

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE (415) 904-5200
FAX (415) 904-5400
TDD (415) 597-5885



W23a

Filed: 08/18/2017
Staff: G. Benoit-SC
K. Schwing-LB
Staff Report: 06/21/2018
Hearing Date: 07/11/2018

STAFF REPORT: REGULAR CALENDAR

Map Adoption: MA-2018-001

Local Government: City of Newport Beach

Location: Coastal Zone area within City of Newport Beach LCP Segment, Orange County

Description: Revised Post LCP Certification Permit and Appeal Jurisdiction map to depict the geographic areas where the Commission retains permit authority pursuant to Coastal Act Sections 30519(b) and 30613, and the geographic areas where local government coastal development permit approvals can be appealed pursuant to Coastal Act Sections 30603(a)(1) and (a)(2), within the City of Newport Beach LCP Segment.

Staff Recommendation: Approval as Modified by Staff Recommendation

SUMMARY OF STAFF RECOMMENDATION

The California Coastal Commission's (Commission) retained permit jurisdiction includes tidelands, submerged lands, and lands subject to the public trust at any time. Legislation that became effective in 1982 provided the Commission with the ability to delegate its original permit authority over potential public trust lands to local governments under certain circumstances. Specifically, Coastal Act Section 30613 allows the Commission, after consultation with the California State Lands Commission (CSLC), to delegate such areas provided they are determined to be (1) filled and developed, and (2) located within an area which is committed to urban uses.

The City of Newport Beach (City) has requested the Commission consider four specific transfer areas of the Commission's retained permit jurisdiction (transfer areas) per Coastal Act Section 30613.¹ Of the 4 proposed transfer areas, Commission staff agrees with one of the City's proposed transfer areas in full (Sea Scout Base/OCC School of Sailing & Seamanship), disagrees with one of the City's proposed transfer areas in full (Newport Aquatic Center), and agrees in part with the two remaining proposed transfer areas (U.S. Coast Guard Station/Orange County Harbor Patrol HQ and Balboa Bay Club and Resort). Regarding the latter two transfer areas, City and Commission staff disagree about whether two beach areas should be treated as "developed" areas that are eligible for potential transfer of permit jurisdiction. Commission staff does not believe it is appropriate to consider these areas developed, do not think they are eligible for permit jurisdiction transfer pursuant to the standards set forth in Coastal Act Section 30613, and recommend approval of the proposed transfer except for these beach areas. With respect to the Newport Aquatic Center, Commission staff believes the overall use of the transfer area is dedicated to natural open space, environmental study areas, and an ecological reserve, and therefore should not be considered a candidate for Commission retained permit jurisdiction transfer. The City's proposed transfer areas and the staff's recommended alternative transfer areas are discussed fully in Section D, Staff Analysis and are depicted in the corresponding map exhibits.

In addition, through analysis of the proposed permit jurisdiction transfer areas requested by the City, staff have identified two areas where map revisions are necessary to accurately identify the Commission's retained permit jurisdiction and geographic appeal jurisdiction in the vicinity of the Newport Harbor Yacht Club at 700 West Bay Avenue and United States Coast Guard Station and the Orange County Harbor Patrol headquarters at 1901 and 1911 Bayside Drive. Staff recommends that the Commission approve these map revisions **prior to** taking action on the City's 30613 request in order to establish the baseline conditions for considering the 30613 request.

The staff recommend that the Commission **approve** the revised Post LCP Certification Permit and Appeals Jurisdiction (Post Cert.) map for the City of Newport Beach LCP segment that reflects map revisions to the Commission's retained permit jurisdiction and geographic appeal jurisdiction in the vicinity of the Newport Harbor Yacht Club and United States Coast Guard Station and the Orange County Harbor Patrol headquarters as identified by Staff.

Furthermore, Staff recommends that the Commission approve Coastal Act Section 30613 transfer areas as modified by this staff recommendation and summarized as follows:

The staff recommends that the Commission **approve** the City of Newport Beach proposed transfer of the Commission's retained permit jurisdiction as submitted consistent with California Coastal Act Sections 30613 with respect to the Sea Scout Base/OCC School of Sailing & Seamanship (Exhibit 5).

¹ Staff notes that this current request constitutes the first 'phase' of what is anticipated to be a multi phased approach by the City asking the Commission to consider a number of such potential permit transfer areas.

The staff recommends that the Commission **reject** the City's proposed transfer of the Commission's retained permit jurisdiction as submitted (Exhibit 4, Exhibit 6) and **approve** the staff proposed modified retained permit jurisdiction transfer consistent with California Coastal Act Section 30613 with respect to the US Coast Guard Station/Orange County Harbor Patrol HQ (Exhibit 4.1) and Balboa Bay Club and Resort (Exhibit 6.1).

The staff recommends that the Commission **reject** the City's proposed transfer of the Commission's retained permit jurisdiction as submitted with respect to the Newport Aquatic Center (Exhibit 7).

TABLE OF CONTENTS

I. RECOMMENDED MOTIONS AND RESOLUTIONS	5
II. MODIFICATIONS	6
III. BACKGROUND	6
IV. FINDINGS AND DECLARATIONS	8
A. CITY OF NEWPORT BEACH POST CERT. MAP	8
B. CITY OF NEWPORT BEACH POST CERT. MAP REVISIONS	9
C. INTERPRETATION OF “FILLED,” “DEVELOPED,” AND “LOCATED WITHIN AN AREA WHICH IS COMMITTED TO URBAN USES”	9
D. STAFF ANALYSIS OF PROPOSED 30613 TRANSFER REQUEST	12

APPENDICES

[Appendix A – Consultation with California State Lands Commission](#)

[Appendix B – List of Substantive File Documents](#)

[Appendix C – Relevant Public Resources Code Sections](#)

[Appendix D – Relevant Code of Regulation Sections](#)

EXHIBITS

[Exhibit 1- Map Revision and CCA Section 30613 Permit Jurisdiction Transfer Area Index](#)

[Exhibit 2- Compilation Plat Newport Harbor Yacht Club Newport Beach, Orange County](#)

[Exhibit 2.1- Map revision- Newport Harbor Yacht Club/700 West Bay Avenue](#)

[Exhibit 3- Compilation Plat Harbor Facility Orange County](#)

[Exhibit 3.1- Map revision- US Coast Guard Station/Orange County Harbor Patrol HQ](#)

[Exhibit 4- US Coast Guard Station/Orange County Harbor Patrol HQ](#)

[Exhibit 4.1- US Coast Guard Station/Orange County Harbor Patrol HQ Recommended
Transfer](#)

[Exhibit 5- Sea Scout Base/OCC School of Sailing & Seamanship](#)

[Exhibit 6- Balboa Bay Club and Resort](#)

[Exhibit 6.1- Balboa Bay Club and Resort Recommended Transfer](#)

[Exhibit 7- Newport Aquatic Center](#)

[Exhibit 8- Post LCP Certification Permit and Appeal Jurisdiction Index Map: County of
Orange](#)

[Exhibit 9- Revised Post LCP Certification Permit and Appeal Jurisdiction Map: City of
Newport Beach](#)

I. RECOMMENDED MOTIONS AND RESOLUTIONS

Staff recommends that the Commission, after public hearing, approve map adoption MA-2018-001 only if it is modified as identified in this staff report. Thus, the Commission first needs to adopt the baseline map (revised to clarify jurisdiction in the Newport Harbor Yacht Club/700 West Bay Avenue and the United States Coast Guard Station/Orange County Harbor Patrol Headquarters areas (see Motion 1 below)). Subsequently, the Commission can then adopt the map to address the City's proposed permit jurisdiction delegation transfer areas only if it is changed as identified by the suggested modifications below (see Motion 2).

1. Adopt Updated Baseline Map

Staff recommends a **YES** vote on the motion below. Passage of the motion will result in the approval of the updated City of Newport Beach Post LCP Certification Permit and Appeal Jurisdiction Map as set forth in the staff recommendation and adoption of the following resolution and findings. The motion to approve the updated City of Newport Beach Post LCP Certification Permit and Appeal Jurisdiction Map passes only by affirmative vote of a majority of the Commissioners present.

***Motion:** I move that the Commission approve the update to the City of Newport Beach Post LCP Certification Permit and Appeal Jurisdiction Map pursuant to Title 14 of the California Code of Regulations Section 13576(a) and as set forth in the staff recommendation in this staff report, and I recommend a **YES** vote.*

***Resolution:** The Commission hereby approves the update to the City of Newport Beach Post LCP Certification Permit and Appeal Jurisdiction Map as set forth in the staff recommendation in this staff report and adopts the findings set forth below on the grounds that the updated Map meets the requirements of Title 14 of the California Code of Regulations Section 13576(a).*

2. Adopt Modified Transfer Areas

Staff recommends a **YES** vote on the motion below. Passage of the motion will result in the approval of map adoption MA-2018-001 as modified by the staff recommendation and adoption of the following resolution and findings. The motion to approve transfer of the Commission's retained permit jurisdiction as modified by the staff recommendation passes only by affirmative vote of a majority of the Commissioners present.

***Motion:** I move that the Commission approve map adoption MA-2018-001 as set forth in the staff recommendation in this staff report, and I recommend a **YES** vote.*

***Resolution:** The Commission hereby approves map adoption MA-2018-001 as modified as set forth in the staff recommendation in this staff report and adopts the findings set forth below on grounds that the transfer areas as modified meet the requirements of Coastal Act Section 30613.*

II. MODIFICATIONS

Passage of the above motion results in the following modifications to the Commission's retained permit jurisdiction, reflected in the revised City of Newport Beach Post LCP Certification Permit and Appeal Jurisdiction Map (Exhibit 9):

- Transfer of the Commission's retained permit jurisdiction to the City with respect to the US Coast Guard Station/Orange County Harbor Patrol HQ, except for Bayside Drive County Beach (Exhibit 4.1).
- Transfer of the Commission's retained permit jurisdiction to the City with respect to the Sea Scout Base/OCC School of Sailing & Seamanship (Exhibit 5).
- Transfer of the Commission's retained permit jurisdiction to the City with respect to the Balboa Bay Club and Resort, except for the beach area (Exhibit 6.1).
- Rejection of the City's proposed transfer of the Commission's retained permit jurisdiction with respect to the Newport Aquatic Center (Exhibit 7).

III. BACKGROUND

Section 30613 of the Coastal Act (30613), added by Chapter 43 Statutes of 1982, allows the Commission to delegate its original permit authority to local governments in areas subject to the public trust under some circumstances, as discussed herein. Note that as a matter of law, even in instances where the Commission does transfer permit authority for areas to a local government pursuant to a 30613 request, the Commission still retains appeal authority for those areas. (See Pub. Res. Code §§ 30603(a)(2) and 30625.)

The City of Newport Beach was originally granted certain sovereign tidelands and submerged lands in trust by the State of California in 1919. Subsequently, this original grant and its amendments were repealed in 1978, and the State issued a new grant that granted the City all of the sovereign tide and submerged lands located within the City's 1919 city limits. The latter grant was specifically for the establishment, improvement and administration of a harbor, as well as for accommodating the public's use and enjoyment of public beaches, marina areas, aquatic playgrounds, and similar recreational facilities open to the general public. The grant was also for the preservation, maintenance, and enhancement of the granted area in its natural state for open space, bird and marine life habitat, scientific study, and public view purposes.²

After the Commission certifies an LCP, such as the City of Newport Beach LCP, most permitting authority within the local government's coastal zone is transferred from the Commission to the local government, with the Commission retaining permit jurisdiction over any areas of deferred certification as well as specific geographic areas often referred to as the Commission's retained permit jurisdiction. Geographically, the Commission's retained permit

² See generally <http://slc.ca.gov/Programs/Grantees/NewportBeach.html>.

jurisdiction includes tidelands, submerged lands, and public trust lands including former tidelands.³ The primary sources for determining the Commission's continuing permit jurisdiction in the City of Newport Beach are the City of Newport Beach Newport Harbor tidelands survey map (dated January 12, 2015 and January 11, 2017); contemporary U.S. Fish and Wildlife Service (USFWS) National Wetland Inventory datasets covering this area; vertical and oblique coastal aerial photography; draft Post Cert. maps 145 through 147 (Newport Beach, Tustin, and Laguna Beach quadrangles, scale 1:24,000); the map set showing potential public trust lands prepared for the Commission by the CSLC staff in the late 1970's using, among other sources, tide and submerged land grant documents and historical U.S. Coast Survey (now known as the National Geodetic Survey) topographic maps from the 19th century.

These maps, photos, and other documents and information were analyzed to establish the public trust component in the City in areas where that is the controlling permit boundary criterion. Given the complexity involved in precisely mapping public trust boundaries, however, especially in areas of granted tidelands in both lower and upper Newport Bay, it is evident that the permit boundary delineation on this map may not include all areas subject to the public trust. Using the best available data and information sources, Commission staff has made a good faith attempt to map tidelands and potential public trust lands to the bulkheads associated with filled development throughout the lower harbor. In these areas, permit authority should be determined by the extent of these bulkheads, with the understanding that the bulkheads in their entirety and lands seaward of the bulkheads remain within the Commission's permit jurisdiction, while development landward of said bulkheads is entirely within the City of Newport Beach's jurisdiction. This is with the understanding that permit jurisdiction boundaries are an extrapolation of the best available data and may be subject to future interpretation and determination if warranted by site specific information. Furthermore, questions regarding the exact location and extent of public trust lands must be referred to the CSLC for determination. Both Commission staff and City staff recognize that should additional public trust lands be identified in the future, those lands would be part of the Commission's retained permit jurisdiction.

Review of the above-referenced primary source materials indicates that the Commission's continuing permit jurisdiction in the City of Newport Beach exists only on lands lying below the mean high tide line (MHTL) and on potential or historical public trust lands (see Exhibit 9). The City's Post Cert. map (MA-2017-001 approved by the Commission on March 8, 2017) depicts the landward boundary of the Commission's retained permit jurisdiction following a combination of tidelands, submerged lands and filled tidelands upon, in and under the Pacific Ocean as illustrated on the City's tidelands map (1/12/2015 & 1/11/17), the inland extent of the active beach and marine and estuarine intertidal zones as mapped by the USFWS in its National

³ Tidelands, the first component of the Commission's retained permit jurisdiction, are lands lying between the lines of mean high tide and mean low tide. The mean high tide line (MHTL) is an ambulatory boundary that moves with changes in the profile of the shoreline, particularly in sandy beach areas. The MHTL is and has been used by federal and state courts, the state legislature, state regulatory and administrative agencies, and local governments in many cases as the boundary between public tidelands and private uplands. The location of the fluctuating MHTL is determined by establishing the intersection of the shore with the plane (elevation) of mean high water as calculated by the National Geodetic Survey for a particular location. Surveys can be performed to establish MHTL or tidelands locations. The California State Lands Commission, as administrator of California's tidelands, can and does perform such surveys.

Wetlands Inventory; and bulkhead lines as evident in contemporary high resolution aerial images of the City of Newport Beach. As reference, Commission staff has also analyzed historical aerial imagery and U.S. Coast Survey Historical Topographic Map, T-1392 (circa 1875) that has led to the conclusion that much of lower Newport Bay is historic tidelands and public trust lands.

As indicated above, after the Commission certifies a local government's LCP and associated Post Cert. map, most permit authority within that jurisdiction's coastal zone is delegated to that local government, with the Commission retaining "original" jurisdiction over tidelands, submerged lands, public trust lands, whether filled or unfilled, and any other lands for which there is no certified LCP. Pursuant to Section 30613 of the Coastal Act, the Commission may transfer permit authority to the local government for public trust lands that are determined by the Commission to be (1) filled and developed; and (2) located within an area which is committed to urban uses. Coastal Act Section 30613 transfer areas do not in any way influence or somehow change the extent of public trust, historic public trust, or public trust interests present in the area.⁴ Although the extent and type of public trust resources may factor into the appropriateness of any given Section 30613 transfer request, the transfer process only affects permit jurisdiction, and not the underlying public trust resource status.

The Commission's administrative regulations (14 CCR Section 13576) provide that a map portraying the areas of continuing Commission permit and appeal jurisdiction be adopted in conjunction with the final LCP certification. An update procedure is also identified and provides the basis for revision and re-adoption of the map by the Commission. Within these regulations is implicit the idea that, while the adopted map should portray the various jurisdiction boundaries as accurately as possible, it remains only a depiction, a cartographic representation and not a definition of the jurisdiction, and should not be used on its own without field determination procedures to establish a precise boundary location. Conditions on the ground may change and thus conditions on the ground control permit and appeal jurisdiction boundary location regardless of how accurate the mapped boundary may be at any given time. In fact, changes to conditions on the ground may justify revisions to an adopted map.

IV. FINDINGS AND DECLARATIONS

A. CITY OF NEWPORT BEACH POST CERT. MAP

In March of 2017 the Commission adopted MA-2017-011, the Post LCP Certification Permit and Appeal Jurisdiction map depicting the geographic areas where the City has been granted coastal development permit authority, where the Commission retains permit authority, and where City coastal development permit approvals are subject to appeal to the Commission.

⁴ California Supreme Court decision *Marks v. Whitney* (1971 6 Cal.3d 251, 261) made clear that, even if filled, tide and submerged lands remain subject to public property rights which include the authority of the state to protect the public's rights.

B. CITY OF NEWPORT BEACH POST CERT. MAP REVISIONS

Additional information provided by the City and CSLC (as discussed below) resulted in a clearer understanding of the Commission’s retained permit jurisdiction, and requires revisions to the adopted Post Cert. map prior to consideration of the City’s Section 30613 transfer request. Each of the updates/revisions is discussed below. The purpose of including these map revisions as part of the Staff recommendation is to clarify the location of the Commission’s retained permit jurisdiction as well as to establish the baseline conditions for considering the City’s 30613 request.

Newport Harbor Yacht Club/700 West Bay Avenue

The Commission’s adopted Post Cert. map (March 2017) delineates the Commission’s retained permit jurisdiction landward of an adjudicated⁵ public trust boundary in the vicinity of the Newport Harbor Yacht Club at 700 West Bay Avenue. However, upon consultation with the CSLC, it was determined that the extent of the public trust in this area is *seaward* of the Commission’s mapped boundaries, and correctly aligned along the seaward edge of assessor parcel numbers (APNs) 047-272-12, 048-010-03, and 048-010-04 (see Exhibit 2). In other words, the Commission’s retained jurisdiction is less than shown on the current adopted map. As a result, the Commission’s retained permit jurisdiction is limited to only tidelands and submerged lands in this area, and needs to be corrected to align along the existing bulkheads and along the mean high tide line of the small pocket beach as illustrated in Exhibit 2.1.

US Coast Guard Station/Orange County Harbor Patrol Headquarters

The Commission’s adopted Post Cert. map (March 2017) delineates the Commission retained permit jurisdiction seaward of its correct location in the vicinity of the U.S. Coast Guard Station and the Orange County Harbor Patrol Headquarters at 1901 and 1911 Bayside Drive. Specifically, upon consultation with the CSLC, it was determined that the extent of the public trust in this area as adjudicated⁶ is actually *landward* of the Commission’s mapped boundaries, and correctly aligned along the landward edge of APNs 050-252-02 and 050-252-03, and thus includes the entirety of these parcels (see Exhibit 3). In other words, the Commission’s retained jurisdiction is more than shown on the current adopted map. As a result, the Commission’s retained permit jurisdiction needs to be corrected to align along the landward parcel lines of APNs 050-252-02 and 050-252-03 as illustrated in Exhibit 3.1.

C. INTERPRETATION OF “FILLED,” “DEVELOPED,” AND “LOCATED WITHIN AN AREA WHICH IS COMMITTED TO URBAN USES”

Coastal Act Section 30613(a) states:

The provisions of subdivision (b) of Section 30519, subdivision (b) of Section 30600, and subdivision (b) of Section 30610.5, which apply to lands subject to the public trust shall not apply to any lands which may be subject to the public trust but which the commission,

⁵ As adjudicated in Superior Court Cases #24080 and #24091.

⁶ As adjudicated in Superior Court Cases #23688 and #40024.

after consultation with the State Lands Commission, determines are (1) filled and developed and are (2) located within an area which is committed to urban uses.

The Coastal Act does not further elaborate on this provision, and at this time the Commission has not enacted regulations or interpretive guidelines further interpreting this provision. The discussion that follows identifies each of the required transfer criteria.

Filled

Coastal Act Section 30108.2 defines “fill” as “earth or any other substance or material, including pilings placed for the purposes of erecting structures thereon, placed in a submerged area.” The Commission here considers this definition as a baseline for determining whether the lands subject to this Section 30613 transfer request are filled. In addition, the Commission also considers the following as non-exclusive factors that may be relevant in making a determination whether a specific site/area is filled: (1) history of deposition of solid materials on land formerly below the historic MHTL, thus resulting in a seaward shift of the MHTL⁷; and (2) site-specific circumstances which may have otherwise affected the location of the historic MHTL (e.g., legal adjudication of the MHTL and the private property boundary line).

The areal extent of fill in a specific area may justify transfer of an area to the local government that is smaller than requested. Adjacent areas that are filled to final grade, including roads and lands with structures, may be useful to help determine the extent of fill at a particular site.

Developed

The Coastal Act does not define the term “developed.” Although Coastal Act Section 30106 defines “development” to include “on land, in or under water, the placement or erection of any solid material or structure,” which broad definition encompasses the concept of “fill,” the term “developed” as used in Section 30613 should not be understood to include “fill” (as the term “development” under Section 30106 does). Rather, Section 30613(a) requires the Commission to determine, in part, whether lands that are subject to a transfer request are “(1) filled ***and*** developed” (emphasis added). Thus, it makes sense to exclude “fill” from the consideration whether a requested site is “developed,” notwithstanding the broad definitional scope of “development” per Section 30106 to include “placement or erection of any solid material or structure.” Otherwise, considering the definition of “developed” per Section 30613 to include “filled” would render the phrase “filled ***and*** developed” (emphasis added) in Section 30613(a) to be redundant and superfluous. Therefore, notwithstanding the concept of “fill,” the Commission here considers the ‘physical placement or erection of any solid material or structure on land, in or under water’ aspect of the Section 30106 definition for “development” as a baseline for determining whether the lands subject to a Section 30613 request are developed. In addition, staff also recommends for consideration the following as non-exclusive factors that may be

⁷ Consistent with the Section 30108.2 definition of “fill,” the Commission has in the past generally considered “filled lands” as areas that historically were below the MHTL but which now lie above that line as a result of the placement or deposit of solid materials on the lands. Usage of a MHTL reference point to determine filled lands may correspond with the reference point to “submerged area” as used in the Section 30108.2 definition.

relevant in making a determination whether a specific site/area is developed⁸: (1) whether the land at issue is subdivided, improved with structures, and served by existing public service infrastructure (e.g., roads, utility lines); and (2) agricultural lands, lands devoted to open space, beaches, and protected habitat areas may not qualify as “developed,” absent contrary evidence provided by the local government.

Like the “filled” criterion, an area may be developed completely or in part. An area that is partially developed may justify a Section 30613 transfer of an area that is smaller than requested.

Located Within an Area Which is Committed to Urban Uses

The phrase “located within an area which is committed to urban uses” is not defined in the Coastal Act or otherwise used within the statute beyond its usage in Section 30613(a). However, the existence of a fully-certified LCP facilitates the ability to make a determination whether an area is committed to urban uses per Section 30613, vis a vis factors such as the land use and zoning designations, building density, and urban services lines. With that understanding, staff also recommends for consideration the following as non-exclusive factors that may be relevant in making a determination whether a specific site is located within an area which is committed to urban uses⁹: (1) current and planned LCP land uses of the specific site and surrounding area; (2) LCP land use and zoning designations of the specific site and surrounding area; (3) LCP building density and floor-area ratio of the specific site and surrounding area; and (4) LCP urban/rural services/reserve line (or urban expansion areas).

Coastal Act Section 30613(a) states in relevant part: “The provisions of subdivision (b) of 30519, subdivision (b) of Section 30600, and subdivision (b) of Section 30610.5, which apply to lands subject to the public trust shall not apply to any land which may be subject to the public trust but which the commission ... determines are ... ***located within an area*** which is committed to urban uses” (emphasis added).

The phrase “located within an area which is committed to urban uses” suggests that this determination could be made in the affirmative if the surrounding vicinity is committed to urban uses, even if the specific site at issue itself is not necessarily committed to urban uses (e.g., beaches). In other words, the fact that the specific site subject to a 30613 request (or a portion thereof) is not committed to urban uses does not alone necessarily justify removing the requested area from transfer to the local government so long as the site is located ***within an area*** which is committed to urban uses. 30613 does not provide specific guidance on how to determine the geographic bounds when evaluating whether lands subject to a 30613 request are located within an area committed to urban uses, but this determination can be made on an *ad hoc*, case-by-case basis considering the facts on the ground for any given request.

⁸ Staff developed this list of non-exclusive factors after first considering a historic public memorandum dated September 28, 1990 from James Burn (then Chief Deputy Director) regarding the Commission’s interpretation of 30613, and revised for purposes of the current staff report in consultation with Commission legal staff as well as California State Lands Commission staff.

⁹ See footnote 8 above.

Consultation with California State Lands Commission

Commission staff provided the CSLC with maps of the proposed retained permit transfer areas. CSLC has made a determination for each of the proposed areas as to whether the land is impressed with the Public Trust, developed, and within areas committed to urban uses (Appendix A). Furthermore, CSLC also provided general input regarding its interpretation of the key terms of 30613 discussed above. It is CSLC staff's opinion that the determination of whether an area is developed shall be supported by evidence that address the following: (a) extent of commercial and industrial uses located within the proposed retained permit transfer area, and (b) extent of the built-out development and the services located within the boundaries of the proposed transfer area, such as existing buildings or parking facilities, as well as the attributes and uses of the surrounding area. CSLC staff do not consider open space, such as sandy beaches or wetland preserves located within or adjacent to proposed transfer areas, to be developed nor committed to urban uses.

D. STAFF ANALYSIS OF PROPOSED 30613 TRANSFER REQUEST

US Coast Guard Station/Orange County Harbor Patrol HQ (Exhibit 4)

Note- Staff recommends rejecting the City's transfer area as proposed (Exhibit 4) and recommends a modified transfer area (Exhibit 4.1).

City of Newport Beach Proposed Alignment (Exhibit 4)

The City's 30613 request pertains to 1901 and 1911 Bayside Drive. The request is to extend the City's jurisdiction seaward approximately 20 to 120 feet to the seaward extent of the bulkhead and to the mean high tide line on the sandy beach as illustrated on Exhibit 4. Development on the site consists of United States Coast Guard Station and the Orange County Harbor Patrol headquarters. These facilities are located in the Bayside community. Development consists of single-unit dwellings, government facilities and yacht clubs.

Staff Analysis

Staff Recommended Transfer Area (Exhibit 4.1)

Staff recommends the following alternative transfer areas consisting of the entire requested area with the exception of the Bayside Drive County Beach that are consistent with Coastal Act Section 30613 based on analysis discussed below and as illustrated on Exhibit 4.1.

Public Trust Component

The Harbor Patrol Facility transfer area is located on Public Trust lands seaward of the adjudicated ordinary high tide line (establishing the public trust boundary in this area) as set forth in SCC No. 23688 and No. 40024 (Exhibit 3) and within lands granted to the County of Orange. A portion of the site may also extend into lands granted to the City of Newport Beach.

Filled

The subject properties were likely filled as part of the harbor improvements circa 1935. It appears that a portion of the filled land was dredged out sometime prior to 1970 to create the Bayside Drive County Beach.

Developed

With the exception of Bayside Drive County Beach, the subject properties are fully developed and contain no sensitive habitats. Bayside Drive was in place by the 1920s; however, most public roadways and infrastructure were constructed when the adjacent Irvine Terrace community was subdivided and developed in the 1950s. The US Coast Guard Station/Orange County Harbor Patrol facility was first constructed on the site circa 1955. Importantly, the open space/beach portion of the proposed transfer area does not have development or structures covering the lands and thus should not be deemed developed.

Located Within an Area Committed to Urban Uses

Furthermore, public trust resources such as open space sandy beaches located within the proposed transfer area should not be considered an area that is committed to an urban use, regardless of whether the surrounding area is developed and utilized for urban purposes. The City's certified LCP classifies these properties as Public Facilities (PF) and surrounding areas as Single Unit Residential Detached (RSD-B), which reflects current land uses.

The Bayside Drive areas was developed in the 1950s. Per the City's certified LCP, the predominate land use is Single-Unit Residential (RSA-A) with a density of up to 5.9 dwelling units per acre.

Conclusion

In sum, the Harbor Patrol Facility Area should be deemed filled and also developed, except for Bayside Drive County Beach. The beach itself is not developed within the meaning of Section 30613. Thus, Staff recommends transfer of the Harbor Patrol Facility Area except for Bayside Drive County Beach, as illustrated on Exhibit 4.1.

Consultation with California State Lands Commission

CSLC staff considers the developed portion of the transfer area involving the Harbor Facility buildings and parking lot suitable for transfer of the Commission's retained permit jurisdiction. However, CSLC staff determined that the open space/beach portion of the proposed transfer area does not have development or structures covering the lands and should not be considered developed, regardless of whether the surrounding area is developed and utilized for urban purposes. CSLC staff's determination aligns with the Commission's determination for this requested site as discussed above.

Sea Scout Base/OCC School of Sailing & Seamanship (Exhibit 5)

Note- Staff recommends accepting the City's transfer area as proposed.

City of Newport Beach Proposed Alignment (Exhibit 5)

The City's Section 30613 request pertains to 1801 and 1931 West Coast Highway. The request is to extend the City's jurisdiction seaward of West Coast Highway to the seaward extent of the bulkhead as illustrated on Exhibit 5. The Sea Scout Base and the Orange Coast College School of Sailing & Seamanship (OCC Sailing) are educational facilities providing instruction on sailing and maritime vocations. These facilities are located in the Mariners' Mile commercial corridor. Development consists of a mix of highway-oriented retail and marine-related commercial uses.

The latter are primarily concentrated on bay-fronting properties and include boat sales and storage, sailing schools, marinas, visitor-serving restaurants, and comparable uses.

Staff Analysis

Staff recommends accepting the City's transfer area as proposed.

Public Trust Component

Pursuant to SCC No. 59376 – Stipulation for Judgment and Decree Quieting Title, the School of Sailing and Seamanship/Sea Scout Base transfer area is located on Public Trust lands granted to the County as Parcel "A" under Chapter 526, Statutes of 1919 (note: lands waterward of the above-mentioned lands are granted to the City).

Filled

Portions of the subject properties were likely first filled as part of harbor improvements in the 1920's and the current shoreline profile was established by the federal harbor improvement project in 1935.

Developed

The subject properties are fully developed and contain no sensitive habitats. As public property (owned by the County of Orange and leased to the Sea Scouts and OCC), public access to and along the shoreline is available. The Coastal Commission recently approved a coastal development permit for a pedestrian bridge across West Coast Highway to OCC Sailing, which will provide additional vertical access opportunities. The Sea Scout Base was first developed in 1947. By that time, the Coast Highway corridor and adjacent area were subdivided, developed and serviced by public infrastructure. The base was redeveloped in 1980, then remodeled and expanded in 2002. OCC Sailing was first developed in 1955 and expanded in 1967, 1970, 1988, 2000, 2007 and 2010.

Located Within an Area Committed to Urban Uses

The City's certified LCP designates the subject properties Public Facilities (PF), which reflects current land uses. The Mariners' Mile area has been committed to urban uses since the 1930s. The City's certified LCP states that "harbor-fronting properties would accommodate a mix of visitor-serving retail, marine-related businesses and vertically integrated mixed-use structures" with floor area to land area ratios up to 1.5:1.

Conclusion

In sum, the Sea Scout Base/OCC is filled, developed, and within an area committed to urban uses. Thus, Staff recommends that the Commission transfer the requested area as submitted.

Consultation with California State Lands Commission

CSLC staff concluded that CC School of Sailing and Seamanship/Sea Scout Base transfer area has been extensively developed and would not likely be utilized for uses other than urban purposes. CSLC staff considers the transfer area developed and committed to urban use. CSLC staff's determination aligns with the Commission's determination for this requested site as discussed above.

Balboa Bay Club and Resort (Exhibit 6)

Note- Staff recommends rejecting the City's transfer area as proposed (Exhibit 6) and recommends a modified transfer area (Exhibit 6.1).

City of Newport Beach Proposed Alignment (Exhibit 6)

The City's Section 30613 request pertains to 1221 West Coast Highway. The request is to extend the City's jurisdiction seaward of West Coast Highway to the seaward extent of the bulkhead and to the mean high tide line on the sandy beach as illustrated on Exhibit 6. The Balboa Bay Club is developed with a 132-room resort hotel, restaurant, spa, private club facilities and 144-unit apartment complex. The Balboa Bay Club is located in the Mariners' Mile commercial corridor. Development consists of a mix of highway-oriented retail and marine-related commercial uses. The latter are primarily concentrated on bay-fronting properties and include boat sales and storage, sailing schools, marinas, visitor-serving restaurants, and comparable uses.

Staff Analysis

Staff Recommended Transfer Area (Exhibit 6.1)

Staff recommends the following alternative transfer areas consisting of the entire requested area with the exception of the Balboa Bay Club and Resort beach area that are consistent with Coastal Act Section 30613 based on analysis discussed below and as illustrated on Exhibit 6.1.

Public Trust Component

The Balboa Bay Club transfer area is located on Public Trust lands seaward of the adjudicated boundary set forth in SCC No. 59376 and within lands granted to the City of Newport Beach.

Filled

According to Assembly Bill 3139 (Chapter 728, Statutes of 1994, the residential portion (Area 1) of the property (identified as Parcel D in the bill) was "filled and reclaimed" as part of a public project of developing lower Newport Bay as a harbor in the 1920's. It is likely that this harbor project filled portions of Area 2 at this time. The extent of the fill is not known; however, the current shoreline profile was established by the federal harbor improvement project in 1935. The Balboa Bay Club and Resort is on State tidelands held in trust by the City of Newport Beach and leased to the Balboa Bay Ventures. The Beacon Bay Bill (Chapter 74 of the Statutes of 1978), together with Assembly Bill 3139 (Chapter 728, Statutes of 1994), allow the Club Facility to be leased for residential purposes until no later than December 31, 2044.

Developed

With the exception of the public beach areas, the property is fully developed and does not contain any sensitive habitats. Vertical public access is provided via an easement connecting West Coast Highway, and lateral public access is provided via an easement along the bulkhead. The Balboa Bay Club opened in 1948. By that time, the Coast Highway corridor and adjacent area were subdivided, developed and serviced by public infrastructure. The open space beach portion of the proposed transfer area does not have development or structures covering this area and thus should not be deemed developed.

Located Within an Area Committed to Urban Uses

The City's certified LCP classifies these properties as Visitor Serving Commercial (CV-B) and Mixed Use Water Related (MU-W), which reflects current land uses. The Mariners' Mile area has been committed to urban uses since the 1930s. The City's certified LCP states that "harbor-fronting properties would accommodate a mix of visitor-serving retail, marine-related businesses and vertically integrated mixed-use structures" with floor area to land area ratios up to 1.5:1.

Conclusion

In sum, the Balboa Bay Club should be deemed filled, as well as developed, except for the beach. Furthermore, although the beach is not committed to urban uses, the Balboa Bay Club is located within an area committed to urban uses. Thus, Staff recommends transfer of the Balboa Bay Club except for the beach, as illustrated on Exhibit 6.1.

Consultation with California State Lands Commission

CSLC staff considers a portion of the Balboa Bay Club transfer area developed and within an area committed to an urban use. However, CSLC staff determined that the open space/beach portion of the proposed transfer area does not have development or structures covering the lands and should not be considered an area that is developed, regardless of whether the surrounding area is developed and utilized for urban purposes. CSLC staff's determination aligns with the Commission's determination for this requested site as discussed above.

Newport Aquatic Center (Exhibit 7)

Note- Staff recommends rejecting the City's transfer area as proposed.

City of Newport Beach Proposed Alignment (Exhibit 7)

The City's Section 30613 request pertains to 1 White Cliffs Drive. The request is to extend the City's jurisdiction seaward approximately 80 to 775 feet to the mean high tide line as illustrated on Exhibit 7. Included in the transfer request is the Newport Aquatic Center (NAC), a public recreational facility co-owned by the City and the County of Orange that provides launching, educational training and support for kayaks and canoes. The broader site includes a large, unpaved overflow parking area to the south, a beach, and a brackish water wetland in addition to the NAC. The NAC is located in the Dover Shores community, a single-unit residential community developed in the 1950s.

Staff Analysis

Staff recommends rejecting the City's transfer area as proposed.

Public Trust Component

The Newport Aquatic Center transfer area is located on Public Trust lands seaward of the adjudicated ordinary high tide line (establishing the public trust boundary in this area) as set forth in SCC 20436 and within lands granted to the County of Orange.

Filled

The property was filled in the late 1950s, either as part of the development of Newport Dunes or Dover Shore.

Developed

The NAC site has access via White Cliffs Drive to the larger street system and connects to the existing public utilities infrastructure (water, sewer, gas and electric) systems. Constructed in 1987¹⁰, the 18,000-square-foot NAC facility provides a large multi-purpose meeting room, cardiovascular and weight training facilities, locker rooms for men and women, and workshop and storage area for 400 plus outriggers, kayaks, stand-up paddleboards and rowing shells. The NAC has a large, paved staging area facing the bay. A public launching pier is located on the bay north the NAC facility.

The transfer area consists of undeveloped open areas including a beach and brackish water wetland, a parking lot, and a permanent structure occupied by the Aquatic Center. The open space areas, including the beach and wetland located within the proposed transfer area, should not be considered areas that are developed, regardless of whether the surrounding area is developed and utilized for urban purposes.

Located Within an Area Committed to Urban Uses

The City's certified LCP classifies the NAC site as PR (Parks and Recreation), which includes active and passive parks aquatic facilities and similar facilities. The NAC itself is identified as lower-cost recreational and hand-carried boat launching facility and as a public park, beach and launch site. There is a small fresh/brackish water wetland located north of the NAC; this area mainly supports willow, palm and sedge. The City's certified LCP identifies the NAC site as an environmental study area (ESA); the LCP requires all coastal development permit applications within or adjacent to an ESA to require a site-specific survey and analysis prepared by a qualified biologist. Such a survey would determine the extent of environmentally sensitive habit areas (ESHA) and establish appropriate buffers. The City's certified LCP designates public park, beach, recreational, vessel launching facilities, and environmental study areas as areas protected for public trust uses.

The adjacent area (Dover Shores) has been fully developed since the 1960s. The City's certified LCP identifies the area adjacent as RSD-A (Single Unit Residential Detached) with a density of up to 5.9 dwelling units per acre, which reflects the existing development.

Conclusion

In sum, the Newport Aquatic Center should be deemed filled, as well as developed, except for the open space wetland area northeast of the NAC facility and the beach southwest of the NAC facility. Furthermore, although the proposed transfer area does include developed buildings and parking lots associated with the Newport Aquatic Center, the Commission must consider to what scale the NAC site should be analyzed to determine whether it is located within an area committed to urban uses. Generally speaking, the entire NAC site is adjacent to an area (Dover Shores) permitted for single-family residences. However, the NAC facility itself is immediately surrounded by open space wetland and beach areas (part of the Upper Newport Bay Ecological Reserve), and the entire NAC site has been designated as an ESA under the LCP, which affords the site heightened environmental protections. Thus, the Commission determines that the NAC facility is not located within an area committed to urban uses. In other words, as the CSLC staff

¹⁰ CDP 5-84-786 and amendments

advises, the overall use of the proposed transfer area is dedicated to natural open space, environmental study areas, and the ecological reserve, not urban uses, and therefore should not be considered a candidate for the transfer of Commission retained permit jurisdiction.

Consultation with California State Lands Commission

CSLC staff does not consider the undeveloped open space areas and beaches committed to urban use. It is CSLC's staff's opinion that open space, such as sandy beaches or wetland preserves, located within the proposed transfer area, should not be considered an area that is developed, regardless of whether the surrounding area is developed and utilized for urban purposes.

Furthermore, CSLC staff determined that although the proposed transfer area does include developed buildings and parking lots associated with the Newport Aquatic Center, the overall use of the transfer area is dedicated to natural open space, environmental study areas, and the ecological reserve, and thus should not be considered committed to an urban use. CSLC staff's determination aligns with the Commission's determination for this requested site as discussed above.