

CALIFORNIA COASTAL COMMISSION

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Th14a



November 10, 2008

ADDENDUM

To: Commissioners & Interested Persons

From: South Coast District Staff

RE: Item Th14a, Newport Beach Land Use Plan Amendment No. NPB-MAJ-1-07,
Newport Beach, Orange County

A. Response to staff recommendation from the City of Newport Beach (attached)

B. Staff response to City's Letter:

Commission staff has reviewed the letter from the City of Newport Beach which responds to the staff recommendation. City staff has recommended some minor changes to Suggested Modifications No. 2, 6, 7, 8, and 10. Commission staff has reviewed those suggestions and find them acceptable. Changes to the staff report necessary to incorporate those changes are provided below.

City staff has raised objections to Suggested Modifications No. 35, 36, 37 and 38 relative to mitigation for the loss of low cost overnight accommodations. The City asserts that such requirements "...necessitate the establishment of a fixed amount for overnight room rentals..." in conflict with Section 30213 of the Coastal Act. Commission staff disputes this assertion. The policies recommended by staff do not require that room rates be fixed for any overnight accommodations. Rather, the policies seek to protect existing low cost overnight accommodations and encourage the provision of new low cost overnight accommodation product-types. Hostels, campgrounds and similar facilities are inherently low cost compared with luxury accommodations. Room rates are not fixed by these policies.

City staff has suggested that the entire topic to address the protection and provision of low cost overnight accommodations be deferred to the implementation plan. While Commission staff has agreed that certain decision points should be deferred, such as the method for determining what is low cost and what mitigation fees would be appropriate, Commission staff does not believe deferring the entire question to the IP is appropriate, particularly given staff's knowledge of how the City is presently interpreting how impacts to low cost accommodations can be mitigated. Commission staff acknowledges that there are existing policies in the City's certified Coastal Land Use Plan (CLUP) that would give the City the ability and mandate to address preservation and provision of low cost overnight accommodations. However, additional policy language is necessary to clarify precisely how such preservation and provision should be achieved. Current City interpretation of the requirement is that the loss of low cost overnight accommodations can be mitigated by providing lower-cost visitor-serving commercial goods and services (e.g. concessions, restaurants, retail, beach rentals, water taxis, public parking, etc.) and/or provision or contribution toward low cost public recreational amenities (e.g. trails, walkways, signs, etc.). Certainly, provision of such low cost commercial and recreational opportunities is encouraged under the Coastal Act and new development is required to provide them. However, the provision of such amenities does not offset the loss of low cost overnight accommodations because they don't provide the public a place to stay near the coast. The City's interpretation of the requirement is fundamentally different from the way the Commission has interpreted the Coastal Act. Therefore, Commission staff

believes it is necessary to clarify that impacts to low cost overnight accommodations must be avoided, where feasible, or, where not feasible, such impacts need to be offset through the new provision of low cost accommodations or an appropriate fee that would be used to provide low cost overnight accommodations.

City staff objects to Suggested Modifications No. 14, 15 and 34 that address Limited Use Overnight Visitor Accommodations (LUOVAs) in the City. Commission staff has consistently held that timeshares and other LUOVAs are not allowed unless an LCP specifically authorizes them. The City's CLUP makes no allowance for LUOVAs. Thus, LUOVAs are not an approved use anywhere in the City's coastal zone. The suggested modifications merely make this position clear. Commission staff has concluded such clarification is necessary in this case because we understand the City takes a contrary position in that they believe such uses are allowed unless they are explicitly excluded. In fact, the City's draft implementation plan available on their web site (not yet submitted to the Commission) indicates the City would allow timeshares in visitor serving zones. Given that understanding, Commission staff believes the suggested modifications are appropriate.

City staff objects to Suggested Modifications No. 3, 4, 14, 19 and 20 which retain the existing condition whereby residential development along the waterfront at Mariners' Mile is not allowed. Commission staff continues to object to allowing new residences along this area of the Newport Bay waterfront. As stated in the staff recommendation, the proposed Land Use Plan amendment reduces commercially developable property throughout the City, as well as introduces allowance for residential uses (in a mixed use fashion) to many commercially designated areas in the City. If approved as proposed, the CLUP would only have a few, small commercial properties along the waterfront where residential uses would be excluded. The remainder of the commercial properties with water frontage would have allowances for residential use. Staff's recommendation would retain the Mariners' Mile water frontage for commercial use without the constraints that new residential uses would impose.

With regard to Suggested Modification No. 20, Commission staff recognizes that the suggested language places unnecessary constraint upon uses allowed along Mariners' Mile. Thus, staff is recommending changes to that language that we believe will address the concerns raised by the City.

With regard to Suggested Modification No. 3, Commission staff has re-reviewed the matter and are proposing an alternative that we believe will address the City concerns. Staff's recommendation will be to apply the MU-W designation to the portion of the Balboa Bay Club site that presently contains residential development, and the CV-B designation to the remainder of the site. The MU-W designation would allow priority commercial uses that would be consistent with the public trust; although it would still allow for residential uses there until 2044. Existing CLUP policies require that public access and uses consistent with the public trust occur when the existing residential use provisions expire.

Finally, the City has recommended that the Commission reject Suggested Modification No. 33, which allows existing commercial properties in the Balboa Village and in Corona del Mar to be redeveloped with their existing intensity of use (which exceeds the allowed intensity of use) so long as they comply with all the other requirements of the CLUP. The City's main objection to this requirement is that these existing properties couldn't feasibly redevelop to their current intensity and provide the required parking to support the development. If parking were required to code then the amount of commercially developable area would be depleted on the site, which in turn would reduce priority visitor serving commercial uses in the area. Commission staff recognizes the impact such

requirements would impose. In consultation with City staff, the Suggested Modification has been re-written to allow parking requirements to be relaxed where certain findings can be made about provision of alternative transit and that no adverse impacts to access, views or biological resources would occur as a result of the redevelopment.

C. Letters from Sierra Club, Jan Vandersloot, Mary Sue Ittner/Bob Rutermaoeller, and Sandra Genis

D. Commission staff response to letters

Several letters have been submitted which cite deficiencies in the existing Coastal Land Use Plan relative to buffers to protect environmentally sensitive habitat areas (ESHA), and issues regarding forthcoming projects at Banning Ranch, Begonia Park (Megonigal), and along Carnation Avenue and Ocean Blvd. (Aerie).

The letters suggest that CLUP policies should be revised to clarify that the 50 foot buffer width is the minimum, not the maximum. The existing CLUP contains policy language regarding buffer requirements which clearly state that 50 feet is the minimum buffer for terrestrial ESHA. Furthermore, that policy language states "require buffer areas of sufficient size to ensure the biological integrity and preservation of the habitat they are designed to protect" which clearly suggests that larger buffers could be required when necessary. This policy is adequate, as written.

With regard to the Banning Ranch project, it should be noted that the CLUP doesn't presently apply to the Banning Ranch area. That area is unincorporated and outside of the geographic area covered by the CLUP. An LCP amendment would be required to bring that area into the CLUP. Appropriate buffers to protect ESHA and wetlands on that site will be addressed at the point in time when an LUP/LCP amendment or coastal permit is sought.

The letters assert that there is presently some ambiguity in CLUP policies addressing setbacks and protection of coastal bluffs which affect a project that the City is considering at Carnation Avenue and Ocean Boulevard, known as the AERIE project. The letters suggest the City has adopted revisions to the policy to address these ambiguities but those haven't been submitted to the Commission. Since the City isn't yet certified, the AERIE project is expected to come before the Commission as a coastal permit application. Thus, the Commission will have an opportunity at that time to address the policy interpretation issues that may be raised in that matter. Even if the City were to become fully certified, the AERIE project is in an appeals area, thus, policy interpretation issues could be addressed upon appeal. Finally, if there is ambiguity in the bluff protection policies and the City has adopted changes to the CLUP to address those ambiguities, those revisions would be reviewed when the City submits the amendment to the Commission for its consideration.

Commission staff is not familiar with the project at Begonia Park. Nevertheless, there are several policies in the City's CLUP that require protection of public coastal views, wherever they exist. A significant public coastal view does not need to be listed or identified on a map in the CLUP in order to be protected. Nevertheless, in fact, Begonia Park is specifically identified as a viewpoint that needs protection on "Coastal Views Map 4-3" in the CLUP. No policy revisions are necessary to ensure that existing coastal views from a public park are protected; those policies already exist in the CLUP. Similarly, another author has suggested that additional specificity be included about protecting views along Mariners' Mile; Commission staff believes the recommended policies are adequate. In fact, additional specificity could inadvertently narrow the scope of views that need

protection along Mariners' Mile to only those shown on the CLUP Coastal Views Map; whereas the language suggested by staff would ensure that all public coastal views are protected.

Finally, one author (Ms. Genis) has recommended that Suggested Modification 16 be modified to clarify that Semeniuk Slough may not be the only habitat area that needs to be addressed through buffers. Commission staff agrees with this comment and have incorporated the recommended change.

E. EX Parte Communications

F. Revisions to the Staff Recommendation:

Commission staff recommend that the Commission adopt the following changes to the staff recommendation:

~~Plain Text in Strike-Out~~ = Policy language previously deleted

Plain Text in Underline = Policy language previously added

~~***BOLD ITALICIZED Text in Strike-Out***~~ = Language deleted as a result of this addendum

BOLD ITALICIZED in Underline = Language added as a result of this addendum

(revisions begin on next page)

ADDENDUM TO NPB-MAJ-1-07

Before the table on pages 8 and 9 of the staff report (Suggested Modifications), insert the following statement:

The City shall modify its land use plan maps to reflect the following revisions to the land use categories associated with the listed sites. The City may select an alternative intensity of use for the sites listed, subject to the review and approval of the Executive Director and subject to confirmation by the Commission itself through the Executive Director checkoff procedure.

Modify the table on pages 8 and 9 of the staff report (Suggested Modifications), as follows (modifications not listed remain unchanged):

Suggested Modification No.	Change Number (see Map)	Site Location	Existing Use of Subject Properties	Current CLUP Land Use	Proposed CLUP Land Use	Suggested Modification
MAP 2 (see City of Newport Beach's Proposed Changes to the CLUP Map "lcp_lu_amend_Changes_MAP_2")(Exhibit 6)						
2	3	Lido Village Area: 3366 Via Lido	2-story office building and parking lot	CV-A (Visitor Serving Commercial)	RM-D (Residential - Multiple Unit)	Apply MU-W (Mixed Use-Water Related) Land Use Designation; Limit Commercial Floor Area Ratio (FAR) to 0.39 FAR to comply with City Charter Section 423
3	15	Mariners' Mile Corridor: 1200 W. Coast Hwy	Public Tidelands; Balboa Bay Club & Resort - Hotel (available to public) & Private Club & 144 Residential Units	RH-A/CM-C (Residential High Density/Marine Commercial)	MU-W (Mixed Use-Water Related)	Apply CV-B (Commercial-Visitor) Land Use Designation to entire site portion of site occupied by the existing public hotel and supporting facilities; Apply MU-W (Mixed Use-Water Related) to portion of site occupied by the existing residences and club
6	n/a	Mariners' Mile (inland side): 2300 Coast Hwy W	Hotel - Holiday Inn Express	CG-B (General Commercial)	MU-W (Mixed Use-Water Related)	Apply CV- A (Visitor Serving Commercial) Land Use Designation
7	n/a	McFadden Square Area: 2306 Ocean Front W	Hotel - Newport Beach Hotel	CG-C (General Commercial)	MU-W (Mixed Use-Water Related)	Apply CV- B (Visitor Serving Commercial) Land Use Designation

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Suggested Modification No.	Change Number (see Map)	Site Location	Existing Use of Subject Properties	Current CLUP Land Use	Proposed CLUP Land Use	Suggested Modification
8	n/a	Lido Peninsula (Planning Study Area 1 (PSA-1)) includes Shipyard Way, Anchorage Way, The Rhine, Anza St, Beach Dr, Cabrillo St, Nomad St, Drake St, El Paseo St, Bolivar St, Fremont St, Channel Road, and a portion of Lido Park Dr.	Shipyard, Mobile Home Park, Commercial, Residential	CM-B & RM-B (Recreation & Marine Commercial and Medium Density Residential)	MU-W (Mixed Use-Water Related)	Retain existing CM-B (Recreation & Marine Commercial) and RM-B RM-C (Medium Density Residential) Land Use Designations
MAP 3 (see City of Newport Beach's Proposed Changes to the CLUP Map "lcp_lu_amend_Changes_MAP_3")(Exhibit 6)						
10	7	Balboa Village: 600 E. Bay Ave/ 600 Edgewater Pl)	Balboa Fun Zone - Visitor Serving Commercial & Nautical Museum	CG-C (General Commercial)	PI-C (Private Institutional)	Apply CV- B (Visitor Serving Commercial) Land Use Designation

(changes to report continue on next page)

On Page 10, change Suggested Modification No. 16, as follows:

Suggested Modification No. 16: In Chapter 2.0 (Land Use and Development), Section 2.1 (Land Use), Sub-section 2.1.3 (West Newport) modify proposed Policy 2.1.3-1, as follows: Work with community groups and the County to facilitate the acquisition of a portion or all of the Western Entry Parcel (designated RM/OS) as open space, which may be used as a staging area for Orange Coast River Park with public parking, public park-related uses, and an underpass access to the ocean. As an alternative, accommodate multi-family residential on all or portions of the property not used for open space, public parking, and public park-related uses. Require the siting and design of new development, including landscaping and public access, to maintain buffers of sufficient size to protect sensitive or rare resources **including but not limited to those** within the Semeniuk Slough wetland against significant disruption of habitat values.

On Page 11, change Suggested Modification No. 20, as follows

Suggested Modification No. 20: In Chapter 2.0 (Land Use and Development), Section 2.1 (Land Use), Sub-section 2.1.4 (Mariners' Mile), Add new policy to Section 2.1.4 (Mariner's Mile), as follows: For bay-fronting properties that are designated as CV or CM, **require encourage** marine-related and visitor-serving retail, restaurant, hotel/motel, institutional, and recreational uses.

On Page 14, change Suggested Modification No. 33, as follows:

Suggested Modification No. 33: In Chapter 2.0 (Land Use and Development), Section 2.2 (General Development Policies), Sub-section 2.2.5 (Nonconforming Structures and Uses), Modify proposed Policy 2.2.5-2, as follows: In the older commercial districts of Balboa Village and Corona del Mar allow existing commercial buildings that exceed current intensity limits to be renovated, upgraded, or reconstructed to no more than their pre-existing intensity, when appropriate to complement the scale and form of existing development, and only ***where a finding can be made that the project will not perpetuate or establish an impediment to public access, nor adversely impact coastal views or biological resources. Where approval of such development necessitates that parking standards be reduced, such approval may only be granted if the proposed use provides for and promotes the use of alternative modes of transportation such as ride-sharing, carpools, vanpools, public transit, bicycling and walking; and where the reduced parking requirement will not adversely impact public access to beaches, parks, open spaces, and trails.*** ~~if the renovated, upgraded, or reconstructed structure also meets all other applicable requirements of the Coastal Land Use Plan.~~

On Page 27, Denial Findings, modify the text as follows:

Balboa Bay Club (Map #2 - Exhibit 6)

Map 2, Site 15 (1200 W. Coast Highway): The subject site is filled public tidelands adjacent to Newport Bay. The site, approximately 13 acres in size, is currently occupied by a private club and residential use (144 units), and the Balboa Bay Club & Resort Hotel that is available to the public. The site currently has two land use designations; the portion occupied by a residential use and private club is designated residential, the portion occupied by the hotel is designated marine commercial. The City proposes to designate the entire site Mixed Use-Water Related (MU-W). The MU-W category would allow a

mixture of residential and commercial on any part of the site. Uses on public tidelands are typically reserved for facilities that are open to the general public. The existing LUP states that the residential use and club "... is in conflict with the public trust doctrine..." However, special legislation allows for the residential use and private club to continue on the property until the year 2044. At that time the site would need to be converted to a use that is compliant with the public trust doctrine. However, the proposed land use designation would allow residential uses to be introduced into areas of the property where those uses are presently excluded. ~~***In addition, that designation would suggest that preservation of existing residential uses and/or further residential development could be condoned on the property.***~~ The existing residential use should be viewed as a non-conforming use. Improvements to the existing residential use and/or any type of development that would extend the economic life of the existing residential use should be avoided so as to encourage conversion to uses that are consistent with the public trust. Expansion of the residential use should be prohibited. The ~~***entire site should have a***~~ land use designation ~~***that encourages***~~ ***must encourage*** use of the property for uses consistent with the public trust. ~~***The proposed designation would undermine efforts to ultimately convert the use.***~~

On Page 48, Findings for approval with modifications, modify the text as follows:

Balboa Bay Club & Resort Hotel Site (Map #2 - Exhibit 6)

Map 2, Site 15 (1200 W. Coast Highway): The subject site is filled public tidelands adjacent to Newport Bay. The site, approximately 13 acres in size, is currently occupied by a private club and residential use (144 units), and the Balboa Bay Club & Resort Hotel that is available to the public. The site currently has two land use designations; the portion occupied by a residential use and private club is designated residential, the portion occupied by the hotel is designated marine commercial. The City proposes to designate the entire site Mixed Use-Water Related (MU-W). The MU-W category would allow a mixture of residential and ***coastal dependent, coastal-related, and visitor-serving uses commercial*** on ~~***any part of***~~ the site. Uses on public tidelands are typically reserved for facilities that are open to the general public and there is acknowledgement ***in the existing CLUP*** that the residential use and club is in conflict with the public trust doctrine. Suggested Modification No. 3 requires that the ***entire portion of the site containing existing visitor serving uses*** be designated for visitor serving commercial purposes. ***The Beacon Bay Bill (Chapter 74 of the Statutes of 1978) and Assembly Bill 3139 (Chapter 728, Statutes of 1994) allow Parcel D of the Balboa Bay Club to be leased for residential purposes until December 31, 2044. The proposed MU-W designation on the portion of the property that is presently developed with residences and a private club will encourage the introduction of visitor-serving uses to that portion of the site without running afoul of the allowances made through State law for the existing residential development to remain until 2044. Existing CLUP policies require that ultimate re-use of the property occur in a manner consistent with the public trust. Such policies include, but are not limited to the following:***

2.5.2-2. Promote the public's right of access to the ocean, beach, and bay and to the provision of coastal dependent uses adjacent to the water in the leasing or re leasing of publicly owned land.

2.5.2-3. Evaluate and ensure the consistency of the proposed use with the public trust restrictions and the public interest at the time any tideland lease is re-negotiated or renewed.

On Page 57, Findings for approval with modifications, modify the text as follows:

3. Non-Conforming Uses

As stated in the findings for denial, proposed policy, 2.2.5-2, is inconsistent with Coastal Act requirements because it would allow a commercial building that is non-conforming with regard to parking, setbacks, height, etc. to be completely reconstructed to its previous intensity without providing the required parking, appropriate setbacks or compliance with existing height limits. As a result the development could have adverse impacts upon public access, public views, or even biological resources that would be inconsistent with the Coastal Act. However, if the policy were modified to clarify that such reconstruction to the pre-existing intensity may be allowed so long as **a finding can be made that the project will not perpetuate or establish an impediment to public access, nor adversely impact coastal views or biological resources and require that parking reductions only occur where the proposed use provides for and promotes the use of alternative modes of transportation such as ride-sharing, carpools, vanpools, public transit, bicycling and walking; and where the reduced parking requirement will not adversely impact public access to beaches, parks, open spaces, and trails.** ~~all other requirements of the Coastal Land Use Plan are satisfied~~, the policy could be found consistent with the Chapter 3 policies of the Coastal Act. The policy also needs to be clarified to indicate that in the areas to which the policy applies, the City has the ability to approve reconstruction of existing buildings that exceed current intensity limits, with less than the current intensity, as necessary, to ensure the structure complies with the other Coastal Land Use Plan policies. The policy also needs to be modified to clarify which areas are considered the 'older commercial districts'. As modified, the Commission finds proposed policy, 2.2.5-2 to be consistent with the Chapter 3 policies of the Coastal Act.

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**Thursday, November 13, 2008
Item 14a**

**For Further Information Contact
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Purpose:

To amend the Certified Coastal Land Use Plan to be consistent with the comprehensive update of the City's General Plan.

The update process began in 2002 and concluded in 2006. The City undertook a substantial public outreach program to understand community values and to establish a new General Plan policy foundation based on those values. The program began with a comprehensive public Visioning Process, which involved numerous workshops, meetings, surveys, newsletters, website information and outreach.

The update process was guided by the City Council and a General Plan Advisory Committee (GPAC) consisting of 38 community members who were selected to represent a broad range of interests. The Committee was involved in all steps of the process and they participated in over 50 meetings during the Plan's preparation.

Land use alternatives were explored, policies were debated, outside agencies were consulted, environmental review was performed, public workshops and hearings were conducted with the GPAC, Planning Commission and concluding with the City Council. After the City Council adopted the new General Plan in July of 2006, the voters of Newport Beach approved the General Plan ballot measure endorsing the overall plan.

Coastal Commission Staff recommendation and City Staff responses:

Newport Beach prides itself on its natural setting and its ability to protect the environment while providing public access that is second to none in the State of California. These priorities are focal points in the City's General Plan and Coastal Land Use Plan documents and the City continually strives through all of its actions to be good stewards of the coastal environment while balancing the needs of visitors and residents.

The proposed Coastal Land Use Plan Amendment application is a true reflection of the City's Vision for the future embodied within the newly adopted General Plan. The City is a collection of unique villages that have their own sense of place and charm that necessitates distinct land use policies that only a locally prepared land use plan can accommodate. Unfortunately, the Coastal Commission staff report does not convey why the City has made the land use choices it has and adds other policy initiatives that do not relate to the land use amendments requested.

City staff has worked diligently with Coastal Commission Staff to resolve as many issues as possible and most have been resolved or can be resolved very easily. Approximately 75 percent of the modifications suggested by Coastal Commission Staff in their report are likely to be accepted with only few minor edits outlined below. The remaining suggested modifications are also highlighted below and fall into only 4 topical areas and recommended actions are also provided.

Disclaimer: The information contained within this document reflects the opinions of Newport Beach Planning Department Staff and may not reflect the opinion of the City Council, community, or individual property owners affected by the proposed Suggested Modifications to the proposed Land Use Plan.

The following items are City staff's opinions based upon many years of collective experience with the community and input from stakeholders.

1. Accept the following Suggested Modifications:

#1, 2, 5, 6, 7, 8, 9, 10, 11, 12, 13, 16, 18, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53

However, the following 5 Suggested Modifications are minor items that need to be addressed in the land use plan:

- #2** – Eliminate reference to a floor area ratio (FAR). The 0.39 FAR was calculated based upon this site and another site nearby to reduce the intensity to be consistent with City Charter Section 423. With the other site being determined not to be an issue with the Coastal Act, the suggested 0.39 FAR is no longer necessary for this site. Increased commercial area would be necessary for a mixed-use development to be viable.
- #6** – No intensity limit is proposed by CCC staff. An intensity limit must be provided and in the case of this lot, the appropriate intensity limit is "A" (CV-A) to maintain a conforming condition.
- #7**– No intensity limit is proposed by CCC staff. An intensity limit must be provided and in the case of this lot, the appropriate intensity limit is "B" (CV-B) to maintain a conforming condition.
- #8** – The proposed density limit for this site must be changed from "B" (RM-B) to "C" (RM-C) due to change in the classification system density limits otherwise the existing residential use will become nonconforming.
- #10** – No intensity limit is proposed by CCC staff. An intensity limit must be provided and in the case of this lot, the appropriate intensity limit is "B" (CV-B) to maintain a conforming condition.

These minor changes listed should not create an issue with Coastal Act compliance and are necessary to appropriately apply the proposed land use classification system. The City is hopeful that CCC staff will acknowledge and incorporate these changes within their recommendation.

- 2. Reject Suggested Modifications #35, #36, #37 and #38 regarding lower-cost accommodation mitigation and defer the entire issue to the to approval of the Implementation Plan currently under preparation.**
- Establishment of an inclusionary affordable component or an in-lieu fee would necessitate the establishment of a fixed amount for overnight room rentals, which is inconsistent with Coastal Act Section 30213 and the City's Certified Land Use Plan.
 - Any in-lieu fee will increase the cost of providing accommodations thereby creating an impediment to increasing access for visitors to the coastal zone.
 - The Commission and the City have no definitions of lower-cost, moderate-cost or higher-cost accommodations, and therefore, neither agency can be certain as to the impact of these policies and whether they actually achieve the desired result.
 - Coastal Commission staff concedes that the formula surrounding this issue remains in its "infancy."
 - Existing Coastal Land Use Plan Policy 2.3.3-1 certified by the Coastal Commission in late 2005 is consistent with the Coastal Act. Policy 2.3.3-1 provides: "Protect, encourage and provide lower-cost visitor accommodations, including campgrounds, recreational vehicle parks, hostels, and lower-cost hotels and motels." This policy will lead to implementing regulations and new policies are unnecessary.
 - The City is willing to implement Coastal Act Section 30213 and Coastal Land Use Plan Policy 2.3.3-1 by ensuring that appropriate mitigation for the loss of lower-cost accommodations is required that will expand existing or create new lower-cost visitor and recreational facilities. Coastal Commission staff offered no comments to the City's specific proposal.
- 3. Reject Suggested Modifications #14, #15 and #34 prohibiting Limited Use Overnight Accommodations within the CV and MU-W designations and prohibiting future conversions of existing hotels.**
- Prohibiting Limited Use Overnight Accommodations in areas that serve visitors or are designated visitor-serving is not logical as there is no question that these types of projects serve visitors to the coastal zone.
 - Prohibitions are impediments to increasing access for visitors to the coastal zone and do not take into account market conditions or financing trends.
 - These suggested modifications eliminates the possibility to request these types of accommodations when the Coastal Commission has approved similar types of projects under specific operational conditions in other jurisdictions. Why is Newport Beach being deprived of similar opportunities?

4. Reject Suggested Modifications #3, #4, #14, #17, #19 and #20 regarding the Mariners' Mile waterfront mixed-use designation (see map).

- The Mariners' Mile waterfront heavily traveled segment of Coast Highway located in the heart of the Newport Harbor just east of the terminus of the State Route 55. It is roughly 30 acres in area and is presently a mixed-use area with variety of retail uses, restaurants, residential development, marine-related office, general office, boating and excursion services, educational uses and visitor accommodations. The area underperforms other commercial areas in the City and vacancy rates are high compared to the rest of the City due in part to the limited type of allowed uses within the existing Marine Commercial designation.

Mariners' Mile



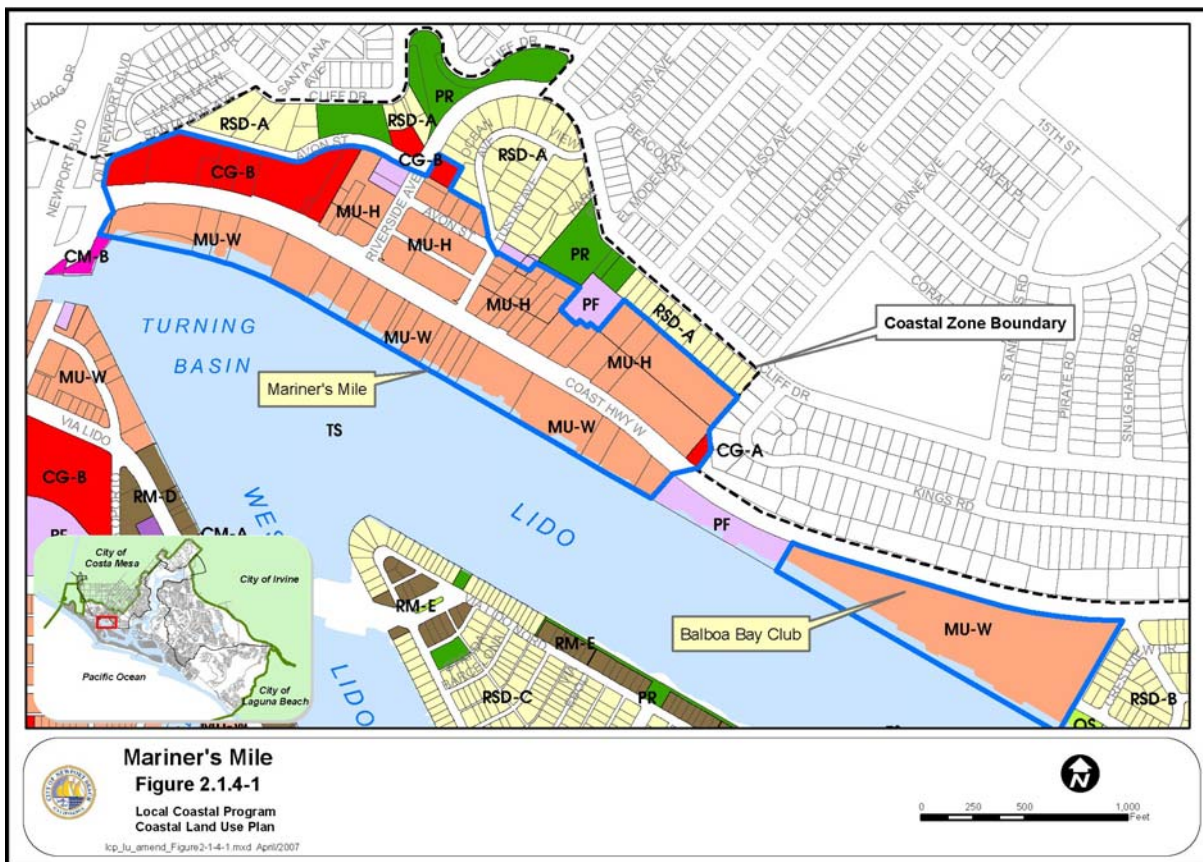
- The proposed Mixed-Use Water related designation or "MU-W" covers approximately 28 acres and it supports and encourages a wide range of commercial and visitor serving uses (including overnight accommodations) while allowing limited residential uses.
- Proposed residential use would only be allowed on lots wider than 200 feet and would also be limited to 50% of any given property leaving 50% of the property devoted to commercial uses.

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- Limited public access today is provided to the waterfront and the City plans to improve access through a waterfront walkway, which is achievable only through redevelopment.
- The introduction of residential uses and/or Limited Use Overnight Accommodations will lead to redevelopment of site that do not presently provide public access. This will result in increased public visual and physical access to the waterfront as existing Land Use Plan policies require it and the additional policy proposed by City staff (Suggested Modification #25) supports it.
- The introduction of residential uses and/or Limited Use Overnight Accommodations will support existing commercial uses that serve both visitors and residents.
- Suggested Modifications #21, #22, #23 and #24 were proposed by City staff to promote high quality of site planning and design to promote compatible development and uses.

Mariners' Mile area



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- Suggested Modification #20 proposed by CCC staff would render roughly 40% of the Mariner’s Mile waterfront (excluding the Balboa Bay Club) nonconforming with the elimination of existing marine-related industry, marine-related office, general retail and general office use. The change would devastate the local economy with existing uses being uprooted and existing financing being jeopardized. Finally, this change does not take into account current or future market conditions.
- The proposed designation for the Balboa Bay Club (Suggested Modification #3) within the area is inconsistent with the State law (Beacon Bay Bill, Chapter 728, Statutes 1994) that allows residential use until December 31, 2044. Proposed CV designation makes the existing apartments nonconforming, which jeopardizes existing financing and insurance. **Alternative** for the Balboa Bay Club site only – apply “RM-D/CV-B” (high density housing and visitor-serving commercial) to reflect current land use intensity and density, the Cities General Plan and more importantly State law. This alternative avoids unintended negative consequences of making the apartments nonconforming. This alternative also applies the visitor-serving designation to the existing resort where it is “CM” today. City staff does not believe this alternative presents any issue with Coastal Act compliance.

5. Reject Suggested Modification #33 regarding the ability to rebuild nonconforming buildings in older commercial areas of Balboa Village and Corona del Mar.

- Balboa Village is the historic center for recreational and social activities on the Peninsula. It has had a strong marine heritage, and has attracted fishermen, recreational boaters, summer residents, and beachgoers. Many of the retail uses are visitor-oriented and seasonal in nature. Balboa Village was well established long before the Coastal Act. The village is characterized by nonconforming commercial buildings that exceed current intensity limits and they typically do not supply code required parking.

Balboa Village



Balboa Village



- The Corona del Mar corridor extends along Coast Highway between Avocado Avenue and Hazel Drive. It is developed with commercial uses and specialty shops that primarily serve adjoining residential neighborhoods with isolated uses that serve highway travelers and coastal visitors. Among the area’s primary uses are restaurants, home furnishings, and miscellaneous apparel and professional offices including architectural design services. Almost half of the commercial uses are located in multi-tenant buildings with retail on the ground floor and professional services above. Other uses include the Sherman Library and Gardens, a research library and botanical garden open to the public, and an assisted-living residential complex.

Corona del Mar

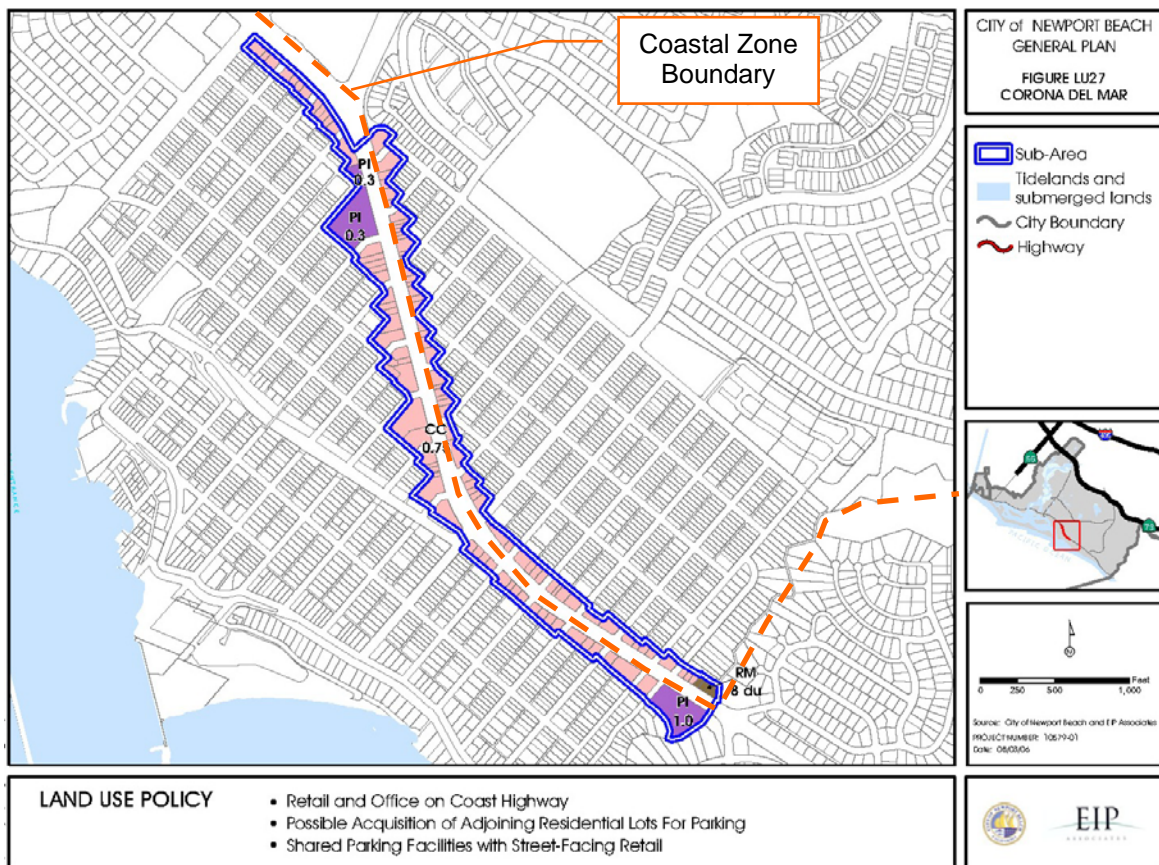


Disclaimer: The information contained within this document reflects the opinions of Newport Beach Planning Department Staff and may not reflect the opinion of the City Council, community, or individual property owners affected by the proposed Suggested Modifications to the proposed Land Use Plan.

Coastal Land Use Plan Amendment NPB-MAJ-1-07

- Buildings in the Corona del Mar corridor mostly front directly on and are visually open to the sidewalks, with few driveways or parking lots to break the continuity of the “building wall” along the street. These characteristics, coupled with improved streetscape amenities, landscaped medians, and a limited number of signalized crosswalks, promote a high level of pedestrian activity.
- The village is also characterized by nonconforming commercial buildings that exceed current intensity limits and they typically do not supply code required parking.
- The suggested modification would reduce existing commercial opportunities in both areas that presently serve existing visitors and residents for increased parking.
- A significant deterrent would be created to improve commercial properties and the CCC staff suggested change would eliminate the possibility to adopt innovative ways to adequately manage existing or future parking.
- City proposal will in no way reduce existing off-street parking with replacement.
- City proposal would in no way limit the City’s ability to increase parking resources through building public parking, implementing more effective parking management or increased transit opportunities. The City is presently studying these opportunities.

Corona del Mar



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 Coastal Commission

NOV 13 2008

San Francisco



SIERRA
 CLUB
 FOUNDED 1892

Agenda Item No. Thr14a

November 6, 2008

California Coastal Commission
 45 Fremont Street Suite 2000
 San Francisco, CA 94105-2219

Subject: Coastal Commission Hearing Agenda Item 14a
 Thursday, November 13, 2008

Dear Coastal Commission:

Our organization is contacting you in advance of the hearing next week to request your support of staff recommendations for agenda item 14a scheduled to be heard on Thursday, November 13, 2008.

14a. City of Newport Beach LCP Amendment No. NPB-MAJ-1-07 (Land Use Changes). Public hearing and action on request by the City of Newport Beach to amend the certified Land Use Plan (LUP) by: (a) changing the land use classification and density/intensity system currently used in the LUP and LUP maps to reflect the new system adopted in the City General Plan's Land Use Element Update; (b) change in land use designation of 55 sites involving several hundred properties in the coastal zone; (c) policy revisions and additions addressing land uses, site design, building volume, mass, clustering, setbacks, architecture, and nonconformities, Newport Beach, Orange County. (KFS/LR-LB)

We not only ask you to support staff's recommendation for denial of the proposed changes to the LUP by the City of Newport Beach and approval with modifications, but we also ask you to consider postponing this issue to resolve important questions relating to Chapter 3 policies including ESHAs and the size of the buffer areas, public access to the coast, and protection of public viewshed areas and coastal bluffs.

As noted in the staff report, the City is proposing changing its CLUP to remove large amounts of visitor serving areas and substituting private residential uses instead of visitor serving facilities, effectively limiting public access to the coast and privatizing the coastline. The table on page 8 of the staff report lists the areas in the City where visitor serving facilities will be replaced by residential complexes. This table also makes staff-recommended modifications that include retaining the visitor serving uses that are currently in the CLUP. We recommend that you support the staff modifications. Otherwise there will be free standing residential complexes in as much as 50% of the frontage along outer Newport Bay at Mariners Mile. Also, Newport Beach is proposing removing hotel rooms and open space areas such as a golf course and approving timeshare units in their place at the Hyatt Regency, an application now being heard at the Planning Commission with Planning Department approval.

The staff also recommends changes to the Biology Section of the CLUP that include dedications of the buffer areas of ESHA to a public agency. We support those changes, but we also ask that you consider changing the 50-foot minimum buffer in the CLUP to a minimum 150 foot buffer that would be more protective of the ESHA resource. Newport Beach appears to be inclined to use the 50-foot minimum buffer to be not the minimum, but the norm for the buffers, as evidenced by current applications coming before the City, such as the Hyatt Regency project abutting the Upper Newport Bay ecological area and the Banning Ranch project. Both of these projects, submitted to the City recently, are proposing only 50-foot buffers along important ecologically sensitive habitats in Upper Newport Bay and the Banning Ranch, respectively, as if 50-foot buffers were the norm, not the minimum. It is important that the Coastal

Commission require adequate buffers such as found at the Brightwater project at Bolsa Chica where buffers from ESHA were recently approved at a minimum 150 feet that varied to 382 feet with an average 274 feet buffer from the ESHA. If the Newport Beach buffer of a minimum 50 feet buffer is allowed to stand, a precedent will be set that is detrimental to ESHA protections all along the California coast. We need your help in protecting and preserving ESHA resources and adequate buffers in the Newport Beach CLUP and other Land Use Plans that come before you.

Similarly, protections of public viewsheds appear to be missing in the CLUP, including protection of the public views of the harbor and ocean from Begonia Street and Begonia Park in Corona del Mar. Correction of this oversight should be required in the modifications to the CLUP, since both General Plan and CLUP policies nominally protect public views, but this particular viewshed is not listed in the modified CLUP. This issue is a current issue at Begonia Park, where a private residence application (Megonigal) has been submitted to the City of Newport Beach that would block up to 40% of the public view of the harbor and ocean from Begonia Park and 100% of the public view at the end of Begonia Street. This application was approved by the Newport Beach Planning Department and the Planning Commission recently.

In addition, clearer policies should be in the CLUP that protect coastal bluffs, including the coastal bluff along the entrance to Newport Harbor at Carnation Ave. and Ocean Blvd. A private multifamily luxury condo project (Aerie) has been submitted that will carve out up to 50 feet deep into the coastal bluff and jut out over the bluff face, causing substantial landform alteration and potential geologic stability problems. The CLUP is vague enough on this issue that the City Planning Department has approved this project as consistent with the CLUP, despite objections from the citizenry about impacts to the coastal bluff, public views, predominant line of existing development, and geologic stability questions.

These examples illustrate how the reconciliation of the General Plan and Coastal Land Use Plan must be done in a manner that protects our coastal resources consistent with Coastal Act resource protections. The current General Plan and CLUP do not appear to meet these requirements.

Therefore, we urge you to uphold the Coastal Act and support your staff's recommendation to deny the application and institute modifications to the City's application.

We also recommend that this item be continued so that staff and the public can address other issues including the ESHA buffers, coastal viewsheds, and coastal bluff issues enumerated above. According to the staff report, the Coastal Commission has until February of 2009 to act upon this submission, which would give more time for both the staff and the public to more carefully examine the considerable complexities involving the submission and allow more adequate consideration of the alternatives that would ensure compliance with the Chapter 3 resource protections of the Coastal Act. The public has not had enough time to fully address these issues since the staff report was only made public on Friday October 31, just 5 days ago.

Thank you for your support and your dedication to the protection and preservation of our coast.

Sincerely,



Penny Flia
Sierra Club
30632 Marilyn Drive
Laguna Beach, CA 92651

Th 14a**SANDRA GENIS, PLANNING RESOURCES**
1586 MYRTLEWOOD COSTA MESA, CA.

PHONE/FAX (714) 754-0814

November 7, 2008

Honorable Chairman Patrick Krueger and Members of the Coastal Commission
California Coastal Commission
200 OceanGate – 10th Floor
Long Beach, CA 90802-4416

Subject: Item 14a. City of Newport Beach LCP Amendment No. NPB-MAJ-1-07 (Land Use Changes) (Thursday, November 13, 2008)

Dear Chairman Krueger and Commissioners:

I urge the Commission to DENY the proposed City of Newport Beach Local Coastal Program Amendment No. NPB-MAJ-1-07 as submitted and approve only as modified by staff with other modifications as suggested below.

The Land Use Plan amendments proposed by the City of Newport Beach would reduce impair coastal access by reducing visitor serving facilities, increasing traffic and parking demand in coastal areas for non-coastal related uses, and potentially impairing visual access to the coast. Unfortunately, the full extent of potential growth and associated impacts on traffic and public parking was not analyzed by the City of Newport Beach. For example, per City of Newport Beach City council staff report dated July 25, 2006 (p.15) (<http://alchemyweb.city.newport-beach.ca.us/alchemyweb/alchemyweb.aspx?action=explore&database=Council Meetings 2006>), Mariners' Mile analyses did not address full buildout of the area under the proposed land use designations, but rather:

Properties on the inland side of Coast Highway in Mariners' Mile were assumed to have three types of development: retail or office uses along the immediate highway frontage and a mix of properties developed for buildings that vertically mix retail/office and residential uses and those on which only multi-family residential units would be developed. For the latter prototype, estimated to occur on approximate 25% of the land area, no commercial use would occur on the property reducing the area's commercial capacity by the referenced building area.

Not only does the above admission illustrate failure to fully consider actual buildout of the proposed plan, but it also illustrates an anticipated loss of commercial uses available to serve visitors.

I also request the following modifications to the proposed plan:

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Views

Suggested Change

Revise Proposed Policy 4.4.1-8 as shown in Exhibit A (page not numbered, pdf page 34)

4.4.1-8. Require that buildings be located and sites designed to provide clear views of and access to the Harbor and Bay from the Coast Highway and Newport Boulevard rights-of-way and from all viewpoints identified on Map 4-3 of the adopted Land Use Plan in accordance with the following principles, as appropriate...

This should also be reflected in suggested staff modification No. 25:

Suggested Modification No. 25: In Chapter 2.0 (Land Use and Development), Section 2.1 (Land Use), Sub-section 2.1.4 (Mariners' Mile), Add new policy to Section 2.1.4 (Mariner's Mile), as follows: For bay-fronting properties require that buildings be located and sites designed to provide clear views of and access to the Harbor and Bay from the Coast Highway and provide clear views from viewpoints identified on Map 4-3 of the adopted Land Use Plan in accordance with the following principles, as appropriate:

Rationale

The Harbor and Bay may be viewed from various points identified on Map 4-3. As building intensities have increased, many of these views have been reduced and impaired. During peak periods when traffic is essentially halted, such as during the annual boat parade or the Fourth of July, the Bay and Harbor may still be visually accessed from locations shown on Map 4-3. These viewpoints must be preserved.

Habitat

Suggested Change

An addition modification of Policy 2.1.2-1 is suggested as follows:

Suggested Modification No. 16: In Chapter 2.0 (Land Use and Development), Section 2.1 (Land Use), Sub-section 2.1.3 (West Newport) modify proposed Policy 2.1.3-1, as follows: Work with community groups and the County to facilitate the acquisition of a portion or all of the Western Entry Parcel (designated RM/OS) as open space, which may be used as a staging area for Orange Coast River Park with public parking, public park-related uses, and an underpass access to the ocean. As an alternative, accommodate multi-family residential on all or portions of the property not used for open space, public parking, and public park-related uses. Require the siting and design of new development, including landscaping and public access, to maintain buffers of sufficient size to protect sensitive or rare resources including but not limited to those within the Semeniuk Slough wetland against significant disruption of habitat values.

22

Rationale

*All resources in the area must be protected, not just the slough itself. The lowlands adjacent to the Santa Ana River and Semeniuk slough have been observed to contain numerous resources, including stands of *Salicornia* which provide habitat for the Belding's Savannah Sparrow (*Passerculus sandwichensis beldingi*), listed as endangered by the State of California.*

Conclusion

Please deny City of Newport Beach Local Coastal Program Amendment No. NPB-MAJ-1-07 as submitted as submitted. Thank you for the opportunity to comment.

Yours truly,



Sandra L. Genis

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CALIFORNIA
COASTAL COMMISSION

November 5, 2008

Agenda Item No. Th14a
Postpone or Support Staff position

RECEIVED
South Coast Region

NOV 7 2008

CALIFORNIA
COASTAL COMMISSION

California Coastal Commission
45 Fremont Street Suite 2000
San Francisco, CA 94105-2219

Subject: Coastal Commission Hearing Agenda Item 14a
Thursday, November 13, 2008

Dear Coastal Commission:

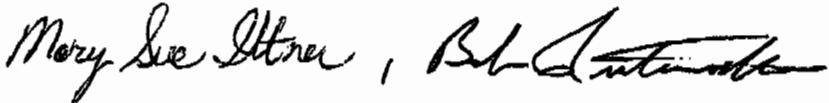
We are writing to you to request that 14 a, City of Newport Beach LCP Amendment No. NPB-MAJ-1-07 (Land Use Changes) to be heard Thursday November 13th be postponed to a later date to allow the public to study the staff report. The staff report was made public on Friday October 31. This does not give much time to read the report and to propose changes to such an important document. If postponement is not possible, we ask you to support the staff recommendations.

This amendment to the LUP removes large amounts of visitor serving areas and substitutes private residential uses. We support the staff modifications in the table on page 8 of the staff report.

There are issues that need to be studied so that the proper language can be added to the LUP. A postponement would facilitate this. Some of these issues are: protecting coastal viewsheds, what is an adequate number of feet for a minimum buffer for an ESHA that will protect against disruption in habitat values, and how best to protect coastal bluffs including addressing geologic stability questions.

Thank you for your consideration.

Sincerely,



Mary Sue Ittner & Bob Rutemoeller
P.O. Box 587
Gualala, CA 95445

msi

JAN D. VANDERSLOOT, M.D.

Certified, American Board of Dermatology

2221 East 16th Street
Newport Beach, CA 92663
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Office Fax: (714) 848-6643

November 5, 2008

Chair Patrick Kruer and California Coastal Commission
South Coast District Office
200 Oceangate 10th Floor
Long Beach, CA 90802-4416

By Fax: 562-590-5084

Re: Public Meeting Thursday November 13, 2008

Subject: Coastal Commission Hearing Agenda Item 14a
Thursday, November 13, 2008

Dear Chair Kruer and California Coastal Commission,

I am representing the citizen's groups SPON (Stop Polluting Our Newport) and Greenlight in Newport Beach to request your support of staff recommendations for agenda item 14a scheduled to be heard on Thursday, November 13, 2008, and to request a continuance of the hearing to allow more detailed responses to the issues raised in the staff report such as the biology issues including ESHA buffers, and public viewsheds that should be included in the CLUP of Newport Beach. Both SPON and Greenlight were involved in the Newport Beach General Plan Update in 2006 and had serious reservations about some of the land use issues that were changed by the General Plan, including areas within the coastal zone such as Mariner's Mile.

The specific agenda item on November 13 is:

14a. City of Newport Beach LCP Amendment No. NPB-MAJ-1-07 (Land Use Changes). Public hearing and action on request by the City of Newport Beach to amend the certified Land Use Plan (LUP) by: (a) changing the land use classification and density/intensity system currently used in the LUP and LUP maps to reflect the new system adopted in the City General Plan's Land Use Element Update; (b) change in land use designation of 55 sites involving several hundred properties in the coastal zone; (c) policy revisions and additions addressing land uses, site design, building volume, mass, clustering, setbacks, architecture, and nonconformities, Newport Beach, Orange County. (KFS/LR-LB)

We request that you support staff's recommendation for denial of the proposed changes to the LUP by the City of Newport Beach and for approval with modifications as listed in the table on page 8 of the staff report, but we also ask you to consider postponing this issue to resolve important questions relating to

25

JAN D. VANDERSLOOT, M.D.*Certified, American Board of Dermatology*

2221 East 16th Street
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Office Phone: (714) 848-0770
Office Fax: (714) 848-6643

Chapter 3 policies including ESHA's and the size of the buffer areas, public access to the coast, and protection of public viewshed areas and coastal bluffs.

As noted in the staff report, the City is proposing changing its CLUP to remove large amounts of visitor serving areas and substituting private residential uses instead of visitor serving facilities, effectively limiting public access to the coast and privatizing the coastline. The table on page 8 of the staff report lists the areas in the City where visitor serving facilities will be replaced by residential complexes. This table also makes staff-recommended modifications that include retaining the visitor serving uses that are currently in the CLUP. We recommend that you support the staff modifications. Otherwise there will be large free standing residential complexes in as much as 50% of the frontage along Newport Harbor at Mariners Mile. Also, Newport Beach is proposing removing hotel rooms and open space areas such as a golf course and substituting time share units in their place at the Hyatt Regency, an application now being heard at the Planning Commission with Planning Department staff's recommendation for approval.

The staff also recommends changes to the Biology Section of the CLUP that include dedications of the buffer areas of ESHA to a public agency. We support those changes, but we also ask that you consider changing the 50-foot minimum buffer in the CLUP to a minimum 100 foot buffer or even a 150-foot buffer that would be more protective of the ESHA resource. Newport Beach appears to be inclined to use the 50-foot minimum buffer to be not the minimum, but the norm for the buffers, as evidenced by current applications coming before the City, such as the Hyatt Regency project abutting the Upper Newport Bay ecological area and the Banning Ranch project. Both of these projects, submitted to the City recently, are proposing only 50-foot buffers along important ecologically sensitive habitats in Upper Newport Bay and the Banning Ranch, respectively, as if 50-foot buffers were the norm, not the minimum. It is important that the Coastal Commission require adequate buffers such as found at the Brightwater project at Bolsa Chica where buffers from ESHA were recently approved at a minimum 150 feet buffer that varied to 382 feet with an average 274 feet buffer from the ESHA. If the Newport Beach buffer of a minimum 50 feet buffer is allowed to stand, a precedent will be set that is detrimental to ESHA protections all along the California coast. We need your help in protecting and preserving ESHA resources and adequate buffers in the Newport Beach CLUP and other Land Use Plans that come before you.

Similarly, protections of public viewsheds appear to be missing in the CLUP, including protection of the public views of the harbor and ocean from Begonia Street and Begonia Park in Corona del Mar. Correction of this oversight should

26

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be required in the modifications to the CLUP, since both General Plan and CLUP policies are supposed to protect public views, but this particular viewshed is not listed in the modified CLUP. This issue is a current issue at Begonia Park, where a private residence application (Megonigal) has been submitted to the City of Newport Beach that would block up to 40% of the public view of the harbor and ocean from Begonia Park and 100% of the public view at the end of Begonia Street. This application was approved by the Newport Beach Planning Department and the Planning Commission recently.

In addition, clearer policies should be in the CLUP that protect coastal bluffs, including the coastal bluff along the entrance to Newport Harbor at Carnation Ave and Ocean Blvd. A private multifamily luxury condo project (Aerie) has been submitted that will carve out up to 40 feet deep into the coastal bluff and jut out over the bluff face, causing substantial landform alteration and potential geologic stability problems. The CLUP is vague enough on this issue that the City Planning Department has approved this project as consistent with the CLUP, despite objections from the citizenry about impacts to the coastal bluff, public views, predominant line of existing development, and geologic stability questions.

As a matter of fact, the City Council passed an amendment to the CLUP in November 2007, relating to coastal bluff developments along Pacific Drive, Ocean Blvd, and Carnation Avenue in November 2007, CLUP Amendment No. 2007-003 (PA 2007-196), but this amendment has not yet been forwarded to the Coastal Commission. Perhaps now is the time to incorporate this amendment into the official CLUP.

These examples illustrate how the reconciliation of the General Plan and Coastal Land Use Plan must be done in a manner that protects our coastal resources consistent with Coastal Act resource protections. The current General Plan and CLUP do not appear to meet these requirements.

Therefore, we urge you to uphold the Coastal Act and support your staff's recommendation to deny the application and institute modifications to the City's application.

We also recommend that this item be continued so that staff and the public can address other issues including the ESHA buffers, coastal viewsheds, and coastal bluff issues enumerated above. According to the staff report, the Coastal Commission has until February of 2009 to act upon this submission, which would give more time for both the staff and the public to more carefully examine the considerably complexities involving the submission and allow more adequate consideration of the alternatives that would ensure compliance with the Chapter 3 resource protections of the Coastal Act. The public has not had enough time to

27

JAN D. VANDERSLOOT, M.D.

Certified, American Board of Dermatology

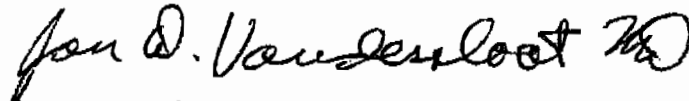
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Office Fax: (714) 848-6643

fully address these issues since the staff report was only made public on Friday October 31, just 5 days ago.

Thank you for your support and your dedication to the protection and preservation of our coast.

Sincerely,



Jan D. Vandersloot, MD

28

Nov 4 2008 2:46 PM

No. 5117 P. 1
RECEIVED

NOV 04 2008

CALIFORNIA
COASTAL COMMISSION

FORM FOR DISCLOSURE
OF EX PARTE
COMMUNICATIONS

Name or description of project, LCP, etc.:

Newport Beach LCP No. NBP-MAJ-1-07

Date and time of receipt of communication:

Oct. 31, 2008 12:30 pm

Location of communication:

La Jolla, CA

Type of communication (letter, facsimile, etc.)

Personal Meeting

Person(s) initiating communication:

David B. Neich, Hon. Counsel

Person(s) receiving communication:

Pat Kruse

Detailed substantive description of content of communication:
(Attach a copy of the complete text of any written material received.)

Applicant (City of Newport Beach) and agent explained differences between
state positions and City positions which included: 1) Marineros Mile cell site
is recommending the total elimination of any residential and office development.
The City is opposed to the total elimination of these land uses. 2) cell site
wants the elimination of the residential use associated with the existing residential
component of the Balboa Bay Club, the City is requesting that the Residential designation
remain until 2014 when the current lease expires. 3) cell site wants to prohibit
ski areas and condo hotels from all Visitor Sweeping zones. City wants to defer this question
until the City submits its Implementation Actions Program.

11/1/08

Date

Signature of Commissioner

If the communication was provided at the same time to staff as it was provided
to a Commissioner, the communication is not ex parte and this form does not
need to be filled out.

If communication occurred seven or more days in advance of the Commission
hearing on the item that was the subject of the communication, complete this
form and transmit it to the Executive Director within seven days of the
communication. If it is reasonable to believe that the completed form will
not arrive by U.S. mail at the Commission's main office prior to the
commencement of the meeting, other means of delivery should be used, such as
facsimile, overnight mail, or personal delivery by the Commissioner to the
Executive Director at the meeting prior to the time that the hearing on the
matter commences.

If communication occurred within seven days of the hearing, complete this
form, provide the information orally on the record of the proceeding and
provide the Executive Director with a copy of any written material that was
part of the communication.

**FORM FOR DISCLOSURE OF
EX-PARTE COMMUNICATIONS**

NOISSIHWOO TALSOCAL
COMMISSION
CALIFORNIA

NOV 07 2008

RECEIVED
1-1-07

Name or description of the project: Thursday 14.a. City of Newport Beach LCP Amendment No. NPB-MAJ-1-07 (Land Use Changes)

Time/Date of communication: Friday, November 7, 2008 9:15 am

Location of communication: La Jolla

Person(s) initiating communication: Dave Grubb, Gabriel Solmer, Graham Forbes, Penny Elia

Person(s) receiving communication: Patrick Kruer

Type of communication: Meeting

Support staff recommendation of denial.

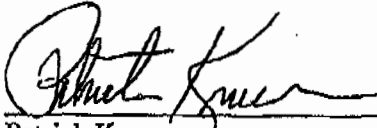
This LCP amendment could clear the way for more development that is inconsistent with the Coastal Act.

Stricter language is needed to ensure adequacy of ESHA protections and public use and access protections. This issue involves amending the Newport Beach CLUP to be consistent with the recently passed General Plan Update of December 2006. The staff of the Coastal Commission is recommending denial, with suggested improvements to the CLUP to make it consistent with the Coastal Act. The Coastal Act is the standard of review since the City of Newport Beach does not have a certified LCP.

The citizens groups Greenlight and SPON agree with denial of the LCP amendment due to the increased in density and intensity with the new land use plan, the loss of hotels to time shares (Hyatt) the need to further protect the ESHA's and buffers (Hyatt, Banning Ranch, with only 50-foot buffers), bluff stability issues (Aerie), development entitlement within submerged lands (Aerie) and the need to specify more explicit viewshed protections (Begonia Park, Mariners Mile). Since passage of the new General Plan, Newport Beach is seeing efforts to allow development in viewshed areas such as a residential development adjacent to Begonia Park and at the end of Begonia Street in Corona del Mar involving view loss from the public park, the development of a massive condo project on the coastal bluff at Aerie, an effort to replace hotel rooms and golf course with time shares located only 50 feet from ESHA at the Hyatt Regency hotel, and a plan to place over 1375 homes, commercial and hotel at Banning Ranch with only 50 foot buffers from the ESHA's.

The new General Plan converts visitor serving uses to residential and commercial, contrary to Coastal Act provisions (Mariners Mile, Hyatt Regency)

Date: November 7, 2008


Patrick Kruer

EX-PARTE COMMUNICATIONS DISCLOSURE

Person(s) initiating communication: Penny Elia 14a
Sierra Club
Graham Forbes 9a
UNITE HERE Local 30
Judy Fogel 20b
Malibu resident

Person(s) receiving communication: Larry Clark
Location of communication: Telephone
Time/Date of communication: November 7, 2008 – 3 pm
Type of communication: Teleconference

Name or description of the project(s)/topics of discussion:

9. NEW APPEALS. See AGENDA CATEGORIES.

a. **Appeal No. A-6-PSD-08-004 (Lane Field Developers, San Diego)** Appeal by Commissioners Kruer & Shallenberger, Ian Trowbridge & UNITE-HERE Local 30 from decision of Port of San Diego granting permit with conditions to Lane Field San Diego Developers, LLC to construct 2 hotels (205 ft.-high & 275 ft.-high) with 800 rooms total, approximately 80,000 sq.ft. of retail uses, restaurants, public spaces and underground parking for 1,330 vehicles, and development of an off-site hostel and public shuttle program, at site north of Broadway Street between Pacific Highway and Harbor Drive, Port District, San Diego, San Diego County. (DL-SD)

We urge the Commission to find that appeal Appeal No. A-6-PSD-08-004 (Lane Field Developers, San Diego) raises a substantial issue and that the project should be reviewed at a de novo hearing.

14. LOCAL COASTAL PROGRAMS (LCPs) See AGENDA CATEGORIES.

a. **City of Newport Beach LCP Amendment No. NPB-MAJ-1-07 (Land Use Changes).** Public hearing and action on request by the City of Newport Beach to amend the certified Land Use Plan (LUP) by: (a) changing the land use classification and density/intensity system currently used in the LUP and LUP maps to reflect the new system adopted in the City General Plan's Land Use Element Update; (b) change in land use designation of 55 sites involving several hundred properties in the coastal zone; (c) policy revisions and additions addressing land uses, site design, building volume, mass, clustering, setbacks, architecture, and nonconformities, Newport Beach, Orange County. (KFS/LR-LB)

We not only ask you to support staff's recommendation for denial of the proposed changes to the LUP by the City of Newport Beach and approval with modifications, but we also ask you to consider postponing this issue to resolve important questions relating to Chapter 3 policies including ESHAs and the size of the buffer areas, public access to the coast, and protection of public viewshed areas and coastal bluffs.

20b. **Appeal No. A-4-MAL-08-074 (Los Angeles Co. Beaches & Harbors, Malibu)** Appeal by Commissioners Wan and Kruer from decision of City of Malibu granting permit to Los Angeles County Beaches & Harbors for restoration and repair of portion of Zuma Creek that runs along Zuma Beach access road beneath Highway One to correct current flood damage and prevent future access road flooding, at 30050 Pacific Coast Highway, Malibu, Los Angeles County. (DC-V)

We ask you to support the appeal by Commissioners Wan and Kruer.

Larry Clark
Calif Coastal Commissioner
11/10/08

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302
(562) 590-5071

**Th14a**

October 30, 2008

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
Liliana Roman, Coastal Program Analyst

SUBJECT: **City of Newport Beach Land Use Plan Amendment NPB-MAJ-1-07
Land Use Classifications/Land Use Changes**

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

The proposed land use plan amendment would: (a) change the land use classification and density/intensity system currently used in the LUP and LUP maps to reflect the new system adopted in the City General Plan's Land Use Element Update; (b) change land use designations on 55 sites involving several hundred properties in the coastal zone; (c) revise policies and add new policies to address land uses, site design, building volume, mass, clustering, setbacks, architecture, and nonconformities.

SUMMARY OF STAFF RECOMMENDATION

Commission staff recommends that the Commission **DENY** the proposed City of Newport Beach Land Use Plan Amendment NPB MAJ 1-07 as submitted and **APPROVE** the amendment subject to suggested modifications. The motions to accomplish this are found on Page 5.

The major issues raised by this amendment request are 1) the proposed establishment of residential uses as allowed uses in existing priority commercial areas or public tidelands (i.e. establishment of mixed use areas) that are priority visitor serving and marine commercial areas in the City (e.g. sites at Mariners' Mile, Balboa Bay Club & Resort Site, Lido Peninsula); 2) the conversion of certain sites that are currently designated for visitor serving uses and/or are developed with visitor serving uses to lower priority land use categories such as residential or private institutional) (e.g. sites at Coast Highway at Cedar Street, 3366 Via Lido, Balboa Blvd. at Island Avenue, and the Balboa Fun Zone); 3) the need to address prioritizing preservation of existing overnight visitor accommodations through appropriate land use designations and policies to address timeshare-type Limited Use Overnight Visitor Accommodations, 4) the absence of policies to protect and provide for lower cost overnight visitor accommodations; 5) the need to include certain policy provisions to address transit issues and smart growth; and 6) the need to address deficiencies in the biological resource protection policies of the

amended plan. Commission staff have recommended suggested modifications to address the issues identified above.

ANTICIPATED AREAS OF CONTROVERSY

Commission and City staff have been working together to address the variety of issues raised by the proposed land use plan amendment. Through negotiations, Commission and City staff have come to agreement regarding land use designation changes at five (5) sites that were originally in contention over provision of priority uses. However, except for Suggested Modification No. 11, relative to the Orange County Harbor Patrol site, some disagreement remains with respect to those remaining twelve (12) sites that are the subject of suggested modifications that address land use changes.

Commission staff have also been working with City staff regarding policy revisions. For instance, Commission staff have incorporated into its recommendation policy language suggested by City staff regarding view corridors and the provision of public access to and along the water at Mariners' Mile. In addition, Commission staff believe City staff will likely not object to policies recommended relative to transit and smart growth.

However, Commission staff believe City staff remain in opposition to policies recommended regarding Limited Use Overnight Visitor Accommodations (LUOVAs) and the protection and provision of lower cost overnight visitor accommodations. Commission staff have made an effort to narrow down the areas of objection, in part, by deferring some of the finer points to the forthcoming Implementation Plan submittal regarding 1) the definition of/methodology for determining what would be considered 'lower cost'; 2) the amount of any in-lieu fee that would need to be paid in cases where lower-cost overnight accommodations are being demolished and not replaced and in cases when high cost accommodations are being constructed; and 3) the definitions of terms associated with LUOVAs such as timeshares, condominium-hotels, fractionals, etc. As of the date of this staff report, staff is unsure whether City staff continue to have objections to the staff recommendation given the deferral of decisions on these often difficult issues.

It is unknown whether City staff have objections to the policies recommended relative to biological resources; although, Commission staff modeled those policies off of existing policies in the Coastal Land Use Plan relative to public access dedications and offers to dedicate in an effort to minimize possible objections.

ADDITIONAL INFORMATION

For further information, please contact **Karl Schwing or Liliana Roman** 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. **James Campbell** is the contact person for the City of Newport Beach, and he may be reached by calling **(949) 644-3000**.

EXHIBITS

Click on the links below to go to the exhibits.

1. Vicinity Map
2. City Council Resolution No. 2007-70 approved on November 13, 2007
3. Proposed Changes to Text of Newport Beach Coastal Land Use Plan (including changes to Land Use Classification system)
4. Proposed Land Use Maps
5. Description of 55 Locations Where Land Use Changes Would Occur
6. Land Use Maps Depicting the 55 Locations Where Land Use Changes Would Occur

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I. COMMISSION RESOLUTION ON CITY OF NEWPORT BEACH LOCAL COASTAL PROGRAM AMENDMENT 1-07

Motion #1

*"I move that the Commission **CERTIFY** the City of Newport Beach Land Use Plan Amendment NPB MAJ 1-07 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 1-07 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 1-07 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 1-07 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 April 27, 2007. On May 10, 2007, 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 November 19, 2007. The Commission approved a request for a one-year (1) time extension of the amendment on January 10, 2008, which gives the Commission until February 16, 2009 (i.e. until the February 2009 hearing which is presently scheduled for February 4th-6th) to act on this submission.

IV. SUMMARY OF PUBLIC PARTICIPATION

The City of Newport Beach approved the Land Use Plan amendment request through a City Council public hearing on November 13, 2007. The subject Coastal Land Use Plan amendment follows on a General Plan update that was approved by the City Council on July 25, 2006, and approved by voters in a general municipal election held November 7, 2006. Following a Planning Commission hearing on March 8, 2007, the proposed amendment to the CLUP was originally approved by the City Council on March 27, 2007 under resolution 2007-20. However, since the draft LUP amendment had not been available for public review for at least 6 weeks prior to the City's final action to approve the LUP amendment (as required under Section 13515(c) of the California Code of Regulations) the City Council approved a subsequent resolution (Resolution No. 2007-70) on November 13, 2007. A "Notice of Availability" of the LUP amendment was mailed and posted on July 30, 2007, and notice of the City Council hearing was published in the local newspaper on November 3, 2007.

V. SUGGESTED MODIFICATIONS

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

The addition of new policies 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.

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Suggested Modification No.	Change Number (see Map)	Site Location	Existing Use of Subject Properties	Current CLUP Land Use	Proposed CLUP Land Use	Suggested Modification
MAP 1 (see City of Newport Beach's Proposed Changes to the CLUP Map "Icp_lu_amend_Changes_MAP_1")(Exhibit 6)						
1	4	West Newport Area: Coast Highway at Cedar Street (6306, 6308, 6310 Coast HWY W)	Restaurant (Big Belly Deli); Real Estate Office; Professional Office	CV-A (Visitor Serving Commercial)	RT-E (Residential - Two Family)	Retain CV-A (Visitor Serving Commercial) Land Use Designation
MAP 2 (see City of Newport Beach's Proposed Changes to the CLUP Map "Icp_lu_amend_Changes_MAP_2")(Exhibit 6)						
2	3	Lido Village Area: 3366 Via Lido	2-story office building and parking lot	CV-A (Visitor Serving Commercial)	RM-D (Residential - Multiple Unit)	Apply MU-W (Mixed Use-Water Related) Land Use Designation; Limit Commercial Floor Area Ratio (FAR) to 0.39 FAR to comply with City Charter Section 423
3	15	Mariners' Mile Corridor: 1200 W. Coast Hwy	Public Tidelands; Balboa Bay Club & Resort - Hotel (available to public) & Private Club & 144 Residential Units	RH-A/CM-C (Residential High Density/Marine Commercial)	MU-W (Mixed Use-Water Related)	Apply CV-B (Commercial-Visitor) Land Use Designation to entire site
4	19	Mariners' Mile Corridor: (Seaward Side)(3333/3335 W. Coast Hwy to 2001 W. Coast Hwy)	Restaurants, Retail, Boat Sales, Boat Charter Services, Boat Repair Yards; Two sites have existing non-conforming residential uses 2547 West Coast Hwy (existing apartment behind commercial shops) and 3121 West Coast Hwy (multi-story residential cooperative with 28 units)	CM-B (Marine Commercial)	MU-W (Mixed Use-Water Related)	Apply CM (Recreation and Marine Commercial) Land Use Designation
5	n/a	McFadden Square: 2102 Ocean Front W	Hotel - Dorymans Inn	CG-C (General Commercial)	MU-W (Mixed Use-Water Related)	Apply CV-B (Visitor Serving Commercial) Land Use Designation

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Suggested Modification No.	Change Number (see Map)	Site Location	Existing Use of Subject Properties	Current CLUP Land Use	Proposed CLUP Land Use	Suggested Modification
6	n/a	Mariners' Mile (inland side): 2300 Coast Hwy W	Hotel - Holiday Inn Express	CG-B (General Commercial)	MU-W (Mixed Use-Water Related)	Apply CV (Visitor Serving Commercial) Land Use Designation
7	n/a	McFadden Square Area: 2306 Ocean Front W	Hotel - Newport Beach Hotel	CG-C (General Commercial)	MU-W (Mixed Use-Water Related)	Apply CV (Visitor Serving Commercial) Land Use Designation
8	n/a	Lido Peninsula (Planning Study Area 1 (PSA-1)) includes Shipyard Way, Anchorage Way, The Rhine, Anza St, Beach Dr, Cabrillo St, Nomad St, Drake St, El Paseo St, Bolivar St, Fremont St, Channel Road, and a portion of Lido Park Dr.	Shipyard, Mobile Home Park, Commercial, Residential	CM-B & RM-B (Recreation & Marine Commercial and Medium Density Residential)	MU-W (Mixed Use-Water Related)	Retain existing CM-B (Recreation & Marine Commercial) and RM-B (Medium Density Residential) Land Use Designations
MAP 3 (see City of Newport Beach's Proposed Changes to the CLUP Map "Icp_lu_amend_Changes_MAP_3")(Exhibit 6)						
9	2	Balboa Peninsula: Northerly side of Balboa Boulevard at Island Avenue (500-514 Balboa Blvd. W)	New market under development; plus existing restaurant, hair salon, barber, Laundromat, coffee shop	CR (Commercial-Residential)	RT-E (Residential-Two Family)	Apply MU-V (Mixed Use-Vertical) Land Use Designation
10	7	Balboa Village: 600 E. Bay Ave/ 600 Edgewater Pl)	Balboa Fun Zone - Visitor Serving Commercial & Nautical Museum	CG-C (General Commercial)	PI-C (Private Institutional)	Apply CV (Visitor Serving Commercial) Land Use Designation
11	11	1901-1911 Bayside Drive	Orange County Harbor Patrol/Coast Guard Site	OS (Open Space)	PF-A (Public Facility)	Apply PR (Public Recreation) Land Use Designation over sandy beach area
12	n/a	Balboa Village: 105 Main Street	Hotel - Balboa Inn	CG-C (General Commercial)	MU-V (Mixed Use-Vertical)	Apply CV -B (Visitor Serving Commercial) Land Use Designation

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CCC Staff Suggested Modifications - Inserted language shown in underline; deleted language shown in ~~strike-out~~.

Suggested Modification No. 13: In consultation with the Coastal Commission's mapping unit, modify all maps that depict the coastal zone boundary in the Banning Ranch area to accurately depict the location of the coastal zone boundary.

Suggested Modification No. 14: In Chapter 2.0 (Land Use and Development), Section 2.1 (Land Use), Sub-section 2.1.1 (Land Use Categories) modify the 'uses' for Mixed Use Water Related-MU-W in Table 2.1.1-1 (Land Use Plan Categories), as follows: The MU-W category is intended to provide for commercial development on or near the bay in a manner that will encourage the continuation of coastal-dependent and coastal-related uses and visitor-serving uses, as well as allow for the integrated development of residential uses on the upper floors only. Freestanding residential uses shall be prohibited. Overnight accommodations (e.g. hotels, motels, hostels) are allowed. Limited Use Overnight Visitor Accommodations (e.g. time shares, fractionals, condominium-hotels) shall be prohibited within areas designated Mixed Use-Water Related.

Suggested Modification No. 15: In Chapter 2.0 (Land Use and Development), Section 2.1 (Land Use), Sub-section 2.1.1 (Land Use Categories) modify the 'uses' for Visitor Serving Commercial-CV in Table 2.1.1-1 (Land Use Plan Categories), as follows: The CV category is intended to provide for accommodations (e.g. hotels, motels, hostels), goods, and services intended to primarily serve visitors to the City of Newport Beach. Limited Use Overnight Visitor Accommodations (e.g. time shares, fractionals, condominium-hotels) shall be prohibited within areas designated Visitor Serving Commercial.

Suggested Modification No. 16: In Chapter 2.0 (Land Use and Development), Section 2.1 (Land Use), Sub-section 2.1.3 (West Newport) modify proposed Policy 2.1.3-1, as follows: Work with community groups and the County to facilitate the acquisition of a portion or all of the Western Entry Parcel (designated RM/OS) as open space, which may be used as a staging area for Orange Coast River Park with public parking, public park-related uses, and an underpass access to the ocean. As an alternative, accommodate multi-family residential on all or portions of the property not used for open space, public parking, and public park-related uses. Require the siting and design of new development, including landscaping and public access, to maintain buffers of sufficient size to protect sensitive or rare resources within the Semeniuk Slough wetland against significant disruption of habitat values.

Suggested Modification No. 17: In Chapter 2.0 (Land Use and Development), Section 2.1 (Land Use), Sub-section 2.1.4 (Mariners' Mile), modify introductory narrative as follows: The vitality of the Mariners' Mile Corridor will be enhanced by establishing a series of distinct retail, mixed-use, and visitor-serving centers. Harbor-fronting

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properties would accommodate a mix of visitor-serving retail and marine-related businesses, with portions of the properties available for housing and mixed-use structures. View and public access corridors from Coast Highway to the Harbor would be required, with a public pedestrian promenade developed along the length of the Harbor frontage. Parcels on the inland side of Coast Highway, generally between Riverside Avenue and the southerly projection of Irvine Avenue, would evolve as a pedestrian-oriented mixed-use “village” containing retail businesses, offices, services, and housing. Sidewalks would be improved with landscape and other amenities to foster pedestrian activity. Inland properties directly fronting onto Coast Highway and those to the east and west of the village would provide for retail, marine-related, and office uses. Streetscape amenities are proposed for the length of Mariners’ Mile to improve its appearance and identity.

Suggested Modification No. 18: In Chapter 2.0 (Land Use and Development), Section 2.1 (Land Use), Sub-section 2.1.4 (Mariners' Mile), Modify proposed Policy 2.1.4-1, as follows: For properties located on the inland side of Coast Highway in the Mariners’ Mile Corridor ~~(that are designated as MU-H)~~, (a) the Coast Highway frontages shall be developed for marine-related and highway-oriented general commercial uses in accordance with CM and CG categories; and (b) portions of properties to the rear of the commercial frontage may be developed for free-standing neighborhood-serving retail, multi-family residential units, or mixed-use buildings that integrate residential with retail uses on the ground floor in accordance with the CN, RM , CV, or MU-V categories respectively.

Suggested Modification No. 19: In Chapter 2.0 (Land Use and Development), Section 2.1 (Land Use), Sub-section 2.1.4 (Mariners' Mile), Modify proposed Policy 2.1.4-2, as follows: For bay-fronting properties ~~(that are designated as MU-WCM)~~, encourage marine-related and visitor-serving retail, restaurant, hotel, institutional, and recreational uses ~~intermixed with residential uses~~. Permitted uses include those permitted by the CM, and CV, MFR, and MU-V categories. ~~A minimum of 50 percent of any lot shall be used for the CM or CV land uses.~~

Suggested Modification No. 20: In Chapter 2.0 (Land Use and Development), Section 2.1 (Land Use), Sub-section 2.1.4 (Mariners' Mile), Add new policy to Section 2.1.4 (Mariner's Mile), as follows: For bay-fronting properties that are designated as CV or CM, require marine-related and visitor-serving retail, restaurant, hotel/motel, institutional, and recreational uses.

Suggested Modification No. 21: In Chapter 2.0 (Land Use and Development), Section 2.1 (Land Use), Sub-section 2.1.4 (Mariners' Mile), Add new policy to Section 2.1.4 (Mariner's Mile), as follows: Development shall be designed and planned to achieve high levels of architectural quality and compatibility among on-site and off-site uses. Adequate pedestrian, non-automobile and vehicular circulation and parking shall be provided.

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Suggested Modification No. 22: In Chapter 2.0 (Land Use and Development), Section 2.1 (Land Use), Sub-section 2.1.4 (Mariners' Mile), Add new policy to Section 2.1.4 (Mariner's Mile), as follows: Require sufficient area be provided for individual uses to prevent fragmentation and assure each use's viability, quality, and compatibility with adjoining uses.

Suggested Modification No. 23: In Chapter 2.0 (Land Use and Development), Section 2.1 (Land Use), Sub-section 2.1.4 (Mariners' Mile), Add new policy to Section 2.1.4 (Mariner's Mile), as follows: For bay-fronting properties, provide plazas and other open spaces that protect existing and provide new view corridors and access from Coast Highway to the Harbor.

Suggested Modification No. 24: In Chapter 2.0 (Land Use and Development), Section 2.1 (Land Use), Sub-section 2.1.4 (Mariners' Mile), Add new policy to Section 2.1.4 (Mariner's Mile), as follows: For bay-fronting properties, require that development on the Bay frontage implement amenities that assure access for coastal visitors including the development of a public pedestrian promenade along the bayfront.

Suggested Modification No. 25: In Chapter 2.0 (Land Use and Development), Section 2.1 (Land Use), Sub-section 2.1.4 (Mariners' Mile), Add new policy to Section 2.1.4 (Mariner's Mile), as follows: For bay-fronting properties require that buildings be located and sites designed to provide clear views of and access to the Harbor and Bay from the Coast Highway in accordance with the following principles, as appropriate:

- Clustering of buildings to provide open view and access corridors to the Harbor
- Modulation of building volume and mass
- Variation of building heights
- Inclusion of porticoes, arcades, windows, and other "see-through" elements in addition to the defined open corridor
- Minimization of landscape, fencing, parked cars, and other nonstructural elements that block views and access to the Harbor
- Prevention of the appearance of the harbor being walled off from the public right-of-way
- Inclusion of setbacks that in combination with setbacks on adjoining parcels cumulatively form functional view corridors
- Encourage adjoining property owners to combine their view corridors to achieve a larger cumulative corridor than would be achieved independently
- A site-specific analysis shall be conducted for new development to determine the appropriate size, configuration, and design of the view and access corridor that meets these objectives, which shall be subject to approval in the Coastal Development Permit process.

Suggested Modification No. 26: In Chapter 2.0 (Land Use and Development), Section 2.1 (Land Use), Sub-section 2.1.5 (Balboa Peninsula) add new maps (or modify existing proposed maps) that define the boundaries of the areas labeled 'Lido Village', 'Cannery

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Village', 'McFadden Square', 'Lido Peninsula', and 'Balboa Village' consistent with the draft maps submitted by City staff on October 7, 2008.

Suggested Modification No. 27: In Chapter 2.0 (Land Use and Development), Section 2.1 (Land Use), Sub-section 2.1.5 (Balboa Peninsula), Modify proposed Policy 2.1.5-1, as follows: For bay-fronting properties (that are designated as MU-W), marine-related uses may be intermixed with buildings that provide residential on the upper floors. Permitted uses include those permitted by the CM, CV, and MU-V categories. In the MU-W designation, free-standing and ground floor residential shall not be permitted in Lido Marina Village, Cannery Village, McFadden Square, and Balboa Island.

Suggested Modification No. 28: In Chapter 2.0 (Land Use and Development), Section 2.1 (Land Use), Sub-section 2.1.5 (Balboa Peninsula), Modify proposed Policy 2.1.5-2, as follows: Encourage uses that take advantage of Lido Village's location at the Harbor's turning basin and its vitality and pedestrian character, including visitor-serving and retail commercial, small lodging facilities (bed and breakfasts, inns), and mixed-use buildings that integrate residential above the ground floor with retail uses.

Suggested Modification No. 29: In Chapter 2.0 (Land Use and Development), Section 2.1 (Land Use), Sub-section 2.1.5 (Balboa Peninsula), Modify proposed Policy 2.1.5-7, as follows: Accommodate visitor- and local-serving uses that take advantage of McFadden Square's waterfront setting including specialty retail, restaurants, and small scale overnight accommodations, as well as mixed-use buildings that integrate upper floor residential with ground level retail.

Suggested Modification No. 30: In Chapter 2.0 (Land Use and Development), Section 2.1 (Land Use), Sub-section 2.1.5 (Balboa Peninsula), Modify proposed Policy 2.1.5-10, as follows: ~~In~~ For the Balboa Village core properties that are (designated as MU-V), encourage local- and visitor-serving retail commercial and mixed-use buildings that integrate residential with ground level retail or office uses that attract customer activity and improve pedestrian character.

Suggested Modification No. 31: In Chapter 2.0 (Land Use and Development), Section 2.1 (Land Use), Sub-section 2.1.5 (Balboa Peninsula), Add new policy as follows: Development and use of lands designated CV (Visitor Serving Commercial) within Balboa Village may include a component that is a visitor serving private institutional facility such as a nautical museum, or similar visitor serving private institutional use.

Suggested Modification No. 32: In Chapter 2.0 (Land Use and Development), Section 2.1 (Land Use), Sub-section 2.1.8 (Balboa Bay Tennis Club), Modify proposed Policy 2.1.8-1, as follows: Allow the horizontal intermixing of ~~27~~ short-term rental units and ~~5~~ single-family homes with the expanded tennis club facilities. Permitted uses include those permitted by the MU-H and PR categories.

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Suggested Modification No. 33: In Chapter 2.0 (Land Use and Development), Section 2.2 (General Development Policies), Sub-section 2.2.5 (Nonconforming Structures and Uses), Modify proposed Policy 2.2.5-2, as follows: In the older commercial districts of Balboa Village and Corona del Mar allow existing commercial buildings that exceed current intensity limits to be renovated, upgraded, or reconstructed to no more than their pre-existing intensity, when appropriate to complement the scale and form of existing development, and only if the renovated, upgraded, or reconstructed structure also meets all other applicable requirements of the Coastal Land Use Plan.

Suggested Modification No. 34: In Chapter 2 (Land Use and Development), Section 2.3 (Visitor Serving and Recreational Development), Sub-section 2.3.1 (Commercial), add the following policy: Any proposal to demolish existing overnight accommodations shall be required to demonstrate that rehabilitation of the units is not feasible. Any hotel/motel rooms for which a certificate of occupancy has been issued on or before the effective date of adoption of Coastal Land Use Plan Amendment No. 2007-001 (NPB-MAJ-1-07) shall not be permitted to convert to a Limited Use Overnight Visitor Accommodation.

Suggested Modification No. 35: In Chapter 2 (Land Use and Development), Section 2.3 (Visitor Serving and Recreational Development), Sub-section 2.3.3 (Lower Cost Visitor and Recreational Facilities), Modify existing policy 2.3.3-1, as follows: Protect, encourage and provide lower-cost overnight visitor accommodations, including campgrounds, recreational vehicle parks, hostels, and lower-cost hotels and motels. Any coastal development permit for the demolition of existing lower cost overnight visitor accommodations or new development of high-cost overnight visitor accommodations shall require the applicant to provide lower cost overnight visitor accommodations. Fees in-lieu of provision of lower cost overnight visitor accommodations shall be required pursuant to Policy 2.3.3-X and 2.3.3-Y.

Suggested Modification No. 36: In Chapter 2 (Land Use and Development), Section 2.3 (Visitor Serving and Recreational Development), Sub-section 2.3.3 (Lower Cost Visitor and Recreational Facilities), add the following policy to Section 2.3.3 (Lower Cost Visitor Recreation Facilities): Policy 2.3.3-X - IN LIEU FEES FOR DEMOLITION OF EXISTING LOWER COST OVERNIGHT VISITOR ACCOMMODATIONS AND REDEVELOPMENT OF EXISTING HOTELS/MOTELS.

A. In-Lieu Fees for Demolition of Existing Lower Cost Overnight Visitor Accommodations: An in-lieu fee shall be required for any demolition of existing lower cost overnight visitor accommodations, unless all those units are replaced by lower cost overnight visitor accommodations, in which case the in-lieu fee shall be waived. This in-lieu fee shall be required as a condition of approval of a coastal development permit, in order to provide significant funding to support the establishment of lower cost overnight visitor accommodations within the coastal area of Orange County, and preferably within the City of Newport Beach's coastal zone. A per-unit fee for the total number of existing

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lower cost overnight units that are demolished and not replaced shall be required. The fee shall be determined in accordance with methods to be established in the implementing regulations for this certified land use plan (when such regulations are certified) and the coastal development permit process. The method for fee establishment shall consider the cost of a replacement lower cost overnight visitor accommodation facility and include such factors as the costs of land, structures, architecture, engineering, construction management, permit fees, legal fees, furniture, equipment and marketing. Alternative or additional factors deemed necessary to establish an appropriate fee may also be considered. The methodology shall include provisions to adjust the fee to account for inflation. The implementing regulations shall contain requirements to assure that fees accrue interest, are used for their intended purpose, and used within a reasonable timeframe. Provisions shall also be made for oversight of fee management and use by the Executive Director of the Coastal Commission.

B. In-lieu Fees for Redevelopment with High-Cost Overnight Visitor Accommodations. If the proposed demolition of existing lower cost overnight visitor accommodations also includes redevelopment of the site with high-cost overnight visitor accommodations, the fee shall also apply to 25% of the number of rooms in excess of the number being lost. The in-lieu fee shall be required as a condition of approval of a coastal development permit, in order to provide significant funding to support the establishment of lower cost overnight visitor accommodations within the coastal area of Orange County, and preferably within the City of Newport Beach's coastal zone. All in-lieu fees required from sub-section A above and this sub-section B shall be combined. The fee shall be determined as described in sub-section A of this policy.

Suggested Modification No. 37: In Chapter 2 (Land Use and Development), Section 2.3 (Visitor Serving and Recreational Development), Sub-section 2.3.3 (Lower Cost Visitor and Recreational Facilities), add the following policy: POLICY 2.3.3-Z – IN LIEU FEES FOR NEW DEVELOPMENT OF OVERNIGHT VISITOR ACCOMMODATIONS.

An in-lieu fee shall be required for new development of overnight visitor accommodations in the coastal zone that are not low or moderate cost facilities. This in-lieu fee shall be required as a condition of approval of a coastal development permit, in order to provide significant funding to support the establishment of lower cost overnight visitor accommodations within the coastal area of Orange County, and preferably within the City of Newport Beach's coastal zone. The fee shall apply to 25% of the total number of proposed units that are high-cost overnight visitor accommodations. The fee shall be determined as described in Policy 2.3.3-X.

Suggested Modification No. 38: In Chapter 2 (Land Use and Development), Section 2.3 (Visitor Serving and Recreational Development), Sub-section 2.3.3 (Lower Cost Visitor and Recreational Facilities), add the following policy: Policy 2.3.3-W - DEFINING LOW-, MODERATE- AND HIGH-COST OVERNIGHT ACCOMMODATIONS.

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A method to define whether a facility providing overnight accommodations is low, moderate, or high cost shall be developed in the implementing regulations for this land use plan (when such regulations are certified) and through the coastal development permit process.

Suggested Modification No. 39, add the following definition to Section 5.0 (Glossary): Limited Use Overnight Visitor Accommodations – Any hotel, motel, or other similar facility that provides overnight visitor accommodations wherein some or all of the units, rooms, lots or parcels or other segment of the facility may be sold to a subsequent purchaser who receives the right in perpetuity, for life, or a term of years, to the recurrent, exclusive use or occupancy of a lot, parcel, unit, room(s), or segment of the facility, annually or on some other seasonal or periodic basis, for a period of time that has been or will be allotted from the use or occupancy periods into which the facility has been divided and shall include, but not be limited to timeshare, condominium-hotel, fractional ownership hotel, or uses of a similar nature, as those terms shall be defined in the implementing regulations for this land use plan (when such regulations are certified).

Suggested Modification No. 40: In Chapter 2 (Land Use and Development), Section 2.9 (Transportation), Sub-section 2.9.1 (Public Transit), Modify existing Policy 2.9.1-3, as follows: Locate and design larger commercial and residential developments to be served by ~~facilitate provision or extension of transit service and provide non-automobile circulation to serve new~~ within the development to the greatest extent possible.

Suggested Modification No. 41: In Chapter 2 (Land Use and Development), Section 2.9 (Transportation), Sub-section 2.9.1 (Public Transit), Modify existing Policy 2.9.2-6 (Transportation), as follows: Require new non-residential developments with floor areas of 10,000 square feet or more to provide bicycle racks for use by customers. Encourage smaller non-residential developments to provide such facilities, when feasible.

Suggested Modification No. 42: In Chapter 2 (Land Use and Development), Section 2.9 (Transportation), Sub-section 2.9.1 (Public Transit), Modify existing Policy 2.9.2-7 (Transportation), as follows: Require new non-residential developments with a total of 100 or more employees to provide bicycle racks, lockers, and showers for use by employees and tenants who commute by bicycle. Encourage smaller non-residential developments to provide such facilities, when feasible.

Suggested Modification No. 43: In Chapter 2 (Land Use and Development), Section 2.9 (Transportation), Sub-section 2.9.1 (Public Transit), add new policy: The City shall study alternative funding mechanisms to provide a low-cost public transportation system to serve beach areas impacted by traffic during summertime, peak-use periods. The City shall address feasible implementation measures for a summertime shuttle or other transit opportunities in the Implementation Plan of the LCP.

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Suggested Modification No. 44: In Chapter 2 (Land Use and Development), Section 2.9 (Transportation), Sub-section 2.9.1 (Public Transit), add new policy: Employment, retail, and entertainment districts and coastal recreational areas should be well served by public transit and easily accessible to pedestrians and bicyclists. Streets, sidewalks, bicycle paths, and recreational trails (including the Coastal Trail) should be designed and regulated to encourage walking, bicycling, and transit ridership.

Suggested Modification No. 45: In Chapter 2 (Land Use and Development), Section 2.9 (Transportation), Sub-section 2.9.1 (Public Transit), add new policy: The City shall encourage employers to provide incentives for transit ridership (e.g. subsidies for transit use, shuttles to transit stations), ridesharing, vanpools, and other transportation demand measures designed to reduce vehicle miles traveled.

Suggested Modification No. 46: In Chapter 2 (Land Use and Development), Section 2.9 (Transportation), Sub-section 2.9.1 (Public Transit), add new policy: Encourage new developments to design projects to facilitate transit ridership and ridesharing through such means as locating and designing building entries that are convenient to pedestrians and transit riders.

Suggested Modification No. 47, Chapter 4 (Coastal Resource Protection), Section 4.1 (Biological Resources), Sub-section 4.1.1 (Environmentally Sensitive Habitats), add the following policy: In conjunction with new development, require that all preserved ESHA buffers, and all mitigation areas, onsite and offsite, be conserved/dedicated (e.g. open space direct dedication, offer to dedicate (OTD), conservation easement, deed restriction) in such a manner as to ensure that the land is conserved in perpetuity. A management plan and funding shall be required to ensure appropriate management of the habitat area in perpetuity.

Suggested Modification No. 48, Chapter 4 (Coastal Resource Protection), Section 4.1 (Biological Resources), Sub-section 4.1.1 (Environmentally Sensitive Habitats), add the following policy: Require all direct open space dedications or OTDs to be made to a public agency or other appropriate entity that will manage the open space area on behalf of the public.

Suggested Modification No. 49, Chapter 4 (Coastal Resource Protection), Section 4.1 (Biological Resources), Sub-section 4.1.1 (Environmentally Sensitive Habitats), add the following policy: Encourage the acceptance of direct open space dedications or OTDs to the public by the City, a public agency, a private association, or other appropriate entity.

Suggested Modification No. 50, Chapter 4 (Coastal Resource Protection), Section 4.1 (Biological Resources), Sub-section 4.1.1 (Environmentally Sensitive Habitats), add the following policy: Give consideration to applying the Open Space land use category to lands with open space restrictions, dedications, or offers to dedicate.

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Suggested Modification No. 51, Chapter 4 (Coastal Resource Protection), Section 4.1 (Biological Resources), Sub-section 4.1.1 (Environmentally Sensitive Habitats), add the following policy: Dedicated open space areas, or areas where there are open space offers to dedicate, open space easements, and/or open space deed restrictions shall be protected consistent with the requirements of the dedication, offer to dedicate, easement or deed restriction.

Suggested Modification No. 52, Chapter 4 (Coastal Resource Protection), Section 4.1 (Biological Resources), Sub-section 4.1.1 (Environmentally Sensitive Habitats), add the following policy: The City shall maintain an inventory of open space dedications or offers to dedicate to ensure such areas are known to the public and are protected through the coastal development permit process.

Suggested Modification No. 53, in Chapter 4 (Coastal Resource Protection), Section 4.2 (Wetlands and Deepwater Areas) , Sub-section 4.2.3 (Dredging, Diking, and Filling), Modify Existing Policy 4.2.3-1, as follows (and re-letter as appropriate): Permit the diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes in accordance with other applicable provisions of the LCP, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects and limited to the following:

A. Construction or expansion of port/marine facilities.

B. Construction or expansion of coastal-dependent industrial facilities, including commercial fishing facilities, and commercial ferry facilities.

~~C. In wetland areas only, entrance channels for new or expanded boating facilities; and in a degraded wetland, identified by the Department of Fish and Game pursuant to subdivision (b) of Section 30411, for boating facilities if, in conjunction with such boating facilities, a substantial portion of the degraded wetland is restored and maintained as a biologically productive wetland. The size of the wetland area used for boating facilities, including berthing space, turning basins, necessary navigation channels, and any necessary support service facilities shall not exceed 25 percent of the degraded wetland.~~

D. In open coastal waters, other than wetlands, including estuaries and streams, new or expanded boating facilities, including slips, access ramps, piers, marinas, recreational boating, launching ramps, and pleasure ferries, and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.

...

[no intervening changes]

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

In November 2006, the City adopted a comprehensive update to its General Plan that included a new land use classification system and a number of land use changes throughout the City. The proposed amendment to the Coastal Land Use Plan (CLUP) would replace the existing land use classification system in the CLUP with the new land use classification system found in the updated General Plan. The proposed amendment would also change the land use designations on several hundred properties within the coastal zone to be consistent with the designations applied in the General Plan update.

In addition to the new land use classification system and land use changes, the amendment adds new policies that more specifically describe the City's expectations regarding development in West Newport, Mariner's Mile, the Balboa Peninsula, Balboa Island, Newport Dunes, and the Balboa Bay Tennis Club. For example, the policies describe the types of mixed use development desired in certain areas and the quantity of space upon certain lots that should be used for certain uses. Other policies describe desired site design such as building volume, mass, clustering, setbacks, and architecture. Finally, the amendment proposes changes to policies addressing nonconforming structures and uses.

1. Changes to Land Use Classification System

While the nomenclature is different, the new land use classification system is roughly identical to the existing one with regard to the following land use classifications: residential, neighborhood commercial, office commercial, visitor-serving commercial, recreation and marine commercial, general commercial, public facilities, and tidelands and submerged lands. However, the new classification system introduces a new series of land use categories for mixed use development. These include "Mixed Use - Vertical", "Mixed Use - Horizontal" and "Mixed Use - Water". The Mixed Use - Vertical category is designed to allow commercial development on the ground floor and either commercial and/or residential on the upper floors of structures built on the lot. The Mixed Use - Horizontal category also calls for a mixture of commercial and residential uses on the lot, however, the arrangement of those uses can include residential and commercial on the ground floor as well as upper floors. The Mixed Use - Water

category also allows for commercial and residential uses on a single parcel of land, however, the category emphasizes coastal-dependent, coastal-related and visitor-serving uses.

The new classification system also introduces a new Parks and Recreation category. The existing system has only an Open Space category which is used both on lands that are reserved for environmental protection and lands that are more actively used, such as sports parks. The new classification system will now distinguish between Open Spaces that are for environmental protection and passive use and Parks and Recreation areas that are more actively used.

The new land use classification system also includes a new Private Institutions category that is used to identify lands for privately owned facilities that serve the public, including churches, private schools, health care facilities and museums, among other uses. These uses were previously placed under the "public facilities" category, which is a misnomer in that they serve the public, but are not publicly owned ("public facility" usually connotes public ownership).

Finally, the City has eliminated the General Industrial and Light Industrial land use categories from the CLUP, since there are no lands designated for industrial use in the City's coastal zone.

The existing and new land use classification systems can be compared in Exhibit 3.

2. Land Use Changes

Based on an analysis provided by the City, the proposed amendment includes 55 changes to land uses within the portion of the City's coastal zone covered by the CLUP. Collectively, these 55 changes cover several hundred properties. The City provided a chart that identifies each of these changes, along with an explanation of the reason for the change (Exhibit 5). A series of maps was also provided that identifies the locations and boundaries of the changes (Exhibit 6).

Following is a chart identifying those changes that raise issues with regard to the Coastal Act and are at issue in this report:

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Change Number (see Map)	Site Location	Existing Use of Subject Properties	Current CLUP Land Use	Proposed CLUP Land Use	Coastal Act Issue
MAP 1 (see City of Newport Beach's Proposed Changes to the CLUP Map "lcp_lu_amend_Changes_MAP_1")					
4	West Newport Area: Coast Highway at Cedar Street (6306, 6308, 6310 Coast HWY W)	Restaurant (Big Belly Deli); real estate office, professional office	CV-A (Visitor Serving Commercial)	RT-E (Residential)	Site is suitable for visitor serving commercial; proposed use is residential - a lower priority use
MAP 2 (see City of Newport Beach's Proposed Changes to the CLUP Map "lcp_lu_amend_Changes_MAP_2")					
3	Lido Village Area: 3366 Via Lido	2-story office building and parking lot	CV-A (Visitor Serving Commercial)	RM-D (Residential)	Site is suitable for visitor serving commercial; proposed use is residential - a lower priority use
15	Mariners' Mile Corridor: 1200 W. Coast Hwy	Public Tidelands; Balboa Bay Club & Resort - Hotel (available to public) & Private Club & 144 Residential Units	RH-A/CM-C (Residential/ Marine Commercial)	MU-W (Mixed Use-Water Related)	Site is public tidelands; existing nonconforming residential uses should be phased out in favor of visitor serving uses
19	Mariners' Mile Corridor (Seaward Side)(3333/3335 W. Coast Hwy to 2001 W. Coast Hwy)	Restaurants, Retail, Boat Sales, Boat Charter Services, Boat Repair Yards; Two sites have existing non-conforming residential uses 2547 West Coast Hwy (existing apartment behind commercial shops) and 3121 West Coast Hwy (multi-story residential cooperative with 28 units)	CM-B (Marine Commercial)	MU-W (Mixed Use-Water Related)	Site is suitable for visitor serving commercial; proposed use allows for introduction of residential uses into a lively visitor serving commercial area; conflicts between visitor serving uses and residential are an issue
n/a	McFadden Square Area: 2102 Ocean Front W	Hotel - Dorymans Inn	CG-C (General Commercial)	MU-W (Mixed Use-Water Related)	Subject site provides existing visitor serving overnight accommodations and land use plan should apply a land use designation that protects and prioritizes the existing use. Apply CV-B (Visitor Serving Commercial) Land Use Designation

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Change Number (see Map)	Site Location	Existing Use of Subject Properties	Current CLUP Land Use	Proposed CLUP Land Use	Coastal Act Issue
n/a	Mariners' Mile (inland side) 2300 Coast Hwy W	Hotel - Holiday Inn Express	CG-B (General Commercial)	MU-W (Mixed Use-Water Related)	Subject site provides existing visitor serving overnight accommodations and land use plan should apply a land use designation that protects and prioritizes the existing use. Apply CV (Visitor Serving Commercial) Land Use Designation
n/a	McFadden Square Area: 2306 Ocean Front W	Hotel - Newport Beach Hotel	CG-C (General Commercial)	MU-W (Mixed Use-Water Related)	Subject site provides existing visitor serving overnight accommodations and land use plan should apply a land use designation that protects and prioritizes the existing use. Apply CV (Visitor Serving Commercial) Land Use Designation
n/a	Lido Peninsula (Planning Study Area 1 (PSA-1)) includes Shipyard Way, Anchorage Way, The Rhine, Anza St, Beach Dr, Cabrillo St, Nomad St, Drake St, El Paseo St, Bolivar St, Fremont St, Channel Road, and a portion of Lido Park Dr.	Shipyard, Mobile Home Park, Commercial, Residential	CM-B & RM-B (Recreation & Marine Commercial and Medium Density Residential)	MU-W (Mixed Use-Water Related)	The subject are contains existing coastal dependent industries (i.e. shipyard) and a mobile home park. The existing land use designation divides the area into distinct. Marine Commercial and Residential areas. The proposal would convert the entire area to mixed use that would allow the introduction of commercial into residential/mobile home park areas and residential into the commercial areas, including the shipyard. Such changes raise concerns about compatibility.
MAP 3 (see City of Newport Beach's Proposed Changes to the CLUP Map "lcp_lu_amend_Changes_MAP_3")					
2	Balboa Peninsula: Northerly side of Balboa Boulevard at Island Avenue (500-514 Balboa Blvd. W)	New market under development; plus existing restaurant, hair salon, barber, Laundromat, coffee shop	CR (Commercial -Residential)	RT-E (Residential)	Site is suitable for visitor serving commercial; proposed use is residential - a lower priority use

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	Change Number (see Map)	Site Location	Existing Use of Subject Properties	Current CLUP Land Use	Proposed CLUP Land Use	Coastal Act Issue
	7	Balboa Village Area: 600 E. Bay Ave/ 600 Edgewater PI)	Balboa Fun Zone - Visitor Serving Commercial & Nautical Museum	CG-C (General Commercial) - Policies Restrict Uses to Visitor Serving Commercial	PI-C (Private Institutional)	Subject site is at the core of this visitor serving commercial zone. Proposed change is to accommodate a nautical museum. While the nautical museum is an appropriate use for the site, the site shouldn't be designated for private institutional use which would foreclose future use of the site for visitor serving uses
	11	1901-1911 Bayside Drive	Orange County Harbor Patrol/Coast Guard Site	OS (Open Space)	PF-A (Public Facilities)	Beach area should be designated for open space
	n/a	Balboa Village Area: 105 Main Street	Hotel - Balboa Inn	CG-C (General Commercial) - Policies Restrict Uses to Visitor Serving Commercial	MU-V (Mixed Use-Vertical)	Subject site provides existing visitor serving overnight accommodations and land use plan should apply a land use designation that protects and prioritizes the existing use. Apply CV -B (Visitor Serving Commercial) Land Use Designation

3. Changes in Intensity of Use of Land

The proposed land use plan amendment does result in significant changes to the intensity of use of land in the City's coastal zone. Based on the EIR prepared for the General Plan Update (the proposed amendment seeks to bring the CLUP into conformance with the updated General Plan), the quantity of housing units and the square footage of commercial development will increase City-wide, with subsequent increases to the City population. According to the EIR, the City population in 2005 was 83,120 people. Upon build-out of the General Plan, including the addition of 9,549 dwelling units, the population would increase by 31,131 residents to 103,753 people, City-wide (no figures were provided for the coastal zone alone).

According to the EIR, using the pre-updated General Plan as the baseline for what is allowed (which is generally more than what exists today), office space square footage would decrease by 171,465 sq.ft. in Mariners' Mile, decrease by 77,260 sq.ft. in Balboa Village, and decrease by 294,734 on the Balboa Peninsula. Whereas, residential units would increase by 437 units in Mariners' Mile, increase by 276 units in Balboa Village, and increase by 754 units on the Balboa Peninsula. Commercial square footage would increase in Mariners' Mile by 73,408 sq.ft., decrease by 24,837 in Balboa Village, and increase by 76,210 sq.ft. on the Balboa Peninsula. The EIR also contains an estimate of the quantity of hotel-motel rooms that would be anticipated, with no change to the planned number of units along Mariners' Mile (up to 204 rooms (from 177 existing)), an addition of up to 231 rooms in Balboa Village (34 existing, total of 265 planned), and 199 rooms in Balboa Peninsula (41 existing, total of 240 planned). The increases are accomplished by changing floor area ratios and the types of uses allowed on the properties, without changing existing height limits.

4. Prior History of Changes to Land Uses (Commercial to Residential/Residential to Commercial) in the City of Newport Beach's LUP:

- Land Use Plan Amendment 1-06A; Visitor Serving Commercial to Residential at 900 Newport Center Drive (4.25 acre site)
- Land Use Plan Amendment 1-03 A; Retail Service Commercial to Residential at 205 Orange Street
- Land Use Plan Amendment 1-03C; Retail Service Commercial to Residential at 129 Agate Avenue
- Land Use Plan Amendment 1-98A; Retail Service Commercial to Residential at 3312 to 3336 Via Lido (22,500 square foot site)
- Land Use Plan Amendment 1-98B; Residential to Retail Service Commercial at 1800 & 1806 West Balboa Blvd (10,000 square foot site)
- Land Use Plan Amendment 2-92; Retail Service Commercial to Residential at 498 Park Avenue and 203 Agate Avenue

- Land Use Plan Amendment 3-92; in part allowed residential use (Senior Affordable Housing) to be allowed within a site designated Retail Service Commercial at lower Bayview landing site (approximately 5 acre area)
- Land Use Plan Amendment 1-91; Retail Service Commercial to Residential at 3008, 3010 and 3012 West Balboa Blvd
- Land Use Plan Amendment 2-90; Retail Service Commercial to Residential at 1900 West Balboa Blvd
- Land Use Plan Amendment 1-89; in part changed Retail Service Commercial and Recreation & Marine Commercial to Residential at Villa Point site (Coast Highway & Jamboree Road)
- Land Use Plan Amendment 1-87, in part changed Residential to Retail Service Commercial at 3014 West Balboa Blvd (3300 square foot site)
- Land Use Plan Amendment 1-86; in part changed Retail Service Commercial to Residential (senior housing project) at 3901 East Coast Highway

B. Findings for Denial

The Commission hereby finds and declares as follows:

1. Priority Uses

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 private 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.

Section 30224 of the Coastal Act states:

Increased recreational boating use of coastal waters shall be encouraged, in accordance with this division, by developing dry storage areas, increasing public launching facilities, providing additional berthing space in existing harbors, limiting non-water-dependent land uses that congest access corridors and preclude boating support facilities, providing harbors of refuge, and by providing for new boating facilities in natural harbors, new protected water areas, and in areas dredged from dry land.

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.*

a. Designation of Sites for Lower Priority Use that are Suitable for Visitor Serving Uses

The proposed amendment involves several requests to apply a residential land use designation, or incorporate allowances for residential uses in a mixed use fashion, to sites that are presently used for visitor serving commercial and/or are suitable for such use. In general these proposed changes will have an adverse affect on priority visitor-serving opportunities in the area. Residential development is a low priority use within the Coastal Zone. These sites are located in highly visible, well-traveled locations and either do support or could potentially support some form of visitor serving commercial and/or recreational development in the future. Re-designation of these sites for residential development, or the introduction of a residential component to these areas now results in lost future opportunity for expanded, enhanced or even lower cost visitor-serving uses at the site. The value of these sites is discussed below.

West Newport (Map 1 - Exhibit 6)

Map 1, Site No. 4 (Coast Highway at Cedar Street (6306, 6308, 6310 Coast HWY W)): The subject site is currently designated for Visitor Serving Commercial uses. The properties, collectively being about 0.15 acres, are developed with commercial uses including a popular restaurant (Big Belly Deli), a real estate office, and professional offices. The City is proposing to convert the land use designation on these properties to residential. The subject site is adjacent to sites located immediately east that would be designated for visitor serving commercial development. Sites north and west of the subject site are designated for residential uses. The subject properties are located at the intersection of West Coast Highway and Prospect Street. Prospect Street has a

stop light controlled intersection with crosswalk. This street crossing is one of only two locations along Coast Highway in West Newport that provides a safe pedestrian crossing from the beach, across Coast Highway, to the inland side of the highway. Beach visitor-supporting commercial development is only located on the inland side of Coast Highway in West Newport. There are no commercial facilities in West Newport on the seaward side of Coast Highway (closest to the beach). Thus, the subject sites are ideally located to support beach visitors. Furthermore, the proposed conversion of existing commercial sites upcoast of the subject site at 6904 West Coast Highway (Coast Hwy at Fern Street) from commercial to residential makes protection of the subject site an even higher priority.

Lido Village (Map #2 - Exhibit 6)

Map 2, Site No. 3 (3366 Via Lido): The subject site is currently designated for visitor serving commercial purposes and is presently occupied by a 2-story office building and parking lot. This site is approximately 0.4 acres in size. The City proposes to convert the use to residential. The subject site is a waterfront site adjacent to the bulkhead and Newport Bay. There are docks seaward of the site. The sites to the north along the bulkhead are presently designated for visitor serving commercial and are proposed to be designated Mixed Use-Water Related (which also emphasizes visitor serving uses). The sites to the south are currently designated for residential use¹ and will remain so with the proposed LUP amendment. The sites to the east are currently designated for commercial use but are also proposed to be converted to residential use. Sites to the north east are in commercial use and will remain in commercial use. Due to its waterfront location, the subject site is ideally suited for visitor serving commercial uses, overnight accommodations, or to support boating (e.g. service). The subject site would be an ideal location for a lower cost overnight accommodation such as a hostel. Protection of the subject site is an even higher priority given the proposed conversion of the commercially designated site (with an existing mixed use development) across the street at 3355 Via Lido to entirely residential.

Balboa Bay Club (Map #2 - Exhibit 6)

Map 2, Site 15 (1200 W. Coast Highway): The subject site is filled public tidelands adjacent to Newport Bay. The site, approximately 13 acres in size, is currently occupied by a private club and residential use (144 units), and the Balboa Bay Club & Resort Hotel that is available to the public. The site currently has two land use designations; the portion occupied by a residential use and private club is designated residential, the portion occupied by the hotel is designated marine commercial. The City proposes to designate the entire site Mixed Use-Water Related (MU-W). The MU-W category would allow a mixture of residential and commercial on any part of the site. Uses on public tidelands are typically reserved for facilities that are open to the general public. The existing LUP states that the residential use and club "... is in conflict with the public trust

¹ These properties (3312 to 3336 Via Lido) were once designated for commercial use but were converted to residential use through Land Use Plan Amendment 1-98A.

doctrine..." However, special legislation allows for the residential use and private club to continue on the property until the year 2044. At that time the site would need to be converted to a use that is compliant with the public trust doctrine. However, the proposed land use designation would allow residential uses to be introduced into areas of the property where those uses are presently excluded. In addition, that designation would suggest that preservation of existing residential uses and/or further residential development could be condoned on the property. The existing residential use should be viewed as a non-conforming use. Improvements to the existing residential use and/or any type of development that would extend the economic life of the existing residential use should be avoided so as to encourage conversion to uses that are consistent with the public trust. Expansion of the residential use should be prohibited. The entire site should have a land use designation that encourages use of the property for uses consistent with the public trust. The proposed designation would undermine efforts to ultimately convert the use.

Mariners' Mile (Map #2 - Exhibit 6)

Map 2, Site 19 (3333/3335 W. Coast Hwy to 2001 W. Coast Hwy): The subject sites, comprising approximately 11.5 acres collectively, are on the seaward side of Coast Highway and are waterfront facing upon Newport Bay. These properties are occupied primarily by a variety of commercial uses including restaurants, bars, boat sales, marine-oriented retail, and a boat service yard. However, two properties (2547 and 3121 W. Coast Hwy) contain residential uses. The existing land use designation is Marine Commercial which prohibits residential uses (the existing residential uses are non-conforming). The Marine Commercial designation encourages commercial uses dependent upon a waterfront location. The City is proposing to designate the area Mixed Use-Water Related (MU-W). This designation also encourages coastal dependent and coastal-related uses, however, proposed policies also allow up to 50% of the lot to be used for residential development. The subject site is one of only two bayfront locations in the City where residential uses are currently prohibited in conjunction with commercial uses (the only other site is a smaller waterfront area at the Balboa Fun Zone/Balboa Pavilion at the end of the Balboa peninsula). The remainder of the commercial areas along the bayfront allow commercial/residential mixed uses. Existing commercial uses along this segment of bayfront are generally intense uses that include boisterous restaurants and bars, and boat sales and repair, which are generally not compatible with residential uses. The introduction of residential use to this area would conflict with the intense commercial uses and bring into question their long term viability. With some uses, such as the boat yard, the subject area is one of only a few bay front locations they could occupy in Newport Beach. Furthermore, the proposed policies and land use changes that introduce residential uses to existing commercial areas on the inland side of Coast Highway opposite these sites along Mariners Mile (an approximately 19 acre area) and the intensification of residential uses within over 6 acres of land at Cannery Village (see Map 2, Site No. 7 (Area Bounded by 32nd Street, Lafayette Avenue, Newport Boulevard)) further emphasizes the need to protect at least some limited, waterfront commercial areas in the coastal zone in Newport Beach that would exclude residential uses.

Lido Peninsula (Map #2 - Exhibit 6)

Map 2, entire Lido Peninsula area (Planning Study Area 1 (PSA-1)) which includes Shipyard Way, Anchorage Way, The Rhine, Anza St, Beach Dr, Cabrillo St, Nomad St, Drake St, El Paseo St, Bolivar St, Fremont St, Channel Road, and a portion of Lido Park Dr. The subject area is presently designated CM-B & RM-B (Recreation & Marine Commercial and Medium Density Residential) (the residential and commercial uses are separated from one another). The City is proposing to designate the entire site Mixed Use-Water Related. That designation would allow the intermixing of commercial and residential development. The subject area is currently developed with a shipyard, other commercial (e.g. marine electronics), and residential mobile homes. The existing shipyard on Lido Peninsula (Newport Harbor Shipyard-151 Shipyard Way) is one of the few shipyards remaining in Newport Beach with waterfront access (others being Larson Shipyard at 2705 W Coast Highway along Mariners' Mile, South Coast Shipyard at 223 21st Street in the City's McFadden Square area, and Shock Boats at 2900 Lafayette in the Cannery Village Area¹). These shipyards are higher priority coastal dependent or coastal related uses. The introduction of residential uses into these areas would conflict with these uses.

Balboa Peninsula (Map #3 - Exhibit 6)

Map 3, Site 2 (500-514 Balboa Blvd. West): The subject site, approximately 0.3 acres in size, is presently designated for mixed commercial and residential use (CR). This existing designation allows for commercial uses on the ground floor and residential on the upper floor. The City proposes to change the land use designation to residential (commercial prohibited). The subject site is developed with a new market (presently under construction), a restaurant, hair salon, barber shop, Laundromat, and coffee shop. The proposed designation would render all existing commercial uses to be non-conforming. The commercial uses would ultimately be replaced with lower priority residential uses. The subject site provides supporting commercial services for visitors to the popular beaches to the south, as well as for visitors to the bay consistent with Section 30223 which requires reservation of upland areas necessary to support coastal recreational uses. Elimination of this small commercial node would eliminate all commercial development that supports beach visitors over a 14 block stretch (more than 1 mile) of the Balboa Peninsula.

Map 3, Site 7 (Balboa Fun Zone - 600 E. Bay Ave./600 Edgewater Place): The subject site, about 1.5 acres in size, is currently designated "General Commercial"; although land use plan policies restrict uses on the property to visitor serving commercial uses. The City proposes to designate the property "Private Institutional" to reflect the fact that the site is partially occupied by a nautical museum, which is open to the public but privately owned. The site is also developed with other visitor serving commercial

¹ Based on internet search for shipyards and boat repair facilities. This list is may not be a complete listing of all facilities along the City's bayfront that provide boat service and repair

entertainment uses including a Ferris wheel and game room. The subject site is at the core of this visitor serving commercial area located inland of the Balboa Pier to the south and the Balboa Ferry landing to the north. While the Commission has no objection to the current use of part of the property for a nautical museum (a clear visitor serving use), if that use were to end, the proposed designation of the property for Private Institutional would allow other uses that are not necessarily visitor serving. For example, the Private Institutional land use category allows, among other uses, "... private schools, health care... yacht clubs, congregate homes...", none of which would serve all sectors of the public. The site should be designated for visitor serving commercial uses with an allowance for private institutional uses that are clearly visitor serving.

Hotels and Motels

There are a number of hotels and motels in the City's coastal zone that would not be designated visitor serving commercial, including the Doryman's Inn (2102 Ocean Front West), Holiday Inn Express (2300 Coast Highway West), Newport Beach Hotel (2306 Ocean Front West), and the Balboa Inn (105 Main Street). Hotels, and their ancillary development, should be protected consistent with Section 30222 of the Coastal Act. The proposed land use designations would not achieve such protection adequately.

As submitted, the proposed land use designations at the sites listed above are 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, the amendment must be denied, as submitted.

The Coastal Act places a higher priority on visitor-serving commercial uses than on private residential uses and other uses listed above. Visitor serving uses provide greater public benefit than private residential and other non-visitor uses because a larger segment of the population is able to take advantage of and enjoy the use.

For the reasons identified above, including these sites' proximity to the beach and other popular visitor destinations, these sites are an appropriate location for visitor serving commercial use. The Commission finds that the amendment request is inconsistent with the Coastal Act policies which require that visitor serving uses be protected and the use of lands suitable for visitor serving commercial facilities shall have priority over private residential development and other lower priority uses. In addition, application of the visitor-serving land use designation to these sites which contain viable visitor-serving uses will help offset the loss of other lands designated for commercial use to be converted to residential or mixed use with the proposed LUP amendment. Therefore, the Commission denies the City's Land Use Plan amendment request 1-07, as submitted, because it is inconsistent with the Chapter 3 policies of the Coastal Act.

Other Policy Issues

The proposed Mixed Use Water Related (MU-W) category states the uses allowed are "...intended to provide for commercial development on or near the bay in a manner that will encourage the continuation of coastal-dependent and coastal-related uses and visitor-serving uses, as well as allow for the integrated development of residential..." The existing Coastal Land Use Plan does not contain an equivalent mixed use category. All proposed mixed use categories are new to the Coastal Land Use Plan. Although there is presently no explicit land use category for mixed uses, such mixed uses were allowed in various specified commercially designated areas in the City (e.g. General Commercial, Marine Commercial) through land use plan policies. Not all such areas allow mixed uses - only those explicitly outlined through policies had such allowances. All such policies limited residential uses to upper floors. The ground floor was reserved for commercial uses because such areas are most easily accessible to pedestrians and are naturally better for commercial purposes. The proposed MU-W category is silent with regard to whether residential uses are allowed on the ground floor. However, policy language proposed by the City that forbids ground floor residential at specified MU-W designated sites suggests that wherever there is no such explicit prohibition then the use would be allowed on the ground floor. Given that the MU-W category is intended to promote coastal dependent, coastal related, and visitor-serving uses, the potential that lower priority residential uses could occupy prime commercial areas on the ground floor is inappropriate and inconsistent with Coastal Act requirements relative to prioritizing visitor serving, coastal dependent and coastal related uses.

Furthermore, there is no reference in the MU-W category to allowances for overnight visitor accommodations; whereas, there is such a reference in the Visitor Serving Commercial (CV) category. The absence of such reference in the MU-W category suggests that overnight visitor accommodations might not be allowed. Once again, the MU-W category, along with the CV category, are intended to provide for visitor serving, coastal dependent, and coastal related uses. Therefore, overnight visitor accommodations must be allowed in the MU-W category similar to the CV category.

Thus, as proposed, the MU-W category does not comply with the Chapter 3 policies of the Coastal Act.

Finally, the City has proposed policy language to guide changes to an existing private tennis club (the Balboa Bay Tennis Club) located in the City's coastal zone. The proposed policy language specifies that 27 short-term rental units and 5 single-family homes are to be included with the expanded tennis club facilities. The subject site is not one that has been reserved for priority uses. Thus, lesser or additional short-term rental and/or homes could be allowed without raising an issue under the Coastal Act at this site. The proposed specificity would preclude alternatives being considered without requiring an LUP amendment. In order to avoid that issue, the specificity must be removed.

b. Lower-Cost Overnight Accommodations

Section 30210 of the Coastal Act states:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30213 of the Coastal Act states:

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

The commission shall not: (1) require that overnight room rentals be fixed at an amount certain for any privately owned and operated hotel, motel, or other similar visitor-serving facility located on either public or private lands; or (2) establish or approve any method for the identification of low or moderate income persons for the purpose of determining eligibility for overnight room rentals in any such facilities.

Section 30221 of the Coastal Act states:

Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

Section 30222 of the Coastal Act 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.

Pursuant to the public access policies of the Coastal Act, and particularly Section 30213, the Commission has the responsibility to ensure that a range of affordable facilities be provided in new development along the coastline of the state. The expectation of the Commission, based upon several precedents, is that developers of sites suitable for overnight accommodations will provide facilities which serve people with a range of incomes. If development cannot provide for a range of affordability on-site, the Commission requires off-site mitigation.

Historically, the Commission has endorsed new hotel developments along the coastline. However, this new development has virtually all been exclusive, higher priced resort developments. In each of those actions, though, the Commission always secured

offsetting public amenities, such as new public accessways, public parking or open space dedications, to address the Coastal Act priorities for public access and visitor support facilities. In addition, the Commission has required mitigation for the loss of land that was available for lower cost and visitor serving facilities (e.g. NPB-MAJ-1-06A)

In light of current trends in the market place and along the coast, the Commission is increasingly concerned with the challenge of providing lower-cost overnight accommodations consistent with the Coastal Act. Recent research in support of a Commission workshop concerning hotel-condominiums showed that only 7.9% of the overnight accommodations in nine popular coastal counties were considered lower-cost. Although statewide demand for lower-cost accommodations in the coastal zone is difficult to quantify, there is no question that camping and hostel opportunities are in high demand, and that there is an on-going need to provide more lower-cost opportunities along California's coast. For example, the Santa Monica hostel occupancy rate was 96% in 2005, with the hostel being full more than half of the year. State Parks estimates that demand for camping has increased 13% between 2000 and 2005. Nine of the ten most popular campgrounds are along the coast.

In general, many low to moderately priced hotel and motel accommodations tend to be older structures that are becoming less and less economically viable. As more recycling occurs, the stock of lower cost overnight accommodations tends to be reduced, since it is generally not economically feasible to replace these structures with accommodations that will maintain the same low rates. As a result, the Commission sees far more proposals for higher cost accommodations than for low cost ones. The loss of affordable overnight accommodations within the coastal zone has become an emerging issue for the Commission. If this development trend continues, the stock of affordable overnight accommodations will be depleted.

In an effort to stem this tide, and to protect lower cost visitor-serving facilities, the Commission has imposed in-lieu mitigation fees when development proposes only higher cost accommodations. By doing so, a method is provided to assure that some degree of lower cost overnight accommodations will be protected. In past actions, the Commission has imposed an in-lieu mitigation fee to be used to provide new lower cost overnight visitor accommodations. Examples include coastal development permit application #s 5-99-169 (Maguire Partners), 5-05-385 (Seal Beach Six), A-3-PSB-06-001 (Beachwalk Hotel), A-6-ENC-07-51 (Surfer's Point), and A-5-RPV-02-234 (Destination Development a.k.a. Old Marineland/Terranea). Older examples include P-79-5539/5-82-291 (AVCO) and 5-89-240 (Michael Construction). In-lieu fees were also adopted in the City of Huntington Beach's LCP Amendment for the Waterfront Hilton and Hyatt Regency planning sub-area and the protection of lower cost visitor accommodations was also a critical element in the Commission's recent action on the City of Oceanside's LCPA #2-08 for the "D" Downtown District. It is the goal of the Commission to address the cumulative impacts that redevelopment and new development have on city, county, and statewide lower cost overnight facilities. By addressing the need for protection of lower cost overnight accommodations at the LCP level, it provides an opportunity for individual cities to be involved in how these fees will

be determined, allocated, and managed; and will therefore create a program by which to manage, protect and encourage the development of lower cost overnight accommodations.

The suggested in-lieu fees will provide the funds necessary to develop and maintain visitor accommodations that are not exclusive to those who can afford to pay considerable rates to experience California's coast. Hostels, campgrounds, and cabins are just some of the developments that could furnish this goal. Given the current trend of proposed developments only including high cost facilities (recreational, overnight, residential, etc.), the City should review Land Use Plan policies for the cumulative impacts associated with these trends and their conformity with the policies of the Coastal Act. Because the City failed to do so, in association with this LCP amendment, the Commission has suggested several suggested modifications to address these issues. These modifications will serve to protect and provide current and future lower cost overnight accommodations within the coastal zone; thereby consistent with the applicable policies of the Coastal Act.

Historically, the Commission has not finalized the definition of "low cost overnight accommodations". In past actions, low cost was loosely considered to be less than \$100 per night. The Commission gave direction to staff to better define what accommodations can be considered low cost. And, in response to this request, staff has been working on not only an appropriate definition of what price can be considered low cost, but staff has also created a formula by which to determine what can be considered low, moderate, and high cost accommodations within a specific area, that will reflect the market, and any increase to costs, demand, etc.; thereby creating a dynamic tool for accurately determining what a feasible "low cost overnight accommodation" is. The statewide average room rate, and local room rates during the peak visitation period(s) of basic accommodations can be factors.

Currently, the formula by which to determine the absolute price of "low cost" overnight accommodations is still in its infancy, and Commission staff is continuing to work to refine the formula. The City has expressed concern with including any specific formula in the Coastal Land Use Plan given that refinements are still likely. Also, the City expects to submit an Implementation Plan for Commission consideration sometime next year (2009) and the City feels details such as a formula would be best addressed in the IP. The Commission agrees with the City regarding this issue and believes deferring details regarding the definition of "low cost" to the IP would be appropriate in this case. That method should consider the factors noted in the paragraph above.

The City did not address the need for the protection of existing lower cost overnight accommodations in this amendment request, nor did the City discuss the use of in-lieu fees to allow for future development of low cost overnight accommodations.

The certified LCP needs to be updated to address emerging trends relative to visitor serving overnight accommodations. As such, neither the current LUP nor the City has adequately protected a range of affordability within the visitor-serving developments in

the City. The City's LUP amendment is not consistent with the previously mentioned Coastal Act policies. Over time, and as policy issues arise, it is the responsibility of coastal jurisdictions to amend and update their LCPs. Coastal Act issues such as these need to be addressed pro-actively and cumulatively. The current amendment is a comprehensive update of the City's land use designation system and contains numerous changes to land uses throughout the City, many of which affect lands available for visitor-serving uses. Therefore, now is the time to address these emerging issues. Those land use changes introduce lower priority residential uses into commercial areas that do not presently allow such uses. Furthermore, the City is condensing (i.e. reducing) its commercial areas into smaller nodes. Condensing the commercial areas will place added re-development pressure on the remaining commercially designated parcels. Thus, the protection of existing overnight accommodations overall, and, in particular, the protection of lower cost overnight accommodations in the face of such pressure, is all the more important.

Therefore, the land use plan amendment, as proposed, cannot be found consistent with the Coastal Act.

c. Limited Use Overnight Visitor Accommodations

Also, the proposed LUP amendment does not adequately address the effect of timeshare-type facilities on the stock of overnight accommodations. Timeshare-type facilities provide a lower level of public accessibility than traditional hotels and motels. The existing Coastal Land Use Plan does not explicitly allow for timeshare-type facilities. However, the City has suggested that certain passing references to timeshares in the narrative in the existing CLUP suggest that timeshares are visitor serving uses and that all such visitor serving uses are allowed in visitor serving zones. The Commission disagrees with this conclusion; thus, clarifications are required.

There are numerous methods for dividing property and/or time interests within vacation accommodations and selling those interests to private individuals or entities. As the market changes, these methods also evolve. Commonly used terms for these methods include "timeshare", "fractional ownership", "condominium/hotel" among many others, all of which tend to be loosely defined as they are used within the industry. However, each type of timeshare proposal may necessitate different controls that must be tailored to assure that public accessibility to the facility is maximized. One step toward implementing those controls is to have clearly defined terminology. For instance, the term "timeshare" can have a specific meaning that defines a particular type of divided interest product or it can serve as a 'catch-all' phrase, which can be confusing. Thus, a distinct "catch-all" phrase is necessary in the Land Use Plan. Hereinafter, within these findings, the Commission will use the phrase "Limited Use Overnight Visitor Accommodations" to mean any hotel, motel or other similar facility that provides overnight visitor accommodations wherein some or all of the units, rooms, lots, parcels or other segment of the facility may be sold to a subsequent purchaser who receives the right for a specified period of time to exclusive use to all or a portion of the facility. A

more detailed definition that encompasses all the possible known types of these kinds of facilities should be included in the CLUP.

The current understanding of Limited Use Overnight Visitor Accommodations raises significant issues with regard to their appropriateness within visitor serving districts. As proposed, existing traditional overnight accommodations, such as hotels and motels, are not explicitly protected from conversion to a Limited Use Overnight Visitor Accommodation. Thus, existing and future hotel/motel rooms available to the general public are jeopardized. This issue is not addressed in the proposed comprehensive update. The proposed LUP amendment does not adequately prioritize protection of existing overnight visitor accommodations, inconsistent with the requirements of Coastal Act Section 30222.

Moreover, Section 30213 of the Coastal Act requires that lower cost visitor facilities be protected, encouraged, and, where feasible, provided. Limited Use Overnight Visitor Accommodations in general cannot be considered lower cost. Generally, Limited Use Overnight Visitor Accommodation facilities require that potential users purchase the right to long term, recurring use. Generally, this requires significant initial investment, and often periodic fees. Such monetary requirements are often beyond the means of a large segment of the general population and certainly exclude that portion of the population that is of the least means. Traditional hotels, motels and similar overnight accommodations, do not require a long term financial commitment in exchange for use of a unit.

The LUP already includes a substantial number of areas designated for private residential development, and to a lesser extent, general commercial. The proposed amendment would expand the areas within which lower priority residential uses are allowed and reduce the quantity of commercial area. The area within proximity to the coast is limited, and within that limited area, only some areas are designated specifically for Visitor Serving Commercial Use. To allow what could potentially be quasi-residential use within the limited areas designated specifically for visitor serving use does not recognize, reflect, or implement the Coastal Act's priority of visitor serving uses over residential uses.

The provision of overnight visitor accommodations serves a significant purpose as a subset of visitor serving uses. Overnight visitor accommodations allow those who do not live within a day's drive of the coast an opportunity to enjoy coastal zone amenities when they otherwise may not be able to do so. Access to coastal recreation facilities is enhanced when there are overnight lodging facilities for all economic sectors. Those members of the public that cannot get to the coast within a day's journey, would need to travel to the coast, and then would need a place to stay overnight so that, finally reaching the coast, they don't have to turn around and head back. However, as proposed, the LUP amendment does not recognize this important function of visitor serving facilities.

Furthermore, although the Commission doesn't believe the existing CLUP allows Limited Use Overnight Visitor Accommodations in visitor serving districts, there are presently existing hotels, motels, etc. that are within other land use designations, and it is possible that those existing hotels, motels, and other types of overnight visitor accommodations could be converted to Limited Use Overnight Visitor Accommodations. There is no explicit prohibition on converting existing hotel/motel type establishments to lesser priority, potentially quasi-residential Limited Use Overnight Visitor Accommodations. A loss of overnight transient visitor accommodations in favor of Limited Use Overnight Visitor Accommodations is not consistent with the priority Coastal Act Section 30222 places on visitor serving uses.

The proposed amendment cannot be found to be consistent with Section 30222 of the Coastal Act, which places a higher priority on visitor serving uses than on private residential or general commercial uses. Therefore, the Commission finds that the proposed development is inconsistent with the Chapter 3 policies of the Coastal Act and therefore must be denied.

2. Transit/Smart Growth

Section 30250(a) of the Coastal Act states, in relevant part:

(a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. ...

Section 30252 of the Coastal Act states:

The location and amount of new development should maintain and enhance public access to the coast by (1) facilitating the provision or extension of transit service, (2) providing commercial facilities within or adjoining residential development or in other areas that will minimize the use of coastal access roads, (3) providing nonautomobile circulation within the development, (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation, (5) assuring the potential for public transit for high intensity uses such as high-rise office buildings, and by (6) assuring that the recreational needs of new residents will not overload nearby coastal recreation areas by correlating the amount of development with local park acquisition and development plans with the provision of onsite recreational facilities to serve the new development.

Section 30253 of the Coastal Act states, in relevant part:

New development shall:

... (4) *Minimize energy consumption and vehicle miles traveled.*

Section 30250 of the Coastal Act requires that new development be concentrated in existing developed areas where it can be accommodated without adverse effects on coastal resources. Section 30252 of the Coastal Act states that the location and concentration of development should maintain and enhance public access to the coast by facilitating the extension of transit service and minimizing the use of coastal access roads. Section 30253 indicates new development shall minimize energy consumption and vehicle miles traveled. Concentrating development in existing developed areas provides more opportunities for people to live near places they work and recreate, such as the beach, and, thereby, reduces impacts to coastal resources. Impacts to roads and vehicle miles traveled would be reduced by having a more intense stock of housing located closer to employment, commercial and recreational opportunities within the coastal zone. Also, by having a higher density in an existing developed area, it places more people in a single location so that public transit service is facilitated, which then again aids in reducing the number of cars on streets and thus reduces impacts to coastal resources and public access.

Concentrating development in developed areas also has other cumulative benefits. It would lead to less pressure to extend new development into undeveloped areas, which would prevent sprawl, preserve open space and prevent adverse impacts to sensitive habitats. By concentrating development in developed areas where it can be accommodated, sensitive coastal resources would be protected and preserved. Additionally, the location and concentration of development would maintain and enhance public access to the coast.

In many ways, the proposed land use plan amendment is consistent with the concepts described above. The proposed amendment establishes more mixed-use districts in the City, allowing residents to be located closer to where they work and shop. The amendment also increases the intensity of use of development within areas that are already developed. Thus, development would be concentrated in areas that can accommodate it.

The Coastal Act policies cited above also address transit and the need to prioritize provision of convenient public transit and to site and design development in a manner that accommodates provision of public transit. Among those concepts are that development within urban areas should be distributed in such a manner and be of sufficient density to support levels of public transit service that provide a convenient alternative to automobile use throughout the urban area. Residential density should be sufficient to support neighborhood serving businesses. Residential, commercial, employment, and recreational uses should be located in relationship to each other so as to encourage walking, bicycling, and transit ridership. Major employment, retail, and

entertainment districts and major coastal recreational areas should be well served by public transit and easily accessible to pedestrians and bicyclists. Street, sidewalk, bicycle path, and recreational trail networks (including the Coastal Trail) should be designed and regulated to encourage walking, bicycling, and transit ridership. High-density, mixed-use development should be allowed and encouraged adjacent to major employment centers; along commuter rail, subway, and light rail stations; along high-frequency bus routes; and at intersections of major bus routes. A variety of housing types should be provided throughout urban areas to minimize commuting needs of all socioeconomic sectors. Major commercial, retail, and residential developments should be required to include facilities to support public transit and bicycling, to provide incentives for transit ridership and ride sharing. For example bus shelters, bus bulbs or pullouts, secure bicycle storage, parking cash-out programs, parking fees, or subsidies for transit ridership.

Commercial, retail and residential developments should be required to design their facilities to encourage walking, bicycling, transit ridership, and ridesharing. For example, developments could locate and design building entries that are convenient to pedestrians and transit riders.

Again, in a variety of ways the proposed amendment seeks to achieve these goals. For instance, the introduction of mixed use developments concentrates residential and commercial uses in a single area which makes achievement of some of the goals described above possible.

However, while many of the principles above are reflected in the City's CLUP, certain provisions are lacking. For instance, while the CLUP does require larger non-residential developments to facilitate commuting by bicycle by providing bicycle racks, lockers and showers, smaller developments aren't encouraged to provide such facilities.

The peak visitor season tends to be during summertime. During these periods, traffic congestion and inadequate parking can impact public access to the beach, bay and other coastal areas. Alternative forms of transit should be available, particularly during these time periods that provide convenient transportation to and along the beach and bay. Although the CLUP does encourage the regional transportation authority, Orange County Transit Authority (OCTA), to expand summer bus service to coastal recreational areas, the existing CLUP doesn't otherwise contain policies to specifically encourage the provision of a summertime beach shuttle. In addition, the shuttle provider could be an entity other than OCTA, such as the City itself.

3. Non-Conforming Uses

The proposed land use plan amendment contains a new policy, 2.2.5-2, which reads as follows: *In older commercial districts allow existing commercial buildings that exceed current intensity limits to be renovated, upgraded, or reconstructed to their pre-existing intensity when appropriate to complement the scale and form of existing development.*

As written, this proposed policy would allow the City to approve any renovation, upgrade, or complete reconstruction of existing structures to their current intensity without regard for other Coastal Land Use Plan or Coastal Act requirements. For example, with this policy, a commercial building that is non-conforming with regard to parking, setbacks, height, etc. could be allowed to be completely reconstructed without providing the required parking, appropriate setbacks or compliance with existing height limits. As a result, the development could have adverse impacts upon public access, public views, or even biological resources that would be inconsistent with the Coastal Act. Thus, this proposed policy must be denied, as submitted.

4. Mapping Issues

Maps submitted with the land use plan amendment inaccurately depict the coastal zone boundary in the vicinity of the Banning Ranch property. Thus, those maps must be denied as submitted.

In addition, the City makes reference to particular areas in the City by community name, but the City's proposed land use plan maps don't identify the location or boundary of these areas. Thus, those maps must be denied as submitted.

5. Open Spaces/Biological Resources

a. Environmentally Sensitive Habitat Area (ESHA)

Section 30240 of the Coastal Act states:

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

The Coastal Act requires environmentally sensitive habitat areas (ESHA) to be protected against significant disruption of habitat values and restricts development within ESHA to resource dependent uses. Development in areas adjacent to ESHA must be sited and designed to prevent impacts that would significantly degrade those areas and must be compatible with the continuance of those habitat and recreation areas.

Section 30107.5 defines ESHA as "any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an

ecosystem and which could be easily disturbed or degraded by human activities and developments.”

As development pressures increase, it is critical to protect remaining ESHA through strong LUP policies. The proposed Land Use Plan amendment includes a new Open Space land use category that will help distinguish between open space areas that are to be used for active recreation and those that will be used for passive open space and environmental protection. However, the proposed amendment does not address some particular deficiencies that are present in the land use plan. For instance, while the plan does contain policies that are equivalent to Section 30240 of the Coastal Act, the land use plan doesn't contain policies that address how the areas which are found to be ESHA or ESHA buffer are to be treated in conjunction with development proposals. For instance, there are no policies that specifically require all preserved ESHA, buffers, and all mitigation areas, to be conserved/dedicated (e.g. open space direct dedication, offer to dedicate (OTD), conservation easement, deed restriction) in such a manner as to ensure that the land is conserved in perpetuity. There are also no policies that require a management plan and funding to be required to ensure appropriate management of the habitat area in perpetuity. These areas also need to be protected consistent with the requirements established in the dedication, offer, deed restriction, or easement.

Offers to dedicate need to be made to public agencies or other appropriate entities willing to accept such offers and to manage the lands subject to the offers. An inventory of such areas should also be maintained by the City so as to ensure such areas are known to the public and are protected through the coastal development permit process. Policies in the Land Use Plan need to establish these requirements.

Without such policies, the land use plan amendment cannot be found consistent with Section 30240 of the Coastal Act.

b. Wetland Diking, Dredging & Fill

The current language of Section 30233(a) of the Coastal Act, is as follows:

(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

(1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.

(2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.

(3) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.

(4) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.

(5) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.

(6) Restoration purposes.

(7) Nature study, aquaculture, or similar resource dependent activities.

The existing Coastal Land Use Plan contains the following policy, modeled on Section 30233 of the Coastal Act, as that language existed in 2005:

4.2.3-1. Permit the diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes in accordance with other applicable provisions of the LCP, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects and limited to the following:

A. Construction or expansion of port/marine facilities.

B. Construction or expansion of coastal-dependent industrial facilities, including commercial fishing facilities, and commercial ferry facilities.

C. In wetland areas only, entrance channels for new or expanded boating facilities; and in a degraded wetland, identified by the Department of Fish and Game pursuant to subdivision (b) of Section 30411, for boating facilities if, in conjunction with such boating facilities, a substantial portion of the degraded wetland is restored and maintained as a biologically productive wetland. The size of the wetland area used for boating facilities, including berthing space, turning basins, necessary navigation channels, and any necessary support service facilities shall not exceed 25 percent of the degraded wetland.

D. In open coastal waters, other than wetlands, including estuaries and streams, new or expanded boating facilities, including slips, access ramps, piers, marinas, recreational boating, launching ramps, and pleasure ferries, and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.

- E. Maintenance of existing and restoration of previously dredged depths in navigational channels, turning basins, vessel berthing, anchorage, and mooring areas, and boat launching ramps. The most recently updated U.S. Army Corps of Engineers maps shall be used to establish existing Newport Bay depths.*
- F. Incidental public service purposes which temporarily impact the resources of the area, such as burying cables and pipes, inspection of piers, and maintenance of existing intake and outfall lines.*
- G. Sand extraction for restoring beaches, except in environmentally sensitive areas.*
- H. Restoration purposes.*
- I. Nature study, aquaculture, or similar resource-dependent activities.*
- J. In the Upper Newport Bay Marine Park, permit dredging, diking, or filling only for the purposes of wetland restoration, nature study, or to enhance the habitat values of environmentally sensitive areas.*

At the beginning of 2007, an amendment to the Coastal Act became effective that eliminated the language from Section 30233 of the Coastal Act upon which subsection C of the City's policy was modeled. Thus, retention of that language in this amendment is inconsistent with Section 30233 of the Coastal Act, thus, the amendment must be denied, as submitted.

c. West Newport/Western Entry Parcel

The City seeks to acquire a property at 7204 West Coast Highway, located at the City's westernmost point on the inland side of coast highway, for public purposes. However, the City wishes to allow some residential development on the property. Thus, the City has given the site a combined land use designation of Open Space and Residential. The site is adjacent to Semeniuk Slough, a sensitive wetland area. Policy language is clear about the intended uses of the property, but, that language lacks acknowledgement of the sensitive resource areas at and adjacent to the site. In the absence of language to acknowledge these resources and to protect them, the Commission cannot find the land use plan consistent with the biological resource protection policies of the Coastal Act.

6. Coastal Access, Recreation & Coastal Views

Section 30210 of the Coastal Act states:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30211 of the Coastal Act states:

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Section 30212 (a) of the Coastal Act states:

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:

(1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,

(2) adequate access exists nearby, or,

(3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

Section 30212.5 of the Coastal Act states:

Wherever appropriate and feasible, public facilities, including parking areas or facilities, shall be distributed throughout an area so as to mitigate against the impacts, social and otherwise, of overcrowding or overuse by the public of any single area.

Section 30213 of the Coastal Act states, in relevant part:

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

Section 30220 of the Coastal Act states:

Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.

Section 30221 of the Coastal Act states:

Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

Section 30222 of the Coastal Act 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.

Section 30223 of the Coastal Act states:

Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.

Section 30251 of the Coastal Act states in relevant part:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. ...

a. Beach Area at Orange County Harbor Patrol Facility

The proposed land use plan amendment would place an existing sandy beach area that is a popular public recreation area at the Orange County Harbor Patrol/Coast Guard site at 1901-1911 Bayside Drive as Public Facility. This land use designation would suggest the sandy beach area should be used for construction of a public facility structure, which would be inconsistent with protection of public recreational facilities. Therefore, the land use plan must be denied as submitted.

b. West Newport/Western Entry Parcel

There is a property (7204 West Coast Highway) located at the City's westernmost point on the inland side of coast highway that is presently developed with an older mobile home park. The City has called this the 'Western Entry Parcel' and intends to seek acquisition of the site for public purposes. Proposed policy language to address this fails to emphasize that the use of the site should be public in nature. Therefore, that policy cannot be found consistent with the public access and recreation policies of the Coastal Act.

c. Mariners' Mile

The proposed amendment would intensify commercial uses along Mariners' Mile and introduce residential uses to areas presently reserved for commercial purposes. Policy language is proposed to address uses in proposed Section 2.1.4 of the plan. However, the need for adequate public access to and along the waterfront and the protection and provision of views of the harbor from the public right of way are not adequately addressed. Therefore, the Commission finds the proposed amendment would be inconsistent with the public access, recreation and view provisions of Chapter 3 of the Coastal Act.

C. Findings for Approval with Suggested Modifications

The Commission hereby finds and declares as follows:

1. Priority Uses

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 private 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.*

a. Designation of Sites for Lower Priority Use that are Suitable for Visitor Serving Uses

As described in the findings for denial, the Commission found that the proposed land use designations at a variety of sites in the City's coastal zone are inconsistent with Section 30213 of the Coastal Act, which requires lower cost visitor and recreational facilities be "*protected, encouraged, and, where feasible, provided.*" The Commission also found that the proposed amendment will have an adverse effect on the priority "*visitor-serving commercial recreational facilities*" to be provided under Section 30222 of the Coastal Act.

The Commission has taken a comprehensive look at the proposed changes to land use and recognizes the City's goal of decreasing area designated for only commercial use, when a mixed use development may encourage redevelopment of an area. However, the Coastal Act requires that sufficient land area be set aside for high-priority visitor-serving uses. Therefore, the Commission has found that due to their location, the following sites provide appropriate locations for visitor serving commercial use. If the land use categories applied to these sites are modified, as follows, the Commission could find the amended land use plan consistent with the Coastal Act:

West Newport (Map 1 - Exhibit 6)

Map 1, Site No. 4 (Coast Highway at Cedar Street (6306, 6308, 6310 Coast HWY W)): The subject site is currently designated for Visitor Serving Commercial uses. The properties, collectively being about 0.15 acres, are developed with commercial uses including a popular restaurant (Big Belly Deli), a real estate office, and professional offices. The City is proposing to convert the land use designation on these properties to residential. Suggested Modification No. 1 requires that the site remain designated for Visitor Serving Commercial uses. The subject site is conveniently located so as to

provide support for beach visitors. The loss of commercial area upcoast of the site makes preservation of this site even more important.

Lido Village (Map #2 - Exhibit 6)

Map 2, Site No. 3 (3366 Via Lido): The subject site is currently designated for visitor serving commercial purposes and is presently occupied by a 2-story office building and parking lot. This site is approximately 0.4 acres in size. The City proposes to convert the use to residential. The subject site is a waterfront site adjacent to the bulkhead and Newport Bay. Due to its waterfront location, the subject site is ideally suited for visitor serving commercial uses, overnight accommodations, or to support boating (e.g. service). The subject site would be ideal for lower cost overnight accommodations (e.g. hostel). Suggested Modification No. 2 requires that the Mixed Use-Water Related land use category be applied to the subject site. The Mixed-Use Water Related Category would encourage the provision of coastal dependent, coastal related or visitor serving commercial on the property, and would allow some residential development on upper floors. Protection of the subject site is an even higher priority given the proposed conversion of the commercially designated site across the street at 3355 Via Lido to entirely residential.

Balboa Bay Club & Resort Hotel Site (Map #2 - Exhibit 6)

Map 2, Site 15 (1200 W. Coast Highway): The subject site is filled public tidelands adjacent to Newport Bay. The site, approximately 13 acres in size, is currently occupied by a private club and residential use (144 units), and the Balboa Bay Club & Resort Hotel that is available to the public. The site currently has two land use designations; the portion occupied by a residential use and private club is designated residential, the portion occupied by the hotel is designated marine commercial. The City proposes to designate the entire site Mixed Use-Water Related (MU-W). The MU-W category would allow a mixture of residential and commercial on any part of the site. Uses on public tidelands are typically reserved for facilities that are open to the general public and there is acknowledgement that the residential use and club is in conflict with the public trust doctrine. Suggested Modification No. 3 requires that the entire site be designated for visitor serving commercial purposes.

Mariner's Mile (Map #2 - Exhibit 6)

Map 2, Site 19 (3333/3335 W. Coast Hwy to 2001 W. Coast Hwy): The subject sites, comprising approximately 11.5 acres collectively, are on the seaward side of Coast Highway and are waterfront facing upon Newport Bay. These properties are occupied primarily by a variety of commercial uses including restaurants, bars, boat sales, marine-oriented retail, a boat service yard, and some non-conforming residential uses. The existing land use designation is Marine Commercial, which encourages commercial uses dependent upon a waterfront location. The City is proposing to designate the area Mixed Use-Water Related (MU-W). This designation also encourages coastal dependent and coastal-related uses, however, proposed policies also allow up to 50%

of the lot to be used for residential development. Suggested Modification No. 4 requires that the marine commercial designation be retained in order to preserve some commercial area along the City's bayfront where residential is excluded in favor of more intensive commercial development. This is a popular waterfront, visitor destination appropriately reserved for high-priority visitor-serving commercial use. The Commission finds introduction of residential use in this location could significantly threaten the viability of existing and future commercial build-out of the area.

Lido Peninsula (Map #2 - Exhibit 6)

Map 2, entire Lido Peninsula area (Planning Study Area 1 (PSA-1)) which includes Shipyard Way, Anchorage Way, The Rhine, Anza St, Beach Dr, Cabrillo St, Nomad St, Drake St, El Paseo St, Bolivar St, Fremont St, Channel Road, and a portion of Lido Park Dr. The subject area is presently designated CM-B & RM-B (Recreation & Marine Commercial and Medium Density Residential) (the residential and commercial uses are separated from one another). The City is proposing to designate the entire site Mixed Use-Water Related. That designation would allow the intermixing of the commercial and residential development. The subject area is currently developed with a shipyard, other commercial (e.g. marine electronics), and residential mobile homes. Shipyards are higher priority coastal dependent or coastal related uses. The introduction of residential uses into these areas would conflict with these uses. Therefore, the Commission imposes Suggested Modification No. 8, which requires retention of the existing separate marine commercial and residential land use designations as contained in the currently certified CLUP.

Balboa Peninsula (Map #3 - Exhibit 6)

Map 3, Site 2 (500-514 Balboa Blvd. West): The subject site, approximately 0.3 acres in size, is presently designated for mixed commercial and residential use (CR). This existing designation allows for commercial uses on the ground floor and residential on the upper floor. The City proposes to change the land use designation to residential (commercial prohibited). The subject site is developed with a new market (presently under construction), a restaurant, hair salon, barber shop, Laundromat, and coffee shop. The proposed designation would render all existing commercial uses to be non-conforming. The commercial uses would ultimately be replaced with lower priority residential uses. The subject site provides supporting upland commercial services for visitors to the popular beaches to the south, as well as for visitors to the bay. Elimination of this small commercial node would eliminate all commercial development that supports beach visitors over a 14 block stretch (more than 1 mile) of the Balboa Peninsula. Therefore, the Commission imposes Suggested Modification No. 9, which requires the Mixed Use-Vertical land use category be applied to the site. This category will preserve commercial uses on the ground floor and allow residential uses on the upper floors.

Map 3, Site 7 (Balboa Fun Zone - 600 E. Bay Ave./600 Edgewater Place): The subject site, about 1.5 acres in size, is currently designated "General Commercial"; although

land use plan policies restrict uses on the property to visitor serving commercial uses. The City proposes to designate the property "Private Institutional" to reflect the fact that the site is partially occupied by a nautical museum, which is open to the public but privately owned. The site is a prime visitor destination on the Balboa Peninsula and is also developed with other visitor serving commercial entertainment uses including a Ferris wheel and game room. The subject site is at the core of this visitor serving commercial area located inland of the Balboa Pier to the south and the Balboa Ferry landing to the north. While the Commission has no objection to the current use of part of the property for a nautical museum (a clear visitor serving use), if that use were to end, the proposed designation of the property for Private Institutional would allow other uses that are not necessarily visitor serving. For example, the Private Institutional land use category allows, among other uses, "... private schools, health care... yacht clubs, congregate homes...", none of which would serve all sectors of the public. The site should be designated for visitor serving commercial uses with an allowance for private institutional uses that are clearly visitor serving. Therefore, the Commission imposes Suggested Modification No. 10 which requires the CV land use category be applied to the site. Suggested Modification No. 31 is also made to clarify that the existing nautical museum would be an allowed use at the site.

Hotels and Motels

There are a number of hotels and motels in the City's coastal zone that would not be designated visitor serving commercial, including the Doryman's Inn (2102 Ocean Front West), Holiday Inn Express (2300 Coast Highway West), Newport Beach Hotel (2306 Ocean Front West), and the Balboa Inn (105 Main Street). Hotels, and their ancillary development should be protected consistent with Section 30222 of the Coastal Act. The proposed land use designations would not achieve such protection adequately. Therefore, the Commission imposes Suggested Modification No.s 5, 6, 7, and 12 which apply the CV land use category to these hotel sites.

As modified, the proposed land use designations at the sites listed above are consistent with Section 30213 of the Coastal Act, which requires lower cost visitor and recreational facilities be "*protected, encouraged, and, where feasible, provided.*" As modified, the proposed amendment will also recognize the existing commercial use of these properties (i.e hotels/motels) and reserve these areas for high-priority visitor use as provided under Section 30222 of the Coastal Act. Retention of these sites for visitor-serving use will also offset the loss of other properties designated for general and visitor-serving commercial use in the proposed CLUP amendment. Therefore, the amendment, as modified, can be approved.

Other Policy Issues

An existing policy in the Coastal Land Use Plan limits residential uses to upper floors in areas where both commercial and residential uses are allowed. The ground floor is reserved for commercial uses in priority visitor serving areas because such areas are most easily accessible to pedestrians and are naturally better for visitor serving

commercial purposes. The proposed MU-W category is silent with regard to whether residential uses are allowed on the ground floor. Given that the MU-W category is intended to promote coastal dependent, coastal related, and visitor-serving uses, the potential that lower priority residential uses could occupy prime commercial areas on the ground floor is inappropriate and inconsistent with Coastal Act requirements relative to prioritizing visitor serving, coastal dependent and coastal related uses. Therefore, the Commission imposes Suggested Modification No.s 14, 27, 28, and 29, which prohibit residential uses on the ground floor or in separate buildings in areas designated MU-W.

Furthermore, there is no reference in the MU-W category to allowances for overnight visitor accommodations. The MU-W category, along with the CV category, are intended to provide for visitor serving, coastal dependent, and coastal related uses; therefore, overnight visitor accommodations must be an allowable use in the MU-W category similar to the visitor-serving uses allowed in lands designated for CV use. Therefore, the Commission imposes Suggested Modification No. 14.

Thus, as modified, the MU-W category complies with the Chapter 3 policies of the Coastal Act.

In addition, the denial findings point out that policy language proposed by the City relative to the Balboa Bay Tennis Club is unnecessarily specific. However, if that policy is changed as noted in Suggested Modification No. 32, a future LUP amendment to address this unnecessary specificity would be avoided.

Conclusion

The Commission finds the proposed amendment, as modified through the suggested modifications, will identify those visitor-serving areas that are most popular and/or contain existing visitor-serving uses and preserve those areas for such use consistent with the public access and recreation policies of the Coastal Act. Through designation of either the CV or the CM land use in these areas, the proposed loss of lands designated for general or visitor commercial use to mixed use or residential will be appropriately offset. Application of a CV designation to properties currently providing existing viable overnight accommodations 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.

b. Low-Cost Overnight Accommodations

The CLUP, as proposed, does not have any policies reflective of Sections 30210, 30213, 30221 and 30222 of the Coastal Act that would protect all types of existing

overnight accommodations¹, or require offsets when existing low-cost accommodations would be demolished and/or higher cost accommodations constructed; thus, the City, in its review of coastal development, is not required to make findings to assure all types of overnight visitor accommodations are encouraged, protected and provided. Therefore, the LUP amendment cannot be found consistent with the Coastal Act. Modifications are being suggested to the City's adopted LUP to incorporate provisions for the protection of low cost visitor-serving facilities and overnight accommodations in the coastal zone. These modifications also serve to better protect and promote overnight accommodations with a range of affordability. The suggested modifications will result in a land use plan that is consistent with the applicable policies of the Coastal Act.

These modifications include specific language pertaining to the protection of existing low cost overnight accommodations, as well as the requirement for in-lieu fees when a proposed overnight accommodation does not include a low cost component.

Section 30213 protects lower cost visitor serving and recreational facilities. As discussed above, as land becomes less available and more expensive, protection of coastally located facilities that provide recreation and accommodations to the general public become invaluable. It is important to protect those uses that best service the public in general, as opposed to members of the public that can afford certain luxuries.

Suggested Modification No. 35 pertains to the demolition and possible redevelopment of existing lower cost overnight accommodations. The protection of the existing stock of lower cost overnight accommodations is important. As mentioned previously, the general trend of redevelopment is removing existing lower cost accommodations and replacing them with higher-end hotel/motel units. This will ultimately lead to far fewer affordable overnight accommodations in the coastal zone.

Given this trend, the Commission is compelled to develop a method for protecting and ensuring the future development of lower cost facilities in the coastal zone. As discussed previously, the Commission has incorporated the requirement for in-lieu fees as a method for off-setting the impacts of predominately higher cost visitor commercial development in the coastal zone. As more hotels are redeveloped or built, these in-lieu fees could be combined to facilitate a viable low cost accommodation project. Possible developments could be a coastal Orange County youth hostel, additions to current beach camping facilities, cabins, etc. These funds could be used, as approved by the Executive Director and the City, to provide funding to off-set the high costs associated with any development located near the ocean. As such, Suggested Modification No. 36 (Sub-section A) requires that any coastal development permit that is proposing to demolish existing low cost hotel/motel units pay a fee for the total number of rooms demolished that are not replaced.

¹ Existing CLUP policy 2.3.3-1 states "Protect, encourage and provide lower-cost visitor accommodations, including campgrounds, recreational vehicle parks, hostels, and lower cost hotels and motels. In addition, existing CLUP policy 2.3.3-2 states, in part, "Encourage new overnight visitor accommodation developments to provide a range of rooms and room prices in order to serve all income ranges..." However, these policies don't necessarily protect all types of existing accommodations.

Suggested Modification No. 36 (Sub-section B) also requires that in-lieu fees be paid if the subsequent development onsite does not include low cost overnight accommodation as a component of the development. However, because the Commission has historically interpreted the protection of lower cost facilities to include a range of affordable facilities, requiring an in-lieu fee for 100% of the units within a proposed development would be too high. It stands to reason that should the proposed development include a significant number of its rooms as low cost, the protection of a range of affordability would still be possible. However, as stated above, the current trend for development is to include 0% of a proposed development's rooms to function as lower cost. Therefore, a significant portion of these developments would be required to pay fees in-lieu of providing facilities at lower cost. The Commission has historically interpreted 25% as a reasonable amount of the total development to protect a range of affordability. Under the Coastal Act, each development on critical land reserved for visitor uses should provide some lower cost amenities to support public use and coastal access. As stated above, the current trend of development includes 0% of the units serving as low cost accommodations; therefore, the suggested modification requires that an in-lieu fee be paid for 25 % of the net increase for any higher cost units, to account for the lack of these priority uses provided on site.

No fee has been identified at this time. Instead, the Commission and City believe it would be appropriate to develop a method for establishing a fee through the coastal development permit process and when the City develops its implementation plan for the Coastal Land Use Plan. That methodology should consider "Hard Costs" and "Soft Costs" and start up costs. "Hard" costs include, among other things, the costs of purchasing a building and land and construction costs (including a construction cost contingency and performance bond for the contractor). "Soft" costs would include, among other things, closing costs, architectural and engineering costs, construction management, permit fees, legal fees, furniture and equipment costs and marketing costs.

The suggested modification also includes the opportunity for an applicant to propose a specific lower cost overnight accommodation project to complete or contribute to, as opposed to payment of fees, subject to the approval of the City and the Executive Director of the Commission.

Suggested Modification No. 37 pertains to new development on land that isn't currently developed with any type of lower cost overnight accommodation. As stated above, the Commission has previously required that new development that cannot be considered low cost provide in-lieu fees for 25% of the proposed number of units. Therefore, any new development that includes only high cost overnight accommodations would be required to pay a mitigation fee for 25% of the total proposed rooms. This fee will offset the loss of land that may have been more appropriately used to provide a visitor-serving facility that the general public can afford. Further, as discussed above, this in-lieu fee will establish or add to a "bank" reserved to subsidize lower cost overnight developments within either the City or within the coastal area of Orange County. In

addition, the Commission now recognizes that moderate cost overnight accommodations would likely serve to provide affordable overnight accommodations during the off-peak season, when rates go down, or at least provide less expensive overnight accommodations than those of high-end hotels, thereby making more hotel/motel units available to a wider variety of incomes. As such, no fees should be imposed on the new construction of moderate cost units.

Lastly, Suggested Modification No. 38 defers development of the methodology for determining how room rates are classified as low, moderate or high cost in the LCP to the implementation phase of LCP development. The methodology should assess statewide travel data and assess costs of overnight accommodations in a regional context taking into consideration market conditions.

In conclusion, the addition of the above stated policies will 1) set priorities for the types of development within lands suitable for visitor-serving uses; 2) protect those visitor-serving recreational and overnight uses that can be considered lower cost; 3) protect the current stock of lower cost overnight accommodations by requiring in-lieu fees associated with any demolition of existing lower cost over-night accommodations that are not replaced and 4) promote the future development of overnight accommodations with an adequate range of affordability. These suggested modifications will serve as incentives to include lower cost accommodations within future projects, or to allocate funds to potential lower cost overnight accommodation projects, thereby promoting lower cost visitor-serving accommodation within the coastal zone. The result of these provisions is that development in areas suitable for visitor-serving uses will be used as such and will be accessible to the highest proportion of the public as feasible, and therefore consistent with the Coastal Act.

c. Limited Use Overnight Visitor Accommodations

Recently, the trend has been for developers constructing projects with overnight accommodations to seek individual investors to aid in the initial costs of construction and development. This often results in a development having a "private component" that limits the visitor-serving use of the facility. These developments incorporate condominium hotel units or fractional ownership units, both of which give some priority to the individual owners, and diminish the visitor-serving use of such a facility.

Limiting where these Limited Use Overnight Visitor Accommodations may occur significantly reduces the level of adverse impacts on the provision of visitor serving uses within the City's coastal zone. Nevertheless, limiting the sites alone does not adequately protect visitor serving uses. Furthermore, existing overnight visitor accommodations, including but not limited to lower cost accommodations, must be protected. As proposed, the LUP amendment doesn't address these issues.

However, if the amendment were modified to 1) add a defined term for Limited Use Overnight Visitor Accommodations; and 2) add an LUP policy to clarify that no existing, traditional overnight transient visitor serving accommodations can be converted to

Limited Use Overnight Visitor Accommodations, then, the LUP amendment could be found consistent with the public access and recreation policies of the Coastal Act. In order to accomplish this, modifications are suggested to the proposed LUP amendment.

The term “timeshares” is often used as a “catch-all” phrase that could include a variety of ownership types. However, the term “timeshare” can have a more specific meaning that defines a particular type of divided interest product¹. Thus, a distinct definition is necessary in the Land Use Plan. A modification is suggested to add a defined term for Limited Use Overnight Accommodations. The definition should be sufficiently broad to encompass all the types of limited use hotels that may be contemplated by the City. The suggested definition is an umbrella term intended to encompass such limited use accommodations as “timeshare”, “fractional ownership hotel”, and “condominium-hotel”. The LUP already includes a Glossary at the end of the document. The Glossary, a list of definitions, represents a good place to add a new definition in the LUP.

The proliferation of timeshares in place of existing facilities providing traditional overnight accommodations would have a severe negative impact on the visitor serving function of these facilities. Therefore, a modification is suggested that would prohibit the conversion of any existing overnight accommodations, such as hotels and motels, to any form of Limited Use Overnight Visitor Accommodations. Furthermore, a modification is suggested that makes it clear that Limited Use Overnight Visitor Accommodations shouldn't be allowed within the priority visitor serving zones. The suggested modification would prohibit Limited Use Overnight Visitor Accommodation uses on sites designated Visitor Serving Commercial or Mixed-Use Water Related. The exclusion of Limited Use Overnight Visitor Accommodations in these zones does not suggest they are allowed in all other zones. No provisions are made at this time to allow Limited Use Overnight Visitor Accommodations elsewhere in the City's coastal zone. An LUP amendment would be needed to address where Limited Use Overnight Visitor Accommodations could potentially be allowed.

Therefore, for the reasons outlined above, the Commission finds that only if modified as suggested, can the proposed LUP amendment be found to be consistent with Sections 30210, 30213 and 30222 and all the public access and recreation policies of the Coastal Act.

2. Transit/Smart Growth

Section 30250(a) of the Coastal Act states, in relevant part:

(a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such

¹ There is a definition of “timeshare” in the Vacation Ownership and Time-Share Act of 2004 (Bus. & Prof. Code Section 11212(z))

areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. ...

Section 30252 of the Coastal Act states:

The location and amount of new development should maintain and enhance public access to the coast by (1) facilitating the provision or extension of transit service, (2) providing commercial facilities within or adjoining residential development or in other areas that will minimize the use of coastal access roads, (3) providing nonautomobile circulation within the development, (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation, (5) assuring the potential for public transit for high intensity uses such as high-rise office buildings, and by (6) assuring that the recreational needs of new residents will not overload nearby coastal recreation areas by correlating the amount of development with local park acquisition and development plans with the provision of onsite recreational facilities to serve the new development.

Section 30253 of the Coastal Act states, in relevant part:

New development shall:

... (4) *Minimize energy consumption and vehicle miles traveled.*

Section 30250 of the Coastal Act requires that new development be concentrated in existing developed areas where it can be accommodated without adverse effects on coastal resources. Section 30252 of the Coastal Act states that the location and concentration of development should maintain and enhance public access to the coast by facilitating the extension of transit service and minimizing the use of coastal access roads. Section 30253 indicates new development shall minimize energy consumption and vehicle miles traveled. Concentrating development in existing developed areas provides more opportunities for people to live near places they work and recreate, such as the beach, and, thereby, reduces impacts to coastal resources. Impacts to roads and vehicle miles traveled would be reduced by having a more intense stock of housing located closer to employment, commercial and recreational opportunities within the coastal zone. Also, by having a higher density in an existing developed area, it places more people in a single location so that public transit service is facilitated, which then again aids in reducing the number of cars on streets and thus reduces impacts to coastal resources and public access.

Concentrating development in developed areas also has other cumulative benefits. It would lead to less pressure to extend new development into undeveloped areas, which would prevent sprawl, preserve open space and prevent adverse impacts to sensitive habitats. By concentrating development in developed areas where it can be accommodated, sensitive coastal resources would be protected and preserved.

Additionally, the location and concentration of development would maintain and enhance public access to the coast.

As described in the findings for denial, Land Use Plans must contain provisions to encourage provision and use of public transit. While the amended CLUP contains many of these concepts, certain provisions are lacking. For instance, while the CLUP does require larger non-residential developments to facilitate commuting by bicycle by providing bicycle racks, lockers and showers, smaller developments aren't encouraged to provide such facilities. The amended plan also lacks adequate policies regarding provision of a summertime beach shuttle. However, if the plan is modified as described in Suggested Modifications 40 through 46, which provide policies to encourage or require improved mass transit and other methods of transportation that do not rely on automobiles, the amended plan can be found consistent with the above described elements of Sections 30250, 30252 and 30253 of the Coastal Act.

3. Non-Conforming Uses

As stated in the findings for denial, proposed policy, 2.2.5-2, is inconsistent with Coastal Act requirements because it would allow a commercial building that is non-conforming with regard to parking, setbacks, height, etc. to be completely reconstructed to its previous intensity without providing the required parking, appropriate setbacks or compliance with existing height limits. As a result the development could have adverse impacts upon public access, public views, or even biological resources that would be inconsistent with the Coastal Act. However, if the policy were modified to clarify that such reconstruction to the pre-existing intensity may be allowed so long as all other requirements of the Coastal Land Use Plan are satisfied, the policy could be found consistent with the Chapter 3 policies of the Coastal Act. The policy also needs to be clarified to indicate that in the areas to which the policy applies, the City has the ability to approve reconstruction of existing buildings that exceed current intensity limits, with less than the current intensity, as necessary, to ensure the structure complies with the other Coastal Land Use Plan policies. The policy also needs to be modified to clarify which areas are considered the 'older commercial districts'. As modified, the Commission finds proposed policy, 2.2.5-2 to be consistent with the Chapter 3 policies of the Coastal Act.

4. Mapping Issues

As noted in the findings for denial, the coastal zone boundary is not accurately depicted with regard to the Banning Ranch area on proposed maps submitted by the City. However, if those maps are modified to depict the coastal zone boundary accurately in the area of Banning Ranch then such maps could be found consistent with the Coastal Act. Therefore, the Commission imposes Suggested Modification No. 13.

In addition, the City makes reference to particular areas in the City by community name, such as "Mariner's Mile" and "Balboa Village", but the City's proposed land use plan maps don't identify the location or boundary of these areas. However, if those maps are

modified to identify these areas, the Commission could approve them. Therefore, the Commission imposes Suggested Modification No. 26.

5. Open Spaces/Biological Resources

a. Environmentally Sensitive Habitat Area (ESHA)

Section 30240 of the Coastal Act states:

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

The Coastal Act requires environmentally sensitive habitat areas (ESHA) to be protected against significant disruption of habitat values and restricts development within ESHA to resource dependent uses. Development in areas adjacent to ESHA must be sited and designed to prevent impacts that would significantly degrade those areas and must be compatible with the continuance of those habitat and recreation areas.

Section 30107.5 defines ESHA as “*any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.*”

As noted in the findings for denial, the proposed amended Coastal Land Use Plan amendment does not contain policies necessary to protect ESHA, such as language that addresses how areas which are found to be ESHA or ESHA buffer are to be treated in conjunction with development proposals. For instance, there are no policies that specifically require all preserved ESHA, buffers, and all mitigation areas, to be conserved/dedicated (e.g. open space direct dedication, offer to dedicate (OTD), conservation easement, deed restriction) in such a manner as to ensure that the land is conserved in perpetuity. There are also no policies that require a management plan and funding to be required to ensure appropriate management of the habitat area in perpetuity. These areas also need to be protected consistent with the requirements established in the dedication, offer, deed restriction, or easement.

Directly dedicated lands and offers to dedicate need to be made to public agencies or other appropriate entities willing to accept such dedications and offers and to manage the lands subject to the dedications and offers. An inventory of such areas should also

be maintained by the City so as to ensure such areas are known to the public and are protected through the coastal development permit process. Policies in the Land Use Plan need to establish these requirements.

However, if the land use plan amendment is modified as described above and in Suggested Modifications No.s 47 to 52, the amended Coastal Land Use Plan can be found consistent with Section 30240 of the Coastal Act.

b. Wetland Diking, Dredging & Fill

The current language of Section 30233(a) of the Coastal Act, is as follows:

(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

(1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.

(2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.

(3) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.

(4) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.

(5) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.

(6) Restoration purposes.

(7) Nature study, aquaculture, or similar resource dependent activities.

The existing Coastal Land Use Plan contains the following policy, modeled on Section 30233 of the Coastal Act, as that language existed in 2005:

4.2.3-1. Permit the diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes in accordance with other applicable provisions of

the LCP, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects and limited to the following:

A. *Construction or expansion of port/marine facilities.*

B. *Construction or expansion of coastal-dependent industrial facilities, including commercial fishing facilities, and commercial ferry facilities.*

C. *In wetland areas only, entrance channels for new or expanded boating facilities; and in a degraded wetland, identified by the Department of Fish and Game pursuant to subdivision (b) of Section 30411, for boating facilities if, in conjunction with such boating facilities, a substantial portion of the degraded wetland is restored and maintained as a biologically productive wetland. The size of the wetland area used for boating facilities, including berthing space, turning basins, necessary navigation channels, and any necessary support service facilities shall not exceed 25 percent of the degraded wetland. [Emphasis Added]*

D. *In open coastal waters, other than wetlands, including estuaries and streams, new or expanded boating facilities, including slips, access ramps, piers, marinas, recreational boating, launching ramps, and pleasure ferries, and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.*

E. *Maintenance of existing and restoration of previously dredged depths in navigational channels, turning basins, vessel berthing, anchorage, and mooring areas, and boat launching ramps. The most recently updated U.S. Army Corps of Engineers maps shall be used to establish existing Newport Bay depths.*

F. *Incidental public service purposes which temporarily impact the resources of the area, such as burying cables and pipes, inspection of piers, and maintenance of existing intake and outfall lines.*

G. *Sand extraction for restoring beaches, except in environmentally sensitive areas.*

H. *Restoration purposes.*

I. *Nature study, aquaculture, or similar resource-dependent activities.*

J. *In the Upper Newport Bay Marine Park, permit dredging, diking, or filling only for the purposes of wetland restoration, nature study, or to enhance the habitat values of environmentally sensitive areas.*

At the beginning of 2007, an amendment to the Coastal Act became effective that eliminated the language from Section 30233 of the Coastal Act upon which subsection C of the City's policy was modeled. Thus, retention of that language in this amendment is inconsistent with Section 30233 of the Coastal Act, thus, the amendment had to be denied, as submitted. However, if the amended Coastal Land Use Plan were modified to delete subsection C of policy 4.2.3-1, the amended plan can be found consistent with Section 30233 of the Coastal Act. Therefore, the Commission imposes Suggested Modification No. 53.

c. West Newport/Western Entry Parcel

As noted in the denial section of these findings, the proposed amendment lacks policy language to adequately acknowledge and protect sensitive resources on and adjacent to the property at 7204 West Coast Highway. However, if that policy language were modified to acknowledge the sensitive resources on the site and to require appropriate setbacks, the Commission could find the amendment consistent with the Coastal Act. Therefore, the Commission imposes Suggested Modification No. 16.

6. Coastal Access, Recreation & Coastal Views

Section 30210 of the Coastal Act states:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30211 of the Coastal Act states:

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Section 30212 (a) of the Coastal Act states:

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:

(1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,

(2) adequate access exists nearby, or,

(3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

Section 30212.5 of the Coastal Act states:

Wherever appropriate and feasible, public facilities, including parking areas or facilities, shall be distributed throughout an area so as to mitigate against the impacts, social and otherwise, of overcrowding or overuse by the public of any single area.

Section 30213 of the Coastal Act states, in relevant part:

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

Section 30220 of the Coastal Act states:

Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.

Section 30221 of the Coastal Act states:

Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

Section 30222 of the Coastal Act 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.

Section 30223 of the Coastal Act states:

Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.

Section 30251 of the Coastal Act states in relevant part:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal

areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. ...

a. Beach Area at Orange County Harbor Patrol Facility

As submitted, the Commission found the City's application of the Public Facility land use category to the sandy beach area at 1901-1911 Bayside Drive to be inconsistent with the Coastal Act. However, if the Public Recreation land use category were applied to the sandy beach area, which is consistent with the existing use, the amendment could be found consistent with the public access and recreation policies of the Coastal Act. Therefore, the Commission imposes Suggested Modification No. 11.

b. West Newport/Western Entry Parcel

The City has targeted the Western Entry Parcel at 7204 West Coast Highway for public purposes. Proposed policy language to address this fails to emphasize that the use of the site should be public in nature. However, if the policy were modified to clarify that public access is a contemplated use on the property, including public accessways, public parking, public park related uses, and an access from the parcel to the beach and ocean on the seaward side of Coast Highway, the Commission could find the policy consistent with the public access and recreation policies of the Coastal Act. Therefore, the Commission imposes Suggested Modification No. 16.

c. Mariners' Mile

The proposed amendment would intensify commercial uses along Mariners' Mile and introduce residential uses to areas presently reserved for commercial purposes. Policy language is proposed to address uses in proposed Section 2.1.4 of the plan. However, the need for adequate public access to and along the waterfront and the protection and provision of views of the harbor from the public right of way are not adequately addressed. However, if the land use plan amendment were modified consistent with Suggested Modification No.'s 17, 21, 23, 24, and 25, the Commission finds the proposed amendment to be consistent with the public access, recreation and view provisions of Chapter 3 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.

In conjunction with the City's preparation of their General Plan Update the City prepared an Environmental Impact Report (EIR) (SCH#2006011119). The City determined, pursuant to Sections 15162 and 15163 of the State CEQA guidelines, that no subsequent or supplemental EIR was necessary for the proposed amendments to the Coastal Land Use Plan because the proposed LCP amendment is consistent with the General Plan Update and the proposed LCP amendment presents no new effects that could occur that were not examined in the program EIR, and there was no evidence - in their view - that new mitigation measures would be required. The EIR found that, with mitigation, most environmental impacts associated with the General Plan Update (and by association the proposed Coastal Land Use Plan amendment) would be reduced to less than significant levels.

However, the EIR did conclude that certain elements of the General Plan Update would have significant adverse impacts that could not be reduced through mitigation to less than significant levels, thus, the City adopted a Statement of Overriding Consideration for these impacts. The unavoidable adverse impacts identified were as follows: 1) aesthetic impacts due to increased light effects that would occur in Banning Ranch if that area is developed with residential and commercial development (although the Banning Ranch area is not a part of the subject Coastal Land Use Plan or the amendment); 2) cumulative impacts with regard to air quality; 3) impacts to historical resources (i.e. demolition of historic structures) that may occur despite policies that encourage their preservation; 4) noise impacts resulting from construction activities, traffic-related noise, and exposure of new residents to high levels of noise from John Wayne Airport (outside the coastal zone and Coastal Land Use Plan area); 5) Population and Housing given that the plan would add up to 7,000 residential units and increase City population by 30% to 43% over 2002 numbers, City-wide (spread over areas inside and outside the coastal zone); and 6) impacts on transportation at freeway segments and ramps. The statement of overriding consideration cites plan benefits such as substantially increasing opportunities for residents to live in proximity to their jobs and reducing the number and length of vehicle commutes through the provision of mixed use developments, economic revitalization in deteriorated commercial districts, among other resource provisions that are included in the updated General Plan that was adopted (provisions that are already in the Coastal Land Use Plan) relative to protection of water quality, protection and provision of visitor serving commercial uses, and protection of sensitive habitat areas.

The proposed LUP amendment has been found not to be in conformance with several Coastal Act policies regarding promoting visitor serving uses, protection and provision of lower cost overnight accommodations, protection of biological resources and provision of alternative forms of transportation. 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. Except for those impacts the City identified that result in significant adverse unavoidable impacts (some of which are reduced as a result of the suggested modifications), 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 other than those with which the City has adopted a Statement of Overriding Consideration.

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.