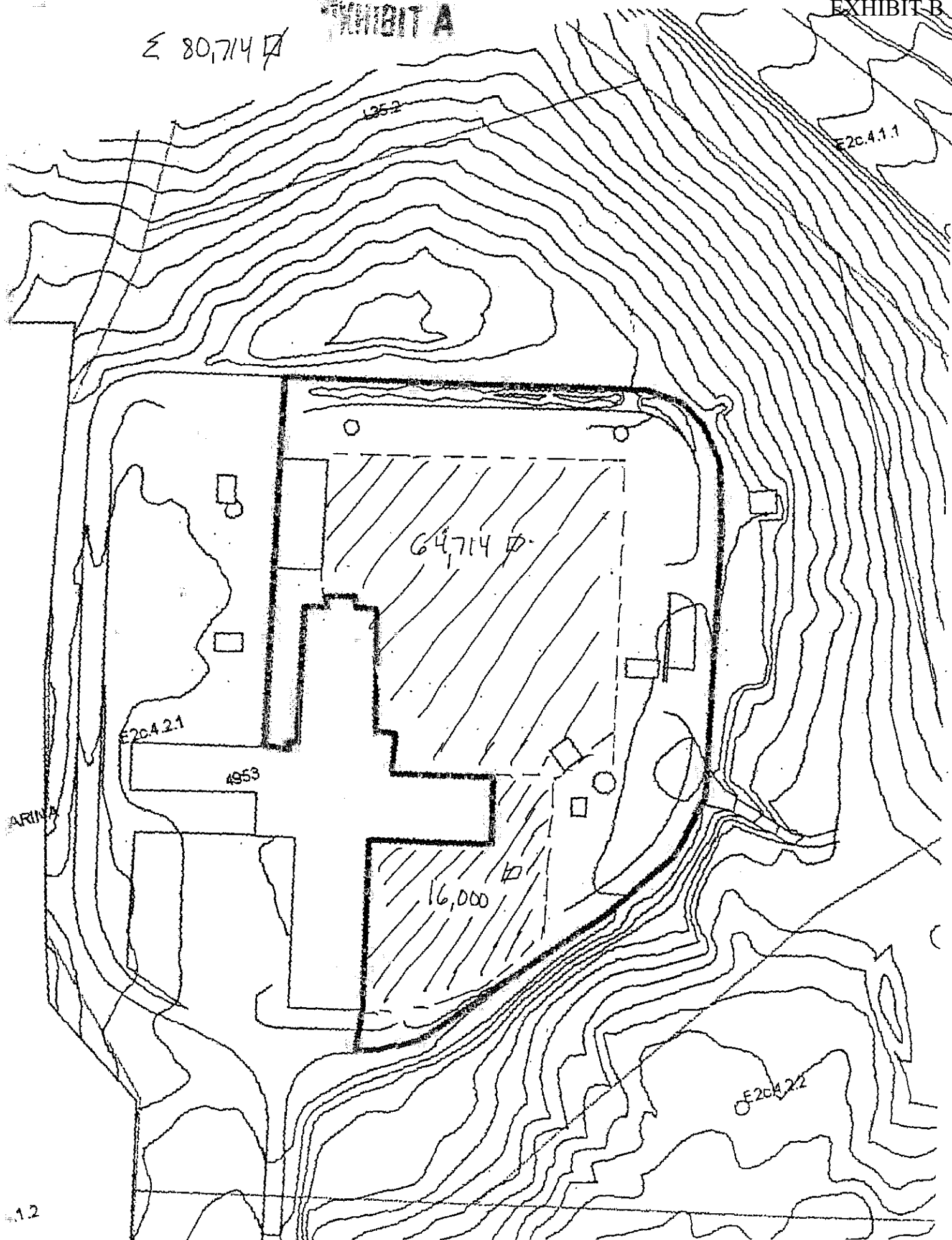


EXHIBIT B

AMENDMENT NO. 1 TO
LEASE FOR CONCRETE BATCH PLANT
BETWEEN THE REDEVELOPMENT AGENCY OF THE CITY OF MARINA
AND LAS ANIMAS CONCRETE, LLC

Only changes described and the numbered paragraphs of said Agreement which are being modified below or otherwise revised are set forth in this Amendment. All other terms and conditions remain the same.

1. **Title.** The title of the Lease is deleted and amended to read "Lease Agreement for Concrete Batch Plant"

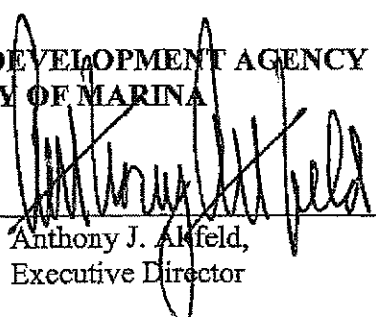
2. **Section 6. Term** is revised to read as follows:

The term of this Agreement shall be for seven (7) years, commencing on February 5, 2006, contingent upon the term of the Use Permit. This Lease may be terminated at any time by mutual agreement of the parties with thirty (30) days prior written notice.

Conditional Option to Extend Term. Tenant is hereby granted the conditional right and option to renew and extend the term of this Lease for an additional period of two (2) years only, following the expiration date hereof, February 4, 2013, provided that upon that on execution of such option this Lease is still in full force and effect at the time and that Tenant is not in default under any of the terms of this Lease. The option may be exercised by the Tenant by its giving written notice of its intent to exercise the option to the RDA Executive Director not sooner than one year and not later than six months prior to the expiration of the initial term hereof. The terms and conditions of the extended two (2) year option to extend the term of the Lease shall be the same as are provided herein, except that the monthly rate to be paid by the Tenant for the optional term shall be based upon the RDA's determination, in its sole discretion, of the then current fair market value for other similar industrial properties in the local area.

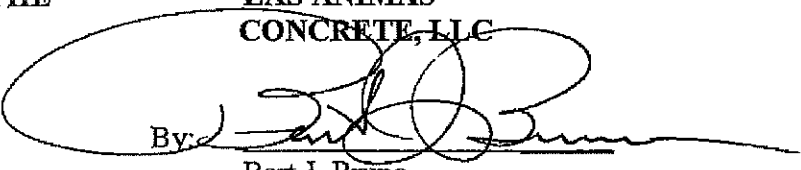
IN WITNESS WHEREOF, Contractor and the City of Marina by their duly authorized representatives, have executed this Amendment, on the dates written below at Marina, California.

REDEVELOPMENT AGENCY OF THE
CITY OF MARINA

By: 

Anthony J. Akfeld,
Executive Director

LAS ANIMAS
CONCRETE, LLC

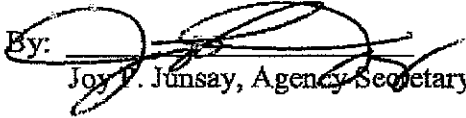
By: 

Bart J. Bruno

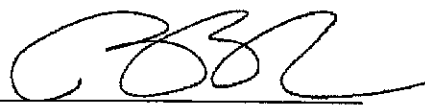
Date: 09-29-08

Date: 9/15/08

Attest: Pursuant to Resolution No.. 2008-22(MRA)

By: 

Joy V. Junsay, Agency Secretary

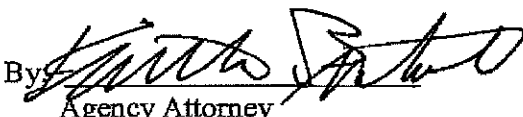
By: 

Paul B. Bruno

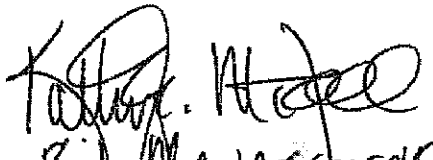
Its: Chief Financial Officer

Date: 9/15/08

Approved as to form:

By: 

Agency Attorney


Katherine H. H. H.
Risk MANAGEMENT
CITY of MARINA



CITY OF MARINA

211 Hillcrest Avenue
Marina, CA 93933
831-884-1278; FAX 831-384-9148
www.ci.marina.ca.us

September 30, 2008

Mr. Bart Bruno
192 Healy Ave.
Marina, CA 93933

Re: Amendment # 1 to Las Animas Concrete Batch Plant Lease

Dear Mr. Bruno

Enclosed is a fully executed Amendment #1 to the lease agreement for Las Animas Concrete for your files.

Should you have any questions please contact Mr. Doug Yount, Development Services Director directly at (831) 384-7324.

Sincerely,


Anita Sharp
Administrative Assistant
City of Marina

AMENDMENT NO. 1 TO
LEASE FOR CONCRETE BATCH PLANT
BETWEEN THE REDEVELOPMENT AGENCY OF THE CITY OF MARINA
AND LAS ANIMAS CONCRETE, LLC

Only changes described and the numbered paragraphs of said Agreement which are being modified below or otherwise revised are set forth in this Amendment. All other terms and conditions remain the same.

1. **Title.** The title of the Lease is deleted and amended to read "Lease Agreement for Concrete Batch Plant"

2. **Section 6. Term** is revised to read as follows:

The term of this Agreement shall be for seven (7) years, commencing on February 5, 2006, contingent upon the term of the Use Permit. This Lease may be terminated at any time by mutual agreement of the parties with thirty (30) days prior written notice.

Conditional Option to Extend Term. Tenant is hereby granted the conditional right and option to renew and extend the term of this Lease for an additional period of two (2) years only, following the expiration date hereof, February 4, 2013, provided that upon that on execution of such option this Lease is still in full force and effect at the time and that Tenant is not in default under any of the terms of this Lease. The option may be exercised by the Tenant by its giving written notice of its intent to exercise the option to the RDA Executive Director not sooner than one year and not later than six months prior to the expiration of the initial term hereof. The terms and conditions of the extended two (2) year option to extend the term of the Lease shall be the same as are provided herein, except that the monthly rate to be paid by the Tenant for the optional term shall be based upon the RDA's determination, in its sole discretion, of the then current fair market value for other similar industrial properties in the local area.

IN WITNESS WHEREOF, Contractor and the City of Marina by their duly authorized representatives, have executed this Amendment, on the dates written below at Marina, California.

REDEVELOPMENT AGENCY OF THE
CITY OF MARINA

By: _____

Anthony J. Attfeld,
Executive Director

Date: _____

09.29.08

LAS ANIMAS
CONCRETE, LLC

By: _____

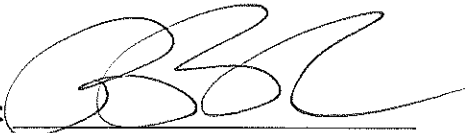
Bart J. Bruno

Date: _____

9/15/08

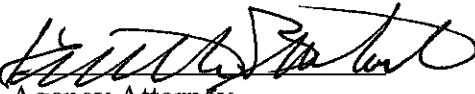
Attest: Pursuant to Resolution No.. 2008-22(MRA)

By: _____
Joy P. Junsay, Agency Secretary

By: 
Paul B. Bruno
Its: Chief Financial Officer

Date: 9/15/08

Approved as to form:

By: 
Agency Attorney



CITY OF MARINA

211 Hillcrest Avenue

Marina, CA 93933

831-884-1278; FAX 831-384-9148

www.ci.marina.ca.us

CERTIFICATE OF THE CITY CLERK

I, ANITA SHARP, ACTING DEPUTY CLERK OF THE CITY OF MARINA, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of City Council **Resolution No. 2012-104**, approving Amendment No. 2 to the Lease Agreement ("Lease") between the City of Marina and Las Animas Concrete, LLC, of Marina, California, for a lease term extension to February 4, 2017; and authorizing the Interim City Manager to execute Amendment No. 2 to the Lease with Las Animas Concrete, LLC, on behalf of the City subject to final review and approval by the City Attorney, adopted by the City Council of the City of Marina at a adjourned regular meeting duly held on the 3RD day of July 2012 and that the original appears on record in the office of the City Clerk.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MARINA

Date: July 9, 2012

A handwritten signature in cursive script, reading "Anita Sharp", is written over a horizontal line.

Anita Sharp, Acting Deputy City Clerk

A RESOLUTION APPROVING AMENDMENT NO. 2 TO THE LEASE AGREEMENT BETWEEN THE CITY OF MARINA AND LAS ANIMAS CONCRETE, LLC, OF MARINA, CALIFORNIA, FOR A LEASE TERM EXTENSION TO FEBRUARY 4, 2017, AND AUTHORIZING THE INTERIM CITY MANAGER TO EXECUTE AMENDMENT NO. 2 TO THE LEASE AGREEMENT WITH LAS ANIMAS CONCRETE, LLC, ON BEHALF OF THE CITY SUBJECT TO FINAL REVIEW AND APPROVAL BY THE CITY ATTORNEY

WHEREAS, Las Animas Concrete, LLC ("Las Animas") leases real property consisting of approximately 80,714 square feet (1.85 acres) of property and facilities thereon (the "Property"), located on the south side of Imjin Parkway near Imjin Road at 499 Ninth Street, owned by the City of Marina (the "City"), and;

WHEREAS, on January 19, 2006, the Redevelopment Agency of the City of Marina ("RDA") approved a Lease Agreement with the terms of a five-year lease, with one two-year tenant option, pursuant to which the RDA would lease the Property to Las Animas and Las Animas would operate a concrete batch plant on the Property, and;

WHEREAS, the lease term was considered reasonable and anticipated to be long enough to allow Las Animas to amortize their investment in the site, given a projected level of construction activity, and;

WHEREAS, in September 2008, Amendment No. 1 to the Lease Agreement was approved, extending the original lease term from five years to seven years, due to the economic downturn which led to an extension of construction schedules and the sales needed to amortize the capital investment that Las Animas had made in the site, and;

WHEREAS, operation of a concrete batch plant within the City's Business Park Zoning District, the zoning district in which the project is located, requires approval of a Conditional Use Permit (CUP). A CUP for the plant's operation was originally approved by the City's Planning Commission at its November 10, 2005 regular meeting. The Planning Commission, at its April 12, 2012 regular meeting, extended the validity of the CUP for five years through April 12, 2017, and;

WHEREAS, the former Stockade site was owned by the Redevelopment Agency at the time of the original Lease Agreement; however, on March 10, 2011, via quitclaim deed, the Agency granted the former Stockade site to the City. The City, therefore, is party to the proposed Amendment No. 2 of the Lease Agreement, and;

WHEREAS, the proposed Amendment No. 2 extends the term of the Lease Agreement two years beyond the existing tenant option, through February 4, 2017, but does not include an option to extend the lease further. Amendment No. 2 conforms the term of the lease with the duration of the recently approved CUP, and;

WHEREAS, Amendment No. 2 to the lease agreement does not affect monthly rent payments or any other terms of the lease agreement, and;

WHEREAS, as required per agreement, 50% of all lease revenues must be shared with Fort Ord Reuse Authority ("FORA"), and;

Resolution No. 2012-104

Page Two

WHEREAS, lease revenues are anticipated to be recorded in the FY12-13 Budget, General Fund 11, Economic Development Division 116, Rental/Lease Income, Account No. 11.116.54320.

NOW, THEREFORE, BE IT RESOLVED that the City of Marina does hereby:

1. Approve Amendment No. 2 to the Lease Agreement between the City of Marina and Las Animas Concrete, LLC of Marina, California, for a lease extension of to February 4, 2017, and;
2. Authorize the City Manager to execute Amendment No. 2 to the Lease Agreement with Las Animas, LLC, on behalf of the City, subject to final review and approval by the City Attorney.

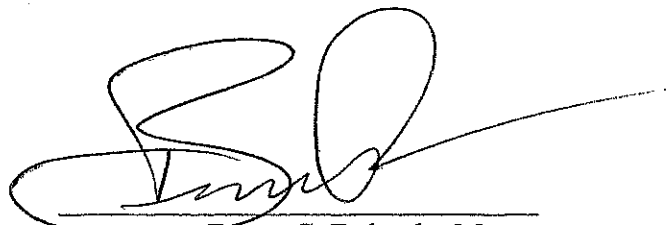
PASSED AND ADOPTED by the City Council of the City of Marina at a regular meeting duly held on the 3rd day of July 2012, by the following vote:

AYES: COUNCIL MEMBERS: Amadeo, Brown, Ford

NOES: COUNCIL MEMBERS: O'Connell, Delgado

ABSTAIN: COUNCIL MEMBERS: None

ABSENT: COUNCIL MEMBERS: None



Bruce C. Delgado, Mayor

ATTEST:



Anita Sharp, Acting Deputy City Clerk

**AMENDMENT NO. 2 TO
LEASE AGREEMENT FOR CONCRETE BATCH PLANT
BETWEEN THE CITY OF MARINA
AND LAS ANIMAS CONCRETE, LLC**

THIS SECOND AMENDMENT TO THE LEASE AGREEMENT FOR CONCRETE BATCH PLANT ("Amendment No. 2") is made this ____ day of June 2012, by and between the CITY OF MARINA, a municipal corporation of the State of California ("City"), as the successor-in-interest to the Redevelopment Agency of the City of Marina, and LAS ANIMAS CONCRETE, LLC, A California limited liability company ("Tenant").

Recitals

A. On August 9, 2005, the City of Marina (the "City"), acting as the agent of the Fort Ord Reuse Authority ("FORA"), entered into that certain "Lease Agreement for Concrete Batch Plant" (the "Interim Lease").

B. On August 31, 2005, the Redevelopment Agency of the City of Marina ("RDA") accepted a Quitclaim Deed from the Fort Ord Reuse Authority ("FORA") for real property which includes the property leased to the Tenant by the Interim Lease, which continued as a direct lease from the City, through the RDA, to the Tenant.

C. The Interim Lease was terminated on February 5, 2006, upon the execution of the 5-Year Lease Agreement for Concrete Batch Plant ("5-Year Lease") which was effective that date between the RDA and the Tennant.

D. On September 29, 2008, the RDA and the Tenant entered into Amendment No. 1 to Lease for Concrete Batch Plant ("Amendment No. 1") which provided for: (1) changing the title of the 5-Year Lease to "Lease Agreement for Concrete Batch Plant"; amending the term of the 5-Year Agreement to provide for a term of seven years commencing on February 5, 2006 and terminating February 4, 2013, contingent upon the term of the Use Permit; granting to the Tenant a conditional right and option to extend the term of the 5-Year Lease for an additional period of two years following the expiration date of February 4, 2013.

E. On March __, 2011, by Quitclaim Deed ("2011 Quitclaim Deed") the RDA granted the real property which is the subject of the 2006 Lease Agreement for Concrete Batch Plant ("2006 Lease") to the City.

E. Tenant desires to continue to occupy and utilize the Premises as a site for operating the Tenant's Concrete Batch Plant under the terms of the 2006 Lease as amended, modified.

F. The 2006 Lease provides that it may only be amended or modified in a writing executed by authorized representatives of both parties.

G. Only the number paragraphs of the 2006 Lease or Amendment No.1 which are being amended or modified are set forth in by this Amendment No. 2.

F. It is mutually agreed that the 2006 Lease continues upon and subject to its terms, covenants, conditions and provisions as added, amended and modified by Amendments No. 1 and Amendment No. 2 and Tenant covenants, as a material part of the consideration for the lease, to keep, perform, and comply with each and all of said terms, covenants, conditions and provisions to be kept, performed and complied with, and this Amendment No. 2 is made upon the condition of such performance and compliance.

Terms & Conditions Amended & Added

1. Section 6 "Term" of the 2006 Lease, and as revised by Amendment No. 1, are both deleted in their entirety and replaced by 6. (b) to read as follows:

"6. (b) **Term.** The term of this Agreement shall be for eleven (11) years, commencing on February 5, 2006, and terminating on February 4, 2017. Tenant shall have no option to extend the term of the Lease. The Lease may be terminated at any time by mutual agreement of the parties with thirty (30) days prior written notice."

2. Section 70 "Attornment" added

"70. **Attornment.** Tenant shall attorn to the City, as the Grantee under the terms of the 2011 Quitclaim Deed which conveyed the Premises from the RDA to the City, and Tenant recognizes the City as the Landlord under the 2006 Lease Agreement for Concrete Batch Plant, as amended. All references in the Lease Agreement for Concrete Batch Plant to the Redevelopment Agency of the City of Marina or the RDA shall be construed and interpreted as being references to the City."

3. Section 2 of Amendment No. 1 to the 2006 Lease is of no further force or effect.

4. Except as herein amended and added, all terms and conditions of the 2006 Lease shall remain in full force and effect.

5. This Amendment No. 2 is executed in two duplicate originals, each of which is deemed to be an original. This Amendment consists of three pages.

IN WITNESS WHEREOF, Tenant and the City by their duly authorized representatives, have executed this Amendment No. 2 to Lease Agreement for Concrete Batch Plant, on the dates written below at Marina, California.

CITY OF MARINA

LAS ANIMAS CONCRETE, LLC

By: _____
Douglas A. Yount,
Interim City Manager

By: _____
Bart J. Bruno
President

Date: _____

Date: _____

By: _____
Paul B. Bruno
Its: Chief Financial Officer

Attest:

Anita Shepherd-Sharp
Acting Deputy City Clerk
Attest: (Pursuant to Resolution No.. 2012-_____

Approved as to form:

City Attorney

EXHIBIT C

RESOLUTION NO. 2024-20

RESOLUTION NO. 24-20 APPROVING CONDITIONAL USE PERMIT CU23-0002 TO ALLOW THE CONTINUED OPERATION OF AN EXISTING CONCRETE BATCH PLANT ON AN APPROXIMATELY THREE (3) ACRE SITE LOCATED AT 499 NINTH STREET (APN 031-201-014 AND -016) FOR THREE (3) YEARS WITH ONE (1) ADDITIONAL YEAR TO DISMANTLE OPERATIONS. THIS ACTION IS SUBJECT TO FINDINGS, CONDITIONS OF APPROVAL AND AN INITIAL STUDY / NEGATIVE DECLARATION (IS/ND) (SCH #2024080409) PREPARED FOR THE PROJECT.

WHEREAS, on June 27, 2005, the Planning Commission adopted a Mitigated Negative Declaration for the proposed project concluding that no impacts to any state protected area or area otherwise under the jurisdiction of the State will occur. Measures to ensure that any air quality impacts that may occur are maintained at a less than significant level have been incorporated into the conditions of approval of the Use Permit. These conditions protect adjacent land uses from potential air quality and noise impacts.

WHEREAS, on November 10, 2005, the Marina Planning Commission adopted Resolution No. 2005-09, adopting findings, conditions, and approving a Use Permit for five (5) years for Las Animas Concrete Batch Plant to operate.

WHEREAS, on April 12, 2012, the Marina Planning Commission adopted Resolution No. 2012-03 approving the extension of the Use Permit (UP 2012-04) for the operation of a concrete batch plant for a second 5-year period.. The second Use Permit expired on April 12, 2017.

WHEREAS, in 2023, Las Animas met with the City to renew their lease. In reviewing the permit history for this site, staff discovered that the Use Permit was expired and informed Las Animas that a new Use Permit would be required to continue operating at this location.

WHEREAS, on October 19, 2023, the applicant submitted application materials for a new Conditional Use Permit (CU 23-0002) to allow Las Animas to continue operation for three (3) years with one (1) additional year for decommissioning the site as described below (**Exhibit A**).

WHEREAS, the Planning Commission, at a duly noticed public hearing October 24, 2024, carefully considered all of the information presented to it, including the staff report and information submitted at the public hearing by interested persons;

WHEREAS, notice is hereby given that decisions of the Planning Commission are appealable to the City Council within 10 days of the date of this action pursuant to Marina Municipal Code Section 17.58.050;

WHEREAS, the Commission expressed concern that both the applicant and City have allowed the operation to occur after expiration of the last permit and in violation of certain aspects of the Marina Municipal Code (MMC). The Commission requests that the approved uses be monitored by the City and required to remain in compliance with the MMC and conditions of approval;

WHEREAS, Public Resources Code Section 21080.c and California Environmental Quality Act (CEQA) Guidelines Section 15070 require the lead agency shall adopt a Negative Declaration when there is a less than significant effect on the environment. In compliance with the California Environmental Quality Act, a Draft Initial Study Negative Declaration (IS/ND)

(SCH No. 2024080409) (Exhibit B) has been prepared and publicly circulated for a period of 30 days (August 9, 2024, through September 9, 2024) and has been submitted for review and consideration by the Planning Commission. The City of Marina Planning Commission has reviewed the Initial Study for the project and adopts the Negative Declaration determination under the California Environmental Quality Act (CEQA) for this project (SCH #: 2024080409).

Further, the City of Marina Planning Commission has determined that this project, including continued operation of the concrete batch processing plant and decommissioning of the site, is exempt from environmental review in accordance with the California Environmental Quality Act (CEQA) under Class 1, Section 15301 for Existing Facilities; and

NOW, THEREFORE BE IT RESOLVED by the Planning Commission of the City of Marina hereby approves Conditional Use Permit CU23-0002 to allow the continued operation of an existing concrete batch plant on an approximately three (3) acre site located at 499 Ninth Street (APN 031-201-016 and 031-201-014) for three (3) years with one (1) additional year to dismantle operations. This action is subject to findings, conditions of approval and the Initial Study / Negative Declaration (IS/ND) (SCH #2024080409) prepared for the project, as described herein and as shown on Exhibit A Application Materials, Exhibit B Negative Declaration, Exhibit C Findings, and Exhibit D Conditions of Approval attached hereto.

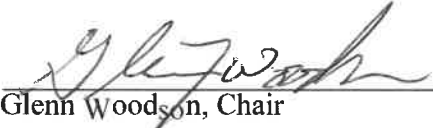
PASSED AND ADOPTED by the Planning Commission of the City of Marina at a regular meeting duly held on the 24th day of October, 2024, by the following vote:

AYES, COMMISSIONERS: BARON, RANA, WALTON, WOODSON, ST. JOHN, JACOBSEN

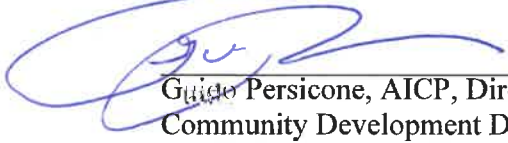
NOES, COMMISSIONERS:

ABSENT, COMMISSIONERS:

ABSTAIN, COMMISSIONERS:


Glenn Woodson, Chair

ATTEST:


Guido Persicone, AICP, Director
Community Development Department

Exhibits:

- A. Application Materials
- B. Negative Declaration (SCH #2024080409)
- C. Findings
- D. Conditions of Approval

EXHIBIT A

Application Materials
(On Separate Sheet)



HEAD OFFICE:
146 ENCINAL ST.
SANTA CRUZ, CA 95060 USA
P.O. BOX 507
SANTA CRUZ, CA 95061 USA
Fax: 831-426-6346
Phone: 831-426-7280

MARINA:
499 9TH ST.
MARINA, CA 93933 USA
P.O. BOX 517
SANTA CRUZ, CA 95061 USA
Fax: 831-883-3043
Phone: 831-883-3040

Additional Operational Information:

Las Animas Concrete LLC typically has 4 different tractor-trailer trucks delivering material each day. On any given day, each truck will do 3 or 4 loads. All Deliveries are between 5:30 AM and 4 PM.

Las Animas Concrete, LLC has 12 mixer trucks that do 4 loads each day on average. All trucks are batched between 5:30 AM and 4 PM

Night time operation is typically rare. We usually do not work nights however, we are contracted to do night work on occasion. When we have a night job it can last for a few weeks at a time.

Las Animas Concrete has 14 employees maximum onsite at Marina.

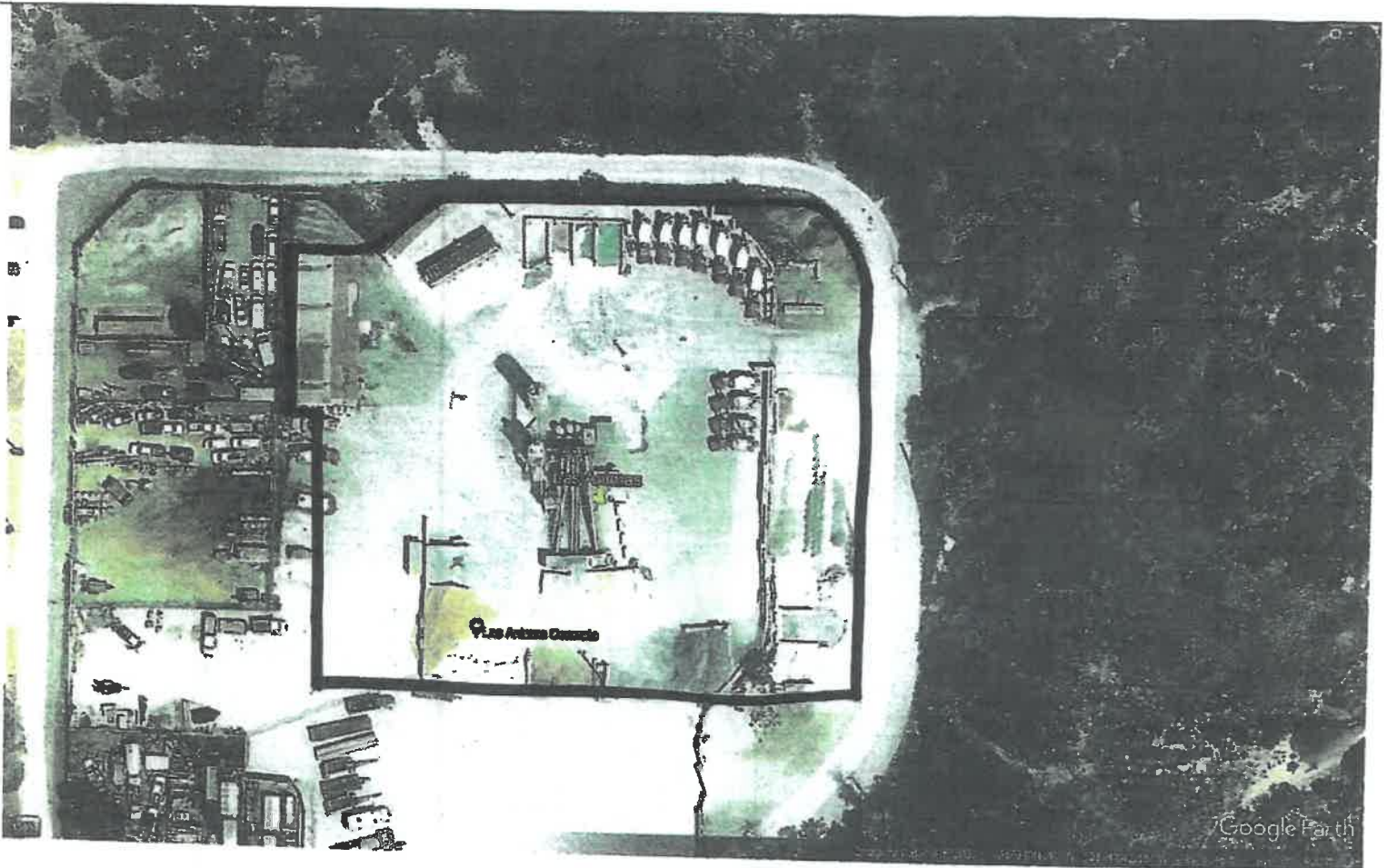


HEAD OFFICE:
146 ENCINAL ST.
SANTA CRUZ, CA 95060 USA
P.O.BOX 507
SANTA CRUZ, CA 95061 USA
Fax: 831-426-6346
Phone: 831-426-7280

MARINA:
499 9TH ST.
MARINA, CA 93933 USA
P.O.BOX 517
SANTA CRUZ, CA 95061 USA
Fax: 831-883-3043
Phone: 831-883-3040



APN: 031 201 016 000





HEAD OFFICE:
146 ENCINAL ST.
SANTA CRUZ, CA 95060 USA
P.O.BOX 507
SANTA CRUZ, CA 95061 USA
Fax: 831-426-6346
Phone: 831-426-7280

MARINA:
499 9TH ST.
MARINA, CA 93933 USA
P.O.BOX 517
SANTA CRUZ, CA 95061 USA
Fax: 831-883-3043
Phone: 831-883-3040

PLOT PLAN

499 9th Street Marina CA

APN: 031 201 016 000

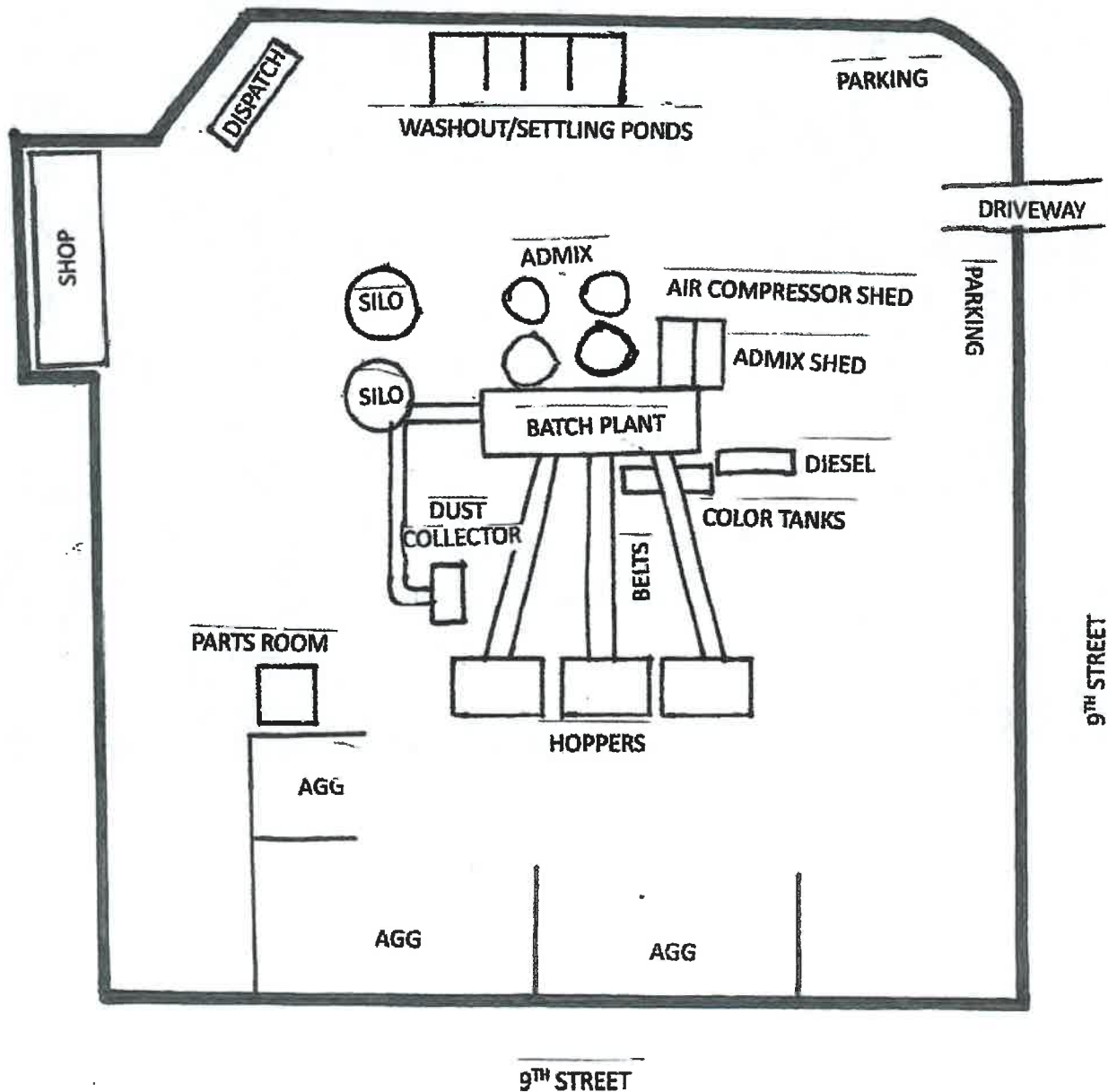


EXHIBIT B

On File with the City of Marina

Documents are also on the City of Marina's Environmental Review webpage (during project review): <https://www.cityofmarina.org/945/Environmental-Review>

EXHIBIT C**FINDINGS****Consistency with the Zoning Code**

General findings for consideration of a use permit (17.58.040):

- 1) *That the establishment, maintenance or operation of the use will not be detrimental to the health, safety, peace, morals, comfort, and general welfare of persons residing or working in the neighborhood.*

Evidence: The proposed use, including the exception for limited nighttime operations, as conditioned herein shall not have a significant impact on persons residing or working in the neighborhood.

General Plan Compliance

Consistency with the General Plan

- 1) General Plan Policy 2.75 – Permitted Industrial Uses states:

“The following uses shall be permitted unless explicitly excluded by the policies and conditions for specific areas. Permitted industrial uses include the following: 1. Custom manufacturing such as small-scale manufacturing, processing, assembling, packaging, or treatment of specialized goods, such as precision equipment, scientific instruments, art objects, hand-crafted goods, and specialized printing and publishing. 2. Light manufacturing involving processing, assembling, fabrication, or packaging in an operation that does not create smoke, odor, dust, sound, vibration, or lighting to a degree that might be noxious or offensive to people residing or conducting businesses in the vicinity. 3. Warehousing involving the storage and distribution of raw, unfinished, and manufactured products with on-premise sales limited primarily to wholesale transactions and mini-storage serving private individuals or firms.”

Evidence: The proposed use is consistent with the permitted industrial uses allowed in the general plan as it will continue to operate a concrete batch processing plant where they process and distribute materials to construction and infrastructure projects within the surrounding area.

- 2) General Plan Policy 2.76.5, Paragraph 6 of Community Goals states:

“The potential for adverse impacts of industrial and commercial-services upon residential uses has been addressed principally by the physical separation of these areas from areas which have a significant level of existing residential use or potential for such use.”

Evidence: The proposed project to continue operation of a batch concrete processing plant, which is separated from adjacent residential uses. The technical analysis identified the nearest residential land uses as being located approximately 485 feet northeast of the project site, across Imjin Parkway. Residential land uses are also located to the west of the project site approximately 950 feet away along California Drive. CSUMB's Promontory apartments are located approximately 1,175 feet south of the project site (AMBIENT, 2024b).

California Environmental Quality Act (CEQA) Negative Declaration Findings

Public Resources Code Section 21080.c and California Environmental Quality Act (CEQA) Guidelines Section 15070 require that the lead agency adopt a Negative Declaration when there is a less than significant effect on the environment.

1. The Initial Study / Negative Declaration of environmental impact were released for the public review and the project as proposed and designed would have less than significant effect on the environment.
2. There is no substantial evidence in light of the whole record before the City of Marina that the project may have a significant effect on the environment.
3. The Planning Commission has read and considered the Initial Study/Negative Declaration, and any comments thereon, and has determined the Initial Study/Negative Declaration reflect the independent judgment of the City and was prepared in accordance with CEQA requirements.

Further, this project, including continued operation of the concrete batch processing plant and decommissioning of the site, is exempt from environmental review in accordance with the California Environmental Quality Act (CEQA) under Class 1, Section 15301 for Existing Facilities and the demolition is exempt under CEQA Guidelines Section 15268 Ministerial Projects.

EXHIBIT D**CONDITIONS OF APPROVAL**

1. Approved Use – The permittee shall execute and operate the project in accordance with the approved application materials and plans received on November 9, 2023, as amended by the following conditions of approval. Any deviation from approvals must be reviewed and approved by staff and may require separate approval from the Planning Commission and/or further environmental review.
2. Effective Date, Expiration, and Extensions – The use permit as proposed expires after three (3) years from the date of issuance of this permit. Las Animas will then have up to one (1) year after the expiration of the permit, to decommission the site and remove the equipment and buildings in coordination with the City of Marina. The site shall be returned to the City of Marina in the state that it was first leased or as agreed upon in the lease agreement. This approval shall become effective immediately, except when an appeal period applies pursuant to Marina Municipal Code (MMC) Chapter 17.70 in which case actions shall become effective ten (10) days after the approval date provided that no appeal is filed. Approval shall expire one-year from the Approval date, or from the date of the final decision in the event of an appeal, unless within such period a complete building permit application has been filed with the Community Development Department, or the authorized activities have commenced in the case of a permit not involving construction. Upon written request and payment of appropriate fees submitted no later than the expiration date of this Approval, the Community Development Director or designee may grant a one-year extension of this date, with additional extensions subject to approval by the approving body. Expiration of any necessary building permit or other construction-related permit for this project may invalidate this Approval if said Approval has also expired. If litigation is filed challenging this Approval or its implementation, then the time period stated above for obtaining necessary permits for construction, commencement of authorized activities, and/or the expiration of the permit / decommission of the site is automatically extended for the duration of the litigation.
3. Compliance with Other Requirements – The permittee shall comply with all other applicable federal, state, regional, and local laws, codes, requirements, regulations, and guidelines. Compliance with other applicable requirements may require changes to the approved use and/or plans. These changes shall be processed in accordance with the procedures contained in Condition #4.
4. Modifications – Any modification to the approved project, site plan, conditions of approval, or use requires consistency review and approval by Planning Staff. Major revisions may require review and approval by the original approving body or a new independent permit.
5. Compliance with Conditions of Approval – The permittee shall be responsible for compliance with all Conditions of Approval. The City reserves the right at any time during construction to require certification by a licensed professional at the permittee's expense that the as-built project conforms to all applicable requirements. Violation of any term, project description, or Condition of Approval is unlawful and prohibited. In the case of noncompliance with the requirements of a Use Permit, Marina Municipal Code (MMC) Section 17.58.060 allows for the revocation of said permit. The City reserves the right to initiate civil and/or criminal enforcement and/or abatement proceedings where violations are present, consistent with MMC Chapters 1.08, 1.10 and 1.12.

6. Revocation – Where one or more project Conditions of Approval are not met, or where a project was approved on the basis of false material information given willfully, intentionally or negligently by the permittee, the appropriate authority may revoke or modify the approval for the project.
7. Indemnification – To the extent allowable by law, the permittee agrees to hold the City harmless from costs and expenses, including attorney's fees, incurred by the City or held to be the liability of the City in connection with the City's defense of its actions in any proceeding brought in any state or federal court challenging the City's actions with respect to the project. The permittee understands and acknowledges that the City is under no obligation to defend any legal actions challenging the City's actions with respect to the project.
8. Violation of Code – Any person who does any work or uses, occupies, or maintains any building or structure, or causes the same to be done, or does any grading, contrary to or in violation of Title 15, Buildings and Construction, or of any of the uniform codes adopted by Title 15 is guilty of an infraction pursuant to Marina Municipal Code (MMC) Section 15.04.060.
9. Enforcement – In the event that the use results in increased service calls, other public nuisance or violation of any code of law, the City may bring this Use Permit before the Planning Commission for possible revocation.

10. Truck Traffic Circulation – Truck operations shall be restricted to the approved circulation plan as shown in the diagram to the right. The route trucks must take is 9th St. from the site, left onto California Dr., right onto 8th St., and a left onto Imjin Rd. out to Imjin Pkwy. Cement trucks shall not use Fourth Ave. or California Ave. until such time as California Ave. is opened to the public, then this shall be the preferred route (no trucks shall use Fourth Ave.)



11. Hours of Operation – the use shall be limited to operating between 6:00 am to 5:00 pm on weekdays, 7:00 am to 5:00 pm on Saturdays.
12. Night operations – Nighttime operation shall be defined as operating between 10:00 pm and 6:00 am on weekdays and between 7:00 pm and 7:00 am on Saturday. No nightwork shall be permitted on Sundays. Las Animas is allowed no more than three (3) nighttime operational uses per year at ten (10) day intervals.
13. Monterey Bay Air Resources District (MBARD) Permit – Applicant / Owner shall continue to operate in compliance with its existing Permit to Operate from MBARD and maintain continued compliance with all conditions of the permit. Further, the decommissioning of the site shall abide by all MBARD requirements for air quality.

14. Lease Agreement – Applicant / Owner shall acquire lease approval from the City and maintain the property according to the terms and conditions of the lease.
15. Notice of Determination – Within 5 business days from the date of the Planning Commission's action upon the use permit the applicant shall submit a check payable to the "Monterey County Clerk" in the amount of \$2,966.75 for filing the required CEQA notice of determination (subject to the current fee County's Assessor fee schedule:
<https://www.countyofmonterey.gov/government/departments-a-h/assessor/fee-schedule>).
16. Site Maintenance – The project site shall be kept in a blight- and nuisance-free condition. Any existing blight or nuisance shall be abated within 30 days of approval. Further, no concrete shall be dumped to dry along 9th Street outside of the area directly adjacent to the fence. Further, the area directly adjacent to the fence must be maintained and cleaned regularly.
17. Lighting – Exterior lighting fixtures shall be adequately shielded to a point below the light bulb and reflector prevent unnecessary glare onto adjacent properties. After installation, the Community Development Director or designee shall retain the right to require reduction in the intensity of illumination or change of light color if said illumination creates any undue public nuisance.
18. Waste Receptacles – No storage of trash, recycling, or food waste receptacles shall be permitted within the public right-of-way. Receptacles shall be stored on site and screened from the public view. The permittee shall ensure that the requirements of Marina Municipal Code (MMC) Chapter 8.04 pertaining to recycling and solid waste disposal are met.
19. Operational Noise – Noise levels from the project site after completion of the project (i.e., during project operation) shall comply with the performance standards of Marina Municipal Code (MMC) Chapter 9.24. If noise levels exceed these standards, the activity causing the noise shall be abated until appropriate noise reduction measures have been installed and compliance verified by the City. Furthermore, the City of Marina Municipal Code (Title 15, Buildings and Construction, Chapter 15.04, Section 15.04.055) generally limits noise-generating construction activities to between the hours of 7:00 am and 7:00 pm Monday through Saturday (City, 2024a). For this site, noise generation is permitted to begin at 6:00 am Monday through Friday. The ordinance also limits noise-generating construction activities between 10:00 am and 7:00 pm on Sundays and holidays (AMBIENT, 2024b).
20. Decommissioning / Demolition of the Site – All decommissioning and demolition of all of the improvements the site shall occur during normal construction hours of 7:00 AM to 7:00 PM, and on Sundays and holidays between the hours of 10:00 AM and 7:00 PM as stated in Marina Municipal Code Section 15.04.055. Decommissioning the site shall not exceed the operational impact of the existing use or exceed the permitted trip count and approved truck route.
21. Permit Authorization and Signature – The Use Permit is not valid, and construction shall not commence until the below affidavit is signed and the approved Conditions are returned to the Community Development Department.
 - a. I attest to the truth and correctness of all the facts, exhibits, maps, and attachments presented with and made a part of the application for the assembly use with a caretaker unit at 3204 Eucalyptus Street.
 - b. I understand and agree to implement all conditions throughout the duration of the project.

- c. I acknowledge that any changes to the conditions of approval would require modification of the conditional use permit by the approval authority.

Permittee's Name:

Permittee's Signature:

Date:

- d. I am the owner of the property involved in this project, and I authorize the person named above to act on my behalf throughout the duration of the project.

Property Owner's Name:

Property Owner's Signature:

Date:

EXHIBIT D

AMENDED

LEASE AGREEMENT FOR CONCRETE BATCH PLANT

THIS LEASE AGREEMENT (“Lease” or “Agreement”) is made and entered into by and between the **CITY OF MARINA**, a municipal corporation of the State of California (“City”), and **LAS ANIMAS CONCRETE & BUILDING SUPPLY, INC.**, a California corporation (“Tenant”) on _____, 2025 for real property located at 499 Ninth Street (Assessor’s Parcel Numbers 031-201-014 and -016), as shown on **Exhibit A** (“Property” or “Premises”). The City and the Tenant are sometimes referred to herein collectively referred to as the “Parties,” as follows:

Recitals:

This Lease is entered into with reference to the following facts and circumstances, which are hereby found and determined by the Parties:

A. On August 9, 2005, the City, acting as the agent of the Fort Ord Reuse Authority (“FORA”), entered into that certain “Lease Agreement for Concrete Batch Plant” (the “Interim Lease”) with Tenant’s predecessor, Las Animas Concrete, LLC (“LAC LLC”).

B. On August 31, 2005, the City accepted a Quitclaim Deed from FORA for real property which includes the property leased to LAC LLC by the Interim Lease, which continued as a direct lease from the City, through the Redevelopment Agency of the City of Marina (“RDA”), to the Tenant.

C. The Interim Lease terminated on February 5, 2006, upon the execution of the 5-Year Lease Agreement for Concrete Batch Plant (“5-Year Lease”) which was effective that date between the RDA and the LAC LLC.

D. On September 29, 2008, the RDA and the LAC LLC entered into Amendment No. 1 to Lease for Concrete Batch Plant (“Amendment No. 1”), which provided for: (1) changing the title of the 5-Year Lease to “Lease Agreement for Concrete Batch Plant”; amending the term of the 5-Year Agreement to provide for a term of seven years commencing on February 5, 2006 and terminating February 4, 2013, contingent upon the term of the Use Permit; granting to the LAC LLC a conditional right and option to extend the term of the 5-Year Lease for an additional period of two years following the expiration date of February 4, 2013.

E. On March 10, 2011, by Quitclaim Deed (“2011 Quitclaim Deed”) the RDA granted the real property which is the subject of the 2006 Lease Agreement for Concrete Batch Plant (“2006 Lease”) to the City.

F. On July 3, 2012, the City and LAC LLC entered into the Second Amendment to the Lease Agreement for Concrete Batch Plant (“Amendment No. 2”), which provided for: (1) changing the term of the Agreement to eleven (11) years, commencing on February 5, 2006, and terminating on February 4, 2017; (2) establishing that LAC LLC shall have no option to extend the term of the Lease; and (3) establishing that the Lease terminated at any time by mutual

agreement of the parties with thirty (30) days prior written notice. The Lease, thus, terminated by its own terms on or about February 6, 2017.

G. In 2023, LAC LLC met with the City to renew its lease, and in reviewing the permit history for this site, staff discovered that the Use Permit was expired and informed Tenant that a new Use Permit would be required to continue operating at the Premises, defined below.

H. On October 19, 2023, LAC LLC submitted application materials for a new Conditional Use Permit (CU 23-002) ("CUP") to allow LAC LLC to continue operation for three (3) years with one (1) additional year for decommissioning the Tenant's Concrete Batch Plant ("Batch Plant") at the Premises.

I. On or about May 30, 2024, LAC LLC dissolved and the business was transferred to Tenant prior to that dissolution.

J. On October 24, 2024, the City of Marina Planning Commission ("Planning Commission"), at a duly noticed public hearing, considered all of the information presented to it, including the staff report and information submitted at the public hearing by interested persons. The Planning Commission adopted Resolution No. 24-20, approving the CUP to allow continued operation of the Batch Plant. The CUP is attached hereto as **Exhibit B** for reference purposes only.

K. Tenant desires to occupy and utilize the Premises as a site for operating the Batch Plant.

L. It is mutually agreed that this Lease is upon and subject to the following terms, covenants, conditions and provisions and Tenant covenants, as a material part of the consideration of this Lease, to keep, perform and comply with each and all of said terms, covenants, conditions and provisions to be kept, performed and complied with, and this Lease is made upon the condition of such performance and compliance.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, and the facts recited above, which are hereby incorporated into this Lease by reference, the Parties agree as follows:

Terms and Conditions

1. **Purpose.** The purpose of this Lease is to facilitate redevelopment, reuse and maintenance of land within the City and on former Fort Ord.

2. **Premises.**

The City hereby delivers to Tenant, and Tenant hereby accepts from the City this Lease for exclusive possession and use of the Premises and facilities, described as approximately 1.85 acres (80,714 s.f.) of minimally improved, graded land, located near Ninth Street, Fifth Avenue, Sixth Avenue and Imjin Parkway in Marina, County of Monterey, California, identified as 499 Ninth Street and as shown on **Exhibit A**, which is attached hereto and incorporated herein.

3. **Use.**

a. Tenant shall use the Property as the site for continued operation of its Batch Plant, which use will include importing and storing at any given time approximately 150 cubic yards of rock and sand to be used to make concrete. Concrete batch infrastructure includes material bunkers, hoppers, two (2) 55-foot-tall silos, one (1) 125-foot-long conveyor, and four (4) 30x15 foot washouts/settling ponds. Tenant's use of the Premises shall include loading sand and coarse aggregate into a portable plant which will then dispense these products into mixer trucks for delivery to job sites located off the Premises. All use shall be consistent with the terms of the CUP.

b. Any and all materials classified as hazardous under federal regulations and used in Tenant's activities on the Premises shall be identified to the satisfaction of the City as to identity, type and quantity and shall be stored, used and disposed of in accordance with all local, state and federal regulations. Tenant shall not use the Premises for any other purpose without the prior written consent of the City.

4. **Use of Mixer Trucks.** Tenant has twelve (12) mixer trucks that do four (4) loads per day on average, with fluctuations in the number of daily trips by the mixer trucks due to the seasonal nature of the construction activities being served. Mixer trucks shall use only those routes to and from the Batch Plant as have been designated by the City and make all reasonable effort to avoid any impact on the operation of the Marina Equestrian Center by not using the narrow streets around the Equestrian Center. In accordance with Condition 10 of the CUP, truck operations shall be restricted to the approved circulation plan shown in the CUP. Cement trucks shall not use Fourth Avenue or California Avenue until such time as California Avenue is open to the public, then this shall be the preferred route. No trucks shall use Fourth Avenue.

5. **Hours of Operation.** Tenant shall operate the Batch Plant Monday through Friday from 6:00 a.m. to 5:00 p.m. and Saturday from 7:00 a.m. to 5:00 p.m. Nighttime operations shall be defined as operating between 10:00 p.m. and 6:00 a.m. on weekdays and between 7:00 p.m. and 7:00 a.m. on Saturday. No nighttime operations shall be permitted on Sundays. Tenant is allowed no more than three (3) nighttime operational uses per year at ten (10) day intervals. To utilize one of the three (3) nighttime operational uses per year, Tenant must notify City via e-mail to the City Manager and the Director of Community Development forty-eight (48) hours in advance that it intends to use one of its three (3) uses per year. Tenant must also notify City via e-mail to the City Manager and the Director of Community Development as soon as practicable if, due to unforeseen circumstances, its operations exceed the 5:00 p.m. cutoff on any days it is allowed to operate.

6. **Operational Noise.** Tenant shall conform its conduct of all activities on and around the Premises to the provisions of Chapter 9.24 of the City's Municipal Code, entitled "Noise Regulations" and the approved CUP. If noise levels exceed these standards, the activity causing the noise shall be abated until appropriate noise reduction measures have been installed and compliance verified by the City.

7. **Term.** The term of this Agreement shall commence on the date that this Agreement is fully executed by Parties. The Lease shall terminate no later than ~~June 30~~December 31, 2026;

however, Tenant must cease operation of the Batch Plant on or before December 31, 2025. Tenant shall then have up to twelve (12) months, between January 1, 2026 and December 31, 2026, to dismantle ~~operations of~~ the Batch Plant and return the site to its pre-lease condition as set forth in **Section 21.i**, herein (“Pre-Lease Condition”). Upon dismantling of the Batch Plant and return of the Premises to its Pre-Lease Condition, subject to review and concurrence by the City, this Lease terminates, but in no event later than December 31, 2026. This Lease may also be terminated at any time by mutual agreement of the parties with thirty (30) days prior written notice. Tenant shall have no option to extend the term of the Lease.

8. Reservation & Easements.

a. Easements and Reservations.

(i) The Premises are subject to all valid and existing recorded outstanding liens, licenses, leases, easements, and any other encumbrances made for the purpose of roads, streets, utility systems, rights-of-way, pipelines, and/or covenants, exceptions, interests, liens, reservations, and agreements of record.

(ii) The Property is subject to public utility easements as set forth in such area master plans as may be developed or approved by the City. Such public utility easements, together with the right to enter thereon, for any purpose in connection with the construction or maintenance of improvements and facilities located thereon are hereby reserved by the City and the City for the benefit of itself and for the benefit of all other persons or entities occupying buildings on former Fort Ord properties. In connection with the fire lanes, Tenant agrees that it will not cause or permit any vehicle, or other equipment to be parked within the boundaries of such fire lanes or use the fire lanes in a manner which would interfere with equipment and personnel traversing same in the course of fire suppression activities.

(iii) The Army reserves a perpetual unassignable right to enter the Property for the specific purpose of treating or removing any unexploded shells, mines, bombs, or other such devices deposited or caused by the Army. Based on a review of existing records and available information, the land proposed for lease is not known to contain unexploded ordnance. In the event a tenant should discover any ordnance on the Property, it shall not attempt to remove or destroy it, but shall immediately notify the local Police Department and the Directorate of Law Enforcement at the Presidio of Monterey and competent Army or Army-designated explosive ordnance personnel will be dispatched promptly to dispose of such ordnance at no expense to the Tenant.

(iv) The Army, its officers, agents, employees, contractors and subcontractors, in accordance with section 120(h) of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), as amended, reserve a right of access to any and all portions of the Property for purposes of environmental investigation, remediation, or other corrective actions found to be necessary after the date of the conveyance of the Property. Tenant agrees to cooperate in good faith to minimize any conflict between necessary environmental investigation and remediation activities and Tenant’s operations. Any inspection, survey, investigation, or other response or remedial action will to the extent practicable, be coordinated with representatives designated by the City. Pursuant to this reservation, the Army and its officers, agents, employees,

contractors, subcontractors shall have the right (upon reasonable notice to the Tenant and the City) to enter upon the Property, and perform surveys, drillings, test pitting, borings, data and/or record compilation, and other activities related to environmental investigation, and to carry out remedial or removal actions as required or necessary under applicable authorities, including but not limited to installation of monitoring and extraction wells, and other treatment facility.

(v) The Army reserves a nonexclusive easement to allow continued access for itself and the regulatory agencies to permit necessary groundwater monitoring at wells located on the Property and the installation of new treatment or monitoring wells if required for the pump and treat operations. Furthermore, tampering with the groundwater monitoring wells is prohibited.

(vi) Access for USA Media Group, LLC, or its successor in interest, for TV cable lines is reserved.

(vii) The City reserves the right to install, lay, construct, maintain, repair and operate or facilitate the operation of such sanitary sewers, drains, storm water sewers, pipelines, manholes, and connections; water, oil and gas pipelines, telephone, telegraph and electrical power lines; and the appliances and appurtenances necessary or convenient in connection therewith, in, over, upon, through, across and along any and all portions of the Premises. City shall restore any of Tenant's improvements altered or disturbed due to City's exercise of any rights under this section to substantially the same condition in which they existed prior to the City's entry on to the Premises.

9. **Time and Place of Payment of Rent.** Tenant must pay rent and all other charges, fees or other obligations due to the City under this Lease every month in advance on or before the first day of the month during the term of this Lease at the office of the City Finance Director, City Hall, 211 Hillcrest Avenue, Marina, California 93933. The rent for certain months of this Lease may be pro-rated. For purposes of calculating and pro-rating rent or other charges due, each month will be considered to have 30 days.

10. **Rent.** The monthly rent for this Lease shall consist of a base plus percentage of gross sales. The base shall be \$3,228.56, which is calculated on the basis of four cents (\$0.04) per square foot of land (80,714 s.f.). In addition to the base, Tenant shall pay one quarter of one percent (0.25%) of their monthly gross sales up to a maximum of \$3,228.56. The maximum monthly rental charge (base plus percentage of gross sales) of \$6,457.12 represents the equivalent of eight cents (\$0.08) per square foot of land (the "Rent"). Such Rent may be adjusted by City based on actual square footage of use of the Property to operate the Batch Plant. Documentation of gross sales shall be submitted monthly with the understanding that the Tenant shall not be obligated to provide documentation of their gross sales for any month in which they have paid the maximum monthly rental charge.

11. **Performance Deposit.** Tenant has paid to the City the sum of \$5,000, deposited with the City's funds in an interest-bearing account as partial security for the payment of rent, loss or damage or other payments due under this Lease. In the event the City is required to utilize this deposit, or any portion thereof, during the term of the Lease, Tenant within ten (10) days of such use shall deposit an additional sum sufficient to restore the performance deposit to the amount set

forth herein. This performance deposit, or any remaining portion, will be returned to Tenant with interest earned thereon at the termination of the Agreement, after any deduction for payment of any obligations of Tenant due and owing to the City under any provisions of this Agreement.

12. **Delinquency Charge.** Tenant acknowledges that the late payment of rent or other amounts due under this Lease will cause the City to incur accounting and other processing costs not contemplated by this Lease, the exact amount of which is extremely difficult and impracticable to fix. Therefore, should any payments due under this Lease remain unpaid ten (10) days after the due date of such payment, a penalty of 10% shall be added to any payments past due and owing. City and Tenant agree that this late charge represents a fair and reasonable estimate of costs that the City will incur by reason of the late payment of rent or other charges by the Tenant. Acceptance of any such late charge shall not constitute a waiver of Tenant default with respect to the overdue amount, nor prevent the City from exercising any of the other rights and remedies available to it by reason of such default. Interest on any unpaid fees, charges and any penalty shall accrue at the rate of 1.5% per month thereafter until paid.

13. **Commissions.** City shall not be liable for the payment of any brokerage commissions of fees associated with this Lease to engineers, contractors, real estate consultants or attorneys working on Tenant's behalf.

14. **Possessory Interest.** Tenant shall meet all expenses and payments in connection with the use of the Premises and the rights and privileges herein granted including any possessory interest tax created by this Lease, permits and license fees, it being understood by Tenant that although the public property is held in public ownership, Tenant's interest therein may be taxable as a possessor interest (California Revenue & Taxation Code §107 et seq.). Tenant shall pay personal property taxes, if any, levied on Tenant's inventory, furnishings, or trade fixtures. Tenant may, at its sole expense and cost, contest any tax or fee. All taxes, fees, assessments, charges, etc. shall be paid prior to their delinquency date and satisfactory evidence that such taxes have been paid shall be furnished to the City.

15. **Joint Assessment.** If the Premises are not separately assessed, Tenant's liability shall be an equitable portion of the possessory interest taxes for all of the land and improvements included within the tax parcel assessed, such proportion to be determined by the City from the respective valuations assigned in the assessor's work sheets or such other information as may be reasonably available. The City's reasonable determination thereof, in good faith, shall be conclusive.

16. **Department of the Army Quitclaim Deed Terms.** This Lease, and the use of the Premises covered hereby, shall be subject to the terms, conditions and restrictions set forth in the "Quitclaim Deed for a Portion of University Village Parcels" (the "Quitclaim Deed") from FORA to the City, recorded at the Office of the Monterey County Recorder on September 1, 2005 (Series #2005091639). Any such use of the premises shall and must be consistent with the terms, conditions and restrictions of the Quitclaim Deed. Tenant, by signing this Lease, acknowledges that it has received and reviewed a copy of the Quitclaim Deed and will abide by its terms.

17. **Initial Study / Negative Declaration & Use Permit.** This Lease and Tenant's use of the Premises shall be subject to the terms, conditions and restrictions set forth in the Initial Study / Negative Declaration (IS/ND) (SCH #2024080409) and CUP adopted by the Planning Commission on October 24, 2024. All terms and conditions of the IS/ND and CUP are hereby incorporated into this Lease by reference, except that the term of the CUP shall not affect the term of this Lease, which is set forth in Section 7, herein.

18. **Post-Acquisition Tenancy.** Tenant acknowledges that the tenancy created by this Lease is a post-acquisition tenancy under state and federal relocation law. As such, Tenant is not eligible to receive relocation benefits upon termination. City will inform Tenant concerning the projected displacement date required for future development of the Property.

19. **Termination by Prior Right of the United States.** The City shall not make any representation of the title and if, for any reason, the Lease should terminate because of prior rights reserved by the United States Government, then all improvements and property brought onto the Premises by Tenant shall be removed by Tenant within sixty (60) days of exercise of said prior rights.

20. **Property Rules & Regulations.** From and after the commencement date of this Lease (as well as any prior lease with the City and Tenant or its predecessor in interest), the City releases to Tenant the use of the Property and Tenant accepts the Property, and agrees to comply with all of the following conditions:

a. With respect to activities related to the Property, the Tenant covenants for itself, its successors and assigns, that the Tenant, and such successors and assigns, shall not discriminate upon the basis of race, color, religion, sex, age, handicap, or national origin in the use, occupancy, sale or lease of the Property, or in their employment practices conducted thereon in violation of the provisions of Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. Section 2000d); the Age Discrimination Act of 1975 (42 U.S.C. Section 6102); and the Rehabilitation Act of 1973, as amended, (29 U.S.C. Section 794). The City shall be deemed beneficiaries of this covenant without regard to whether City remains the owner of any land or interest therein in the locality of the leased Property, and either shall have the right to enforce this covenant in any court of competent jurisdiction. In the event of breach of any of the above nondiscrimination covenant, City shall have the right to terminate this Agreement and to reenter and repossess the Premises and hold the same as if this Lease had never been made or issued.

b. Tenant agrees that it shall insert these provisions regarding nondiscrimination in any agreement by which the Tenant grants a right or privilege to any person, firm or corporation to render accommodations or services to the public.

c. Tenant will not do or permit to be done upon the premises any act or thing which constitute waste or nuisance and agrees that within seventy-two (72) hours from receiving written notice by the City that such condition exists, to abate or otherwise cause said condition to be cured. In the event Tenant has not taken corrective action within seventy-two (72) hours, the City may enter and abate said condition at the expense of Tenant without any liability whatsoever to City for monetary loss of Tenant or others.

d. Tenant shall have the right, at its expense, to place in or on the Premises a sign or signs identifying Tenant. Sign or signs shall be of a size, shape and design, and at a location or locations, approved in advance by the City and in conformance with any overall directional graphics or sign program established by the City. Notwithstanding any other provision of this Lease, any signs shall remain the property of Tenant. Tenant shall remove, at its own expense, all lettering, signs and placards so erected on the Premises upon termination of this Lease.

e. Tenant shall have the right, at its expense, to place in or on the Premises fencing, trade fixtures, furnishings, personal property, equipment and materials necessary to any use authorized hereunder. Said fencing, trade fixtures, furnishings, personal property, equipment and materials will remain the property of Tenant and will be removed upon termination of Tenant's occupancy.

f. Tenant will comply with all federal, state and local laws, rules and regulations which may apply to the conduct of the activities provided for and authorized hereunder. Tenant will comply with all terms and conditions of the CUP. Tenant will maintain in effect and post in a prominent place all necessary or required licenses, including a City of Marina Business License, or permits, prior to commencing operations. Tenant shall be responsible for any improvements required for permit approval. The City shall not have any obligation to make any such required improvements. In the event Tenant cannot or elects not to undertake any improvements required for permit approval as required by federal, state or local laws, rules and regulations, in that event Tenant shall provide thirty (30) days written notice of its intention to vacate the Premises and to terminate this Lease.

g. Tenant will prepare an Emergency Action/Fire Protection Plan. A current plan shall be kept on file with the City's Department of Public Safety.

h. Tenant agrees at its own expense to keep and maintain upon the Premises such portable fire extinguishers of such number type and material as may be prescribed from time to time by the regulations of the City's Department of Public Safety.

i. Any damage to the Premises as a result of Tenant's activities shall be repaired and Premises shall be returned to its condition as of August 9, 2005, the commencement date of the Interim Lease, including removal of the metal building located on the Property and cleanup of any contaminants resulting from Tenant's use of the Property, with the following exceptions: a) reasonable wear and tear; b) damage by the elements not caused by Tenant's negligence and c) those improvements and modification for which permits have been issued by the City and which have been approved as completed and signed off by the City's building inspector.

j. Tenant shall, in good faith use its best efforts to efficiently utilize the facilities covered by this Lease in a competent and efficient manner and remain cognizant that a primary purpose for the City in entering into this Lease is to promote the rehabilitation, maintenance and development of former Fort Ord properties.

21. Acceptance of Premises.

a. Tenant understands that the Premises were formerly used by the federal government as part of an Army base, that surrounding lands which were also part of such Army

base have, in the past been found to contain concentrations of volatile organic chemicals which exceed standards prescribed by the environmental agencies and the state and federal governments. (The groundwater beneath former Fort Ord Parcels E4.1.1, E4.2, E4.3.1, and E17.is.contaminated with volatile organic compounds (“VOCs”), primarily trichloroethene (“TCE”), associated with Operable Unit 2 (“OU2”). The maximum estimated concentration of TCE in the groundwater beneath the Property is 43.7 ug/L.) Tenant shall not interfere with any response action being taken on the Property or interrupt, relocate, or interfere with any remediation system now or in the future located on, over, through, or across any portion of the Property.

b. The Tenant is hereby informed and does acknowledge that pesticides may be present on the Property. To the best of the City’s knowledge, the presence of pesticides does not currently pose a threat to human health or the environment, and the use and application of any pesticide product was in accordance with its intended purpose.

c. The Tenant is hereby informed and does acknowledge that friable and nonfriable asbestos or asbestos-containing material (“ACM”) have been found on Fort Ord property, as described in the Environmental Baseline Survey and the referenced asbestos survey. The interior asbestos does not present a “release or threat of release into the environment” as defined by CERCLA.

d. The Tenant covenants and agrees that its use of the Property will be in compliance with all applicable laws relating to asbestos; and the City does not assume any liability for future remediation of asbestos or damages for personal injury, illness, disability, or death, which arises from any such exposure, arising from or incident to the purchase, transportation, removal, handling, use, disposition, or other activity causing or leading to contact of any kind whatsoever with asbestos on the Property, whether the Tenant has properly warned or failed to properly warn the individual(s) injured.

e. Unprotected or unregulated exposures to asbestos in product manufacturing, shipyard, building construction workplaces have been associated with asbestos-related diseases. Both the Occupational Safety and Health Administration (“OSHA”) and the EPA regulate asbestos because of the potential hazards associated with exposure to airborne asbestos fibers. Both OSHA and EPA have determined that such exposure increases the risk of asbestos-related diseases, which include certain cancers and which can result in disability or death.

f. The Tenant acknowledges that it has inspected the Property as to its asbestos content and condition and any hazardous or environmental conditions relating thereto. The Tenant shall be deemed to have relied solely on its own judgment in assessing the overall condition of all or any portion of the Property, including, without limitation, any asbestos hazards or concerns.

g. No warranties, either express or implied, are given with regard to the condition of the Property, including, without limitation, whether the Property does or does not contain asbestos or is or is not safe for a particular purpose. The failure of the Tenant to inspect, or to be fully informed as to the condition of all or any portion of the Property offered, will not constitute

grounds for any claim or demand against the United States or the City, with respect to any asbestos hazards or concerns.

h. The Tenant further agrees to indemnify and hold harmless the United States and the City, its council, boards, commissions, officers, agents and employees, from and against all suits, claims, demands or actions, liabilities, judgments, costs and attorneys' fees arising out of, or in any manner predicated upon, exposure to asbestos on any portion of the Property which exposure occurs after conveyance of the Property to the Tenant or any future remediation or abatement of asbestos or the need therefor. The Tenant's obligation hereunder shall apply whenever the United States, the City incur costs or liabilities for actions giving rise to liability under this Section.

i. The Tenant is hereby informed and does acknowledge that all buildings on Fort Ord property, which were constructed or rehabilitated prior to 1978, are presumed to contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly.

j. Tenant acknowledges that the City has granted to Tenant the right to review all maps and records of the old Army base presently on file in the office of the City's Planning Department as well as the right to inspect the Premises and perform any tests of the soils and improvements thereon or the groundwater thereunder, all in order to afford Tenant a full and complete opportunity to investigate and determine whether the Premises can be used for the purposes intended.

22. **No Warranty.** Tenant further understands and agrees that no representation, statement, or warranty, express or implied, has been made by or on behalf of the City as to the condition of the Premises or the suitability of the Premises for the intended use, save and except for the representation and warranty that neither the City or any City officer, employee, or agent has caused any condition of pollution or contamination which may now exist. Such representation and warranty, however, shall not extend to any condition of pollution or contamination caused by the federal government, the Tenant or by any other contractor or tenant of City. Tenant agrees to accept the premises in their present condition and "as is" with respect to all conditions which may now exist. Moreover, Tenant agrees to waive any claim or right of action against the City which Tenant now has or hereafter may acquire arising out of the condition of the soils or the groundwater underlying the property, including but not limited to any claim of indemnity which Tenant may have by reason of costs incurred by Tenant arising out of the abatement or cleanup of any pollution or contamination condition discovered on the premises hereinafter required under applicable state, federal or city laws or regulations save and except for a claim or right of action arising out of a condition of pollution or contamination caused by an officer, employee or agent of the City.

23. **Hazardous Materials Study.**

a. Prior to its occupancy of the Premises, Tenant may, at its sole option but without obligation and at its sole cost and expense, arrange for a hazardous materials study of the Property. City shall provide Tenant any documents, drawings and data in its possession relating to environmental analysis of the property. Tenant and City agree that, upon occupancy, the City

shall not have any further obligation to remove any hazardous materials in, on or under the property, including any required remediation identified in any study Tenant may choose to make, prior to, or after Tenants occupancy of the Premises.

b. In the event that hazardous materials are discovered on or under the Property which materially affect Tenant's ability to safely utilize the Premises for the purpose provided for herein, neither the City nor the Tenant shall have any liability for removal of anything not brought onto the Premises by Tenant and Tenant may terminate this agreement upon thirty (30) days prior written notice to the City.

24. **Hazardous Substances.** Pursuant to California Health and Safety Code §25359.7, Tenant shall notify City in writing within a reasonable time, of any material release of hazardous substances and of any hazardous substances that have come to be located on or beneath the Property.

25. **Removal.** Prior to the expiration of this Lease or when terminated earlier by either party in accordance with its terms, Tenant shall at its sole expense, remove all items of personal property, brought onto the Premises by the Tenant as defined by state or federal law.

26. **Inspection of Records.** Tenant shall make available for inspection to the City all records relating to the release, mitigation and cleanup for any hazardous substances on the Premises.

27. **Compliance.** Tenant shall comply with all federal, state and local laws and regulations relating to hazardous materials and wastes, and shall timely comply with the orders of any governmental agencies relating thereto or shall provide thirty (30) days prior written notice of its intent to exercise its rights as provided herein to vacate the Premises and terminate this Lease.

28. **Improvements to Property.** During the term of this Lease, Tenant must not make any additions or alterations to the Premises without the prior written consent of the City. Moreover, upon receiving consent to make an addition or alteration to the improvements on the Property, and except as provided herein, Tenant shall not commence work on the construction or installation of such added or altered improvements until plans and specifications for same have been submitted to and approved by the City's Department of Public Works and other Departments as may be required.

29. **Performance and Payment Bonds.** Tenant shall cause to be made, executed and delivered to City prior to the date of commencement of any work in or on the Premises, performance and payment bonds approved as to form and as to surety by the City, with Tenant's contractor or contractors as principal, and the City specifically named as additional insureds, each in the sum of one hundred percent (100%) of the amount of the contract for all work costing in excess of \$10,000.00 for a) the said required work in accordance with the approved plans and specifications and b) to provide that if Tenant or its contractor or contractors fail to pay for any materials, provisions or other supplies, used in or upon, for or about the performance of the work to be done, or for any work or labor thereon of any kind, that the surety will pay the same, in an amount not exceeding the sum specified in the bond, and also, in case suit is brought upon the bond, a reasonable attorney's fee as set by the court.

30. **Title to Improvements.** Upon termination of this Lease all additions or alterations to the Premises made by Tenant will remain the Tenant's property; provided, however, that upon termination of this Agreement, Tenant shall promptly remove any or all of its property and restore the Premises to substantially the same condition as it was on August 9, 2005, including removal of the metal building located on the Property and cleanup of any contaminants resulting from Tenant's use of the Property, all at Tenant's sole cost and expense.

31. **Tenant's Obligations Under this Lease.**

a. Tenant shall maintain, control dust, sweep and keep the Premises clear of refuse. Tenant will promptly repair any damage to sidewalks, driveways, asphalt parking areas, or components, or to other paved surfaces when such damage is caused by Tenant or its invitees.

b. Tenant shall arrange for trash and waste removal services.

c. Tenant shall continue to operate in compliance with its existing Permit to Operate from the Monterey Bay Air Resources District (MBARD) and maintain continued compliance with all conditions of the permit. Further, the decommissioning of the site shall abide by all MBARD requirements for air quality.

d. Tenant shall undertake other general maintenance and upkeep of the Premises not specified herein.

32. **Destruction of Substantial Damage of Premises.** If, during the term of this Lease, the Premises or any part thereof are substantially damaged or destroyed by a fire or other casualty beyond Tenant's control (but not including damage caused by the willful acts or negligence of Tenant or Tenant's employees which damage Tenant shall promptly repair, replace or restore at Tenant's sole cost and expense), this Lease shall terminate. Tenant shall be released thereby without further obligation to the City upon surrender of possession of the Premises, except for obligations which have theretofore accrued and are then unpaid or unperformed.

33. **Provision of Utilities.**

a. During the term of this Lease, Tenant shall have the right to connect the Premises and facilities appurtenant thereto to the existing utilities at its sole cost and expense. Tenant shall arrange for and pay for the installation of required meters for electric, gas and water and shall pay any connection fees. The City shall make available to Tenant maps in its possession showing the location of sewer, water, electrical, gas and telephone lines located near the Premises. Tenant shall be responsible for arranging and paying for all utilities required to serve the Premises. The City will use its best efforts to continue all utility services as they presently exist but cannot and does not guarantee that there will be no interruptions of service at all, and Tenant hereby waives any rights or claims it may have resulting from temporary interruptions of service. To the extent it has knowledge, the City will provide notice of any work scheduled which may interrupt the utility service to the property.

b. If the City is unable to provide access to utility service facilities due to the imposition of any limit on consumption or on the construction of additional utility facilities, or

the allocation or curtailment of utility facilities or service by law or regulation, neither of them shall have any obligation hereunder.

34. **Payment of Utilities.** Tenant agrees to pay directly to the utility providers for all utility services provided under the terms of any contract between the Tenant and the utility provider and to the City for all utility services provided under the terms of any contract between the City and a utility provider which serve the Premises through existing lines and connections. Tenant shall not be responsible to pay for any existing or preexisting utility charges incurred by others. Tenant shall be responsible to provide and pay for all new connection equipment and any fees required. Tenant shall pay all utility charges within twenty (20) days of receipt of invoice and shall provide evidence of payment when requested to do so in writing by the City. In the event Tenant fails to pay any utility bill when due, the City may, at its option, pay the same and collect from Tenant's performance deposit the amounts so disbursed, plus interest at the rate of 1½% per month or fraction thereof.

35. **Compliance with Regulations of Local Agencies.** It shall be the responsibility of the Tenant under this Lease to contact, consult and comply with any regulation applicable to Tenant's activities on the Property which are now or may be promulgated by a local public or private utility provider or regulator having jurisdiction over activities or utility services, including, but not limited to, the Marina Coast Water District, the Monterey Regional Water Pollution Control Agency, Pacific Gas & Electric Company, Monterey Bay Unified Air Pollution Control District (aka Monterey Bay Air Resources District).

36. **Indemnity.**

a. Tenant and City agree that the City, its council, boards and commissions, officers, employees, agents, and volunteers should, to the maximum extent permitted by law, be fully protected from any loss, injury, damage, claim, lawsuits, cost, expense, attorneys fees, litigation costs, defense costs, court costs or any other cost arising out of or in any way related to the Tenant's use and occupancy of the Premises. Accordingly, the provisions of this indemnity provision are intended by the parties to be interpreted and construed to provide the fullest protection possible under the law to the City. Tenant acknowledges that City would not enter into this agreement in the absence of the commitment from Tenant to indemnify and protect City as set forth here.

b. To the full extent permitted by law, Tenant shall defend, indemnify and hold harmless the City, its council, boards and commissions, officers, employees, agents, and volunteers, from any liability, claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, reasonable attorney fees incurred by City, court costs, interest, defense costs including expert witness fees and any other costs or expenses of any kind whatsoever without restriction or limitation incurred in relation to, as a consequence of or arising out of or in any way attributable actually, allegedly or impliedly, in whole or in part to the performance of this Lease. All obligations under this provision are to be paid by Tenant as they are incurred by the City.

c. Without affecting the rights of the City under any provision of this Lease or this Section, Tenant shall not be required to indemnify and hold harmless City, as set forth above, for liability attributable to the sole fault of City, provided such sole fault is determined by agreement between the parties or the findings of a court of competent jurisdiction. This exception will apply only in instances where the City is shown to have been solely at fault.

d. The obligations of Tenant under this or any other provision of this Lease will not be limited by the provisions of any workers' compensation act or similar act. Tenant expressly waives its statutory immunity under such statutes or laws as to City, its council, boards and commissions, officers, employees, agents, and volunteers.

e. Tenant agrees to obtain executed indemnity agreements with provisions identical to those set forth in this section from any assignee, subcontractor or any other person or entity involved by, for, with or on behalf of Tenant in the performance or subject matter of this Lease. In the event Tenant fails to obtain such indemnity obligations from others as required here, Tenant agrees to be fully responsible according to the terms of this Section.

f. Failure of the City to monitor compliance with these requirements imposes no additional obligations on City and will in no way act as a waiver of any rights hereunder. This obligation to indemnify and defend the City as set forth herein is binding on the successors, assigns, or heirs of Tenant and shall survive the termination or expiration of this Lease or this Section.

37. **Insurance.** Tenant is the insuring party, and as such agrees that it will provide, and it will require its contractors to provide insurance in accordance with the requirements set forth here. The following coverages will be provided by Tenant and maintained on behalf of the City and in accordance with the requirements set forth herein.

a. **Commercial General Liability/Umbrella Insurance.** Primary insurance shall be provided on Insurance Services Office (ISO) Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury, or on an ISO or ACCORD form acceptable to the City. Total limits shall be no less than two million dollars per occurrence for all coverages and two million dollars general aggregate. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit. The City and its council, board and commissions, officers, employees, agents and volunteers shall be added as additional insureds using an ISO or ACCORD additional insured endorsement form. Coverage shall apply on a primary non-contributing basis in relation to any other insurance or self-insurance, primary or excess, available to the City or any agent of the City. Coverage shall not be limited to the vicarious liability or supervisory role of any additional insured. Umbrella Liability Insurance (over primary) shall apply to bodily injury/property damage, personal injury/advertising injury, at a minimum, and shall include a "drop down" provision providing primary coverage above a maximum \$25,000.00 self-insured retention for liability not covered by primary policies but covered by the umbrella policy. Coverage shall be following from to any underlying coverage. Coverage shall be provided on a "pay on behalf" basis, with defense costs payable in addition to

policy limits. There shall be no cross-liability exclusion. Policies shall have concurrent starting and ending dates.

b. Business Auto/Umbrella Liability Insurance. Primary coverage shall be written on an ISO or ACCORD business auto coverage form acceptable to the City including ISO Form Number CA 00 01 (code/symbol 1) (Any Auto). Limits shall be no less than one million dollars (\$1,000,000.00) per accident for bodily injury and property damage. Starting and ending dates shall be concurrent. City, its council, boards and commissions, officers, employees, agents and volunteers shall be added as additional insureds using an ISO or ACCORD additional insured endorsement form .

c. Workers' Compensation/Employers' Liability. Workers' compensation and employers' liability coverage shall be written on a policy form providing workers' compensation statutory benefits as required by law and if Tenant has any employees. Employers' liability limits shall be no less than one million dollars (\$1,000,000.00) per accident for bodily injury or disease. Employers' liability coverage shall be scheduled under any umbrella policy described above. Unless otherwise agreed, this policy shall be endorsed to waive any right of subrogation as respects the City, its council, boards and commissions, officers, employees, agents and volunteers.

d. Tenant and City further agree as follows:

(i) This section supersedes all other sections and provisions of this Lease to the extent that any other section or provision conflicts with or impairs the provisions of this section.

(ii) Nothing contained in this Section is to be construed as affecting or altering the legal status of the parties to this Lease, or the indemnity provisions of this Lease. The insurance requirements set forth in this Section are intended to be separate and distinct from any other provision in this Lease and shall be interpreted as such.

(iii) All insurance coverage and limits provided pursuant to this Lease shall apply to the full extent of the policies involved, available or applicable. Nothing contained in this Lease or any other agreement relating to the City or its operations limits the application of such insurance coverage.

(iv) Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only and is not intended by any party to be all inclusive, or to the exclusion of other coverage, or a waiver of any type.

(v) For purposes of insurance coverage only, this Lease will be deemed to have been executed immediately upon any party hereto taking any steps that can be deemed to be in furtherance of or towards performance of this Lease.

(vi) All general or auto liability insurance coverage provided pursuant to this Lease, or any other agreements pertaining to the performance of this Lease, shall not prohibit

Tenant, Tenant's employees, or agents from waiving the right of subrogation prior to a loss. Tenant hereby waives all rights of subrogation against the City.

(vii) Unless otherwise approved by the City, Tenant's insurance shall be written by insurers authorized to do business in the State of California with a minimum "Best's" Insurance Guide Rating of "A:VII." Self-insurance will not be considered to comply with these insurance specifications.

(viii) In the event any policy of insurance required under this Lease does not comply with these requirements or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary, and any premium paid by City will be promptly reimbursed by Tenant.

(ix) Tenant agrees to provide evidence of the insurance required herein, satisfactory to City, consisting of certificate(s) of insurance evidencing all of the coverages required and an additional endorsement to Tenant's general liability, auto and umbrella liability policies using ISO or ACCORD forms. Certificate(s) are to reflect that the insurer will provide thirty (30) days notice to Tenant and City of any cancellation of coverage. Tenant agrees to require its insurer to modify such certificates to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, and to delete the word "endeavor" with regard to any notice provisions. Tenant agrees to provide complete copies of policies to City upon request.

(x) Tenant shall provide proof that policies of insurance required herein expiring during the term of this Lease have been renewed or replaced with other policies providing at least the same coverage. Such proof will be furnished at least two weeks prior to the expiration of the coverages.

(xi) Any actual or alleged failure on the part of the City or any other additional insured under these requirements to obtain proof of insurance required under this Lease in no way waives any right or remedy of City or any additional insured, in this or any other regard.

(xii) Tenant agrees to require all contractors, subcontractors or other parties hired by Tenant to provide general liability insurance naming as additional insureds all parties to this Lease. Tenant agrees to obtain certificates evidencing such coverage and make reasonable efforts to ensure that such coverage is provided as required here. Tenant agrees to require that no contract used by any contractor, subcontractor, or contracts Tenant enters into, will reserve the right to charge back to City the cost of insurance required by this Lease. Tenant agrees that upon request, all agreements with contractors, subcontractors or others with whom Tenant contracts with, will be submitted to City for review. Failure of City to request copies of such agreements will not impose any liability on City, its council, boards and commissions, officers, employees, agents and volunteers.

(xiii) As Tenant is a Limited Liability Company, general liability coverage must be amended so that the Limited Liability Company and its Managers, Affiliates, employees, agents and other persons necessary or incidental to its operation are insureds.

(xiv) Tenant agrees to provide immediate notice to City of any claim or loss against Tenant that includes City as a defendant. The City shall not assume any obligation or liability by such notice, but each has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve the City.

38. **Review of Insurance Coverage.** City is entitled at any time during the term of this Lease to review the type, form and coverage limits of the insurance requirements. If in the opinion of the City, the insurance provisions of this Lease are not sufficient to provide adequate protection for the City and the members of the public, the City may require Tenant to maintain insurance sufficient to provide such adequate protection. Insurance requirements shall be applied uniformly to all parties engaged in similar-type operations on former Fort Ord properties, and such requirements shall be consistent with industry standards. City shall notify Tenant in writing of any changes in the insurance provisions necessary to provide adequate protection. If Tenant does not deposit acceptable certificates evidencing valid insurance policies acceptable in form and content to the City, incorporating such changes within sixty (60) days of receipt of such notice this Lease will be in default. The procuring of such policy of insurance will not be construed to be a limitation upon Tenant's liability nor as a full performance of its part of the indemnification provisions of this Agreement; Tenant's obligation being, notwithstanding said policy or policies of insurance, the full and total amount of any damage, injury or loss caused by the negligence or neglect connected with its operations under this Lease.

39. **Liens and Claims.** Tenant shall not suffer or permit to be enforced against the City's title to the property, or any part thereof, any lien, claim or demand arising from any work of construction, repair, restoration, maintenance or removal as herein provided, or otherwise arising (except liens, claims or demands suffered by or arising from the actions of the City).

40. **Tenant to Pay Liens & Claims.** Tenant shall pay all such liens, claims and demands before any action is brought to enforce same against said land. Tenant agrees to hold City and said land free and harmless from all liability for any and all such liens, claims or demands, together with all costs and expenses in connection therewith.

41. **Payment of Liens & Claims by City.** Should Tenant fail or refuse to pay any lien, claim, or demand arising out of the construction, repair, restoration maintenance and use of the Premises or any other claim, charge or demand which Tenant has agreed to pay under the covenants of this Lease, Tenant shall, within thirty (30) days written notice from City to Tenant of its said encumbrance, pay and discharge the same or shall furnish to City, in a form satisfactory to City, sufficient security for such lien, claim or demand and all costs and expenses in connection therewith. Should Tenant or its said encumbrancer within said thirty (30) day period, not pay and discharge said lien, claim or demand, or not provide said security to City, then City, at its option, may either treat such failure or refusal as a breach of or default under this Lease, or may pay any such lien, claim, charge or demand, or settle or discharge any action therefore or judgement thereon, and all costs, expenses and other sums incurred or paid by City, including without limitation attorneys' fees, in connection therewith must be repaid to City by Tenant upon written demand, together with interest thereon at the rate of 10% per annum from the date of payment until repaid, and any default in such repayment will constitute a breach of the covenants and conditions of this Lease.

42. **Assignments, Transfers and Encumbrances.** Tenant shall not sell, assign, transfer, or encumber this Agreement or any interest of Tenant in and to the property without the prior written consent of the City. It is expressly agreed between the City and Tenant that Tenant shall not pledge any interest in this Agreement to secure repayment of any debt.

43. **Compliance with Laws, Permits and Licenses.** Tenant's business will be conducted and maintained in strict compliance with all applicable laws, ordinances, regulations, and other requirements of federal, state, county, city or other governmental agencies having jurisdiction over the Premises. Similarly, Tenant will obtain and pay for all necessary permits, licenses and other consents for the operation of Tenant's business including a City of Marina Business License. A refusal or failure by the City to issue any permit, license or approval sought by the Tenant shall not constitute a breach of this Lease, whether or not any such refusal or failure was wrongful. Tenant's sole remedy for a wrongful refusal or failure by the City to issue any permit, license or approval sought by Tenant shall be a petition for writ of mandate; and such a refusal or failure by the City shall not give rise to an action for money damages by the Tenant. Tenant represents and warrants that it has full power and authority to enter into this Lease and perform hereunder and holds all permits and licenses which are required by law or regulation for complete performance in accordance with the terms of this Lease.

44. **Independent Status.** Tenant is an independent entity. Tenant is solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors, if any. Nothing in this Lease will be construed as creating a partnership or joint venture between City and Tenant. Neither Tenant nor its officers, employees, agents or subcontractors shall obtain any rights to retirement or other benefits which accrue to the City's employees.

45. **Dispute Resolution.** The parties agree that if any dispute arises over the interpretation or performance of this Lease, the parties will first attempt to negotiate any such dispute informally. If such informal negotiation fails, and if the parties mutually agree at the time, the parties may then submit the dispute for formal mediation to the American Arbitration Association (AAA) or the Judicial Arbitration and Mediation Services (JAMS), or such other mediation service as the parties may mutually agree upon. Expenses of such mediation shall be shared equally between the parties.

46. **Confidentiality.** To the extent allowed by law, the City shall not disclose Tenant's financial statement or confidential financial position, or any records which are the basis of the gross sale portion of the rent calculation. Tenant acknowledges that the City is a municipal corporation and has limited powers to withhold information from the public.

47. **Attorney's Fees and Costs.** Should the dispute of the parties not be resolved by negotiation or mediation, and in the event it should become necessary for either party to enforce or interpret any of the terms and conditions of this Lease by means of court action or administrative enforcement, the laws of the State of California shall govern the interpretation of the terms and conditions of this Lease and such action shall be brought in a court of proper jurisdiction in Monterey County. The prevailing party, in addition to any other remedy at law or in equity available to such party, will be awarded all reasonable costs and reasonable attorney's fees in connection therewith, including the fees and costs of experts reasonably consulted by the attorneys for the prevailing party.

48. **Litigation Involving Agreement.** In the event the City is made a party to any litigation concerning this Lease or the Premises, or the use thereof, by reason of any act or omission by Tenant, Tenant shall hold the City harmless from all loss or liability, including reasonable attorney's fees, incurred by the City in such litigation. This Section shall survive the termination or expiration of this Lease.

49. **Bankruptcy and Insolvency.** If Tenant, at any time during the term of this Lease, becomes insolvent, or if proceedings in bankruptcy are instituted by or against Tenant, or if Tenant is adjudged bankrupt or insolvent by any court, or if a receiver or trustee in bankruptcy or a receiver of any property of Tenant is appointed in any suit or proceeding brought by or against Tenant, or if Tenant makes any assignment for the benefit of creditors, then in each and every case, this Lease and the rights and privileges granted hereunder will immediately cease, terminate and be forfeited and canceled provided, however, that if Tenant, within six (6) days after the filing and service on Tenant of any involuntary petition in bankruptcy or for appointment of a receiver, commences proper proceedings to dismiss or deny the petition or vacate the receivership and expeditiously pursues and diligently exhausts all proper remedies toward that end, the bankruptcy or receivership may not constitute a default until the entry of a final determination adverse to Tenant.

50. **Force Majeure; Waiver.** Tenant will not be in default under this Lease in the event that the activities of Tenant are temporarily interrupted for any of the following reasons: riots; war or national emergency declared by the President or Congress and affecting the City; sabotage; civil disturbance; insurrection; explosion; natural disasters such as floods, earthquakes, landslides; strikes, lockouts and other labor disturbances or other catastrophic events which are beyond the reasonable control of Tenant. "Other catastrophic events" does not include the financial ability of Tenant to perform or failure of Tenant to obtain any necessary permits or licenses from other governmental agencies or the right to use facilities of any public entity where such failure occurs because Tenant has failed to exercise reasonable diligence.

51. **Abandonment.** Tenant must not vacate or abandon the Property or any part of the Premises for a period in excess of thirty (30) days during any time during the term of this Lease. If Tenant abandons, vacates or surrenders the premises or is dispossessed by process of law or otherwise, any property belonging to Tenant and left on the property may be deemed, at the option of City, to be abandoned. Upon relinquishing possession, Tenant will be in default of this Lease and City is entitled to terminate this Lease and Tenant's rights in and to the Premises in the manner hereinafter provided by this Lease.

52. **Default.** Tenant will be deemed in default under this Lease:

a. Upon breach of any of the covenants and conditions of or involving: the Quitclaim Deed from the United States with respect to discrimination on the grounds of race, creed, color, national origin, sex, or age; economic discrimination; physical disability discrimination; the sale, assignment, transfer, encumbrance, or subletting of the property which is the subject matter of this Lease without the City's prior written consent: bankruptcy or insolvency of Tenant; or, with respect to any other covenant or condition of this Lease, which breach cannot be cured, within forty-eight (48) hours upon being given notice thereof by City.

b. Upon failure to pay any rent, fees, or any other consideration required under this Lease to be paid by Tenant to City within ten (10) days following the date those obligations are due, or upon failure to provide evidence of the insurance when due, within forty-eight (48) hours after being given notice thereof by City.

c. Upon the breach of any of Tenant's other duties and obligations under this Lease, which breach can be cured, if such breach is not cured within forty-eight (48) hours after being given written notice thereof by City.

53. Remedies on Default

a. **City's Right to Terminate Lease.** Upon Tenant's default of this Lease, City is entitled, after reasonable notice to Tenant which notice provides Tenant with the statutorily required minimum time to cure any default in rent and which provides a reasonable time to cure any other type of default, to terminate this Lease as well as Tenant's rights in and to the Premises, to enter upon and retake possession of the Premises, including all improvements thereon and facilities appurtenant thereto, by legal proceedings or otherwise, and to recover from Tenant, at the time of such termination, the excess, if any, of the amount of any rent to be paid by Tenant under this Lease.

b. **Other Remedies.** All rights, options, and remedies of City contained in this Lease will be construed and held to be cumulative and not one of them will be exclusive of the other, and City will have the right to pursue any one or all of such remedies or any other remedy or relief which may be provided for by law, whether or not stated in this Lease.

54. **Waiver of Default.** Any waiver by City of a default of this Lease arising out of the breach of any of the covenants, conditions, or restrictions of this Lease will not be construed or held to be a waiver of any succeeding or preceding default arising out of a breach of the same or any other covenant, condition, or restriction of this Lease.

55. **City's Right of Entry.** The City, in its proprietary capacity, reserves the right to enter upon and inspect the Premises, with twenty-four hours (24) prior written notice to Tenant. Tenant shall permit City and any agents and employees of City to enter the Premises at all reasonable times for the purpose of inspecting the same, or for the purpose of posting notices of non-responsibility for improvements, alterations, additions, or repairs, without any rebate of fees and without any liability to Tenant for any loss of occupation or quiet enjoyment of the Premises thereby occasioned. The City may enter the Premises under emergency conditions without notice.

56. **Notices.** All notices required or permitted to be given under this Lease shall be in writing and must be personally delivered or United States certified mail, postage prepaid, return receipt requested, addressed as follows:

To City: City of Marina
 City Hall
 Attn: City Manager
 211 Hillcrest Ave
 Marina, California 93933

Phone: (831) 384-3715
Email: llong@cityofmarina.org

Copy to: City Attorney of City of Marina
Attn: René Ortega
Shute, Mihaly & Weinberger LLP
396 Hayes St.
San Francisco, CA 94102
Phone: (415) 552-7272
Email: rortega@smwlaw.com

To Tenant: Las Animas Concrete & Building Supply, Inc.
Attn: Scott French
146 Encinal Street
Santa Cruz, CA 95060
Phone: [REDACTED]
Email: [REDACTED]

or to such other address as either party may from time-to-time designate by notice to the other given in accordance with this Section. Notice will be deemed effective on the date personally served or, if mailed, three business days from the date such notice is deposited in the United States mail. Parties may, but are not required to, provide courtesy copies of any notice via email or other electronic means.

57. **Amendment or Modification.** This Lease may be amended, altered or modified only by a writing, specifying such amendment, alteration or modification, executed by authorized representatives of both of the parties hereto.

58. **Construction of Lease.** Whenever the singular number is used in this Lease and when required by the context, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders. If there is more than one Tenant designated in or signatory to this Lease, the obligations hereunder imposed upon Tenant are joint and several; and the term "Tenant" as used herein refers to each and every of said signatory parties, severally as well as jointly.

59. **Covenant & Condition.** Each term and provision of this Lease performable by Tenant or by the City shall be construed to be both a covenant and a condition.

60. **Time.** Time is and shall be of the essence of each term and provision of this Lease.

61. **Heirs and Successors.** All of the covenants, agreements, conditions and undertakings herein contained shall apply to and bind the representatives, heirs, executor, administrators, or successors-in-interest of all the parties hereto and all the parties hereto will be jointly and severally liable hereunder.

62. **Further Actions.** Each of the parties agree to execute and deliver to the other such documents and instruments, and to take such actions, as may reasonably be required to give effect to the terms and conditions of this Lease including such information and reports as may be required by the City for inclusion in any report to the Army or other governmental agency.

63. **Interpretation.** This Lease has been negotiated by and between the representatives of both parties. Accordingly, any rule of law (including Civil Code §1654) or legal decision that would require interpretation of any ambiguities in this Lease against the party that has drafted it is not applicable and is waived. The provisions of this Lease shall be interpreted in a reasonable manner to affect the purpose of the parties and this Lease.

64. **Captions.** Titles or captions of the sections contained in this Lease are inserted only as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provision of it.

65. **Severability.** If any of the provisions of this Lease are determined to be invalid or unenforceable, those provisions shall be deemed severable from the remainder of this Lease and will not cause the invalidity or unenforceability of the remainder of this Lease, unless this Lease without the severed provisions would frustrate a material purpose of either party in entering into this Lease.

66. **Waiver.** No waiver of any right or obligation of either party hereto will be effective unless made in a writing, specifying such waiver and executed by the party against whom such waiver is sought to be enforced. A waiver by either party of any of its rights under this Lease on any occasion will not bar the exercise of the same right on any subsequent occasion or of any other right at any time.

67. **Counterparts.** This Lease may be executed in two or more counterparts, each of which will be deemed an original, but any of which will be deemed to constitute one and the same instrument.

68. **Entire Agreement.** This Lease constitutes the entire and complete agreement between the parties regarding the subject matter hereof, and supersedes all prior or contemporaneous negotiations, understandings or agreements of the parties, whether written or oral, with respect to the subject matter.

IN WITNESS WHEREOF, this Lease has been executed by the duly authorized officers or representatives of each of the parties.

CITY OF MARINA

LAS ANIMAS CONCRETE &
BUILDING SUPPLY, INC.

By: _____
Layne Long
City Manager

By: _____
Scott French
Its: Chief Executive Officer

Date: _____

Date: _____

Attest:

City Clerk

By: _____
Emily Dutton
Chief Financial Officer

Approved as to form:

City Attorney

Date: _____

1849796.11

EXHIBIT A

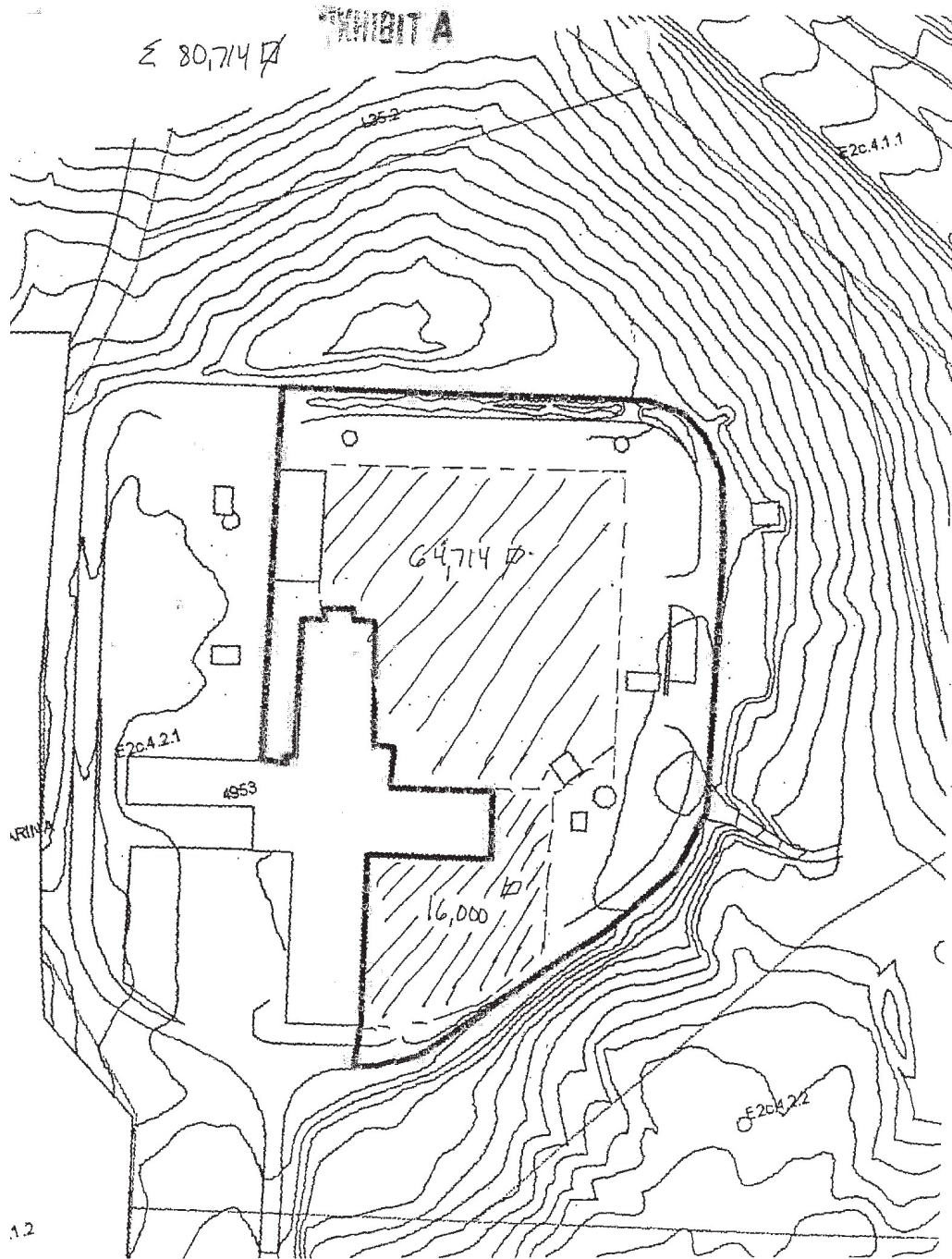


EXHIBIT B

Conditional Use Permit (CU23-002) – Resolution No 2024-20



MEMORANDUM

DATE: January 17, 2025
FROM: Guido F. Persicone
TO: File
SUBJECT: Las Animas/California Avenue Emails

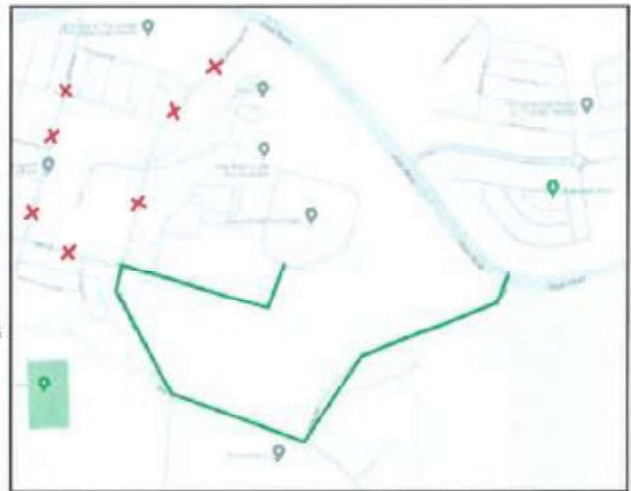
Council Questions/Comments

1. **Under Las Animas' old Conditional Use Permit (CUP) and lease before they expired, what were the routes that its vehicles were approved to travel on to go in and out of its plant?**

Conditions of Approval#10 (COA #10) has the exact route verbiage, as approved by the Planning Commission on October 24, 2024.

Planning Commission for possible revocation.

10. **Truck Traffic Circulation** – Truck operations shall be restricted to the approved circulation plan as shown in the diagram to the right. The route trucks must take is 9th St. from the site, left onto California Dr., right onto 8th St., and a left onto Imjin Rd. out to Imjin Pkwy. Cement trucks shall not use Fourth Ave. or California Ave. until such time as California Ave. is opened to the public, then this shall be the preferred route (no trucks shall use Fourth Ave.)



2. **Did the road California Ave between Imjin Parkway and 9th St exist before Dunes?**
Yes, California Avenue has been operational since the inception of the former Fort Ord base
3. **Did the road California Ave between 9th St and 8th St exist before Dunes?**
Yes, California Avenue has been operational since the inception of the former Fort Ord base.
4. **Would it be possible to construct a new road from Las Animas to Imjin Parkway or to Imjin Road?**



City staff have discussed this extensively and that area has a significant amount of Sand Gilia. Also, a portion of the property is owned by MST. Additionally, portions of the area also are being used for the regional trail (FORTAG). So, building a new road is unlikely given these limitations as well as a CUP limiting operations to three years, with an additional year for decommissioning of the site.

5. **What are the allowable noise levels on residential streets like California Avenue during daylight/night hours?** Allowable average noise standards are as identified in Table 4.1 and 4.2 of the General Plan. According to the General Plan 70 Ldn dBA during the day and 65 Ldn dBA at night are allowed. These are 24-hour-average noise standards, not single-event noise standards. Whether a single noise event or events (e.g., truck trips) might individually exceed 70 Ldn dBA (day) or 65 Ldn dBA (night) does not necessarily constitute a violation of the General Plan or City's noise ordinance.



Table 4.1. Allowable Noise Standards Measured in Ldn (dBA)

Land Use Category	Maximum Exterior		Maximum Interior*
	Acceptable	Conditionally Acceptable	
Residential	60	70	45
Live/Work	65	75	50
Hotel/Motel	65	75	50
Office	67	77	55
Other Commercial	70	80	60
Industrial/Agriculture	70	80	60
Schools, Libraries, Theaters, Churches, Nursing Homes	60	70	45
Parks and Playfields	65	70	NA
Golf Courses, Riding Stables, Cemeteries	70	75	NA
*It is preferred that the interior noise standard be attained with open windows. However, where the interior noise standard is attainable only with closed windows and doors, mechanical ventilation shall be required.			

Table 4.2. Noise Standards for Stationary Noise Sources

Duration	Maximum Allowable Noise	
	Day (7:00 a.m. to 10:00 p.m.)	Night (10:00 p.m. to 7:00 a.m.)
Hourly L_{eq} in dB ^{1,2}	50	45
Maximum Level in dB ^{1,2}	70	65
Maximum Impulsive Noise in dB ^{1,3}	65	60

¹As determined at the property line of the receiver. When determining the effectiveness of noise mitigation measures, the standards may be applied on the receptor side of noise barriers or other property-line noise mitigation measures.

²Sound level measurements shall be made with slow meter response.

³Sound level measurements shall be made with fast meter response.

6. **What studies, if any, were conducted by the City of Marina on noise emitted by Las Animas cement trucks traveling on residential streets, prior to Shea Homes' development of the California Avenue housing tract. If not, why not?** A Mitigated Negative Declaration for the site was prepared pursuant to the California Environmental Quality Act (CEQA) in 2005 to ensure impacts were less than a significant level. Additionally, all homes within the Dunes Development were made aware of the Las Animas site in their disclosure documents.

Why did the City of Marina approve the building of residential homes on California Avenue, knowing that Las Animas Concrete would use residential streets, such as California Avenue and adjoining streets between Imjin and 8th Street, without a



plan to redirect this heavy truck traffic away from residential homes?

All homes within the Dunes Development were made aware of the Las Animas site in their disclosure documents. Finally, the University Village Specific Plan (Dunes Development) was approved in 2005, but the homes were not built till 2021.

Properties to the East: Existing uses east of the Community and south of Imjin Parkway and generally north of 9th Street include, among others, the Marina Coast Water District maintenance facility and corporate yard on General Jim Moore Boulevard between 9th Street and 5th Avenue; an equestrian center (Marina Equestrian Center described below); a ready-mix concrete plant (Las Animas Concrete) on 9th Street east of 5th Avenue about 750 from the Community; and radio towers at the end of Dx Drive, less than 500 feet from the Community. The radio towers are owned by the City of Marina and operated by the Monterey Bay Amateur Radio Association. Former military buildings, most of which are vacant, boarded up and/or dilapidated, are currently within the Marina Coast Water District corporate yard. While the Reuse Plan designates the Marina Coast Water District property for future mixed used development, Seller does not know when development will occur and the military buildings may remain on the site and the nuisances associated with the buildings may continue for the foreseeable future.

Properties to the South: Existing uses south of the Community include, among others, an approximately 7.8-acre park site (described below in the "Offsite Park" Section); Monterey Institute for Research Astronomy (MIRA), which consists of research offices, library, electronics and machine shops, student observatory, and other facilities; a contractor storage yard and tree service business adjacent to and east and south of MIRA; and, the approximately 1,300-acre California State University Monterey Bay (CSUMB) campus, whose northern boundary is across 8th Street from the Community. A student recreational field, east of 4th Avenue, and student housing, east of 5th Avenue are the

Page 23

The Dunes (Phase 2 East)

7. Why is the City of Marina allowing Las Animas Concrete to violate the municipal codes created to protect all residents' peace, comfort, safety, and welfare from excessive, unnecessary or unusually loud noises and vibrations?

The City is not allowing violations of the Municipal Code. During the reauthorization of the Conditional Use Permit a revised Mitigated Negative Declaration (MND) was prepared for the project. As part of the preparation of the MND, AMBIENT prepared a *Noise and Groundborne Vibration Technical Memorandum*. The noise-measurement surveys conducted included "onsite stationary sources, haul trucks and off-road equipment, which averaged approximately 64 dBA| Leq at 150 feet from the plant center." The AMBIENT noise subject matter experts found that the proposed project would have a less than significant impact regarding noise. Additionally, with Monterey Peninsula Engineering (MPE) leaving the site in the Fall of 2023 the site currently has less noise impact than previously perceived by the community.

8. Every Dunes household pays a special tax every year for being in The Dunes CFD or Community Facilities District (known formally as District No. 2015-1). We pay this annual special tax in our property tax bill on top of regular taxes for the maintenance of the neighborhood facilities such as the streets, lights etc. From the document Resolution 2024-77 in July of this year, I calculated that the tax



collections total nearly \$1.9million from the start in 2015 until the latest fiscal year of 2024-25. Is California Ave between Imjin Parkway and 8th Street being maintained under this Dunes special tax collection?

California Avenue is not a part of the CFD.

9. Is this segment of California Ave built to withstand truck traffic, e.g. the loads of Las Animas' trucks?

It's a collector roadway with a Traffic Index of 7 – this index gives us an understanding of how much of a Truck Load this particular roadway can take in its lifetime. A TI of 7 is fitting for a collector roadway and should suffice for California Avenue's normal use. 8th St is also a Collector roadway designed in the same manner.

10. Would Las Animas contribute directly to pay for the extra wear and tear on California Ave between Imjin and 8th?

This collector road can handle the wear and tear as most collector roads can handle approximately 2,000-4,000 trips per day. Additionally, collector roads are sufficient for the 30-mph proposed for this area per the traffic warrant study recently completed by the Public Works Department.

11. Speed limit for residential areas is 25 mph. Can speed bumps be installed for the safety of the people on this street?

The traffic warrant study recently completed for the abutting roads indicates 30 mph is the appropriate speed limit for these collector roads. Additionally, the TAC has discussed this site with the community at the January 7, 2025, meeting and speed bumps were not recommended.

12. Should you widen California Avenue to the width of 4th Avenue?

A Capital Improvement Project (EDR2117) has been approved for improvements to California Ave..

13. Many students of CSUMB want to avoid the parking fee on campus, so they park in front of our houses which leave us with no parking space. We paid more than one million for this house and have no parking space? Imagine if you were one of us! What would you do?

The restriping of some of these streets can be considered and evaluated by either the Public Works Commission or the Traffic Advisory Committee in more detail.



14. Is Las Animas no longer licensed by the State?

Response from Las Animas, dated December 19, 2024, - “Yes, we dissolved the LLC this year since we no longer partner with MPE in Marina. We are now Las Animas Concrete & Building Supply Inc, DBA Las Animas Concrete, Marina.”

15. What local projects are being served by Las Animas?

According to their website, several local projects are being serviced by Las Animas <https://lasanimasconcrete.com/projects/> including providing concrete for the Dunes Development and the Sea Haven project.

16. According to an email from homeowner/lawyer Marie Weiner, Las Animas is operating in a BP (Business Park) Zone. Is a cement plant allowed to operate in a BP Zone?

Yes, with a conditional use permit the project is allowed per 17.24.030 of the Muni Code.

17. Does the city monitor/check the number of truck rides?

The city’s code enforcement will be following up with compliance of the number of trucks trips permitted.

18. Residents expressed safety concerns due to stop signs and speed limits not being obeyed.

Yes, this was discussed at the January 7, 2025 TAC meeting. A traffic warrant study was conducted, and the speeds are being evaluated. To alleviate some of the neighborhood concerns the Public Works Director advised staff to perform additional traffic analysis for key streets near the Las Animas site. Additionally, the Marina Police Department has stepped up enforcement near and around the project site.

19. Complaints about dust caused by trucks that makes cars and front porches dirty.

City staff monitor this impact along with the Monterey Bay Air Resources District (MBARD). MBARD authorized the most recent Permit to Operate in 2018 and determined concrete batch plant has the ability to comply with applicable MBARD regulations.

20. Residents are requesting the council to not extend the lease. From one of the emails:

“While I understand it takes time to relocate a business with infrastructure of this magnitude, Las Animas has another facility 36 minutes away. They do not need to operate here for 3 more years to fulfill their local contracts. This would pose a minor increase in their operating expenditures and a minor inconvenience. A small price to pay when lives are at stake. I am pleading with you to vote against extending their use permit and accelerate relocating their business outside of a residential neighborhood for the safety of our citizens.”



The Council will consider this when renewing the lease at an upcoming meeting.

- 21. “I recently spent 3hrs with 2 Calif Ave households going over their copies of Las Animas related paperwork. It appears a deja vu with a business no longer registered with Calif., a lease that expired years ago, and apparently noise levels maybe far above what City ordinance allows. The trucks are so loud windows rattle, and residents are awakened while sleeping. Any reasonable person would be unnerved in this situation given the paperwork and noise.”**

The Planning Commission approved a conditional use permit to operate the site in accordance with the California Environmental Quality Act by preparation of a Mitigated Negative Declaration that determined the impacts from the site are less than significant. City staff will continue to monitor the property to ensure compliance with the Municipal Code and the approved CUP.

- 22. Traffic Advisory Committee (TAC) meeting on 1.7.25. Concerned residents were present at the TAC meeting to express their concern for the speeds along California Avenue.**

Public Works staff explained the traffic analysis done for this street and several abutting streets and the speeds that were identified at the 85 percentiles (generally around 35 miles per hour along California Avenue), higher than the 30 mph posted. The Public Works Director indicated a new traffic warrant study will be carried out for these streets in the near term.

- 23. Concerned resident-email on 1.6.25**

- a. **Yes or No: Is California Ave BETWEEN Imjin Parkway and 8th St (which is in Dunes CFD) maintained under Dunes CFD? No**
- b. **What is the weight limit that California Ave between Imjin Parkway and 8th St was built to withstand? i.e., This specific segment of California Ave, up to what weight of vehicle was it meant for travel on?**

It's a collector roadway with a Traffic Index of 7 – this index gives us an understanding of how much of a Truck Load this particular roadway can take in its lifetime. A TI of 7 is fitting for a collector roadway and should suffice for California Avenue's normal use. 8th St is also a Collector roadway designed in the same manner. This was conveyed to Carol Eng via email on 1.7.25.

Concerned resident Noise Disturbance Complaint 1.3.25: 30 trucks passed on Friday, 1.3.25 by with noise levels of 68.1-84.3 dBA.

The City will be hiring a consulting firm to further evaluate the truck noise to ensure compliance with the City's noise standards.



24. Concerned resident-Traffic Complaint-1.3.25 Nine (9) cars observed not using the stop sign.

Community Development Director emailed resident on 1.6.25 stating this matter has been referred to the TAC. Additionally, the Police Chief stated at the January 7, 2025 TAC meeting that additional enforcement will be occurring near and around this street in the near term.

28. Concerned resident-Traffic Complaint-12.31.24. 12.31.24 41 cars, SUVs and trucks driving over the speed limit on California Avenue.

Community Development Director emailed resident on 1.2.25 stating the matter had been referred to the January 7, 2025 TAC for additional follow up.

25. 12.17.24- Letter From concerned residents

Las Animas Concrete LLC is no longer an entity registered with the California Secretary of State. Its status with the California state is “terminated” and it has been “inactive” since May 30, 2024.

Response from Las Animas, dated December 19, 2024, - “Yes, we dissolved the LLC this year since we no longer partner with MPE in Marina. We are now Las Animas Concrete & Building Supply Inc, DBA Las Animas Concrete, Marina.”

26. Concerned resident email dated 12.13.23

- a. **Is it the area enclosed within and including the dotted lines which are maintained under the CFD?**

Map sent to resident on 12.13.24. California is not a part of the CFD.

- b. **What is the street in the lowest point of this maintained area in dotted line? the street at the southern most end of the dotted enclosure. "op phase 3 is written above it)**

Divarty Street

- c. **Approved truck routes for use in general (separate from special approvals given for Las Animas Concrete.**

No formal truck routes have been approved in Marina.

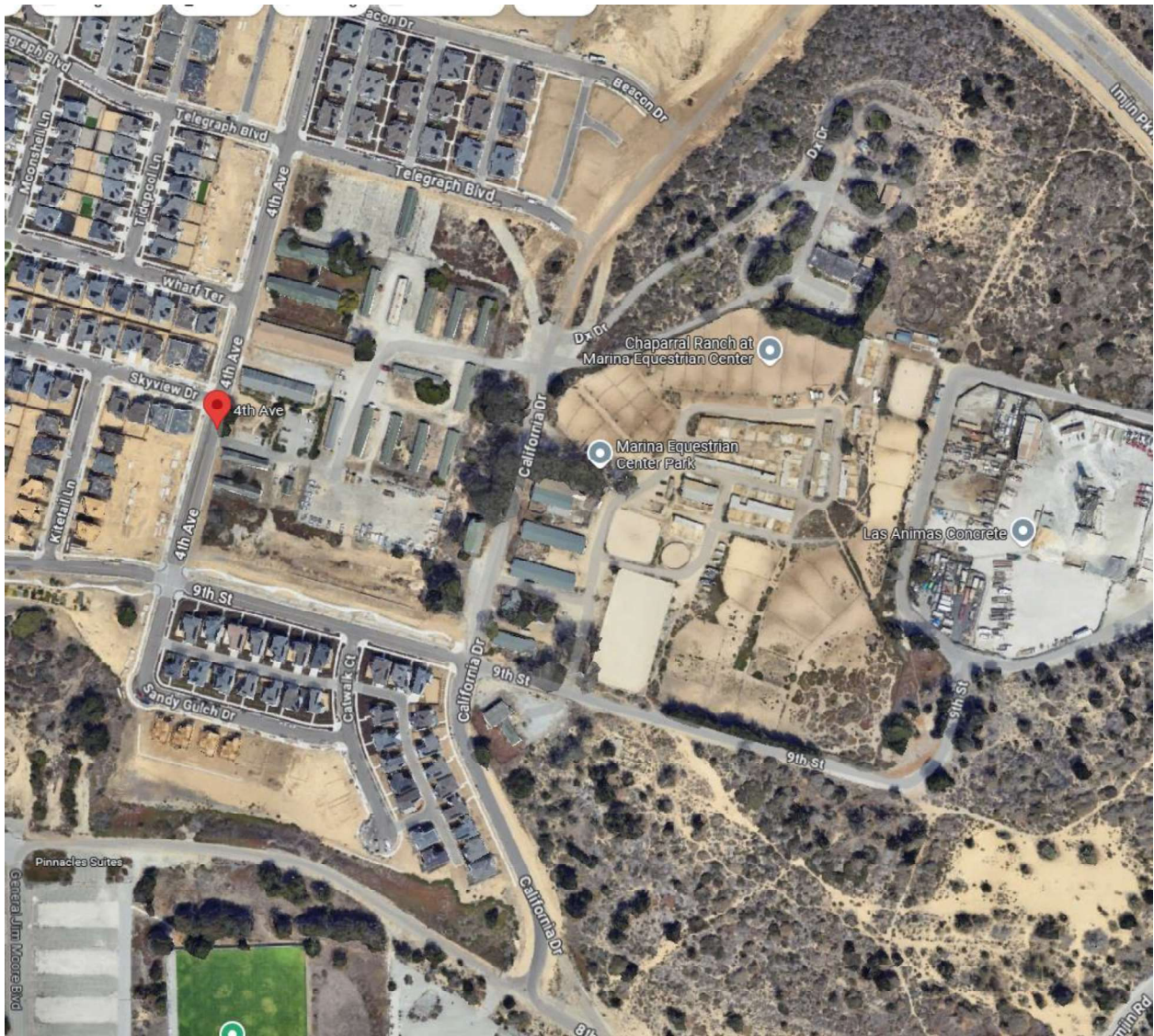
- d. **Conditional Use Permit approved for Las Animas Concrete on 24 October 2024 hearing**

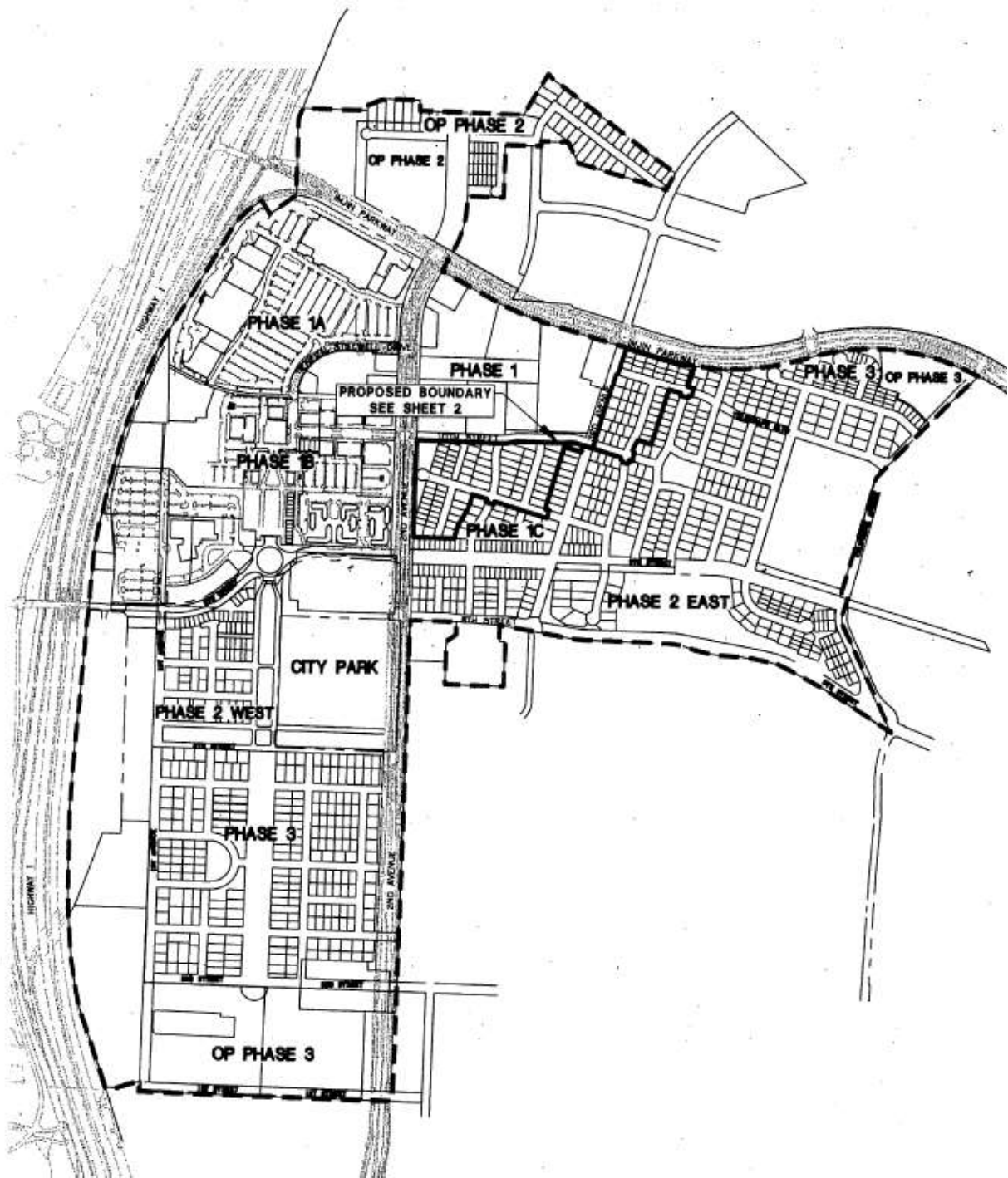
CUP info can be found via this

link: <https://www.cityofmarina.org/AgendaCenter/ViewFile/Agenda/10242024-569?html=true>

- e. **Ordinance No. 2015-03 forming the City of Marina Community Facilities District No. 2015-1 (commonly referred to as The Dunes CFD)**

Ordinance 2015-03 sent to resident on 12.5.24





REBUTTAL RESPONSE TO COUNCIL'S QUESTIONS RE:
LAS ANIMAS CONCRETE POTENTIAL LEASE
Marina City Council
Meeting of January 22, 2025
and
OPPOSITION AND OBJECTION
TO PROPOSED LEASE
BETWEEN CITY AND LAS ANIMAS CONCRETE

499 Ninth Street
Parcels 031-201-014 and -016
City Council Meeting, January 22, 2025

I am a California attorney appearing solely on my own behalf as a resident and owner of residential property on California Avenue (cross-street Ninth Street) in Marina. I oppose and object to the proposed three-year lease between the City of Marina and Las Animas Concrete – or any other Lease -- for continued operation. A cement plant and daily transportation of products and materials in three, four and five axle commercial trucks do not belong in a residential neighborhood. Las Animas Concrete intends to engage in operation and transportation through our residential Dunes neighborhood six days per week, 11 hours per day, starting at 6:00 a.m., *plus* 30 nights of operation per year, *including holidays*. Las Animas' operations generate 80 to 90 truck trips right in front of my home, and the homes of dozens of other residents of The Dunes Phase Two – which is highly disruptive to sleep, peace, health, and safety of Marina residents.

City Council has on the Agenda for Closed Session, the negotiation of a new Lease with Las Animas Concrete & Building Supplies Inc. Upon investigation by other Neighbors, we now know that Las Animas Concrete LLC (a different entity) previously had a written Lease with the City (as proxy for the Redevelopment Agency) dated/effective February 4, 2006, with had a term of 5 years, with option for extension of 2 more years. In September 2008, the parties entered into a written Amendment #1, exercising the extension to February 4, 2013. In July 2012, the City and Las Animas entered into a written Amendment #2, extending the Lease term to February 4, 2017. **The Amendment #2, as approved by Resolution 2012-104, signed by Mayor Bruce Delgado, expressly states that there will be no more extensions of the Lease:** "The term of this Agreement shall be for eleven (11) years, commencing on February 4, 2006, and terminating on February 4, 2017. Tenant shall have no option to extend the term of the Lease."

Guido Persicone kindly provided his Staff response to Questions posed by the City Council regarding Las Animas Concrete and its use of City-owned parcels, dated January 17, 2025.

As several of the Answers to the Council's Questions are imprecise, evasive or inaccurate, this Rebuttal Response is submitted as alternative Answers to some of the Questions posed by the City Council, for its consideration:

2. Did the road California Ave between Imjin Parkway and 9th St exist before Dunes? Staff answer: “Yes, California Avenue has been operational since the inception of the former Fort Ord Base.”

My Answer: The road by new residential construction was named Fifth Avenue, not California Avenue, prior to The Dunes. The portion of the road between Imjin and 9th Street was CLOSED for several years during construction of The Dunes (at least during Phase Two) – in that the intersection of California Avenue and Imjin Parkway was blockaded for years, and did not open until November 2024.

5. What are the allowable noise levels on residential streets like California Avenue during daylight/night hours.? Staff answer: “Allowable average noise standards are as identified in Table 4.1 and 4.2 of the General Plan. According to the General Plan 70 Ldn dBA during the day the 65 Ldn dBA at night are allowed. . . .”

My Answer: The Conditional Use Permit recently issued to Las Animas Concrete by the Marina Planning Commission explicitly requires that it comply with the Noise Ordinance noise levels stated in Section 9.24.

Section 9.24.010 states: “It is declared to be the policy of the city that the peace, health, comfort, safety and welfare of its citizens require protection from excessive, unnecessary or unusually loud noises and vibrations from any and all sources in the community” Section 9.24.020 states: “The term ‘excessive, unnecessary or unusually loud noise’ means a noise disturbance which, because of its volume level, duration or character, annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of Marina residents, businesses or education facilities”

It is also noteworthy that that areas zoned as “industrial” have noise limits pursuant to Section 17.28.040H. **Industrial noise caused to single or double family residential property is limited to 55 decibels during days and 45 decibels during the night.** Las Animas’ own data shows that it exceeds these levels.

The activities of the concrete company, especially the travel of cement trucks and of 5 axles supply tractor-trailers indeed violates Section 9.24, as its noise disturbance is of such volume, duration, and/or character that it certainly annoys and disturbs the comfort, repose, health, peace and safety of the residents of The Dunes, the local college residents, and any pedestrians.

These heavy commercial operations in our residential neighborhood are unsafe, unhealthy, and noisy. The entire neighborhood in Marinas has significantly changed in the past 12 years since Las Animas concreted was last issued a CUP and lease. Hundreds of residential homes have been built in The Dunes adjacent to Las Animas plant, with hundreds of new residents including children. Las Animas Concrete uses *residential streets*, especially California Avenue, for transportation of materials and products in and out of its facilities all day long. This is a residential family neighborhood,

and the constant travel of *80 to 90 daily trips* of tractor-trailer trucks and cement trucks poses a dangerous threat to our children and other family members. Further, students regularly travel on foot, bike, skateboard and scooter to and from CSU Monterey Bay on the 2600 block of California Avenue each day – which place's them in harm's way. Granting a lease to Las Animas to operate for three more years continues to place children, students, and others in harm's way.

In support of its CUP application, Las Animas Concrete submitted the Ambient Noise Study, which it asserted shows that it is not noisy. As can be attested by neighborhood residents, this is false. The Noise Study only considered noise from the facility base, and took no consideration of all the noise caused by heavy commercial trucks driving going up and down residential streets, six days a week. Indeed, in its Opposition to the Las Animas CUP, CSUMB objected to the noise generated by Las Animas operations, and noted that Ambient's noise measurements at the Promontory residential housing was taken in the middle of the parking lot, and *not* at the property line, and thus is artificially lowered.

Also, Ambient's study reflects that the noise levels from Las Animas operations is *above* the noise levels permitted under Marina's ordinances for nighttime operations – yet Las Animas intends to operate 30 days nights per year – and above the levels allowed for 6:00 a.m. operations. In response, Las Animas' owner simply told the Planning Commission that it will try to keep the noise down, but Las Animas will make no efforts to control noise generated by its material suppliers and their five-axle commercial trucks. This is not satisfactory.

Disturbance of neighborhood residents, recreational areas, and historic resources must be considered – all of which exist near to Las Animas Concrete -- and these are presumed to be noise "sensitive" areas:

Noise-sensitive land uses are generally considered to include those uses where noise exposure could result in health-related risks to individuals, as well as places where quiet is an essential element of their intended purpose. Residential dwellings are of primary concern because of the potential for increased and prolonged exposure of individuals to both interior and exterior noise levels. Additional land uses such as parks, historic sites, cemeteries, and recreational areas are also considered sensitive to increases in exterior noise levels.¹

According to Las Animas' own data, The Dunes residential neighborhood is only 950 feet from the facility. That's less than 2-tenths of a mile (950/5280 feet). The Marina Equestrian Center is right next door. Buildings at CSU Monterey Bay, especially the 60 unit residential building at Promontory, are located as close as approximately 2 tenths of a mile (1175/5280 feet). These are all noise sensitive property uses.

¹ Ambient Report at pages 4-5.

Las Animas Concrete is also known to violate the required end of operations at 5:00 p.m. – which is part of its CUP requirements. For example, on August 30, 2024, a five-axle tractor-trailer truck drove out of Las Animas and down the 2600 residential block of California Avenue at 5:30 p.m., another one left at 5:39 p.m., and a mixer truck drove along 2600 block of California Avenue and into the facility at 6:22 p.m. This creates residential noise that is not subject to any permit. In response, at the Planning Commission hearing, Las Animas acknowledged that it can be expected that commercial trucks will be returning to the plant after 5:00 p.m. as needed, and did not propose to enforce its 5:00 p.m. mandatory deadline. Neighbors are simply told to file complaints for CUP violations that Las Animas already commits and anticipates committing in the future if a lease is granted.

There is also a problem with pollution. Every day that Las Animas Concrete operates, its trucks (and its suppliers' trucks) litter California Avenue with dust, sand, gravel, and rocks. Residents' vehicles parked (in front of their residential homes) on California Avenue are daily covered with dust and grit from the commercial trucks going in and out of Las Animas Concrete. This pollution problem was intentionally ignored by the Planning Commission, saying that it was up to residential neighbors to complain to the Monterey Bay Air Resources District. This is incorrect, as the City must consider whether the Las Animas operations might create dust, sound, or vibration.

As operation of a cement plant and related commercial truck transportation is inconsistent with the residential neighborhood, the lease should be denied.

6. What studies, if any, were conducted by the City of Marina on noise emitted by Las Animas cement trucks traveling on residential streets, prior to Shea Homes' development of the California Avenue housing tract. If not, why not? Staff

Answer: "A Mitigated Negative Declaration for the site was prepared pursuant to the California Environmental Quality Act in 2005 to ensure impacts were less than a significant level. Additionally, all homes within the Dunes Development were made aware of the Las Animas site in their disclosure documents."

My Answer: The staff did not answer the Question. The real answer is NONE were ever conducted by the City. A CEQA review in 2005 had no analysis of noise levels from *cement trucks* upon potential residential properties. The "site" examined was only the plant itself– not the truck transportation noise – and it was just an abandoned Fort Ord at the time (no residential). As set forth above, the only noise study was conducted by Ambient for Las Animas, which *did not measure the noise of the commercial trucks upon residential property*, but only the noise of the plant itself, and only measured for 10 minutes, at six points, during *non-peak* hours of operation.²

As to the Staff's reference about disclosure to property buyers by Shea Homes, the statement is *highly misrepresentative*. Assertions by Las Animas or Shea Homes or

² Extensive traffic activity occurs between 7:00 a.m. and 9:00 a.m. Conveniently, Las Animas had its noise study conducted during less busy hours after 10:00 a.m.

City Staff that The Dunes residents had prior notice are unfounded. People who purchased homes on California Avenue in The Dunes Phase Two did not know and would not have known, at the time of purchase, that the cement company was and would be driving three, four and five axels commercial trucks up and down California Avenue, six days per week, 11 hours per day.

As this Council is aware, The Dunes residential properties are pre-sold with an earnest money deposit prior to construction of the houses. The areas were fenced off from general public access. While the Phase Two residential area was under construction, purchasers were only allowed to view their putative residential lots by appointment with the personal supervision of Shea Homes realty staff. Such viewings were also limited to those days and times when Shea Homes realtors worked at the showroom site – typically on weekends. Once the homes were built, Phase Two purchasers had only a few days to inspect the property and complete escrow. Accordingly there was no actual knowledge of Las Animas Concrete's intended invasion of The Dunes Phase Two residential streets to occur after purchase and move-in to the residential homes – and certainly not to the extent of six days per week, 11 hours per day, starting at 6:00 a.m.

At the Special City Council meeting on November 26, 2024, a Shea Homes representative developer told the Council that all purchasers of residential property at the Dunes Phase Two received a voluminous written disclosure to be signed in escrow, disclosing that a cement plant was in the neighborhood. **I have reviewed the disclosures of Shea Homes for purchase of my property on California Avenue, and there is absolutely *no disclosure* that Las Animas Concrete runs, or would be running, 80 to 90 truck trips up and down California Avenue, RIGHT IN FRONT OF OUR HOMES, from 6:00 a.m. to 5:00 p.m., six days per week, plus 30 nights per year. There was no such actual disclosure to the buyers of the circumstances.**

Further, there was no putative public notice to the purchasers of Dunes Phase Two residences. Indeed, in November/December 2022, Las Animas Concrete *had no conditional use permit to operate, and was operating unlawfully*. Any search of public documents would have shown *no* CUP for Las Animas to engage in cement plant operations. This Council is now aware of the fact that Las Animas was operating without any CUP since 2017.

In addition, any public search would have reflected *no operative lease* between the City of Marina and Las Animas Concrete for use of this City-owned parcel of land. California Government Code Section 37393 mandates: “A lease of an interest in real property of a city shall be recorded in the office of the recorder of the county in which the property is located.” These parcels were quitclaimed to the City as of 2011. An electronic search on the Monterey County Recorder's office records website reflects *no prior lease between City of Marina and Las Animas Concrete* was ever filed. To the extent that there was a prior lease in 2005/2006 or 2012, the City and Las Animas failed to comply with State law, and there was no public record of any lease at the time of sales and purchase of Phase Two residences. In fact, any lease had already expired by that time.

9. Is this segment of California Ave built to withstand truck traffic, e.g., the loads of Las Animas' trucks? Staff answer: "It's a collector roadway with a Traffic Index of 7 – this index gives us an understanding of how much of a Truck Load this particular roadway can take in its lifetime. A TI of 7 is fitting for a collector roadway and should suffice for California Avenue's normal use. 8th St is also a collector roadway designed in the same manner."

My Answer: The staff answer ignores the physical difference of California Avenue between 8th and 9th. Unlike the portion of California between 9th and Imjin, the portion of California Avenue on the 2600 block is NOT built as a collector road. Its lanes are very narrow, just like the rest of the residential streets in The Dunes Phase Two. I have previously provided this Council with physical evidence that the 2600 block of California is being damaged on a daily basis. The distinction between the construction of this portion of California Avenue from that closer to Imjin was specifically acknowledged by the Chair of the Traffic Advisory Committee at its meeting on January 7, 2025. The portion of the road where California meets 8th and then continues on through the CSUMB campus is heavily destroyed asphalt road, caused by these heavy loads.

16. According to an email from homeowner/lawyer Marie Weiner, Las Animas is operating in a BP (Business Park) Zone. Is a cement plant allowed to operate in a BP Zone? Staff answer: "Yes, with a conditional use permit the project is allowed per 17.24.030 of the Muni Code."

My Answer: The staff answer is not precise and is misleading. In order for a cement company to operate in a BP Zone, under 17.24.030, the Company must have (1) a CUP AND (2) an actual Lease for use of city-owned property. More precisely, a cement company is not one of the activities that is automatically allowed in a BP Zone. The City Ordinance limits which types of business can even operate their with a CUP. The cement company can only be eligible for operation with a CUP in a BP Zone IF it has a Lease for city-owned property. **The one and only way that Las Animas can operate of these city-owned parcels is pursuant to 17.24.030J, which mandates that it must have a Lease.**

As we now all know, Las Animas does not have any Lease for use of this city-owned property. It has not had a lease for 8 years – and thus is in violation of the Zoning Ordinance. Further, the new CUP requires that Las Animas have a Lease in order to operate – which it does not have. All operations should have been shut down unless and until Las Animas had a Lease in the first place.

17. Does the city monitor/check the number of truck rides? Staff answer: The city's code enforcement will be following up with compliance on the number of trucks trips permitted."

My Answer: No. Obviously the staff answer is also No. Even the recent travel data taken by the City, per the report given at the TAC January 2025 meeting, did *not*

measure any traffic in California Avenue between 9th and 8th, i.e., my residential block and the road that leads to CSUMB. The City only took data for the area between 9th and Imjin.

OPPOSITION OF ANY FURTHER LEASE

In addition to response to certain questions posed by the City Council, further information is provided in Opposition to issuance of any further Lease to Las Animas:

OPERATION OF A CEMENT PLANT AND EXTENSIVE USE OF COMMERCIAL TRUCKS NEXT TO THE PHASE TWO DUNES RESIDENTIAL NEIGHBORHOOD IS *INCONSISTENT* WITH THE PROPOSED GENERAL PLAN

Parcels 031-201-014 and -016 were given to the City of Marina by the federal government upon closure of Fort Ord. It is located at the dead end of Ninth Street in Marina, with the closest cross-street California Avenue. *Admittedly, Las Animas Concrete has been operating illegally for the past seven years (since 2017) without a conditional use permit, without an active lease, and thus also in violation of the Zoning laws (as Section 17.29.030(J) requires a lease agreement with the city).*

At the time of issuance of its prior conditional use permit (and related lease), *12 years ago in 2012*, Las Animas Concrete's adjacent "neighbors" were the Marina Equestrian Center and the abandoned Fort Ord stockade. Much has changed in the City of Marina since 2012. Indeed, much has changed since Las Animas' last CUP expired seven years ago.³

According to the Fort Ord Reuse Authority Stockage Building Removal plans, the stockade was demolished in 2019. In its place, pursuant to a development plan in which the City participated and approved, Shea Homes built the Dunes Phase Two residences, which are now *the hundreds of residential neighbors* of the concrete plant.

Also the Marina Equestrian Center was placed on the National Register of Historic Places since 2014. The site has been designated by the City for public and recreational use – which public recreational use was mandated by the federal government in granting that land to the City. The Las Animas facility is at the dead end on Ninth Street, and all of the many commercial trucks of Las Animas and its providers drive past and through the historic Marina Equestrian Center property – indeed on the road between

³ Although Las Animas was granted a new conditional use permit by the Planning Commission on October 24, 2024, that CUP is explicitly conditioned upon Las Animas having an active (new) lease with the City of Marina, and its BP Zoning also mandates that Las Animas must have a City lease *in order to operate in the first place*. Thus all operations by Las Animas since the granting of its new CUP are *illegal*, unless and until it gets a new lease.

the horse pens and the horse-riding trails. Such heavy industrial activity of a cement business is utterly inconsistent with use of the historic Equestrian Center.

Importantly, City of Monterey has a draft of revisions to the General Plan for the growth and development of the City of Marina, which new proposed General Plan was presented to and approved by the City Council at its meetings on November 19, 2024 and January 9, 2025.. Part of that proposed General Plan revision is called the “8th Street Area”, and it pertains to the same geographic area. The proposal calls for building additional CSUMB residential housing along the 2600 block of California Avenue – across the street from my residence – as well as two small green parks. Such student housing would also border Ninth Street. These are the same streets that Las Animas heavy commercial trucks travel for *80 to 90 truck trips per day*. Such industrial operation of a cement plant and transportation of materials and products, six days per week, 11 hours per day, is utterly *inconsistent* with the proposed General Plan for student housing. Indeed it is inconsistent with the existing CSUMB Promontory Point resident housing that Las Animas presently travels next to on Eighth Street starting at 6:00 a.m. Monday through Saturday.

Further, there are two “pink” areas on the draft General Plan map for the 8th Street Campus Extension are designated as “Neighborhood Commercial” (NC), which is described as “retail, restaurants, entertainment, office, and other services” that would normally be found in a neighborhood. These “pink” areas include or are right next to the existing City-owned parcels used by Las Animas Concrete. It would be completely *inconsistent* to grant a lease to Las Animas to operate a cement plant, when it is anticipated that the adjacent land will be used for offices and restaurants -- especially given that the surrounding neighbors are residential units.

In fact, as part of the proposed new General Plan, the City has a Goal of “creating community gathering places”; and the City has specifically designated the Marina Equestrian Center to be one such community gather place. Clearly it is inconsistent with the Goal to have heavy commercial trucks and noisy dirty cement operations taking place **right next door** to a place for gathering of families and children.

The City should decline to enter into any further Lease with Las Animas, and certainly not for three years. At most, the City should give Las Animas one year to wind down its operations, and six months to disassemble and remove its cement plan facilities.

MARIE WEINER
California Avenue
Marina, CA
mweiner@astound.net

Rebuttal Of Marina City Staff Q&A **Dated January 17, 2025 on Las Animas Concrete**

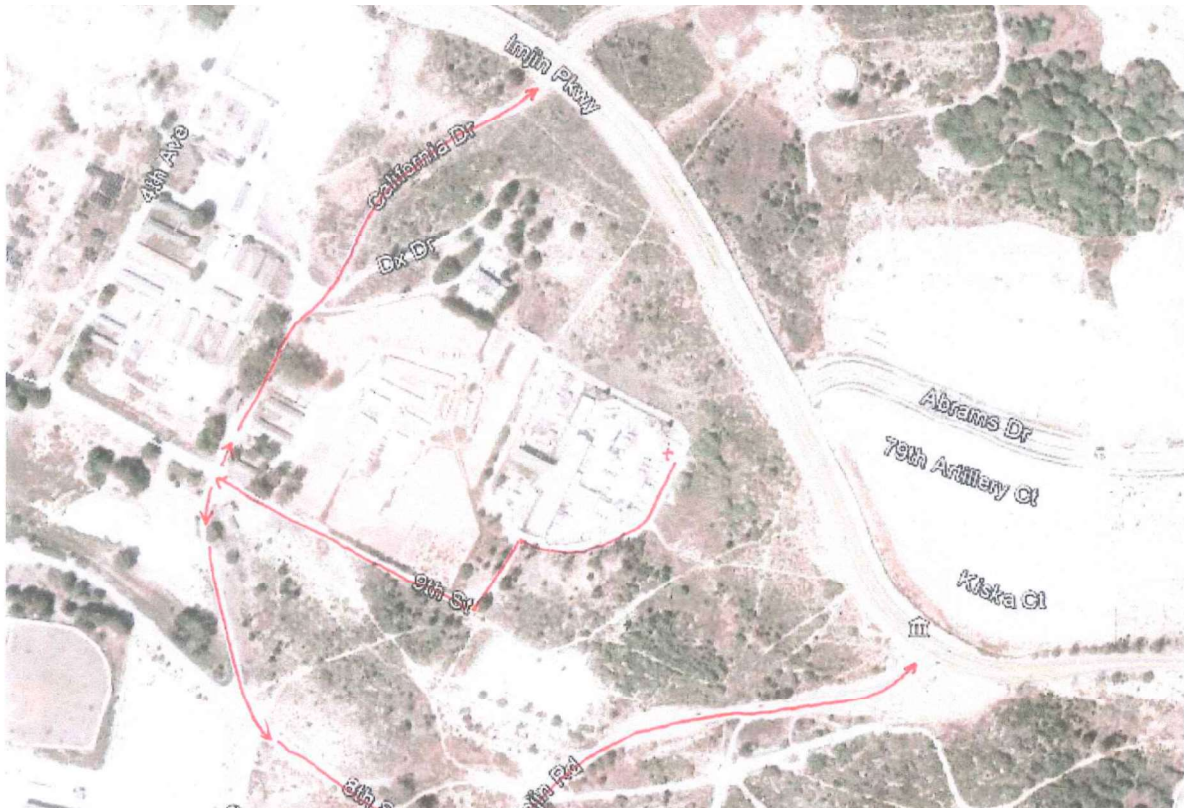
February 3, 2025

From: NoToLA2025 Concerned Citizens Group NoToLA2025@gmail.com
To: City of Marina, 5 City Council members, City Manager, City Counsel
Subject : Las Animas Concrete / California Ave / 8th St

- We, representing the local community of NoToLA2025 group with 76 petitioners and growing, are responding to Marina City Staff's answers to Council questions about Las Animas Concrete (file emailed as ***"Las Animas Emails CM Input v6.0.pdf"*** dated January 17, 2025).
- All references are provided in the appendix.
- Copy of petition is attached separately.

Response to Answer #1 **Misrepresentation of truck route**

The **picture** provided by City Staff in Q&A is misrepresentative, since it displays only **part** of the truck route approved in the past: it mistakenly shows trucks can only turn left onto California Ave, but not to the right.



2012 CUP : Approved Truck Route

The picture **shown here** displays the **complete truck route** from the 2012 Conditional Use Permit. It shows trucks can in fact turn onto both the left and right onto California Ave.

- **[REF]** Resolution No. 2012-03 (Las Animas CUP 2012)

Why is this relevant? It shows inadequate disclosure of information on the Dunes and the provision of wrong and inaccurate information by builder Shea Homes and Las Animas.

1. This CUP is material information which is known since 2012 and before Dunes homes were built: trucks would travel directly on residential roads adjacent to approved homes on California Ave.
2. This CUP is material information which should have been disclosed to home buyers but was not. This point discussed further below in the **Response to Answer #6**.
3. Also, when Shea Homes customers visit the site/homes for purchase, they are provided a marketing map that does not show the existence of Las Animas. This point discussed further below in the **Response to Answer #6**.
4. Further, **when specifically asked in 2022 whether trucks would travel on roads adjacent to Dunes homes, both builder Shea Homes and Las Animas said they would not when it is known ahead that they would!**

This enquiry was made by a resident of the Dunes, Hitoshi Takakura. He asked Animas and Shea about the driving route of the trucks before they purchased their home in **Sept 2022**. The direct response from the owner of Las Animas is they avoid the houses as much as possible and they don't drive through the neighborhood unless they are delivering concrete to the neighborhood for construction.

- **[REF]** Hitoshi Takakura email

Response to Answer #4

Deny new lease since City is not building a new access road

By not building a dedicated access road for Las Animas to divert traffic away from residential areas, would cause Las Animas to continue to breach **Dunes SP requirements, and Marina GP noise standards**.

These breaches are discussed further below in the **Response to Answer #5, and in Response to Answer #7, #21**.

Response to Answer #5

Acceptable Noise Levels

The **Acceptable** noise level that is given in Table 4.1 of the Marina GP is what should be referenced as the maximum allowable noise limit. For residential area — always defined as noise-sensitive — the maximum allowable noise limits are:

City of Marina General Plan Noise Standard (Residential) :

<u>Maximum acceptable noise (exterior)</u>	<u>60 dBA</u>
<u>Maximum acceptable noise (interior)</u>	<u>45 dBA</u>

The values quoted in the response from City staff are for **Conditionally Acceptable**: this applies only apply if noise reduction has been applied. The Dunes homes along California Ave are of conventional design with no special noise-reduction features.

- **[REF]** *Marina GP, page 172*

The State of California General Plan definitions are as below:

Acceptable: “Specified land use is satisfactory based upon the assumption that any buildings involved are of normal conventional construction, without any special noise insulation requirements.”

Conditionally Acceptable: “New construction or development should be undertaken only after a detailed analysis of the noise reduction requirements is made and needed noise insulation features included in the design. Conventional construction, but with closed windows and fresh air supply systems or air conditioning will normally suffice.”

- **[REF]** *State of CA GP, Appendix D, page 374*

Many people may have forgotten

The Dunes Specific Plan

passed 20 years ago in May 2005 :

This Dunes SP trumps other regulations because it was specifically crafted for a particular area (In fact, the Marina General Plan had to be revised to bring it in alignment with The Dunes SP) This Dunes SP sets development regulations for all developments that are to come come after it, or after May 2005.

The Dunes SP is required to conform to the Ford Ord Reuse Plan (FORA). As such, the Dunes SP has set noise goals which are to be met by any development which is to come after it.

Environment Impact Report (EIR) for The Dunes Specific Plan

The need to use and apply the **Acceptable level** is set out in the **Environment Impact Report (EIR) for The Dunes Specific Plan** (formerly called University Villages Specific Plan).

The EIR for the Dunes SP reinforces the need to apply **Acceptable** level (and **NOT Conditionally Acceptable**). **ie the “acceptable level” for noise is to be applied to every home in the Dunes planned residential community..**

*“The maximum allowable exterior noise exposure, as measured in Ldn (dBA) (or CNEL for the Airport CLUP noise standards), shall not exceed the “**acceptable** use” standards shown Table 4.1 [Table 3.8-5] of this plan... Where existing or projected exterior noise levels exceed the **acceptable** limit, construction shall be conditionally permitted only when appropriate mitigation measures are employed, including measures to attenuate exterior noise levels where development of schools, parks and playgrounds is proposed”*

- **[REF]** Dunes Specific Plan (formerly University Villages) Noise Goals, (page 170-172, 189)
- **[REF]** EIR for Dunes SP, page 3.8-9

This Dunes SP EIR defines the terms used for noise:

Lmax : maximum noise level in any given time period
Lmin : minimum noise level in any given time period
Leq : average noise level in any given time period
Ldn : average noise level over a 24-hour period

- **[REF]** EIR for Dunes SP, page 3.8-2

Fort Ord Reuse Plan (FORA) Noise Goal (which the Dunes SP needs to conform to):

To protect people who live, work and recreate in and around the former Fort Ord from the harmful effect or exposure to excessive noise

To provide noise environments that enhance and are compatible with existing and planned uses

To protect the economic base of incompatible land uses within areas affected by existing or planned noise-producing uses.

- **[REF]** *Dunes Specific Plan (formerly University Villages), page 189.*

Response to Answer #6

Shea Homes' Disclosure on Dunes

Excerpt from "SHEA HOMES LIMITED PARTNERSHIP'S DISCLOSURE STATEMENT FOR THE DUNES (PHASE 2 EAST)"

***"Properties to the East:* Existing uses east of the Community and south of Imjin Parkway and generally north of 9th Street include, among others, the Marina Coast Water District maintenance facility and corporate yard on General Jim Moore Boulevard between 9th Street and 5th Avenue; an equestrian center (Marina Equestrian Center described below); **a ready-mix concrete plant (Las Animas Concrete) on 9th Street east of 5th Avenue about 750 from the Community**; and radio towers at the end of Dx Drive, less than 500 feet from the Community. The radio towers are owned by the City of Marina and operated by the Monterey Bay Amateur Radio Association."**

1. The name "Las Animas Concrete" only appears once in the text of the 367-page complete Shea home closing contract and disclosures provided.
 2. There are no mentions of the operation of the plant, the transportation of goods in and out of the plant by large and heavy trucks, or their use of the roads adjacent to Dunes homes. Neither are there any mentions of the noise, vibrations, and pollution from the operation of these trucks on residential roads.
- **[REF]** *SHEA HOMES LIMITED PARTNERSHIP'S DISCLOSURE STATEMENT FOR THE DUNES (PHASE 2 EAST), page 23.*

Also, in the marketing materials provided by Shea Homes when customers come to view the homes, the **marketing map provided does not show the existence of Las Animas**. The picture ends on the East at the Marina Equestrian Center.

- **[REF]** *Shea Homes marketing map of the Dunes*

Response to Answer #7 and #21

Noise Study for Las Animas

The IS/ND for Las Animas Concrete CUP done by the city stated that "there would be less than significant impact on the environment." The noise study in the IS submitted by Ambient is incomplete, inadequate and inaccurate. Who is saying that?

- **CSUMB** via an opposition letter submitted to the Planning Commission meeting on Oct 24, 2024.
- **Marie Weiner** (former judge with 20 years experience, and expertise in CEQA) via an opposition letter submitted to the Planning Commission meeting on Oct 24, 2024.
- **Local residents** on the ground, who have signed two petitions, one was submitted to the Planning Commission meeting on Oct 24, 2024. A second petition, with 76 signatures and growing, by Marina residents is also attached.
- **[REF]** CSUMB letter
- **[REF]** Marie Weiner letter
- **[REF]** Residents letter and petition
- **[REF]** Attached separately, Current NoToLA2025 petition

The noise study is incomplete, inadequate and inaccurate because, to quote Marie Weiner in the opposition letter *"in assessing the traffic and noise caused by Las Animas Concrete in its business operations, the Initial Study fails to substantively recognize that a significant inherent part of its business is **transportation**. Las Animas Concrete's operations include transporting materials and concrete in and out of its facility based on 499 Ninth Street."*

1. The measured noise at various locations near the plant do not include noise from the trucks that come in and out of the plant, including large trucks from its suppliers, as well Las Animas' own cement trucks.
Since the residents' main objection is to truck noise, then truck noise must be measured in order for this IS to be valid. ***The IS is not complete until a complete study of truck noise is done at the residences adjacent to the truck routes, including at Dunes homes on California Ave, and at the CSUMB Promontory on 8th St.***
2. Looking at the measurement locations from the Ambient report, page 6, only Location 3 and Location 5 are directly on the truck route (on August 2024 when the study was done). Yet, the maximum reported noise (Lmax) at Location 3 is **57.9 dBA**, and at Location 5 it is **56.3 dBA**. ***This is too low for trucks.***
3. From our own noise measurements, the noise from trucks when measured at a residential property adjacent to truck travel, the maximum noise (Lmax) should be between **70-78 dBA**. ***It is clear that the noise study did not in fact measure any Las Animas trucks or the trucks of their suppliers.***

Our measurements can be found in two videos shared on Google drive here:

(1) [https://drive.google.com/file/d/1LdR4qKtcVk5A2KA-kJqy3YKycRAPbppv/view?usp=share link](https://drive.google.com/file/d/1LdR4qKtcVk5A2KA-kJqy3YKycRAPbppv/view?usp=share_link)

(2) [https://drive.google.com/file/d/1_jB4qCWb5eiTfpxXTWMZlpo7VpY_9aS/view?usp=share link](https://drive.google.com/file/d/1_jB4qCWb5eiTfpxXTWMZlpo7VpY_9aS/view?usp=share_link)

- **[REF]** Ambient report from IS, pages 5 and 6

Hence, the City's noise study only looked at the noise from the facility and **did not study the noise from trucks although transportation is the heart of a concrete business!** Every day, suppliers transport raw materials to the site, concrete is mixed, and this is then transported to customers **every day!**

On the basis of this non-study, the City made a wrong negative CEQA declaration to say there is no impact from Las Animas' business.

Carol Eng

Tom Zahilaris

NoToLA2025@gmail.com

From: Hitoshi Takakura
Subject: Re: Concrete Company Truck Route
Date: November 30, 2024 at 19:40
To:

**PROVISION OF WRONG INFO BY
LAS ANIMAS CONCRETE & BUILDER SHEA HOMES
IN RESPONSE TO BUYER QUESTIONS IN 2022**

Carol,
Resending.

2024年11月30日(土) 18:26 Hitoshi Takakura
Hello Carol,

Here is my communication with the Shea Home office when we confirmed a driving route of the concrete company. Please allow me to delete my confidential information; however, I actually contacted Tyler French at Las Animas on the website not to drive to Imjin through California Dr. Hopefully this is enough for you.

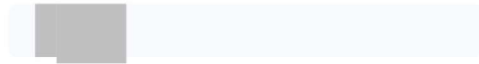
The communication held in September, 2022.

Hitoshi

B

Bernadette Gluck <Bernadette.Gluck@sheahomes.com>

To 自分, Josh



Hello Hitoshi,

Regarding the Las Animas Concrete company, I would recommend you call them and ask them your specific questions. We do not know exactly what their route is or will be and do not want to give you false information.

H

Hitoshi Takakura

To Bernadette, Josh, Renee

Good morning Bernadette,
cc: Josh,

Here is the reply from Las Animas Concrete Company about the driving route.
Please let me forward for your reference.

We take Injim Parkway to Injim Rd to 8th Ave, we try to avoid the house as much as possible and don't drive through the neighborhood unless we are delivering concrete.

Thanks

Tyler French
Las Animas Concrete
(831) 426-7280 x...5
Cell (831) 227-7488

J

Josh Miller <Josh.Miller@sheahomes.com>

To 自分, Bernadette



Hello Hitoshi,

Well that sounds like the best possible answer. It means they go around the back and should not be anywhere near your home.

Thank you,

Joshua Miller

Shea Homes® The Dunes™

SENIOR COMMUNITY REPRESENTATIVE

O: 831.233.0962 | [Directions](#)

Table 4.1. Allowable Noise Standards Measured in Ldn (dBA)

Land Use Category	Maximum Exterior		Maximum Interior*
	Acceptable	Conditionally Acceptable	
Residential	60	70	45
Live/Work	65	75	50
Hotel/Motel	65	75	50
Office	67	77	55
Other Commercial	70	80	60
Industrial/Agriculture	70	80	60
Schools, Libraries, Theaters, Churches, Nursing Homes	60	70	45
Parks and Playfields	65	70	NA
Golf Courses, Riding Stables, Cemeteries	70	75	NA
*It is preferred that the interior noise standard be attained with open windows. However, where the interior noise standard is attainable only with closed windows and doors, mechanical ventilation shall be required.			

Table 4.2. Noise Standards for Stationary Noise Sources

Duration	Maximum Allowable Noise	
	Day (7:00 a.m. to 10:00 p.m.)	Night (10:00 p.m. to 7:00 a.m.)
Hourly L_{eq} in dB ^{1,2}	50	45
Maximum Level in dB ^{1,2}	70	65
Maximum Impulsive Noise in dB ^{1,3}	65	60

¹As determined at the property line of the receiver. When determining the effectiveness of noise mitigation measures, the standards may be applied on the receptor side of noise barriers or other property-line noise mitigation measures.

²Sound level measurements shall be made with slow meter response.

³Sound level measurements shall be made with fast meter response.

Step 15:

Adopt and apply a community noise ordinance for resolution of noise complaints.

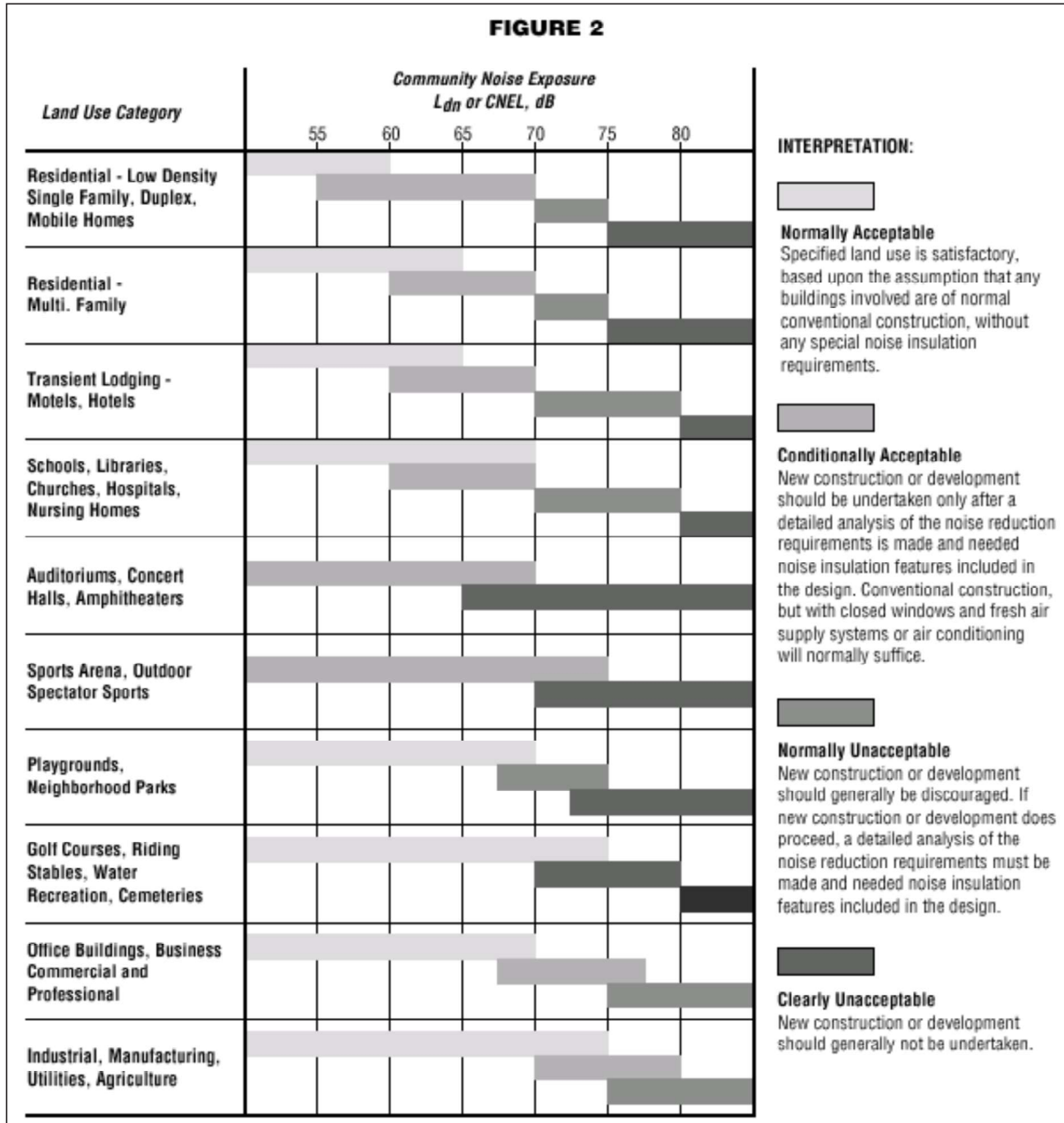


EXHIBIT E

Environment Impact Report for Dunes Specific Plan in 2005
(These development guidelines are required to be followed. Las Animas
Concrete came after and violates the Dunes Specific Plan for noise.

Table 3.8-1
Representative Environmental Noise Levels

Common Outdoor Activities	Noise Level (dBA)	Common Indoor Activities
	—110—	Rock Band
Jet Fly-over at 100 feet		
	—100—	
Gas Lawnmower at 3 feet		
	—90—	
		Food Blender at 3 feet
Diesel Truck going 50 mph at 50 feet	—80—	Garbage Disposal at 3 feet
Noisy Urban Area during Daytime		
Gas Lawnmower at 100 feet	—70—	Vacuum Cleaner at 10 feet
Commercial Area		Normal Speech at 3 feet
Heavy Traffic at 300 feet	—60—	
		Large Business Office
Quiet Urban Area during Daytime	—50—	Dishwasher in Next Room
Quiet Urban Area during Nighttime	—40—	Theater, Large Conference Room (background)
Quiet Suburban Area during Nighttime		
	—30—	Library
Quiet Rural Area during Nighttime		Bedroom at Night, Concert Hall (background)
	—20—	
		Broadcast/Recording Studio
	—10—	
Lowest Threshold of Human Hearing	—0—	Lowest Threshold of Human Hearing

Source: California Department of Transportation, 1998

L_{eq} , the equivalent energy noise level, is the average acoustic energy content of noise for a stated period of time. Thus, the L_{eq} of a time-varying noise and that of a steady noise are the same if they deliver the same acoustic energy to the ear during exposure. For evaluating community impacts, this rating scale does not vary, regardless of whether the noise occurs during the day or the night.

L_{dn} , the Day Night Average Level, is a 24-hour average L_{eq} with a 10 dBA “weighting” added to noise during the hours of 10:00 p.m. to 7:00 a.m. to account for noise sensitivity in the nighttime.

L_{min} , the minimum instantaneous noise level experienced during a given period of time.

L_{max} , the maximum instantaneous noise level experienced during a given period of time.

Noise caused by natural sources and human activities is usually well represented by median noise levels during the day, night, or over a 24-hour period. Environmental noise levels are generally considered low when the L_{eq} is below 60 dBA, moderate in the 60-to 70-dBA range, and high above 70 dBA.

Examples of settings with low daytime background noise levels are isolated, natural settings that can provide noise levels as low as 20 dBA and quiet, suburban, residential streets that can provide noise levels around 40 dBA. Noise levels above 45 dBA at night can disrupt sleep. Examples of moderate-level noise settings are urban residential or semi-commercial areas (typically 55 to 60 dBA) and commercial locations (typically 60 dBA). People may consider louder environments adverse, but most people living or working in urban residential or residential-commercial areas (60 to 75 dBA) or dense urban or industrial areas (65 to 80 dBA) accept the higher noise levels commonly associated with these land uses.

When evaluating changes in 24-hour community noise levels, a difference of 3 dBA is a barely perceptible increase to most people. A 5 dBA increase is readily noticeable, while a difference of 10 dBA would be perceived as a doubling of loudness.

Noise levels from a particular source decline as distance to a receptor increases. Other factors, such as the weather and reflecting or shielding, also help intensify or reduce noise levels at any given location. A commonly used rule of thumb for roadway noise is that for every doubling of distance from the source, the noise level is reduced by about 3 dBA at acoustically “hard” locations (i.e., the area between the noise source and the receptor is nearly complete asphalt, concrete, hard-packed soil, or other solid materials) and 4.5 dBA at acoustically “soft” locations (i.e., the area between the source and receptor is normal earth or has vegetation, including grass). Noise from stationary or point sources is reduced by about 6 to 7.5 dBA for every doubling of distance at acoustically hard and soft locations, respectively. Noise levels may also be reduced by intervening structures; generally, a single row of buildings between the receptor and the noise source reduces the noise level by about 5 dBA, while a solid wall or berm reduces noise levels by 5 to 10 dBA. The manner in which older homes in California were constructed generally provides a reduction of exterior- to-interior noise levels of about 20 to 25 dBA with closed windows. The exterior-to-interior reduction of newer residential units is generally 30 dBA or more.

Fundamentals of Groundborne Vibration

Vibration is sound radiated through the ground. The rumbling sound caused by the vibration of room surfaces is called groundborne noise. The ground motion caused by vibration is measured in the U.S. as vibration decibels (VdB).

The background vibration velocity level in residential and educational areas is usually around 50 VdB. Groundborne vibration is normally perceptible to humans at approximately 65 VdB. A vibration velocity level of 75 VdB is the approximate dividing line between barely perceptible and distinctly perceptible levels for most people.

Most perceptible indoor vibration is caused by sources within buildings, such as the operation of mechanical equipment, movement of people, or the slamming of doors. Typical outdoor sources of perceptible groundborne vibration are construction equipment, steel-wheeled trains, and traffic on rough roads. If a roadway is smooth, the groundborne vibration from traffic is rarely perceptible. The

Table 3.8-5
City Of Marina
Maximum Exterior And Interior Acceptable Ambient Noise Levels (L_{dn})

Land Use	Maximum Acceptable Exterior	Maximum Conditionally Acceptable Exterior	Maximum Acceptable Interior
Residential	60	70	45
Live/Work	65	75	50
Hotel/Motel	65	75	50
Office	67	77	55
Other Commercial	70	80	60
Industrial/Agriculture	70	80	60
Schools, Libraries, Theaters, Churches, Nursing Homes	60	70	45
Parks and Playfields	65	70	NA
Golf Courses, Riding Stables, Cemeteries	70	75	NA

Source: Marina General Plan –Adopted October 31, 2000, Revised November 6, 2003, Table 4.1, page 4-37.

4.110: The maximum allowable exterior noise exposure, as measured in L_{dn} (dBA) (or CNEL for the Airport CLUP noise standards), shall not exceed the “acceptable use” standards shown Table 4.1 [Table 3.8-5] of this plan, or, where applicable, the “permitted use” standards of Table 4-1 of the Airport CLUP. In the Airport Planning Area, the noise standards of Table 4-1 of the Airport CLUP shall apply where such standards are more stringent than those of this plan. Where existing or projected exterior noise levels exceed the acceptable limit, construction shall be conditionally permitted only when appropriate mitigation measures are employed, including measures to attenuate exterior noise levels where development of schools, parks and playgrounds is proposed and, within the Airport Planning Area, as conditionally allowed by Table 4-1 of the Airport CLUP.

These measures must reduce interior noise to the maximum allowable limits shown in Table 4.1 [Table 3.8-5], and, within the Airport Planning Area, to CNEL 45 dB for all uses which are conditionally permitted as indicated by Table 4-1 of the Airport CLUP. In such instances, the developer of a new building shall provide the City with proof from a professional acoustical consultant that exterior noise levels have been mitigated such that building occupants would not be subject to interior noise levels greater than those in Table 4.1, and, within the Airport Planning Area, in Table 4-1 of the CLUP. Except in the Airport Planning Area, if the City finds the Proposed Project to be in the public interest, the City may approve a project where the exterior noise level exceeds the conditionally acceptable level. Such approval shall be contingent upon a detailed analysis by a qualified acoustical engineer showing that specific measures included in the Proposed Project would reduce interior noise to the maximum interior levels shown in Table 4.1.

4.111: The construction of new or the improvement of existing arterials and collectors as identified in this plan shall require discretionary approval. A cumulative noise impact analysis shall be undertaken prior to approval of all new major roads or improvements of existing arterials and collectors which

CONFORMANCE WITH GOALS OF THE REUSE PLAN

Circulation Goal: Create and maintain a balanced transportation system, including pedestrian ways, bikeways, transit, and streets, to provide for the safe and efficient movement of people and goods to and throughout the former Fort Ord.

The University Villages Specific Plan encourages alternative modes of transportation through bicycle and pedestrian friendly street designs. The gridded nature of the block pattern disperses traffic so that this street pattern in conjunction with the pedestrian paseos creates the most seamless network of connectivity for autos, bicycles and pedestrians.

Recreation and Open Space Goal: Establish a unified open space system, which preserves and enhances the health of the natural environment while contributing to the revitalization of the former Fort Ord by providing a wide range of accessible recreational experiences for residents and visitors alike.

Development of University Villages will include adequate and suitable open space facilities and improvements for recreation and outdoor public gatherings & festivals, both formal and informal. Amongst these improvements will be the linear park feature paralleling 2nd Ave, the City's PBC parcels as previously discussed in this document, the Beach Boardwalk at the 8th St over-crossing, the Hilltop Park at 8th St and the Village Square/Village Promenade area, as well as numerous sub-neighborhood parks within the neighborhoods.

Conservation Goal: Promote the protection, maintenance and use of natural resources, with special emphasis on scarce resources and those that require special control and management.

The University Villages Specific Plan includes Sustainability and Green Building Guidelines in recognition that sustainable communities that also incorporate the principles of smart growth and green building technologies better serve the needs and desires of today's residents and the needs of future residents.

Noise Goal: To protect people who live, work, and recreate in and around the former Fort Ord from the harmful effects or exposure to excessive noise; to provide noise environments that enhance and are compatible with existing and planned uses; and to protect the economic base of the former Fort Ord by preventing encroachment of incompatible land uses within areas affected by existing or planned noise-producing uses.

University Villages adjoins four arterial highways and the Highway 1 Freeway. Noise factors generated by these traffic sources and any others that are applicable will be analyzed as one of the EIR Technical Studies. It is not intended that sound walls to intercept this noise will

Shea Homes signed contracts and disclosures provided at closing

of the Interior Bureau of Land Management Central Coast Field Office; Covenant Presbyterian Church at the northern terminus of 2nd Avenue; Marina High School, at the western terminus of Patton Parkway about 0.5 miles north of the Community; and, hundreds of former U.S. Army housing units, which are predominantly vacant and in disrepair, but some of which are currently occupied as residences or used as offices. The U.S. Army housing units are on sites designated for residential or commercial uses, some of which are described below.

According to the City of Marina and/or FORA, uses proposed for the area north of Imjin Parkway include, among others, an approximately 5-acre office park at the 2nd Avenue/Imjin Parkway intersection, a h/conference center north of the 2nd Avenue/Twelfth Street intersection, an expansion of the Marina Education Center, an approximately 712-unit senior housing complex at or near the 3rd Avenue/Twelfth Street intersection, an approximately 93-unit affordable apartment complex southeast of the Imjin Parkway/4th Avenue intersection, and a retail center southwest of the Imjin Parkway/California Avenue intersection. An approximately 1,050-unit, 248-acre single-family and multi-family residential development known as Sea Haven (formerly Marina Heights) is currently under construction at the Imjin Parkway/Abrams Drive intersection less than 1,000 feet northeast of the Community.

Properties to the East: Existing uses east of the Community and south of Imjin Parkway and generally north of 9th Street include, among others, the Marina Coast Water District maintenance facility and corporate yard on General Jim Moore Boulevard between 9th Street and 5th Avenue, an equestrian center (Marina Equestrian Center described below); a ready-mix concrete plant (Las Animas Concrete) on 9th Street east of 5th Avenue about 750 from the Community; and radio towers at the end of DX Drive, less than 500 feet from the Community. The radio towers are owned by the City of Marina and operated by the Monterey Bay Amateur Radio Association. Former military buildings, most of which are vacant, boarded up and/or dilapidated, are currently within the Marina Coast Water District corporate yard. While the Reuse Plan designates the Marina Coast Water District property for future mixed used development, Seller does not know when development will occur and the military buildings may remain on the site and the nuisances associated with the buildings may continue for the foreseeable future.

Properties to the South: Existing uses south of the Community include, among others, an approximately 7.8-acre park site (described below in the "Offsite Park" Section); Monterey Institute for Research Astronomy (MIRA), which consists of research offices, library, electronics and machine shops, student observatory, and other facilities; a contractor storage yard and tree service business adjacent to and east and south of MIRA; and, the approximately 1,300-acre California State University Monterey Bay (CSUMB) campus, whose northern boundary is across 8th Street from the Community. A student recreational field, east of 4th Avenue, and student housing, east of 5th Avenue are the nearest existing CSUMB facilities. Buyer is directed to the Section below entitled "College/University" for information about current and planned CSUMB facilities.

Properties to the West: Existing uses west of 3rd Avenue and south of Imjin Parkway include, among others, Shoreline Workforce Development Campus, a Goodwill Industries training and employment center northwest of the 3rd Avenue/10th Street intersection; Shoreline Conference Center and Chapel, a Goodwill Industries event facility on the west side of 3rd Avenue; Central Coast Baptist Church and Young Nak Presbyterian Church, both fronting on 10th Street across from the Community; SpringHill Suites, (described in the "Hotel/Resort" Section below); Montage Wellness Center, a fitness, wellness and rehabilitation center and urgent care facility operated by Community Hospital of the Monterey Peninsula, on 2nd Avenue at Imjin Parkway; The Dunes on Monterey Bay, a regional shopping center (described in the "Retail Development" Section below); a neighborhood park at the western terminus of Boardwalk Avenue, adjacent to and east of 2nd Avenue; University Village Apartments, an approximately 108-unit affordable apartment complex; Water City Sports and Roller Hockey, an indoor rink on 2nd Avenue at 8th Street, across from the Community; Cinemark Marina, a multi-screen movie

The Dunes marketing map does NOT show Las Animas Concrete !





**CSUMB OPPOSITION LETTER IN OCT 2024
TO GRANTING OF CONDITIONAL USE PERMIT
BY CITY OF MARINA**

TO: City of Marina Planning Commission

209 Cypress Avenue, Marina, CA 93933

SUBJECT: Opposition to the Approval of Proposed Nighttime Operations in Conditional Use Permit CU23-0002

Members of the Planning Commission,

California State University, Monterey Bay (CSUMB) opposes the proposed nighttime operations and truck traffic associated with the Las Animas concrete batch plant. The noise generated by truck traffic—braking, accelerating, and movement near the intersection of 8th Street and Imjin Road has not been adequately studied or mitigated by the proposed project.

The City of Marina's noise standards for nighttime are: **(10pm – 7am) – 45 dB hourly L_{eq} , 65 dBA L_{max}** , as determined at the property line of the receiving noise-sensitive land use. Measurements taken at Location #5, near Promontory Apartments, in the noise study included in the Initial Study/Mitigated Negative Declaration (IS/MND) dated 9/9/24, recorded levels of **46.6 dB hourly L_{eq}** , which would exceed the City's nighttime noise limits. Moreover, Figure 3 of the same study details that the measurement was taken within the Promontory parking lot, not at the property line and this omission raises questions about compliance with the City's noise standards. The proposed operations between 10:00pm and 7:00am violate the City's noise limits.

Nighttime and early morning trucking operations will disrupt the sleep and studying of our students, particularly during the academic semester. CSUMB urges the Planning Commission to deny this project in its current form due to the unacceptable effects on our student population. CSUMB welcomes the opportunity to work with the City to craft conditions of approval should this project move forward. Thank you for your consideration of this comment letter.

Julie Wyrick

Associate Vice President of Facilities Management

Group Petition Letter to Marina Planning Commission in Sept 2024 EXHIBIT E
against granting of Conditional Use Permit to Las Animas

OPPOSITION AND OBJECTION
TO NOTICE OF INTENT TO ADOPT A NEGATIVE DECLARATION
And TO THE INITIAL STUDY

Project: Las Animas Concrete Conditional Use Permit
Project Location: 499 Ninth Street, Marina, CA APN 031-201-016 and 031-251-014
Hearing: September 12, 2024 at 6:30 p.m.

To: City of Marina Planning Commission
Planning Division Office
211 Hillcrest Avenue
Marina, CA 93923

WE, THE RESIDENTIAL NEIGHBORS OF LAS ANIMAS CONCRETE, STRONGLY OPPOSE AND OBJECT TO THE CITY OF MARINA PLANNING DIVISION'S NOTICE OF INTENT TO ADOPT NEGATIVE DECLARATION, AND TO THE INITIAL STUDY; AND OPPOSE AND OBJECT TO ANY ISSUANCE OF A CONDITIONAL USE PERMIT UNDER THE TERMS REQUESTED BY APPLICANT LAS ANIMAS CONCRETE.

Not A True Renewal of CUP. The Draft Initial Study submitted as part of the Notice of Intent inaccurately characterizes Las Animas Concrete CUP application as a "renewal". As admitted in the Draft Initial Study, Las Animas Concrete has been unlawfully operating for the past **7 years without a Conditional Use Permit**. It states that Las Animas Concrete's last CUP was issued in 2012 and expired in 2017.

The entire neighborhood in Marina has significantly changed in the past 12 years since Las Animas Concrete was last issued a CUP. Hundreds of residential homes have been built in The Dunes adjacent to Las Animas Concrete, with hundreds of new residents including children. The Draft Initial Study fails to acknowledge that Las Animas Concrete uses **residential streets**, and especially California Avenue, for transportation of materials and products in and out of its facilities all day long.

Unreasonable Operations Hours. The Project proposes that Las Animas Concrete facility, and its 4 five-axle tractor-trailer trucks, and its 12 three-axle cement mixer trucks, be permitted to operate **six days per week, 11 hours per day (starting at 6:00 a.m.), plus 30 days overnight, for the next 4 years!** This is simply unreasonable and unacceptable given its vicinity to residential housing and recreational areas. No explanation is given as to specifically why it cannot operate during regular business hours on weekdays only.

The Notice of Intent states that Las Animas Concrete operations on Saturdays are "occasional". This is **false**. Rather, Las Animas Concrete operates (and specifically operates its commercial trucks on California Avenue) the majority of Saturdays.

Dangerous Use of Residential Street by Commercial Trucks. The Notice of Intent and the Draft Initial Study fail to substantively address the real safety concerns of using residential streets, particularly the 2600 block of California Avenue, for dozens and dozens of commercial truck trips, six days per week, 11 hours per day. [The Initial Study

also falsely states that Las Animas Concrete does truck trips down California Avenue to Imjin Parkway – the intersection of California and Imjin has been closed for years and is presently closed by the City of Marina.] This is a residential family neighborhood, and the constant travel of tractor-trailer trucks and cement truck poses a dangerous threat to our children and other family members. Further, students regularly travel on foot, bike, skateboard and scooter to and from CSU Monterey Bay (which is less than one-half mile away) on California Avenue each day -- which places them in harm's way. The Project is contrary to public safety.

Unacceptable Noise and Violation of Quiet Enjoyment of Residential Property.

The operation of three-axle cement trucks and five-axle tractor-trailer trucks by Las Animas Concrete along California Avenue in our residential neighborhood is **Noisy**. It is particularly disturbing of personal sleep, especially when it operates starting at 6:00 a.m. six days per week. This is also violation of residents' property rights of quiet enjoyment. The "noise study" submitted with the Draft Initial Study fails to address the noise from the substantial transportation aspects of the Las Animas Concrete business.

Pollution of Our Neighborhood. Every day that Las Animas Concrete operates, its trucks litter California Avenue with dust, sand, gravel, and rocks. Residents' vehicles parked (in front of their residential homes) on California Avenue are daily covered with dust and grit from the commercial trucks going in and out of Las Animas Concrete. This pollution is not addressed in the Draft Initial Study.

Please do **not** issue a Negative Declaration; Please reject the Draft Initial Study as false and incomplete; and Please deny any further Conditional Use Permit to Las Animas.

Name of Owner/Resident

MARIE S. WEINER

L. ADAM WEINER

L. Adam Weiner

Address

2609 California Avenue

Marina, CA 93933

MSW

email contact

mweiner@astound.net

Sing Fatt Chin

[Signature]

2603

California Avenue
Marina, CA 93933

Roychinmd@icloud.com

Courtney Bartlett

Courtney Bartlett

2605 California Avenue
Marina, CA 93933

court3@umbc.edu

Please do **not** issue a Negative Declaration; Please reject the Draft Initial Study as false and incomplete; and Please deny any further Conditional Use Permit to Las Animas.

Name of Owner/Resident	Address	email contact
<u>GARY ROCHE</u>	<u>2607</u> California Avenue Marina, CA 93933	

Gary Roche

284 9TH ST.
~~California Avenue~~
Marina, CA 93933

____ California Avenue
Marina, CA 93933

____ California Avenue
Marina, CA 93933

____ California Avenue
Marina, CA 93933

____ California Avenue
Marina, CA 93933

MICHAEL KENNEY

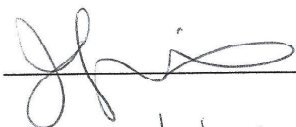
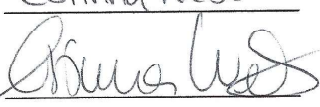
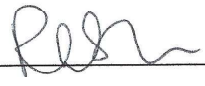
Michael G Kenney

____ California Avenue
Marina, CA 93933

222 9TH ST.
MGK333@SBCGLOBAL.NET

EXHIBIT E

Please do **not** issue a Negative Declaration; Please reject the Draft Initial Study as false and incomplete; and Please deny any further Conditional Use Permit to Las Animas.

Name of Owner/Resident	Address	email contact
<u>Jessica Smith</u> 	<u>2607</u> Catwalk Court Marina, CA 93933	<u>Jessicaglaesner@gmail.com</u>
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<u>Maria Cardenas</u> 	<u>2608</u> Catwalk Court Marina, CA 93933	<u>mcardenas07@berkeley.edu</u>
<u>Scott Paul</u> 	<u>2610</u> Catwalk Court Marina, CA 93933	
<u>Rebecca Shaw</u> 	<u>2604</u> Catwalk Court Marina, CA 93933	
<u></u>	<u></u> Catwalk Court Marina, CA 93933	

Please do **not** issue a Negative Declaration; Please reject the Draft Initial Study as false and incomplete; and Please deny any further Conditional Use Permit to Las Animas.

Name of Owner/Resident

Address

email contact

Tom Lubowe284 Ninth Street
Marina, CA 93933

TLUBOWE@GMAIL.COM

[Signature]

 Ninth Street
Marina, CA 93933

 Ninth Street
Marina, CA 93933

Opposition Letter to Marina Planning Commission in Sept 2024

OPPOSITION AND OBJECTION TO ADOPTION OF A NEGATIVE DECLARATION And TO THE DRAFT INITIAL STUDY

Project: Las Animas Concrete Conditional Use Permit
Project Location: 499 Ninth Street, Marina, CA APN031-201-016 and 031-251-014
Hearing: September 12, 2024 at 6:30 p.m.

THE DRAFT INITIAL STUDY BY LAS ANIMAS CONCRETE IS INCOMPLETE, INACCURATE, AND CONTRARY TO THE REQUIREMENTS OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

THE CONDITIONAL USE PERMIT IS NOT A TRUE RENEWAL

The Notice of Intent to Issue Negative Declaration and the Initial Study state, and are based upon the assumption, that the Las Animas Concrete application for a Conditional Use Permit is simply a “renewal” or an “extension”. This is a false assumption. The Notice of Intent and the Initial Study admit that the last CUP issued to Las Animas Concrete was **12 years ago** in 2012, and that this prior CUP **expired seven years ago** in 2017. Thus, Las Animas Concrete has been flagrantly operating without a valid use permit for the past seven years. This is a new CUP request, and should be treated as such.

The Notice of Intent and the Initial Study gloss-over the many significant changes to the City of Marina and to the adjacent neighborhood over the past 12 years since Las Animas Concrete was issued its prior CUP. Hundreds of residential homes have now been built in the area, additional CSU Monterey Bay student housing has been built close by, and historic resources have been designated – all since Las Animas obtained its last CUP back in 2012.

SIGNIFICANT HISTORIC RESOURCES ARE COMPLETELY MISSING FROM THE INITIAL STUDY

CEQA, under Public Resources Code Sections 21084.1 and 5020.1 and 14 CCR §15064.5, mandates that historic resources be identified and considered as part of the Initial Study (or any Environmental Impact Report). Las Animas Concrete’s Initial Study dated August 2024 states on page 10 that there are no cultural resources potentially affected by this Project, and states on page 28 (under the topic Cultural Resources) that “the project site is not a historic site, nor is the project site adjacent to a historic site.” **This is false.**

As stated in the Initial Study at page 27, “significant cultural resources may be historic resources”. As acknowledged by the Initial Study at page 27, historic resources **must** be considered and discussed under CEQA requirements:

CEQA requires regulatory compliance for projects involving historic resources throughout the state. Under CEQA, public agencies must consider the effects of their actions on historic resources (PRC §21084.1). The CEQA Guidelines define a significant resource as any resource listed in or determined to be eligible for listing in the CRHR [see PRC §21084.1 and CEQA Guidelines §15064.5(a) and (b)].

The Marina Equestrian Center borders the Las Animas Concrete facility, and constitutes an adjacent historic resource. **Indeed, the Marina Equestrian Center has been on the National Register of Historic Places since 2014.**¹ It has been designated for public and recreational use by the City of Marina. The City of Marina has proclaimed that the Marina Equestrian Center is also a key gateway to the Fort Ord National Monument (another historic resource near Las Animas Concrete):

[T]he Marina Equestrian Center facility [is] located at Fifth Avenue [now California Avenue] and 9th Street, Marina, California 93933. The MEC Park, with over 16,000 square feet of building space was conveyed to the City in 1998, for public recreational use. The MEC Park's prime location affords it the ability to be the Gateway for the Monterey Peninsula and the Ford Ord National Monument. It offers convenient access to more than 86 miles of trails on the former Fort Ord, sits less than two miles from Downtown Marina, and is in close proximity to the Fort Ord Dunes State Park.

(City of Marina's Request for Proposals to Lease the Marina Equestrian Park and Provide Recreational Facilities and Programs to the Public, issued October 23, 2020, page 4.)

Accordingly, the Initial Study is clearly inadequate, false, and contrary to the requirements of CEQA. The Initial Study cannot validly be a basis for any Negative Declaration by the City of Marina on this Project.

THE INITIAL STUDY'S DATA ON NOISE AND TRAFFIC CAUSED BY LAS ANIMAS CONCRETE OPERATIONS IN THIS RESIDENTIAL NEIGHBORHOOD IS INADEQUATE, INCONSISTENT, AND FALSE

In assessing the traffic and noise caused by Las Animas Concrete in its business operations, the Initial Study fails to substantively recognize that a significant inherent part of its business is **transportation**. Las Animas Concrete's operations include transporting materials and concrete in and out of its facility based on 499 Ninth Street. The Initial Study states that access to and from the facility is via California Avenue and Imjin Parkway. The reality is that all of the many commercial trucks used by Las Animas

¹ This occurred after Las Animas Concrete was issued its last CUP in 2012, and after that prior CUP expired in 2017.

in its daily operations go to and from the facility on the 2600 block of California Avenue (a residential street). The intersection of California Avenue (formerly 5th Avenue) and Imjin Parkway has been closed to all through traffic for years and continues to be closed (with no date set to reopen).²

Similarly, as the Las Animas facility is at a dead end on Ninth Street, all of the many commercial trucks of Las Animas Concrete drive past and through the historic Marina Equestrian Center property. Indeed, the road between the horse pens and the horse-riding trails is Ninth Street.

The transportation trips and traffic data provided by Las Animas in the Initial Study are inadequate and inconsistent. The Initial Study asserts that all prior traffic and noise concerns were caused by MPE haul and water trucks, and that MPE has already vacated and is no longer on the Project premises, so there is allegedly no problem. This is incorrect – Las Animas Concrete trucks driving through residential streets is very much a continuing problem!

Traffic

First, the data for traffic in and out of Las Animas Concrete facilities, as stated in the Initial Study, including the analysis of Ambient Air Quality and Noise Consulting and analysis of Kimley Horn, is inconsistent.

According to the Ambient Report at page 4, “Las Animas has four (4) tractor-trailer trucks that take three (3) to four (4) trips per day and 12 mixer trucks that take about four (4) trips per day. The facility supports 14 employees and accommodates approximately 48 mixer truck trips per day . . .” If so, that would be 48 trips per day by the three (or four) axle concrete mixer trucks **plus** 12 to 16 trips per day by the five axle tractor-trailer trucks. This would be a total of 60 to 64 truck trips per day.

Yet, on that same page of the Ambient Report, it states: “Las Animas expects to have between 10-20 and 25-35 truck trips per day.” What does that mean? If it means a total of 55 vehicle trips per day, that is inconsistent with other trip figures given in the Initial Study – and is also contrary to the reality of its present use.

According to the Kimley Horn Report at page 3, the daily trips for Las Animas tractor-trailer trucks **and** mixer trucks is and would be 48 truck trips **total**. This total of 48 truck trips per day is also contained in the Initial Study at page 53.

² The Initial Study under “Transportation” on page 51 states: “About 900 feet to the west of the project site, 9th Street intersects with California Drive, which provides access to Imjin Parkway to the north and 8th Street to the south.” *This is misleading.* Although California Avenue (not Drive) has paved road to Imjin Parkway, that intersection is *closed* by the City of Marina; and there is presently no connection to 8th Street, which is not presently paved for or open for vehicle travel.

Second, the data is inaccurate as demonstrated by simple observation. The only alleged “traffic study” was conducted by Kimley Horn, **but it contains no specific data from any actual count or measurements by them – no dates, no times, no amounts.** Rather, Kimley Horn apparently just accepted flat figures proposed by Las Animas. Using that data, under the Ambient Report, there should be a maximum of 12 to 16 trips per day by Las Animas five-axle tractor-trailers during the course of its operations from 6:00 a.m. to 5:00 p.m. **That is false** – indeed the trips by Las Animas tractor-trailers up and down the 2600 block of California Avenue from its facility on Ninth Street is double to triple that amount per day.

For example, on Tuesday, September 3, 2024, during just a one hour period of its 11 hour day, there were 9 tractor-trailer truck trips by Las Animas.³ In just one hour on Thursday, August 29, 2024, there were 8 tractor-trailer truck trips by Las Animas.⁴ During 3-1/2 hours on Wednesday, August 28, 2024 (which would be one-third of a daily 11-hour operation by Las Animas) there were 15 tractor-trailer truck trips. During that same 3-1/2 hour time, there were a total of 30 truck trips (mixer and tractor-trailer) by Las Animas.⁵ That would extrapolate to 90 truck trips in one day – and at least 45 trips by tractor-trailers. This is well beyond the maximum of 12 to 16 trips per day for tractor-trailers, and beyond the maximum of 48 to 64 total truck trips per day. *That’s not even counting the additional passenger vehicle trips* which Las Animas estimates to be 30 per day.

Third, Las Animas Concrete facility and transportation operations are not entitled to a presumption of “less than significant” traffic under CEQA Guidelines. The initial Study and the Kimley Horn Report assert that this Project has a less-than-significant impact, because it asserts a daily total of passenger car trips and truck trips of 78. (See Kimley Horn report at page 3, and Initial Study at page 52.) It is claimed that: “A project is presumed to cause a less-than-significant VMT impact if the trip generation for the Project is less than 110 trips per day . . .”

Under CEQA, 14 CCR §15064.3, evaluation of a project’s transportation impact is by vehicle miles travelled. City of Marina VMT guidelines use vehicle trip generation – which is a one-way trip. But Las Animas Concrete seeks to compare apples to oranges. Section 15064.3 specifically provides for a presumption of less-than-significant traffic impact for **automobiles**, i.e., passenger vehicles. The 110-trip

³ Tuesday, 9/3/24 8:30 a.m. to 9:30 a.m., 1 mixer truck inbound, 3 mixer trucks outbound, 5 tractor-trailer trucks outbound, 4 tractor-trailer trucks inbound.

⁴ Thursday, 8/29/24 8:55 a.m. to 9:55 a.m., 4 mixer trucks inbound, 3 mixer trucks outbound, 4 tractor-trailer trucks outbound, 4 tractor-trailer trucks inbound.

⁵ Wednesday, 8/28/24 11:43 a.m. to 1:00 p.m. and 2:10 p.m. to 4:10 p.m., 4 mixer trucks outbound, 11 mixer trucks inbound, 8 tractor-trailer trucks outbound, 7 tractor-trailer trucks inbound.

threshold cited by the Initial Study is *not* properly applied to *heavy commercial truck traffic*. There is no right to a presumption under CEQA in this situation.

Even if the presumption applied, it is only a presumption – and thus can be rebutted by contrary evidence. Here, the trip counts represented in the Initial Study and its related consultant reports are inaccurate and understated – as set forth above. Indeed, simple observation of activities reflect that Las Animas may well be above the 110 trip threshold regardless. Accordingly, any presumption has been refuted, and therefore the Initial Study is inadequate under CEQA.

The Initial Study is inaccurate and inconsistent, and thus cannot be a valid basis for any Negative Declaration.

Noise

The Ambient Noise Study presented in the Initial Study is inadequate. The “Project” is narrowly defined and contrary to CEQA, as a key component of the Las Animas Concrete operation and business is **transportation**. The Noise Study only considers noise from the facility base, and takes no consideration of all the noise caused by heavy commercial trucks driving going up and down residential streets, six days a week.

Even the Ambient Report, at pages 4-5 thereof, acknowledges that disturbance of neighborhood residents, recreational areas, and historic resources must be considered – all of which exist near to Las Animas Concrete -- and that these are presumed to be “sensitive” noise areas:

Noise-sensitive land uses are generally considered to include those uses where noise exposure could result in health-related risks to individuals, as well as places where quiet is an essential element of their intended purpose. Residential dwellings are of primary concern because of the potential for increased and prolonged exposure of individuals to both interior and exterior noise levels. Additional land uses such as parks, historic sites, cemeteries, and recreational areas are also considered sensitive to increases in exterior noise levels.

The Ambient Report states that residential property to the west, i.e., The Dunes residential neighborhood, is approximately 950 feet from the facility. That’s less than 2-tenths of a mile (950/5280 feet). It acknowledges that the Marina Equestrian Center is right next door. It also states that buildings at CSU Monterey Bay (especially the 60 unit residential building at Promontory) are located as close as approximately 2 tenths of a mile (1175/5280 feet). These are all noise sensitive property uses.

Yet, the Ambient Noise Study was conducted in a single day, July 1, 2024, with *single 10-minute* readings at six locations. (Ambient Report at page 5). Only the noise

from the facility base itself was measured, and the noise from its heavy trucks while actually driving along the residential streets and the campus of CSUMB *were not separately* measured. It should also be noted that *all* of its noise measurements are above the levels allowed under the Marina noise ordinance for 10:00 p.m. to 7:00 a.m. Yet, Las Animas Concrete seeks to conduct operations starting at 6:00 a.m. six days per week, and wants to conduct 30 nights of operation per year. Las Animas' noise disclosures are inadequate under CEQA and contrary to the regulations of the City.

Further, although Las Animas Concrete is only allowed to (and claims to) operate until 5:00 p.m., it is known to breach that closing time. As a recent example, on Friday, August 30, 2024, a five-axle tractor-trailer truck drove out of Las Animas and down the 2600 residential block of California Avenue at 5:30 p.m., another one left at 5:39 p.m., and a mixer truck drove along 2600 block of California Avenue and into the facility at 6:22 p.m. This creates residential noise that is not subject to any permit.

The Initial Study also claims that Saturday operations are “occasional” only. (e.g., Ambient Report at page 4.) This is false. Common observation reflects that Las Animas Concrete operates on most Saturdays.

Inconsistent with Historic Resources

Further, 100% of all of these vehicle trips in and out of Las Animas Concrete must and do go on Ninth Street, right *through* the historic resource Marina Equestrian Center. The public (families) has/have the right to access and use of Marina Equestrian Center and its related recreational facilities. Driving huge commercial trucks through this historic property – 11 hours per day, six days per week -- is completely inconsistent with its recreational public use, and “materially alters in an adverse manner” this historic and public resource. Accordingly, a Negative Declaration is inappropriate under CEQA.

As the Initial Study is inadequate and inaccurate, and cannot validly be the basis of any Negative Declaration.

THE NOTICE OF INTENT AND THE INITIAL STUDY CONTAIN ZERO DETAILS OF THE DISMANTLING OF THE OPERATIONS

The Notice of Intent and the Initial Study state that the Conditional Use Permit would be for three more years of operation of Las Animas Concrete plus an additional fourth year for “decommissioning” the Project site. Absolutely no details are provided regarding this fourth year – and thus seems to be a vaguely defined fourth year of operation. When will the “decommission” start and end? Why will it take one full year? What are the traffic, noise, pollution control, habitat restoration, etc. etc. from this alleged one year of work to dismantle the concrete facility?

There is also no mitigation or other obligation stated in the Notice of Intent or the Initial Study for repairs or replacement of the *residential streets* of the Dunes

neighborhood caused by the constant stream of heavy commercial trucks operated by Las Animas Concrete. Las Animas is not entitled to put commercial loads on streets built for residential traffic, and then walk away from the inherent property damage.

This requested decommission/dismantle plan is required to be disclosed and analyzed as part of the Initial Study; and thus issuance of a Negative Declaration and approval of a CUP for a “fourth” year is unsupported with any facts and would be contrary to CEQA.

For all these reasons, a Negative Declaration should not be issued, and the Draft Initial Study of August 2024 should be rejected as inadequate under CEQA. Further, any Conditional Use Permit application by Las Animas Concrete to operate three to four more years, six days per week, 11 hours per day, plus 30 nights per year, be DENIED.

MARIE WEINER
2609 California Avenue
Marina, CA 93933
mweiner@astound.net

September 6, 2024

City of Marina's noise study which DID NOT STUDY the effects of the noise of trucks !

EXHIBIT E



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5

purpose. Residential dwellings are of primary concern because of the potential for increased and prolonged exposure of individuals to both interior and exterior noise levels. Additional land uses such as parks, historic sites, cemeteries, and recreation areas are also considered sensitive to increases in exterior noise levels. Schools, churches, hotels, libraries, and other places where low interior noise levels are essential are also considered noise-sensitive land uses.

The nearest residential land uses are located approximately 485 feet east of the project site, across Imjin Parkway. Residential land uses are also located approximately 950 feet west of the project site along California Drive. The Marina Equestrian Center is located adjacent to and west of the project site. In addition, the California State University Monterey Bay's Promontory is located approximately 1,175 feet south of the project site. Nearby land uses are depicted in Figure 3.

Ambient Noise Environment

To document existing ambient noise levels in the project area, short-term ambient noise measurements were conducted on July 1, 2024. Noise measurements were conducted using a SoftdB, Type II integrating sound-level meter. The meter was calibrated before use and is certified to comply with ANSI specifications. Measured ambient daytime noise levels are summarized in Table 1.

Table 1. Summary of Measured Noise Levels

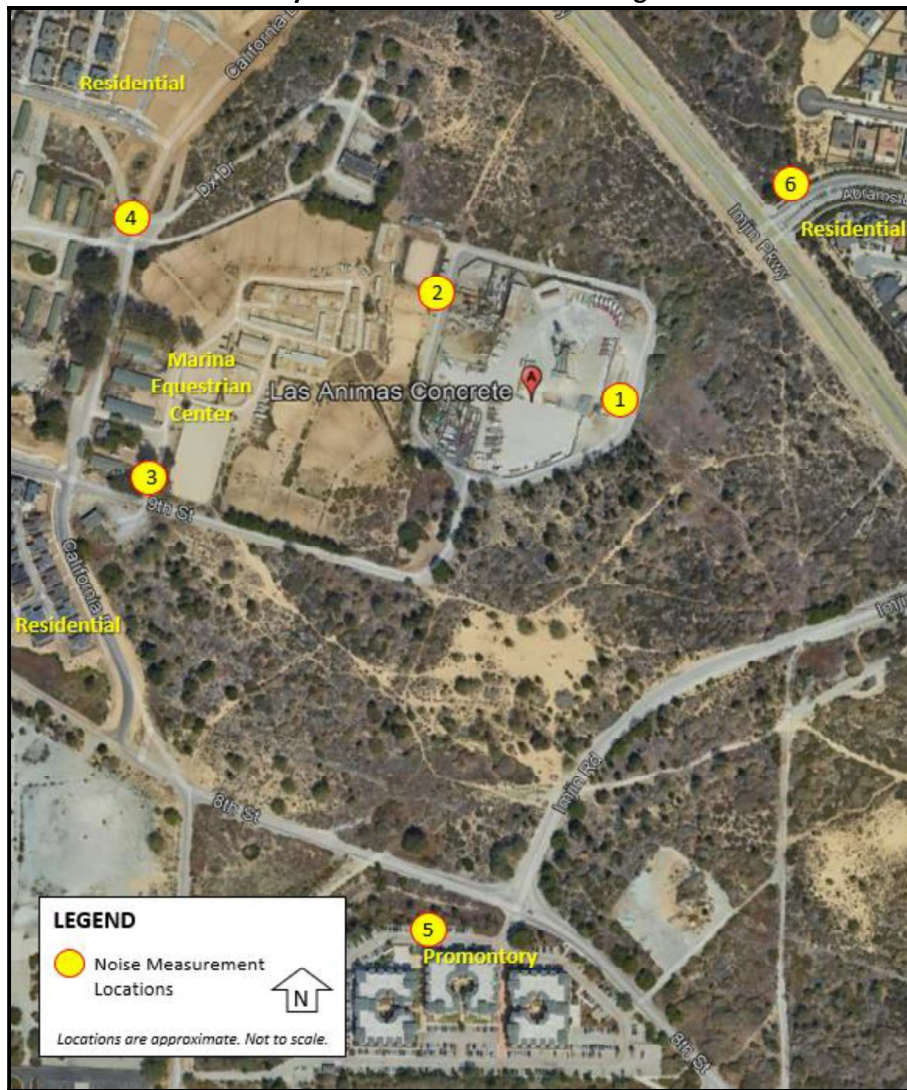
Location ¹	Monitoring Period	Primary Noise Sources	Noise Level (dBA)	
			Leq	Lmax
1 – Las Animas Concrete Plant. Onsite approximately 125-175' from plant operations.	09:35-09:45	Plant Operations. ²	64.3	72.3
2 – Las Animas Concrete Plant. Onsite approximately 365-400' from plant operations.	09:50-10:00	Plant Operations. ²	54.4	63.7
3 – 9 th Street. Near Marina Equestrian Center.	10:05-10:15	Traffic on 9 th St./California Dr. Plant operations (buzzer) intermittently detectable in distance.	47.2	57.9
4 – California Drive near Dx Drive.	10:20-10:30	Traffic on California Dr./area roadways. Plant operations largely undetectable.	47.0	56.8
5 – CSUMB Promontory.	10:38-10:48	Traffic on 8 th St./area roadways. Plant operations undetectable.	46.6	56.3
6 – Abrams Drive near Imjin Parkway.	10:55-11:05	Traffic on Imjin Parkway. Plant operations undetectable.	56.3	65.4
Ambient noise measurements were conducted on July 1, 2024, using a SoftdB, Type II integrating sound level meter.				
1. Refer to Figure 3 for noise-measurement locations.				
2. Included stationary equipment (e.g., conveyors, mixer, buzzer), haul trucks, and off-road equipment (e.g., front-end loader)				



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6

Figure 3
Nearby Land Uses & Noise Monitoring Locations



Based on the measurements conducted, onsite plant operational noise levels measured approximately 54–64 dBA L_{eq} . Maximum instantaneous noise levels measured approximately 64–72 dBA L_{max} . Ambient noise levels in the vicinity of nearby land uses measured approximately 47–56 dBA L_{eq} . Ambient noise levels at nearby land uses were influenced primarily by vehicle traffic on area roadways. Plant operations during the measurement periods were largely undetectable at nearby land uses.

NoToLA2025 Concerned Citizens Group

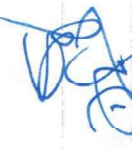
Petition to Deny The Las Animas Concrete Lease

The City of Marina will soon vote (as early as January) to grant Las Animas Concrete company a new 4-year lease agreement that allows cement trucks and tractor-trailer trucks to travel on California Avenue, 9th Street, 8th Street on:

- Weekdays: 6AM to 5PM
- Saturdays: 7AM to 5PM
- Nights: 30 nights each year on Weekdays 10PM to 6AM & Saturdays 7PM to 7AM

NoToLA2025 is a Concerned Citizens Group petitioning the City to deny this lease because it violates many laws, including the noise regulations in the Marina Municipal Code and Marina General Plan, which leaves the City open to liability exposures. It also threatens the safety, health and well-being of Marina residents as the massive industrial trucks barrel down residential streets where children, pets, CSUMB students and Dunes residents live.

Please join us to seek a denial of this 4-year lease to Las Animas Concrete based on the safety, health and legal exposures created by Las Animas truck traffic on California Avenue, 8th Street, and 9th Street.

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NoToLA2025 Concerned Citizens Group

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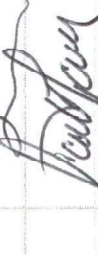
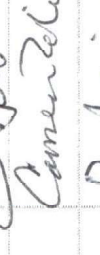
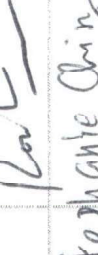
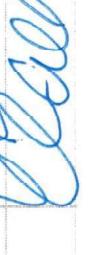
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Please join us to seek a denial of this 4-year lease to Las Animas Concrete based on the safety, health and legal exposures created by Las Animas truck traffic on California Avenue, 8th Street, and 9th Street.

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Petition to Deny Las Animas Concrete New Lease

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Petition to Deny Las Animas Concrete New Lease

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Howard McCown	2805 Telegraph Blvd	hsmccown@sbcglobal.net	Howard McCown
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Ali Garcia	100 campus center, Seaside, CA 95933	aligarcia1@csunb.edu	Ali Garcia
Bernadette Ortiz	Seaside, CA 95933	bortiz@csunb.edu	Bernadette Ortiz
Barbara Aguila	2723 Telegraph Blvd		Barbara Aguila
Svetlana Stanford	2723 Parkview way	svetlana.stanford@gmail.com	Svetlana Stanford

Petition to Deny Las Animas Concrete New Lease

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X. Desollar	2615 CALIF Ave	linka88988@gmail.com	X. Desollar
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Anthony Crawford	2608 California Avenue	anthonycrawfordtx@gmail.com	Anthony Crawford
Amy Furrer	2100 Moonshell Ln.	furrerfamily@gmail.com	Amy Furrer
Jeongsun Kim	2004 Canvas Way	jeongsun9950@gmail.com	Jeongsun Kim
JEN ERICKSON	2766 Telegraph Bld	jenck62@ucla.edu	JEN ERICKSON
Thapanee Panitchpakdi	278 Skyview Dr.	pakpanitchpakdi@hotmail.com	Thapanee Panitchpakdi
	Malaki Childers	malakichilders19@gmail.com	Malaki Childers

Petition to Deny Las Animas Concrete New Lease

[illegible]

Petition to Deny Las Animas Concrete New Lease

Name

Address

Email

Signature

Frankie Lou

215 9th St, Marina, CA

frankieharrison8@gmail.com



Maggie Cheng

215 9th St, Marina, CA

"

"

NoToLA2025 Group Objection To Lease Between City & Las Animas Concrete

February 15, 2025

From: NoToLA2025 Concerned Citizens Group **NoToLA2025@gmail.com**
To: City of Marina, 5 City Council members, City Manager, City Counsel
Subject : Las Animas Concrete / California Ave / 8th St / 9th St

Background Information

- We represent a local community group, named **NoToLA2025**, with 76 petitioners and growing. Our petition is attached as **[REF #13]**.
- We **object** to the City of Marina entering into a new lease with the concrete company Las Animas to operate at 499 Ninth St.
- Granting a lease would officially sanction the following:
 - **Disregard the well-being of Marina residents.**
 - **Destroy their lives at home.**
 - **Risk the lives of people and children.**
- How can the City sanction this when supposed to **protect residents**, as given in the Marina Vision & Mission Statement:
 - *“The City will develop in a way that insulates it from the negative impacts of urban sprawl to become a desirable residential and business community in a natural setting”*
 - *“developing the City in a way that provides a balance of housing, jobs and business opportunities that will result in a community characterized by a desirable quality of life, including recreation and cultural opportunities, a safe environment”*
[REF #20]
- **The present City Council may not be responsible for past events regarding Las Animas Concrete, but have the power to own the City’s doings, and do what is right by Marina residents.**
- **We beseech you to take time to read and understand all the reasons why Marina residents are so opposed to Las Animas operations and why a new lease with Las Animas should be denied.**

Why We Oppose the New Lease

- **Massive, Noisy and Dangerous trucks** from Las Animas travel in front of homes and the CSUMB Promontory student hostel on California Ave and 8th/ St. These trucks include those from raw materials suppliers and are **30 to 60' feet long and weigh 60,000 pounds** (possibly more). We have videos of some of these trucks here in the Google drive below. **[REF #15, [Videos](#)]**
- This clearly threatens the safety, health and well-being of Marina residents.
- For the last five months since September 2024, so many residents have written countless letters, official complaints and petitions to the Planning Commission and City Council. This includes several from Marie Weiner **[REF #8, [Link](#)]**, who is a former Superior Court judge and a CEQA expert. She clearly explained the inadequacy of the CEQA IS/ND given by City staff for the Las Animas CUP. **[REF #7, 9, 10, 11, 12, 13, 16]**
- We sincerely hope the local community's voices will not be disregarded by the City of Marina, in favor of a concrete company from Santa Cruz.
- Approved hours are outrageous: **starting at 6AM, 11 hours a day, Saturdays and public holidays included:**
 - 11 hours from **6AM** (out of line with Marina's business hours in Marina Municipal Code which start at 7AM)
 - 10 hours from 7AM **SATURDAYS**
 - **30 NIGHTS:** 10PM to 6AM weekdays & 7PM to 7AM Saturdays
 - **PUBLIC HOLIDAYS INCLUDED** (On Veterans Day and Martin Luther King Day, trucks were zipping up and down the whole day!)
 - **THERE IS NO RESPITE EXCEPT ON SUNDAY.**
- [REF #5]**
- There are **"Significant road design problems"** with California Ave, which is too narrow, and hence bigger issues which City has to deal with, says the Planning Commission Chairman during the PC meeting on the Las Animas CUP, Oct 24, 2024 **[REF #6, [Video](#) timestamp 1:55:40]**.
- Cyclists and students regularly bike to CSUMB and Ford Ord on narrow streets alongside massive trucks, including approved hours for the dark: **no sidewalks on more than half of California Ave, and none at all on 8th St. No bike path on both streets. No street light on more than half of California Ave and none at all on 8th St.** We have taken photos of these places and are provided here: **[REF #14, [Photos](#)]**
- Residents and their pets, and students walk regularly on these streets, and their safety is at risk.
- The Marina Equestrian Center is both next to (on 9th St) and in front of (on California Ave) of the truck route. Visitors and children visit the center daily, and especially busy on Saturdays, and their safety is also of utmost concern.
- California Ave is daily now an industrial zone and not the City of Marina's exemplary planned residential neighborhood of The Dunes.
- **Up to 10 trucks per hour (one truck every 6 minutes): this frequency is simply outrageous and unacceptable where people live and sleep there.** A count made by a resident had 80 to 90 trucks pass a day during off-peak autumn/winter. But this number will rise to the construction sector's peak traffic in summer which could be 110 trucks a day. This

works out to 10 trucks every hour (110 trucks/10 hours).

[REF #10]

- The disturbance from the trucks is so great that vibrations are felt inside the house. We have difficulty working, and do not enjoy pastimes at home, such as reading a book or playing a musical instrument. It is not compatible with living in a quiet planned neighborhood.
- The noise from the trucks is so loud that they can be heard even at the back of the house, not to mention where it is the loudest at bedrooms facing the street, making sleep impossible.
- Several residents have lodged official complaints to the City regarding the breaking of traffic laws by the trucks of Las Animas and trucks of its suppliers, including speeding, not stopping at STOP signs, driving across the center line and even driving in the middle of both lanes. The new CUP **[REF #5]** called for the City to monitor the operation for compliance and violations. So far residents have witnessed no such monitoring nor enforcement from the City or the Police. We have videos of some of these violations in the Google drive below.
[REF #15, [Videos](#)]
- **Most significantly, the trucks are so loud that they exceed the noise limits allowed under Marina's laws.**
[REF #7, 16, 17, 18, 19]

New Information from our Investigations

1. Significance of Noise Hazards on Health

Studies have shown that chronic exposure to noise is not just an annoyance, but is **detrimental to your long term health**. This is why noise protection exist in the places where we live and work. Such protection are explicitly written in the Marina Municipal Code, in the Marina GP, and in the Dunes SP.

[REF #17, 18, 19]

To quote a **Harvard University** article on **Noise and Health**:

"The European Environmental Agency reports that noise ranks second only to air pollution as the environmental exposure most harmful to public health."

"Ahmed Tawakol, an HMS associate professor of medicine at Massachusetts General Hospital, and Michael Osborne, an HMS instructor in medicine at Mass General, have used advanced PET scanning to show that transportation noise is associated with heightened activity of the amygdala relative to regulatory cortical regions. Amygdala activity can trigger stress pathways, including inflammation, that can lead to cardiovascular and metabolic diseases."

[REF #21, [Link](#)]

An article from **[brainfacts.org](#)** on **Noise Pollution**:

"Researchers suspect that noise aggravates these health conditions by inducing higher levels of stress, says Thomas Münzel, a cardiologist at the Johannes Gutenberg University in Mainz, Germany. "When you experience noise in the middle of the night, you have an awakening reaction," Münzel says. "You can close your eyes but you cannot close your ears.""

“But chronic exposure to noise keeps this stress response activated continuously. Eventually, it starts to wear the body down, causing mental and physical health problems.”

[REF #22, [Link](#)]

An article and podcast from [NPR.org](#) on **Chronic Noise Exposure**:

“A growing body of research says that chronic noise exposure is putting nearly a third of Americans at heightened risk of hypertension, stroke, and heart attacks.”

[REF #23, [Link](#)]

2. CSUMB opposes Las Animas operations and criticizes its trucks’ violations of Marina’s noise laws

An opposition letter was submitted by CSUMB to the Planning Commission on the same day that the Conditional Use Permit was passed on October 24, 2024.

[REF # 7]

Quotes:

“CSUMB opposes the proposed night operations and truck traffic associated with the Las Animas concrete batch plant”

“The noise generated by truck traffic has not been adequately studied or mitigated by the proposed project.”

*“operations between 10:00pm and 7:00am **violate the City’s noise limits.**”*

“unacceptable effects on our student population”.

City’s noise measurements were **NOT** taken at property line but were further inside the property and this omission raises questions about compliance with the City’s noise standards.” Marina General Plan noise limits are to be measured at property line of noise-receiving party.

[REF #18]

During the Planning Commission meeting on the Conditional Use Permit on October 24, 2024, this letter was submitted to the Planning Commission, but its contents were never discussed further and put aside very quickly.

[REF #6, [Video](#) timestamp 1:34:30]

3. Official plans for Las Animas to depart in 2017 to prevent violation of Dunes Specific Plan as Dunes homes came up

- The Dunes Specific Plan (formerly called University Villages SP) — which is enshrined in the Marina General Plan — was passed 20 years ago on May 31, 2005.
- The Dunes SP remains in force today and needs to be respected as the whole point of an SP and GP is to set development rules and regulations for all other developments which are to come up, ie after May 2005.

- California Ave and the homes along California Ave are part of the Dunes development and SP.
- Las Animas Concrete entered Marina on August 9, 2005 **AFTER** The Dunes SP.
- **Hence, Las Animas needs to conform to the Dunes SP.**

The City of Marina was acutely aware that Las Animas needed to meet the requirements of the Dunes SP. Hence, at every step of the way from 2005 to 2012, the City had planned carefully and meticulously for Las Animas to depart when Dunes homes were built.

When a CUP was granted to Las Animas in 2012, the surrounding area was an abandoned empty military base. Now, the surrounding landscape is completely transformed with 590 homes built in The Dunes and the large CSUMB Promontory student housing.

In 2012 when the City entered into Lease Amendment #2 with Las Animas (signed by then and current Mayor Bruce Delgado), it stated emphatically:

“The term of this Agreement shall be for eleven (11) years, commencing on February 4, 2006 and terminating on February 4, 2017. Tenant shall have no option to extend the term of the Lease.”

[REF #3]

Also in the same lease document, it clearly states that the lease also requires a CUP:

“WHEREAS, operation of a concrete batch plant within the City's Business Park Zoning District, the zoning district in which the project is located, requires approval of a Conditional Use Permit (CUP).

[REF #3]

Both the lease and the CUP expired in 2017, and Las Animas operated illegally between 2017 and 2025.

The City became aware of this in 2023, quote from Resolution No. 2024-20:

“WHEREAS, in 2023, Las Animas met with the City to renew their lease. In reviewing the permit history for this site, staff discovered that the Use Permit was expired and informed Las Animas that a new Use Permit would be required to continue operating at this location.”

[REF #5]

Between 2023 and present, the City should have evicted Las Animas as it had been operating without both a lease and CUP at the same time.

Also the lease clearly states that there will be no extensions from 2017 onwards.

4. Lack of Long-Term Planning

- The whole point of long-term planning (such as the new Marina General Plan) is to make well-considered plans and carry out the plans so the City of Marina grows in an orderly manner and benefit its residents.

- **The City needs to carry out a well-thoughtout plan:**
 - **It knew that the Dunes will continue to expand from 2015 (when the first homes were released), and that Las Animas would need to vacate by 2017.**
 - **Between 2017 and 2022 (when Dunes Phase 2 homes would be released adjacent to California Ave) it had ample time to carry out a well-thoughtout plan.**
 - **Find replacement tenant that is compatible with the neighboring community, or**
 - **Prevent Las Animas trucks from using California Ave and 8th St, by building a dedicated access road to Imjin Pkwy or Imjin Road.**

The City needs to fix any negligence and mistakes from the past, and not throw the ball to its residents to carry.

It is completely unacceptable to have these dangerous and noisy trucks run past homes, along California Ave, which now looks and feels like a road in an industrial area, when it is supposed to be a planned residential community, which was actually well-planned for in the Dunes SP and past City Council plans to have Las Animas leave the plot on February 4, 2017 (eight years ago).

From the Original Lease, 2006, Clause (4):

“Use of Mixer Trucks. Generally, an average of six (6) concrete mixer trucks will be dispatched from the Premises, with fluctuations in the number of daily trips by the mixer trucks due to the seasonal nature of the construction activities being served. Mixer trucks shall use only those routes to and from the Batch Plant as have been designated by the City and make all reasonable effort to avoid any impact on the operation of the Marina Equestrian Center by not using the narrow streets around the Equestrian Center.”

[REF #1]

Las Animas is currently driving trucks on the narrow streets adjacent to the Marina Equestrian Center and to the home of the Dunes.

5. Disconcerting Actions by the City of Marina and Las Animas Concrete

Although the Marina Planning Commission approved a new CUP for Las Animas on October 24, 2024 (previous one had expired on 2017), this was done reluctantly and under pressure from City staff, hence it wrote in Resolution No. 2024-20:

“The Commission expressed concern that both the applicant and City have allowed the operation to occur after expiration of the last permit and in violation of certain aspects of the Marina Municipal Code (MMC).

The Commission requests that the approved uses be monitored by the City and required to remain in compliance with the MMC and conditions of approval.”

[REF #5]

During the meeting [REF #6, [Video](#)]:

- It expressed concern the both LA and City allowed the lease to lapse and breach code for so long.

[Video timestamp 0:49:30]

- It expressed concern about the length of the new CUP and lease of 3+1 years, and that a 1-year term would be better, with a review of compliance with MMC annually.

[Video timestamp 1:21:00 and 1:48:20]

- It exhorted the City to keep tabs on LA, and that it will comply with MMC.

[Video timestamp 1:47:00 and 2:09:50]

In 2017, both the lease and CUP of Las Animas had expired. However, Las Animas continued to operate, violating the law, as its facility sits on land that is not zoned for concrete operation. In order for a concrete company to operate there, it needs to have both a CUP and a lease.

- Las Animas has been renting on a month-to-month basis since February 4, 2017. This is **NOT** a lease as a lease requires specific conditions including a lease tenure stated.
- The City did not realize Las Animas was operating without a CUP until end-2023.
- Instead of immediately stopping Las Animas operations and evicting Las Animas the City permitted the concrete company to continue operating.
- Instead of enforcing the requirements in the Dunes SP and evicting Las Animas as per the lease termination date in Lease Amendment No. 2, the City instructed the company to apply for a new CUP.
- However, the City continued to allow Las Animas to **operate to this day without both a new lease and a CUP.**

In February 2011, the original CUP of Las Animas had also expired, and was not renewed until April 2012 in Resolution No. 2012-03.

- Hence, Las Animas was also operating illegally from Feb 2011 to April 2012.

[REF #4]

Signed by

NoToLA2025 Concerned Citizens Group against a new lease for Las Animas Concrete, with a petition of 76 signatures.

----- Forwarded message -----

From: **Min Chan** <ca@slatini.com>

Date: Wed, Feb 19, 2025 at 11:03 AM

Subject: City Council meeting submission on Las Animas closed session

To: Marina <marina@cityofmarina.org>, <bdelgado62@gmail.com>, Liesbeth Visscher <councilmember_visscher@cityofmarina.org>, Brian McCarthy <bmccarthy@cityofmarina.org>, <kybiala@icloud.com>, <jmcadams@cityofmarina.org>, <llong@cityofmarina.org>

Desr Council members,

I am writing to provide more information on Las Animas truck traffic as you go into closed session, on Feb 19, 2025, on the lease for Las Animas lease.

I reference the document “Marina_2817 Cali Dr Noise Memo 020325.pdf” which is the report on the Noise study done at the property line of my house at 2817 California Ave. It was done by Ambient over a 48-hour period from the morning of Jan 20-22, 2025. It contains a complete 24-hour noise measurement of Jan 21, 2025, which is the day after MLK day.

Keep in mind this is traffic noise measurement was done in winter, when Las Animas truck traffic is not at its peak. The peak traffic is in the summer.

The results show that the daytime noise measurement was Ldn = 64.4 dBA. This above the Marina daytime Ldn limit of 60 dBA in a residential zone.

The results show that the nighttime noise measurement predicted would be Ldn = 68.9 dBA, if Las Animas was allowed to operate at night. This above the Marina night time Ldn limit of 45 dBA in a residential zone. This number is particularly disturbing, as it shows nighttime noise would be 23.8 dB ABOVE the limit. This is massive, and proves that night time operation should not have been freely given to Las Animas without a proper noise study. The CUP was voted on by the Planning Commission on Oct 24, 2024, and approved without due consideration of the objections made by CSUMB and other residents at that time.

Also Table 1 and Figure 2 in the report shows that the maximum instantaneous noise (Lmax) was consistently above 70 dBA, with many of them above 80 dBA as well. You can see this in the light green measurement line in the Figure 2. This above the Marina maximum limit Lmax of 70 dBA in a residential zone.

There is no longer any hearsay or subjective opinion about the noise at the property line of a residential home on California Ave. This report shows that the actual measured noise is above the limit, by all metrics: Daytime average, Nighttime average, and the instantaneous maximum limit.

Sincerely
Min Chan

(The definitions of Ldn and Lmax are also given in the report in Table 1 of the Attachment 1).

--

Mayor Bruce Delgado
cell: (831) 277-7690
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1

TRAFFIC NOISE TECHNICAL MEMORANDUM

Date: February 3, 2025

To: City of Marina

From: Kurt Legleiter, Principal

Subject: Noise Measurement Report – 2817 California Drive

INTRODUCTION

The purpose of this memorandum is to evaluate traffic noise levels at the residential dwelling located at 2817 California Drive in Marina, CA. This report includes an evaluation of traffic noise levels with and without operation of the Las Animas Concrete facility. To assist with interpretation of this report, a summary of acoustic fundamentals and terminology is included in Attachment 1. Noise measurement data and modeling assumptions/results are included in Attachment 2.

SUMMARY OF FINDINGS

Based on the analysis conducted, ambient exterior traffic noise levels (excluding truck traffic associated with current road construction occurring along Imjin Parkway and Las Animas Concrete facility, as well as, employee commute trips associated with Las Animas Concrete) was estimated to be 63.2 dBA $L_{dn}/CNEL$ at the property line of the residential land use. Depending on the hours of operation for the Las Animas Concrete facility, predicted increases in ambient traffic noise levels at the property line of the residential land use would range from approximately 1.2 to 5.7 dBA $L_{dn}/CNEL$.

With daytime operation of the Las Animas Concrete facility, predicted exterior traffic noise levels at the residential property line would be 64.4 dBA $L_{dn}/CNEL$. With windows closed, predicted interior average-daily noise levels associated with daytime operations would range from approximately 37.1 to 42.1 dBA $L_{dn}/CNEL$, depending on the noise insulation characteristics of the structure.

With nighttime operation of the Las Animas Concrete facility predicted exterior traffic noise levels at the residential property line would be 68.9 dBA $L_{dn}/CNEL$. Predicted interior noise levels with nighttime operation of the Las Animas Concrete facility would range from approximately 41.6 to 46.6 dBA $L_{dn}/CNEL$, depending on the noise insulation characteristics of the structure.



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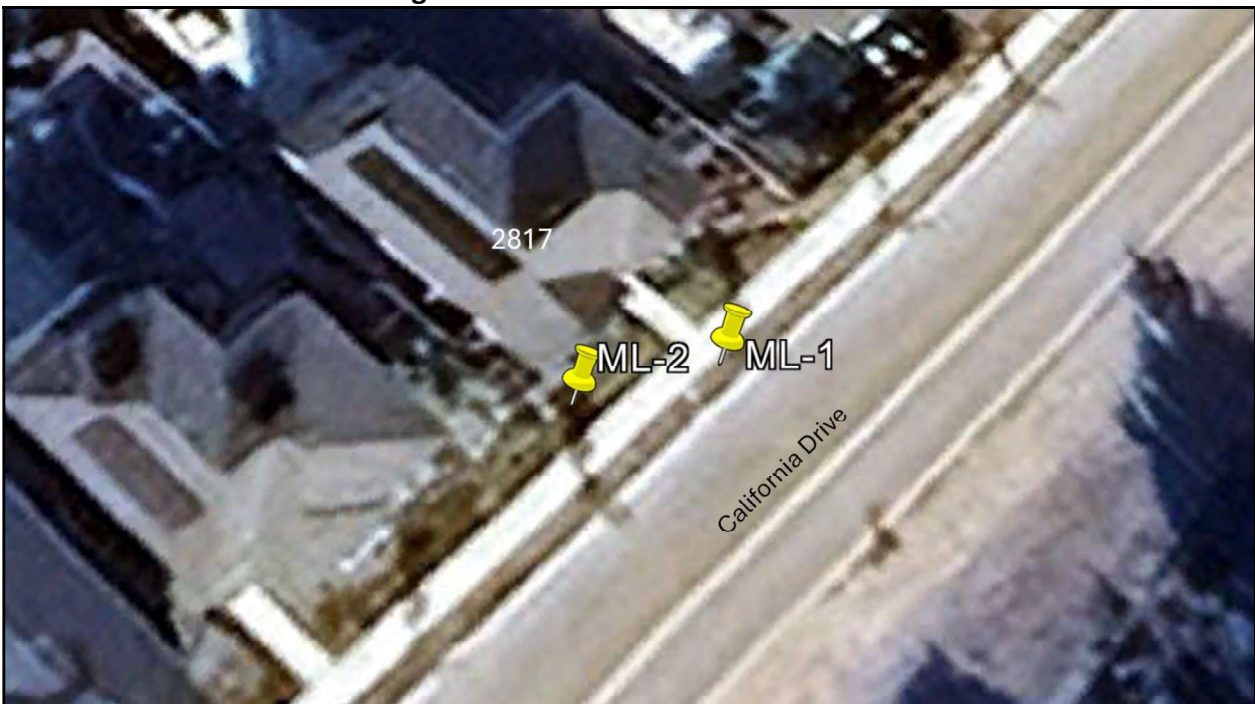
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NOISE MEASUREMENT SURVEYS

Ambient Noise Environment

To document existing ambient noise levels, short-term ambient noise measurements were conducted on January 20th through January 22nd, 2025. Noise measurements were conducted using a SoftdB, Type II integrating sound-level meter. The meter was calibrated before use and is certified to comply with ANSI specifications. Two long-term (e.g., 48-hour) measurements were conducted. Measurement Location 1 (ML-1) was located near the property line of the project site, approximately 19.5 feet from the centerline of California Drive. Measurement Location 2 (ML-2) was located approximately 39.7 feet from the road centerline. Based on the measurements conducted, the average-daily noise levels were 64.6 dBA $L_{dn}/CNEL$ at ML-1 and approximately 62.1 dBA $L_{dn}/CNEL$ at ML-2. The average-daily noise levels were calculated based on 24-hour data for January 21, 2025. Ambient noise levels were influenced primarily by vehicle traffic on California Drive. Measurement locations are depicted in Figure 1. Measured noise levels are summarized in Table 1. Noise measurement data for ML-1 and ML-2 are summarized in Figures 2 and 3, respectively.

Figure 1. Noise Measurement Locations



Locations are approximate. Not to scale.



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3

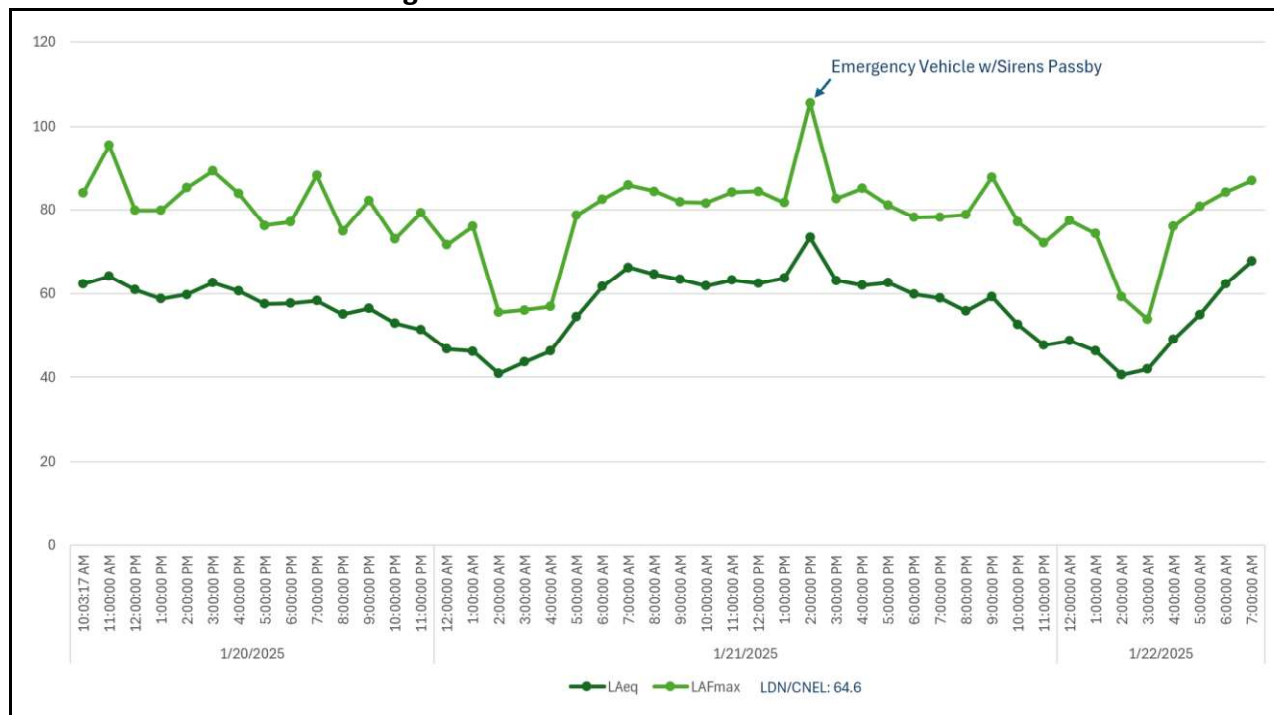
Table 1. Summary of Measured Noise Levels

Location ¹	Primary Noise Sources	Noise Level (dBA) ²		
		L _{eq}	L _{max}	L _{dn} /CNEL
ML-1	Vehicle Traffic	41-73	54-106	64.6
ML-2	Vehicle Traffic	42-70	57-99	62.1

Ambient noise measurements were conducted on January 20-22, 2025, using a SoftdB, Type II integrating sound level meter.

- Refer to Figure 1 for noise-measurement locations.*
- Highest average-hourly and instantaneous noise levels were associated with the passby of an emergency vehicle with siren sounding.*

Figure 2: Noise Measurement Data – ML-1

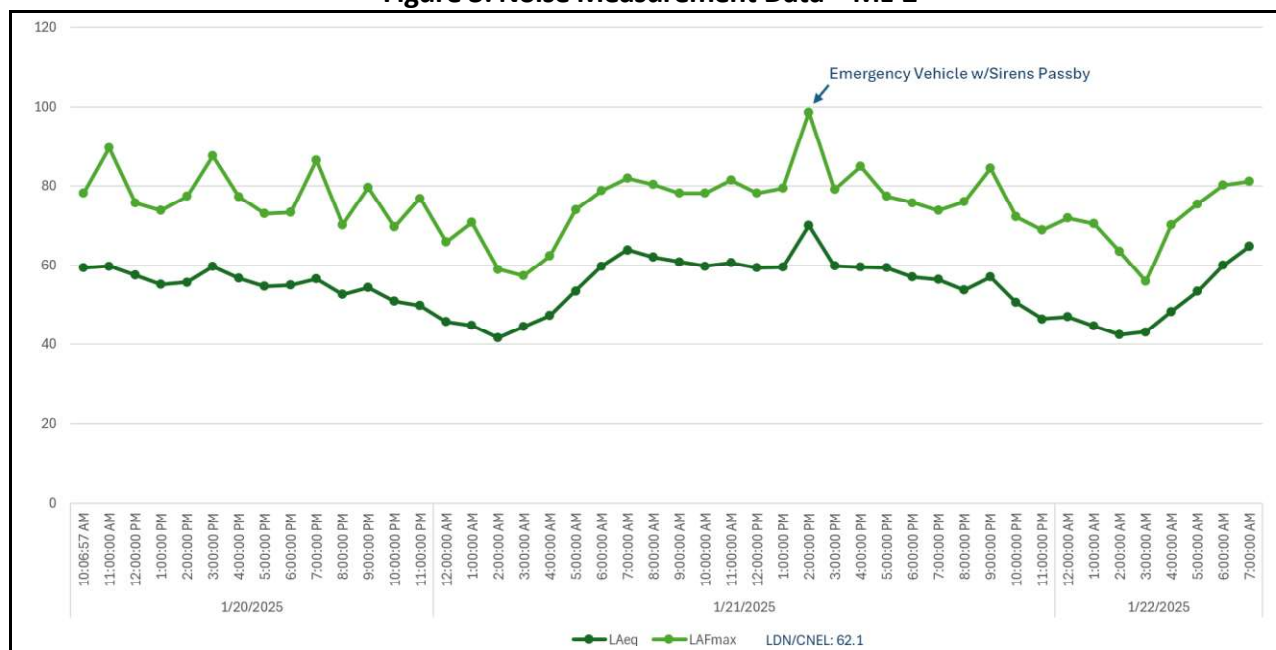




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4

Figure 3: Noise Measurement Data – ML-2



PREDICTED TRAFFIC NOISE LEVELS

Methodology

Traffic noise levels at the property line of the residence were calculated using the FHWA Highway Traffic Noise Prediction Model (FHWA-RD-77-108). The model was calibrated based on noise measurement data obtained over a 24-hour period on January 21, 2025 and corresponding traffic data. Traffic data for this time period was categorized by vehicle type, including light-duty automobiles and trucks, medium duty vehicles, and heavy-duty trucks. Heavy-duty trucks were further categorized by type, including dump trucks, concrete mixer trucks, and tractor-trailer material haul trucks. Refer to Attachment 1 for traffic count data. Model calibration results are summarized in Table 3. As depicted, the traffic noise model accurately calculated average-daily traffic noise levels when compared to measured noise levels.

Table 3. Traffic Noise Model Calibration Results

Scenario	dBA CNEL
Measured ¹	64.6
Modeled	64.6
<i>1. Based on measurement data obtained over a 24-hour period at ML-1 on January 21, 2025.</i>	



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Traffic noise modeling was conducted for three scenarios including: 1) existing ambient traffic noise levels, 2) existing ambient traffic noise + Las Animas Concrete facility daytime operations, and 3) existing ambient traffic noise + Las Animas Concrete facility nighttime operations. Predicted average-daily exterior noise levels (in $L_{dn}/CNEL$) were calculated at the property line of the residential land use, estimated to be approximately 20 feet from the residential structure.

Existing ambient traffic noise levels were calculated to create a baseline against which predicted traffic noise levels with Las Animas Concrete facility operations were compared. Existing ambient traffic noise levels were calculated excluding observed dump trucks associated with temporary road construction activities occurring along the nearby Imjin Parkway, and concrete and material delivery truck trips associated with the Las Animas Concrete facility. To be conservative, noise levels associated with the passby of the emergency vehicle were also excluded from the calculation of existing ambient traffic noise levels, as were employee vehicle trips associated with Las Animas Concrete facility.

In addition to the calculation of existing ambient traffic noise levels, two additional scenarios were evaluated including: 1) Las Animas Concrete daytime operations, and 2) Las Animas Concrete nighttime operations. Haul truck traffic associated with Las Animas Concrete facility daytime operations were distributed equally over the hours of 7:00 am to 7:00 pm, with two haul truck occurring during the hour of 6:00 am. Las Animas vehicle trip generation was based on a maximum total of 48 concrete haul trucks and 30 employee worker commute trips (City of Marina 2024). To be conservative, the number of material delivery haul trucks was based on the number of observed material haul trucks noted during the noise monitoring survey conducted over the 24-hour period on January 21, 2025. Based on these observations, a total of 25 material haul truck trips was assumed, which equated to a calculated ratio of 1 tractor-trailer material haul truck trip per 2 concrete mixer trucks. Nighttime operational conditions were modeled based on these same assumptions with employee and truck traffic distributed between the hours of 7:00 am and 7:00 pm.

Predicted average-daily interior noise levels (in $L_{dn}/CNEL$) were calculated based on predicted exterior traffic noise levels at the building façade and applying an average structural exterior-to-interior noise level reduction (NLR). In this context, “NLR” refers to the average amount of noise reduction achieved by the building envelope. Historically, based on noise measurements conducted by the U.S. EPA in the early 1970s, standard building construction was estimated to provide a minimum average NLR of 20 dBA, with windows closed (U.S. EPA 1974). This minimum NLR of 20 dBA became the basis for many of the recommended interior and exterior noise standards initially developed in the 1970s and 1980s by various government agencies and state/local jurisdictions. For example, assuming a commonly recommended interior noise standard of 45 dBA $L_{dn}/CNEL$ for noise-sensitive land uses and a minimum exterior-to-interior NLR of 20 dBA, the recommended exterior noise level required to maintain acceptable interior noise levels would equate to 65 dBA $L_{dn}/CNEL$. Over the years, as building insulation standards have become increasingly more stringent, the NLR of typical building construction has increased. With compliance with current building requirements, newer structures can achieve exterior-to-interior NLRs of approximately 25 dBA, or more, depending on building construction materials and techniques. As a result, this report provides estimated interior noise levels based on a range of average exterior-to-interior NLRs of 20 to 25 dBA, with windows closed.



Predicted traffic noise levels associated with the operation of the Las Animas Concrete facility, for both daytime and nighttime operations, were compared to existing ambient traffic noise levels for determination of increases in traffic noise levels at the property line of the residential land use. Predicted exterior traffic noise levels at the property line and calculated increases in traffic noise levels are summarized in Table 4. Predicted exterior traffic noise levels at the building façade and predicted interior noise levels are summarized in Table 5.

Findings

Based on the analysis conducted, ambient exterior traffic noise levels (excluding truck traffic associated with current road construction occurring along Imjin Parkway and Las Animas Concrete facility, as well as, employee commute trips associated with Las Animas Concrete) was estimated to be 63.2 dBA L_{dn} /CNEL at the property line of the residential land use. Depending on the hours of operation for the Las Animas Concrete facility, predicted increases in ambient noise levels would range from approximately 1.2 to 5.7 dBA L_{dn} /CNEL. (refer to Table 4).

With daytime operation of the Las Animas Concrete facility, predicted exterior traffic noise levels at the residential property line would be 64.4 dBA L_{dn} /CNEL (refer to Table 4). Based on the modeling conducted, predicted interior average-daily noise levels associated with daytime operations would be estimated to range from approximately 37.1 to 42.1 dBA L_{dn} /CNEL, with windows closed (refer to Table 5).

With nighttime operation of the Las Animas Concrete facility predicted exterior traffic noise levels at the residential property line were estimated to be 68.9 dBA L_{dn} /CNEL (refer to Table 4). Predicted interior noise levels with nighttime operation of the Las Animas Concrete facility would range from approximately 41.6 to 46.6 dBA L_{dn} /CNEL, with windows closed (refer to Table 5).

ADDITIONAL CONSIDERATIONS

Instantaneous Noise Events

In the context of the average-daily noise level (L_{dn} /CNEL), an instantaneous noise event refers to a sudden noise event of short-duration, often described in terms of the maximum noise level (in dBA L_{max}). Instantaneous noise levels that occur within a measured period are factored into the overall calculation of average-daily cumulative noise levels by applying a penalty based on the time of day during which the instantaneous events occur. Of particular concern are events that occur during the more noise-sensitive evening and nighttime hours during which times instantaneous noise events may be more noticeable in comparison to ambient conditions. For this reason, instantaneous noise events occurring during the more noise-sensitive periods of the day are given extra weight when calculating the cumulative noise exposure over a 24-hour period. The L_{dn} descriptor applies a 10-dB penalty for noise events that occur between the hours of 10:00 pm and 7:00 am. The CNEL noise descriptor applies this same nighttime penalty but also applies an additional 5-dB penalty for noise events that occur between the evening hours of 7:00 pm and 10:00 pm. The cumulative noise exposure metric is currently one of the only noise metrics for which there is a substantial body of research data and regulatory guidance defining the relationship between noise exposure, people's



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7

reactions, and land use compatibility. To be conservative, this analysis was based on the more conservative CNEL noise descriptor, which imposed an additional noise penalty of 5 dB for noise events occurring during the evening hours.

Groundborne Vibration

Traffic, including heavy-duty trucks traveling on roadways, rarely generate groundborne vibration levels that exceed commonly-applied vibration criteria for structural damage or human annoyance. Loaded haul trucks generate groundborne vibration levels of approximately 0.076 inches per second peak-particle velocity (in/sec ppv). Groundborne vibration levels exceeding approximately 0.2 in/sec ppv within occupied structures can result in increased levels of annoyance. Groundborne vibration levels in excess of approximately 0.5 in/sec ppv can result in potential structural damage (Caltrans 2020).

Assuming a groundborne vibration level of 0.076 in/sec ppv and a minimum distance of approximately 35 feet for haul truck passbys, predicted vibration levels at the residential structure would be less than 0.05 in/sec ppv. Groundborne vibration levels may be intermittently detectable, but would not be anticipated to exceed commonly applied criteria for human annoyance or structural vibration.



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Table 4. Summary of Predicted Exterior Noise Levels at Residential Property Line

SCENARIO	EXTERIOR NOISE LEVEL AT PROPERTY LINE (dBA $L_{dn}/CNEL$)	DIFFERENCE COMPARED TO AMBIENT (dBA $L_{dn}/CNEL$)
Existing Ambient Traffic Noise Level - Excludes Road Construction Trucks, Los Animas Concrete Trucks, Las Animas Employee Trips	63.2	--
Modeled Operational Scenario 1: Las Animas Concrete - Daytime Operations	64.4	1.2
Modeled Operational Scenario 2: Las Animas Concrete - Nighttime Operations	68.9	5.7

Table 5. Summary of Predicted Exterior & Interior Noise Levels at Residential Building Facade

SCENARIO	EXTERIOR NOISE LEVEL AT BUILDING FAÇADE (dBA $L_{dn}/CNEL$)	RANGE OF PREDICTED INTERIOR NOISE LEVELS (dBA $L_{dn}/CNEL$) ¹	
		20 dBA NLR	25 dBA NLR
Existing Ambient Traffic Noise Level - Excludes Road Construction Trucks, Los Animas Concrete Trucks, Las Animas Employee Trips	60.9	40.9	35.9
Modeled Operational Scenario 1: Las Animas Concrete - Daytime Operations	62.1	42.1	37.1
Modeled Operational Scenario 2: Las Animas Concrete - Nighttime Operations	66.6	46.6	41.6

1. Interior noise levels were calculated based on the predicted exterior noise level at the building façade and average exterior-to-interior NLR for the building envelope, with windows closed. Presents a range of predicted interior noise levels based average NLRs of 20 and 25 dBA $L_{dn}/CNEL$.



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REFERENCES

California Department of Transportation (Caltrans). April 2020. *Transportation and Construction Vibration Guidance Manual*.

California Department of Transportation (Caltrans). October 2011. *California Airport Land Use Planning Handbook*.

City of Marina. August 2024. *Draft Initial Study, Las Animas Concrete Conditional Use Permit Project*.

U.S. Environmental Protection Agency (U.S. EPA). March 1974. *Information on Levels of Environmental Noise Requisite to Protect Public Health and Welfare with an Adequate Margin of Safety*.



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ATTACHMENT 1
ACOUSTIC FUNDAMENTALS AND TERMINOLOGY



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ACOUSTIC FUNDAMENTALS

Noise is generally defined as sound that is loud, disagreeable, or unexpected. Sound, as described in more detail below, is mechanical energy transmitted in the form of a wave because of a disturbance or vibration.

Amplitude

Amplitude is the difference between ambient air pressure and the peak pressure of the sound wave. Amplitude is measured in decibels (dB) on a logarithmic scale. For example, a 65-dB source of sound, such as a truck, when joined by another 65 dB source results in a sound amplitude of 68 dB, not 130 dB (i.e., doubling the source strength increases the sound pressure by 3 dB). Amplitude is interpreted by the ear as corresponding to different degrees of loudness. Laboratory measurements correlate a 10 dB increase in amplitude with a perceived doubling of loudness and establish a 3-dB change in amplitude as the minimum audible difference perceptible to the average person.

Frequency

Frequency is the number of fluctuations in the pressure wave per second. The unit of frequency is the Hertz (Hz). One Hz equals one cycle per second. The human ear is not equally sensitive to sound of different frequencies. Sound waves below 16 Hz or above 20,000 Hz cannot be heard at all, and the ear is more sensitive to sound in the higher portion of this range than in the lower. To approximate this sensitivity, the environmental sound is usually measured in A-weighted decibels (dBA). On this scale, the normal range of human hearing extends from about 10 dBA to about 140 dBA. Common community noise sources and noise levels are depicted in Figure 2.

Addition of Decibels

Because decibels are logarithmic units, sound levels cannot be added or subtracted through ordinary arithmetic. Under the decibel scale, a doubling of sound energy corresponds to a 3-dB increase. In other words, when two identical sources are each producing sound of the same loudness, the resulting sound level at a given distance would be 3 dB higher than one source under the same conditions. For example, if one automobile produces a sound level of 70 dB when it passes an observer, two cars passing simultaneously would not produce 140 dB; rather, they would combine to produce 73 dB. Under the decibel scale, three sources of equal loudness together would produce an increase of 5 dB.

Sound Propagation & Attenuation

Geometric Spreading

Sound from a localized source (i.e., a point source) propagates uniformly outward in a spherical pattern. The sound level decreases (attenuates) at a rate of approximately 6 dB for each doubling of distance from a point source. Highways consist of several localized noise sources on a defined path, and hence can be treated as a line source, which approximates the effect of several point sources. Noise from a line source propagates outward in a cylindrical pattern, often referred to as cylindrical spreading. Sound levels attenuate at a rate of approximately 3 dB for each doubling of distance from a line source, depending on ground surface characteristics. For acoustically hard sites (i.e., sites with a reflective surface between the source and the receiver, such as a parking lot or body of water,), no excess ground attenuation is assumed. For acoustically absorptive or soft sites (i.e., those sites with an absorptive ground surface between a line source and the receiver, such as soft dirt, grass, or scattered bushes and trees), an excess ground-attenuation value of 1.5 dB per doubling of distance is normally assumed. When added to the cylindrical spreading, the excess ground attenuation for soft surfaces results in an overall attenuation rate of 4.5 dB per doubling of distance from a line source.

Shielding by Natural or Human-Made Features

A large object or barrier in the path between a noise source and a receiver can substantially attenuate noise levels at the receiver. The amount of attenuation provided by shielding depends on the size of the object and the frequency content of the noise source. Natural terrain features (e.g., hills and dense woods) and human-made features (e.g., buildings and walls) can substantially reduce noise levels. Walls are often constructed between a source and a receiver specifically to reduce noise. A barrier that breaks the line of sight between a source and a receiver will typically result in an approximate 5 dB of noise reduction. Taller barriers provide increased noise reduction.



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Figure 2. Typical Community Noise Levels

Common Outdoor Activities	Noise Level (dBA)	Common Indoor Activities
Jet Fly-over at 300m (1000 ft)	110	Rock Band
Gas Lawn Mower at 1 m (3 ft)	100	
Diesel Truck at 15 m (50 ft), at 80 km (50 mph)	90	Food Blender at 1 m (3 ft)
Noisy Urban Area, Daytime	80	Garbage Disposal at 1 m (3 ft)
Gas Lawn Mower, 30 m (100 ft)	70	Vacuum Cleaner at 3 m (10 ft)
Commercial Area		Normal Speech at 1 m (3 ft)
Heavy Traffic at 90 m (300 ft)	60	
Quiet Urban Daytime	50	Large Business Office
		Dishwasher Next Room
Quiet Urban Nighttime	40	Theater, Large Conference Room (Background)
Quiet Suburban Nighttime		Library
Quiet Rural Nighttime	30	Bedroom at Night,
		Concert Hall (Background)
	20	Broadcast/Recording Studio
	10	
Lowest Threshold of Human Hearing	0	Lowest Threshold of Human Hearing



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Noise Descriptors

The decibel scale alone does not adequately characterize how humans perceive noise. The dominant frequencies of a sound have a substantial effect on the human response to that sound. Although the intensity (energy per unit area) of the sound is a purely physical quantity, the loudness or human response is determined by the characteristics of the human ear.

Human hearing is limited in the range of audible frequencies as well as in the way it perceives the sound-pressure level in that range. In general, people are most sensitive to the frequency range of 1,000–8,000 Hz, and perceive sounds within that range better than sounds of the same amplitude in higher or lower frequencies. To approximate the response of the human ear, sound levels of individual frequency bands are weighted, depending on the human sensitivity to those frequencies, which is referred to as the “A-weighted” sound level (expressed in units of dBA). The A-weighting network approximates the frequency response of the average young ear when listening to most ordinary sounds. When people make judgments of the relative loudness or annoyance of a sound, their judgments correlate well with the A-weighted noise scale. Other weighting networks have been devised to address high noise levels or other special problems (e.g., B-, C-, and D-scales), but these scales are rarely used in conjunction with environmental noise.

The intensity of environmental noise fluctuates over time, and several descriptors of time-averaged noise levels are typically used. For the evaluation of environmental noise, the most commonly used descriptors are L_{eq} , L_{dn} , and CNEL. The energy-equivalent noise level, L_{eq} , is a measure of the average energy content (intensity) of noise over any given period. Many communities use 24-hour descriptors of noise levels to regulate noise. The day-night average noise level, L_{dn} , is the 24-hour average of the noise intensity, with a 10-dBA “penalty” added for nighttime noise (10 p.m. to 7 a.m.) to account for the greater sensitivity to noise during this period. CNEL, the community equivalent noise level, is similar to L_{dn} but adds an additional 5-dBA penalty for evening noise (7 p.m. to 10 p.m.) Common noise descriptors are summarized in Table 1.

Table 1. Common Acoustical Terms and Descriptors

Descriptor	Definition
Decibel (dB)	A unit-less measure of sound on a logarithmic scale, which indicates the squared ratio of sound pressure amplitude to referenced sound pressure amplitude. The reference pressure is 20 micro-pascals.
A-Weighted Decibel (dBA)	An overall frequency-weighted sound level in decibels that approximates the frequency response of the human ear.
Energy Equivalent Noise Level (L_{eq})	The energy mean (average) noise level. The instantaneous noise levels during a specific period of time in dBA are converted to relative energy values. From the sum of the relative energy values, an average energy value (in dBA) is calculated.
Maximum Noise Level (L_{max})	The maximum instantaneous noise level during a specific period of time.
Day-Night Average Noise Level (DNL or L_{dn})	The 24-hour L_{eq} with a 10 dBA “penalty” for noise events that occur during the noise-sensitive hours between 10:00 p.m. and 7:00 a.m. In other words, 10 dBA is “added” to noise events that occur in the nighttime hours to account for increased sensitivity to noise during these hours.
Community Noise Equivalent Level (CNEL)	The CNEL is similar to the L_{dn} described above, but with an additional 5 dBA “penalty” added to noise events that occur between the hours of 7:00 p.m. to 10:00 p.m. The calculated CNEL is typically approximately 0.5 dBA higher than the calculated L_{dn} .



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Human Response to Noise

The human response to environmental noise is subjective and varies considerably from individual to individual. Noise in the community has often been cited as a health problem, not in terms of actual physiological damage, such as hearing impairment, but in terms of inhibiting general well-being and contributing to undue stress and annoyance. The health effects of noise in the community arise from interference with human activities, including sleep, speech, recreation, and tasks that demand concentration or coordination. Hearing loss can occur at the highest noise intensity levels. When community noise interferes with human activities or contributes to stress, public annoyance with the noise source increases. The acceptability of noise and the threat to public well-being are the basis for land use planning policies preventing exposure to excessive community noise levels.

Unfortunately, there is no completely satisfactory way to measure the subjective effects of noise or of the corresponding reactions of annoyance and dissatisfaction. This is primarily because of the wide variation in individual thresholds of annoyance and habituation to noise over differing individual experiences with noise. Thus, an important way of determining a person's subjective reaction to a new noise is the comparison of it to the existing environment to which one has adapted: the so-called "ambient" environment. In general, the more a new noise exceeds the previously existing ambient noise level, the less acceptable the new noise will be judged. Regarding increases in A-weighted noise levels, knowledge of the following relationships may be helpful in understanding this analysis:

- Except in carefully controlled laboratory experiments, a change of 1 dB cannot be perceived by humans;
- Outside of the laboratory, a 3-dB change is considered a just-perceivable difference;
- A change in a level of at least 5 dB is required before any noticeable change in community response would be expected. An increase of 5 dB is typically considered substantial;
- A 10-dB change is subjectively heard as an approximate doubling in loudness and would almost certainly cause an adverse change in community response.



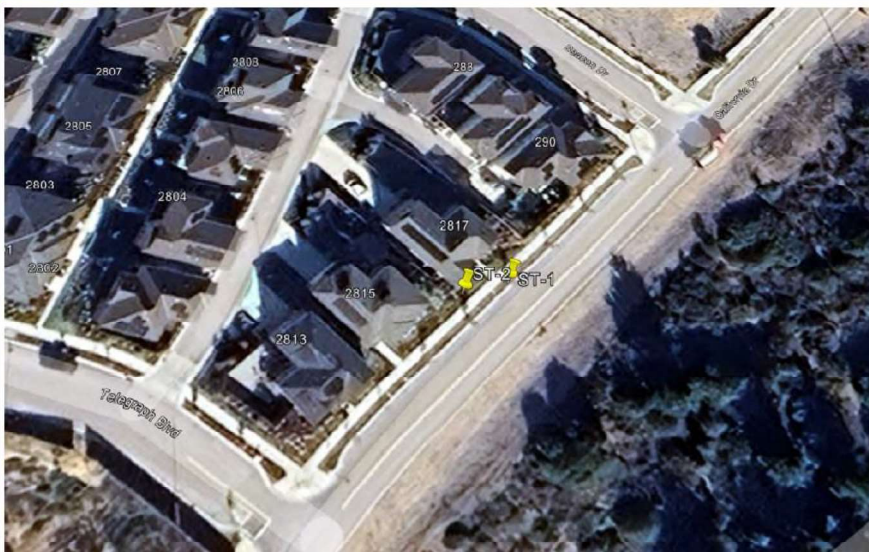
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ATTACHMENT 2

TRAFFIC NOISE MEASUREMENT SURVEYS & MODELING

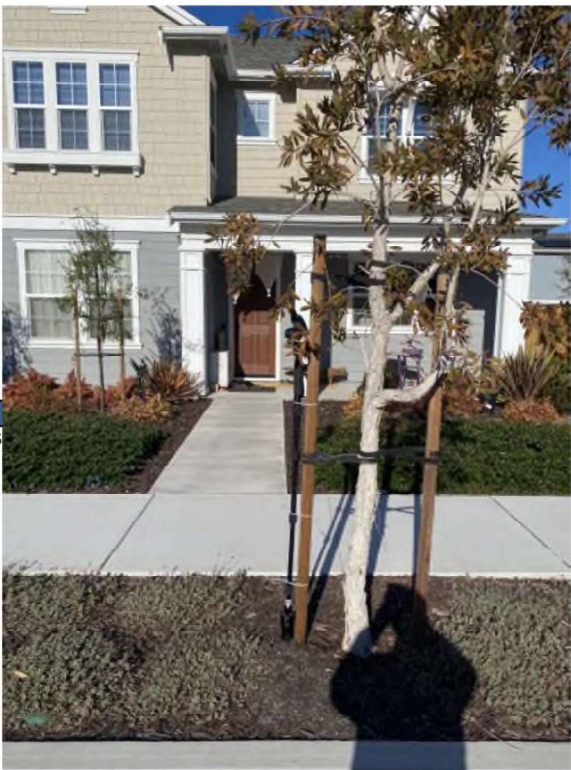


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		NOISE MEASUREMENT SURVEY FORM					
		SHEET		1	OF 1		
DATE:	01/20-01/22/25						
PROJECT:	2817 CALIFORNIA AVENUE - NOISE MONITORING						
LOCATION:	CALIFORNIA DRIVE, MARINA, CA						
MONITORING STAFF:	KURT LEGLEITER						
LOCATION MAP:							
							
Not to scale. Locations are approximate.							
NOISE MEASUREMENT CONDITIONS & EQUIPMENT							
MET CONDITIONS & MONITORING EQUIPMENT:		TEMP: 39-64 F. HUMIDITY: 38-72 % WIND SPEED: 2-8 MPH SKY: CLEAR GROUND: DRY					
		CLOUD COVER BY CLASS (OC=OVERCAST):	3	(1. HEAVY OC, 2. LIGHT OC, 3. SUNNY, 4. CLEAR NIGHT, 5. OC NIGHT)			
		MET. METER:	KESTREL 5500				
NOISE MONITORING EQUIPMENT:		SLM MODEL:	SoftdB Picollo Type II				
		CALIBRATOR:	CAL200				
NOISE MONITORING SETUP:		MICROPHONE HEIGHT AGL (FT):		5			
CALIBRATED PRIOR TO AND UPON COMPLETION OF MEASUREMENTS:		YES	METER SETTINGS:		A-WHT		
NOISE & TRAFFIC MEASUREMENTS							
MEASUREMENT		DURATION (Minutes)	MEASUREMENT LOCATION	PRIMARY NOISE SOURCES NOTED	MEASURED NOISE LEVELS		
LOCATION	DATE/TIME				LEQ	LMAX	CNEL
1	01/20-01/22	SEE ATTACHED	AT TREE NEAR ST. ~19.5' FROM ROAD CL	TRAFFIC	41-73	54-106	64.6
2	01/20-01/23	SEE ATTACHED	AT TREE NEAR HOUSE. ~39'8" FROM ROAD CL	TRAFFIC	42-70	57-99	62.1
NOTES: Traffic noise primary. Lmax measurements primarily associated with vehicle passbys. Emergency vehicle with siren passby resulted in the highest average-hourly and maximum instantaneous noise levels. HDT passby instantaneous noise levels ranged from the mid-70s to upper 80's, with the highest measurement of approx. 89 dBA Lmax. LDN/CNEL based on 1/21 measurement data. 1/20 data excluded due to holiday/CSUMB closure.							

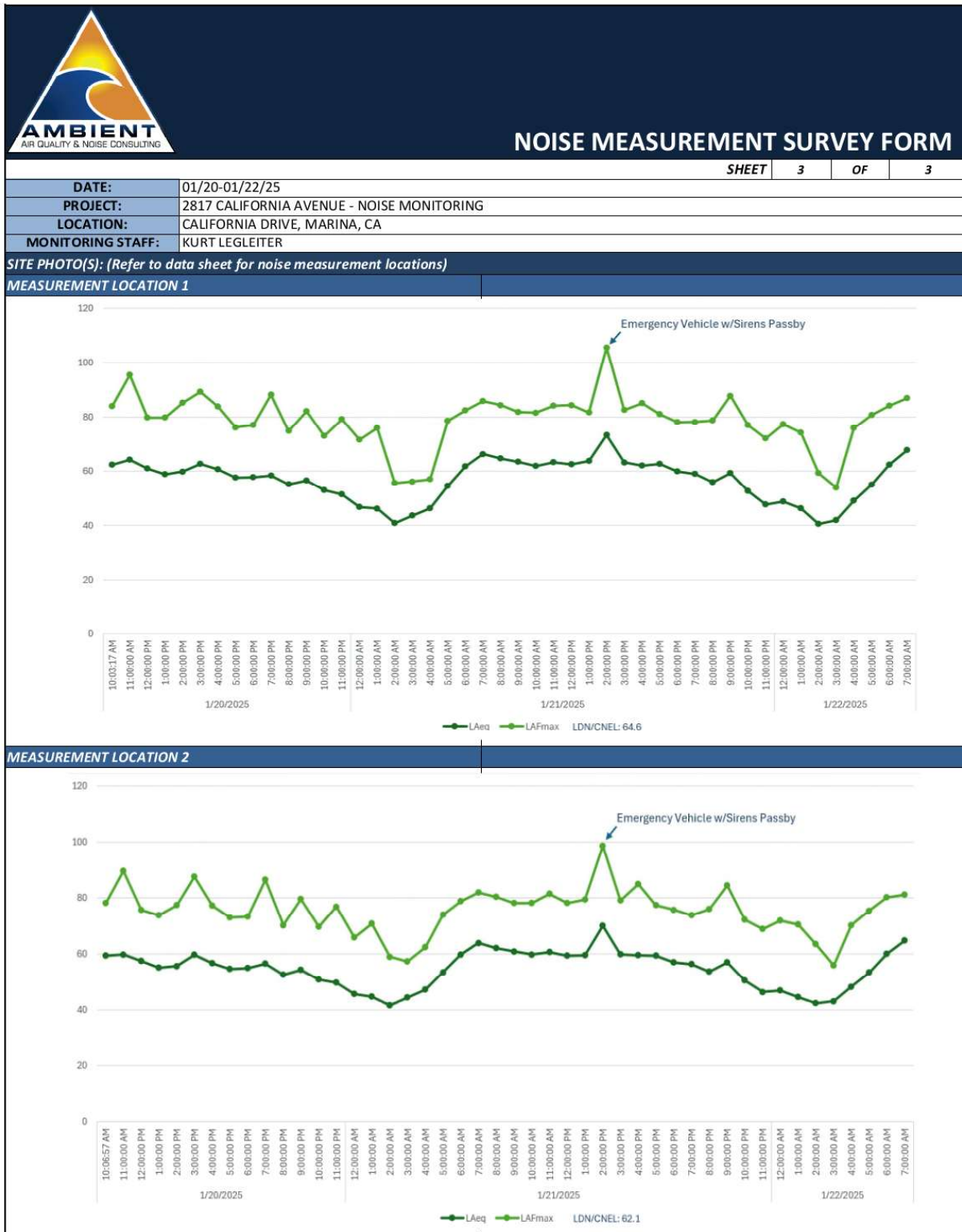


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		NOISE MEASUREMENT SURVEY FORM			
		SHEET	2	OF	3
DATE:	01/20-01/22/25				
PROJECT:	2817 CALIFORNIA AVENUE - NOISE MONITORING				
LOCATION:	CALIFORNIA DRIVE, MARINA, CA				
MONITORING STAFF:	KURT LEGLEITER				
SITE PHOTO(S): (Refer to data sheet for noise measurement locations)					
MEASUREMENT LOCATION 1			MEASUREMENT LOCATION 2		
					



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TRAFFIC COUNTS & MODELED SCENARIOS

1/21/2025

MEASURED - MODEL CALIBRATION

	LDA/T				MDT				HDT								TOTAL			
	SB		NB		SB		NB		DUMP TRUCK		CONCRETE TRUCK		MATERIAL DELIVERY TRUCK				TOTAL			
									SB	NB	SB	NB	SB	NB	SB	NB	SB	NB		
CALIFORNIA DRIVE	50	5	3	0	0.00%	0.00%	0	0	0	0	1	2	0	2	1	55	6			
MIDNIGHT-7:00 AM	90.91%	83.33%	5.45%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	1.82%	3.64%	0.00%	3.64%	16.67%						
PERCENT OF TOTAL PERIOD																				
7:00 AM - NOON	600	252	18	20	6	9	14	18	5	8	25	35	643	307						
NOON-7:00 PM	407	738	28	22	10	12	8	2	4	4	22	19	457	779						
TOTAL	1007	990	46	42	16	21	22	20	9	12	47	54	1100	1086						
PERCENT OF TOTAL PERIOD	91.55%	91.16%	4.18%	3.87%	1.45%	1.93%	2.00%	1.84%	0.82%	1.10%	4.27%	4.97%								
7:00 PM - 10:00 PM	36	101	0	0	0	0	0	0	0	0	0	0	36	101						
10:00 PM-MIDNIGHT	11	5	0	0	0	0	0	0	0	0	0	0	11	5						
7:00PM-MIDNIGHT	47	106	0	0	0	0	0	0	0	0	0	0	47	106						
PERCENT OF TOTAL PERIOD	100.00%	100.00%																		

SCENARIO 1-EXISTING AMBIENT (EXCLUDES ROAD CONST. DUMP TRUCKS, 30 LAC EMPLOYEE TRIPS, CONCRETE TRUCKS, AND MATERIAL DELIVERY TRUCK TRIPS)

	LDA/T		MDT		HDT												TOTAL	
					DUMP TRUCK				CONCRETE TRUCK				MATERIAL DELIVERY					
					SB	NB	SB	NB	SB	NB	SB	NB	SB	NB	SB	NB		
CALIFORNIA DRIVE	SB	NB	SB	NB	SB	NB	SB	NB	SB	NB	SB	NB	SB	NB	SB	NB	SB	NB
MIDNIGHT-7:00 AM	35	5	3	0	0	0	0	0	0	0	0	0	0	0	0	0	38	5
PERCENT OF TOTAL PERIOD	92.11%	100.00%	7.89%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%		
7:00 AM - NOON	600	252	18	20	0	0	0	0	0	0	0	0	0	0	0	0	618	272
NOON-7:00 PM	407	723	28	22	0	0	0	0	0	0	0	0	0	0	0	0	435	745
TOTAL	1007	975	46	42	0	0	0	0	0	0	0	0	0	0	0	0	1053	1017
PERCENT OF TOTAL PERIOD	95.63%	95.87%	4.37%	4.13%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%		
7:00 PM - 10:00 PM	36	101	0	0	0	0	0	0	0	0	0	0	0	0	0	0	36	101
10:00 PM-MIDNIGHT	11	5	0	0	0	0	0	0	0	0	0	0	0	0	0	0	11	5
7:00 PM - MIDNIGHT	47	106	0	0	0	0	0	0	0	0	0	0	0	0	0	0	47	106
PERCENT OF TOTAL PERIOD	100.00%	100.00%																
30 LAC employee trips excluded.																		

30 LAC employee trips excluded.
Dump trucks associated with temporary nearby road construction activities excluded. Concrete trucks and material deliveries excluded.



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SCENARIO 2-CONCRETE PLANT DAYTIME MAX OPERATIONS (EXCLUDES ROAD CONST. DUMP TRUCKS)

	LDA/T		MDT		HDT								TOTAL		
					DUMP TRUCK		CONCRETE TRUCK		MATERIAL DELIVERY						TOTAL
	SB	NB	SB	NB	SB	NB	SB	NB	SB	NB	SB	NB	SB	NB	
CALIFORNIA DRIVE															
MIDNIGHT-7:00 AM	50	5	3	0	0	0	0	0	2	2	0	0	2	2	7
PERCENT OF TOTAL PERIOD	90.91%	71.43%	5.45%	0.00%	0.00%	0.00%	0.00%	0.00%	28.57%	3.64%	0.00%	0.00%	3.64%	28.57%	
7:00 AM - NOON	600	252	18	20	0	0	15	19	6	9	21	28	639	300	
NOON-7:00 PM	407	738	28	22	0	0	9	3	4	4	13	7	448	767	
TOTAL	1007	990	46	42	0	0	24	22	10	13	34	35	1087	1067	
PERCENT OF TOTAL PERIOD	92.64%	92.78%	4.23%	3.94%	0.00%	0.00%	2.21%	2.06%	0.92%	1.22%	3.13%	3.28%			
7:00 PM-10:00 PM	36	101	0	0	0	0	0	0	0	0	0	0	36	101	
10:00 PM-MIDNIGHT	11	5	0	0	0	0	0	0	0	0	0	0	11	5	
7:00 PM - MIDNIGHT	47	106	0	0	0	0	0	0	0	0	0	0	47	106	
PERCENT OF TOTAL PERIOD	100.00%	100.00%					46	25							

Concrete trucks increased to 48 total daytime. Tractor trailers for material haul increased to 25 deliveries/day based on a calculated ratio of 1.87 concrete trucks/tractor trailer.

Dump trucks associated with temporary nearby road construction activities excluded.

30 LAC employee trips included.

SCENARIO 3-CONCRETE PLANT NIGHTIME MAX OPERATIONS (EXCLUDES ROAD CONST. DUMP TRUCKS)

	LDA/T				MDT				HDT								TOTAL							
	SB		NB		SB		NB		DUMP TRUCK				CONCRETE TRUCK				MATERIAL DELIVERY				TOTAL			
									SB	NB	SB	NB	SB	NB	SB	NB	SB	NB	SB	NB	SB	NB	SB	NB
CALIFORNIA DRIVE	35	20	3	0	0	0	0	0	14	14	8	7	22	21	60	41								
PERCENT OF TOTAL PERIOD	92.11%	400.00%	7.89%	0.00%	0.00%	0.00%	0.00%	0.00%	25.45%	25.45%	14.55%	12.73%	36.67%	51.22%										
7:00 AM - NOON	600	252	18	20	0	0	0	0	0	0	0	0	0	0	618	272								
NOON-7:00 PM	407	738	28	22	0	0	0	0	0	0	0	0	0	0	435	760								
TOTAL	1007	990	46	42	0	0	0	0	0	0	0	0	0	0	1053	1032								
PERCENT OF TOTAL PERIOD	95.63%	95.93%	4.37%	4.07%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%										
7:00 PM -10:00 PM	51	101	0	0	0	0	0	0	6	6	3	3	9	9	60	110								
10:00 PM-MIDNIGHT	11	5	0	0	0	0	0	0	4	4	2	2	6	6	17	11								
7:00 PM -MIDNIGHT	47	106	0	0	0	0	0	0	10	10	5	5	15	15	62	121								
PERCENT OF TOTAL PERIOD	75.81%	87.60%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	16.13%	8.26%	8.06%	4.13%	24.19%	12.40%										

Concrete trucks increased to 48 total nighttime (7pm-7am). Tractor trailers for material haul increased to 25 deliveries/day based on a calculated ratio of 1.87 concrete trucks/tractor trailer.

Dump trucks associated with temporary nearby road construction activities excluded.



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MEASURED - MODEL CALIBRATION

VEH.CAT	SB			NB			TOTAL		
	DAY	EVE	NIGHT	DAY	EVE	NIGHT	DAY	EVE	NIGHT
LDA	1007	36	61	990	101	10	1997	137	71
MT	46	0	3	42	0	0	88	0	3
HT	47	0	2	54	0	11	101	0	13
	1100	36	66	1086	101	21			
	1202			1208			2410		
VEH.CAT	SB			NB			TOTAL		
	DAY	EVE	NIGHT	DAY	EVE	NIGHT	DAY	EVE	NIGHT
LDA	83.78%	3.00%	5.07%	81.95%	8.36%	0.83%	82.86%	5.68%	2.95%
MT	3.83%	0.00%	0.25%	3.48%	0.00%	0.00%	3.65%	0.00%	0.12%
HT	3.91%	0.00%	0.17%	4.47%	0.00%	0.91%	4.19%	0.00%	0.54%
	91.51%	3.00%	5.49%	89.90%	8.36%	1.74%	90.71%	5.68%	3.61%

Totals may not sum due to rounding

SCENARIO 1-EXISTING AMBIENT (EXCLUDES ROAD CONST. DUMP TRUCKS, 30 LAC EMPLOYEE TRIPS, CONCRETE TRUCKS, AND MATERIAL DELIVERY

VEH.CAT	SB			NB			TOTAL		
	DAY	EVE	NIGHT	DAY	EVE	NIGHT	DAY	EVE	NIGHT
LDA	1007	36	46	975	101	10	1982	137	56
MT	46	0	3	42	0	0	88	0	3
HT	0	0	0	0	0	10	0	0	10
	1053	36	49	1017	101	20			
	1138			1138			2276		
VEH.CAT	SB			NB			TOTAL		
	DAY	EVE	NIGHT	DAY	EVE	NIGHT	DAY	EVE	NIGHT
LDA	88.49%	3.16%	4.04%	85.68%	8.88%	0.88%	87.08%	6.02%	2.46%
MT	4.04%	0.00%	0.26%	3.69%	0.00%	0.00%	3.87%	0.00%	0.13%
HT	0.00%	0.00%	0.00%	0.00%	0.00%	0.88%	0.00%	0.00%	0.44%



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SCENARIO 2-CONCRETE PLANT DAYTIME MAX OPERATIONS (EXCLUDES ROAD CONST. DUMP TRUCKS)

VEH CAT	SB			NB			TOTAL		
	DAY	EVE	NIGHT	DAY	EVE	NIGHT	DAY	EVE	NIGHT
LDA	1007	36	61	990	101	10	1997	137	71
MT	46	0	3	42	0	0	88	0	3
HT	34	0	2	35	0	12	69	0	14
	1087	36	66	1067	101	22			
	1189			1190			2379		

VEH CAT	SB			NB			TOTAL		
	DAY	EVE	NIGHT	DAY	EVE	NIGHT	DAY	EVE	NIGHT
LDA	84.69%	3.03%	5.13%	83.19%	8.49%	0.84%	83.94%	5.76%	2.98%
MT	3.87%	0.00%	0.25%	3.53%	0.00%	0.00%	3.70%	0.00%	0.13%
HT	2.86%	0.00%	0.17%	2.94%	0.00%	1.01%	2.90%	0.00%	0.59%
	91.42%	3.03%	5.55%	89.66%	8.49%	1.85%	90.54%	5.76%	3.70%

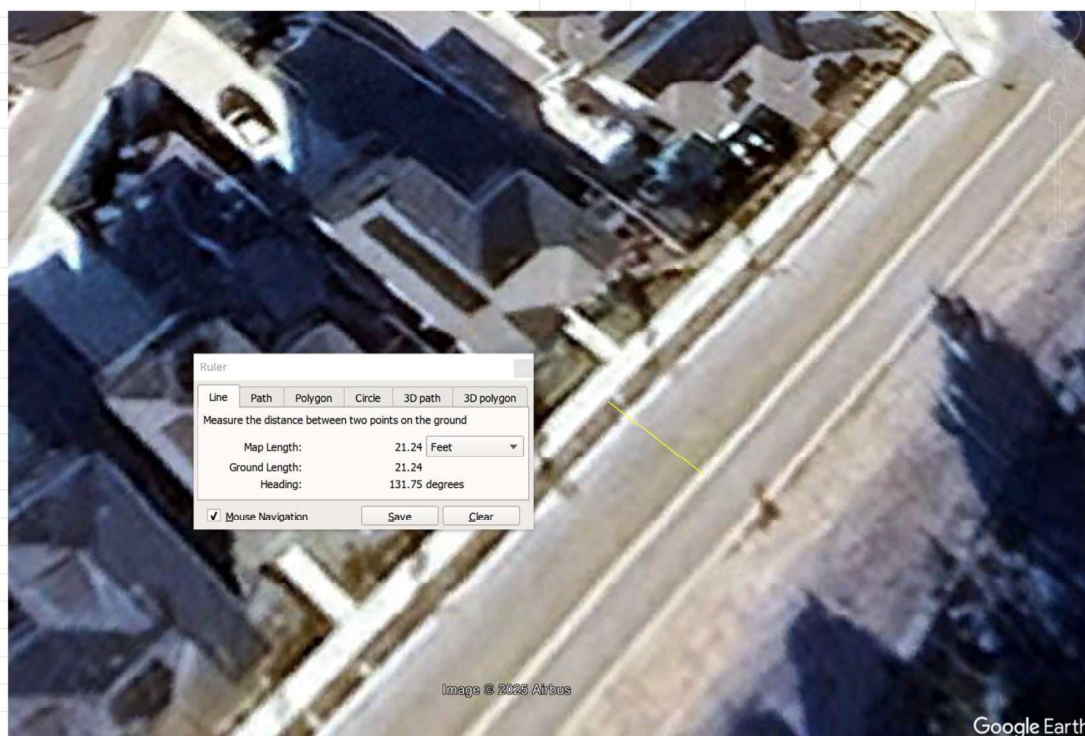
SCENARIO 3-CONCRETE PLANT NIGHTIME MAX OPERATIONS (EXCLUDES ROAD CONST. DUMP TRUCKS)

VEH CAT	SB			NB			TOTAL		
	DAY	EVE	NIGHT	DAY	EVE	NIGHT	DAY	EVE	NIGHT
LDA	1007	51	46	990	101	25	1997	152	71
MT	46	0	3	42	0	0	88	0	3
HT	0	9	28	0	9	52	0	18	80
	1053	60	77	1032	110	77			
	1190			1219			2409		

VEH CAT	SB			NB			TOTAL		
	DAY	EVE	NIGHT	DAY	EVE	NIGHT	DAY	EVE	NIGHT
LDA	84.62%	4.29%	3.87%	81.21%	8.29%	2.05%	82.90%	6.31%	2.95%
MT	3.87%	0.00%	0.25%	3.45%	0.00%	0.00%	3.65%	0.00%	0.12%
HT	0.00%	0.76%	2.35%	0.00%	0.74%	4.27%	0.00%	0.75%	3.32%



PREDICTED TRAFFIC NOISE LEVELS



PROPERTY LINE					
SCENARIO	SPEED (MPH)	DISTANCE FROM ROAD CL (FT)	MEASURED LDN/CNEL	MODELED EXTERIOR LDN/CNEL	DIFFERENCE COMPARED TO AMBIENT
MEASURED/MODEL CALIBRATION	30	19.5	64.6	64.6	
EXISTING AMBIENT TRAFFIC WITHOUT CONST/LAC TRUCKS/EMPLOYEE TI	30	21		63.2	
SCENARIO: LAC TRUCKS-DAYTIME OPERATIONS	30	21		64.4	1.2
SCENARIO: LAC TRUCKS-NIGHTTIME OPERATIONS	30	21		68.9	5.7
FAÇADE					
SCENARIO	SPEED (MPH)	DISTANCE FROM ROAD CL (FT)	MODELED EXTERIOR LDN/CNEL	INTERIOR LDN/CNEL	
				NLR 20	NLR 25
EXISTING AMBIENT TRAFFIC WITHOUT CONST/LAC TRUCKS/EMPLOYEE TI	30	41	60.9	40.9	35.9
SCENARIO: LAC TRUCKS-DAYTIME OPERATIONS	30	41	62.1	42.1	37.1
SCENARIO: LAC TRUCKS-NIGHTTIME OPERATIONS	30	41	66.6	46.6	41.6



CITY OF MARINA SERVICE/REQUEST FORM

FOR OFFICE USE ONLY

City of Marina
211 Hillcrest Avenue
Marina, CA 93933
(T) 831-884-1292
(F) 831-384-0425

DATE REC'D: _____

REC'D BY: _____

SERVICE REQUEST REGARDING

ADDRESS: 2817 California Ave Marina, CA 93933
 OWNER'S NAME: Min Chan
 OWNER'S ADDRESS: 2817 California Ave
 PHONE: ☎ () 650-224-6236
 IF RENTED, TENANT NAME: _____
 TENANT PHONE: ☎ () _____

DESCRIPTION OF SERVICE REQUEST

Please use back of form for additional information

Please see the attached page for more information.

PETITIONER INFORMATION

INFORMATION PROVIDED BELOW WILL REMAIN CONFIDENTIAL

PETITIONER NAME: Min Chan
 PETITIONER ADDRESS: 2817 California Ave Marina, CA 93933
 PHONE: ☎ () 650-224-6236
 EMAIL ADDRESS: ca@slatini.com
 DOES PETITIONER WISH CONTACT OR UPDATE: ☒ YES ☐ NO
 SIGNATURE OF PETITIONER DATE: 2/20/2025

DO NOT WRITE BELOW THIS BOX

ROUTED/REFERRED TO: _____ DEPARTMENT: _____

DISPOSITION

DATE: _____ HANDLED BY: _____

MMC VIOLATION: SECTION _____

DISPOSITION/ACTION TAKEN: _____

CONTACT MADE WITH PROPERTY/VEHICLE OWNER BY:

☐ LETTER (COPY ATTACHED)

☐ PHONE ☎ () _____

☐ IN PERSON

STEPS TAKEN TO CORRECT: _____

DATE: _____

PERMIT NO.: _____

I wish to provide negative feedback on the traffic that is on California Ave between Imjin Parkway and 8th Street.

I have been observing for over a month, including using a radar speed gun to gather vehicle speeds.

1. Trucks servicing Las Animas continue to begin around 6:30am, which is still the night time hours as defined by the City of Marina. The noise from the trucks are just too much for residents, and anything before 8am is ridiculous.
2. Traffic continue to speed more, both higher speeds and more people doing it. I have measured with my radar speed gun, multiple vehicles going between **37mph-45mph** (at least 5 vehicles per hour). Many of them are sporty cars capable of showing off. **Sadly, sometimes I also observe that work vehicles, and the MST bus going over the speed limit of 30mph.**
3. Traffic also speed during hours when they know no one is watching, namely between say 10pm-6am. I can still hear them and it is very annoying.
4. Traffic volumes have increased steadily, and during peak hours (of work travel I am assuming), between 7am-9am, and 3pm-5pm, the constant flow of cars is just not compatible with the definition of a residential road that has both houses and a recreational facility adjacent to it. Sometimes the back up at the traffic light, and at the various stop signs, is so long that there are cars lined-up stationary in front of my house.
5. When will Imjin Road re-open so that some relief can be had for the traffic on California Ave.
6. We really do need traffic reinforcement as my observation is that the number of violations are increasing with time. And we also need more speed limit signs, and other ways of slowing down traffic.

Date: March 4, 2025

To: Marina City Council for council meeting March 4, 2025 on Las Animas closed-session item

From: NoToLA 2025

We, NoToLA2025, the group which submitted a petition with 76 signatures from Marina citizens to the City to deny Las Animas a new lease refer to:

Marina Planning Commission Resolution No. 2024-20 on October 24, 2024 for new Conditional Use Permit (CUP) for Las Animas:

“WHEREAS, the Commission expressed concern that both the applicant and City have allowed the operation to occur after expiration of the last permit and in violation of certain aspects of the Marina Municipal Code (MMC). The Commission requests that the approved uses be monitored by the City and required to remain in compliance with the MMC and conditions of approval;”

City is Required to deny a New Lease

1. The MMC is being violated by Las Animas every day as the noise study conducted by Ambient Consulting in January 2025 shows that the noise from Las Animas trucks is above the daily average noise limit in the Marina Municipal Code (MMC).
2. The City needs to enforce its own laws, which means a new lease needs to be denied as Las Animas operations breach Marina laws.
3. The Marina Planning Commission inserted the quote above because the City had repeatedly failed to enforce the MMC with Las Animas: allowed it to operate without CUP from 2010-12, and again from 2017 to 2024.
4. The City also failed to evict Las Animas on 4 February 2017 when its lease expired. The 2nd Lease Amendment specifically disallowed a lease extension. Doing so would breach noise regulations in the Dunes Specific Plan 2005, as Dunes homes had already come up by 2017.
5. The new CUP is *conditional* on a new lease being granted, so the CUP is *not* binding on its own

Should the City grant a new lease, the City would be sacrificing the health and safety of Marina residents and CSUMB students to bear the burden of the City's own mistake.

A new access road for Las Animas should be built so that the truck traffic is not adjacent to the CSUMB student residences, the Dunes residences, and the Marina Equestrian Center.

[Can please add to the EIR for the General Plan to look at a new road for the Las Animas site, which will provide options to the City for any future plans?]

Strict Penalties to ensure Las Animas compliance

1. In the hideous event that a lease is going ahead, then there must be effective deterrent measures to ensure Las Animas will stop business activities during the decommissioning period, and depart of own accord at end of decommissioning.
2. No lease extensions or future leases should be allowed because it was heard from a source that the owner of Las Animas has said it plans to operate on a month-to-month during the decommissioning period, and to also negotiate for new lease then.
3. A deposit of \$2 million should be imposed to ensure that Las Animas will halt operations and depart as stated in any new lease. This number is chosen because the owner of Las

Animas stated at the Oct 24, 2024 Planning Commission meeting that it would cost \$2 million to relocate to another site.

4. The deposit has to be large enough that Las Animas would conform to the terms of the lease as this company has a repeated history of non-compliance. And the City has a repeated history of lapses. A large deposit is the only way to get Las Animas' skin in the game, and not pull the repeated stunts of breaking the laws and getting away with it.
5. A penalty of \$10,000 per day should be imposed if Las Animas fails to stop business operation during the decommissioning period.

Las Animas is dishonest and untrustworthy

1. Las Animas failed to inform city that the entity "Las Animas Concrete LLC" was terminated with Secretary of State in May 2024, and the new CUP was granted 5 months later to this company which no longer exists.
2. This has questionable implications for the business license fee which would have been paid to the City, as the fees are based on a percentage of gross receipts. What would have been reported if this terminated entity had not been discovered?
3. It was not until our NoToLA2025 Group informed the City of this, that Las Animas confirmed that this was so.
4. This comes after their past offenses of operating illegally from 2010 without CUP, and again from 2017 for **next 7 years** until 2023 until the matter was made known.

REDENBACHER & BROWN**Gary Redenbacher**

Attorney

March 4, 2025

City Council of Marina
211 Hillcrest Ave.
Marina, CA 93933



RE: *Las Animas Concrete*

Dear Council Members,

I am general counsel for Las Animas Concrete which operates the Marina concrete batch plant at 499 9th Street, Marina. While I expect you already know most of what I am going to share, it is important that it be repeated as any decision to renege on the Planning Commission's Resolution No. 2024-20, dated October 24, 2024, to allow Las Animas' continued operation for three years will have resounding adverse consequences, not just for Las Animas, but for its employees and the City itself.

In reliance on the City's representations, Las Animas purchased, at a cost of \$287,000, newer, more efficient trucks and invested approximately an additional \$1,500,000 in the plant to assure compliance with all city ordinances and operate as efficiently as possible with minimal impact on the surrounding neighborhoods. They made these expenditures under the City's assurance that they could continue to operate for three years. I expect the City does not want a claim presented should Las Animas not have the time promised to "recoup" these expenses.

The City knows how much the operation adds to the City's budget – approaching \$1,000,000 in a good year. Las Animas is also a good employer, paying union wages and benefits to its 14 employees. Las Animas has also agreed to be available to the City at night when the City needs road work done.

Current complaints are centered around the noise generated by the concrete trucks. Presently, there are only 4 homes on California Drive that the concrete trucks drive by. Of course, if those four homeowners work outside the home during the day, they have no exposure to the trucks. Even so, Las Animas was effectively vindicated by the sound study recently commissioned by the City. That study recognized that the exterior ambient noise level along California Drive did not exceed the acceptable average level of 65 dBA when measured from the property line of the houses.

Since the four affected homes are of relatively new construction, they should be capable of a noise level reduction of 25 dBA or greater, meaning an ambient interior noise level at these four homes of 40 dBA or less. From a practical standpoint, this equates to a "Quiet Urban Nighttime" or a "quiet library"¹ and significantly less than normal speech at 1 meter. (The trucks no longer drive by the home of the most vocal complainant because the work at Imjin Road prevents the trucks from turning left at California Drive. That homeowner's house is about 230 feet from the

¹ See <https://decibelpro.app/blog/decibel-chart-of-common-sound-sources/#2>

Mail: P.O. Box 66134
Scotts Valley, CA 95067

(831) 439-8821
office: 5401 Scotts Valley Dr.
Gary@RedBrownLaw.com
www.RedenbacherLaw.com

REDENBACHER & BROWN**Gary Redenbacher**

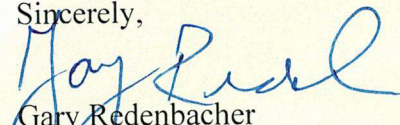
Attorney

intersection of 9th and California so any noise from the trucks is significantly attenuated – far below the acceptable limits noted in the study.)

We understand that, as community leaders, you wish to please everyone but recognize that this is impossible. Put into perspective, however, any complaints from these four homeowners about sound that is within normal limits are unreasonable compared to the wholesale disruption to the lives of 14 employees whose jobs would be lost should the plant be shut down shortly. Any concerns by these four homeowners, who were necessarily aware of the concrete trucks when they bought their homes, are outweighed by the benefit to the City and Las Animas' 14 employees as well as the detriment to Las Animas.

Las Animas understands that the clock will run out in a little less than three years, but it will do all it can to continue to be a good and contributing neighbor for the City.

Sincerely,



Gary Redenbacher

cc: client

Mail: P.O. Box 66134
Scotts Valley, CA 95067

(831) 439-8821
office: 5401 Scotts Valley Dr.
Gary@RedBrownLaw.com
www.RedenbacherLaw.com

**BUY OUT AGREEMENT
LAS ANIMAS CONCRETE, LLC**

This Buy Out Agreement ("Agreement") is entered into between Las Animas Concrete and Building Supply, Inc., a California corporation ("LACBS"), Monterey Peninsula Engineering, a California partnership ("MPE") and Las Animas Concrete, LLC, a California limited liability company ("LAC") effective November 30, 2023 (the "Effective Date"). LACBS, MPE and LAC are sometimes individually referred to herein as a "Party" and collectively as the "Parties."

RECITALS

A. MPE and LACBS formed LAC on or about November 22, 2004. Pursuant to LAC's Operating Agreement (the "Operating Agreement"), MPE and LACBS each own 50% of the membership interests of LAC.

B. Article VIII of the Operating Agreement provides for the transfers of membership interests. MPE would like to transfer its membership interest in LAC to LACBS so that LACBS will own 100% of the membership interests of LAC. LACBS would like to purchase MPE's membership interest in LAC. The Parties have agreed that the Purchase Price, set forth below, is the "Fair Option Price" required by section 8.7.

TERMS AND CONDITIONS

NOW, THEREFORE, in consideration for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, LAC, MPE, and LACBS agree as follows:

1. Membership Interest to Be Purchased. LACBS shall purchase all of MPE's interest in LAC ("MPE's Membership Interests").
2. Purchase Price. The purchase price for MPE's Membership Interests ("Purchase Price") shall be the sum of Seven Hundred Twenty-Five Thousand Dollars (\$725,000.00). The Purchase Price shall be paid in cash as follows: Five Hundred Thousand Dollars (\$500,000.00) shall be paid into "Escrow" (see section 5 below) within fifteen (15) days of the Parties' execution of this Agreement ("Initial Payment"); and the balance of Two Hundred Twenty-Five Thousand Dollars (\$225,000.00) is to be paid directly to MPE in monthly installments of Twenty-Five Thousand Dollars (\$25,000.00) starting the first of the month following the Initial Payment so that the balance is paid off within nine (9) months. If the subsequent payments are made as set forth above, no interest shall be charged. However, if LACBS fails to make any subsequent payment, interest shall start to accrue at the rate of ten percent (10%) per annum until the entire balance has been paid. If the subsequent payments are made earlier, there is no penalty for early payment. This section 2, with its obligation to continue making payments, shall survive Close of Escrow.
3. Transfer of Membership Interest. Upon receipt of the Initial Payment, MPE shall assign LAC MPE's Membership Interests.

4. Corporate Records. Upon receipt of the assignment from MPE, LAC shall update its records, and file an updated Statement of Information with the California Secretary of State. The Operating Agreement shall be updated to reflect that LACBS owns all of the membership interest for LAC.

5. Escrow. Upon full execution, the Parties shall provide a copy of this Agreement to the "Escrow Holder" which shall be Crescent Land Title Company, 890 3rd Street, Crescent City, CA 95531 (Steve Lehenbauer). The Initial Payment shall be released to MPE at the same time as the assignment of MPE's Membership Interests is released to LACBS. The Parties agree to execute, deliver and be bound by any reasonable or customary supplemental escrow instructions of Escrow Holder or other instruments reasonably required by Escrow Holder in order to consummate the transaction contemplated by this Agreement.

6. LACBS's Warranties and Representations. LACBS makes the following representations and warranties to MPE:

6.1. Power and Authority. LACBS and LAC are duly organized, validly existing, and in good standing under the laws of the state of California and they have all requisite power and authority to carry on their businesses as now conducted and to own and operate its properties and assets now owned and being operated by them. LACBS and LAC have the power and authority to enter into this Agreement and to carry out their obligations under this Agreement.

6.2. Due Authorization. This Agreement and all agreements, instruments and documents herein provided to be executed by LACBS and LAC are and as of the Closing will be duly authorized, executed and delivered by LACBS and LAC, respectively. Upon the execution and delivery by LACBS and LAC of this Agreement, and any other documents to be executed at the Closing, such documents shall constitute the legal, valid and binding obligations of LACBS and LAC, enforceable against LACBS and LAC in accordance with their respective terms, except as such enforceability may be limited by bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting debtors' and creditors' rights generally and general equitable provisions.

6.3. No Conflict. The execution and delivery of this Agreement and the performance of its obligations hereunder by LACBS and LAC will not: (i) conflict with any provision of any law, order or regulation to which LACBS and LAC are subject; (ii) conflict with, result in a breach of or constitute a default under any of the terms, conditions or provisions of any agreement or instrument to which either LACBS and LAC is a party or by which either LACBS and LAC is bound; (iii) violate any order, judgment, or decree of any court or other agency of government applicable to LACBS or LAC; or (iv) result in or require the imposition of any lien, claim, or demand upon any of LACBS or LAC.

6.4. Litigation. No threatened action, suit or proceeding is pending in any court or by or before any other governmental agency or instrumentality against LACBS and/or LAC or which would materially and adversely affect the ability of LACBS and/or LAC to carry out the transactions contemplated by this Agreement.

6.5. Contract Rights. LACBS has not executed any contracts on behalf of LAC that MPE has not also executed.

6.6. Insolvency. LACBS has not (i) made a general assignment for the benefit of creditors; (ii) filed any voluntary petition in bankruptcy or suffered the filing of an involuntary petition by LACBS's creditors; (iii) suffered the appointment of a receiver to take possession of all or substantially all of LACBS's assets; or (iv) suffered the attachment or other judicial seizure of all, or substantially all, of LACBS's assets.

6.7. Brokers. LACBS has not dealt with any broker, finder or similar person in connection with the transactions contemplated by this Agreement.

6.8. Violations. Neither LACBS nor LAC has received notice of, nor is otherwise aware of, any violations of any applicable codes, laws or statutes relating to LAC, including, without limitation, any occupational safety laws or accessibility laws, which violations have not been rectified by LAC.

6.9. Labor. Neither LACBS nor LAC is aware of any labor matters related to union organization threatened against LACBS or LAC. LACBS is not aware of any potential wage and hour claims, discrimination claims, or any other labor claims against LAC.

6.10. Notice of Breach; LACBS's Right to Cure. In the event, at or prior to Closing, LACBS learns of facts or circumstances beyond the reasonable control of LACBS to prevent which make any of the foregoing representations or warranties materially inaccurate, LACBS shall give written notice thereof to MPE and LACBS' representations and warranties shall be deemed qualified and amended as set forth in such notice (subject to MPE's rights to terminate this Agreement set forth below). Within ten (10) days after receipt of such notice from LACBS that any of LACBS's representations or warranties contained in this Agreement are materially inaccurate (the Closing Date being hereby extended for such period, if necessary, to give MPE the ten (10) days to respond), other than inaccuracies resulting from the fact that a LACBS representation was untrue when originally made or became untrue because of an affirmative act of LACBS, MPE, without limiting MPE's rights and remedies, may elect by written notice to LACBS (a) to waive such misrepresentations or breaches of warranties and consummate the transactions contemplated herein without any reduction of or credit against the Purchase Price, or (b) to terminate this Agreement by written notice given to LACBS on the Closing Date, in which event this Agreement shall be terminated.

6.11. Survival. If the Close of Escrow occurs, the representations and warranties of LACBS in this Section 6 shall survive the Close of Escrow (and not be merged therein). The provisions of this Section 6.11 shall survive the Close of Escrow.

7. MPE's Warranties and Representations. MPE makes the following representations and warranties to LACBS:

7.1. Power and Authority. MPE has the power and authority to enter into this Agreement and to carry out its obligations under this Agreement.

7.2. Due Authorization. This Agreement and all agreements, instruments and documents herein provided to be executed by MPE are and as of the Closing will be duly authorized, executed and delivered by MPE. Upon the execution and delivery by MPE of this Agreement, and any other documents to be executed at the Closing, such documents shall constitute the legal, valid and binding obligations of MPE, enforceable against MPE in accordance with their respective terms, except as such enforceability may be limited by bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting debtors' and creditors' rights generally and general equitable provisions.

7.3. No Conflict. To MPE's knowledge, the execution and delivery of this Agreement and the performance of its obligations hereunder by MPE will not: (i) conflict with any provision of any law, order or regulation to which MPE is subject; (ii) conflict with, result in a breach of or constitute a default under any of the terms, conditions or provisions of any agreement or instrument to which MPE is a party; or (iii) violate any order, judgment, or decree of any court or other agency of government applicable to MPE.

7.4. Litigation. To MPE's knowledge, no action, suit or proceeding is pending in any court or by or before any other governmental agency or instrumentality against MPE which would materially and adversely affect the ability of MPE to carry out the transactions contemplated by this Agreement. To MPE's knowledge, no such action, suit or proceeding is threatened against MPE.

7.5. Insolvency. MPE has not (i) made a general assignment for the benefit of creditors; (ii) filed any voluntary petition in bankruptcy or suffered the filing of an involuntary petition by MPE's creditors; (iii) suffered the appointment of a receiver to take possession of all or substantially all of MPE's assets; or (iv) suffered the attachment or other judicial seizure of all, or substantially all of MPE's assets.

7.6. Survival. If the Close of Escrow occurs, the representations and warranties of MPE in this Section 7 shall survive the Close of Escrow (and not be merged therein). Additionally, if the Close of Escrow occurs, LACBS and LAC hereby expressly waive, relinquish and release any right or remedy available to it at law, in equity or under this Agreement to make a claim against MPE for damages that either may incur, or to rescind this Agreement or the transactions contemplated herein, as a result of any of MPE's representations or warranties (other than MPE's representations which were untrue when originally made or became untrue due to MPE's affirmative acts) being untrue, inaccurate or incorrect if LACBS and/or LAC had actual knowledge that such representation or warranty was untrue, inaccurate or incorrect at the Close of Escrow. The provisions of this Section 7.6 shall survive the Close of Escrow.

8. Closing Escrow.

8.1. Close of Escrow. The close of escrow (the "Close of Escrow") shall occur no later than five (5) business days after the Initial Payment is deposited into Escrow (the "Closing Date").

8.2. Conditions to MPE's Obligations. MPE's obligation to consummate the transactions contemplated by this Agreement is subject to the satisfaction of the following conditions for MPE's benefit (or MPE's waiver thereof) on or prior to the dates designated below for the satisfaction of such conditions.

8.2.1. LACBS's Obligations. As of the Close of Escrow, LACBS shall have performed all of the obligations required to be performed by LACBS under this Agreement.

8.2.2. Payment of Purchase Price. LACBS has deposited the remaining cash portion of the Purchase Price with Escrow Holder at least three (3) business days before the Closing Date and delivered all documents and instruments required hereunder.

8.2.3. Representations and Warranties True. The representations and warranties of LACBS contained in this Agreement shall be in all material respects true and accurate as of the date when made and at and as of the Closing Date as though such representations and warranties were made at and as of such date, except for changes permitted or contemplated by the terms of this Agreement.

8.3. Conditions to LACBS's Obligations. LACBS's obligation to consummate the transaction contemplated by this Agreement is subject to the satisfaction of the following conditions for the benefit of LACBS (or LACBS's waiver thereof) on or prior to the dates designated below for the satisfaction of such conditions.

8.3.1. MPE's Obligations. As of the Close of Escrow, MPE shall have performed all of the obligations required to be performed by MPE under this Agreement.

8.3.2. Representations and Warranties True. The representations and warranties of MPE contained herein shall be in all material respects true and accurate as of the date when made and at and as of the Closing Date as though such representations and warranties were made at and as of such date.

8.4. Failure of Condition. Except as otherwise provided in this Agreement, if the Escrow fails to close on or before the Closing Date for any reason whatsoever (other than a reason for which LACBS or MPE has the express right to postpone Closing), including, without limitation, a failure of a condition precedent set forth in this Section 8, either LACBS or MPE, if not then in default hereunder, may, subject to the provisions of Section 19, terminate the Escrow and this Agreement and, thereupon:

8.4.1. The costs of Escrow and title fees through the Closing Date shall be shared equally by LACBS and MPE;

8.4.2. All monies and deposits paid into the Escrow (including any interest earned thereon) and all documents deposited in the Escrow shall be returned to the Party paying or depositing the same;

8.4.3. Each Party shall be released from all obligations under this Agreement except for the obligations which survive termination as provided herein.

Notwithstanding anything in this Section 8.4 to the contrary, in no event shall either Party's termination of this Agreement pursuant to this Section 8.4 affect any rights or obligations which expressly survive the termination of this Agreement.

8.5. Deposits by MPE. At least one (1) business day prior to the Closing Date, MPE shall deposit or cause to be deposited with Escrow Holder the following documents and instruments:

8.5.1. An assignment of MPE's Membership Interest to LACBS; and

8.5.2. Other Documents. All other documents and instruments to be executed and/or delivered by or on behalf of MPE as provided or contemplated by this Agreement, including access codes; and originals (or copies, if originals are not available) of any contracts.

8.6. Escrow and Transaction Fees. The escrow fees and costs of Escrow Holder shall be shared equally by LACBS and MPE. LACBS shall pay all state and local transfer taxes, if any.

8.7. Closing Statement. Escrow Holder shall prepare, no later than two (2) business days prior to the Closing, a closing statement (the "Closing Statement").

8.8. Disbursements and Other Actions by Escrow Holder. Upon the Close of Escrow, Escrow Holder shall promptly undertake all of the following:

8.8.1. Funds. Disburse from funds deposited by LACBS with Escrow Holder towards payment of all items chargeable to the account of LACBS pursuant hereto in payment of such costs, including, without limitation, the payment of the Purchase Price to MPE, and disburse the balance of such funds, if any, to MPE.

8.8.2. Documents to LACBS. Deliver to LACBS the assignment of MPE's Membership Interests.

9. Indemnification. In addition to any indemnification obligations set forth elsewhere in this Agreement, LACBS agrees that LACBS and LAC will indemnify, defend, and hold harmless MPE against from any and all liability, loss, cost, or obligation arising from or relating to any claims made against LACBS and/or LAC and/or MPE to the extent such claims are based upon LACBS's and/or LAC's actions which occurred or are alleged to have occurred prior to the Close of Escrow. LACBS agrees that LACBS and LAC will indemnify, defend, and hold harmless MPE against from any and all liability, loss, cost, or obligation arising from or relating to any claims made against LACBS and/or LAC and/or MPE based upon events which occurred or are alleged to have occurred after the Close of Escrow.

10. Attorney's Fees. In the event that an action is brought by any Party hereto to interpret or enforce this Agreement, the prevailing Party shall be entitled to reasonable attorneys' fees and costs related directly to such interpretation or enforcement in addition to all other relief to which that Party or those Parties may be entitled.

11. General Provisions.

11.1. No Waivers. The waiver by a Party hereto of any condition or the breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of any other condition or of any subsequent breach of the same or of any other term, covenant or condition herein contained.

11.2. Time of Essence. Time is of the essence of this Agreement. However, whenever action must be taken (including the giving of notice or the delivery of documents) under this Agreement during a certain period of time (or by a particular date) that ends (or occurs) on a non-business day, then such period (or date) shall be extended until the immediately following business day. As used herein, "business day" shall mean any day other than a Saturday, Sunday or federal or California state holiday. Unless expressly indicated otherwise, (i) all references to time in this Agreement shall be deemed to refer to Pacific Time, and (ii) all time periods provided for under this Agreement shall expire at 5:00 p.m. Pacific Time.

11.3. Notices. Any notice required to be given to any of the Parties pursuant to this Agreement shall be in writing and shall be given (i) by certified mail, return receipt requested, (ii) by reputable national overnight courier service, or (iii) by a PDF or similar attachment to an email, provided that such email attachment shall be followed within one (1) business day by delivery of such notice pursuant to clause (i) or (ii) above. Such notice shall be deemed duly given on the day of actual delivery (whether accepted or refused). Notice shall be given to the following addresses:

If to LACBS: _____

If to MPE: _____

Any Party, by notice given as aforesaid, may change the address to which subsequent notices are to be sent to such Party.

11.4. Invalidity. If for any reason any term or provision of this Agreement shall be declared void and unenforceable by any court of law or equity it shall only affect such particular term or provision of this Agreement and the balance of this Agreement shall remain in full force and effect and shall be binding upon the Parties hereto.

11.5. Complete Agreement. All understandings and agreements heretofore had between the Parties, whether written or verbal, are merged into this Agreement which alone fully and completely expresses their agreement. This Agreement may be changed only in writing signed by all of the Parties hereto and shall apply to and bind the successors and assigns of each of the Parties hereto.

11.6. Successors and Assigns. This Agreement shall be binding upon the Parties and their respective successors and assigns.

11.8. Further Assurances. Each Party shall, whenever and as often as it shall be requested so to do by the other, cause to be executed, acknowledged or delivered any and all such further instruments and documents as may be necessary or proper, in the reasonable opinion of the requesting Party, in order to carry out the intent and purpose of this Agreement (provided the same do not increase in any material respect the costs to, or liabilities or obligations of, such Party in a manner not otherwise provided for herein).

11.9. No Third Party Beneficiaries. The Parties do not intend to confer any benefit hereunder on any person, firm or corporation other than the Parties hereto.

11.10. Venue; Jurisdiction. This Agreement shall be governed by the laws of the State of California. All disputes arising out of this Agreement shall be subject to the exclusive jurisdiction and venue of the California State courts of Monterey County, California, (or, if there is exclusive federal jurisdiction, the United States District Court for the Northern District of California, San Jose branch) and each Party consents to the personal and exclusive jurisdiction and venue of these courts.

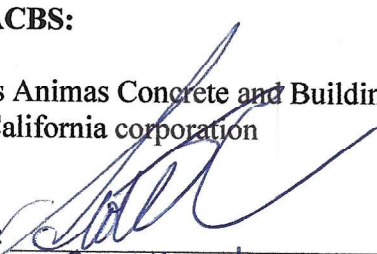
IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

Signatures on *following* *page.*

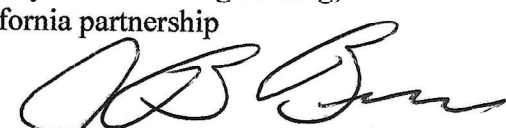
1-23-24

LACBS:

Las Animas Concrete and Building Supply, Inc.,
a California corporation

By: Name: Scott FrenchTitle: President**MPE:**

Monterey Peninsula Engineering,
a California partnership

By: Name: JAMES BRUNDTitle: man Ayer**LAC:**

Las Animas Concrete, LLC,
a California limited liability company

By: Name: Scott FrenchTitle: President



**COAST COUNTIES TRUCK & EQUIPMENT CO.
DBA COAST COUNTIES PETERBILT**

REMIT TO:
P.O. BOX 757 SAN JOSE, CA 95106
PHONE (408) 453-5510 FAX (408) 453-7637

**MAIN OFFICE
1740 N. 4TH STREET (95112)**

920 ELVEE DRIVE P.O. BOX 1812
SALINAS, CA 93902-1812
PHONE (831) 758-2441
FAX (831) 758-3314

260 DOOLITTLE DRIVE
SAN LEANDRO, CA 94577-1014
PHONE (510) 568-6933
FAX (510) 562-5564

7675 CONDE LANE
WINDSOR, CA 95492
PHONE (707) 837-2727
FAX (707) 837-0589

2660 JACOBS AVENUE
EUREKA, CA 95501-0901
PHONE (707) 443-7073
FAX (707) 443-6254

3030 RAMADA DRIVE
PASO ROBLES, CA 93446
PHONE (805) 238-6764
FAX (805) 238-6866

Sold To:		Ship To:		Invoice Number
92403 Las Animas Concrete 146 Encinal St Santa Cruz, CA 95060		Las Animas Concrete 146 Encinal St Santa Cruz, CA 95060 Via: _____ Your Driver _____		011839 Branch: San Jose
Customer PO	Our Order No.	Terms	Salesman	Invoice Date
	6218 / 1	Net Due Upon Delivery	Bob Souza	11/26/2024
Description				
SOLD UNIT(S) Year: 2019 Make: Peterbilt Model: 567 Price: \$140,000.00 VIN: 1NPCLK0X4KD625938 License: _____ ADDITIONAL UNIT CHARGES DMV Doc Fee \$85.00 Unit Price: \$140,085.00 Sales Tax 5.8125%: \$8,142.44 License Fee (fees are estimated) \$2,500.00 Subtotal: \$150,727.44 Year: 2019 Make: Peterbilt Model: 567 Price: \$127,000.00 VIN: 1NPCLK0X6KD625939 License: _____ ADDITIONAL UNIT CHARGES DMV Doc Fee \$85.00 Unit Price: \$127,085.00 Sales Tax 5.8125%: \$7,386.82 License Fee (fees are estimated) \$2,500.00 Subtotal: \$136,971.82				
<i>New drum #127 here</i> <i>7978 / 94809 12/18</i> <i>Temp License # DM 73B79</i> <i>used drum 128</i> <i>7000 / 92,293 12/18</i> <i>Temp License # DM 73C10</i>				
Sold Unit Amount				\$287,699.26
There is no payment of Heavy Vehicle Use tax (IRS Form 2290) included in the Invoice. Buyer must file any payment, if applicable, with the IRS. "An on-road heavy-duty diesel or alternative-diesel vehicle operated in California may be subject to the California Air Resources Board Regulation to Reduce Particulate Matter and Criteria Pollutant Emissions from In-Use Heavy-Duty Diesel Vehicles. It, therefore, could be subject to exhaust retrofit or accelerated turnover requirements to reduce emissions of air pollutants." For more information, please visit the California Air Resources Board website at http://www.arb.ca.gov/dieseltruck .				Total: \$287,699.26 Net: \$287,699.26
X				Balance Due: \$287,699.26
CUSTOMER SIGNATURE				

April 11, 2025

Item No. **13c**

Honorable Mayor and Members
of the Marina City Council

City Council Meeting
of April 15, 2025

**CITY COUNCIL TO CONSIDER ADOPTING RESOLUTION NO. 2025-__,
AUTHORIZING A LEASE AGREEMENT BETWEEN LAS ANIMAS CONCRETE
AND BUILDING SUPPLY, INC. (DBA LAS ANIMAS CONCRETE, MARINA);
AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT ON
BEHALF OF THE CITY, SUBJECT TO FINAL REVIEW AND APPROVAL BY THE
CITY ATTORNEY; AND AUTHORIZING THE FINANCE DIRECTOR TO MAKE
NECESSARY ACCOUNTING AND BUDGETARY ENTRIES.**

RECOMMENDATION: It is recommended that the City Council consider adopting Resolution No. 2025-__ to:

1. Authorize a lease agreement, attached as Exhibit D, between the City and Las Animas Concrete and Building Supply, Inc. (DBA Las Animas Concrete, Marina) from the period beginning on the date of execution and terminating on December 31, 2026, but which provides that tenant will cease operations of the batch plant on or before December 31, 2025. Thereafter, from January 1, 2026, the tenant will have up to twelve months dismantle operations and return the site to its pre-lease condition in 2005;
2. Authorize the City Manager to execute the lease agreement on behalf of the City, subject to final review and approval by the City Attorney; and
3. Authorize the Finance Director to make necessary accounting and budgetary entries.

BACKGROUND

On August 9, 2005, the City, acting as the agent of the Fort Ord Reuse Authority (“FORA”), entered into that certain “Lease Agreement for Concrete Batch Plant” (the “Interim Lease”) for property located at 499 Ninth Street (Assessor’s Parcel Numbers 031-201-014 and -016).

On August 31, 2005, the City accepted a Quitclaim Deed from FORA for real property which included the property leased to the Las Animas Concrete’s predecessor, Las Animas Concrete, LLC (LAC LLC). The Interim Lease continued as a direct lease from the City through the Redevelopment Agency of the City of Marina (“RDA”).

The Interim Lease terminated on February 5, 2006 upon the execution of a 5-year Lease Agreement for Concrete Batch Plant which was effective that date (“Lease”). (See Exhibit B, 2006 Lease Agreement with Amendments.)

On September 29, 2008, the RDA and LAC LLC entered into Amendment No. 1 to Lease for Concrete Batch Plant (“Amendment No. 1”), which provided for: (1) changing the title of the 5-Year Lease to “Lease Agreement for Concrete Batch Plant”; amending the term of the 5-Year Agreement to provide for a term of seven (7) years commencing on February 5, 2006 and terminating February 4, 2013, contingent upon the term of the Use Permit; granting to LAC LLC a conditional right and option to extend the term of the 5-year Lease for an additional period of two (2) years following the expiration date of February 4, 2013. (See Exhibit B.)

On March 10, 2011, by Quitclaim Deed, the RDA granted the real property which is the subject of the Lease Agreement for Concrete Batch Plant to the City.

On July 3, 2012, the City and LAC LLC entered into a Second Amendment to the Lease Agreement for Concrete Batch Plant (“Amendment No. 2”), which provided for: (1) changing the term of the Agreement to eleven (11) years, commencing on February 5, 2006, and terminating on February 4, 2017; (2) establishing that LAC LLC shall have no option to extend the term of the Lease; and (3) establishing that the Lease terminated at any time by mutual agreement of the parties with thirty (30) days prior written notice. The Lease, thus, terminated by its own terms on or about February 6, 2017. (See Exhibit B.)

In 2023, LAC LLC met with the City to discuss entering into a new lease, and in reviewing the permit history for this site, staff discovered that the Use Permit was expired and informed LAC LLC that a new Use Permit would be required to continue operating at the subject property.

On October 19, 2023, LAC LLC submitted application materials for a new Conditional Use Permit (CU 23-002) (“CUP”) to allow LAC LLC to continue operation for up to three (3) years with one (1) additional year for decommissioning the batch plant located on the subject property.

On or about May 30, 2024, LAC LLC dissolved and the business was transferred to Las Animas Concrete & Building Supply, Inc., DBA Las Animas Concrete, Marina, prior to that dissolution.

On August 9, 2024, the City of Marina submitted the draft Initial Study (IS) and Negative Declaration (ND) for the Las Animas Batch Concrete Processing Use Permit Project to the State Clearing House (SCH No: 2024080409) with a state and local 30-day review period.

On October 24, 2024, the City of Marina Planning Commission (“Planning Commission”), at a duly noticed public hearing, considered all of the information presented to it, including the staff report and information submitted at the public hearing by interested persons. The Planning Commission adopted Resolution No. 24-20, approving the CUP to allow continued operation of the Batch Plant, subject to conditions of approval, including entering into a new lease agreement with the City. (See Exhibit C, CUP.)

ANALYSIS

On October 24, 2024, the Planning Commission approved a conditional use permit to reauthorize a concrete batch plant on the subject property with the express condition that the approval of a lease agreement with the City would be required (See Condition No. 14 of Exhibit C.). The City Council has directed staff to prepare a lease agreement to allow the business to remain operational on the subject property until December 31, 2025. Thereafter, from January 1, 2026, the tenant will have up to 12 months to dismantle operations and, per the terms of the proposed lease, as well as CUP condition of approval #20, the tenant will be required to return the site back to its pre-lease condition in 2005.

ENVIROMENTAL REVIEW

Approval of a lease is not a project subject to the California Environmental Quality Act pursuant to the commonsense exemption found in section 15061(b)(3) of the CEQA Guidelines. A mitigated negative declaration (MND) was prepared for the project conditional use permit, which was approved by the Planning Commission on October 24, 2024, per Section 15070 of the CEQA Guidelines.

FISCAL IMPACT

The City of Marina will lose approximately \$150,000-\$200,000 in annual revenue when the Las Animas business ceases to operate.

Respectfully submitted

Guido F. Persicone
Community Development Director
City of Marina

REVIEWED BY:

Layne Long
City Manager
City of Marina

Attachments
A-Resolution
B-2006 Lease Agreement and Amendments
C-Planning Commission Resolution 2024-20
D-Draft Lease Agreement
E-Public Comment