

CALIFORNIA COASTAL COMMISSION

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May 26, 2011



TO: Commissioners and Interested Persons

FROM: Sherilyn Sarb, Deputy Director, South Coast District Orange County Area
Teresa Henry, District Manager, South Coast District
Karl Schwing, Supervisor, Regulation & Planning, Orange County Area
Fernie Sy, Coastal Program Analyst II

SUBJECT: Major Amendment Request No. 1-10 to the City of Newport Beach Certified Land Use Plan (For Public Hearing and Commission Action at the June 15-17, 2011 hearing in Marina Del Rey).

SUMMARY OF LUP AMENDMENT REQUEST NO. 1-10

The subject LCP Amendment is a request by the City of Newport Beach to amend the Certified Land Use Plan (LUP) by changing the LUP designation of a site composed of six (6) privately owned lots developed with tennis courts from PR (Parks and Recreation) to RSD-B (Single-Unit Residential Detached).

SUMMARY OF STAFF RECOMMENDATION

Staff is recommending that the Commission, after public hearing:

Approve the Land Use Plan Amendment, as submitted.

The motion to accomplish this recommendation is found on page 2. As proposed, the LUP Amendment meets the requirements of and is in conformity with the Chapter 3 policies of the Coastal Act.

STANDARD OF REVIEW

The standard of review for the proposed Land Use Plan Amendment, shall be conformance with and satisfaction of the requirements of the Chapter 3 policies of the Coastal Act.

SUMMARY OF PUBLIC PARTICIPATION

Section 30503 of the Coastal Act requires public input in Local Coastal Program development. During the preparation, approval, certification, and amendment of any local coastal program, the public, as well as all affected governmental agencies, including special districts, shall be provided maximum opportunities to participate. Prior to submission of a Local Coastal Program for approval, local governments shall hold a public hearing or hearings on that portion of the program which has not been subjected to public hearings within four years of such submission. The City held a Planning Commission Hearing on March 4, 2010 and a City Council hearing on May 25, 2010 regarding the proposed LUP Amendment.

All City staff reports were made available for public review in the Planning Department and the City of Newport Beach website. Public hearing notices were mailed to property owners of record for the parcels that are the subject of the amendment as well as parcels within a 1,000 foot radius (including occupants).

ADDITIONAL INFORMATION

Copies of the staff report are available online on the Coastal Commission's website at www.coastal.ca.gov or at the South Coast District office located in the ARCO Center Towers, 200 Oceangate, Suite 1000, Long Beach, 90802. To obtain copies of the staff report by mail, or for additional information, contact Fernie Sy in the Long Beach office at (562) 590-5071. The City of Newport Beach contact for this LCP Amendment is Makana Nova, Assistant Planner, who may be reached at (949) 644-3200.

EXHIBITS

1. Vicinity Map/Site
2. City Council Resolution No. 2010-50 approved on May 25, 2010.
3. Graphic Depicting Zoning District Change
4. Conceptual Development Plan

I. STAFF RECOMMENDATION

Approve the Land Use Plan Amendment as Submitted

MOTION: *I move that the Commission certify Land Use Plan Amendment No. 1-10 to the City of Newport Beach Local Coastal Program as submitted by the City of Newport Beach.*

STAFF RECOMMENDATION TO CERTIFY:

Staff recommends a **YES** vote. Passage of this motion will result in certification of the Land Use Plan Amendment as submitted and adoption of the following resolution and findings. The motion to certify as submitted passes only upon an affirmative vote of a majority of the appointed Commissioners.

RESOLUTION TO CERTIFY LAND USE PLAN AMENDMENT AS SUBMITTED:

The Commission hereby certifies Land Use Plan Amendment No. 1-10 as submitted by the City of Newport Beach and adopts the findings set forth below on grounds that the amendment 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 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 and

mitigation measures that would substantially lessen any significant adverse impacts on the environment that will result from certification of the Land Use Plan.

II. PROCEDURAL PROCESS (LEGAL STANDARD FOR REVIEW)

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."

Procedural Requirements

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

III. FINDINGS

The following findings support the Commission's approval of the proposed Land Use Plan Amendment as submitted. The Commission hereby finds and declares as follows:

A. Amendment Description

The City of Newport Beach has requested to amend the Certified Land Use Plan (LUP) by changing the LUP designation of a site composed of six (6) privately owned lots developed with private tennis courts from PR (Parks and Recreation) to RSD-B (Single-Unit Residential Detached) (Exhibit No. 3). The zoning (not certified by the Commission) for these properties has been and remains R-1 (Single Family Residential).

The subject properties are located at 2000-2016 East Balboa Boulevard. The project site is 26,662 square feet (approximately 0.6 acres) and consists of six (6) legal parcels (Exhibit No. 1). The site is located in a residentially developed area toward the end of the Balboa Peninsula. The property is bounded by East Balboa Boulevard, to the South, a privately owned segment of East Bay Avenue, to the North, and by privately owned segments of L Street, on the West side, and Seville Ave. on the East side. None of these privately owned street segments are gated. The proposed project would not change these

existing conditions. Residential development is located to the South, North, East and West of the site (Exhibit No. 1). Newport Bay is located beyond the adjacent residential development to the North. There is no direct coastal access from the project site.

The existing development consists of a private recreational use tennis club (Peninsula Point Racquet Club) with an 800 square foot clubhouse building and two hard surface tennis courts (Exhibit No. 1). The private tennis club is a City-permitted use by Use Permit No. UP945 that was approved in 1963. The private tennis club does not provide off-street parking and members must park along East Balboa Boulevard or adjacent private driveways. There has been no history of Commission involvement with the project sites prior to this LUP Amendment.

While the existing use was permitted under the Zoning Code and the Land Use Plan designations, the General Plan land use map was updated in 1988 for this site to be Parks and Recreation (PR) based on the existing on ground recreational use. The City states that this change to the land use may have been inadvertent or was intentional to increase the parks and recreation land use designations throughout the City. This new PR land use designation for the project site was then carried over in the 2006 General Plan update. Additionally, the recent 2008 LUP Amendment had the site designated as Parks and Recreation (PR) as well. Although the land use designation was changed, the City Zoning for the project site (not certified) was never updated for consistency with the new General Plan and the project remained within the R-1 (Single-Family Residential) Zoning district. The site has never been used for public recreation.

There is no specific project proposed at this time. The property owner has stated they have no current plans to demolish the racquet club. However, the Mitigated Negative Declaration (MND) includes a conceptual development plan to consider the potential environmental impacts of the land use change since the proposed land use changes would allow conversion of the existing land use from a private tennis club to single-unit dwellings. The conceptual plan is for five (5) dwellings units, which is the maximum allowed by the land use plan change (Exhibit No. 4). Additionally, the conceptual plan would reconfigure the six (6) existing legal lots to five (5) lots through the approval of a tract map and would not result in a net increase of parcels. These changes, if ever formally proposed, would require a subsequent Coastal Development Permit.

B. Land Use Plan Amendment: Consistency with Chapter 3 Policies of the Coastal Act

The proposed LUP Amendment would change the LUP designation of a site composed of six (6) privately owned lots developed with tennis courts from PR (Parks and Recreation) to RSD-B (Single-Unit Residential Detached).

The Coastal Act policies applicable to the proposed change in the land use designation are:

Section 30213 of the Coastal Act states in part:

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

Section 30222 Private lands; priority of development purposes

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

New residential...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...

Section 30251 of the Coastal Act states:

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. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

The proposed LUP Amendment would change the LUP designation of the site composed of six (6) privately owned lots developed with tennis courts, which are part of a private tennis club called the Peninsula Point Racquet Club, from PR (Parks and Recreation) to RSD-B (Single-Unit Residential Detached). The site is located toward the end of the Balboa Peninsula, in a residential neighborhood. The existing private tennis club charges a membership fee and does not provide public recreational opportunities. There are other public tennis courts in the area. While residential uses are not a priority use as indicated in the Coastal Act, the surrounding properties are all designated RSD-B north of East Balboa Boulevard or RSD-C south of East Balboa Boulevard, allowing single-unit residential detached land uses at different densities. There are no commercial uses in the immediate area. The nearest commercial is about $\frac{3}{4}$ mile away, in the vicinity of the Balboa Pier and Fun Zone. Thus, the change in land use designation would make the sites consistent with surrounding land use designations. Public access is available near the site approximately 0.25 mile east of the project site, at the intersection of Channel Road and Granada Avenue

(Exhibit No. 1). The change in land use designation would not negatively impact public access or recreation in the vicinity. Therefore, public access opportunities would remain and not result in any adverse effects on public access.

The project sites are located inland and views of Newport Bay and the Pacific Ocean in this area are currently blocked by the existing tennis court fence that surrounds the site and/or by residences. There are no scenic vistas in the general proximity of the proposed project site and the proposed land use change and subsequent future development of the site with single-unit dwellings would not substantially alter or obstruct existing views of the bay or ocean. Therefore, the Land Use Plan designation change would not impact scenic coastal resources.

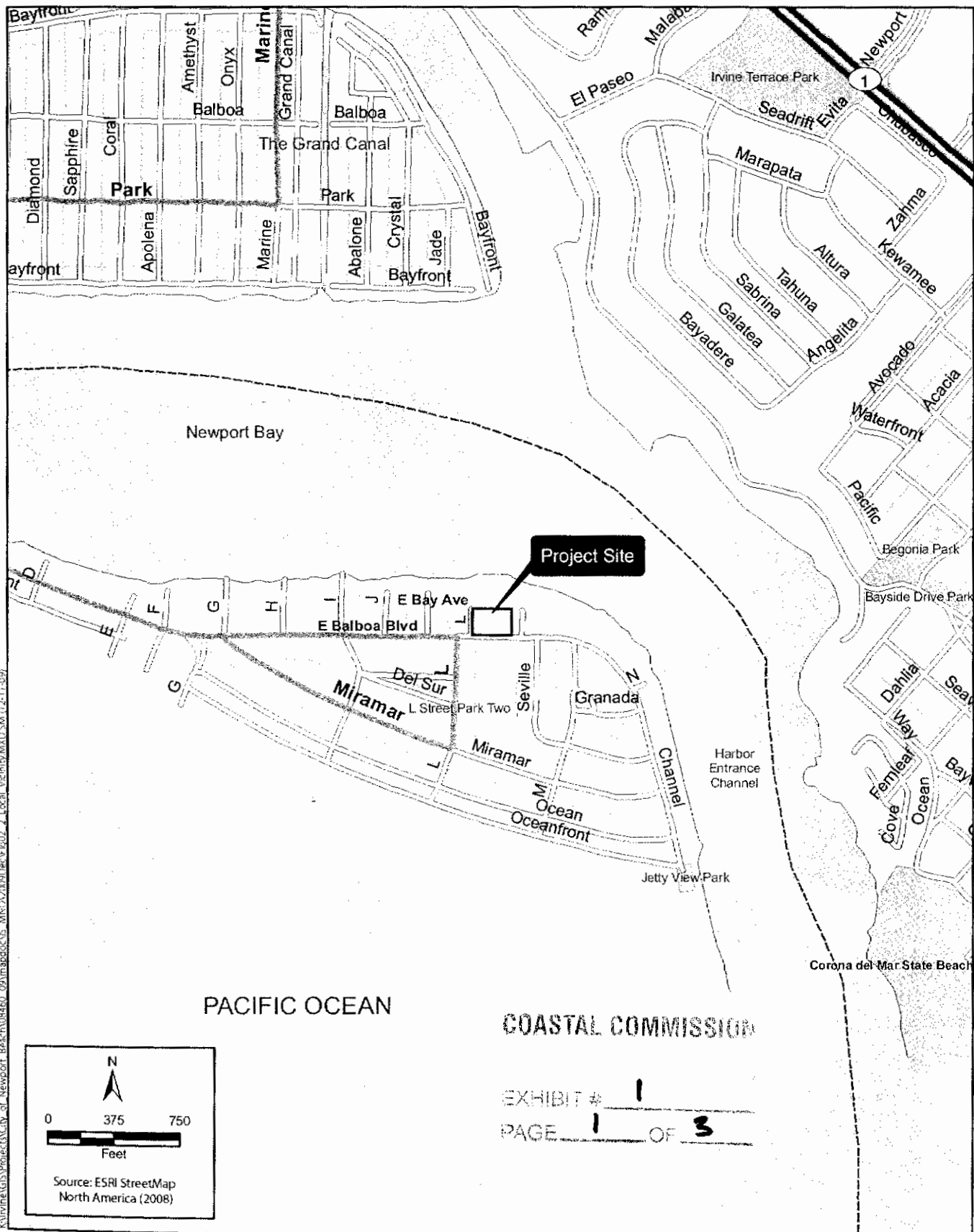
Therefore, for the reasons outlined above, the Commission finds that as proposed, the LUP Amendment can be found to be consistent with Sections 30213, 30222, 30250 and 30251 and all the public access and recreation policies of the Coastal Act.

C. California Environmental Quality Act (CEQA)

Section 21080.9 of the California Public Resources Code – within the California Environmental Quality Act (CEQA) – exempts local governments from the requirement of preparing an environmental impact report (EIR) in connection with its activities and approvals necessary for the preparation and adoption of a Local Coastal Program (LCP). Instead, the CEQA responsibilities are assigned to the Coastal Commission. Additionally, 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 Amendment to find that the Local Coastal Program as amended conforms with other provisions of CEQA.

Pursuant to the California Environmental Quality Act (CEQA) and the Coastal Commission's regulations [see California Code of Regulations, Title 14, Sections 13540(f), 13542(a), 13555(b)] the Commission's certification of this Local Coastal Program Amendment must be based in part on a finding that it is consistent with CEQA Section 21080.5(d)(2)(A). That section of the Public Resources Code requires that the Commission not approve or adopt an LCP:

As outlined in this staff report, the LUP Amendment is consistent with the Chapter 3 policies of the Coastal Act including the public access, public recreational, and public view policies, as proposed. Thus, the Commission finds that the proposed LUP Amendment meets the requirements of and conforms with the Chapter 3 policies of the Coastal Act. Therefore, the Commission finds that approval of the LUP Amendment as proposed will not result in significant adverse environmental impacts under the meaning of CEQA. Therefore, the Commission certifies LUP Amendment request 1-10 as proposed.



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Figure 2-2
Local Vicinity Map
Beauchamp GPA and LCP Amendment IS/MND

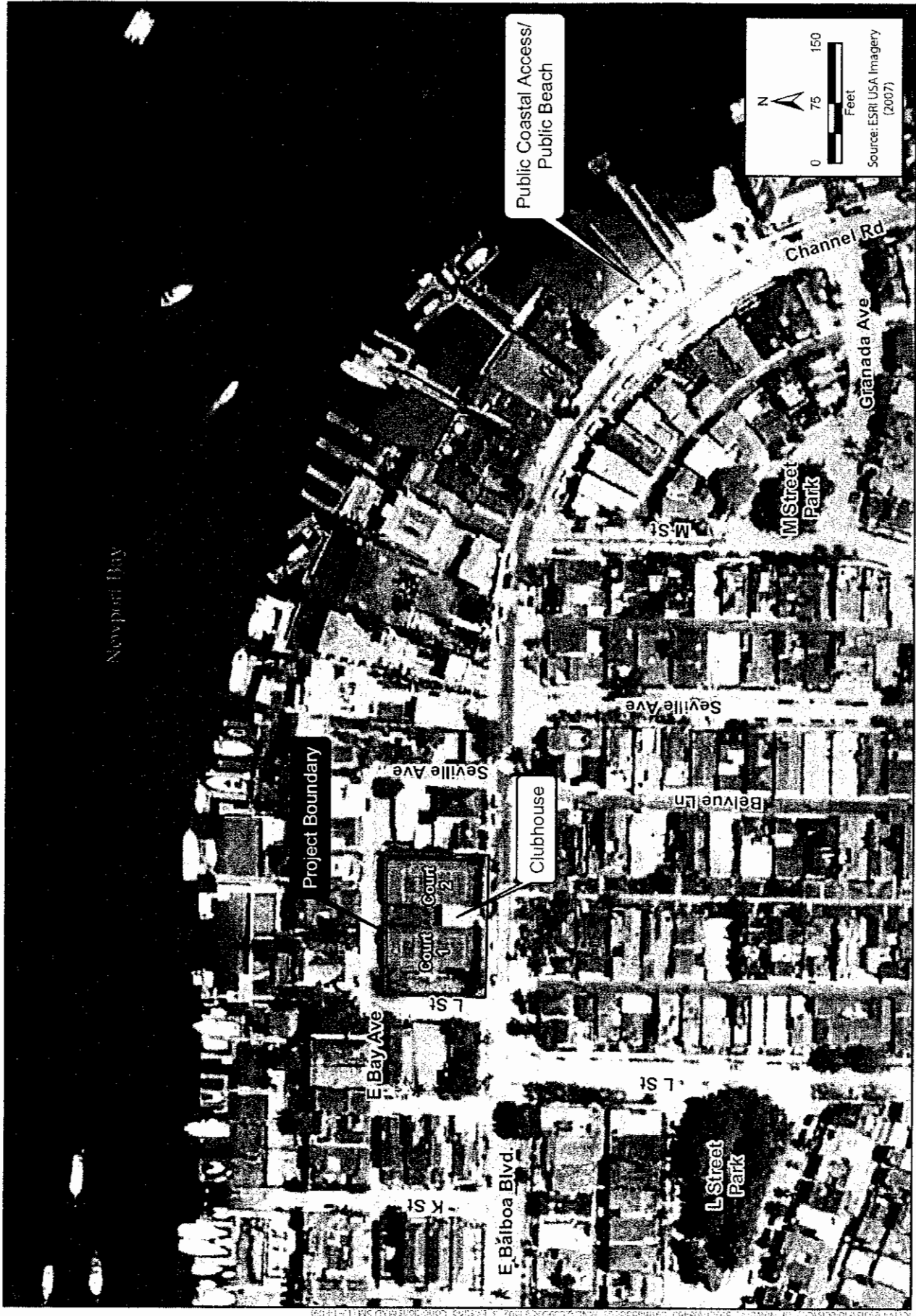
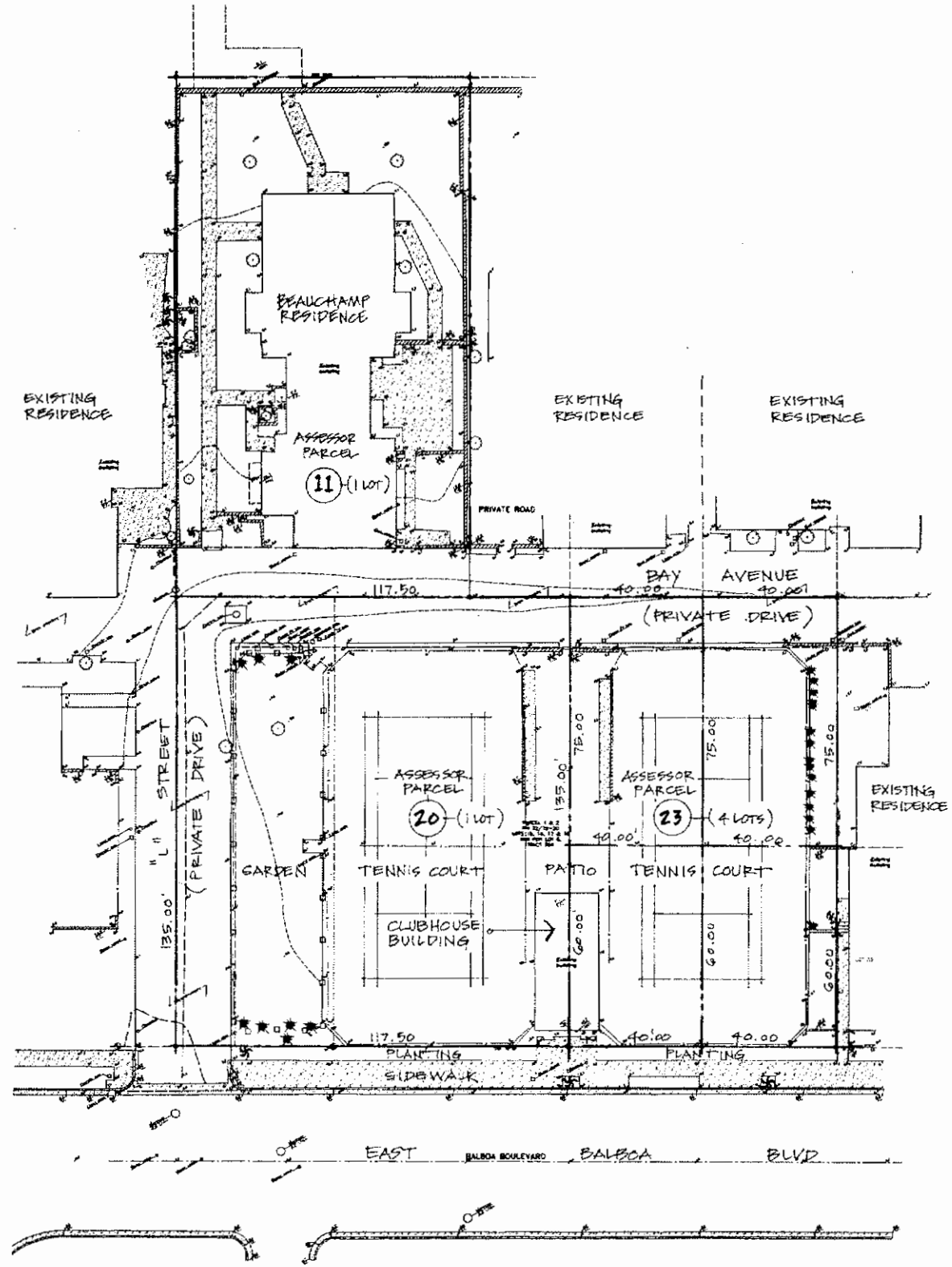


Figure 2-3
Existing Conditions
Beauchamp GPA and LCP Amendment IS/MND

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JCF Jones & Stokes
an ICF International Company

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EXHIBIT # 1
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Figure 2-4
Existing Development
Beauchamp GPA and LCP Amendment IS/MND

JUN 1 - 2010

CALIFORNIA
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RESOLUTION NO. 2010-50

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH ADOPTING MITIGATED NEGATIVE DECLARATION NO. ND2010-001 AND APPROVING GENERAL PLAN AMENDMENT NO. GP2009-001 AND LOCAL COASTAL PROGRAM COASTAL LAND USE PLAN AMENDMENT NO. LC2009-001 FOR PROPERTY LOCATED AT 2000 THROUGH 2016 EAST BALBOA BOULEVARD (PA2009-067).

THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by David Beauchamp of Peninsula Point Properties, LLC, with respect to property located at 2000-2016 East Balboa Boulevard and legally described as Lots 14, 15, 16, 21, and 22 of Tract 756, as shown on a map recorded in Book 23, Pages 7 & 8 of miscellaneous maps, records of Orange County, California in requesting approval of a General Plan amendment and Local Coastal Program Coastal Land Use Plan amendment.
2. The applicant proposes the adoption of a General Plan amendment and Local Coastal Program Coastal Land Use Plan amendment to change the land use designations from PR (Parks and Recreation) to RS-D (Single Unit Residential Detached) and RSD-B, respectively. The property is currently used as a private tennis club and the Amendments would allow for future redevelopment of dwelling units.
3. The subject property is located within the Single-Family Residential (R-1) Zoning District and the General Plan Land Use Element category is currently Parks and Recreation (PR).
4. The subject property is located within the coastal zone. The Local Coastal Program Coastal Land Use Plan category is currently Parks and Recreation (PR).
5. A public hearing was held on March 4, 2010, in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this meeting.

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EXHIBIT # 2
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6. At the March 4, 2010, hearing, the Planning Commission received public comments and voted (7 ayes and 0 noes) to recommend adoption of the Mitigated Negative Declaration, approval of the proposed General Plan Amendment, and Local Coastal Program Coastal Land Use Plan Amendment.
7. public hearing was held by the City Council on May 25, 2010, in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the City Council at this meeting

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. An Initial Study and Mitigated Negative Declaration have been prepared in compliance with the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and City Council Policy K-3.
2. The draft Mitigated Negative Declaration was circulated for a 30-day comment period beginning on January 12, 2010, and ending on February 10, 2010. The contents of the environmental document and comments on the document were considered by the Planning Commission and City Council in its review of the proposed project.
3. On the basis of the entire environmental review record, the proposed project, with mitigation measures, will have a less than significant impact upon the environment and there are no known substantial adverse affects on human beings that would be caused. Additionally, there are no long-term environmental goals that would be compromised by the project, nor cumulative impacts anticipated in connection with the project. The mitigation measures identified and incorporated in the Mitigation Monitoring and Reporting Program are feasible and will reduce the potential environmental impacts to a less than significant level.
4. The Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program are attached as Exhibits "A" and "B". The document and all supporting materials, which constitute the record upon which this decision was based, are on file with the Planning Department, City Hall, 3300 Newport Boulevard, Newport Beach, California.
5. The City Council finds that judicial challenges to the City's CEQA determinations and approvals of land use projects are costly and time consuming. In addition, project opponents often seek an award of attorneys' fees in such challenges. As project applicants are the primary beneficiaries of such approvals, it is appropriate that such applicants should bear the expense of defending against any such judicial challenge, and bear the responsibility for any costs, attorneys' fees, and damages which may be awarded to a successful challenger.

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SECTION 3. GENERAL PLAN AMENDMENT.

1. Council Policy A-18 (CPA-18) requires that proposed General Plan amendments be reviewed to determine if a vote of the electorate would be required. If a General Plan amendment (separately or cumulatively with other projects over a 10-year span) generates more than 100 peak hour trips, 40,000 square feet of non-residential floor area, or exceeds 100 dwelling units in a statistical area beyond what is allowed in the General Plan, a vote of the electorate would be required if the City Council approves the General Plan amendment.
2. The General Plan does not provide a density/intensity limit for the proposed RS-D land use designation nor does it include a specific floor area limit or FAR for the Parks and Recreation land use designation but allows for incidental buildings. No increase in non-residential floor area is proposed by this amendment; therefore, the non-residential floor area threshold will not be impacted. Since there is an increase of 0.41 peak hour trips, the 100-peak hour trip threshold will not be exceeded. The amendment would allow up to five additional dwelling units. This is well below the 100-dwelling unit threshold. This is the first General Plan amendment in Statistical Area D4 since the General Plan update in 2006. There are no prior amendments in this statistical area. None of the thresholds to require a vote pursuant to CPA-18 would be exceeded.
3. The project site is located on the Balboa Peninsula where public services and infrastructure are available to serve the additional dwelling units under the proposed land use changes.
4. The amendment is in the public interest pursuant to Section 65358 of the California Government Code and CPA-18. The amendment would allow for additional dwelling units which would contribute to the City's assigned share of moderate or above moderate dwelling units for the Regional Housing Needs Allocation (RHNA).
5. Pursuant to Section 65352.3 of the California Government Code, the appropriate tribe contacts identified by the Native American Heritage Commission were provided notice of the proposed General Plan Amendment on February 10, 2010. The California Government Code requires 90 days to allow tribe contacts to respond to the request to consult unless the tribe contacts mutually agree to a shorter time period. The response period ended on May 11, 2010 and no requests for consultation were received.

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EXHIBIT 2
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SECTION 4. LOCAL COASTAL PROGRAM COASTAL LAND USE PLAN AMENDMENT.

1. Pursuant to the California Coastal Act, the City prepared a Local Coastal Program Coastal Land Use Plan (CLUP) for property lying within the Coastal Zone of the City of Newport Beach. In October of 2005, the California Coastal Commission certified the CLUP and the City Council subsequently adopted it in December of 2005.
2. On February 17, 2010 and May 14, 2010, notices of the availability of a draft amendment of the Local Coastal Program Coastal Land Use Plan were provided in accordance with Section 13515(c) of the California Code of Regulations. This notice was mailed to approximately 122 affected property owners, occupants, interested parties, and public agencies in order to provide public participation and comments.
3. This Amendment of the Local Coastal Program CLUP is intended to be carried out in a manner fully in conformity with the California Coastal Act. Additionally, the Amendment meets the requirements of, and is in conformity with, the policies of Chapter 3 (commencing with Section 30200) of the California Coastal Act. The current use of the project site is a private recreational use within the Coastal Zone and the proposed General Plan and Local Coastal Program CLUP amendments allow the development of the property as was permitted prior to the 1988 General Plan update. The conceptual development plan would comply with the density requirement of 6.0 to 9.9 dwelling units per acre as required by the Residential Single Unit Detached (RSD-B) land use designation of the Local Coastal Program CLUP.

SECTION 5. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

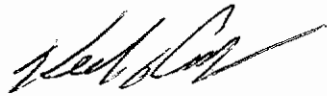
1. The City Council hereby removes the final sentence of the first paragraph as shown on Page 2-6 of Mitigated Negative Declaration No. ND2010-001 that reads, "However, this environmental document would cover the approval of a future subdivision tract map and final development plan, provided they are in substantial conformance with the conceptual development plan."
2. The City Council of the City of Newport Beach hereby adopts Mitigated Negative Declaration No. ND2010-001 as depicted in Exhibit "A" and Mitigation Monitoring Report Program as depicted in Exhibit "B" of this resolution.
3. The City Council of the City of Newport Beach hereby approves General Plan Amendment No. GP2009-001 as depicted in Exhibit "C".

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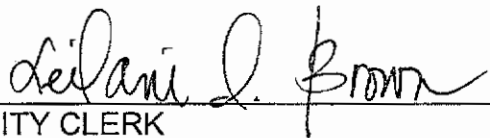
4. Amendments to the General Plan and Local Coastal Program Coastal Land Use Plan are legislative acts. Neither the City nor State Planning Law set forth any required findings for either approval or denial of such amendments.
5. The City Council of the City of Newport Beach hereby approves Local Coastal Program Coastal Land Use Plan Amendment No. LC2009-001 to update the Local Coastal Program Coastal Land Use Plan as depicted in Exhibit "D".
6. The City Council of the City of Newport Beach hereby authorizes submittal of the Local Coastal Program CLUP Amendment to the California Coastal Commission for formal review and approval.
7. Local Coastal Program CLUP Amendment No. LC2009-001 shall not become effective until after California Coastal Commission approves it and subsequent action is taken to adopt the Amendment by the City Council.

Passed and adopted by the City Council of Newport Beach at a regular meeting held on the May 25, 2010.



MAYOR

ATTEST:

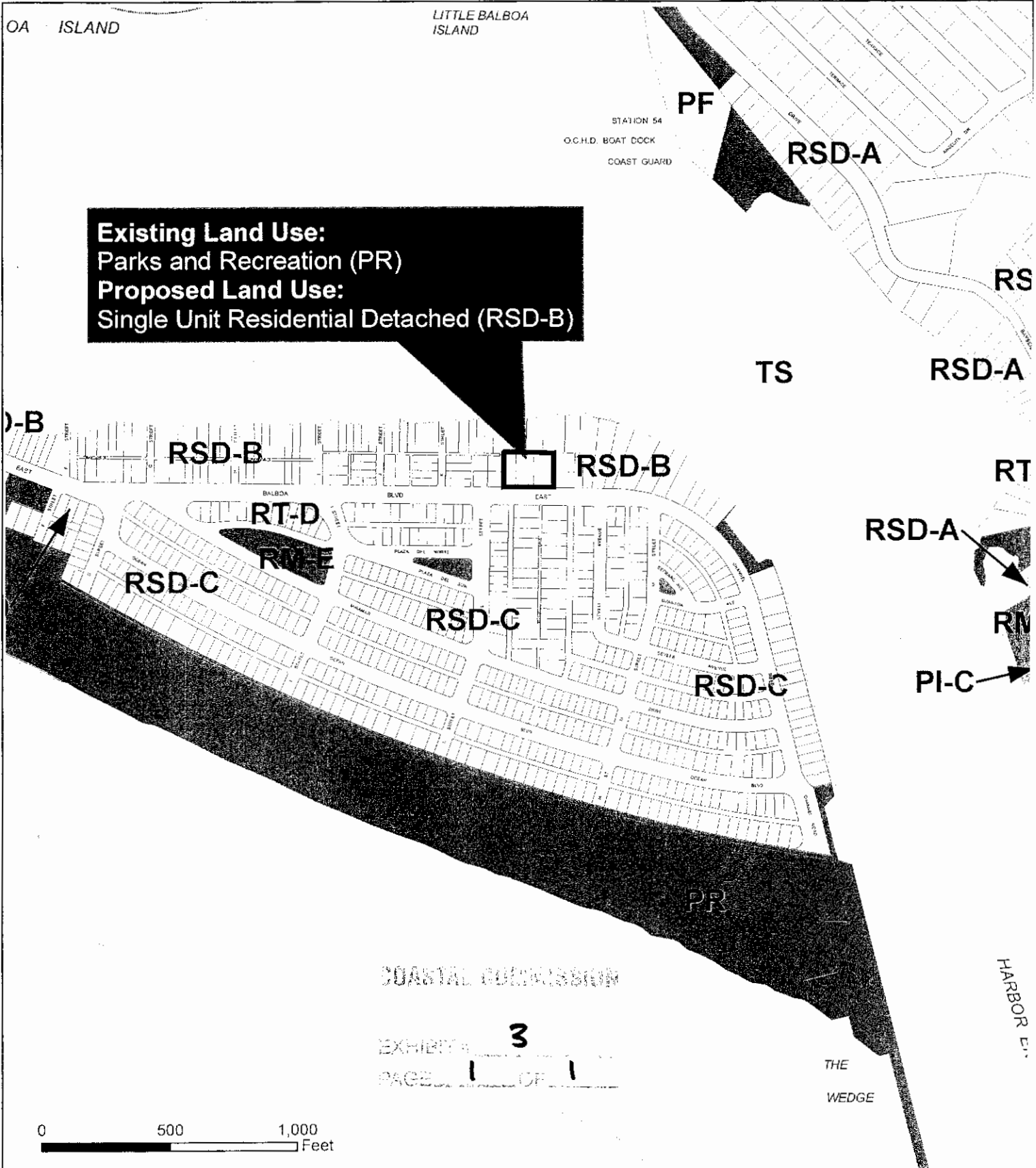


CITY CLERK



COASTAL COMMISSION

EXHIBIT 2
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LC2009-001 (PA2009-067)
Coastal Land Use Plan Amendment
2000 - 2016 East Balboa Boulevard

