

CALIFORNIA COASTAL COMMISSION

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Th21c

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ADDENDUM

September 6, 2016

TO: Coastal Commissioners and Interested Parties

FROM: South Coast District Staff

SUBJECT: ADDENDUM TO **ITEM Th21c**, COASTAL COMMISSION
IMPLEMENTATION PLAN SUBMITTAL, CITY OF NEWPORT BEACH
IMPLEMENTATION PLAN (LCP-5-NPB-15-0039-1) FOR THE
COMMISSION MEETING OF **September 8, 2016**.

Correspondence

Attached is correspondence related to Item Th21c, City of Newport Beach Implementation Plan LCP-5-NPB-15-0039-1 and one Ex Parte Communication submitted by Chair Steve Kinsey. Included is the City of Newport Beach's letter response to the staff report and three attachments, Attachment A, Attachment B and Attachment C containing recommended changes to staff's suggested modifications, and five letters from the public. One public letter is in support of Implementation Plan (IP), one letter raising concerns regarding a specific coastal access issue, and three letters expressed concerns with the content of the IP document and with the limited amount of time the public has to review the Commission's staff report and suggested modifications. Following is the staff response to the issues raised by the City of Newport Beach in their letter and to one particular public letter from Mr. Jim Mosher which raises specific questions regarding the content of the staff report.

Staff's response to the letters is in the form of findings below and will be included in the staff report per this addendum as a new Section III.B.13 titled Response to Comments:

In their letter to the Commission dated September 1, 2016, the City raises three areas/sections of the IP for which they are not in agreement with the Commission's suggested modifications. These areas/sections are IP Section 21.28.040 in relation to Bluff Overlay Districts, IP Sections 21.30.015, 21.30.030, and 21.30.060 relating to natural landform and shoreline protection, and IP Section 21.48.055 relating to public beach hours; three attachments to their letter contain three sets of different suggested modifications for these IP sections than those contained in the staff report.

City of Newport Beach correspondence Attachment A
Attachment A to the City's letter proposes a different set of suggested modifications to Section 21.28.040 than the Commission's suggested modifications to that IP section beginning on

page 90 of Exhibit 2 of the staff report. The findings for “denial as submitted and approval with suggested modifications” in regards to development on bluff sites/Bluff Overlay Districts begins on page 54 of the staff report.

In their letter the City takes issue with Commission suggested modifications limiting the type of development allowed within each of the three Development Areas identified in the City’s proposed Bluff Overlay District. Commission suggested modifications are necessary to ensure that these Development Areas are in conformance with the certified LUP policies (see Section 4.4.3 of the Coastal Land Use Plan) . As proposed by the City, Bluff Overlay District Area A allows principal and accessory structures Area B allows accessory structures such as decks, patios, and swimming pools, and Area C allows fences, walls, guardrails and handrails, trails, stairways, benches, landscaping, irrigation, drainage devices and underground utilities. It appears from the actual Bluff Overlay District maps displaying the location of Development Areas A, B, and C that Development Area C mostly comprises the actual bluff face. The Commission suggested modification in Exhibit #2 of the staff report moves benches, fences and walls, guardrails and handrails from Development Area C to Area B. Coastal Land Use Plan Policy 4.4.3-8 specifically prohibits development on bluff faces, with certain limited exceptions such as for public improvements providing public access. Thus the Commission’s suggested modifications ensure that any permitted public trails and stairways in Area C (bluff face) are public trails and public stairways. These modifications ensure compliance with certified LUP policies that prohibit development on bluff faces and that require site design and construction techniques to minimize alteration of coastal bluffs to the maximum extent feasible. Furthermore, development such as benches, fences, walls, and guardrails are the type of development that typically is considered “accessory development” and policies in the certified LUP (Policies 4.4.3-4 and 4.4.3-6) require accessory development to be either setback in accordance with the predominant line of existing development or a minimum 10-foot setback from the bluff edge. Thus, as modified in Exhibit #2 of the staff report, the IP adheres to these certified LUP policies.

Furthermore, the City proposes to strike out a suggested modification to the Bluff Overlay District for the Shorecliffs and Cameo Shore communities which requires that structures within Development Area A, however defined/identified in the Bluff Overlay District maps shall also be sited not less than 25 feet from the bluff edge for principal structures and major accessory structures such as guesthouses and pools and not less than 10 feet from the bluff edge for accessory structures, per certified LUP policies 4.4.3-3 and 4.4.3-4 for development on bluffs subject to marine erosion. The City’s IP submittal did not provide any background data or information to explain how the polygons identifying Development Areas A, B, and C on the Bluff Overlay District maps were developed. In their letter, the City provides some background explaining how the predominant line of existing development (PLOED) were used to establish each distinct Bluff Overlay District Development Area. The letter states:

“As an example when the City established the development areas for the Shorecliffs and Cameo Shores bluffs, which are subject to marine erosion, the PLOED was used for delineating the development area boundaries. This methodology respects the 25-foot and 10-foot bluff edge for principal and accessory structures, respectively, when each bluff area is reviewed in its entirety. The City believes that this effectively implements both provisions of the CLUP policies.”

In their letter, the City assures that the development area boundaries respect the 25 and 10 foot setbacks, therefore, it should not be an issue to spell it out in the text of the IP as suggested by the Commission. This suggested modification is still deemed necessary to implement the LUP policies as the Bluff Overlay District maps for Shorecliffs and Cameo Shores do not show actual contour/topographic lines, making it unclear whether or not Development Area A is in compliance with the minimum 25-foot setback from the bluff edge as required by LUP policies. Furthermore, even if the boundaries were accurately depicted on

the District maps, conditions on the ground change over time as a result of erosion. Thus, the Commission maintains the suggested modification to the Bluff Overlay District specific to the Shorecliffs and Cameo Shore communities stating that Development Area A, however defined/identified in the Bluff Overlay District maps shall also be sited not less than 25 feet from the bluff edge for principal structures and major accessory structures such as guesthouses and pools per certified LUP policy 4.4.3-3, and not less than 10 feet from the bluff edge for accessory structures, per certified LUP policy 4.4.3-4 for development on bluffs subject to marine erosion is necessary.

The Commission agrees with the City that the 25-foot bluff setback required for bluffs subject to marine erosion does not apply to the bluff lots along Cliff Drive. Cliff Drive was inadvertently included in with the Upper Newport Bay bluff lots and that area is clearly not subject to marine erosion and thus not subject to the 25-foot setback policy in the certified LUP. The Commission agrees that mention of Cliff Drive should be struck out from the suggested modifications related to Upper Newport Bay coastal bluffs.

Regarding the coastal bluffs in the area the City refers to as "Dover Shores" these are along Galaxy Drive and Polaris Drive and historically proposed development along these bluffs have been reviewed as bluffs subject to marine erosion, albeit currently minimal erosion, but still marine erosion. Additionally, with sea level rise the rate of erosion along these bluffs is likely to increase. Therefore, the parcels along these bluffs should be included in the City's proposed Bluff Overlay District as revised by the Commission in a suggested modification to the IP. Though the rate of erosion is presently low at the bluff toe, these bluffs have a history of bluff failures at the bluff top often caused by manmade conditions such as poor drainage and overwatering in areas where development is sited too close to the bluff edge. In the 1990s, the Commission issued numerous emergency permits and regular CDPs to protect existing development due to bluff failures along Galaxy Drive (e.g., 5-98-497-G(Penfil), 5-98-524-G(Penfil), 5-98-469-G(Ferber), 5-98-240(Patton), 5-94-288(Lewis), 5-93-367(Rushton), 5-93-308(Pope Trust), and 5-85-062(Braman)). The Commission acknowledges that the area was developed in the 1950s with rear property lines generally along the bluff edge with either 10 or 20 foot bluff setbacks. However, certified LUP policy 4.4.3-3 requires all new bluff top development located on a bluff subject to marine erosion to be sited in accordance with the predominant line of existing development but not less than 25-feet from the bluff edge. These policies still apply to these bluff lots regardless of when they were originally developed. The Commission has previously approved new development on Galaxy Drive and applied policy 4.4.3-3 requiring a 25-foot bluff edge setback. This and other Commission actions demonstrate that these sites are still developable with a 25-foot setback. For example, CDP 5-12-155(Jehangiri/Levering) approved new development, in the form of a major remodel (demolition of 50% or more of exterior walls) and addition to an existing single family residence at 1638 Galaxy Drive; the new development provided a 25-foot setback from the bluff edge for the primary structure and a 10-foot setback for accessory structures. CDP 5-11-213(Matthews) also approved new development with a 25-foot setback for the primary structure and a 10-foot setback for accessory structures. In fact, the geotechnical reports provided as part of the CDP applications for these projects referred to these coastal bluffs as subject to marine erosion. Therefore, only as modified through the Commission's suggested modifications to include Galaxy Drive and Polaris Drive as coastal bluff lots subject to marine erosion in the City's proposed Bluff Overlay District will the IP be fully in compliance with and adequate to carry out the certified LUP policies regarding bluffs subject to marine erosion.

Also, upon closer examination, it appears that approximately seven coastal bluff top lots along Upper Newport Bay located on Santiago Drive between Galaxy Drive and Irvine Ave. are not subject to direct marine erosion. Therefore, to address the City's concerns, the Commission proposes to change the language of the suggested modification regarding Santiago Drive in this addendum to reflect the certified LUP policies 4.4.3-5, 4.4.3-6, and 4.4.3-7 requiring all new bluff top development (principal structures and accessory structures) located on a bluff

not subject to marine erosion have a minimum setback from the bluff edge in accordance with the predominant line of existing development, and shall be increased where necessary to ensure safety and stability. Though not subject to marine erosion, these are still by definition coastal bluff top lots and should be included in the City's proposed Bluff Overlay District to ensure that review of development in these coastal hazard areas meet the applicable standards of the IP, thus the Commission's suggested modification to include Santiago Drive in the City's Bluff Overlay District.

City of Newport Beach correspondence Attachment B

Attachment B to the City's letter proposes a different set of suggested modifications to Sections 21.015, 21.30.030, and 21.30.060 than the Commission's suggested modifications to those IP sections on page 103 – 119 of Exhibit 2 of the staff report. In their letter, the City's expressed intent is to allow for the repair, maintenance and alteration of existing bulkheads in Newport Harbor. However, the Commission's suggested modifications are not intended to preclude repair, maintenance and alteration of existing bulkheads. Instead, the Commission's suggested modifications allow for it in a manner that conforms to the public access and recreation policies of the Coastal Act.

The findings for "denial as submitted and approval with suggested modifications" in regards to development on sites with existing bulkheads is found beginning at the bottom of page 60 of the staff report. These findings clearly acknowledge the existing and pre-Coastal Act pattern of development on the islands and along the shoreline of Newport Bay which rely on existing bulkheads and explains how the suggested modifications to the IP address sites with an existing bulkhead by:

- requiring a determination as to whether the existing bulkhead can be removed or if the bulkhead is required to remain as it protects existing principle structures or public facilities at the time of CDP application for redevelopment of the existing structure that the bulkhead protects
- if it is determined (through a coastal hazards report) that an existing bulkhead on the site cannot be removed and/or an existing replacement bulkhead is required to protect existing principal structures or public facilities then a bulkhead condition report is required providing an analysis of condition/structural stability of the bulkhead and providing recommendations regarding the need for repair, augmentation or replacement of the bulkhead

Additional suggested modifications to the IP are necessary as shown in Exhibit #2 to ensure that a bulkhead replacement, when necessary, is replaced either in its existing alignment. If the bulkhead is not in alignment with adjacent bulkheads the suggested modifications require the relocation of the bulkhead to be as much in alignment with adjacent bulkheads, and as far landward as possible. All of these recommended suggested modifications recognize the existing pattern of development that is reliant on bulkheads while including measures to ensure the continued protection of the public tidelands seaward of the bulkheads for public use in a manner adequate to carry the policies of the certified LUP and the public access and recreation policies of the Coastal Act.

In an effort to further clarify the intent of the Commission's suggested modifications and in order to ensure only the necessary suggested modifications are made to Chapter 21.30, the Commission proposes to address the City's concerns by making changes to the suggested modifications in Exhibit #2 of the staff report rather than accepting the City's Attachment B. Therefore, some additional modifications to Sections 21.30.015, 21.30.030, and 21.30.060 in Exhibit #2 of the staff report are proposed as illustrated in the section below.

City of Newport Beach correspondence Attachment C

Attachment C to the City's letter proposes a different set of suggested modifications to Section

21.48.055 than the suggested modifications beginning on page 254 of Exhibit #2 of the staff report. The City's modifications contained in Attachment C removes language the Commission added as a suggested modification to ensure compliance with the LUP and Coastal Act Chapter 3 public access policies. Therefore, the Commission cannot support the City's proposed modified language contained in Attachment C.

In Attachment C, the City would memorialize current beach hours in the LCP for which it has not previously received a coastal development permit. The changes the City seeks would also omit CCC recommended provisions related to constitutional access rights and only keep provisions for emergency temporary closures and closures to abate a legally declared nuisance.

A brief history of City ordinances to consider regarding beach hours:

- 1957 Ord. 825 - "...no person shall be allowed or permitted on the public beaches in the City...between the hours of midnight and 6:00 o'clock a.m..." except at Little Corona Beach where the hours were set at 6pm to 6am and 10pm to 6am depending on time of year
- 1970 Ord. 1362 - hours at Little Corona changed to 10pm to 6am all year
- 1971 Ord. 1381 - appears to set same hours
- 1989 Ord. 89-10 - closure hours at beaches (other than Corona del Mar) set at 11pm to 6am; Corona Del Mar State Beach hours remain 10pm to 6am
- 1993 Ord. 93-6 closure hours at all beaches set at 10pm to 6am

The City has not ever applied to the Commission for a coastal development permit for regulation of beach hours at night. As modified by the Commission, the IP states that beach hours in effect prior to February 1, 1973 (prior to passage of Proposition 20/Coastal Act) may continue to be effective, however, the public's right to gain access to State tidelands at all hours must also be maintained (a basic right granted by the State constitution). The Commission's suggested modifications further clarify that any change to beach regulations or hours impacting the public's right to access the beach or resulting in a closure to public use of any portion of the beach inland of the mean high tide line shall require an LCP amendment. The City objects to the addition of this specific language. Furthermore, although the City agrees that any new restriction(s) that limits access to public beaches, State waters, or beach parking lots require a coastal development permit, the City would like to strike out suggested modifications that provides specific detailed provisions for any new beach restriction(s) such as those that require the restriction be supported by reasonable evidence establishing justification for the restriction and limiting the new restriction to a geographic area with identified public safety problems warranting the closure action. The City also strikes out a suggested modification clarifying that new beach restrictions shall not apply to activities such as walking, jogging, grunion hunting, fishing on the wet sand or within 20 feet of the wet sand, scuba diving, surfing, or swimming in the ocean, bay or harbor, and that any restriction does not apply to persons going to or coming from the wet sand or the area within 20 feet of the wet sand. Only with the Commission's suggested modifications contained in Exhibit #2 and the additional clarifications to the findings in the staff report proposed in this addendum in the section below can the IP be considered in conformance with the LUP and the public access policies of Chapter 3 of the Coastal Act.

Additional Revisions to the Staff Report and Exhibit #2 (Proposed IP with Suggested Modifications)

In response to the City of Newport Beach and Mr. Mosher's comments/concerns, Commission staff recommends the following edits and additional staff report findings to clarify the intent of the findings in the staff report and the intent of suggested modifications to the IP contained in

Exhibit #2 of the staff report. Deleted language is shown in ~~double strikethrough~~ and new language is in **bold, double underlined italic**.

Staff Report Page 1, last line of second paragraph:

The result of this collaboration is an IP, as suggested to be modified, that attempts to address the issues raised by **sea level rise and the protection of coastal resources** in a manner that is consistent with, and is adequate to carry out the certified LUP.

Staff Report Page 12, second paragraph:

As submitted, the IP is not part of the City's ~~Municipal~~ **Zoning** Code, but instead is an independent document, describing and implementing the land use planning and development standards that solely apply to development within the coastal zone.

Staff Report Page 47, second paragraph:

Public Beaches – Beach Hours and Beach Encroachments

Public beaches are designated as Coastal Zoning District PR – Parks and Recreation in the IP, land uses and development on public beaches are limited to public safety facilities, restroom facilities, showers, bikeways, walkways, public recreation facilities and similar facilities. The IP established procedures for the approval of permitted encroachments, the removal of prohibited encroachments, limiting the extent of encroachments, and clarification of improvements permitted within public accessways.

As submitted, the IP maintains provisions for Municipal Code regulations of beach hours at night ~~that have been in effect prior to February 1, 1973 to continue to be in effect.~~

Staff Report Page 49, beginning at the last sentence of the first paragraph:

Another suggested modification clarifies that any development such as grading, structures or landscaping within permitted encroachment zones aside from the requirement for an encroachment permit, is also considered development requiring a CDP. **At the request of the City, a suggested modification is included to strikeout all of Section 21.30A.100 and move all these procedures and regulations to an appendix. As modified, IP Appendix C includes the entire Oceanfront Encroachment Permit Guidelines adopted by the City in order to implement the Balboa Peninsula Oceanfront encroachment permit policy approved by the Commission as a 1991 LUP amendment. All of the aforementioned suggested modifications necessary to ensure that permitted private beach encroachments onto the sandy beach or public rights-of-way do not have an adverse impact on coastal access are made in Appendix C.**

Additionally, there is the issue of use of the beach at night. The City has a history of regulation beach hours at night and asserts in the IP **that use of any public bay, beach, or ocean front shall be consistent with the Newport Beach Municipal Code.** ~~beach hours in effect prior to February 1, 1973, may continue to be in effect. **Municipal Code Section 11.08.030 states:**~~

A. Prohibited Hours. Except as provided in subsection (B) of this section, no person shall be allowed or permitted on any public bay, beach nor any ocean front beach between the hours of 10:00 p.m. and 6:00 a.m. of the following day;

B. Temporary Modification. The City Manager may, when necessary to protect the safety of persons or property, temporarily modify the beach and pier closure hours established in this Code. In no event shall the modification of hours continue for a period of more than two weeks. The modification shall not be effective until notice of the new hour, and the effective dates is filed with the City Clerk. (Ord. 93-28 § 1 (part),

1993: Ord. 93-6 § 1, 1993: Ord. 89-10 § 1, 1989: Ord. 1381 § 1, 1971: Ord. 1362 § 1, 1970: Ord. 825 (part), 1957: 1949 Code § 4201).

Setting restrictive hours for the use of public beaches constitutes development under section 30106 of the Coastal Act because they change the intensity of the public's use of water/sea and access thereto. However, the City has not ever applied for, or received a CDP for the restriction of public beach hours between 10pm and 6am it enacted in 1993, or previous modifications to public beach hours in 1989. Additionally, the LUP does not allow for nighttime restrictions on beach access. Therefore, a suggested modification is necessary to make use of any public bay, beach or ocean front consistent with the LCP instead of the City Municipal Code. Suggested modifications are also included protecting the public's right to gain access to State tidelands at all hours and requiring an LCP amendment for any change in beach regulations or hours impacting the public's right to access the beach or resulting in a closure to public use of any portion of the beach inland of the mean high tide line and any new restriction(s) that limits access to public beaches and State waters or beach parking lots shall require a CDP. Furthermore, specific provisions are included requiring any new restriction(s) be supported by reasonable evidence establishing the justification for the restriction and limiting the geographic area for which the restriction of public use applies to those beach areas with identified public safety problems warranting the closure action. Further clarification is provided in a suggested modification outlining the type of activities that would not be impacted by any new restriction(s) such as scuba diving, surfing, or swimming in the ocean, bay or harbor, or walking, jogging, grunion hunting, or fishing on the wet sand or within 20 feet of the wet sand.

Staff Report Page 81, after the second paragraph:

Eelgrass

The numerous LUP policies to protect, restore and enhance eelgrass for their important ecological function are addressed in Section 21.30C.050 and in Appendix C of the IP which contains "Eelgrass Protection and Mitigation Plan for Shallow Waters in Lower Newport Bay: An Ecosystem Management Plan." Suggested modifications to Section 21.30C.050 are required to strengthen the language of eelgrass protection regulations in order to more fully ensure that piers, pier platforms, gangways and docks are designed to minimize and where feasible completely avoid impacts to eelgrass and marine habitat. However, a suggested modification is necessary to completely strike out this eelgrass management plan from the IP as that plan relates to development in areas of the Commission's retained jurisdiction and does not need to be part of this IP. More relevantly, the City has received separate Commission approval through the CDP process for the eelgrass plan but was only approved for a trial period in order to assess plan effectiveness and allow for adjustments as needed. Thus, the eelgrass plan should not be part of this IP as it is likely to be revised through time.

Staff Report Page 106, at the end of the third paragraph:

Regarding the Coastal Zoning Map depicting the coastal zoning districts established by the IP, a necessary point of clarification is made to Section 21.14.010 through a suggested modification that any changes to IP maps or addition of new maps to the IP shall be adopted through an IP amendment. Furthermore, another suggested modification is necessary to ensure that all final maps adopted as part of this IP accurately reflect the Coastal Zone Boundary including changes made in a Coastal Zone Boundary adjustments approved by the Commission at its April 2016 hearing.

Exhibit #2, Page 66 an additional suggested modification:

21.26.055 – Planned Community Coastal Zoning District Development Standards

- A. **Relationship to Other Property Development Regulations.** Property development regulations applicable to residential, commercial, industrial, and mixed-use districts shall also apply to corresponding portions of PC Districts, unless specifically waived or modified by subsections (B) through (P) of this section. Where conflict in provisions occurs, the regulations specified in this chapter or in the development plan(s) approved in compliance with this chapter shall apply. ***If a PC District is located within the Shoreline Height Limit Area, per Map H-1, the 35-foot height limit shall prevail over any other higher height limit identified in a PC District.***

Exhibit #2, Page 111 last paragraph, correction of a typo:

686. Fuel Modification.

Exhibit #2, Page 112 last paragraph, correction of a typo:

797. Erosion Control Plan.

Exhibit #2, Page 116 second paragraph, UNDO proposed suggested modification to delete text, keep text as proposed:

- b. **Enlargement and Expansion of Land Areas.** The construction of protective structures shall be prohibited for the purpose of enlarging or expanding areas for new development or for new development. ~~However, this shall not preclude the expansion or encroachment into coastal waters to the minimum extent necessary to repair, maintain, or replace an existing protective device that is in general alignment with any adjacent protective device(s).~~ Under no circumstances shall the backfill be used to create new usable land areas.

Exhibit #2, Page 117 last paragraph, corrections to references to other IP Sections:

- i. Bulkheads for nonresidential and residential waterfront development (as identified in Sections 21.30.015(BC) and (CD)).** In cases where the coastal hazards report required in Section 21.30.015 (E)(3) establishes that an existing bulkhead on the site cannot be removed and/or an existing or replacement bulkhead is required to protect existing principle structures or public facilities, the following shall apply:

Exhibit #2, Page 109 last paragraph at the bottom of the page, add two new footnotes to clarify that certain requirements of a Geologic Stability Report shall not apply to sites with existing bulkheads:

1. **Geologic Stability Report.** In addition to the coastal hazards report required above, ~~C~~coastal development permit applications for development proposed in shoreline areas of known or potential geologic or seismic hazards shall be

~~required to submit~~ include a geologic geologic/soils/geotechnical report that.
The geologic/soils/geotechnical report shall use the methodology in Appendix A
and includes the following:

- a. A statement of the preparer's qualifications;
- b. Identification of geologic hazards affecting the site;
- c. Identification of necessary mitigation measures;
- d. A certification that the:
 - (1) Site is suitable for the proposed development;
 - (2) Development will have no adverse effect on the stability of the bluff, canyon, or shoreline; and
 - (3) Development is expected to be reasonably safe from failure and erosion over its economic lifetime without ~~having to install additional stabilization features to reliance on existing or future protective structures for stability; and in the future.~~¹
 - (4) Adaptation options and mitigation measures have been incorporated to address potential risk without having to rely on existing protective structures or the need to install additional protective structures in the future.²

Exhibit #2, Page 124 at the bottom of the page:

3. **Flood Hazard Areas.**

a. ~~Finished First Floor~~ **Top of Slab Elevation for Interior Living Areas**. The minimum required top of slab/~~finished floor~~ elevation for interior living areas of all new structures/~~development~~ within flood hazard areas shall be as established by the Flood Insurance Rate Maps recognized by the Building Division as part of flood safety requirements and maps adopted by the City Council. Notwithstanding, the building elevations established by the Flood Insurance Rate Maps, the minimum required top of slab elevation for interior living areas of all new structures/~~new development~~ shall be at least 9.00 (NAVD 88).

- (1) **Sea Level Rise**. The minimum required top of slab elevation/~~finished floor elevation~~ for interior living areas may be increased as necessary to minimize hazards associated with long-term sea level rise over the economic life of the structure identified in the coastal hazards report pursuant ~~to~~ Section 21.30.015(E)~~(42)~~.

Exhibit #2, Page 132 at the bottom of the page after Table 21.30-2, correction of a typo:

¹ ***This standard shall not apply to development along Newport Bay with an existing bulkhead.***

² ***This standard shall not apply to development along Newport Bay with an existing bulkhead.***

- E. **Removal of Nonconforming Signs.** The nonconforming roof and ~~pool~~ pole signs shall be removed or altered to be conforming by October 27, 2020, with the exception of signs designated as heritage signs.

Exhibit #2, Page 97 changes to suggested modifications of IP language:

9. Map B-9—Upper Newport Bay Bluffs.

a. ~~Galaxy Drive, and Polaris Drive, Mariner's Drive, Santiago Drive, and Cliff Drive.~~

- i. Development Area A. As indicated by the specified distance (in feet) from the front property line on the development area map, but not less than 25 feet from the bluff edge for principal structures and major accessory structures such as guesthouses, and pools and not less than 10 feet from the bluff edge for accessory structures.**
- ii. Development Area B. Between the seaward boundary of Area A and a line established by a ten (10) foot setback from the bluff edge (not all lots may have an Area B).**
- iii. Development Area C. All portions of the lot not located in Area A or B. No development allowed in Area C, as the coastal bluffs are protected open space as part of Upper Newport Bay Ecological Reserve.**
- iv. Additional Development Standards. If Area A overlaps Area B, the area of overlap shall be regulated as Area A. No fences or walls shall be allowed in Area C.**

b. Santiago Drive

- i. Development Area A. As indicated by the specified distance (in feet) from the front property line on the development area map for principal structures and major accessory structures such as guesthouses, and pools and not less than 10 feet from the bluff edge for accessory structures.**
- ii. Development Area B. Between the seaward boundary of Area A and a line established by a ten (10) foot setback from the bluff edge (not all lots may have an Area B).**
- iii. Development Area C. No development allowed in Area C, as the coastal bluffs are protected open space as part of Upper Newport Bay Ecological Reserve.**
- iv. Additional Development Standards. If Area A overlaps Area B, the area of overlap shall be regulated as Area A. No fences or walls shall be allowed in Area C.**

Exhibit #2, bottom of Page 84 add the updated Back Bay Landing Planned Community Development Plan (PC-9) as amended April 26, 2016 by City Ordinance No. 2016-8 to the IP with the following suggested modifications, including deletion of Exhibit #4 of the Back Bay Landing Planned Community Development Plan (PCDP):

Back Bay Landing
PLANNED COMMUNITY
DEVELOPMENT PLAN (PC-9)

Prepared February 11, 2014
Adopted February 25, 2014, Ordinance No. 2014-4 (PA2011-216)
Amended April 26, 2016, Ordinance No. 2016-8

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LIST OF ACRONYMS

ABC	California State Department of Alcoholic Beverage Control
CDP	Coastal Development Permit
CLUP	Coastal Land Use Plan
CM	Recreational and Marine Commercial
CUP	Conditional Use Permit
ESA	Environmental Study Area
ESHA	Environmentally Sensitive Habitat Area
LID	Low Impact Development
HHW	Highest High Water
MLLW	Mean Lower Low Water
MU-W2	Mixed-Use Water-Related 2 (General Plan Designation)
MU-W	Mixed-Use Water-Related (CLUP Designation)
NAVD 88	North American Vertical Datum of 1988
OCSD	Orange County Sanitation District
OCTA	Orange County Transportation Authority
PC-9	Back Bay Landing Planned Community
PCDP	Planned Community Development Plan
WQMP	Water Quality Management Plan

I. Introduction and Purpose of the Planned Community Development Plan (PCDP)

A. Introduction

The Back Bay Landing site is envisioned to be developed as an integrated, mixed-use waterfront village on an approximately 7-acre portion of a 31.5-acre parcel located adjacent to the Upper Newport Bay in the City of Newport Beach. The City of Newport Beach Municipal Code allows a Planned Community Development Plan (PCDP) to address land use designations and regulations in Planned Communities. The Back Bay Landing PCDP serves as the controlling zoning ordinance for the site and is authorized and intended to implement the provisions of the Newport Beach General Plan and Coastal Land Use Plan.

The Back Bay Landing PCDP Design Guidelines provide a comprehensive vision of the physical implementation of the project and have been drafted to assist the City and community to visualize the architectural theme and desired character of the development.

B. Project Location

The Back Bay Landing Planned Community (PC-9) is located within the City of Newport Beach, in Orange County, California. The approximately 7-acre primary project area is generally located north of East Coast Highway and northwest of Bayside Drive in the western portion of the City, as shown on Exhibit 1, Location Map. The project area is bounded by the Upper Newport Back Bay to the north and west, the Newport Dunes Waterfront Resort and the Bayside Village Mobile Home Park to the east, East Coast Highway and various marina commercial and restaurant uses south of the Highway to the southeast. As shown on Exhibit 2, Planning Areas, the Back Bay Landing Planned Community is comprised of five distinct Planning Areas: Mixed-Use Area (PA 1), Recreational and Marine Commercial (PA 2), Existing Private Marina Access and Beach (PA 3), Marina and Bayside Village Mobile Home Park Storage and Guest Parking (PA 4), and Submerged Fee-Owned Lands (PA 5).

C. Purpose and Objectives

The purpose of the PCDP is to establish appropriate zoning regulations governing land use and development of the site consistent with the City of Newport Beach General Plan and Coastal Land Use Plan. The PCDP provides a vision for the land uses on the site, sets the development standards and design guidelines for specific project approvals at the Site Development Review and Coastal Development Permit (CDP) approval stage, and regulates the long term operation of the developed site.

Implementation of the PCDP will:

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- Provide a high quality mixed-use, marine-related, visitor-serving commercial development with integrated residential units and a unified architectural and landscape theme.
- Implement the MU-W2 (Mixed Use Water-Related 2) General Plan and MU-W (Mixed Use Water Related) Coastal Land Use Plan categories on an underutilized bayfront location in a manner that provides for commercial development on or near the bay in a manner that will encourage the continuation of coastal-dependent and coastal-related land 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.
- Maintain and expand core coastal dependent and coastal-related land uses, including the development of marina parking and enclosed dry stack boat storage and launching facility.
- Provide new housing opportunities in response to demand for housing, reduce vehicle trips and encourage active lifestyles by increasing the opportunity for residents to live in proximity to jobs, services, entertainment, and recreation.
- Protect and enhance significant visual resources from identified public vantage points, such as Coast Highway, Castaways Park, and Coast Highway-Bay Bridge, to the bay and the cliffs of upper Newport Beach through view corridors designed into the project. New public view opportunities will be created on-site.
- Expand bayfront access to and along the bay where it does not exist at the present time, in a manner that protects environmental study areas (ESA) and/or environmentally sensitive habitat areas (ESHA) and does not adversely impact existing private residences adjacent to the site.
- Provide continuous public coastal access with a new minimum 12-foot-wide bayfront access promenade along the bayfront edge of Planning Areas 1, 2, and 3. This new, public bayfront promenade will link the public docks and marina property south of the Coast Highway-Bay Bridge along the bayfront, to the Newport Dunes recreational area. In addition, 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 recreational area.

D. Relationship to the Newport Beach Municipal Code

Whenever the development regulations contained in this PCDP conflict with the regulations of the Newport Beach Municipal Code, the regulations contained in this PCDP shall take precedence. The Municipal Code shall regulate all development within the PCDP when such regulations are not provided within the PCDP. All construction within the Back Bay Landing PCDP (PC-9) shall be in compliance with the California Building Code, California Fire Code, and all other ordinances adopted by the City pertaining to construction and safety features. All words and phrases used in this Back Bay Landing PCDP shall have the same meaning and definition as used in the City of Newport Beach Zoning Code unless defined differently in Section VIII, Definitions.

E. Relationship to Design Guidelines

Development within the site shall be regulated by both the Development Plan and the Design Guidelines.

Development Limits and Land Use Plan

The development limits in this Development Plan are consistent with those established by the General Plan and are identified in the following Table 1, Development Limits by Planning Area. Parking structures, carts, kiosks, temporary and support uses are permitted and are not counted towards square footage development limits. In addition, the OCSD wastewater pump station shall not be counted towards square footage development limits.

Land Use	Planning Area 1	Planning Area 2	Planning Area 3	Planning Area 4	Planning Area 5	Total Per Land Use
Commercial	49,144 sf	8,390 sf	0	4,000 sf	0	61,534 sf
Residential	49 du (85,644 sf)	0	0	0	0	49 du (85,644 sf)
Marina	0	0	0	0	220 wet slips	220 wet slips
Dry Stack Boat Storage	32,500 sf (140 spaces)	0	0	0	0	32,500 sf (140 spaces)
TOTAL						179,679 SF
<i>Notes:</i> (1) All limits expressed as "sf" are gross square feet as defined in the Newport Beach Zoning Code. (2) Development limits are subject to General Plan Land Use Plan and Table LU2, Anomaly Caps.						

A. Planning Area 1 – Mixed-Use Area

The primary land-side parcel immediately north of East Coast Highway to the northwest is intended to allow commercial development on or near the bay in a manner that will encourage the continuation of coastal-dependent and coastal-related land 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.. Priority uses include retail, restaurants, boat storage, marine and boat sales, boat rentals, boat service/repair, and recreational commercial uses such as kayak and paddle board rentals.

The total gross floor area of Planning Area 1 shall be limited to 49,144 square feet of marine-related and visitor-serving commercial and recreational uses; a

new 32,500-square foot full-service and fully enclosed dry stack boat storage (up to a maximum of 140 boat spaces) and launching facility; and a maximum of 49 residential units within a maximum of 85,644 square feet of residential floor area.

Development shall incorporate amenities that assure bayfront access for coastal visitors, including the development of a minimum 12-foot-wide public pedestrian and bicyclist promenade along the waterfront with connections to existing regional trails and paths, an enclosed dry stack boat storage facility, public plazas and open spaces that provide public views and view corridors, and construction of a coastal public view tower.

Any mixed-use development that includes integration of residential units shall be subject to the following additional development limitations:

1. A minimum of 50 percent of the total proposed gross floor area located within Planning Area 1 and 4 shall be limited to non-residential uses. This non-residential use may consist of any combination of visitor-serving retail, restaurants, marine boat sales, office, and/or enclosed dry stack boat storage.
2. At minimum, a total of 68,955 square feet of non-residential gross floor area shall be developed within Planning Area 1 and 4.
3. The enclosed boat storage, public promenade and public plazas shall be sited adjacent to the bayfront, with public launch area and boat storage on the western/northwestern bayfront edge of the site, adjacent to the existing Pearson's Port seafood market. .

B. Planning Area 2 - Recreational and Marine Commercial

Planning Area 2 is located immediately south of the Coast Highway-Bay Bridge and is intended to be developed with recreational and marine-related commercial uses. The total gross floor area of Planning Area 2 shall be limited to 8,390 square feet.

Development shall incorporate a minimum 12-foot-wide public pedestrian and bicyclist promenade along the waterfront with connections to existing and/or planned regional trails and paths, and open spaces that provide public views and view corridors. An integrated connection to the planned public/private marina, pier, and trail to the south shall be developed.

C. Planning Area 3 – Existing Private Marina Access and Beach

Planning Area 3 consists of an existing narrow strip of private marina access walkway and non-publicly accessible beach area located between the Bayside Village Mobile Home Park and Bayside Marina, which provides marina lessee access to private boat slips and docks. Development shall incorporate a

minimum 12-foot-wide public pedestrian and bicyclist promenade within the existing marina access walkway and also across the private beach/submerged fee owned land with the width necessary to complete a continuous connection to the existing or planned regional trails and paths, and to the Newport Dunes recreational area. Allowed improvements shall be limited to public promenade, guardrails, seawall/bulkhead replacement, landscaping, screening and lighting. No other development shall occur within this walkway and the beach area.

D. Planning Area 4 – Marina and Bayside Village Mobile Home Park Storage and Guest Parking

Planning Area 4 is a narrow strip of land located on the eastern project boundary and development shall be limited to a gross floor area of 4,000 square feet. This area is intended to be re-used primarily as standard sized parking for residents and guests of the Bayside Village Mobile Home Park. Additional standard sized parking will be provided for the Bayside Village Marina tenants. New replacement storage, replacement restrooms, laundry facilities and lockers will be built for the Bayside Village Mobile Home Park and Marina tenants. A new replacement gate entry for this area is allowed. Development shall incorporate a minimum 12-foot-wide public pedestrian and bicyclist promenade with the width necessary to complete a continuous connection to the existing or planned regional trails and paths, and to the Newport Dunes recreational area. No other uses shall be allowed in this storage/parking/facilities area.

E. Planning Area 5 - Submerged Fee-Owned Lands

This fee-owned submerged land area consists of an existing 220-slip marina and is bordered by the earthen De Anza Bayside Marsh Peninsula. The De Anza Bayside Marsh Peninsula was originally constructed with dredging spoils and rip-rap as fill to provide a protected harbor and overflow parking for the Bayside Marina. No new development shall occur within the De Anza Bayside Marsh Peninsula. A small gravel parking and access road currently exists on the eastern portion of the peninsula and is used for overflow parking for the marina. The existing gravel parking lot shall not be expanded in area or paved; however, maintenance activities shall be permitted. The marina shall be regulated by Title 17 of the Newport Beach Municipal Code.

II. Permitted Uses

Permitted uses are those uses set forth in this Section for each Planning Area as shown on Table 2, Permitted Uses. The uses identified within the table are not comprehensive but rather major use categories. Specific uses are permitted consistent with the definitions provided in Section VIII of this PCDP. Uses determined to be accessory or ancillary to permitted uses, or uses that support permitted uses are also permitted. The Community Development Director may determine other uses not specifically listed herein are allowed, provided they are consistent with the purpose of

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this PCDP, Planning Areas, and are compatible with surrounding uses. The initial construction of any new structure, or the significant reconstruction or major addition, shall be subject to Site Development Review pursuant to Section VII of this PCDP.

Table 2 Permitted Uses					
Uses	Planning Areas				
	Planning Area 1	Planning Area 2	Planning Area 3	Planning Area 4	Planning Area 5
Commercial Recreation and Entertainment	CUP	-	-	-	-
Cultural Institution	P	P	-	-	-
Eating and Drinking Establishments					
Bar, Lounge, and Nightclubs	-	-	-	-	-
Fast Food (No Drive Thru)	P*	-	-	-	-
Food Service, No Late Hours	P*	-	-	-	-
Food Service, Late Hours	CUP	-	-	-	-
Take-Out Service, Limited	P	P	-	-	-
Take-Out Service, Only	P	P	-	-	-
Marina	-	-	-	-	MC Title 17
Marina Support Facilities	P	P	-	P	-
Marine Rentals and Sales					
Marine Retail Sales	P	P	-	-	-
Boat Rentals and Sales	MUP	MUP	-	-	-
Marine Services	MUP	MUP	-	-	-
Entertainment and Excursion Vessels	CUP	-	-	-	-
Office	P	P	-	-	-
Personal Services					
General	P	-	-	-	-
Restricted	MUP	-	-	-	-
Residential (Located above 1st floor)	P	-	-	-	-
Visitor-Serving Retail	P*	P*	-	-	-
Utilities					
Wastewater Pump Station	P	P	-	-	-
P=Permitted CUP=Conditional Use Permit MUP=Minor Use Permit *=A Minor Use Permit is required for the sale of alcohol -= Not Permitted					

III. Development Standards

The following site development standards shall apply:

A. Setback Requirements

Setbacks are the minimum distance from the property line to building or structure, unless otherwise specified.

1. Street Setback

- a) East Coast Highway - 0 feet (provided a minimum 10-foot landscape buffer is provided to the back of sidewalk)
- b) Coast Highway-Bay Bridge - 20 feet to edge of bridge (public access connections, kayak/paddleboard rentals, storage, and launch uses may be permitted within this setback and beneath the bridge, subject to Site Development Review).
- c) Bayside Drive - 5 feet

2. Perimeter Setback

- a) Abutting Non-residential - 0 feet
- b) Abutting Existing Residential - 25 feet, except:
 - i. In Planning Area 1, public restrooms and marina lockers may provide a minimum 5-foot setback.
 - ii. In Planning Area 4, a minimum 5-foot setback may be provided.

3. Bayfront Setback

- a) Bulkhead - 15 feet from constructed bulkhead wall to allow for a minimum 12-foot-wide public bayfront promenade and a minimum 3-foot-wide landscape area.
- b) No Bulkhead
 - i. In Planning Area 1, 15 feet from the Highest High Water contour elevation noted as 7.86' above Mean Lower low Water (0.0') or 7.48'/NAVD 88 to allow for a minimum 12-foot-wide public bayfront promenade and a minimum 3-foot-wide landscape area.

- ii. In Planning Area 2, 15 feet from contour elevation 10 (NAVD 88) to allow for a minimum 12-foot-wide public bayfront promenade and a minimum 3-foot-wide landscape area.

4. **Setback Encroachments**

a) Fences, Walls, and Hedges

- i. Permitted within the Perimeter Setback Abutting Existing Residential up to a maximum height of 8 feet.
- ii. Within Bayfront Setback, see subsection c. below.
- iii. Permitted in all other setback areas up to a maximum height of 42 inches.

b) Architectural Features

- i. Roof overhangs, brackets, cornices and eaves may encroach 30 inches into a required Perimeter Setback area, provided a minimum vertical clearance above grade of 8 feet is maintained.
- ii. Decorative architectural features (e.g., belt courses, ornamental moldings, pilasters, and similar features) may encroach up to 6 inches into any required Perimeter Setback.

c) Bayfront Setback

- i. Benches, sculptures, light standards, hedges, open guardrails and safety features, and other similar features that enhance the public bayfront promenade may encroach into the bayfront setback, provided a 12-foot-wide clear path is maintained.

- d) Other- Other encroachments may be permitted through the Site Development Review.

B. **Permitted Height of Structures**

1. **Building Height**

The maximum allowable building height shall be 35 feet ~~for structures with flat roofs and 40 feet for structures with sloped roofs (minimum 3:12 pitch)~~, except as follows:

- a) As illustrated on Exhibit 3, Building Heights, 100 feet from back of curb along Bayside Drive within the eastern portion of Planning Area 1, maximum allowable building height shall not exceed 26 feet for flat roofs and 31 feet for sloped roofs.
- b) Within Planning Area 1, maximum allowable height for any parking structure shall not exceed 30 feet for flat roofs and 35 feet for sloped roofs.
- c) Maximum allowable building height within Planning Area 2 shall not exceed 26 feet for flat roofs and 31 feet for sloped roofs.
- d) Within Planning Area 4, maximum allowable building height shall not exceed 20 feet for flat roofs and 25 feet for sloped roofs.
- ~~e) All other exceptions to height shall be regulated pursuant to Section 20.30.060.D of the Newport Beach Municipal Code.~~

2. Grade for the Purposes of Measuring Height

- a) Within Planning Area 1, height shall be measured from the established baseline elevation of either 11 feet or 14 feet (NAVD 88) as illustrated on Exhibit 3, Building Heights, or as determined by the Sea Level Rise and Shoreline Management Plan.
- b) Within Planning Area 2, height shall be measured from the established baseline elevation of 12 feet (NAVD 88)
- c) Within Planning Area 4, height shall be measured from the established baseline elevation of 12 feet (NAVD 88)

C. Residential Units

1. Open Space

- a) Common Open Space - A minimum of 75 square feet per dwelling shall be provided for common open space (e.g., pool, patio, decking, and barbecue areas, common meeting rooms, etc.). The minimum dimension (length and width) shall be 15 feet. The common open space areas shall be separated from non-residential uses on the site and shall be sited and designed to limit intrusion by non-residents and customers of non-residential uses. However, sharing of common open space may be allowed, subject to Site Development Review, when it is clear that the open space will provide a direct benefit to project residents. Common open space uses may be provided on rooftops for use only by project residents.

- b) Private Open Space - Five percent of the gross floor area for each unit. The minimum dimension (length and width) shall be 6 feet. The private open space shall be designed and located to be used by individual units (e.g., patios, balconies, etc.).
2. **Non-residential Use Required on Ground Floor** - All of the ground floor frontage of a mixed-use structure shall be occupied by retail and other compatible non-residential uses, with the exception of common/shared building entrances for residences on upper floors.
 3. **Sound Mitigation** - An acoustical analysis report, prepared by an acoustical engineer, shall be submitted describing the acoustical design features of the structure that will satisfy the exterior and interior noise standards. The residential units shall be attenuated in compliance with the report.
 4. **Buffering and screening** - Buffering and screening shall be provided in compliance with Municipal Code Section 20.30.020 (Buffering and Screening). Mixed-use projects shall locate loading areas, parking lots, driveways, trash enclosures, mechanical equipment, and other noise sources away from the residential portion of the development to the greatest extent feasible.
 5. **Notification to owners and tenants** - A written disclosure statement shall be prepared prior to sale, lease, or rental of a residential unit within the development. The disclosure statement shall indicate that the occupants will be living in an urban type of environment and that the noise, odor, and outdoor activity levels may be higher than a typical suburban residential area. The disclosure statement shall include a written description of the potential impacts to residents of both the existing environment (e.g., noise from boats, planes, commercial activity on the site and vehicles on Coast Highway) and potential nuisances based upon the allowed uses in the zoning district. Each and every buyer, lessee, or renter shall sign the statement acknowledging that they have received, read, and understand the disclosure statement. A covenant shall also be included within all deeds, leases or contracts conveying any interest in a residential unit within the development that requires: (1) the disclosure and notification requirement stated herein; (2) an acknowledgment by all grantees or lessees that the property is located within an urban type of environment and that the noise, odor, and outdoor activity levels may be higher than a typical suburban residential area; and (3) acknowledgment that the covenant is binding for the benefit and in favor of the City of Newport Beach.

6. **Deed notification** - A deed notification shall be recorded with the County Recorder's Office, the form and content of which shall be satisfactory to the City Attorney. The deed notification document shall state that the residential unit is located in a mixed-use development and that an owner may be subject to impacts, including inconvenience and discomfort, from lawful activities occurring in the project or zoning district (e.g., noise, lighting, odors, high pedestrian activity levels, etc.).

D. Parking Requirements

1. General Standards

Parking requirements are shown in the following Table 3, Parking Requirements, per land use. Kiosks for retail sales shall not be included in the calculation of parking.

Table 3 Parking Requirements	
Land Use	Parking Ratio
Boat Rentals and Sales	As established per MUP
Eating and Drinking Establishments	1 space per 30 to 50 SF of Net Public Area*
Take-Out Service, Limited	1 space per 250 square feet
Marina Support Facilities	0.5 spaces per 1,000 SF
Marina Wet Slips	0.6 spaces per slip
Marine Services	
Enclosed Dry Stack Boat Storage	0.33 spaces per slip
Entertainment and Excursion Services	1 per each 3 passengers and crew members or as required by MUP
Other	As established per MUP
Office	1 space per 250 square feet
Medical Office	1 space per 200 square feet
Residential Units (Attached)	2 spaces per unit, plus 0.5 resident guest spaces per unit
Retail Sales	1 space per 250 square feet
Other	Municipal Code
* Including outdoor dining, but excluding first 25% or 1,000 SF of outdoor dining per restaurant, whichever is less.	

2. Parking Management Plan

Off-street parking requirements may be reduced with the approval of a Conditional Use Permit based upon complementary peak hour parking demand of uses within the development. The Planning Commission may grant a joint-use of parking spaces between uses that result in a reduction in the total number of required parking spaces in compliance with the following conditions:

- a) The most remote space is located within a convenient distance to the use it is intended to serve.
- b) The probable long-term occupancy of the structures, based on their design, will not generate additional parking demand.

- c) The applicant has provided sufficient data, including a parking study if required by the Director, to indicate that there is no conflict in peak parking demand for the uses proposing to make joint-use of parking facilities.
- d) The property owners, if more than one, involved in the joint-use of parking facilities shall record a parking agreement approved by the Director and City Attorney. The agreement shall be recorded with the County Recorder, and a copy shall be filed with the Department.
- e) A parking management plan shall be prepared to address potential impacts associated with a reduction in the number of required parking spaces.

3. **Access, location, and improvements.** Access, location, parking space and lot dimensions, and parking lot improvements shall be in compliance with the Development Standards for Parking Areas Section of the Municipal Code.

E. Landscaping

A detailed landscape and irrigation plan shall be prepared by a licensed landscape architect and submitted with the Site Development Review application. All landscaping shall comply with the applicable landscaping requirements specified in the Municipal Code, including the Landscaping Standards and Water-Efficient Landscaping Sections. In addition, vegetated landscaped areas shall only consist of native plants or non-native drought tolerant plants, which are non-invasive. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a “noxious weed” by the State of California or the U.S. Federal Government shall be utilized within the property. All plants shall be low water use plants as identified by California Department of Water Resources.

F. Seawall/Bulkhead Standards

Coastal hazards shall be considered consistent with Implementation Plan Chapter 21.30 of the certified Local Coastal Plan and Policy 2.1.9-4 of the certified Land Use Plan. ~~As shown on Exhibit 4, Seawall/Bulkhead Section, a new bayfront seawall/bulkhead may be constructed along the bayfront to protect existing and future development, subject to the following:~~

~~1. Planning Area 1~~

~~a) Any new bulkhead structure shall not extend bayward beyond the Highest High Water contour elevation of 7.86' relative to MLLW (0.0') or 7.48'/NAVD 88 (see also applicable General Requirements below) to preserve the shoreline profile.~~

~~2. Planning Area 2~~

~~a) Any new bulkhead structure shall not extend bayward beyond the 10' contour elevation (NAVD 88) to preserve the shoreline profile.~~

~~3. Planning Area 3~~

~~a) Maintenance, repair, and replacement of the existing bulkhead wall shall be permitted to protect existing development.~~

~~b) Improvements are permitted to provide the required public access connection across, over or around the private beach and intertidal area and shall take into consideration and be consistent with measures identified in the Sea Level Rise and Shoreline Management Plan to adapt to sea level rise and to ensure the long term protection of public improvements, coastal access and adjacent existing residential areas.~~

~~4. Planning Area 4 and 5~~

~~a) No bulkheads shall be permitted.~~

~~5. General Requirements~~

~~a) The minimum top of bulkhead elevation shall be 10 feet (NAVD 88) or a higher elevation if the Sea Level Rise and Shoreline Management Plan requires a higher elevation to address sea level rise.~~

~~b) Seawalls, bulkheads, revetments and other such construction that alters the existing shoreline processes shall be permitted 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. In addition, such improvements shall only be permitted when found consistent with applicable sections of the Coastal Act and City's Coastal Land Use Plan policies.~~

~~e) Bulkheads shall be designed to provide access points to the shoreline.~~

G. Diking, Filling, and Dredging Standards

The diking, filling, or dredging of open coastal waters, wetlands and estuaries shall be permitted in accordance with applicable provisions of the Coastal Act and City's Coastal Land Use Plan policies.

H. Public Bayfront Promenade and Trail

A continuous, minimum 12-foot-wide bayfront access promenade shall be constructed along the bayfront edge of Planning Areas 1, 2, and 3. This new, public bayfront promenade will link the public docks and marina property south of the Coast Highway-Bay Bridge along the bayfront and to the Newport Dunes recreational, as illustrated in Exhibit 5, Public Spaces, and 6, Coastal Access and Regional Trail Connections. The construction of the promenade shall include a connection across the private beach/submerged fee owned land located within Planning Area 3 necessary to complete a continuous path. The design details of the public bayfront promenade shall be submitted with Site Development Review. The public bayfront promenade shall comply with the following requirements:

1. An easement for public access shall be provided to the City along the entire length of the proposed public bayfront promenade. The easement area shall be maintained in good condition and repaired at no cost to the City.
2. The public bayfront promenade shall be accessible to pedestrians and bicyclists, and shall extend along the waterfront under the Coast Highway-Bay Bridge and shall connect to an existing trail system on the south side of East Coast Highway.
3. The bayfront promenade shall interface with restaurants and outdoor dining areas, the enclosed dry stack boat storage, public plaza, and marine boat service areas to the maximum extent feasible. Amenities such as seating, trash enclosures, lighting, and other pedestrian-oriented improvements shall be provided along its length where appropriate, provided a 12-foot-wide clear path is maintained.
4. 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 that originates at the Bayside Drive / East Coast Highway intersection and runs northerly to the terminus of Bayside Drive, as shown on Exhibit 6, Coastal Access and Regional Trail Connections, 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.

5. Trails shall be located and designed consistent with Coastal Land Use Plan (CLUP) Policy 3.1.1-1 and the Coastal Act, with appropriate landscaping and screening where necessary to protect the privacy of adjacent new or existing Bayside Village Mobile Home Park residents or residential uses, consistent with Public Resources Code section 30214 (Coastal Act).

I. Vehicular Circulation

1. Primary vehicular and pedestrian access to the site shall be set back from its current location on Bayside Drive to approximately 200 feet north of the East Coast Highway intersection, as shown on Exhibit 7, Vehicular Circulation, and Exhibit 8, Revised Vehicular Circulation and Parking. This project driveway will service both inbound and outbound movements, improve the existing driveway connection further into the site, and will be relocated approximately 45 feet north of its current location. Any guest parking that is displaced in the adjacent mobile home park complex as a result of this new driveway alignment shall be replaced within the mobile home park complex or within Planning Area 4 on the east side of Bayside Village Mobile Home Park.
2. Intersection improvements at Bayside Drive shall maintain the existing left-turn lane, add a shared left-turn/through lane, and add an exclusive right-turn lane on the southbound approach of the signalized intersection with East Coast Highway. Project access enhancements shall include an exclusive left-turn lane on the northbound approach of the Bayside Drive and project driveway intersection.
3. Primary circulation within the development shall accommodate adequate fire truck turn-around. Emergency vehicle access to and from Bayside Village Mobile Home Park to the site shall be provided consistent with Exhibit 8, Revised Vehicular Circulation and Parking.
4. An optional secondary access may be constructed, subject to the review and approval of the Public Works Department, California Department of Transportation, Orange County Transportation Authority (OCTA), and the Orange County Sanitation District (OCSD) that would add an exclusive right-turn lane along westbound East Coast Highway, as shown on Exhibit 7, Vehicular Circulation. This connection would be located approximately 430 feet west of the Bayside Drive intersection with East Coast Highway, and would allow for inbound right-turn movements only. Outbound movements at this connection point would be prohibited.

J. Lighting

A detailed lighting plan with lighting fixtures and standard designs shall be submitted with the Site Development Review application. The lighting plan shall illustrate how all exterior lighting is designed to reduce unnecessary illumination of adjacent properties, conserve energy, minimize detrimental effects on

sensitive environmental areas, and provide minimum standards for safety. At minimum, exterior lighting shall comply with the following:

1. **Protection from glare.**
 - a. **Shielding required.** Exterior lighting shall be shielded and light rays confined within boundaries of the site.
 - b. **Light spill prohibited.** Direct rays or glare shall not create a public nuisance by shining onto public streets, adjacent sites, or beyond the perimeter of the bayfront promenade.
 - c. **Maximum light at property line.** No more than one candlefoot of illumination shall be present at the property line.
 - d. **Maximum light beyond bayfront.** No more than 0.25 candlefoot of illumination shall be present beyond the perimeter of the bayfront promenade.
2. **Photometric study.** A photometric study plan shall be incorporated into the lighting plan to ensure lighting will not negatively impact surrounding land uses and adjacent sensitive coastal resource areas.
3. **Lighting fixtures.** Exterior lights shall consist of a light source, reflector, and shielding devices so that, acting together, the light beam is controlled and not directed across a property line or beyond the bayfront promenade.
4. **Parking lot light standards.** Light standards within parking lots shall be the minimum height required to effectively illuminate the parking area and eliminate spillover of light and glare onto adjoining properties. To accomplish this, a greater number of shorter light standards may be required as opposed to a lesser number of taller standards.

K. Signs

A comprehensive sign program with sign materials and lighting details shall be submitted with the Site Development Review application. All signage shall comply with the Sign Standards Section of the Municipal Code, with the following exceptions:

1. Temporary Signs- Temporary signs that are visible from public right-of-ways and identify new construction or remodeling may be displayed for the duration of the construction period beyond the 60-day limit. Signs mounted on construction fences are allowed during construction and may be rigid or fabric.
2. Directional signs oriented to vehicular or pedestrian traffic within internal drives or walkways, such as electronic display signs, kiosk signs, internal

banners, and three-dimensional sculptural advertising associated with individual businesses are allowed, or similar, and are not regulated as to size, content, or color; however, signs shall require permits and shall be subject to the review of the City Traffic Engineer to ensure adequate sight distance in accordance with the provisions of the Municipal Code.

L. Utilities

Existing and proposed water and sewer locations are shown on Exhibit 9, Utilities Plan, and existing and proposed storm drain locations are shown on Exhibit 10, Drainage Plan. A Final Utilities Plan shall be submitted with the Site Development Review application. The final alignment and location of utilities shall be reviewed and approved by the Public Works Department. Adequate access for maintenance vehicles shall be provided. A 30-foot-wide accessible easement shall be provided for the relocated water transmission line. Buildings shall maintain a minimum distance of 15 feet from the water line, unless otherwise approved by the Public Works Department.

M. Sustainability

The development shall be designed as a sustainable community which will allow residents, tenants and visitors to enjoy a high quality of life while minimizing their impact on the environment. A Sustainability Plan that addresses topics such as water and energy efficiency, indoor environmental quality and waste reduction shall be submitted with the Site Development Review application.

Sustainable programming shall be used to maximize efficiency by conserving water, minimizing construction impacts, minimizing energy use and reducing construction and post-construction waste. California-friendly landscaping shall be utilized in public areas and reclaimed water use (if available) on-site or off-site will further reduce water demand. Appropriate best management practices shall be incorporated into landscape design. Energy reduction, recycling, and the smart use of existing resources shall be implemented. The development shall incorporate a walkable community design to promote walking and bicycling, and thus reduce reliance on automotive transport.

The development shall include Low Impact Development (LID) features for storm water quality improvement where none exist today. Potential LID features may include storm water planters, permeable pavement and proprietary bioretention systems. Through the development of a project-specific Water Quality Management Plan (WQMP), the appropriate site design, source control and LID control features shall be implemented to improve water quality in the Bay, including weekly street sweeping of all drive aisles and parking areas.

N. Public Improvements

A public improvements plan shall be submitted with the Site Development Review application specifying the public improvements to be constructed in conjunction with the development of the site and phasing of such improvements. At minimum, the plan shall discuss and illustrate utility improvements, the bayfront promenade, Bayside Drive street and bikeway improvements, and improvements to the OCSD facility.

O. Hazards Assessment

A site-specific hazards assessment shall be submitted with the Site Development Review application addressing 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. 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 years) 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 Nino event.

P. Sea Level Rise and Shoreline Management

A sea level rise and shoreline management plan shall be prepared for the site and submitted with the Site Development Review application. The plan shall address shoreline areas of the site subject to tidal action, flooding, wave hazards and erosion, and 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.

IV. Design Guidelines

The Back Bay Landing Design Guidelines are intended to express the desired character of the future mixed-use waterfront village. These guidelines set parameters for future design efforts and help achieve overall consistency and quality of architectural design and landscape features at build-out. They also explore the aesthetic quality and functionality of the upper limit of acceptable development intensity, and are structured to allow the City considerable flexibility in review of future project submittals and subsequent approvals. All development within the Planned Community shall be in conformance with these Design Guidelines.

The purpose of the Design Guidelines is:

- To provide the City of Newport Beach, the California Coastal Commission, and future residents and visitors with the necessary assurances that, when completed, the development will be built in accordance with the design character proposed herein;
- To provide guidance to developers, builders, engineers, architects, landscape architects and other professionals in order to maintain the desired design character and appearance of the project, as well as expand upon these concepts in order to maximize the success of the development consistent with market needs, aesthetic satisfaction, and community goals;
- To provide guidance to the City Staff, Planning Commission, City Council members and the California Coastal Commission in the review of future development submissions; and
- To encourage building plans that allow flexibility for innovative and creative design solutions that respond to contemporary market trends.

A. Architectural Theme

The development shall be designed with a Coastal architectural theme. This architectural theme is influenced by the marine climate of the California coastline, with varied historical vernacular and casually elegant palette, with building forms and massing that define and create unique and often seamless indoor/outdoor spaces. The project will follow principles of quality design, exhibiting a high level of architectural standards and shall be compatible with the surrounding area, sensitive to scale, proportion, and identity with a focus on place-making. Massing offsets, variation of roof lines, varied textures, openings, recesses, and design accents on all building elevations shall be provided to enhance the architectural design. The intent is not to select a historically specific

or rigid architectural style for the project, but to create an active, mixed-use village.

The project should accommodate marine-oriented and visitor-serving retail, restaurants, enclosed dry stack boat storage, and residential uses, while integrating the public spaces, bayfront promenade and plaza in a pedestrian-friendly manner. The “village look” may be expressed through several techniques. Visual interest may be created by multiple one-, two- and three-level buildings, with varied roof heights and planes. Light and shadows may be created through the use of trellises, decks, and canopies. The planes of the buildings should include recesses and vertical elements to create the village feeling. Varied roof heights should communicate the break-up of architectural forms.

The parking structure shall be designed to add to the public and visitor-serving retail experience and be easily accessible. The project’s architectural style, with the recommended use of modern or traditional, sustainable materials, should blend in color and form with existing similarly themed facilities within Newport Beach, and provide a high standard of quality for future neighboring development. Sample imagery is provided on Exhibit 11, Architectural Theme.

B. Site Planning

1. As illustrated in Exhibit 12, Conceptual Site Plan, the development shall be designed as an integrated, mixed-use waterfront village that encourages public access to and along the bayfront.
2. A public bayfront promenade shall be developed between the Balboa Marina development to the south and the Newport Dunes and the regional trail system to the east. Special features of this public bayfront promenade shall include coastal plazas, vista points and connections with City/County trails and Newport Dunes as shown on Exhibit 5, Public Spaces.
3. Back Bay Landing restaurants, visitor-serving commercial and plaza areas shall be accessible to the community by public and private vehicular transportation, pedestrian and bike paths, and public dock space.
4. Scenic view corridors should be incorporated throughout the project to maintain or enhance existing coastal views from East Coast Highway as shown on Exhibit 13, East Coast Highway View Corridors.
5. Outdoor dining and plaza areas shall be designed to interface with the street and bayfront. Siting of outdoor dining facilities shall minimize potential impacts on occupants of adjacent residential units.
6. The development shall create a strong pedestrian interface with the waterfront, maximizing accessibility and providing visual corridors enhancing the public/visitor experience.

7. Buildings should be arranged to create opportunities for public gathering spaces, encourage outdoor living and invite patronage. Mixed-use areas should emphasize pedestrian orientation by utilizing features such as plazas, courtyards, interior walkways, trellises, seating, fountains, and other similar elements.
8. The development shall promote connectivity throughout the village and to adjacent developments and trails systems through the use of shared facilities such as driveways, parking areas, pedestrian plazas and walkways.
9. Ground level equipment, refuse collection areas, storage tanks, infrastructure equipment and utility vaults should be screened from public right-of-way views with dense landscaping and/or walls of materials and finishes compatible with adjacent buildings.
10. Site-specific analyses (wind patterns, noise assessments, etc.) and special design features shall be incorporated into the proposed buildings surrounding the OCS D pump station facility to offset potential noise and odor control issues associated with the existing operations of the facility. Indoor air conditioned spaces within the development shall include the installation of odor filters, such as activated carbon filters or similar, to filter indoor air.

C. Building Massing

1. Avoid long, continuous blank walls, by incorporating a variety of materials, design treatments and/or modulating and articulating elevations to promote visual interest and reduce massing.
2. Layering of wall planes and volumes are encouraged to provide rhythm, dynamic building forms, and shadows.
3. Building massing should consist of a mix of heights to add visual interest and enhance views to the bay above or between buildings.
4. Taller buildings should use articulation to create visual interest. Articulation should include vertical and horizontal offsets, use of multiple materials and finishes, and the entry/corner elements.
5. Towers or other vertical/prominent building features should be used to accentuate key elements such as building entries, pedestrian nodes, plazas, and courtyards.
6. To maintain a low profile at the corner of East Coast Highway and Bayside Drive, the development should consist of reduced height commercial retail buildings closest to the intersection and may step up in height further away from the intersection, as shown on Exhibit 3, Building Heights.

D. Facade Treatments

1. Ground floors of commercial buildings should have storefront design with large windows and entries encouraging indoor and outdoor retailing.
2. Architectural elements that create sheltered pedestrian areas are encouraged.
3. The quality of the pedestrian environment should be activated by architecturally vibrant storefronts with features such as planter walls, outdoor seating and dining spaces, enhanced trellises, accent or festive lighting, awnings or canopies, large transparent windows, recessed openings and entry ways.
4. Create a unified and consistent alignment of building facades that define and address the street and waterfront.
5. Horizontal definition between uses, generally between the first and second floor is strongly encouraged.
6. For residential uses, balconies and sill treatments are encouraged on upper stories to articulate the facade.
7. Building facades should respect the public realm edge by controlling and limiting encroachments that could impede pedestrian connectivity and retail exposure. Building designs will be encouraged to support and activate the public realm and plazas, and encourage accessibility.
8. "Back of House Areas" and service corridors shall be avoided along primary street and waterfront elevations.
9. Roof-mounted mechanical equipment shall not be visible in any direction from a public right-of-way, as may be seen from a point 6 feet above ground level, including from the Coast Highway-Bay Bridge curb elevation. In addition, screening of the top of the roof-mounted mechanical equipment may be required if necessary to protect views.
10. Subject to the approval of the OCSD, the existing building exterior of the OCSD facility located adjacent to East Coast Highway and at the property's southwestern boundary shall undergo aesthetic improvements (refacing, reroofing, etc.) to reflect the architectural design standards contained in this PCDP. Should the OCSD facility be relocated and/or reconstructed, the architectural design of the structure shall be compatible with the architectural design of the Back Bay Landing development and design standards contained in this PCDP or architectural design of adjacent developments, as determined appropriate – during the Site Development Review process.

E. Public Views

1. As illustrated on Exhibit 13, East Coast Highway View Corridors, buildings should be oriented to maximize view opportunities while minimizing the visual impact of the building on existing view sheds.
2. Buildings proposed adjacent to the Coast Highway-Bay Bridge shall preserve coastal views that are afforded due to the differential in height between the elevation of the bridge and the elevation of the site. The public coastal views shall be consistent with Section 4.4.1-8 of the Newport Beach Coastal Land Use Plan policies.
3. A pedestrian view corridor shall be designed at the southeast corner of Bayside Drive and East Coast Highway, shown as View Corridor 2 on Exhibit 13, East Coast Highway View Corridors, allowing northbound pedestrians and motorists to see into the project and the coastal view beyond.
4. The enclosed dry stack boat storage building shall be designed with multiple heights to create a distinct view corridor from East Coast Highway to the Bay, illustrated on Exhibit 13, East Coast Highway View Corridors. This corridor shall be visible to north and south bound pedestrians, bicyclists and motorists.
5. The development shall be designed to frame existing bay views and should create new bay views where they are currently blocked by fencing and outdoor vehicle/boat storage.

F. Parking and Parking Structure

1. Parking areas and structures shall promote efficient circulation for vehicles and pedestrians.
2. Convenient, well-marked and attractive pedestrian access shall be provided from parking areas and structures to buildings.
3. Parking facilities should be physically separated for non-residential uses and residential uses, except for residential guest parking. If enclosed parking is provided for an entire mixed-use complex, separate areas/levels shall be provided for non-residential and residential uses with separate building entrances, whenever possible.
4. A semi-subterranean level should be incorporated, if feasible, to minimize height and bulk of parking structure.
5. Parking structures shall be screened from the public right-of-way to the maximum extent feasible. Portions of the structure that cannot be screened

- shall incorporate decorative screening, landscape walls, artistic murals, or application of stylized facades.
6. Commercial retail and residential uses should wrap and mask the parking structure.
 7. The parking structure shall complement the design vocabulary of the attached or adjacent buildings, and incorporate form, materials, color, and details from the attached or adjacent buildings.
 8. Adequate parking that is located within a convenient distance from the use it is intended to serve shall be provided for all uses proposed on-site, as well as marina users, displaced Bayside Village Mobile Home Park guest parking, and for public access. General parking locations are shown on Exhibit 14, Parking Plan.
 9. The upper level of the parking structure shall be designed to eliminate vehicle headlight and rooftop lighting spill-over.
 10. To encourage alternative means of transportation, the parking structure shall incorporate bicycle parking storage accommodations, and electric vehicle charging stations.

G. Public Spaces

The development shall provide extensive outdoor public spaces, as shown on Exhibit 5, Public Spaces, and described below.

1. An elevated coastal public view plaza is strongly encouraged. This elevated plaza can provide exceptional public coastal view opportunities of Newport Harbor and Upper Newport Bay.
2. A pedestrian and automobile plaza should be incorporated into the design that seamlessly and safely blends pedestrian, bicycle and vehicular movement. This plaza may provide an opportunity for valet parking, provided a valet operation plan is reviewed and approved by the City. Bollards and potted plants should define the plaza edge in a park-like setting and should visually connect the east and west ends of the mixed-use project area as the center point of the project, while still allowing unhindered pedestrian movement to the retail areas and public bayfront promenade.
3. Restaurants shall be designed to be accessible from the public bayfront promenade and should provide both indoor and outdoor dining areas with scenic coastal views of the bay.
4. Vendor carts selling specialty items are encouraged in the outside plazas and along retail walkways to enhance the shopping or dining experience by

activating the plaza areas. However, vendor carts shall not be permitted within the 12-foot-wide public bayfront promenade.

5. Passive recreation opportunities and waterfront viewing shall be provided along the public bayfront promenade.
6. A public launching area and parking for kayak and paddleboard users shall be incorporated into the development.
7. New marina boat-slip tenant lockers shall be provided near the entry to the Bayside Village Marina.
8. Public restrooms for visitors to the site shall be provided along the public bayfront promenade.

H. Landscaping

1. The landscaping should reflect the project's coastal marine location and provide visual ties to the coastal bluffs, sand beaches, tidelands and wetlands, tide pools, local marinas and sea life.
2. Creativity in combining plant materials to emulate natural features is encouraged. Some examples of possible design strategies are using swaying grasses to emulate water movement, using water fountains to emulate the sound and rhythm of waves, and emulating sea colors in plant selection.
3. The use of water fountains, waterfalls, water sculptures, or water features are encouraged.
4. Marine murals and other forms of public art are encouraged throughout the project.
5. Landscaping should include tree plantings around buildings to enhance architectural character and provide shade in the summer and sun in the winter.
6. California-friendly plant species with low watering requirements and characteristics that are compatible with the climate, soils, and setting should compose the majority of the plant palate.
7. The irrigation system shall be designed, constructed, managed, and maintained to achieve a high level of water efficiency.
8. Landscaping in the view corridors should not block these views but rather frame and enhance them.

9. Green walls, water features and selective placement of potted plants and trees can improve and soften the appearance of the buildings while preserving and enhancing desired views.

I. Hardscaping

1. An enhanced permeable paving should be used at the project entry to create rich texture and color while also helping to mitigate urban runoff.
2. Pedestrian spaces should be developed with specialty paving to provide interest and definition and compliment architectural and landscape features.
3. Selection of hardscape material should reflect the coastal marine theme of the project, for example: sand stone, sea glass, pebbles, drift wood, ocean/beach inspired colors or textures, etc.
4. Private streets, driveways, and drive aisles should be multi-purpose and accommodate pedestrian, bike, emergency vehicles, and slow automobile movements. Generous use of planters, large pots and bollards are encouraged with raised curbs only where necessary.

J. Signs

1. The preferred approach to signing is through creating a strong architectural statement that announces development, rather than large distracting signs.
2. Monument signs identifying the development may be permitted at the primary entrance off Bayside Drive and possibly the optional secondary entrance off East Coast Highway, if approved.
3. Signage should be appropriately scaled to the building or surface onto which it is placed, should not obscure important architectural features, and should be readable by both pedestrians and drivers approaching the site.
4. Signage shall be integrated with the design and scale of the architecture.
5. A coordinated approach to signage throughout the development is particularly important due to the multiple storefronts that are envisioned. Signs of similar size, proportion, and materials should be used on each store.

V. Phasing

The Back Bay Landing mixed-use development is anticipated to be developed as one phase during an 18- to 24-month construction period. The integrated mixed-use and parking structure combined with the relatively small site necessitates construction in a single phase. The Back Bay Landing development will necessitate the construction of a seawall/bulkhead, but does not include reconstruction of the existing Bayside Village Marina.

The general sequence of construction is provided below although certain activities will overlap thereby reducing the total duration of the project.

- Demolition – 1 month
- Excavation and De-watering – 2 months
- Infrastructure / Foundations – 6 months
- Vertical Construction – 15 months
- Final Landscaping – 3 months
- Bayside Drive Roadway Improvements and Trail – 4 months
- Reconfiguration of Lot Line Adjustment Area – 6 months

VI. Back Bay Landing PCDP Implementation/ Site Development Review

A. Purpose and Intent

The purpose of the Site Development Review process is to ensure the development of the Back Bay Landing PCDP (PC-9) is consistent with the goals and policies of the General Plan, provisions of this PCDP, and the findings set forth below in Section VII.C. It is the intent of the Site Development Review process that all aspects of the design of the project will be reviewed and approved at one time. Conceptual architectural theme, site plan, landscape plan and other conceptual Exhibits attached to this PCDP are preliminary and may be modified through the Site Development Review process.

B. Application

1. Approval of the Site Development Review application by the Planning Commission shall be required prior to the issuance of a grading or building permit for the construction of any new structure at the project. The Planning Commission's decision is final, unless appealed in accordance with the Newport Beach Municipal Code.
2. The following items are exempt from the Site Development Review Process and are subject to the City's applicable permits:
 - a) Tenant (interior) improvements to any existing buildings, kiosks, and temporary structures.
 - b) Repair and maintenance activities.
 - c) Replacement of existing structures found in substantial conformance with previously approved plans and/or permits.

C. Findings

In addition to the general purposes set forth in Section VII.A and in order to carry out the purposes of the Back Bay Landing PCDP, the following findings must be made to approve or conditionally approve a Site Development Review application:

1. The development shall be in compliance with the General Plan, Coastal Land Use Plan, Back Bay Landing Planned Community Development Plan, including design guidelines, and any other applicable plan or criteria related to the development;

2. The development shall not be incompatible with the character of the neighboring uses and surrounding sites;
3. The development shall be sited and designed to maximize the aesthetic quality of the project as viewed from surrounding roadways, properties, and waterfront, with special consideration given to providing a variety of building heights, massing, and architectural treatments to provide public views through the site;
4. Site plan and layout of buildings, parking areas, pedestrian and vehicular access ways, landscaping and other site features shall give proper consideration to functional aspects of site development; and
5. The development shall not be detrimental to the harmonious and orderly growth of the City, or endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood of the proposed development.

D. Submittal Contents

The Site Development Review application shall include all of the information and materials specified by the Community Development Director and any additional information requested by the Planning Commission in order to conduct a thorough review of the application. The following plans/exhibits may include, but are not limited to the following:

1. Existing conditions including adjacent structures and proposed improvements.
2. Comprehensive site and grading plan.
3. Comprehensive elevation drawings, material boards and floor plans for new structures with coordinated and complementary architecture, design, materials and colors. The elevation drawings shall indicate the colors and materials that will be used on the exterior surfaces of the buildings, walls, fences and other visible structures.
4. Permitted and proposed floor area, and residential units.
5. A parking and circulation plan showing pedestrian paths, streets and fire lanes.
6. Landscaping, lighting, signage, utilities, sustainability, and public improvements plans as required by Section IV.
7. Parking management plan (if applicable).
8. Hazards Assessment, and Sea Level Rise and Shoreline Management Plan as required by Section IV.

9. A comprehensive, cohesive and coordinated preliminary landscape plan, illustrating general location of all plant materials, by common and botanical names (with pictures), size of plant materials, and irrigation concept.
10. A comprehensive, cohesive and coordinated lighting plan of exterior and parking structure lighting, including locations, fixture height, fixture product type and technical specifications.
11. Comprehensive text and graphics describing the design philosophy for the architecture, landscape architecture, material and textures, color palette, lighting, and signage.
12. Location and text describing drainage and water quality mitigation measures.
13. Open Space Plans (indoor and/or outdoor) for residential units.
14. A statement that the proposed new structure is consistent with the goals, policies, and actions of the General Plan and Planned Community Development Plan.
15. Any additional background and supporting information, studies, or materials that the Community Development Director deems necessary for a clear representation of the project.

E. Public Hearing

A Planning Commission public hearing shall be held on all Site Development Review applications. Notice of the hearing shall be provided and the hearing shall be conducted in compliance with the Municipal Code Chapter 20.62 (Public Hearings).

F. Expiration and Revocation of Site Development Review Approvals

1. Expiration. Any Site Development Review approved in accordance with the terms of this Planned Community Development Plan shall expire within twenty-four (24) months from the effective date of final approval as specified in the Time Limits and Extensions Section of the Newport Beach Municipal Code, unless at the time of approval the Planning Commission has specified a different period of time or an extension is otherwise granted.
2. Violation of Terms. Any Site Development Review approved in accordance with the terms of this Planned Community Development Plan may be modified or revoked if any of the conditions or terms of such Site

Development Review are violated or if any law or ordinance is violated in connection therewith.

3. Public Hearing. The Planning Commission shall hold a public hearing on any proposed modification or revocation after giving written notice to the permittee at least ten (10) days prior to the hearing, and shall submit its recommendations to the City Council. The City Council shall act thereon within sixty (60) days after receipt of the recommendation of the Planning Commission.

G. Parcel or Tract Maps

No parcel or tract map shall be recorded prior to the approval of the Site Development Review for the entire project. Covenant, Conditions and Restrictions shall be required in connection with any subdivisions at the project so that the responsibility for performance of, and payment for, maintenance are clear. Such CC&R's shall be subject to the approval of the City Attorney.

H. Fees

The applicant shall pay a fee as established by Resolution of the Newport Beach City Council to the City with each application for Site Development Review under this planned community development plan.

I. Minor Changes by the Director

1. The following minor changes to an approved site plan may be approved by the Director in compliance with Section 20.54.070 (Changes to an approved project) of the Newport Beach Municipal Code:
 - a) Minor relocation of any proposed structure.
 - b) Reconfiguration of the parking lot, including drive aisles and/or parking spaces, subject to review and approval of the City Traffic Engineer.
 - c) Reconfiguration of landscaping.
 - d) Any other minor change to the site plan provided it does not increase any structure area, height, number of units, and/or intensity of uses.
2. Any proposed changes that are not deemed minor shall be subject to review and approval by the Planning Commission.

VII. Definitions

All words, phrases, and terms used in this Back Bay Landing PCDP (PC-9) shall have the same meaning and definition as provided in the City of Newport Beach Zoning Code unless defined differently in this section.

Architectural Features: A visually prominent or formally significant element of a building which expresses its architectural language and style in a complementary fashion. Architectural features should be logical extensions of the massing, details, materials, and color of the building which complement and celebrate its overall aesthetic character.

Backfill: Material used to fill or refill an excavated or natural slope area.

Building Elevation: The drawing of the exterior wall surface formed by one (1) side of the building.

Bulkhead: A retaining wall/structural wall constructed along shorelines for the purpose of controlling beach erosion, supporting buildings and protecting areas of human habitation, conservation and leisure activities. Also referred to as a seawall. The depth of the bulkhead will be determined by a licensed structural engineer.

Carts and Kiosks: Carts and kiosks are small, freestanding structures used for retail sales and services. Generally mobile in terms of ease or relocation, the structures can be seasonal, temporary or for a more permanent use.

Commercial Recreation and Entertainment: Establishments providing participant or spectator recreation or entertainment, either indoors or outdoors, for a fee or admission charge. Commercial recreation and entertainment uses shall not include arcades or electronic games centers, billiard parlors, cinemas, and theaters, except as accessory to a permitted use.

Cultural Institution: A public or private institution that displays or preserves objects of community or cultural interest in one or more of the arts or sciences. Illustrative examples of these uses include libraries and museums.

Eating and Drinking Establishments:

Bar, Lounge, and Nightclub. An establishment that sells or serves alcoholic beverages for consumption on the premises and is holding or applying for a public premise license from the California State Department of Alcoholic Beverage Control (ABC) (i.e., ABC License Type 42 [On Sale Beer & Wine-Public Premises], ABC License Type 48 [On Sale General-Public Premises], and ABC License Type 61 [On Sale Beer-Public Premises]). Persons under 21 years of age are not allowed to enter and remain on the premises. The establishment shall include any immediately adjacent area that is owned, leased, rented, or controlled by the licensee.

Fast Food. An establishment whose design or principal method of operation typically includes the following characteristics:

1. A permanent menu board is provided from which to select and order food;
2. A chain or franchise restaurant;
3. Customers pay for food before consuming it;
4. A self-service condiment bar and/or drink service is/are provided;
5. Trash receptacles are provided for self-service bussing; and
6. Furnishing plan indicates stationary seating arrangements.

A fast food establishment may or may not have late hour operations. Alcoholic beverages are not sold, served, or given away on the premises. If alcoholic beverages are sold, served, or given away on the premises, the use shall be considered a food service use. See "Food Service." Drive thru service shall not be allowed.

Food Service, No Late Hours. An establishment that sells food and beverages, including alcoholic beverages, prepared for primarily on-site consumption, and typically has the following characteristics:

1. Establishment does not have late hour operations;
2. Customers order food and beverages from individual menus;
3. Food and beverages are served to the customer at a fixed location (i.e., booth, counter, or table); and
4. Customers pay for food and beverages after service and/or consumption.

Food Service, Late Hours. An establishment that sells food and beverages, including alcoholic beverages, prepared for primarily on-site consumption, and typically has the following characteristics:

1. Establishment does have late hours;
2. Customers order food and beverages from individual menus;
3. Food and beverages are served to the customer at a fixed location (i.e., booth, counter, or table); and

4. Customers pay for food and beverages after service and/or consumption.

Late Hour Operations. Facilities that provide service after 11:00 p.m.

Outdoor Dining, Accessory. An outdoor dining area contiguous and accessory to a food service establishment.

Take-Out Service, Limited. An establishment that sells food or beverages and typically has the following characteristics:

1. Sales are primarily for off-site consumption;
2. Customers order and pay for food at either a counter or service window;
3. Incidental seating up to 6 seats may be provided for on-site consumption of food or beverages; and
4. Alcoholic beverages are not sold, served, or given away on the premises.

Typical uses include bakeries, candy, coffee, nut and confectionery stores, ice cream and frozen dessert stores, small delicatessens, and similar establishments.

Take-Out Service Only. An establishment that offers a limited variety of food or beverages and has all of the following characteristics:

1. Sales are for off-site consumption;
2. Seating is not provided for on-site consumption of food or beverages; and
3. Alcoholic beverages are not sold, served, or given away on the premises.

Green Building: The practice of increasing the efficiency of buildings and their use of energy, water, and materials, and reducing building impacts on human health and the environment through better siting, design, construction, operation, maintenance, and removal.

High Tide: The tide at its fullest, when the water reaches its highest level.

Marina: A commercial berthing facility (other than moorings or anchorage) in which five or more vessels are continuously wet-stored (in water) for more than 30 days. Marinas are regulated by Title 17. See Marina Support Facilities.

Marina Support Facilities: An on-shore facility (e.g., administrative offices, bathrooms, laundry facilities, storage lockers, picnic areas, snack bar, etc.) that directly supports a marina.

Marine Rentals and Sales: Establishments engaged in renting, selling or providing supplies and equipment for commercial fishing, pleasure boating, or related activities.

Boat Rentals and Sales. An establishment that rents or sells vessels, including storage and incidental maintenance. See “Vessel.” Does not include “Marine Services.”

Marine Retail Sales. An establishment that provides supplies and equipment for commercial fishing, pleasure boating, or related activities. Examples of goods sold include navigational instruments, marine hardware and paints, nautical publications, nautical clothing (e.g., foul-weather gear), and marine engines. Does not include uses in which fuel for boats and ships is the primary good sold (see “Marine Services.”).

Marine Services:

Boat Storage. Storage of operative or inoperative boats or ships on land or racks for more than 30 days. Unenclosed boat storage on racks are not permitted.

Boat Yard. Construction, maintenance, or repair of boats or ships, including the sale, installation, and servicing of related equipment and parts.

Entertainment and Excursion Vessels. A vessel engaged in carrying passengers for hire for the purposes of entertainment or excursions (e.g., fishing, whale watching, diving, educational activities, harbor and coastal tours, dining/drinking, business or social special events and entertainment, etc.). See “Vessel.”

Marine Service Station. A retail establishment that sells gasoline, diesel, and alternative fuels, lubricants, parts, and accessories for vessels and other convenience items. No fuel docks shall be allowed. See “Vessel.”

Water Transportation Service. An establishment that provides vessels to carry passengers for hire who are traveling to destinations within and outside of Newport Harbor. See “Vessel.”

Highest High Water (HHW) Line: The average of all the highest high tides occurring over a certain period of time, usually 18.6 years (one lunar epoch). Based on the 2004 Tide Planes & Tidal Datum Relationships for City of Newport Beach, HHW elevation is 7.86’ relative to Mean Lower Low Water (0.00’).

Mean Lower Low Water (MLLW) Line: The average of the lower low tides occurring over a certain period of time, usually 18.6 years (one lunar epoch). Based on the 2004 Tide Planes & Tidal Datum Relationships for City of Newport Beach, Mean Lower Low Water is elevation 0.00’.

Multi-Family Residential Flat: A condominium on a single level.

North American Vertical Datum of 1988 (NAVD 88): The vertical control datum of orthometric height established for vertical control surveying in the United States.

Parking Structure: Structures containing more than one story principally dedicated to parking. Parking structures may contain accessory, ancillary, and resident support uses such as solar panels and trellis structures.

Perimeter Setback: An established distance between a building/structure and the perimeter of the project site other than along East Coast Highway, Coast Highway-Bay Bridge, Bayside Drive, and the bayfront.

Personal Services (Land Use):

General. Establishments that provide recurrently needed services of a personal nature. Illustrative examples of these uses include:

- Barber and beauty shops
- Clothing rental shops
- Dry cleaning pick up stores with limited equipment
- Locksmiths
- Shoe repair shops
- Tailors and seamstresses
- Laundromats

These uses may also include accessory retail sales of products related to the services provided.

Restricted. Personal service establishments that may tend to have a blighting and/or deteriorating effect upon surrounding areas and that may need to be dispersed from other similar uses to minimize adverse impacts, including:

- Day spas
- Healing arts (acupuncture, aromatherapy, etc.) with no services qualifying under “Massage Establishments”
- Tanning salons
- Tattoo services and body piercing studios

These uses may also include accessory retail sales of products related to the services provided.

Public Bayfront Promenade: A pedestrian walkway that extends along the waterfront length of the Back Bay Landing project.

Seawall: See previous definition of “bulkhead” above.

Setback: Shall mean the space between an object, such as the face of a building or fence, and the perimeter property line.

Sign: Any media, including their structure and component parts which are used or intended to be used outdoor to communicate information to the public.

Temporary Sign: Any sign, banner, pennant, valance, or advertising display constructed of cloth, canvas, plywood, light fabric, cardboard, wallboard or other light materials, with or without frames, intended to be displayed for a limited period of time.

Vehicle Entry: Any intersection points along the public right-of-way that provide access for automobiles.

Vessel: Every type of watercraft that is used or capable of being used as a means of transportation on water. This includes all vessels of any size homeported, launched/retrieved, or visiting in Newport Harbor, arriving by water or land, and registered or unregistered under State or Federal requirements, except a seaplane on the water.

Visitor-Serving Retail: Retail establishments engaged in selling goods or merchandise to tourists and visitors. Examples of these establishments and lines of merchandise include:

- Antiques
- Appliances
- Art galleries
- Artists' supplies
- Bakeries (retail only)
- Bicycle sales and rentals
- Books
- Cameras and photographic supplies
- Clothing and accessories
- Convenience market
- Drug and discount stores
- Gift shops
- Handcrafted items
- Hobby materials
- Jewelry
- Luggage and leather goods
- Newsstands
- Pharmacies
- Specialty food and beverage

Addendum to LCP-5-NPB-15-0039-1

- Specialty shops
- Sporting goods and equipment
- Tobacco
- Toys and games
- Travel services

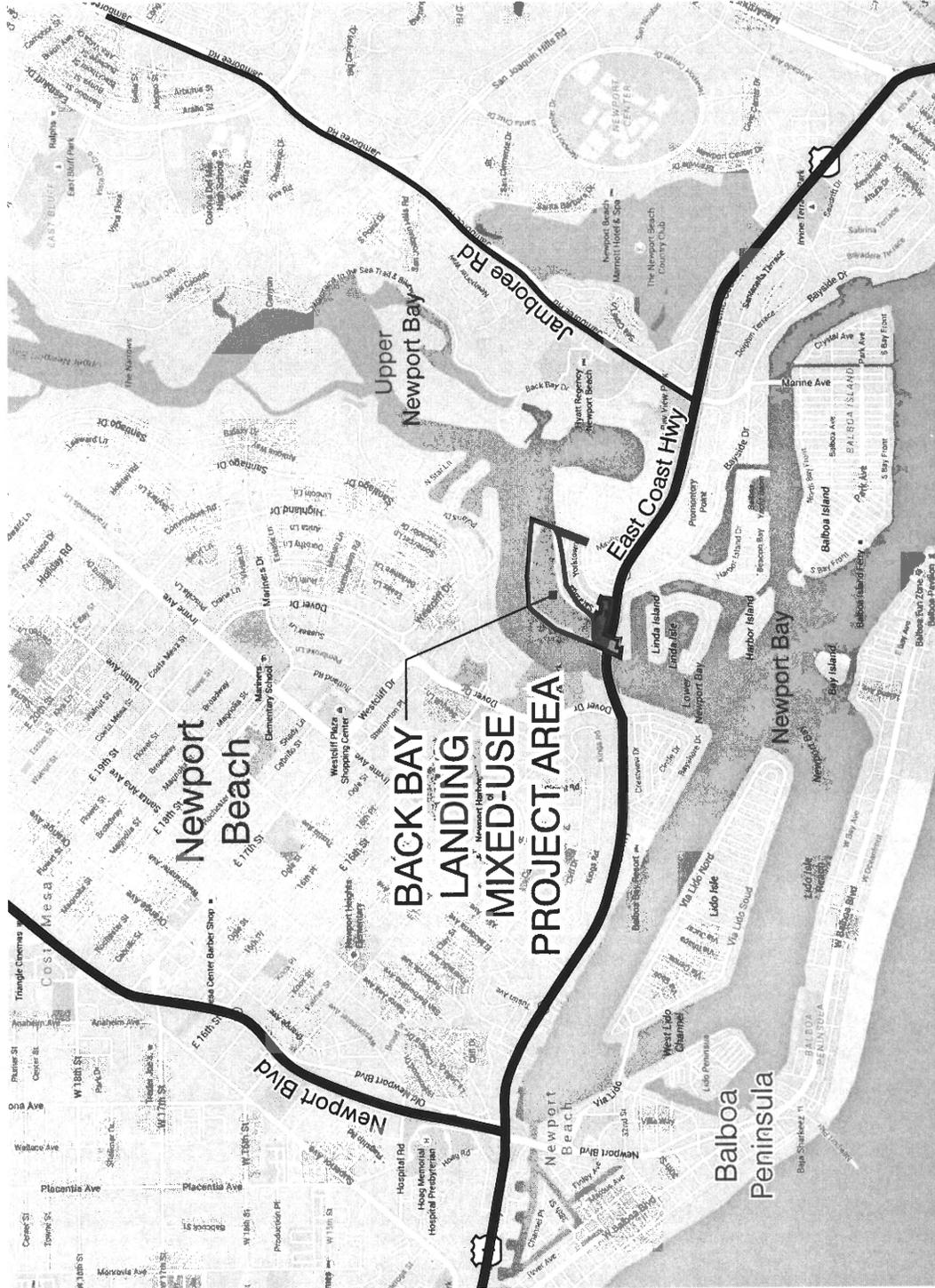
Appendix

Back Bay Landing Exhibits

**Commission Suggested Modification: Strikeout/delete Exhibit 4:
Seawall/Bulkhead Section**

EXHIBIT 1 LOCATION MAP

Back Bay Landing is 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, and 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)
- Back Bay Landing Mixed-Use Project Area
- PC-9 Boundary



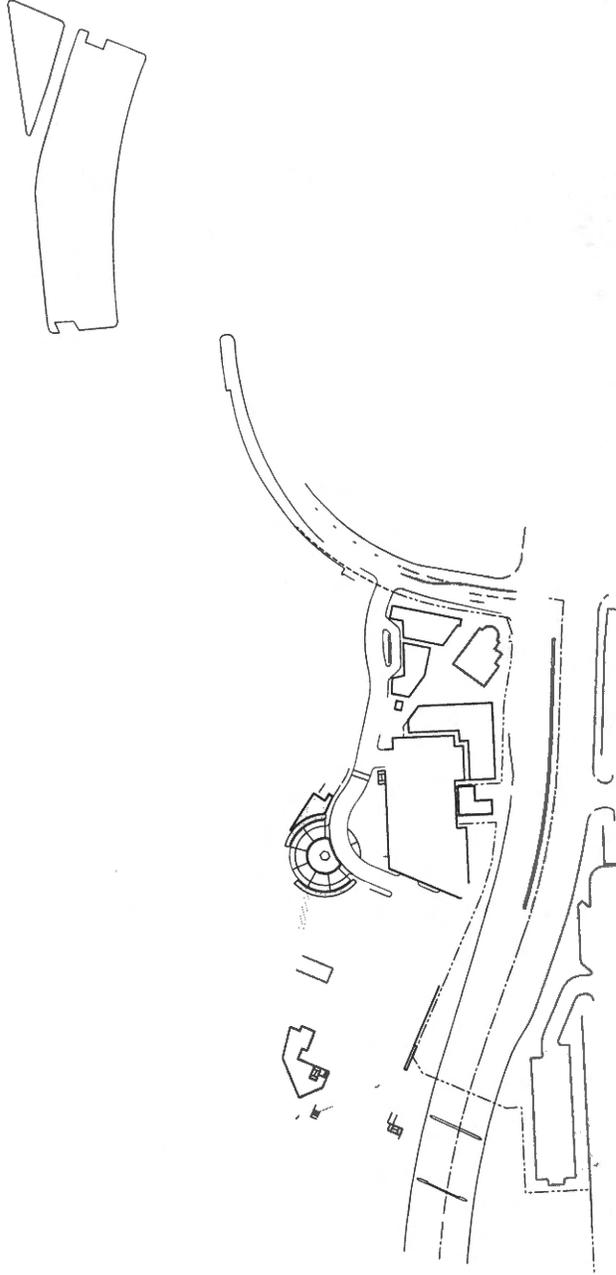
02.02.2016
NTS

BACK BAY LANDING NEWPORT BEACH, CA

LOCATION MAP

EXHIBIT 2
PLANNING AREAS

This Planned Community includes five distinct planning areas.



02.02.2016
NTS

PLANNING AREAS

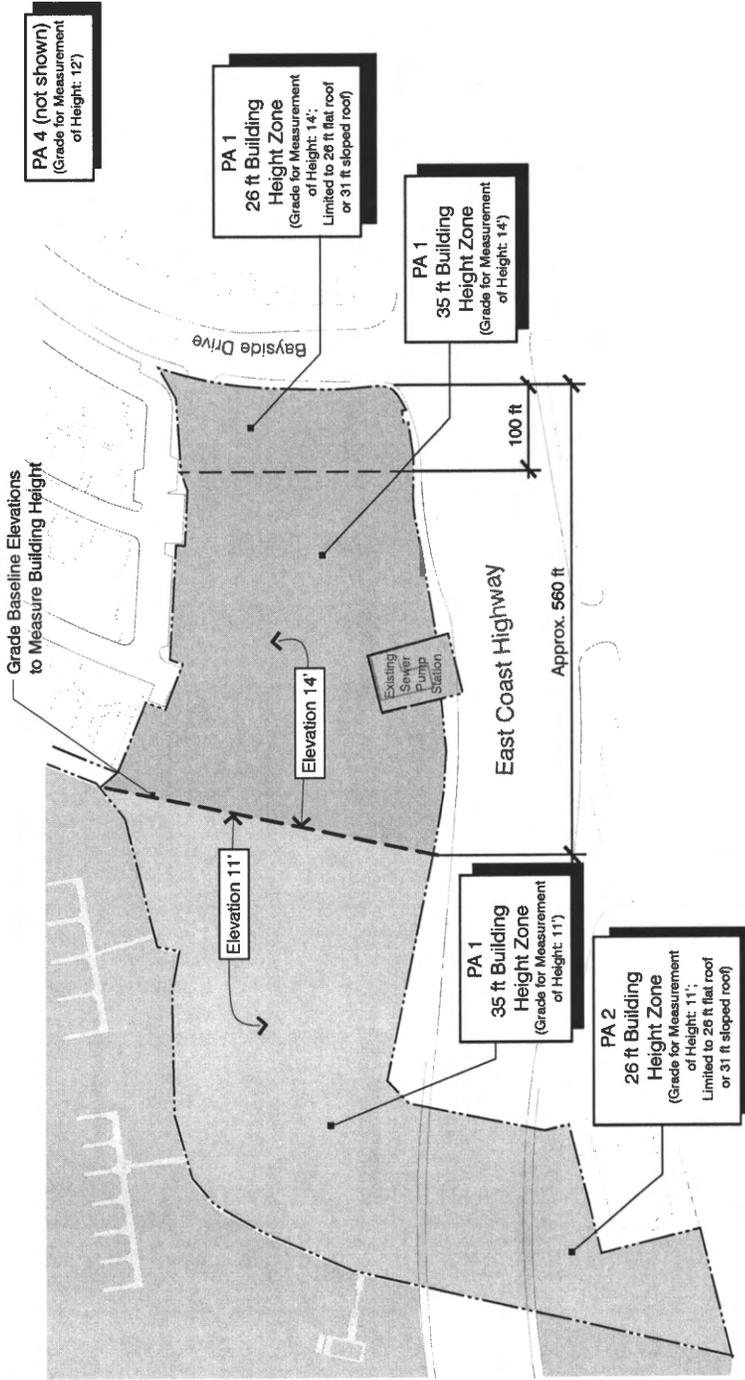
BACK BAY LANDING
NEWPORT BEACH, CA

EXHIBIT 3 BUILDING HEIGHTS

DESIGN GUIDELINES

East Coast Highway is approximately 22 feet above the Back Bay Landing development site limiting the development's impact on views from East Coast Highway.

There are three finished grade baseline elevations indicated on the exhibit from which the building heights are measured: 11 and 14 feet, or as determined by Sea Level Rise and the Shoreline Management Plan.

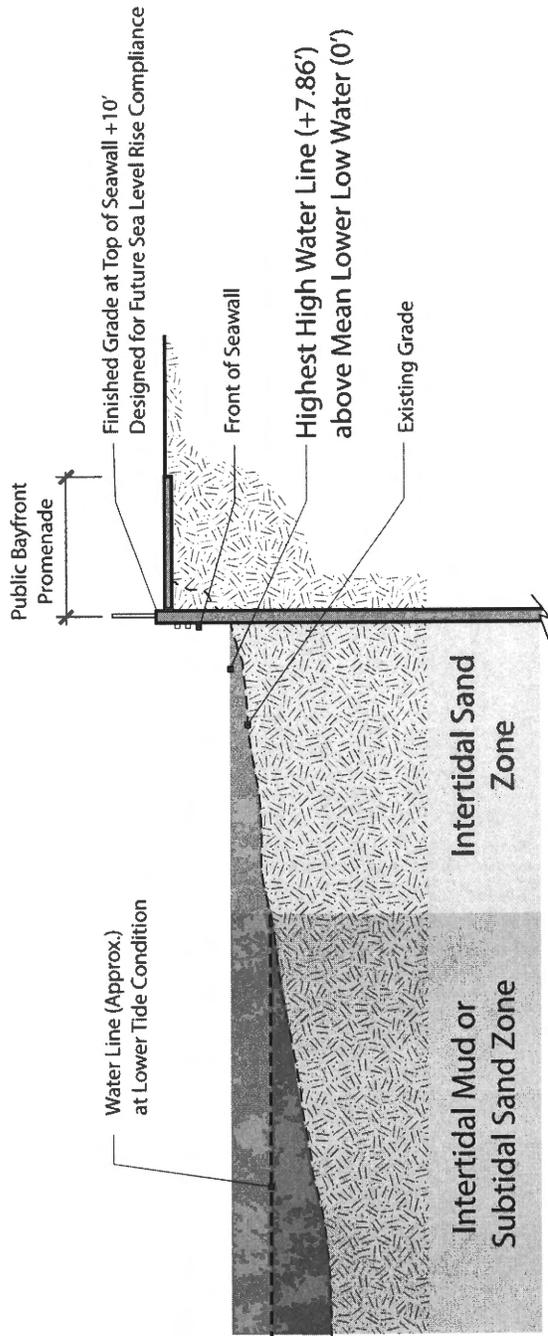


02.02.2016
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**EXHIBIT 4
SEAWALL/BULKHEAD
SECTION**

BULKHEAD

The project bulkhead may be built to the Highest High Water elevation of 7.86' relative to Mean Lower Low Water (0.0') or 7.48'/NAVD 88 to preserve the natural profile along the shoreline adjacent to the County Tidelands, subject to consistency findings in the Coastal Act and City of Newport Beach Coastal Land Use Policies.



02.02.2016
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BACK BAY LANDING
NEWPORT BEACH, CA

SEAWALL/BULKHEAD SECTION

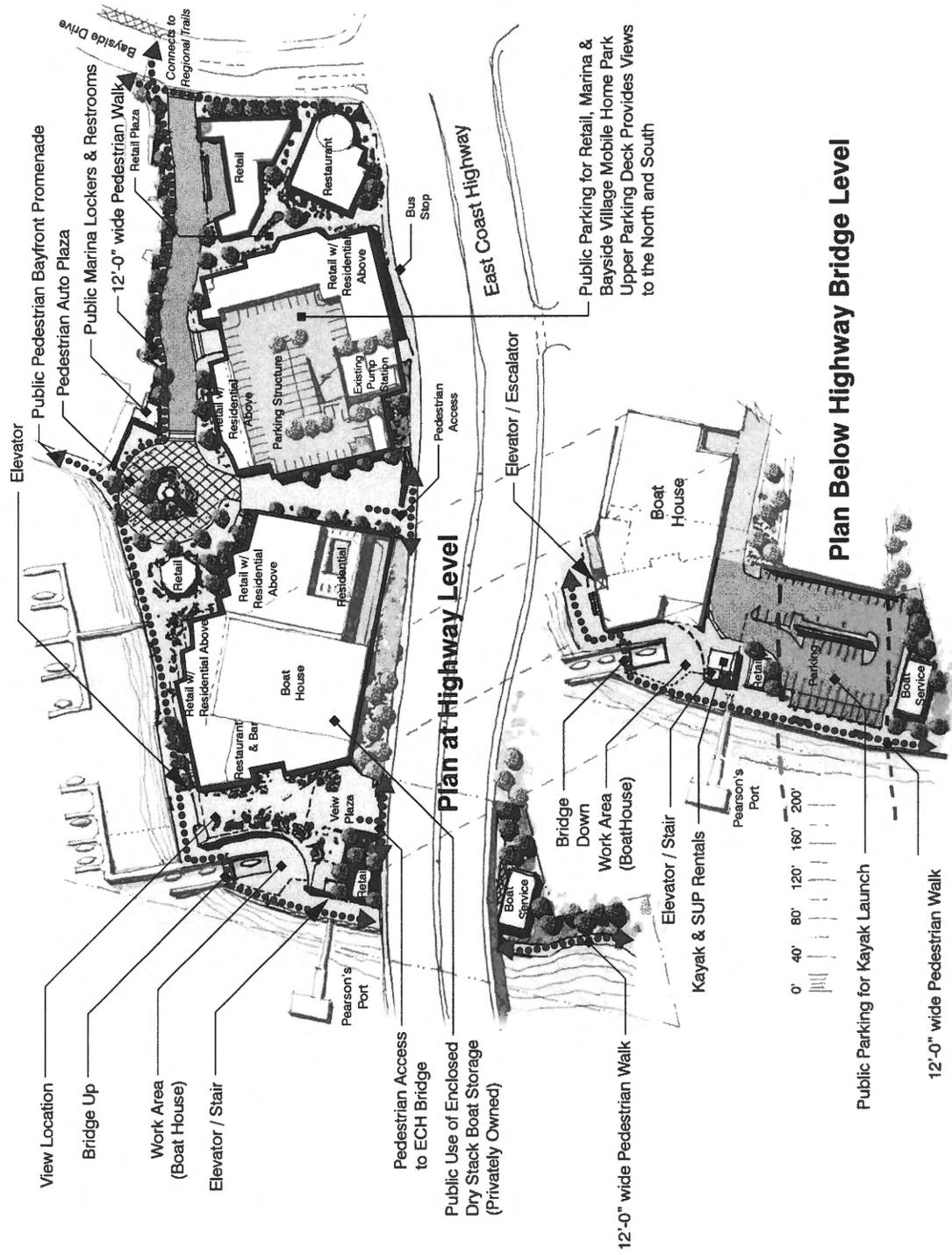
EXHIBIT 5 PUBLIC SPACES

DESIGN GUIDELINES

Back Bay Landing contains extensive outdoor public space, including:

- A linear continuous Public Bayfront Promenade along the bay and connecting to regional trails.
- Class 1, 2, and 3 off-street bikeway and pedestrian trails connecting to East Coast Highway along Bayside Drive.
- A large retail plaza with enhanced paving street furniture, water features and shade trees.
- A Bayside Plaza with enhanced paving, seating and shade trees.
- A kayak and SUP rental and launch area with storage lockers and water access.
- Public Restrooms accessed from the Public Bayfront Promenade.

Additional public spaces are provided within retail, restaurant and the enclosed dry stack boat storage buildings.



02.02.2016
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BACK BAY LANDING
NEWPORT BEACH, CA

PUBLIC SPACES

EXHIBIT 6 COASTAL ACCESS & REGIONAL TRAIL CONNECTIONS

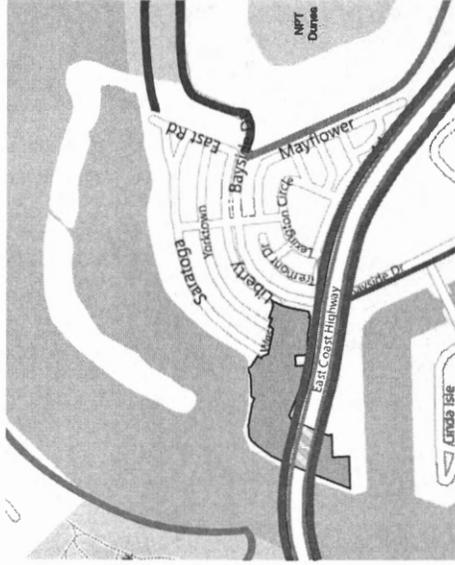
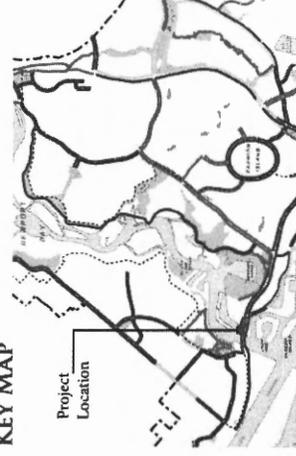
Back Bay Landing provides coastal access and a critical link between existing regional trails.

1. Regional Trail Connections
2. Proposed Coastal Access
3. Current Lack of Trail Connection
4. Critical Trail Connections

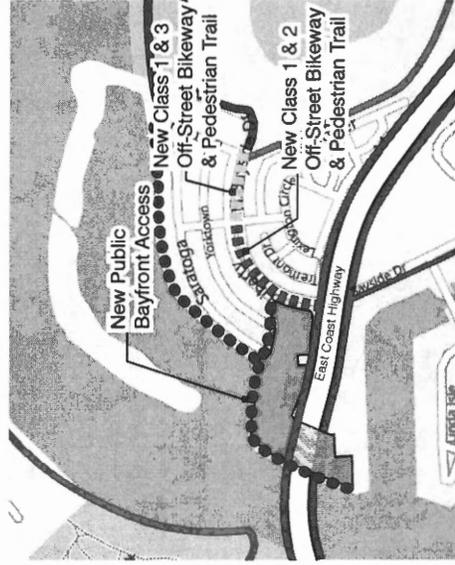
LEGEND

	Existing Class 1 Trail
	Existing Class 2 Trail
	Existing Class 3 Trail
	Existing Newport Dunes Recreational Trail
	Lateral Access
	Vertical Access
	Proposed Class 1 & 3 Trail
	Proposed Class 1 & 2 Trail
	Proposed Public Bayfront Promenade

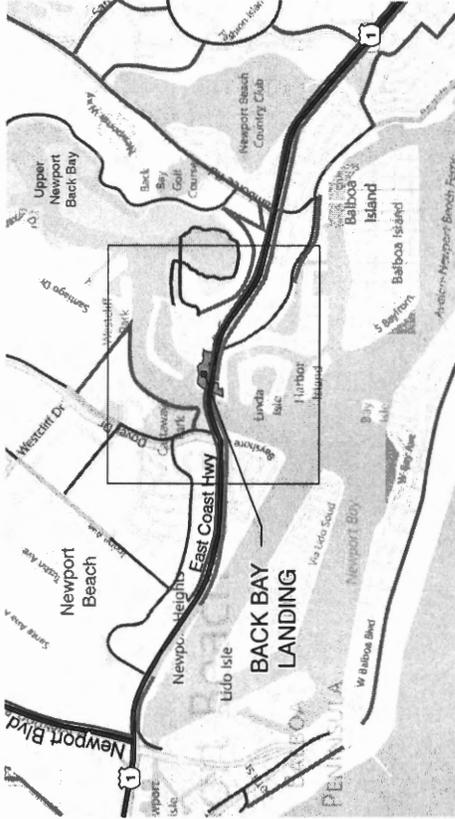
KEY MAP



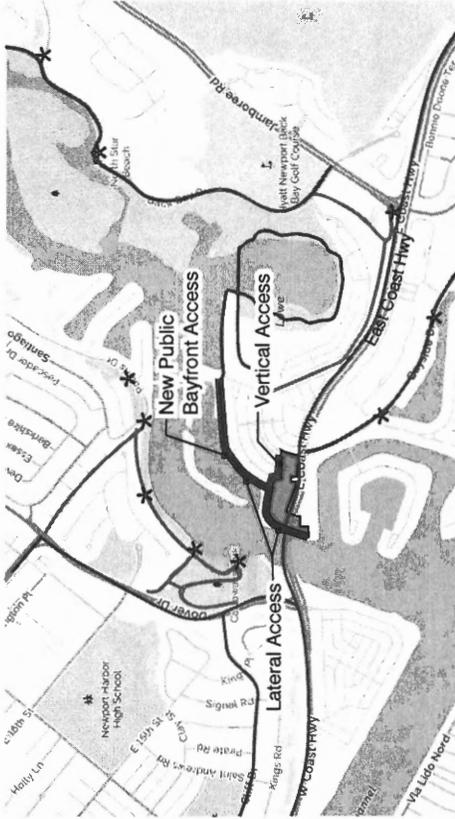
3. Current Lack of Trail Connection



4. Critical Trail Connections



1. Regional Trail Connections



2. Proposed Coastal Access



02.02.2016
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COASTAL ACCESS & REGIONAL TRAIL CONNECTIONS

BACK BAY LANDING NEWPORT BEACH, CA

EXHIBIT 7 VEHICULAR CIRCULATION

DESIGN GUIDELINES

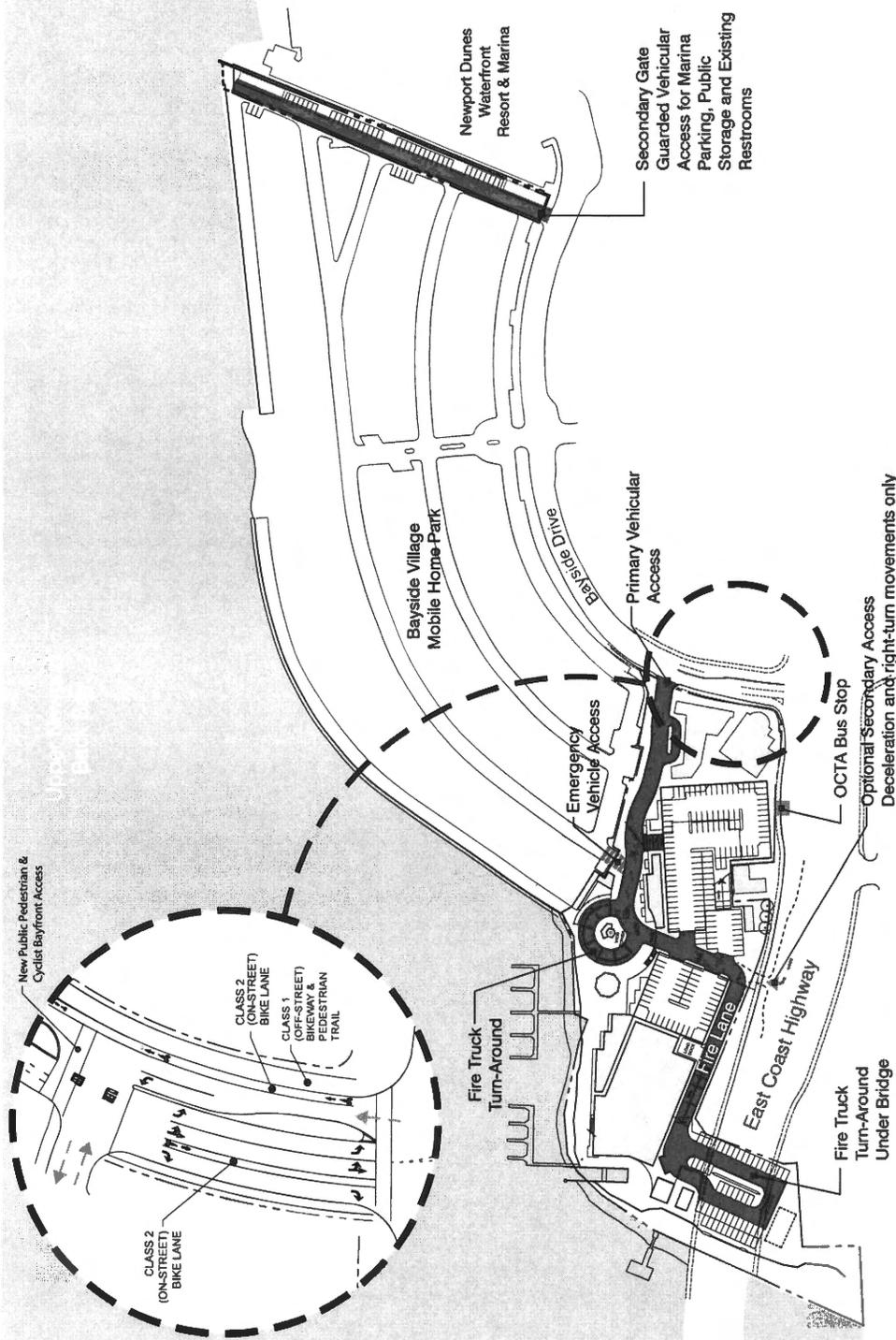
Primary vehicular access to the site will be from Bayside Drive approximately 200 feet north of the East Coast Highway intersection. This project driveway would service both inbound and outbound movements, improve the existing driveway connection further into the site, and will be relocated approximately 45 feet north of its current location.

Intersection improvements will maintain the existing left-turn lane, add a shared left-turn through lane, and add an exclusive right turn lane on the southbound approach of the signalized intersection of Bayside Drive with East Coast Highway. Project access enhancements will include an exclusive left-turn lane on the northbound approach of the Bayside Drive and project driveway intersection.

Primary circulation includes two fire truck turnarounds. An Emergency Vehicle Access from Bayside Village Mobile Home Park provides an additional layer of safety.

Secondary marina access for marina parking and public storage is located directly off Bayside Drive.

An optional secondary access located approximately 430 feet west of the Bayside Drive intersection with East Coast Highway, would add an exclusive right-turn lane along westbound East Coast Highway. This connection would allow for inbound right-turn movements only. Outbound movements would be prohibited.



02.02.2016
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BACK BAY LANDING
NEWPORT BEACH, CA

VEHICULAR CIRCULATION

EXHIBIT 8 REVISED VEHICULAR CIRCULATION & PARKING

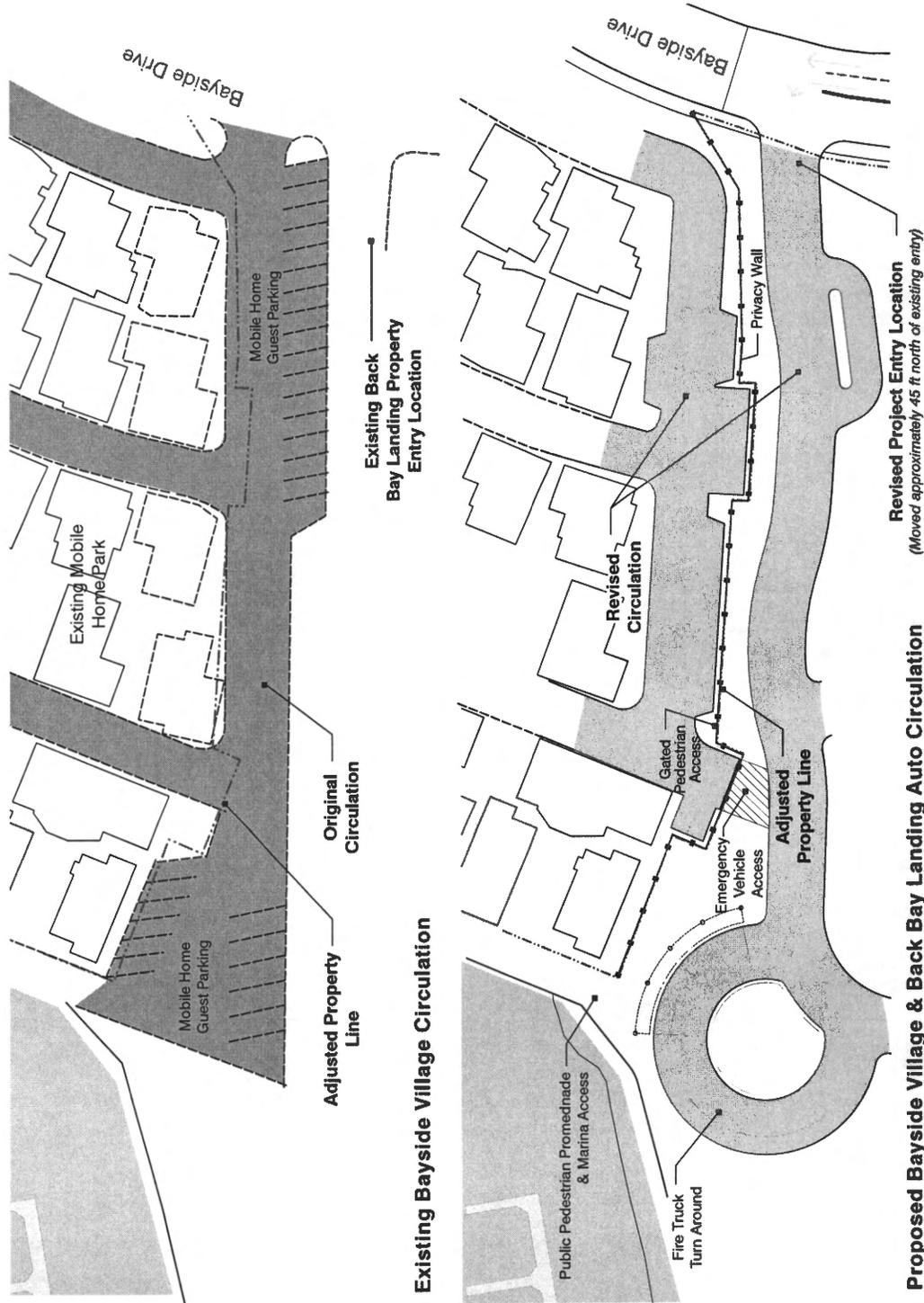
DESIGN GUIDELINES

New & Improved Project Access

Revised vehicular circulation will provide a new and improved access to the proposed project. The primary entry is located on Bayside Drive approximately 200 feet north of the East Coast Highway intersection. The entry is proposed to be relocated approximately 45 feet north of its existing location.

The reconfiguration will remove four (4) mobile homes and relocate thirty one (31) mobile home guest parking spaces and two trash bins to allow for the expanded project entry.

New landscaping with decorative walls and pedestrian gates will separate the mixed use project from the mobile homes. The mobile home vehicular circulation will be reconfigured and will include twelve (12) mobile home guest parking spaces. An additional nineteen (19) mobile home guest parking spaces will be relocated in Planning Area 4. There will be no net loss of guest parking to the mobile home community.



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BACK BAY LANDING
NEWPORT BEACH, CA

REVISED VEHICULAR CIRCULATION & PARKING

EXHIBIT 9 UTILITIES PLAN

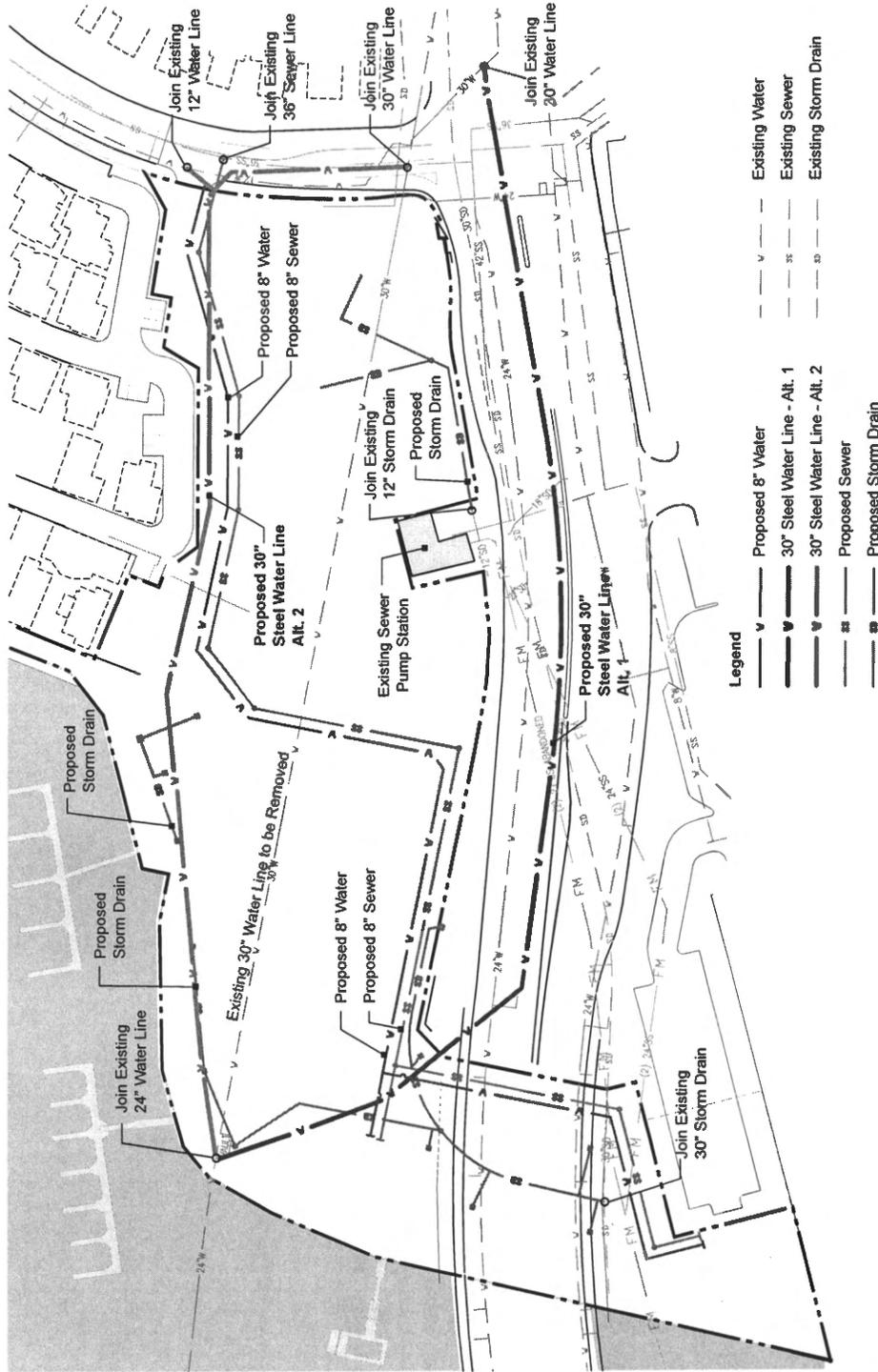
Sewer

A new 8" sewer line is proposed to serve the Back Bay Landing project. It will connect into the existing 36" sewer line within Bayside Drive north of the proposed project. Based on the 2006 Strategic Plan Update for OCSD, capacity exists within the existing 36" line to accommodate the proposed project.

Water

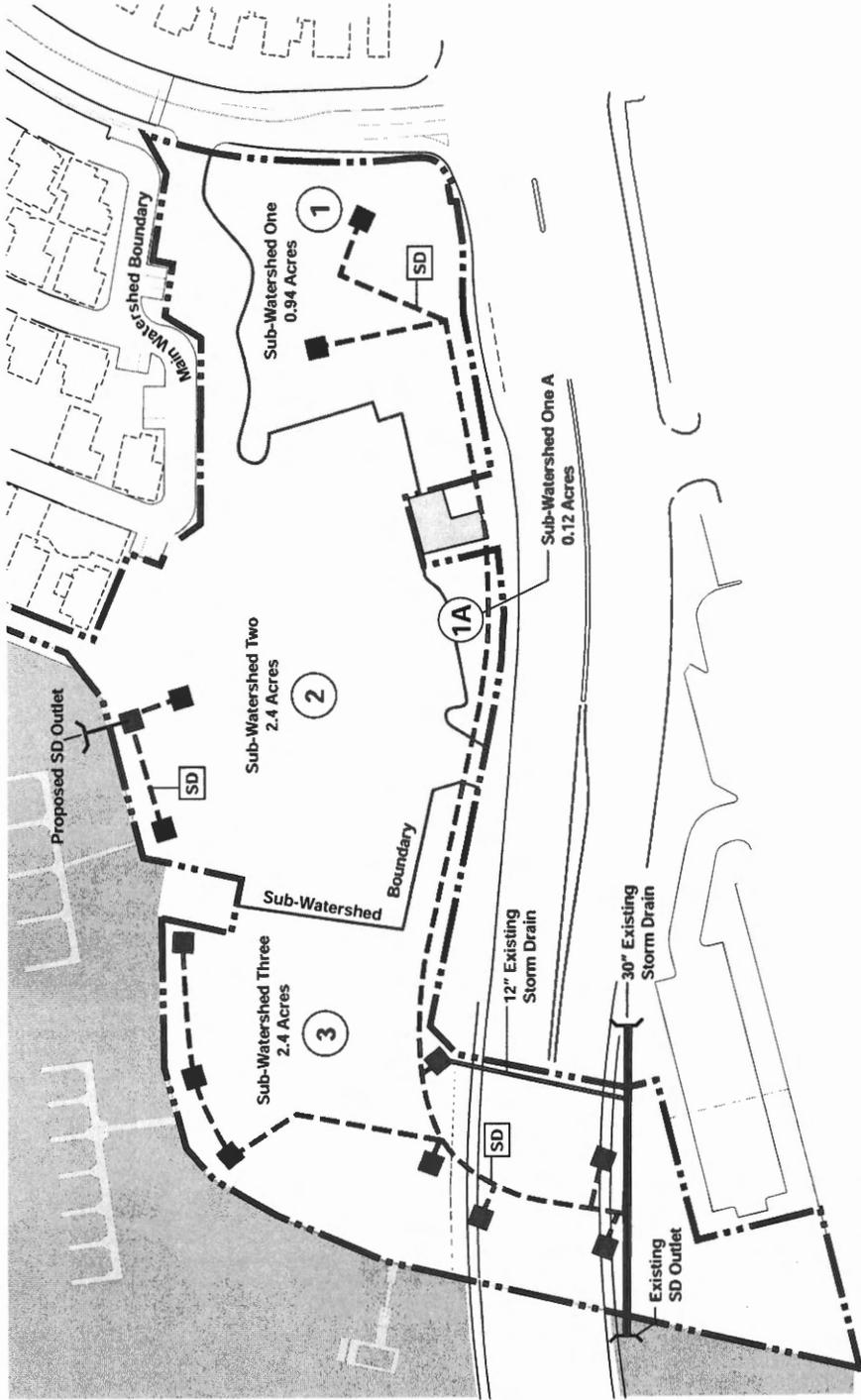
The existing 30" water transmission line traversing the project site will be abandoned to minimize conflicts with the proposed project and allow easy access and maintenance to the proposed lines. Two alternatives are currently proposed to replace the capacity of the line and continue to provide reliable water service in case of an emergency to the western region of Newport Beach.

Additionally, a new 8" water line will serve the proposed project and tie into the existing 12" water line in Bayside Drive. The increased demand on the existing line will be consistent with the proposed sewer generation rates. Water capacity is not anticipated to be an issue based on the redundant water transmission lines that surround the project site.



**EXHIBIT 10
DRAINAGE PLAN**

The proposed drainage plan consists of four sub-watersheds. Stormwater will be collected at various inlets throughout the project site which will connect into the existing 30-inch storm drain that discharges south of the East Coast Highway Bridge or drain directly out an existing or new outlet through the bulkhead.



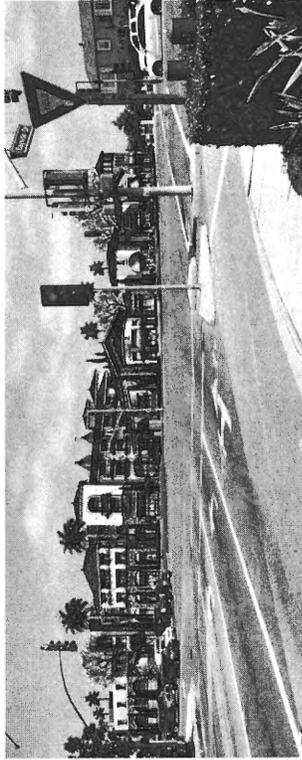
02.02.2016
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EXHIBIT 11 ARCHITECTURAL THEME

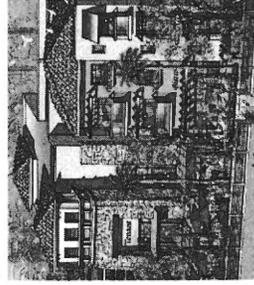
DESIGN GUIDELINES

The development shall be designed with a coastal architectural theme. The intent is not to select a historically specific or rigid architectural style for the project, but to use it as the design guidelines to help shape the character of the area and reflect its setting within the City.

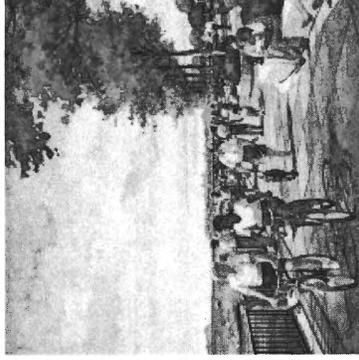
Back Bay Landing will be designed and constructed to evoke the experience of a seaside village, with compatible architecture and community character to existing waterfront portions of Newport's Mariner's Mile, Lido and Newport Peninsulas.



East Coast Highway and Bayside Drive



Coastal Access with Ground Floor Commercial and Residences Above



Public Bayfront Promenade



Visitor Serving Commercial



View Plaza Seating



02.02.2016
NTS

ARCHITECTURAL THEME

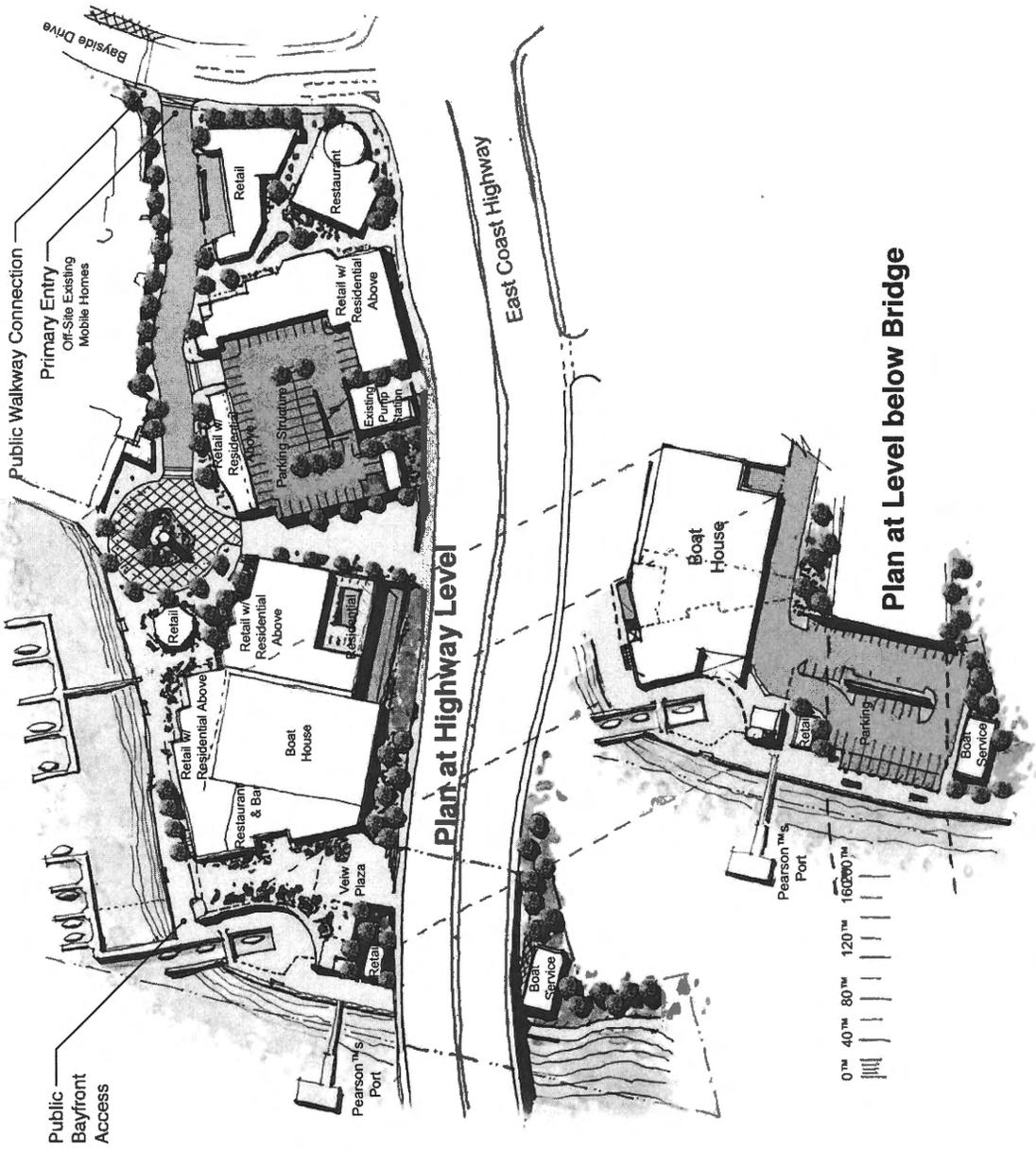
BACK BAY LANDING
NEWPORT BEACH, CA

**EXHIBIT 12
CONCEPTUAL SITE
PLAN**

DESIGN GUIDELINES

Back Bay Landing is an integrated, mixed-use waterfront village with visitor-serving retail and marine service commercial facilities, as well as a limited amount of attached residential uses.

It is designed to evoke a seaside village and has a strong focus on the pedestrian experience.



02.02.2016
NTS

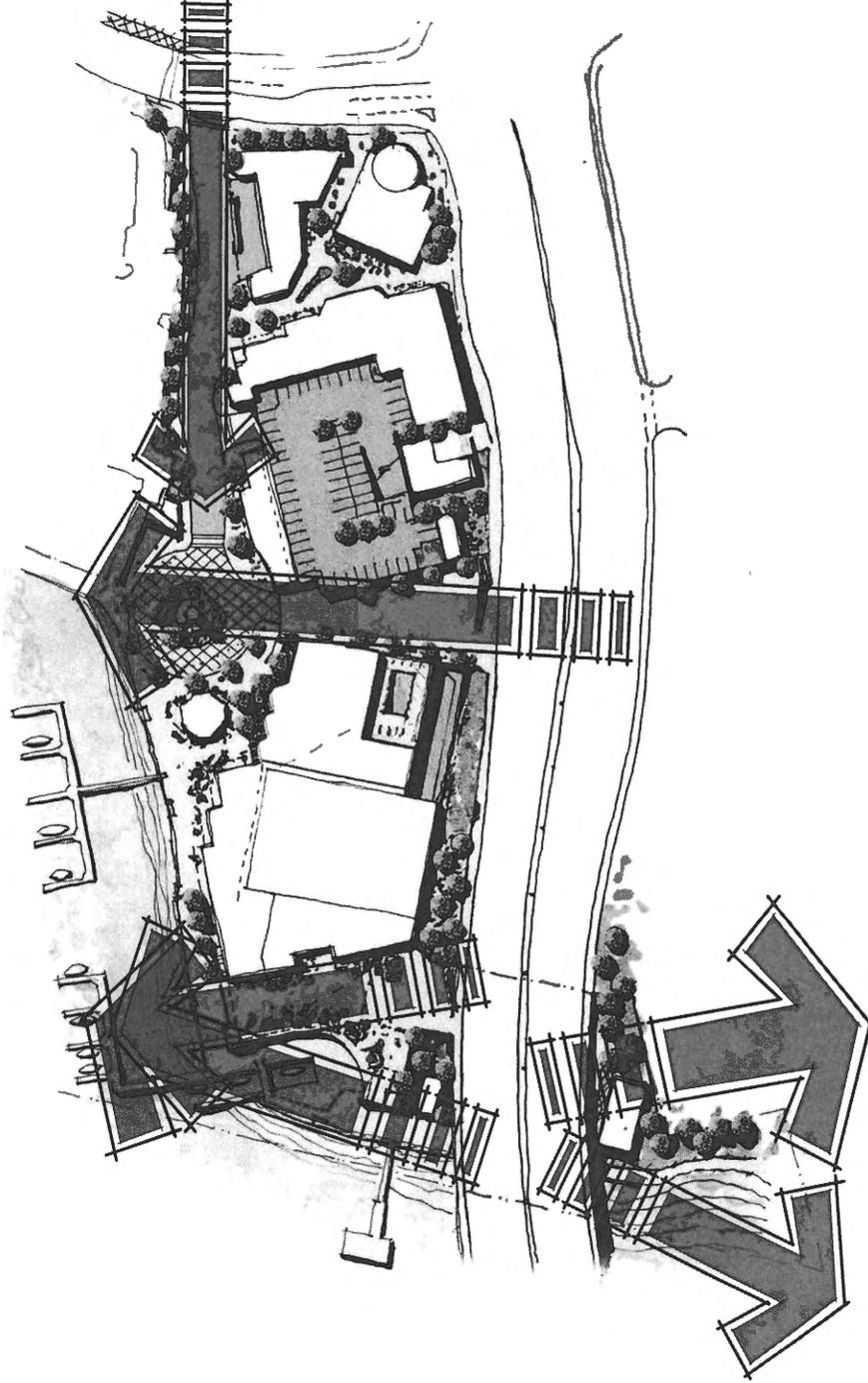
BACK BAY LANDING
NEWPORT BEACH, CA

CONCEPTUAL SITE PLAN

**EXHIBIT 13
EAST COAST HIGHWAY
VIEW CORRIDORS**

DESIGN GUIDELINES

Varied roof heights and undulating buildings add variety to the street scene. Along East Coast Highway and Bayside Drive six scenic view corridors are preserved.



02.02.2016
NTS

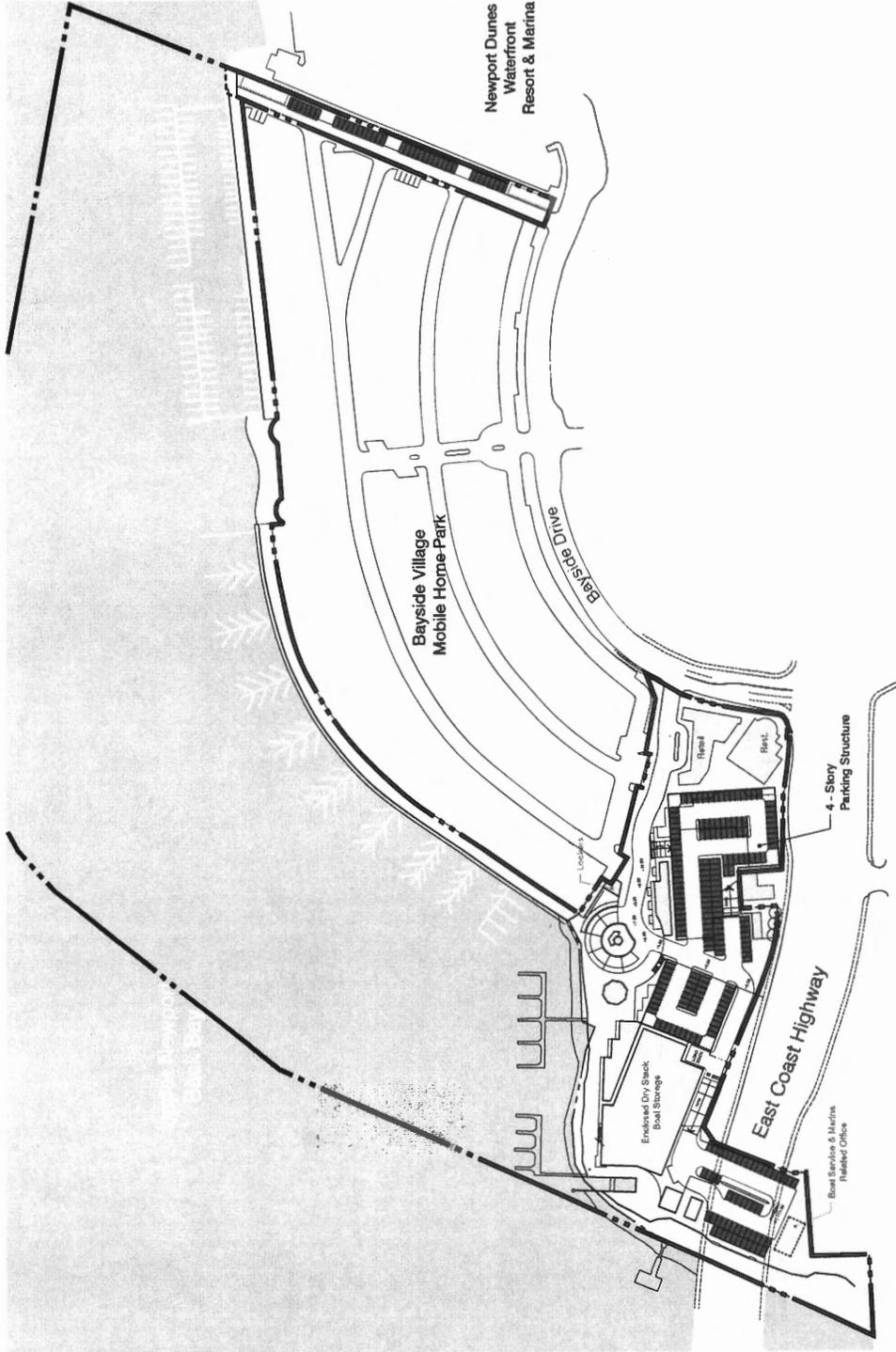
EAST COAST HIGHWAY VIEW CORRIDORS

BACK BAY LANDING
NEWPORT BEACH, CA

EXHIBIT 14 PARKING PLAN

DESIGN GUIDELINES

Back Bay Landing is a mixed-use waterfront development providing parking above the City's requirements.



LEGEND



02.02.2016
NTS

PARKING PLAN

BACK BAY LANDING NEWPORT BEACH, CA



August 30, 2016

RECEIVED
South Coast Region

AUG 31 2016

Re: Newport Beach Local Coastal Plan Implementation Plan CALIFORNIA
COASTAL COMMISSION

Shore Cliffs Property Owners Association is happy to join other local community Homeowners' Associations in offering its support for the Newport Beach LCP Implementation Plan.

We are glad to have a document that unites and defines the rules of both Newport Beach and the Coastal Commission in their efforts to preserve and protect the canyons and bluffs our city while allowing homeowners to build their homes.

We believe this document will provide clear guidance to property owners developing their land in these sensitive areas. It will help us all to understand and respect the delicate balance between development, ecology and preservation while giving homeowners, city officials and homeowners associations with CCR's to enforce, one clear path to getting their projects approved and completed in a more timely and efficient manner.

We hope you will approve this much needed land use plan for Newport Beach.

Sincerely,

Shore Cliffs Property Owners Association

August 31, 2016

Dear California Coastal Commission,

I am writing to give you my input on the pending Newport Beach Local Coastal Program Implementation Plan that may be certified on September 8.

My first concern is the sheer volume of material that has just been released to the public. 600 pages of notes and information released just days before the certification substantially precludes a thoughtful study of these documents in a meaningful way. This is a critically important IP and if the City of Newport Beach is allowed to implement a flawed plan, not even the power of the Coastal Commission can stop it.

Newport Beach has, from my perspective, a long history of being given an inch and taking a mile. They have previously approved plans with apparent disregard for Coastal Act issues and its own Coastal Land Use Plan, including plans to subdivide the Back Bay and the Castaways site and even the 2012 City Council approval of a "Planned Community Plan" for Banning Ranch. These are actions that Coastal Commission staff has found to be vastly inconsistent with the Coast Act. Thus, it is particularly important to ensure that all aspects of the IP are airtight and enforceable and I am not convinced that it is. It should not have to be the responsibility of Newport Beach residents to bird dog Newport Beach's actions with regard to coastal issues.

I am part of a group of Newport Beach residents who are involved a citizen-led effort to tighten restrictions and preserve the historic coastal character of Newport Beach. We are planning a voter initiative that will alter city wide planning and zoning codes to make them more protective and I am concerned that memorializing the present zoning regulations in the LCP-IP could conflict with these efforts. I would assume that a CDP could not be used to allow construction of something in the Coastal Zone inconsistent with a future, more restrictive citizen initiated city wide code, but would like to be assured that this is clearly stated in the LCP-IP.

Thank you,

Susan Skinner, MD
2042 Port Provence Place
Newport Beach, CA 92660

RECEIVED
South Coast Region

AUG 31 2016

CALIFORNIA
COASTAL COMMISSION

Roman, Liliana@Coastal

From: Bill <williamcool@sbcglobal.net>
Sent: Wednesday, August 31, 2016 10:30 PM
To: Roman, Liliana@Coastal
Subject: Certification of Newport Beach's Plans

Hello,

It is my understanding that on Sept. 8th the CCC will certify Newport Beach development plans. If the CCC approves anything, it is my hope that it will be the plans that were in place in 2005. The current plans have expanded heights separate from the general approved heights. This is done with the Planned Community Districts which allow up to 375 feet in Newport Center. Our city government has been approving plans with total disregard for Coastal Act issues and even its own Coastal Land use Plan.

Our organization, called "Line in the Sand" is drafting an initiative which will curb many of the ways the City Council is getting around the voter approved General Plan. We also hope to draft another initiative which will limit and even reduce height in our city.

We are attempting to preserve the historic coastal character of Newport Beach and hope that the CCC won't approve anything which makes it harder for us to keep our city from becoming overly developed.

Please don't approve any of the city's plans which allow additional height in the Shoreline Height area. The Coastal Land Policies seem to be more in line with the 2005 city plan than the present plan. Thank you.

William Cool
430 Dahlia Ave.
Corona del Mar, Ca. 92625
(949) 675-5122

RECEIVED
South Coast Region

AUG 31 2016

CALIFORNIA
COASTAL COMMISSION

AUG 31 2016

CALIFORNIA
COASTAL COMMISSION

Questions related to the Staff Report LCP-5-NPB-15-0039-1

As just a regular California resident, I am having trouble to reconcile the staff report Page 4 Public Access- Public Beaches, where the Coastal Commission claims that all sandy beach areas remain in the Coastal Commission Permit jurisdiction and the policy of Beach Encroachments on Page 39 outlines how the City of Newport is given permit authority to allow the building of encroachments that normally require a permit. Please help me understand this.

As a regular California resident, I am having trouble to reconcile how under 3.1.1-3 the proposed encroachments allowed are 15 x 20 feet and 10 x 20 feet. I am sure that the Coastal Commission Staff and the City of Newport Beach reviewed the difference between leasing public land to private parties and mitigation of encroachments. When one pays an annual fee for a 15x20 lot of land, it sounds more like a lease of public land and less like a mitigation payment for encroachment. Maybe the staff report can share this discussion and how the difference was determined.

There are many California residents who would like to lease a 15x20 lot of coastal beach or a 10x10 lot of coastal beach on an annual basis. Can a resident living in Santa Ana lease these encroachment lots? Many residents who live in Pasadena or Bakersfield, would love to lease such a lot, pitch a tent or place a portable shed and have a place to relax and surf or fish. How does a regular Californian get such an opportunity?

Signed,

I am not an expert, as a California resident, do I have the right to ask?

320 Island Avenue
Newport Beach, California 92661

California Coastal Commission

Re: September 8, 2016 hearing with City of Newport Beach

To whom it may concern,

Several times I have directly written to the Coastal Commission concerning the attempts by the residents on Edgewater/the Bayfront to limit the public access to the public beach and the bay between Island Avenue and Lindo. Most recently a letter was sent to you when the Coastal Commission was considering the application of Bay Island to move their bridge and thereby shrink the public fishing area in favor of a ramp for golf cart access for the residents of Bay Island. That application was granted, but there was no attempt to provide fishermen with the availability of additional space for fishing along the seawall that continues beyond those huge trees planted by a homeowner on city property.

Immediately following submission of this letter via email from our frazierdc@gmail.com Picasa account, I have sent 9 pictures to Mr. Patrick Alford to copy and submit to you along with this letter. These pictures show that this public beach needs signage to let the public know it is public.

Picture #1 shows the very small public fishing beach which now shares its space with the ramp to the Bay Island bridge. Picture #2 shows the boat which rents dock space from the homeowner that encroaches on the already limited space to fish, and it shows the bench in the area which is clearly marked with a city emblem so the public knows it can be used. Picture #3 shows one of the other benches which does not have the emblem. The public is unaware that it can be used. Those benches need emblems as well.

Pictures #4-5 show the seawall and how there are plantings to discourage anyone from using the wall. One month ago the City removed one of the trees which had died, and the homeowner has already replaced it with another young tree to prevent the public from traversing the seawall or accessing the grassy area. In the Bay Island bridge project, the City approved that low cement wall between the fishing beach and those huge trees, again giving the impression that what was on the other side was private. These trees and shrubs must be removed.

Pictures #6-7 show the view on Edgewater between Island Avenue and Lindo. This is what the public sees. There are installed sprinkler systems, grass and shrubs, and brick walkways on public beach land. It is lovely and the public should know they can sit on it. Of course, the timing of the sprinklers must not coincide with public use. What family wants to be on the grass when the sprinklers go off? Currently the only signage says the docks are private. They are private, but the area leading to the docks is public and needs enough conspicuous signage indicating it is public.

Pictures #8-9 show an area where this public beach meets Buena Vista. There used to be a large sign posted about the land before the bulkhead as public beach, but as the picture shows that has disappeared as has the public cement bench that was on the now empty cement pad. That bench was a memorial to a local woman, and I believe donations paid for that now missing bench. What happened to that bench? The planting with a small decorative fence extends beyond that bulkhead giving the appearance of private land.

The Coastal Commission in considering the City's land use plan. It must include the above mentioned remedies. I look forward to hearing from you on this matter.

Sincerely,

Kathy Frazer

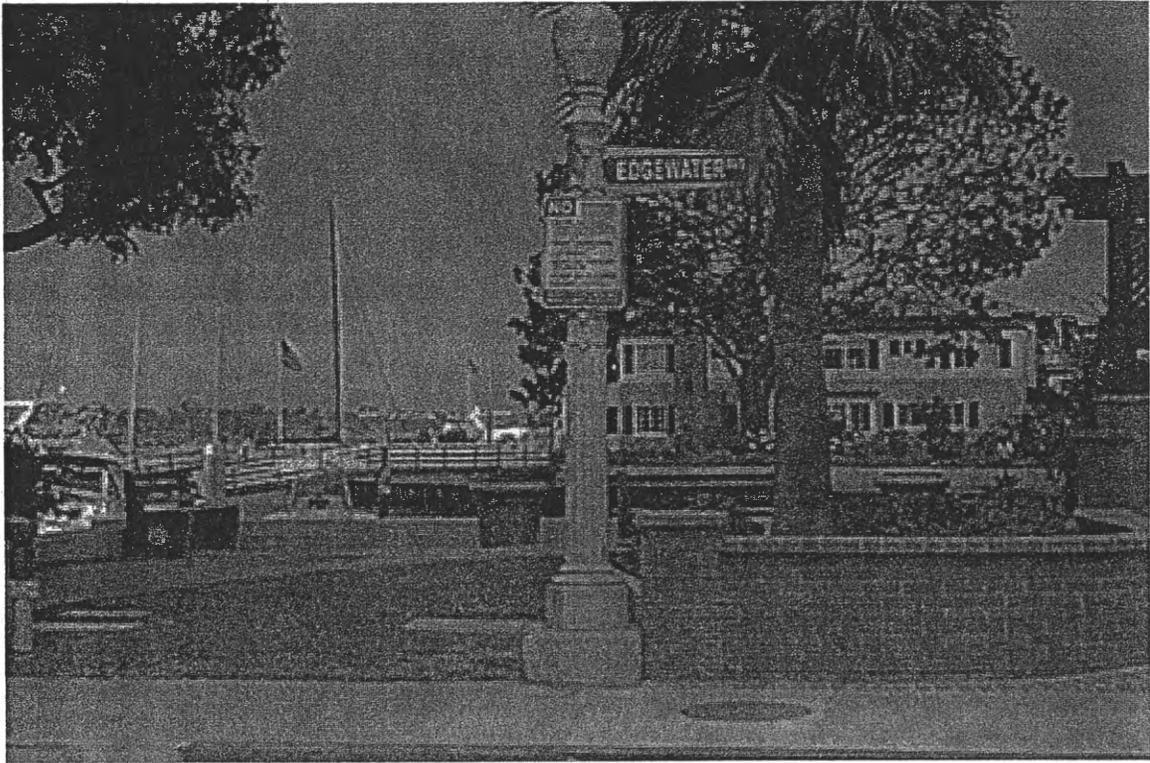
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South Coast Region

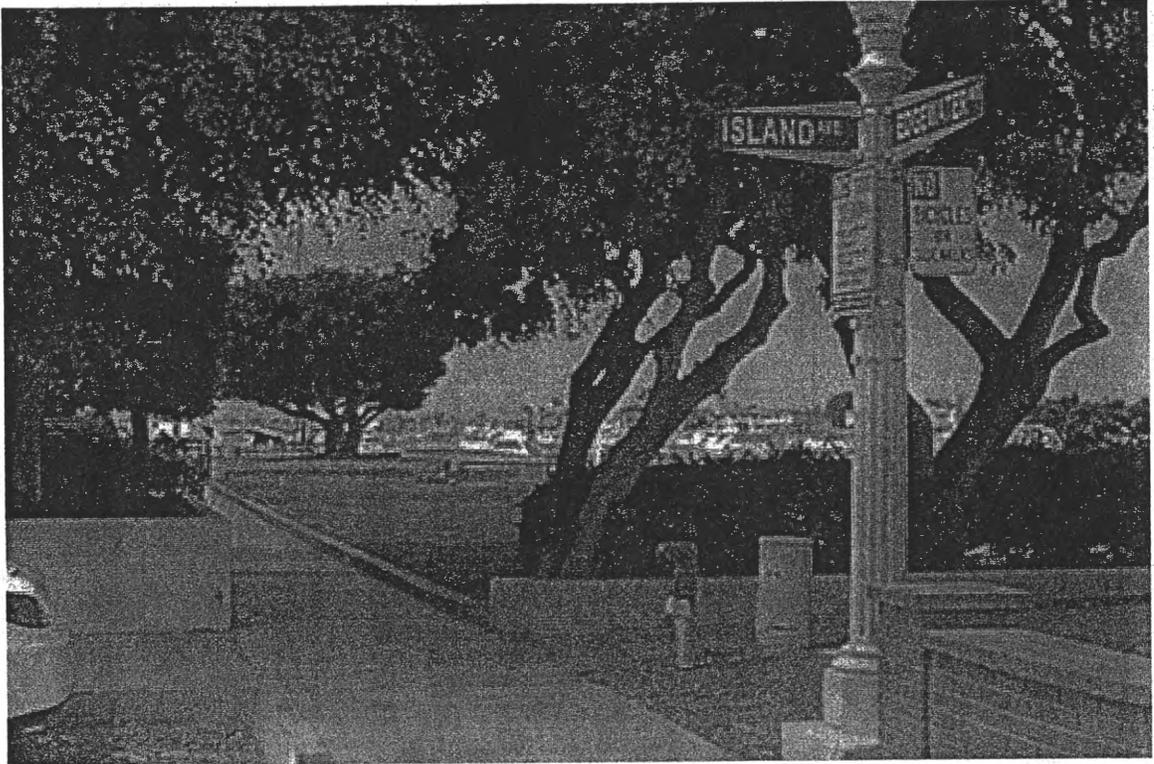
SEP 12 2016

CALIFORNIA
COASTAL COMMISSION

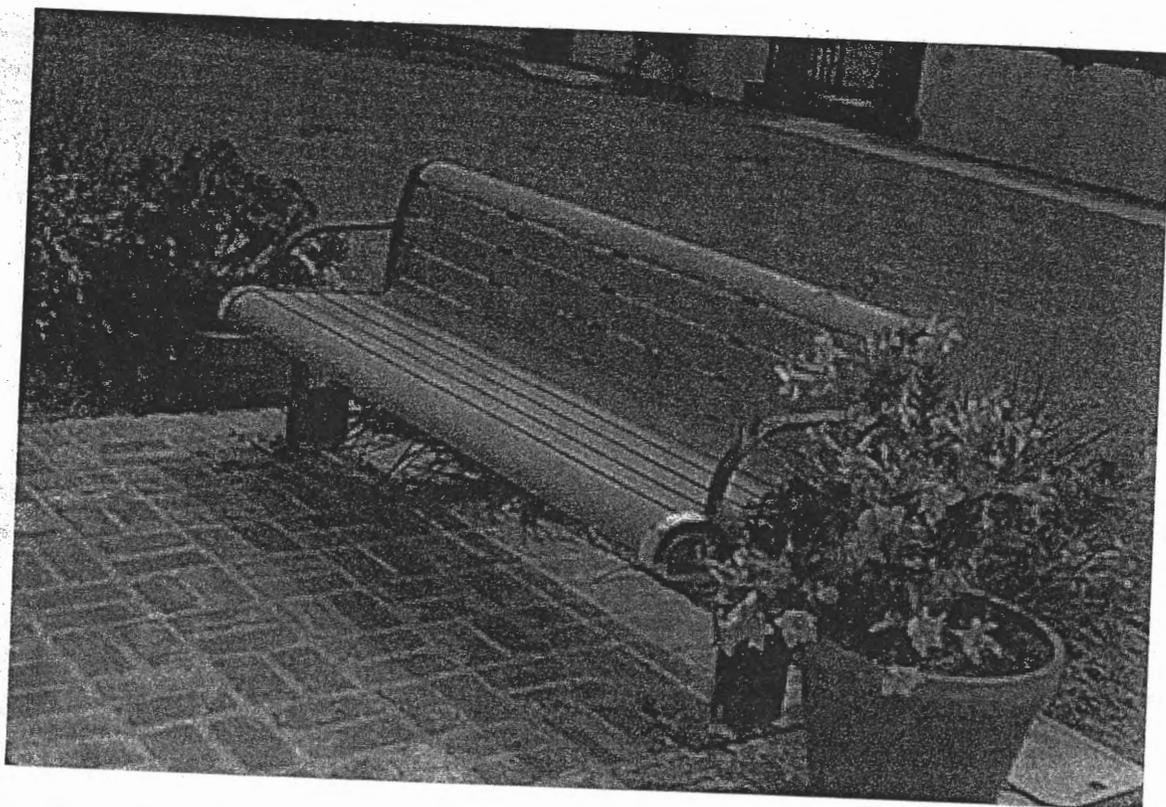


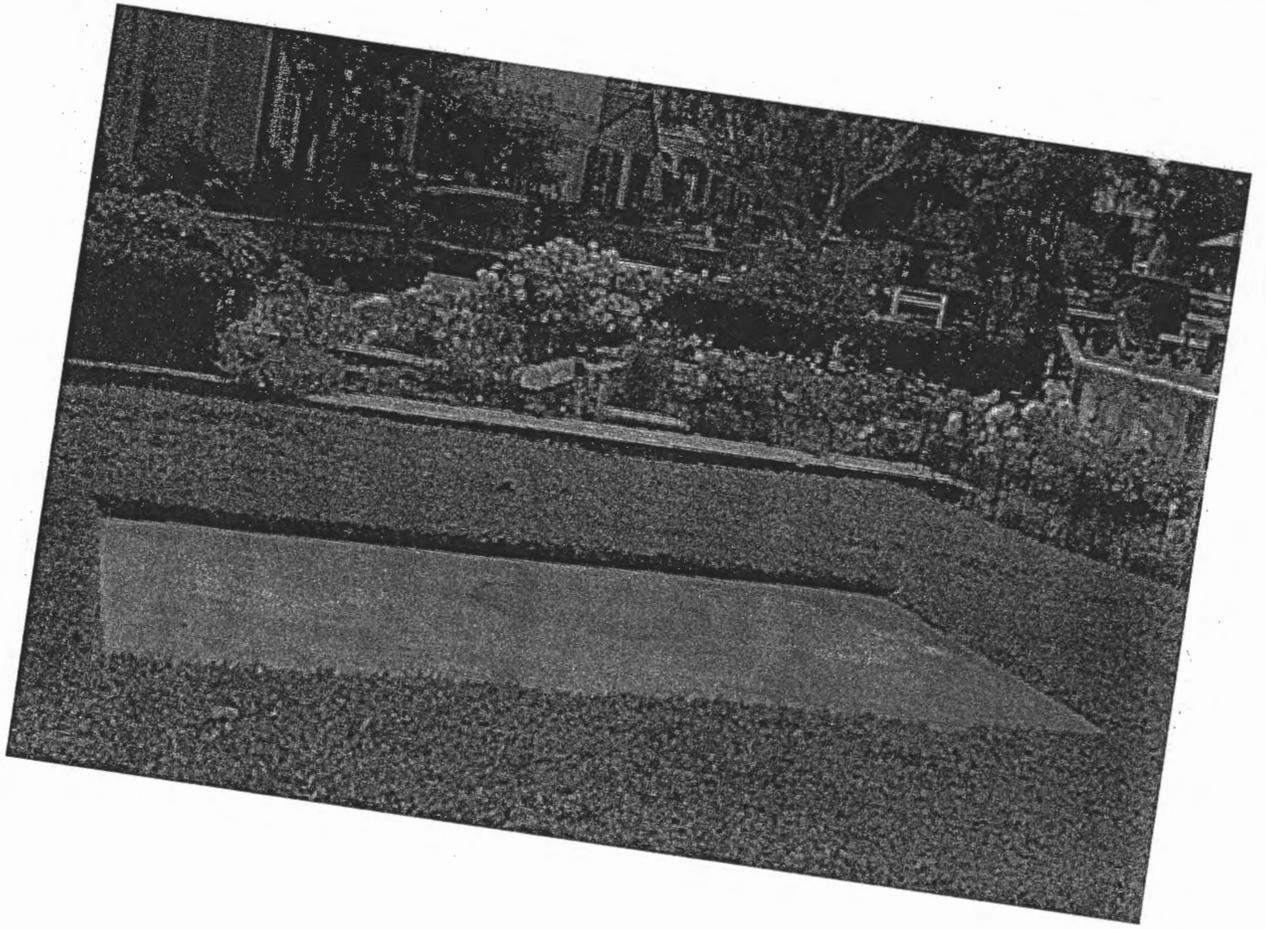


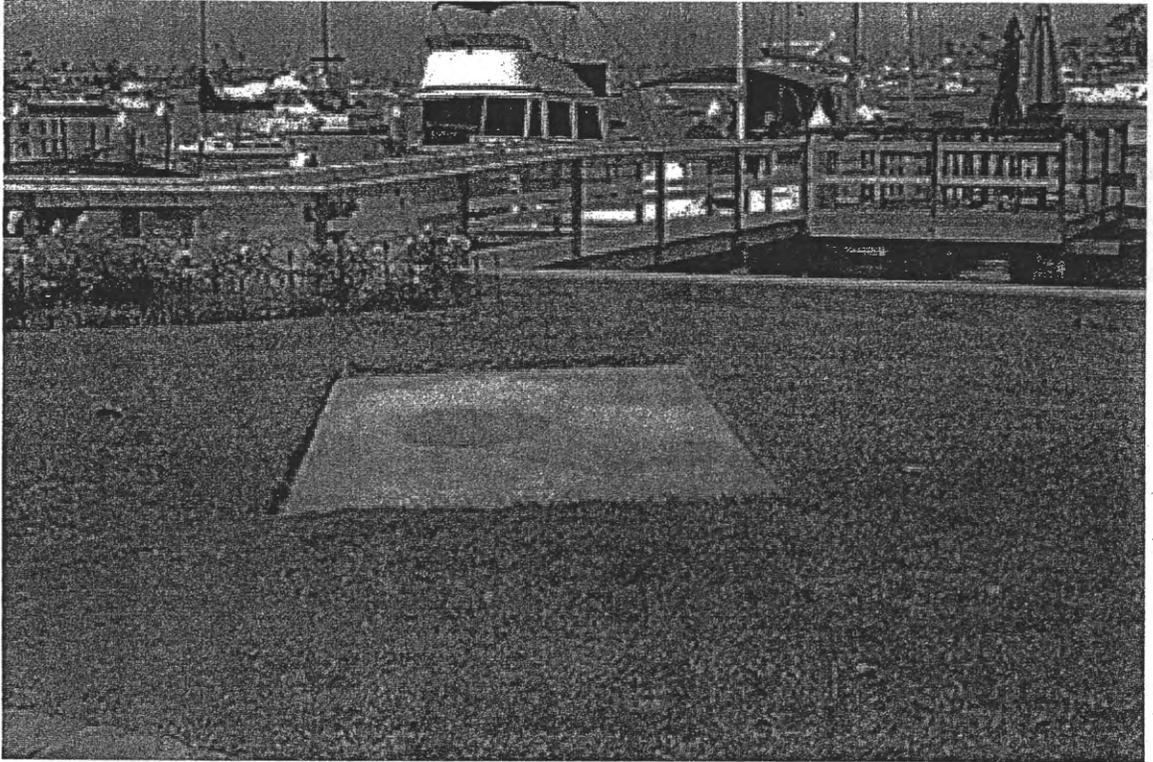












Date of comments: September 1, 2016
Agenda Item: th21c-9-2016
Application No.: LCP-5-NPB-15-0039-1
My position: IP not ready for certification

California Coastal Commission (attn: Liliana Roman)
South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302

RECEIVED
South Coast Region

Re: City of Newport Beach LCP Implementation Plan

SEP 01 2016

Dear Ms. Roman,

I would like to start by expressing my sincere appreciation to CCC staff for your continuing efforts to bring this Implementation Plan into compliance with the Coastal Act, and for your public outreach with four residents by phone on Tuesday.

CALIFORNIA
COASTAL COMMISSION

Nonetheless, in the absence of clear examples of how it would work, it's very difficult to engage the public in abstract rule making. As a result, I'm not sure the details of this IP have been subjected to enough public scrutiny (I know the details haven't been carefully reviewed by me) to make it ready, even as modified, for certification.

This is particularly concerning in the case of the City of Newport Beach, which, as the staff report says, is the steward of an extremely rich legacy of coastal resources, but whose local government has a long history of faulty assessment of Coastal Act issues – a poster child being the City Council's 2012 approval of development on Banning Ranch under an adopted "Planned Community Development Plan" which CCC staff (and it appears a majority of the Commission) found very inconsistent with Coastal Act policies.

Furthermore, it is my understanding that once certified, if following the IP is discovered to have unexpected consequences, not even the Commission can require changes to it. Hence, given the City's problematic history of recognizing on its own potential Coastal Act issues, it seems particularly important that the details of this IP be subjected to close scrutiny, including by members of the public from outside Newport Beach whose interests it is expected to protect. Despite the assertion in the preamble to the staff report that the IP is the result of "extensive deliberation," I do not believe detailed public scrutiny happened locally, and I am unconvinced that a single public hearing before the Commission is sufficient to complete the task.

Conversely, I do not think there is great urgency about the certification since, as I understand it, most of the Newport Beach issues that currently come before the Commission deal with harbor issues (docks and floats, for example) that will continue to burden the Commission even after an IP is certified.

Procedurally, since this is the Commission's first exposure to a complex 520 page document (and the public's first exposure to the compromise worked out between CNB and CCC staff), I think it is very important for the Commissioners and public to be properly informed as to what the consequences would be if a certification of some version of the IP is granted at the

September 8th hearing. The staff report is unclear. Would the City have to accept or reject the Commission's decision in its entirety? Or by resubmitting "a modified IP proposal" does staff mean the City could accept the September 8th certification of certain parts of the IP and come back at a future hearing with alternatives to other parts, leaving only those City-challenged passages still open to public debate?

I also have a lingering concern about the City's philosophy of creating what is essentially a duplicate zoning code that can be changed only with Commission approval, and a feeling that with time it may well diverge from the "real" zoning code amended by Council action and perhaps even by voter initiatives. It seems unnecessarily confusing to have two sets of possibly conflicting standards regarding many of the same issues and applying to the same property. I am not sure how other cities do this, but this does not seem like the best way.

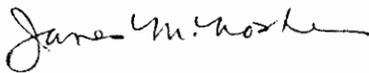
In the following Attachment, I provide more specific comments on some of the pages I have had time to review.

Due to the extreme time constraint of learning only late Monday where the IP negotiated between City and CCC staff could be viewed, and having to complete comments on it (for inclusion in an addendum) by early Thursday morning, the number of pages reviewed by me has been extremely small and frustratingly random.

While some of the issues cited, such as minor typos and the disarray of the map sections, may be corrected in the addendum, some of the problems noticed below are more pervasive and more serious – such as the reliance on the current City Zoning Code as the basis for the IP when the LUP may require compliance with the 2005 Zoning Code. In addition, given the number of problems found in the very small number of pages sampled, I suspect a similar array of problems would be found in the pages not examined. And even though some detailed sections and issues may be aired and deliberated at the September 8th hearing, most of the IP will not be discussed, and I don't think certifying the unexamined, but quite likely problem-riddled sections is in anyone's best interest.

In summary, despite the hard and good-faith efforts of the City and CCC staff, I feel the IP being presented to the Commission is in no way ready for certification.

Yours sincerely,



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Attachment: Specific Comments on CCC posting

(page numbers refer to the items as posted online on August 26, 2016)

Staff Report

1. Page 1: The idea that the IP is the product of “*extensive deliberation by the City Planning Commission, Harbor Commission and City Council*” may give Commissioners a false impression about the degree of public exposure to the development of the proposed IP. The IP was reviewed, with very little public input or attendance, by a committee including three Council members and three Planning Commissioners at 19 mostly monthly afternoon boardroom type meetings between April 24, 2014, and August 27, 2015, and some of the details were discussed at two evening study sessions of the Planning Commission (September 3 and 17, 2015), but the actual approval hearings were extremely perfunctory with no debate or deliberation on the final massive staff-generated product. And it was never deliberated by the Harbor Commission. They merely heard a brief presentation about the benefits of an IP which they received and filed.
2. Page 1, last line of paragraph 2: “*The result of this collaboration is an IP, as suggested to be modified, that attempts to address the issues raised by in a manner that is consistent with, and is adequate to carry out the certified LUP.*” Something is missing between “*by*” and “*in.*”
3. Page 1, last sentence: See cover letter: if the City should “*choose to resubmit a modified IP proposal for future Commission consideration,*” would that be regarded as a completely new application, with all issues still on the table? Or would the parts the City does not attempt to modify be regarded as previously settled?
4. Page 3: “*Planned Community*”: the existence of Planned Communities is mentioned four times in the LUP, but what they are is not explained. Like the main IP, they are sets of development standards, but none of them have been previously reviewed by the Commission for consistency with the LUP or the Coastal Act.
5. Page 10: The suggested motion is unclear as to exactly what is being certified. Is it Exhibits 1 and 2, or all three exhibits? This is significant because Exhibit 3 repeats pages within Exhibit 2, and if the two differ (as they did as initially posted) it is unclear which prevails.
6. Page 12: “*the IP is not part of the City’s Municipal Code, but instead is an independent document*”: CCC staff may be not completely understanding CNB staff’s intentions. The present NBMC ends with “*Title 20 (Planning and Zoning).*” The IP is largely a copy of that, with “*21*” simply being substituted for “*20*”. It would appear the intent *is* to add the IP to the NBMC as Title 21.

7. Page 16: This lists an “Appendix C. Eelgrass Protection and Mitigation Plan for Shallow Waters in Lower Newport Bay: An Ecosystem Management Plan” as being part of the City’s submittal, yet in Exhibit 2 it appears to have been replaced with a “C. Oceanfront Encroachment Policy Guidelines.”
- What happened to the “Eelgrass Protection and Mitigation Plan”? I am unable to find any explanation in the staff report.
 - Is “C. Oceanfront Encroachment Policy Guidelines” an exact copy of what was approved in 1991 or a modification/adaptation of it?
 - What is the significance of regulations like the Oceanfront Encroachment Policy being in appendices and not being referenced in the main body of the IP? Do the rules in appendices have less importance? How is one sure they are included in the flow of approving CDP’s (whatever that flow may be)?

Exhibit 1: Proposed Coastal Zoning Map

- I notice the Commission is being asked to “zone” the property on the north side of Coast Highway at the extreme west end of the Oxbow Loop/Semeniuk Slough (7204 Coast Hwy W, currently developed as a trailer park) as OS (Open Space) even though the according to the City’s GIS mapping the certified LUP specifies the land use as RM-D/OS.
 - Is this a conscious effort to make the present use non-conforming?
 - If not, shouldn’t it be designated as part of the Mobile Home Park Overlay District of Section 21.28.020?
 - Will other properties be “rezoned” as well? If so, have the property owners been notified?

Exhibit 2: Proposed Implementation Plan Submittal including Appendix IP Text with Coastal Commission Suggested Modifications, including Suggested Modifications to IP Appendices

- Page 9:
 - Under Section 21.10.030(C), I liked the idea that in the case of a conflict between regulations the one “most protective of coastal resources” would prevail. Why has CCC staff deleted this here and on page 103?
 - Regarding “21.10.040 – Applicability of Implementation Plan,” the corresponding section of the City Zoning Code (NBMC Sec. 20.10.040) contains a provision allowing the City Council to exempt the City’s own projects from the Zoning Code. I am very pleased there is no comparable exemption proposed here, but I

am very concerned about the City's ability to adequately self-police itself in issuing CDP's for its own projects.

2. Page 56: In the tables on pages 56 & 57, it appears CCC staff has *inserted* a reference to a "Back Bay Landing Planned Community Development Plan (PC-9)" which a footnote on page 57 says "*is incorporated as an attachment to this chapter.*" This is mentioned again on page 70. Yet on page 84, CCC staff has *deleted* CNB staff's requested statement that "Back Bay Landing (PC-9)" is being incorporated reference. Moreover, I can find no attachment to Chapter 21.26, although on page 389 there is reference to a map called "PC-09 – Bayside Village Boat Launch and Storage," accompanied by a very old site plan on pages 452 and 484. Yet on page 83, I see "Bayside Village Boat Launch and Storage (PC-09)" has been deleted.
 - a. What is going on here??
 - b. Is a Back Bay Landing Development Plan in or out?
 - c. If it's in, where is the attachment that's being certified? Is it the PC-09 on page 57, and is that old map consistent with and adequate to implement the recent amendments to the LUP?
3. Page 56: Beginning with Section 21.26.045 (Planned Community Coastal Zoning District Land Uses) the IP seeks certification of development standards for a large number of "planned communities" deviating from the normal city-wide standards. It troubles me that those standards were adopted locally and, prior to this, with no Coastal Commission verification that they comply with the Coastal Act or the policies agreed to in the City's LUP. For example, with reference to the comments on pages 100 and 126, below they may allow heights inconsistent with LUP Policy 4.4.2-3. I have no confidence they have each, individually, been given the same scrutiny as the city-wide standards, nor that all the items in the larger individual PC texts that may implicate Coastal Act issues have been addressed in the IP.
4. Page 83: Does subsection "C. Other Planned Communities" need to be more explicit about what the significance is of "certifying" what purport to be old site maps. How will they guide the issuance of future CDP's in these areas? This seems to be more than anything simply an acknowledgement of the disarray regarding what the City of Newport Beach regards as a "planned community."
 - a. For example, although development at "PC-51 Marina Park" has taken place under a Commission approved CDP, it's not clear its local zoning status as a "planned community" (dating back to ??) was ever formally updated, and according to the City's online records the present "PC-51" has no adopted PC text (regulations).

- b. Similarly, it's unclear how something like "Armstrong Garden (PC-47)," a retail nursery, came to have a separate identity as a planned community from "Newport Beach Country Club (PC-47)" which it seems to have, at some time and some reason, been spun off from.
 - c. Regarding the extremely important "Upper Newport Bay Regional Park (PC-44)," which the City's online records also say has no adopted PC text, is the IP clear as to who holds permitting authority over this? Isn't much of it State and Orange County land?
5. Page 100: The "Height (H) Overlay District" of Section 21.28.060 was added to the corresponding section of the local City Planning and Zoning Code in recent years. I don't recall the CCC adding it to the City's LUP. If that has not happened, the inclusion of this section in the IP seems inconsistent with LUP Policy 4.4.2-3, which promises to preserve public views by restricting buildings to the envelopes allowed under the height, setback, floor area, lot coverage, and building bulk regulation of the Zoning Code in effect as of October 13, 2005. Building to the heights the City now allows in the Height Overlay District is inconsistent with the 2005 regulations. I suspect this entire section needs to be stricken. I am similarly unable to find anything in the proposed IP assuring me CDP's issued under it will be compliant with the setback, floor area, lot coverage, and building bulk regulations in effect on October 13, 2005. In fact I am unable to find any mention in it of lot coverage or building bulk.
6. Page 126: The height limits in Newport Beach were locally enacted, just prior to the Coastal Act, in response to citizen concerns about the area losing its visual character, with Ordinance 1408 (establishing as an urgency matter a Shoreline Height Limitation Zone in 1971) and Ordinance 1454 (in 1972, establishing limits applying to the remainder of the City, including the remainder of what would become the Coastal Zone).
 - a. Policy 4.4.2-3 in the certified LUP appears to be a promise to continue to preserve the visual character of the city by ensuring development stays within the building envelopes allowed under "*the height, setback, floor area, lot coverage, and building bulk regulation of the Zoning Code in effect as of October 13, 2005.*" [there are similar "freezing" requirements in LUP Policy 2.9.3-3 on off-street parking and Policy 3.1.1-18 on oceanfront setbacks]
 - b. Despite this directive, the City's proposed IP standards for height, setback, and floor area are based on the *current* Zoning Code, not that in effect on October 13, 2005, while building bulk does not appear to be addressed at all ("lot coverage," in 2005 may have been explicitly regulated only in "planned communities").
 - c. The current City height standards, and method of measuring heights, differ from those in effect on October 13, 2005, hence the proposed IP is inconsistent with the LUP.

- i. In particular, in C.1 on page 126 contains the phrase “*Height limits established as part of an adopted planned community shall not be subject to this subsection*” which was *not* part of the City Zoning Code in 2005 and which appears to contradict a phrase that *was*: regarding planned community districts the 2005 code said “*in no event shall the development exceed the height limits permitted in the height limitation zones*” (former NBMC Section 20.65.050).
 - ii. These post-2005 changes have proven very problematic to citizens trying to ensure that the declaration of “planned communities” is not being used to circumvent the city-wide (and possibly even the Shoreline Height Limitation Zone) height standards.
 - iii. While it appears that for purposes of issuing CDP’s, the creation of new planned communities and alterations to the stated height standards in existing planned communities would require Coastal Commission certified amendments to the IP, the proposed language opens the door to the City’s interpretation that under this certified IP the height standards in those new or modified planned communities can exceed the citywide limits.
 1. In that regard, and recognizing some of these ambiguities, CCC staff has attempted to insert language protecting the Shoreline Height Limitation zone, but those changes are entirely within the “C. Increase in Height Limit” subsection, and the City’s interpretation is likely to be that planned communities are exempted from that subsection in its entirety.
 2. Hence the insertions may be ineffective.
7. Page 132: “pool signs” is supposed to be “pole signs”
 8. Page 133: refers to “heritage signs.” They are defined on page 375, but the procedures for designating a sign as such that exist in the City’s Planning and Zoning Code (NBMC Title 20) have not been copied into the IP (“Title 21”). Do they need to be, or does a reference to the Title 20 procedure need to be made part of the definition? [the City seems to want to avoid cross-referencing the NBMC in the IP]
 9. Page 224: Six “conditions” are listed at the bottom of the page, all of which must be met. Adding the clause in blue as a seventh numbered mandatory condition (striking the word “only), if that is indeed what is intended, would be more logical and easier to understand.
 10. Page 253: There was great uncertainty in the phone conversation with CCC staff as to what the intended effect of “E. Use of Beaches at Night Beach Hours” is. All parties should understand that since February 1, 1973, the City of Newport Beach has changed beach hours and regulations (generally “tightening” them) without Coastal Commission

review or approval. I would hope the IP ensures a roll back to the rules least restrictive on public access to the public beaches. Does that need to be clarified?

11. Page 294: There are subsections numbered 1 – 3 under “C”.
 - a. Shouldn't each set of three have a separate heading so they can be referred to unambiguously?
 - b. As to the “3” in the second set, condominium subdivisions of duplexes are typically (and quite frequently) heard by the City's Zoning Administrator. I don't know if there is a Coastal Act issue with them, but the applicants are rarely told there is any need to ask or are told the CCC will review the subdivision when considering the CDP for construction (or reviewing the exemption for compliance with the Categorical Exclusion Order). Is having this language in the IP expected to change any of that?
12. Page 295 (long paragraph near the top): The Newport Beach City Council has seven members, so one-third would generally be understood to be 3 (not 2) members.
13. Page 296: In Part 2, should “*shall*” be “*may*”? Part 1 appears to set up rules for mandatory oversight by the Executive Director of the Coastal Commission, but a “*shall*” in Part 2 means the City can ignore them simply by asking to (and the Executive Director can't refuse to relinquish his or her authority). What is the point of having Part 1 if the City never has to follow it?
14. Page 309: Why does it say “Commission” and “Council” in a(1) and a(2), but “Planning Commission” and “City Council” in a(3) and a(4)? Is b(1) intended to mean that to appeal to the Coastal Commission there is no fee paid to the City? Or no fee at all? In any event since this relates to appeals to the Coastal Commission, shouldn't the fee be under Section 21.64.035? And is there a fee for appeals filed *within* the City (that is ones made in accordance with a(1) or a(2)? Doesn't that need to be specified?
15. The presentation of maps beginning on page 390 is completely baffling to me.
 - a. For example on page 441, I find Map S-14 as expected in the Table of Contents on page 388. It is followed on page 442 by Map CE-1, which is perhaps understandable since page 388 indicates maps P 1, P2 and P3 have been deleted by CCC staff. However, it also says Map CE-1 has been deleted, yet I see the supposedly deleted Maps CE-1 through PT 1 (but not P1 through P3) on pages 442 through 449, followed on page 450 through 452 by PC-1, PC-7 and PC-09. And on page 483, I inexplicably find a second copy of PC-7, again followed by PC-09 but this time preceded not by PC-1 or PT 1, but by “Specific Plan 7 - Santa Ana Heights (Area within Coastal Zone)” – something that does not seem to appear in the Table of Contents at all – and followed by more possibly duplicate maps through page 497.

- b. I have no idea how most of these maps relate to the IP, what the significance of certifying old “site plans” is, or what might be the significance of certifying multiple copies of what same to be the same maps.
 - c. Are some of what appear to be duplicates actually the versions submitted by CNB staff compared to versions modified by CCC staff? If so, how can the Commission or the public know which are which, and what modifications were made?
 - d. I am particularly baffled by the “Area Maps” of Section 21.80.010. These seem to be intended to be intended to assign names to some, but not all the areas of the Coastal Zone. And the names do not appear to have their normal connotations. For example, for most people “Buck Gully” is the name of an extended physical feature of coastal significance, but per Map A-3 it appears denote instead only a small set of specific private parcels. And some of the names may not be used in the IP at all: I find map “A-14” referenced on page 100, but I can’t find references to any of the others.
 - e. Finally as CCC staff appears to recognize, the maps posted for certification do not appear to reflect the changes in the Coastal Zone boundary approved by the Commission in April. Would certifying these move the boundary back?
16. Page 390: The name “Grand Canal” is printed three times where only once would seem to be needed.
17. Page 512: What is the significance of this page saying “City of Newport Beach Wayfinding & Directional Signage Program Initial Design and Locations”? It looks like a placeholder for something yet to be determined. What does “certifying” a placeholder signify?

Exhibit 3: IP Maps with Coastal Commission Suggested Modifications

- 1. This seems to be the same as pages 387-389 of Exhibit 2.
- 2. I understand this is being provided for the convenience of the Commission, but in this version “21.80.045 Permit and Appeal Jurisdiction Maps” is crossed out, whereas on page 387 it is not.



CITY OF NEWPORT BEACH

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VIA ELECTRONIC MAIL AND USPS DELIVERY

September 1, 2016

Mr. Steve Kinsey, Chair
California Coastal Commission
South Coast District Office
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416

Subject: Item No. Th21c – City of Newport Beach Implementation Plan (LCP-5-NPB-15-0039-1)

Dear Chair Kinsey;

The City of Newport Beach (City) is very pleased to have the final component of the City's Local Coastal Program (LCP) before the California Coastal Commission (CCC). We believe this is a significant achievement for both the City and the CCC.

The City's Implementation Plan is the product of an extensive review and collaboration effort between City and CCC staffs. This process began in 2012 when key issues were identified and ideas were exchanged to address them. After the public review draft Implementation Plan was released in February 2015, a series of meetings occurred from March to September 2015 between the City and the CCC in an effort to obtain consensus on policies, and streamline the CCC staff's review time. This collaboration continued after the Implementation Plan was formally submitted to the CCC in November 2015 and continues to this day. We extend our sincere thanks and appreciation to Acting Executive Director Jack Ainsworth, Deputy Director Sherilyn Sarb, and her staff for working diligently with us in completing this document for your review and action.

The Implementation Plan contains 191 code sections, and your staff is recommending modifications to 146 of these sections. The majority of these modifications resulted from our collaborative work efforts, and they are mutually agreeable. However out of the 146 sections with suggested modifications, there are three topical sections with suggested modifications that we believe will result in significant and detrimental conflicts with the City's policies and regulations. We also believe that these issues are significant enough to undermine support for LCP certification in the community and jeopardize its adoption by the Newport Beach City Council.

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The three sections of concern are:

1. Bluff (B) Overlay District (IP Section 21.28.040)
2. Natural Landform and Shoreline Protection (IP Sections 21.30.15, 21.30.030, and 21.30.060)
3. Public Beaches (IP Section 21.48.055)

Each section is discussed further below.

1. Bluff (B) Overlay District (Section 21.28.040 – found in Exhibit 2, Pages 90-99)

The suggested modifications to IP Section 21.28.040 (Bluff (B) Overlay District) essentially sets aside the years of intensive investigation and analysis that the City used to develop bluff regulations that are specific to unique geographic areas. We note that these regulations have successfully controlled bluff development in the City, since their adoption six years ago.

Coastal bluffs are a prominent landform in Newport Beach and are considered significant scenic and environmental resources which are to be protected. Beginning in The Bluffs Planned Community in early 1960s, the bluffs above Upper Newport Bay were preserved as open space. The later Upper Newport Bay planned communities of Park Newport, Harbor Cove and Castaways also preserved the bluffs as parkland and other forms of open space. However, in the City's older areas, including Dover Shores, Corona del Mar, Shorecliffs, and Cameo Shores, the bluffs are within conventional single-family residential subdivisions. Development on these lots occurred mainly on a lot-by-lot basis and there was no comprehensive plan to control bluff development.

Following the certification of the Coastal Land Use Plan (CLUP) in late 2005, the City began a process to develop regulations for the protection of coastal bluffs in the older areas of the City, both inside and outside the Coastal Zone.

Establishing regulations protecting coastal bluffs presented many challenges:

- **Diverse Geographic Settings.** Bluffs are located in a range of geographic settings, including ocean-facing bluffs along the shoreline of Corona del Mar, Shorecliffs, and Cameo Shores; bluffs overlooking Upper Newport Bay; and bluffs overlooking the Newport Harbor in Irvine Terrace and Corona del Mar.
- **Varied Extent of Landform Alteration.** Some bluffs remain pristine, while others have been physically or visually modified in their entirety by structures, landform alteration, or landscaping.
- **Varied Subdivision and Development patterns.** Many bluffs are protected as dedicated open space, while others remain in private ownership. In some areas, development is permitted on the bluff face to provide and protect coastal views

from public areas across the development, while some areas are conversely set back from the bluff edge to protect public views looking up at the bluffs.

It quickly became apparent to the City that a single standard could not properly address these issues. Therefore, the City conducted a block-by-block, and in some cases, a lot-by-lot, investigation of each bluff area. After considerable analysis and public input, the City adopted the Bluff Overlay District into its Zoning Code in 2010.

A major component of CLUP coastal bluff policies is to keep development within the "Predominant Line of Existing Development" or "PLOED." To establish the PLOED, the Bluff Overlay uses different measurement methods appropriate to each geographic/development setting, including distance from property lines, and distance from curb and contour lines. PLOEDs are established for principal structures (i.e., a residence) and for accessory structures (e.g., decks, patios, pools, spas, fences, walls, and landscaping).

The PLOEDs are used to establish distinct Development Areas, which determine what can be developed where. There are three Development Areas:

- Area A allows residences;
- Area B allows accessory structures; and
- Area C is the most restrictive and allows a limited range of accessory uses, including property line fences/walls, landscaping/irrigation, drainage devices, benches, on-grade stairs and trails, and underground utilities.

The Bluff Overlay Development Areas also reconcile two CLUP policy provisions. The policies required all new bluff top development located on a bluff subject to marine erosion to be sited in accordance with the PLOED in the subject area. However, the policies also call for maintaining a 25-foot bluff edge setback for principal structures and a 10-foot bluff edge setback for accessory structures.

As an example when the City established the development areas for the Shorecliffs and Cameo Shores bluffs, which are subject to marine erosion, the PLOED was used for delineating the development area boundaries. This methodology respects the 25-foot and 10-foot bluff edge for principal and accessory structures, respectively, when each bluff area is reviewed in its entirety. The City believes that this effectively implements both provisions of the CLUP policies.

However, the Bluff Overlay Development Areas are only a starting point in the City's regulations. While the Development Areas establish what development is permissible in the area, the proposed development may be subject to additional restrictions. Through the coastal development permit process, development may be further restricted by resource and protection regulations in the Implementation Plan. For example:

- A Visual Impact Analysis, required by IP Section 21.30.100 where appropriate, will restrict building placement in a Development Area to protect a public view;
- If an ESHA is present, Development Areas will be reduced to protect the resource and provide a buffer (IP Sections 21.28.040 (O) and 21.30B.030);
- A required Public Access Impact Analysis, required by IP Section 21.30A.040, will limit or prohibit the use of fences if they impact public access; and
- A Geologic Stability, Erosion, and/or Coastal Hazard report, required by IP Section 21.30.015, will pull development further landward to avoid the need for protective structures where appropriate and feasible.

The Bluff Overlay District along with other Implementation Plan resource protection and safety regulations and procedures will be used together on a project-by-project basis to implement the bluff protection and other policies of the CLUP.

The City also takes issue with the application of bluff edge setbacks that are intended for bluffs subject to marine erosion to areas that are not subject to marine erosion. These particular areas are Dover Shores and Cliff Drive.

The bluffs below Dover Shores are along the Upper Newport Bay, an estuary with no appreciable marine erosion (see Attachment D). Furthermore, Dover Shores was developed in the 1950s and the rear property lines generally follow the bluff edge. The bluff faces are protected open space within the Upper Newport Regional Park. The rear setbacks are either 10 or 20 feet, depending on the location, from the rear property line. These setbacks have been in place since the 1950s and establish the PLOED for principal and accessory structures. Applying 25-foot setbacks in this area would make most Dover Shores homes nonconforming. The shallow lot depths in this area limit the available development area, so there is little opportunity to pull back development. Geotechnical stability and erosion reports required by the Implementation Plan will ensure that any future development will not impact the adjacent bluffs.

The suggested modification would also apply bluff edge setbacks intended for bluffs subject to marine erosion to the homes along Cliff Drive above Mariners' Mile (see Attachment E). These lots are over 800 feet from the shoreline of Newport Harbor and are clearly not subject to marine erosion. Furthermore, these are hillsides that do not meet the definition of a coastal bluff. They do not form a high bank or bold headland nor do they have a broad, precipitous or rounded cliff face. As they are more than 800 feet from the shoreline of Newport Harbor, they do not overlook a beach or shoreline. These homes are either located on pads immediately adjacent to the hillside or terrace down the hillside. Applying marine erosion bluff edge setbacks to these homes would make 100% of the homes nonconforming and reduce their buildable area by 25% to 30%.

The City's Bluff Overlay District accomplishes what any well-considered implementing regulation should do, which is to take broad, generalized policies and apply them to site-

specific situations. Therefore, the City respectfully recommends that the Coastal Commission adopt the modifications contained in Attachment A, which retains the Development Areas and other components of the Bluff Overlay District as proposed by the City.

2. Shoreline Protective Devices (Sections 21.30.15, 21.30.030, and 21.30.060 – found in Exhibit 2, Pages 114-119)

The suggested modifications to IP Sections 21.30.015, 21.30.030, and 21.30.060 would place severe restrictions on the repair, maintenance, and alteration of existing shoreline protective devices. We believe that these suggested modifications have been adapted from the Coastal Commission's *Sea Level Rise Policy Guidance* document which has laudable goals such as: to limit the life and require the removal of shoreline protective devices that threaten the survival of wetlands and other habitats, block or impede access to beaches, trails and other recreational areas, encroach on public lands, or disrupt the natural shoreline processes. However, very few of these situations apply to Newport Beach.

There are few ocean-facing shoreline protective devices in Newport Beach. The Balboa Peninsula has 5 miles of wide, sandy beaches and a limited number of protective devices; most of which protect public parking and parks. There are also a limited number of shoreline protective devices in the communities of Corona del Mar, Shorecliffs, and Cameo Shores, which protect single-family homes. Newport Beach does, however, have over 22 miles of bulkheads along the shoreline of Newport Harbor.

It is important to understand that Newport Harbor is one of the largest small craft harbors on the West Coast with over 5,000 boats berthed at 2,119 commercial slips and side ties, 1,221 bay moorings, and 1,230 piers. The typical Newport Harbor bulkhead age is 76-86 years; overall, the bulkheads are holding together fairly well with only surficial cracks with some concrete spalling and evidence of corroding rebar. The long-term maintenance of these bulkheads is essential to the preservation of Newport Harbor and its many coastal recreational opportunities and amenities for the general public.

Newport Harbor is a highly urbanized waterfront setting, with little or no undeveloped upland areas adjacent to the water. With the exception of public beaches and parks, most lateral access is provided landward of the bulkheads; therefore there would be no impact to lateral public access by maintaining the existing bulkheads where they are located. Vertical public access will continue to be provided by public street ends and at public parks and beaches. As public viewpoints are at public beaches and parks and along lateral public access ways, public views will not be impacted by the retention of the bulkheads. Finally, the bulkheads do not block the flow of sand to beaches.

Sea level rise threatens development along Newport Harbor. Retreat and avoidance are not options as they are in more rural areas of the State. The low elevation of the Peninsula and harbor islands and development patterns provide no safe areas for

retreat. Adaptation requires the ability to retain, maintain, and adapt these bulkheads, similar to the Ports of Los Angeles and San Diego.

An excellent example is Balboa Island, for which the City is investigating a 9-inch cap extension to increase the top of wall elevation to provide normal over-topping flood protection until 2025. This is only an interim solution, and the City is investigating long-term solutions which will most likely include additional bulkhead extensions, new seawalls designed to maintain public access and views, raising pad elevations, groundwater dewatering system, and a tide gate.

Goal A.20a of *Sea Level Rise Policy Guidance* provides for situations such as those in Newport Harbor:

"On intensely developed, urbanized shorelines, if the removal of armoring would put existing development at risk and not otherwise result in significant protection or enhancement of coastal resources, it may be appropriate to allow properly designed shoreline armoring to remain for the foreseeable future, subject to conditions that provide for potential future removal in coordination with surrounding development. However, the proper short term responses, longer term adaptation measures, and mitigation of on-going resource impacts should be determined through updated context-specific LCP planning and consideration of the existing rights and responsibilities of development in the area (see strategies A.21 – A.25)."

Our recommended language regarding shoreline protection is included in Attachment B. The proposed regulations incorporate the vast majority of the modifications recommended by your staff; however most importantly, the regulations allow for the repair, maintenance and alteration of existing bulkheads in Newport Harbor.

Therefore, the City respectfully recommends that the Coastal Commission adopt the modifications contained in Attachment B.

3. Public Beaches- Beach Hours (Section 21.48.055.E found in Exhibit 2 on Pages 253-255)

Since 1947, the City has regulated and enforced the hours of use of all its public beaches at night for the preservation of public health, peace, and safety. Currently, the beach hours are from 6:00 a.m. to 10:00 p.m. We note that our beach hours are identical to Huntington State Beach and are longer than Crystal Cove State Beach which are 6:00 a.m. to Sunset.

The City's 8 miles of sandy beaches are enjoyed by nearly 10 million people each year, with the majority of the visitors coming in the summer months. In comparison, Disneyland attracted 18.2 million visitors in 2015, and the entire population of Orange County is just over 3 million. The City of Newport Beach welcomes all to enjoy its coastal resources and provides public access, parking, and services in a myriad of

ways, and the yearly 10 million visitors to the beaches alone are a validation of this access success story.

In Attachment C, we are simply proposing that the City's current beach hours of 6 a.m. to 10 p.m., be reflected in the IP. Additionally, we have included language that states that any changes to those hours would require a Coastal Development Permit. It is our understanding that the Coastal Commission would be responsible for reviewing and taking action on a Coastal Development Permit on any future change in the beach hours. The proposed language also allows for temporary closures for emergencies and public nuisances.

Therefore, the City respectfully recommends that the Coastal Commission adopt the modifications contained in Attachment C.

Given the magnitude of this Implementation Plan, we are very pleased that there are only three areas where we disagree with your staff's recommendations. We believe that the adoption of this IP with the City's recommendations attached herein will result in its successful certification. Thank you very much for considering these requests, and we will be in attendance at the public hearing and available to answer any questions you may have.

Sincerely,


Kimberly Brandt, AICP
Director

Attachments: City suggested IP modifications

- A. IP Chapter 21.28
- B. IP Chapter 21.30
- C. IP Chapter 21.48
- D. Dover Shores photos
- E. Cliff Drive photos

cc: Jack Ainsworth, Acting Executive Director
Sherilyn Sarb, Deputy Director
Karl Schwing, Coastal Program Manager
Liliana Roman, Coastal Program Analyst
Dave Kiff, City Manager

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1. COASTAL BLUFFS

C. **Development Area Defined.** For the purpose of this section the development area of a lot is an area delineated for the purpose of regulating the placement and location of structures. Each lot within the B Overlay District shall be divided into two or more development areas. Development areas are delineated on the Development Area Maps attached to the ordinance codified in this Implementation Plan and are consistent with the development areas listed in subsection (D) of this section, unless modified by pursuant to

section (O) of this section. The setbacks provided in Tables 21.18-2 and 21.18-3 in section 21.18.030 (Residential Coastal Zoning Districts General Development Standards) are not used to determine development areas, but are only used to determine the minimum floor area limit for the lot, if applicable.

CNB-1

Delete the word "surficial." Sub-surface grading is sometimes necessary within Area B in order to implement CLUP Policies 4.4.3-5, 4.4.3-6, 4.4.3-8, 4.4.3-9, and 4.4.3-10.

Development Area A — Principal and Accessory Structures. Area A allows for the development including grading and use of principal and accessory structures. Accessory structures allowed in Areas B and C are allowed in Area A.

Development Area B — Accessory Structures. Area B allows for the development including surficial grading and use of accessory structures listed below. Principal structures are not allowed.

a. Allowed Accessory Structures. The following accessory structures are allowed in Area B:

- i. Accessory structures allowed in Area C are allowed within Area B.
- ii. Barbecues.
- iii. Decks.
- iv. Detached or attached patio covers (solid or lattice).
- v. Fences, walls, and retaining walls in compliance with Section 21.30.040 (Fences, Hedges, Walls, and Retaining Walls).
- vi. Fireplaces and fire pits.
- vii. Gazebos.
- viii. Outdoor play equipment.
- ix. Patios.
- x. Platforms.
- xi. Porches.
- xii. **Above ground Spas and hot tubs.**
- xiii. **Swimming pools (25' setback required on bluffs subject to marine erosion).**

CNB-2

Delete "Above ground spas" and "25' setback required on bluffs subject to marine erosion." This modification would make numerous structures nonconforming.

CNB-3

Move subsections xvi, xvii, and xviii to subsection (3)

- xiv. Terraces.
- xv. Similar structures.

- ~~xvi. Benches.~~
- ~~xvii. Guardrails and handrails required by building code.~~
- ~~xviii. Property line fences and walls, not including retaining walls.~~

b. Development standards for accessory structures. The following development standards apply to Area B:

- i. Covered accessory structures (e.g., trellis, gazebos, patio covers) shall not exceed twelve (12) feet in height from existing grade or finished grade or exceed four hundred (400) square feet in cumulative total area.
- ii. Retaining walls shall comply with Section 21.30.040 (Fences, Hedges, Walls, and Retaining Walls).

- iii. ~~Surficial grading for at-grade structures only; no caissons or accessory structures with deepened foundations allowed in Area B.~~

3. ~~Development Area C—Limited Accessory Structures.~~ Area C allows for the development and use of limited accessory structures. The following accessory structures are allowed in Area C:

- ~~a. Benches.~~
- ~~ba. Drainage devices, only if not feasible to be placed elsewhere on the site.~~
- ~~c. Guardrails and handrails required by building code.~~
- ~~db. Landscaping/temporary irrigation systems.~~
- ~~ec. On-grade public trails.~~
- ~~fd. On-grade public stairways.~~
- ~~g. Property line fences and walls, not including retaining walls.~~
- ~~he. Underground utilities, only if not feasible to be placed elsewhere on the site.~~
- ~~i. Similar structures.~~

CNB-4

Delete subsection iii. Sub-surface grading is sometimes necessary within Area B in order to implement CLUP Policies 4.4.3-5, 4.4.3-6, 4.4.3-8, 4.4.3-9, and 4.4.3-10.

CNB-5

Retain as originally submitted.

- i. Development Area A. Between the forty-eight (48) foot contour line* and the property line adjacent to Ocean Boulevard.
 - ii. Development Area B. Between the forty-eight (48) foot contour line and the thirty-eight (38) foot contour line.*
 - iii. Development Area C. All portions of the lot not located in Area A or B.
 - iv. Additional Development Standards. No fences or walls in Area C.
 - d. Ocean Boulevard (3601-3729).
 - i. Development Area A. Between the property line adjacent to Ocean Boulevard and the seaward extent of the existing development area.
 - ii. Development Area C. All portions of the lot not located in Area A.
 - iii. Additional Development Standards. New development shall not extend further onto the bluff face beyond existing development.

7. **Map B-7—Shorecliffs.**

CNB-6

Delete. Area A and Area B provides required bluff edge setbacks.

a. Shorecliff Road.

i. Development Area A. As indicated by the specified distance (in feet) from the front property line on the development area map, but not less than 25 feet from the bluff edge for principal structures and major accessory structures such as guesthouses, and pools and not less than 10 feet from the bluff edge for accessory structures.

- ii. Development Area B. Between the seaward boundary of Area A and a line established by a ten (10) foot setback from the bluff edge (not all lots have an Area B).
- iii. Development Area C. All portions of the lot not located in Area A or B.
- iv. Additional Development Standards. If Area A overlaps Area B, the area of overlap shall be regulated as Area A. No fences or walls shall be allowed in Area C.

8. **Map B-8—Cameo Shores.**

a. Brighton Road.

- i. Development Area A. As indicated by the specified distance (in

CNB-7

Delete. Area A and Area B provides required bluff edge setbacks.

~~feet from the front property line on the development area map, but not less than 25 feet from the bluff edge for principal structures and major accessory structures such as guesthouses, and pools and not less than 10 feet from the bluff edge for accessory structures.~~

CNB-8

Delete. Dover Shores and Cliff Drive are not subject to marine erosion.

- ii. Development Area B. Between the seaward boundary of Area A and a line established by a ten (10) foot setback from the bluff edge (not all lots may have an Area B).
- iii. Development Area C. All portions of the lot not located in Area A or B.
- iv. Additional Development Standards. If Area A overlaps Area B, the area of overlap shall be regulated as Area A. No fences or walls shall be allowed in Area C.

9. Map B-9—Upper Newport Bay Bluffs.

a. Galaxy Drive, Polaris Drive, Mariner's Drive, Santiago Drive, and Cliff Drive.

- i. ~~Development Area A. As indicated by the specified distance (in feet) from the front property line on the development area map, but not less than 25 feet from the bluff edge for principal structures and major accessory structures such as guesthouses, and pools and not less than 10 feet from the bluff edge for accessory structures.~~
- ii. ~~Development Area B. Between the seaward boundary of Area A and a line established by a ten (10) foot setback from the bluff edge (not all lots may have an Area B).~~
- iii. ~~Development Area C. All portions of the lot not located in Area A or B.~~
- iv. ~~Additional Development Standards. If Area A overlaps Area B, the area of overlap shall be regulated as Area A. No fences or walls shall be allowed in Area C.~~

*all contour lines refer to NAVD88 contours.

CNB-9

Delete (see above).

~~sements. Basements are allowed in Area A and may be constructed at an elevation (AVD88) below any specified contour elevation. Basements shall not daylight on the bluff or slope face beyond Area A.~~

- F. **Grading—All Development Areas.** ~~Grading in Development Area A is limited to the minimum necessary for the construction and placement of allowed structures. Surficial grading in Development Area B is limited to the minimum necessary for the~~

CNB-10
Delete (see above).

CNB-11
Retain (see above).

the bluff or a factor of safety greater than or equal to 1.1 for the seismic condition of the bluff, whichever is further landward; and

b. Ensure that the principal structures are safe from hazards due to erosional factors and coastal hazards for the economic life of the building.

c. ~~Ensure a minimum setback of 25 feet from the bluff edge for the principal structure and major accessory structures such as guesthouses and pools and not less than 10 feet from the bluff edge for accessory structures on bluffs subject to marine erosion.~~

~~2. Increased Development Area(s). A development area's boundaries may be adjusted through the approval of a coastal development permit in compliance with Chapter 21.62 (Coastal Development Review Procedures) to allow structures and grading not otherwise allowed. In addition to the coastal development permit findings, all of the following findings shall also be made:~~

~~a. The increased bluff development area will ensure a slope stability factor of safety greater than or equal to 1.5 at the end of the economic life of the development for the static condition of the bluff or a factor of safety greater than or equal to 1.1 for the seismic condition of the bluff or canyon, whichever is farther landward;~~

~~b. The increased bluff development area will provide adequate protection from erosion factors for the economic life of the development;~~

~~c. The increased bluff development area will be compatible and consistent with surrounding development; and~~

~~d. The increased bluff development area will not have an impact on public views or sensitive habitat areas, and is not otherwise detrimental to the general public health and welfare.~~

21.28.050 – Canyon (C) Overlay District

- A. **Applicability.** This section applies to lots located in the Canyon (C) Overlay District as indicated on the Coastal Zoning Map. All development shall comply with the applicable development standards (e.g., setbacks, height) of the underlying coastal zoning district in addition to the standards provided in this section. In situations where an inconsistency occurs between the development standards of the underlying coastal zoning district and the standards in this section the most restrictive standard shall prevail.
- B. **Uses Allowed.** Land uses allowed in the C Overlay District are all those uses allowed in the underlying coastal zoning district.
- C. **Development Stringline Setback.** Development within the C Overlay District shall not extend beyond the predominant line of existing development on canyon faces by

CNB-12

Delete "/finished floor." Finished floor is not appropriate for determining safe elevation.

2. PROTECTIVE DEVICES

by providing setbacks for principle structures that avoid the need for new or perpetuation of existing shoreline protective devices to the extent possible;

- b. The minimum required top of slab/finished floor elevation for interior living areas of all new structures shall be as established by the Flood Insurance Rate Maps recognized by the Building Division as part of flood safety requirements and maps adopted by the Council (see Section 21.30.060 (B)(3) or higher where recommended by the Coastal Hazards report required by Section 21.30.015 (F) with acknowledgement of potential need for adaption measures in the future to address flood potential and sea level rise. Notwithstanding the building elevations established by the Flood Insurance Rate Maps, the minimum required top of slab elevation for interior living areas of all new structures shall be at least 9.00 (NAVD 88).
- c. The applicant and property owner shall acknowledge any hazards present at the site, assume the risk of injury and damage from such hazards, unconditionally waive any claim of damage or liability against the decision authority from such hazards, and to indemnify and hold harmless the decision making authority against any and all liability, claims, demands, damages, costs, expenses, and amounts paid in settlement arising from any injury or damage due to such hazards;
- d. All nonconforming structures particularly when located on State tidelands or beaches available for public use shall be removed;
- e. Any existing impediments to public access shall be removed, wherever possible;
- f. New development shall protect, and where feasible, expand and complete lateral public pedestrian access along the waterfront with connectivity to beaches, street-ends and shoreline areas providing public access (see Chapter 21.30A (Public Access and Recreation).
- hg. Development shall comply with 21.30.015 (E) – Development in Shoreline Hazardous Areas and 21.30.030 – Natural Landform and Shoreline Protection, as applicable.
- h. New development and/or replacement structures shall be brought into conformity with current standards for setback from the shoreline, bluff and/or bulkhead.

DE. Development in Shoreline Hazardous Areas.

~~**General.** New development shall be sited and designed to avoid hazardous areas and minimize risks to life and property from coastal, geologic, seismic, fire, and other hazards.~~

under static conditions and 1.1 under seismic (pseudostatic) conditions for its economic life (generally 75 years). This generally means that the setback necessary to achieve a factor of safety of 1.5 (static) and 1.1 (pseudostatic) today must be added to the expected amount of bluff erosion over the economic life of the development (generally 75 years).

CNB-13

Replace "finished floor" with "top of slab."

- d. On sites with an existing bulkhead, a determination as to whether the existing bulkhead can be removed and/or the existing or a replacement bulkhead is required to protect existing principle structures or public facilities, and
 - e. Identification of necessary mitigation measures to address current hazardous conditions such as siting development away from hazardous areas and elevating the finished floor of structures to be at or above the base flood elevation including measures that may be required in the future to address increased erosion and flooding due to sea level rise such as waterproofing, flood shields, watertight doors, moveable floodwalls, partitions, water-resistive sealant devices, sandbagging and other similar flood-proofing techniques.
3. **Bulkhead Condition Report.** Where a coastal hazards report shows that an existing bulkhead on the site cannot be removed and/or an existing replacement bulkhead is required to protect existing principal structures or public facilities, the applicant shall submit a bulkhead condition report that includes the following:
- a. A statement of the preparer's qualifications;
 - b. An analysis of the condition of any existing bulkhead including whether the top elevation meets current City standards, the condition of the sheetpiles or panels, the condition of existing tiebacks and/or deadmen or similar, and any other relevant conditions;
 - c. Recommendations regarding the need for repair, augmentation or replacement of the bulkhead or any parts thereof;
 - d. If augmentation or replacement in the existing alignment is necessary, recommendations that will avoid seaward encroachment of the bulkhead;
 - d. If replacement is necessary and the existing bulkhead is not in alignment with adjacent bulkheads, recommended alternatives that will relocate the bulkhead in as much in alignment with adjacent bulkheads, and as far landward, as possible.
4. **Geologic Stability Report.** In addition to the coastal hazards report required above, Coastal development permit applications for development proposed in shoreline areas of known or potential geologic or seismic hazards shall be required to submit include a geologic geologic/soils/geotechnical report that. The geologic/soils/geotechnical report shall use the methodology in Appendix A and includes the following:

- a. A statement of the preparer's qualifications;
- b. Identification of geologic hazards affecting the site;
- c. Identification of necessary mitigation measures;

CNB-14
Delete "existing or."

- d. A certification that the:
 - (1) Site is suitable for the proposed development;
 - (2) Development will have no adverse effect on the stability of the bluff, canyon, or shoreline; and
 - (3) Development is expected to be reasonably safe from failure and erosion over its economic lifetime ~~without having to install additional stabilization features to reliance on existing or future protective structures for stability; and in the future.~~
 - (4) Adaptation options and mitigation measures have been incorporated to address potential risk without having to rely on existing or install additional protective structures in the future.

CNB-15
Delete "existing or install."

- e. An analysis of the following factors:
 - (1) Cliff Slope geometry and site topography, extending the surveying work beyond the site as needed to depict unusual geomorphic conditions that might affect the site;
 - (2) Identification of the coastal bluff or canyon edge, where applicable;
 - (3) Historic, current, and foreseeable erosion, including changes in shore configuration and sand transport;
 - (4) Geologic conditions (e.g., soil, sediment, rock types and characteristics, etc.) in addition to structural features (e.g., bedding, joints, faults, etc.). The analysis shall include slope stability/failure analyses (i.e., analyses of the possibility that bluff retreat may occur suddenly and catastrophically through slope failure) and erosion rate estimates (i.e., estimates of the possible rate at which bluff retreat may occur over time);
 - (5) Evidence of past or potential landslide conditions, the implications of the condition for the proposed development, and the potential effects of the development on landslide activity;
 - (6) Impact of construction activity on the stability of the site and adjacent area;
 - (7) Ground and surface water conditions and variations, including hydrologic changes caused by the development;

CNB-16

Retain. Needed to implement CLUP Policy 3.1.4-8.

~~existing development~~ structure and located on private land, not State tidelands. For purposes of this subsection, "existing development structure" shall consist only of a principal structure (e.g., residential dwelling, required garage, second residential unit, etc.) and shall not include accessory structures (e.g., cabanas, decks, landscaping, patios, pools, stairs, tennis courts, etc.).

b. Enlargement and Expansion of Land Areas. The construction of protective structures shall be prohibited for the purpose of ~~enlarging or expanding areas for new development or for new development.~~ **However, this shall not preclude the expansion or encroachment into coastal waters to the minimum extent necessary to repair, maintain, or replace an existing protective device that is in general alignment with any adjacent protective device(s).** Under no circumstances shall the backfill be used to create new usable land areas.

c. Use of Sand Berms and Sand Dunes. In shoreline areas, temporary sand berms and/or permanent sand dunes may be installed to protect structures from wave uprush, provided that their installation minimizes significant impacts to coastal access and resources. Temporary sand berms shall avoid all areas of existing southern foredune and southern dune scrub habitat. When feasible, nonstructural methods (e.g., dune restoration, sand nourishment, etc.) shall be used instead of shoreline protective structures.

d. Protective devices shall be designed and sited to:

- (1) ~~To be~~ as far landward as possible and within private property, where feasible;
- (2) ~~e~~Eliminate or mitigate adverse impacts to coastal resources;
- (3) ~~to m~~Minimize alteration of natural shoreline processes;
- (4) ~~to p~~Provide for coastal public access to State tidelands and recreational areas and facilities;
- (5) ~~to m~~Minimize visual impacts and maximize the enjoyment of the natural shoreline environment; ~~and~~
- (6) ~~to e~~Eliminate or mitigate adverse impacts on local shoreline sand supply;
- (7) To have the smallest footprint possible; and
- (8) Cause no reduction in public access, use, or enjoyment of the natural shoreline environment, and preserve or provide access to public recreational lands and facilities.

CNB-17

Replace with "Coastal development permits shall be conditioned to require necessary repair and maintenance to return the structure to its authorized condition, including reburial of exposed subsurface elements and/or visual treatment."

e. **Mitigation Required.** Mitigation shall be required, either through fees or other actions as applicable and feasible, for adverse impacts on local shoreline sand supply, for loss of sandy beach and other coastal habitats, and for adverse impacts to public access, visual, and other coastal resources.

f. **Periodic Monitoring Required.** Periodic monitoring of the protective device and surrounding site shall be required to examine excessive scour, erosion, or other impacts to on-site and adjacent resources, exposure of subsurface elements, as well as damage to the protective device or movement from its initial footprint. The landowner shall apply for a coastal development permit to undertake any necessary repair and maintenance to return the structure to its authorized condition, including reburial of exposed subsurface elements and/or visual treatment.

CNB-18

Replace with "Such permits shall be conditioned to require the removal of the projective device when the existing structure requiring protection, is no longer present or no longer requires a protective device, whichever comes first."

g. **Limits on Authorization.** Authorization of the protective device shall be limited to the development being protected. Such permits shall expire when the existing structure requiring protection is redeveloped, is no longer present, or no longer requires a protective device, whichever comes first. Coastal development permits shall also be conditioned to require the removal of shoreline protective devices when they are no longer needed.

h. **Removal from State Tidelands Required.** Encroachment permits and removal agreements shall be required for protective structures that are located on State tidelands and/or subject to potential future removal.

i. **Bulkheads for nonresidential and residential waterfront development (as identified in Sections 21.30.015(B) and (C)).** In cases where the coastal hazards report required in Section 21.30.015 (E) establishes that an existing bulkhead on the site cannot be removed and/or an existing or replacement bulkhead is required to protect existing principle structures or public facilities, the following shall apply:

(1) The principal structure(s) shall be setback a sufficient distance from the existing or replacement bulkhead to allow for repair and maintenance of that bulkhead including access to any subsurface deadman or tiebacks;

(2) The principal structure(s) shall be setback a sufficient distance to allow for realignment of necessary bulkheads as far landward as possible and in alignment with bulkheads on either side;

(3) The development shall be in compliance with Section 21.30.030(C)(3) - Protective Structures to the maximum extent feasible;

CNB-19

Delete "/finished floor elevation."
Finished floor is not appropriate for determining safe elevation.

slab/finished floor elevation for interior living areas of all new structures within flood hazard areas shall be as established by the Flood Insurance Rate Maps recognized by the Building Division as part of flood safety requirements and maps adopted by the Council. Notwithstanding the building elevations established by the Flood Insurance Rate Maps, the minimum required top of slab elevation for interior living areas of all new structures shall be at least 9.00 (NAVD 88).

CNB-20

Delete "/finished floor elevation."
Finished floor is not appropriate for determining safe elevation.

(1) Sea Level Rise. The minimum required top of slab elevation/finished floor elevation for interior living areas may be increased as necessary to minimize hazards associated with long-term sea level rise over the economic life of the structure identified in the coastal hazards report pursuant Section 21.30.015(E)(4). To address the uncertainty inherent in sea level rise projections (see Appendix A), adjustments to the top of slab elevation may be based on a moderate sea level rise scenario within the projected range of possible sea level rise amounts identified by the current best available science, so long as the structure's design can, if necessary, accommodate future adaptation measures for the high sea level rise scenario that comply with the certified LCP and do not result in coastal resource impacts.

b. **Height Measurement.** The height of a principal structure shall be measured from the top of slab elevation.

c. **Accessory Structures.**

i. The height of accessory structures, except fences, hedges, walls, and retaining walls (see Section 21.30.040) shall be measured from existing grade of the lot prior to construction.

ii. Exception: When a new principal building is required to have the top of slab constructed at elevation 9.00 NAVD88 and when the grade surrounding the new principal building is proposed to be increased, the height of accessory structures shall be measured from the proposed finished grade.

4. **Structures on Ocean Boulevard.** New structures and additions/changes to existing structures on the bluff side of Ocean Boulevard in Corona del Mar shall not be constructed to a height greater than the elevation of the adjacent curb. The top of curb height limit shall be established by a plane created by the extension of the top of curb line across each lot.

C. Increase in Height Limit.

1. **Procedure.** The height limits established in Part 2 of this Implementation Plan (Coastal Zoning Districts, Allowable Land Uses, and Coastal Zoning District Standards) may be increased within specified areas with approval of a coastal development permit when all applicable findings are met in compliance with subsection (C)(3) of this section (Required Findings). ~~No increase above~~

Revise as provided below.

3. BEACH HOURS

- d. The Dory sheds permitted within the designated boundaries are to be used by the Dory Fishermen only for the storage of equipment and supplies and are not to be used for temporary or permanent human habitation .
3. Limits on Development. A maximum of twenty (20) dory storage sheds, no larger than ten (10) feet by ten (10), with roof ridge heights not to exceed nine (9) feet, shall be permitted.

E. Use of Beaches at Night Beach Hours.

1. Existing Restrictions. Since 1947, the City of Newport Beach has regulated the use of the public beaches at night for the preservation of public health, peace, and safety. Use of any public bay, beach, or ocean front shall be consistent with the ~~Newport Beach Municipal Code, certified LCP.~~ Beach hours in effect prior to February 1, 1973, may continue to be effective, however, the public's right to gain access to State tidelands at all hours must be maintained. Any change to beach regulations or hours impacting the public's right to access the beach or resulting in a closure to public use of any portion of the beach inland of the mean high tide line shall be submitted to the Coastal Commission for certification as an LCP amendment.
2. New Restrictions. Any new restriction(s) that limits access to public beaches and State waters or beach parking lots shall require the approval of a coastal development permit, and shall include the following provisions:
- a. The restriction is supported by reasonable evidence establishing the justification for the restriction;
 - b. The geographic area to which the restriction of public use applies is specifically identified and limited to those beach areas with identified public safety problems warranting the closure action;
 - c. The restriction does not apply to the following activities:
 - (1) Walking, jogging, grunion hunting, or fishing by members of the public having in their possession a valid California fishing license, on the wet sand or within twenty (20) feet of the wet sand; or
 - (2) Scuba diving, surfing, or swimming in the ocean, bay or harbor;
 - d. The restriction does not apply to persons from going to or coming from the wet sand or the area within twenty (20) feet of the wet sand by the most direct safe route available in any given location;
 - e. The restriction begins no earlier than 10:00 p.m. and ends no later than one (1) hour before sunrise;

- f. During public emergencies where a law enforcement agency temporarily closes a beach, parking lot, accessway or other coastal recreational facility to protect life or property. The closure shall remain in effect only for the duration of the emergency; and
- g. In situations where the City has declared a public nuisance the abatement of which requires the closure.

A public beach closure/curfew by the City cannot apply to the area of Coastal Commission original jurisdiction (State tidelands, submerged lands and public trust lands) including but not necessarily limited to the area seaward of the mean high tide line. Public access to the water's edge and at least 20 feet inland of the wet sand of all beaches shall be permitted at all times. Existing or new signage at beaches or beach parking lots shall not indicate or suggest a prohibition of public access to the shoreline at any time and any replacement or new signs shall explain the public's right to gain access to State tidelands at all hours for recreational activities. Nothing in this LCP shall be construed as placing any limit or prohibition on the public's right to gain access to State tidelands.

21.48.085 – Public Trust Lands

- A. **Applicability.** Public Trust Lands include tidelands, submerged lands, the beds of navigable lakes and rivers, and historic tidelands and submerged lands that are presently filled or reclaimed and which were subject to the Public Trust at any time.
- B. **Limits on Uses.** Public Trust Lands are subject to the Common Law Public Trust, which limits uses to navigation, fishing, commerce, public access, water-oriented recreation, open space and environmental protection.
- C. **Exceptions.** State legislation has modified public trust restrictions for the historic tidelands in Beacon Bay, the Balboa Bay Club, and Harbor Island.
 - 1. **Beacon Bay.** The Beacon Bay Bill (Chapter 74, Statutes of 1978) and Senate Bill 573 (Chapter 317, Statutes of 1997) allow the residential lots of Beacon Bay located within State tidelands to be leased for residential purposes until June 27, 2043.
 - 2. **Balboa Bay Resort.** The Beacon Bay Bill (Chapter 74 of the Statutes of 1978) and Assembly Bill 3139 (Chapter 728, Statutes of 1994) allow Parcel D of the Balboa Bay Resort to be leased for residential purposes until December 31, 2044.
 - 3. **Harbor Island.** Chapter 715, Statutes of 1984 allow the filled or reclaimed land on Harbor Island to be leased for non-permanent recreational and landscaping purposes until March 22, 2047.
- D. **Leases.** The following restrictions shall apply to leases of public trust lands:
 - 1. **Use of Leases.** In the event public trust lands are used for commercial purposes by an entity other than the City, the City shall use leases to implement the provisions of this Article. The City shall transition any public trust lands currently on

SECTION 21.48.055 (PUBLIC BEACHES)
CITY OF NEWPORT BEACH
SUGGESTED LANGUAGE

21.48.055 – Public Beaches

- A. **General.** Public beaches shall be protected as a means of providing free and lower-cost recreational opportunities.
- B. **Limits on Uses.** Land uses and development on public sandy beach areas shall be limited to those structures directly supportive of visitor-serving and recreational uses, such as public safety facilities, restroom facilities, showers, bikeways, walkways, public recreation facilities, and similar public facilities.
- C. **Parking.** Public parking shall be permitted provided there are no significant adverse impacts to public beaches or the public's right of access to the bay and ocean. Any proposed change(s) to existing public parking shall be reviewed to determine whether an amendment to an existing coastal development permit or a new coastal development permit is required.
- D. **Dory Fleet.** The historic Dory Fishing Fleet shall be permitted to be launched and stored and to sell fish on the public beach adjacent to Newport Pier, subject to the following regulations:.
1. **Location.** The Dory Fishing Fleet Zone is delineated by existing pilings erected by the City.
 2. **Limits on Operation.**
 - a. The Dory Fishing Fleet Zone shall be reserved for full time Dory Fishermen who derive their livelihood from commercial fishing.
 - b. Dory fishing vessels allowed to be launched and stored on the public beach shall be a traditional Dory design vessel (i.e., a small, shallow-draft boat, approximately 16 to 23 feet long).
 - c. The Dory Fishing Fleet Zone is not to be used as a launching facility for itinerant commercial or sport fishing enterprises.
 - d. The Dory sheds permitted within the designated boundaries are to be used by the Dory Fishermen only for the storage of equipment and supplies and are not to be used for temporary or permanent human habitation.
 3. **Limits on Development.** A maximum of twenty (20) dory storage sheds, no larger than ten (10) feet by ten (10), with roof ridge heights not to exceed nine (9) feet, shall be permitted.
- E. **Beach Hours.**
1. **Purpose.** Since 1947, the City of Newport Beach has regulated and enforced the hours of use of the public beaches for the preservation of public health, peace, and safety.

**SECTION 21.48.055 (PUBLIC BEACHES)
CITY OF NEWPORT BEACH
SUGGESTED LANGUAGE**

2. **Existing Beach Hours.**
 - a. Except as provided in subsection (b) below, public bay and ocean front beach hours shall be from 6:00 a.m. to 10:00 p.m.
 - b. When necessary to protect the safety of persons or property, the City Manager may temporarily modify the beach hours. In no event shall the modification of hours continue for a period of more than two (2) weeks.
3. **Coastal Development Permit Required to Change Beach Hours.** Any change in the beach hours set forth in subsection (E)(2)(a) above shall require the approval of a coastal development permit, unless authorized pursuant to subsection (E)(2)(b) above.
4. **Emergency Closures.** In emergency situations requiring immediate action to protect public safety, the responsible law enforcement officials and/or the City Manager may temporarily close a beach, parking lot, accessway or other coastal recreational facility to protect life or property. The closure shall remain in effect only for the duration of the emergency.
5. **Closures to Abate Public Nuisances.** Pursuant to Coastal Act Section 30005, a beach, parking lot, accessway or other coastal recreational facility may be closed by the responsible law enforcement officials and/or the City Manager in order to abate a legally declared nuisance. The closure shall remain in effect only until the declared nuisance is abated.