

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
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Staff: Fernie Sy-LB
Staff Report: February 1, 2007
Hearing Date: February 14-16, 2007
Commission Action:

**TH 21a****STAFF REPORT: REGULAR CALENDAR**

APPLICATION NO.: 5-06-145

APPLICANT: UGS Development, Inc; Attn: Tom Utman

AGENT: Carol McDermott

PROJECT LOCATION: 919 Bayside Drive, City of Newport Beach (Orange County)

PROJECT DESCRIPTION: Demolition of an existing 64-unit apartment complex and creation of a parcel map for 17 single-family residential lease lots. In addition, the project consists of construction of a gated community with 17 custom single-family residences in accordance with height, setback and other development standards identified in the Planned Community Text. The existing vertical public access on site will be made ADA compliant and widened within the existing easement to provide an 8-foot wide concrete walkway. In addition, the project proposes revising an existing lateral access by closing a segment of an existing 6-foot floating public walkway and constructing an alternative lateral access comprised of an 8-foot wide landside ADA compliant walkway such that 3-feet of the walkway will be partially on land, with the remaining 5-feet cantilevered over the existing bulkhead. Grading will consist of 4,200 cubic yards of cut, 4,600 cubic yards of fill and 400 cubic yards of import. The proposal also establishes a limitation on use of an existing 34-slip marina located seaward of the new residential community.

SUMMARY OF STAFF RECOMMENDATION:

The proposed project, a new gated residential subdivision between the first public road and the sea, raises several issues with regard to coastal access and recreation, water quality, visual impacts and hazards. However, the main issues of contention are 1) the creation of a new gated residential community with private streets, which is contrary to the public access policies of the Coastal Act and is prohibited by the City's recently certified Coastal Land Use Plan; 2) the substantial reduction in the pool of individuals that will have access to the 34-slip marina and the resultant increased burden on other marinas and recreational facilities; and 3) the effort to improve and re-route accessways that were irrevocably dedicated to public access over 30 years ago and have been in use since that time. The staff recommendation, summarized in greater detail below, would consist of the following: removal of the gates; establishing public streets, sidewalks and public access to a new vertical access; allowing the applicant to offset the impacts to public

recreational facilities by fully funding the construction of a new public dock at the Rhine Channel; and allowing improvements to an existing accessway.

Commission staff is recommending **APPROVAL** of the proposed project with **FIFTEEN (15) SPECIAL CONDITIONS**. **SPECIAL CONDITION NO. 1** requires the applicant to submit an application to amend Coastal Development Permit No. P-11-29-73-2313-Extension-(McLain Development Company) to modify and improve the lateral access. **SPECIAL CONDITION NO. 2** requires the applicant to submit Revised Project Plans that incorporate the changes imposed in the special conditions into the applicant's proposed plans. **SPECIAL CONDITION NO. 3** requires the applicant to irrevocably offer to dedicate to a public agency or other appropriate entity an easement for public access located on: the on-land and cantilevered walkway along the existing bulkhead along the North Channel (lateral access); the ramp connecting the on-land and cantilevered walkway with the existing floating walkway; the 6-foot wide easement connecting Lot "E" to Lot "B"; and a minimum 4-foot wide sidewalk along the perimeter but outside of Lot "E." **SPECIAL CONDITION NO. 4** requires the applicant to dedicate all streets and sidewalks within the subdivision to a public agency or non-profit acceptable to the Executive Director. **SPECIAL CONDITION NO. 5** requires the applicant to submit a Management and Maintenance Program for the public walkways and the public access areas within the residential community. **SPECIAL CONDITION NO. 6** requires the applicant to maintain the walkways as public access pathways and the streets within the residential community available to the public. It also prohibits the construction of any gates or other device that limits public access to the streets of the subdivision. **SPECIAL CONDITION NO. 7** requires the applicant to submit a Construction/Development Phasing Plan. **SPECIAL CONDITION NO. 8** requires the applicant to submit an in-lieu fee to construct the Rhine Channel Wharf Public Dock and a Memorandum of Understanding between the City of Newport Beach and the Coastal Commission must be completed in regards to this construction. **SPECIAL CONDITION NO. 9** identifies best management practices. **SPECIAL CONDITION NO. 10** requires that the applicant identify the location of the disposal site of the demolition and construction debris. If the disposal site is located in the coastal zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place. **SPECIAL CONDITION NO. 11** requires the applicant to submit a Final Water Quality Management Plan. **SPECIAL CONDITION NO. 12** requires the applicant to submit a Landscape Palette Plant List, which only consists of native and/or non-native drought tolerant plants, which are non-invasive. **SPECIAL CONDITION NO. 13**, requires the applicant to submit, prior to issuance of the permit, evidence of conformance with geotechnical recommendations. **SPECIAL CONDITION NO. 14** requires the applicant to establish covenants, conditions and restrictions (CC&R's), or an equivalent thereof, for the proposed residential lots to address ownership and management of all subdivision streets, sidewalks, public walkways, and common landscaped areas. **SPECIAL CONDITION NO. 15** pertains to attorney's fees.

Section 30600(c) of the Coastal Act provides for the issuance of coastal development permits directly by the Commission in regions where the local government having jurisdiction does not have a certified Local Coastal Program. The City of Newport Beach only has a certified Land Use Plan and has not exercised the options provided in 30600(b) or 30600.5 to issue its own permits. Therefore, the Coastal Commission is the permit issuing entity and the standard of review is Chapter 3 of the Coastal Act. The certified Land Use Plan may be used for guidance.

LOCAL APPROVALS RECEIVED: Approval in Concept (Harbor Permit No. 200-919) from the City of Newport Beach Harbor Resources Division dated May 31, 2006; Approval in Concept (No.

0876-2006) from the City of Newport Beach Planning Department dated April 13, 2006; Mitigated Negative Declaration (SCH No. 2005-061019); Tentative Tract Map 2004-001 (Tract 15323); Coastal Residential Development Permit No. 2005-001, City of Newport Beach Code Amendment No. 2004-003; and Bayside Residential Planned Community (PC) Designation and Development and Use Regulations.

SUBSTANTIVE FILE DOCUMENTS: City of Newport Beach Certified Land Use Plan; Letter from Commission staff to Carol McDermott dated May 17, 2006; Letter from Manatt Phelps Phillips to Commission staff dated June 8, 2006; Letter from Manatt Phelps Phillips to Commission staff dated August 31, 2006; *Geotechnical Investigation, Proposed 19 custom Single-Family Lots (North Bay), 919 Bayside Drive, Tentative Tract 15323, City of Newport Beach, Orange County, California (J.N. 639-04)* prepared by Petra Geotechnical Inc. dated December 6, 2004; Water Quality Management Plan (WQMP) prepared by Adams Streeter Civil Engineers, Inc. dated March 20, 2006; letter from the City of Newport Beach to Commission staff dated January 5, 2007; letter from the City of Newport Beach to Commission staff dated January 23, 2007; and letter from the City of Newport Beach to Commission staff dated January 24, 2007.

LIST OF EXHIBITS

1. Vicinity Map
2. Site Plan
3. Gate Plans
4. Tentative Tract Map
5. Bulkhead Plans
6. Coastal Development Permit No. P-11-29-73-2313-Extension-(McLain Development Company)
7. Grant of Easement executed on May 14, 1975 between the McLain Development Company/The Irvine Company and the City of Newport Beach
8. Agreement For Irrevocable Public Access executed on May 29, 1975 between The Irvine Company and the City of Newport Beach
9. Letter from the City of Newport Beach to Commission staff dated January 24, 2007

I. STAFF RECOMMENDATION, MOTION AND RESOLUTION OF APPROVAL

MOTION: *I move that the Commission approve Coastal Development Permit No. 5-06-145 pursuant to the staff recommendation.*

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO APPROVE THE PERMIT:

The Commission hereby **APPROVES** a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit 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 development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. STANDARD CONDITIONS

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date this permit is reported to the Commission. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

1. EXISTING 6-FOOT WIDE FLOATING ACCESS WALKWAY (LATERAL ACCESS)

Development that would in any manner obstruct, interfere with or adversely impact public access to the existing 6-foot wide floating walkway required by Coastal Development Permit No. P-11-29-73-2313-Extension-(McLain Development Company) is prohibited until such time that an application to amend Coastal Development Permit No. P-11-29-73-2313-Extension-(McLain Development Company) to modify and improve the lateral access required by that permit has been approved by the Commission and any conditions of amendment approval have been satisfied by the property owner.

2. REVISED PROJECT PLANS

- A. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the Executive Director's review and approval, a revised Bayside Residential Planned Community (PC) Designation and Development and Use Regulations (a.k.a. 'PC Text') and two (2) full size sets of Revised Project Plans which conform with the requirements of the special conditions of this permit and indicate the final layout of all development including but not limited to lots, grading, streets, utilities and easements, infrastructure, water quality management system, accessways, signs, interpretive amenities, walls, fences, gates, and the maximum footprint of residential structures on each lot and appurtenances.
- B.** All development shall conform with the required, revised Bayside Residential Planned Community (PC) Designation and Development and Use Regulations as required in paragraph A. Plans for development on each of the 17-single-family residential lease lots do not need further review by the Commission unless the said plans do not conform to the Bayside Residential Planned Community (PC) Designation and Development and Use Regulations approved by the Executive Director, in which case an amendment to this permit would be required.
- C.** The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

3. OFFERS TO DEDICATE PUBLIC ACCESS AND RECREATIONAL USE EASEMENTS

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the landowner(s) shall execute and record document(s) in a form and content acceptable to the Executive Director, irrevocably offering to dedicate to a public agency or non-profit entity acceptable to the Executive Director, an easement for public pedestrian access and passive recreational use of: (1) the areas of land identified as Lot "B" on the Tentative Parcel Map prepared on December 4, 2002 and revised January 3, 2007 consisting of an on-land and cantilevered walkway along the existing bulkhead along the North Channel (lateral access) and the ramp connecting the on-land and cantilevered walkway with the existing floating walkway, but subtracting therefrom the areas of land already dedicated identified on Grant of Easement executed on May 14, 1975 between the McLain Development Company/The Irvine Company and the City of Newport Beach; and (2) the areas of land consisting of a 6-foot wide easement connecting Lot "E" to Lot "B" identified on the Tentative Parcel Map prepared on December 4, 2002 and revised January 3, 2007.

The recorded document(s) described above shall reflect that development in the offered area is restricted as set forth in the Special Conditions of this permit. The offers shall be recorded free of prior liens and encumbrances that the Executive Director determines may affect the interest being conveyed. The offers shall run with the land in favor of the People of the State of California, binding all successors and assignees, and shall be irrevocable for a period of 21 years, such period running from the date of recording.

The lands identified in these offers to dedicate shall be maintained in accordance with the Management and Maintenance Program approved by the Executive Director in accordance with SPECIAL CONDITION NO. 5.

4. OFFER TO DEDICATE PUBLIC STREETS AND SIDEWALKS

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the landowner(s) shall establish to the Executive Director's satisfaction that the landowner(s) has dedicated all streets and sidewalks within the subdivision which are the areas of land identified as Lot "E" and a minimum 4-foot wide sidewalk along the perimeter but outside of Lot "E" on the Tentative Parcel Map prepared on December 4, 2002 and revised January 3, 2007, to a public agency or non-profit acceptable to the Executive Director for public pedestrian, bicycle and vehicular access and use.

5. PUBLIC ACCESS WALKWAYS MANAGEMENT AND MAINTENANCE PROGRAM

A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall provide for the review and approval by the Executive Director, a Management and Maintenance Program for the proposed public access areas. The final program shall include the following:

- (1) **IDENTIFY ALL ENTITIES RESPONSIBLE FOR MANAGEMENT AND MAINTENANCE.** In general, the owner of the land shall maintain the public access areas until such time as any easement required to be offered by this permit is accepted. Where an easement is accepted by an entity in accordance with the terms and conditions of this permit, the holder of the easement shall be responsible for management and maintenance of the facilities within the easement unless the arrangements between the original landowner and the easement holder dictate that the original landowner shall retain all or part of said management and maintenance responsibility. All management and maintenance shall occur in accordance with the approved Management and Maintenance Program.
- (2) **IDENTIFICATION OF MANAGEMENT AND MAINTENANCE ACTIVITIES AND ASSOCIATED FUNDING PROGRAM.** The Management and Maintenance Program shall include identification of management and maintenance activities including a funding program that will provide for the actual cost of:
 - (a) maintenance and periodic repair and replacement of the public access facilities and publicly accessible streets, sidewalks, and walkways and associated appurtenances including, but not limited to, surfaces, fences, benches, landscaping, and signage.
- (3) **LEGAL AUTHORITY.** The program shall demonstrate the legal ability of the assigned entities to undertake the development and maintain said development in accordance with the requirements of this permit.

B. The permittee shall undertake development in accordance with the approved final program. Any proposed changes to the approved final program shall be reported to the Executive Director. No changes to the approved final program shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

6. PUBLIC ACCESS AND RECREATION REQUIREMENTS AND IMPROVEMENTS

A. Public Access Requirements

(1) Streets, Roads and Public Parking

All streets, roads and parking shall be provided as described on the final project plans approved by the Executive Director pursuant to SPECIAL CONDITION NO. 2 of this permit except that all such streets, roads and parking areas shall provide both public and private pedestrian, bicycle and vehicular access and parking. Parking shall be provided as described in the applicant's Bayside Residential Planned Community District Development Regulations. In addition, all on-street parking areas shall be open for use by the general public 24 hours per day, with the exception of standard limited parking restrictions for street sweeping/maintenance purposes. Long term or permanent physical obstruction of streets, roads and parking areas shall be prohibited. All public entry controls (e.g. gates, gate/guard houses, guards, signage, etc.) and restrictions on use by the general public (e.g. preferential parking districts, resident-only parking periods/permits, etc.) associated with any streets or parking areas shall be prohibited.

(2) Public Access Walkways

No development, as defined in Section 30106 of the Coastal Act, shall occur within the public access corridor as approved by the Executive Director pursuant to paragraph C of this condition except for the following development: grading and construction necessary to construct the public access walkways and appurtenances (e.g. cantilevered walkway and ramp, signs, interpretive displays, benches, trash receptacles, safety fencing that does not obstruct public views or access), vegetation removal and planting, drainage devices, erosion control and repair, maintenance and repair of the existing bulkhead, maintenance and repair activities pursuant to and in conjunction with the Management and Maintenance Program detailed in SPECIAL CONDITION NO. 5 and as required below. Development that diminishes permanent public access is prohibited. The public access walkways shall be open to the general public for recreational use 24-hours per day.

The lands identified in this restriction shall be maintained in accordance with the Management and Maintenance Program approved by the Executive Director in accordance with SPECIAL CONDITION NO. 5.

C. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit revised, final, detailed plans of the public access walkways for review and approval by the Executive Director. Plans shall identify all structures including location, dimensions, materials and colors, and use as well as sign and interpretive display text and graphics, size and orientation. All plans shall be of sufficient scale and detail to verify the location, size and content of all signage, and the location and orientation, size, materials and use of structures during a physical inspection of the premises. The final plans shall also comply with the following:

- (1) Public Access Walkways: The final plans submitted for review and approval to the Executive Director shall include detailed final public access walkway plans. The detailed final walkway improvement plans submitted shall be in substantial conformance with the submitted April 17, 2006 plans identified above and as modified by the conditions of this permit. Said plan(s) shall include walkway alignment, width, surface and materials; recreational appurtenances such as benches, and refuse containers.
- (2) Sign Plan: The final plans submitted for review and approval to the Executive Director shall include a detailed signage plan that directs the public to the public access walkways on the project site. Signs shall invite and encourage public use of access opportunities and shall identify and direct the public to their locations. Signage shall include facility identification/directional monuments (e.g. location of amenities); informational signage and circulation; and roadways signs. Signs and displays not explicitly permitted in this document shall require an amendment to this permit unless the Executive Director determines that no amendment is legally required.

- D. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

7. CONSTRUCTION/DEVELOPMENT PHASING PLAN

- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit two (2) copies of Final Construction/Development Phasing Plan for review and approval by the Executive Director, which shall conform to the following:

- (1) The construction of the: 1) new ADA compliant landward lateral access walkway comprised a 3-foot wide on land component, adjoining a 5-foot wide segment cantilevered over the surface of the water; 2) the ramp connecting the new partially on-land and cantilevered lateral access walkway with the existing floating walkway; 3) the 6-foot wide pathway within the residential community that will connect to the partially on-land and cantilevered lateral access walkway; and 4) enhancement of the existing 10-foot wide vertical access (from Bayside Drive to the bayfront along Promontory Bay) walkway that will be made ADA compliant and will be widened to provide a continuous, 8-foot wide concrete walkway with a 2-foot wide landscaped planter shall be completed prior to occupancy of the first single-family residence.
- (2) The construction and improvements listed in the above paragraph 1 will be phased so that vertical and lateral access to the bay will remain open and available to the public.

- B.** The permittee shall undertake development in accordance with the approved final construction/development phasing plans. Any proposed changes to the approved final construction/development phasing plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

8. IN-LIEU FEE

- A.** The applicant or any successor(s) in interest to the subject property shall pay a mitigation fee to the City of Newport Beach (herein "City"), in accordance with the agreement required in subsection B below, in an amount not less than \$240,000.00, which shall be increased and/or supplemented as necessary by the applicant or its successor(s) in interest to be sufficient for the City to design, permit, and construct a public dock, with not less than 100-feet of wharfage area, for the short term/transient docking of boats in Newport Harbor at the Rhine Channel Wharf, Newport Beach, California. If the construction of the public dock becomes infeasible, the applicant shall submit an application to amend the Coastal Development Permit. The Executive Director shall determine if the project is infeasible and if so, will make a determination identifying a different feasible project appropriate for the use of this in-lieu fee.
- B. PRIOR TO THE ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT**, but only after the Executive Director of the Coastal Commission has indicated, in writing, that the Commission has entered into an agreement with the City (the "Agreement"), the applicant shall provide to the City of Newport Beach, through a financial instrument subject to the review and approval of the Executive Director, a mitigation fee in an amount not less than \$240,000.00 as described in subsection A, payable to the City of Newport Beach. This mitigation fee shall be used for the purposes described in subsection A of this condition in accordance with the terms and conditions of the Agreement, which, at a minimum, shall include the following provisions: 1) the City of Newport Beach shall submit a final plan for use of the funds to the Executive Director for review and approval within 24 months of the date on which the funds are transferred to the City; 2) the final plan shall provide for construction and opening of the public dock within 36 months of approval of the final plan by the Executive Director; 3) the City of Newport Beach must obtain all necessary regulatory permits and approvals, including but not limited to a coastal development permit, for the public dock prior to commencement of the project; 4) the funds must be deposited in a separate and independent interest bearing account created solely to manage the funds as well as provisions to limit the use of funds for administrative costs (which shall not exceed 5% of the total funds transferred to the City of Newport Beach); 5) the City must justify the need for any funding in excess of the initial \$240,000.00 necessary to complete the project identified in the final plan and for the Executive Director to demand such additional/supplementary funding from the applicant or its successor(s) in interest as well as a methodology to resolve disputes; 6) the public dock constructed pursuant to the Agreement shall continue to be operated as a public dock in accordance with the terms of the Agreement, whether the City of Newport Beach or another entity owns or operates the public dock; 7) a deadline not to exceed 10 years from the date of transfer of the funds to the City by which the funds shall be

used by the City to complete the project identified in the final plan, along with provisions to address any failure to complete the project, including but not limited to, transfer of the funds to an alternate entity able to implement the final plan, or, if approved by an amendment to this coastal development permit, to apply the funds to an alternative project that provides public boating related recreational opportunities in the City of Newport Beach.

9. CONSTRUCTION BEST MANAGEMENT PRACTICES

The applicant shall comply with the following construction-related requirements:

A. The permittee shall comply with the following construction-related requirements:

- (1) No construction materials, debris, or waste shall be placed or stored where it may be subject to wave, wind, rain, or tidal erosion and dispersion;
- (2) Any and all debris resulting from construction activities shall be removed from the project site within 24 hours of completion of the project;
- (3) Construction debris and sediment shall be removed from construction areas each day that construction occurs to prevent the accumulation of sediment and other debris which may be discharged into coastal waters;
- (4) Erosion control/sedimentation Best Management Practices (BMP's) shall be used to control dust and sedimentation impacts to coastal waters during construction. BMPs shall include, but are not limited to: placement of sand bags around drainage inlets to prevent runoff/sediment transport into coastal waters; and
- (5) All construction materials, excluding lumber, shall be covered and enclosed on all sides, and as far away from a storm drain inlet and receiving waters as possible.
- (6) Machinery or construction materials not essential for project improvements will not be allowed at any time in the intertidal zone.
- (7) If turbid conditions are generated during construction a silt curtain will be utilized to control turbidity.
- (8) Floating booms will be used to contain debris discharged into coastal waters and any debris discharged will be removed as soon as possible but no later than the end of each day.
- (9) Non-buoyant debris discharged into coastal waters will be recovered by divers as soon as possible after loss.

B. Best Management Practices (BMPs) designed to prevent spillage and/or runoff of construction-related materials, sediment, or contaminants associated with construction activity shall be implemented prior to the on-set of such activity.

Selected BMPs shall be maintained in a functional condition throughout the duration of the project. Such measures shall be used during construction:

- (1) The applicant shall ensure the proper handling, storage, and application of petroleum products and other construction materials. These shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. It shall be located as far away from the receiving waters and storm drain inlets as possible;
- (2) The applicant shall develop and implement spill prevention and control measures;
- (3) The applicant shall maintain and wash equipment and machinery in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems. Washout from concrete trucks shall be disposed of at a location not subject to runoff and more than 50 feet away from a stormdrain, open ditch or surface water; and
- (4) The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during construction.

10. LOCATION OF DEBRIS DISPOSAL SITE

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall identify in writing, for the review and approval of the Executive Director, the location of the disposal site of the demolition and construction debris resulting from the proposed development. Disposal shall occur at the approved disposal site. If the disposal site is located in the coastal zone a coastal development permit or an amendment to this permit shall be required before disposal can take place.

11. SUBMITTAL OF A FINAL WATER QUALITY MANAGEMENT PLAN (WQMP)

A. PRIOR TO THE ISSUANCE OF A COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for review and approval of the Executive Director, two (2) copies of a Final Water Quality Management Plan. The Final Water Quality Management Plan shall include, but is not limited to:

- (1) Design elements that serve to minimize directly connected impervious area and maintain permeable space within the development shall be incorporated where feasible. Options include the use of alternative design features such as concrete grid driveways and/or pavers for walkways, and/or porous material for or near walkways and driveways;
- (2) Sweep streets with a vacuum regenerative sweeper a minimum of one time per week;
- (3) Installation of catch basin inserts or vegetative or other media filtration devices effective at trapping and/or mitigating contaminants such as petroleum hydrocarbons, heavy metals and particulates, in addition to trash

and large debris. Selected BMPs (or suites of BMPs) shall be designed to treat, infiltrate or filter the stormwater runoff from each runoff event up to and including the 85th percentile, 24-hour runoff event for volume based BMPs and/or the 85th percentile, 1 hour event, with an appropriate safety factor, for flow-based BMPs;

- (4) The filtration devices should be maintained in accordance with the manufacturer's specifications. Also, routine maintenance should take place, including inspection and regular cleaning of approved BMPs, to ensure their effectiveness prior to, and during, each rainy season from October 15th through April 31st of each year. Debris and other water pollutants contained in BMP device(s) will be contained and disposed of in a proper manner on a regular basis. All BMP traps/separators and/or filters must be cleaned prior to the start of the winter storm season, no later than October 15th each year. The BMP's shall be maintained to uphold their functionality.

- B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

12. **LANDSCAPING GUIDELINES**

- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the review and approval of the Executive Director, two (2) copies of Landscaping Guidelines that shall be used to direct landscaping within the residential community that demonstrate the following:

- (1) The Landscaping Guidelines shall include the following:
 - (a) A Landscape Palette Plant List from which all landscaping shall be selected which shall consist of native and/or non-native drought tolerant non-invasive plant species. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized within the property. Any existing landscaping that doesn't meet the above requirements shall be removed.
 - (b) Requirements that all planting shall provide 90 percent coverage within 90 days and shall be repeated if necessary to provide such coverage;
 - (c) Requirements that all plantings shall be maintained in good growing condition throughout the life of the project, and whenever necessary, shall be replaced with new plant materials to ensure continued compliance with the landscape plan;

- (d) Requirements that of each residential lot shall be completed within a timely manner.
- (2) The Landscaping Guidelines shall be incorporated into the CC&R's as required by SPECIAL CONDITION NO. 14. Landscape Plans for the common areas and each of the 17-single-family residential lease lots do not need further review by the Commission unless the said landscape plans do not conform to the final Landscape Palette Plant List approved by the Executive Director, in which case an amendment to this permit would be required.
- B. The permittee shall undertake development in accordance with the approved plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

13. CONFORMANCE WITH GEOTECHNICAL RECOMMENDATIONS

- A. All final design and construction plans, including foundations, grading and drainage plans shall be consistent with all recommendations contained in *Geotechnical Investigation, Proposed 19 custom Single-Family Lots (North Bay), 919 Bayside Drive, Tentative Tract 15323, City of Newport Beach, Orange County, California (J.N. 639-04)* prepared by Petra Geotechnical Inc. dated December 6, 2004. No changes to the approved plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.
- B. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the Executive Director's review and approval, evidence that an appropriately licensed professional has reviewed and approved all final design and construction plans and certified that each of those final plans is consistent with all the recommendations specified in the above-referenced geologic engineering report.
- C. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment unless the Executive Director determines that no amendment is legally required.

14. COVENANTS, CONDITIONS, AND RESTRICTIONS (CC&R'S)

- A. The applicant shall establish covenants, conditions and restrictions (CC&R's), or an equivalent thereof, for the proposed residential community to address ownership and management of all subdivision streets, sidewalks, public walkways, and common landscaped areas. The CC&R's shall reflect all applicable requirements of this coastal development permit, including but not limited to the limitations on the public access walkway facilities.

- B. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, and prior to recordation of any CC&R's associated with the approved project, proposed version of said CC&R's shall be submitted to the Executive Director for review and approval. The Executive Director's review shall be for the purpose of ensuring compliance with the standard and special conditions of this Coastal Development Permit, including ensuring that, pursuant to paragraph A of this condition, the CC&Rs also reflect the ongoing restrictions and obligations imposed by these conditions. The restriction on use of the land cited within the special conditions of this permit shall be identified in the CC&R's.
- C.** The permittee shall record the covenants, conditions and restrictions approved by the Executive Director, against the property. The applicant shall submit a recorded copy of the covenants, conditions and restrictions within 30 days of their recordation to the Executive Director. The CC&R's may not be modified in a manner that would render them inconsistent with any provision of this permit or of any plan or other document approved by the Executive Director pursuant to the conditions of this permit. Any change that would not create a direct conflict between the CC&R's and the provisions of this permit or of any approved plan or other document shall be submitted to the Executive Director, in writing, for a determination as to whether such change requires approval of the Coastal Commission. If the Executive Director indicates that Commission approval is required, no such change shall occur until such approval is secured. Otherwise, no Coastal Commission approval shall be required. The CC& R's shall indicate these restrictions within their terms.

15. ATTORNEY'S FEES

Liability for Costs and Attorneys Fees: The Permittee shall reimburse the Coastal Commission in full for all Coastal Commission costs and attorneys fees -- including (1) those charged by the Office of the Attorney General, and (2) any court costs and attorneys fees that the Coastal Commission may be required by a court to pay -- that the Coastal Commission incurs in connection with the defense of any action brought by a party other than the applicant against the Coastal Commission, its officers, employees, agents, successors and assigns challenging the approval or issuance of this permit, the interpretation and/or enforcement of permit conditions, or any other matter related to this permit. The Coastal Commission retains complete authority to conduct and direct the defense of any such action against the Coastal Commission.

IV. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. PROJECT LOCATION, DESCRIPTION AND PRIOR COMMISSION ACTION

1. Project Location

The project site is located at 919 Bayside Drive in the City of Newport Beach, Orange County (Exhibit #1). The project site is 3.92 acres in size and the City of Newport Beach Land Use Plan (LUP) designates use of the site for Medium Density Residential. The proposed project adheres to this designation since this designation allows for single-family

residences: “*The RM [Medium Density Residential] designation is intended to provide for the range of residential development types, including single-family (attached and detached), two-family, and multi-family residential.*” The project site is located in the Promontory Bay area of Newport Beach, which is bounded by Newport Bay, Marine Avenue/Jamboree Road and East Coast Highway. The Promontory Bay area includes Harbor Island, Linda Isle and all the area bounded by Newport Bay, Marine Avenue/Jamboree Road and East Coast highway. Currently on site, there are 64 apartment units in 14 separate buildings built between the late 1950’s and the early 1970’s, including carports, garages, surface parking and a private pool area. There are currently 128 parking spaces available on site for the residents only. To the north of the project site is Bayside Drive and a retail shopping center. To the east of the project site are the Cove Condominiums. To the south of the project site are the Newport Bay North Channel and an existing dock area, consisting of 34 docks that are used by owners and occupants of the existing apartment complex, the Cove Condominiums, and a nearby yacht club. In addition, there is an existing public access (lateral access) easement and walkway provided by a 6-foot floating walkway along the existing docks. To the west of the project site is an existing 10-foot wide public access (vertical access) easement and walkway extending from Bayside Drive to the North Channel ending at a viewing platform and then connecting via a gangplank to the previously discussed floating lateral access way. Promontory Bay is located immediately adjacent to the west of this vertical access and across Promontory Bay is the Balboa Yacht Basin and also single-family residences.

2. Project Description

The proposed project includes the following (Exhibits #2-5):

(a) Residential

The project entails the demolition of an existing 64-unit apartment complex and creation of a parcel map for 17 single-family residential lease lots. In addition, the project consists of construction of a gated community with 17 custom single-family residences in accordance with height, setback and other development standards identified in a Planned Community Text. The City of Newport Beach has approved the project as *Bayside Residential Planned Community (PC)*, which includes *Development and Use Regulations* that control permitted uses. The project is designated Multi-Family Residential in the Land Use Element of the General Plan. This designation permits both single-family dwellings and multi-family dwellings; however, the *Bayside Planned Community* does not permit more than one unit per numbered lot within the subdivision. The 3.92 acre parcel will be developed consistent with the General Plan. Tentative Tract Map No. 2004-001 (Tract 15323) was approved with a PC Text and accommodates creation of 17-single family lease lots represented as numbered lots on the Tract Map. The buildable lots will range in size from 5,818 square feet to 10,754 square feet. All lettered lease lots are in common and are intended to accommodate common amenities and other improvements and are not developable for residences. Common area facilities to be shared by the residents and maintained by a homeowner’s association are indicated on Lots “A”, “B”, “C”, and “D.” Lot A is designated for recreation and/or pool use. LOTS “C” and “D” will accommodate landscaped areas proposed along the Bayside Drive frontage and at the driveway entrance. Lot “E” includes the driveway entrance from Bayside Drive and the loop road, which encircles the

recreation area and includes all vehicular access roadways to the buildable lots. Lot "F" includes the open area of water between the new on land and cantilevered walkway and the existing floating walkway. Lot "B" is designated as the lateral and vertical public access walkways and easements. A 6-foot wide fire access easement, that must remain open and unobstructed at all times, connects the loop road to a gangplank and to the walkway at the boat docks.

The tentative tract map will be for lease purposes. Vehicular access to the planned community would be provided from Bayside Drive by a single gated access. The proposed entry gate will be approximately 7-feet tall. On each side of the gate will be imposing approximately 16-foot high guard towers; however, it appears that the gate will be electronically activated instead of manned by security guards.

Per the regulations adopted by the City on the *Bayside Residential Planned Community*, all structures will be built on the project site will two-stories in height or less. The maximum building height allowed is 32-feet maximum, with a maximum mid-span height of 28-feet from finished pad grade. Per the *Bayside Residential Planned Community*, the average setback from the bayside private property lines will range from 15-22-feet. A Homeowner's Association (HOA) will be established to maintain the proposed private streets, public walkways and landscaping. Also a 5-foot high wall is proposed along rear of development along the North Channel. Lastly, the net number of parking spaces on completion of the project would be approximately 67 parking spaces (a total of 48 covered parking spaces and 19 on-street parking spaces).

(b) Public Access

The project proposes to change lateral access along the North Channel by improving and re-routing the existing 6-foot wide floating public access walkway to a new more landward lateral access comprised of an 8-foot wide, ADA compliant walkway. This 8-foot wide walkway will be dedicated as a public access easement and is comprised of 3-foot wide on land component, adjoining a 5-foot wide segment cantilevered over the surface of the water. The new lateral access public walkway will either be poured in place or set in place (using pre-cast concrete). The footings and wall to support the walkway will be located behind the existing bulkhead and will be constructed of poured in place concrete. Retaining walls will also be used. The footing of the walkway is approximately 5-feet below the top of the existing bulkhead cap and will be constructed on the inland side of the bulkhead. The walkway will be for unrestricted use by the public. Development of the property pursuant to the PC Text includes the dedication of the 8-foot wide public access easement parallel to the waterfront at the North Channel.

The project also entails an easement to accommodate a ramp and walkway segment (ADA compliant) outside the boundaries of the Tentative Tract Map. Dedication of the easement and construction of the ramp are conditions of project approval from the City. The easement and ramp extend from the new bulkhead walkway to the easterly end of the existing floating walkway at the project site where the walkway continues along the waterfront at the Cove Condominium property to the east. The easement and walkway provide unobstructed public access to the waterfront. The ramp will also provide access to the private boat docks.

The project also proposes enhancing the existing 10-foot wide vertical access (from Bayside Drive to the bayfront along Promontory Bay) walkway by making it ADA compliant and widening it within an existing easement to provide a continuous, 8-foot wide concrete walkway with a 2-foot wide landscaped planter. An existing 10-foot wide irrevocable public access easement extends from Bayside Drive along the westerly boundary of the planned community to the waterfront. Redevelopment of the subject property pursuant to the PC Text requires reconfiguration and reconstruction of improvements within this easement to improve public pedestrian access to the waterfront. The easement includes an existing viewing platform at the southern end of the accessway that will also be improved by providing new and enhanced seating and decking for use by the public.

(c) Bulkhead Work

The existing east-west bulkhead will be repaired and strengthened with new tie-backs and reinforced concrete deadmen. The deadmen are located under the residential lots that front the bayside edge of the project site. The project also proposes the replacement of the reinforced concrete cap on the bulkhead utilizing poured in place, reinforced concrete. The reinforcement work that is proposed will occur behind the bulkhead on the landward side of the project. The existing east-west bulkhead will be maintained in place. No work or modifications are proposed for the existing north-south bulkhead.

3. Prior Commission Action at the Subject Site

919 Bayside Drive

(a) Administrative Permit No. A-6-14-76-8113-(McLain Development Company)

At the June 1976 California Coastal Zone Conservation Commission Hearing, the Commission approved the addition of a spa in an existing pool area and modification of an existing covered structure to include a rental office and storage area in conjunction with an existing apartment complex. One (1) Special Condition was imposed which required that prior to issuance of the permit, the applicant shall submit a signed and notarized statement agreeing to use a solar heating system only for the spa.

(b) Administrative Permit No. A-8-25-76-8723-(McLain Development Company)

At the September 1976 California Coastal Zone Conservation Commission Hearing, the Commission approved the installation of a 34' cone tapered aluminum nautical flagpole adjacent to the bulkhead associated with an existing apartment complex. No Special Conditions were imposed.

(c) Coastal Development Permit No. A-5-10-77-787-(McLain Enterprises)

At the May 1977 California Coastal Commission (South Coast Regional Commission) Hearing, the Commission approved the alteration of existing boat docks configuration consisting of removal of twelve (12) 30-foot slips (16 docks) and

construction of six (6) 42-foot slips (8 docks). The project did not extend beyond the U.S. Pierhead Line and did not require dredging. The previous slips were parallel to the bulkhead and the new slips were permitted to be perpendicular. No Special Conditions were imposed.

909 Bayside Drive

(a) Coastal Development Permit No. P-11-29-73-2313-(McLain Development Company)

At the February 1974 California Coastal Zone Conservation Commission Hearing, the Commission approved the subdivision of land to create 2 parcels and construct 14 apartments with 33-on-site parking spaces. Two (2) Special Conditions were imposed: 1) that the 10-foot easement be used for public access to circumvolve the project from the north on Bayside Drive to the south connecting to the Balboa Island Bridge; and 2) that the conditions of resubdivision #396 and amendment #380 by the Planning Commission of Newport Beach be met. The permit was issued on March 1974. The staff report stated that this 909 Bayside Drive parcel was a vacant parcel that was adjacent to an existing 50-unit apartment complex. The proposed project was an extension of that existing apartment complex located at 919 Bayside Drive and hence took the 919 Bayside Drive address after construction. Furthermore, the staff report stated that the City had asked for the 10-foot setback parallel to the Promontory Bay Channel to be used as an access easement for the public to access the interior channels and also to serve as an extension of the similar board walk that surrounds Balboa Island. The staff report additionally stated that a walkway existed from the Balboa Bridge to the property line of a private beach fronting and belonging to the adjacent 50-unit apartment complex. Since both properties were owned by the same owner, it was then feasible to continue this walkway past the private beach and to the Promontory Bay Channel and then up to Bayside Drive.

(b) Coastal Development Permit No. P-11-29-73-2313-Extension-(McLain Development Company) (Exhibit #6)

At the December 1974 California Coastal Zone Conservation Commission Hearing, the Commission approved an extension to the permit that allowed the subdivision of land to create 2 parcels and construct 14 apartments with 33-on-site parking spaces. One (1) Special Condition was imposed which required that prior to commencement of construction, the applicant would submit evidence that the appropriate legal dedications and agreements have been completed to assure irrevocable public access to the 10-foot easement at Promontory Bay Channel, the 200 square foot viewing platform at the intersection of Promontory and North Channels and the 6-foot floating boat dock walkway fronting the Coves and this project in the North Channel. The permit was issued on December 1974. The staff report stated that the intent was to provide a continuous public walkway from the Balboa Island Bridge along North Channel and up to Promontory Bay Channel to

Bayside Drive. Access along the channels would be a 10-foot easement adjacent to Promontory Bay Channel and a 6-foot floating walkway in the North Channel fronting this project and the Coves.

Bayside Drive, West of Marine Avenue, Tract #8073, Newport Beach (The Coves Condominiums)

(a) Coastal Development Permit No. P-3-19-73-407-(The Irvine Company)

At the June 1973 California Coastal Zone Conservation Commission Hearing, the Commission approved Coastal Development Permit No. P-3-19-73-407-(The Irvine Company) for the construction of 60 condominium units, replacement of 77 boat slips, building a triangle shaped cove with a beach, and removal of 4,000 cubic yards of sand east of the project site known as the Cove. The Cove Condominiums are located downcoast of and adjacent to the subject site. A portion of the existing 6-foot wide floating North Channel lateral walkway that is at issue with the current application was approved with this project. This portion approved under this action extends from the Balboa Island Bridge (Marine Avenue) to the project site. No Special Conditions were imposed. This permit was subsequently amended in April 1975 to reduce the number of condominiums to 58 and add offsite improvements such as landscaping, interior streets and a swimming pool to the development description.

B. PUBLIC ACCESS

Section 30210 of the Coastal Act states:

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

Section 30212 of the Coastal Act states in relevant part:

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

(2) adequate access exists nearby...

Section 30213 of the Coastal Act states:

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

Section 30212.5 of the Coastal Act states:

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

Section 30240 (b) of the Coastal Act states:

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

Section 30224 of the Coastal Act states:

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

The City's certified Land Use Plan also has the following policies that address public access and recreational issues related to gating and parking:

Policy 3.1.5-1 states,

Prohibit new development that incorporates gates, guardhouses, barriers or other structures designed to regulate or restrict access where they would inhibit public access to and along the shoreline and to beaches, coastal parks, trails, or coastal bluffs.

Policies 3.1.5-2 states,

Prohibit new private streets, or the conversion of public streets to private streets, where such a conversion would inhibit public access to and along the shoreline and to beaches, coastal parks, trails or costal bluffs.

Policy 2.9.3-6 states the following regarding parking:

Prohibit new development that would result in restrictions on public parking that would impede or restrict public access to beaches, trails or parklands, (including, but not limited to, the posting of "no parking" signs, red curbing, and physical barriers), except where such restrictions are needed to protect public safety and where no other feasible alternative exists to provide public safety.

With regard to access, the City's LUP has the following policies, among others:

Policy 3.1.1-1 states:

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 3.2.2-1 states:

Continue to protect public coastal access recreational opportunities through the provision of adequate support facilities.

With regard to berthing and storage, the City's LUP has the following policy:

Policy 3.3.2-2 states:

Protect, and where feasible, enhance and expand marina and dry boat facilities.

The provision of public access in new development proposals is one of the main tenets of the Coastal Act, especially in conjunction with new development located between the sea and the first public road, such as the subject project. Gated subdivisions that preclude the possibility of public access to the coast conflict with Coastal Act Sections 30210 and 30212 and are therefore usually prohibited. Appropriate public access and recreational opportunities must be conspicuously posted and provided.

Not only do private gated subdivisions limit public access locally, but the cumulative effect of private gated subdivisions along the coast impacts public access, public parking, traffic circulation and the availability of non-automobile transportation options. When there are numerous gated subdivisions along the coast, traffic circulation is limited solely to major arterials, parking is unevenly distributed in the few public parking areas near existing vertical accessways, and pedestrians and cyclists are forced to travel on major arterials when seeking coastal access.

There is existing vertical and lateral access to the bay along the perimeter of the project site, however, there is presently no formal access provided through the existing developed site. Along the bay frontage to the south of the project site is an existing public access walkway (herein also referred to as the lateral access along North Channel) provided by a 6-foot wide floating walkway along the existing docks. Along the bay frontage to the west of the project site is an existing 10-foot wide public access easement and walkway (herein also referred to as the vertical access along Promontory Bay) extending from Bayside Drive to the North Channel walkway ending at a viewing platform and then connecting via a gangplank to the previously discussed floating lateral North Channel access way. There is no public access to the bay along the east side of the project site.

As described more fully in the project description, the applicant is proposing several changes to access conditions at the site. These changes include 1) improving and re-routing the portion of the existing floating North Channel accessway that fronts the project site and replacing that access with a lateral land-based/cantilevered walkway; 2) enhancing the existing vertical access along Promontory Bay; and 3) reducing the population that has berthing rights and access to the existing boat slips on the site which will place an additional burden on other marinas in the harbor. The applicant is also proposing to gate the new residential subdivision and prohibit all public access to streets and a new vertical access that are proposed within the subdivision. Each of these components raises issues relative to public access and recreation which are discussed in detail below (although not necessarily in the order listed above).

While there are existing and proposed opportunities for and enhancements to public access at the site, support facilities, such as parking, are insufficient to adequately provide for broad public use of the access. Furthermore, the applicants' proposal to make this a private gated community does not maximize coastal access and conflicts with the Land Use Plan policies that prohibit new gated communities and private streets.

In a letter to Fernie Sy dated August 31, 2006, the applicant asserted that the gates and private streets provided for in its application did not conflict with the Coastal Act, since the existing development on the site does not allow public access. The existing development was primarily built or approved prior to the enactment of the Coastal Act, however, and it is inconsistent with the public access requirements of the Act as it exists today. In addition, the applicant's proposal consists of demolishing the entire development, subdividing the property and building an entirely new development. This new development must fully comply with existing Coastal Act requirements.

1. Change to North Channel Lateral Accessway

Lateral access along the bulkheaded bayfront is currently provided by a 6-foot wide floating walkway that serves a dual purpose of providing pedestrian access as well as access to existing docks. The City identifies this walkway in their inventory of Coastal Access and Recreation areas in their certified Land Use Plan. The Commission has a history of involvement with this accessway, which is described in detail above, with key components highlighted below.

In 1974 the California Coastal Zone Conservation Commission approved Coastal Development Permit No. P-11-29-73-2313 and an extension which authorized a land division and an addition of 14 apartments with parking to the existing 50-unit apartment complex. The approvals required irrevocable dedications for public access to a 10-foot easement at Promontory Bay Channel (the vertical access to be discussed in the next section), the 200 square foot viewing platform at the intersection of Promontory and North Channels and the 6-foot wide floating boat dock walkway fronting the Coves Condominiums and this project site. The purpose of these dedications was to provide a continuous public walkway from the Balboa Island Bridge (Marine Avenue) along the North Channel and up to Promontory Bay Channel to Bayside Drive. The required dedications were fully executed and the walkways and viewing platform were constructed and opened for public access.

In the current proposal, the existing lateral access would be improved and re-routed by replacing public access to the 6-foot wide floating dock walkway that fronts the site with public access to an 8-foot wide, ADA compliant, concrete walkway constructed upon the top of the bulkhead and partially cantilevered over bay water (this will be done by removing an existing gangway from the public viewing platform to the existing floating public walkway and installing gates at two locations to prevent access to this floating walkway after the on-land lateral access has been built). The new 8-foot wide walkway will be dedicated as a public access easement and is comprised of a 3-foot wide, on land component, adjoining a 5-foot wide segment cantilevered over the surface of the water. The new public walkway would connect via a ramp to the portion of the existing floating walkway that will remain open to the public that is downcoast of this site and runs along the bay front side east of the Coves Condominiums property and ultimately connects to the Balboa Island Bridge (Marine Avenue). The applicant has also stated that the ramp connection from the new 8-foot wide walkway down to the existing floating walkway would also be dedicated as a public access easement.

The existing floating public walkway fronting the site and continuing down to the Balboa Bay Island Bridge provides an opportunity for the public to enjoy Newport Bay. The proposed new walkway would continue to provide an appropriate opportunity for the public

to access the bay. However, the applicant's proposal to modify and improve the lateral access at the site by replacing public access to the floating walkway fronting the subject site with public access to an on-land access parallel to the existing lateral access is prohibited under the terms of Coastal Development Permit No. P-11-29-73-2313-Extension-(McLain Development Company) (Exhibit #8), since the existing 6-foot wide floating walkway was irrevocably dedicated as a public walkway in conjunction with that permit. In order to modify and improve the lateral access at the site, the applicant would have to apply for an amendment to Coastal Development Permit No. P-11-29-73-2313 to modify the location of the existing public access walkway from a floating walkway to a new on-land and cantilevered walkway.

Thus, the Commission imposes **SPECIAL CONDITION NO. 1**, which requires the applicant to submit an application to amend Coastal Development Permit No. P-11-29-73-2313-Extension-(McLain Development Company) to modify and improve the lateral access.

Coastal Development Permit No. P-11-29-73-2313, as extended, required irrevocable public access to a 10-foot easement at Promontory Bay Channel (the vertical access to be discussed in the next section), the 200 square foot viewing platform at the intersection of Promontory and North Channels and the 6-foot floating boat dock walkway fronting the Coves Condominiums and this project in the North Channel. The applicant's submitted Tract Map incorrectly identifies one of these items. The 200 square foot viewing platform is not correctly shown on the map (the viewing platform appears smaller on the Tract Map submitted by the applicant). Therefore, the Commission imposes **SPECIAL CONDITION NO. 2**, which requires the applicant to submit Revised Project Plans that correctly identify the 200 square foot viewing platform.

In order to ensure that lateral public access walkway is provided on site, as proposed, the Commission imposes **SPECIAL CONDITION NO. 3**, which requires that the applicant irrevocably offer to dedicate to a public agency or other appropriate entity an easement for public access along the applicant's proposed on-land and cantilevered walkway located on the existing bulkhead along the North Channel (lateral access) and the ramp connecting the on-land and cantilevered walkway with the existing floating walkway.

In order to ensure that this proposed public access pathway is maintained and kept in operating order, the Commission imposes, **SPECIAL CONDITION NO. 5**, which requires the applicant to submit a Management and Maintenance Program for the public walkways.

To ensure that this walkway is kept as a public access pathway, the Commission imposes **SPECIAL CONDITION NO. 6**, which requires the applicant to maintain the walkways as public access pathways.

To ensure that vertical and lateral access is made available on site, the Commission imposes **SPECIAL CONDITION NO. 7**, which requires that the construction and improvements to the lateral and vertical access public walkways are be completed prior to occupancy of the first residence. In addition, it requires that lateral and vertical access remain open and available during construction.

2. Enhancement of Promontory Bay Vertical Access

Vertical public access to the bay is currently provided from a dedicated public walkway that is adjacent to the project site. The existing walkway extends from Bayside Drive between the project site and Promontory Bay to the lateral floating walkway described above. The City identifies this walkway in their inventory of Coastal Access and Recreation areas in their certified Land Use Plan. This existing walkway was a requirement of Coastal Development Permit No. P-11-29-73-2313, as extended.

In the current proposal, the Promontory Bay vertical access will be enhanced by the applicant with a new public signage program and by removing and reconfiguring planters, steps and ramps that will result in an ADA compliant, 8-foot wide unobstructed access. The applicant is also proposing abandonment of a portion of the existing dedicated public walkway located near the viewing platform. The Promontory Bay vertical access will remain unobstructed and open to the public after the improvements. This access walkway currently provides vertical access to Newport Bay, specifically Promontory Bay and continues until it reaches the existing North Channel lateral access along the bay. This walkway provides an opportunity for the public to enjoy Newport Bay and is consistent with the Coastal Act in preserving and maximizing coastal access. However, the applicant's proposal to abandon a portion of the existing dedicated public walkway is not allowed since the existing vertical public walkway was irrevocably dedicated as a public walkway (Exhibit #7). As noted above, the request is inconsistent with a previously imposed special condition. Therefore, the Commission imposes **SPECIAL CONDITION NO. 2**, which requires the applicant to submit Revised Project Plans that removes any reference to work taking place on the existing vertical access walkway that would adversely impacts its use as a public access walkway.

3. Proposed Gating of Waterfront Residential Development

To determine whether a development meets the Coastal Act goal of providing maximum public access and recreational opportunities at a level appropriate for a particular site, the ease at which the public can use the amenities must be considered. The 919 Bayside site is currently developed with a private, multi-family residential development. No access is provided through the site (although there is no gating impeding the public from entering this private development), and on-site signage limits parking to residents and guests of the development. This existing development is proposed to be entirely demolished and replaced by a gated residential subdivision with 17 single-family residences, a private internal roadway, and a private vertical walkway that connects to the proposed cantilevered segment of the North Channel Lateral Accessway. The proposed entry gate will be approximately 7-feet tall. On each side of the gate will be imposing approximately 16-foot high guard towers; however, it appears that the gate will be electronically activated instead of manned by security guards. The gate and guard towers would convey a strong message that no entrance is allowed by the public. All forms of public access (vehicular, bicycle and pedestrian), through the community would be prohibited. The general public would not be allowed to enter the residential community, park on its streets, or use the proposed interior vertical accessway that leads to the North Channel Lateral Accessway.

Private, gated communities between the first public road and the sea severely limit opportunities for public access to the sea, and are therefore incompatible with the public access requirements of the Coastal Act. (Sections 30210 and 30212). In addition, gated communities contribute to traffic and parking congestion on arterial streets, as the public is forced to seek access ways to the coast solely from these large arterials. Gated

communities also inhibit non-automobile circulation, since they limit pedestrians' ability to access the coast from other neighboring developments.

The presence of alternative access, visitor support facilities (such as parking), and signage that informs the public of the location of public access and recreational amenities, including parking, can help to overcome the public access barriers created by private communities. However, as described below, the support facilities that would exist after the development proposed by the applicant would be inadequate. Therefore, although the proposed project includes some enhancement to an existing access, public access to the walkways is made difficult and therefore public access is actually discouraged. These design elements render the proposed project inconsistent with the public access and public recreation provisions of the Coastal Act.

Furthermore, the City's recently certified Land Use Plan prohibits new gated residential development. Policy 3.1.5-1 prohibits development that incorporates gates, guardhouses or any structures that are designed to regulate or restrict access where they would inhibit public access to the coast; however, the project specifically proposes gates and guardtowers that would adversely impact public access to the coast. Policy 3.1.5-2 prohibits new private streets; however, contrary to this policy, the proposed project incorporates all private streets. Policy 2.9.3-6 prohibits new development that would result in restrictions on public parking that would impede public access; however, contrary to this policy, the proposed project would not allow the streets to be public and thus provide an opportunity for the public to park and then access the public walkways. Policy 3.1.1-1 states that the City will protect and where feasible, expand and enhance public access to and along the shoreline; however, this project would restrict public access to the shoreline by prohibiting the public from parking in the community to access the walkways and would exacerbate the parking problem in the area (more thoroughly discussed later). Policy 3.2.2-1 states that the City will continue to protect public coastal access recreational opportunities through the provision of adequate support facilities; however, the proposed project adversely impacts coastal recreation facilities by not allowing adequate support facilities (public parking within the community). The applicant's proposal for the private gated community makes the project inconsistent with all of these policies of the City's certified Land Use Plan.

As stated previously, public parking to serve the lateral and vertical access identified above is presently limited. There is no public parking adjacent to these access ways. The nearest pool of public parking is approximately 450-feet west of the site, along Bayside Drive. These are unmarked spaces along the street and these parking spaces are adjacent to a private beach that the public cannot access. The applicant has asserted that this existing pool of parking 450-feet from the site is sufficient for the public to use to park and access the walkways. However, the applicant has not provided any support for this assertion, and staff has concluded that these limited number of parking spaces along Bayside Drive are not sufficient in quantity or proximity for the public to gain use of the walkways. In addition, prohibiting parking within this subdivision will exacerbate problems of overcrowding and overuse of areas that are readily publicly accessible, instead of increasing the distribution of parking areas throughout this coastal area. See Coastal Act Section 30212.5.

The parking situation in the subject area and Newport Beach in general is raised as a significant issue in the City's certified Land Use Plan. For example, the LUP states that *...Parking in the coastal zone is a major issue in Newport Beach...During peak summer*

*weekends, parking demand associated with beach and bay uses is virtually unlimited...*Introductory narrative from Section 2.9.3 (Parking)

In fact, Balboa Island, which is near the site, has a severe parking problem that can only be relieved with the provision of additional pools of parking within walking distance of the popular visitor serving shopping district on Marine Avenue, and the beaches and walkways around the island. The following statement is made in the LUP:

...The 2002 field observations indicate that parking is routinely at or above capacity and that parking demand extends well beyond the blocks immediately surrounding the business area...the model indicates a significant latent demand for parking in this area...the demand is still much higher than the current supply...

The segment of Bayside Drive that fronts the project site is a primary roadway providing access to Balboa Island. Creating a new pool of parking in this area could provide needed parking relief.

One way to provide parking for the subject walkways and areas such as Balboa Island that is near the site is to ensure the public has access to the proposed streets within the new subdivision and to prohibit the gating of the subdivision. By doing so, the public would be able to park along the streets in the new residential community and then have access to these walkways and surrounding areas. Preventing the gating of the community and making the streets of the community open to the public would improve access in the area and prevent adverse impacts to public access.

Preventing the project from being gated and opening up the streets for public use would maximize coastal access and be consistent with the Coastal Act. The City also has a certified Land Use Plan (LUP). The City's LUP actually has policies that prohibit new gated communities within the Coastal Zone. Thus, the City's approval of the proposed project is inconsistent with the City's certified Land Use Plan.

The applicants have proposed an access path within the development to the lateral walkway for use by solely by the residents in the proposed gated community. By prohibiting gating of the community and making the streets open to the public, this pathway through and within the development would also provide a direct way for the public to access the existing and proposed lateral accessway.

Public access would not be maximized if the project site were allowed to be a private gated community with private streets. In an area where access to the public walkways is already limited by the deficient amount of parking for public use, the proposed project would exacerbate that problem by not allowing the public to park in the community so they can have access to the public walkways. In addition, gating the development would prevent the public from direct access that leads to the lateral access public walkway.

Thus, in order to maximize and preserve public access, the Commission is imposing **SPECIAL CONDITION NO. 2**, which requires that the project plans be revised so that the project is no longer a gated community and that the streets are kept open for the public, in accordance with the requirements of **SPECIAL CONDITION NO. 6**.

Also, in order to ensure that public access is available on site, the Commission is imposing additional **SPECIAL CONDITIONS**: **SPECIAL CONDITION NO. 3** requires the applicant to irrevocably offer to dedicate to a public agency or other appropriate entity an easement for public access located on: the on-land and cantilevered walkway along the existing bulkhead along the North Channel (lateral access); the ramp connecting the on-land and cantilevered walkway with the existing floating walkway; the 6-foot wide easement connecting Lot "E" to Lot "B"; and a minimum 4-foot wide sidewalk along the perimeter but outside of Lot "E". **SPECIAL CONDITION NO. 4** requires the applicant to dedicate all streets and sidewalks within the subdivision to a public agency or non-profit acceptable to the Executive Director. **SPECIAL CONDITION NO. 5** requires the applicant to submit a Management and Maintenance Program for the public access areas within the residential community. **SPECIAL CONDITION NO. 6** requires that the applicant maintain the walkways as public access pathways and the streets within the residential community available to the public. **SPECIAL CONDITION NO. 7** requires that the construction and improvements to the lateral and vertical access public walkways be completed prior to occupancy of the first residence. In addition, it requires that lateral and vertical access remain open and available during construction.

4. Docks

Policy 3.2.1-1 in the Land Use Plan states:

Protect, and where feasible, expand and enhance recreational opportunities in the coastal zone.

Policy 3.2.1-3 in the Land Use Plan states:

Provide adequate park and recreational facilities to accommodate the needs of new residents when allowing new development.

Narrative on page 3-19 of the Land Use Plan has the following statement:

"...new development that limits or eliminates private recreational facilities within such communities could place additional demand on public recreational facilities..."

Policy 3.3.2-2 in the Land Use Plan states:

Protect, and where feasible, enhance and expand marinas and dry boat storage facilities.

Policy 3.3.2-6 in the Land Use Plan states:

Protect, and where feasible, enhance and expand guest docks at public facilities, yacht clubs and at privately owned marinas, restaurants and other appropriate locations.

Policy 3.3.2-7 in the Land Use Plan states:

Protection, 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 applicant has submitted information with the application that states that the existing 34 docks currently on site are associated and intended for use by only the owners of the existing apartment complex. However, recent discussion with the applicant have stated otherwise. The applicant currently states that the existing 34 docks are part of a pool of docks used by the existing apartment complex and the Coves Condominiums (east of the project site) and the Newport Beach Yacht Club (east of the Cove Condominiums). Nonetheless, with the proposed project, those docks will be operated as a residential marina for use by only the new 17 residential leaseholders. This is a requirement imposed by the City because there is inadequate parking in the area to support a broader population using the docks. This would have an adverse impact to public access since the displaced boat dock users would now need to use surrounding slips in other marinas and place additional demands upon limited public facilities in the harbor. The proposed project would reduce the population of individuals that would have access to the existing boat slips. Thus, the project as proposed would be inconsistent with Section 30224 of the Coastal Act because it would decrease public berthing areas. Allowing the existing 34 docks to only be used for the 17 new residential lease holders, increases the impact upon public berthing facilities since the existing displaced slip holders must find a new location to berth their boats. Typically, one slip would be allotted to each residential leaseholder. Adhering to this would result in an excess of 17 docks that would not be associated with any lease hold and could be made available to the public. The result is adverse impacts to surrounding marinas while a pool of berthing facilities is available at the project site.

Furthermore, the City's recently certified Land Use Plan protects berthing facilities, but the proposed project would instead be adversely impacting berthing facilities. Policy 3.2.1-1 states that the City will protect and where feasible expand and enhance recreational facilities in the Coastal Zone; however, this project would actually be limiting recreational facilities in the Coastal Zone. Policy 3.2.1-3 states that the City will provide adequate park and recreational facilities to accommodate the needs of new residents when allowing new development; however, by limiting use of the 34 docks to the new 17-residential leaseholders, this impacts new residents ability to find docking facilities in the area because the displaced boat owners of the apartment complex must now use spaces in other marinas that once could have been open for new residents in the area to use. Policy 3.3.2-2 states that the City will protect and where feasible expand and enhance marinas and dry boat storage facilities; however, the proposed project would do neither and instead limit and reduce marinas and dry boat facilities. Policy 3.3.2-6 states that the City will protect and where feasible enhance and expand guest docks at public facilities, yacht clubs and at privately owned marinas; however, the proposed project would adversely impact guest docks because now the displaced boat owners may use these docks temporarily which were originally meant for guests. Policy 3.3.2-7 states that the City will 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. However, the proposed project would adversely impacts visiting vessels now because the boat owners

displaced from the subject marina would increase the number of users using these other facilities. The applicant's proposal for limiting the 34 existing docks for the new 17 residential leaseholders makes the project inconsistent with all of these policies of the City's certified Land Use Plan as well as Section 30244 of the Coastal Act.

In order to mitigate this impact to recreational resources, the applicant has consulted with the City of Newport Beach on two possible projects that could mitigate this impact (Exhibit #9). The two possible projects are as follows:

(a) Bayside Walkway Connection to Marine Avenue

This project would connect an existing floating walkway that parallels Bayside Drive and the Promontory Channel from Bayside Drive to Marine Avenue, to the Marine Avenue Bridge which connects to Balboa Island. This connection has been planned for many years and has recently received a high enough priority on the City's CIP program to be included in the FY 2007-07 CIP Program for design and obtaining permits. However, construction has yet to be funded. This connection would allow pedestrians to have a continuous walking path along the water to Balboa Island from the intersection of Promontory Bay and Bayside Drive. The FY 2006-07 Budget allocated \$40,000 for design and permitting, but no funds have as yet been allocated to construction. The estimated cost of this project is \$270,000. Construction is scheduled for FY 2007-08, subject to Coastal Commission approval and other permits being obtained.

(b) Rhine Channel Wharf Public Dock

This project would construct a 100' long public dock at the end of the Rhine Channel. The dock would be intended for short term docking of boats in the harbor to visit land-based facilities such as restrooms, restaurants, and stores. This has been on the City's CIP program and budgeted for a number of years, anticipating matching funds from the Department of Boating and Waterways. The project has never been selected for funding by Boating and Waterways and was therefore never constructed. In the FY 2006-07 budget the City has funded design and environmental at \$15,000. Permitting and construction are estimated at an additional \$225,000. Construction could start during FY 07-08, subject to obtaining the required permits and approvals.

In order to mitigate the proposed project's impact to public boating, the construction of the Rhine Channel public dock would be more closely linked to the type of development that the proposed project would be impacting. Thus, construction of this public dock is the most feasible mitigation to adequately address the projects' impact to public boating. The applicant would need to fund the entire construction of this dock and a Memorandum of Understanding between the City and Coastal Commission regarding use of the funds for construction of the project and use of the dock must also be completed.

Thus, in order to maximize and preserve public access, the Commission is imposing **SPECIAL CONDITION NO. 7**, which requires that the applicant submit an in-lieu fee to construct the Rhine Channel Wharf Public Dock and a Memorandum of Understanding between the City of Newport Beach and the Coastal Commission must be completed in regards to this construction.

CONCLUSION

To maximize and preserve coastal access, **EIGHT (8) SPECIAL CONDITIONS** have been imposed. **SPECIAL CONDITION NO. 1** requires the applicant to submit an application to amend Coastal Development Permit No. P-11-29-73-2313-Extension-(McLain Development Company) to modify and improve the lateral access. **SPECIAL CONDITION NO. 2** requires the applicant to submit Revised Project Plans that reflect the changes imposed in the special conditions. **SPECIAL CONDITION NO. 3** requires the applicant to irrevocably offer to dedicate to a public agency or other appropriate entity an easement for public access located on: the on-land and cantilevered walkway along the existing bulkhead along the North Channel (lateral access); the ramp connecting the on-land and cantilevered walkway with the existing floating walkway; the 6-foot wide easement connecting Lot "E" to Lot "B"; and a minimum 4-foot wide sidewalk along the perimeter but outside of Lot "E". **SPECIAL CONDITION NO. 4** requires the applicant to dedicate all streets and sidewalks within the subdivision to a public agency or non-profit acceptable to the Executive Director. **SPECIAL CONDITION NO. 5** requires the applicant to submit a Management and Maintenance Program for the public walkways and the public access areas within the community. **SPECIAL CONDITION NO. 6** requires the applicant to maintain the walkways as public access pathways and the streets within the residential community available to the public. **SPECIAL CONDITION NO. 7** requires the applicant to submit a Construction/Development Phasing Plan. **SPECIAL CONDITION NO. 8** requires the applicant to submit an in-lieu fee to construct the Rhine Channel Wharf Public Dock and a Memorandum of Understanding between the City of Newport Beach and the Coastal Commission must be completed in regards to this construction. Therefore, as conditioned, the Commission finds that the proposed development conforms with Sections 30210, 30212, 30212.5, 30213, 30240(b), and 30224 of the Coastal Act.

C. WATER QUALITY AND THE MARINE ENVIRONMENT

Section 30230 of the Coastal Act states:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231 of the Coastal Act states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Section 30232 of the Coastal Act states:

Protection against the spillage of crude oil, gas, petroleum products, or hazardous substances shall be provided in relation to any development or transportation of such materials. Effective containment and cleanup facilities and procedures shall be provided for accidental spills that do occur.

The protection of water quality is an important aspect of the Coastal Act. Water from the project site will flow into the City of Newport Beach's storm drain system and will ultimately drain to Newport Bay and the Pacific Ocean. Recent beach closures occurring throughout Orange County, including those in Huntington Beach and Laguna Beach, have been attributed to polluted urban runoff discharging into the ocean through outfalls. As illustrated by these beach closures, polluted runoff negatively affects both marine resources and the public's ability to access coastal resources.

1. Construction Impacts to Water Quality

Storage or placement of construction materials, debris, or waste in a location subject to erosion and dispersion or which may be discharged into coastal waters via rain or wind would result in adverse impacts upon the marine environment that would reduce the biological productivity of coastal waters. For instance, construction debris entering coastal waters may cover and displace soft bottom habitat. Sediment discharged into coastal waters may cause turbidity, which can shade and reduce the productivity of foraging avian and marine species' ability to see food in the water column. In order to avoid adverse construction-related impacts upon marine resources, **SPECIAL CONDITION NO. 9** outlines construction-related requirements to provide for the safe storage of construction materials and the safe disposal of construction debris. This condition requires the applicant to remove any and all debris resulting from construction activities within 24 hours of completion of the project. In addition, all construction materials shall be covered and enclosed on all sides, and as far away from a storm drain inlet and receiving waters as possible. In order to prevent impacts to coastal waters, **SPECIAL CONDITION NO. 10** requires that all demolition and cut material debris be disposed of at a legal site. Choice of a site within the coastal zone shall require an amendment to this permit or a new coastal development permit, unless the Executive Director determines that no amendment or new permit is legally required.

2. Post-Construction Impacts to Water Quality

Pollutants such as sediments or toxic substances such as grease, motor oil, heavy metals, pesticides and fertilizers are often contained within urban runoff entering the storm water system. In this case, the site drains 17 new lots intended for residential development, a street, hardscape areas, and landscaped areas. During storm events, the pollutants which have collected upon the roofs and upon other impervious surfaces created by the proposed project may be discharged from the site into the storm water system and eventually into coastal waters which can become polluted from those discharges.

The proposed development would result in the discharge of storm water into the storm water conveyance system. As such, the amount of pollutants carried through the system would increase proportionally. Therefore, the project has the potential to affect the water quality of the coastal waters in Newport Beach.

The proposed project is new development, which affords an opportunity to improve water quality. Much of the pollutants entering the ocean come from land-based development. The Commission finds that it is necessary to minimize to the extent feasible within its jurisdiction the cumulative adverse impacts on water quality resulting from incremental increases in impervious surface associated with additional development. Reductions in the amount of pollutants in the existing runoff would be one step to begin to reduce cumulative adverse impacts to coastal water quality. As such, appropriate measures must be taken to assure that adverse effects on water quality are minimized. Currently, all existing drainage flows directly into the bay. The project will re-direct runoff to on-site storm water treatment facilities to be located underground within the streets and walkways to filter on-site runoff. The project will abandon and remove the existing storm drain system that currently discharges directly into the bay and will replace it with a new storm drain system that will connect into the City's off-site, existing 36" storm drain at the eastern edge of the project site. The project proposes to locate two stormceptors (Aqua-Shield units or approved equivalent) within the project site to filter runoff. One stormceptor will be located below grade in front of Lot "3" in the street. This stormceptor will accept drainage from the entire residential area of the proposed project. The second stormceptor will be located in lettered Lot "B" at the southwest corner of the project site, and will accept runoff from the new cantilevered, public walkway and lettered Lot "B." In addition, the project proposes sealing the existing outlets from the inland side of the bulkhead to prevent the discharge of any unfiltered drainage into the bay. While these measures are being proposed to address post construction water quality, additional measures are necessary. The applicant's proposed measures do not provide information about maintenance of the proposed stormceptors. Therefore, it is necessary to impose **SPECIAL CONDITION NO. 11**, which requires that the applicant submit a Final Water Quality Management Plan (WQMP).

The applicants have stated that landscaping is proposed and plans have been submitted for the common areas of the development. The placement of any vegetation that is considered to be invasive which could supplant native vegetation should not be allowed. Invasive plants have the potential to overcome native plants and spread quickly. Invasive plants are generally those identified by the California Invasive Plant Council (<http://www.cal-ipc.org/>) and California Native Plant Society (www.CNPS.org) in their publications. Furthermore, any plants in the landscape plan should be drought tolerant to minimize the use of water (and preferably native to coastal Orange County). The term drought tolerant is equivalent to the terms 'low water use' and 'ultra low water use' as defined and used by "A Guide to Estimating Irrigation Water Needs of Landscape Plantings in California" prepared by University of California Cooperative Extension and the California Department of Water Resources dated August 2000 available at <http://www.owue.water.ca.gov/landscape/pubs/pubs.cfm>.

Commission staff has reviewed the submitted Landscaping Plan for the common areas of the development and determined that non-drought tolerant plants are being proposed: *Platanus racemosa* (California Sycamore), *Tristania conferta* (Brisbane Box), *Coleonema pulchrum* (Pink Breath of Heaven), *Pittosporum crassifolium* 'Compactum' (Dwarf Karo), and *Buxus* 'Green Beauty' (Japanese Boxwood). Commission staff also could not determine the drought tolerancy of the following vegetation: *Eriobotrya* 'Coppertone' (*Eriobotrya* 'Coppertone'), *Ilex* z. 'Blue Princess' (Blue Princess Holly), *Rosa* 'Pink Meidiland' (Carpet Rose), *Lingustrum* 'Texanum' (Wax-Leaf Privet), and *Ficus Nitida* 'Green Gem' (Indian Laurel).

While the applicant has submitted a landscape plan for the common areas, landscaping for the 17 single-family residential lease lots has not been submitted. Landscaping for those lots will be determined at a later time by the individuals that will lease the lots.

Thus, in order to verify that landscaping in the common areas and on the lease lots consists of native and/or non-native drought tolerant non-invasive plants, the Commission imposes **SPECIAL CONDITION NO. 12**, which requires the applicant to prepare and submit a Landscape Guidelines document that will detail landscaping requirements that all landscaping must comply with, including but not limited to the use of native and/or non-native drought tolerant non-invasive plants.

CONCLUSION

To minimize the adverse impacts upon the marine environment, **FOUR (4) SPECIAL CONDITIONS** have been imposed. **SPECIAL CONDITION NO. 9** identifies best management practices. **SPECIAL CONDITION NO. 10** requires that the applicant identify the location of the disposal site of the demolition and construction debris. If the disposal site is located in the coastal zone a coastal development permit or an amendment to this permit shall be required before disposal can take place. **SPECIAL CONDITION NO. 11** requires the applicant to submit a Final Water Quality Management Plan. **SPECIAL CONDITION NO. 12**, which requires the applicant to submit a revised Landscape Palette Plant List, which only consists solely of native and/or non-native drought tolerant plants, which are non-invasive. Therefore, as conditioned, the Commission finds that the proposed project is consistent with Section 30230 and 30231 of the Coastal Act.

D. GEOLOGY

Section 30253 of the Coastal Act states in relevant part:

New development shall:

- (1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.*
- (2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area...*

To assess the feasibility of the project, the applicant submitted the *Geotechnical Investigation, Proposed 19 custom Single-Family Lots (North Bay), 919 Bayside Drive, Tentative Tract 15323, City of Newport Beach, Orange County, California (J.N. 639-04)* prepared by Petra Geotechnical Inc. dated December 6, 2004. Petra conducted a subsurface exploration and collection of samples at the subject site. Laboratory tests were conducted with the collected samples. The investigation states that the site is underlain by recent marine sands and dredged fill. Some bedrock material was also found underlying the native marine sands. The investigation furthermore states that there may be some concerns on site relating to seismic issues, on-site soils, grading, etc... However, the investigation ultimately concludes that the project is feasible from an engineering perspective provided the applicant complies with the recommendations contained in the investigation. Some of the proposed recommendations dealt with the bulkhead, foundation, grading and retaining walls. In order to assure that risks are minimized, the geotechnical consultant's final recommendations must be incorporated into the design of the project. Thus, the Commission imposes **SPECIAL**

CONDITION NO. 13, which requires the applicant to submit, prior to issuance of the permit, evidence of conformance with geotechnical recommendations. Therefore, as conditioned, the Commission finds that the proposed development conforms with Section 30253 of the Coastal Act.

E. VISUAL IMPACTS

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.

This facility is between the first public road and the sea and is a bayfront lot. The project site is located in the Promontory Bay area of Newport Beach, which is bounded by Newport Bay, Marine Avenue/Jamboree Road and East Coast Highway. The Promontory Bay area includes, Harbor Island, Linda Isle and all the area bounded by Newport Bay, Marine Avenue/Jamboree Road and East Coast highway. The area is built out and consists of residential and commercial development. Bayside Drive traverse through this area and a portion of Bayside Drive adjacent to Promontory Bay is considered to be a public view area in the City's certified Land Use Plan. While public views are not afforded on site, the adjacent designated public view area along Bayside Drive at Promontory Bay provides public views and will continue to do so with the proposed project. Thus, public views will not be impacted.

The proposed project also includes the construction of 17 custom single-family residences in accordance with height, setback and other development standards identified in the Planned Community Text. The City of Newport Beach has approved the project as *Bayside Residential Planned Community (PC)*, which includes Development and Use Regulations that control permitted uses. The Planned Community Text development and use regulations include limits on height, setbacks and the like. For example, the maximum height of any dwelling shall be 28-feet to the mid-point of a sloping roof or to the top of a flat roof and those front yard setbacks vary from 15-feet to 35-feet based on the lot location. Adhering to these regulations would promote residential development that would be consistent with the surrounding area. As previously stated before, the project site is surrounded by residential and commercial development. The proposed project would be consistent with the character of the surrounding area if it adheres to the Planned Community Text regulations. All development shall conform with the Bayside Residential Planned Community (PC) Designation and Development and Use Regulations. Plans for development on each of the 17-single-famliy residential lease lots do not need further review by the Commission unless the said plans do not conform to the Bayside Residential Planned Community (PC) Designation and Development and Use Regulations, in which case an amendment to this permit would be required. To enforce this action, the Commission has imposed **SPECIAL CONDITION NO. 2**.

CONCLUSION

To minimize visual impacts, the Commission imposes **SPECIAL CONDITION NO. 2**, which states that plans for development on each of the 17-single-family residential lease lots do not need further review by the Commission unless the said plans do not conform to the Bayside Residential Planned Community (PC) Designation and Development and Use Regulations, in which case an amendment to this permit would be required. Therefore, as conditioned, the Commission finds that the proposed project is consistent with Section 30251 of the Coastal Act.

F. COVENANTS, CONDITIONS, AND RESTRICTIONS (CC&R'S)

To ensure that any prospective future owners of the property are made aware of the applicability of the conditions of this permit, the Commission imposes **SPECIAL CONDITION NO. 12. SPECIAL CONDITION NO. 14** states that the applicant shall establish covenants, conditions and restrictions (CC&R's), or an equivalent thereof, for the proposed residential lots to address ownership and management of all subdivision streets, sidewalks, public walkways, and common landscaped areas. The CC&R's shall reflect all applicable requirements of this coastal development permit, including but not limited to the limitations on the public access walkway facilities.

G. LOCAL COASTAL PROGRAM

Section 30604(a) of the Coastal Act provides that the Commission shall issue a coastal development permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program that conforms with the Chapter 3 policies of the Coastal Act.

The City of Newport Beach Land Use Plan (LUP) was certified on May 19, 1982. At the October 2005 Coastal Commission Hearing, the certified LUP was updated. Since the City only has an LUP, the policies of the LUP are used only as guidance. The Newport Beach LUP includes the following policies that relate to development at the subject site:

Policy 3.1.5-1 states,

Prohibit new development that incorporates gates, guardhouses, barriers or other structures designed to regulate or restrict access where they would inhibit public access to and along the shoreline and to beaches, coastal parks, trails, or coastal bluffs.

Policies 3.1.5-2 states,

Prohibit new private streets, or the conversion of public streets to private streets, where such a conversion would inhibit public access to and along the shoreline and to beaches, coastal parks, trails or costal bluffs.

Policy 2.9.3-6 states the following regarding parking:

Prohibit new development that would result in restrictions on public parking that would impede or restrict public access to beaches, trails or parklands, (including, but not limited to, the posting of "no parking" signs, red curbing, and physical barriers), except where such

restrictions are needed to protect public safety and where no other feasible alternative exists to provide public safety.

Policy 3.1.1-1 states:

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 3.2.1-1 states:

Protect, and where feasible, expand and enhance recreational opportunities in the coastal zone.

Policy 3.2.1-3 states:

Provide adequate park and recreational facilities to accommodate the needs of new residents when allowing new development.

Policy 3.2.2-1 states:

Continue to protect public coastal access recreational opportunities through the provision of adequate support facilities.

Policy 3.3.2-2 states:

Protect, and where feasible, enhance and expand marina and dry boat facilities.

Policy 3.3.2-6 states:

Protection, and where feasible, enhance and expand guest docks at public facilities, yacht clubs and at privately owned marinas, restaurants and other appropriate locations.

Policy 3.3.2-7 states:

Protection, 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.

If this development were approved without the proposed conditions, it would prejudice the City of Newport Beach's ability to adopt an LCP, since the development as proposed conflicts with clear policies in the certified LUP, such as the prohibition on new private streets and gated communities. (Policies 3.1.5-1 and 3.1.5-2). The proposed development, as conditioned, however, is consistent with Chapter 3 of the Coastal Act and with the certified Land Use Plan for the area. Thus, approval of the project, as conditioned, will not prejudice the ability of the local government to prepare a Local Coastal Program that is in conformity with the provisions of Chapter 3.

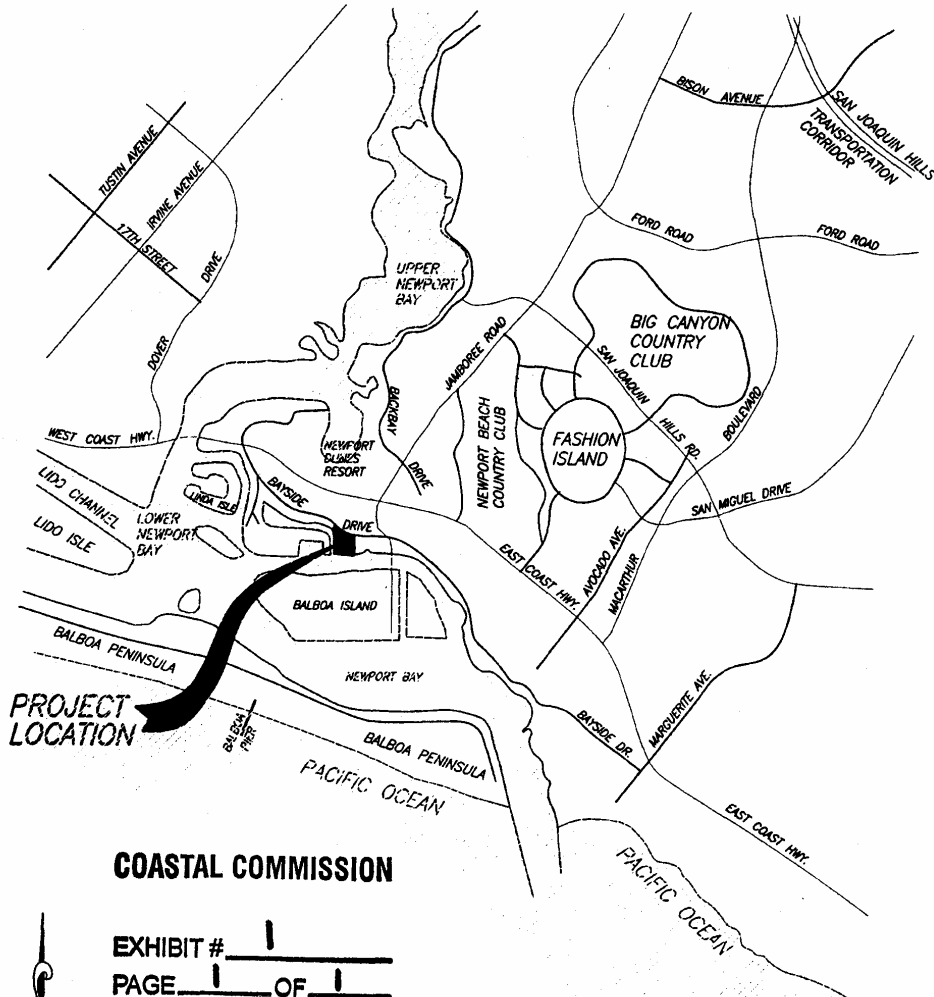
H. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 13096(a) of Title 14 of the California Code of Regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or further feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The proposed project is located in an urban area. All infrastructure necessary to serve the site exists in the area. As conditioned, the proposed project has been found consistent with the hazard, water quality, marine environment and public access policies of Chapter 3 of the Coastal Act. Mitigation measures include **THIRTEEN (13) SPECIAL CONDITIONS** requiring: **1)** the applicant to submit an application to amend Coastal Development Permit No. P-11-29-73-2313-Extension-(McLain Development Company) to modify and improve the lateral access; **2)** the applicant to submit Revised Project Plans that reflect the changes imposed in the special conditions; **3)** the applicant to irrevocably offer to dedicate to a public agency or other appropriate entity an easement for public access along the on-land and cantilevered walkway along the existing bulkhead along the North Channel (lateral access) and the ramp connecting the on-land and cantilevered walkway with the existing floating walkway and for public access to the streets and new vertical walkway within the residential community; **4)** requires the applicant to dedicate all streets and sidewalks within the subdivision; **5)** the applicant to submit a Management and Maintenance Program for the public walkways and the public access areas within the residential community; **6)** the applicant to maintain the walkways as public access pathways and the streets within the residential community available to the public; **7)** the applicant submit a Construction/Development Phasing Plan; **8)** the applicant to submit an in-lieu fee to construct the Rhine Channel Wharf Public Dock and a Memorandum of Understanding between the City of Newport Beach and the Coastal Commission must be completed in regards to this construction; **9)** the identification of best management practices; **10)** the applicant identify the location of the disposal site of the demolition and construction debris. If the disposal site is located in the coastal zone a coastal development permit or an amendment to this permit shall be required before disposal can take place; **11)** the applicant to submit a Final Water Quality Management Plan; **12)** the applicant to submit a Landscape Palette Plant List, which only consists of native and/or non-native drought tolerant plants, which are non-invasive; **13)** the applicant to submit, prior to issuance of the permit, evidence of conformance with geotechnical recommendations; **14)** the applicant to establish covenants, conditions and restrictions (CC&R's), or an equivalent thereof, for the proposed residential lots to address ownership and management of all subdivision streets, sidewalks, public walkways, and common landscaped areas; and **15)** pertains to attorney's fees.

As conditioned, there are no feasible alternatives or additional feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.

VICINITY MAP BAY HARBOR – T.M. 15323 PLANNED COMMUNITY DISTRICT



NOT TO SCALE

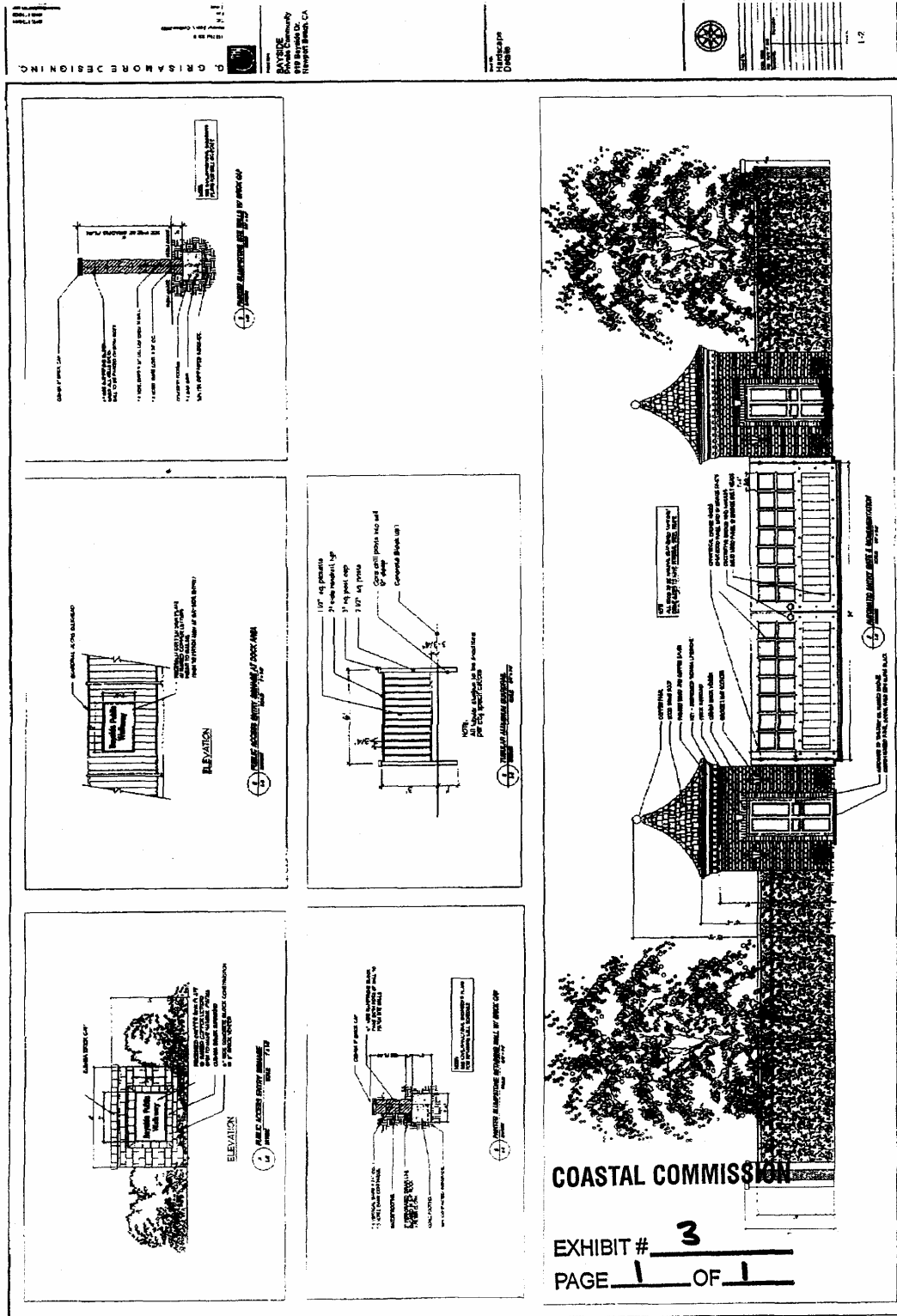
The Promontory Bay area of Newport Beach is bounded by Newport Bay, Marine Avenue/Jamboree Road and East Coast Highway where the project site is generally located. The Bayside Residential Planned Community District is within this area and is located on the south side of Bayside Drive between Promontory Channel, Newport Bay and the Cove Condominiums across from a neighborhood retail shopping center (Bayside Center) anchored by a supermarket. The Cove Condominiums (multiple-family residential dwellings) are located to the east of the subject property.

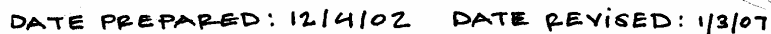
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PAGE 4

06-06-2006 12:02 RS MYERS CD 949 675 7555







STATE OF CALIFORNIA

RONALD REAGAN, Governor

CALIFORNIA COASTAL ZONE CONSERVATION COMMISSION

SOUTH COAST REGIONAL COMMISSION

666 E. OCEAN BOULEVARD, SUITE 3107

P. O. BOX 1450

LONG BEACH, CALIFORNIA 90801

(213) 436-4201 (714) 846-0648



RESOLUTION OF APPROVAL AND PERMIT

Application Number: P-11-29-73-2313

Name of Applicant: McLain Development Company

2208 Beverly Blvd., Los Angeles, CA 90057

Permit Type: ☒ Standard

☐ Emergency

Development Location: 909 Bayside Drive, Newport Beach

Development Description: Subdivision of land to create two parcels
and construct 14 apartment units with 33 on-site parking spaces

Commission Resolution:

- I. The South Coast Conservation Commission finds that the proposed development:
- A. Will not have a substantial adverse environmental or ecological effect.
 - B. Is consistent with the findings and declarations set forth in Public Resources Code Sections 27001 and 27302.
 - C. Is subject to the following other resultant statutory provisions and policies:
City of Newport Beach ordinances.
 - D. Is consistent with the aforesaid other statutory provisions and policies in that:

COASTAL COMMISSION approval in concept has been issued.

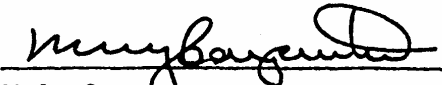
EXHIBIT # 6 The following language and/or drawings clarify and/or facilitate carrying out the intent of the South Coast Regional
PAGE 1 OF 2 Zone Conservation Commission:
application, site map, plot plan and approval in concept.

RESOLUTION OF APPROVAL AND TERMS

- II. Whereas, at a public hearing held on December 9, 1974
(date)
at Long Beach by a 12 to 0 vote here-
(location)
by approves the application for Permit Number P-11-29-73-2313
pursuant to the California Coastal Zone Conservation Act of
1972, subject to the following conditions imposed pursuant to
the Public Resources Codes Section 27403:
- Prior to commencement of construction, the applicant submit
evidence that the appropriate legal dedications and agreements
have been completed to assure irrevocable public access to the 10'
easement at Promontory Channel, the 200 sq. ft. viewing platform at
the intersection of Promontory & Balboa Channels and the 6' boatdock
walkway fronting the Coves & this project in the Balboa Channel.
- III. Said terms and conditions shall be perpetual and bind all future
owners and possessors of the property or any part thereof unless
otherwise specified herein.
- IV. The grant of this permit is further made subject to the following:
- A. That this permit shall not become effective until the attached
verification of permit has been returned to the South Coast
Regional Conservation Commission upon which copy all permittees
have acknowledged that they have received a copy of the permit
and understood its contents. Said acknowledgment should be
returned within ten working days following issuance of this
permit.
- B. That said development is to be commenced on or before 360
days from effective date of issuance.
- V. Therefore, said Permit (Standard, ~~Emergency~~) No. P-11-29-73-2313
is hereby granted for the above described development only, sub-
ject to the above conditions and subject to all terms and pro-
visions of the Resolution of Approval by the South Coast Regional
Conservation Commission.
- VI. Executed at Long Beach, California on behalf of the South Coast
Regional Conservation Commission on December 23, 1974.

COASTAL COMMISSION

EXHIBIT # 6
PAGE 2 OF 7
2474


M.J. Carpenter
Executive Director

wk


P-2313 - Extension - Addendum
McLain Development Company
December 5, 1974

File

2313

This project is a 14-unit addition to an existing 50-unit apartment complex. The site was formerly occupied by a yacht club and the vacated ROW of Bayside Drive. To the north, across Bayside Drive is a shopping center and Promotory Point Apartments, to the east, is the Coves Condominium project (P-407), to the south, is Balboa Channel, and to the west is Promontory Channel.

This project was conditionally approved February 1974 to provide waterfront access along the channels. The intent was to create a continuous public walkway from Balboa Island Bridge along Balboa Channel and up Promontory Channel to Bayside Drive. Access along the channels will be a 10 foot easement adjacent to Promontory Channel and a 6 foot floating walkway in the Balboa Channel fronting this project and the Coves. (The Coves, P-407, was approved with the floating walkway, June 1973.) A 13 foot bicycle pedestrian easement is provided adjacent to Bayside Drive from the Balboa Island Bridge to the Promontory Bay development also, at the intersection of the Promontory and Balboa Channels there is planned a 200 foot viewing platform.

Means of dedication of the floating walkway is yet to be determined.

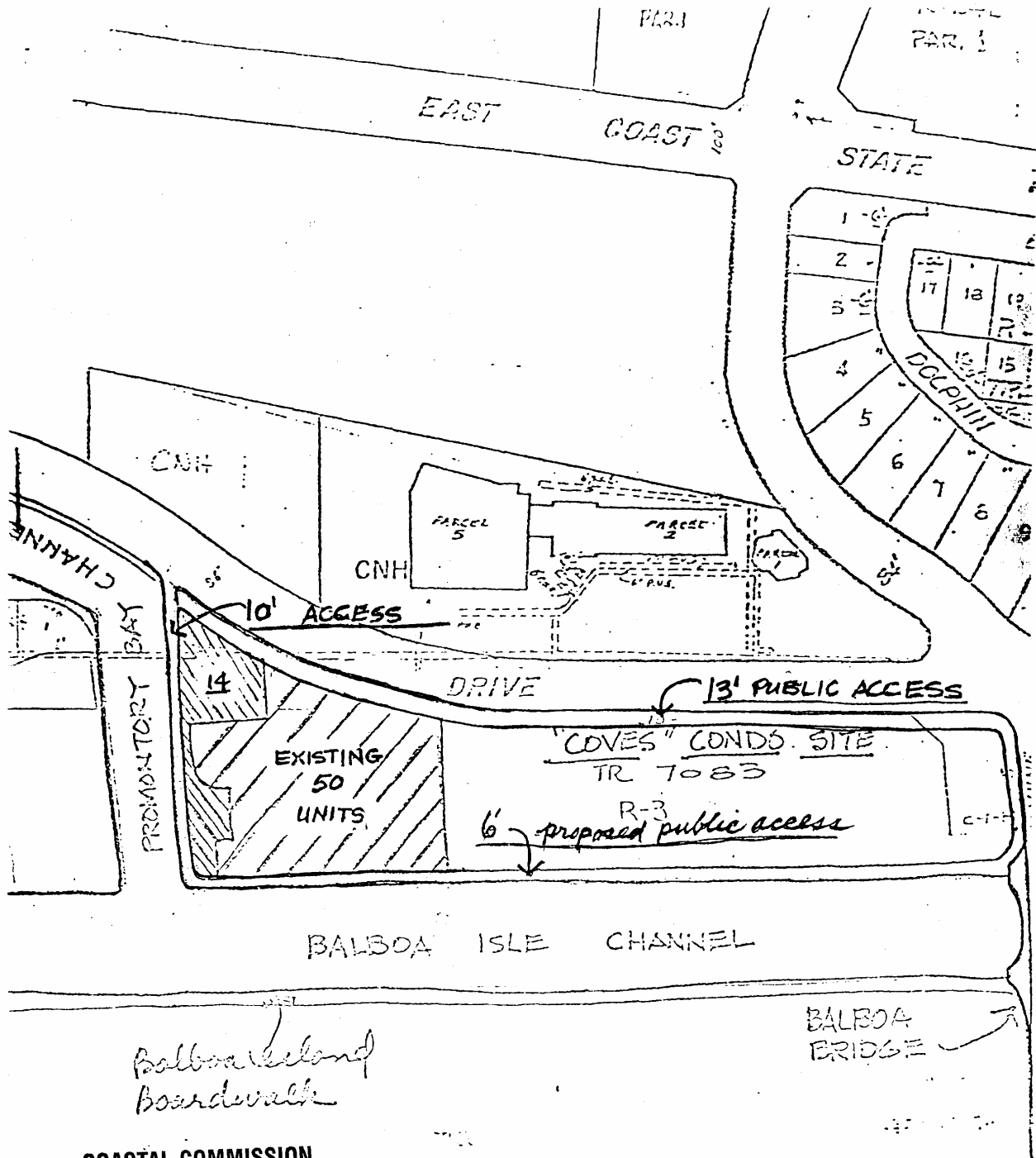
Staff recommends approval of this extension with the condition that prior to the issuance of the 1 year extension, the applicant submit evidence that the appropriate legal dedications and agreements have been completed to assure irrevocable public access to the 10 foot easement at Promontory Channel, the 200 foot viewing platform at the intersection of Promontory and Balboa Channels and the 6 foot boatdock walkway fronting the Coves and this project in the Balboa Channel.

COASTAL COMMISSION

Staff Planner
Joseph

EXHIBIT # 6
PAGE 3 OF 7

mc *h*



COASTAL COMMISSION

EXHIBIT # 6
PAGE 4 OF 7

P-2313

THE IRVINE COMPANY

610 Newport Center Drive
Newport Beach, California 92663
(714) 644-3011

November 15, 1974

Mr. Bob Joseph
California Coastal Zone Conservation Commission
South Coast Regional Commission
P. O. Box 1450
Long Beach, California 90801

RECEIVED

NOV 18 1974

South Coast Regional Commission

Subject: Permit #2313

Dear Bob:

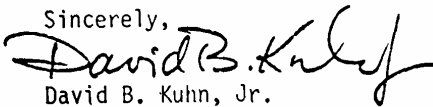
As a follow up to our telephone conversation, I am enclosing two maps showing the current status of the public pedestrian easement adjacent to resubdivision #396, McLain Development Company's Newport Marina project, Coastal Commission Permit #2313.

The first sketch shows the marina configuration, including the floating public walkway which will connect from the Balboa Island bridge and run the full length of Shark Island Yacht Club, The Cove Condominiums and Newport Marina Apartments connecting to the easterly side of the Promontory Bay channel. As you can see, at that connection point there will be a pier platform which will include benches and trash receptacles, and provide a pleasant seating and viewing area for pedestrians.

The next attachment shows a proposed ten foot wide easement along the easterly edge of the Promontory Bay channel connecting the floating public walkway to Bayside Drive. At this point in time, we are still in the process of finalizing the easement documents and they have not been presented to nor accepted by the City of Newport Beach to date. For these reasons, we do not as yet have any preliminary sketches of what the actual walkway design and/or landscaping within this easement will be. Nevertheless, the easement will be dedicated per the condition of approval placed on the Newport Marina apartment project and a copy of the final documents will be forwarded to your office.

I trust that this is the information that you were interested in for your files and that now you will be able to process the request for extension submitted by McLain Development Company. If you should have any other questions, please feel free to call me at 714-644-3419.

Sincerely,



David B. Kuhn, Jr.
Manager
Residential Development

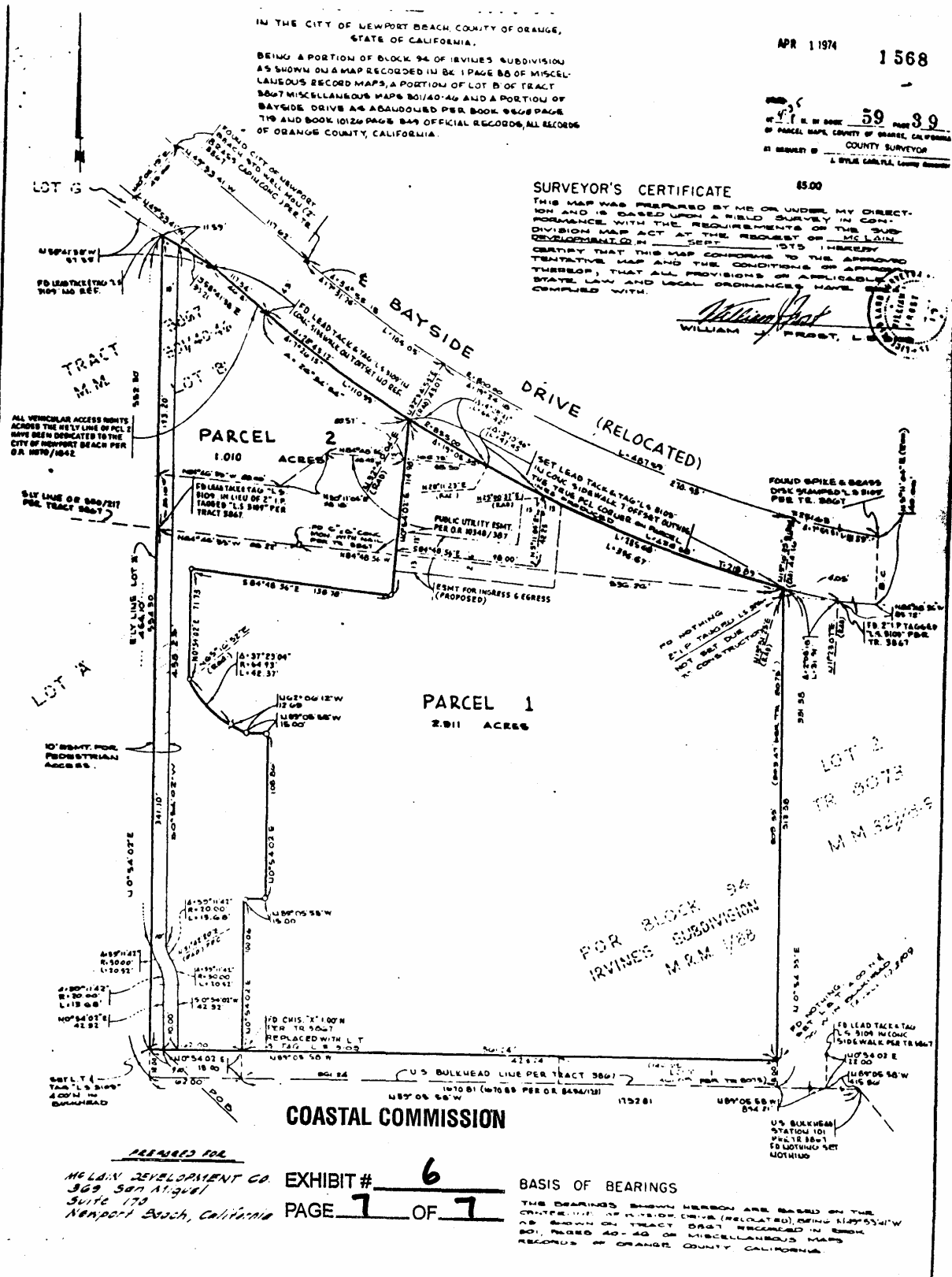
COASTAL COMMISSION

DBK:gr

cc: Ralph Arnesen, McLain Development Co.
Earle Truax, The Irvine Company

EXHIBIT # 6
PAGE 5 OF 7





610 Newport Center Drive
Newport Beach, CA 92663

WHEN RECORDED MAIL TO:

Gail Robbins
Residential Development

RECEIVED

JUN 5 1975

South Coast Regional Commission

(Space above this line for Recorder's Use)
South Coast Regional
Commission

GRANT OF EASEMENT

APPROVAL

Permit No.

By:

P-23/3

THE IRVINE COMPANY, a West Virginia corporation, and
ROBERT B. McLAIN, an individual, doing business as McLAIN
DEVELOPMENT COMPANY (hereinafter collectively referred to
as "Grantors"), hereby GRANT to the CITY OF NEWPORT BEACH,
a municipal corporation organized under the laws of the
State of California (hereinafter referred to as "Grantee"),
an easement for pedestrian walkway purposes, over and along
real property situated in the City of Newport Beach, County
of Orange, State of California, described as follows:

That portion of Parcel 2, as per map filed in
Book 59, page 39 of Parcel Maps and that portion
of Block 94 of Irvine's Subdivision, as per map
filed in Book 1, page 88 of Miscellaneous Record
Maps, records of said Orange County, described as
follows:

Beginning at the Northwest corner of said Parcel 2;
thence South 0°54'02" West 552.30 feet along the
Westerly line of said parcel and the Southerly
prolongation thereof to the U.S. Bulkhead Line as
shown on said parcel map; thence South 89°05'58" East
20.00 feet along said Bulkhead Line; thence North
0°54'02" East 33.00 feet; thence North 89°05'58"
West 4.00 feet; thence North 0°54'02" East 40.00
feet; thence North 89°05'58" West 6.00 feet;
thence North 0°54'02" East 473.43 feet to the
Northeasterly line of said Parcel 2; thence North
58°41'58" West 11.59 feet along said Northeasterly
line to the Point of Beginning.

Said easement is shown on Exhibit "B" attached hereto
and made a part hereof by this reference.

SUBJECT TO easements and rights of way of record or
apparent.

COASTAL COMMISSION

EXHIBIT #

7

PAGE

1

OF

4

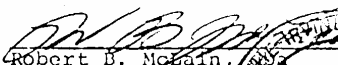
Grantee agrees that Grantors shall not be liable for any loss, damage, injury, death of any person, or claim of any kind or character to any person or property arising from the public's use of this easement, and Grantee hereby waives on its behalf all claims and demands against Grantors for any such loss, damage, injury or death, and, except to the extent occasioned by the act or neglect of Grantors, their employees or agents, hereby agrees to indemnify and to hold Grantors entirely free and harmless from all liability for any such loss, damage, injury, death or claim and from all costs, expenses and charges arising therefrom, including, without limitation, attorneys' fees and costs incurred by Grantors in connection therewith. Said waiver and indemnity is intended to apply with respect to loss, damage, injury, death or claim arising during the term of this easement and following the expiration or termination of this easement, and said waiver and indemnity shall survive the expiration or termination of this easement and shall be binding upon Grantee until such time as action against Grantors on account of any such loss, damage, injury, death or claim shall be barred by an applicable statute of limitations.

By acceptance of this Grant of Easement, Grantee agrees to maintain all of said easement, except that portion which is south of the presently constructed bulkhead which runs through said easement from east to west, in good and safe condition and repair, free from obstructions and debris, at Grantee's sole cost and expense.

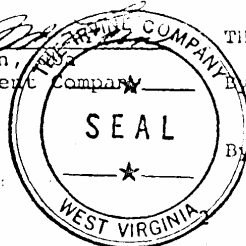
COASTAL COMMISSION

DATED this 14th day of MAY, 1975.

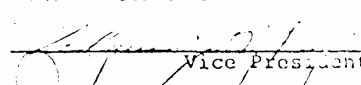
EXHIBIT # 7
PAGE 2 OF 4

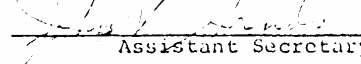

Robert B. McLain,
McLain Development Company

THE IRVINE COMPANY



By


Vice President


Assistant Secretary

ACCEPTED BY CITY OF NEWPORT BEACH:

By [Signature]
Vice Mayor

ATTEST:

By [Signature]
Clerk of the
City of Newport Beach

APPROVED AS TO FORM

By [Signature]
City Attorney

STATE OF CALIFORNIA)
) ss
COUNTY OF ORANGE)

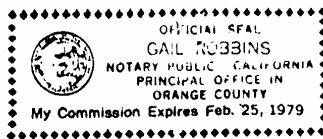
On May 14, 1975, before me, a Notary Public in and for said State, personally appeared ROBERT B. McLAIN, known to me to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same.

WITNESS my hand and official seal.



[Signature]
Notary Public in and for said State

On MAY 14, 1975, before me, the undersigned, a Notary Public in and for said County and State, personally appeared WARREN D. FIX, known to me to be the Vice President, and JOHN V. SANDS, known to me to be the Assistant Secretary, of THE IRVINE COMPANY, the corporation that executed the within instrument, and known to me to be the persons who executed the within instrument on behalf of the said corporation, and acknowledged to me that such corporation executed the same pursuant to its bylaws or a resolution of its board of directors.



[Signature]
Notary Public in and for said County and State

COASTAL COMMISSION

EXHIBIT # 7
PAGE 3 OF 4

PARCEL MAP

IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE,
STATE OF CALIFORNIA.

BEING A PORTION OF BLOCK 94 OF IRVINE'S SUBDIVISION
AS SHOWN ON A MAP RECORDED IN BOOK 55 OF MISCELLANEOUS
RECORDS MAPS, A PORTION OF LOT 2 OF TRACT
3647 MISCELLANEOUS MAPS 801/40-46 AND A PORTION OF
BAYSIDE DRIVE AS ABANDONED PER BOOK 9506 PAGE
719 AND BOOK 10126 PAGE 849 OFFICIAL RECORDS, ALL RECORDS
OF ORANGE COUNTY, CALIFORNIA.

R.S.T. 6551
RESUBDIVISION NO. 556

APR 1 1974

1568

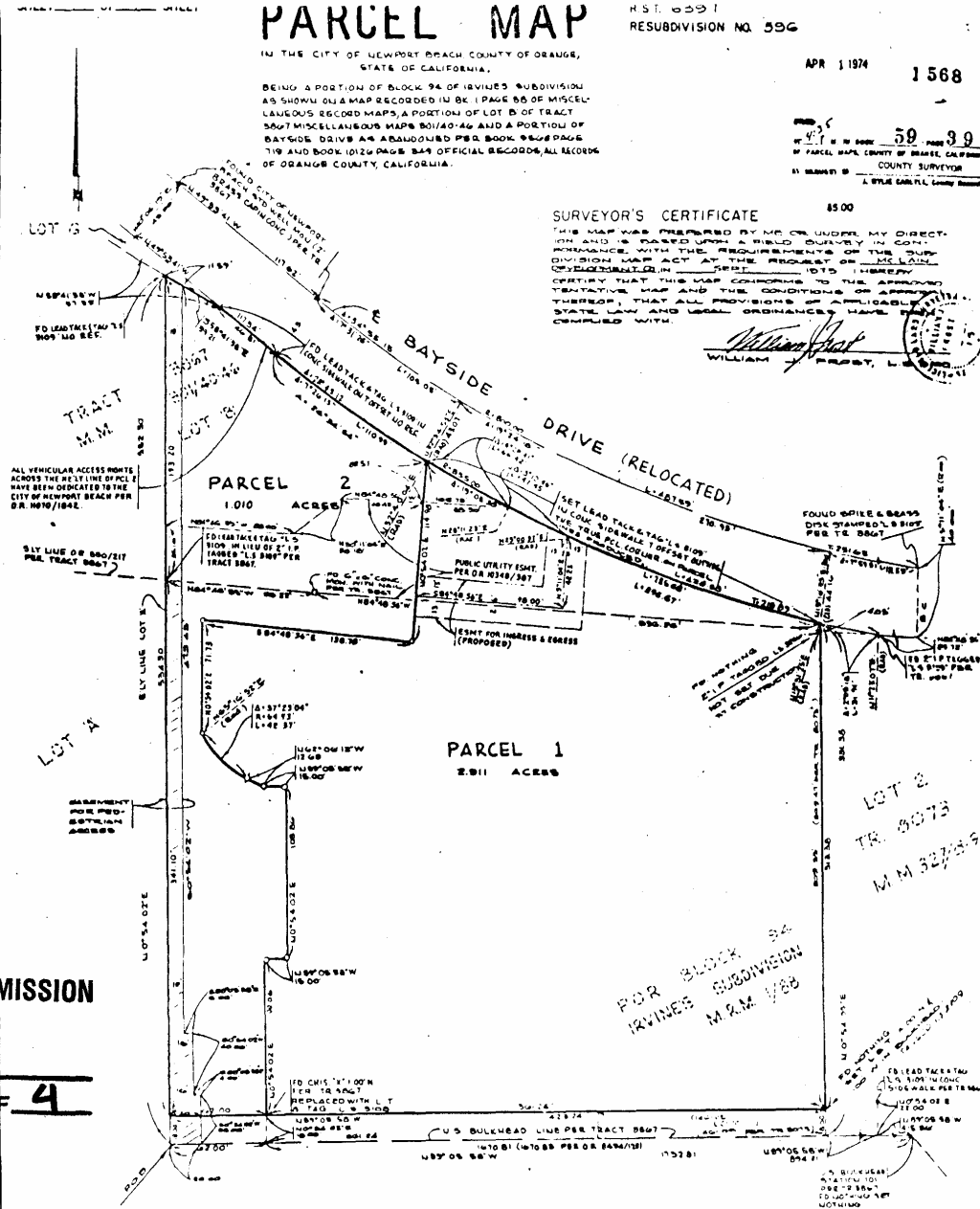
47' 11" IN BOOK 59, PAGE 39
IF PARCEL MAP, COUNTY OF ORANGE, CALIFORNIA
COUNTY SURVEYOR
A. BLUE CARP, County Surveyor

SURVEYOR'S CERTIFICATE

\$5.00

THIS MAP WAS PREPARED BY ME OR UNDER MY DIRECT-
ION AND IS BASED UPON A FIELD SURVEY IN CON-
FORMANCE WITH THE REQUIREMENTS OF THE SUR-
VEYOR'S ACT AT THE REQUEST OF THE
OWNER. I HEREBY
CERTIFY THAT THE MAP CONFORMS TO THE APPROVED
TENTATIVE MAP AND THE CONDITIONS OF APPROVAL
THEREOF, THAT ALL PROVISIONS OF APPLICABLE
STATE LAW AND LOCAL ORDINANCES HAVE BEEN
COMPLIED WITH.

William J. Frost
WILLIAM J. FROST, L.S. 11514



COASTAL COMMISSION

EXHIBIT # 7
PAGE 4 OF 4

FOR BLOCK 94
IRVINE'S SUBDIVISION
M.M. 1/88

EXHIBIT "B"

TO ACCOMPANY A LEGAL DESCRIPTION
OF AN EASEMENT FOR PEDESTRIAN
ACCESS PURPOSES.

BASIS OF BEARINGS

THE BEARINGS SHOWN HEREON ARE BASED UPON THE
MAGNETIC DECLINATION OF 11° 15' 00" EAST IN 1974
AND 11° 00' 00" EAST IN 1984. THE BEARINGS ARE
RECORDED IN ORANGE COUNTY RECORDS.

GRAPHIC SCALE



Raub, Bein, Frost & Associates
PROFESSIONAL ENVIRONMENTAL ENGINEERS & PLANNERS
P.O. BOX 1000, 1001 BUAL DRIVE, NEWPORT BEACH, CALIFORNIA 92657
REVISED 11-7-78
11-7-78 (11/7/78)

AGREEMENT FOR IRREVOCABLE PUBLIC ACCESS

This Agreement for Irrevocable Public Access is made and entered into as of this 24TH day of MAY, 1975, by and between THE IRVINE COMPANY, a corporation organized under the laws of the State of West Virginia (hereinafter referred to as "Irvine"), and the CITY OF NEWPORT BEACH, a municipal corporation organized under the laws of the State of California (hereinafter referred to as "City").

South Coast Regional

Commission

APPROVAL

Permit No.

By: [Signature]

W I T N E S S E T H:

RECEIVED

JUN 5 1975

South Coast Regional Commission

For and in consideration of the covenants and conditions herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Irvine and City hereby mutually agree as follows:

1. Irvine agrees with City, for the benefit of the general public, to give the general public nonexclusive access to and a nonexclusive right to use, but not to obstruct, the Viewing Platform and Headwalk of the marina to be constructed by Irvine (in accordance with plans and specifications to be approved by City) and located at the approximate location shown by the dark crosshatching lines on Exhibit "A" attached hereto (hereinafter referred to as the "Viewing Platform and Headwalk"). Said exhibit is hereby made a part hereof as if set forth in full herein.

2. This Agreement shall be irrevocable by either party hereto.

3. Irvine agrees to repair and maintain the Viewing Platform and Headwalk in good and safe condition and repair, free from obstructions and debris, at its sole cost and expense.

COASTAL COMMISSION

EXHIBIT # 8

PAGE 1 OF 5

Rev. 5/8/75

4. City agrees that Irvine shall not be liable for any loss, damage, injury, death of any person, or claim of any kind or character to any person or property arising from the public access to and use of the Viewing Platform and Headwalk, and City hereby waives on its behalf all claims and demands against Irvine for any such loss, damage, injury or death, and, except to the extent occasioned by the act or neglect of Irvine, its employees or agents, hereby agrees to indemnify and to hold Irvine entirely free and harmless from all liability for any such loss, damage, injury, death or claim and from all costs, expenses and charges arising therefrom, including, without limitation, attorneys' fees and costs incurred by Irvine in connection therewith. Said waiver and indemnity is intended to apply with respect to loss, damage, injury, death or claim arising during the term of this Agreement and following the expiration or termination of this Agreement, and said waiver and indemnity shall survive the expiration or termination of this Agreement and shall be binding upon City until such time as action against Irvine on account of any such loss, damage, injury, death or claim shall be barred by an applicable statute of limitations.

5. Irvine and City hereby acknowledge and agree that the ownership of the Viewing Platform and Headwalk shall not be altered by this Agreement, that upon construction of the Viewing Platform and Headwalk Irvine shall be the owner of the Viewing Platform and Headwalk and that thereafter Irvine shall have the right to retain ownership of the Viewing Platform and Headwalk or dispose of or encumber the same, or any part thereof, as Irvine, in its sole discretion, may deem appropriate, subject, however, to the terms and conditions of this Agreement.

COASTAL COMMISSION

EXHIBIT # 8
PAGE 2 OF 5

6. Irvine further expressly reserves to itself the right to have access to and to use the Viewing Platform and Headwalk and the right to grant to such other persons or entities as it shall, in its sole discretion, deem appropriate, the right to have access to and to use the Viewing Platform and Headwalk; provided, however, that no such right to have access to or to use the Viewing Platform and Headwalk shall unreasonably interfere with the general public's right of access to and use of the same which is granted by this Agreement; and provided further that, notwithstanding paragraph 2 above, Irvine shall have the right to remove and not replace the Viewing Platform and Headwalk at such time as any public agency having jurisdiction over the public waterway shown on Exhibit "A" rescinds or revokes Irvine's permission to keep said Viewing Platform and Headwalk in said waterway.

7. Each and every of the obligations, covenants, conditions and restrictions of this Agreement shall inure to the benefit of and be binding upon and enforceable against, as the case may require, the successors and assigns of Irvine and City.

8. This Agreement constitutes the entire agreement between the parties hereto as to the subject matter hereof and all prior and contemporaneous negotiations and oral agreements acceptable to both parties are included herein. No amendment or other modification of this Agreement shall be effective or enforceable unless in writing signed by the duly authorized representative of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed with all the formalities


COASTAL COMMISSION

EXHIBIT # 8
PAGE 3 OF 5

required by law on the date set forth opposite their respective signatures.

THE IRVINE COMPANY

By [Signature] Vice President ★ Date 5-14-75
By [Signature] Assistant Secretary ★ Date 5-14-75



CITY OF NEWPORT BEACH

By [Signature] Vice Mayor ★ Date 5-29-75



ATTEST:

[Signature]
Clerk of the City of
Newport Beach

Date MAY 30 1975

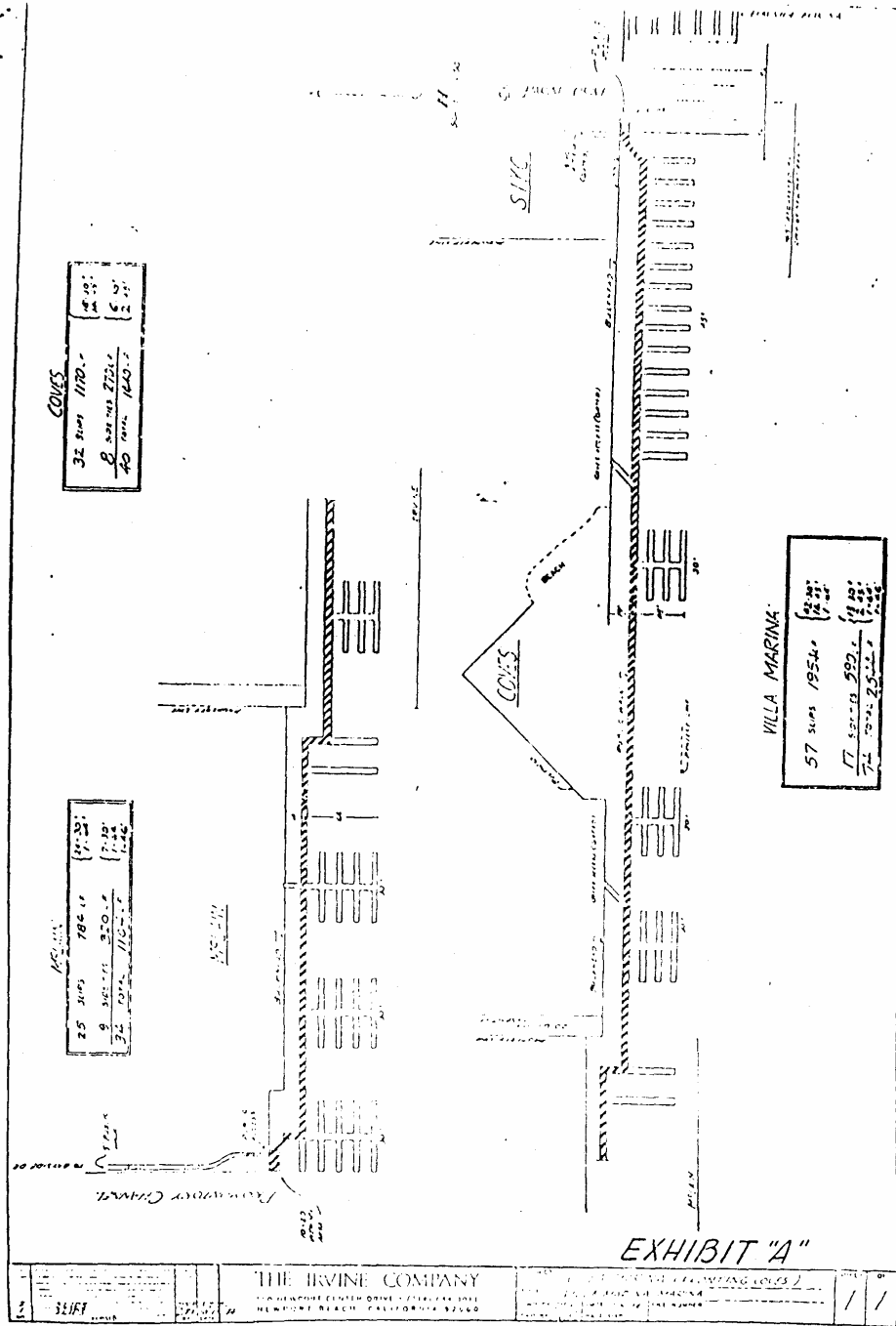
APPROVED AS TO FORM:

[Signature]
City Attorney

Date May 23, 1975

COASTAL COMMISSION

EXHIBIT # 8
PAGE 4 OF 5



COASTAL COMMISSION

EXHIBIT # 8
PAGE 5 OF 5

01/24/2007 14:52

9496443229

CNB PLANNING

PAGE 02/03



CITY OF NEWPORT BEACH

PLANNING DEPARTMENT

January 24, 2007

RECEIVED
South Coast Region

JAN 24 2007

Teresa Henry, District Manager
California Coastal Commission
200 Oceangate, 10th floor
Long Beach, California 90802-4116

CALIFORNIA
COASTAL COMMISSION

Re: Coastal Development Permit application 5-06-145
919 Bayside Drive

Dear Teresa,

It was a pleasure to speak with you today regarding the redevelopment effort planned by UGS Development at 919 Bayside Drive.

The project site is currently developed with a 64-unit apartment complex that is planned to be demolished. Construction of a 17-unit, custom lot subdivision with private gated streets is planned. No public access exists through the existing apartment development; however, public access is currently provided from the first public road (Bayside Drive) to Newport Bay around the existing development. The access is along the entire bay frontage of the project site. A public access easement and public walkway presently exists from Bayside Drive along the western boundary of the site where it transitions to a walkway along the existing floating docks. The walkway on the floating docks then continues to the east, south of neighboring properties. This floating walkway is a unique form of access as it exists nowhere in Newport Harbor other than at this location.

The City Council required the enhancement of the existing public access with the approval of the new residential project. The existing concrete walkway must be widened and re-landscaped within the existing 10-foot wide easement. The public walkway on the floating docks will be replaced by an 8-foot wide cantilevered concrete walkway above the existing bulkhead. A new ADA compliant gangway will be provided near the eastern property line to provide public access to the existing walkway on the floating docks. The walkway on the floating docks will otherwise remain unchanged. Public access on the floating dock will continue to the east on the floating dock from the new gangway. The docks west of the new gangway are intended to serve only the boat slips due to security and safety concerns. Enhanced signage denoting public access is also required.

COASTAL COMMISSION

EXHIBIT # 9
PAGE 1 OF 2

CDP 5-06-145
January 24, 2007
Page 2 of 2

The City found the project consistent with the Coastal Land Use Plan and specifically Policy 3.1.5-1, which states in part:

"3.1.5-1 Prohibit new development that incorporate gates...designed to regulate or restrict access where they would inhibit public access to an along the shoreline...

The project does include gates but they are not designed nor do they regulate or inhibit public access because public access is not provided through the proposed gates or internal circulation system. As noted above, enhanced access is provided from Bayside Drive in the present location that will be unaffected by the proposed gates.

Section 30212 of the Coastal Act requires public access from the nearest public roadway to the shoreline except where adequate access already exists nearby. The enhanced access described above clearly meets this criteria and it provides access along the entire shoreline of the project site. The City Council found the enhanced access to be adequate and consistent with Section 30212.

I hope this discussion provides the rationale behind how the City concluded that the project is consistent with this portion of the Newport Beach Coastal Land Use Plan and Coastal Act.

If you have any questions, please do not hesitate to contact me at 949-644-3210 or you can contact me via e-mail at jcampbell@city.newport-beach.ca.us.

Sincerely,


James Campbell
Senior Planner

cc. Carol McDermott, Government Solutions

COASTAL COMMISSION

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