

CALIFORNIA COASTAL COMMISSION

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

W8.5a



April 6, 2009

ADDENDUM

To: Commissioners & Interested Persons

From: South Coast District Staff

RE: Item W8.5a, Revised Findings for Newport Beach Land Use Plan Amendment No. NPB-MAJ-1-07, Newport Beach, Orange County, for the Commission hearing on April 8, 2009.

A. Letter dated April 1, 2009 from the City of Newport Beach City Attorney responding to the staff recommended revised findings (attached)

B. Staff response to City's Letter:

The City of Newport Beach's City Attorney raises two objections to the staff recommended revised findings, as follows: 1) no revised findings should be made with regard to the findings for denial-as-submitted because the City Attorney believes no specific direction was given by the Commission to staff to make changes to the denial findings; and 2) the City Attorney believes the Commission's action at the hearing resulted in a change such that the conversion of existing hotel/motel rooms to Limited Use Overnight Visitor Accommodations would be allowed so long as those LUOVAs are subject to the restrictions on quantity, duration of owner use, management, etc. As written in the revised findings dated March 26, 2009, Suggested Modification No. 33 prohibits conversion of existing hotel/motel rooms to LUOVAs (except for a few units allowed to be converted at the Hyatt Newport site). Suggested Modification No. 38A and B specify the restrictions related to LUOVAs at the Hyatt Newport site, and to all other LUOVAs that are proposed.

In cases where the Commission takes an action that is different from the staff recommendation, unless the Commission wishes to, there is no need for the Commission itself to specifically direct staff as to where in the findings changes need to be made (notwithstanding the need for Commissioners to explain the reasons for the changes they are making). Instead, Commission staff review the transcript and web cast of the discussion during the hearing and make all changes necessary to support the action the Commission took. Commission staff believe the changes to the findings for denial-as-submitted, found on pages 41 and 42 of the revised findings are appropriate and necessary to reflect clarifications made at the hearing by Commission staff and to accurately reflect the Commission's deliberations relative to its action. The change on page 41 was made to reflect discussion, most specifically, found on pages 19 and 20 of the transcript (Exhibit 8).

Commission staff disagree with the City Attorney's assertion that the Commission allowed for the conversion of existing hotel/motel rooms to LUOVAs so long as the requirements related to LUOVAs are imposed. The Commission's deliberations about allowing LUOVAs in the City's visitor serving zones was focused on new development of LUOVAs, not conversion of existing hotel/motels to LUOVAs. The prohibition on conversion of existing hotel/motel rooms to LUOVAs is contained in Suggested Modification No. (SM) 33. The Commission made no motion to change the requirements of SM 33; nor did it make any motion to make changes to any other suggested modification to allow conversion of existing hotels/motels to LUOVAs. In fact, on page 40 of the transcript (Exhibit 8), the maker of the motion (Commissioner Reilly) explicitly stated his opposition to any changes to SM 33. While the City Attorney is not suggesting changes to SM 33, the changes he is

suggesting to SM38b would, in effect, remove the prohibition on conversion of existing hotel/motel rooms to LUOVAs, contrary to the intent expressed by the Commission.

Given the City's present position regarding SM 38b, Commission staff believe some changes are appropriate to clarify any ambiguity regarding SM 38b. During its deliberations, the Commission only made reference to changing SM 14. However, upon consultation with the City, Commission staff decided to separate the requirements related to LUOVAs so that part were contained in SM 14 and part in SM 38b. The reason for doing this was because SM 14 related to all types of uses allowed in the visitor serving commercial districts - it was not a policy specific to restrictions on LUOVAs; whereas, SM 38 contained the restrictions specifically related to permitted LUOVAs. Thus, we concluded that SM 14 should make the allowance for LUOVAs in the visitor serving district, but contain a cross reference to SM 38 wherein the requirements related to restrictions regarding use of any permitted LUOVAs would be laid out. However, in retrospect, we believe that separation has, in part, led to some ambiguity that could be exploited in the manner the City Attorney has suggested. Thus, Commission staff now believe it would be best to simply place all the requirements outlined by the Commission in its February 5th deliberations into SM 14 where the Commission discussed they would occur. Returning the requirements to SM 14 removes any ambiguity. Thus, some changes to the revised findings are being made.

C. Revisions to the Revised Findings:

Commission staff recommends that the Commission adopt the following changes to the revised findings:

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

Plain Text in Underline = Policy language previously added

~~Plain Text in Double Strike Out~~ = Policy language deleted as a result of Commission's action on February 5, 2009 as shown in the March 26, 2009 report

Plain Text in Double Underline = Policy language added as a result of Commission's action on February 5, 2009 as shown in the March 26, 2009 report

~~***Plain Text in Double Strike Out***~~ = Language deleted as a result of this addendum

Plain Text in Double Underline = Language added as a result of this addendum

- On page 13 of the Revised Findings, change Suggested Modification No. 14 as follows:

Suggested Modification No. 14: MODIFIED BY COMMISSION ACTION AT THE FEBRUARY 5, 2009, HEARING. 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, except (LUOVA) are an allowed use when provided together with traditional overnight, hotel visitor accommodations. **Furthermore, any permitted LUOVA shall be subject to specific restrictions on the quantity, duration of owner use of such facilities, management of**

the accommodations as part of the hotel facility and an allowance for transient overnight use by the general public when not owner occupied. All of these requirements shall be further defined in the implementing regulations for this land use plan (when such regulations are certified) and through the coastal development permit process. among other requirements as provided in Policy 2.3.3-V.

- On page 20 of the Revised Findings, change Suggested Modification No. 38 as follows:

Suggested Modification No. 38: ~~**MODIFIED BY COMMISSION ACTION AT THE FEBRUARY 5, 2009, HEARING.**~~ In Chapter 2 (Land Use and Development), Section 2.3 (Visitor Serving and Recreational Development), Policy 2.3.3-V:

~~**A. Permit limited-use overnight visitor accommodations on the hotel resort property located at 1107 Jamboree Road where such accommodations are provided together with traditional overnight, hotel visitor accommodations and which shall be subject to specific restrictions, including on: quantity (no less than 391 units shall be traditional hotel units available for transient overnight use by the general public year round and no more than 88 of the total 479 units planned may be limited-use overnight visitor accommodations), duration of owner use of such facilities (maximum use of 90 days per calendar year with a maximum of 29 days of use during any 60 day period), management of the units as part of the hotel facility and allowance for transient overnight use by the general public when not owner occupied; all of which shall be further defined in the implementing regulations for this land use plan (when such regulations are certified) and through the coastal development permit process.**~~

~~**B. Any permitted limited-use overnight visitor accommodation (LUOVA) shall be subject to specific restrictions on the quantity, duration of owner use of such facilities, management of the accommodations as part of the hotel facility and an allowance for transient overnight use by the general public when not owner occupied; all of which shall be further defined in the implementing regulations for this land use plan (when such regulations are certified) and through the coastal development permit process.**~~

- On all pages of the Revised Findings where there is reference to SM 38b, remove or change that reference to SM 14.



CITY OF NEWPORT BEACH

OFFICE OF THE CITY ATTORNEY

David R. Hunt, City Attorney

April 1, 2009

**VIA FACSIMILE (562) 590-5084 AND
FEDERAL EXPRESS**

California Coastal Commission
South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA, 90802-4302

**Re: City of Newport Beach Land Use Plan Amendment NPB-MAJ-1-07
Land Use Classifications/Land Use Changes
A09-00025**

Honorable Commissioners:

On February 5, 2009, the California Coastal Commission ("Commission") considered the application filed by the City of Newport Beach ("City") to amend its Coastal Land Use Plan ("CLUP"). At the hearing, the Commission denied the application based upon its conclusion that the amendment was not in conformance with the Coastal Act. In a separate action, the Commission voted to certify the amendment to the CLUP provided the City adopted suggested modifications. At the conclusion of the hearing, Commission staff was asked to return to the Commission with suggested modifications and findings that reflected the decision of the Commission as to the certified CLUP so that the Commission could confirm that Commission staff had properly interpreted the direction of the Commission.

On April 8, 2009, the California Coastal Commission will consider whether staff properly interpreted the direction of the Commission in regards to the conditional certification of the City's amendment to the CLUP. While the City is in general agreement that Commission staff has accurately captured the direction of the Commission, the City is concerned because the proposed motion seeks to adopt findings related to the decision to deny the application, a decision which is final and cannot be disturbed. In addition, the City believes that a slight change to Suggested Modification No. 38 (B) is necessary to make the modification consistent with Suggested Modification No. 33.

Scope of Review

The scope of review and the matter before you on your April 8, 2009 agenda is limited to memorializing the commission's certification of the CLUP amendment as modified. No further action on the denial of the City's amendment is necessary or appropriate.

The action by the Commission denying the amendment to the CLUP is final. As a result, the findings and evidence related thereto cannot be amended or otherwise altered. Specifically, on February 5, 2009, the Commission voted to deny the City's amendment to the CLUP. (See, Reporter's Transcript of Proceedings, p. 5, attached hereto as Attachment 1.) There was no direction given to Commission staff to alter the findings or return the matter to the Commission for review. Thus, the action by the Commission to deny the application was final at the time the vote was taken on February 5, 2009.

However, in the March 26, 2009 staff report, Commission staff inappropriately recommends that the Commission should make a motion adopting new findings in regards to the decision to deny the application for amendment of the City's CLUP. Specifically, the staff report provides that:

Commission staff recommends that the Commission **ADOPT** the following revised findings in support of the Commission's decision on February 5, 2009 ***to deny the proposed Land use Plan amendment***, as submitted, and to approve the Land use Plan amendment with suggested modifications. The motions to accomplish this begin on Page 7.

* * *

Motion: "I move that the Commission adopt the following revised findings in support of the Commission's action on February 5, 2009 concerning City of Newport Beach Land Use Plan Amendment 1-07."

* * *

Resolution To Adopt Revised Findings:

The Commission hereby adopts the findings set forth below for the Commission's denial of certification of the City of Newport Beach's proposed Land Use Plan Amendment 1-07, as submitted, and for the Commission's conditional certification (certification with the suggested modifications listed below) of that proposed LCP Amendment, on the ground that the findings support the Commission's decision made on February 5, 2009, and accurately reflect the reasons for it. (See, March 26, 2009, Commission Staff Report, p. 2, ¶ 2, p. 7, ¶¶ 2 and 5.)

As set forth above, this recommended action is inappropriate because the action by the Commission to deny the application was final on February 5, 2009 and no other action in regards to the motion to deny the application is necessary or appropriate.

As a result, the sole purpose of the hearing scheduled April 8, 2009 is to determine whether Commission staff properly interpreted the direction of the Commission in regards to the motion to certify the amendment to the CLUP and to adopt revised language and findings to that end. The purpose of the hearing is not to take additional evidence or make any findings that are not consistent with the record or the decision on February 5, 2009 [to conditionally certify the amendment to the CLUP.]

Suggested Modification No. 38 (B)

The City is concerned that the additional text contained in Suggested Modification No. 38 (B) creates an ambiguity given the text of Suggested Modification No. 33. Specifically, this text could be interpreted in the future to limit the development of Limited Use Overnight Visitor Accommodations which does not correspond with the direction given by the Commission at the last meeting.

Specifically, Suggested Modification No. 33 provides that:

Suggested Modification No. 33: 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 (NPBMAJ- 1-07) shall not be permitted to convert to a Limited Use Overnight Visitor Accommodation, except as provided in Policy 2.3.3-V.

Based on the text of Suggested Modification No. 33, a hotel/motel is prohibited from converting to a Limited Use Overnight Visitor Accommodation, except as provided in Policy 2.3.3-V. Suggested Modification No. 38 provides that:

Suggested Modification No. 38: MODIFIED BY COMMISSION ACTION AT THE FEBRUARY 5, 2009, HEARING. In Chapter 2 (Land Use and Development), Section 2.3 (Visitor Serving and Recreational Development), Policy 2.3.3-V:

A. Permit limited-use overnight visitor accommodations on the hotel resort property located at 1107 Jamboree Road where such accommodations are provided together with traditional overnight, hotel visitor accommodations and which shall be subject to specific restrictions, including on: quantity (no less

than 391 units shall be traditional hotel units available for transient overnight use by the general public year round and no more than 88 of the total 479 units planned may be limited-use overnight visitor accommodations), duration of owner use of such facilities (maximum use of 90 days per calendar year with a maximum of 29 days of use during any 60 day period), management of the units as part of the hotel facility and allowance for transient overnight use by the general public when not owner occupied; all of which shall be further defined in the implementing regulations for this land use plan (when such regulations are certified) and through the coastal development permit process.

B. Any permitted limited-use overnight visitor accommodation (LUOVA) shall be subject to specific restrictions on the quantity, duration of owner use of such facilities, management of the accommodations as part of the hotel facility and an allowance for transient overnight use by the general public when not owner occupied; all of which shall be further defined in the implementing regulations for this land use plan (when such regulations are certified) and through the coastal development permit process.

Given the text of Suggested Modification No. 38, it could be interpreted that Limited Use Overnight Visitor Accommodation are only allowed at the Hyatt property at 1107 Jamboree Road. To clarify that a hotel/motel is allowed to convert to a Limited Use Overnight Visitor Accommodation at other locations, the City is recommending that suggested Modification No. 38 (B) be changed as follows:

B. Permit conversion of hotel/motel rooms to limited-use overnight visitor accommodations (LUOVAs) and permit LUOVAs where the use is allowed, provided that the development shall be subject to specific restrictions on the quantity, duration of owner use of such facilities, management of the accommodations as part of the hotel facility and an allowance for transient overnight use by the general public when not owner occupied; all of which shall be further defined in the implementing regulations for this land use plan (when such regulations are certified) and through the coastal development permit process.

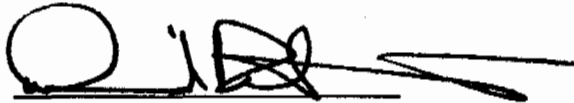
Conclusion

In sum, the City believes staff's recommendation is generally appropriate and appreciates staff's efforts. The City only objects to the adoption of new findings related to the decision to deny the application and requests that the Commission adopt a revised motion and resolution, accordingly. In addition, a revision to Suggested Modification No. 38 (B) is necessary to make the modification consistent with Suggested Modification No. 33. To help the Commission with this matter, an alternative motion and resolution for adoption by the Commission is attached hereto as Attachment 2.

Thank you for your consideration. If you have any questions, please do not hesitate to contact me.

Sincerely,

OFFICE OF THE CITY ATTORNEY

A handwritten signature in black ink, appearing to read 'D. R. Hunt', written over a horizontal line.

David R. Hunt,
City Attorney

cc: Proof of Service

ATTACHMENT 1

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STATE OF CALIFORNIA
COASTAL COMMISSION

copy
ORIGINAL

CITY OF NEWPORT BEACH)
LAND USE CHANGES)
COUNTY OF ORANGE)

Local Coastal Program
Amendment No. NPB-MAJ-1-07

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Thursday
February 5, 2009
Agenda Item No. 18.d.

(Fragmented Portion Only)

Huntington Beach City Hall
City Council Chambers
2000 Main Street
Huntington Beach, California

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1 zone, and that being the visitor-serving uses, in particular
2 the lower-cost visitor overnight accommodations.

3 And, in reference to the city's numbers, we think
4 that those are taken from the General Plan. They are
5 referring to commercial square footage, and not to land area
6 that is set aside for commercial uses.

7 And, their reference to whether or not there is an
8 increase in the hotel motels in the city, they indicated
9 those numbers show that there is an increase in the lower-
10 cost hotel motels in the city, and it is just a number that
11 reflects that there may be an increase in the hotels and
12 motels in general.

13 We think it is reasonable to address limited use
14 overnight accommodations at the new land use that is not
15 addressed in the Land Use Plan. It is not permitted in
16 visitor-commercial land areas now. We know that the city
17 disagrees with that position. It is a relatively new use,
18 these condominium hotels and fractionals, and we think that
19 it is only prudent for the Land Use Plan to address that use.

20 We are clarifying that it is a prohibited use in
21 visitor commercial areas. The city has provided information
22 for one site, the Hyatt site, that we have looked at in a
23 manner similar to the way the Commission has addressed this
24 issue in other LCP amendments. We have looked at the
25 existing stock in the city. We have looked at the number of

1 the specific circumstances when a fee would be required,
2 specifically, if lower-cost overnight accommodations are
3 demolished, and not replaced, or if high cost accommodations
4 are proposed. The policy is recommending that the fee be
5 applied to 25 percent of those units.

6 We feel that the fee should be used as a
7 mitigation for loss of lower-cost accommodations, and they
8 should be used to provide lower-cost accommodations in the
9 Newport Beach coastal zone.

10 The city has suggested some alternative language
11 to address the fee. The language removes some of the
12 specificity as to when the fee would be required, but it also
13 allows that the fees could be used for visitor and
14 recreational facilities, and not overnight accommodations.

15 We urge the Commission, if you are inclined to
16 accept the city's language to remove some of the specificity
17 regarding the fee, that you do not accept use of the fees for
18 anything other than provision of lower-cost overnight
19 accommodations in the coastal zone.

20 And, Suggested Modification No. 39, is a
21 definition of limited use overnight accommodations, similar
22 to what has been used in other Commission actions in other
23 LCPs. We feel that there needs to be a definition in the
24 LUP. It is referred to in Suggested Modification No. 38,
25 that the city is now objecting to.

1 apply the *Nollan Dolan* standards.

2 They said that their nexus and rough proportional-
3 ity tests do not apply to fees that are established by rules
4 that apply to everyone, within a reasonably defined category
5 of applicants, and fees that are established by ordinance, or
6 other generally applicably rules, do need to be reasonably
7 related. But, they were clear that this was not *Nollan*
8 *Dolan*. and is more lenient, so we don't believe that their
9 argument helps their case.

10 And, we do believe that we do have the authority,
11 and that we do meet the standard required in this case.

12 CHAIR NEELY: Anything else from staff?

13 DEPUTY DIRECTOR SARB: That concludes our
14 comments.

15 CHAIR NEELY: All right, thank you very much. I
16 will bring it back to the Commission.

17 Commissioner Shallenberger.

18 COMMISSIONER SHALLENBERGER: Yes, I was out of the
19 room for a short period, at the beginning of the present-
20 ation, and I just wanted to put on the record, that I have
21 read the staff report, and all of the information that the
22 city provided beforehand, and in fact, some of the time that
23 I was out of the room, I also was monitoring the sound, so I
24 feel quite comfortable being able to participate in the
25 debate and voting on this issue, because I have read

1 [MOTION]

2 COMMISSIONER CLARK: I'll start over.

3 I move that the Commission certify the City of
4 Newport Beach Land Use Plan Amendment NPB-MAJ-1-07 as
5 submitted, and recommend a "No" vote.

6 COMMISSIONER POTTER: Second.

7 CHAIR NEELY: All right, we have a motion by
8 Commissioner Clark, and a "second" by Commission Potter.

9 COMMISSIONER CLARK: Right.

10 CHAIR NEELY: And, they are both recommending a
11 "No" vote. Failure of the motion will result in the denial
12 of the Land Use Plan Amendment as submitted, and adoption of
13 the resolutions and findings in the staff report.

14 Would you like to speak to that motion,
15 Commissioner Clark?

16 COMMISSIONER CLARK: No, but I will speak to the
17 next one.

18 CHAIR NEELY: All right.

19 Commissioner Potter?

20 COMMISSIONER POTTER: No.

21 CHAIR NEELY: Okay, is there any objection to a
22 unanimous roll call vote on this item?

23 [No Response]

24 Okay, then the Commission hereby denies the City
25 of Newport Beach Land Use Plan Amendment NPB-MAJ-1-07 as

1 some amending motions consistent with --

2 COMMISSIONER CLARK: Okay.

3 CHIEF COUNSEL SCHMELTZER: And, if I may make one
4 other suggestion.

5 COMMISSIONER CLARK: Yes.

6 CHIEF COUNSEL SCHMELTZER: In the recommended
7 motions, there are suggestions for not just changing some of
8 the suggested modifications, but also making some deletions
9 from the findings.

10 COMMISSIONER CLARK: Right.

11 CHIEF COUNSEL SCHMELTZER: If you are making -- if
12 the Commission does wish to go with the city's recommend-
13 ation, it would be helpful for staff to have the ability to
14 make the revised findings necessary to support those.

15 COMMISSIONER CLARK: Right.

16 CHIEF COUNSEL SCHMELTZER: And, I think what the
17 city is suggesting is somewhat limited as far as deletions
18 and changes to the findings.

19 And, I think it would be more helpful to us to be
20 able to give us the direction of following their suggestions
21 in revising the findings, so that we can come back with
22 appropriate revised findings.

23 COMMISSIONER ACHADJIAN: Madam Chair.

24 CHAIR NEELY: Commissioner Clark has the floor
25 right now.

1 CHIEF COUNSEL SCHMELTZER: -- and we are now --

2 CHAIR NEELY: No, we have not made the second
3 motion yet.

4 EXECUTIVE DIRECTOR DOUGLAS: They have not done
5 that yet.

6 CHIEF COUNSEL SCHMELTZER: Okay, I am sorry.

7 EXECUTIVE DIRECTOR DOUGLAS: You haven't had a
8 "second" on the motion to adopt it, as modified by staff
9 recommendation, so you need to do that.

10 [MOTION]

11 COMMISSIONER CLARK: Okay, I move that the
12 Commission certify the City of Newport Beach Land Use
13 Amendment NPB-MAJ-1-07, if modified as suggested by staff
14 report, and recommend a "No" vote --

15 EXECUTIVE DIRECTOR DOUGLAS: Just hold off on your
16 recommendation.

17 COMMISSIONER CLARK: Okay.

18 EXECUTIVE DIRECTOR DOUGLAS: We need a "second".

19 CHAIR NEELY: Is there a "second"?

20 COMMISSIONER POTTER: Second.

21 CHAIR NEELY: We have a motion by Commissioner
22 Clark, and a "second" by Commissioner Potter. They haven't
23 made a recommendation yet.

24 EXECUTIVE DIRECTOR DOUGLAS: Now, you can make a
25 motion to make --

1 CHAIR NEELY: He is still in the motion 1 on the
2 amendment, I think.

3 Commissioner Achadjian, did you have a suggestion?

4 COMMISSIONER ACHADJIAN: Question to the staff.

5 I hear where Mr. Clark is going with this. Does
6 it have to be a tentative motion, so that he can come back at
7 another hearing?

8 COMMISSIONER WAN: No, no.

9 COMMISSIONER ACHADJIAN: Already got an answer
10 here on this side.

11 EXECUTIVE DIRECTOR DOUGLAS: Could you repeat the
12 question, please?

13 COMMISSIONER ACHADJIAN: Okay, let me ask the
14 question.

15 Because of the newly amending motion by
16 Commissioner Clark, does it have to be a tentative motion, so
17 that staff can come back with the correct findings?

18 EXECUTIVE DIRECTOR DOUGLAS: No, what happens is,
19 right now, we are at the point where Commissioner Clark is
20 proposing amendments to the motion that is on the floor, to
21 reflect what the city is asking for.

22 COMMISSIONER CLARK: Right.

23 EXECUTIVE DIRECTOR DOUGLAS: If that motion
24 passes, they we will make revised findings to support the
25 action that the Commission took.

1 they are suggesting that the city can come back in on a land
2 use amendment for a specific project, to deal with the
3 staff's proposed limited use overnight accommodations within
4 a visitor-serving land use category for a specific project.

5 But, I think I am more persuaded by providing --
6 not taking it out in totality, as it would do on 14, as the
7 staff has recommended, so I would not like to see us take it
8 out at this point in time.

9 CHAIR NEELY: Thank you.

10 Commissioner Potter, did you want to speak to the
11 motion?

12 COMMISSIONER POTTER: Just briefly.

13 I think that it can be found consistent with the
14 Coastal Act, that the low cost, visitor serving is part of
15 the equation here, as far as the visitor-serving aspects
16 goes. And, this financing mechanism allows you to be able to
17 provide that opportunity. It is consistent with the
18 decisions we have had in other areas, also, so for that
19 reason I am willing to go in the direction we are moving
20 here.

21 CHAIR NEELY: Okay, and also to the motion,
22 Commissioner Wan, would you like to address the Commission.

23 COMMISSIONER WAN: Yeah, I'll talk about this, and
24 then later I will talk about some of the others.

25 Actually, it is not consistent with what we have

1 And, I can't support it.

2 COMMISSIONER POTTER: Madam Chair, if I might just

3 --

4 CHAIR NEELY: Okay.

5 COMMISSIONER POTTER: -- that I think that was
6 directed to me.

7 COMMISSIONER WAN: No, it was directed at --

8 COMMISSIONER POTTER: In the other cases, they
9 have been project driven, LCP changes, and in this case, we
10 will see a project at the time, and that is the difference, I
11 think, in this project, as this is simply an LCP amendment
12 without a project, or a known project, at this moment, before
13 us.

14 COMMISSIONER WAN: Well, and that is precisely
15 what I am saying, is that you need, if you are going to allow
16 this, you need to have some conditions.

17 Staff, am I correct?

18 We have -- there is nothing in here that would, in
19 the future, if you put this in the way the city wants it, as
20 I read it -- and maybe I am wrong, and don't understand this
21 -- but, if this goes forward in this manner, then anything
22 that comes forward in the future, they simply have a current

23 --

24 [General Discussion]

25 COMMISSIONER REILLY: Well, that is not the --

1 position?

2 DEPUTY DIRECTOR SARB: No, the city disagrees that
3 limited use overnight accommodations are not a permitted use
4 in visitor-serving zones. They feel that they are visitor-
5 serving uses, and that the Land Use Plan doesn't have to
6 specifically allow for them.

7 COMMISSIONER REILLY: Are these visitor-serving
8 zones all in the appeals zone?

9 DEPUTY DIRECTOR SARB: Again, this is not a
10 certified LCP.

11 COMMISSIONER REILLY: Would they be?

12 DEPUTY DIRECTOR SARB: No, they would not, they
13 would not all be subject to appeal to the Commission.

14 COMMISSIONER WAN: And, that is what my concern
15 is, that is why this needs to be dealt with appropriately by
16 an LUP amendment that deals just with this issue, so that it
17 can be clarified, and we are not left in a situation where
18 the staff is saying, "You can't do it under the current LUP,"
19 and the city is saying, "You can".

20 And, if the city is going to take that position,
21 then there are developments that could go forward without any
22 of the conditions that the Commission generally puts on these
23 things. I am not saying not to have it. I am saying I don't
24 believe that this is the appropriate way to deal with it.

25 CHAIR NEELY: Commissioner Clark.

1 it out, there could be projects that go through that never
2 come to the Commission on that, is that correct?

3 MR. CAMPBELL: Correct.

4 COMMISSIONER CLARK: And, did you realize that,
5 from the city's standpoint.

6 MR. CAMPBELL: I am not actually sure that is
7 correct, because, again, the Coastal Commission has permit
8 jurisdiction. We can't just issue Coastal Development
9 Permits, so you would see that project. We have a difference
10 of opinion as to whether LCPs might allow these. I mean,
11 these would have to be resolved when a project comes forward,
12 and we would address it at that time. We can also address
13 this in the Implementation Plan, as well.

14 COMMISSIONER CLARK: Well, but Mr. Campbell, what
15 I think I have heard -- correct me if I am wrong, staff --
16 what I think I have heard is that there are some projects
17 that could forward, by the city, without ever coming back,
18 that were condo hotel projects.

19 MR. CAMPBELL: No.

20 EXECUTIVE DIRECTOR DOUGLAS: That's correct, once
21 the LCP is certified, that is absolutely correct. Right now,
22 it is not a fully certified LCP.

23 COMMISSIONER CLARK: So, all of them would come
24 back now?

25 EXECUTIVE DIRECTOR DOUGLAS: Right now, because it

1 Use Plan, why couldn't you have that be in the IP?

2 DEPUTY DIRECTOR SARB: Any IP amendment that came
3 in that addressed limited use overnight accommodations should
4 be accompanied by a Land Use Plan amendment that also does
5 so, because right now, again, the LUP is silent.

6 COMMISSIONER REILLY: All right.

7 COMMISSIONER WAN: Can I finish my discussion?

8 CHAIR NEELY: Commissioner Wan wants to finish,
9 and then Commissioner Blank.

10 COMMISSIONER WAN: This is what I was trying to
11 say, is the appropriate place is in the LUP, because the LUP
12 and the IP have to be consistent with each other.

13 The IP are the ordinances necessary to carry out
14 the LUP. If you don't have anything about it in the LUP, I
15 don't see how you can actually put it in the IP. That is not
16 the appropriate place. That is not where we have done this
17 in the past.

18 And, while we do allow time shares in condos,
19 again, this is not the appropriate way to deal with this.

20 CHAIR NEELY: Okay.

21 Commissioner Blank.

22 COMMISSIONER BLANK: So, maybe I am just getting
23 more confused, but wouldn't a potential amendment,
24 Commissioner Clark, actually put in this LUP amendment
25 authorizing time shares, but suggesting that they all need to

1 **COMMISSIONER REILLY:** I understand the dilemma, in
2 terms of us wanting to make sure that any condo hotel, or
3 limited use hotels, are properly conditioned, I understand
4 that. Here is my problem with what I see staff doing on
5 this.

6 You guys have come out against every condo hotel
7 project we've had since the beginning. The Commission has
8 consistently approved them. Now, you are trying to wipe them
9 out at an LCP level, you know, and what developer is going to
10 come in with a prohibition in the LCP for that kind of hotel,
11 go through the dollars, and the development costs for
12 proposing one, if that is what the language is?

13 That is problem I am having with what you are
14 suggesting.

15 **CHAIR NEELY:** All right, if you are finished, then
16 Commissioner Clark.

17 **COMMISSIONER CLARK:** Yes, actually, Mike said it
18 much better than I could, but that is the reason I am
19 supporting the city on this. We go from a silent position to
20 a prohibition, and that is the issue I have.

21 **CHAIR NEELY:** Okay, and so we have an amending
22 motion to delete Suggested Modification No. 14.

23 So, staff, do you have anything else to add?

24 **DEPUTY DIRECTOR SARB:** No.

25 **CHAIR NEELY:** Okay.

1 They are allowed in all other commercial areas, residential
2 areas, wherever the city wants to allow them. Our protection
3 is of the prime visitor-serving sites, that we have tried to
4 focus on with this LUP amendment.

5 COMMISSIONER ACHADJIAN: May I ask another
6 question, Madam Chair?

7 CHAIR NEELY: Certainly.

8 COMMISSIONER ACHADJIAN: So, what can you do,
9 instead of eliminating giving us the discretion, so that it
10 can come forward for us to make a decision, based on the
11 project, itself, other than a blanket policy?

12 EXECUTIVE DIRECTOR DOUGLAS: Well, if that is the
13 will of the majority of the Commission, that you don't want
14 to just outright prohibit these kinds of uses in the visitor-
15 serving areas, then you could make a motion to allow that,
16 but that the requirements, the conditions, and all of the
17 provisions that Commissioner Wan talked about, have to be
18 addressed in either the Implementation Plan -- well, either
19 there, or in the project when it comes back, if you don't
20 have a fully certified LCP, it would be before you.

21 But, you, basically, would be authorizing it but
22 making clear that the conditions have to be provided for, in
23 terms of the usage, and that this Commission would see it,
24 either in the Implementation Plan, or in the permit prior to
25 full certification.

1 Implementation Plan? because, that will be before any
2 project, correct? so why can't we go down that path?

3 CHAIR NEELY: Staff.

4 EXECUTIVE DIRECTOR DOUGLAS: If the majority of
5 the Commission wants to do that, for the visitor-serving
6 areas, then you could just make a motion to permit these
7 types of uses, provided that the conditions of that use will
8 be addressed either at the permit stage, or at the
9 implementation stage, by the Commission.

10 COMMISSIONER REILLY: Madam Chair.

11 CHAIR NEELY: Yes.

12 COMMISSIONER REILLY: Can I ask the representative
13 of the city to come up?

14 CHAIR NEELY: Yes.

15 COMMISSIONER REILLY: Do you understand what we
16 are trying to get to?

17 MR. CAMPBELL: I believe I do -- Jim Campbell,
18 City of Newport Beach.

19 We hadn't thought to resolve the dispute with
20 staff in this fashion, but what you are talking about would
21 work for us. Again, permission, then addressing the
22 conditions of operations that the Commission is seeking at
23 the IP, and our position would be that that would be the
24 perfect way to go, and we would support that amendment.

25 COMMISSIONER REILLY: All right, thank you.

1 [No Response]

2 Is there a need for a roll call.

3 COMMISSIONER WAN: Yes.

4 CHAIR NEELY: Okay, could the Clerk please call
5 the roll.

6 SECRETARY MILLER: Commissioner Achadjian?

7 COMMISSIONER ACHADJIAN: Yes.

8 SECRETARY MILLER: Achadjian, "Yes".

9 Commissioner Blank?

10 COMMISSIONER BLANK: Yes.

11 SECRETARY MILLER: Blank, "Yes".

12 Commissioner Clark?

13 COMMISSIONER CLARK: Yes.

14 SECRETARY MILLER: Clark, "Yes".

15 Commissioner Gonzalez?

16 COMMISSIONER GONZALEZ: Yes.

17 SECRETARY MILLER: Gonzalez, "Yes".

18 Commissioner Potter?

19 COMMISSIONER POTTER: Aye.

20 SECRETARY MILLER: Potter, "Yes".

21 Commissioner Reilly?

22 COMMISSIONER REILLY: Yes.

23 SECRETARY MILLER: Reilly, "Yes".

24 Commissioner Shallenberger?

25 COMMISSIONER SHALLENBERGER: No.

1 CHAIR NEELY: Okay.

2 Commissioner Potter, you have been volunteered.

3 COMMISSIONER POTTER: That is so nice.

4 I move that the we delete Suggested Modifications
5 33, 34, 35, 36, 39, as seen on pages 15 through 18, in
6 regards to low cost accommodation mitigations, and now I need
7 a "second".

8 COMMISSIONER CLARK: I'll second that.

9 COMMISSIONER POTTER: And, I do that in those
10 specific areas for consistency, because that is where those
11 policy representations are made regarding the lower-cost
12 accommodation mitigations.

13 CHAIR NEELY: Okay, staff, did you want to comment
14 on that amending motion?

15 DEPUTY DIRECTOR SARB: I just wanted to make sure
16 that it is clear that there were five suggested modifications
17 to deal with separate issues.

18 The first one is the one that prohibits conversion
19 of existing hotels and motels to lower-cost overnight
20 accommodations.

21 The 34, 35, and 36 address the in-lieu fee
22 provisions, and identify under what circumstances the in-lieu
23 fee would be required.

24 And, No. 39 is the definition of lower-cost
25 overnight accommodations, and I believe they stand what you

1 CHAIR NEELY: All right.

2 Staff, would you like to comment?

3 EXECUTIVE DIRECTOR DOUGLAS: As I understand it,
4 there are two main effects of this motion.

5 One is to eliminate the prohibition on the
6 conversion of existing visitor overnight accommodations to
7 condominiums or time shares. And, it doesn't matter whether
8 they are lower cost, or what, that is one.

9 The other is it eliminates the in-lieu fee
10 requirement, and that is something we strongly recommend you
11 not --

12 COMMISSIONER POTTER: There is nothing for an
13 in-lieu fee right now.

14 EXECUTIVE DIRECTOR DOUGLAS: Pardon me?

15 COMMISSIONER POTTER: There is no project at this
16 moment.

17 EXECUTIVE DIRECTOR DOUGLAS: No, but, the point is
18 the Land Use Plan should indicate that if you do have a
19 project to convert, that you ought to have an in-lieu fee,
20 and this would eliminate that, as I understand it.

21 CHAIR NEELY: I am going to let Commissioner
22 Potter finish, and then we are going to Reilly, unless you
23 would like him to go now?

24 COMMISSIONER POTTER: We can go to Reilly.

25 CHAIR NEELY: Commissioner Reilly.

1 complicating an already complicated issue by doing these
2 actions at this time, but I was trying to do a little bit of
3 clean up here, and it doesn't seem to me, necessarily,
4 deleterious for you. What is your feeling on this?

5 MR. CAMPBELL: To put a provision in the policy
6 that would require the funds to be paid to be used for
7 lower-cost accommodations, and accommodations only?

8 COMMISSIONER POTTER: Well, like the parcel that
9 is before us, exactly.

10 COMMISSIONER CLARK: Right.

11 MR. CAMPBELL: Okay, we would prefer not to do
12 that at this time, because we when a project comes forward,
13 we could evaluate it at that time, and find out what is
14 really feasible, and in some cases it might not be feasible,
15 and we would like to have the flexibility to look at other
16 priority uses in accordance with *Section 30213* of the Coastal
17 Act, which actually talks about visitor serving and
18 recreational facilities.

19 So, we want to have a little bit of flexibility,
20 so that we can look at all three.

21 COMMISSIONER POTTER: I am inclined to withdraw my
22 motion.

23 CHAIR NEELY: Okay.

24 Commissioner Reilly.

25 ///

1 what was it, last month, we dealt with Lane Field, and we
2 required in-lieu fees. It sets such an incredibly bad
3 precedent, what this Commission says, in essence.

4 [General Discussion]

5 But, you have taken out, if I am reading this
6 correctly -- you want to explain -- that they are taking out
7 a requirement for in-lieu fees.

8 COMMISSIONER REILLY: No, it still requires
9 in-lieu. You are taking out the detail of the actually the
10 25 percent, and those --

11 COMMISSIONER WAN: Just taking out the details,
12 all right.

13 EXECUTIVE DIRECTOR DOUGLAS: That's right, the
14 in-lieu fee remains. They can either provide a lower-cost
15 accommodation off set, or provide for an in-lieu fee for that
16 purpose.

17 COMMISSIONER WAN: Okay.

18 EXECUTIVE DIRECTOR DOUGLAS: It is not eliminated,
19 it is just not set at this time out.

20 CHAIR NEELY: All right, any other comments from
21 Commissioners?

22 COMMISSIONER REILLY: Well, I just would note that
23 I, specifically, did not include 33 in there, because I
24 couldn't support a motion that included 33.

25 CHAIR NEELY: And, 39.

1 Commissioner Wan?

2 COMMISSIONER WAN: Yes.

3 SECRETARY MILLER: Commissioner Wan, "Yes."
4 Wan, "Yes."

5 Commissioner Achadjian?

6 COMMISSIONER ACHADJIAN: Aye.

7 SECRETARY MILLER: Commissioner Achadjian, "Yes."
8 Chairman Neely?

9 CHAIR NEELY: Yes.

10 SECRETARY MILLER: Neely, "Yes," unanimous.

11 CHAIR NEELY: We have a unanimous vote for the
12 last amending motion.

13 And, now we will go back to the main motion --

14 COMMISSIONER REILLY: As amended.

15 CHAIR NEELY: -- as amended, and the maker and the
16 "seconder" are recommending a "Yes" vote.

17 Is there any objection to a unanimous roll call
18 vote on this item?

19 [No Response]

20 Seeing none, the Commission hereby certifies the
21 Land Use Plan Amendment NPB-MAJ-1-07 for the City of Newport
22 Beach, as amended.

23 And, I think we will take a 5-minute break right
24 now.

25 * * [Whereupon the hearing concluded 4:35 p.m.]

ATTACHMENT 2

The City of Newport Beach respectfully requests the Coastal Commission **not** adopt staff recommended Motion and Resolution found on Page 7 of the Commission staff report and adopt the following substitute motion and resolution:

Motion

"I move that the Commission adopt the following revised findings in support of the Commission's action on February 5, 2009 to conditionally certify the proposed LCP Amendment concerning City of Newport Beach Land Use Plan Amendment 1-07 incorporating the following change to Suggested Modification No. 38(B) which shall read as follows:

B. Permit conversion of hotel/motel rooms to limited-use overnight visitor accommodations (LUOVAs) and permit LUOVAs where the use is allowed, provided that the development shall be subject to specific restrictions on the quantity, duration of owner use of such facilities, management of the accommodations as part of the hotel facility and an allowance for transient overnight use by the general public when not owner occupied; all of which shall be further defined in the implementing regulations for this land use plan (when such regulations are certified) and through the coastal development permit process.

Resolution

"The Commission hereby adopts the findings set forth below for the Commission's conditional certification (certification with the suggested modifications listed below) of the City of Newport Beach's proposed Land Use Plan Amendment 1-07 on the ground that the findings support the Commission's decision made on February 5, 2009 to conditionally certify the amendment, and accurately reflect the reasons for it."

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**PROOF OF SERVICE BY
FEDERAL EXPRESS AND FACSIMILE**

**IN RE: City of Newport Beach Land Use Plan Amendment NPB-MAJ-1-07
Land Use Classification/Land Use Changes
A09-00025**

1. In accordance with the Public Resources Code, all materials transmitted to Commissioners in this packet were sent to the Commission staff at the same time and at the addresses and fax numbers listed on the attached Mailing List.
2. I declare that I am a citizen of the United States, that I am employed by the City of Newport Beach, that I am over 18 years and not a party to the within action or proceeding. My business address is 3300 Newport Boulevard, Newport Beach, California, which is located in the county in which the within-mentioned delivery occurred. I am familiar with the practice at my place of business for collection and processing of correspondence for overnight delivery by Federal Express. Such correspondence will be deposited with a facility regularly maintained by Federal Express for receipt on the same day and via facsimile in the ordinary course of business.
3. On April 1, 2009, I served via **Federal Express** the following documents, LETTER DATED APRIL 1, 2009 TO CALIFORNIA COASTAL COMMISSION WITH ATTACHMENTS 1 & 2, by placing a true copy in a separate envelope named below, with the name and address of the person served shown on the envelope named below and by sealing the envelope and placing it for collection and delivery by Federal express with delivery fees paid or provided for in accordance with ordinary business practices,
4. On April 1, 2009, I served via **facsimile to (562) 590-5084** the following document, LETTER DATED APRIL 1, 2009 TO CALIFORNIA COASTAL COMMISSION **WITHOUT** ATTACHMENTS 1 & 2, to the names shown below in accordance with ordinary business practices.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

EXECUTED on this April 1, 2009, at Newport Beach, California.

Signature: 

DEBBIE ALCARAZ
City of Newport Beach

+++SEE ATTACHED MAILING LIST****

MAILING LIST

IN RE: City of Newport Beach Land Use Plan Amendment NPB-MAJ-1-07
Land Use Classification/Land Use Changes
A09-00025

<p>Sherilyn Sarb, OC Deputy Director Teresa Henry, District Office Manager California Coastal Commission 200 Oceangate Suite 1000 Long Beach, CA, 90802 (562) 590-5071 FAX (562) 590-5084</p>	<p>Sara Wan, Commissioner 22350 Carbon Mesa Road Malibu, CA, 90265 (415) 904-5200 FAX (562) 590-5084</p>
<p>Patrick Kruer, Commissioner The Monarch Group 7727 Herschel Avenue La Jolla, CA, 92037 (858) 551-4390 FAX (562) 590-5084</p>	<p>Bonnie Neely-Chair Board of Supervisors 825 5th Street Room 111 Eureka, CA, 95501 (707) 476-2394 FAX (562) 590-5084 <i>(CCC – North Coast Representative)</i></p>
<p>Dave Potter, Supervisor County of Monterey District 5 Suite 001 Monterey, CA, 93940 (831) 647-7755 FAX (562) 590-5084 <i>(CCC – Central Coast Representative)</i></p>	<p>Dale E. Bonner, Secretary Business, Transportation Housing Agency 980 9th Street Suite 2450 Sacramento, CA, 95814 (916) 323-5400 FAX (562) 590-5084</p>
<p>Paul Thayer, Executive Officer State Lands Commission 100 Howe Avenue Suite 100-South Sacramento, CA, 95825 (916) 574-1900 FAX (562) 590-5084</p>	<p>Gail Newton, Chief of Environmental Planning & Management Division State Lands Commission 100 Howe Avenue Suite 100-South Sacramento, CA, 95825 (916) 574-1900 FAX (562) 590-5084</p>
<p>Michael Chrisman, Secretary Natural Resources Agency 1416 9th Street Suite 1311 Sacramento, CA, 95814 (916) 653-5656 FAX (562) 590-5084</p>	<p>Ben Hueson City Administration Building 202 C Street No. 10-A San Diego, CA, 92101 (619) 236-6688 FAX (562) 590-5084 <i>(CCC – San Diego Coast Representative)</i></p>

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MAILING LIST

**IN RE: City of Newport Beach Land Use Plan Amendment NPB-MAJ-1-07
Land Use Classification/Land Use Changes
A09-00025**

<p>Larry Clark, Mayor City of Rancho Palos Verdes 30940 Hawthorne Blvd. Rancho Palos Verdes, CA, 90275 (310) 544-5207 FAX (562) 590-5084</p> <p><i>(CCC – South Coast Representative)</i></p>	<p>Khatchnik Achadjian Board of Supervisors 1055 Monterey Street Room D-430 San Luis Obispo, CA, 93408 (805) 781-4337 FAX (562) 590-5084</p> <p><i>(CCC – South Central Coast Representative)</i></p>
<p>Steve Blank, Commissioner Dr. William A. Burke, Commissioner Steven Kram, Commissioner Mary Shallenberger California Coastal Commission 45 Fremont Street Suite 2000 San Francisco, CA, 94105 (415) 904-5200 FAX (562) 590-5084</p>	

CALIFORNIA COASTAL COMMISSION

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

**W8.5a**

March 26, 2009

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

Adoption of revised findings requires a majority vote of the Commission members from the prevailing side present at the February 5, 2009 hearing, with at least three of the prevailing members voting. Only those Commissioners on the prevailing side of the Commission's action are eligible to vote on the revised findings. Commissioners eligible to vote are: Blank, Clark, Gonzalez, Potter, Reilly, Shallenberger, Wan, Achadian, and Chair Neely.

Text added to findings (compared with version of report dated January 15, 2009 including addendum dated February 4, 2009) shown in double underline

Text deleted from findings (compared with version of report dated January 15, 2009 including addendum dated February 4, 2009) shown in ~~double strike through~~

SUMMARY OF COMMISSION ACTION

On February 5, 2009, the Commission denied City of Newport Beach Land Use Plan Amendment NPB-MAJ-1-07, as submitted, and approved it with suggested modifications. The action differed from the action and findings identified in the report submitted by staff. While a number of issues were discussed, the Commission's deliberations primarily focused on two areas, as follows: 1) whether to allow Limited Use Overnight Visitor Accommodations (LUOVAs) in the City's Visitor Serving Commercial zone; and if allowed, what types of restrictions ought to be identified in the Land Use Plan policies; and 2) the amount of specificity in the Land Use Plan policies relative to mitigation requirements for the loss of lower-cost accommodations and/or construction of high cost accommodations. With regard to LUOVAs, the Commission permitted them in the City's visitor serving zone, subject to certain restrictions. This differed from the prior report which suggested that LUOVAs only be allowed at 1107 Jamboree Road and that any additional sites require an LCP amendment. Suggested Modification No.'s 14 (page 13) and 38 (page 20) have been modified, along with the findings, to reflect the Commission's action. The Commission also decided to accept a revised version of

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policy language supplied by the City that addressed mitigation requirements relative to the protection and provision of lower cost accommodations. The language accepted by the Commission maintained the requirements for mitigation suggested by staff but eliminated much of the specificity regarding use and calculation of in lieu fees. Those specifications were to be identified in the Implementation Plan when the City submits that plan for certification by the Commission. Suggested Modification No. 34 (page 18) was modified and Suggested Modification No.'s 35 and 36 were deleted (pages 18-19) to reflect the Commission's action, along with conforming changes to the findings.

SUMMARY OF STAFF RECOMMENDATION

Commission staff recommends that the Commission **ADOPT** the following revised findings in support of the Commission's decision on February 5, 2009 to deny the proposed Land Use Plan amendment, as submitted, and to approve the Land Use Plan amendment with suggested modifications. The motions to accomplish this begin on Page 7.

SUMMARY OF STAFF REPORT

DESCRIPTION OF THE APPROVED LCP AMENDMENT SUBMITTAL

The ~~proposed~~ approved 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 ISSUES~~

~~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 7.~~

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

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address timeshare-type Limited Use Overnight Visitor Accommodations (LUOVAs), 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 have been adopted to address the issues identified above.

ANTICIPATED AREAS OF CONTROVERSY BETWEEN APPLICANT AND COMMISSION

~~Commission and City staff have been working together to address the variety of issues raised by the proposed land use plan amendment. In Commission staff's November 2008 staff report, it was reported that Commission and City staff were unable to resolve differences regarding 1) the introduction of residential development to the area along the waterfront in Mariners Mile; 2) policies recommended regarding Limited Use Overnight Visitor Accommodations (LUOVAs); 3) policies regarding the protection and provision of lower cost overnight visitor accommodations; and 4) a policy regarding the reconstruction of structures to their previous intensity of use in Balboa Village and Corona del Mar. Based on recent coordination, there are no remaining anticipated areas of controversy between the City staff and Commission staff.~~

~~Mariners Mile: Commission staff were previously recommending that the existing Commercial Marine land use designation remain in place along the Mariners Mile waterfront, instead of the City's proposed Mixed Use Water land use designation that would allow residential uses on the properties as well as coastal dependent, coastal related, and visitor serving commercial uses. Since November, the City offered a provision that would significantly curb the potential quantity of residential units along the waterfront. Those provisions would now state: "On sites developed with mixed use structures, a minimum of 50 percent of the permitted square footage shall be devoted to non-residential uses. Mixed use structures may only be developed on sites with 200 feet or more of street frontage along Coast Highway and, in aggregate, no more than 50 percent of the waterfront land area along Coast Highway between the Arches Bridge and the Boy Scout Sea Base may be developed with mixed use structures." In sum, those provisions now state that mixed use structures are only allowed on half of the land area along the waterfront, and that the developable square footage that may contain residential uses on those properties is limited by half again. Another limitation is that the site must have at least 200 feet of street frontage on Coast Highway in order to have mixed uses on it. Finally, a separate provision already in the proposed LUP limits residential development on mixed use sites to 6 units per acre. Combined, these limitations would mean that only 7.8 acres of the 15.6 acres of land in the Mixed Use Water District between the Arches Bridge and the Boy Scouts Sea Base may contain mixed use development, with no more than 47 residential units that could be constructed in that area.~~

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~~Limited Use Overnight Visitor Accommodations (LUOVAs): Commission staff were previously recommending policies that would prohibit "timeshare" type LUOVAs in any visitor serving zone. Since November, Commission staff have agreed to include an allowance for up to 88 timeshares/LUOVAs at the site of the existing 403 room Hyatt Newporter at 1107 Jamboree Road. The City is presently processing a request to remove 12 hotel room units (leaving 391 traditional rooms), and to add 88 "timeshare" units, bringing the site up to the maximum allowable 479 units. Were that project to be approved, 18.3% of the facility would be LUOVAs, and the remainder 81.7% would be traditional overnight rooms. That request is anticipated to be submitted to the Commission for review as a coastal development application in 2009. The City has agreed to the typical restrictions on LUOVAs the Commission has imposed elsewhere (e.g. Huntington Beach) relative to quantity (at this site no less than 391 units shall be traditional hotel units available for transient overnight use by the general public year round and no more than 88 of the total 479 units planned may be limited use overnight visitor accommodations), duration of owner use of such facilities (maximum use of 90 days per calendar year with a maximum of 29 days of use during any 60 day period), management of the units as part of the hotel facility and allowance for transient overnight use by the general public when not owner occupied; all of which will be further defined in the implementing regulations (when such regulations are certified) and through the coastal development permit process. The City reports there are 2,674 overnight rooms in the City's coastal zone. Commission staff agreed to make an allowance for limited use overnight accommodations at the Hyatt site because of the inventory of existing overnight accommodations in the City, the fact that the existing inventory of overnight accommodations would be protected through policies suggested herein (with the exception of the loss of 12 traditional overnight rooms at the Hyatt), and the fact that the quantity of land designated for visitor serving commercial uses would expand as a result of the policies and land use changes suggested herein.~~

~~Also, the suggested modifications recommended by staff in its November 2008 report included a prohibition on any LUOVAs in the Mixed Use Water district. Staff's intention was to prohibit LUOVAs from consuming any portion of the commercial development potential. However, Commission staff do not take issue with LUOVAs consuming the residential development potential on a mixed use site because LUOVAs would be available to the general public on an occasional basis, whereas, residential development won't (unless the owner makes their residential unit available for short-term rental). Therefore, the suggested modifications (No. 13) relative to the Mixed Use Water district, now contain the following provision: "Limited Use Overnight Visitor Accommodations (e.g. time shares, fractionals, condominium hotels) may be permitted in lieu of allowable residential development provided the use is above the ground floor."~~

~~Lower Cost Overnight Visitor Accommodations: One change has been made to these policies to apply in lieu fee requirements to the creation of limited use overnight visitor accommodations in addition to the demolition of low cost facilities and the construction of high cost, traditional overnight accommodations. The City staff are in agreement with these modifications.~~

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~~Reconstruction of Structures to Previous Intensity in Balboa Village and Corona del Mar. City staff proposed revisions to the language suggested by staff in the prior report. Commission staff believe the proposed changes adequately address issues relative to provision of parking/transportation demand measures, heights, protection and establishment of public accessways, protection of views, and protection of biological resources.~~

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**.

Click on the links below
to go to the exhibits.

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
7. Overnight Accommodations in the Coastal Zone of the City of Newport Beach
8. Partial Transcript of the hearing on February 5, 2009, covering portion of hearing commencing after closure of hearing to public testimony.

NOTE: EXHIBITS 1-7 ARE NOT INCLUDED IN THE PRINTED EDITION OF THESE REVISED FINDINGS DISTRIBUTED TO COMMISSIONERS AND THE PUBLIC FOR THE APRIL 2009 HEARING ON THE FINDINGS; THEY ARE AVAILABLE IN ELECTRONIC FORMAT ON-LINE FROM THE COMMISSION'S WEB SITE BY LOCATING THIS ITEM ON THE APRIL 2009 AGENDA, DOWNLOADING THE REPORT FROM THE WEB SITE, AND THEN CLICKING ON THE EXHIBIT NUMBER ABOVE WHERE INDICATED WITHIN THE ELECTRONIC VERSION OF THIS DOCUMENT.

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I. RESOLUTION TO ADOPT REVISED FINDINGS IN SUPPORT OF THE COMMISSION'S ACTION ON CITY OF NEWPORT BEACH LAND USE PLAN AMENDMENT 1-07

Following a public hearing, staff recommends the Commission adopt the following resolution and findings. The appropriate motion to introduce the resolution and a staff recommendation is provided below.

Motion: "I move that the Commission adopt the following revised findings in support of the Commission's action on February 5, 2009 concerning City of Newport Beach Land Use Plan Amendment 1-07."

Staff Recommendation of Approval:

Staff recommends a YES vote on the motion. Passage of this motion will result in the adoption of revised findings as set forth in this staff report. The motion requires a majority vote of the members from the prevailing side present at the February 5, 2009 hearing, with at least three of the prevailing members voting. Only those Commissioners on the prevailing side of the Commission's action are eligible to vote on the revised findings.

Commissioners Eligible to Vote Are: Blank, Clark, Gonzalez, Potter, Reilly, Shallenberger, Wan, Achadjian, Chair Neely

Resolution To Adopt Revised Findings:

The Commission hereby adopts the findings set forth below for the Commission's denial of certification of the City of Newport Beach's proposed Land Use Plan Amendment 1-07, as submitted, and for the Commission's conditional certification (certification with the suggested modifications listed below) of that proposed LCP Amendment, on the ground that the findings support the Commission's decision made on February 5, 2009, and accurately reflect the reasons for it.

II. 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~~

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~~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 modifications 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.

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III. 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.

IV. 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.

V. 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,

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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.

VI. 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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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.

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 "lcp_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 "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
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 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
4	n/a	McFadden Square: 2102 Ocean Front W	Hotel - Doryman's Inn	CG-C (General Commercial)	MU-W (Mixed Use-Water Related)	Apply CV-B (Visitor Serving Commercial) Land Use Designation
5	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

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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	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
7	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-C (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)						
8	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
9	7	Balboa Village: 600 E. Bay Ave/ 600 Edgewater PI)	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
10	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
11	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~~.

Language added as a result of the Commission's action at the February 5, 2009 hearing is shown in double underline, and language deleted as a result of the Commission's action is shown in ~~double strike-out~~.

Suggested Modification No. 12: 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. 13: 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 mixed-use structures with residential uses above the ground floor. 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) may be permitted in lieu of allowable residential development provided the use is above the ground floor.

Suggested Modification No. 14: MODIFIED BY COMMISSION ACTION AT THE FEBRUARY 5, 2009, HEARING. 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, except (LUOVA) are an allowed use when provided together with traditional overnight, hotel visitor accommodations among other requirements as provided in Policy 2.3.3-V.

Suggested Modification No. 15: 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

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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.

Suggested Modification No. 16: 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 properties would accommodate a mix of visitor-serving retail, ~~and marine-related businesses~~ and vertically integrated mixed-use structures, 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. 17: 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. 18: In Chapter 2.0 (Land Use and Development), Section 2.1 (Land Use), Sub-section 2.1.4 (Mariners' Mile), Modify proposed Policy 2.1.4-2, as follows: For bay-fronting properties (~~that are~~ designated as MU-W), encourage marine-related and visitor-serving retail, restaurant, hotel, institutional, and recreational uses ~~intermixed with residential uses.~~ Vertically integrated mixed use structures are allowed as described below. Permitted uses include those permitted by the CM, CV, ~~MFR,~~ and MU-V categories. On sites developed with mixed-use structures, a minimum of 50 percent of the permitted square footage shall be devoted to non-residential uses. any lot shall be used for the CM or CV land uses. Mixed-use structures may only be developed on sites with 200 feet or more of street frontage along Coast Highway and, in aggregate, no more than 50 percent of the waterfront land area along Coast Highway between the Arches Bridge and the Boy Scout Sea Base may be developed with mixed use structures.

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Suggested Modification No. 19: 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, encourage marine-related and visitor-serving retail, restaurant, hotel/motel, institutional, and recreational 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: 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.

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: 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. 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: 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. 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, 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. 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 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

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

Suggested Modification No. 26: 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. 27: In Chapter 2.0 (Land Use and Development), Section 2.1 (Land Use), Sub-section 2.1.5 (Balboa Peninsula), Modify proposed Policy 2.1.5-2, 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. 28: In Chapter 2.0 (Land Use and Development), Section 2.1 (Land Use), Sub-section 2.1.5 (Balboa Peninsula), Modify proposed Policy 2.1.5-7, 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. 29: In Chapter 2.0 (Land Use and Development), Section 2.1 (Land Use), Sub-section 2.1.5 (Balboa Peninsula), Modify proposed Policy 2.1.5-10, 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.

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Suggested Modification No. 30: 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. 31: 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.

Suggested Modification No. 32: 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, only where a finding can be made that the development will not perpetuate or establish a physical impediment to public access to coastal resources, nor adversely impact coastal views or biological resources. Where such development cannot meet current parking standards, such approval may only be granted if the proposed development includes at least as much parking as the existing development, and provides for or facilitates the use of alternative modes of transportation such as ride-sharing, carpools, vanpools, public transit, bicycling or walking to the extent feasible.

Suggested Modification No. 33: 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, except as provided in Policy 2.3.3-V.

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Suggested Modification No. 34: MODIFIED BY COMMISSION ACTION AT THE FEBRUARY 5, 2009, HEARING. 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.~~ Lower-cost visitor and recreational facilities, including campgrounds, recreational vehicle parks, hostels, and lower-cost hotels and motels, shall be protected, encouraged and, where feasible, provided. Developments providing public recreational opportunities are preferred. New development that eliminates existing lower-cost accommodations or provides high-cost overnight visitor accommodations or limited use overnight visitor accommodations such as timeshares, fractional ownership and condominium-hotels shall provide lower-cost overnight visitor accommodations commensurate with the impact of the development on lower-cost overnight visitor accommodations in Newport Beach or pay an "in-lieu" fee to the City in an amount to be determined in accordance with law that shall be used by the City to provide lower-cost overnight visitor accommodations.

Suggested Modification No. 35: DELETED BY COMMISSION ACTION AT THE FEBRUARY 5, 2009, HEARING. ~~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 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,~~

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~~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.~~

~~**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 or limited use overnight visitor accommodations, the fee shall also apply to 25% of the number of high cost rooms/units in excess of the number of rooms/units 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. 36: ~~DELETED BY COMMISSION ACTION AT THE FEBRUARY 5, 2009, HEARING. 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. An in-lieu fee shall also be required for new development of limited use overnight visitor accommodations in the coastal zone. These in-lieu fee(s) 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 or limited use overnight visitor accommodations. The fee shall be determined as described in Policy 2.3.3-X.~~

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-W - DEFINING LOW-, MODERATE- AND HIGH-COST OVERNIGHT ACCOMMODATIONS.

A method to define whether a facility providing overnight accommodations is low, moderate, or high cost for the City of Newport Beach coastal zone shall be developed in

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the implementing regulations for this land use plan (when such regulations are certified) and through the coastal development permit process.

Suggested Modification No. 38: MODIFIED BY COMMISSION ACTION AT THE FEBRUARY 5, 2009, HEARING. In Chapter 2 (Land Use and Development), Section 2.3 (Visitor Serving and Recreational Development), Policy 2.3.3-V:

A. Permit limited-use overnight visitor accommodations on the hotel resort property located at 1107 Jamboree Road where such accommodations are provided together with traditional overnight, hotel visitor accommodations and which shall be subject to specific restrictions, including on: quantity (no less than 391 units shall be traditional hotel units available for transient overnight use by the general public year round and no more than 88 of the total 479 units planned may be limited-use overnight visitor accommodations), duration of owner use of such facilities (maximum use of 90 days per calendar year with a maximum of 29 days of use during any 60 day period), management of the units as part of the hotel facility and allowance for transient overnight use by the general public when not owner occupied; all of which shall be further defined in the implementing regulations for this land use plan (when such regulations are certified) and through the coastal development permit process.

B. Any permitted limited-use overnight visitor accommodation (LUOVA) shall be subject to specific restrictions on the quantity, duration of owner use of such facilities, management of the accommodations as part of the hotel facility and an allowance for transient overnight use by the general public when not owner occupied; all of which shall be further defined 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

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~~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.

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

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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.

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:

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- 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]

VII. 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 significant 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, as submitted

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. 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 land use designation must encourage use of the property for uses consistent with the public trust.

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 buildable square footage on a project site to be used for residential development. The City estimates up to approximately 100 residential units could be allowed along the Mariners' Mile waterfront with this proposed policy. The subject site is one of only two bayfront locations in the City where residential uses are currently prohibited in conjunction with visitor-serving 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) along with a few scattered waterfront marine commercial sites. 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 intense residential uses. The introduction of significant residential uses 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 where residential uses are minimized or excluded.

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

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

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 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 uses dependent upon high foot traffic and easy accessibility. 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.), and the added redevelopment pressure on the remaining commercial sites that will ensue as a result of the proposed amendment which reduces the overall quantity of land in the City's coastal zone that is reserved for commercial uses, 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 this 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 it has on the quantity of land available for commercial uses and the potential consumption of the remaining land designated for visitor serving uses with timeshare-type facilities and the subsequent impacts on the stock of overnight accommodations. Timeshare-type facilities provide a lower level of public accessibility than traditional hotels and motels. The proposed CLUP amendment changes land use designations on hundreds of properties in the City's coastal zone. Those changes reduce the quantity of land designated for commercial purposes in the coastal zone. The proposed CLUP amendment also introduces residential uses into areas previously reserved exclusively for commercial purposes. Thus, there is a loss of commercial development potential on the sites designated for mixed uses. These losses cumulatively will place more redevelopment pressure on the remaining sites that are designated for commercial uses. With this added redevelopment pressure, policies must be in place that adequately protect existing higher priority visitor serving commercial uses. Hotels on sites designated for visitor serving uses are among the higher priority commercial uses encouraged and protected by the Coastal Act. Policies must be in place to protect those uses -that are located on key visitor-serving sites- from conversion to uses, such as LUOVAs, that have a lower visitor serving value.

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 asserts that the City's CLUP presently makes no specific allowance for time-share type facilities in zones where hotel-motel uses are allowed, such as visitor-serving zones and that a specific allowance should be included if the City wishes to permit them. ~~The Commission disagrees with the City's conclusion noted above; the introduction of new timeshare type facilities in the designated visitor serving sites in the City's coastal zone would require a specific LUP provision.~~ Thus, clarifications to the existing plan are required to address the ambiguity.

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" (or 'LUOVA') 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 commercially designated land 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. Unrestricted consumption of the already small quantity of land area designated for visitor serving uses for quasi-residential uses like LUOVAs 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 amended plan 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 retaining existing on-site parking and considering other transportation demand measures, or providing 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 coastal dependent, coastal-related, and visitor-serving uses on 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 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.

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 buildable square footage on a project site to be used for residential development. Some commercial area along the City's bayfront must be preserved where residential is

excluded in favor of more intensive commercial development. This is a popular waterfront, visitor destination appropriately reserved for high-priority coastal dependent and visitor-serving commercial use. The Commission finds introduction of significant residential use in this location could threaten the viability of existing and future commercial build-out of the area. Therefore, the Commission imposes Suggested Modification No. 16 and 18 which allows for some limited, vertically integrated mixed use (commercial/residential) structures along the waterfront along Mariners' Mile. However, the modifications mandate that only half of the waterfront land area that is along and bayward of Coast Highway between the Arches Bridge and the Boy Scout Sea Base, and is designated MU-W, may contain mixed-use structures. So, about 7.8 of the 15.6 acres could potentially have structures that are mixed-use. Combined with the City-proposed 50% square footage limitation and the allowable intensity of use (6 du/acre), the number of sites that may contain mixed-use structures is limited and the quantity of buildable square footage on those parcels is limited. With these provisions, the City estimates that no more than 47 residential units could be constructed on the 7.8 acres. Even this is likely an overestimate as that quantity assumes that all the properties are aggregated together as a single parcel, whereas, the area is actually carved up into many parcels that do not meet the requirement that the parcel have 200 feet of street frontage. Aggressive lot consolidation would be needed to reach the maximum quantity of residential units identified by the City. Given these limitations on quantity, and the design requirements identified in Suggested Modification No. 21 that require that development, such as residential uses, be sited on the parcels so as to avoid conflicts with on-site and adjacent commercial uses, the Commission finds that its concerns regarding the protection, provision and encouragement of coastal dependent, coastal related and visitor serving commercial uses are addressed.

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. 7, 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. 8, 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. 9 which requires the CV land use category be applied to the site. Suggested Modification No. 30 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 4, 5, 6, and 11 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 13, 26, 27, and 28, 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. 13.

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. 31, 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

As noted in the findings for denial of the proposed amendment, as submitted, the proposed amendment will reduce the overall quantity of land in the City's coastal zone that is reserved for commercial uses. Thus, there will be added redevelopment pressure on the remaining commercial sites. The CLUP amendment, 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 lower-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. The proposed amendment will add redevelopment pressure upon the remaining commercially designated land in the City's coastal zone. Thus, stronger, more explicit policies are needed in addition to the existing ones to guide protection of lower cost overnight accommodations and/or offset the loss and/or failure to provide such uses. 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 an amended land use plan that is consistent with the applicable policies of the Coastal Act.

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.

These suggested 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.s 33 and 34 pertain 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. The proposed-amended LUP will exacerbate this issue because it reduces the overall quantity of commercial land in the City's coastal zone, placing even greater redevelopment pressure on the remaining commercial lands. 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 viable low cost accommodation project(s). 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. 34 ~~35 (Sub-section A)~~ requires that any coastal development permit that is proposing to demolish existing low cost hotel/motel units provide lower-cost overnight visitor accommodations commensurate with the impact of the development on lower-cost overnight accommodations in Newport Beach or pay a fee in an amount to be determined in accordance with law to offset the loss of lower-cost overnight accommodations that are for the total number of rooms demolished that and are not replaced.

Suggested Modification No. 34 ~~35 (Sub-section B)~~ also requires that ~~an additional in-lieu fee be paid~~ if the subsequent development onsite creates a number of higher-cost accommodations, that lower-cost overnight visitor accommodations also be provided commensurate with the impact of the development on lower-cost overnight accommodations in Newport Beach that is larger than the number of lower cost accommodations that existed on the site previously. 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 (either traditional hotel units or limited use overnight visitor accommodations). The amount of mitigation needed to account for offset the lack of these priority uses provided on site will need to be determined through procedures established in the City's forthcoming Implementation Plan and the coastal development permit process. Limited use overnight visitor accommodations are considered inherently high cost because there is a significant entry fee associated with their acquisition and use by the owner.~~

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 City may wish to consider identifying a specific lower cost overnight accommodation project to complete or contribute to, as opposed to requiring payment of fees. The City could request such changes to their LUP through a future LUP amendment.

~~Suggested Modification No. 34 includes language that 36~~ pertains to new development on land that isn't currently developed with any type of lower cost overnight accommodation. As stated above, in other actions 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~~ Pursuant to this LUP, any new development that includes only high cost overnight accommodations or limited use overnight visitor accommodations would be required to pay a mitigation fee commensurate with the impact of the project for 25% of the total proposed units. This fee will offset the loss of land that may have been more appropriately used to provide a visitor-serving facility that a wider population of 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. 37 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 (LUOVAs)

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 (i.e. Limited Use Overnight Visitor Accommodations or LUOVAs), both of which give some priority to the individual owners, and diminish the visitor-serving use of such a facility. This trend has become much more pronounced since the Commission last reviewed a major LUP update by the City of Newport Beach (in 2005).

The proposed CLUP amendment causes a loss of commercial land area development potential in the City's coastal zone. These losses cumulatively will place more redevelopment pressure on the remaining sites that are designated for commercial uses. With this added redevelopment pressure, policies must be in place that adequately protect existing higher priority visitor serving commercial uses. Hotels on sites designated for visitor serving uses are among the higher priority commercial uses

encouraged and protected by the Coastal Act. Policies must be in place to protect those uses -that are located on key visitor-serving sites- from conversion to uses, such as LUOVAs, that have a lower visitor serving value. Policies must also be in place to minimize the impact that LUOVAs, if approved, have on the visitor serving function consumption of remaining visitor serving lands ~~with LUOVAs~~.

~~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.~~

Every community has a different set of circumstances with regard to existing hotel inventory, the range and types of facilities available, their proximity to the coast, and the availability of other lands suitable for future hotel uses. When considering whether and where to allow LUOVAs, the Commission must consider the range of existing inventory of accommodations within the City.

According to materials submitted by the City of Newport Beach, there are approximately 2,671 overnight units in the City (inside the coastal zone). This statistic includes facilities within the City's historic city limit, as well as within the recently annexed Newport Coast area (which is within a separate LCP jurisdiction). The statistic represents 1,628 traditional overnight rooms, 406 recreational vehicle spaces (at Newport Dunes), 13 units at Crystal Cove¹, and a 624 unit hotel with timeshare component (Marriott in the Newport Coast area).

With regard to LUOVAs, the Commission finds that it is necessary to insert certain clarifications and provisions that apply to LUOVAs broadly, as follows: 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.

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 product². Thus, a distinct definition is necessary in the Land Use Plan. A modification is suggested to add a defined term for Limited Use Overnight Visitor 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-

¹ This appears to be an under-estimate. The State Parks reservation web site (reserveamerica.com) indicates there are 21 units at the Crystal Cove Beach Cottages (each accommodating between 2 and 9 people) including 7 that are 'dorm-style'.

² There is a definition of "timeshare" in the Vacation Ownership and Time-Share Act of 2004 (Bus. & Prof. Code Section 11212(z))

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 (with the exception of the allowance at 1107 Jamboree described below). ~~Furthermore, a modification is suggested that makes it clear that Limited Use Overnight Visitor Accommodations are not allowed within the priority visitor serving zones (with the exception of the allowance described below).~~

The industry developing timeshare-like LUOVAs is an evolving one. The nature of ownership has changed from one of owning time, to having a fee interest ownership in the property. Thus, the cost of entry to these types of developments has increased (making them less available to individuals of lesser economic means). These LUOVAs represent a new kind of land use that has expanded into coastal areas over the last few years. Given that LUOVAs are a new type of use, when local governments intend to allow timeshares and other LUOVAs are not allowed in zones where hotel-motel uses are allowed, unless an the LCP should specifically authorizes them. The City asserts that LUOVAs are substantially the same as a hotel-motel use, thus, it stands to reason they are presently allowed in zones, such as visitor-serving commercial, where hotel-motel uses are allowed. The City's CLUP presently makes no allowance for LUOVAs. Thus, LUOVAs are not currently an approved use on any visitor serving sites in the City's coastal zone. In order to resolve this ambiguity in the Newport Beach Coastal Land Use Plan, the Commission approved revisions to Suggested Modification No.s 14 and 38 which will clearly allow for LUOVAs in the CV zones in Newport Beach where hotel-motel uses are allowed uses, provided that the restrictions typically imposed in other past cases that limit owner-occupancy and require the units be available to the general public when not owner-occupied, etc. are applied to all future LUOVAs, if approved.

~~The subject amendment does not request the creation of an allowance for LUOVAs in the City's visitor serving zones. However, as explained elsewhere in these findings, the City believed that LUOVAs were already allowed; whereas the Commission has informed them that without a specific provision to allow them, they are prohibited. The Commission is inserting clarifications in the plan about LUOVAs. Given those clarifications, the The City has also requested that the Commission consider inserting an allowance for specifically address LUOVAs at one specific site, at 1107 Jamboree Road, the site of the existing 403 room Hyatt Newporter. The City is presently processing a request to remove 12 hotel room units, and to add 88 "timeshare" units, bringing the site up to the maximum allowable 479 units. Were that project to be~~

approved¹, 18% of the facility would be LUOVAs, and the remainder 82% would be traditional overnight rooms. That request is anticipated to be submitted to the Commission for review as a coastal development application in 2009. ~~Given that situation, and the information provided by the City regarding their inventory of hotel rooms, the Commission is considering their request to provide an allowance for LUOVAs at the requested site.~~

In this case, the Commission is specifying the restrictions to be imposed at 1107 Jamboree ~~making an allowance for limited use overnight accommodations at one site in the visitor serving district~~ because there was sufficient information available about the existing inventory of overnight accommodations in the City, the forthcoming project at 1107 Jamboree Road, and the minimal impact that allowance for LUOVAs on this site would have on the City's ability to provide an adequate inventory of overnight accommodations for the visiting public. These factors were considered in conjunction with other suggested modifications that help minimize the impact that LUOVAs can have such as the protection of the existing inventory of overnight accommodations (Suggested Modification No. 33) (with the exception of the loss of 12 traditional overnight rooms at the Hyatt), and the suggested modifications that expand the quantity of land designated for visitor serving commercial uses (Suggested Modification Nos. 4, 5, 6 and 11)(although there is still an overall deficit in commercial land use area as a result of the amendment). In addition, the allowance for limited use overnight accommodations would only apply in the context of a site that also retains a significant portion of traditional overnight accommodations.

~~Although no allowance for LUOVAs is made for other visitor serving sites elsewhere in the City's coastal zone, this does not preclude the City from seeking a future LUP amendment to establish such allowances at other locations provided there is sufficient justification to accompany the request showing the City's ability to provide overnight accommodations is not impaired.~~

In order to maximize the visitor serving use at 1107 Jamboree (Hyatt Newport Site) within the Limited Use Overnight Visitor Accommodations, as required by Section 30222 of the Coastal Act, limits and restrictions must be imposed on the number of units for which limited use ownership rights may be created and sold, and on use of the units by separate owners, as well as on how the overall hotels are operated.

For the Hyatt Newport Site, the project proponent currently anticipates a hotel with 479 units, of which 88 would be sold as LUOVAs. So long as no less than 391 units in the hotel are traditional hotel units available for transient overnight use by the general public year round, then no more than 88 of the total 479 units planned may be limited-use overnight visitor accommodations. This figure represents about 18.3% of the total hotel units. Assuring that 82% of the total hotel units will be available to the general public as

¹ There are other resource issues that must be addressed which could affect the development footprint on this site (which may ultimately affect the quantity of proposed LUOVAs), such as biological setbacks, building heights, parking/transit considerations, among other issues.

traditional use hotel rooms tends toward maximization of the visitor serving function of the hotel consistent with retaining a hotel at the site. It should be noted, however, that the allowance for 88 of the planned 479 units to be LUOVAs and the requirement that 391 of the units be traditional hotel rooms reflects the project proponents anticipated plan. While that ratio, in this case, is adequate to protect the visitor serving function of the anticipated future remodeled hotel at the site, a different ratio may be appropriate for other sites with different circumstances.

In addition, to maximize the number of potential users, the length of time any particular owner may use a LUOVA must be limited. In this case at the Hyatt Newport site, a maximum of 90 days per calendar year, with a maximum of 29 consecutive days of use during any 60 day period would be appropriate. Thus, even though the LUOVAs reduce the pool of potential users of these units when they are owner occupied, the units would circulate into transient public occupation during other times of the year. That would be in addition to the availability of the 391 traditional hotel rooms that would be available to the general public on a daily basis year-round.

However, it should be noted that this percentage takes into consideration the number of existing, traditional, transient overnight accommodations (including an existing inventory of lower cost overnight accommodations) in the area. Within the project vicinity there are a significant number of traditional overnight accommodations available to the general public. With the required in-lieu fee (described above), the project would also contribute toward the provision of additional lower-cost overnight accommodations. Were it not for the presence of a significant number of these existing traditional, transient, overnight visitor accommodations in Newport Beach and the provision of additional lower cost overnight accommodations through the in-lieu fee, the Commission may have required a higher percentage of the total number of units within the hotel to be traditional, transient, overnight visitor accommodations available to the general public on a daily basis or even disallowed the use at this site.

Suggested modifications are included which require that privately owned units not occupied by the owner(s) (or their guests) must be made available for overnight rental by the general public in the same manner as the traditional hotel room units. This achieves two ends: 1) it increases the facility's visitor serving function by increasing the number of transient overnight units available to the general public, and 2) it promotes the likelihood that the overall facility will be perceived as a facility available to the general public. This encourages the visitor serving function of the facility, consistent with the requirement of Section 30222 of the Coastal Act.

It is important that all units in the hotel, both LUOVAs as well as traditional units, be operated by a single hotel operator. This includes booking of reservations, check-in, maintenance, cleaning services, and similar responsibilities of hotel management. This requirement is important as a means of assuring the hotel does not convert to a limited ownership-only hotel and to maximize its visitor serving function.

The Commission has also decided to allow for LUOVAs to be proposed at other sites

where hotel-motel uses are allowed in the City. A case by case decision will need to be made as to whether LUOVAs are appropriate at each site where they are proposed. However, all such LUOVAs need to comply with the following restrictions, at minimum: LUOVAs are only allowed when they are provided together with traditional overnight hotel visitor accommodations; all LUOVAs are subject to restrictions on the duration of owner use of the unit; management of the LUOVA units shall be as part of the hotel facility (i.e. they shall function as an integrated function of the overall hotel facility); and all LUOVA units shall be made available to the general public for transient overnight use when not owner occupied. The quantity of LUOVA units that may be allowed at any approved site is not being defined at this time; nor is the duration of allowable owner occupancy. Decisions about those limitations will need to be made on a case-by-case basis through the coastal development permit process and/or be addressed in the implementation plan. Therefore, the Commission imposes the requirements related to LUOVAs as outlined in Suggested Modification No. 14 and 38B¹. These limitations are imposed for the reasons given in the Hyatt Newport case described above.

There are other measures that need to be addressed in the implementation plan for this land use plan and through the coastal development permit process. For instance, the entity responsible for implementing the restrictions and requirements must be identified, provisions to assure that there is a substantial commitment from and incentive for the owner/operator to maintain a public hotel environment and ambiance, and a disincentive with regard to converting or catering to the separate owners primarily or exclusively.

Another concern relates to preserving the existing stock of traditional overnight accommodations in the City. Conversion of an existing hotel- or motel-type use from traditional, transient overnight accommodations to a LUOVA must be avoided. As described previously, allowing LUOVAs, undefined and unrestricted, throughout the Commercial Visitor designation does not maximize visitor serving uses. Even with the proposed definition and the restrictions noted above, the proliferation of LUOVAs 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 (with the exception of the loss of 12 units at the Hyatt Newport site)(see Suggested Modification No. 33). ~~Furthermore, the modifications limit the locations where the Limited Use Overnight Visitor Accommodation uses would be allowed in visitor serving zones to 1107 Jamboree (see Suggested Modification Nos. 14 and 38). These suggested modifications do not take away a land use right that previously existed; rather they make it clear there is presently no allowance for LUOVAs on visitor serving sites, except as expressly allowed at 1107 Jamboree Road. Were the~~

¹ In their action on February 5, 2009, the Commission made explicit reference during deliberations to changing Suggested Modification 14 to include requirements related to LUOVAs, but not to Suggested Modification 38. In consultation with the City, Commission staff concluded that the requirements related to LUOVAs should be placed in Suggested Modification 38 in the policy where there are other requirements related to LUOVAs specific to the Hyatt Newport site, with a cross-reference thereto in Suggested Modification 14.

~~City to consider adding other sites, an LCP amendment would be required.~~

Also, the proposed Mixed Use-Water district has been clarified to indicate that traditional overnight accommodations are an allowable use. LUOVAs must not be allowed to consume any portion of the allowable commercial development potential on a mixed use site. However, were LUOVAs to consume the residential development potential on a mixed use site the LUOVAs would be available to the general public on an occasional basis, whereas, residential development would not (unless the owner makes their residential unit available for short-term rental). Therefore, the Commission incorporates into Suggested Modifications No. 13, relative to the Mixed Use-Water district, an allowance for LUOVAs as follows: "Limited Use Overnight Visitor Accommodations (e.g. time shares, fractionals, condominium-hotels) may be permitted in lieu of allowable residential development provided the use is above the ground floor."

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 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 preserving existing parking and considering other transportation demand measures, 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 a physical impediment to public access to coastal resources, nor adversely impact coastal views or biological resources, the policy could be found consistent with the Chapter 3 policies of the Coastal Act. Where such development cannot meet current parking standards, such approval may only be granted if the proposed development includes at least as much parking as the existing development, and provides for or facilitates the use of alternative modes of transportation such as ride-sharing, carpools, vanpools, public transit, bicycling or walking to the extent feasible.

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. 12.

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. 25.

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. 15.

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. 10.

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. 15.

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 16, 20, 22, 23, and 24, the Commission finds the proposed amendment to be consistent with the public access, recreation and view provisions of Chapter 3 of the Coastal Act.

VIII. 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.