

CALIFORNIA COASTAL COMMISSION

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**T 14a**

June 21, 2007

TO: Commissioners and Interested Persons

FROM: Sherilyn Sarb, Deputy Director, South Coast District (Orange County)
Teresa Henry, District Manager, South Coast District
Karl Schwing, Supervisor, Regulation & Planning, Orange County Area
Ryan Todaro, Coastal Program Analyst

SUBJECT: **City of Newport Beach Land Use Plan Amendment NPB-MAJ-1-06
Part A (Marriott Hotel VSC to MDR/Santa Barbara Condominiums)**

SUMMARY OF STAFF REPORT**DESCRIPTION OF THE SUBMITTAL**

The amendment that is the subject of this report was submitted as part of a package with other Land Use Plan (LUP) amendments. This report deals only with "Part A" of the amendment. Part A of the amendment consists of a request by the City of Newport Beach to change the land use designation of a 4.25 acre area (presently occupied by tennis courts) at the Marriott Hotel from Visitor-Serving Commercial to Medium Density Residential, at 900 Newport Center Drive, Newport Beach, Orange County. (Part B of the amendment was acted on separately at the Commission's July 2006 hearing, and Part C was retracted, in part because the City Council had not authorized its original submittal.) The proposed land use change would allow for the construction of condominiums (or other medium density residential) on the subject property. A corresponding coastal development permit application (5-07-085, Lennar) has been submitted and will be considered at a subsequent hearing.

SUMMARY OF STAFF RECOMMENDATION

Commission staff recommends that the Commission **DENY** the proposed City of Newport Beach Land Use Plan Amendment NPB MAJ 1-06 Part A as submitted and **APPROVE** the amendment subject to suggested modifications. The motions to accomplish this are found on Page 3.

The major issues raised by this amendment request are adequate provision of visitor-serving commercial development and public access. The proposed land use designation change from Visitor-Serving Commercial to Medium Density Residential would have an adverse affect on priority visitor-serving opportunities in the area. Residential development is a low priority use within the Coastal Zone. However, with the adoption of the suggested modifications, which include a new Land Use Plan policy that requires a payment of a fee to mitigate for the loss of visitor-serving land, the proposed land use designation change would not have an adverse affect on priority

visitor-serving opportunities in the area. The mitigation fee shall be for the protection, enhancement and provision of lower-cost visitor-serving uses at Crystal Cove State Park in the amount of \$5,000,000.00 (five million dollars) to off-set the loss of the priority land use in Newport Center. This mitigation fee would fund Phase 2 of the ongoing Crystal Cove Alliance restoration effort of the Historic District at Crystal Cove State Park and which is presently contemplated to provide for the completion of the Outdoor Educational Commons (Cottages 40, 42, 43 and 44), the Beach Museum (Cottage 13), Cottage 5, Cottage 45, the garages and creek restoration.

ADDITIONAL INFORMATION

For further information, please contact **Ryan Todaro** at the South Coast District Office of the Coastal Commission at **(562) 590-5071**. The proposed amendment to the Land Use Plan (LUP) of the City of Newport Beach Local Coastal Program (LCP) is available for review at the Long Beach Office of the Coastal Commission or at the City of Newport Beach Planning Department. The City of Newport Beach Planning Department is located at 3300 Newport Boulevard in Newport Beach. **Homer Bludau** is the contact person for the City of Newport Beach, and he may be reached by calling **(949) 644-3000**.

EXHIBITS

1. City Council Resolution No. 2006-02 approved January 10, 2006
2. City Council Resolution No. 2006-26 approved March 28, 2006
3. Vicinity Map (Newport Center)
4. Land Use Map
5. Vicinity Map (Crystal Cove State Park)
6. Site Map (Crystal Cove State Park)
7. City of Newport Beach letter

I. COMMISSION RESOLUTION ON CITY OF NEWPORT BEACH LOCAL COASTAL PROGRAM AMENDMENT 1-06 (PART A)

Motion #1

*"I move that the Commission **CERTIFY** the City of Newport Beach Land Use Plan Amendment NPB MAJ 1-06 Part A as submitted."*

Staff Recommendation for Denial

Staff recommends a **NO** vote. Failure of this motion will result in denial of the land use plan amendment as submitted and adoption of the following resolutions and findings. The motion to certify as submitted passes only upon affirmative vote of a majority of the appointed Commissioners.

Resolution for Denial

The Commission hereby **DENIES** the City of Newport Beach Land Use Plan Amendment NPB MAJ 1-06 Part A as submitted and adopts the findings stated below on the grounds that the amendment will not meet the requirements of and is not in conformity with the policies of Chapter 3 of the California Coastal Act. Certification of the Land Use Plan amendment would not comply with the California Environmental Quality Act as there are feasible mitigation measures and alternatives that would substantially lessen the significant adverse impacts on the environment that will result from certification of the land use plan amendment as submitted.

Motion #2

*"I move that the Commission **CERTIFY** the City of Newport Beach Land Use Plan Amendment NPB MAJ 1-06 Part A if modified as suggested in this staff report."*

Staff Recommendation for Certification

Staff recommends a **YES** vote. Passage of this motion will result in the certification of the land use plan with suggested modification and adoption of the following resolution and findings. The motion to certify with suggested modifications passes only upon an affirmative vote of a majority of the appointed Commissioners.

Resolution for Certification with Suggested Modifications

The Commission hereby certifies the Land Use Plan Amendment NPB MAJ 1-06 Part A for the City of Newport Beach if modified as suggested and adopts the findings set forth below on the grounds that the Land Use Plan amendment with suggested modifications will meet the requirements of and be in conformity with the policies of Chapter 3 of the Coastal Act. Certification of the land use plan amendment if modified as suggested

complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the plan on the environment, or 2) there are no further feasible alternatives or mitigation measures that would substantially lessen any significant adverse impacts which the Land Use Plan Amendment may have on the environment.

II. PROCEDURAL PROCESS (LEGAL STANDARD FOR REVIEW)

A. Standard of Review

The standard of review for land use plan amendments is found in Section 30512 of the Coastal Act. This section requires the Commission to certify an LUP amendment if it finds that it meets the requirements of, and is in conformity with, the policies of Chapter 3 of the Coastal Act. Specifically, Section 30512(c) states: *“The Commission shall certify a land use plan, or any amendments thereto, if it finds that a land use plan meets the requirements of, and is in conformity with, the policies of Chapter 3 (commencing with Section 30200). Except as provided in paragraph (1) of subdivision (a), a decision to certify shall require a majority vote of the appointed membership of the Commission.”*

B. Procedural Requirements

Pursuant to Section 13551(b) of Title 14 of the California Code of Regulations, a local government’s resolution for submittal of a proposed LUP amendment must indicate whether the local coastal program amendment will require formal local government adoption after Commission approval, or is an amendment that will take effect automatically upon the Commission’s approval pursuant to Public Resources Code Sections 30512, 30513 and 30519. The City of Newport Beach’s submittal indicates that this LCP amendment, if approved as submitted, will take effect upon Commission certification. Approval of the amendment with modifications will require subsequent action by the City.

III. BACKGROUND

The Land Use Plan (LUP) for the City of Newport Beach was effectively certified on May 19, 1982 and comprehensively updated October 13, 2005. The subject amendment was initially submitted by the City of Newport Beach on March 6, 2006. On March 15, 2006, Coastal Commission staff notified the City of Newport Beach that the submittal was incomplete and that additional information would be required to complete the submittal. City staff submitted the information on April 14, 2006. On May 18, 2006, Coastal Commission staff notified the City that the amendment request was complete. The Commission approved a request for a one-year (1) time extension of the amendment on June 13, 2006, which gives the Commission until July 13, 2007 to act on this submission. Part B of the amendment request, which involved a change in the

land use designation of another parcel from Medium Density Residential to Open Space, was approved by the Commission on July 12, 2006. Part A of the amendment request is now being submitted for Commission action. Part A involves a change in land use designation at 900 Newport Center Drive from Visitor-Serving Commercial to Medium Density Residential.

IV. SUMMARY OF PUBLIC PARTICIPATION

The City of Newport Beach approved this segment of the Land Use Plan amendment request (Part A) through a City Council public hearing on January 10, 2006. The item was originally scheduled for the Council hearing of November 22, 2005, but the item was continued to the December 13, 2005 hearing and finally approved on January 10, 2006. It was approved through City Council Resolution No. 2006-02, which approved General Plan Amendment No. 2004-005 and Local Coastal Plan Amendment 2005-001 (Exhibit 1). Prior to either the City Council approving the LUP amendment request, or the Planning Commission voting to recommend that the City Council do so, the Planning Commission held a public hearing on November 3, 2005. Notice was provided for both entities' hearings. Notice of the City Council's public hearing was mailed and posted on November 14, 2005 and published in the local newspaper on November 12, 2005. The City Council approved a subsequent resolution (Resolution No. 2006-26) on March 28, 2006 to correct procedural deficiencies in the original resolution related to the Coastal Act requirements (Exhibit 2).

One letter of opposition was received at the local level. The letter expresses concerns about increased density at the subject site. No oral comments were received during the public hearings held at the local level.

V. SUGGESTED MODIFICATIONS

Staff recommends the following suggested modifications to the proposed LUP amendment be adopted.

Suggested Modification #1

Add the following new Land Use Plan policy to Chapter 2, Section 2.3 (Visitor-Serving and Recreational Development), Sub-section 2.3.1 (Commercial) of the Coastal Land Use Plan after existing policy number 2.3.1-7:

- 2.3.1-8 LCP Amendment No. 2005-001 (NPB-MAJ-1-06 part A) to the Coastal Land Use Plan changing a portion of land, not to exceed 4.25 acres in size, designated Visitor-Serving Commercial (CV) in Newport Center to a residential designation shall require a payment of a fee to mitigate for the loss of visitor-serving land. The mitigation fee shall be used for the protection, enhancement and provision of lower-cost visitor-serving uses

at Crystal Cove State Park. The mitigation fee shall be in the amount of \$5,000,000.00 (five million dollars) to off-set the loss of the priority land use in Newport Center. The mitigation fee shall be paid prior to issuance of any coastal development permit granted for any residential project within the newly designated area and to an entity, identified by the permitting agency, capable of implementing the mitigation at Crystal Cove State Park. Until paid in accordance with the terms and conditions of the coastal development permit, the amount shall be increased every July 1st by an amount calculated on the basis of the percentage change from the year 2007 in the California Consumer Price Index for Urban Consumers as determined by the entity that grants the coastal development permit.

The addition of this new policy may affect the numbering of subsequent LUP policies when the City of Newport Beach publishes the final LUP incorporating the Commission's suggested modifications. This staff report will **not** make revisions to the policy numbers. The City will make modifications to the numbering system when it prepares the final LUP for submission to the Commission for certification pursuant to Sections 13544 and 13544.5 of the California Code of Regulations.

Suggested Modification #2

The City shall submit a revised Coastal Land Use Plan Map (i.e. that map referenced in Chapter 2, subsection 2.1.2 of the Coastal Land Use Plan), which reflects the land use change approved by the Commission through this amendment.

VI. FINDINGS FOR DENIAL OF CERTIFICATION OF THE CITY OF NEWPORT BEACH LAND USE PLAN AMENDMENT, AS SUBMITTED, AND FINDINGS FOR APPROVAL OF THE CITY OF NEWPORT BEACH LAND USE PLAN AMENDMENT, IF MODIFIED AS SUGGESTED

A. Amendment Description

The proposed submittal consists of a request by the City of Newport Beach to change the land use designation of a 4.25 acre area (presently occupied by tennis courts) at the Marriott Hotel from Visitor-Serving Commercial to Medium Density Residential, at 900 Newport Center Drive, Newport Beach, Orange County. Approximately 9.54 acres of Visitor-Serving Commercial (VC) would remain on site in Newport Center after the land use designation change. The proposed land use change would allow for the construction of condominiums (or other medium density residential) on the subject property.

B. Findings For Denial

The Commission hereby finds and declares as follows:

Site Description and Land Use Designation

The proposed land use redesignation will affect only one site—900 Newport Center Drive in the City of Newport Beach, Orange County. The 4.25-acre site is located in the Newport Center/Fashion Island area of the City, inland of Pacific Coast Highway (Exhibit 3). The site is currently operated as a private tennis club used by members and guests of the Newport Beach Marriott Hotel. There are eight outdoor tennis courts, a clubhouse and ancillary uses on the property. The property owner proposes to subdivide the subject site from the larger hotel parcel and develop a 79-unit condominium project.¹

The site is currently designated Visitor-Serving Commercial (CV-B) in the City's Certified Land Use Plan, as depicted in Exhibit 4. The site is surrounded by a golf course to the west and north, hotel development to the south, and commercial offices to the east.

Coastal Act Policies

As stated previously, the Coastal Act is the standard of review in the current analysis. The Coastal Act encourages the provision of lower cost visitor and recreational facilities and prioritizes visitor-serving commercial development over residential development. The proposed LUP amendment is not in conformity with the public access and recreation policies of the Coastal Act relating to the provision of visitor serving development. Applicable provisions of the Coastal Act include the following:

Section 30213 states, in pertinent part:

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.

Section 30222 states:

The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.

¹ Coastal Development Permit Application 5-07-085 (Lennar), which seeks authorization to develop the condominium project, will be considered by the Commission at a subsequent hearing.

Applicable Land Use Plan Policies from the certified Coastal Land Use Plan

2.3.1-3 *On land designated for visitor-serving and/or recreational uses, give priority to visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation over other commercial uses, except for agriculture and coastal-dependant industry.*

2.3.3-3 *Encourage visitor-serving and recreational developments that provide public recreational opportunities.*

Proposed Change in Land Use Designation

The proposed amendment (NPB MAJ 1-06, Part A) involves a request to change the land use designation of a 4.25-acre area of the Newport Beach Marriott Hotel from Visitor Serving Commercial to Medium Density Residential at 900 Newport Center Drive. No other properties are subject to the proposed land use change.

The proposed change will have an adverse affect on priority visitor-serving opportunities in the area. Residential development is a low priority use within the Coastal Zone. The City indicates, however, that the loss of CV-B designated land at this location will not have an adverse affect on visitor-serving commercial or recreational activities.

According to the amendment request, “[t]he property is not located in close proximity to coastal resources, coastal recreational use or the water and the change in land use does not impact the adjacent visitor serving uses other than to eliminate the accessory tennis courts, which is not a coastal dependent recreational activity.” Although the tennis courts are not typically considered a “coastal dependent” activity, tennis is a recreational activity, and the site is part of a larger commercial facility (Marriott Hotel) that serves visitors to the coast. Thus, although currently operated as a private tennis club serving only members and guests of the Newport Beach Marriott Hotel, the club is nevertheless a visitor-serving recreational offering. In addition, the hotel is located in close proximity to popular visitor destinations, such as the Newport Dunes, Balboa Island and the beach. The site is located in a highly visible, well-traveled location and could potentially support some form of commercial and/or recreational development in the future. Re-designation of the site for residential development now results in lost future opportunity for expanded, enhanced or even lower cost visitor-serving uses at the site.

The City states that the loss of this visitor-serving commercial site as a result of the requested amendment would not significantly reduce the amount of visitor-serving land in the City. The City concludes that the project represents a 2% reduction in visitor serving uses based on a table showing the portion of land currently designated as visitor serving commercial and what will remain after the 4.25-acre site is re-designated. The table is replicated below.

Visitor Serving Commercial Designation	Amount of Land
CV-A (0.5—0.75)	7.65 acres
CV-B (0.5—1.25)	42.90 acres
Newport Coast Planned Community	153.00 acres
CITYWIDE TOTAL:	203.55 acres
Less project	-4.25 acres
REMAINING CITYWIDE TOTAL:	199.30 acres
	(2% loss of CV-B)

The City included the Newport Coast Planned Community in the above-referenced tabulation. However, Newport Coast is covered by a segment of the County of Orange certified LUP and is not within the boundary of the City of Newport Beach certified LUP. As such, the 153.00 acres of visitor serving commercially designated area referred to in the table is not covered by the LUP that is the subject of the current amendment request. In actuality, the 4.25-acre loss represents an 8.4% $[4.25/(7.65+42.90)]$ --not 2%-- reduction in visitor-serving land in the portion of the City covered by this LUP.

In addition, the subject site is one of only five sites designated Visitor-Serving Commercial (CV) in the City's certified LUP. Many land uses that are in fact visitor-serving are located within the General Commercial (CG) or Neighborhood Commercial (CN) designation and could thus cease to provide a visitor-serving function. According to the LUP, *[t]he CV designation is intended to provide for accommodations, goods, and services intended to primarily serve the needs of visitors of Newport Beach.* Hotels, and their ancillary development, clearly fit this designation and should be protected consistent with Section 30222 of the Coastal Act. The LUP includes policies that encourage visitor-serving and recreational developments that provide public recreational opportunities. Although the tennis courts are part of a private club, they are available for use by hotel guests. Hotel guests are typically members of the public that are visitors to the area.

The agent for the corresponding CDP application states that the tennis courts are underutilized and replacing the courts *"does not remove a publicly accessible, widely-used recreation facility from the coastal zone."* The Commission acknowledges that the property owner is in no way obligated to retain the tennis court use of the site. However, under the current land use designation, the site can only be developed with uses allowed under the CV designation. Commercial development of the site could serve potential visitors to the coast. The location is conducive to commercial recreational development and consistent with the adjacent hotel use and the nearby commercial development. Residential development at the subject site would serve no purpose to members of the visiting public and could potentially establish a precedent for residential conversions in the other CV designated areas.

As submitted, the proposed land use conversion proposed as Part A of the City's amendment request is inconsistent with Section 30213 of the Coastal Act, which requires lower cost visitor and recreational facilities be *"protected, encouraged, and, where feasible, provided."* The proposed amendment will also have an adverse affect on the priority *"visitor-serving commercial recreational facilities"* to be provided under

Section 30222 of the Coastal Act. Therefore, Part A of the amendment must be denied, as submitted.

C. Findings for Approval with Suggested Modifications

The Commission hereby finds and declares as follows:

Coastal Act Policies

As stated previously, the Coastal Act is the standard of review in the current analysis. The Coastal Act encourages the provision of lower cost visitor and recreational facilities and prioritizes visitor-serving commercial development over residential development. The proposed LUP amendment is not in conformity with the public access and recreation policies of the Coastal Act relating to the provision of visitor serving development. Applicable provisions of the Coastal Act include the following:

Section 30213 states, in pertinent part:

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.

Section 30222 states:

The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.

Applicable Land Use Plan Policies from the certified Coastal Land Use Plan

2.3.1-3 *On land designated for visitor-serving and/or recreational uses, give priority to visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation over other commercial uses, except for agriculture and coastal-dependant industry.*

2.3.3-3 *Encourage visitor-serving and recreational developments that provide public recreational opportunities.*

Mitigation to Replace the Loss of Visitor-Serving Recreation

In order for the proposed land use conversion from Visitor-Serving Commercial to Medium Density Residential to be found consistent with the Coastal Act, it must be appropriately mitigated since the proposed land use change would allow for residential development on the subject property, which is not a priority use within the Coastal Zone. The proposed amendment is a project specific request. A corresponding coastal

development permit application (5-07-085) for the construction of condominiums at this location has been submitted and will be considered at a subsequent hearing. It should be noted that with this corresponding project, Marriott's property would not lose any entitlement to the 611 rooms allowed on the site (currently, according to the applicant, there are 532 rooms with a 75% occupancy).

Ideally, the loss of area designated for visitor serving uses should be offset by re-designating some other equivalent or superior area within the City that is designated with a low priority land use, to a visitor serving use. The applicant (Lennar) for the corresponding coastal development permit application undertook an extensive search for potential visitor-serving properties within the coastal zone in Newport Beach to mitigate for the change in land use. In reviewing sites of similar size, the applicant determined that no properties were suitable, the result of Newport Beach being nearly built-out. In addition, the applicant determined that the acquisition of individual parcels totaling 4.25 acres was not an attractive prospect; while residential property could be acquired, this would result in sporadic rezoning, incompatible uses adjacent to existing uses and proved economically unfeasible given the property values in Newport Beach.

As a result, Lennar, in consultation with the City, proposed an alternative; to pay a fee to mitigate for the loss of visitor-serving land. The proposal is to provide funding for the protection, enhancement and provision of lower-cost visitor-serving uses at Crystal Cove State Park in the amount of \$5,000,000.00 (five million dollars). This mitigation fee would off-set the loss of the priority land use in Newport Center and provide funding for Phase 2 of the ongoing effort by State Parks and their concessionaire, Crystal Cove Alliance, to restore the Historic District within Crystal Cove State Park. Phase 2 is presently contemplated to include the completion of the Outdoor Educational Commons (Cottages 40, 42, 43 and 44), the Beach Museum (Cottage 13), overnight accommodations in Cottage 5, Cottage 45, and the garages and creek restoration (Exhibit 6). Therefore, the Commission is requiring a suggested modification that would implement this alternative. Suggested Modification #1 would require the City to add a new Land Use Plan policy that requires a payment of a fee to mitigate for the loss of visitor-serving land. The policy includes provisions to adjust the mitigation fee to account for inflation. Implementation of the mitigation requirement would be carried out through the coastal development permit process.

The Crystal Cove Historic District is a 12.3-acre coastal portion of the 2,791-acre Crystal Cove State Park, which is located along the southeast coast of the City of Newport Beach. The federally listed Historic District is an enclave of 46 vintage rustic coastal cottages originally built in the 1920's and 1930's nestled around the mouth of Los Trancos Creek. It is one of the last remaining examples of early 20th century Southern California coastal development.

California State Parks has completed Phase I of the restoration of the Historic District, which provides cottages for visitor services, educational and community programs, a restaurant, and 13 cottages for overnight use by the public. Cottages available for

overnight rental include studios, one- and two-bedroom houses, and hostel-style dormitories.

Restoration of these historic cottages represents a significant opportunity for lower cost visitor-serving accommodations and associated educational and visitor uses at Crystal Cove State Park, which has become a popular destination of statewide significance for the public, especially since some of the cottages became available for overnight use. Only 22 of the 46 historic cottages have been restored to date. Crystal Cove Alliance, the non-profit cooperating association and concessionaire benefiting Crystal Cove State Park, is currently raising funds to restore the remaining 24 cottages for visitor-serving and overnight accommodation uses. With funding, restoration can begin immediately.

Revised Coastal Land Use Plan Map

Since the proposed amendment would change the land use designation of the 4.25 acre site, the Coastal Land Use Plan Map would need to be updated. Therefore, the Commission is requiring suggested modification #2, which would require the City to submit a revised Coastal Land Use Plan Map (i.e. that map referenced in Chapter 2, subsection 2.1.2 of the Coastal Land Use Plan), which reflects the land use change approved by the Commission through this amendment.

Conclusion

The proposed amendment, as modified through the suggested modifications, is consistent with Section 30213 of the Coastal Act, which requires lower cost visitor and recreational facilities be “*protected, encouraged, and, where feasible, provided.*” In addition, the proposed amendment, as modified through the suggested modifications, would not have an adverse effect on the priority “*visitor-serving commercial recreational facilities*” to be provided under Section 30222 of the Coastal Act.

VII. CONSISTENCY WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

Section 21080.5 of the California Environmental Quality Act (CEQA) exempts local governments from the requirement of preparing an environmental impact report (EIR) in connection with a local coastal program (LCP). The Commission’s Local Coastal Program review and approval procedures have been found by the Resources Agency to be functionally equivalent to the environmental review process. Thus, under Section 21080.5 of CEQA, the Commission is relieved of the responsibility to prepare an environmental impact report for each local coastal program submitted for Commission review and approval. Nevertheless, the Commission is required when approving a local coastal program to find that the local coastal program does conform with the provisions of CEQA. As part of the City’s review of this project, a Mitigated Negative Declaration (MND) was prepared for the proposed project and found that with mitigation, the project’s environmental impacts would be reduced to less than significant levels.

The proposed LUP amendment has been found not to be in conformance with several Coastal Act policies regarding promoting visitor serving uses. Thus, the LUP amendment, as submitted, is not adequate to carry out and is not in conformity with the policies of Chapter 3 of the Coastal Act. Furthermore, the proposed LUP amendment, as submitted, would result in significant adverse environmental impacts within the meaning of the California Environmental Quality Act. To resolve the concerns identified, suggested modifications have been made to the City's Land Use Plan. Without the incorporation of these suggested modifications; the LUPA, as submitted, is not adequate to carry out and is not in conformity with the policies of Chapter 3 of the Coastal Act. The suggested modifications minimize or mitigate any potentially significant environmental impacts of the Land Use Plan Amendment. As modified, the Commission finds that approval of the Land Use Plan amendment will not result in significant adverse environmental impacts within the meaning of the California Environmental Quality Act.

Given the proposed suggested modifications, the Commission finds that the City of Newport Beach Land Use Plan Amendment NPB MAJ 1-06 Part A, as modified, will not result in significant unmitigated adverse environmental impacts under the meaning of the CEQA. Furthermore, future individual projects will require coastal development permits issued by the Coastal Commission (until such time as the City receives full LCP certification). Throughout the coastal zone, specific impacts associated with individual development projects are assessed through the coastal development permit review process; thus, an individual project's compliance with CEQA would be assured. Therefore, the Commission finds that there are no feasible alternatives within the meaning of CEQA that would reduce the potential for significant adverse environmental impacts.

RESOLUTION NO. 2006- 2

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH ADOPTING MITIGATED NEGATIVE DECLARATION (SCH NO. 2005-071067) AND APPROVING GENERAL PLAN AMENDMENT NO. 2004-005, LOCAL COASTAL PROGRAM LAND USE PLAN AMENDMENT NO. 2005-001, TENTATIVE PARCEL MAP NO. 2005-014, TENTATIVE TRACT MAP NO. 2004-004 (16774), TRAFFIC STUDY NO. 2005-002 AND COASTAL RESIDENTIAL DEVELOPMENT PERMIT NO. 2005-004 FOR PROPERTY LOCATED AT 900 NEWPORT CENTER DRIVE (PA 2004-169)

WHEREAS, an application was filed by Lennar Homes with respect to property located at 900 Newport Center Drive, and legally described as Parcel 1, as per map filed in Book 75 pages 33 and 34 of parcel maps, in the office of the County Recorder to construct 79 residential condominiums on a 4.25-acre site presently developed with tennis courts operated by the adjacent Newport Beach Marriott Hotel. The applicant requests approval of: a General Plan Amendment and an Amendment of the 1990 Local Coastal Plan Land Use Plan (LCPLUP) to change the land use designations of the 4.25-acre site from Administrative, Professional & Financial Commercial to Multiple-Family Residential; an Amendment of the 2004 LCPLUP to change the land use designation from Visitor-Serving Commercial (CV-B) to Medium Density Residential C (RM-C); a Zone Change to rezone the subject property from APF to the PC District; adopt a Planned Community Development Plan to establish permitted use and development regulations; consider a waiver of the 10-acre minimum land area requirement for Planned Community District adoption; a Parcel Map to subdivide the subject property from the hotel development for financing and development purposes; a Tract Map for the condominium ownership (79 residential units); a Traffic Study pursuant to the Traffic Phasing Ordinance (TPO) and a Coastal Residential Development Permit regarding the provision of affordable housing in accordance with the Municipal Code and the General Plan Housing Element.

WHEREAS, on November 3, 2005, the Planning Commission held a noticed public hearing in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California at which time the project applications, the Mitigated Negative Declaration and comments received thereon were considered. Notice of time, place and purpose of the public hearing was given in accordance with law and testimony was presented to, and considered by, the Planning Commission at the hearing. With a vote of 6 ayes (one recused), the Planning Commission recommended approval of the above-mentioned applications to the City Council.

WHEREAS, the property is located in the Block 900 – Hotel Plaza of the Newport Center (Statistical Area L1) of the Land Use Element and has a land use designation of Administrative, Professional & Financial Commercial (APF) and zoned APF (Administrative, Professional, Financial).

WHEREAS, pursuant to Section 20.94 of the Newport Beach Municipal Code, the City Council held a noticed public hearing on November 22, 2005, which was continued to December 13, 2005 without testimony, to consider the proposed applications and the recommendations of the Planning Commission.

COASTAL COMMISSION
NPB 1-06 Part A

EXHIBIT # 1
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WHEREAS, a General Plan Amendment and an Amendment of the 1990 Local Coastal Plan Land Use Plan (LCPLUP) to change the land use designations of the site from Administrative, Professional & Financial Commercial to Multiple-Family Residential is necessary as the proposed residential use is not permitted in the APF designation. A change in land use would result in a 4.25-acre reduction in land available to be potentially used for office uses consistent with the APF designation. However, within the Newport Center, there is approximately 200 acres designated APF and the two percent (2%) reduction proposed by the project is not a significant reduction.

WHEREAS, the residential condominium project is consistent with the proposed Multi-Family Residential land use designation. The proposed residential condominium project would be compatible with the residential developments to the south and northeast of the site. The proposed project is viewed as incompatible with the office uses across Santa Barbara Street and is also compatible with the adjacent hotel and golf course

WHEREAS, the 2004 LCP Land Use Plan designates the site for Visitor Serving Commercial uses. This designation was applied due to the existing use of the Marriott Hotel complex. A change in land use designation from CV-B (Visitor-Serving Commercial) to RM-C (Medium Density Residential C) is necessary for the proposed residential development. The change in land use designation will reduce the land available for visitor-serving commercial uses by 4.25 acres. Although this reduction in area would occur, the opportunity to construct the remaining hotel room entitlement of 79 rooms would not be lost and they could be constructed nearby within a portion of Newport Center within the Coastal Zone.

WHEREAS, Section 30250(a) of the California Coastal Act (CCA) provides criteria for the location of new development. The Coastal Act provides for the protection of coastal resources by requiring that new development be located in close proximity to existing development with available public services to minimize the impacts associated with the extension of infrastructure and services. The project is located within Newport Center, which is a development area with all public services (utilities, roads, police, fire etc.) presently provided.

WHEREAS, Section 30252(4) requires new development within the Coastal Zone to provide adequate parking facilities or provide substitute means of serving the development with public transportation. The proposed development provides an adequate number of on-site parking spaces. The project also will be conditioned so that the parking structures will have adequate dimensions, clearances, and access to insure their proper use.

WHEREAS, Section 30212, requires public access must be provided from the nearest public roadway to the shoreline and along the coast in new development. The subject property is not adjacent to the ocean or bay; therefore, coastal access easements are not required.

WHEREAS, Section 30222 requires the use of private land suitable for visitor-serving commercial recreational facilities for coastal recreation must have priority over private residential, general industry, or general commercial development. Although, the change in land use designation will reduce the land available for visitor serving commercial uses by 4.25 acres; the opportunity to construct the remaining hotel room entitlement of 79 rooms would not

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be lost and they could be constructed nearby within the portion of Newport Center that is located within the Coastal Zone.

WHEREAS, the City's General Plan indicates that the City shall maintain suitable and adequate standards for landscaping, sign control, site and building design, parking and undergrounding of utilities and other development standards to ensure that the beauty and charm of existing residential neighborhoods are maintained, that commercial and office projects are aesthetically pleasing and compatible with surrounding land uses. The proposed PC Text contains one classification of land use and provides the development standards for the entire subject property. The draft PC Text contains development regulations for the subject site which includes definitions and information concerning requirements for development site coverage, building height, setbacks, off-street parking, vehicular access, signing, lighting, storage, and screening and landscaping to ensure that the project would be compatible with the surrounding land uses consistent with the objectives of the Land Use Element.

WHEREAS, to be consistent with the Housing Programs 2.2.1 and 2.2.3 of the City's Housing Element, the project is required to provide a minimum of 20% of the total units (16 units) for affordable income households for a minimum of 30 years. The applicant is requesting that the affordable housing provision be off-site, at an approved location within the City, as affordable housing is not feasible at the subject site. According to the applicant, the project's Home Owner's Association fees are expected to be a minimum of \$1,500 per month, which is a substantial multiple of the statutory mortgage payment limits for affordable housing when combined with acquisition costs and taxes. With this provision, the applicant will be required to enter into an agreement with the City to provide said units off-site within the City's limits. The agreement will be reviewed and approved by the City Attorney and will be executed prior to the recordation of tract map or the issuance of a building or grading permit for the proposed project.

WHEREAS, an approval of the project is implementing Housing Program 3.2.4 that allows the City to consider and approve rezoning of property from non-residential to residential uses when appropriate to extend housing opportunities to as many renter and owner occupied households as possible in response to the demand for housing in the City.

WHEREAS, Charter Section 423 requires all proposed General Plan Amendments to be reviewed to determine if the square footage, peak hour vehicle trip or dwelling units thresholds have been exceeded and a vote by the public is required. This project has been reviewed in accordance with Council Policy A-18 and a voter approval is not required as the project represents an increase of 39 - A.M. and 35 - P.M. peak hour trips for a new 79 dwelling unit development. These increases, when added with 80% of the increases attributable to two previously approved amendments, result in a total of 47 - A.M. peak hour trips and 43.8 - P.M. peak hour trips; 3,640 square feet of non-residential floor area and 79 dwelling units do not cumulatively exceed Charter Section 423 thresholds for a vote.

WHEREAS, the project is located within Newport Center where public services and infrastructure are available to serve the proposed development. Additionally, all applicable improvements required by Section 19.28 (Subdivision Improvements) of the Subdivision Code are to be satisfied by the applicant.

Ex. 1
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WHEREAS, the parking requirement for a multiple-family residential zoned project is two spaces per unit, including one covered, plus 0.5 spaces for guest parking for developments of four or more units. A total of 158 spaces are required for the residences and a minimum of 40 spaces are required for guest parking. A total of 201 spaces are proposed to serve the project, and therefore, the project meets the parking requirements of the Municipal Code. In addition to the provision of adequate on-site parking, the project is conditioned that the parking designs meet all City requirements regarding parking stall width, depth, grade, and aisle-turning radii.

WHEREAS, pursuant to Section 19.12.070 of the City Subdivision Code, the following standard findings must be made to approve the Tentative Parcel Map and Tract Map.

1. The proposed Tentative Maps are consistent with the Newport Beach Subdivision Code (Title 19) and applicable requirements of the Subdivision Map Act. Conditions of approval have been included to ensure compliance with Title 19 and the Subdivision Map Act.
2. Lot 1 of the Parcel Map is being proposed for the residential development and is of sufficient size for the intensity of development and the site is physically suitable for the project. The project provides an adequate number of parking spaces as required by the Zoning Code. Access to the site can be provided through the proposed driveways along Santa Barbara Drive. Additionally, no earthquake faults were found on-site. There is no known incidence of landslide, lateral spreading, subsidence, liquefaction, or collapse on-site or near the site; however, existing soils will be required to be excavated and re-compacted to create stable soil conditions to support the proposed development. The implementation of mitigation measures identified in the draft Mitigated Negative Declaration would reduce any potential impacts. The site is, therefore, physically suitable for development.
3. Lot 2 of Parcel Map is proposed to retain a General Plan land use designation of Administrative, Professional & Financial Commercial. Lot 2 is not proposed for new development and this parcel will continue to be used as a hotel and it is of sufficient size to support its existing use.
4. Under the proposed Parcel Map, Lot 2 does not include any improvements and the development of Lot 1 as a residential use is not expected to cause serious public health problems given the use of typical construction materials and practices. No evidence is known to exist that would indicate that the proposed subdivisions will generate any serious public health problems. All mitigation measures will be implemented as outlined in the Mitigated Negative Declaration to ensure the protection of the public health.
5. No public easements for access through, or use of, the property have been retained for the use by the public at large. Public utility easements for utility connections that serve the project site are present and will be modified, if necessary, to serve the proposed project.

EX. 1
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6. Title 24 of the Uniform Building Code requires new construction to meet minimum heating and cooling efficiency standards depending on location and climate. The Newport Beach Building Department enforces Title 24 compliance through the plan check and field inspection processes.
7. The proposed subdivision facilitates the creation of 79 new residential units. The provision of 16 affordable units will assist the City in meeting its housing needs as identified in the Regional Housing Needs Assessment. Public services are available to serve the proposed development of the site and the Mitigated Negative Declaration prepared for the project indicates that the project's potential environmental impacts are expected to be less than significant.
8. Waste discharge into the existing sewer system will be consistent with residential use of the property which does not violate Regional Water Quality Control Board (RWQCB) requirements.
9. The proposed subdivision is entirely within the coastal zone and the site subject to the tentative maps is not presently developed with coastal-related uses, coastal-dependent uses or water-oriented recreational uses. The project is consistent with the City's 1990 Local Coastal Program Land Use Plan and the recently modified and approved LCPLUP that will replace the 1990 certified LUP. The subject site to be subdivided does not abut the ocean or bay, and does not provide public access to coastal resources; therefore, no impacts to coastal access are anticipated. Recreation policies of the Coastal Act require that site resources for water-oriented recreational activities that cannot be supplied inland must be protected. These policies prioritize water-oriented recreational activities over other land uses and encourage aquaculture and water-oriented recreational support facilities. The project site proposed to be subdivided is not suitable for water-oriented recreational activities due to its size and location, approximately 1.5 miles from the shoreline.

WHEREAS, the entire project is located within the Coastal Zone and requests the construction of 79 units. Pursuant to Chapter 20.86 of the Zoning Code, when a project proposes to create 10 or more units within the coastal zone, affordable housing must be included within the project unless it can be determined infeasible. The Housing Element of the General Plan determines the number and type of affordable housing that is required. In accordance with the Housing Element, 16 affordable housing units would be required to be provided.

WHEREAS, a Traffic Study has been prepared by Kunzman Associates under the supervision of the City Traffic Engineer pursuant to the TPO and its implementing guidelines (Appendix D of the Mitigated Negative Declaration), CEQA analysis for cumulative projects and intersection capacity utilization (ICU), and General Plan analysis. The project will result in a net increase of 330 new average daily trips, 42 vehicle trips during morning (AM) peak hour and 39 vehicle trips during the afternoon (PM) peak hour. The study concluded that the proposed project will not cause a significant impact at the study area intersections; therefore, no improvements are required at these intersections.

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WHEREAS, an Initial Study and Mitigated Negative Declaration (MND) have been prepared in compliance with the Environmental Quality Act (CEQA), the State CEQA Guidelines, and City Council Policy K-3. The Draft MND was circulated for public comment between July 15 and August 15, 2005. Comments were received from the California Coastal Commission, Airport Land Use Commission and Mr. Terek Saleh of Costa Mesa. The contents of the environmental document, including comments on the document, have been considered in the various decisions on this project. Since then, it was determined that the most appropriate zoning designation for the property would be PC (Planned Community). This new zoning designation does not affect the size, scope or design of the project that would potentially create additional physical environmental impacts. As result, it has been determined that the MND adequately describes the potential impacts of the project and does not require additional recirculation and review of the MND. An addendum has been prepared to address the change in the zoning designation and made it a part of the MND.

WHEREAS, on the basis of the entire environmental review record, the proposed project will have a less than significant impact upon the environment and there are no known substantial adverse effects on human beings that would be caused. Additionally, there are no long-term environmental goals that would be compromised by the project, nor cumulative impacts anticipated in connection with the project. The mitigation measures identified are feasible and reduce potential environmental impacts to a less than significant level. The mitigation measures are applied to the project and are incorporated as conditions of approval.


WHEREAS, General Plan Amendment No. 2004-005, Planned Community Development Plan No. 2005-003, Tentative Parcel Map No. 2005-014, Tentative Tract Map No. 2004-004 (16774), Traffic Study No. 2005-002 and Coastal Residential Development Permit No. 2005-004 shall only become effective upon the approval of LCP Land Use Plan Amendment No. 2005-001 by the California Coastal Commission.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Newport Beach does hereby adopt Mitigated Negative Declaration (SCH No. 2005-071067); approve General Plan Amendment No. 2004-005 by amending the Land Use Element, Statistical Area L1, Block 900-Hotel Plaza and the Estimated Growth for Statistical Area L1 Table of the General Plan as depicted in Exhibit "A" and Land Use map in Exhibit "B", LCP Land Use Plan Amendment No. 2005-001 by revising Land Use map as depicted in Exhibit "C", Tentative Parcel Map No. 2005-014, Tentative Tract Map No. 2004-004 (16774), Traffic Study No. 2005-002 and Coastal Residential Development Permit No. 2005-004, subject to the conditions of approval listed in Exhibit "D"

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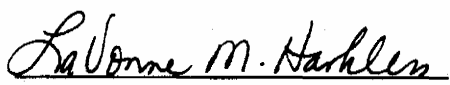
This resolution shall take effect immediately upon adoption. Passed and adopted by the City Council of Newport Beach at a regular meeting held on the 10th day of January 2006 by the following vote to wit:

AYES, COUNCIL MEMBERS Heffernan, Selich, Rosansky, Ridgeway, Daigle,
Nichols, Mayor Webb
NOES, COUNCIL MEMBERS None
ABSENT, COUNCIL MEMBERS None



MAYOR

ATTEST:



CITY CLERK



EX. 1
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RESOLUTION NO. 2006- 26

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH DECLARING THAT LOCAL COAST PROGRAM LAND USE PLAN AMENDMENT NOS. 2005-001 AND 2006-001 ARE INTENDED TO BE CARRIED OUT IN FULL CONFORMANCE WITH THE CALIFORNIA COASTAL ACT

WHEREAS, on January 10, 2006, the City Council approved Coastal Land Use Plan Amendment No. 2005-001 changing the coastal land use designation of a 4.25-acre site located at 900 Newport Center Drive from CV-B (Visitor-Serving Commercial) to RM-C (Medium Density Residential) allowing the development of 79 residential condominiums.

WHEREAS, on February 14, 2006, the Council approved Coastal Land Use Amendment No. 2006-001 changing the coastal land use designation of a 14.25 acre site located at 4850 West Coast Highway from RM-B (Medium Density Residential) to OS (Open Space) to facilitate the development of a public park.

WHEREAS, the approval of these two amendments should have included a finding that the amendments are intended to be carried out in full conformance with the California Coastal Act and they should have specified when the amendments become effective.

NOW, THEREFORE, BE IT RESOLVED

Section 1. Coastal Land Use Plan Amendment Nos. 2005-001 and 2006-001 are intended to be carried out in full conformance with the California Coastal Act.

Section 2. Coastal Land Use Plan Amendment Nos. 2005-001 and 2006-001 shall take effect automatically upon Coastal Commission action unless the Coastal Commission proposes suggested modifications. In the event that the Coastal Commission proposes revisions, the LCP Land Use Plan Amendments shall not take effect until the City Council adopts the Commission suggested modifications.


Section 3. This resolution shall take effect immediately upon adoption.

Passed and adopted by the City Council of Newport Beach at a regular meeting held on the 28th day of March 2006 by the following vote to wit:

AYES, COUNCIL MEMBERS Curry, Selich, Rosansky, Ridgeway,
Daigle, Nichols, Mayor Webb

NOES, COUNCIL MEMBERS ---

ABSENT, COUNCIL MEMBERS --



MAYOR

ATTEST:
Ladonne M. Harkless
CITY CLERK



COASTAL COMMISSION
NPB 1-06 Part A
EXHIBIT # 2
PAGE 1 OF 2

STATE OF CALIFORNIA }
COUNTY OF ORANGE }
CITY OF NEWPORT BEACH } ss.

I, LaVonne M. Harkless, City Clerk of the City of Newport Beach, California, do hereby certify that the whole number of members of the City Council is seven; that the foregoing resolution, being Resolution No. 2006-26 was duly and regularly introduced before and adopted by the City Council of said City at a regular meeting of said Council, duly and regularly held on the 28th day of March 2006, and that the same was so passed and adopted by the following vote, to wit:

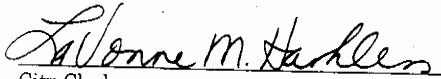
Ayes: Curry, Selich, Rosansky, Ridgeway, Daigle, Nichols, Mayor Webb

Noes: None

Absent: None

Abstain: None

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the official seal of said City this 29th day of March 2006.


City Clerk
Newport Beach, California

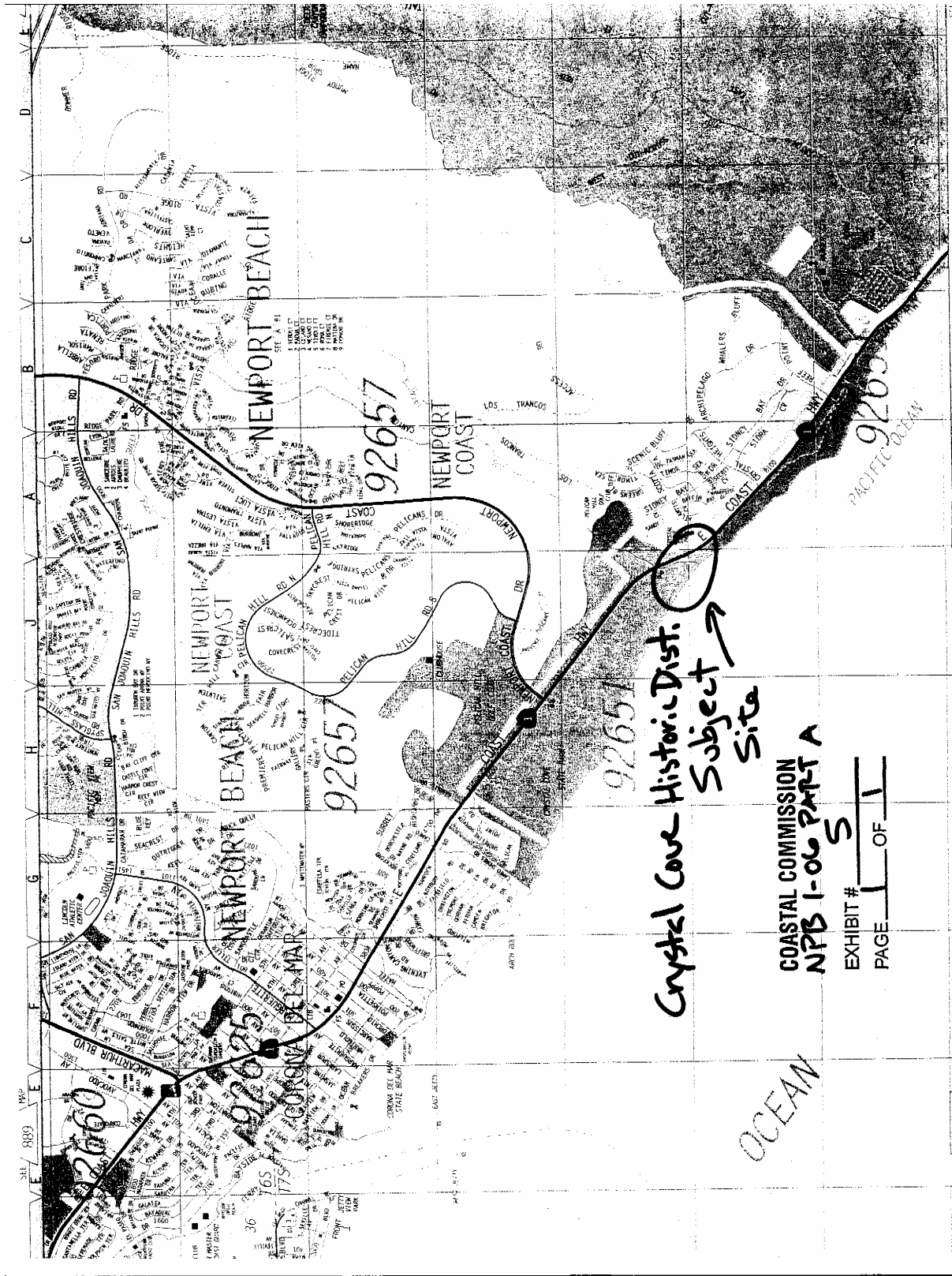
(Seal)



EX. 2
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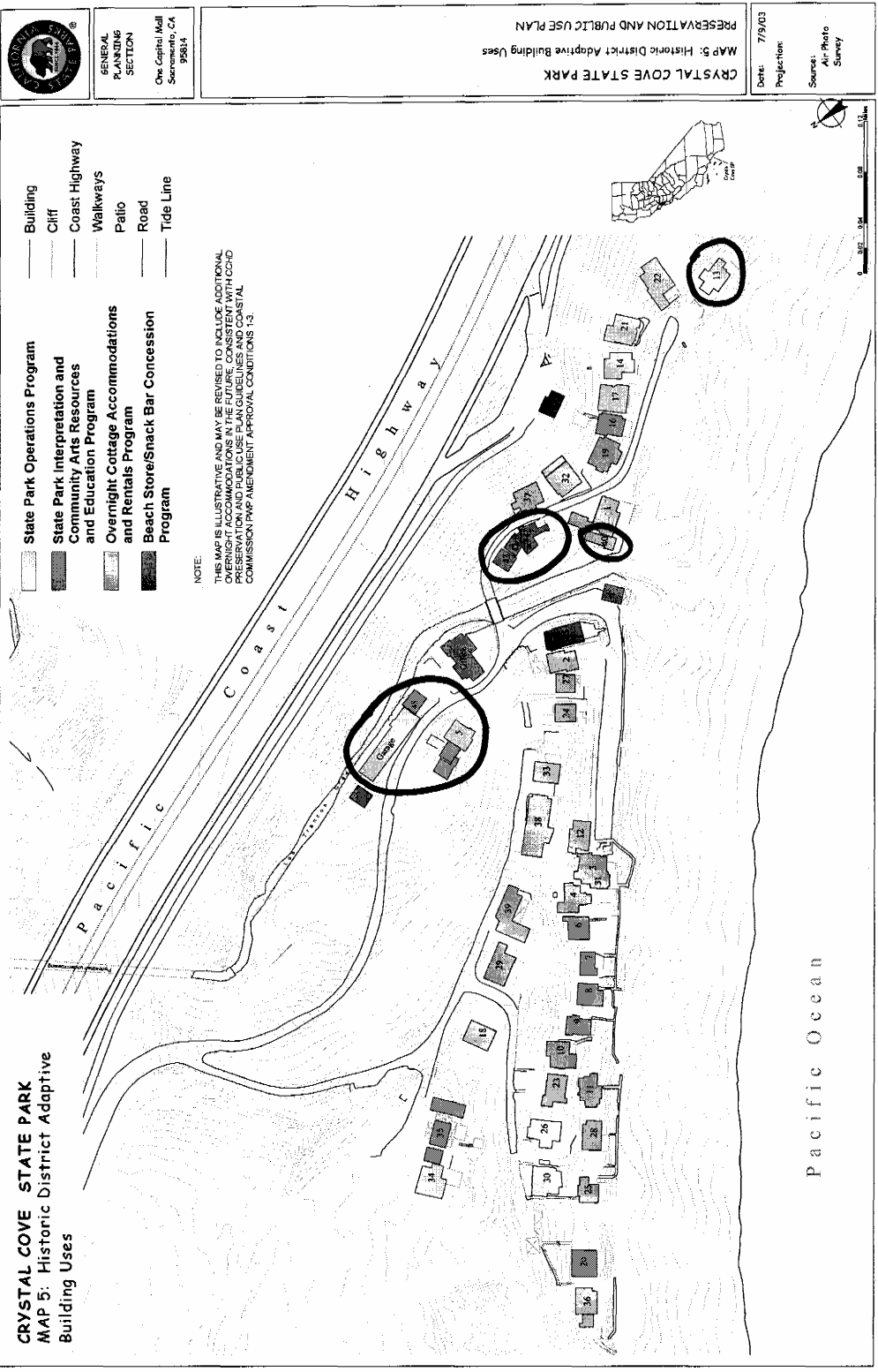
COASTAL COMMISSION
 NPB 1-06 Part A
 EXHIBIT # 3
 PAGE 1 OF 1



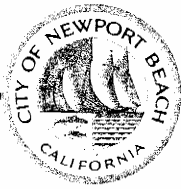
*Crystal Cove Historic Dist.
Subject Site*

**COASTAL COMMISSION
NPB 1-06 PART A**

EXHIBIT # 5
PAGE 1 OF 1



COASTAL COMMISSION
NPB 1-00 PART A
 EXHIBIT # 6
 PAGE 1 OF 1



CITY OF NEWPORT BEACH

June 15, 2007

Ms. Teresa Henry
California Coastal Commission
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416

RE: City of Newport Beach Land Use Plan Amendment NPB-MAJ-1-06

Dear Ms. Henry:

The City of Newport Beach, as the applicant for the above Land Use Plan Amendment, has been following the negotiations regarding the mitigation for the loss of visitor-serving land use for the parcel adjacent to the Newport Beach Marriott Hotel. We wish to indicate our support for the following language which will be a new policy for Section 2.3.1 of our Land Use Plan:

2.3.1-8 LCP Amendment No. 2005-001 (NPB-MAJ-1-06 part A) to the Coastal Land Use Plan changing a portion of land designated CV in Newport Center to a residential designation shall require a contribution representative of a like-for-like replacement of the loss of visitor-serving land. The contribution shall be for the protection and provision of lower-cost visitor-serving uses at Crystal Cove State Park in the amount of \$5 million.

We understand that this application will be sent to the Coastal Commission for review at their July 12, 2007, hearing. We will be anxious to receive a copy of your staff report which will hopefully reflect a positive recommendation. The City will send a representative to indicate our support for the above language and the amendment in total. Please let us know if you need anything further from the City. Thank you for your cooperation.

Sincerely,

Homer Bludau
City Manager

cc: Carol McDermott, Government Solutions, Inc.
Donna Kelly, Lennar

RECEIVED
South Coast Area

JUN 18 2007

CALIFORNIA
COASTAL COMMISSION

COASTAL COMMISSION
NPB 1-06 PART A

EXHIBIT # 7

PAGE 1 OF 1

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