CALIFORNIA COASTAL COMMISSION

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





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ADDENDUM

December 9, 2015

TO: Coastal Commissioners and Interested Parties

FROM: South Coast District Staff

SUBJECT: ADDENDUM TO ITEM Th20a, LCP-5-NPB-MAJ-14-0820-2 (BACK BAY LANDING, NEWPORT BEACH) FOR THE COMMISSION MEETING OF THURSDAY, DECEMBER 10, 2015.

CHANGES TO STAFF REPORT

Commission staff recommends modifications to the staff report dated November 25, 2015.

A. Page 3 – Add the following Exhibits to the Exhibits List, as follows:

Language to be added to the findings is shown in *<u>underlined italicized bold text</u>*, and language to be deleted is identified by strike-out.

EXHIBITS

- 1. Location Map
- 2. City Council Resolution No. 2014-12
- 3. Letter from the City of Newport Beach dated November 3, 2015
- 4. Shoreline Height Limitation Zone Map
- 5. Coastal Access and Regional Trail Connection
- 6. Public Correspondence
- 7. Parcel Map
- 8. Existing Bulkhead/Seawall and Proposed Bulkhead/Seawall Site Plan
- 9. Bulkhead/Seawall Cross-Section
- 10. Photo of subject site with sandy area fronting the bay
- 11. 1927 Aerial Site Photo
- 12. Marine Habitat Map
- 13. Upper Newport Bay State Marine Conservation Area
- 14. Land Use Comparison Table

B. Page 4 – Revise the suggested modifications to Section 2.1.9, as follows:

Original suggested modifications shown in strikeout and <u>underline text</u>; revisions to those modifications as a result of this addendum are shown in *bold double strikeout italies* and *bold double-underline italics*.

2.1.9 Back Bay Landing

Located <u>at 300 East Coast Highway</u> at the northwesterly corner of the intersection of East Coast Highway and Bayside Drive, the Back Bay Landing site is an approximately 7-acre <u>privately-owned</u> site adjacent to the Upper Newport Bay. The site is the landside portion of Parcel 3 of Parcel Map 93-111 and is currently improved with existing structures and paved areas utilized for outdoor storage space of RVs and small boats, parking and restrooms facilities for the Bayside Marina, a kayak rental and launch facility, parking and access to Pearson's Port <u>seafood</u> <u>market</u> and marine service equipment storage under the Coast Highway Bridge.

The site would accommodate the development of an integrated, mixed-use waterfront project consisting of coastal dependent and coastal related visitor-serving commercial and recreational uses allowed in the current CLUP CM-A and CM-B designation, while allowing for limited freestanding multifamily residential and mixed-use structures with residential uses above the ground floor. Residential development would be contingent upon the concurrent development of the above-referenced marine-related and visitor-serving commercial and recreational facilities on the ground floor, *including a boat storage facility*. including the enclosed dry stack boat storage facility, and completion of a new public bayfront promenade connecting with Bayside Drive and Newport Dunes/County trails. The public bayfront promenade shall be continuous along the waterfront and connect the sidewalks along East Coast Highway at one end (west, to and along the shoreline of Back Bay Landing, then continuing along a waterfront accessway that is adjacent to the mobile home development located on Parcel 2 of Parcel Map 93-111) and then to the bike and waterfront pedestrian access *along the Marina Clubhouse and marina* at the Newport Dunes recreation area at the other end (east). Bike lanes and pedestrian access will be provided along Bayside Drive from the intersection of Bayside Drive/East Coast Highway intersection running northerly to the terminus of Bayside Drive at the Newport Dunes recreation area as shown on Coastal Access Map 3-1 and Bikeways and Trails: Map 2. These public bike and pedestrian improvements shall occur prior to or concurrent with any new development at Back Bay Landing.

C. Page 5 – Revise the suggested modifications to Policy 2.1.9-1, as follows: Original suggested modifications shown in strikeout and underline text; revisions to those modifications as a result of this addendum are shown in hold double strikeout italias and hold

modifications as a result of this addendum are shown in *bold double strikeout italies* and *bold double-underline italics*.

Policy 2.1.9-1

The Back Bay Landing site shall be developed as a unified site with <u>coastal-dependent</u>, <u>coastal-related</u>, and <u>visitor-serving development</u> as priority uses, with residential uses allowed above the ground floor onlymarine-related and visitor-serving commercial and recreational uses. Limited freestanding multifamily residential and mixed-use structures with residential uses above the ground floor are allowed as integrated uses as described below.

The Mixed Use Horizontal MU-H category is applicable to the project(s) site; permitted uses include those allowed under the CM, CV, RM, and MU-V categories; however, a minimum of 50 percent of the permitted building square footage shall be devoted to nonresidential uses;

The Mixed-Use Water Related – MU-W category is applicable to the project(s) site; it is intended to provide for commercial development on or near the bay in a manner that will encourage the continuation of coastal-dependent and coastal-related uses and visitor-serving uses, as well as allow for the development of mixed-use structures with residential uses above the ground floor. Freestanding residential uses shall be prohibited. Overnight accommodations (e.g. hotels, motels, hostels) are allowed. Limited Use Overnight Visitor Accommodations (e.g. time shares, fractionals, condominium-hotels) may be permitted in lieu of allowable residential development provided the use is above the ground floor. <u>A minimum floor area to land area ratio of 0.25 and a maximum of 0.5 shall be used for non-residential uses. The amount of residential floor area shall not exceed the amount of non-residential floor area (commercial plus boat storage).</u>

The site shall be limited to a maximum floor area to land area ratio as established in General Plan Land Use Element Anomaly Cap No. 80. <u>A minimum of 50 percent of the residential units shall be developed in mixed-use buildings with nonresidential use on the ground floor.</u>

The boat storage, public promenade and public plazas, shall, as priority uses, be sited adjacent to the bayfront, with the public launch area and boat storage on the western/northwestern bayfront edge of the site, adjacent to the existing Pearson's Port seafood market. A seafood market is planned to be preserved as a priority visitor-serving/coastal-related commercial use.

A public coastal access proposal shall be submitted with any coastal development permit application for Parcel 3 (Back Bay Landing) which Development shall incorporate amenities that assure access for the coastal visitors public, including the development of a public pedestrian promenade along the bayfront (as described in Policy 2.1.9-2); bikeways with connections to existing regional trails and paths; an enclosed dry stack boat storage facility; a public launch area for non-trailered, non-motorized watercraft; public access parking; marina parking; public restrooms; and public plazas and open spaces that provide public views, view corridors, and new coastal view opportunities.

Bayside Drive shall be improved on both sides with a new Class 2 (on-street) bike lane up to Bayside Way and a new Class 3 (shared-use) bikeway east of Bayside Way. A Class 1 (offstreet) bikeway and pedestrian trail will also be provided on the east side of Bayside Drive originating at the Bayside Drive/East Coast Highway intersection and running northerly to the terminus of Bayside Drive at the Newport Dunes recreation area to accommodate both cyclists and pedestrians. This improvement shall serve as an enhanced link between the new public bayfront promenade and the existing City and County trail systems and the Newport Dunes recreation area.

The site shall be developed as a unified site to prevent fragmentation and to assure each use's viability, quality, and compatibility with adjoining uses. Development shall be designed and

planned to achieve a high level of architectural quality with pedestrian, non-automobile and vehicular circulation and adequate parking provided.

D. Page 6 – Revise the suggested modifications to Policy 2.1.9-2, as follows:

Original suggested modifications shown in strikeout and <u>underline text</u>; revisions to those modifications as a result of this addendum are shown in *bold double strikeout italies* and <u>bold</u> <u>double-underline italies</u>.

Policy 2.1.9-2

A public bayfront pedestrian promenade shall be continuous along the waterfront and connect the sidewalks along East Coast Highway at one end (west), to and along the shoreline of Back Bay Landing, then continuing along a waterfront accessway that is adjacent to the mobile home development located on Parcel 2 of Parcel Map 93-111 and then connecting to the waterfront pedestrian access *along the Marina Clubhouse and marina* at the Newport Dunes recreation area at the other end (east). These public access improvements shall be provided and made available for public use *prior to or* concurrent with the development of the Back Bay Landing site. Restrictions on the hours of public access, if any, and landscape improvements shall only be established if they are approved as part of a coastal development permit *approval* for development of Back Bay Landing.

E. Page 6 – Revise the suggested modifications to Policy 2.1.9-3, as follows:

Original suggested modifications shown in strikeout and <u>underline text</u>; revisions to those modifications as a result of this addendum are shown in *bold double strikeout italies* and <u>bold</u> <u>double-underline italies</u>.

Policy 2.1.9-3

As a condition of approval on any coastal development permit issued for development of the Back Bay Landing site, the applicant/landowner shall record a public easement, or an Offer to Dedicate (OTD) a public access easement, across the entire width and length of the public accessways described in Policy 2.9.1-2, to include the marina accessway adjacent to the mobile home development, including the private beach/submerged fee owned land located on Parcel 2 of Parcel Map 93-111-including over the marina accessway adjacent to the mobile home development and also across the private beach/submerged fee owned land located on Parcel 3 of Parcel Map 93-111, and across any portion of Parcel 2 underlying the private beach or marina access way necessary to provide sufficient width to complete a continuous, connected, bayfront walkway.

F. Page 6 – Delete the suggested modification adding Policy 2.1.9-6, as follows:

Deletion shown in double strikeout.

<u>Policy 2.1.9-6</u> <u>Site and design new development at the Back Bay Landing site in accordance with Policy</u> <u>2.8.6-10.</u>

G. Page 9 – Revise third paragraph to clarify findings, as follows:

Language to be added to the findings below are shown in <u>underlined italicized bold text</u>, and language to be deleted is identified by strike-out.

The subject property is located northwest of the intersection of East Coast Highway and Bayside Drive and is legally described as Parcel 3 of Parcel Map No. PM 93-111 (*Exhibit No. 7*). The bayfronting portion of the site is a sandy beach. Surrounding land uses include the adjacent Bayside Village Mobile Home development on Parcels 2 and 3 of PM 93-111 to the east, the Upper Newport Bay and Channel located to the north and west, and the Balboa Marina and Linda Isle is located south of the East Coast Highway bridge, which bisects the site.

H. Page 11 – Revise second paragraph to clarify findings, as follows:

Language to be added to the findings below are shown in *<u>underlined italicized bold text</u>*, and language to be deleted is identified by strike-out.

Public Access

The subject site is a bayfront lot that currently provides public access opportunities to the bay such as: outdoor storage of recreational vehicles and small boats on trailers; kayak and paddle board rental facility; parking lot and restrooms for the Bayside Marina, and Pearson's Port floating fish market. Unobstructed access to these commercial facilities is available at all times of the day. The public can enter from Bayside Drive by foot, bike or automobile (parking is available). Shoreline access is available from the parking lot and the area also includes a rental and launch site to the bay for kayaks and paddle boards. During lower tides a sandy *beach is present along the subject site shoreline that is accessible to the public.* The subject site is also located along a major highway (East Coast Highway), near existing City and County trail systems and the Newport Dunes recreation area and therefore serves as an important link to these other public access opportunities. In addition, part of the subject site includes a bayfront portion adjacent to the existing mobile home development where an existing waterfront accessway currently exists. *The subject site provides an important public access and* recreational opportunity. But it is also an important potential public access linkage along the waterfront between E Coast Highway and the adjacent Newport Dunes public recreation area. Therefore these access and recreational opportunities need to be protected and expanded. The subject site serves as an important location that provides public access to the bay and public access is high priority use under the Coastal Act.

I. Page 12 – Revise third paragraph to clarify findings, as follows:

Language to be added to the findings below are shown in *<u>underlined italicized bold text</u>*, and language to be deleted is identified by strike-out.

Hazards

The subject site, *Parcel 3*, is a bay front lot with a sandy beach fronting the bay. <u>No</u> <u>bulkhead/seawall currently exists on the portion of the subject site that is contemplated for a</u>

mixed-use redevelopment (Exhibit No. 8). The waterfront portion of the property is currently subject to inundation, flooding, wave impacts, and erosion and will be exposed to increased risks from these coastal hazards with rising sea level. The higher elevations on the site may also eventually be at risk as sea level rises and increases the inland extent of coastal hazards. Thus, development on the site will require review for sea level rise effects. No bulkhead/seawall currently exists on site *on the portion of the subject site that is contemplated for a mixed-use redevelopment*. The City has identified that future development of the Back Bay Landing site would include construction of a bulkhead/seawall *that would not extend past the highest high water elevation of 7.86 relative to Mean Lower Low Water or 7.48'/NAVD 88 (Exhibit No. 8 & No. 9), in order to preserve the natural profile of the shoreline. Any proposed bulkhead would be subject to a determination that it is consistent with the land use planning policies of the Coastal Act and the Newport Beach LUP.*

In a letter dated December 4, 2015, the property owner's representative asserts that the development being contemplated at the site would be a coastal dependent use that would gualify for shoreline protection under Section 30235 of the Coastal Act and equivalent LUP policies. The Commission's action on this LUP amendment wouldn't make changes to the LUP relative to the existing hazards policies in the LUP, and no allowance or disallowance of shoreline protection is included. The reviewing authority of any coastal development permit application will consider all applicable policies and make a determination as to consistency at the time of that review. At that time alternatives will need to be considered that appropriately site the development and address any hazards in a manner consistent with the Coastal Act and LUP, as applicable.

J. Page 13 – Revise fourth paragraph to clarify findings, as follows:

Language to be added to the findings below are shown in *<u>underlined italicized bold text</u>*, and language to be deleted is identified by strike-out.

Biological Resources

The subject site is a bay front lot with a sandy beach fronting the bay (*Exhibit No. 10*). Based on aerial photographs dated 1927 supplied by the landowner it appears the shoreline of the subject site along the channel, between the E Coast Highway bridge and mobilehome park, was present prior to any dredging or other development of the site (Exhibit No. 11). The marina fronting the mobile home development was dredged out in approximately 1968, but the shoreline fronting the portion of the subject site that is contemplated for redevelopment has been present for decades. With the subject site's location adjacent to the bay, it is located adjacent to intertidal areas, wetlands and sensitive habitat such as pickleweed and eelgrass (Exhibit No. 12). The shoreline habitat located adjacent to the subject site contains important biological resources that may be adversely impacted by development at the subject site. The importance of the habitat found in the waters fronting the site is underscored by the designation of these waters as a Marine Protected Area (MPA) by the California Department of Fish and Wildlife. More specifically, the upper bay, inland of the E Coast Highway bridge, is designated as the Upper Newport Bay State Marine Conservation Area (Exhibit No. 13). MPAs are a type of marine managed area where marine or estuarine waters are set aside primarily to protect or conserve marine life and associated habitats.

K. Page 18 – Revise fourth paragraph to clarify findings, as follows:

Language to be added to the findings below are shown in *<u>underlined italicized bold text</u>*, and language to be deleted is identified by strike-out.

As stated, future development of the Back Bay Landing site would result in significant increased development on the subject site and as a result promote larger usage of the site by the public and therefore public access opportunities need to be enhanced and provided. Commission staff discussed this issue with the City and as a result of those discussions; the City provided additional policy language stating that public access would be available along a waterfront accessway that is *located between an existing bulkhead and an* adjacent to the mobile home development (Exhibit No. 1 & No. 8). However, continuous public access along the waterfront accessway is currently hindered by a private beach for residents of the mobile home development that bisects the waterfront accessway (the private beach and mobile home development is owned by the same property owner of the Back Bay Landing site) (Exhibit No. 1). If continuous public access was available along this waterfront accessway, it would provide a significant public access opportunity by establishing a public bayfront pedestrian promenade along the waterfront by connecting the sidewalks along East Coast Highway at one end (west) to and along the shoreline of Back Bay Landing, then continuing along the waterfront accessway adjacent to the mobile home development and then connecting to the water pedestrian access along the Marina Clubhouse and marina at the Newport Dunes recreation area the other end (east). Having such an unimpeded waterfront accessway available for the public would promote public access. Commission staff modified the City's language and proposed Policy 2.1.9-2, which would require an unimpeded public bayfront pedestrian accessway. It would also help to accommodate the increased demand for access to and along the waterfront and to the development at the Back Bay Landing site that future development of the site will spur.



PCR

Back Bay Landing Source: Templeton Planning Group, 2013.

Exhibit No. 7 Page 1 of 1



EXISTING & Future Seawall Condition

1 1

Bayside Village mobile home park recreation center and private beach.



LEG	LEGEND		
	Existing Seawall		
	Proposed Seawall		

Proposed CLUP Amendment Request No. LCP-5-NPB-14-0820-2

12-07-2015

NTS

EXISTING & FUTURE SEAWALL CONDITION



Exhibit No. 8 Page 1 of 1

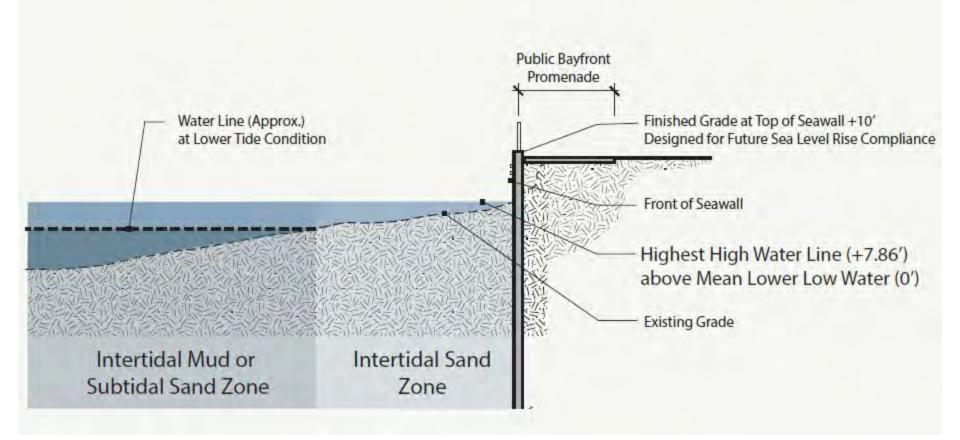


Exhibit No. 9 Page 1 of 1







Exhibit No. 11 Page 1 of 1



http://www.amazon.com/b/ref=sv_t_7?ie=UTF8&node=11021999011



Upper Newport Bay State Marine Conservation Area

Southern California Marine Protected Areas (MPAs), Established January 2012



Site Overview

Photos are representative of the Bouth Coast Region and may not be within this MPA

What is an MPA?

MPAs are a type of <u>marine managed area</u> (MMA) where marine or estuarine waters are set aside primarily to protect or conserve marine life and associated habitats. California has a coastal network of 124 protected areas designed to help increase the coherence and effectiveness of protecting the state's marine life, habitats, and ecosystems. The network includes three types of MPA: <u>state marine reserve</u> (SMR), <u>state marine conservation</u> <u>area</u> (SMCA), and <u>state marine park</u> (SMP); one MMA: <u>state marine recerve</u> (SMR), <u>state marine conservation</u> and <u>special closures</u>. There are 119 MPAs, 5 MMAs and 15 special closures, each with unique boundaries and regulations in the network. Non-consumptive activities, restoration, and permitted scientific research are allowed.

What is an SMCA?

An SMCA is a type of MPA that protects resources by allowing for only specific types of recreational and/or commercial take to occur.

Upper Newport Bay SMCA Overview & Key Habitats

MPA size: 1.24 square miles

- Tidal flats: 5.68 miles
- Coastal marsh: 8.09 miles
- Marsh: 0.73 square miles
- · Estuary: 1.21 square miles
- Unidentified (all depths): 1.21 square miles

Where is Upper Newport Bay SMCA?



Boundary: This area includes the waters below the mean high tide line within Upper Newport Bay northeastward of Pacific Coast Highway approximated by a line between the following two points: 33° 37.02' N. lat. 117° 54.24' W. long.; 33° 37.02' N. lat. 117° 54.32' W. long.; and southwestward of Jamboree Road approximated by a line between the following

Jamboree Road approximated by a line between the to two points: 33° 39.07' N. lat. 117° 52.02' W. long.; and 33° 39.03' N. lat. 117° 52.01' W. long.

Boundaries and Regulations

Permitted/Prohibited Uses: Take of all living marine resources is prohibited EXCEPT the recreational take of <u>finfish</u> by hock-and-line from shore only, or take pursuant to maintenance dredging, habitat restoration, research and education programs, maintenance of artificial structures, and operation and maintenance of existing facilities inside the conservation area per any required federal, state and local permits, or activities pursuant to Section 630, or as otherwise authorized by the department. In waters below the mean high tide line inside the Upper Newport Bay Ecological Reserve, northeastward of a line connecting Shellmaker Island (33° 37.36' N. lat. 117° 53.51' W. long.) and North Star Beach (33° apply:

- Swimming is allowed only in the area between North Star Beach and mid-channel.
- 2. Boats are limited to speeds less than five miles per hour.
- Shoreline access is limited to established trails, paths, or other designated areas.

Upper Newport Bay State Marine Conservation Area

How and Why Upper Newport Bay was Chosen for an SMCA

MPAs were designed through a collaborative, regional public process by a cross-interest regional stakeholder group (RSG). Using scientific criteria, public input and local resource knowledge the RSG developed MPA proposals. RSG proposals included site specific rationale (why the site should be an MPA-*included below*), the classification (type of MPA), boundaries, and regulations. Final MPA proposals were sent to the California Fish and Game Commission (Commission) for their adoption process. Upper Newport Bay SMCA was adopted by the Commission in 2012.

South Coast RSG Identified Rationale for Upper Newport Bay SMCA:

This wetland currently under restoration/dredging activities offers limited recreational fishing opportunities while protecting nursery habitats for several fish species such as halibut, and sand bass. Monitoring programs are in place due to restoration activities that are ongoing.

Species Likely to Benefit from the Establishment of MPAs in California

Species likely to benefit from establishing an MPA are those, whose home range, behavior, reproduction, exploitation rate or population status indicates that they may benefit from spatial management. This includes species that are directly targeted by fisheries, those which are caught incidental to fishing for the target species (bycatch) and which cannot be returned to the water with a high rate of survival, and those which may be indirectly impacted through ecological changes within MPAs.

For a list of species likely to benefit from MPAs statewide: www.dfg.ca.gov/marine/mpa/species.asp For a list of species likely to benefit from south coast MPAs: www.dfg.ca.gov/marine/pdfs/binders_sc/b2g.pdf

South Coast Regional Resources

California MPA Overview: www.wildlife.ca.gov/MPAs/Network-Overview South Coast Regional Goals and Objectives: www.dfg.ca.gov/marine/pdfs/binders_sc/b1n.pdf California MLPA South Coast Study Region Description of MPAs: www.dfg.ca.gov/marine/pdfs/binders_sc/b1pv.pdf Methods Used to Evaluate MPAs in the South Coast: www.dfg.ca.gov/marine/pdfs/binders_sc/b2p.pdf MPA Research and Monitoring Activities: www.wildlife.ca.gov/MPAs/Research-And-Monitoring Regional MPA Statistics: www.wildlife.ca.gov/MPAs/Statistics Regional Planning History: www.wildlife.ca.gov/Conservation/Marine/MPAs/Planning-Process



Detailed MPA guidebooks maps and brochures: <u>www.wildlife.ca.gov/MPAs/Network</u> California Marine Life Protection Act Marine Protected Areas Master Plan: <u>www.wildlife.ca.gov/Conservation/Marine/MPAs/Master-Plan</u> Marine Life Protection Act Summary and Network Goals: <u>www.wildlife.ca.gov/MPAs/Network-Goals</u>



For more Information, visit: www.wildlife.ca.gov/MPAs

Email: AskMPA@wildlife.ca.gov

MPA Mobile:



Report poaching and polluting, Call CalTIP 1-888-334-2258

The information in this document does not replace the official regulatory language found in the California Code of Regulations Title 14, Section 632 www.wildlife.ca.gov/Conservation/Marine/MPAs/Network/Title-14-Section-632

A publication of the California Department of Fish and Wildlife October 2015

Support documentation for City request of the inclusion of "A minimum floor area to land area ratio of 0.25 and a maximum of 0.5 shall be used for nonresidential" to Policy 2.1.9-1. City accepts that the MU-W designation is appropriate if ground floor residential use is not allowed. It would also prioritize coastal-dependent uses near the bay. However, the MU-W designation also requires a minimum floor area to land area ratio of 0.35 for nonresidential uses, which would result in the unintended consequence of requiring increased development on the site that was not evaluated in the EIR and is not consistent with City's maximum development limit established for the site through the Planned Community Development Plan (PCDP).

City staff recommends adding this sentence to continue to require a minimum 0.25 FAR with the suggested MU-W designation. As you can see from the table below, the maximum square footage allowed in the BBL PCDP is close to meeting the 0.35 min FAR of the MU-W; however, the requested revision to allow 0.25 min FAR retains the design flexibility built into the City's authorization and it would allow for more open space and view corridors at final project design phase.

	c	Comparison of MU-H	MU-W, and BBL PCC	P Development Limit	5	
Prop	oosed	Suggested I	Modification	Adopted Planne	d Community Regula	tions (part of IP)
MU-H	247,116 sf of land area*	MU-W	247,116 sf of land area*	BBL Planned Community Development Plan	Planning Area 1 and 4 (247,116 sf of land area)	Actual FAR
Mixed Use Develop	oments	Mixed-Use Develop	oments	Mixed-Use Develop due to General Plan A	ment (50% Residentia momaly 80 below)	l 50% commercial
Non Residential 0.25 min- 0.5 max	61,779 sf min 123,558 sf max	Non Residential 0.35 min- 0.7 max	86,490 sf min 172,981 sf max	Nonresidential	85,644 sf max	0.34
<u>Residential</u> 1.0 max	247,116 sf max	Residential 0.8 max	197,692 max	Commercial	53,144 sf	1
Nonresidential Onl	у	Nonresidential Onl	у	Boat Storage	32,500 sf	
0.5 max	123,558 sf max	0.5 max	123,558 sf max	Residential	85,644 sf max	0.34

*Note- The total land area of 247,116 sf excludes the area of the walkway adjacent to mobile home park suggested to remain designated CM.

General Plan Anomaly 80

Based on 1:1 ratio for mixed use developments, maximum residential that could be built on site is 85,644 sf. See excerpt from General Plan below.

Anomaly Number	Statistical Area	Land Use Designation	Development Limit (sf)	Development Limit (Other)	Additional Information
80	K-1	MU-H1	Nonresidential development: 131,290 st Mixed-use development: 171,288 st	49 residential units	For mixed-use development, residential floor area shall not exceed a 1:1 ratio to nonresidential floo area
81	K-1	RM		296 residential units	



VIA E-MAIL AND U.S. MAIL

ATTORNEYS AT LAW

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John P. Erskine D 949.477.7633 jerskine@nossaman.com

Refer To File #: 400244-0001

December 4, 2015

Chairman Steve Kinsey and Commissioners California Coastal Commission 45 Fremont Street, #2000 San Francisco, CA 94105

Th20a

Re: LCP Amendment Request No. 2-14 (LCP-5-NPB-14-0820-2) -Back Bay Landing: Comments of Property Owner on November 25, 2015 Staff Report and Staff Suggested Modifications

Dear Chairman Kinsey and Commissioners:

As you may be aware, our firm represents Bayside Village Marina LLC, the property owners of the proposed Back Bay Landing project that is the subject of City of Newport Beach ("City") LCP Amendment Request No. 2-14 (LCP-5-NPB-14-0820-2), scheduled for hearing on Thursday, December 10, 2015 – Agenda Item 20a.

In its November 25, 2015 staff report, Commission staff has recommended approval of the City's LCP Amendment request¹ with several suggested modifications. As indicated below, we do not object to the primary staff modification to Policy 2.1.9-1, which eliminates the proposed ground floor residential and applies the Mixed Use Water Related (MU-W) category to the project site, the requirement that boat storage and other coastal dependent/coastal related and/or visitor-serving commercial uses be sited on the western/northwestern bayfront edge of the site, the additional public launch area for non-motorized watercraft, or the requirement that a public coastal access proposal be submitted with our Coastal Development Permit ("CDP") application for Parcel 3 (Back Bay Landing). We also do not object to Commission staff's inclusion of Policy 2.1.9-4 or 2.1.9-5 addressing sea level rise and requiring preparation and submittal of a shoreline management plan.

We <u>do object</u>, however, to Commission staff's specific proposed language in *Policy* **2.1.9-2** (continuous public bayfront promenade); *Policy* **2.1.9-3** (OTD public access easement – language issues); and *Policy* **2.1.9-6** (site structures to avoid shoreline protective devices for 75 years). Following a brief discussion of the project and the requested CLUP Amendment, we provide facts and legal support for elimination of Policy **2.1.9-6** and revision of Policy **2.1.9-3**.

¹ The LCP Amendment is a request for certification of a CLUP Amendment inasmuch as the City does not have a fully certified LCP.

CLUP Amendment / Project Background / Project Setting

As generally set forth in Section III of the Commission staff report, but more accurately described in the City's certified Back Bay Landing EIR ("City EIR"), the City's CLUP Amendment Request No. 2-14, provides legislative approvals for a future, mixed-use, marine-oriented project known as Back Bay Landing. The Commission staff coastal land use modifications in Policy 2.1.9-1 change the City-approved Mixed Use Horizontal (MU-H) designation to Mixed Use Water-Related (MU-W).

We take issue with some of the descriptions of the existing site conditions. While staff accurately states that the subject site is currently occupied by a paved surface lot used for outdoor storage of recreational vehicles, marina parking and kayak/SUP rentals, neither a routine site inspection nor a review of the City EIR would support the conclusion that the 6.97 acre development site is a "bayfront lot with a sandy beach." As discussed below, <u>some</u> of the site contains intertidal or subtidal sand and mud, but this broad and imprecise characterization of the area <u>below</u> the proposed upland development site is misleading. Likewise, existing conditions described in the City's EIR refute the notion that the site provides "existing public access." While Pearson's Port is a commercial seafood market, and the RV storage and kayak rentals are open for business during daytime hours, the site is private property and has limited commercial access. Both of these staff descriptions of the site are repeated throughout the staff report, and misstate existing conditions.

Shoreline Edge Conditions Require Seawall/Bulkhead

An understanding of shoreline edge conditions and the unacceptable staff-proposed imposition of a single CLUP Policy 2.1.9-6 (avoid shoreline protective devices for 75 years), which ignores overriding Coastal Act policies such as Section 30235, is critical to the viability of the future coastal approvals required for Back Bay Landing.

The existing shoreline is the result of 60 years of dredging, filling and alteration of the lower reach of the Upper Newport Bay. Furthermore, there is no geologic or historical evidence of any natural landform, bluff or cliff on the subject Parcel 3 property. The bayfront edge of the project site is most accurately delineated in <u>4C. Biological Resources</u>, Section 2b. Existing Conditions, (1) Physical Site Conditions," of the BBL Environmental Impact Report (EIR), as follows:

The Back Bay Landing project study area ("study area") consists of a shoreline dominated by hard structures including a bulkhead wall, two cement groins, concrete block riprap revetments, and scrap metal (refer to Figure 4.C-1, Marine Biological Resources Habitat Map, below). There are two small areas of intertidal sand; one is a linear area adjacent to and below the marina parking lot and the other is currently utilized by mobile home park residents as a private recreational area. Nearshore subtidal habitat consists primarily of unvegetated mud bottom, with some vegetated habitat (eelgrass patches) scattered in the shallow areas. The northern portion of the study area is bounded by a constructed salt marsh peninsula (De Anza Bayside Marsh Peninsula). The bottom slopes gently from the intertidal sand and mud areas and bulkhead wall, increasing in depth to support a channel between the

shoreline and the salt marsh peninsula. Tidal elevations within the study area extend from +7.1 mean lower low water (MLLW) elevation to a depth of approximately -8 feet MLLW within the basin and -16 feet MLLW under the East Coast Highway bridge. Water visibility at the time of the survey was approximately 2 to 5 feet. The following section describes the habitat types present within the study area.

See also the attached Marine Habitat Map (Attachment 1), prepared by City Biological consultant Merkel & Associates, Inc., in 2013 and included as Figure 4.C-1 in the Certified EIR. Note that the bayfront edge of the project site is delineated as "disturbed upland," bayward of which is "intertidal sand," "intertidal mud" or "coarse sediments." These multiple site delineations contrast with the oversimplified "sandy beach" description of the intertidal area below the proposed seawall/bulkhead area upland development site.

Upgrade and Completion of Existing Parcel 3 Seawall / Bulkhead Critical to Protection of Existing and Proposed Coastal Dependent Uses; Applicant's Objection to "Hazards" CLUP Policy Modification (Policy 2.1.9-6)

The Project Description and other sections of the Back Bay Landing Certified EIR clearly set forth the importance of a seawall/bulkhead as a key project component on the portion of the Parcel 3 development site that does not presently contain a shoreline protective device. Page 2-14 of the City EIR describes this specific project component as follows:

A new bayfront seawall/bulkhead would be designed, permitted and constructed to protect existing and future development consistent with Coastal Act section 30235 (refer to Section 4.C, Biological Resources, of this Draft EIR for a discussion of project consistency with Section 30235). The new bulkhead and sheetpile wall would be located at the Highest High Water line with backfill as necessary under future engineering requirements (details to be determined during project permitting). The minimum 12-foot wide public bayfront access would be designed along the length of a new seawall/bulkhead to the boundary with the Bayside Village Mobile Home Park, and continue along the project entrance to Bayside Drive.

We have also agreed with Coastal Commission staff that the bayfront walkway/coastal access continue along and above the existing marina seawall/bulkhead.

Existing Seawall / Bulkhead Extends Along Almost Two-Thirds of Parcel 3

Staff's assertion that "no bulkhead/seawall currently exists on site" (Commission Staff Report, page 12, "Hazards") is in error. A seawall/bulkhead, permitted and constructed in 1958-59, exists along approximately 62% of the Parcel 3 shoreline. This seawall exists within the project site and within Parcel 3, which comprise the project boundaries.

Upgrading the existing seawall and constructing a new bulkhead/seawall on the balance of the Parcel 3 bayfront was determined by the property owner, the project technical consultants, Anchor QEA and Fuscoe Engineering, as well as the City, to be critical to protection of existing and proposed coastal dependent uses. These uses include the existing

marina parking and watercraft rentals, the proposed boat storage, expanded marina and public launch/public access parking, the new bayfront promenade and relocated City water and utility lines.

The specific site conditions, including constant erosion of the bayfront edge due to storms, tidal influence, and other geotechnical issues, are well documented (see City EIR Section 4E. Geology and Soils; Table 4.E-2 and 4.E-3 CLUP and Coastal Act Consistency Analysis (see Attachment 2)).

Coastal Act Section 30235 Overrides Section 30253

The Commission staff has provided only a one-sided analysis on hazards and shoreline protective devices, citing Coastal Act section 30253 several times, but providing no mention of Coastal Act section 30235. As the Commission's recently adopted Sea Level Rise (SLR) Policy Guidance Document advises, the Commission has consistently interpreted Section 30235 as a "more specific overriding policy that requires approval of Coastal Development Permits for construction [of seawalls, etc.] intended to protect coastal-dependent uses, or existing structures if the other requirements of Section 30235 are also satisfied" (*Sea Level Rise Policy Guidance Document*, pg. 164, Chap. 8 Legal Context of Adaptation Planning).

The Commission thus will generally permit, as the SLR Policy Guidance Document makes clear, seawalls and other SPDs on projects where:

- (1) there is an existing structure, public beach, or coastal-dependent use that is
- (2) in danger from erosion; and
- (3) the SPD is the least environmentally damaging, feasible alternative and the protection is
- (4) designed to eliminate or mitigate impacts on sand supply.²

The Certified Back Bay Landing EIR provided extensive <u>consistency analysis</u> of both the City's several adopted Commission and Certified CLUP policies applicable to future completion of the existing Parcel 3, Back Bay Landing seawall/bulkhead, but applicable Chapter 3 Coastal Act policies as well (see Attachment 3). Reviewed together, and with the geologic site analysis and facts before the Commission and presented herein, the justification for the seawall/bulkhead is extensive and compelling.

These include the pre-Coastal Act permitted approval of the marina, marina parking area and the associated <u>existing bulkhead seawall</u> which <u>comprises 62% of the bayfront perimeter of the subject parcel</u> (Parcel 3 of Parcel Map 93-111), the evidence of erosion along the non-protected bayfront edge, the adjacent existing as well as proposed coastal-dependent uses, the potential danger to and loss of a main City water vault, and numerous additional factors described in the aforementioned EIR CLUP/Coastal Act <u>Consistency Analysis</u>.

² Chapter 8, SLR Policy Guidance Document, pg. 164.

Conclusion – Facts Presented Herein and City CLUP Hazard Policies Require Elimination of CLUP Policy 2.1.9-6 (Avoidance of Need for Shoreline Protective Device)

The corrected facts set forth above, both from the certified Back Bay Landing EIR and additional historical records, demonstrate that existing coastal dependent structures and an existing seawall/bulkhead covering two-thirds of the bayfront perimeter were permitted and constructed more than a decade prior to the Coastal Act.

The Commission must assure that staff evaluates <u>all</u> CLUP Section 2.8 Hazard and Protective Device policies (2.8.1-2, 2.8.1-3, 2.8.6-5, 2.8.6-6, 2.8.6-8, and 2.8.6-9) in considering a future CDP application for the referenced Back Bay Landing seawall/bulkhead, particularly in light of the need demonstrated on this unique developed site.

Consequently, CLUP Policy 2.1.9-6, requiring our clients to "site and design new development at the Back Bay Landing site in accordance with CLUP policy 2.8.6-10" should be deleted as too narrow and restrictive, and as contrary to the legal protections afforded by Coastal Action Section 30235, and other provisions of the Coastal Act.

Public Access

As stated above, the current Parcel 3 Bayside Village Marina / RV Storage / Pearson's Port development does <u>not</u> provide existing public access. Only limited hour <u>commercial</u> access is provided.

The applicant's project, as submitted and approved by the City in 2014, provided for a new bayfront promenade connecting to the County and City trail system.

The suggested modifications contained in Policy 2.1.9-2 overreach, through the staff requirement of a bayfront accessway along the existing marina accessway, traversing the private beach (previously designated as private by the Commission in the City's certified CLUP), and then connecting to Newport Dunes to the east, <u>all</u> "prior to or concurrent with the development of the Back Bay Landing site." This is infeasible, at a minimum, from a timing standpoint, but remains unsettled as to actual construction methodology.

The applicant would therefore request Commission adoption of the language contained in the City's November 3, 2015 "Proposed Modifications" as set forth in Enclosure 1 – Revised CLUP Amendment attached to the November 25, 2015 Commission staff report.

As indicated above, the applicant is agreeable to the other access-related modifications, including Policy 2.1.9-3 requiring an OTD public access easement with corrections/revisions as set forth by the City.

In summary, the above-referenced Hazard/SPD Policy 2.1.9-6 deletion and our requested revisions to the public access modifications are warranted in light of, respectively, Coastal Act Section 30235 (seawalls permitted) and Section 30214 (time, place and manner restrictions on public access). Application of these Coastal Act provisions will result in the least environmentally damaging alternative and fulfillment of the project objectives set forth in the certified EIR and the City's legislative approvals.

Thank you for the opportunity to submit our comments on the November 25, 2015 staffproposed CLUP Amendment modifications.

Sincerø

John P. Erskine of Nossaman LLP

JPE:dlf Attachments

cc: Dr. Charles Lester Sheralyn Sarb Karl Schwing Chuck Posner Fernie Sy



ATTACHMENT 2

E. Geology and Soils

Table 4.E-2

1

CLUP Policy	Project Consistency Statement
2.8.6 Coastal Erosion	
Policy 2.8.6-5. Permit revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls and other structures altering natural shoreline processes or retaining walls when required to serve coastal-dependent uses or to protect existing principal structures or public beaches in danger from erosion and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply, unless a waiver of future shoreline protection was required by a previous coastal development permit.	Consistent. Pursuant to the BBL PCDP, new seawall/bulkhead structures in Planning Area 1 are restricted to the Highest High Water contour elevation of 7.48' (NAVD 88) and in Planning Area 2 to the 10 contour elevation (NAVD 88) to preserve the natural shoreline profile. The proposed future seawall/bulkhead, consistent with the CLUP Policy and Coastal Act section 30235, is necessary for the protection of existing structures, including marina facilities and marina parking, and public utilities, which are threatened by ongoing erosion; the seawall/bulkhead will also provide support for, and protection of, the proposed public bayfront promenade which will extend along the bayfront and connect with regional coastal trails and Newport Dunes to the east. In addition, the proposed project is occurring within an urban harbor at a location isolated from the nearest open coastal shoreline and longshore littoral sand transport mechanism.
Policy 2.8.6-6. Design and site protective devices to minimize impacts to coastal resources, minimize alteration of natural shoreline processes, provide for coastal access, minimize visual impacts, and eliminate or mitigate adverse impacts on local shoreline sand supply.	 Consistent. The proposed future seawall/bulkhead will be subject to additional City CEQA review, Site Development Review and permitting, as well as processing of a Coastal Development Permit through the California Coastal Commission for the seawall/bulkhead and the future project-level applications for the Back Bay Landing project. Any submitted design will conform to the then-current minimum elevation requirements set by the City of Newport Beach, and as described in the Back Bay Landing Project Description and PCDP to be at a minimum elevation of at least 10 feet above MLLW. This minimum is presently consistent with the City of Newport Beach Harbor Committee Report on Global Warming and Sea Level Rise Effects on Newport Harbor, but will be subject to future City and Coastal Commission requirements applicable at the time of project permitting. The location of the future seawall/bulkhead will minimize impacts to coastal resources, alteration of natural shoreline processes and eliminate or mitigate adverse impacts on local shoreline sand supply for several reasons: 1. The future seawall/bulkhead will be located landward of the mean highest high water line and landward of any potential wetlands or Waters of the U.S.; 2. The seawall/bulkhead is proposed along the edge of an existing, developed marina parking lot (Bayside Village Marina) within an urban harbor at a location

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Table 4.E-2 (Continued)

CLUP Policy	Project Consistency Statement		
	 isolated from the nearest open coastal shoreline and longshore littoral sand transport mechanism; 3. Such seawall/bulkhead will provide protection from bayfront erosion and the sloughing off of tidal slope areas and associated siltation of adjacent navigable channels in the private marina; 		
1	4. The seawall/bulkhead will provide improved bayfront access and protection/support for a new minimum 12-foot wide public walkway/ promenade.		
Policy 2.8.6-8. Limit the use of protective devices to the minimum required to protect existing development and prohibit their use to enlarge or expand areas for new or existing development. "Existing development" for purposes of this policy shall consist only of a principle structure, e.g., resident dwelling, required garage, or second residential unit, and shall not include accessory or ancillary structures such as decks, patios, pools, tennis courts, cabanas, stairs, landscaping, etc.	Consistent. The proposed protective devices would not be used to enlarge or expand area for new development. Moreover, as stated above, such seawall/bulkhead is consistent with Section 30235 of the Coastal Act which states that, "seawallsshall be permitted when required to serve coastal-dependent uses or to protect existing structures." The prop osed future development on-site includes improvement of access to existing (e.g., the marina and marina parking) as well as new (dry stack storage and public bayfront promenade) coastal 'dependent uses, consistent with Policy 2.8.6-5.		
Policy 2.8.6-9. Require property owners to record a waiver of future shoreline protection for new development during the economic life of the structure (75 years) as a condition of approval of a coastal development permit for new development on a beach, shoreline, or bluff that is subject to wave action, erosion, flooding, landslides, or other hazards associated with development on a beach or bluff. Shoreline protection may be permitted to protect existing structures that were legally constructed prior to the certification of the LCP, unless a waiver of future shoreline protection was required by a previous coastal development permit.	(shoreline protection) is necessary to protect existing structures on the project site, including parking and accessways to the Bayside Village/Marina, a Coastal- dependent use, and a main water vault. These public and private improvements were constructed prior to the Coastal Act of the LCP so the policy is not applicable and/or unnecessary.		
Policy 2.8.6-10. Site and design new structures to avoid the need for shoreline and bluff protective devices during the economic life of the structure (75 years).	Consistent. See discussion above; the bayfront protective device is needed irrespective of the location of any new structures at the project site. The future development project cannot be sited or designed to avoid the need for a seawall/bulkhead, since the shoreline protective device is needed to protect the existing marina as well as the proposed dry stack storage facility.		

Table 4.I-2 (Continued)

2.0 Land Use and Development	
Policy 2.8.6-5. Permit revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls and other structures altering natural shoreline processes or retaining walls when required to serve coastal-dependent uses or to protect existing principal structures or public beaches in danger from erosion and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply, unless a waiver of future shoreline protection was required by a previous coastal development permit.	Consistent. The proposed future seawall/bulkhead, consistent with the CLUP Policy and Coastal Act section 30235, is necessary for the protection of existing structures, including marina facilities and marina parking, and public utilities, which are threatened by ongoing erosion; the seawall/bulkhead will also provide support for, and protection of, the proposed public bayfront promenade which will extend along the bayfront and connect with regional coastal trails and Newport Dunes to the east. In addition, the proposed project is occurring within an urban harbor at a location isolated from the nearest open coastal shoreline and longshore littoral sand transport mechanism.
Policy 2.8.6-6. Design and site protective devices to minimize impacts to coastal resources, minimize alteration of natural shoreline processes, provide for coastal access, minimize visual impacts, and eliminate or mitigate adverse impacts on local shoreline sand supply.	Consistent. The proposed future seawall/bulkhead will be subject to additional City CEQA review, Site Development Review and permitting, as well as processing of a Coastal Development Permit through the California Coastal Commission for the seawall/bulkhead and the future project level applications for the Back Bay Landing project. Any submitted design will conform to the then-current minimum elevation requirements set by the City of Newport Beach, and as described in the Back Bay Landing Project Description and PCDP to be at a minimum elevation of at least 10 ft. MLLW. This minimum is presently consistent with the City of Newport Beach Harbor Committee Report on Global Warming and Sea Level Rise Effects on Newport Harbor, but will be subject to future City and Coastal Commission requirements applicable at the time of project permitting. The location of the future seawall/bulkhead will minimize impacts to coastal resources, alteration of natural shoreline processes and eliminate or mitigate adverse impacts on local shoreline sand supply for several reasons:
	 The future seawall/bulkhead will be located landward of the mean high tide line and landward of any potential wetlands or Waters of the U.S.;
19]-	 The seawall/bulkhead is proposed along the edge of an existing, developed marina parking lot (Bayside Village Marina) within an urban harbor at a location isolated from the nearest open coastal shoreline and longshore littoral sand transport mechanism;
а	 Such seawall/bulkhead will provide protection from bayfront erosion and the sloughing off of tidal slope areas and associated siltation of adjacent navigable channels in the private marina;
	4. The seawall/bulkhead will provide improved

Table 4.I-2 (Continued)

2.0 Land Use and Development			
	bayfront access and protection/support for a new minimum 12-foot wide public walkway/promenade.		
Policy 2.8.6-8. Limit the use of protective devices to the minimum required to protect existing development and prohibit their use to enlarge or expand areas for new or existing development. "Existing development" for purposes of this policy shall consist only of a principle structure, e.g., resident dwelling, required garage, or second residential unit, and shall not include accessory or ancillary structures such as decks, patios, pools, tennis courts, cabanas, stairs, landscaping, etc.	be used to enlarge or expand area for new development Moreover, as stated above, such seawall/bulkhead is consistent with Section 30235 of the Coastal Act which states that, "seawallsshall be permitted when required to serve coastal-dependent uses or to protect existing		
Policy 2.8.6-9. Require property owners to record a waiver of future shoreline protection for new development during the economic life of the structure (75 years) as a condition of approval of a coastal development permit for new development on a beach, shoreline, or bluff that is subject to wave action, erosion, Hooding, landslides, or other hazards associated with development on a beach or bluff. Shoreline protection may be permitted to protect existing structures that were legally constructed prior to the certification of the LCP, unless a waiver of future shoreline protection was required by a previous coastal development permit.	Consistent. The proposed future seawall/bulkhead (shoreline protection) is necessary to protect existing structures on the Back Bay Landing site; including parking and accessways to the Bayside Village/Marina, a Coastal-dependent use, and a main water vault. These public and private improvements were constructed prior to the Coastal Act of the LCP so the policy is not applicable and/or unnecessary.		
Policy 2.8.6-10. Site and design new structures to avoid the need for shoreline and bluff protective devices during the economic life of the structure (75 years).	Consistent. See discussion above; the bayfront protective device is needed irrespective of the location of any new structures at BBL. The future Back Bay Landing project cannot be sited or designed to avoid the need for a seawal1Jbulkhead, since the shoreline protective device is needed to protect the existing marina as well as the proposed dry stack storage facility.		

PATRICIA A. SHELTON

15 Saratoga Newport Beach, California 92660 (949) 675-2312 **RECEIVID** South Coast Region

DEC 0 8 2015

CALIFORNIA COASTAL COMMISSION

December 5, 2015

Steve Kinsey, Chairman California Coastal Commission 45 Fremont Street #2000 San Francisco, CA 94105 c/o Vanessa Miller vanessa.miller@coastal.ca.gov

RE: Back Bay Landing – SUPPORT LCP-5-NPB-14 0820-2

Dear Chairman Kinsey & Members of the California Coastal Commission:

As a homeowner in Bayside Village, the community immediately adjacent to the proposed Back Bay Landing (BBL) development, I am writing to provide my <u>qualified</u> support of this project.

My family's residency in Newport Beach dates back more than 75 years to 1940. I have lived in Bayside Village (BV) itself for more than 25 years. I grew up in Newport, attended school here from elementary through college, and have had the privilege of experiencing its growing pains from a sleepy undeveloped town to its current welldesigned collection of picturesque "villages". My brother and I grew up sailing, kayaking, swimming, fishing, clamming, diving for abalone and surfing in the then pristine harbor and coastal waters, in days when the islands in our harbor were sparsely populated, and some did not exist!

With that personal history, you might think that I would be overly "territorial" or protective of Newport Beach and its now not-so-pristine harbor and, as a consequence, resistant to any further development. But for a number of reasons, I support the Back Bay Landing project <u>as approved by the City of Newport Beach in 2014</u>. My reasons are numerous, and probably would be repetitive. You have heard them before from other Bayside Village homeowners and members of the BIC HOA committee that has worked with the developer. But most notably among BV reasons for supporting the BBL:

- The project is a beautiful, well-designed, yet low profile, addition to the community. Its components will be a definite asset to Newport Beach in many ways.
- The developer has been diligent in planning a project that will protect the environment, and in informing the surrounding communities of project plans. Over the five years since the project was introduced to us, the developer has provided numerous presentations and updates and has worked closely with our committee in resolving issues that were of concern.

The reason my support is "qualified" as stated in the first paragraph, is due to modifications in the project plan that are recommended by the California Coastal Commission staff. I would like to think that a well-meaning and zealous state agency will on occasion listen to and consider comments from its citizenry on issues that affect the agency's constituents and our planet's populations, human and otherwise. Particularly since the agency is responsible for such a vast territory, and may not be able to visit and study all project locations. The BBL site is an unusual one. I hope this letter helps in understanding the unique circumstances that surround it.

It has been my understanding that the California Coastal Commission was, <u>first and</u> <u>foremost</u>, the protector of our coastal environments, and <u>second the guarantor that those</u> <u>environments will be open to the public</u>. Now it seems that the CCC's <u>primary</u> mandate is to open those environmental lands and waters to the public, a goal that is not necessarily consistent with protecting coastal environments.

When there are two primary goals, in an agency's eagerness to fulfill one goal, often another is compromised. I am disappointed to read that the CCC staff made recommendations that included:

1. Requiring that new structures be sited and designed to avoid the need for the shoreline devices during the projected life of the structure (75 years).

This recommendation appears to prohibit shoreline devices that would enable the provision of public/handicapped access from the northwest side of the PCH Bridge to the BBL site and the 10-mile Back Bay Loop Trail. Without the protective bulkhead, natural erosion prohibits that access. This recommendation does not appear to protect the environment, as might be the justification, but does interfere with provision of public access and safety measures.

Currently the northwest pedestrian and bike traffic must access the southeast side of the bridge via the dangerous PCH/Bayside Drive intersection (note the death of bicyclist Sarah Leaf at that intersection on September 14, 2014; she was the second of two bicyclists killed in Newport Beach within a 24 hour period).

2. (2.1.9) Granting a public easement across the entire portion of the private marina accessway adjacent to the private mobile home development, including the private beach/submerged fee-owned land located on Parcel 2 of Parcel Map 93-311.

This recommendation serves no purpose, with the possible exception of making amends for denying public access with the deletion of shoreline devices that would enable the provision of public/handicapped access from the northwest side of the PCH Bridge to the BBL site and beyond.

In addition, and more importantly, this recommendation will destroy a natural beach, thereby doing <u>the opposite of protecting the environment</u>, and will insert a finger of public land into the middle of private property, thereby removing the use of private property from the benefits of ownership in Bayside Village.

3. (4.4.2-1) Eliminating the exception to the 35-foot Shoreline Height Limitation Zone.

The proposed structure is very narrow, will <u>not</u> block views, but instead will enhance views for the general public as well as for handicapped individuals. The view tower will open up vistas and provide education for all the public, including the disabled. I love it! Please save it! Steve Kinsey, Chairman California Coastal Commission December 5, 2015

While they may appear to meet the CCC mandated mission, in this humble citizen's view, those recommendations contain components that are in direct conflict with the CCC mission to make coastal environments accessible to the public, AND protect the environment.

With respect to the foregoing #2: Not only is the developer's proposed public access route along Bayside Drive the <u>best</u> route for the public, and the most practical, it also protects the integrity of the Bayside Village community. If an alternate route were to be jerry-rigged through BV, splitting the private residential property from its private marina and beach, it would not only be a <u>poor substitute</u> for the more appropriate route, it would be costly, and any design to attempt to make it work would be clumsy and would jeopardize the safety and security of BV as well as the general public.

While I support the project as it was approved by the City of Newport Beach, I am hopeful you will consider our concerns with the California Coastal Commission Staff recommendations.

Thank you for allowing me this opportunity to express my views, and thank you for your continued protection of our coastal waters.

Sincerely,

Patricia A. Shelton

CC: Sherilyn.<u>Sarb@coastal.ca.gov</u> <u>Chuck.posner@coastal.ca.gov</u> Fernie.sy@coastal.ca.gov

Please distribute this letter to all Commissioners

November 9, 2015

RECEIVED South Coast Region

DEC 0 7 2015

Steve Kinsey, Chairman CALIFORMA California Coastal COASTAL COMMISSION

c/o Vanessa Miller

Commission 45 Fremont Street #2000 San Francisco, CA 94105

vanessa.miller@coastal.ca.gov

Re: Back Bay Landing- SUPPORT LCP-5-NPB-14 0820-2

On a daily basis, I walk my dogs in the proposed Back Bay Landing area (vacant parking lot and RV storage lot) on the corner at the intersection of East Pacific Coast Hwy and Bayside Dr. North.

On this property I have seen drug activity, homeless people living in their vehicles, transients meandering on the property, large items of junk thrown outside of trash bins and trash and cigarette butts littered throughout the area. It is similar looking to many of the run down commercial neighborhoods in parts of Los Angeles. Having that area developed into a Residential/Retail center would not only prove to be aesthetically pleasing, but will also provide safety for residents of Bayside Village, nearby neighborhoods and the public.

The proposed Back Bay Landing would also ease and organize the traffic flow, making Bayside Drive North safe for drivers and bicyclists with the lane adjustments. Currently, this is an unsafe road with the many cars parked on the narrow Bayside Drive(North). By the way, the high performance motorcycles and automobiles plus large commercial trucks create noise about 15hrs out of the day, any noise from BBL would more than likely be mute in comparison.

The 60 ft. proposed tower, which will provide public access is a benefit for visitors who love the boats and bay. Within 200 yards to the north and south sit much taller structures (Promotory Point-which blocks water views from Pacific Coast Hwy. and mountain views from Bayside Drive (south). The Balboa Bay Club also boasts a three story structure. The proposed tower would NOT block any residents' view from Bayside Village North or South. Public access would be very limited as MOST, not all, but most visitors prefer to visit the beach areas. We(Bayside Village non-taxpaying residents) already live in a Semi-private environment, a tower will not violate or change what little privacy we have in the future. In fact, a 65 foot tower would be a safe location for Bayside Village residents to seek in case of a tsunami.

In reference to the proposed restaurant, the city of Newport Beach will not allow this/these establishment(s)operating hours beyond 11:00pm. Besides this fact, BBL will be a residential zone also. We already have the odors from 333 Restaurant and SOL Cucina from across PCH. Most of the late night restaurants are found on the Newport Peninsula, regardless.

The proposed Back Bay Landing will only improve the quality of life for those of us that live near and visit the poastal areas of Newport Beach.

Regards, UM Sharon Seal

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215 Tremont Drive Bayside Village South Newport Beach, CA 92660

CC: Sherilyn.<u>Sarb@coastal.ca.gov</u> <u>Chuck.posner@coastal.ca.gov</u> Fernie.Sy@coastal.ca.gov

** Please distribute this letter to all Commissioners

Jerry and Lynn Plumlee 203 Tremont Drive Newport Beach, CA 92660

December 5, 2015

c/o Venessa Miller Vanessa.miller@coastal.ca.gov

Steve Kinsey, Chairman California Coastal Commission 45 Fremont Street #2000 San Francisco, CA 94105

South Coast Region

DEC - 4 2015

Re: Back Bay Landing-IN FAVOR LCP-5-NPB-14 0820-2

CALIFORNIA COASTAL COMMISSION

Dear Chairman Kinsey and Members of the California Coastal Commission:

As 15 year residents of Bayside Village and 25 year residents of Newport Beach, we are in favor of the Back Bay Landing proposed project.

Being residents of this seaside community provides us a lifestyle of activity and close proximity to restaurants, shops and other attractions which we relish. We feel that the Back Bay Landing will embellish our lifestyle and also provide individuals that may not have the luxury of living in this beautiful area access to beach attractions and activities. Another reason we are in favor of your approval of this project is the beautification aspect of the designated area. At this time it is a very unsightly area located at one of the most central locations in the heart of Newport Beach and promotes a very unfavorable image of our lovely community.

One other point we feel is very relevant to the residents of Bayside Village is the potential of increase to our property values. At this time we are sort of "under the radar" and thought of as an old "mobile home park" which in fact is not the case. Back Bay Landing will bring awareness to our community that is very relevant to the current real estate market in Newport Beach.

Thank you for your consideration of our opinions in this matter.

Regards,

Lynn and Jerry Plumlee

cc: sarb@coastal.ca.gov chuck.posner.ca.gov fernie.sy@coastal.ca.gov

****PLEASE DISTRIBUTE THIS LETTER TO ALL COMMISSIONERS**

October 29, 2015

Steve Kinsey, Chairman California Coastal Commission 45 Freemont Street #2000 San Francisco, CA 94105 RECEIVED South Cocst Region

CEC 0 2 2015

CALIFORNIA COASTAL COMMISSION

Re: Back Bay Landing-SUPPORT LCP-5-NPB-14 0820-2

Dear Chairman Kinsey & Members of the California Coastal Commission:

My husband and I started visiting Bayside Village in 1985. My husband, Jack Clark was on the BBC Committee until he passed away in 2014. I am now serving on the committee.

For 20 years we have looked at the RV, Boat Storage yard and watched it decline into disrepair. There are presently 108 RV's, boats , cars & Fifth Wheels stored . Some are in very good condition, others are covered with rust, many of the boats do not even look sea worthy.

The proposed addition of residential and retail units would be a very POSITIVE and BEAUTIFUL addition to the entire area, while preserving Pearson's Point and public access to the coast.

I urge the Coastal Commission to support this plan. It will be a beneficial, beautiful addition for all of the nearby communities.

Sincerely,

Marty Cal

Marty Clark 256 Mayflower Drive Newport Beach, CA 92660

Steve Kinsey, Chairman California Coastal Commission 45 Fremont Street #2000 San Francisco, CA 94105 c/o Vanessa Miller vanessa.miller@coastal.ca.gov South Coast Region

DEC - 3 2015

RE: Back Bay Landing – SUPPORT LCP-5-NPB-14 0820-2

CALIFORNIA COASTAL COMMISSION

Dear Chairman Kinsey & Members of the California Coastal Commission:

I am writing to ask your approval of the Back Bay Landing project proposal. As a Bayside Village homeowner (for 8 years) and serving on a committee known as the Bayside Improvement Committee (BIC), I've been involved for over 4 years on this project.

Due to our close proximity to the project site, we formed the BIC committee early on in the planning of Back Bay Landing and worked directly with the project applicant. The planning process has been a positive one with the property owners and the community working to resolve issues and derive a plan that meets the community's needs and the coastal requirements. Its actually quite surprising that we were able to come together on this project, as it was in the beginning, a huge concern of the residents.

The addition of retail, restaurants, and new residential units to the RV/Boat Dry Storage area (the project site) will be an asset to our community and Newport Beach. The RV storage area has been an eyesore and poor use of land in this area.

Through hard work between the BBL and BIC committee my concerns have been addressed; parking, circulation, access, safety, and storage. I believe, that the project as designed today strikes a good balance between providing new public access to the coast, providing coastal dependent uses like the boat house, preserving coastal dependent uses like Pearson's Point, and respecting the existing community. In that vein, I am hopeful that you will respect our community's request to route the public access through the new development and around our community to Bayside Drive.

This project represents a collaborative effort between the adjacent neighbors and the applicant/land owner. Please lend your support and approve this project.

Thank you for taking our interests into your overview of this project.

Sincerely,

Sally Robertson Bayside Village Homeowner & BIC Committee Member

CC: Sherilyn<u>.Sarb@coastal.ca.gov</u> <u>Chuck.posner@coastal.ca.gov</u> <u>Fernie.sy@coastal.ca.gov</u> ** Please distribute this letter to all Commissioners

Ray L. Loud 272 Revere Way Newport Beach, Ca. 92660

November 30, 2015

Steve Kinsey, Chairman California Coastal Commission 45 Fremont Street #2000 San Francisco, Ca. 94105

RECEIVED South Coast Region

DEC - 1 2015

CALIFORNIA COASTAL COMMISSION

Re: Back Bay Landing – Support LCP-5NPD-14 0820-2

Dear Chairman Kinsey & Members of the California Coastal Commission:

I am a resident of Bayside Village Mobile Home Park. I have lived here for 10 years and I'm an active member of the Bayside Improvement Committee (BIC).

I am in favor of this project because I believe it will have a positive impact on the value of our homes and lifestyle. In addition, the area being converted is an eye sore and not conducive to the projected image of Newport Beach.

The project calls for lifting boats in an out of the water rather than using a launch; e.g., Newport Dunes. This is not only environmentally friendly but allows for an elimination of exhaust fumes in the water and provides the ability to check boats for nuisance mussels. The use of reclaimed water, to wash the boats before returning to storage, is also an environmental advantage.

I am not in favor of the proposal to add a public walk way on the beach side in front of the mobile home park. It will de-value the homes on the water front, where residents pay a premium rate for their space, and will eliminate privacy and increase vandalism. Further, the existing walk way on either side of the beach has always been available to resident's guests and boaters alike.

In closing, I am hopeful, in your review as Coastal Commissioners, you will support the project in its intended capacity.

Sincerely,

Ray Y. Youd

Ray L. Loud

Patricia A. Nangle

8 Saratoga, Newport Beach, CA 92660 Residence phone (949) 673-2281

South Coast Region

Updated: December 9, 2015

DEC 0 7 2015

CALIFORNIA COASTAL COMMISSION

c/o Vanessa Miller vanessa.miller@coastal.ca.gov

Steve Kinsey, Chairman California Coastal Commission 45 Fremont Street #2000 San Francisco, CA 94105

RE: Back Bay Landing – SUPPORT LCP-5-NPB-14 0820-2

Dear Chairman Kinsey & Members of the California Coastal Commission:

I am a resident of the Bayside Village Mobile Home Park. I have lived here for 30 years. I am directly affected by what ultimately gets developed on the adjacent RV & boat storage area and parking lot (project site). Given the close relationship between our community and the project site - we are direct neighbors- I've paid very close attention to this project through the planning stages. I've attended numerous community meetings on this project and attended both the City of Newport Beach's public hearing in front of the Planning Commission and City Council. I was very pleased the City Council unanimously approved this project in February, 2014 as I believe this project represents a unique effort between a landowner and adjacent neighbors.

I am not an expert in land use or the Coastal Act requirements, but I do believe this project has undergone a very rigorous community process and represents a good addition to our beach community. I am hopeful in your review as Coastal Commissioners you will support this project and find that it meets your criteria for approval.

Based on reading the CCC Staff Report, if the contiguous walkway along the Bayfront from the Back Bay Landing to Newport Dunes is approved, I withdraw support of this project

Sincerely,

Pat Nangle CC: Sherilyn.sarb@coastal.ca.gov <u>Chuck.posner@coastal.ca.gov</u> Fernie.sy@coastal.ca.gov

Sy, Fernie@Coastal

From:	Jim Mosher <jimmosher@yahoo.com></jimmosher@yahoo.com>
Sent:	Monday, December 07, 2015 9:41 AM
То:	Sarb, Sherilyn@Coastal; Schwing, Karl@Coastal; charles.posner@coastal.ca.gov
Cc:	Sy, Fernie@Coastal; Seychelle Cannes
Subject:	Fw: Further comment on LCP-5-NPB-14-0820-2 (Back Bay Landing)
Follow Up Flag:	Follow up
Flag Status:	Flagged
Categories:	Important

Dear Sirs (and Madam),

I am sure you are all *very* busy with other things, but it has been suggested to me that I should have copied the following message to you as well as to Fernie.

As best I can tell the fact that the proposed Back Bay Landing project borders a Marine Protected Area has not previously received the attention it deserves.

My understanding is that in exploring the possibility of visitor serving public development on the opposite side of the channel -- at Lower Castaways -- the City found that the potential for shoreline modification was extremely constrained by the recent MPA designation.

My previous comments -- which failed to mention this, but which I hope may be part of an addendum -- were submitted on Friday.

-- Jim Mosher, Newport Beach

----- Forwarded Message -----From: Jim Mosher <jimmosher@yahoo.com> To: Fernie Sy <fernie.sy@coastal.ca.gov> Sent: Sunday, December 6, 2015 9:47 PM Subject: Further comment on LCP-5-NPB-14-0820-2 (Back Bay Landing)

Dear Mr. Sy,

Since submitting my previous comments on LCP-5-NPB-14-0820-2 (Back Bay Landing) I have read a letter dated December 4, 2015, from development proponent John Erskine of Nossaman LLP.

In objecting to one of CCC staff's proposed policy modifications regarding shoreline protection (proposed CLUP Policy 2.1.9-6), a large part of Mr. Erskine's letter is devoted to presenting what purports to be an argument that the Coastal Commission is legally required to allow the future extension of the pre-Coastal Act Bayside Marina seawall/bulkhead around the portion of the property that does not currently have shoreline protective devices.

I would like to respond.

Since the construction of new seawalls to protect "new" (that is, post-Coastal Act) development is very difficult to justify, **Mr. Erskine seems to be arguing, primarily** (and without presenting evidence they are pre-Coastal Act or have subsequent CDPs), **that a new seawall is needed to protect an existing private parking lot and kayak rental area**.

Not only are these features that are in no obvious present danger of destruction and which it would seem, if necessary, could be "saved" much less impactfully simply by raising them, but Simulation #3 (Figure 4.A-8) of the City's DEIR:

http://www.newportbeachca.gov/pln/CEQA_DOCS.asp?path=/Back%20Bay%20Landing/DEIR-Newport%20Back%20Bay-October%202013

and revised Figures 4.A-9, 4.A-10, 4.A-11 and 4.A-14 of the Final EIR:

http://www.newportbeachca.gov/pln/CEQA_REVIEW/Back%20Bay%20Landing/Final%20EIR_Complete_February%202 014.pdf

indicate the City expects the construction of the seawall/bulkhead will result in the disappearance of the existing shoreline bayward of it and severely limit access to the water: **the simulations show the harbor's waters lapping up against a sheer** (and impassible) **concrete wall with no remaining beach at all below it**.

As problematic as destroying a shoreline to save a parking lot would be in the most generic of circumstances, it seems especially problematic here when one considers that in 2012 the State declared the entire body of water north of the Bay Bridge, including most of the present planning area, to be part of a "Marine Protected Area" -- the Upper Newport Bay State Marine Conservation Area:

https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=98216&inline

The City seems to think it has avoided the MPA/SMCA issue by requiring (as Condition IV.F.1 on page 15 of its approved *Planned Community Development Plan*) that the new bulkhead be constructed just outside the present Highest High Water contour (which defines the outer edge of the MPA). But even if the simulations are not immediately correct, sea level rise would presumably soon enough submerge the supposedly protected intertidal habitat, and even if it survived, the vertical wall would severely impede public access to it and the harbor's waters.

Mr. Erskine's arguments notwithstanding, I find it very difficult to see how the "protection" of an easily modifiable private parking lot and kayak rental stand could be used to justify the destruction of and limitation of access to an irreplaceable State-protected habitat and public shoreline.

I urge the Commission to reject Mr. Erskine's arguments and to follow Commission staff's recommendation to honor the Coastal Act and existing CLUP general Policy 2.8.1-2 by insisting that all new development be sited where it can be considered free of coastal hazards without any need for new shoreline protective devices.

Thanks again for your efforts on this.

Yours sincerely,

Jim Mosher 2210 Private Road Newport Beach, CA. 92660

Sy, Fernie@Coastal

From:	Jim Mosher <jimmosher@yahoo.com></jimmosher@yahoo.com>
Sent:	Sunday, December 06, 2015 9:47 PM
To:	Sy, Fernie@Coastal
Subject:	Further comment on LCP-5-NPB-14-0820-2 (Back Bay Landing)
Follow Up Flag:	Follow up
Flag Status:	Flagged
Categories:	Important

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I urge the Commission to reject Mr. Erskine's arguments and to follow Commission staff's recommendation to honor the Coastal Act and existing CLUP general Policy 2.8.1-2 by insisting that all new development be sited where it can be considered free of coastal hazards without any need for new shoreline protective devices.

Thanks again for your efforts on this.

Yours sincerely,

Jim Mosher 2210 Private Road Newport Beach, CA. 92660

We, the undersigned, do not believe the Back Bay Landing Project is in the best interest of the Newport Beach Community and does not meet the requirements of the California Coastal Act.

1. We are requesting that you deny changes to Newport Beach's Coastal Land Use Plan (CLUP) and General Plan (GP) that would allow high-end residential housing on this Recreation & Marine Commercial (CM-2) designated parcel. 48% of the proposed total square footage of the Back Bay Landing project will be allocated to residential use, including most of the waterfront, and it will increase the project's density footprint by 39,998 square feet.

2. We are concerned about the impact this project will have on our scenic views. First is the requested exception to the height limit to allow for a 65' tower. This walled-off dense project has very limited view sheds and will obstruct our present views of Newport Bay, the Bluffs and Saddleback Mountain. The Coast Highway is designated as a "scenic highway" in the CLUP where it approaches and crosses the Bay Bridge. Very few expansive views still exist along the Coast Highway in Newport Beach and these iconic views need to be protected and preserved.

3. The Upper Newport Bay, one of the largest coastal wetlands remaining in southern California, is an ecological resource of national significance. We are concerned about the adverse impacts to the Environmental Study Area (ESA) from the proposed bulkhead, dredging of the inlet for access to the dry storage landing and toxic runoff created by the Back Bay Landing project. The De Anza Bayside Marsh Peninsula was not constructed with dredging spoils and rip-rap but it is an Environmentally Sensitive Habitat Area (ESHA) and should be designated and protected as such.

Thank you

Name & Address: (please print legibly)

92627 + UNTINGTOX 217 CA 9262 ME r de HB P റ ctoria Costa Mesa 83 926 South Coast Region DFC 4 015

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Thank you

Name & Address: (please print legibly)

Name & Autress. (please print legibly)	
Narcy Kappelmann	1853 Partyvista Circle COSTA Mesa 9262]
Jina Reinemann	1877 Parkview Circle Costa Mesa 92627
Ron Frankiewicz	950 W. 19th St. Costa Mesa 9262i
LOIS LEVINE	1627 ANITALN NEWPORT BEACH, 92660
Pamela Patee	1973 Newport BIVA, #54 Costa Mesa 9262
Carb J Grey	488 Prospect St. Newport Besche 9266
TERESA BARNWER	75860 Sarazen Way. Palm Desert, CA 92211
Ecanor M. Epan	1893 PARKVIEW CIRCLE, Costa Mese, CA 92627
Diane Labuca	939 W. 19 St. B4 Coste Mosa 92627
CORINNE TUCHOLKA	1949 FEDERAL AVE COSTA MESA, CA 92627
CARRIE FOGARTY	699 HAMILTON ST COSTHMEST CA 92627
Joan Susman	1982 PARKCRENT Dr. COSTA MEL CA 92627
Ack, ws ANSON	1014 GROVE DT. CLOSTA MEDYA 92627
Gary Itano	11 Latitubett, Nowport Beady 4 92663
ELAINE DETHLOFSEN	1628 PONDEROSA CM 92626
PATTI BASS	2449 LAMEDN PL CM 92626
Christine Torino	1674 Klamath A. Orange CA 92867
Sylvia Reese	1674 Rlamath A. Orange CA 92867 1835 Newport Blud Alog Costa Mesa, CA 92627
PIAN KENNER	1750/14/TTIEC AV #86 CONTA MERA CA. 32627
	1750 Whittien Ave #89 C. M. 9262
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Thank you

Name & Address: (please print legibly)		DEC = 4 2015
A Linka Mardan hall	8 Goodwill (r.T. Newport Beach.	CAUFORNIA
Sungine M. Jakemoto	8 Goodwill (rt. Newport Beach. 12 Jana Lyn Ct. N. 5, 9266	COASTAL COMMISSION
	3x06 Channol Placer N.P.	
SUSAN GOVORKO	31 ENCORE CRT. NB 9	2663
Linda Vas	17 Odyssey Ct. NB 9:	
Sheila Kaff NORMAD SUKER		
NORMA DO SUKER	15 Landfall (t., NB 9266 14 ODYSSEY CT, NB 92663	
Roberta Vickrey	17 Gretel Ct, N.B. 92663	
Futlien CRAY	405 Canal MMB #	93663
	2011 Javan Barranca 92660.	
Lunn Lorenz	434 Redlands AV	e 92663
Tim STEPHENS	2501 SEAVIEW AVE, CORONA DE	MAR, 92625
TONY GUENTHER	323 Pilzanhino N.B 92663	
Sharon Wryat	200 JIN ANTIPASH 3 Den	wat Bead 92663
melody Raves	10 mes at Newport	Beach 92663
John A Plang	10 Ames Of Neuront Bo 17 shipt COURT 1118 926	ade 92002
DICK CRUCE	17 FUILT COURT ING 926	53
	322 Mayflower N.B. 92	
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Thank you

Name & Address: (please print legibly)

KEN BARRETT	1 CANAL CR. NEWPORT BEACH 92663
Isabelle Phillips	206 Walnut St. NB CA 92663
Susan McFadden	444 Prospect St., Newport Beach 92663
CARON BOTTEN	5205 LIDOSANDS DE, NOW PORTBEACH 92663
RICHARD SLOCOM	5205 LIDUAND DK. NOWOUT BEACH, CA 92663
Nila Kyser	· · · · · · · · · · · · · · · · · · ·
Robert Kyser	5215 Lide Sands Dr. Manport Beach, CA 92663
S UARON Langueman	117 28th St. Newport Och 92663
STEPHENB, WHEELER	527 SANGERNARDINO AVE. N.B. 92663
Jim Mosker	2210 Private V.R., Nauport Beach, CA. 92660
Julia Shunda	7 Seuscape Dr. Dewport Beach, CA 92663
HOVA Wheeler	527 San Bernardino Ave NB 92663
	South Coast Region
	DEC 4 2015
	CALIFORNIA
	COASTAL COMMISSION
	L

Posner, Chuck@Coastal

From:annieem50@aol.comSent:Friday, December 04, 2015 5:15 PMTo:Posner, Chuck@Coastal; Miller, Vanessa@Coastal; Sy, Fernie@CoastalSubject:Newport Back Bay Landing...OPPOSED

December 4, 2015

Steve Kinsey, Chairman California Coastal Commission 45 Fremont St. #2000 San Francisco, CA 94105

RE: Back Bay Landing --- OPPOSED

LCP-5-NPB-14 0820-2

Dear Chairman KInsey & Members of the California Coastal Commission:

I am a resident of the Bayside Village Mobile Home Park. I have lived here since April 2002, over 13 years. I have enjoyed the area, especially the access to the Coastal area and Back Bay. I have paid close attention to this project through the planning stages and actually thought it would be denied due to the Newport Estuary and Back Bay environment. I have attended all the community meetings concerning this project and watched the developer bait and switch the proposal. I am concerned about the birds, fish, wildlife, and the sea life that will be disturbed by this project. I was upset that the Newport Beach City Council approved this project, especially approving a 65 ft UNNECESSARY tower,

(which would become yet another exception to the 35 foot limit of building height.)

I am not an expert in land use or the Coastal Act requirements, but I have been involved in real estate with shopping centers, town homes, and apartments. During my projects I am aware of all the 'rules and regulations' of a site. But, reading over the Bayside Landing proposal, I see many rules being totally disregarded on this 7 acre site, not only from a building point of view but from an ecological point of view. I am hopeful in your review as the Coastal Commissioners you will **DENY THIS PROJECT** as it does NOT meet the criteria for the California Coastal Commission.

Sincerely,

Annie Quinn AnnieEm50@AOL.com 225 Lexington Circle Newport Beach, CA 92660 (949) 673-1984

Sy, Fernie@Coastal

Friday, December 04, 2015 5:05 PM Sent: Friday, December 04, 2015 5:05 PM To: Sy, Fernie@Coastal; Schwing, Karl@Coastal; Posner, Chuck@Coastal; Sarb, Sherilyn@Coastal Subject: Re: Major LCP Amendment Request No. 2-14 (LCP-5-NPB-14-0820-2) (Back Bay Landing) to the City of Newport Beach Certified Coastal Land Use Plan. Follow Up Flag: Follow up Flag Status: Flagged Categories: Important December 4, 2015 California Coastal Commission 200 Oceangate #1000 Long Beach, CA 90802 Via Email to: Fernie.Sy@coastal.ca.gov Karl Schwing, karl.schwing@coastal.ca.gov Sherilyn Sarb, sherilyn.sarb@coastal.ca.gov Re: Major LCP Amendment Request No. 2-14 (LCP-5-NPB-14-0820-2) (Back Bay Landing) to the City of Newport Beach Certified Coastal Land Use Plan.	From:	couchelle connect convehelle connec@att.not>	
To: Sy, Fernie@Coastal; Schwing, Karl@Coastal; Posner, Chuck@Coastal; Sarb, Sherilyn@Coastal Subject: Re: Major LCP Amendment Request No. 2-14 (LCP-5-NPB-14-0820-2) (Back Bay Landing) to the City of Newport Beach Certified Coastal Land Use Plan. Follow Up Flag: Follow up Flag Status: Follow up Flag Status: Follow up Flag Status: Important December 4, 2015 Important California Coastal Commission Important 200 Oceangate #1000 Iong Beach, CA 90802 Via Email to: Fernie Sy, Geoastal.ca.gov Karl Schwing, karl.schwing@coastal.ca.gov Sherilyn Sarb, sherilyn.sarb@coastal.ca.gov Re: Major LCP Amendment Request No. 2-14 (LCP-5-NPB-14-0820-2) (Back Bay Landing) to the		seychelle cannes <seychellecannes@att.net></seychellecannes@att.net>	
Subject: Sherilyn@Coastal Re: Major LCP Amendment Request No. 2-14 (LCP-5-NPB-14-0820-2) (Back Bay Landing) to the City of Newport Beach Certified Coastal Land Use Plan. Follow Up Flag: Follow up Flag Status: Follow Up Flag: Follow up Flagged Categories: Important December 4, 2015 Important California Coastal Commission 200 Oceangate #1000 Long Beach, CA 90802 Jernie Sy@coastal.ca.gov Karl Schwing, karl.schwing@coastal.ca.gov Chuck Posner, chuck, posner@coastal.ca.gov Sherilyn Sarb, sherilyn.sarb@coastal.ca.gov Re: Major LCP Amendment Request No. 2-14 (LCP-5-NPB-14-0820-2) (Back Bay Landing) to the			
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	Re	Major LCP Amendment Request No. 2-14 (LCP-5-NPB-14-0820-2) (Back Bay Landing) to the	
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Honorable Chair Kinsey, Commissioners, and Staff:

Bayside Village Residents Committee ("BVRC") is a group of residents formed separate from the Bayside Village Homeowners Association. We formed specifically to address the Back Bay Landing project. As residents of Newport Beach, and of Bayside Village in particular, we are writing to express our support for the staff's recommendation in their November 25 2015 report regarding the Major LCP Amendment Request referenced above. This letter will summarize several points we support, issues that remain, and considerations we hope the Commission makes.

We largely support staff findings and recommendations, especially the following:

- Staff's recommendation to revise the amendment by changing the proposed designation of MU-H to MU-W is wholly supported. MU-H is inappropriate for this project.
- Staff's rejection to the proposed exception to the 35 foot height limit, thereby rejecting the tower is wholly support, and we urge the Commission to support this rejection. The tower is completely inappropriate due to view shed and privacy issues.
- Staff's recommendation that there be no bulk head as a bulk head is not appropriate for new construction.
- Staff's recommendation that a requirement for a coastal development permit application for the Back Bay Landing project include a hazards assessment and a shoreline management plan is an important requirement that should be supported by the Commission.

There are several issues that raise concern, including the following:

- The City has at the last moment suggested communication uses for the proposed 65 foot tower, which is simply a ruse, much like the Marina Tower, to secure approval of the tower. The tower is appropriately rejected by staff.
- The portion of the mobile home park that is subject to the lot line adjustment will remove mobile home park amenities and housing, and such removal needs to be addressed. Changing the land use designation to essentially allow the lot line adjustment and portions of the project requires mitigation to changes to the mobile home park amenities and housing. This issue is not discussed in the proposal or staff report, and we urge the Commission to address this issue.
- Structures are subject to a 35 foot limitation, but the project proposes 40 foot heights with architectural features. The integrity of the 35 foot limitation should be preserved.
- Piecemealing appears to be an issue, but it has not been addressed in the City's proposal or in the staff's report. This amendment, and the project it is for, is just one part of the developer's plan for this and adjacent properties, including the hotel property, the mobile home park, and the marina.
- Approval of this amendment may lead to prejudicing the certification of a Local Coastal Plan ("LCP"). For instance, the law provides that a bulk head cannot be built for new construction, therefore, if the amendment was approved as submitted by the City, the land use would be inconsistent with what could be a certified LCP.
- Low cost serving visitor amenities should be preserved and not exchanged for higher cost amenities.
- Preservation of the historic site and amenities should be addressed in the land use plan, but is not mentioned in amendment or staff report.

The following are topics that we hope the staff and commissioners consider in terms of how the approval of this land use amendment will impact future conduct:

- With regard to improper piecemealing, the Commission should ask for review of future plans for all the jointly held property.
- In rezoning to MU-W, floor area ratios must be strongly enforced for any development proposals.
- There is a difference of opinion regarding the promenade among residents et al. Still, because there is adjacent housing, any use or construction/reconstruction of the promenade should be done with the privacy and safety of the nearby residents as high priority.
- Even without a bulk head, the study by a qualified civil engineer or other professional should be conducted to protect against any encroachments and project components.
- When a project is proposed, it should include protection of the natural resources such as the De Anza Peninsula with ESHA designations.
- The City is independently submitting a proposed Implementation Plan ("IP") in order to secure a certified LCP that all provisions of this application should be met in the proposed IP. Such conduct should not be supported.

Sincerely,

Bayside Village Residents Committee, Board of Directors of BVRC and all members of BVRC Annie Quinn, Maureen Buffington, Dita Vaughn, Seychelle Cannes, John Santo Contact Person: Seychelle Cannes, 85 Yorktown, Newport Beach, CA 92660

3

Sy, Fernie@Coastal

From:	Jim Mosher <jimmosher@yahoo.com></jimmosher@yahoo.com>
Sent:	Friday, December 04, 2015 4:08 PM
To:	Sy, Fernie@Coastal
Subject:	Comment on LCP-5-NPB-14-0820-2 (Back Bay Landing)
Follow Up Flag:	Follow up
Flag Status:	Flagged
Categories:	Important

Dear Mr. Sy,

I have just finished reading your report for next Thursday's Coastal Commission hearing on LCP-5-NPB-14-0820-2 (Back Bay Landing):

http://documents.coastal.ca.gov/reports/2015/12/th20a-12-2015.pdf

and would like to offer the following thoughts:

1. Given the **extremely** small fraction of the Newport Beach waterfront with a "*Recreational and Marine Commercial*" (CM) land use designation in the existing CLUP, I find it odd that the Commission would want to dilute its commitment to visitor serving uses by adding a residential entitlement to **any** of that rare commodity.

2. But should such a retrenchment be deemed necessary or desirable, I strongly support Coastal Commission staff's suggested modifications to the City proposal, and equally strongly oppose City staff's November 3rd alternative suggestions (Exhibit No. 3).

3. Commission staff's proposals seem to me to be the result of a thoughtful process to enhance the rather poor existing public access as a kind of mitigation for the residential concession.

4. That said, and even though Commission staff suggests emphasizing in the proposed Policy 2.1.9-1 (on page 5 of the report) that the proposed MU-W designation prohibits free-standing residential units, I would caution that the MU-W designation as defined in Table 2.1.1-1 ("*Land Use Plan Categories*") on page 2-4 of the existing CLUP:

http://newportbeachca.gov/government/departments/community-development/planning-division/general-plan-codes-and-regulations/local-coastal-program/coastal-land-use-plan

contains a confusing entry in the "*Density/Intensity*" column that could be taken to allow a free-standing residential option or component in an MU-W district: "*Residential only*: 15 units per acre per net acre." I understand the preceding "*Nonresidential only*" limit as an option with no residential development, but if this is not a typo, I have been struggling to understand what the "residential-only" limit could mean if residential-only buildings are not allowed. Since the City has asked to revise its CLUP, I would suggest making the deletion or clarification of that confusing entry a required part of the approval (I am not sure but I suspect it is trying to say that in addition to the floor area limit and the limitation to second floors only, the residential component, if any, in an MU-W development is limited to a maximum of 15 units per acre).

5. In the following paragraph on page 5 of Thursday's report, I would also question the wisdom of letting stand the City's suggested reference to the "maximum floor area to land area ratio **as established in General Plan Land Use Element Anomaly Cap No. 80**" (emphasis added). The maximum floor area to land area ratio for MU-W parcels is already specified in the above-mentioned Table 2.1.1-1 of the CLUP, and the City's proposed language would appear to allow the City to override that limit by amending its General Plan without amending its CLUP. If a special limit for Back Bay Landing is desired, I would strongly suggest spelling it out directly in the CLUP rather than relying on a reference to the City's General Plan. 6. I am also puzzled by the City's suggestion (thankfully rejected by Commission staff) to "save" the proposed 65-foottall public view tower by adding "screened communications or emergency equipment" (page 6 of Exhibit No. 3) -paralleling a part of the Commission-approved justification for the tower at Marina Park (which does not have public access). If the property owner at Back Bay Landing has in mind increasing his profits by leasing out a landing on the tower for a cell site, or something of that sort, I would point out that the RF emission levels in such close proximity to the stairs/elevator would likely make it incompatible with a public use.

7. Finally, as the report alludes to on page 8, I believe the City recently submitted to the Commission a proposed *Implementation Plan* for its CLUP that includes, for Commission certification, a "*Planned Community Development Plan*" for Back Bay Landing that is completely incompatible both with the existing CLUP and with the CLUP policies proposed by Commission staff. I trust that that portion of the IP will be modified to make it consistent with whatever new CLUP language, if any, the Commission adopts with regard to Back Bay Landing.

Thank you for your efforts on this, and I hope it is not too late to consider the above suggestions.

Yours sincerely,

Jim Mosher 2210 Private Road Newport Beach, CA. 92660

RECEIVED South Coast Region

EX PARTE COMMUNICATION DISCLOSURE FORM

Filed by Commissioner: Effie Turnbull Sanders

1) Name or description of project: Back Bay Landing CLUP Amendment

2) Date and time of receipt of communication: June 12, 2015 at 12:30 pm

3) Location of communication: Back Bay Landing project site, Newport Beach, CA

(If not in person, include the means of communication, e.g., telephone, e-mail, etc.)
4) Identity of person(s) initiating communication: Bonnie Neely, Nossaman LLP

5) Identity of person(s) on whose behalf communication was made: Michael Gelfand, project owner

6) Identity of persons(s) receiving communication: Effie Turnbull Sanders

7) Identity of all person(s) present during the communication: <u>Steve Kinsey, Effie</u> Turnbull Sanders, Janelle Beland, Gordon Craig, Bonnie Neely

Complete, comprehensive description of communication content (attach complete set of any text or graphic material presented):

Applicants representatives provided background information to attendees and reviewed the materials in the attached briefing booklet.

une

ommissioner Signature

TIMING FOR FILING OF DISCLOSURE FORM: File this form with the Executive Director within seven (7) days of the ex parte communication, if the communication occurred seven or more days in advance of the Commission hearing on the item that was the subject of the communication. If the communication occurred within seven (7) days of the hearing, provide the information orally on the record of the proceeding and provide the Executive Director with a copy of any written material that was part of the communication. This form may be filed with the Executive Director in addition to the oral disclosure.

NOV **3 0** 2015

COASTAL COMMISSION

NOV 3 0 2015

COASTAL COMMISSION

RECEIVED

EX PARTE	COMMUNICATION	DISCLOSURE	FORM	
				CALIFORNIA

Filed by Commissioner: Effie Turnbull-Sanders

1) Name or description of project: Back Bay Landing, Newport Beach CLUP amendment #LCP-5-NPB-14-0820-2

2) Date and time of receipt of communication: Wednesday, November 4th at 12:00.

3) Location of communication: Oceano Hotel, Half Moon Bay, CA.

(If not in person, include the means of communication, e.g., telephone, e-mail, etc.)4) Identity of person(s) initiating communication: Bonnie Neely, Nossaman LLP

5) Identity of person(s) on whose behalf communication was made: ______ Bayside Village Marina LLC

6) Identity of persons(s) receiving communication: _____ Commissioner Effie Turnbull-Sanders

7) Identity of all person(s) present during the communication: ______ Gordon Craig, John Erskine and Bonnie Neely

Complete, comprehensive description of communication content (attach complete set of any text or graphic material presented):

Back Bay Landing representatives Gordon Craig, John Erskine and Bonnie Neely presented the Revised Conceptual Plan for the Back Bay Landing project in Newport Beach including all of the information contained in the attached Briefing Booklet, plus the photos and exhibits.

JON. 8,2015

Signature of Commissioner

TIMING FOR FILING OF DISCLOSURE FORM: File this form with the Executive Director within seven (7) days of the ex parte communication, if the communication occurred seven or more days in advance of the Commission hearing on the item that was the subject of the communication. If the communication occurred within seven (7) days of the hearing, provide the information orally on the record of the proceeding and provide the Executive Director with a copy of any written material that was part of the communication. This form may be filed with the Executive Director in addition to the oral disclosure.

BACK BAY LANDING

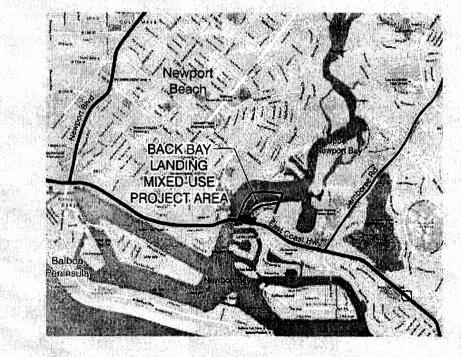
CALIFORNIA COASTAL COMMISSION CLUP AMENDMENT REQUEST NO. LCP-5-NPB-14-0820-2

BRIEFING BOOKLET

GORDON CRAIG - AUTHORIZED AGENT JOHN ERSKINE - AUTHORIZED AGENT BONNIE NEELY - AUTHORIZED AGENT

(MICHAEL GELFAND - OWNER, BAYSIDE VILLAGE MARINA LLC)

JUNE 9-12, 2015 BRIEFINGS



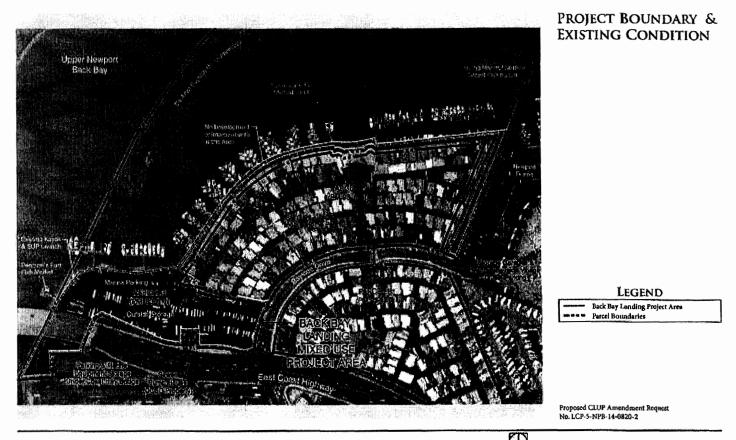
LOCATION MAP

Back Bay Landing is a partially developed commercial site (pre-dated the Coastal Act) located lunnediately north of East Coast Highway in Newport Beach, California. The site is bounded by East Coast Highway and Newport Harbor on the south and west, Bayside Drive to the south, the Newport Back Bay channel to the west and Bayside Village Mobile Home Park to the southeast.

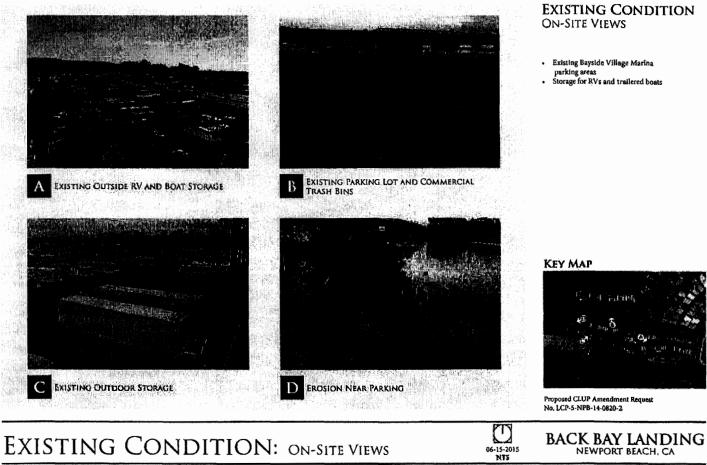
	LEGEND
	Project Area (Parcel 3 of PM 93-111)
C 197 M	Back Bay Landing Mixed-Use Project Area
	Recreation & Marine Commercial

06-15-2015 NT5 Proposed CLUP Amendmont Request No. LCP-5-NPB-14-0820-2

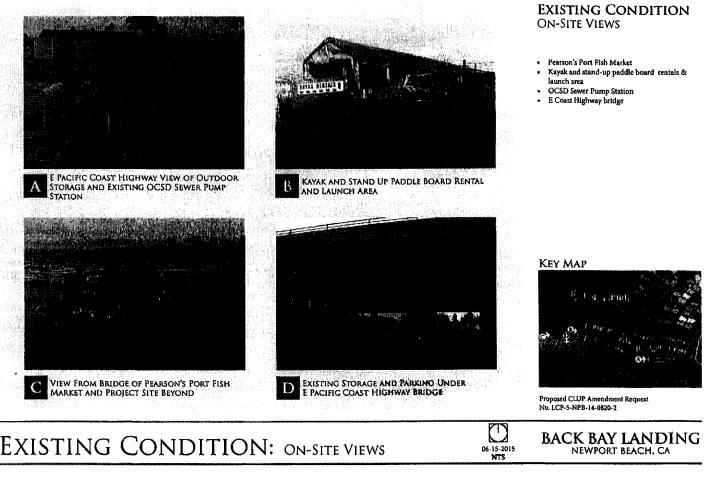
LOCATION MAP



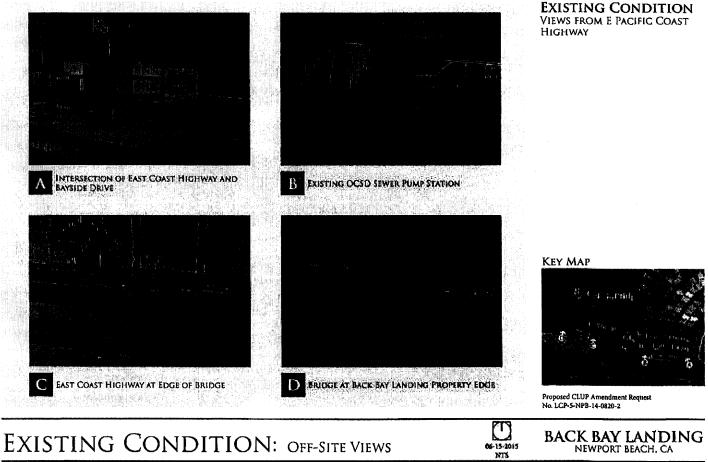
PROJECT BOUNDARY & EXISTING CONDITION



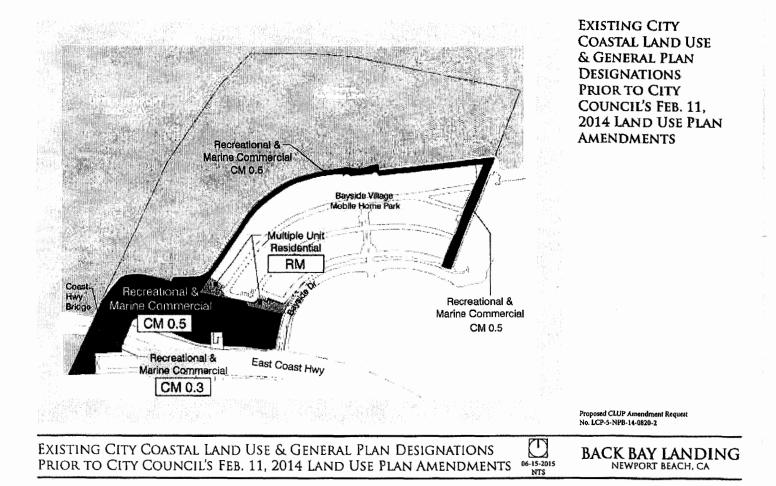
EXISTING CONDITION: ON-SITE VIEWS

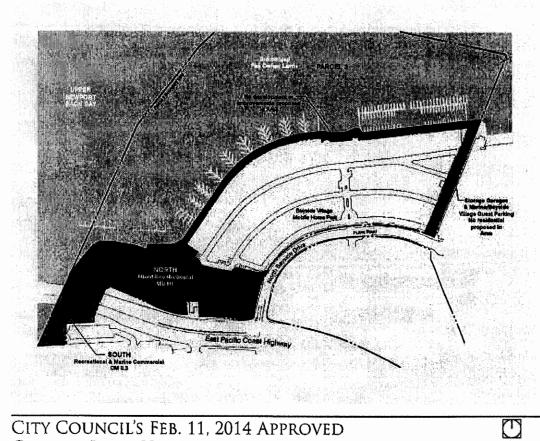


EXISTING CONDITION: ON-SITE VIEWS



EXISTING CONDITION: OFF-SITE VIEWS





CITY COUNCIL'S FEB. 11, 2014 APPROVED COASTAL LAND USE AMENDMENT

1

CITY COUNCIL'S FEB. 11, 2014 APPROVED COASTAL LAND USE AMENDMENT

LAND USE OVERVIEW

NORTH

Changing the land use from CM (Recreational and Marine Commercial) north of East Pacific Coast Highway to MU-H1 (Mixed Use - Horizontal).

SOUTH

No change from prior CM 0.3 (Recreational and Marine Commercial).

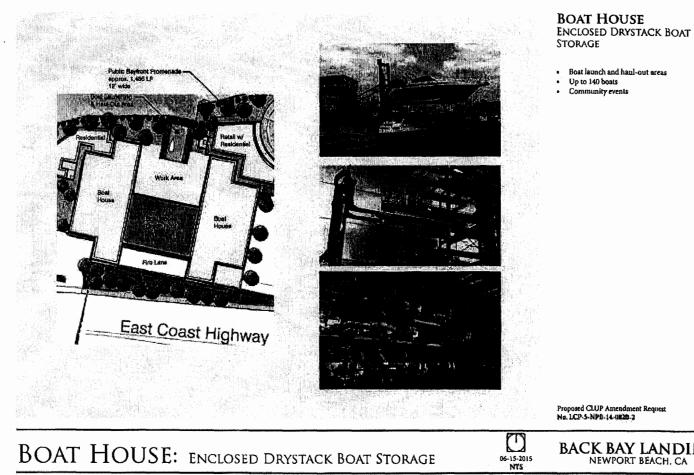
City approved amendment to the LCP, Planned Community Development Plan (PCDP), EIR, lot line adjustment and zone change.

PROJECT COMPONENTS

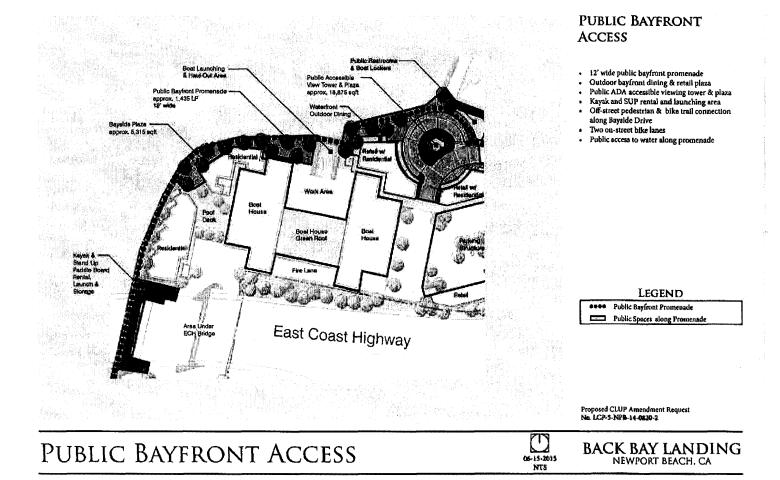
- Induor dry stack boat storage Visitor serving recreational and commercial . HICS
- Public bayfront pedestrian promenade Bike trail connections ٠
- Public ADA accessible view tower
- New parking for marina, Boat House, mixed-uses, including residential
- . 49 Residences

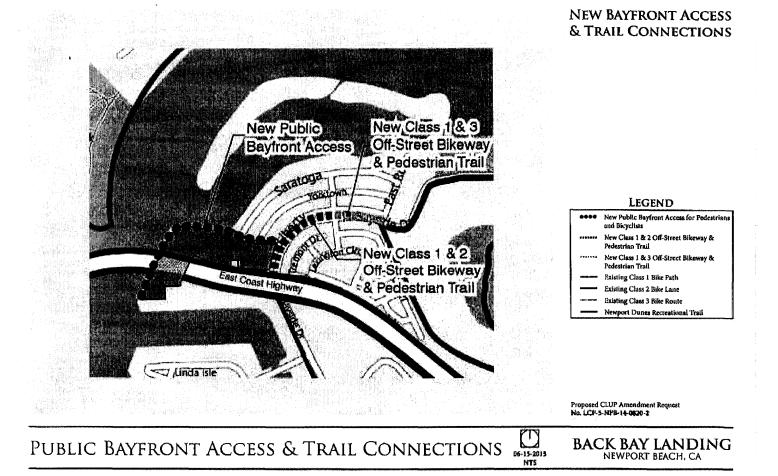
06-15-2015 NTS

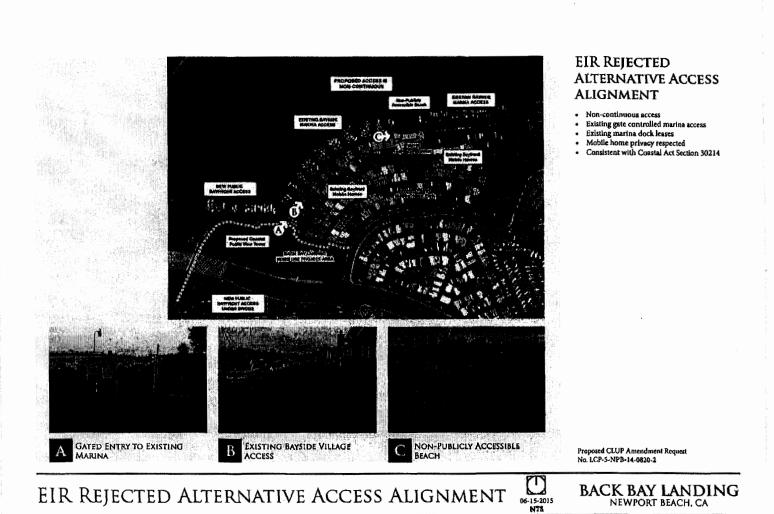
Proposed CLUP Amendment Request No. LCP-5-NPD-14-0820-2

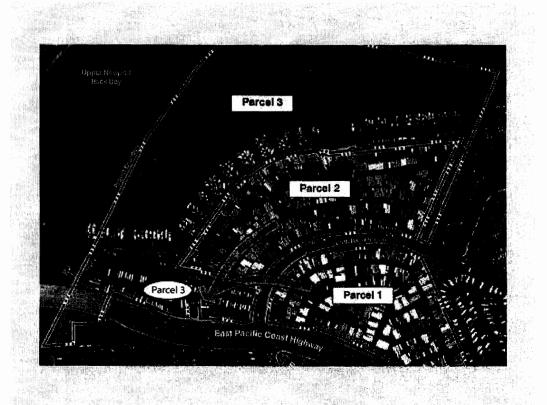


BOAT HOUSE: ENCLOSED DRYSTACK BOAT STORAGE







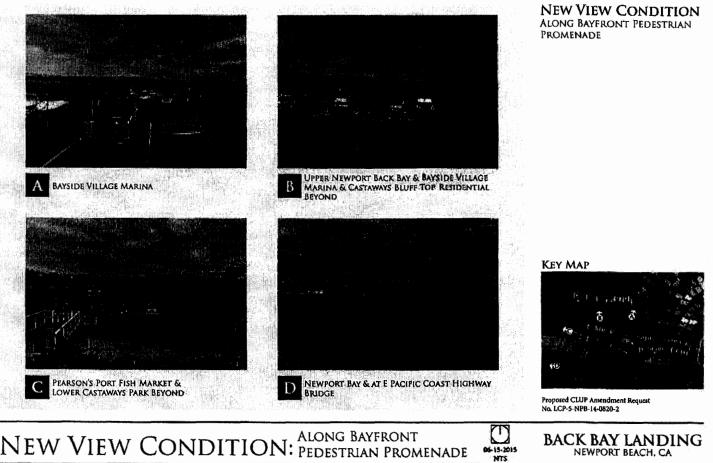


RESIDENTIAL DENSITY REALLOCATION

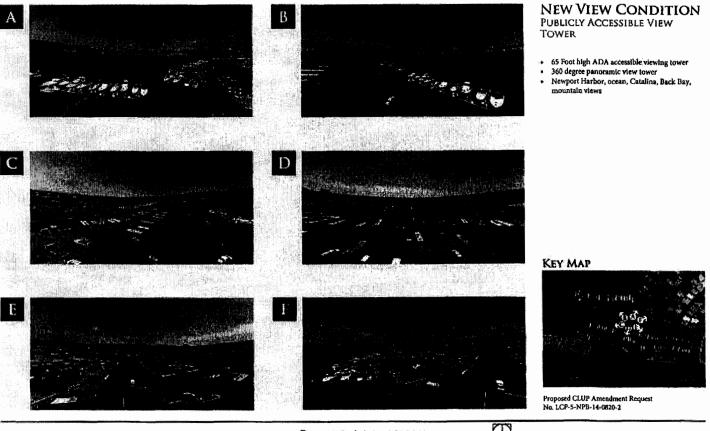
49 residential units have been reallocated from Parcel 1 & 2 to Parcel 3. The 49 units are within the existing Parcel Map 93-111 and within the same statistical area of the General Plan and under the same ownership.

Proposed CLUP Amendment Request No. LCP-5-NPB-14-0820-2

06-15-2015 NTS **RESIDENTIAL DENSITY REALLOCATION**



NEW VIEW CONDITION: PEDESTRIAN PROMENADE



NEW VIEW CONDITION: VIEW TOWER

06-15-2015 NTS

Added by private interviewed and a state of the state of		PUBLIC SPACES
Kayat A Bian U bo Practite Gener Rende Gen		LEGEN D Public Bayfront Promenade Effects Bayside Drive Pedestrian & Bike Trail link STE Public Spaces
		Propased CLUP Amendment Request No. LCP-5-NPB-14-0820-2
PUBLIC SPACES	06-15-2015 NTS	BACK BAY LANDING NEWPORT BEACH, CA

PROJECT OVERVIEW

Alithu ant

Back Bay Landing is a proposed integrated, mixed-use waterfront village on an approximately 7 acre portion of a 31.4 acre parcel adjacent to the Upper Newport Bay in the City of Newport Beach. The majority of the development site (6.332 acres) is located immediately north of East Coast Highway between Bayside Drive and the Bayside Marina adjacent to the Upper Newport Bay. The balance of the project site (0.642 acres) is located under and immediately south of the center line of the East Coast Highway bridge.

CURRENT COASTAL **COMMISSION REQUESTS** (LEGISLATIVE APPROVALS)

Amendments to the General Plan and Coastal Land Use Plan are required to change the land use designations to a Mixed-Use Horizontal (MU-H) designation and the Planned Community Development Plan (PCDP) is proposed to establish appropriate zoning regulations and development standards for Parcel 3. The requested approvals will provide for a horizontally distributed mix of uses, including enclosed dry stack boat storage, recreational and marine commercial retail, marine services, and a limited mix of freestanding multi-family residential and mixed-use structures with residential uses above ground floor, as regulated by the proposed Back Bay Landing PCDP. No development is proposed for the De Anza Bayside Marsh Peninsula nor are any changes proposed to the existing Bayside Village Marina.

FUTURE COASTAL COMMISSION REQUEST (CDP)

Specific project design and site plan approvals will be sought at a future date through the site development plan and the Coastal Development Permit (CDP) application process. The review process will be regulated by the development standards and design guidelines established in the Planned Community Development Plan (PCDP).

COASTAL COMMISSION **APPROVALS REQUESTED**



PROJECT ENTRY AT E PACIFIC COAST HIGHWAY AND BAYSIDE DRIVE



PUBLIC PEDESTRIAN BAYSIDE PROMENADE

Proposed CLUP Amendment Request No. LCP-5-NPB-14-0820-2

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COASTAL COMMISSION APPROVALS REQUESTED 06-15-2015 BACK BAY LANDING NEWPORT BEACH, CA

BACK BAY LANDING

CALIFORNIA COASTAL COMMISSION CLUP AMENDMENT REQUEST NO. LCP-5-NPB-14-0820-2

BRIEFING BOOKLET

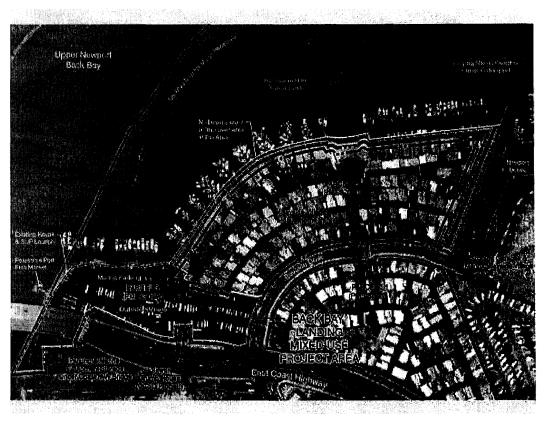
GORDON CRAIG - AUTHORIZED AGENT JOHN ERSKINE - AUTHORIZED AGENT BONNIE NEELY - AUTHORIZED AGENT

(MICHAEL GELFAND - OWNER, BAYSIDE VILLAGE MARINA LLC)

JUNE 9-12, 2015 BRIEFINGS

- "你們覺得她的發展了。」, "但我們們的心理的?" 전환 것을 다 있는 것 같은 것 않는 것 같은 사람들이 가지 않는 것 같은 것 같이 가지? 것		LOCATION MAP
Newport Beach Back Bay LANDING MIXED-USE PROJECT AREA		Back Bay Landing is a partially developed commercial sile (pre-dated the Coastal Act) located immediately north of East Coast Highway in Newport Beach, California. The site is bounded by East Coast Highway and Newport Harbor on the south and west, Bayside Drive to the south, the Newport Back Bay channel to the west and Bayside Village Mobile Home Park to the southeast.
Balbos Baissula		LEGEND Project Area (Parcel 3 of PM 93-111) Back Bay Landing Mixed-Use Project Area Recreation & Marine Commercial Proposed CLUP Amendment Request No. 1 C.P. S. MPR. 14, 4820-2
ny service internet to a service of the Annal Service of the service of the service of the service services of the service of the	andra di Coloria	No. LCP-5-NPB-14-0820-2
Location Map	06-13-2015	BACK BAY LANDING NEWPORT BEACH, CA

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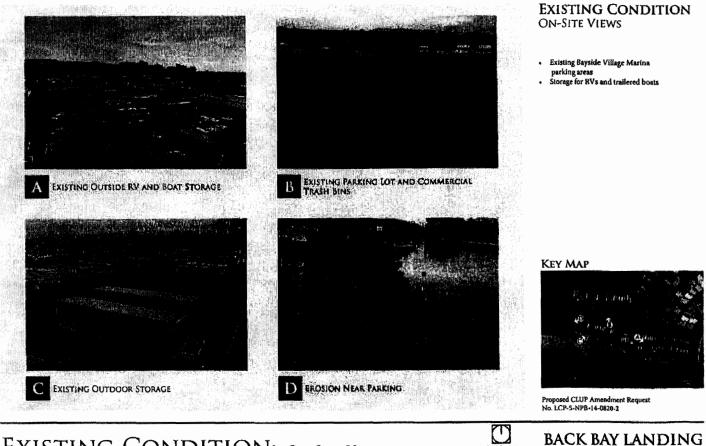
PROJECT BOUNDARY & EXISTING CONDITION

Proposed CLUP Amendment Request No. LCP-5-NPB-14-0820-2

PROJECT BOUNDARY & EXISTING CONDITION

BACK BAY LANDING

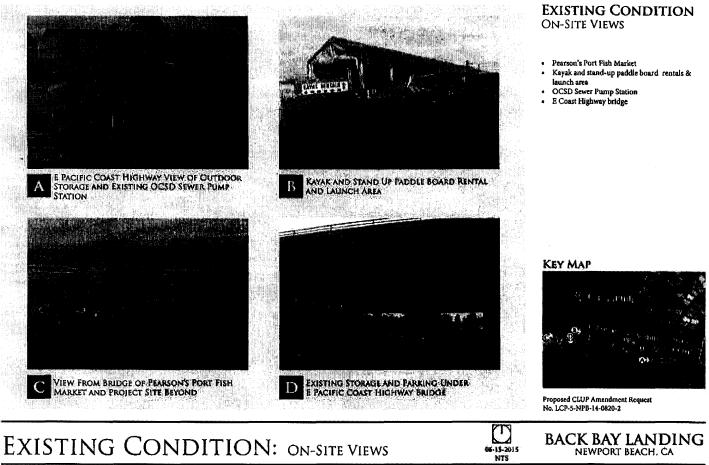
LEGEND Back Bay Landing Project Area Parcel Boundaries



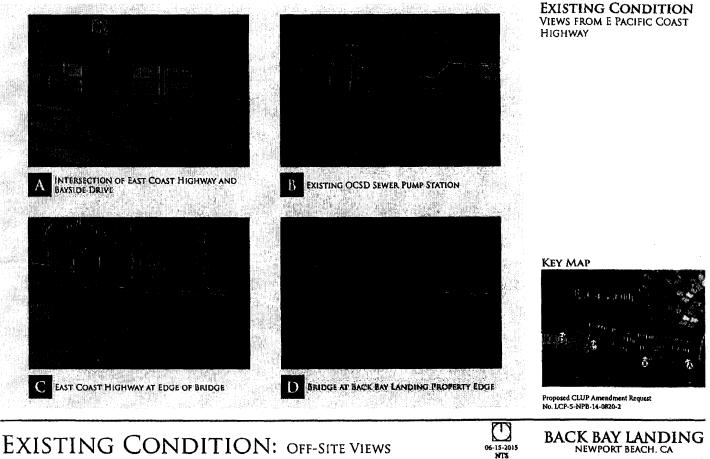
EXISTING CONDITION: ON-SITE VIEWS

BACK BAY LANDING

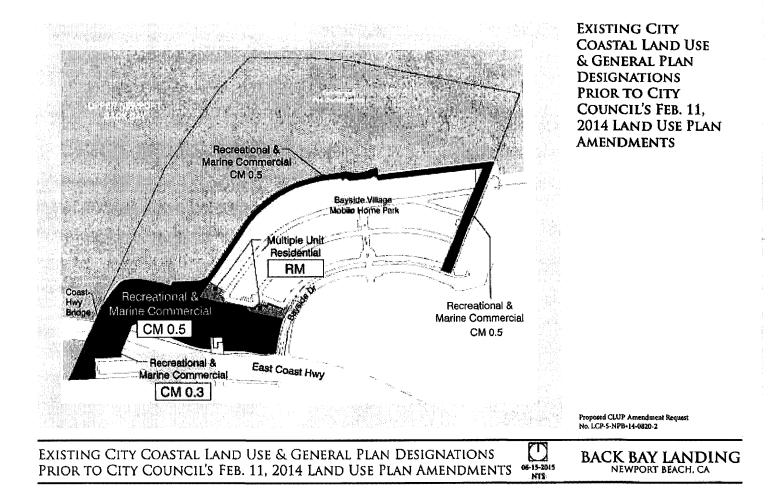
06-15-2015 NTS

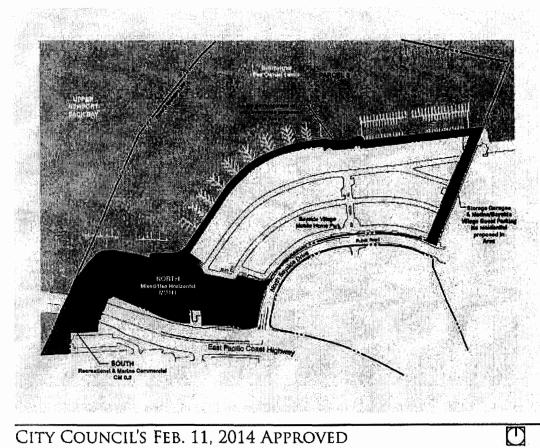


EXISTING CONDITION: ON-SITE VIEWS



EXISTING CONDITION: OFF-SITE VIEWS





CITY COUNCIL'S FEB. 11, 2014 APPROVED COASTAL LAND USE AMENDMENT

CITY COUNCIL'S FEB. **11, 2014 APPROVED** COASTAL LAND USE AMENDMENT

LAND USE OVERVIEW

NORTH

Changing the land use from CM (Recreational and Marine Commercial) north of East Pacific Coast Highway to MU-H1 (Mixed Use - Horizontal).

SOUTH

No change from prior CM 0.3 (Recreational and Marine Commercial).

City approved amendment to the LCP, Planned Community Development Plan (PCDP), EIR, lot line adjustment and zone change.

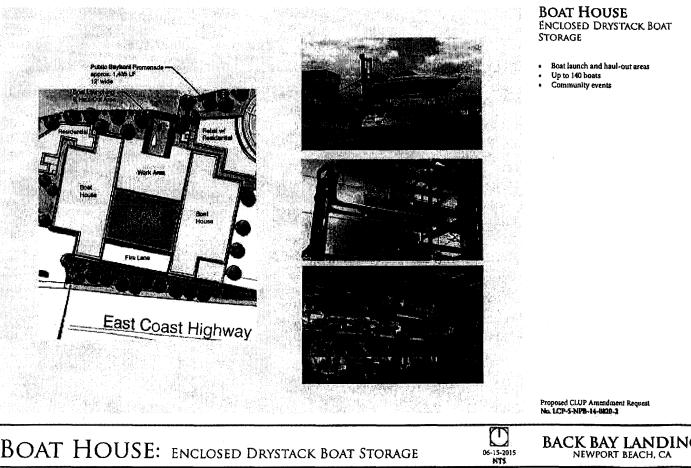
PROJECT COMPONENTS

- Indoor dry stack boat storage Visitor serving recreational and commercial URCS
- Public bayfront pedestrian promenade Bike trail connections
- Public ADA accessible view tower
- New parking for marina, Boat House, mixed-uses, including residential

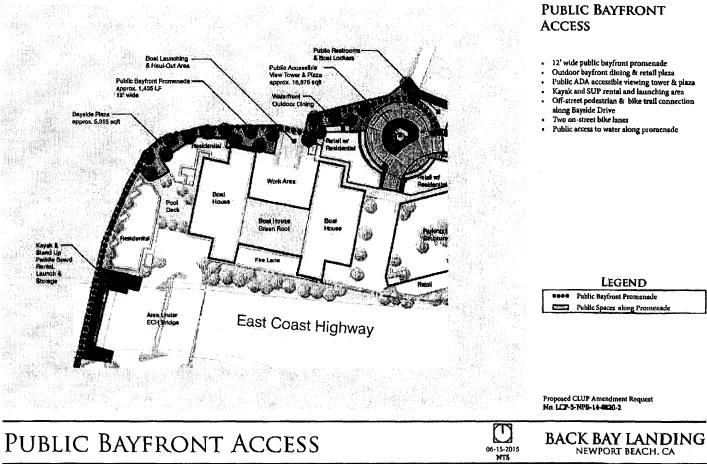
. 49 Residences

06-15-2015 NTS

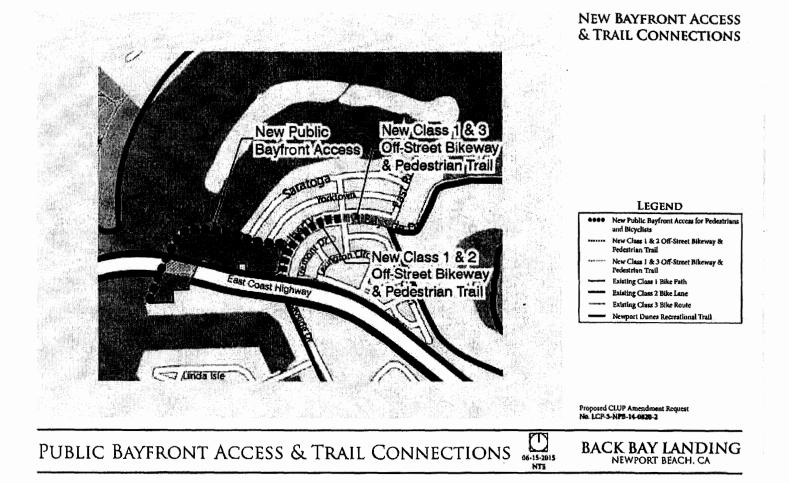
Proposed CLUP Amendment Request No. LCP-3-NP8-14-0820-2

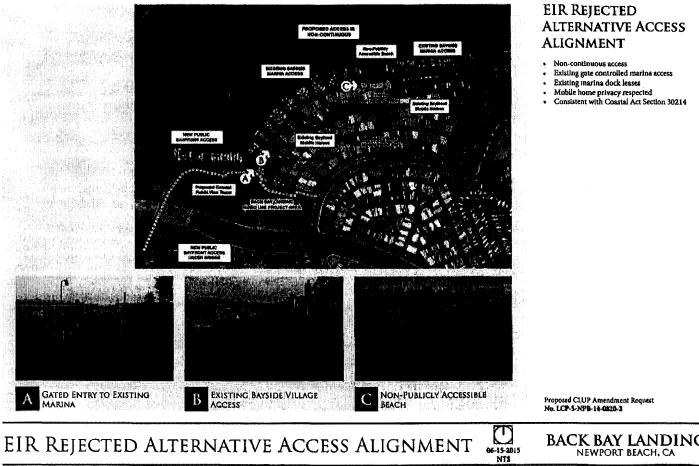


BOAT HOUSE: ENCLOSED DRYSTACK BOAT STORAGE

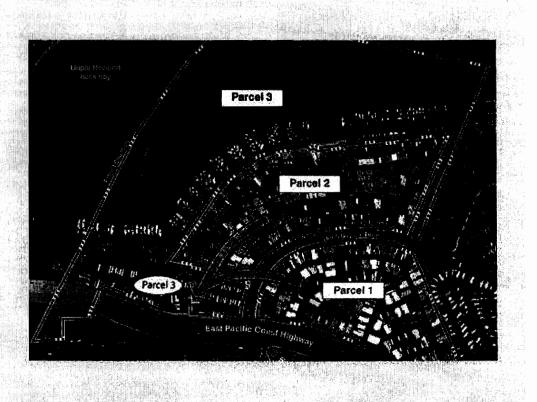


PUBLIC BAYFRONT ACCESS





EIR REJECTED ALTERNATIVE ACCESS ALIGNMENT

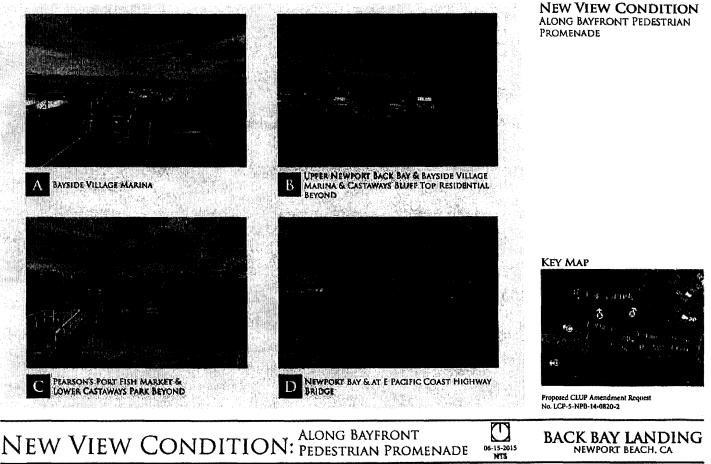


RESIDENTIAL DENSITY REALLOCATION

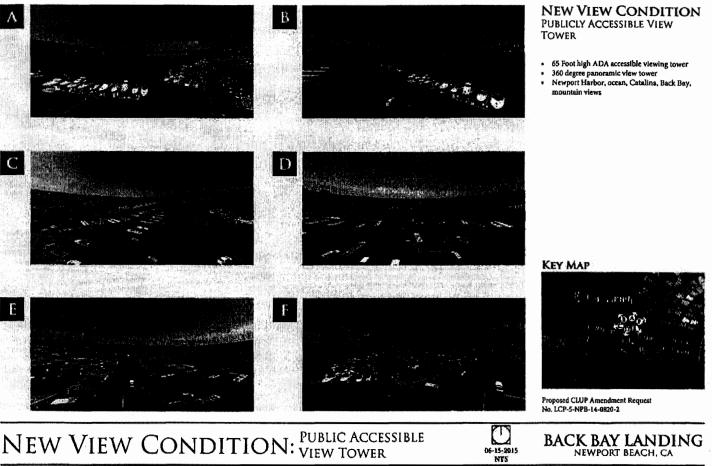
49 residential units have been reallocated from Parcel 1 & 2 to Parcel 3. The 49 units are within the existing Parcel Map 93-111 and within the same statistical area of the General Plan and under the same ownership.

Proposed CLUP Amendment Request No. LCP-5-NPB+14-0820-2

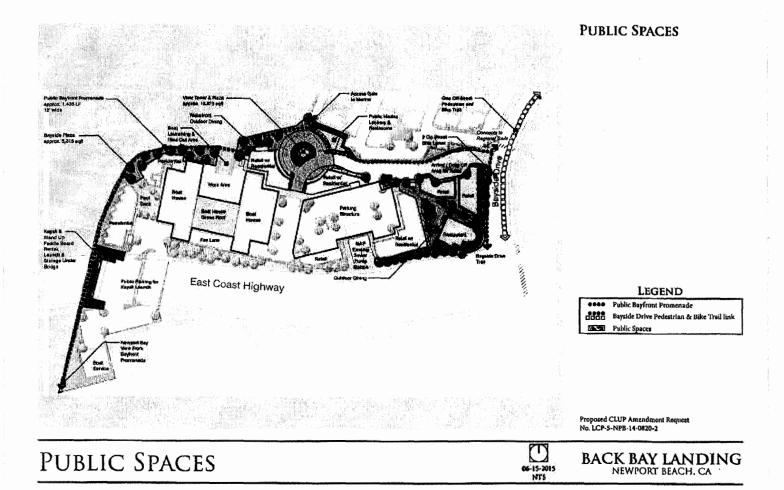
06-15-2015 NTS **RESIDENTIAL DENSITY REALLOCATION**



NEW VIEW CONDITION: PEDESTRIAN PROMENADE



NEW VIEW CONDITION: VIEW TOWER



PROJECT OVERVIEW

Back Bay Landing is a proposed integrated, mixed-use waterfront village on an approximately 7 acre portion of a 31.4 acre parcel adjacent to the Upper Newport Bay in the City of Newport Beach. The majority of the development site (6.332 acres) is located immediately north of East Coast Highway between Bayside Drive and the Bayside Marina adjacent to the Upper Newport Bay. The balance of the project site (0.642 acres) is located under and immediately south of the center line of the East Coast Highway bridge.

CURRENT COASTAL COMMISSION REQUESTS (LEGISLATIVE APPROVALS)

Amendments to the General Plan and Coastal Land Use Plan are required to change the land use designations to a Mixed-Use Horizontal (MU-H) designation and the Planned Community Development Plan (PCDP) is proposed to establish appropriate zoning regulations and development standards for Parcel 3. The requested approvals will provide for a horizontally distributed mix of uses, including enclosed dry stack boat storage, recreational and marine commercial retail, marine services, and a limited mix of freestanding multi-family residential and mixed-use structures with residential uses above ground floor, as regulated by the proposed Back Bay Landing PCDP. No development is proposed for the De Anza Bayside Marsh Peninsula nor are any changes proposed to the existing Bayside Village Marina.

FUTURE COASTAL COMMISSION REQUEST (CDP)

Specific project design and site plan approvals will be sought at a future date through the site development plan and the Coastal Development Permit (CDP) application process. The review process will be regulated by the development standards and design guidelines established in the Planned Community Development Plan (PCDP).

COASTAL COMMISSION APPROVALS REQUESTED



PROJECT ENTRY AT E PACIFIC COAST HIGHWAY AND BAYSIDE DRIVE



PUBLIC PEDESTRIAN BAYSIDE PROMENADE

Proposed CLUP Amendment Request No. LCP-5-NPB-14-0820-2

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COASTAL COMMISSION APPROVALS REQUESTED

BACK BAY LANDING

CALIFORNIA COASTAL COMMISSION CLUP AMENDMENT NO. LCP-5-NPB-14-0820-2 Planned Community Development Plan (PC-9)

BRIEFING BOOKLET

GORDON CRAIG - AUTHORIZED AGENT JOHN ERSKINE - AUTHORIZED AGENT BONNIE NEELY - AUTHORIZED AGENT

MICHAEL GELFAND - PRESIDENT, BAYSIDE VILLAGE MARINA LLC

NOV. 4-6, 2015

PROJECT OVERVIEW

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CURRENT COASTAL COMMISSION REQUESTS (LEGISLATIVE APPROVALS)

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Maximum 6 of 49 residential ground floor units over

FUTURE COASTAL COMMISSION REQUEST (CDP)

Specific project design and site plan approvals will be sought at a future date through the site development plan and the Coastal Development Permit (CDP) application process. The review process will be regulated by the development standards and design guidelines established in the Planned Community Development Plan (PCDP). COASTAL COMMISSION APPROVALS REQUESTED





BACK BAY LANDING PUBLIC PEDESTRIAN PROMENADE



BACK BAY LANDING

VIEW PLAZA SECOND LEVEL Proposed CLUP Amendment Request No. LCP 5-NPH 14-0020-2

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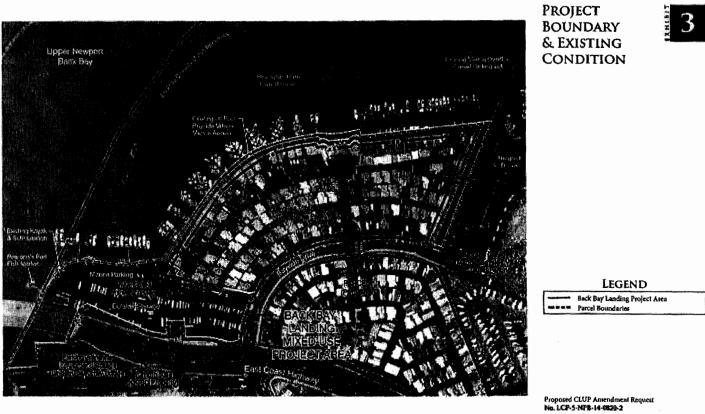
11-04-2015 NTS

COASTAL COMMISSION APPROVALS REQUESTED

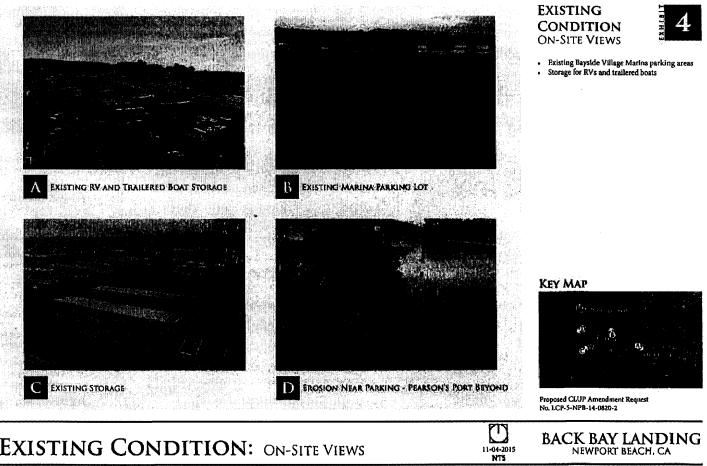
		LOCATION MAP
Newpon Beach BACK BAY LANDING MIXED!USE PROJECT AREA		Back Bay Landing is a previously developed commercial site (pre-dated the Coastal Act) located immediately north of East Coast Highway in Newport Bach, California. The site is bounded by East Coast Highway and Newport Harbor on the south and west, Bayside Drive to the south, the Newport Back Bay channel to the west and Bayside Village Mobile Home Park to the southeast.
Balboa Fesiaesula		LEGEND Project Area (Parcel 3 of PM 93-111) Back Bay Landing Mixed-Use Project Area Recreation & Marine Commercial
		Proposed CLUP Amendment Request No. LCP-5-NPB-14-0820-2
LOCATION MAP	11-04-2015 NTS	BACK BAY LANDING

LOCATION MAP

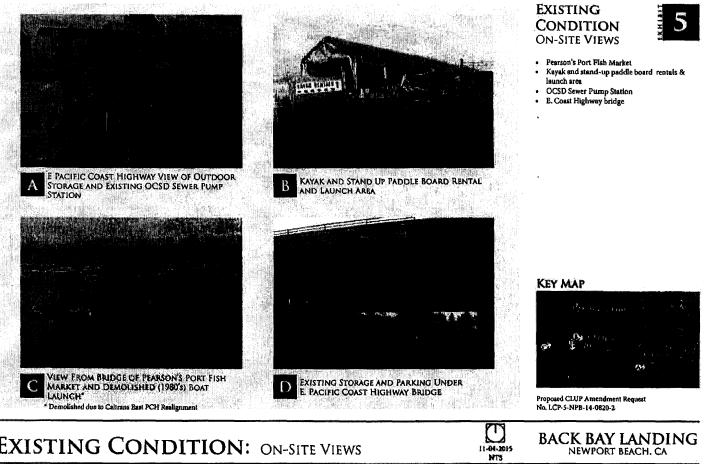
LOCATION MAP



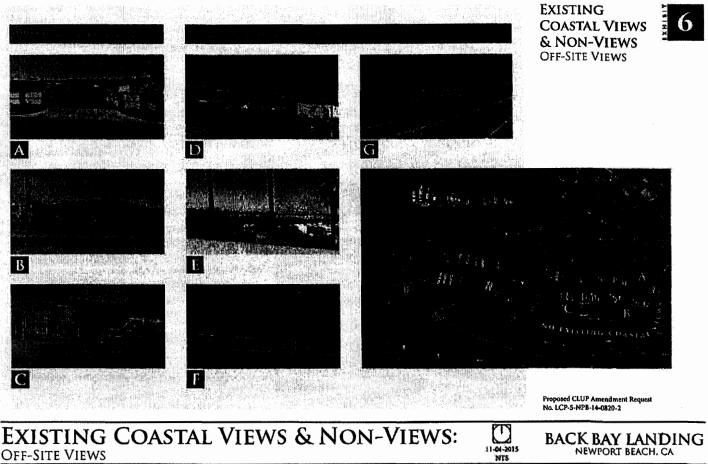
PROJECT BOUNDARY & EXISTING CONDITION



EXISTING CONDITION: ON-SITE VIEWS

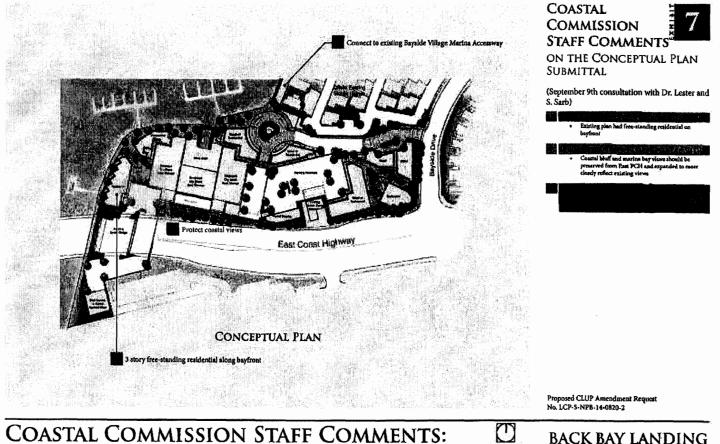


EXISTING CONDITION: ON-SITE VIEWS



EXISTING COASTAL VIEWS & NON-VIEWS: **OFF-SITE VIEWS**

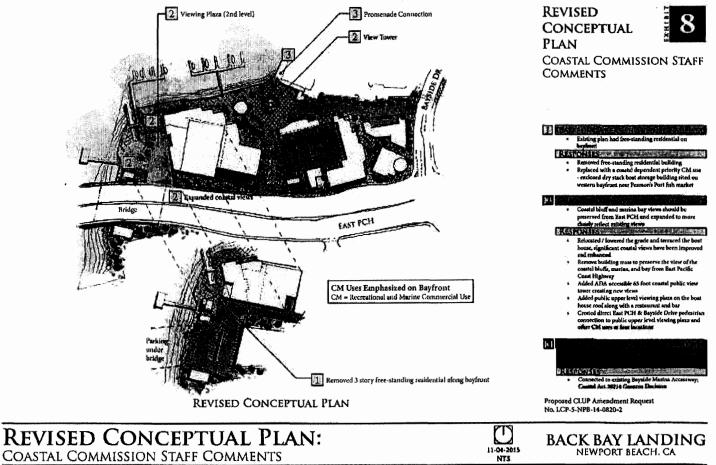
BACK BAY LANDING



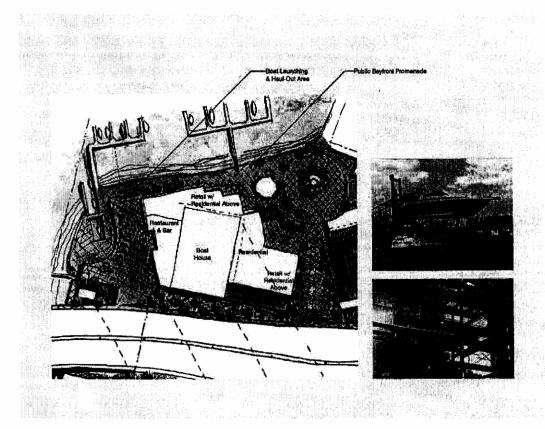
COASTAL COMMISSION STAFF COMMENTS: ON THE CONCEPTUAL PLAN

BACK BAY LANDING

11-04-2015 NTS



COASTAL COMMISSION STAFF COMMENTS



CITY GPA Mandated Priority Coastal Use



COASTAL USE ENCLOSED DRY STACK BOAT STORAGE

Boat launch and haul-out areas

Up to 140 boats
 Community events

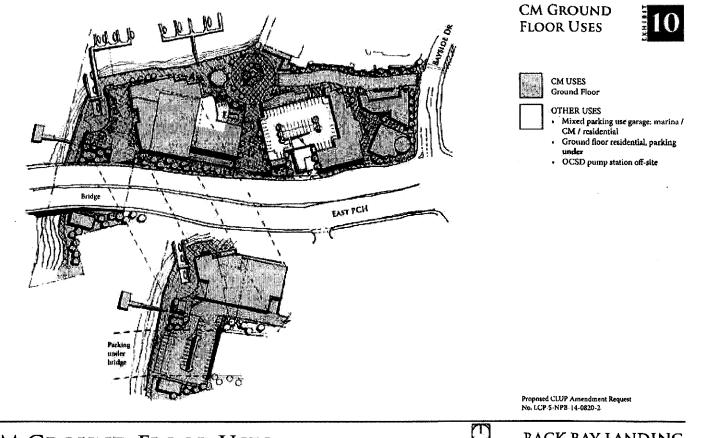
"Development shall incorporate amenities that assure access for coastal visitors, including the development of a public pedestrian promende along the bayfront, bikeways with connections to existing regional irrails and paths, are enclosed dry-stack boat storage facility, and public plazas and open spaces that provide public views, view corridors, and new coastal view opportunities." - City Resolution 2.1.9-1

Proposed CLUP Amendment Request No. LCP-3-NFI-14-0820-2

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11-04-2015 NTS

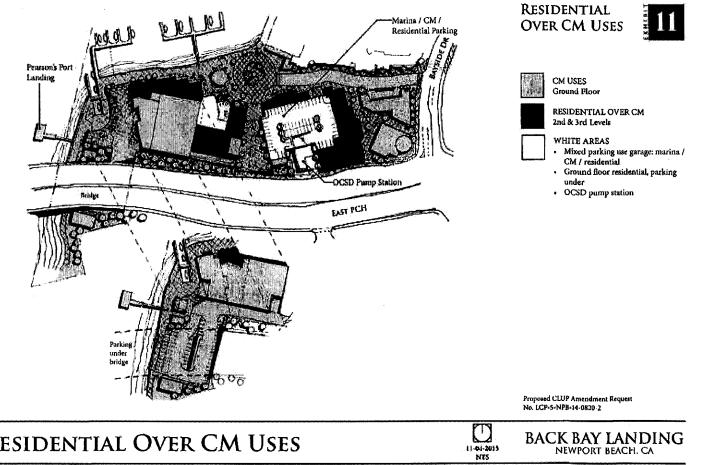
CITY OF NEWPORT BEACH GPA MANDATED PRIORITY COASTAL USE: ENCLOSED DRY STACK BOAT STORAGE



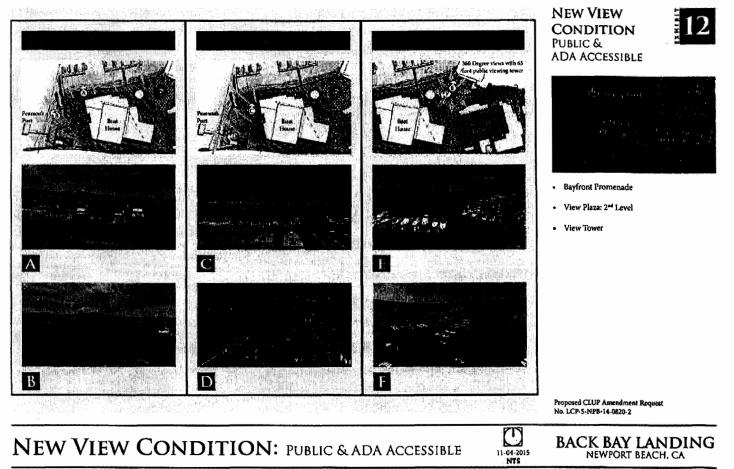
CM GROUND FLOOR USES

11-94-2015 NTS

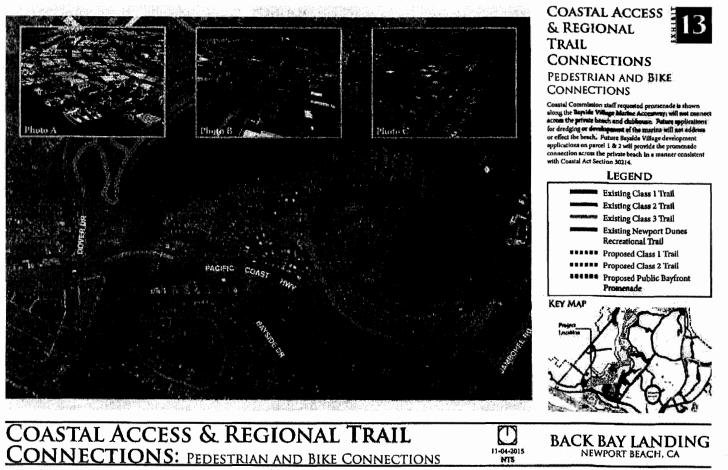
BACK BAY LANDING NEWPORT BEACH, CA



RESIDENTIAL OVER CM USES



NEW VIEW CONDITION: PUBLIC & ADA ACCESSIBLE



CALIFORNIA COASTAL COMMISSION

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





November 25, 2015

TO: Commissioners and Interested Persons

- FROM: Sherilyn Sarb, Deputy Director Karl Schwing, Coastal Program Manager Charles Posner, Planning Supervisor Fernie Sy, Coastal Program Analyst
- **SUBJECT:** Major LCP Amendment Request No. 2-14 (LCP-5-NPB-14-0820-2) (Back Bay Landing) to the City of Newport Beach Certified Coastal Land Use Plan. For public hearing and Commission action at the Commission's December 10, 2015 meeting in Monterey.

SUMMARY OF LCP AMENDMENT REQUEST NO. 2-14

The Coastal Land Use Plan (CLUP) for the City of Newport Beach was effectively certified by the Commission in 2006, and updated in 2009. Only the Land Use Plan portion of the City's Local Coastal Program (LCP) has been certified by the Commission.

Amendment Request No. 2-14 incorporates changes to the certified LUP to accommodate a future, mixeduse project known as Back Bay Landing and would change the land-use designation of a 6.97-acre portion of the 31-acre property located at 300 East Coast Highway from Recreational and Marine Commercial (CM-B) to Mixed-Use Horizontal (MU-H), as well as establish a site specific development policy, and provide an exception to the 35-foot Shoreline Height Limitation Zone to allow for a 65-foot high coastal public view tower. The proposed changes are reflected in the City Council Resolution No. 2014-12 (**Exhibit No. 2**). The subject site is currently occupied by a paved surface lot used for RV and trailered boat/marine equipment storage and marina parking.

SUMMARY OF STAFF RECOMMENDATION

Staff recommends that the Commission certify LCP Amendment Request No. 2-14 with the following suggested modifications: 1) adopt and apply a Mixed-Use Water Related (MU-W) land use designation to the subject property; 2) require improvements (bike lanes and pedestrian trail) to Bayside Drive including a new trail connecting to the existing trail at the Newport Dunes recreational area; 3) require public access through an easement across the entire portion of the marina accessway adjacent to the mobile home development including the private beach/submerged fee-owned land located on Parcel 2 of Parcel Map 93-111; 4) require the coastal development permit application for the Back Bay Landing project to include a hazards assessment and a shoreline management plan; 5) require that new structures be sited and designed to avoid the need for the shoreline devices during the projected life of the structure (75 years); and 6) eliminate the exception to the 35 foot Shoreline Height Limitation Zone. The motions are on **Page Three through Four**. The suggested modifications are on **Pages Four through Seven**. The City does not entirely agree with the staff recommendation.

The suggested modification are necessary to carry out the Coastal Act requirement to prioritize coastaldependent and coastal-related visitor-serving land uses above residential uses, to promote and enhance public access, and to protect visual resources and maintain the character of the surrounding areas. The modifications will allow for the proposed use of the site as a mixed–use development focusing on higher-priority coastal-dependent and coastal-related development while allowing lower-priority residential uses above the ground floor. In the event that the proposed Back Bay Landing project is not approved or is not constructed, or upon redevelopment of the site, the site will remain designated for coastal-dependent and coastal-related visitor-serving commercial uses, with the ability to provide residential uses above the ground floor.

Therefore, staff recommends that the Commission, after public hearing:

- 1. Deny the LUP amendment request as submitted; and,
- 2. Certify, only if modified, the LUP amendment request.

The motions and resolutions are found on Page Three through Four.

STANDARD OF REVIEW

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

LOCAL REVIEW AND DEADLINE FOR COMMISSION ACTION

The City of Newport Beach Planning Commission held a public hearing for the CLUP amendment on December 19, 2013. The City Council held a public hearing on February 11, 2014 and February 25, 2014 (2nd reading of the ordinance). On July 11, 2014, the City submitted the amendment request for Coastal Commission certification with City Council Resolution No. 2014-12. On July 23, 2014, the submission was deemed incomplete.

On October 9, 2014, after receiving additional information, the amendment request was deemed by staff to be complete. On December 10, 2014, the Commission authorized a one-year extension of the ninety-day time limit for action on the LUP amendment request. As such, the last date for Commission action on this item is January 7, 2016.

FOR ADDITIONAL INFORMATION

The file is available for review at the South Coast District office located in the Molina Center, 200 Oceangate, Suite 1000, Long Beach, 90802. The staff report can be viewed on the Commission's website: <u>http://www.coastal.ca.gov/mtgcurr.html</u>. For additional information, contact Fernie Sy in the South Coast District office at (562) 590-5071.

EXHIBITS

- 1. Location Map
- 2. City Council Resolution No. 2014-12
- 3. Letter from the City of Newport Beach dated November 3, 2015
- 4. Shoreline Height Limitation Zone Map
- 5. Coastal Access and Regional Trail Connection
- 6. Public Correspondence

I. MOTIONS AND RESOLUTIONS

Motion I:

I move that the Commission certify Land Use Plan Amendment No. 2-14 as submitted by the City of Newport Beach.

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

Resolution I:

The Commission hereby denies certification of Land Use Plan Amendment No. 2-14 as submitted by the City of Newport Beach and adopts the findings set forth below on grounds that the amendment does not conform with the policies of Chapter 3 of the Coastal Act. Certification of the Land Use Plan Amendment would not comply with the California Environmental Quality Act because there are feasible alternatives or mitigation measures which could substantially lessen any significant adverse impact which the Land Use Plan Amendment may have on the environment.

Motion II:

I move that the Commission certify Land Use Plan Amendment No. 2-14 for the City of Newport Beach if it is modified as suggested in this staff report.

Staff recommends a **YES** vote. Passage of this motion will result in the certification of the LUP Amendment with suggested modifications and adoption of the following resolution and findings. The motion to certify with suggested modifications passes only upon an affirmative vote of the majority of the appointed Commissioners.

Resolution II:

The Commission hereby certifies Land Use Plan Amendment No. 2-14 for the City of Newport Beach if modified as suggested and adopts the findings set forth below on grounds that the Land Use Plan Amendment with the suggested modifications will meet the requirements of and be in conformity with the policies of Chapter 3 of the Coastal Act. Certification of the Land Use Plan Amendment if modified as suggested complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the plan on the environment, or 2) there are no further feasible alternatives and mitigation measures that would substantially lessen any significant adverse impacts which the Land Use Plan Amendment may have on the environment.

II. SUGGESTED MODIFICATIONS

Certification of the LUP amendment is subject to the following modifications. Text added by the suggested modification is *bold, italicized and underlined*, and text suggested to be deleted is struck through. Only those subsections of the LUP for which modifications are being suggested are shown below.

2.1.9 Back Bay Landing

Located *at <u>300 East Coast Highway</u>* at the northwesterly corner of the intersection of East Coast Highway and Bayside Drive, the Back Bay Landing site is an approximately 7-acre *privately-owned* site adjacent to the Upper Newport Bay. The site is the landside portion of Parcel 3 of Parcel Map 93-111 and is currently improved with existing structures and paved areas utilized for outdoor storage space of RVs and small boats, parking and restrooms facilities for the Bayside Marina, a kayak rental and launch facility, parking and access to Pearson's Port <u>seafood market</u> and marine service equipment storage under the Coast Highway Bridge.

The site would accommodate the development of an integrated, mixed-use waterfront project consisting of coastal dependent and coastal related visitor-serving commercial and recreational uses allowed in the current CLUP CM-A and CM-B designation, while allowing for limited freestanding multifamily residential and mixed-use structures with residential uses above the ground floor. Residential development would be contingent upon the concurrent development of the abovereferenced marine-related and visitor-serving commercial and recreational facilities on the ground floor, including the enclosed dry stack boat storage facility, and completion of a new public bayfront promenade connecting with Bayside Drive and Newport Dunes/County trails. The public bayfront promenade shall be continuous along the waterfront and connect the sidewalks along East Coast Highway at one end (west, to and along the shoreline of Back Bay Landing, then continuing along a waterfront accessway that is adjacent to the mobile home development located on Parcel 2 of Parcel Map 93-111) and then to the bike and waterfront pedestrian access along the Marina Clubhouse and marina at the Newport Dunes recreation area at the other end (east). Bike lanes and pedestrian access will be provided along Bayside Drive from the intersection of Bayside Drive/East Coast Highway intersection running northerly to the terminus of Bayside Drive at the Newport Dunes recreation area as shown on Coastal Access Map 3-1and Bikeways and Trails: Map 2. These public bike and pedestrian improvements shall occur prior to or concurrent with any new development at Back Bay Landing.

Policy 2.1.9-1

The Back Bay Landing site shall be developed as a unified site with <u>coastal-dependent, coastal-</u> <u>related, and visitor-serving development as priority uses, with residential uses allowed above the</u> <u>ground floor onlymarine related and visitor serving commercial and recreational uses. Limited</u> freestanding multifamily residential and mixed use structures with residential uses above the ground floor are allowed as integrated uses as described below.

The Mixed-Use Horizontal – MU-H category is applicable to the project(s) site; permitted uses include those allowed under the CM, CV, RM, and MU-V categories; however, a minimum of 50 percent of the permitted building square footage shall be devoted to nonresidential uses;

<u>The Mixed-Use Water Related – MU-W category is applicable to the project(s) site; it is intended to</u> provide for commercial development on or near the bay in a manner that will encourage the <u>continuation of coastal-dependent and coastal-related uses and visitor-serving uses, as well as allow</u> for the development of mixed-use structures with residential uses above the ground floor. <u>Freestanding residential uses shall be prohibited. Overnight accommodations (e.g. hotels, motels, hostels) are allowed. Limited Use Overnight Visitor Accommodations (e.g. time shares, fractionals, <u>condominium-hotels) may be permitted in lieu of allowable residential development provided the use</u> <u>is above the ground floor.</u></u>

The site shall be limited to a maximum floor area to land area ratio as established in General Plan Land Use Element Anomaly Cap No. 80. A minimum of 50 percent of the residential units shall be developed in mixed-use buildings with nonresidential use on the ground floor.

The boat storage, public promenade and public plazas, shall, as priority uses, be sited adjacent to the bayfront, with the public launch area and boat storage on the western/northwestern bayfront edge of the site, adjacent to the existing Pearson's Port seafood market. A seafood market is planned to be preserved as a priority visitor-serving/coastal-related commercial use.

<u>A public coastal access proposal shall be submitted with any coastal development permit application</u> <u>for Parcel 3 (Back Bay Landing) which</u> Development shall incorporate amenities that assure access for the coastal visitors public, including the development of a public pedestrian promenade along the bayfront <u>(as described in Policy 2.1.9-2)</u>; bikeways with connections to existing regional trails and paths; an enclosed dry stack boat storage facility; <u>a public launch area for non-trailered, non-</u> <u>motorized watercraft; public access parking; marina parking; public restrooms;</u> and public plazas and open spaces that provide public views, view corridors, and new coastal view opportunities.

Bayside Drive shall be improved on both sides with a new Class 2 (on-street) bike lane up to Bayside Way and a new Class 3 (shared-use) bikeway east of Bayside Way. A Class 1 (off-street) bikeway and pedestrian trail will also be provided on the east side of Bayside Drive originating at the Bayside Drive/East Coast Highway intersection and running northerly to the terminus of Bayside Drive at the Newport Dunes recreation area to accommodate both cyclists and pedestrians. This improvement shall serve as an enhanced link between the new public bayfront promenade and the existing City and County trail systems and the Newport Dunes recreation area.

The site shall be developed as a unified site to prevent fragmentation and to assure each use's viability, quality, and compatibility with adjoining uses. Development shall be designed and planned to achieve a high level of architectural quality with pedestrian, non-automobile and vehicular circulation and adequate parking provided.

Policy 2.1.9-2

A public bayfront pedestrian promenade shall be continuous along the waterfront and connect the sidewalks along East Coast Highway at one end (west), to and along the shoreline of Back Bay Landing, then continuing along a waterfront accessway that is adjacent to the mobile home development located on Parcel 2 of Parcel Map 93-111 and then connecting to the waterfront pedestrian access along the Marina Clubhouse and marina at the Newport Dunes recreation area at the other end (east). These public access improvements shall be provided and made available for public use prior to or concurrent with the development of the Back Bay Landing site. Restrictions on the hours of public access, if any, and landscape improvements shall only be established if they are approved as part of a coastal development permit approval for development of Back Bay Landing.

Policy 2.1.9-3

As a condition of approval on any coastal development permit issued for development of the Back Bay Landing site, the applicant/landowner shall record a public easement, or an Offer to Dedicate (OTD) a public access easement, across the entire width and length of the public accessways described in Policy 2.9.1-2, to include the marina accessway adjacent to the mobile home development, including the private beach/submerged fee owned land located on Parcel 2 of Parcel Map 93-111.

Policy 2.1.9-4

A site-specific hazards assessment of the potential for erosion, flooding and/or damage from natural forces including, but not limited to, tidal action, waves, storm surge, or seiches, prepared by a licensed civil engineer with expertise in coastal processes, shall be submitted as part of any coastal development permit application for Parcel 3 (Back Bay Landing). The conditions that shall be considered in a hazards analysis are: a seasonally eroded beach/shoreline combined with long-term (75 years) erosion; high tide conditions, combined with long-term (75 year) projections for sea level rise using the best available science; storm waves from a 100-year event or a storm that compares to the 1982/83 El Niño event.

Policy 2.1.9-5

Require any coastal development permit application for Parcel 3 (Back Bay Landing) to develop and implement a shoreline management plan for the development and shoreline areas subject to tidal action, flooding, wave hazards and erosion. The shoreline management plan shall incorporate measures to adapt to sea level rise over time and provide for the long term protection and provision of public improvements, coastal access, public opportunities for coastal recreation, and coastal resources including beach and shoreline habitat..

Policy 2.1.9-6

Site and design new development at the Back Bay Landing site in accordance with Policy 2.8.6-10.

2.1.9<u>10</u> Coastal Land Use Plan Map

The Coastal Land Use Plan Map depicts the land use category for each property and is intended to provide a graphic representation of policies relating to the location, type, density, and intensity of all land uses in the coastal zone.

Policy 2.1.9<u>10</u>-1. Land uses and new development in the coastal zone shall be consistent with the Coastal Land Use Plan Map and all applicable LCP policies and regulations.

4.4.2 Bulk and Height Limitation

Policy 4.4.2-1

Maintain the 35-foot height limitation in the Shoreline Height Limitation Zone, as graphically depicted on Map 43, except for Marina Park and the following sites:

- A. Marina Park...[no change to existing language]
- B. Former City Hall Complex...[no change to existing language]
- C. Back Bay Landing at East Coast Highway/Bayside Drive: A single, up to 65-foot-tall coastal public view tower, that will be ADA compliant and publicly accessible, to provide new coastal and Upper Newport Bay view opportunities where existing views are impacted by the East Coast Highway Bridge, other existing structures and topography.

2. <u>Except for the area seaward of the mobile home park described further below, a</u>Amending Figure 2.1.7-1 of the Coastal Land Use Plan to change the designation of the existing 6.028-acre portion of the project site designated as Recreational and Marine Commercial (CM-B) to Mixed-Use Horizontal (MU-H) Mixed-Use Water Related (MU-W) and the 0.304-acre lot line adjustment area designated as Multiple Unit Residential (RM-C) to MU-HW. <u>The land use designation over the strip of land seaward of the mobile home development shall remain Recreation and Marine Commercial (CM-B) as it is currently designated.</u>

*Changes to the Coastal Land Use Map 1, Coastal Access Map 3-1 and the Bikeways and Trails: Map 2 will need to be made to be consistent with the above suggested modifications.

III. FINDINGS

The Commission hereby finds and declares:

A. DESCRIPTION OF THE LUP AMENDMENT REQUEST

Amendment Request No. 2-14 provides for a future, mixed-use project known as Back Bay Landing and would change the land-use designation of a 6.97-acre portion of the 31-acre bayfront property located at 300 East Coast Highway from Recreational and Marine Commercial (CM-B) to Mixed-Use Horizontal (MU-H) and change a bayfront area adjacent to the existing mobile home development where an existing waterfront accessway currently exists, as well as, an inland portion area along the eastern edge of the mobile home development currently used as storage garages and Marina/Bayside Village (mobile home development) guest parking from Multiple Unit Residential (RM-C) to Mixed-Use Horizontal (MU-H) (**Exhibit No. 1**). Therefore, the amendment request also includes a change to the Coastal Land Use Map (Map 1) (**Exhibit No. 2, page 7**).

The anticipated Back Bay Landing project envisions a horizontally distributed mix of uses, including recreational and marine commercial, boat storage, a new marina and parking facility, and a limited mix of freestanding multi-family residential and mixed-use structures with residential uses above the ground floor. However, no coastal development permit application for the development of the site has been submitted. Future development of the site will be subject to the review and approval of a Site Development Permit by the City's Planning Commission to ensure compliance with the General Plan, Coastal Land Use Plan, and the Back Bay Landing PCDP (to be discussed below), including design guidelines. Subsequent to City approval, a coastal development permit would be sought by the property owner.

A site-specific development policy implemented through the City Council's approval of a Planned Community Development Plan (PCDP) has been approved. The City is not requesting formal Coastal Commission approval of the PCDP. Rather, the PCDP was provided to document how the requested CLUP amendments are intended to be implemented through the Council-adopted zoning for the site. The City does anticipate that the PCDP will be incorporated into the future Implementation Plan of the City's Local Coastal Program.

The proposed amendment would also allow an additional height exception to the 35-foot Shoreline Height Limitation Zone, allowing for a single, 65-foot-tall ADA-Accessible coastal public view tower. The proposed amendment would also incorporate amenities that assure access for coastal visitors, which would include development of a public pedestrian bayfront promenade, bikeways with connections to existing regional trails and paths, a boat storage facility, and public plazas and open spaces that provide public access and view opportunities. Lastly, the amendment also proposes to change the land use designation of a portion (0.304 acres) of the mobile home development site located on Parcel 2 of PM 93-111 with the current land use designation of Multi-Unit Residential (RM-C) to Mixed-Use Horizontal (MU-H), which would later become part of the Back Bay Landing site through a lot line adjustment that would need to be processed as a coastal development permit.

The proposed changes are reflected in the City Council Resolution No. 2014-12 (**Exhibit No. 2**). The subject site is currently occupied by a paved surface lot used for outdoor storage of recreational vehicles and small boats on trailers; a kayak and paddle board rental facility; a parking lot and restrooms for the Bayside Marina, Pearson's Port floating fish market, and guest parking for Bayside Village Mobile Home

development; and adjoining the southwest portion of the site is the Orange County Sanitation District pump station.

Due to the significant impact upon existing public access and increased demand for public access due to significant increased development on the subject site, Commission staff had discussions with City staff and the property owner to determine ways in which public access opportunities on site could be provided and enhanced. While not approved under City Council Resolution No. 2014-12, the City, in consultation with the property owner, in a letter dated November 3, 2015 (Exhibit No. 3) proposed the inclusion of additional policies to provide enhanced coastal access, such as locating public access opportunities near the bay, clarify that public opportunities would be included as part of the Back Bay Landing development and provide public access along a waterfront accessway adjacent to the existing mobile home development that is also owned by the same property owner of the subject site. In addition, the City has proposed a policy that requires an offer to dedicate a public access easement along a portion of the waterfront accessway that is currently utilized by the residents of the adjacent mobile home development as a private beach that currently bisects the waterfront accessway and prevents public access along the entirety of the waterfront accessway. The intention of these policies would be to provide a continuous public bayfront pedestrian promenade the sidewalks along East Coast Highway at one end (west), to and along the shoreline of Back Bay Landing, then continuing along the waterfront accessway adjacent to the mobile home development and then connecting to the waterfront pedestrian access along the Marina Clubhouse and marina at the Newport Dunes recreation area at the other end (east). The City has also recently proposed policy language to include a public-launch area for non-trailered, non-motorized watercraft, public access parking, marina parking and public restrooms The City has also proposed language to clarify that that the coastal public view tower would provide additional views of the area and may include interpretive facilities, screened communications or emergency equipment.

The subject property is located northwest of the intersection of East Coast Highway and Bayside Drive and is legally described as Parcel 3 of Parcel Map No. PM 93-111. The bayfronting portion of the site is a sandy beach. Surrounding land uses include the adjacent Bayside Village Mobile Home development on Parcels 2 and 3 of PM 93-111 to the east, the Upper Newport Bay and Channel located to the north and west, and the Balboa Marina and Linda Isle is located south of the East Coast Highway bridge, which bisects the site.

B. DENY THE LUP AMENDMENT REQUEST AS SUBMITTED

Land Use

The subject site is a bayfront lot currently designated as Recreation and Marine Commercial (CM-B), a high priority land use designation. The subject site is currently occupied by a paved surface lot used for outdoor storage of recreational vehicles and small boats on trailers; a kayak and paddle board rental facility; a parking lot and restrooms for the Bayside Marina, Pearson's Port floating fish market, and guest parking for Bayside Village Mobile Home development; and adjoining the southwest portion of the site is the Orange County Sanitation District pump station. The subject site is an ideal location for such coastal-dependent, coastal-related high priority uses under the Coastal act. The adjoining portion to the subject site that is not part of this CLUP amendment and is located bayward of the subject site and underneath East Coast Highway has the same land use designation and is occupied with a marina, marina parking lot and restaurant establishments, which are also high priority uses under the Coastal Act.

The Coastal Act states that visitor-serving commercial recreational facilities shall be protected encouraged and where feasible, provided and have priority over general commercial and residential development.

Section 30213 of the Coastal Act states in part:

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

Section 30220 of the Coastal Act states:

Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.

Section 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 subject site, because of its location along the bay and along a major highway (East Coast Highway), is an ideal site for a visitor-serving commercial recreational facility that will enhance public opportunities for coastal recreation. The City has proposed to change the land use designation of the site from Recreation and Marine Commercial (CM-B) to Mixed Use-Horizontal (MU-H). The proposed MU-H land use category allows general commercial and mixed-use development. The reason the City chose to change the land use designation from CM to MU-H, as opposed to Mixed-Use Vertical (MU-V) or Mixed-Use Water Related (MU-W), is because the MU-H designation allows for both vertically-integrated residential and free-standing residential. The existing MU-V and MU-W designation in the CLUP prohibit freestanding residential. The proposed MU-H land use category does not give priority to visitor-serving commercial uses, and allows free-standing residential use.

Because the proposed amendment would allow non-priority uses in a location that is well-suited for higher priority visitor-serving and marine uses and that is currently designated for those higher priority uses, it is inconsistent with Coastal Act Sections 30212, 30220 and 30222. Therefore, the Commission hereby denies certification of the amendment as submitted.

Public Access

The subject site is a bayfront lot that currently provides public access opportunities to the bay such as: outdoor storage of recreational vehicles and small boats on trailers; kayak and paddle board rental facility; parking lot and restrooms for the Bayside Marina, and Pearson's Port floating fish market. The subject site is also located along a major highway (East Coast Highway), near existing City and County trail systems and the Newport Dunes recreation area and therefore serves as an important link to these other public access opportunities. In addition, part of the subject site includes a bayfront portion adjacent to the existing mobile home development where an existing waterfront accessway currently exists. The subject site serves as an important location that provides public access to the bay and public access is high priority use under the Coastal Act.

The Coastal Act protects the publics' right to access the shoreline and water and recreational opportunities, protects the public's right to the sea and that public access to the coast be maintained and enhanced.

Section 30210 of the Coastal Act states:

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

Section 30211 of the Coastal Act states:

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Section 30212(a) of the Coastal Act states:

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where: (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby, or, (3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

Section 30252 of the Coastal Act states:

The location and amount of new development should maintain and enhance public access to the coast by (1) facilitating the provision or extension of transit service, (2) providing commercial facilities within or adjoining residential development or in other areas that will minimize the

use of coastal access roads, (3) providing nonautomobile circulation within the development, (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation, (5) assuring the potential for public transit for high intensity uses such as high-rise office buildings, and by (6) assuring that the recreational needs of new residents will not overload nearby coastal recreation areas by correlating the amount of development with local park acquisition and development plans with the provision of onsite recreational facilities to serve the new development.

The subject site's location near the bay and to other public access opportunities makes it an important location to protect, and provide and enhance public access opportunities. The City has proposed policies that will provide public access opportunities with any on site proposed development, such as an enclosed dry stack boat storage facility, public plazas. However, increased significant development of the Back Bay Landing site would have a significant impact upon existing public access and increases demand for public access; therefore additional policies that provide and enhance public access opportunities are necessary. The proposed public access policies are insufficient as additional policies need to be proposed that would protect, provide and enhance public access opportunities on site and cannot be found consistent with Coastal Act Sections 30210, 30211, 30212 and 30252. Therefore, the Commission hereby denies certification of the amendment as submitted.

Hazards

The subject site is a bay front lot with a sandy beach fronting the bay. The waterfront portion of the property is currently subject to inundation, flooding, wave impacts, and erosion and will be exposed to increased risks from these coastal hazards with rising sea level. The higher elevations on the site may also eventually be at risk as sea level rises and increases the inland extent of coastal hazards. Thus, development on the site will require review for sea level rise effects. No bulkhead/seawall currently exists on site. The City has identified that future development of the Back Bay Landing site would include construction of a bulkhead/seawall.

The Coastal Act states that new development shall minimize risks to life and property in areas of high geologic, flood, and fire hazard and requires new development that will not create nor contribute significantly to erosion or destruction of the site or area or require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

Section 30253 of the Coastal Act states, in pertinent part:

New development shall do all of the following:

(a) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.

(b) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

The City's Certified CLUP contains existing policies that deal with impacts from coastal hazards and the coastal erosion. However, this project-driven amendment with proposed site-specific policies doesn't include specific hazard policies for this site. Additionally, in August 2015 the Commission

adopted the *California Coastal Commission Sea Level Rise Policy Guidance: Interpretive Guidelines* for Addressing Sea Level Rise in Local Coastal Programs and Coastal Development Permits. This proposed LUP amendment should be reviewed in light of these guidelines.

To comply with Coastal Act Section 30253 any project located at the subject site will need to be planned, located, designed, and engineered for the changing water levels and associated impacts that might occur over the life of the development. In addition, project planning should anticipate the migration and natural adaptation of coastal resources (beaches, access, wetlands, etc.) due to future sea level rise conditions in order to avoid future impacts to those resources from the new development. It will be important that CDPs are also conditioned and approved in ways that emphasize an adaptive approach to addressing sea level rise hazards to help ensure that development and resources are resilient over time.

However, no such polices have been proposed and thus the submittal cannot be found consistent with Coastal Act Section 30253. Therefore, the Commission hereby denies certification of the amendment as submitted.

Biological Resources

The subject site is a bay front lot with a sandy beach fronting the bay. With the subject site's location adjacent to the bay, it is located adjacent to intertidal areas, wetlands and sensitive habitat such as pickleweed and eelgrass. The shoreline habitat located adjacent to the subject site contains important biological resources that may be adversely impacted by development at the subject site.

The Coastal Act states that marine resources including biological productivity shall be protected; that the biological productivity of coastal waters be maintained, and where feasible, restored; and that the diking, filling, or dredging of open coastal waters shall be permitted where there is no feasible environmentally damaging alternative and where feasible mitigation measures are provided.

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 30233 of the Coastal Act states, in relevant part:

(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

(3) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities

(b) Dredging and spoils disposal shall be planned and carried out to avoid significant disruption to marine and wildlife habitats and water circulation. Dredge spoils suitable for beach replenishment should be transported for such purposes to appropriate beaches or into suitable long shore current systems

Wetland habitat and sensitive habitat are within the project vicinity and are subject to potential adverse impacts from development of the site. The location of development on the subject site may adversely impact the biological resources adjacent to the site. For example, development may need to be setback a specific distance from the bay in order to preserve and protect shoreline habitat. Policies need to be proposed that will protect these important resources. The City's Certified CLUP does include policies that protect biological resources. However, policies need to be proposed specifically for the site since future potential site specific development at this location may have adverse impacts upon biological resources. No such polices have been proposed and thus the submittal cannot be found consistent with Coastal Act Sections 30230, 30231 and 30233. Therefore, the Commission hereby denies certification of the amendment as submitted.

Scenic Resources

The subject site is located in the Shoreline Height Limitation Zone. The LUP amendment request includes an exception to the Shoreline Height Limitation Zone (CLUP Policy 4.4.2-1) that would allow a coastal public view tower on the Back Bay Landing site to reach 65 feet in height. The City states that the tower is intended to be an iconic landmark or "place making" element for the site that maximizes the public's awareness for the site, the public access amenities Back Bay Landing will provide, and the coastal views afforded by an ADA-accessible view tower. The Shoreline Height Limitation Zone was originally adopted by the City in the early 1970s to regulate and control development pressures within the bay area. The Shoreline Height Limitation Zone includes the subject site. The Shoreline Height Limitation Zone (including Policy 4.4.2-1) was adopted into the Certified CLUP in 2005 to regulate and control development within the bay area and to reduce impacts to public views.

Section 30251 of the Coastal Act requires that the scenic and visual qualities of coastal areas shall be protected and that new development shall be visually compatible with the character of the surrounding area. Similarly, the policies set forth in the City's Certified CLUP aim to maintain the character and visual scale of development in the City. The character of the surrounding area is defined by the scale and height of the development.

Section 30251 of the Coastal Act states, in relevant part:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas...

The subject site currently has 35 foot height limitation as it is in the Shoreline Height Limitation Zone. The City has proposed a CLUP amendment that would allow an exception to this limitation that would allow a 65 foot tall coastal public view tower. The subject site and the surrounding area currently do not have any structures that exceed the 35 foot height limitation. Thus, allowing a substantially taller structure would not be visually compatible with the character of the surrounding area. There are visual resources from identified public vantage points such as East Coast Highway, Coast Highway/Bay Bridge, and Castaways Park to the bay and the cliffs of Upper Newport Bay that will be impacted by the proposed tower. Section A of CLUP Policy 4.4.2-1 was the subject of City of Newport Beach LCP Amendment No. 1-12 which was certified by the Commission in 2013. The amendment allowed an exception to the 35 foot height limit to allow a maximum 73 foot tall faux lighthouse only on the Marina Park site (1600 West Balboa Boulevard) because it would not only be an iconic landmark for the public to identify the site from land and water, but also serve as a boating safety feature to help guide boats and would also incorporate use of the tower as a tsunami warning device. Also, it was found to not be incompatible with the community character in that there are buildings in the area that are of similar height. Section B of CLUP Policy 4.4.2-1 was the subject of City of Newport Beach LCP Amendment No. 3-14 which was certified by the Commission in 2015. The amendment allowed an exception to the 35 foot height limit to allow to allow structures up to 55 feet high with architectural elements up to 65 feet high only on the former City Hall site (3300 Newport Boulevard) because the project site is not a waterfront site that would significantly impact any public coastal views and that there are buildings in the area that already exceed the 35 height limitation. Thus, the proposed 65 foot tall tower would be inconsistent with the character of the area and result in adverse visual impacts to public views of the bay and the cliffs of Upper Newport Bay. Therefore, the proposed exceptions to the 35 foot height limit cannot be found consistent with Coastal Act Section 30251 and are denied as submitted.

C. CERTIFY THE LUP AMENDMENT WITH SUGGESTED MODIFICATIONS

In order to be certified by the Commission, the LUP amendment must meet the requirements of, and be in conformance with the Chapter 3 policies of the Coastal Act. Pursuant to Sections 30512 and 30514 of the Coastal Act, the proposed LUP amendment must conform with and meet the requirements of the relevant Chapter 3 policies of the Coastal Act. The LUP amendment can be certified only if it is modified to include policies that will protect visitor-serving uses, public access, development from hazards, biological resources and scenic resources as required by Chapter 3 of the Coastal Act.

Land Use

As previously stated, the waterfront site subject to the amendment is an ideal site for a visitor-serving commercial recreational facility that will enhance public opportunities for coastal recreation (**Exhibit No. 1**). Section 30213, 30220 and 30222 of the Coastal Act state that visitor-serving commercial recreational facilities shall be protected encouraged and where feasible, provided and have priority over general commercial and residential development.

In order to be found consistent with Coastal Act policies, because of the location of the site and because of its current designation for recreation and marine uses, a land use designation must be applied to the subject site that prioritizes coastal dependent and visitor-serving uses over other non-priority uses. To this end, an existing coastal-dependent and coastal-related visitor-serving commercial land use category has been put forth by Commission staff for designation of the subject site. The "Mixed-Use Water Related (MU-W) land use category, as described in the City's Certified Coastal Land Use Plan, states that this designation is: "…*intended to provide for commercial development on or near the bay in a manner that will encourage the continuation of coastal-dependent and coastal-related uses and visitor-serving uses, as well as allow for the development of mixed-use structures with residential uses above the ground floor. Freestanding residential uses shall be prohibited. Overnight accommodations (e.g. hotels, motels, hostels) are allowed. Limited Use Overnight Visitor Accommodations (e.g. time shares, fractionals, condominium-hotels) may be permitted in lieu of allowable residential development provided the use is above the ground floor."*

The MU-W designation ensures the higher priority uses will be preserved on the waterfront site. Lower priority residential uses will be allowed on site, but would only be allowed on upper stories above the higher priority uses. This land use designation would not allow freestanding residential. As such, higher priority uses will be located on the ground floor and in doing so will encourage the continuation of coastal-dependent and coastal-related uses and visitor-serving uses near the bay. The City proposed additional language that would identify the number of ground floor residential units proposed under the MU-H designation and to locate visitor-serving commercial uses, (i.e.; boat storage and seafood market) adjacent to the bay. Commission staff did not agree with the City's proposed language pertaining to the number of ground floor residential units since it would still allow low priority residential uses on the ground floor. Any such residential use must be above ground and must not be freestanding, consistent with the MU-V land use designation. However, the Commission did agree with the City's proposed language regarding the location of the visitor-serving commercial uses, but determined that more specific language about the location of such uses onsite was necessary. As stated, the City's proposed land use designation of MU-H would not protect higher priority uses and additional policy language is needed to clarify the location of such visitor-serving uses. The MU-W land use category prioritizes visitor-serving uses over other non-priority uses. If the LUP amendment is modified to adopt and apply the MU-W land use category to the Back Bay Landing site, the amendment as modified will meet the requirements of, and be in conformance with Section 30222 of the Coastal Act.

Part of the LUP amendment includes the land use designation change of a portion (0.304 acres) of the mobile home development site located on Parcel 2 of PM 93-111 with the current land use designation of Multi-Unit Residential (RM-C) to Mixed-Use Horizontal (MU-H). A future separate coastal development permit would be required for a lot line adjustment to incorporate this site into the Back Bay Landing site. The current land use designation is a lower priority residential use and the proposed land use designation, as discussed above, does not prioritize visitor-serving uses over other non-priority uses. However, the MU-W land use designation would prioritize such higher priority uses. If the LUP amendment is modified to adopt and apply the MU-W land use category to the portions of the mobile home park located on Parcel 2 of PM 93-111 as identified in Policy 2.1.9-1, it will meet the requirements of, and be in conformance with Chapter 3 policies of the Coastal Act.

An existing seafood market (Pearson's Port) is located on the western bayfront edge of the site that is a visitor-serving/coastal related commercial use. This seafood market provides a unique coastal-dependent and coastal-related visitor-serving commercial opportunity for the public that visit this site and this use should be protected so that this type of use is continued as part of any future development at the Back Bay Landing site. This type of existing use would be consistent with the proposed MU-W land use designation that places priority on higher priority uses. No specific policies are proposed that preserve this use. Thus, Policy 2.1.9-1 and Policy 4.4.2-1 have been proposed to preserve this high priority use. Therefore, the Commission finds that only if the CLUP is modified as suggested (in Section II of this staff report) to adopt a policy to preserve this use can the LUP amendment be found consistent with Chapter 3 policies of the Coastal Act.

Public Access

The subject site's location on the bayfront and near other public access opportunities makes it an important location to provide and enhance public access opportunities. Section 30210, 30211 and 30252 of the Coastal Act protect the public's right to access the shoreline and water and recreational opportunities and protects the public's right to the sea and that public access to the coast be maintained and enhanced. While policies have been proposed that will provide public access opportunities with any on site proposed development, such as an enclosed dry stack boat storage facility and public plazas; additional policies are necessary to protect the high priority use available at this site. Future development of the Back Bay Landing site would result in significant increased development on the subject site and as a result promote larger usage of the site by the public. Thus, the public access opportunities available on site at this ideal location adjacent to the bay need to be enhanced and provided. Commission staff discussed this issue with the City and as a result of those discussions, the City proposed additional policy language that would locate public access opportunities in areas near the bay, clarify that public opportunities would be included as part of the Back Bay Landing development, and provide public access along a waterfront accessway that is adjacent to the existing mobile home development. However while these proposed measures would enhance public access opportunities, additional and clearer policies need to be incorporated into the CLUP, as discussed below.

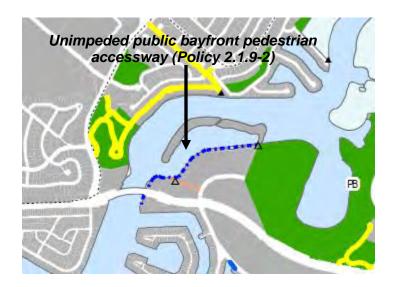
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To widen the scope of types of boat storage to be provided on site, Policy 2.1.9-1 has been suggested to allow "boat storage" in general instead of a specific "dry stack boat storage facility". As suggested, the policy will allow a dry stack boat storage facility on the site, but will also allow other types of boat storage facilities to utilize the site with future development. This modification will allow flexibility for future development plans in the event that the currently planned project (with the dry stack boat storage) is not built. It also allows the continuation of the trailered boat storage that currently exists on the site.

In order to make sure that any proposed boat storage facilities, public promenade and public plaza for the site are sited are at a location that enhances opportunities for public access along the water, suggested modification Policy 2.1.9-1 would require that the boat storage, public promenade and public plaza be sited along the western bayfront edge of the subject site. The City provided additional language to assist in clarifying the location of these public access opportunities (i.e., public promenade and public plazas) and Commissions staff worked with this language to develop suggested Policy 2.1.9-1. Commission staff also included language in suggested policy 2.1.9-1 requiring that a public access proposal be submitted with any CDP application for the Back Bay Landing site which assures that public access amenities are part of the Back Bay Landing development.

In the immediate area adjacent to the site there are existing City and County trail systems and the Newport Dunes recreation area that provide public access (**Exhibit No. 5**). The City has stated that new bike lanes and a pedestrian trail (originating at the Bayside Drive/East Coast Highway intersection and running northerly to the terminus at the Newport Dunes recreation area) will be provided as part of future development of the site and shall serve as an enhanced link between the new public bayfront promenade and the existing City and County trail systems and the Newport Dunes recreation area. However, the amendment does not include specific policies guaranteeing this public access improvement will be carried out. Therefore, in order to provide and enhance public access, suggested modification Policy 2.1.9-1 would require the provision of these bike lanes and the pedestrian trail.

As stated, future development of the Back Bay Landing site would result in significant increased development on the subject site and as a result promote larger usage of the site by the public and therefore public access opportunities need to be enhanced and provided. Commission staff discussed this issue with the City and as a result of those discussions; the City provided additional policy language stating that public access would be available along a waterfront accessway that is adjacent to the mobile home development (Exhibit No. 1). However, continuous public access along the waterfront accessway is currently hindered by a private beach for residents of the mobile home development that bisects the waterfront accessway (the private beach and mobile home development is owned by the same property owner of the Back Bay Landing site) (Exhibit No. 1). If continuous public access was available along this waterfront accessway, it would provide a significant public access opportunity by establishing a public bayfront pedestrian promenade along the waterfront by connecting the sidewalks along East Coast Highway at one end (west) to and along the shoreline of Back Bay Landing, then continuing along the waterfront accessway adjacent to the mobile home development and then connecting to the water pedestrian access along the Marina Clubhouse and marina at the Newport Dunes recreation area the other end (east). Having such an unimpeded waterfront accessway available for the public would promote public access. Commission staff modified the City's language and proposed Policy 2.1.9-2, which would require an unimpeded public bayfront pedestrian accessway.



The City proposed additional language stating that construction of the public access connection to the east and west portions of this waterfront accessway (currently separated by the private beach for the mobile home development residents) would be constructed in conjunction with redevelopment of the mobile home development located on Parcel 1 and Parcel 2 of Map 93-111, of which Parcel Map 3 (Back Bay Landing) is part of. However, Commission staff revised that policy language (Policy 2.1.9-2) to state that the entire public bayfront pedestrian promenade that connects the sidewalks along East Coast Highway at one end (west) to and along the shoreline of Back Bay Landing, then continuing along the waterfront accessway adjacent to the mobile home development and then connecting to the water pedestrian access along the Marina Clubhouse and marina at the Newport Dunes recreation area the other end (east) shall be provided and made available for public use prior to or concurrent with development of the Back Bay Landing site.

The City also proposed additional language requiring that an offer to dedicate a public easement across the portion of property used as a public beach by the mobile home residents (that currently bisects the and impedes access along the bayfront accessway). However, Commission staff modified this language and proposes Policy 2.1.9-3 that instead requires as a condition of any CDP issued for development of the Back Bay Landing site that the applicant/landowner to record a public easement or an Offer to Dedicate a public access easement along the entire width and length of the public accessway described in Policy 2.9.1-2. This modification will ensure that the required public accessway will be required in perpetuity as part of a CDP for development of the Back Bay Landing site.

The City has also proposed policy language requiring recordation of an offer to dedicate a public access easement across the portion of the marina accessway that currently has a private beach. Commission staff determined that a recordation of a public easement or an offer to dedicate for the entire waterfront accessway and not just the segment of the waterfront accessway with a private beach is necessary to ensure the public's right of access and is proposed as Policy 2.1.9-3. Recordation only a section of the waterfront accessway (private beach) would not ensure continuous public access.

Public launch opportunities for kayaks and paddle boards into the bay currently exist on the sandy beach that comprises the Bayfront portion of the site. Parking and restrooms for the bayside marina

City of Newport Beach LCP Amendment Request No. 2-14

also exist on the site. In order to protect and preserve and enhance public access at this important location adjacent to the bay, suggested modification Policy 2.1.9-1 would protect the ability for public to launch non-trailered, non-motorized watercraft and provide amenities for the public such as parking and restrooms that will enhance their opportunity for public access at this location. In order to provide for long term protection of coastal access and public opportunities for coastal recreation, suggested modification Policy 2.1.9-5 would require the development of a shoreline management plan with an coastal development permit application for the Back Bay Landing site.

Therefore, the Commission finds that only if the CLUP is modified as suggested (in Section II of this staff report) to adopt a policy to preserve this use can the LUP amendment be found consistent with Chapter 3 policies of the Coastal Act.

Hazards

The subject site is a bay front lot with a sandy beach fronting the bay. The site is subject to coastal hazards, such as sea level rise. Sea level rise increases the risk of flooding, coastal erosion, and wave attack, which have the potential to threaten many of the resources that are integral to the California coast, including coastal development, coastal access and recreation, and habitats (e.g., wetlands, beaches, etc.), community character, and scenic quality. New development needs to be sited so that it is safe from hazards as stated in Section 30253 of the Coastal Act.

The City's Certified CLUP contains policies that address the review of new development in the context of coastal hazards and the coastal erosion. However, in the review of the proposed amendment the City and property owner have made clear that the project being contemplated at this time includes a seawall/bulkhead. To ensure that any new development contemplated at this site is designed in a manner that is consistent with Chapter 3 of the Coastal Act, the Commission has concluded that certain site-specific policies are needed. Additionally, in August 2015 the Commission adopted the California Coastal Commission Sea Level Rise Policy Guidance: Interpretive Guidelines for Addressing Sea Level Rise in Local Coastal Programs and Coastal Development Permits. This proposed LUP amendment should be reviewed in light of these guidelines.

To comply with Coastal Act Section 30253 any project located at the subject site will need to be planned, located, designed, and engineered for the changing water levels and associated impacts that might occur over the life of the development. In addition, project planning should anticipate the migration and natural adaptation of coastal resources (beaches, access, wetlands, etc.) due to future sea level rise conditions in order to avoid future impacts to those resources from the new development. It will be important that CDPs are also conditioned and approved in ways that emphasize an adaptive approach to addressing sea level rise hazards to help ensure that development and resources are resilient over time.

A CDP application for new development in a hazardous area like the subject site must include reports analyzing the anticipated impacts to a project site associated with various sea level rise scenarios. Generally, the analyses should consider how sea level rise will affect coastal resources now and in the future so that alternatives can be developed and to minimize the project's impacts to coastal resources throughout its lifetime. In addition to considering the effects on new development, the analysis should consider and plan for effects on other resources. For instance, public access and recreation resources include lateral and vertical public accessways, public access easements, beaches, recreation areas, public trust lands, and trails. These areas may become hazardous or unusable during the project life

due to sea level rise and/or due to the proposed project. Similarly, coastal habitats, especially those that have a connection to water, such as beaches, intertidal areas, and wetlands, can be highly sensitive to changes in sea level. All of this analysis is meant to identify the locations of the project site that could support some level of development without impacts to coastal resources and without putting the development at risk.

In order to analyze the site specific hazards present at the site and in the future, suggested modification Policy 2.1.9-4 would require that a site specific hazards assessment for the potential of erosion, flooding, and/or damage from natural forces including, but not limited to tidal action, waves, storm surge or seiches be prepared for any development at the Back Bay Landing site as part of a coastal development permit application. New development on site needs to be sited and designed so that it avoids the need for shoreline protective devices. The negative impacts of a shoreline protective device include the loss of the beach area on which the structure is located; and the long-term loss of beach that will result when the back-beach location is fixed on an eroding shoreline. There would also be negative impacts on biological resources and habitat that are present at this site including wetlands and eelgrass beds. To ensure that the new development avoids the need for shoreline protective devices, which can have negative impacts upon the beach and biological resources, suggested modification Policy 2.1.9-6 would require that new development be sited and designed to avoid the need for shoreline protective devices during the projected life of the development. In order to provide for long term protection and provision of public improvements, coastal access, public opportunities for coastal recreation, and coastal resources including beach and shoreline habitat, suggested modification Policy 2.1.9-5 would require that any development application for the Back Bay Landing site include a shoreline management plan.

Therefore, the Commission finds that only if the CLUP is modified as suggested (in Section II of this staff report) to adopt a policy to preserve this use can the LUP amendment be found consistent with Chapter 3 policies of the Coastal Act.

Biological Resources

The subject site has a sandy beach that fronts the site along the bay that contains wetland and sensitive habitat. Section 30230, 30231 and 30233 of the Coastal Act are polices of the Coastal Act that protect the biological resources of coastal waters. The City of Newport Beach Certified CLUP does contain policies that protect biological resources. However, future potential development on this specific subject site may significantly impact shoreline habitat. To protect biological resources at this location, a site specific policy is needed that would ensure that biological resources will be protected. For example, a future development at the Back Bay Landing site may need to be setback a specific distance from the bay in order to avoid adverse impacts to shoreline habitat. Such a setback would be determined from the requirement of a shoreline management plan for any development of the Back Bay Landing site. No such specific type of policy requiring this plan has been proposed. In order to provide for the long term protection of important biological resources, Policy 2.1.9-5 has been proposed. This policy requires that that any development application for the Back Bay Landing site include a shoreline management plan for the long term protection of coastal resources including beach and shoreline habitat.

Therefore, the Commission finds that only if the CLUP is modified as suggested (in Section II of this staff report) to adopt a policy to preserve this use can the LUP amendment be found consistent with Chapter 3 policies of the Coastal Act.

City of Newport Beach LCP Amendment Request No. 2-14

Scenic Resources

As stated previously, Section 30251 of the Coastal Act requires that the scenic and visual qualities of coastal areas be protected and that new development shall be visually compatible with the character of the surrounding area. The LUP amendment request includes an exception to the Shoreline Height Limitation Zone that would a coastal public view tower on the Back Bay Landing site to reach 65 feet in height (**Exhibit No. 4**). The Shoreline Height Limitation Zone controls development within the bay area to reduce impacts to public views. The character of the surrounding area is defined by the scale and height of the development. The subject site and surrounding area do not have any structures that exceed the 35 foot height limitation. Significant visual resources available at the site and in the surrounding area from public vantage points such as East Coast Highway, Coast Highway/Bay Bridge and Castaways Park to the bay and the cliffs of Upper Newport Bay would be adversely impacted by a structure significantly exceeding the current height limit. Allowing a structure of this size would adversely impact views of the bay and the cliffs of Upper Newport Bay.

Therefore, the Commission finds that only if the amendment to the CLUP to adopt the suggested changes to the Shoreline Height Limitation Zone (CLUP Policy 4.4.2-1) is deleted, can it be found to be consistent with Section 30251 of the Coastal Act.

D. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The City of Newport Beach is the lead agency for the purposes of California Environmental Quality Act review of the proposed LCP amendment. An Initial Study and Draft Environmental Impact Report (DEIR) (SCH#2012011003) was prepared. The DEIR was completed and circulated for a mandatory 45-day review period that began on October 4, 2013 and concluded on November 18, 2013. Detailed written responses to each of the comments received on the DEIR were prepared and considered by both the Planning Commission and the City Council. Corrections and additions to the DEIR were also prepared. On February 11, 2014, the City of Newport Beach City Council certified the Environmental Impact Report (EIR) and that it was in compliance with CEQA and the State and local CEQA guidelines.

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 LCP 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 Commission finds that, for the reasons discussed in this report, the proposed LCP amendment, with adoption of the suggested modifications listed in Section II of this report, will meet the requirements of and be in conformity with the policies of Chapter 3 of the Coastal Act. The suggested modifications to the LCP amendment are necessary to ensure that visitor-serving uses, public access to the coast, development in hazardous locations, biological resources and scenic resources are protected in conformity with the requirements of the Chapter 3 policies of the Coastal Act.

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



Exhibit No. 1 Page 1 of 1

RESOLUTION NO. 2014-12

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH APPROVING COASTAL LAND USE PLAN AMENDMENT NO. LC2011-007 FOR THE APPROXIMATELY 31 ACRE PLANNED COMMUNITY KNOWN AS BACK BAY LANDING LOCATED AT 300 EAST COAST HIGHWAY (PA2011-216)

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

SECTION 1. STATEMENT OF FACTS.

- 1. An application was filed by Bayside Village Marina, LLC (Applicant) with respect to an approximately 31-acre parcel generally located on the north of East Coast Highway and northwest of Bayside Drive, legally described Parcel 1 of PM 93-111, (the Property) requesting approval of various legislative and related approvals that would allow for the future development of a mixed-use bayfront village comprising of up to 94,035 square feet of marine-related and visitor-serving commercial uses and up to 49 residential units (the Project). The following approvals are requested or required in order to implement the Project as proposed:
 - a. <u>General Plan Amendment (GPA)-</u> To allow the development of residential units by changing the land use designation of portions of the site from Recreational and Marine Commercial (CM 0.5) to Mixed-Use Horizontal (MU-H1). The amendment would also change the designation of the 0.304-acre lot line adjustment area currently designated as Multiple Unit Residential (RM) to MU-H1. In addition to the land use changes, the amendment would create two new anomalies to reallocate 49 un-built residential dwelling units from the adjacent mobile home park (Anomaly No. 81) to the project site (Anomaly No. 80).
 - b. <u>Coastal Land Use Plan Amendment (CLUPA)-</u> To allow the development of residential units by changing the land use designation of portions of the site from Recreational and Marine Commercial (CM-B) to Mixed-Use Horizontal (MU-H). The amendment would also change the designation of the 0.3-acre lot line adjustment area currently designated as Multiple Unit Residential (RM-C) to MU-H. In addition to the land use changes, the amendment would also establish a site-specific development policy and a height exception to the 35-foot Shoreline Height Limit allowing for a single, 65-foot-tall coastal public view tower.
 - c. <u>Code Amendment</u>- To amend the Zoning Map of the Zoning Code to expand the current Planned Community District boundaries (PC-9) of the site to include: 1) the 0.304-acre lot line adjustment area currently zoned as Bayside Village Mobile Home Park Planned Community (PC-1/MHP); and, 2) the existing 0.642-acre portion of the project site currently zoned as Recreational and Marine Commercial (CM).
 - d. <u>Planned Community Development Plan (PCDP)</u>- Adoption of a Development Plan to allow for the classification of land within the existing Planned Community

boundaries and establishment of development standards, design guidelines, and implementation of the future project and long-term operation of all planning areas of the site.

- e. Lot Line Adjustment (LLA)- To adjust the property boundaries between Parcel 3 (subject property) and Parcel 2 (adjacent Bayside Village Mobile Home Park) of Parcel Map No. PM 93-111 to improve ingress and egress to the project site with a new driveway.
- f. <u>Traffic Study</u>- A traffic study pursuant to Chapter 15.40 (Traffic Phasing Ordinance) of the Municipal Code.
- 2. The Property currently has General Plan designations of Recreational and Marine Commercial (CM 0.5 and 0.3), Open Space (OS) and Tidelands and Submerged Lands (TS), and limited to a total maximum development of 139,680 square feet.
- 3. The Property is currently located within the Coastal Zone and has Coastal Land Use Plan designations of Recreational and Marine Commercial (CM-A and CM-B), Open Space (OS) and Tidelands and Submerged Lands (TS). The requested change of the Coastal Land Use Plan designation from CM-B and MU-H will not become effective until the amendment to the Coastal Land Use Plan is approved by the Coastal Commission.
- 4. The Property is currently located within the Planned Community zoning district (PC-9) and within the Recreational and Marine (CM 0.3) zoning district.
- 5. On November 7, 2013, the Planning Commission held a study session for the project in the City Hall Council Chambers, 100 Civic Center Drive, Newport Beach, on the Draft Environmental Impact Report (DEIR) and Project.
- 6. The Planning Commission held a public hearing on December 19, 2013, in the City Hall Council Chambers, 100 Civic Center Drive, Newport Beach, California. A notice of the time, place and purpose of the aforesaid meeting was provided in accordance with California Environmental Quality Act (CEQA) and the Newport Beach Municipal Code (NBMC). The environmental documents for the Project comprising the DEIR, Final Environmental Impact Report (FEIR) which consists of Responses to Comments, Corrections and Additions to DEIR (collectively, the EIR), and Mitigation Monitoring and Reporting Program (MMRP), the draft Findings and Facts in Support of Findings (Findings), staff report, and evidence, both written and oral, were presented to and considered by the Planning Commission at these hearings.
- On December 19, 2013, the Planning Commission adopted Resolution No. 1928 by a unanimous vote of 7-0, recommending certification of the Back Bay Landing FEIR (SCH No. 20121010034) and approval of the Project to the City Council.
- 8. The City Council held a public hearing February 11, 2014, in the City Hall Council Chambers, at 100 Civic Center Drive, Newport Beach, California. A notice of the time, place and purpose of the aforesaid meeting was provided in accordance with CEQA and the NBMC. The environmental documents for the Project comprising the FEIR,

the Findings and Facts in Support of Findings (Findings), staff report, and evidence, both written and oral, were presented to and considered by the City Council at the scheduled hearing.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

- 1. The Back Bay Landing FEIR (SCH No. 20121010034) was prepared for the Project in compliance with the CEQA, the State CEQA Guidelines, and City Council Policy K-3.
- 2. The City Council, having final approval authority over the Project, adopted and certified as complete and adequate the Back Bay Landing FEIR, and adopted "Findings and Facts in Support of Findings for the Back Bay Landing Project Final Environmental Impact Report" (CEQA Findings) containing within Resolution No. 2014-10 on February 11, 2014, which are hereby incorporated by reference.
- 3. On the basis of the entire environmental review record, the proposed Project will have a less than significant impact upon the environment with the incorporation of mitigation measures.
- 4. The mitigation measures identified in the FEIR are feasible and reduce potential environmental impacts to a less than significant level. The mitigation measures would be applied to the Project through the MMRP.
- 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.

SECTION 3. FINDINGS.

- 1. Amendments to the Coastal Land Use Plan are legislative acts. Neither the City nor State Planning Law set forth any required findings for either approval or denial of such amendments.
- 2. The proposed project is consistent with the goals and policies of the Newport Beach Coastal Land Use Plan. The City Council concurs with the conclusion of the consistency analysis of the proposed project with these goals and policies provided in the DEIR.
- 3. The requested CLUP amendment is necessary to maintain consistency with General Plan Amendment No. GP2011-011. The CLUP amendment is consistent with other applicable policies of the CLUP related to land use, public access, and resource protection.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

- 1. The City Council of the City of Newport Beach hereby approves Coastal Land Use Plan Amendment No. LC2011-007, attached hereto as Exhibit A and incorporated herein by reference.
- 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.
- 5. This resolution was approved, passed and adopted at a regular meeting of the City Council of the City of Newport Beach, held on the 11th day of February, 2014.

Rush N. Hill, II Mayor

ATTEST: XIII D. BMM

Leilani I. Brown City Clerk



EXHIBIT A

COASTAL LAND USE PLAN AMENDMENT NO. LC2011-007

Consists of:

 Amending Chapter 2.0 (Land Use and Development) of the Coastal Land Use Plan to include the following sections and policies (deletions illustrated in strikeouts/ additions illustrated in <u>underline</u>):

2.1.9 Back Bay Landing

Located at the northwesterly corner of the intersection of East Coast Highway and Bayside Drive, the Back Bay Landing site is an approximately 7-acre site adjacent to the Upper Newport Bay. The site is the landside portion of Parcel 3 of Parcel Map 93-111 and is currently improved with existing structures and paved areas utilized for outdoor storage space of RVs and small boats, parking and restrooms facilities for the Bayside Marina, a kayak rental and launch facility, parking and access to Pearson's Port, and marine service equipment storage under the Coast Highway Bridge.

The site would accommodate the development of an integrated, mixed-use waterfront project consisting of coastal dependent and coastal related visitor-serving commercial and recreational uses allowed in the current CLUP CM-A and CM-B designation, while allowing for limited freestanding multifamily residential and mixed-use structures with residential uses above the ground floor. Residential development would be contingent upon the concurrent development of the above-referenced marine-related and visitor-serving commercial and recreational facilities, including the enclosed dry stack boat storage facility and completion of a new public bayfront promenade connecting with Bayside Drive and Newport Dunes/County trails.

Policy 2.1.9-1

The Back Bay Landing site shall be developed as a unified site with marine-related and visitorserving commercial and recreational uses. Limited freestanding multifamily residential and mixeduse structures with residential uses above the ground floor are allowed as integrated uses as described below.

- The Mixed-Use Horizontal MU-H category is applicable to the project(s) site; permitted uses include those allowed under the CM, CV, RM, and MU-V categories; however, a minimum of 50 percent of the permitted building square footage shall be devoted to nonresidential uses;
- The site shall be limited to a maximum floor area to land area ratio as established in General Plan Land Use Element Anomaly Cap No. 80. A minimum of 50 percent of the residential units shall be developed in mixed-use buildings with nonresidential use on the ground floor.
- Development shall incorporate amenities that assure access for coastal visitors, including the development of a public pedestrian promenade along the bayfront, bikeways with connections to existing regional trails and paths, an enclosed dry-stack boat storage facility, and public plazas and open spaces that provide public views, view corridors, and new coastal view opportunities.

 The site shall be developed as a unified site to prevent fragmentation and to assure each use's viability, quality, and compatibility with adjoining uses. Development shall be designed and planned to achieve a high level of architectural quality with pedestrian, nonautomobile and vehicular circulation and adequate parking provided.

2.1.9 10 Coastal Land Use Plan Map

The Coastal Land Use Plan Map depicts the land use category for each property and is intended to provide a graphic representation of policies relating to the location, type, density, and intensity of all land uses in the coastal zone.

Policy 2.1.9-10-1

Land use and new development in the coastal zone shall be consistent with the Coastal Land Use Plan Map and all applicable LCP policies and regulations.

Policy 4.4.2-1

Maintain the 35-foot height limitation in the Shoreline Height Limitation Zone, as graphically depicted on Map 43, except for Marina Park and the following sites:

- Marina Park located at 1600 West Balboa Boulevard: A single, up to maximum 73-foot- tall faux lighthouse architectural tower, that creates an iconic landmark for the public to identify the site from land and water as a boating safety feature, may be allowed. No further exceptions to the height limit shall be allowed, including but not limited to, exceptions for architectural features, solar equipment or flag poles. Any architectural tower that exceeds the 35-foot height limit shall not include floor area above the 35-foot height limit, but shall house screened communications or emergency equipment, and shall be sited and designed to reduce adverse visual impacts and be compatible with the character of the area by among other things, incorporating a tapered design with a maximum diameter of 34-feet at the base of the tower. Public viewing opportunities shall be provided above the 35-feet, as feasible.
- Back Bay Landing at East Coast Highway/Bayside Drive: A single, up to 65-foot-tall coastal public view tower, that will be ADA-compliant and publicly accessible, to provide new coastal and Upper Newport Bay view opportunities where existing views are impacted by the East Coast Highway Bridge, other existing structures and topography.
- Amending Figure 2.1.7-1 of the Coastal Land Use Plan to change the designation of the existing 6.028-acre portion of the project site designated as Recreational and Marine Commercial (CM-B) to Mixed-Use Horizontal (MU-H) and the 0.304-acre lot line adjustment area designated as Multiple Unit Residential (RM-C) to MU-H.

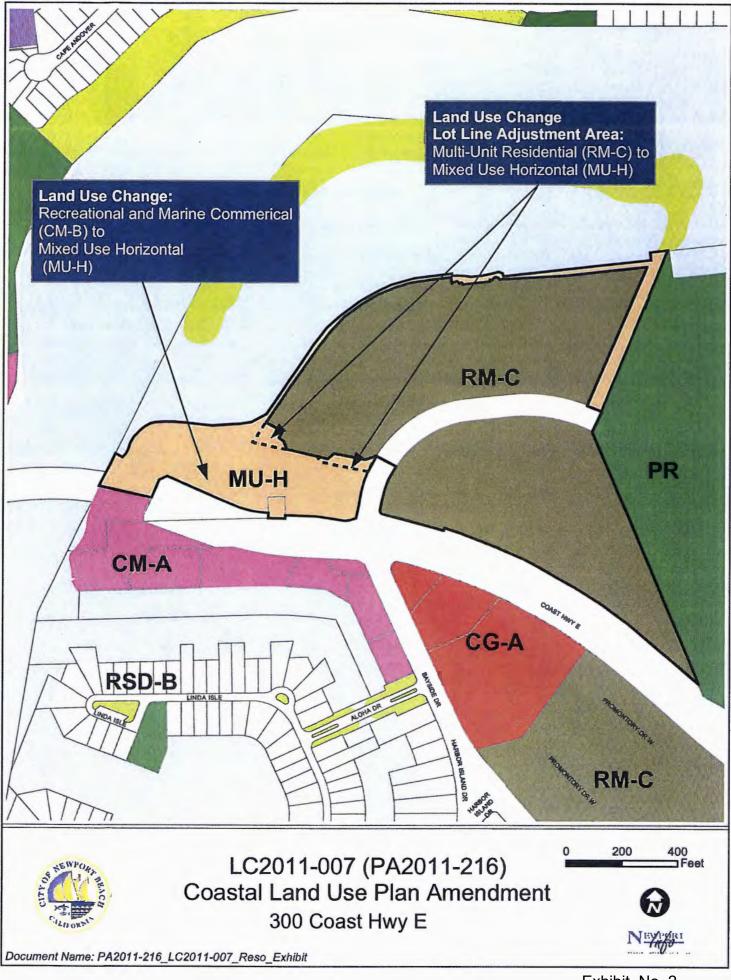


Exhibit No. 2 Page 7 of 8 STATE OF CALIFORNIA}COUNTY OF ORANGE}CITY OF NEWPORT BEACH}

I, Leilani I. Brown, City Clerk of the City of Newport Beach, California, do hereby certify that the whole number of members of the City Council is seven; that the foregoing resolution, being Resolution No. 2014-12 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 11th day of February, 2014, and that the same was so passed and adopted by the following vote, to wit:

Ayes:Gardner, Petros, Selich, Curry, Henn, Daigle, Mayor HillNays:None

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the official seal of said City this 12th day of February, 2014.

City Clerk / Newport Beach, California

(Seal)



CITY OF NEWPORT BEACH

100 Civic Center Drive Newport Beach, California 92660 949 644-3200 newportbeachca.gov/communitydevelopment



November 3, 2015

Attn: Karl Schwing, South Coast District Manager California Coastal Commission South Coast District Office 200 Oceangate, 10th Floor Long Beach, CA 90802-4416

Subject: Proposed Modifications to City of Newport Beach Coastal Land Use Plan Amendment No. LC2011-007/ Coastal Commission Reference No. LCP-5-NPB-14-0820-2 related to the Back Bay Landing site located at 300 E. Coast Highway

Dear Mr. Schwing,

Thank you for taking the time to meet with City staff and the project proponent's team on Monday, October 26, 2015. The intent of the meeting was to present a revised conceptual plan for the site that focused CM land uses on the bayfront in response to Coastal Commission staff comments presented to the project proponents at a September meeting. At the conclusion of the October meeting, it was requested that the City withdraw the application to provide additional time to process the amendment request. At this time, the City is not prepared to withdraw the application given that the application was deemed complete October 9, 2014, and we believe the concerns raised can be addressed with minor modifications to the originally proposed CLUP amendment language.

The project proponent has agreed to the attached modifications, which include additional policies to provide enhanced coastal access (including along the perimeter of the adjacent mobile home complex). The modifications also strengthen the mandate for the development of coastal-dependent and public uses to be provided on-site as priority uses and further restrict the number of location of ground level residential units.

To assist with the identification of the Back Bay Landing site, a new area map is proposed to be added to the CLUP as Figure 2.1.9-1.

Lastly, Coastal Access and Recreation Map 3-1 (Map 3 of 3) is proposed to be revised to identify the future vertical access through the site and future lateral access around the site, as identified in the proposed policy modifications discussed above.

Please accept this letter as a formal request to consider the attached modifications to the City's CLUP amendment request referenced above. If you need any additional information, please do not hesitate to contact me at (949) 644-3209 or jmurillo@newportbeachca.gov.

Sincerely,

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Jaime Murillo Senior Planner

Enclosures:

- 1. Revised CLUP Amendment (Tracked Changes)
- 2. Revised CLUP Amendment (Clean Copy)
- 3. New Back Bay Landing Map (Figure 2.1.9-1)
- 4. Current Coastal Access and Recreation Map 3-1 (Map 3 of 3)
- 5. Revised Coastal Access and Recreation Map 3-1 (Map 3 of 3)

Enclosure 1

Revised CLUP Amendment (Tracked Changes)

<u>2.1.9<mark>-1</mark> Back Bay Landing</u>

Located at the northwesterly corner of the intersection of East Coast Highway and Bayside Drive, the Back Bay Landing site is an approximately 7-acre site adjacent to the Upper Newport Bay. The site is the landside portion of Parcel 3 of Parcel Map 93-111 and is currently improved with existing structures and paved areas utilized for outdoor storage space of RVs and small boats, parking and restrooms facilities for the Bayside Marina, a kayak rental and launch facility, parking and access to Pearson's Port, and marine service equipment storage under the Coast Highway Bridge.

The site would accommodate the development of an integrated, mixed-use waterfront project consisting of coastal dependent and coastal related visitor-serving commercial and recreational uses allowed in the current CLUP CM-A and CM-B designation, while allowing for limited freestanding multifamily residential and mixed-use structures with residential uses above the ground floor. Residential development would be contingent upon the concurrent development of the above-referenced marine-related and visitor-serving commercial and recreational facilities, including the enclosed dry stack boat storage facility and completion of a new public bayfront promenade shall connect to the Newport Dunes/County trails. The public bayfront promenade shall connect to the Newport Dunes/County regional trail system via a new Class 1 trail along Bayside Drive and additional bayfront access shall be provided along the existing marina access way adjacent to the mobile home development located on Parcel 2 of Parcel Map 93-111 as specified in Policies 2.1.9-2 and 2.1.9-3 and as shown on Coastal Access Map 3-1.

Policy 2.1.9-1

<u>The Back Bay Landing site shall be developed as a unified site with marine-related</u> <u>and visitor-serving commercial and recreational uses. Limited freestanding</u> <u>multifamily residential and mixed-use structures with residential uses above the</u> <u>ground floor are allowed as integrated uses as described below.</u>

- <u>The Mixed-Use Horizontal MU-H category is applicable to the project(s)</u> <u>site; permitted uses include those allowed under the CM, CV, RM, and MU-V</u> <u>categories; however, a minimum of 50 percent of the permitted building</u> <u>square footage shall be devoted to nonresidential uses;</u>
- <u>The site shall be limited to a maximum floor area to land area ratio as</u> established in General Plan Land Use Element Anomaly Cap No. 80. <u>Ground</u> floor residential units shall be limited to a maximum of 6 units and sited no

closer than 75 feet from the bayfront. <u>A minimum of 50 percent of the residential</u> units shall be developed in mixed-use buildings with nonresidential use on the ground floor.

- The dry stack boat storage, public promenade and public plazas, shall, as priority uses, be sited adjacent to the bayfront, with the dry stack building on the western bayfront edge of the site (adjacent to existing Pearson's Port location).
- <u>A public coastal access component shall be submitted with any project</u> specific coastal development permit application for Parcel 3 (Back Bay Landing) which shall incorporate amenities that assure access for coastal visitors, including the development of a public pedestrian promenade along the bayfront, bikeways with connections to existing regional trails and paths, an enclosed dry-stack boat storage facility, a public launch area for nontrailered, non-motorized watercraft, public access parking, marina parking, public restrooms, and public plazas and open spaces that provide public views, view corridors, and new coastal view opportunities.
- <u>The site shall be developed as a unified site to prevent fragmentation and to</u> assure each use's viability, quality, and compatibility with adjoining uses. Development shall be designed and planned to achieve a high level of architectural quality with pedestrian, non-automobile and vehicular circulation and adequate parking provided.

Policy 2.1.9-2

Access to and along the existing marina access way adjacent to the mobile home development located on Parcel 2 of Parcel Map 93-111 shall be provided in conjunction with the development of the Back Bay Landing site. Restrictions on the hours of public access and landscape improvements consistent with Coastal Act Section 30214 shall be established at the time of review of the coastal development permit application for Back Bay Landing.

<u>Policy 2.1.9-3</u>

As a condition of approval on any coastal development permit issued for development of the Back Bay Landing site, the applicant shall provide an Offer to Dedicate (OTD) a public access easement across the portion of the property that is currently utilized by the residents of the adjacent mobile home complex as a private beach or over the submerged fee-owned land adjacent thereto. As a condition of any new development of Parcel 1 or Parcel 2 of Parcel Map 93-111, other than replacement and/or maintenance of mobile homes, the clubhouses, pools, common areas or roadways, the public marina access way connection from the west portion of the access way to the east portion shall be constructed.

2.1.10 Coastal Land Use Plan Map

The Coastal Land Use Plan Map depicts the land use category for each property and is intended to provide a graphic representation of policies relating to the location, type, density, and intensity of all land uses in the coastal zone.

Policy 2.1.<u>10</u>**-1.** Land uses and new development in the coastal zone shall be consistent with the Coastal Land Use Plan Map and all applicable LCP policies and regulations.

Policy 4.4.2-1

Maintain the 35-foot height limitation in the Shoreline Height Limitation Zone, as graphically depicted on Map 43, except for Marina Park and the following site<u>s</u>:

- A. Marina Park...[no change to existing language]
- B. Former City Hall Complex...[no change to existing language]
- C. <u>Back Bay Landing at East Coast Highway/Bayside Drive: A single, up to 65-</u> foot-tall coastal public view tower, that will be ADA-compliant and publicly accessible at no cost, to provide new coastal additional view opportunities of Newport Harbor, the Pacific Ocean and the Upper Newport Bay view opportunities-where existing views are impactedobstructed by the East Coast Highway Bridge, other existing structures and topography. If feasible, and subject to review during coastal development permit review of any Back Bay Landing project application, the public view tower may include interpretive facilities, screened communications or emergency equipment.

*Amendment will include related changes to Table of Contents

Enclosure 2 Revised CLUP Amendment (Clean Copy)

2.1.9 Back Bay Landing

Located at the northwesterly corner of the intersection of East Coast Highway and Bayside Drive, the Back Bay Landing site is an approximately 7-acre site adjacent to the Upper Newport Bay. The site is the landside portion of Parcel 3 of Parcel Map 93-111 and is currently improved with existing structures and paved areas utilized for outdoor storage space of RVs and small boats, parking and restrooms facilities for the Bayside Marina, a kayak rental and launch facility, parking and access to Pearson's Port, and marine service equipment storage under the Coast Highway Bridge.

The site would accommodate the development of an integrated, mixed-use waterfront project consisting of coastal dependent and coastal related visitor-serving commercial and recreational uses allowed in the current CLUP CM-A and CM-B designation, while allowing for limited freestanding multifamily residential and mixed-use structures with residential uses above the ground floor. Residential development would be contingent upon the concurrent development of the above-referenced marine-related and visitor-serving commercial and recreational facilities, including the enclosed dry stack boat storage facility and completion of a new public bayfront promenade. The public bayfront promenade shall connect to the Newport Dunes/County regional trail system via a new Class 1 trail along Bayside Drive and additional bayfront access shall be provided along the existing marina access way adjacent to the mobile home development located on Parcel 2 of Parcel Map 93-111 as specified in Policies 2.1.9-2 and 2.1.9-3 and as shown on Coastal Access Map 3-1.

Policy 2.1.9-1

<u>The Back Bay Landing site shall be developed as a unified site with marine-related</u> <u>and visitor-serving commercial and recreational uses. Limited freestanding</u> <u>multifamily residential and mixed-use structures with residential uses above the</u> <u>ground floor are allowed as integrated uses as described below.</u>

- <u>The Mixed-Use Horizontal MU-H category is applicable to the project(s)</u> site; permitted uses include those allowed under the CM, CV, RM, and MU-V categories; however, a minimum of 50 percent of the permitted building square footage shall be devoted to nonresidential uses;</u>
- <u>The site shall be limited to a maximum floor area to land area ratio as</u> <u>established in General Plan Land Use Element Anomaly Cap No. 80. Ground</u> <u>floor residential units shall be limited to a maximum of 6 units and sited no</u> <u>closer than 75 feet from the bayfront.</u>
- <u>The dry stack boat storage, public promenade and public plazas, shall, as</u> <u>priority uses, be sited adjacent to the bayfront, with the dry stack building on</u> <u>the western bayfront edge of the site (adjacent to existing Pearson's Port</u> <u>location).</u>

- <u>A public coastal access component shall be submitted with any project</u> specific coastal development permit application for Parcel 3 (Back Bay Landing) which shall incorporate amenities that assure access for coastal visitors, including the development of a public pedestrian promenade along the bayfront, bikeways with connections to existing regional trails and paths, an enclosed dry-stack boat storage facility, a public launch area for nontrailered, non-motorized watercraft, public access parking, marina parking, public restrooms, and public plazas and open spaces that provide public views, view corridors, and new coastal view opportunities.
- <u>The site shall be developed as a unified site to prevent fragmentation and to</u> assure each use's viability, quality, and compatibility with adjoining uses. Development shall be designed and planned to achieve a high level of architectural quality with pedestrian, non-automobile and vehicular circulation and adequate parking provided.

<u>Policy 2.1.9-2</u>

Access to and along the existing marina access way adjacent to the mobile home development located on Parcel 2 of Parcel Map 93-111 shall be provided in conjunction with the development of the Back Bay Landing site. Restrictions on the hours of public access and landscape improvements consistent with Coastal Act Section 30214 shall be established at the time of review of the coastal development permit application for Back Bay Landing.

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As a condition of approval on any coastal development permit issued for development of the Back Bay Landing site, the applicant shall provide an Offer to Dedicate (OTD) a public access easement across the portion of the property that is currently utilized by the residents of the adjacent mobile home complex as a private beach or over the submerged fee-owned land adjacent thereto. As a condition of any new development of Parcel 1 or Parcel 2 of Parcel Map 93-111, other than replacement and/or maintenance of mobile homes, the clubhouses, pools, common areas or roadways, the public marina access way connection from the west portion of the access way to the east portion shall be constructed.

2.1.<u>10</u> Coastal Land Use Plan Map

The Coastal Land Use Plan Map depicts the land use category for each property and is intended to provide a graphic representation of policies relating to the location, type, density, and intensity of all land uses in the coastal zone.

Policy 2.1.<u>10</u>-1. Land uses and new development in the coastal zone shall be consistent with the Coastal Land Use Plan Map and all applicable LCP policies and regulations.

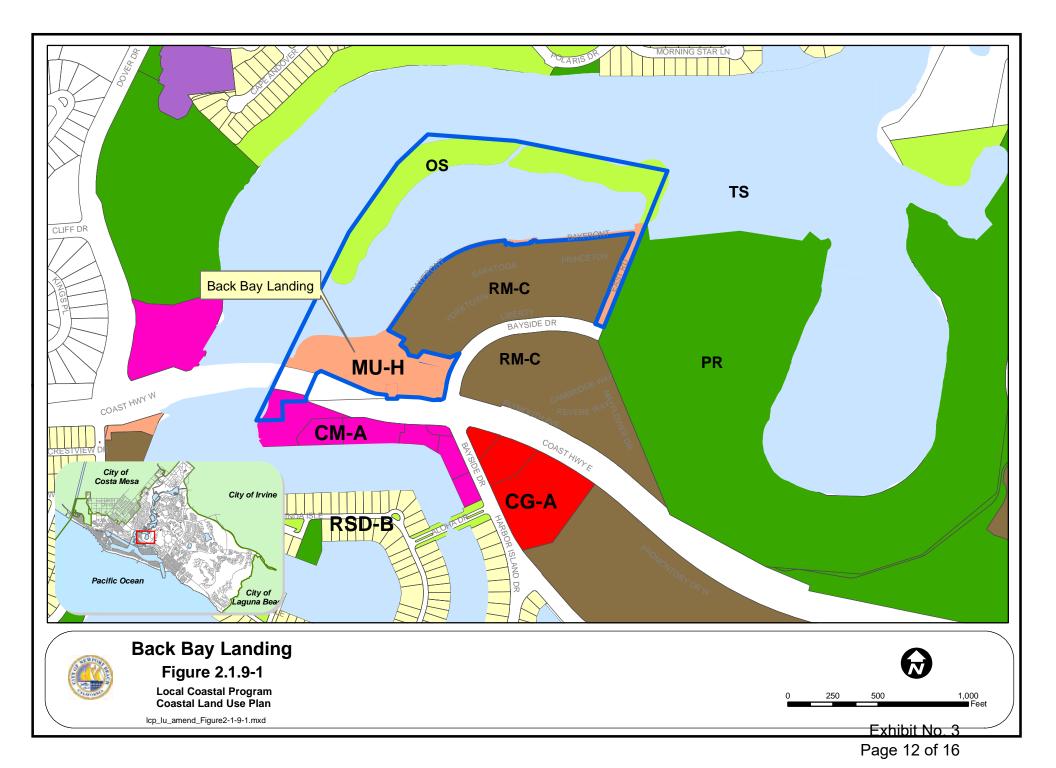
Policy 4.4.2-1

Maintain the 35-foot height limitation in the Shoreline Height Limitation Zone, as graphically depicted on Map 43, except for Marina Park and the following site<u>s</u>:

- A. Marina Park...[no change to existing language]
- B. Former City Hall Complex...[no change to existing language]
- C. <u>Back Bay Landing at East Coast Highway/Bayside Drive: A single, up to 65-</u> foot-tall coastal public view tower, that will be ADA-compliant and publicly accessible at no cost, to provide additional view opportunities of Newport Harbor, the Pacific Ocean and the Upper Newport Bay where existing views are obstructed by the East Coast Highway Bridge, other existing structures and topography. If feasible, and subject to review during coastal development permit review of any Back Bay Landing project application, the public view tower may include interpretive facilities, screened communications or emergency equipment.

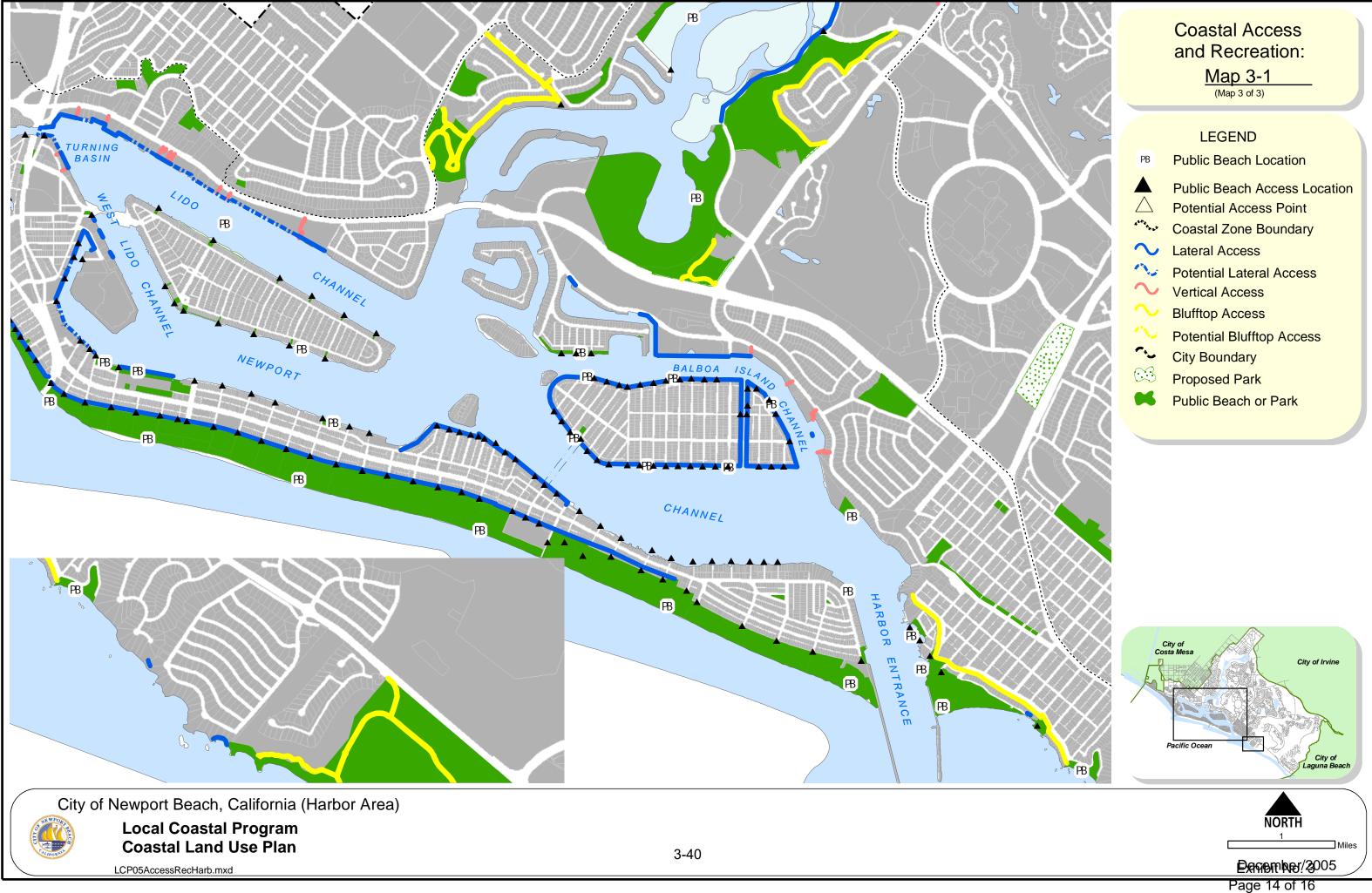
*Amendment will include related changes to Table of Contents

Enclosure 3 New Back Bay Landing Map (Figure 2.1.9-1)



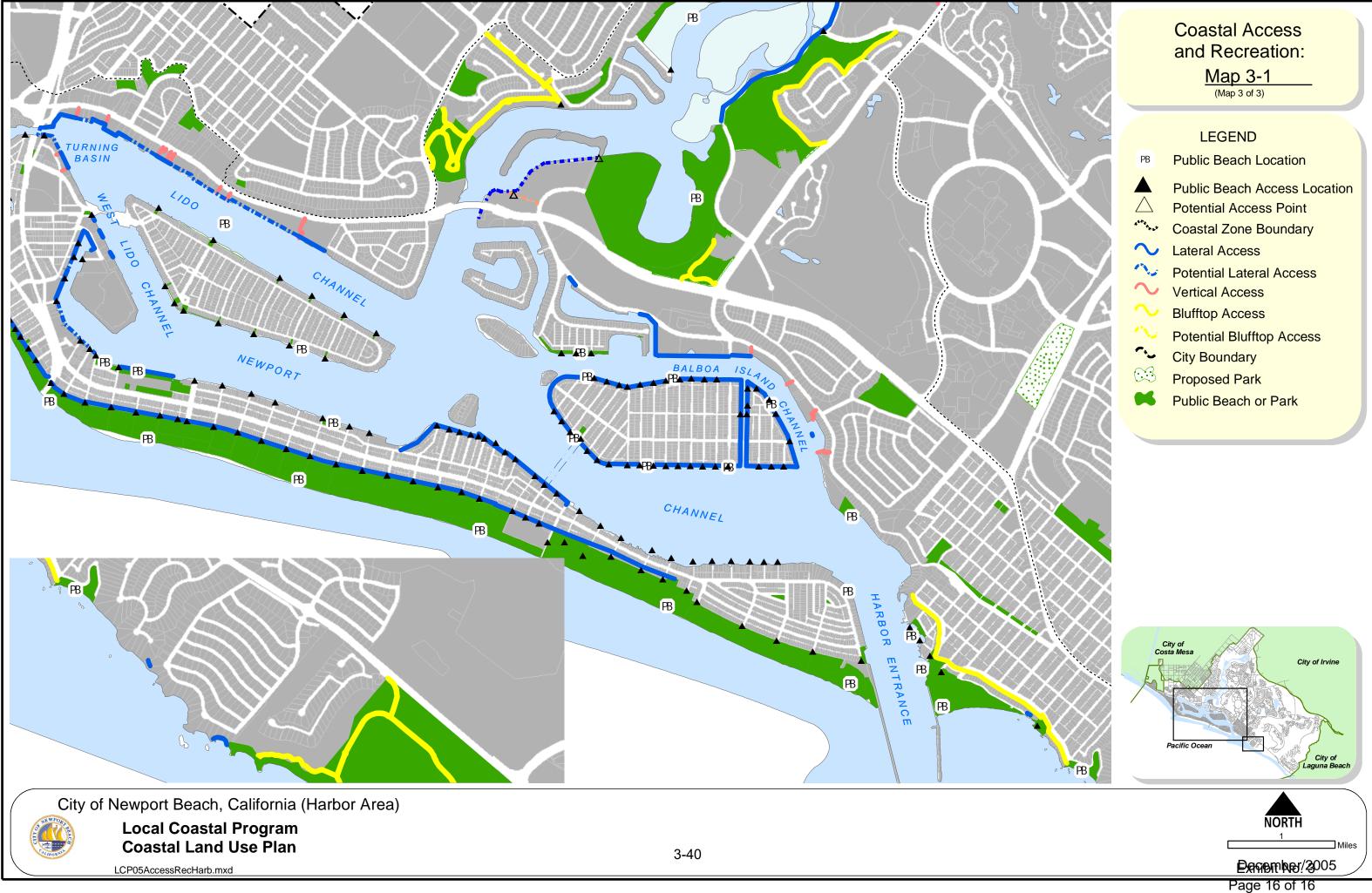
Enclosure 4

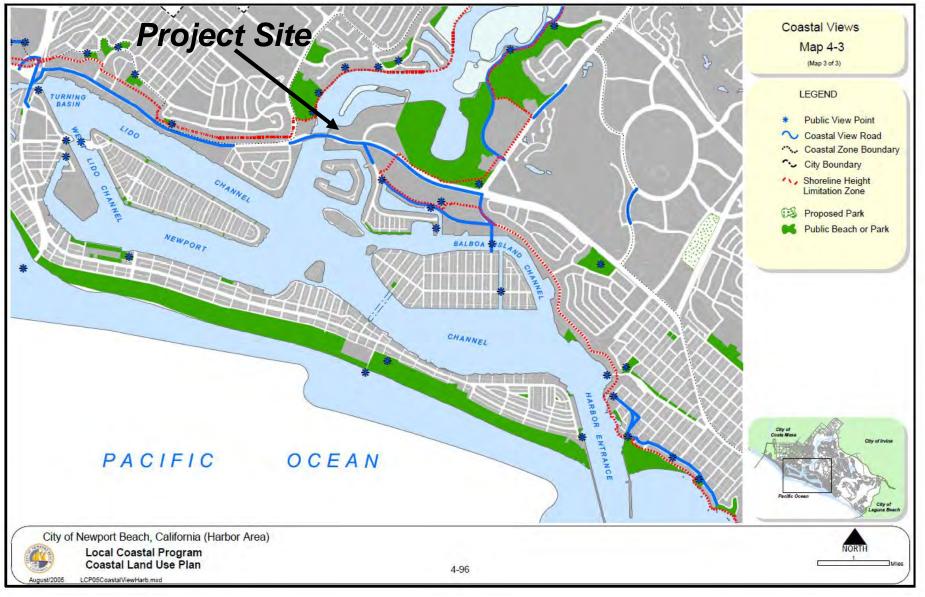
Current Coastal Access and Recreation Map 3-1 (Map 3 of 3)



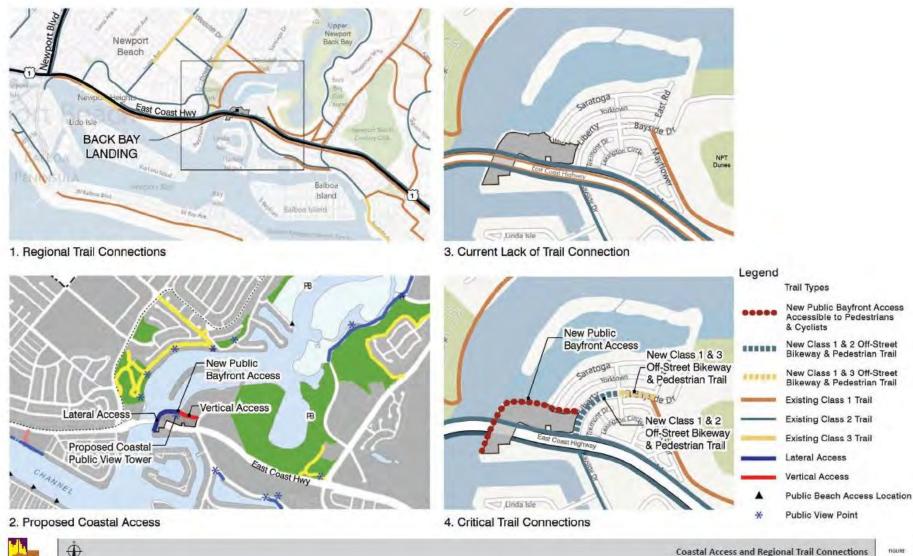
Enclosure 5

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









RECEIVED South Coast Region

NOV 0 9 2015

CALIFORNIA COASTAL COMMISSION

October 22, 2015

Steve Kinsey, Chairman California Coastal Commission 45 Fremont Street #2000 San Francisco, CA 94105 c/o Vanessa Miller vanessa.miller@coastal.ca.gov

RE: Back Bay Landing - SUPPORT, LCP-5-NPB-14 0820-2

Dear Chairman Kinsey & Members of the California Coastal Commission:

I am writing to support the Back Bay Landing project for a variety of reasons. As a homeowner and person who has been historically very involved in the Bayside Village Homeowner Association, I thought it was important to share with you my perspective on why I have, and continue to be, in support of the Back Bay Landing project that is coming before the Commission.

During the last of the three years that I served as President of the Bayside Village Homeowner's Association, I appointed a Bayside Village Home Owner Association Committee of concerned homeowners to ensure that our concerns regarding the Back Bay Landing project were addressed. This Bayside Improvement Committee (BIC) has met and negotiated throughout the past 4 plus years with the project team, which includes Michael Gelfand the owner of Bayside Village Mobile Home Park.

Working together, the two parties have sought reasonable solutions to a variety of issues that may have impacted the Bayside Village residents. Topics under discussion have been parking, storage, security, noise abatement, traffic management, and public access. As a homeowner committee and voice for the community, we were able to convince the project owner/applicant to purchase 4 mobile home sites at the entrance of the project to facilitate traffic flow within our community and improve access into the proposed project. This also ensured that our community would experience no net loss of parking spaces for our residents.

Pearson's Port Fish Market, a special and iconic place for many of us will remain and be part of the new project. . This was a request of our community and we are pleased this request is being listened to by the applicant.

I believe that the addition of 49 residential condominiums helps traffic from the project by creating a balance between marine commercial uses, retail, and new homes. It seems that the traffic is reduced by this mixed use versus having an all commercial project which is currently allowed on the property.

As a homeowner and active member of the community, my love for Bayside Village remains strong. My personal view is that replacing the dirty and dusty storage area along Coast Highway with a vibrant redevelopment will have a positive impact on our homes, our property values, and lifestyles. Our issues have been addressed by the developer and I strongly urge your support for the project.

Sincerely, 1 U

Malcolm Read, Homeowner 54 Saratoga, Bayside Village MHP 949-294-7770 (cell) CC: Sherilyn.Sarb@coastal.ca.gov Chuck.posner@coastal.ca.gov Fernie.sy@coastal.ca.gov

a great place to live

RECEIVED South Coccal Region

NOV 0 4 2015

October 29, 2015

Steve Kinsey, Chairman California Coastal Commission 45 Fremont St. # 2000 San Francisco, Ca. 94105

Re: Back Bay Landing LCP-5-NPB-14-0820-2

Dear Chairman Kinsey & Members of the California Coastal Commission,

This letter is from Richard Hoagland, Chairman of the Bayside Improvement Committee (BIC), concerning the referenced Back Bay Landing Development (BBL). The BIC was formed in 2010 as a Committee of the Bayside Village Homeowners Association (BVHOA) to officially represent the residents of all 270 homes of Bayside Village Mobil Home Park. Bayside Village is the residential development most affected by the BBL.

The mission of this Committee was and is to insure that issues and concerns of the Park residents were brought to the developers and the City, and to mitigate any adverse conditions involved with this project. Over the past five years there have been numerous meetings and discussions to deal with these issues and concerns. I can say that for the most part the BIC is in favor of this development and considers it a significant improvement to the storage yard that currently exists on this property.

The BIC understands that one main focus and mission of the Coastal Commission is to provide public access to coastal waters. This letter is specifically directed toward that CCC mission. The BIC has addressed the public access aspects of this project and agrees with the developers that the proposed access along Bayside Drive is the best solution to accomplish both the need for public access and the right for residents of Bayside Village to safety, security and privacy.

300 east coast highway, newport beach, california 92660

There were a number of major factors that were considered in arriving at this conclusion. The Bayside Drive public access accomplishes two primary functions.

First, it completes a long overdue extension to the Class One 10-mile Back Bay Loop trail circling the Newport Beach Back Bay waters and connecting the Back Bay Reserve to the Pacific Coast Highway and the BBL.

Second, it provides both pedestrian and bike traffic a safe way to access the Bay and the BBL.

Of equal importance, it eliminates the need to use an inferior route along the narrow, private marina front access road which was vetted as a possible alternative.

It is important to note that in the process of seeking the most suitable route for public access to public waters that would connect to the 10-Mile Back Bay Loop trail, and the BBL to the nearby Dunes recreational facility, an alternate route was considered. That route is through privately owned lands, including the land beneath the water in the marina: the Bayside Village Mobile Home Park (BVMHP) community on one side and the BV marina land and waters extending out to a spit separating the lands from the public Back Bay channel.

Further, BVMHP is documented in both the Land Use Plan and the Local Coastal Program as private roads, park, and beach. The Title Map for Parcel 3 (the BBL development) designates the North Clubhouse beach area as an easement *"for the exclusive recreational use of Parcel 2."* Parcel 2 is the North Side of BVMHP. BVMHP was originally founded as a senior park but in 1997 it was converted to all age. Because it was seniors-only, there was little need for play areas for children, however today the beach is a major source of recreation for families with children.

The rejection of the inferior alternate route was for these significant reasons:

- 1. This route does not adjoin public waters, but is contiguous to privately owned marina land on the waterside as well as privately owned land and homes on the landside. It provides no access to the public Back Bay waters.
- 2. This route is not accessible from the east end. It does not provide a clear throughway from the BBL project to the eastern connecting point with the Class One trail. There is a private beach blocking the route in the middle, which would be physically and financially burdensome to overcome.

- 3. There are no housing set backs as would be experienced on similar walkways in other developments where walkways were built specifically to accommodate public access (an average height person can see directly into the living space of adjoining homes).
- 4. Perhaps the most compelling argument against the conversion of this private marina access road is the over abundance of public access to the Back Bay coastal waters in question.
 - Directly across from the marina access road in question and on the opposite side of the Bay is the Castaways Development with both a public access walkway on the top of the bluffs, and in addition public access along the beach below the bluffs.
 - These walkways extend from Dover Shores on the east to Pacific Coast Highway on the west. As an added benefit to these public access walkways, there are large public parking lots near the entrance to both these walkways.

I hope you understand the BIC is not against public access, but has studied all the alternatives and believes the public is best served with the new walkway/bike trail proposed by the developers of BBL and approved by the BIC and the City of Newport Beach.

Thank you for the good work your Commission does for our coastal waters and I look forward to meeting you at the Monterey Hearing.

Sincerely, nac

Richard Hoagland, Chairman Bayside Improvement Committee 31 Saratoga Newport Beach, California 92660

8 Saratoga, Newport Beach, CA 92660 Residence phone (949) 673-2281

November 25, 2015

Steve Kinsey, Chairman California Coastal Commission 45 Fremont Street #2000 San Francisco, CA 94105 c/o Vanessa Miller vanessa.miller@coastal.ca.gov

RE: Back Bay Landing – SUPPORT LCP-5-NPB-14 0820-2

Dear Chairman Kinsey & Members of the California Coastal Commission:

I am a resident of the Bayside Village Mobile Home Park. I have lived here for 30 years. I am directly affected by what ultimately gets developed on the adjacent RV & boat storage area and parking lot (project site). Given the close relationship between our community and the project site - we are direct neighbors- I've paid very close attention to this project through the planning stages. I've attended numerous community meetings on this project and attended both the City of Newport Beach's public hearing in front of the Planning Commission and City Council. I was very pleased the City Council unanimously approved this project in February, 2014 as I believe this project represents a unique effort between a landowner and adjacent neighbors.

I am not an expert in land use or the Coastal Act requirements, but I do believe this project has undergone a very rigorous community process and represents a good addition to our beach community. I am hopeful in your review as Coastal Commissioners you will support this project and find that it meets your criteria for approval.

Sincerely,

Pat Nangle

CC: Sherilyn.sarb@coastal.ca.gov <u>Chuck.posner@coastal.ca.gov</u> <u>Fernie.sy@coastal.ca.gov</u> Sandra D. Garcia 209 Tremont Drive Newport Beach, CA 92660 Email- nextstophawaii@sbcglobal.net Cell- 949-838-4744 Home- 949-675-4742

November 14, 2015

Steve Kinsey, Chairman California Coastal Commission 45 Fremont Street #2000 San Francisco, CA 94105 c/o Vanessa Miller vanessa.miller@coastal.ca.gov

RE: Back Bay Landing – SUPPORT LCP-5-NPB-14 0820-2

Dear Chairman Kinsey & Members of the California Coastal Commission:

I am a resident of the Bayside Village Mobile Home Park. I have lived here for 18 years. Given the close relationship between our community and the project site, I've paid very close attention to this project through the planning stages. I've attended numerous community meetings on this project. I was very pleased the City Council unanimously approved this project in February, 2014 as I believe this project represents a unique effort between a landowner and adjacent neighbors.

I am not an expert in land use or the Coastal Act requirements, but I do believe this project has undergone a very rigorous community process and represents a good addition to our beach community. I am hopeful in your review as Coastal Commissioners you will support this project and find that it meets your criteria for approval.

Sincerely,

Sandra D. Garcia

CC: Sherilyn.sarb@coastal.ca.gov Chuck.posner@coastal.ca.gov Fernie.sy@coastal.ca.gov