

CALIFORNIA COASTAL COMMISSION

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Date: October 13, 2016
To: Coastal Commissioners and Interested Persons
From: Sherilyn Sarb, Deputy Director
Karl Schwing, South Coast Coastal Program Manager
Liliana Roman, Coastal Program Analyst
Subject: **City of Newport Beach Categorical Exclusion Order CE-5-NPB-16-1** for public hearing and Commission action at its November 2016 hearing in Half Moon Bay.

SUMMARY OF STAFF RECOMMENDATION

Description of Submittal

In 1977 the Commission approved Categorical Exclusion Order E-77-5 for the City of Newport Beach. The order excludes the demolition and/or construction of single-unit and two-unit dwelling units and their appurtenant facilities in the R-1, R-BI, and R-2 Zoning Districts within the Coastal Zone limited to the geographic areas of: Balboa Island, Balboa Peninsula, Cameo Highlands, Cameo Shores, Corona del Mar, Corona Highlands, Irvine Terrace, Lido Isle, Shorecliffs, Upper Newport Bay, and West Newport.

Within the identified geographic areas, the Categorical Exclusion does not include:

- 1) The first row of lots adjacent to the beach, bay, or wetlands
- 2) Major undeveloped residential sites
- 3) Planned Community Districts
- 4) Gated Communities

The Terms and Conditions of the 1977 Categorical Exclusion order are quoted as follows:

- 1) **Lot Coverage.** *Structures subject to this exclusion shall be designed so that the gross structural area, including storage, parking, and stairways, does not exceed 1.5 times the buildable area on non-conforming lots (4,000 square feet or less) and in areas where a majority of the lots are non-conforming.*
- 2) **Parking.** *A minimum of two parking spaces shall be provided for each residential unit, regardless of size. To the maximum extent practicable, parking shall be provided on the alley side of the lot and in no case shall required parking be permitted in the required front setback.*
- 3) **Density.** *Duplexes shall only be permitted on lots 2,400 square feet or greater.*
- 4) **Applicable Zoning.** *Development pursuant to this exclusion shall conform, unless otherwise limited by this order, to the zoning regulations in effect on the date this order.*
- 5) **Implementation.** *The City of Newport Beach shall, at an appropriate stage in the local approval process for development subject to this exclusion, distribute to the applicant for such local approval a form provided by the Executive Director of the Coastal*

Commission. After final local governmental approval but prior to construction under this exclusion, the City shall send the completed form to the Coastal Commission. The completed form shall include a certification by the applicant that the approved development conforms to the terms and conditions of this order. The City of Newport Beach may, at its option, also make that certification on the completed form. No construction pursuant to this exclusion may commence until 5 working days have elapsed following receipt of the completed form by the Coastal Commission.

- 6) **Public Trust.** *In the event that any competent agency or court determines that any lands excluded by this order are subject to the public trust, this exclusion shall immediately become void as to those lands and any development undertaken on those lands shall be subject to the full permit requirements of the Coastal Act of 1976.*

Any existing Categorical Exclusion Order expires upon Commission final certification of a Local Coastal Program (LCP). The Commission certified a Land Use Plan for the City of Newport Beach on May 19, 1982, with major updates in 2005 and 2009. An Implementation Plan (except for one area of deferred certification) was approved by the Commission at its September 8, 2016 meeting. Final certification of the LCP is pending but has not yet occurred. With the goal of preventing a lapse in coverage by the Categorical Exclusion Order in a letter dated February 8, 2016, the City requested a renewal of the existing Categorical Exclusion Order, with the same categories of development that were excluded from coastal development permit requirements within the same geographic areas as are in the 1977 Categorical Exclusion Order as described above, and requested the same terms and conditions.

Public Resources Code Section 30610(e) authorizes the Commission to exclude from the permit requirements of the Coastal Act, any category of development within a specifically defined geographic area, if certain findings are made. The Commission must find, by two-thirds vote after public hearing, that:

- 1) The exclusion will not result in a potential for any significant adverse effect, either individually or cumulatively, on coastal resources or on public access to, or along, the coast; and
- 2) Where the exclusion precedes certification of the LCP, it will not impair the ability of the local government to prepare a Local Coastal Program.

Staff Recommendation

Staff recommends the Commission certify the proposed new Categorical Exclusion Order CE-5-NPB-16-1 for the City of Newport Beach subject to the original Categorical Exclusion Order E-77-5 Terms and Conditions, regarding 1) lot coverage; 2) parking; 3) density; and 6) public trust lands. Staff also recommends minor modifications to Condition #4 regarding applicable zoning and to Special Condition #5 regarding implementation of the Categorical Exclusion. Staff also suggests one new additional condition, 7) effectiveness – stating that this Categorical Exclusion Order shall not become effective until final certification of the LCP by the Commission. In substance, the modified conditions are similar to the original Categorical Exclusion Order E-77-5 Terms and Conditions. These conditions are necessary to limit the application of the exclusion so as not to result in any significant adverse impact.

Pursuant to the Coastal Act, the Commission after public hearing and by two-thirds vote of its appointed members, may certify a categorical exclusion order to exempt certain categories of development from the requirements of coastal development permitting. The proposed categorical exclusion order, as conditioned, would not have any potential for any significant adverse effect, either individually or cumulatively, on coastal resources or on public access to, or along the coast. Additionally, the order, as conditioned, would not result in any significant change in density, height, or nature of uses in the City's coastal zone. **The motion and resolution for Commission action are on page 5.**

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EXHIBITS

Exhibit 1: Proposed Exclusion Areas - Maps

Exhibit 2: City of Newport Beach Request for Categorical Exclusion dated February 8, 2016

SUBSTANTIVE FILE DOCUMENTS

Staff Recommendation and Proposed Findings, City of Newport Beach Categorical Exclusion E-77-5 adopted September 23, 1977 by the California Coastal Commission.

ADDITIONAL INFORMATION

For further information on the City of Newport Beach proposed Categorical Exclusion Order or this report, please contact Liliana Roman, Coastal Program Analyst at (562) 590-5071. Correspondence should be sent to the South Coast District Office in Long Beach at 200 Oceangate, 10th floor, Long Beach, CA 90802 and at Liliana.Roman@coastal.ca.gov

I. PROCEDURAL ISSUES

A. STANDARD OF REVIEW

Section 30610(e) of the Coastal Act states, in relevant part:

Notwithstanding any other provision of this division, no coastal development permit shall be required pursuant to this chapter for the following types of development in the following areas: ...

(e) Any category of development, or any category of development within a specifically defined geographic area, that the commission, after public hearing, and two-thirds vote of its appointed members, has described or identified and with respect to which the commission has found that there is no potential for any significant adverse effect, either individually or cumulative, on coastal resources or on public access to, or along, the coastal program, that the exclusion will not impair the ability of local government to prepare a local coastal program.

Section 30610.5(b) of the Coastal Act states:

Every exclusion granted under subdivision (a) of this section and subdivision of (e) Section 30610 shall be subject to terms and conditions to assure that no significant change in density, height, or nature of uses will occur without further proceedings under this division, and an order granting an exclusion under subdivision (e) of Section 30610, but not under subdivision (a) of this section may be revoked at any time by the commission, if the conditions of exclusion are violated. Tide and submerged land, beaches, and lots immediately adjacent to the inland extent of any beach, or of the mean high tide line of the sea where there is no beach, and all lands and waters subject to the public trust shall not be excluded under either subdivision (a) of this section or subdivision (e) of Section 30610.

B. PUBLIC PARTICIPATION

Pursuant to Sections 13016, 13059, 13063, 13220, and 13243 of Title 14 of the California Code of Regulations, notice of the subject order has been distributed to all known interested parties, the applicant, and all affected cities and counties. Additionally, a hearing notice will be published in a local newspaper.

C. PROCEDURAL REQUIREMENTS

The request for Categorical Exclusion Order CE-5-NPB-16-1 was received by the Commission on February 9, 2016 and was deemed complete for filing on the same date. Pursuant to Section 13244(a) of Title 14 of the California Code of Regulations, upon adoption of an order granting the proposed exclusion, the Commission shall transmit copies of such order to the City of Newport Beach. According to Section 13244, the subject categorical exclusion approved by the Commission shall not be effective until the following occur:

- (a) The City of Newport Beach, by action of its governing body, acknowledges receipt of the commission's resolution of approval, including any conditions which may have been required;
- (b) The City of Newport Beach, by appropriate action of its governing body, accepts and agrees to the terms and conditions to which the categorical exclusion has been made subject; and
- (c) The executive director of the commission determines in writing that the City's resolution is legally adequate to carry out the exclusion order and that the notification procedures satisfy the requirements of the exclusion order.

If the Commission denies the Categorical Exclusion Order, the Commission shall transmit copies of the Commission's resolution that indicates the reasons for such denial. Upon receipt of this denial notice, no further action is required by the City.

II. STAFF RECOMMENDATION AND RESOLUTION ON CATEGORICAL EXCLUSION ORDER NO. CE-5-NPB-16-1

Staff recommends that, following a public hearing, the Commission adopt the following resolution and related findings.

A. APPROVAL OF THE PROPOSED CATEGORICAL EXCLUSION ORDER WITH CONDITIONS

Motion:

*I move that the Commission **adopt** Categorical Exclusion CE-5-NPB-16-1 for the City of Newport Beach subject to the conditions suggested in the staff report.*

Staff Recommendation for Certification of Categorical Exclusion:

Staff recommends a **YES** vote. Passage of this motion will result in the adoption of the order of categorical exclusion as conditioned. Public Resources Code Section 30610(e) requires an affirmative vote by two-thirds of the appointed Commissioners to adopt a Categorical Exclusion.

Order:

*The Commission by two-thirds vote of its appointed members, hereby adopts this Order as conditioned as consistent with the requirements of 30610(e) and 30610.5(b) of the Coastal Act to exclude the category of development detailed in the findings, from the permit requirements of the Coastal Act. Development subject to this Exclusion Order is limited to demolition and/or construction of single-unit and two-unit dwelling units and their appurtenant facilities in the R-1, R-BI, and R-2 Zoning Districts within the geographic areas shown on **Exhibit #1**. The exclusion does not apply to any development located on the first row of lots adjacent to the beach, bay, and wetlands; major undeveloped residential sites;*

Planned Community Districts; gated communities; and to tidelands or submerged lands, beaches, any lands or water subject to or potentially subject to the public trust, or to uncertified segments where the City does not have coastal permit issuing responsibility. Pursuant to the findings herein, the excluded development does not have the potential for any significant adverse impacts, either individually or cumulatively, on public access or coastal resources. This Categorical Exclusion, as conditioned, will assure that no significant change in density, height, or nature of uses excluded by the Order will occur without further proceedings under the Coastal Act or certified Local Coastal Program, if applicable.

B. SPECIAL CONDITIONS

This Categorical Exemption Order is granted subject to the following conditions:

1. **Lot Coverage.** Structures subject to this exclusion shall be designed so that the gross structural area, including storage, parking, and stairways, does not exceed 1.5 times the buildable area on non-conforming lots (4,000 square feet or less) and in areas where a majority of the lots are non-conforming.
2. **Parking.** A minimum of two parking spaces shall be provided for each residential unit, regardless of size. To the maximum extent practicable, parking shall be provided on the alley side of the lot and in no case shall parking be permitted in the required front setback.
3. **Density.** Duplexes shall only be permitted on lots 2,400 square feet or greater.
4. **Applicable Zoning.** Development pursuant to this exclusion shall conform, unless otherwise limited by this order, to the policies and regulations of the City of Newport Beach Local Coastal Program as certified by the Commission.
5. **Implementation.** The City of Newport Beach shall, at an appropriate stage in the local approval process for development subject to this exclusion, distribute to the applicant for such local approval a form provided by the Executive Director of the Coastal Commission. After final local governmental approval, the City shall send the completed form to the Coastal Commission. The completed form shall include a certification by the City that the approved development conforms to the terms and conditions of this order. The form shall be provided to the Coastal Commission and to any person who has requested such notice within five (5) working days of issuance. Additionally, per Section 13244(c) of the California Code of Regulations, this categorical exclusion shall become effective twenty (20) working days following Coastal Commission receipt of notification unless the Executive Director objects to the exclusion. The determination of whether a development is categorically excluded for purposes of notice procedures shall be made in reference to this Categorical Exclusion Order. Where an applicant, interested person, or City has a question, or the City is challenged on the determination as to the appropriate designation for the development, the City shall notify the Commission by telephone of the dispute/question and shall request an Executive Director opinion on the City's determination per dispute resolution procedures in the Implementation Plan Section 21.50.050(B).

6. **Public Trust.** In the event that any competent agency or court determines that any lands excluded by this order are subject to the public trust, this exclusion shall immediately become void as to those lands and any development undertaken on those lands shall be subject to the full permit requirements of the Coastal Act of 1976.
7. **Effectiveness.** This Categorical Exclusion Order shall not become effective until final certification of the Local Coastal Program (LCP) by the Commission.

III. PROPOSED CATEGORICAL EXCLUSION

City of Newport Beach
Categorical Exclusion Order CE-5-NPB-16-1

The Commission by a two-thirds vote of its appointed members hereby adopts, by regulation, an order, pursuant to Public Resources Code Sections 30610(e), categorically excluding from the permit requirements of the California Coastal Act of 1976 the category of development within the specifically defined geographic areas below:

A. CATEGORY OF DEVELOPMENT AND GEOGRAPHIC AREA

This order categorically excludes the demolition and/or construction of single-unit and two-unit dwelling units and their appurtenant facilities in the R-1, R-BI, and R-2 Zoning Districts within the Coastal Zone in the geographic area depicted on the Categorical Exclusion Map included as **Exhibit #1**. The Categorical Exclusion Order does not include the first row of lots adjacent to the beach, bay, wetlands, major undeveloped residential sites, Planned Community Districts, and gated communities.

B. FINDINGS

The Commission hereby finds, for the reasons set forth in the attached staff report, that this exclusion, as conditioned, presents no potential for any significant adverse effect, either individually or cumulatively, on coastal resources or on public access to, or along the coast, and that this exclusion will not impair the ability of local government to prepare a local coastal program.

C. CONDITIONS

In order to assure that the adoption of the exclusion will cause no significant change in density, height, or nature of uses in the excluded area and to implement the exclusion, this order is subject to the conditions above in Section II.B and the regulations regarding rescission and revocation in Section III.D below.

D. RESCISSION AND REVOCATION

Pursuant to Title 14 of the California Code of Regulations Section 13243(e), the Commission hereby declares that the order granting this exclusion may be rescinded in whole or in part at any time if, after public hearing by a majority vote of its appointed membership, the Commission finds that the terms and conditions of the exclusion order no longer support the findings specified in Public Resources Code, Section 30610(e). Further pursuant to Section 13243(e), the Commission declares that this order may be revoked at any time that the terms and conditions of the order are violated as provided in Public Resources Code, Section 30610.5.

IV. FINDINGS IN SUPPORT OF APPROVAL WITH CONDITIONS

The following findings support the Commission's approval of Categorical Exclusion Order CE-5-NPB-16-1 for the City of Newport Beach with the conditions outlined in Section II.B above. The Commission hereby finds and declares the following:

Background

In 1977 the Commission approved Categorical Exclusion Order E-77-5 for the City of Newport Beach. In its approval of the Categorical Exclusion Order in 1977, the Commission found that, for the proposed types of development within the exclusion areas involved, development did not have the potential to negatively impact coastal resources due to the scope and location of the development. No amendments were ever made to E-77-5 and it has been in effect for almost 40 years.

The Land Use Plan (LUP) for the City of Newport Beach was effectively certified on May 19, 1982, and subsequently amended multiple times. The City underwent a comprehensive LUP update approved by the Commission on October 13, 2005, in preparation for an Implementation Plan (IP) submittal, another update in 2009, and numerous project specific amendments in the past ten years. The Implementation Plan (except for one area of deferred certification) was approved by the Commission at its September 8, 2016 meeting and will be submitted back to the City for acceptance of the Commission's modifications. Final certification of the LCP has not yet occurred. Categorical Exclusion Order E-77-5 will expire upon final LCP certification by the Commission. With the goal of preventing a lapse in the Categorical Exclusion, in a letter to the Coastal Commission dated February 8, 2016, the City has requested a new Categorical Exclusion that includes the same categories of development that were excluded from coastal development permit requirements within the same geographic areas as are in the 1977 Categorical Exclusion Order. The Commission supports granting continuation of the Categorical Exclusion after LCP certification with (1) amendments to **Special Condition 4** in order to require that development pursuant to this exclusion shall conform to the regulations set forth in the certified Local Coastal Program and to **Special Condition 5** regarding implementation of the Categorical Exclusion and (2) addition of **Special Condition 7** to ensure that this Categorical Exclusion Order shall not become effective until final certification of the LCP by the Commission.

Existing Conditions and Future Trends

Approximately all residentially zoned lots within the coastal zone in the City of Newport Beach are built out. The trend in Newport Beach in the last forty years has been in-fill development with the replacement of residential structures in presently developed areas. As proposed, the Categorical Exclusion would exclude the demolition and/or construction of single-unit and two-unit dwelling units and their appurtenant structures and facilities in the R-1, R-BI, and R-2 Coastal Zoning Districts from coastal development permit requirements.

Impacts to Coastal Resources

The Commission must determine that the development categories proposed for exclusion within the defined geographic areas of Newport Beach will not have, either individually or cumulatively, a potential for any significant adverse effect on coastal resources or on public access to, or along, the coast.

Previously, the 1977 Categorical Exclusion required development pursuant to the exclusion to conform to the zoning in effect on the date the order was adopted by the Commission. This 2016 renewed Categorical Exclusion amends that condition to instead require development pursuant to this Categorical Exclusion to conform to all applicable policies and regulations of the certified Newport Beach Local Coastal Program (Special Condition 4). A new condition would delay the effective date of the new Categorical Exclusion Order until final certification of the LCP by the Commission (Special Condition 7).

In order to qualify for a Categorical Exclusion, development within the Categorical Exclusion Zone (per the Maps included as **Exhibit #1**) in the form of demolition and construction of single-unit and two-unit structures and their appurtenant structures would be required to meet all the requirements and development standards of the certified LCP. Implementation Plan Chapter 21.18 – Residential Coastal Zoning Districts R-A, R-1, R-BI, R-2, and RM) contains the applicable specific development standards regarding lot area, density/intensity, setbacks, height, fencing, landscaping, and parking. In addition to these development standards, the demolition and construction of new structures must be in compliance with all the development standards in Part 3 of the Implementation Plan which include Chapter 21.30 - Property Development Standards, Chapter 21.30A – Public Access and Recreation, Chapter 21.30B – Habitat Protection, Chapter 21.34 – Conversion or Demolition of Affordable Housing, Chapter 21.38 – Nonconforming Uses and Structures, Chapter 21.40 – Off Street Parking, Chapter 21.44 – Transportation and Circulation. Only development which meets all applicable policies and regulations of the Newport Beach Local Coastal Program, including the certified Land Use Plan and Implementation Plan, would be excluded. Applications for a Categorical Exclusion from CDP requirements which are not consistent with the certified LCP would remain subject to the coastal development permit requirements of the LCP.

In addition, any exclusion granted shall be subject to terms and conditions to assure that no significant change in density, height, or nature of uses will occur without further proceedings under this division, and an order granting an exclusion under subdivision (e) of Section 30610 may be revoked at any time by the Commission, if the conditions of the exclusion are violated.

Only the demolition and construction of single-unit and two-unit structures and their appurtenant structures is proposed for exclusion under the Categorical Exclusion Order; no other type of development is proposed to be excluded from CDP requirements in this Categorical Exclusion Order. Moreover, these exclusions will not apply to the Banning Ranch area of deferred certification, to the Irvine Coast segment of Newport Beach which has a certified Local Coastal Program administered by the County of Orange, or to development upon any lands and waters subject to or potentially subject to the public trust, such as tidelands or submerged lands, beaches and the first row of lots immediately adjacent to the inland extent of a beach, or the mean high tide line where there is no beach.

Public Access

Section 30210 of the Coastal Act states:

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

Section 30252 of the Coastal Act states in relevant part:

The location and amount of new development should maintain and enhance public access to the coast by (1) facilitating the provision or extension of transit service...(4) providing adequate parking facilities or providing substitute means of serving the development with public transportation...

Demolition and construction of single-unit and two-unit structures in gated communities or planned communities where issues of public access to the beach may exist and are not yet resolved are not included in this Categorical Exclusion Order. Therefore, the exclusion will not foreclose the ability for these public coastal access issues to be addressed through the CDP process.

Per Categorical Exclusion Order **Special Condition #4**, an application requesting an exclusion from CDP requirements for the demolition and/or construction of single-unit and two-unit structures must conform to the all applicable policies and regulations of the Newport Beach Local Coastal Program. Implementation Plan Chapter 21.30 contains the development standards for new development in the coastal zone, including the minimum parking requirement of two parking spaces for each unit regardless of size. Furthermore, Categorical Exclusion Order **Special Condition #2** requires a minimum of two parking spaces shall be provided for each residential unit, regardless of size and that to the maximum extent practicable, parking shall be provided on the alley side of the lot and in no case shall parking be permitted in the required front setback. Thus, as conditioned, the Categorical Exclusion Order presents no potential for any significant adverse effect, either individually or cumulatively on public access to, or along the coast.

Coastal Dependent Development

Section 30255 of the Coastal Act states:

Coastal-dependent developments shall have priority over other developments on or near the shoreline. Except as provided elsewhere in this division, coastal-dependent developments shall not be sited in a wetland. When appropriate, coastal-related developments should be accommodated within reasonable proximity to the coastal-dependent uses they support.

In its certification of the City's Land Use Plan, the Commission identified, through the designation of land uses, those areas where coastal-related and coastal-dependent developments would be appropriate. As proposed, the Categorical Exclusion Order does not exclude development proposed in commercial or mixed use coastal zoning districts (appropriate for visitor-serving facilities) or development along the first row of lots adjacent to the beach, bay and wetlands, and thus, will not result in any possible adverse impact to coastal dependent or coastal related development or visitor-serving facilities.

Scenic and Visual Qualities

Section 30251 of the Coastal Act states:

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

Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

The proposed Categorical Exclusion Order would require development projects consisting of the demolition and/or construction of single-unit and two-unit structures to conform to the all applicable policies and regulations of the Newport Beach Local Coastal Program. The City's certified Land Use Plan contains policies requiring the protection of the scenic and visual qualities of the City's coastal zone. Among those policies are requirements related to the maximum height of new development. Implementation Plan Chapter 21.18 contains the development standards for new development in the coastal zone, including lot coverage, density, and height limits for structures in R1 and R2 coastal zoning districts. Height restrictions for R1, R-BI and R2 structures are 24-ft. for a flat roof and 29-ft. for a sloped roof. Implementation Plan Section 21.30.060(C)(2) allows for the height of a structure to be increased by 4-ft. A structure with a flat roof may be increased up to a maximum of 28-ft. and a structure with a sloped rooftop to 33-ft. However, these increases are only allowable through a CDP if certain findings can be made. No increase in height would be allowable with a Categorical Exclusion from CDP requirements. If a proposed development in the Categorical Exclusion Zone sought a height exception, then it would need to go through the CDP process.

Habitat

Section 30240 of the Coastal Act states:

- (a) *Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.*
- (b) *Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

The majority of the geographic area covered by this Categorical Exclusion is built out and urbanized. Residential lots either abut other residential lots or streets. However, the residential lots along Buck Gully and Morning Canyon which are included in this Categorical Exclusion go down into the canyon in to open space/habitat. The certified Land Use Plan (LUP) identifies both canyons as Environmental Study Areas. These are relatively large, undeveloped areas that contain natural habitat that may be capable of supporting sensitive biological resources. Portions of the Environmental Study Areas are known to contain habitat that constitutes Environmentally Sensitive Habitat Area (ESHA). The natural communities/habitats found within Buck Gully and Morning Canyon are presumed to be ESHA, unless there is compelling site-specific evidence to the contrary.

Buck Gully is a 74 acre Environmental Study Area dominated mostly by Diegan coastal sage scrub and southern mixed chaparral along the canyon slopes, with southern willow scrub, annual grassland, and coastal freshwater marsh at the canyon bottom supported by a creek that flows along the canyon bottom the length of the gully. The lower portion of Buck Gully is isolated from the upper Buck Gully by Coast Hwy and is closely confined by residential development on the south and north canyon slopes. The central section of the canyon immediately northeast of Coast Hwy is also closely confined by residential development on the canyon slopes. Chaparral and coastal sage

scrub in these areas is impacted by the adjacent residential development, disturbed due to vegetation clearance for fire prevention by the homeowners and invasive ornamental plant species. The upper portion of Buck Gully is a broad, open, relatively undisturbed canyon, however, much of the native vegetation near the rim of the canyon is also cleared for fire prevention. It is highly probable that some habitat areas of Buck Gully may be considered ESHA.

Morning Canyon is an 11 acre Environmental Study Area and is characterized by disturbed southern mixed chaparral along the canyon slopes and bottom. The lower southwestern section of Morning Canyon is separated from the upper section by Coast Hwy. The entire canyon is highly disturbed as many of native plant communities have been displaced by non-native, ornamental, and invasive plant species that have invaded the canyon from adjacent residential areas. There is less probability that habitat areas of Morning Canyon may be considered ESHA.

Both the policies of the LUP regarding Environmental Study Areas and the standards and regulations of the Implementation Plan (IP) provide protection of sensitive biological resources. IP Chapter 21.30B – Habitat Protection requires an initial site resource survey to identify the presence or the potential for wetlands or sensitive habitat, vegetation, and wildlife species on the site for proposed development that is located within or within 100 feet of an Environmental Study Area. Furthermore, this IP Chapter requires establishment of certain buffers from wetlands and other sensitive habitats, and requires mitigation and monitoring programs for allowable impacts to sensitive resources that cannot be avoided through the implementation of project alternatives that would avoid impacts. The certified LUP contains Policy 4.4.3-18 establishing canyon development setbacks based on the predominant line of existing development for Buck Gully and Morning Canyon; specifically, development is not permitted to extend beyond the predominant line of existing development by establishing a development stringline where a line is drawn between nearest adjacent corners of existing structures on either side of the subject property for both principal structures and accessory improvements and Policy 4.1.3-1 that, among other things, requires a strict control to encroachments into natural habitats of Environmental Study Areas to prevent impacts that would significantly degrade the habitat. Proposed residential development in Morning Canyon and Buck Gully would be required to meet these requirements of the certified LCP in order to be granted a Categorical Exclusion from CDP requirements. If the proposed development is not able to meet the LCP requirements, for example, if the required buffer from sensitive resources is not provided, then the proposed development could not be granted a Categorical Exclusion. A CDP would instead be required to ensure that development in areas adjacent to environmentally sensitive habitat areas is sited and designed to prevent impacts which would significantly degrade those areas, and is compatible with the continuance of those habitat areas.

Geologic Hazards

Section 30253 of the Coastal Act states:

New development shall do all of the following:

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

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

landforms along bluffs and cliffs.

The geographic area proposed to be excluded from CDP requirements for the demolition and construction of residential structures include coastal canyon areas that may be considered areas of high geologic risk. These include Buck Gully, Morning Canyon and coastal bluffs not subject to marine erosion with Bayside Drive at the toe of the bluff and along Cliff Drive. Per policies in the certified LUP, principal and accessory structures (i.e., decks, patios, walkways) on residential lots along Buck Gully, Morning Canyon and coastal bluffs not subject to marine erosion are required to be setback from the canyon or bluff edge in accordance with the predominant line of existing development in the subject area. Furthermore, LUP policies require accessory structures on coastal bluffs not subject to marine erosion to be removed or relocated landward when threatened by erosion, instability or other hazards. These lots are all mostly built out and frequently re-develop. The Commission has consistently found that development on coastal canyon slopes or in areas of geologic risk such as along bluffs raises the potential for adverse impacts. The proposed Categorical Exclusion Order does not include the first row of lots adjacent to the beach, bay or wetlands, thus bluffs subject to marine erosion usually considered areas of high geologic risk are not included in this Categorical Exclusion Order.

According to the Implementation Plan regulations and standards, only development that does not raise even the potential for adverse impacts may be categorically excluded from coastal development permit requirements. In the case of these coastal canyon lots, proposed development that would result in the demolition of 50% or more of exterior walls, or full demolition and/or construction of a single-unit or two-unit structure and appurtenant structures must demonstrate that individual projects will not result in adverse impacts, and such a finding must be made in a geotechnical report before the project may be considered for exclusion from CDP requirements.

Archeological/Paleontological Resources

Section 30244 of the Coastal Act states:

Where new development would adversely impact archaeological or paleontological resources identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required.

All lots subject to the proposed categorical exclusion order have been previously developed. Thus, the likelihood of exposing archeological or paleontological resources in conjunction with a redevelopment project is low. Nonetheless, any development requesting a Categorical Exclusion from CDP requirements on sites known to contain or are suspected of containing archaeological/paleontological cultural resources must meet the regulations established in the Implementation Plan Chapter 21.30105 – Cultural Resource Protection. The IP's regulation provides for the determination of the nature and extent of on-site archaeological/paleontological cultural resources during the early stages of planning for the development of the site, thereby allowing for a full range of mitigation options. Therefore, if the proposed development involves grading or excavation and it is determined that the site has a high potential for the presence of archaeological/paleontological cultural resources, then a CDP would be required to ensure the protection of those cultural resources.

Protection of Marine Environment/Water Quality

Section 30230 of the Coastal Act states, in pertinent part:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231 of the Coastal Act states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Development consisting of demolition and construction of any structure has the potential for adverse water quality or hydrologic impacts to coastal waters. Any proposed development requesting a Categorical Exclusion from CDP requirements would be required to meet the requirements of Implementation Plan Chapter 21.35 – Water Quality Control requiring both construction phase and post-development plans for water quality protection in order to qualify for a Categorical Exclusion from CDP requirements.

Conclusion

Section 30610(e) of the Coastal Act allows the exclusion of certain categories of development from the requirement to obtain coastal development permits if the exclusion has no potential for significant adverse impacts to coastal resources or public access, and if the exclusion will not prejudice the local government's ability to prepare a Local Coastal Program. As conditioned, proposed Categorical Exclusion CE-5-NPB-16-1 would have no potential for significant adverse impacts to coastal resources or public access.

V. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The Commission finds that the adoption of the categorical exclusion with the conditions identified in Part II of these findings, is exempt from CEQA. Section 21080(b)(9) of CEQA exempts classes of project designated pursuant to Section 21084. The CEQA Guidelines at California Code of Regulations, Title 14, Sections 15300 to 15329 designate classes of development that do not have a significant effect on the environment and are therefore exempt from CEQA, pursuant to CEQA Section 21084 (so-called "Categorical Exemptions"). The City is proposing to exclude one type of development, i.e., the demolition and/or construction of single-unit and two-unit dwelling units and their appurtenant facilities on a legal parcel in specified geographic areas, from the requirement to obtain a coastal development permit. The exclusion of such development in these areas from coastal development permitting requirements falls under various CEQA Categorical Exemptions:

Permitting the demolition of a single-unit or two-unit dwelling is categorically exempt from the requirements of CEQA pursuant to Section 15301 of the CEQA Guidelines (Class 1 Categorical Exemption for existing facilities) which exempts the following class of activities associated with existing facilities:

Class 1 consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination. The types of "existing facilities" itemized below are not intended to be all-inclusive of the types of projects which might fall within Class 1. The key consideration is whether the project involves negligible or no expansion of an existing use. Examples include but are not limited to:

(1) Demolition and removal of individual small structures listed in this subdivision;

(1) One single-family residence. In urbanized areas, up to three single-family residences may be demolished under this exemption.

(2) A duplex or similar multifamily residential structure. In urbanized areas, this exemption applies to duplexes and similar structures where not more than six dwelling units will be demolished.

Similarly, Section 15303(a) of Title 14 of the California Code of Regulations (Class 3 Categorical Exemption for new construction of small structures) identifies the permitting of construction of a single family residence in a residential zone as a category of development that is exempt from CEQA. And also Section 15303(b) of Title 14 of the California Code of Regulations (Class 3 Categorical Exemption for new construction of small structures) covers two-unit dwellings as well. The LCP's Implementation Plan Chapter 21.18 – Residential Coastal Zoning Districts (R-1, R-BI, and R-2) contain limitations on the number of residences allowed per lot. R-1 coastal zoning districts are limited to a one-unit residential structure per lot, and R-BI and R-2 coastal zoning districts are limited to two-unit residential structures per lot. Thus, the permitting of the demolition and/or construction of a single family residence, one-unit and two-unit residential structures exempt from CEQA.

Section 15302 of Title 14 of the California Code of Regulations (Class 2 Categorical Exemption for replacement or construction) exempts from CEQA compliance “replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced.” Thus, Section 15302 exempts from CEQA residential demolitions and rebuilds that “have substantially the same purpose and capacity” such as those that fall within the scope of this Categorical Exclusion Order.

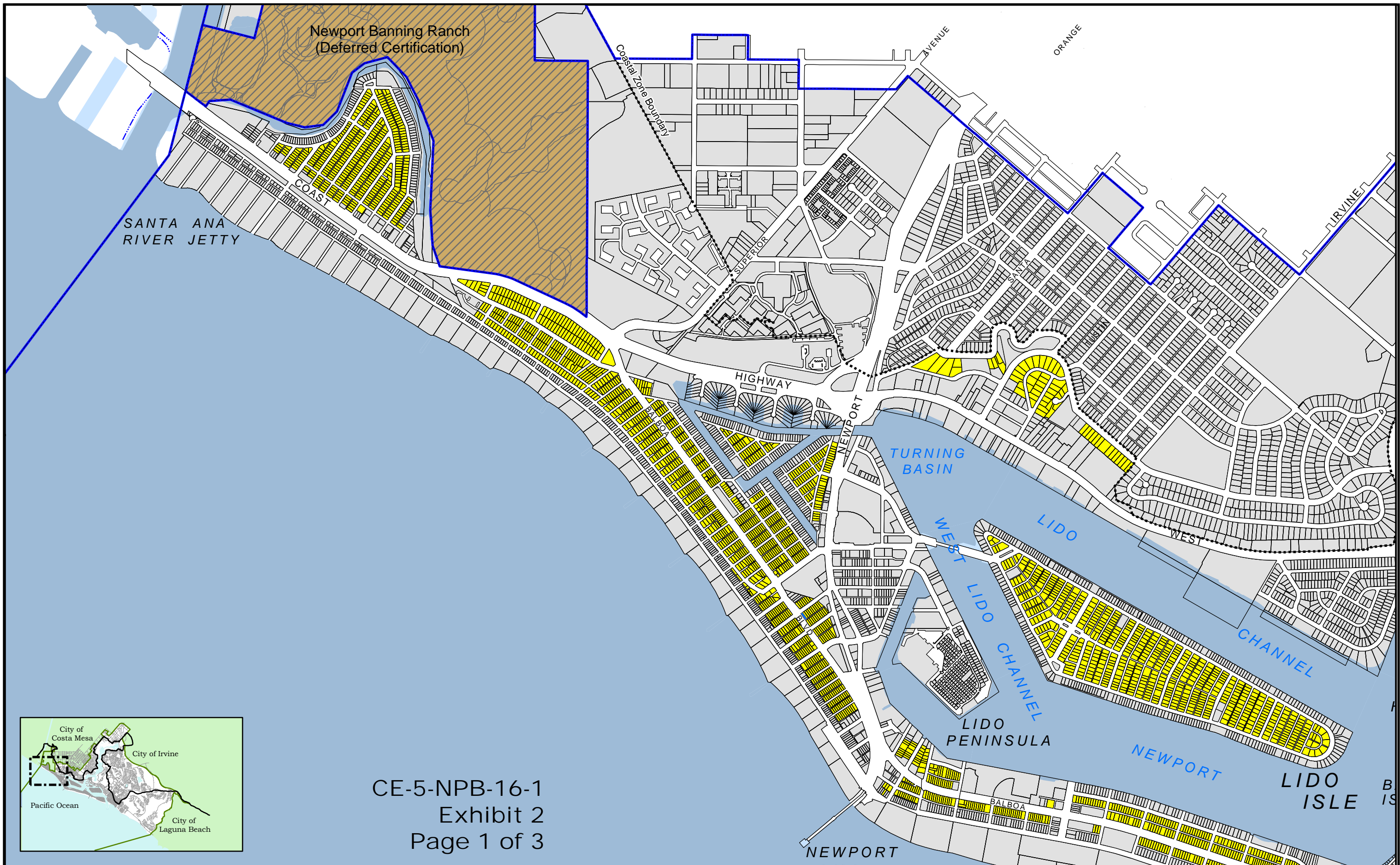
Finally, Section 15332 of Title 14 of the California Code of Regulations (Class 32 Categorical Exemption for in-fill development projects) exempts from CEQA “in-fill” development meeting the following conditions:

CE-5-NPB-16-1(City of Newport Beach Categorical Exclusion)

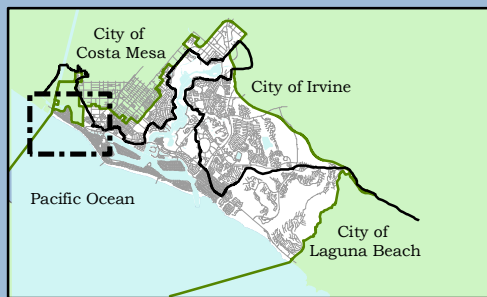
- a. The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.
- b. The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses.
- c. The project site has no value as habitat for endangered, rare or threatened species.
- d. Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.
- e. The site can be adequately served by all required utilities and public services.

The type of development activities within the geographic areas covered by this Categorical Exclusion Order satisfy the conditions specified in Section 15332 applicable to in-fill development. No lots greater than an acre are depicted in the geographic areas covered by this Categorical Exclusion Order as shown on Exhibit #2 of this report.

Therefore, the Commission's adoption of a categorical exclusion that exempts the demolition and construction of single-unit and two-unit dwellings from the requirement to obtain a coastal development permit within specified geographic areas does not require any further actions by the Commission to satisfy the requirements of CEQA.



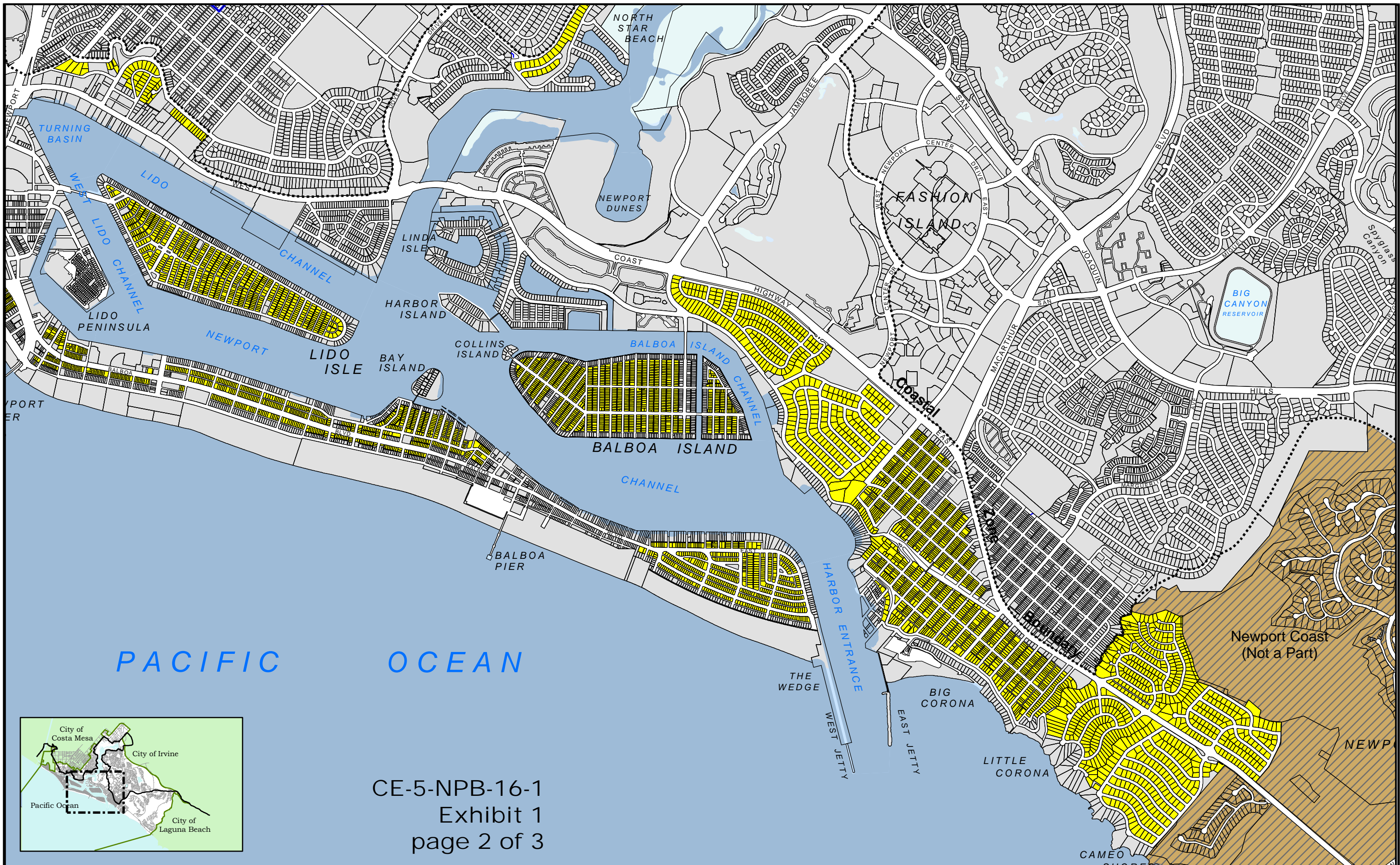
CE-5-NPB-16-1
Exhibit 2
Page 1 of 3



CE - 1 Categorical Exclusion Areas **REVISED**
West Newport Area




2,000 Feet

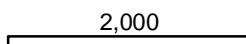


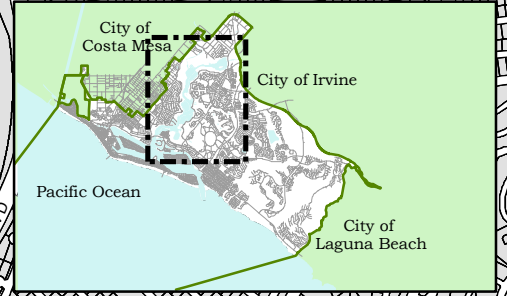
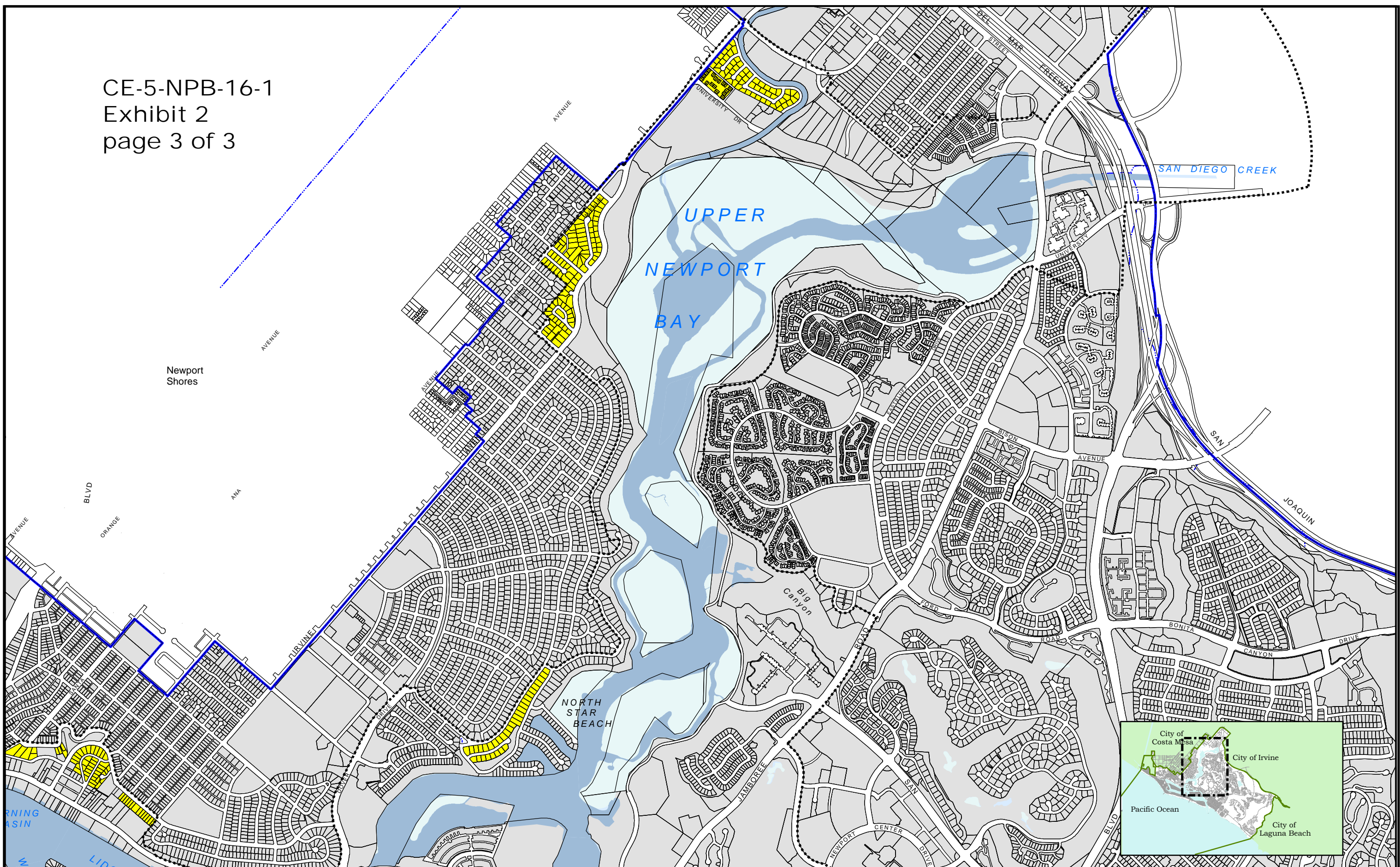
CE-5-NPB-16-1
Exhibit 1
page 2 of 3



 **CE - 2 Categorical Exclusion Areas** **REVISED**
Harbor Area



 2,000 Feet



 **CE - 3 Categorical Exclusion Areas** **REVISED**
Upper Back Bay



2,000 Feet



CITY OF NEWPORT BEACH

100 Civic Center Drive
Newport Beach, California 92660

949 644-3200

newportbeachca.gov/communitydevelopment

VIA ELECTRONIC MAIL AND OVERNIGHT DELIVERY

February 8, 2016

Sherilyn Sarb
Deputy Director
California Coastal Commission
South Coast District Office
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416

Subject: City of Newport Beach Request for Categorical Exclusion

Dear Ms. Sarb,

In response to your letter of December 4, 2015, and our meeting on January 28, 2016, the City of Newport Beach hereby requests that certain categories of development within specific geographic areas be excluded from the coastal development permit requirements of Chapter 7 of the California Coastal Act of 1976 pursuant to California Code of Regulations 13241. The proposed exclusion is described below, and it the City's intent that this exclusion would become effective upon the certification of the City's Local Coastal Program.

The requested categorical exclusion is identical to the terms and conditions of Categorical Exclusion Order E-77-5 (see Attachment No. 1). The exclusion is for a category of development (single-unit and two-unit) within a specifically defined geographic area (see Attachment 2). It is consistent with Sections 30610(e) and 30610.5(b) of the Coastal Act, as there is no potential for any significant adverse effect, either individually or cumulatively, on coastal resources or on public access to, or along, the coast. As it was in 1977, the excluded development would occur as infill and redevelopment in areas with established services, and infrastructure. Public access to, or along, the coast is well-established, primarily from public streets and parks. As these are developed areas, they do not contain any environmentally sensitive habitat areas. The exclusion is subject to terms and conditions to assure that there will be no significant change in density, height, or nature of uses.

This request reflects an ongoing acknowledgement by Coastal Commission of the continuation of Categorical Exclusion Order E-77-5 post-certification. In 1996, then-Executive Director Peter Douglas confirmed in a letter to the City that "certification of a local coastal program (LCP) for the City of Newport Beach would not affect the Commission's authority to grant a categorical exclusion for all development currently subject to the City's categorical exclusion." This goal was officially acknowledged by the Coastal Commission through the certification of the City's Coastal Land Use Plan, which includes Policy 2.2.3-3, which states:

2.2.3-3. Incorporate the terms and conditions of categorical exclusions into the implementation plan.

I cannot express strongly enough that City acceptance of a certified local coastal program is contingent on continuation of the terms and conditions of Categorical Exclusion Order E-77-5. Therefore, this request must be considered by the Coastal Commission on the same agenda as the Draft LCP Implementation Plan. We remain hopeful that both of these items can be considered at the May 2016 Coastal Commission hearing.

Sincerely,



Kimberly Brandt, AICP
Director

cc: Karl Schwing, Coastal Program Manager (w/o attachments)
Charles Posner, Coastal Program Analyst (w/o attachments)
Lilliana Roman, Coastal Program Analyst (w/o attachments)

Attachments:

1. Requested Categorical Exclusion Terms and Conditions
2. Area Maps

City of Newport Beach

Requested Categorical Exclusion Terms and Conditions

The categorical exclusion is for the demolition and/or construction of single-unit and two-unit dwelling units and their appurtenant facilities in the R-1, R-BI, and R-2 Zoning Districts within the Coastal Zone.

1. **Geographic Area.** The exclusion shall apply only to the following areas: Balboa Island, Balboa Peninsula, Cameo Highlands, Cameo Shores, Corona del Mar, Corona Highlands, Irvine Terrace, Lido Isle, Shorecliffs, Upper Newport Bay, and West Newport depicted in the attached maps.
2. **Exceptions.** The Categorical Exclusion Order does not include:
 - a. The first row of lots adjacent to the beach, bay wetlands
 - b. Major undeveloped residential sites
 - c. Planned Community Districts
 - d. Gated communities
3. **Terms and Conditions.** The terms and conditions of the Categorical Exclusion Order are as follows:
 - a. **Lot Coverage.** Structures subject to this exclusion shall be designed so that the gross structural area, including storage, parking, and stairways, does not exceed 1.5 times the buildable area on non-conforming lots (4,000 square feet or less) and in areas where a majority of the lots are non-conforming.
 - b. **Parking.** A minimum of two parking spaces shall be provided for each residential unit, regardless of size. To the maximum extent practicable, parking shall be provided on the alley side of the lot and in no case shall required parking be permitted in the required front setback.
 - c. **Density.** Duplexes shall only be permitted on lots 2,400 square feet or greater.
 - d. **Applicable Zoning.** Development pursuant to this exclusion shall conform, unless otherwise limited by this order, to the zoning regulations in effect on the date this order.
 - e. **Implementation.** The City of Newport Beach shall, at an appropriate stage in the local approval process for development subject to this exclusion, distribute to the applicant for such local approval a form provided by the Executive Director of the Coastal Commission. After final local governmental approval but prior to construction under this exclusion, the City shall send the completed form to the Coastal Commission. The completed form shall include a certification by the applicant that the approved development conforms to the terms and conditions of this order.

The City of Newport Beach may, at its option, also make that certification on the completed form. No construction pursuant to this exclusion may commence until 5 working days have elapsed following receipt of the completed form by the Coastal Commission.

City of Newport Beach
Requested Categorical Exclusion Terms and Conditions

Public Trust. In the event that any competent agency or court determines that any lands excluded by this order are subject to the public trust, this exclusion shall immediately become void as to those lands and any development undertaken on those lands shall be subject to the full permit requirements of the Coastal Act of 1976.