

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
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Long Beach, CA 90802-4302
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W12b

February 27, 2014

TO: Commissioners and Interested Persons

FROM: Sherilyn Sarb, Deputy Director
Teresa Henry, Coastal Program Manager
Charles Posner, Coastal Program Supervisor
Matt Stone, Coastal Program Analyst

SUBJECT: Major Amendment Request No. 1-13 (LCP-5-NB-13-0227-1) to the City of Newport Beach Certified Coastal Land Use Plan. For public hearing and action at the Commission's March 12, 2014 meeting in Long Beach.

SUMMARY OF CLUP AMENDMENT REQUEST NO. 1-13

The Coastal Commission certified the City of Newport Beach Coastal Land Use Plan (CLUP) on October 8, 2009. The current CLUP amendment request submitted for Commission certification by City Council Resolution No. 2013-77, is the City's only CLUP amendment request for 2013.

The proposed CLUP amendment would change the land use designation for the property at 3303 Via Lido from Private Institutions (PI-B) to Multiple-Unit Residential (RM-D, 20-29.9 dwelling units per acre) (Exhibit #1). The proposed new Multiple-Unit Residential land use designation, which would be applied to a 0.4 acre site currently developed with a religious institution (church), would be consistent with the mix of residential and commercial uses on the surrounding properties. The subject property is located one block inland of Newport Bay. The issue raised by this amendment request is adequate provision of visitor-serving commercial uses, coastal-dependent and coastal-related uses, and lower cost visitor and recreation facilities. The only action before the Commission is the change to the land use designation of this property in the City of Newport Beach Certified CLUP. The General Plan and Zoning Code have not been certified by the Commission and are not currently subject to Commission review. The City is not yet fully certified as it does not have an Implementation Plan.

SUMMARY OF STAFF RECOMMENDATION

Coastal Commission staff recommends that the Commission **CERTIFY** the proposed City of Newport Beach Coastal Land Use Plan (CLUP) Amendment as submitted. The motion to accomplish this is found on Page 3.

CONTENTS OF THE CLUP AMENDMENT REQUEST

The proposed CLUP amendment is contained in the Newport Beach City Council Resolution No. 2013-77 (Exhibit #1). The Newport Beach Planning Commission held public hearings for the proposed CLUP amendment on August 22, 2013 and September 5, 2013. The Newport Beach City Council held a public hearing on the matter on November 12, 2013. The City Council adopted Resolution No. 2013-77 on November 12, 2013.

The City of Newport Beach submitted the CLUP Amendment request to the Coastal Commission's South Coast District Office on November 26, 2013. The Amendment request was deemed incomplete by Coastal Commission staff on December 12, 2013. City staff submitted additional information on December 13, 2013. The Amendment request was again deemed incomplete by Coastal Commission staff on December 20, 2013. City staff submitted additional information in response to Coastal Commission staff's second notice of incomplete application on February 14, 2014. After the second submittal of additional information, Coastal Commission staff determined that the amendment request was complete on February 24, 2014.

STANDARD OF REVIEW

The standard of review for land use plan amendments is found in Section 30512 of the Coastal Act. This section requires the Commission to certify a CLUP Amendment if it finds that it meets the requirements of, and is in conformity with, the policies of Chapter 3 of the Coastal Act. Specifically, Section 30512 states: "*(c) The Commission shall certify a land use plan, or any amendments thereto, if it finds that a land use plan meets the requirements of, and is in conformity with, the policies of Chapter 3 (commencing with Section 30200). Except as provided in paragraph (1) of subdivision (a), a decision to certify shall require a majority vote of the appointed membership of the Commission.*"

ADDITIONAL INFORMATION

For further information, please contact *Matt Stone* at the South Coast District Office of the Coastal Commission at (562) 590-5071. The proposed amendment to the City of Newport Beach Certified Coastal Land Use Plan is available for review at the South Coast District office of the Coastal Commission or at the City of Newport Beach Community Development Department. The City of Newport Beach Community Development Department is located at 100 Civic Center Drive, Newport Beach. Assistant City Planner *Makana Nova* is the contact person for this CLUP amendment. Makana Nova may be reached by calling (949) 644-3249.

EXHIBITS

1. City Council Resolution No. 2013-77
2. Aerial view of the property at 3303 Via Lido
3. Proposed CLUP Amendment Map for 3303 Via

I. STAFF RECOMMENDATION

Staff recommends adoption of the following motion and resolution:

Certify the Coastal Land Use Plan as Submitted

MOTION: *“I move that the Commission CERTIFY the City of Newport Beach Coastal Land Use Plan Amendment No. 1-13 as submitted.”*

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

Resolution to Certify the Coastal Land Use Plan as Submitted

The Commission hereby certifies Amendment Request No. 1-13 to the Land Use Plan for the City of Newport Beach as submitted and adopts the findings set forth below on grounds that the land use plan will meet the requirements of and be in conformity with the policies of Chapter 3 of the Coastal Act. Certification of the land use plan complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the plan on the environment, or 2) there are no further feasible alternatives and mitigation measures that would substantially lessen any significant adverse impacts on the environment that will result from certification of the land use plan.

II. FINDINGS

The Commission hereby finds and declares as follows:

A. Description of the CLUP Amendment Request

The proposed land use redesignation will affect one property located within the City of Newport Beach. The property located at 3303 Via Lido is currently designated Private Institutions (PI-B) in the City’s Certified Coastal Land Use Plan (Exhibit #3). The 0.4-acre property, which is one block inland of Newport Bay, is currently developed for a religious institution. No visitor-serving commercial uses, coastal-dependent and coastal-related uses, or lower cost visitor and recreation facilities exist on the property. This amendment proposes to change the land use designation of the property to Multiple-Unit Residential (RM-D). The Certified Coastal Land Use Plan describes this land use designation as follows: *The RM-D category is intended to provide primarily for multi-family residential development containing attached or detached dwelling units.*

B. Coastal Act Policy and Proposed Change to the Land Use Designation

As stated previously, the Coastal Act is the standard of review in the current analysis. The Coastal Act encourages the provision of visitor-serving commercial uses, coastal-dependent and coastal-related uses, and lower cost visitor and recreation facilities. As explained below, the proposed CLUP Amendment is in conformity with all applicable sections of the Coastal Act, including the following:

Section 30222 of the Coastal Act states:

The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.

The property located at 3303 Via Lido is currently designated Private Institutions (PI-B) and the proposed CLUP Amendment involves a request to change the land use designation to Multiple-Unit Residential (RM-D).

The property is located at the southern edge of the Lido Marina Village where visitor-serving retail and commercial uses such as specialty retail uses, restaurants, office uses, the former City Hall site, and churches are currently found. Policies in the certified Coastal Land Use Plan, including 2.1.5-1 to 2.1.5-11, encourage a combination of such visitor-serving retail and local commercial uses in the Lido Marina Village area. The subject property is surrounded by Certified Coastal Land Use Plan designated Multiple-Unit Residential (RM-D), Mixed-Use Water (MU-W), Mixed-Use Vertical (MU-V), Mixed-Use Horizontal (MU-H), General Commercial (CG), Corridor Commercial (CC), Visitor-Serving Commercial (CV), and Public Facilities (PF) uses, which encourage higher priority uses that provide opportunities for the public to enjoy the coast (Exhibit #3).

The designation of the subject property to Multiple-Unit Residential (RM-D), while not a high priority use under the Coastal Act, would not result in the reduction of visitor-serving commercial uses, coastal-dependent and coastal-related uses, and lower cost visitor and recreation facilities because the site is not currently zoned for such uses. In addition, the amendment would not affect the provision and/or maintenance of such existing uses in the Lido Marina Village area, as a new residential use on this site would be compatible with such uses. The proposed land use plan change will serve to support nearby higher priority visitor-serving commercial uses, coastal-dependent and coastal-related uses, and lower cost visitor and recreation facilities. In addition, the land use designations for 3363, 3369 and 3377 Via Lido and 3378 Via Oporto, adjacent to the subject property, were changed from Multiple-Unit Residential (RM) to Mixed-Use Vertical (MU) and approved by the Commission in November 2012 (CLUP Amendment No. 1-11) thereby providing the opportunity for additional higher priority uses in an area where none had previously existed. As such, adequate visitor-serving retail and commercial uses, and the opportunities to develop such uses exist near the subject site, and the new land use designation of the subject site is consistent with the pattern of development and uses in the surrounding area.

Therefore, the proposed amendment, as submitted, would be consistent with Section 30222 of the Coastal Act.

C. California Environmental Quality Act (CEQA)

Pursuant to the California Environmental Quality Act (CEQA) and the California Code of Regulations [Title 14, Sections 13540(f), 13542(a), 13555(b)] the Commission's certification of this LUP amendment must be based in part on a finding that it is consistent with CEQA Section 21080.5(d)(2)(A). That section of the Public Resources Code requires that the Commission's regulatory program require that a proposal not be approved or adopted:

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

The City of Newport Beach is the lead agency for the purposes of California Environmental Quality Act review of the City's CLUP amendment. On November 12, 2013, the City of Newport Beach adopted Mitigated Negative Declaration No. ND2013-001 for the changes proposed by this CLUP amendment. The City concluded that no significant impacts would occur.

The Commission finds that, for the reasons discussed in this report, the proposed CLUP amendment will meet the requirements of the Coastal Act. Certification of the CLUP amendment complies with the California Environmental Quality Act because: 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the plan on the environment, and 2) there are no further feasible alternatives and mitigation measures that would substantially lessen any significant adverse impacts which the CLUP Amendment may have on the environment. The Commission finds that the proposed CLUP amendment will be consistent with Section 21080.5(d)(2)(A) of the Public Resources Code.

RESOLUTION NO. 2013-77

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH APPROVING GENERAL PLAN AMENDMENT NO. GP2012-005 AND COASTAL LAND USE PLAN AMENDMENT NO. LC2013-001 FOR THE LIDO VILLAS PROJECT LOCATED AT 3303 AND 3355 VIA LIDO (PA2012-146)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by DART Development Group, with respect to property located at 3303 and 3355 Via Lido, and legally described as Lots 1201 to 1204 together with that portion of the adjoining alley of Tract 907, as shown on the map recorded in Book 28, Pages 25 to 36, inclusive, of Miscellaneous Maps, records of Orange County, California, together with that portion of Lots 4 and 5 of Tract 1117, in the City of Newport Beach, County of Orange, State of California, as shown on a map recorded in Book 35, Page 48 of Miscellaneous Maps, records of Orange County, California, together with a portion of the 20 foot alley adjoining said Lots 4 and 5 as abandoned by resolution of the City Council of Newport Beach on February 4, 1946, a certified copy of said resolution being recorded March 11, 1946 in Book 1400, Page 149 of Official Records, requesting adoption of a mitigated negative declaration and approval of a General Plan amendment (GPA), Coastal Land Use Plan (CLUP) amendment, Zoning Code amendment, site development review, and tentative tract map.
2. The proposed project consists of the demolition of a 3-story commercial building, a single-story church building (First Church of Christ, Scientist), and a 56-space surface parking lot to accommodate the development of 23 townhouse-style multi-family condominium units on a combined 1.2 acre site. A site development review and tentative tract map are required to allow the development of the 23 unit condominium project on the project site.
3. The General Plan Land Use Element category of the subject property at 3303 Via Lido is Private Institutions (PI, 0.75 FAR). The General Plan Land Use Element category of the subject property at 3355 Via Lido is Multiple-Unit Residential (RM, 20 du/ac).
4. The requested change of the General Plan designation of 3303 Via Lido is from Private Institutions (PI, 0.75 FAR) to Multiple-Unit Residential (RM, 20 du/ac) (General Plan Amendment No. GP2012-005).

5. Council Policy A-18 requires that proposed General Plan amendments be reviewed to determine if a vote of the electorate would be required pursuant to Section 423 of the City Charter. If a General Plan Amendment (separately or cumulatively with other GPA's within the same statistical area within the previous 10 years) generates more than 100 peak hour trips (AM or PM), adds 40,000 square feet of non-residential floor area, or adds more than 100 dwelling units in a statistical area, a vote of the electorate would be required if the City Council approves the GPA.
6. This is the fourth General Plan Amendment that affects Statistical Area B5 since the General Plan update in 2006. The amendment results in seven additional dwelling units and there is no change in square-footage of non-residential floor area. The seven additional units result in an overall decrease in a.m. and p.m. peak hour trips based on the residential/condominium townhouse trip rates provided in Council Policy A-18. Including 80 percent of prior General Plan amendments results in a total increase of 16,275 square feet of nonresidential floor area, 49 a.m. peak hour trips, 65 p.m. peak hour trips, and nine residential dwelling units for Statistical Area B5. As none of the thresholds specified by Charter Section 423 are exceeded, no vote of the electorate is required with the approval of General Plan Amendment No. GP2012-005.
7. The subject property is located within the coastal zone. The Coastal Land Use Plan category of 3303 Via Lido is Private Institutions (PI-B) and the Coastal Land Use Plan category of 3355 Via Lido is Multiple-Unit Residential (RM-D).
8. The requested change to the Coastal Land Use category is consistent with the General Plan Amendment for 3303 Via Lido from Private Institutions (PI-B) to Multiple-Unit Residential (RM-D), Coastal Land Use Plan Amendment No. LC2013-001. The CLUP amendment will not become effective until the amendment to the Coastal Land Use Plan is approved by the Coastal Commission.
9. The Zoning designation of 3303 Via Lido is Private Institutions (PI, 0.75 FAR) and the Zoning designation of 3355 Via Lido is Multi-Unit Residential (RM, 2178). The Zoning Code Amendment to change both parcels on the project site to the PC Zoning District and adoption of the Lido Villas Planned Community will provide consistency with the land use amendments to change the General Plan and Coastal Land Use Plan of 3303 Via Lido.
10. The Planning Commission considered a staff report on the application on August 22, 2013, in the City Hall Council Chambers, 100 Civic Center Drive, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. The Planning Commission continued the item to the September 5, 2013, Planning Commission Meeting.
11. A public hearing was held by the Planning Commission on September 5, 2013, in the City Hall Council Chambers, 100 Civic Center Drive, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the

Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this hearing. At the conclusion of the public hearing, the Planning Commission voted (7 ayes and 0 noes) to adopt Planning Commission Resolution No. 1921 recommending City Council adoption of the Mitigated Negative Declaration and approval of the General Plan Amendment, Coastal Land Use Plan Amendment, Zoning Code Amendment, Site Development Review, and Tentative Tract Map.

12. A public hearing was held by the City Council on November 12, 2013, in the City Hall Council Chambers, 100 Civic Center Drive, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the City Council at this hearing.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. An Initial Study and Mitigated Negative Declaration have been prepared in compliance with the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and City Council Policy K-3.
2. The draft Mitigated Negative Declaration was circulated for a 30-day comment period beginning on July 12, 2013, and ending on August 13, 2013. The environmental document and comments on the document were considered by the City Council in its review of the proposed project.
3. The documents and all material, which constitute the record upon which this decision was based, are on file with the Planning Division, City Hall, 100 Civic Center Drive, Newport Beach, California.
4. On the basis of the entire environmental review record, the proposed project, with mitigation measures, will have a less than significant impact upon the environment and there are no known substantial adverse affects on human beings that would be caused. Additionally, there are no long-term environmental goals that would be compromised by the project, nor cumulative impacts anticipated in connection with the project. The mitigation measures identified and incorporated in the Mitigation Monitoring and Reporting Program are feasible and will reduce the potential environmental impacts to a less than significant level.
5. The City Council finds that judicial challenges to the City's CEQA determinations and approvals of land use projects are costly and time consuming. In addition, project opponents often seek an award of attorneys' fees in such challenges. As project applicants are the primary beneficiaries of such approvals, it is appropriate that such applicants should bear the expense of defending against any such judicial challenge, and bear the responsibility for any costs, attorneys' fees, and damages which may be awarded to a successful challenger.

Therefore, to the fullest extent permitted by law, applicant and property owner shall defend, indemnify, release and hold harmless the City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to the project, the project's approval based on the City's CEQA determination and/or the City's failure to comply with the requirements of any federal, state, or local laws, including, but not limited to, CEQA, General Plan and zoning requirements. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding.

SECTION 3. FINDINGS.

1. Amendments to the General Plan, Coastal Land Use Plan, and Zoning Code are legislative acts and neither the City nor State Planning Law set forth any required findings for either approval or denial of such amendments. However, amendments of the Coastal Land Use Plan must be found consistent with the Coastal Act to be certified by the California Coastal Commission.
2. The requested GPA and resulting land use change is compatible with the existing surrounding uses and planned land uses identified by the General Plan because the project would introduce residential land uses on a property that abuts 3355 Via Lido, which is already designated for residential land use. Additionally, the proposed amendment from PI to RM will be compatible with adjacent residential properties to the east, religious institutional use to the south, and commercial uses to the west. 3355 Via Lido is an unusually shaped parcel and the proposed amendment will create a larger shaped parcel making development more efficient. The Lido Village Subarea has been characterized by underperforming retail uses within the past decade and additional residential units would support commercial properties within the area.
3. The requested GPA from PI to RM does not eliminate existing or future land uses to the overall detriment of the community given the site's small size, location, and surrounding uses. The site is developed with buildings designed for a religious institution, the site does not provide adequate parking, and it is reliant upon off-site and public street parking. Maintaining the site's PI land use designation would maintain the inadequate parking arrangement. The existing buildings would require extensive alterations to accommodate other visitor-serving uses or other institutional uses under the existing PI land use designation.

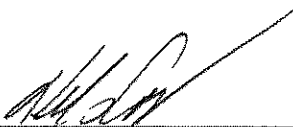
4. The requested GPA and resulting land use change is consistent with other applicable land use policies of the General Plan. Consistent with General Plan Policy 6.9.1 (Priority Uses) for Lido Village, the project site is located in an area of Lido Village where multi-family uses are planned and encouraged. The size, density and character of the proposed dwelling units complement the existing land uses in the project area and include design elements consistent with Land Use Element Policy 5.1.9 (Character and Quality of Multi-Family Residential) that require multi-family dwellings to be designed to convey a high quality architectural character. Consistent with General Plan Policy LU 6.2.1 (Residential Supply), the provision of 23 townhomes on the site would help the City meet its regional housing needs.
5. The requested CLUP amendment is necessary to maintain consistency with the recommended GPA land use designation. The CLUP amendment is consistent with other applicable policies of the CLUP related to land use, public access, and resource protection. The project would not limit the potential to place coastal-development and coastal-related land uses within Lido Village given the site's location and existing adjacent and planned uses. The site is separated from Newport Bay by Via Lido and private development and the majority of the 1.2 acre site is designated for residential use. The site is also separated from nearby commercial uses by public roadways with the exception of the small commercial property to the north of the project site. The site does not provide public access to the coast and development will reduce the site's current demand for public parking with the elimination of the existing private institutional use that does not provide off-street parking. The proposed Planned Community (PC) Zoning would apply appropriate site and project specific setbacks and height limits to the project site given the site's urban location and all required parking is provided on-site. The site is fully developed and does not support any natural resources and all potential environmental impacts associated with the project are appropriately addressed through standard building permit procedures and the mitigation measures identified in the Mitigated Negative Declaration.
6. The future development of the property affected by the proposed amendments will be consistent with the goals and policies of the Land Use Element of the General Plan and the Coastal Land Use Plan. The land use change implements the goals and policies of the General Plan for growth and change, residential supply, and priority uses identified for the Lido Village Sub-Area by accommodating multi-family residential development within the Lido Triangle. The proposed project does not further limit the potential to place coastal-dependant, coastal-related, visitor-serving, or recreational land uses within lido Village and the project would not conflict with Policy 2.4.1-3 of the Coastal Land Use Plan.

SECTION 4. DECISION.

NOW THEREFORE, the City Council of the City of Newport Beach, California, hereby resolves as follows:

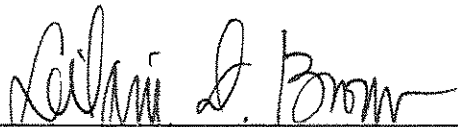
1. The City Council of the City of Newport Beach hereby approves General Plan Amendment Permit No. GP2012-005 as depicted in Exhibit "A" and Local Coastal Program Amendment No. LC2013-001 as depicted in Exhibit "B", which is attached hereto and incorporated by reference.
2. The City Council of the City of Newport Beach hereby authorizes submittal of the Local Coastal Program CLUP Amendment to the California Coastal Commission for review and approval.
3. The City's certified Coastal Land Use Plan, including this amendment shall be implemented in a manner fully in conformity with the Coastal Act.
4. These actions shall take effect automatically upon Coastal Commission action, unless the Coastal Commission proposes suggested modifications to the proposed Coastal Land Use Plan Amendment. In the event that the Coastal Commission approves the Amendment with suggested modifications, City approval of the modified Amendment shall require a separate action by the City Council following Coastal Commission approval. In this case, the Amendment would become effective upon the effective date of the Coastal Commission certification of the modified Amendment.

Passed and adopted by the City Council of Newport Beach at a regular meeting held on the 12th day of November, 2013.



Keith D. Curry, Mayor

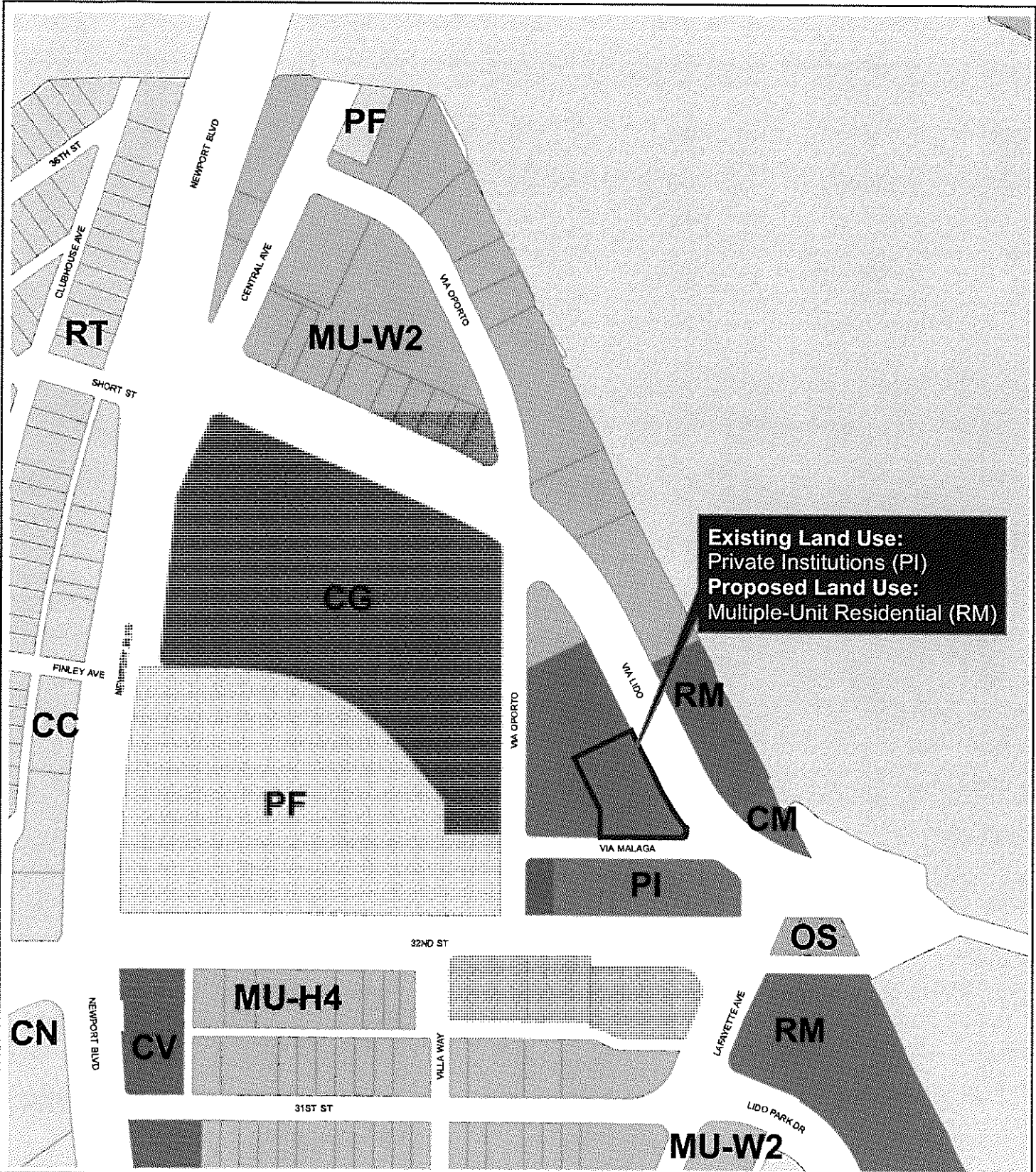
ATTEST:



Leilani I. Brown, City Clerk



Exhibit "A"
General Plan Land Use Map
Amendment



GP2012-005 (PA2012-146)
 General Plan Amendment
 3303 Via Lido

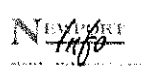
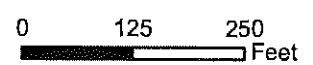
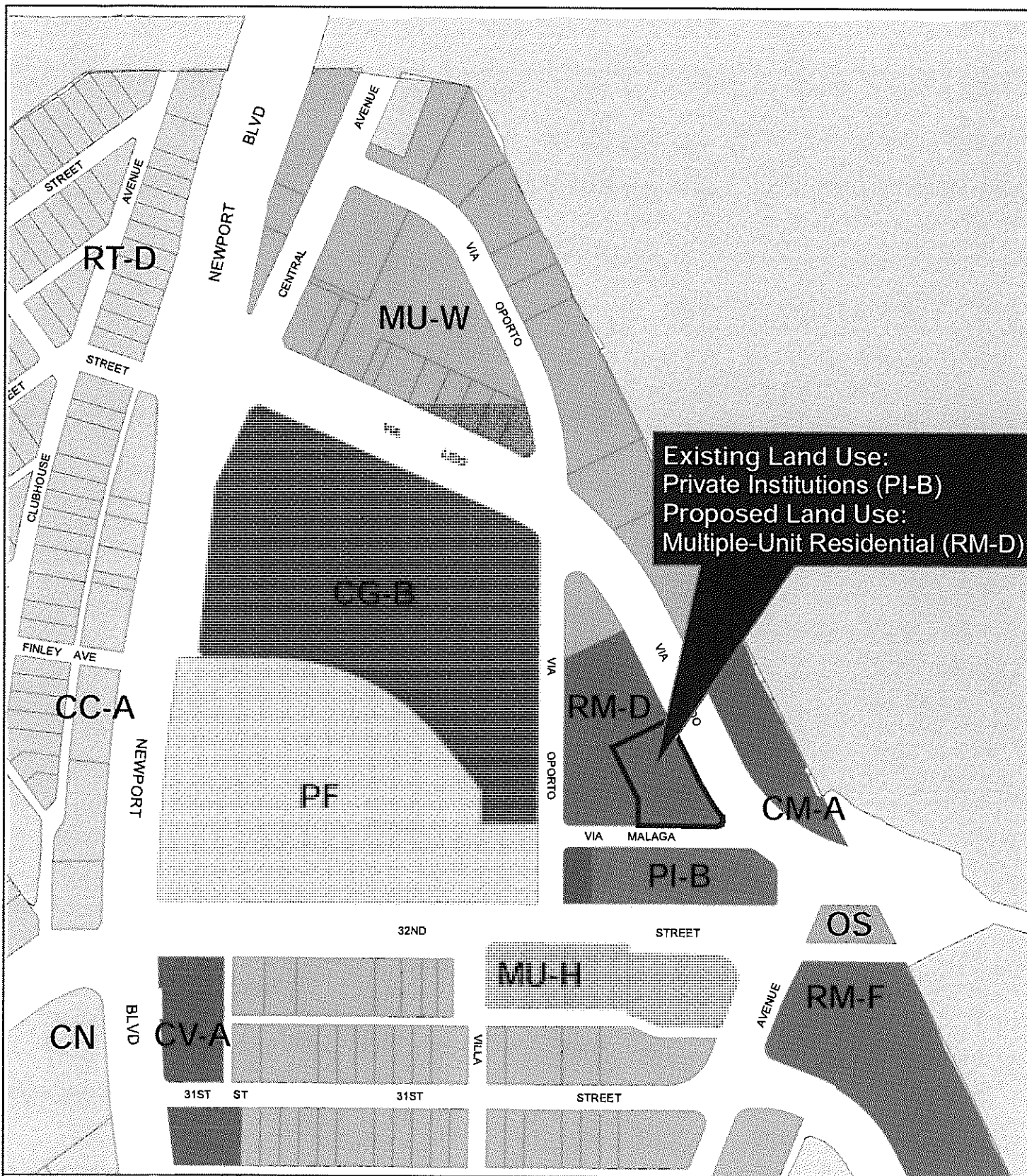
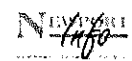
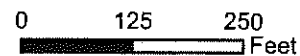


Exhibit "B"
Coastal Plan Land Use Plan
Amendment



LC2013-001 (PA2012-146)
Coastal Land Use Plan Amendment
3303 Via Lido



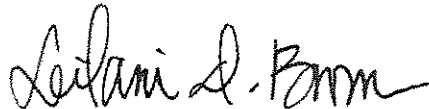
STATE OF CALIFORNIA }
COUNTY OF ORANGE }
CITY OF NEWPORT BEACH } ss.

I, Leilani I. Brown, City Clerk of the City of Newport Beach, California, do hereby certify that the whole number of members of the City Council is seven; that the foregoing resolution, being Resolution No. 2013-77 was duly and regularly introduced before and adopted by the City Council of said City at a regular meeting of said Council, duly and regularly held on the 12th day of November, 2013, and that the same was so passed and adopted by the following vote, to wit:

Ayes: Gardner, Petros, Hill, Selich, Henn, Daigle, Mayor Curry

Nays: None

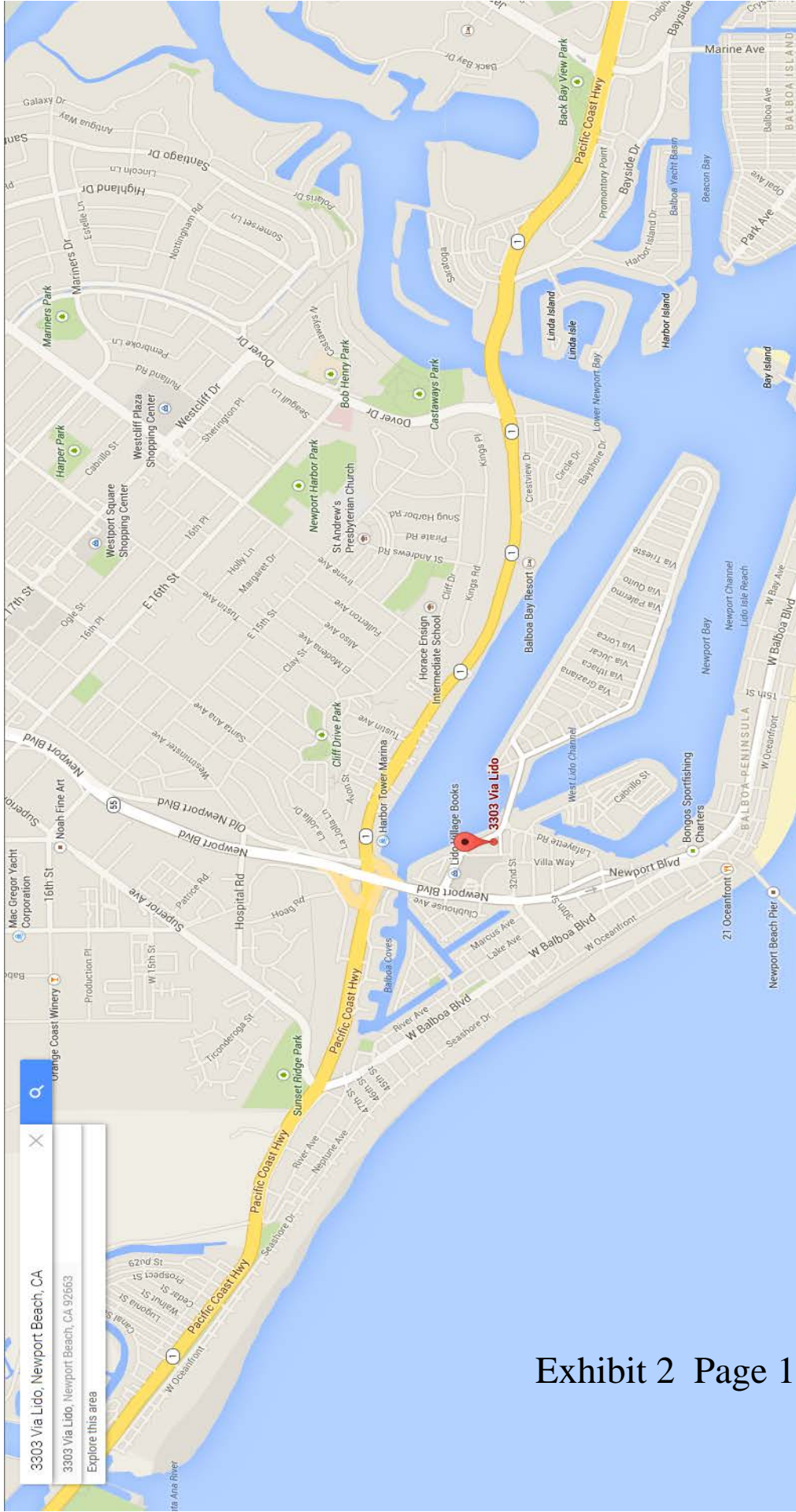
IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the official seal of said City this 13th day of November, 2013.

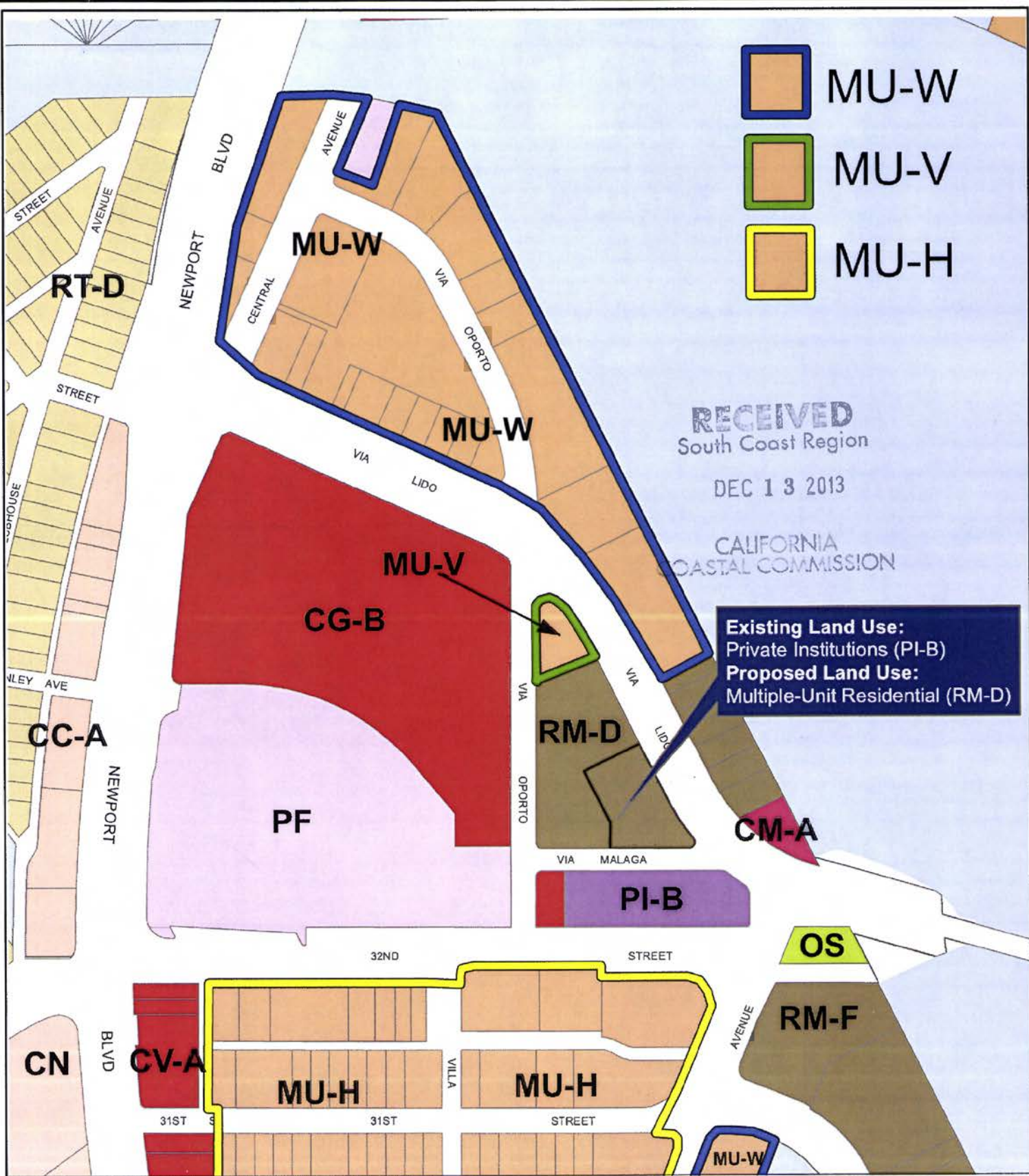


City Clerk
Newport Beach, California

(Seal)







LC2013-001 (PA2012-146)
Coastal Land Use Plan Amendment
3303 Via Lido

