

CALIFORNIA COASTAL COMMISSION

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

**W14a****ADDENDUM**

Click to go to
original staff report

Date: September 8, 2015

To: COMMISSIONERS & INTERESTED PERSONS

From: SOUTH COAST DISTRICT STAFF

Subject: Major Amendment No. 1-14 (LCP-5-NPB-14-0611-1) to the City of Newport Beach Certified Land Use Plan. For public hearing and Commission action at the Commission's September 9, 2015 meeting in Arcata.

Staff recommends the following change be made to Page 6, Section II (Suggested Modifications) of the staff report dated August 28, 2015.

Additions are shown in underline text and deletions are shown in ~~strike-out~~ text.

II. SUGGESTED MODIFICATIONS TO THE LUP AMENDMENT

Certification of the LUP Amendment is subject to the following modifications. Only those specific subsections of the LUP for which modifications are being suggested are identified below.

1. Land Use Plan, Chapter 3, Page 3-43, Vessel Launching, Berthing and Storage Map. The map shall be amended to identify the 8th Street street end as a "Public Launch Site."
2. Land Use Plan, Chapter 3, Page 3-40, Coastal Access and Recreation Map. The map shall be amended to identify "Potential Lateral Access" along the State tidelands adjacent to and bayward of the two Newport Harbor Yacht Club bay-front parcels on either side of the 8th Street street end ~~and one residential parcel to the east, which would connect to an existing public beach near the 7th Street street end.~~ The public beach near the 7th Street street end shall be identified as a "Public Beach Access Location."
3. Land Use Plan, Chapter 3, Page 3-10, Public Access and Recreation Policies. Chapter 3 of the Land Use Plan shall be amended to include new Policy ~~3.1.1-29~~ 3.3.1-4: "The Balboa Peninsula bay-fronting street end at 8th Street, and/ or reasonably proximate locations acceptable to the Executive Director of the Coastal Commission, shall be improved to provide public access and recreational facilities for enhanced public use of the adjacent State tidelands. The improvements addressed in this policy shall be implemented with the replacement or expansion of the adjacent Newport Harbor Yacht Clubhouse located at 720

West Bay Avenue. Appropriate public access signage shall be installed and maintained at appropriate locations.”

~~“Provide enhanced public access and recreational facilities on property with public rights of access and recreation that exist or may exist including, but not limited to, streets, public accessways, public facilities, and public tidelands when development is proposed on bay front properties.”~~

Staff recommends the following change be made to the findings in Section III.C of the staff report, at page 15, as follows:

2. Land Use Plan, Chapter 3, Page 3-40, Coastal Access and Recreation Map.

The map shall be amended to identify “Potential Lateral Access” along the State tidelands adjacent to and bayward of the two Newport Harbor Yacht Club bay-front parcels on either side of the 8th Street street end. ~~and one residential parcel to the east, which would connect to an existing public beach near the 7th Street street end.~~ The public beach near the 7th Street street end shall be identified as a “Public Beach Access Location.”

These modifications are consistent with the Coastal Act and with other policies of the Land Use Plan because they will identify areas near the site where public access is provided and where public access may be provided in the future. The omission of the existing public beach access location from the map is an error which can be corrected by the proposed LUPA because the public beach is very close to the yacht club parcels proposed to be re-designated. The provision of lateral public access along the waterfront (either on the improved bulkhead or on a boardwalk or ~~private~~ docks over State tidelands) is an improvement that could be implemented in conjunction with development facilitated by the proposed LUPA. Improved lateral access along the bay could be in the form of a public recreational pier extending from the street-end and serving public use of the adjacent State waters and would be consistent with the Chapter 3 policies of the Coastal Act and with multiple policies of the LUP. The suggested modification to the LUPA will not immediately result in any public access improvements, but would identify a new area for potential ~~lateral~~ public access improvements when the City and the Commission review applications for proposed development in the area.

Suggested Modification 2 does not require any action by the City. It identifies an area of potential lateral access for purposes of mitigating any access impacts associated with any development proposed on the redesignated sites, which could include much more than just a yacht club considering the various uses allowed under the PI designation. In the event that it is not feasible to provide lateral public access bayward of these parcels, or other forms of public access are determined to be more appropriate, this map change identifying “potential lateral access” does not require that area to be developed for lateral access purposes.

3. Land Use Plan, Chapter 3, Page 3-10, Public Access and Recreation Policies.

Chapter 3 of the Land Use Plan shall be amended to include Policy ~~3.1.1-29~~ 3.3.1-4: “The Balboa Peninsula bay-fronting street end at 8th Street, and/ or reasonably proximate locations acceptable to the Executive Director of the Coastal Commission, shall be improved to provide public access and

recreational facilities for enhanced public use of the adjacent State tidelands. The improvements addressed in this policy shall be implemented with the replacement or expansion of the adjacent Newport Harbor Yacht Clubhouse located at 720 West Bay Avenue. Appropriate public access signage shall be installed and maintained at appropriate locations.”

~~“Provide enhanced public access and recreational facilities on property with public rights of access and recreation that exist or may exist including, but not limited to, streets, public accessways, public facilities, and public tidelands when development is proposed on bay front properties.”~~

This modification is consistent with the Coastal Act and with other policies of the Land Use Plan because it will support implementation of the public access and recreation enhancements identified on the amended maps in the LUP when new development is carried out. When the replacement or expansion of the Newport Harbor Yacht Clubhouse located at 720 West Bay Avenue occurs ~~development is proposed on bay front properties~~, the Land Use Plan policy ensures that the review of those proposals takes into account opportunities for the enhancement or creation of public access and recreational facilities, commensurate with and to offset the public access impacts associated with such development, including enhanced public use of the adjacent State tidelands if required for approval of the proposed development. This policy does not restrict new development and would not restrict new development on the private yacht club parcels; rather it enables new development to occur by encouraging opportunities to enhance public access and recreational facilities if mitigation is required for identified impacts on access or recreation from development projects. The policy would not require the Newport Harbor Yacht Club (or any other private development) to allocate private land or provide access or easements over private property; it merely encourages development to be planned in a way which improves public access and recreation over public property.

As revised by the suggested modifications, the Commission finds that the proposed LUPA would serve to maximize public access and public recreational opportunities within the project area and within the City of Newport Beach. In conclusion, the Commission finds that the Land Use Plan Amendment, only if modified as suggested, meets the requirements of, and is in conformity with, the policies of Chapter 3 of the Coastal Act.

Replace Exhibit 4 in the staff report with the attached revised Exhibit 4.

Correspondence. Staff received the attached letter from the City of Newport Beach on September 4, 2015.

Exhibit 4

Page 1 of 1



California Coastal
Commission

REVISED
9/8/2015

VICINITY MAP

Pacific
Ocean



7th Street
public beach
access location

Yacht Club
Parking

8th Street
street end
(add 'Public
Launch Site')

Public Accessways

Potential Lateral Access

Newport Harbor





CITY OF NEWPORT BEACH

100 Civic Center Drive
Newport Beach, California 92660

949 644-3200

newportbeachca.gov/communitydevelopment

W14a

VIA EMAIL

September 4, 2015

Steve Kinsey, Chairman
California Coastal Commission
200 Oceangate, Suite 1000
Long Beach, CA 90802

Re: CLUP Amendment No. LCP-5-NPB-14-0611-1

Dear Chairman Kinsey:

The City of Newport Beach (City) submitted the referenced application to amend the City's Certified Local Coastal Program Coastal Land Use Plan (CLUP) on April 23, 2014. The application was deemed complete on June 20, 2014. At its September 2014 meeting, the Coastal Commission approved a one-year extension for review of the amendment. In the staff report for the time extension, staff stated that the anticipated hearing date would be towards the end of 2014 or beginning of 2015. The application is scheduled before the Coastal Commission on Wednesday, September 9, 2015, seventeen months from submission and there is no opportunity for a continuance, as statutes require action this month.

The amendment is associated with a portion of the Newport Harbor Yacht Club (NHYC) property and simply changes the land use category of seven lots developed as NHYC parking and boat storage from Single-Unit Residential Detached and Two-Unit Residential to Private Institutions so the entire yacht club property has one consistent designation. The proposed amendment is essentially a "clean-up" item as it was overlooked when the City's current CLUP was certified in 2005 and amended in 2009. The City asserts that the proposed amendment would strengthen the CLUP in support of a priority coastal-dependent use by providing consistent land use designations for the yacht club. The amendment also eliminates the non-priority residential designations for property that is not used or planned for residential purposes.

Please see the following responses to the suggested modifications within the Coastal Commission staff report dated August 28, 2015.

Suggested Modification No. 1

New Public Launch Site

We support designating 8th Street as it intersects the bay as a “Public Launch Site” denoted by a star symbol on CLUP Map 3-4 given that the Newport Beach Municipal Code allows anyone the ability to launch hand carried watercraft from any street end or public beach. This street end is currently designated as a “Public Beach Access Location” denoted by a black triangle symbol on CLUP Map 3-1 and the additional designation is mutually supportive of enhanced access (attachments 1 and 2). Be advised the access is only 20 feet wide and the City’s Harbor Resources Manager has significant doubts about the usefulness of such a limited public launch site given that other launch sites exist nearby that are more convenient.

Suggested Modification No. 2:

Potential Lateral Access Designation

We do not support the suggested modification regarding potential future lateral access across the NHYC properties to the Buena Vista Avenue terminus near 7th Street referred to by Coastal staff as a public beach near 7th Street. The basis for this is the Coastal Commission’s certification of the City’s CLUP that includes over 90 specific policies and Maps 3-1, 3-2, 3-3 and 3-4 that guide decision-making related to public access including the identification of potential lateral access areas in the bay.

In 2005 and again in 2009, the Coastal Commission certified the City’s CLUP that includes a public access plan including several map and policies for enhancing and requiring additional public access when development is proposed. As shown in the attached Map 3-1, public access to the ocean and harbor is not continuous and policies require additional access when development affects access. Vertical and lateral access currently exists approximately 70 feet to the east of the NHYC, from which a public walkway connects West Bay Avenue to Balboa Village, Balboa Island Ferry, Fun Zone, and Balboa Pavilion; the walkway extends close to $\frac{3}{4}$ of a mile. The certified public access plan also shows vertical access to the harbor via the numerous street ends and between the Newport Harbor Yacht Club and the City’s new Marina Park to the west. The City also maintains vertical and lateral access at a public beach between 9th Street and 10th Street that is only located approximately 525 feet west of the NHYC.

The City is investing approximately \$40 million for the construction of Marina Park, which is located approximately 3,100 feet to the west and provides exceptional public access and recreational opportunities that were not envisioned by the CLUP in 2005 or the amended CLUP of 2009. The City chose to create this new 10-acre project to improve access to the bay and coast because it was the correct use for the property rather than a mobile home park. It clearly furthers the goals of the Coastal Act and is a shining example of the City’s commitment to improving public access and providing visitor and recreational facilities. The expanded Marina Park includes many low or no-

cost amenities including a new 23-slip visitor serving marina, a 10,500-square-foot community center, a 11,000-square-foot sailing center, a children's themed playground and picnic area, two half-court basketball areas, a fitness circuit, a café/diner, new and refurbished public restrooms, beach frontage improvements, and 177 on-site parking spaces.

Coastal Act §30212 and §30214 require implementation of public access policies in a manner that takes into account the time, place, and manner dependent upon a variety of factors. Public safety, military needs, protection of coastal resources, adequate access nearby, agriculture, topographic or geologic conditions, caring capacity, aesthetic value, and the protection of privacy of adjacent property owners all must be considered. In the light of the certified CLUP that established the plan and policies by which the City implements improvements to public access, we believe that adequate access exists nearby and we do not believe there is evidence of an impact to public access attributable to the proposed amendment. As a result, we conclude the suggested modification coupled with the third suggested modification shows that the recommendation was made without due consideration of the City's CLUP or Coastal Act §30212 and §30214.

Public Beach Designation

The second component of the suggested modification also seeks to identify the beach bayward of the intersection of West Bay Avenue and Buena Vista Avenue, approximately 70 feet west of the NHYC, as a "Public Beach" denoted by a "PB" symbol on Map 3-1 of the CLUP. We do not support the suggested modification for the following reasons:

- The beach is not tidelands but rather is part of a paper street dedicated as public right-of-way (Buena Vista Avenue).
- The area is relatively small (less than 3,000 square feet) and no public amenities are provided.
- The area is similar to the numerous street ends that abut the harbor that are identified on Map 3-1 as "Public Beach Access Location".

However, we would support the identification of the of the street end beach as a "Public Beach Access Location" on Map 3-1 consistent with how other street ends are identified in the harbor.

Suggested Modification No. 3:

New Coastal Land Use Policy

We do not support the suggested modification to add a new policy (Policy 3.1.1-29). We believe it is too broadly constructed and lacks specificity for proper implementation. More importantly, the City's CLUP includes adequate policies to carry out

implementation of the Coastal Act as confirmed by its certification by the Coastal Commission in 2005.

Alternatively, we submit the following policy, which is specific to the concerns that have been expressed by your staff:

Policy 3.3.1-4

The Balboa Peninsula bay-fronting street end at 8th Street, or reasonably proximate location acceptable to the Executive Director of the Coastal Commission, shall be improved to provide enhanced public access facilitating hand-carried watercraft. The improvements shall be implemented with the replacement or expansion of the adjacent Newport Harbor Yacht Club building located at 720 West Bay Avenue. Appropriate public access signage shall be installed and maintained at appropriate locations.

We have communicated our proposed alternatives as outlined in this letter to your staff. In summary, we believe the proposed amendment is consistent with Chapter 3 of the Coastal Act and respectfully requests that the Coastal Commission approve the City's requested CLUP amendment with suggested modifications outlined above.

Principal Planner Jim Campbell and Associate Planner Fern Nueno will be on hand at the meeting to address any questions you may have. Thank you so very much for your consideration.

Sincerely,



Kimberly Brandt, AICP
Director

Attachments:








- 1) Map 3-1
- 2) Map 3-4

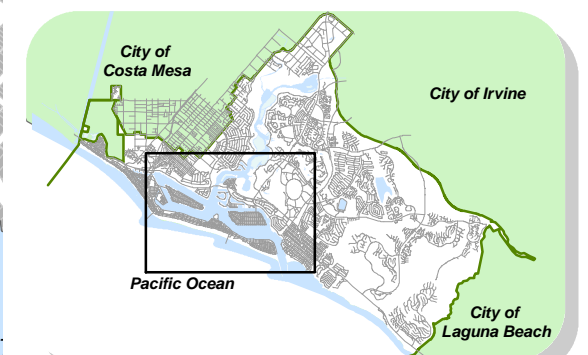
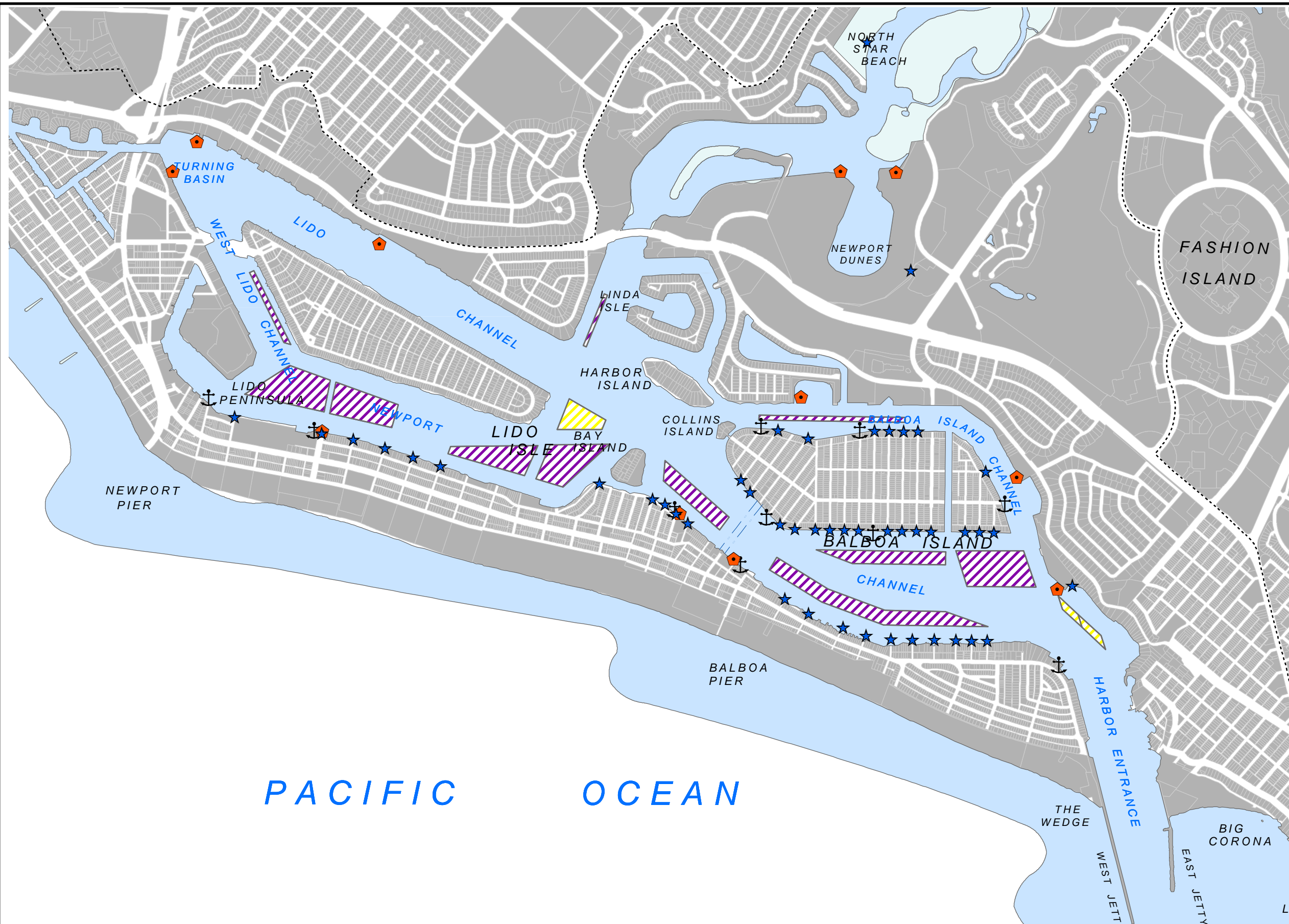
c:

Dave Kiff, City Manager
Sherilyn Sarb, Deputy Director, California Coastal Commission
Charles Posner, Coastal Program Analyst
Zach Rehm, Coastal Program Analyst
Sherman Stacey, Newport Harbor Yacht Club
Jeff Gordon, Newport Harbor Yacht Club

Vessel Launching, Berthing and Storage Map 3-4

LEGEND

-  Public Launch Site
-  Public Pumpout Site
-  Public Dock & View Point
-  Coastal Zone Boundary
-  City Boundary
-  Mooring Sites
-  Anchorage Sites



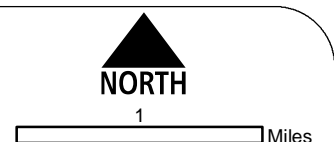
City of Newport Beach, California (Harbor Area)



**Local Coastal Program
Coastal Land Use Plan**










August/2005

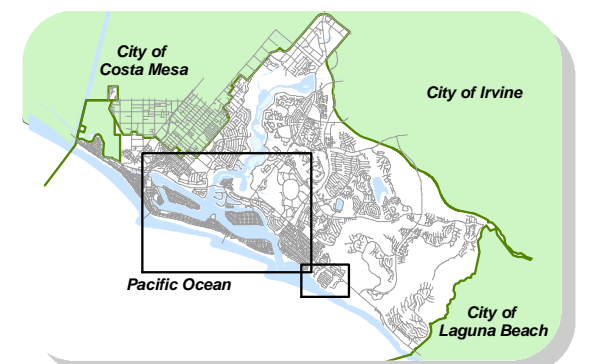
LCP05VesselHarb.mxd



Coastal Access and Recreation: Map 3-1 (Map 3 of 3)

LEGEND

-  Public Beach Location
-  Public Beach Access Location
-  Potential Access Point
-  Coastal Zone Boundary
-  Lateral Access
-  Potential Lateral Access
-  Vertical Access
-  Blufftop Access
-  Potential Blufftop Access
-  City Boundary
-  Proposed Park
-  Public Beach or Park



City of Newport Beach, California (Harbor Area)



**Local Coastal Program
Coastal Land Use Plan**

LCP05AccessRecHarb.mxd

FORM FOR DISCLOSURE OF EX PARTE COMMUNICATIONS

Name or description of project, LPC, etc.: LCP-5-NPB-14-0611

Date and time of receipt of communication: September 1 – 1:00 pm

Location of communication: 3501 Civic Center Drive, San Rafael

Type of communication (letter, facsimile, etc.): Telephone conversation

Person(s) initiating communication: Sherman Stacey

Detailed substantive description of content of communication:

(Attach a copy of the complete text of any written material received.)

See attached description of oral communication.

Date

9 / 1 / 15

Signature of Commissioner



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

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

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

Stacey described that the Newport Harbor Yacht Club was almost 100 years old and had been in this location since 1919. Stacey disagreed with the staff that the LUP Amendment was a project driven amendment necessary to a permit to reconstruct the main yacht club building. Stacey stated that when the LUP was certified in 2009, 7 parcels which were in long term use for parking or boat storage were left in a "residential" designation. The LUP Amendment was proposed by the City to make the land use designation consistent with the yacht club use which was provided in the certified LUP, not for the purpose of allowing uses which already legally existed. The LUP did not reflect the reality that residential use was not being made and would be a lower priority use than a coastal dependent use.

Stacey stated that the change in City zoning from designating the parcel for 20,000 square feet to 25,000 square feet was a change in pre LUP zoning that was not a part of the certified LUP. The certified LUP used a floor area ratio of 0.3 FAR to limit the intensity of development, not a fixed number. Based on the 0.3 FAR in the certified LUP, Stacey stated that the size of the proposed replacement building was well below the allowed area. Stacey pointed out that 400 feet to the west of the yacht club was a significant harbor public beach. Stacey pointed out that waterfronting lateral access existed starting 100 feet east of the club and extending for a mile to a point past the historic Balboa Pavilion. Stacey described that the Balboa Island Ferry, the fun zone, the Newport Harbor Nautical Museum, public fishing boats and other public recreational uses existed within the area if the Ferry. Stacey pointed out that the entire ocean beach on Balboa Peninsula was public.

Stacey stated that he believed that the City would be willing to accept part of the staff recommendation for suggested modifications but not a designation of the yacht club frontage for public access. Stacey stated that the yacht club also would not accept public access onto its property. Stacey described that the yacht club serves 1,000 members and families in a location where much of Newport Harbor would have 12 private homes. Stacey stated that the LUP certified by the Commission in 2005 and 2009 did not designate the frontage of any of the three major yacht clubs for public access, although there were waterfront areas without public lateral access that were designated. Stacey stated that other harbors, such as San Diego, have several yacht clubs without public access on their frontages, so that the lack of public access on property of a yacht club was not inconsistent with Chapter 3 public access policies. Stacey stated that the larger building was mostly to expand spaces for employees, and ADA compliance and not to expand membership.

Stacey explained that the public tidelands occupied by the yacht club were consistent with the certified LUP which allowed such uses to the established harbor lines. Stacey stated that the yacht club, like all other tideland users, pays the City a fee for the use of the tidelands based on a fair market value determination made by the City. Similar fees are paid for the moorings which the yacht club occupies. These tidelands fees are used by the City to maintain and perform public improvements on the harbor and beaches that increase the opportunities for public use. Stacey stated that the local high school uses the yacht club with no membership requirement and that numerous races are run each year, mostly in small boats, which are attended by any other sailors who wish to participate. The most common sailing races are in sabots. There are also various social events in which non-members participate. Members of other yachts clubs throughout California are afforded reciprocal use of the yacht club facilities. Stacey states that the yacht club was a coastal dependent use devoted to recreational uses of the ocean.

CALIFORNIA COASTAL COMMISSION

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



August 28, 2015

W14a

TO: Commissioners and Interested Persons

FROM: Sherilyn Sarb, Deputy Director
Charles Posner, LCP Supervisor
Zach Rehm, Coastal Program Analyst

SUBJECT: Major Land Use Plan Amendment No. 1-14 (LCP-5-NPB-14-0611-1) to the City of Newport Beach Certified Land Use Plan. For public hearing and Commission action at the Commission's September 9, 2015 meeting in Arcata.

SUMMARY OF LAND USE PLAN AMENDMENT NO. 1-14

The Coastal Commission certified the City of Newport Beach Land Use Plan (LUP) on May 19, 1982, and certified a major Land Use Plan Amendment (LUPA) on February 5, 2009. The City does not have a certified Implementation Plan. The proposed LUPA would change the land use designation of seven parcels associated with the Newport Harbor Yacht Club from various categories of "Residential" to "Private Institutions." The Private Institutions designation would permit the existing non-conforming boat storage and vehicle parking uses on the seven residential parcels and would enable the Newport Harbor Yacht Club to carry out the City-approved Planned Development Permit No. PL2012-002 and Minor Use Permit No. UP2012-016 for a new clubhouse, approximately 4,000 square feet larger than the existing clubhouse, on an adjacent bay-front parcel (720 West Bay Avenue). The private yacht club has submitted Coastal Development Permit Application No. 5-14-1671 for its clubhouse replacement project.

SUMMARY OF STAFF RECOMMENDATION

Staff recommends that the Commission certify the Land Use Plan Amendment, only if modified to ensure consistency with Chapter 3 of the Coastal Act. As proposed, the LUPA would not be consistent with Chapter 3 or with LUP policies requiring the provision of maximum public access and recreational opportunities. The proposed LUPA would establish the Private Institutions land use designation on all of the parcels associated with the existing private yacht club including a bay-front parcel at 800 West Bay Avenue currently used for boat storage. Certification of the LUPA would enable more intense development on the bay-front parcel and on the adjacent bay-front primary yacht club parcel, where public access over State tidelands and submerged lands is currently restricted, and where public access could be further restricted in the future if the yacht club constructs additional docks or moors additional boats over the State tidelands and submerged lands.

The existing Newport Harbor Yacht Club is developed up to the bulkhead line, with several large dock floats and hundreds of privately owned vessels occupying the State tidelands and submerged lands beyond the private yacht club property. The adjacent residentially-zoned bay-front parcel, used by the yacht club primarily for dry boat storage, also features a dock float over State tidelands and submerged lands. Between the two parcels, and bound by six-foot high wood and chain link fences on either side, is the 8th Street street end, identified as a “Public Beach Access Location” on the Coastal Access and Recreation Map on page 3-40 of the City of Newport Beach certified Land Use Plan. The State tidelands and submerged lands bayward of the 8th Street street end previously contained a public dock float for small boat launches (approximately 40 years ago according to a representative of the Newport Harbor Yacht Club). The water adjacent to the street end is currently occupied by private vessels tied to the dock floats over State tidelands adjacent to each of the two bay-front Newport Harbor Yacht Club parcels. The proposed LUPA would permit the existing non-conforming boat storage use on the re-designated Private Institutions parcel and would facilitate the construction of a new clubhouse, approximately 4,000 square feet larger than the existing clubhouse. The LUPA would establish conforming parking spaces on the six inland residential parcels re-designated Private Institutions (currently designated residential with variances to allow parking uses), which would be required for the construction of a new, larger clubhouse building on the primary yacht club parcel.

The Commission certified a major LUP Amendment on February 5, 2009, which re-designated the primary Newport Harbor Yacht Club parcel as Private Institutions, along with three other groups of parcels in Newport Beach that had pre-existing yacht clubs sited on them. The Commission’s findings included: “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” and “a number of yacht clubs and other private recreational facilities are currently placed in the Open Space (OS) category. These facilities will be placed in the Private Institutions (PI) category, which better reflects the current land use and intensity of development.” Yacht clubs were included in the Private Institutions category because they provide ancillary services to the public (such as guest/visitor boat launch docks), because they hold events which members of the public can attend (although often only at the invitation of a member), and because they provide sailing programs for children and high school students (who are not required to be members). The City and the applicant characterize yacht clubs as a coastal-dependent use which supports public recreation.

The proposed Private Institutions land use designation is intended to accommodate private facilities that serve the public, including yacht clubs. Currently, there is limited public access to State tidelands and submerged lands located adjacent to and bayward of the existing yacht club. The existing fencing prohibits all access for the general public to the State waters bayward of the yacht club parcels and there is no access at the street-end. The proposed redevelopment of the yacht club, which is the development accommodated by the proposed LUPA, will impact public use of the streets and surrounding area including the bay. These impacts to public access and recreational opportunities should be addressed in the proposed LUPA, which will be used as guidance for the yacht club redevelopment. Unless the LUP is modified to identify public access and recreation improvements on existing public streets, public accessways, public facilities, and public tidelands in the area, the LUPA would serve to restrict public access because it would perpetuate existing restrictions to public access over the life of the new development, which could be up to 100 years.

Staff recommends that the Commission certify the proposed changes to the land use designations of the seven parcels proposed by the subject LUPA, but only if the LUP is modified to include public access and recreation enhancements and policies relevant to the proposed site, consistent with the Chapter 3 policies of the Coastal Act. Staff recommends that the Vessel Launching, Berthing and Storage Map on page 3-43 of the LUP be amended to identify the 8th Street street end as a “Public Launch Site,” consistent with its historical use and with dozens of other street ends in Newport Beach. Staff also recommends that the Coastal Access and Recreation Map on page 3-40 of the LUP be amended to identify “Potential Lateral Access” along the State tidelands adjacent to the two Newport Harbor Yacht Club bay-front parcels on either side of the 8th Street street end and one residential parcel to the east, which would connect to an existing public beach near the 7th Street street end. Staff further recommends that the beach near 7th Street be identified as a “Public Beach Location” on the map in the LUP, consistent with other public beaches which are already identified. East of the public beach, continuous lateral access is provided to the public for approximately one mile along a bay-front walkway designated as Buena Vista Boulevard and East Edgewater Avenue. Finally, in order to ensure that the public access and recreation enhancements identified on the amended maps in the LUP are implemented in the future, staff recommends one additional policy be added to the public access and recreation chapter of the LUP. Policy 3.1.1-29 would augment other policies in the LUP through its directive to “Provide enhanced public access and recreational facilities on property with public rights of access and recreation that exist or may exist (including streets, public accessways, public facilities, and public tidelands) when development is proposed on bay-front properties.” Staff recommends that the Commission, after a public hearing:

- 1. Deny LUP Amendment No. 1-14 as submitted; and,**
- 2. Certify, only if modified, LUP Amendment No. 1-14.**

STANDARD OF REVIEW

The standard of review for the proposed amendment to the Land Use Plan (LUP), pursuant to Section 30512 and 30514 of the Coastal Act, is that the proposed Land Use Plan Amendment meets the requirements of, and is in conformance with the Chapter 3 policies of the Coastal Act.

FOR ADDITIONAL INFORMATION

The LUP Amendment file is available for review at the South Coast District office located in the Molina Center, 200 Oceangate, Suite 1000, Long Beach, 90802. The staff report can be viewed on the Commission’s website: <http://www.coastal.ca.gov/mtgcurr.html>. The City of Newport Beach certified Land Use Plan can be viewed on the City’s website: <http://www.newportbeachca.gov/government/departments/community-development/planning-division/general-plan-codes-and-regulations/local-coastal-program/coastal-land-use-plan>. For additional information, contact Zach Rehm in the Commission’s South Coast District office at (562) 590-5071.

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 D. CALIFORNIA ENVIRONMENTAL QUALITY ACT 16

SUBSTANTIVE FILE DOCUMENTS

- 1. City of Newport Beach certified Land Use Plan, 5/19/1982
- 2. City of Newport Beach certified Coastal Land Use Plan (2009 Update), 2/5/2009
- 3. Coastal Development Permit Application No. 5-14-1671 (Newport Harbor Yacht Club)

EXHIBITS

- Exhibit 1 – Newport Beach City Council Resolution No. 2014-19
- Exhibit 2 – Map of Parcels Proposed to be Re-designated
- Exhibit 3 – Newport Beach certified LUP Coastal Access and Recreation & Vessel Launching Maps
- Exhibit 4 – Vicinity Map
- Exhibit 5 – Photos

I. MOTIONS AND RESOLUTIONS

Motion I:

I move that the Commission certify Land Use Plan Amendment No. 1-14 as submitted by the City of Newport Beach.

Staff recommends a **NO** vote of the foregoing motion. Failure of this motion will result in denial of the LUP Amendment as submitted and adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

Resolution I:

The Commission hereby denies certification of Land Use Plan Amendment No. 1-14 as submitted by the City of Newport Beach and adopts the findings set forth below on grounds that the amendment does not conform with the policies of Chapter 3 of the Coastal Act. Certification of the Land Use Plan Amendment would not comply with the California Environmental Quality Act because there are feasible alternatives or mitigation measures which could substantially lessen any significant adverse impact which the Land Use Plan Amendment may have on the environment.

Motion II:

I move that the Commission certify Land Use Plan Amendment No. 1-14 for the City of Newport Beach if it is modified as suggested in this staff report.

Staff recommends a **YES** vote. Passage of this motion will result in the certification of the LUP Amendment 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 Commissioners present.

Resolution II:

The Commission hereby certifies Land Use Plan Amendment No. 1-14 for the City of Newport Beach if modified as suggested and adopts the findings set forth below on grounds that the Land Use Plan Amendment with the 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 and mitigation measures that would substantially lessen any significant adverse impacts which the Land Use Plan Amendment may have on the environment.

II. SUGGESTED MODIFICATIONS TO THE LUP AMENDMENT

Certification of the LUP Amendment is subject to the following modifications. Only those specific subsections of the LUP for which modifications are being suggested are identified below.

1. Land Use Plan, Chapter 3, Page 3-43, Vessel Launching, Berthing and Storage Map.

The map shall be amended to identify the 8th Street street end as a “Public Launch Site.”

2. Land Use Plan, Chapter 3, Page 3-40, Coastal Access and Recreation Map.

The map shall be amended to identify “Potential Lateral Access” along the State tidelands adjacent to and bayward of the two Newport Harbor Yacht Club bay-front parcels on either side of the 8th Street street end and one residential parcel to the east, which would connect to an existing public beach near the 7th Street street end. The public beach near the 7th Street street end shall be identified as a “Public Beach Location.”

3. Land Use Plan, Chapter 3, Page 3-10, Public Access and Recreation Policies.

Chapter 3 of the Land Use Plan shall be amended to include new Policy 3.1.1-29: “Provide enhanced public access and recreational facilities on property with public rights of access and recreation that exist or may exist including, but not limited to, streets, public accessways, public facilities, and public tidelands when development is proposed on bay-front properties.”

III. FINDINGS AND DECLARATIONS

A. DESCRIPTION OF THE LUP AMENDMENT

Land Use Plan Amendment No. 1-14 was submitted with Newport Beach City Council Resolution No. 2014-19 (**Exhibit 1**). The LUPA would change the land use designation of seven parcels associated with the Newport Harbor Yacht Club from various categories of “Residential” to “Private Institutions”. The Private Institutions designation would permit the existing non-conforming boat storage and vehicle parking uses on the seven residential parcels and would enable the Newport Harbor Yacht Club to carry out the City-approved Planned Development Permit No. PL2012-002 and Minor Use Permit No. UP2012-016 for a new clubhouse, approximately 4,000 square feet larger than the existing clubhouse, on an adjacent bay-front parcel (720 West Bay Avenue). The private yacht club has submitted Coastal Development Permit Application No. 5-14-1671 for its clubhouse replacement project.

The seven parcels subject to the proposed changes in land use designation are identified on a map submitted by the City (**Exhibit 2**). All seven parcels are currently owned by the Newport Harbor Yacht Club and all seven parcels are proposed to be re-designated for Private Institutions (PI-A) uses. The bay-front parcel at 800 West Bay Avenue, west of the primary yacht club parcel, used for dry boat storage, would be re-designated from Single-Unit Residential (RSD-B) to Private Institutions (PI-A). The other six parcels are across Bay Avenue, inland (south) of the primary yacht club parcel, and are currently used for vehicle parking by the yacht club’s members and guests. Four parcels at 711, 713, 715, and 717 West Bay Avenue would be re-designated from Two-Unit Residential (RT-E) to Private Institutions (PI-A). Two parcels at 706 and 708 West Balboa Boulevard would be re-designated from Single-Unit Residential (RSD-D) to Private Institutions (PI-A).

The LUPA is project-motivated. In order to facilitate the construction of a new clubhouse for the Newport Harbor Yacht Club, the City amended its General Plan and Zoning Code, and is seeking Commission certification for the proposed amendment to its Land Use Plan. The Newport Harbor Yacht Club proposes to demolish an existing 19,234 square foot clubhouse and construct a new 23,263 square foot clubhouse and to reconstruct the bulkhead and increase the height of the bulkhead by 21 inches. The City has approved a Minor Use Permit and a Planned Development Permit to allow the proposed new clubhouse to exceed the 31-foot height limit identified in the LUP and the Zoning Code and to allow the development to provide 123 parking spaces, rather than the 209 parking spaces required by the LUP and the Zoning Code. A letter from the City indicates that the current parking area supports 114 vehicle parking spaces over ten parcels designated Private Institutions and six parcels designated residential.

Additionally, the City has increased the development limit for the existing clubhouse parcel to 25,000 square feet and has included the seven parcels proposed to be re-designated in its floor area ratio calculation for the proposed new clubhouse. The Floor Area Ratio (FAR) for development on Private Institutions parcels is restricted to a maximum of 0.3, which would restrict any new clubhouse on the primary yacht club parcel to one of approximately the current size. However, the City has indicated that it will calculate the FAR using all Private Institutions parcels within the project area (including existing and re-designated parcels), which would allow for a larger clubhouse on the primary yacht club parcel. If the seven proposed re-designated parcels are included in the FAR calculation, more intense development could be permitted on the primary yacht club parcel, and additional development could be permitted in the future.

The City of Newport Beach Planning Commission held public hearings for the proposed LUPA (and associated project-motivated General Plan amendment, Zoning Code amendment, Minor Use Permit, and Planned Development Permit) on September 5, 2013, December 9, 2013, and January 23, 2014. The City Council held a public hearing on February 25, 2014 and approved the proposed Land Use Plan amendment (and associated General Plan amendment, Zoning Code amendment, Minor Use Permit, and Planned Development Permit). The LUPA was submitted for Coastal Commission certification with Newport Beach City Council Resolution No. 2014-19. The City submitted Land Use Plan Amendment No. 1-14 to the Commission on April 23, 2014 and the Executive Director determined that it was incomplete on May 6, 2014. The City submitted additional information on June 20, 2014 and the Executive Director determined that it was complete as of that date. On September 11, 2014, the Commission extended for one year the time limit for its review of the LUPA, establishing an effective deadline for Commission action of September 18, 2015.

B. DENY THE LUP AMENDMENT AS SUBMITTED

The standard of review for the Land Use Plan Amendment, pursuant to Section 30512 and 30514 of the Coastal Act, is that the proposed LUPA meets the requirements of, and is in conformance with the Chapter 3 policies of the Coastal Act.

One of the basic goals of the Coastal Act is to maximize public access and recreational opportunities along the coast. The following Chapter 3 policies protect public access and recreation:

Section 30210 of the Coastal Act. 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. 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 30213 of the Coastal Act. 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 30220 of the Coastal Act. 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. 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. 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. Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.

Section 30253(d) of the Coastal Act. New development shall do all of the following:...

(d) minimize energy consumption and vehicle miles traveled.

As currently certified, the Newport Beach Land Use Plan has policies related to shoreline access (Section 3.1.1), bay/harbor encroachments (Section 3.1.4), recreational opportunities (Section 3.2.1), vessel launching (Section 3.3.1), and vessel berthing and storage (Section 3.3.2). The following policies are relevant to the subject LUPA and the associated clubhouse replacement project:

Policy 3.1.1-1 of the LUP. Protect, and where feasible, expand and enhance public access to and along the shoreline and to beaches, coastal waters, tidelands, coastal parks, and trails.

Policy 3.1.1-2 of the LUP. *Protect and enhance all existing public street ends providing public access to the shoreline, beaches, coastal parks, and trails.*

Policy 3.1.1-3 of the LUP. *Protect, and where feasible, expand and enhance public access to and along the shoreline and to beaches, coastal waters, tidelands, coastal parks, and trails.*

Policy 3.1.1-11 of the LUP. *Require new development to minimize impacts to public access to and along the shoreline.*

Policy 3.1.1-26 of the LUP. *Consistent with the policies above, provide maximum public access from the nearest public roadway to the shoreline and along the shoreline with new development except where (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources or (2) adequate access exists nearby.*

Policy 3.1.1-27 of the LUP. *Implement public access policies in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following:*

- *Topographic and geologic site characteristics;*
- *Capacity of the site to sustain use and at what level of intensity;*
- *Fragility of natural resource areas;*
- *Proximity to residential uses;*
- *Public safety services, including lifeguards, fire, and police access;*
- *Support facilities, including parking and restrooms;*
- *Management and maintenance of the access;*
- *The need to balance constitutional rights of individual property owners and the public's constitutional rights of access.*

Policy 3.1.4-6 of the LUP. *Continue to prohibit private piers at street ends.*

Policy 3.2.1-1 of the LUP. *Protect, and where feasible, expand and enhance recreational opportunities in the coastal zone.*

Policy 3.3.1-1 of the LUP. *Protect, and where feasible, expand and enhance vessel-launching facilities in Newport Harbor.*

Policy 3.3.1-3 of the LUP. *Protect, and where feasible, expand and enhance low cost public launching facilities, such as trailer launch ramps, boat hoists, commercial loading facilities, and organized recreational boating launch facilities.*

Policy 3.3.2-7 of the LUP. *Protect, and where feasible, expand and enhance facilities and services for visiting vessels, including public mooring and docking facilities, dinghy docks, guest docks, club guest docks, pump-out stations and other features, through City, County, and private means.*

The Land Use Plan and Zoning Code state: the Private Institutions category is intended to provide for privately owned facilities that serve the public, including places for religious assembly, private schools, health care, cultural institutions, museums, yacht clubs, congregated homes, and comparable facilities.

Zoning Code Table 2-14. Allowed Uses indicates that the following uses are permitted with a minor use permit: assembly/meeting facilities, commercial recreation and entertainment, marine services, boat storage and boat yard, and parking facilities. Commercial Recreational and Marine permits the same uses with a minor use permit

Finally, the Newport Beach Land Use Plan has two maps relevant to the proposed LUPA. The Coastal Access and Recreation Map on page 3-40 of the certified LUP designates vertical and lateral accessways along the coast, as well as public beaches and parks. The Vessel Launching, Berthing and Storage Map on page 3-43 of the certified LUP designates public launch sites, mooring sites, and public docks (**Exhibit 3**).

As proposed, the LUPA would not be consistent with Chapter 3, which is the standard of review, and it would also conflict with several of the LUP policies identified above, which require the provision of maximum public access and recreational opportunities. The proposed LUPA would establish the Private Institutions land use designation on all of the parcels associated with the existing private yacht club including those currently occupied by boat storage and parking and including a bay-front parcel. The proposed land use designation would make the existing land uses conforming and would enable more intense development on the adjacent yacht club parcel. The proposed land use designation is intended to accommodate private facilities that serve the public, including yacht clubs. Currently, there is limited public access to State tidelands and submerged lands located adjacent to and bayward of the existing yacht club. The existing fencing prohibits all access for the general public to the State waters bayward of the yacht club parcels and there is no access at the street-end. The proposed redevelopment of the yacht club, which is the development accommodated by the proposed LUPA, will impact public use of the streets and surrounding area including the bay. These impacts to public access and recreational opportunities should be addressed in the proposed LUPA, which will be used as guidance for the yacht club redevelopment. Unless the LUP is modified to identify public access and recreation improvements on existing public streets, public accessways, public facilities, and public tidelands in the area, the LUPA would serve to restrict public access because it would perpetuate existing restrictions to public access over the life of the new development, which could be up to 100 years.

The LUPA would enable the continuation and expansion of land uses which restrict public access and recreational opportunities along a public street end maintained by the City of Newport Beach and over State tidelands and submerged lands belonging to the people of California. The primary Newport Harbor Yacht Club parcel at 720 West Bay Avenue is 73,859 square feet (approximately 1.7 acres), between the first public road and Newport Bay, behind an adjudicated (1919) bulkhead property line (**Exhibit 4**). The parcel has been owned by the Newport Harbor Yacht Club for approximately 100 years and currently features a 19,234 square foot clubhouse, dry boat storage area, and private beach. The yacht club's dock floats and members' vessels occupy the State tidelands and submerged lands bayward of the clubhouse. Immediately to the west of the primary yacht club parcel is the 8th Street street end, identified as a Public Beach Access Location on the Coastal Access and Recreation map on page 3-40 of the certified LUP (**Exhibit 3**). The yacht club's members' vessels occupy the State tidelands bayward of the street end (see photo in **Exhibit 5**). To the west of the street end is the 800

West Bay Avenue parcel, owned by the yacht club and proposed to be re-designated from “Residential” to “Private Institutions” (**Exhibit 2**) The parcel is used by Newport Harbor Yacht Club for dry boat storage and the State tidelands and submerged lands bayward of the parcel are occupied by the yacht club’s dock floats and members’ vessels.

The change in land use designations proposed by the LUPA would allow for more intense development on the consolidated group of parcels designated Private Institutions and owned by the Newport Harbor Yacht Club because the City calculates floor area ratio and other development standards based on all the entirety of the parcels. Additionally, the change in land use would permit boat storage as an allowed use on the bay-front parcel at 800 West Bay Avenue, which is currently designated residential and subject to different development standards. The storage of dozens of boats on the land and on the State tidelands and submerged lands adjacent to the parcel inherently affects public access to the State tidelands and submerged lands and the development of the parcel adjacent to the public street end at 8th Street affects public access along the street end and in the tidelands bayward of it.

According to a representative of the Newport Harbor Yacht Club, the 8th Street street end, bound by the two bay-front private yacht club parcels, historically supported greater public access and recreational opportunities than it does today. There was previously a public dock float for small boat launches over the State tidelands and submerged lands bayward of the street end. The street end is currently bound by six-foot high wood and chain link fences on either side and is sometimes used for staging of yacht club operations (see photo of unoccupied vehicles adjacent to an open gate associated with the yacht club in **Exhibit 5**). A public bench is provided at the end of the street end atop the bulkhead, but no public access to the water is provided. Under the current condition, even if access from the bulkhead to the water were provided, members of the public would not be able to launch boats because yacht club members’ boats completely occupy the State tidelands and submerged lands beyond the bulkhead (even kayakers and paddle-boarders would struggle to get through the blockage; see photo in **Exhibit 5**). Certification of the LUPA as proposed would serve to prolong this access-restrictive condition over the life of any development approved on the re-designated Private Institutions parcels.

The proposed LUPA would permit the existing non-conforming boat storage use on the re-designated Private Institutions parcel, which is not otherwise permitted on residential parcels in Newport Beach. The Newport Harbor Yacht Club has in the past obtained variances from the City in order to store boats on the residential parcel, but the City has indicated that the purpose of the proposed LUPA is to end that practice and certify the existing use. The proposed LUPA would allow the yacht club to continue its dry storage uses and to potentially expand the use of the private dock float over State tidelands and submerged lands in the future. While dock systems over State tidelands and submerged lands adjacent to residential development have been limited by the Commission and by the Newport Beach Harbor Department to the minimum size required for one or two vessels, parcels designated Private Institutions (including yacht clubs) have been permitted to occupy greater area of tidelands with their docks and vessels. In the case of the dock system adjacent to the proposed re-designated parcel at 800 West Bay Avenue, up to a dozen boats may be moored at once under the current condition. Additional boats associated with the private yacht club may be moored with lines in Newport Harbor. The private yacht club members’ boats that are moored to the east side of the private dock currently occupy State tidelands and submerged lands bayward of the parcel and the public street end. Policy 3.1.4-6 of the LUP indicates that the City shall continue to prohibit private

piers at street ends, but the LUP and the Zoning Code would allow the yacht club to continue, and potentially expand, the use of the private dock float over tidelands and submerged lands bayward of the parcel if it were re-designated Private Institutions.

Additionally, the proposed LUPA would facilitate the construction of a new clubhouse with greater capacity than the current clubhouse, and potentially extend its associated occupation of State tidelands and submerged lands for up to 100 years if the clubhouse were built in the same footprint on top of the bulkhead with private docks and boats over the adjacent State tidelands and submerged lands, and with no public access across the tidelands. Because of the parking requirements and the floor area ratio specified in the LUP and the Zoning Code, a new clubhouse could not be built unless the proposed LUPA was approved to re-designate additional Private Institutions parcels associated with the primary yacht club parcel. A letter included with the City's LUPA submission indicates that 114 parking spaces currently support the existing 19,234 square foot clubhouse. Although Chapter 3 of the Coastal Act is the standard of review for the LUPA and will be the standard of review for any site specific clubhouse project, the parking standards in the City's Zoning Code, referenced in the LUP, would require at least 200 parking spaces for a new clubhouse of similar size. In past actions, the Commission has found that new development is required to provide enough parking to satisfy demand, so that the public parking supply is not overtaken by private development, which would reduce public access to the coast.

The LUPA was passed under the same City Council resolution as the entitlements for a new 23,263 square foot clubhouse and the resolution and staff report reference the seven parcels subject to the LUPA as being a part of the entire 2.74 acre project site, which includes all parcels currently designated Private Institutions and the seven parcels proposed to be designated Private Institutions. The new clubhouse proposed by the Newport Harbor Yacht Club would be sited in approximately the same location as the existing clubhouse on the parcel on 720 West Bay Avenue, although it would be larger and would include additional assembly space. The plans submitted with Coastal Development Permit Application No. 5-14-1671 indicate that the clubhouse would be required by the LUP and the Zoning Code to provide 209 parking spaces; however only 123 parking spaces are proposed. The proposed LUPA would establish conforming parking spaces on the six inland residential parcels re-designated Private Institutions, which would be required for the construction of a new clubhouse building on the primary yacht club parcel.

Even if the development proposed by Coastal Development Permit Application No. 5-14-1671 is not ultimately approved by the Commission, the proposed LUPA would enable the potential for more intense development on the site because it would establish conforming parking spaces and additional parcels for a floor area ratio calculation of the entire project site. The six parcels inland designated as residential currently support non-conforming parking spaces utilized by yacht club members and guests, but those parcels could be re-sold or redeveloped with residential buildings at any time. Re-designating those six parcels as Private Institutions would cement them as parking facilities and floor area to be counted as part of a larger yacht club or a similar proposal in the future.

The Commission certified a major LUP Amendment on February 5, 2009, which re-designated the Newport Harbor Yacht Club parcel as Private Institutions, along with three other groups of parcels in Newport Beach that had pre-existing yacht clubs sited on them. The Commission's findings included: "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” and “a number of yacht clubs and other private recreational facilities are currently placed in the Open Space (OS) category. These facilities will be placed in the Private Institutions (PI) category, which better reflects the current land use and intensity of development.” Yacht clubs were included in the Private Institutions category because they provide ancillary services to the public (such as guest/visitor boat launch docks and mooring), because they hold events which members of the public can attend (although often only at the invitation of a member), and because they provide sailing programs for children and high school students (who are not required to be members). The City and the applicant characterize yacht clubs as a coastal-dependent use which supports public recreation.

The proposed Private Institutions land use designation is intended to accommodate private facilities that serve the public, including yacht clubs. Currently, there is limited public access to State tidelands and submerged lands located adjacent to and bayward of the existing yacht club, which is not consistent with the Private Institutions designation. The Newport Harbor Yacht Club does occasionally hold events which members of the public can attend and it does provide sailing programs for children and high school students (who are not required to be members); however, the yacht club does not provide any public access to the public and its operation restricts public access along the public street end and over the State tidelands and submerged lands bayward of its two bay-front parcels. And while the yacht club does encourage marine recreation, it does so only for the members of the yacht club and their guests. The subject yacht club requires membership (including sign-up fees and monthly dues) and sponsorship to join (i.e. other existing members must agree to sign your application prior to its consideration by the club). Thus, unlike other private commercial ventures in the harbor like hotels, restaurants, and retail shops, which any member of the public may visit, the use of the yacht club facilities is limited to members (except during certain fundraising and educational events). The fees/dues and membership requirements of the yacht club substantially limit the population who can use its facilities.

Section 30210 of the Coastal Act states that maximum access shall be provided and Section 30211 of the Coastal Act states that development shall not interfere with the public's right of access to the sea. The Commission finds that as submitted, the proposed LUPA would have the effect of reducing public access and recreational opportunities. Therefore, the Land Use Plan Amendment is denied as submitted.

C. CERTIFY THE LUP AMENDMENT WITH SUGGESTED MODIFICATIONS

In order to be certified by the Commission, the LUPA must meet the requirements of, and be in conformance with the Chapter 3 policies of the Coastal Act. Pursuant to Section 30512 and 30514 of the Coastal Act, the proposed LUPA must have clear and concise policy language that meets the requirements of the relevant Chapter 3 policies of the Coastal Act. The LUPA can be certified only if it is modified to include policies that will protect public access and recreation as required by Chapter 3 of the Coastal Act.

One of the basic goals of the Coastal Act is to maximize public access and recreational opportunities along the coast, especially through the protection of lower cost recreational facilities. The Chapter 3 policies that protect public access and recreation are listed in Section B of these Findings. In order to access the coast, many visitors drive in personal vehicles from inland locations within the City of

Newport Beach and from elsewhere in California. Once they reach the coast, many visitors search for a place to park their vehicles and walk to coastal access points. Some coastal visitors also drive or walk their small boats to public boat launch sites in order to access the coast. Without identifying clear public access and recreational amenities and policies to encourage public access and recreation, the City's Land Use Plan cannot be certified as consistent with the Chapter 3 policies of the Coastal Act.

The Commission has previously found that Land Use Plan policies encouraging public access and recreational opportunities are necessary to ensure that yacht clubs are constructed, expanded, and operated consistent with the public access and recreation policies of Chapter 3 of the Coastal Act. In its approval of the City of Dana Point major Land Use Plan Amendment (DPT-MAJ-1-08; 10/9/09), through suggested modifications, the Commission prohibited additional private yacht clubs and required, among other things, that three existing private boating clubs/associations provide mitigation for the expansion of those facilities, including maximizing public access to and along their bulkhead, allowing public use of any banquet or meeting room facilities when not booked by members, allowing general public participation in any water safety or boating classes offered to members, and requiring that the classes be for no cost or a low cost to economically disadvantaged families.

The proposed LUPA would not be consistent with the Coastal Act unless the Land Use Plan is amended to maximize public access and recreation opportunities in the area adjacent to the site of the proposed re-designated parcels. Without identifying public access amenities and policies relevant to the site, the permitted use of boat storage on the bay-front parcel at 800 West Bay Avenue and the potential construction of a new clubhouse with an increase in intensity of use at 720 West Bay Avenue (facilitated by the re-designation of the six landward parcels subject to the LUPA) would have the effect of reducing public access to the State tidelands adjacent to each bay-front parcel and the 8th Street street end between the two bay-front parcels.

These concerns can be addressed by modifying the Land Use Plan to include public access and recreation enhancements and policies relevant to the proposed site, consistent with the Chapter 3 policies of the Coastal Act. The Commission finds that only if modified as suggested will the proposed Land Use Plan Amendment meet the requirements of, and be in conformance with the Chapter 3 policies of the Coastal Act:

1. Land Use Plan, Chapter 3, Page 3-43, Vessel Launching, Berthing and Storage Map.

The map shall be amended to identify the 8th Street street end as a "Public Launch Site."

This modification is consistent with the Coastal Act and with other policies of the Land Use Plan because it will encourage the re-establishment of a public amenity that was previously provided at the site. Both the City of Newport Beach and representatives of Newport Harbor Yacht Club have indicated their willingness to improve the street end and the area over the State tidelands adjacent to 8th Street. The suggested modification to the LUPA will not immediately result in any public access improvements, but it will identify the street end as an eligible site for improvements when the City and the Commission review applications for proposed development in the area.

2. Land Use Plan, Chapter 3, Page 3-40, Coastal Access and Recreation Map.

The map shall be amended to identify “Potential Lateral Access” along the State tidelands adjacent to the two Newport Harbor Yacht Club bay-front parcels on either side of the 8th Street street end and one residential parcel to the east, which would connect to an existing public beach near the 7th Street street end. The public beach near the 7th Street street end shall be identified as a “Public Beach Location.”

These modifications are consistent with the Coastal Act and with other policies of the Land Use Plan because they will identify areas near the site where public access is provided and where public access may be provided in the future. The omission of the existing public beach from the map is an error which can be corrected by the proposed LUPA because the public beach is very close to the yacht club parcels proposed to be re-designated. The provision of lateral public access along the waterfront (either on the improved bulkhead or on a boardwalk or private docks over State tidelands) is an improvement that could be implemented in conjunction with development facilitated by the proposed LUPA. Improved lateral access along the bay would be consistent with the Chapter 3 policies of the Coastal Act and with multiple policies of the LUP. The suggested modification to the LUPA will not immediately result in any public access improvements, but would identify a new area for potential lateral access improvements when the City and the Commission review applications for proposed development in the area.

3. Land Use Plan, Chapter 3, Page 3-10, Public Access and Recreation Policies.

Chapter 3 of the Land Use Plan shall be amended to include Policy 3.1.1-29: “Provide enhanced public access and recreational facilities on property with public rights of access and recreation that exist or may exist including, but not limited to, streets, public accessways, public facilities, and public tidelands when development is proposed on bay-front properties.”

This modification is consistent with the Coastal Act and with other policies of the Land Use Plan because it will support implementation of the public access and recreation enhancements identified on the amended maps in the LUP when new development is carried out. When development is proposed on bay-front properties, the Land Use Plan policy ensures that the review of those proposals takes into account opportunities for the enhancement or creation of public access and recreational facilities if required for approval of the proposed development. This policy does not restrict new development and would not restrict new development on the private yacht club parcels; rather it enables new development to occur by encouraging opportunities to enhance public access and recreational facilities if mitigation is required for identified impacts on access or recreation from development projects. The policy would not require the Newport Harbor Yacht Club (or any other private development) to allocate private land or provide access or easements over private property; it merely encourages development to be planned in a way which improves public access and recreation over public property.

As revised by the suggested modifications, the Commission finds that the proposed LUPA would serve to maximize public access and public recreational opportunities within the project area and within the City of Newport Beach. In conclusion, the Commission finds that the Land Use Plan Amendment, only if modified as suggested, meets the requirements of, and is in conformity with, the policies of Chapter 3 of the Coastal Act.

D. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The City of Newport is the lead agency for the purposes of California Environmental Quality Act review of the LUPA and associated Newport Harbor Yacht Club clubhouse replacement project. On February 25, 2014, the Newport Beach City Council found that the project was categorically exempt from CEQA requirements (Class 2, Replacement and Reconstruction).

Pursuant to the California Environmental Quality Act (CEQA) and the California Code of Regulations [Title 14, Sections 13540(f), 13542(a), 13555(b)] the Commission's certification of this LUPA 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's regulatory program require that a proposal not be approved or adopted:

if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The Commission finds that, for the reasons discussed in this report, the proposed LUPA, with adoption of the suggested modifications listed in Section II of this report, will meet the requirements of and be in conformity with the policies of Chapter 3 of the Coastal Act. The suggested modifications to the LUPA are necessary to ensure that public access to the coast and public recreation opportunities along the coast are protected in conformity with the requirements of the Chapter 3 policies of the Coastal Act.

Certification of the LUP if modified as suggested complies with the California Environmental Quality Act because: 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the plan on the environment, and 2) there are no further feasible alternatives and mitigation measures that would substantially lessen any significant adverse impacts which the LUPA may have on the environment. The Commission finds that the proposed Land Use Plan Amendment, if modified as suggested, will be consistent with Section 21080.5(d)(2)(A) of the Public Resources Code.

RESOLUTION NO. 2014-19

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
NEWPORT BEACH APPROVING GENERAL PLAN
AMENDMENT NO. GP2012-003 AND COASTAL LAND USE
PLAN AMENDMENT NO. LC2012-003 FOR LAND USE
DESIGNATION CHANGES AND AN INCREASE IN THE
DEVELOPMENT LIMIT FOR THE NEWPORT HARBOR YACHT
CLUB PROPERTY LOCATED AT 720 WEST BAY AVENUE
(PA2012-091)**

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Newport Harbor Yacht Club, with respect to property located at 720 West Bay Avenue, 800 West Bay Avenue, 711-721 West Bay Avenue, and 710-720 West Balboa Boulevard, and legally described as Lot 169, Block A, East Newport Tract; Lot 37, Tract 0884; Lots 8-24, Block 5, East Newport Tract, requesting approval of General Plan Amendment, Coastal Land Use Plan Amendment, Zoning Code Amendment, Minor Use Permit, and Planned Development Permit. The following approvals are required in order to implement the project as proposed:
 - A General Plan Amendment to change the land use designations for certain properties (as shown in the table below) currently being used for boat storage and parking from Single-Unit Residential (RS-D) and Two-Unit Residential (RT) to Private Institutions (PI).
 - A Coastal Land Use Plan Amendment to change the land use designations for certain properties (as shown in the table below) currently being used for boat storage and parking from Single-Unit Residential (RSD-B) and Two-Unit Residential (RT-E) to Private Institutions (PI-A).
 - A Zoning Code Amendment to change the zoning designation for certain properties (as shown in the table below) currently being used for boat storage and parking from Single-Unit Residential (R-1) and Two-Unit Residential (R-2) to Private Institutions (PI).
 - A General Plan Amendment and Zoning Code Amendment to increase the development limit for the project site (Anomaly 67) from 20,000 square feet to 25,000 square feet to accommodate the size of the proposed building.
 - A Minor Use Permit to authorize the yacht club assembly use.
 - A Planned Development Permit for the design, height, and parking standards for the proposed construction.



Address	800 West Bay Avenue	711, 713, 715, and 717 West Bay Avenue	706 and 708 West Balboa Boulevard
Assessor Parcel Number	047-272-12	048-021-16, 048-021-17, 048-021-18, and 048-021-19	048-021-08 and 048-021-07
Existing General Plan	Single-Unit Residential Detached (RS-D)	Two-Unit Residential (RT)	Single-Unit Residential Detached (RS-D)
Proposed General Plan	Private Institutions (PI)	Private Institutions (PI)	Private Institutions (PI)
Existing Coastal Land Use Plan	Single Unit Residential Detached (RSD-B)	Two Unit Residential (RT-E)	Single Unit Residential Detached (RSD-B)
Proposed Coastal Land Use Plan	Private Institutions (PI-A)	Private Institutions (PI-A)	Private Institutions (PI-A)
Existing Zoning	Single-Unit Residential (R-1)	Two-Unit Residential (R-2)	Single-Unit Residential (R-1)
Proposed Zoning	Private Institutions (PI)	Private Institutions (PI)	Private Institutions (PI)

2. The Newport Harbor Yacht Club ("NHYC") has approximately 900 members who are able to use the building as a base for any number of yachting and water-oriented activities. The NHYC also provides members with the ability to enjoy a small beach, dining opportunities, and many club-wide sponsored special events. The NHYC hosts a number of sailing regattas/races year-round, including several national and internationally acclaimed events, with associated social activities. In addition, members are able to schedule private functions with restrictions on dates and attendance, including dinner parties, birthday and anniversary celebrations, and weddings. The NHYC hours of operation are Wednesday through Sunday from 9:00 a.m. to 11:00 p.m. Some staff members work Monday through Friday and certain private events occur on Mondays and Tuesdays. The NHYC has approximately 89 employees with up to 40 on-site working at any given time.
3. The subject properties are located within the Private Institutions (PI), Single-Unit Residential (R-1), and Two-Unit Residential (R-2) Zoning District and the General Plan Land Use Element categories are Private Institutions (PI), Single-Unit Residential Detached (RS-D), and Two-Unit Residential (RT).
4. The subject properties are located within the coastal zone. The Coastal Land Use Plan categories are Private Institutions (PI-A), Single Unit Residential Detached (RSD-B), and Two Unit Residential (RT-E). The requested change of the Coastal Land Use Plan designation for certain properties from RS-B and RT-E to PI-A will not become effective until the amendment to the Coastal Land Use Plan is approved by the Coastal Commission.
5. Council Policy A-18 requires that proposed General Plan amendments be reviewed to determine if a vote of the electorate would be required. If a project (separately or cumulatively with other projects over a 10-year span) exceeds any one of the following



thresholds, a vote of the electorate would be required: if the project generates more than 100 peak hour trips (AM or PM); adds 40,000 square feet of nonresidential floor area; or adds more than 100 dwelling units in a statistical area. This is the second General Plan Amendment that affects Statistical Area D2 since the General Plan update in 2006. The amendment results in no increase in the number of dwelling units and 5,000 additional square feet of nonresidential floor area. The additional floor area results in an increase of 1.73 AM peak hour trips and an increase of 0.15 PM peak hour trips based on the General Plan Public, Semi-Public and Institutional trip rate reflected in Council Policy A-18. As none of the thresholds specified by Charter Section 423 are exceeded, no vote of the electorate is required.

6. 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 August 23, 2012. 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 November 21, 2012, and no requests for consultation were received.
7. A study session was held on December 19, 2013, in the City Hall Council Chambers, 100 Civic Center Drive, 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.
8. A public hearing was held on January 23, 2014, in the City Hall Council Chambers, 100 Civic Center Drive, 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. The Planning Commission adopted Resolution No. 1931 recommending City Council approval of the proposed project.
9. A public hearing was held on February 25, 2014, in the City Hall Council Chambers, 100 Civic Center Drive, 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. This project has been determined to be categorically exempt under the requirements of the California Environmental Quality Act ("CEQA") under Class 2 (Replacement and Reconstruction).
2. Class 2 exempts the replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced. The



existing building would be demolished and a new facility would be constructed with approximately the same building footprint with a 27 percent increase in floor area. The existing yacht club use would remain the same, with minimal or no proposed changes in the use, membership, or operational characteristics.

3. 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.

SECTION 3. FINDINGS.

1. Amendments to the General Plan and 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.
2. The proposed amendments will provide consistency with the existing and anticipated use of the subject properties for continued yacht club use including the associated parking and boat storage.
3. The use and future development of the property affected by the proposed amendments will be consistent with the goals and policies of the Land Use Element of the General Plan and the Coastal Land Use Plan.
4. The General Plan Amendment to increase the development limit to 25,000 square feet for Anomaly 67 will allow a more efficient yacht club facility with modern features built to current code requirements, without increasing noise or traffic in the vicinity. The operational characteristics should not change as a result of the increased floor area, including the number of employees, members, and special events.
5. The amended development limit of 25,000 square feet for the entire 2.74 acre project site is consistent with the maximum 0.30 floor area ratio for the Coastal Land Use Plan PI-A designation.
6. The City's certified Coastal Land Use Plan, including this amendment shall be implemented in a manner fully in conformity with the Coastal Act.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The City Council of the City of Newport Beach hereby approves General Plan Amendment No. GP2012-003 and Coastal Land Use Plan Amendment No. LC2012-003, as shown on Exhibit A, which is attached hereto and incorporated by reference;



2. The General Plan shall be amended to increase the development limit from 20,000 square feet to 25,000 square feet of gross floor area for Anomaly 67;
3. The City Council of the City of Newport Beach hereby authorizes submittal of the Local Coastal Program Coastal Land Use Plan Amendment to the California Coastal Commission for review and approval;
4. The Coastal Land Use Plan will be carried out fully in conformity with the California Coastal Act; and
5. These actions shall take effect automatically upon California Coastal Commission action, unless the Coastal Commission proposes suggested modifications to the proposed Coastal Land Use Plan Amendment. In the event that the Coastal Commission approves the Amendment with suggested modifications, City approval of the modified Amendment shall require a separate action by the City Council following Coastal Commission approval. In this case, the Amendment would become effective upon the effective date of the Coastal Commission certification of the modified Amendment.

PASSED, APPROVED, AND ADOPTED THIS 25TH DAY OF FEBRUARY, 2014.

A handwritten signature in black ink, appearing to read "R. Lee", written over a horizontal line.

MAYOR

ATTEST:

A handwritten signature in black ink, appearing to read "Daniel Brown", written over a horizontal line.

CITY CLERK



Exhibit 1

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California Coastal
Commission

STATE OF CALIFORNIA
COUNTY OF ORANGE
CITY OF NEWPORT BEACH

ss.

I, Leilani I. Brown, City Clerk of the City of Newport Beach, California, do hereby certify that the whole number of members of the City Council is seven; that the foregoing resolution, being Resolution No. 2014-19 was duly and regularly introduced before and adopted by the City Council of said City at a regular meeting of said Council, duly and regularly held on the 25th day of February, 2014, and that the same was so passed and adopted by the following vote, to wit:

Ayes: Gardner, Petros, Selich, Curry, Henn, Daigle, Mayor Hill
Nays: None

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the official seal of said City this 26th day of February, 2014.

A handwritten signature in blue ink, reading "Leilani I. Brown".

City Clerk
Newport Beach, California

(Seal)



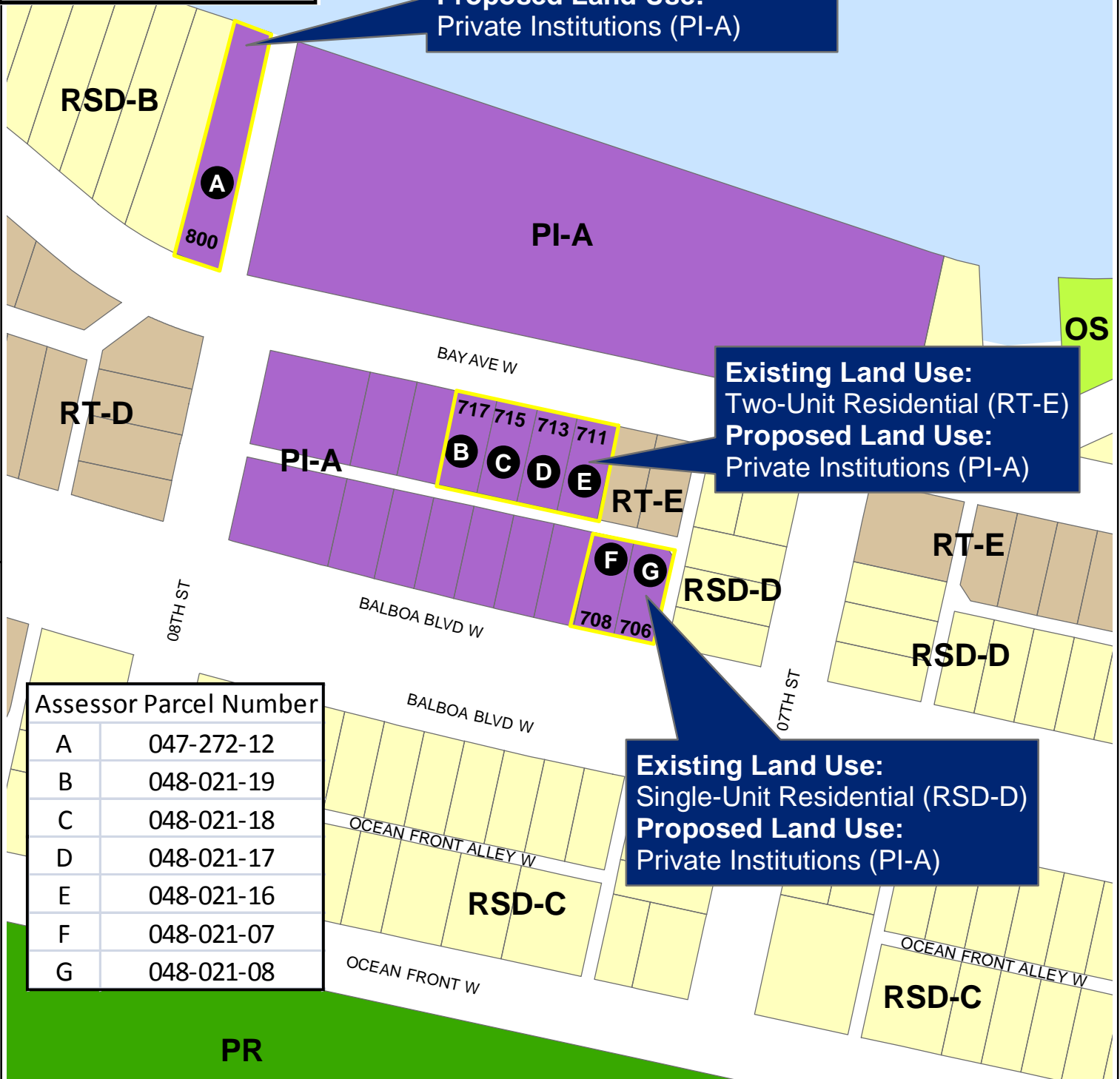
Exhibit 2

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California Coastal
Commission

Existing Land Use:
Single-Unit Residential (RSD-B)
Proposed Land Use:
Private Institutions (PI-A)



Existing Land Use:
Two-Unit Residential (RT-E)
Proposed Land Use:
Private Institutions (PI-A)

Existing Land Use:
Single-Unit Residential (RSD-D)
Proposed Land Use:
Private Institutions (PI-A)



LC2013-003 (PA2012-091)
Coastal Land Use Plan Amendment
Newport Harbor Yacht Club

0 75 150 Feet



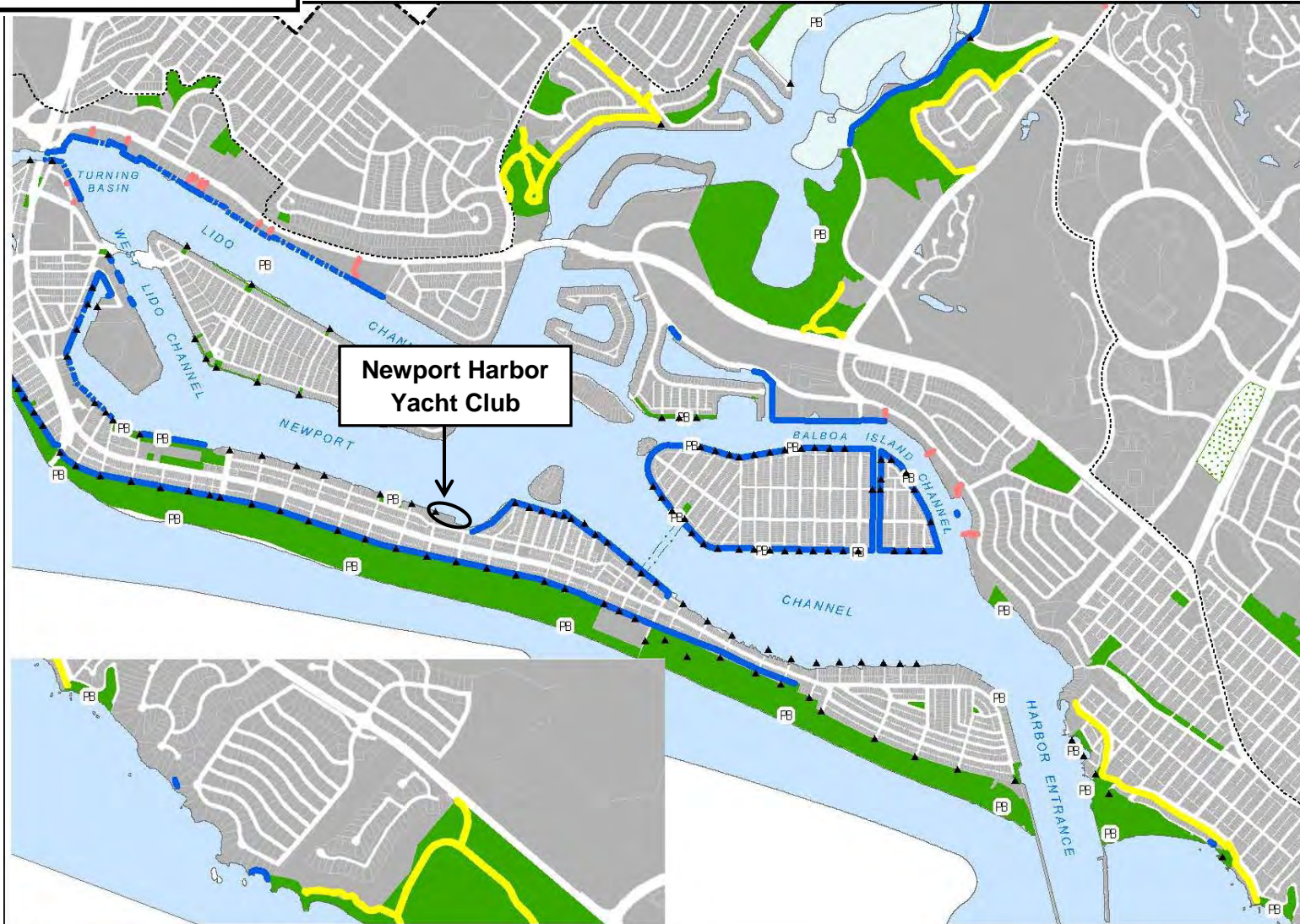
NEWPORT
Beach
NEWPORT INTERIOR DESIGN

Exhibit 3

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California Coastal
Commission



Coastal Access
and Recreation:

Map 3-1

(Map 3 of 3)

LEGEND

- PB Public Beach Location
- ▲ Public Beach Access Location
- △ Potential Access Point
- - - Coastal Zone Boundary
- ~ Lateral Access
- ~ Potential Lateral Access
- ~ Vertical Access
- ~ Blufftop Access
- ~ Potential Blufftop Access
- - - City Boundary
- ~ Proposed Park
- ~ Public Beach or Park



City of Newport Beach, California (Harbor Area)



Local Coastal Program
Coastal Land Use Plan

LCPO5AccessRecharb.mxd

3-40



1 Miles

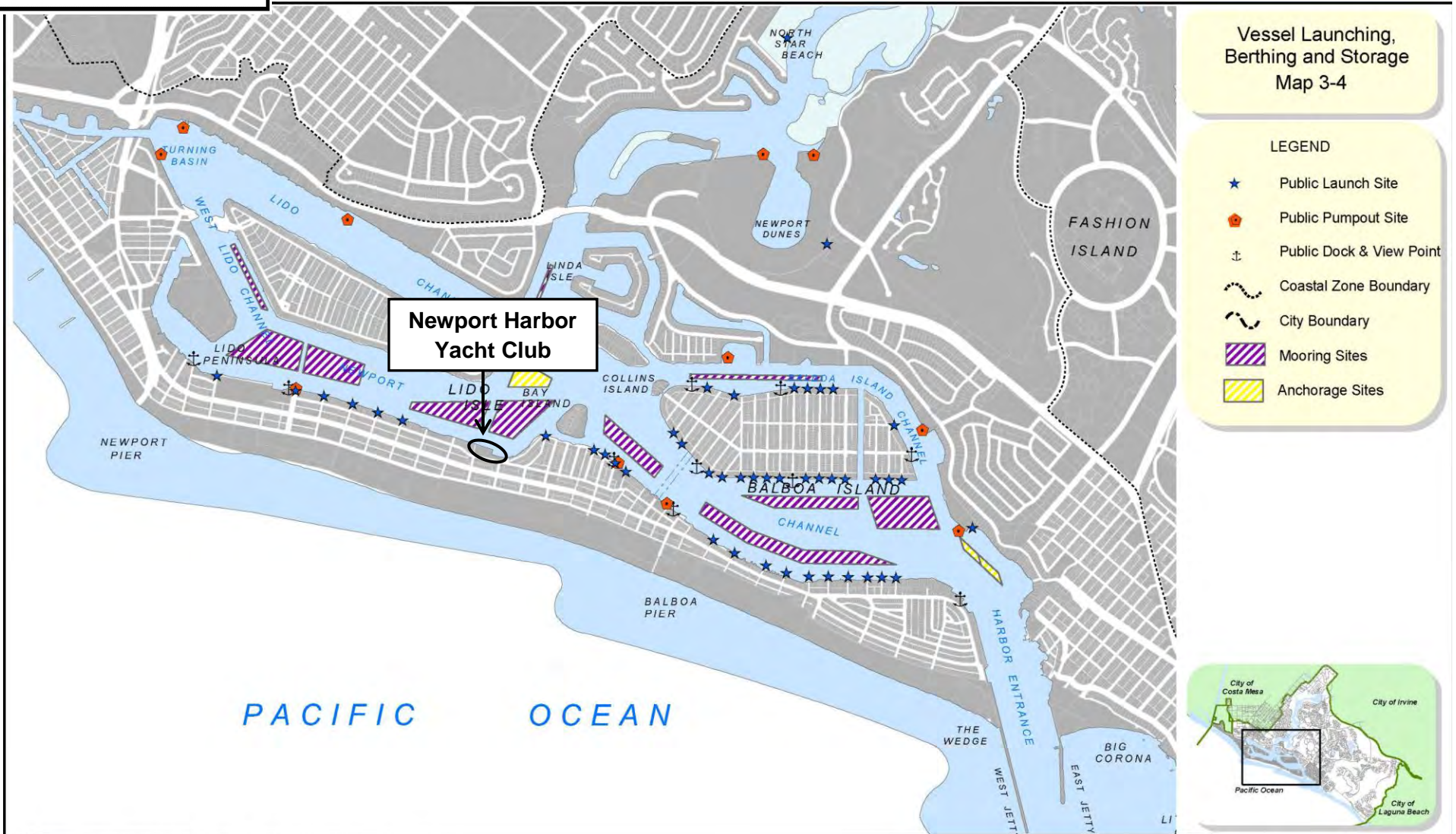
December/2005

Exhibit 3

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City of Newport Beach, California (Harbor Area)



Local Coastal Program
Coastal Land Use Plan

August/2005

LCP05VesselHarb.mxd

3-43

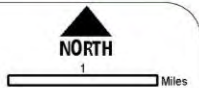


Exhibit 4

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Commission

Vicinity Map



Exhibit 5

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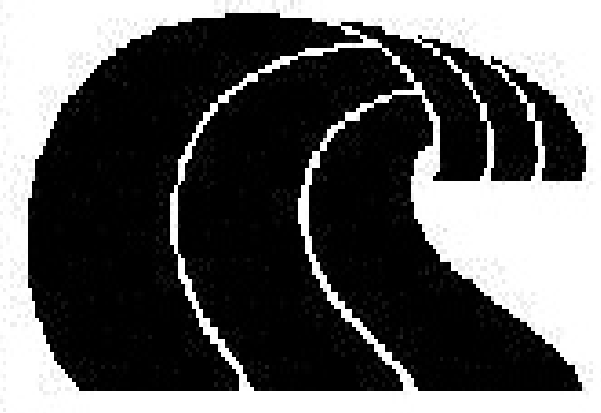


California Coastal
Commission



Exhibit 5

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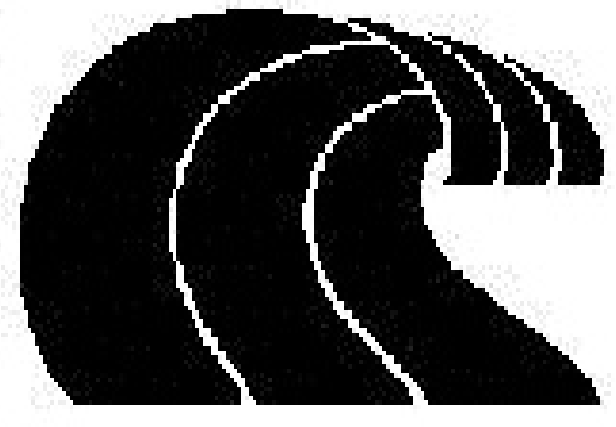


California Coastal
Commission



Exhibit 5

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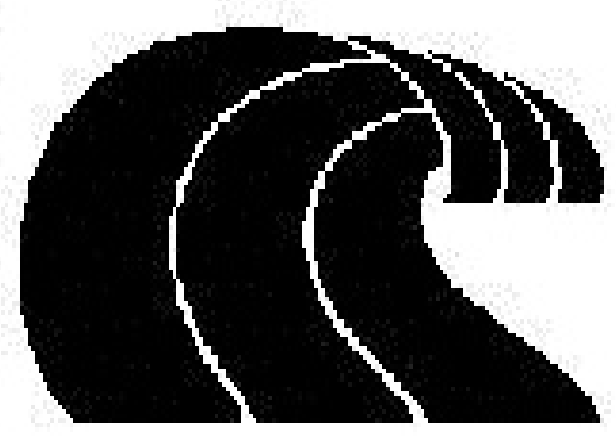


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Exhibit 5

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Exhibit 5

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