

# **Attachment A**

Resolution No. 2023-4

## RESOLUTION NO. 2023-4

### A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING GENERAL PLAN AMENDMENT NO. GP2022-001 TO CHANGE THE DEVELOPMENT LIMIT SPECIFIED FOR BAY ISLAND FROM 23 DWELLING UNITS TO 25 MAXIMUM DWELLING UNITS (PA2022-087)

**WHEREAS**, Section 200 of the City of Newport Beach ("City") Charter vests the City Council with the authority to make and enforce all laws, rules, and regulations with respect to municipal affairs subject only to the restrictions and limitations contained in the Charter and the State Constitution, and the power to exercise, or act pursuant to any and all rights, powers and privileges, or procedures granted or prescribed by any law of the State of California;

**WHEREAS**, on April 20, 2022, an application was filed by Bay Island Club, Inc., ("Applicant") with respect to Bay Island, as shown on the official map of Bay Island ("Property") which is attached hereto as Exhibit "A" and incorporated herein by reference;

**WHEREAS**, Bay Island is a 5.5-acre legal lot in Newport Harbor that is currently developed with 23 single-family homes, shared open space, recreational areas, and a caretaker's unit, which currently functions as a clubhouse;

**WHEREAS**, Bay Island is accessible by a pedestrian bridge with no vehicular access;

**WHEREAS**, on November 24, 1997, the City Council approved Use Permit No. UP3618 to implement a Planned Residential Development Overlay District, which modified the Multi-Family Residential (MFR) zoning and development regulations for Bay Island and created a development plan authorizing a maximum of 25 residential units (24 single-family building sites plus one residential caretaker site) and off-site parking;

**WHEREAS**, the purpose of Use Permit No. UP3618 is to ensure that future development maintains the single-family detached character of Bay Island;

**WHEREAS**, on July 25, 2006, the City Council approved Resolution No. 2006-76 adopting a comprehensive 2006 General Plan Update ("General Plan Update") wherein the density of Bay Island was inadvertently decreased to a maximum of 23 residential dwelling units based on the number of dwellings that existed on Bay Island at that time;

**WHEREAS**, the Applicant is requesting approval to correct the maximum density allowed on Bay Island from 23 to 25 dwelling units, consistent with Use Permit No. UP3618 ("Project");

**WHEREAS**, the following approvals are requested or required from the City to implement the Project:

- General Plan Amendment No. GP2022-001 – An amendment to the Land Use Element of the General Plan to correct the development limit specified for Bay Island from 23 dwelling units to 25 maximum dwelling units;
- Local Coastal Program Amendment No. LC2022-003 – An amendment to Title 21 (Local Coastal Program Implementation Plan) of the NBMC to correct the development limit specified for Bay Island from 23 dwelling units to 25 maximum dwelling units; and
- Zoning Code Amendment No. CA2022-005 – An amendment to Title 20 (Planning and Zoning) of the NBMC to correct the development limit specified for Bay Island from 23 dwelling units to 25 maximum dwelling units;

**WHEREAS**, the Property is located within the Multiple Residential (RM) Zoning District and the General Plan Land Use Element category is Multiple Residential Detached (RM-D);

**WHEREAS**, the Property is located within the coastal zone with a Coastal Land Use Plan category of Multiple-Unit Residential – 10.0 – 19.9 DU/AC (RM-C) and the Coastal Zoning District of Multiple Residential (RM);

**WHEREAS**, the Planning Commission held a public hearing on September 8, 2022 in the Council Chambers located at 100 Civic Center Drive, Newport Beach, California. A notice of time, place and purpose of the hearing was given in accordance with California Government Code Section 54950 *et seq.* ("Ralph M. Brown Act") and Chapters 20.62 and 21.62 (Public Hearings) of the NBMC. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this hearing;

**WHEREAS**, at the hearing, the Planning Commission adopted Resolution No. PC2022-023 by a majority vote (6 ayes, 1 absent) recommending City Council approval of General Plan Amendment No. GP2022-001, Local Coastal Program Amendment No. LC2022-003 and Zoning Code Amendment No. CA2022-005; and

**WHEREAS**, the City Council held a public hearing on January 24, 2023 in the Council Chambers located at 100 Civic Center Drive, Newport Beach, California. A notice of time, place and purpose of the hearing was given in accordance with the Ralph M. Brown Act and Chapters 20.62 and 21.62 (Public Hearings) of the NBMC. Evidence, both written and oral, was presented to, and considered by, the City Council at this hearing.

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

**Section 1:** The City Council hereby approves General Plan Amendment No. GP2022-001 amending the General Plan of the City of Newport Beach to correct the development limit specified for Bay Island from 23 dwelling units to a maximum of 25 dwelling units as depicted in Exhibit “B,” which is attached hereto and incorporated herein by reference. This approval is contingent upon the certification of Local Coastal Program Amendment No. LC2022-003 by the California Coastal Commission.

**Section 2:** Charter Section 423 requires voter approval of any major General Plan amendment to the General Plan. A major General Plan amendment is one that significantly increases allowed density or intensity by 40,000 square feet of non-residential floor area, increases traffic by more than 100 peak hour vehicle trips (AM/PM), or increases residential dwelling units by 100 units. These thresholds apply to the total of increases resulting from the amendment itself, plus 80 percent of the increases resulting from other amendments affecting the same neighborhood (defined as a Statistical Area as shown in the General Plan Land Use Element) and adopted within the preceding 10 years.

Council Policy A-18 (Guidelines for Implementing Charter Section 423) requires that proposed amendments to the General Plan be reviewed to determine if a vote of the Newport Beach electorate would be required. This policy includes a provision that all General Plan amendments be tracked as “Prior Amendments” for 10 years to determine if minor amendments in a single Statistical Area cumulatively exceed the thresholds indicated above.

Facts in Support Finding of Consistency with Charter Section 423:

The Project is located within Statistical Area D3 with no general plan amendments over the last 10 years. Charter Section 423 is not triggered because the maximum number of dwelling units on Bay Island was inadvertently revised to reflect the number of dwelling units at that time as opposed to what was authorized by Use Permit No. UP3618.

Additionally, even assuming the Project was not merely correcting an error, increasing the number of dwelling units by two units has no effect on the non-residential floor area and would result in an overall increase of 1.4 a.m. peak hour trips and 1.9 p.m. peak hour trips based on the residential trip rates reflected in Council Policy A-18. Since none of the three thresholds specified by Charter Section 423 are exceeded, no vote of the electorate is required

**Section 3:** The recitals provided in this resolution are true and correct and are incorporated into the operative part of this resolution.

**Section 4:** If any section, subsection, sentence, clause or phrase of this resolution is, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this resolution. The City Council hereby declares that it would have passed this resolution, and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

**Section 5:** The City Council finds General Plan Amendment No. GP2022-001 is exempt from environmental review under the California Environmental Quality Act ("CEQA") pursuant to Section 15303, Class 3 (New Construction or Conversion of Small Structures) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3. Class 3 exempts the construction of up to three single-family residences. General Plan Amendment No. GP2022-001 would authorize the future development of up to two additional single-family residences at Bay Island and therefore qualifies within this exemption.

**Section 6:** This resolution shall take effect upon the certification of Local Coastal Program Amendment No. LC2022-003 by the California Coastal Commission.


**ADOPTED** this 24th day of January, 2023.

\_\_\_\_\_  
Noah Blom  
Mayor

**ATTEST:**

\_\_\_\_\_  
Leilani I. Brown  
City Clerk

**APPROVED AS TO FORM:**  
CITY ATTORNEY'S OFFICE

  
\_\_\_\_\_  
Aaron C. Harp  
City Attorney

Attachments:      Exhibit A - Bay Island Map  
                         Exhibit B - General Plan Amendment No. GP2022-001

EXHIBIT "A"  
Bay Island Map

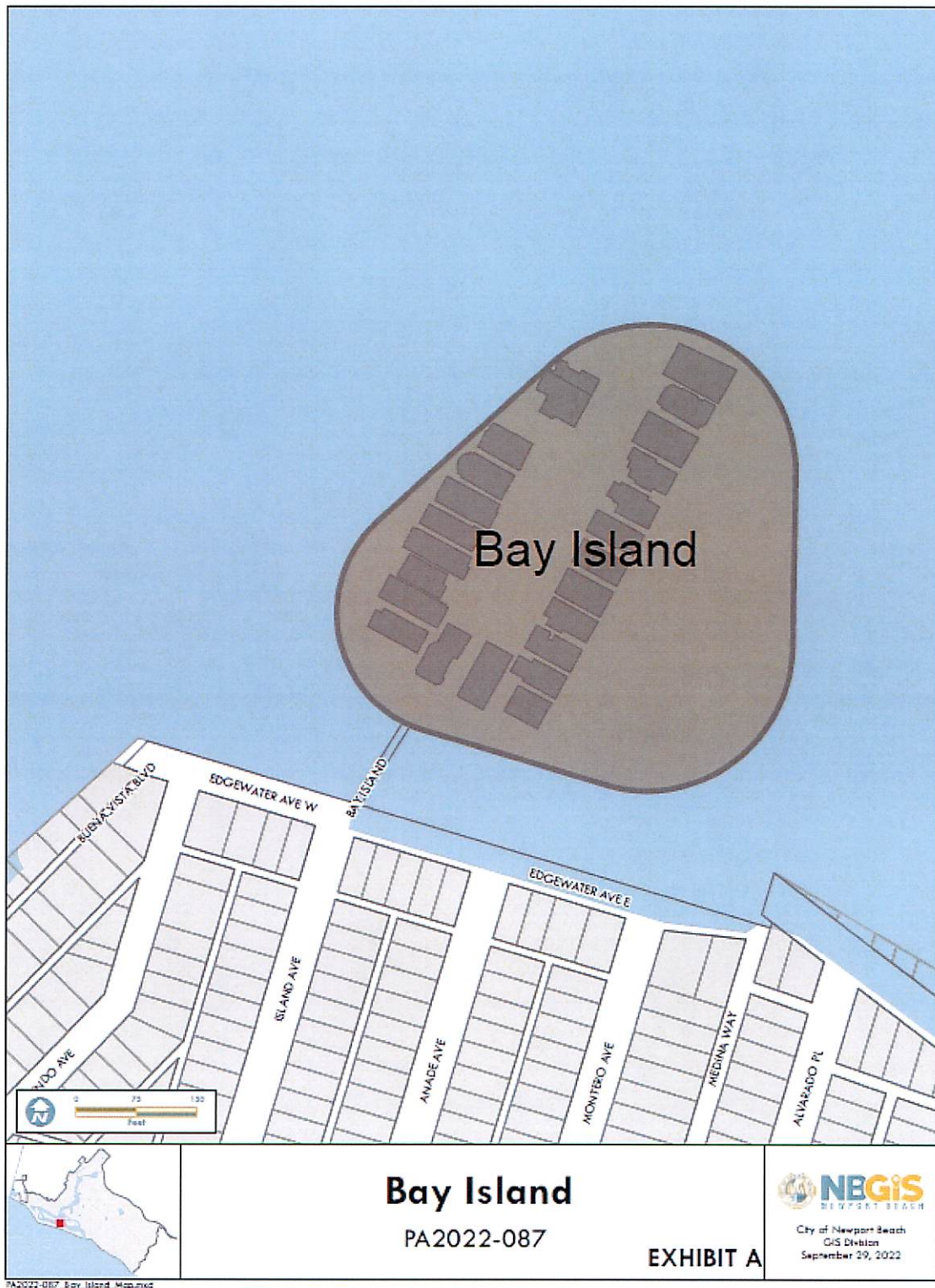




EXHIBIT "B"  
General Plan Amendment No. GP2022-001

