

**CALIFORNIA COASTAL COMMISSION**

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# Th21c

**To:** Coastal Commissioners and Interested Persons

**From:** Sherilyn Sarb, Deputy Director  
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Liliana Roman, Coastal Program Analyst

**Subject:** **City of Newport Beach Implementation Plan LCP-5-NPB-15-0039-1** for Commission action at its September 2016 hearing in Newport Beach.

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## SUMMARY OF STAFF RECOMMENDATION

### Procedural Note

The City of Newport Beach does not have a certified Local Coastal Program (LCP). The City's Land Use Plan (LUP) was effectively certified May 18, 1982, comprehensively updated in 2005 and the most recent update effectively certified on October 8, 2009. In 2013, the City began formulating the Implementation Plan (IP) and following three years of public involvement, hearings, and extensive deliberation by the City Planning Commission, Harbor Commission and City Council, the City submitted the IP for Coastal Commission consideration. The standard of review for the IP is the LUP that was approved by the Commission in 2009.

Commission staff notes that the City has offered a collaborative dialogue with staff, including early consultation on sensitive issues to be addressed in the IP. Commission staff has worked extensively with City staff in preparation of a draft IP submittal and subsequent to submittal of this IP. The result of this collaboration is an IP, as suggested to be modified, that attempts to address the issues raised by in a manner that is consistent with, and is adequate to carry out the certified LUP.

Upon approval of the IP by the Commission, the City would have six months to accept the Commission-approved IP. The City has indicated that it intends to take the IP back to the City Council shortly after the Commission's action. If the City Council accepts all of the Commission's approved changes, then the LCP would be certified when that City action is reported back to the Commission for final effective certification. If the City Council does not accept all of the changes, then the City would not have a certified LCP in place, and the City could choose to continue to rely on the Coastal Commission for coastal development permit authority or could choose to resubmit a modified IP proposal for future Commission consideration.

## **Background**

Newport Beach is a community of over 75,000 residents covering a 25.4 square mile area, including 2.5 square miles of bay and harbor waters. The City has over 30 miles of bay and ocean waterfront stretching from the northern border at the Santa Ana River mouth to Crystal Cove State Park in the south. The coastal zone is over 63 percent of the City's total land area. Newport Beach's coastal zone is incredibly rich in coastal resources, including the Upper Newport Bay Ecological Reserve; a rich tapestry of sensitive biological resources including sand dunes, coastal bluffs, and riparian areas; extensive visitor-serving uses that provide both vital recreational (e.g., trails, parks, beaches) and commercial (e.g., walkable commercial districts and visitor accommodations) opportunities for the millions of visitors to the City each year; and broad swaths of land subject to coastal hazards, including development protected by bulkheads, low-lying areas subject to flooding, and bluffs susceptible to erosion, all exacerbated by the effects of sea-level rise.

The following contains an outline of the City's IP submittal, and an overview of particularly important coastal resource protection issues and the suggested modifications required to achieve LUP consistency on these topics.

- Part 1 Implementation Plan Applicability
- Part 2 Coastal Zoning Districts, Allowable Land Uses, and Coastal Zoning District Standards
- Part 3 Site Planning and Development Standards
- Part 4 Standards for Specific Land Uses
- Part 5 Planning Permit Procedures
- Part 6 Implementation Plan Administration
- Part 7 Definitions
- Part 8 Maps
- Part 9 Specific Plans
- Part 10 Appendices

## **Shoreline Hazards**

As submitted, the proposed IP lacks a section that provides specific considerations and standards for waterfront development which are the majority of coastal development permit applications reviewed by the Commission in the past 40 years while implementing the Coastal Act for the City of Newport Beach. Therefore, suggested modifications include such a section which would carry out the LUP policies and apply to coastal development permit applications for development on residential and non-residential properties fronting on the waterfront of Newport Bay, the Pacific Ocean, the Old Channel of the Santa River (the Oxbow Loop), or the channels in West Newport. The suggested modifications require the review authority to consider the following in review of coastal development permit applications: the compatibility of the proposed development with the height, bulk, scale and building frontages of surrounding development; the presence of an existing

bulkhead, retaining wall or other similar structure seaward of the proposed development and whether such structure is located on private property or State tidelands and in alignment with structures on adjacent properties; the need for the existing or potential future bulkhead or similar device to protect the proposed development, and the ability to remove such protective device now or in the future; the development's ability to enhance public access to State tidelands and shoreline areas through project siting and design or conditions of approval; whether the development is designed and sited so as to minimize, and where feasible, avoid shoreline hazards; and whether any boating facilities (e.g. piers, pier platforms, gangways and dock floats) associated with the non-residential waterfront development are so sited and designed to protect, and where feasible, expand and enhance public access to and along shoreline areas. Thus, as modified, the IP implements corresponding conditionally approved LUP policies, which state the required parameters, metrics, and findings that must be made to ensure new development is safely located in a manner that assures structural stability and minimizes risks to life and property from coastal hazards (i.e., flooding and geologic hazards).

### **Bluff Setbacks**

LUP Policy 4.4.3-3 requires all new bluff top development located on bluffs subject to marine erosion to be sited in accordance with the predominant line of development *but not less than 25 feet from the bluff edge* and LUP Policy 4.4.3-4 requires new accessory structures to be sited in accordance with the predominant line of development *but not less than 10 feet from the bluff edge*. As submitted, the IP includes Bluff (B) Overlay District intended to address all the LUP policies pertaining to bluff top development, however, the B Overlay District does not provide a clearly stated requirement for a minimum 25 foot bluff setback for principal structures and 10 foot setback for accessory structures as on bluffs subject to marine erosion as required by the certified LUP.

### **Special Purpose Coastal Zoning Districts PC (Planned Community)**

PC Districts are not included in the LUP. The IP describes the special purpose of coastal zoning districts PC as intended to provide for areas appropriate for the development of coordinated, comprehensive projects that result in a superior environment; to allow diversification land uses as they relate to each other in a physical and environmental arrangement while maintaining the spirit and intent of this Implementation Plan; and to include a variety of land uses, consistent with the Coastal Land Use Plan, through the adoption of a development plan and related text that provides land use relationships and associated development standards. The IP identifies 20 PCs with Development Plans, 2 without Development Plans but with established land uses and development limits and 10 without only a site plan serving as the Planned Community Development Plan. One of the identified PCs is Banning Newport Ranch PC-25 established 1995 for the portion of Banning Ranch that is within the City limits. However, the Banning Ranch site in its entirety (both the portion within and outside the City) has been identified as an area for deferred certification and the Commission will not delegate permit authority to the City upon effective certification of the LCP. Thus, a suggested modification is to strike it from the IP. Furthermore, PC-25 does not at all reflect the land uses and development proposed for this portion of Banning Ranch in the pending CDP application 5-15-2097(Newport Banning Ranch LLC).

### **Tidelands, Harbor and Bay Regulations**

The suggested modifications pertaining to tidelands and bay waters are intended to remove any doubt that tidelands, submerged lands, open waters are the Commission's area of original permit jurisdiction. They clarify the type of development allowed in tidelands, clarify what type of

development requires a CDP and what development is exempt from CDP requirements such as clarifying that maintenance dredging is not necessarily (depending on the extent of dredging) exempt from CDP requirements, and most importantly, that the Commission is the permit authority for development over tidelands, submerged lands, and open coastal waters.

**Public Access – Public Beaches**

Public beaches are designated as Coastal Zoning District PR – Parks and Recreation in the IP, suggested modifications clarifying the type of allowable development on public sandy beach areas, and clarifying that public beaches are also subject to the public trust and therefore development on sandy beach areas remain the Commission’s permit jurisdiction including changes that would limit public beach parking hours, fees charged for parking, or change to method of fee collection would require a CDP from the Coastal Commission.

Furthermore, there is the issue of use of the beach at night. The City has a history of regulating beach hours at night and asserts that beach hours in effect prior to February 1, 1973, may continue to be effect. Suggested modifications are included protecting the public’s right to gain access to State tidelands at all hours and requiring an LCP amendment for any change in beach regulations or hours impacting the public’s right to access the beach or resulting in a closure to public use of any portion of the beach inland of the mean high tide line.

**Public Access – Visitor Accommodations**

IP Chapter 21.48 provides additional site planning, development, and operations standards for development of new visitor accommodations or the demolition, conversion, closure, or cessation of existing visitor accommodations. A suggested modification is to also include the “expansion, reduction, and redevelopment” of visitor accommodations into the applicability of these provisions. As proposed, the IP requires an Impact Analysis providing an analysis of a development’s impact on the availability of lower cost visitor accommodations in the City. As modified, the IP also requires a Feasibility Analysis providing an analysis of the feasibility of providing lower cost visitor accommodations for any development project involving visitor accommodations; if the proposed rates are not lower cost, the feasibility study shall explain why providing lower cost accommodations as part of the project is not feasible and propose suitable mitigation.

LUP Policy 2.3.3-6 provides for using short-term lodging permits as a means of providing lower-cost overnight visitor accommodations and includes restrictions to protect residential areas. In earlier times, the City was known as a summer beach resort type of town. The City began regulating short-term lodging in 1992 to address code enforcement issues and demands on City services. Current regulations include a prohibition on short-term lodging in single-family residential districts, with the exception of 211 ”grandfathered” properties, but allows short-term lodging in two-unit and multi-family zones. The City has approximately 1,070 active short-term lodging permits; all but nine are located in West Newport, Balboa Peninsula, Balboa Island, and Corona del Mar, the most publicly accessible visitor-serving beach and harbor neighborhoods in the City. Unlike other beach cities, Newport Beach is not pursuing moratoria, caps or bans on short-term lodging. The IP includes provisions implementing LUP Policy 2.3.3-6, though preserving the short-term lodging prohibition in single-family residential districts, retains all grandfathered single-family properties and provides standards for the operation of short-term lodging units intended to prevent overburdening City services and adverse impacts on residential neighborhoods and on coastal access and coastal resources.

### **Mobility – Transportation and Parking**

Certain modifications are required in order for this section of the IP to be fully LUP consistent.

Suggested modifications pertaining to transportation and parking include:

- additional requirements for bicycle parking for non-residential land uses,
- requirement to include utilization of Transportation Demand Management strategies that promote the use of alternative transportation modes such as ridesharing, carpools, vanpools, public transit, bicycles and walking for any reductions to required off-street parking requirements
- clarifying language regarding off-site parking standards (i.e., standards for facilities, parking agreements, effect of termination of parking agreement)
- Parking Management Districts – properties within a Parking Management District may be exempted from all or part of the off-street parking requirements of IP Chapter 21.40
- Preferential Parking Zones – LUP Policy 3.1.6-1 states “Prohibit the establishment of new preferential parking districts in the coastal zone except where such restrictions would not have a direct impact to coastal access, including the ability to use public parking.” As proposed in the IP, there is insufficient detail provided in the establishment, and criteria for establishment of a PPZ that would ensure compliance with LUP Policy 3.1.6-1. Therefore, staff suggests striking the Preferential Parking Zones from the IP at this time until additional information can be provided.
- clarifying that Street and Right-of-Way Vacations and Abandonments of any public land or interest in public land shall require a coastal development permit and must make a finding of consistency with the LCP and the public access and recreation policies of Chapter 3 of the Coastal Act.

### **Street Vacation/Abandonment**

As proposed the IP includes procedures providing the City Council authority to approve or disapprove applications to vacate public rights-of-way and to abandon public service easements by filing an application for vacation or abandonment pursuant to City Streets and Highways Code Section 8300-8363 and shall require a CDP if within the Coastal Zone. As submitted, the IP does not fully conform to the LUP policy which prohibits the creation of new private streets, or the conversion of existing public streets (or public rights-of-way) to private streets (private ownership) through an action such as a vacation/abandonment, where such a conversion would inhibit public access to and along the shoreline and to beaches, coastal parks, trails, or coastal bluffs.

Modifications are necessary to ensure that such an action takes into consideration and makes the necessary findings of consistency with the LUP policies and where a vacation/abandonment is proposed within the first public road and the sea, makes the necessary findings of consistency with the public access and recreation policies of Chapter 3 of the Coastal Act.

### **Shoreline Height Limitation Zone**

Differences remain regarding the Shoreline Height Limitation Zone. The LUP contains a policy statement that limits the height of new development in the Height Limitation Zone to 35-feet. Residential development is limited to a height of 24 to 28 feet and non-residential development is limited to a height of 26 to 35 feet. Outside the Height Limitation Zone, heights up to 50 feet are permitted within the Planned Community (PC) Districts. The City maintains that this is a general

policy and never considered to be absolute and has therefore included a procedure in the IP that allows height increases past 35 feet in the Shoreline Height Limitation Zone. However, as the IP requires strict adherence to the LUP, and there is no basis in the LUP to justify increases to established height limits, a suggested modifications is necessary to remove such an allowance from the IP. Any allowance for new development to exceed 35 feet must be subject to an LCP amendment as has been required for the Marina Park lighthouse and the Lido Hotel.

### **Biological Resources**

The certified LUP includes policies that define ESHA, specify the uses allowed within it, specify the required buffers from ESHA and the allowed uses within those buffers, identifies biological assessment requirements, including limiting development uses in ESHA consistent with the Coastal Act.

In general, the proposed IP implements the certified LUP's biological resource protection standards and offers additional details on the CDP submittal requirements necessary to ensure such sensitive habitat protection. However, certain modifications are necessary for the IP to be fully LUP consistent. These changes mostly provide minor but important clarifications, and are made in order to ensure that the IP conforms to the LUP. For example, clarifying language is deemed necessary to ensure that the IP section delineating ESHA mitigation clearly states that impacts to ESHA shall only be impacts caused by an allowable use, one that is dependent on the ESHA resource to satisfy the use's function. No other use shall be allowed within ESHA. Other suggested modifications, however, are more substantive. For example, as proposed the IP allows payment of an in-lieu fee instead of habitat mitigation for impacts to both terrestrial habitat and wetlands. However, according to LUP policy, an in-lieu fee is only considered a possible mitigation measure for wetland habitat impacts. Thus, a suggested modification is necessary to make this distinction. Additionally, as submitted the IP allows development in dune habitat, as such, modifications are added to clarify that development in dune habitat is prohibited and "earthmoving" of beach sand in dune habitat areas shall be limited to dune restoration projects. Furthermore, suggested modifications clarify the difference between sand dunes which are considered sensitive habitat and temporary/seasonal sand dunes (i.e., sand berms) used to protect buildings and infrastructure from wave uprush during storm events. Thus, the IP can be approved only with these modifications to ensure it is LUP consistent on this point.

### **Cultural Resources**

The IP submittal provides a framework outlining the procedures required for development projects on a site deemed to potentially contain significant paleontological/archaeological resources. However, it lacks necessary detail important to ensure the protection of cultural resources *prior to* commencement of development activities (such as grading and excavation) and even prior to consideration of development proposals. Simply monitoring for resources during grading activities has not provided optimum results in terms of protecting resources. Thus, suggested modifications are required providing clear steps along the CDP application process to ensure the IP adequately carries out the LUP policies requiring new development to protect and preserve paleontological and archaeological resources from destruction and avoid and minimize impacts to such resources.

### **Nonconforming Uses and Structures**

The IP aims to address the detailed LUP policies regarding nonconforming uses and structures, however, suggested modifications are required to make important clarifications in order to ensure

full compliance with the LUP policies. For example, beginning with the applicability of this chapter to “legally established uses and structures” a suggested modification is necessary to add, that in addition to this chapter applying to all legally established uses and structures that become nonconforming due to reclassification, ordinance changes, or annexations, uses and structures also become nonconforming due to landform and habitat changes, including bluff or shoreline erosion, wetland or dune migration. Another important necessary clarification ensures that if a structure is nonconforming due to a coastal resource protection development regulation, the structure shall be brought into conformance with all current development regulations if the proposed alterations or additions would result in demolition or replacement of 50% or more of exterior walls. Furthermore, as modified, language is added to clarify that although nonconforming uses are allowed to be expanded or intensified, such new development must first comply with the coastal protection policies of the LCP and not increase the degree of non-conformity of the structure; IP allowances for alterations/additions to residential or nonresidential structures or uses nonconforming due to offstreet parking requirements requires a suggested modification to clarify that the addition or alteration may only be made if it does not increase the degree of nonconformity.

### **Maps**

While the IP as submitted includes relevant detailed maps such as area maps, height limit maps, planned community land use maps, it also includes Chapter 21.80- Maps Section 21.80.045 and Chapter 21.14 – Coastal Maps Section 21.14.045 with a narrative describing the aforementioned maps containing a permit and appeal jurisdiction map, Categorical Exclusion Map, Area of Deferred Certification Map, and Map displaying public trust lands where permit authority has been delegated to the City.

It is premature to include these maps in the IP, as approval for all of these maps require individual, separate Commission actions after approval of the IP. The Commission Mapping Unit is tasked with creation of the Post-Certification Permit and Appeal Jurisdiction Map for Commission adoption Post Certification of the IP. Any existing Categorical Exclusions (Cat Ex) become null and void after final LCP certification. The City has one Cat Ex, Categorical Exclusion Order E-77-5 which will expire upon effective LCP certification. The City has submitted a request for a new Cat Ex identical to the terms and conditions of Cat Ex Order E-77-5. In order to prevent a lapse in time between LCP certification and Cat Ex renewal, staff has committed to bring the Cat Ex action for Commission action within the six month period between Commission action and final Commission effective certification. Regarding an Area of Deferred Certification (ADC), the LUP identifies the Banning Ranch site as a future ADC at the time LCP certification. Thus, the Commission will retain permit authority, applying Chapter 3 as the standard of review, over any proposed development on the Banning Ranch site, after effective certification of the LCP. Finally, included in the IP submittal, is a request for permit authority over certain public trust lands per Coastal Act Section 30613. The IP should not effectively authorize such a transfer of permit authority over Commission retained jurisdiction areas. Any Section 30613 request must be submitted to the Commission, separate from the IP submittal, after effective certification of the full LCP, once the City has obtained permit jurisdiction. The request for permit transfer may then be considered by and acted upon by the Commission and may occur as part of the Post-Certification Map adoption.

### **CDP Procedures**

The Coastal Act and Coastal Act Regulations define the activities that constitute development, require a CDP that is consistent with the Coastal Act or the local government's Commission-certified LCP for the activities that meet the definition of development, and then lists the different types of CDPs. The Coastal Act's implementing regulations then offer detailed provisions that specify permitting procedures, including required noticing, hearing dates, and appeals procedures.

While the IP as submitted by the City offers a detailed set of CDP procedures, some of those procedures do not have a place in an IP, and in places, the intent of the IP language is not always clear. Suggested modifications aim to provide clarity in these areas. The City is in agreement with the majority of these modifications with a few exceptions, particularly with respect to suggested modifications to strike out Chapter 21.66 in its entirety as it pertains solely to LCP amendments and striking out Section 21.50.070(A) outlining the City's CEQA review requirements as the requirements to implement the LCP and thus, the Coastal Act, is a completely separate process from that of CEQA. Other suggested modifications clarify the difference between the requirement of posting of a pending project notice at the project site at the time a CDP application is submitted from the mailed notice of public hearing that is later distributed to the public and the Commission, both of which are very important steps for transparency purposes because they ensure that the Commission and interested stakeholders can weigh in on City CDP decisions prior to the City's actions; clarifying the type of development requiring a CDP and development exempt from CDP requirements, clarifying nomenclature/terminology (i.e., "filing" vs. "receives") and the addition of dispute resolution procedures. Other modifications to the CDP procedures chapters address emergency permits, temporary events, land divisions, nonconforming structures, and potential takings analysis.

As modified, the IP identifies the procedures by which it will carry out the policies of the LUP and the process by which it will carry out the LCP, including by specifying the type of development requiring a CDP and their corresponding hearing and noticing requirements, and allows for a robust program of challenge and appeal, all with the goal of maximizing public participation consistent with the LUP and Coastal Act. Thus, if modified as suggested in this report, the IP is consistent with and adequate to carry out the policies of the City's certified LUP.

### **Conclusion**

In conclusion, the City of Newport Beach has prepared and submitted an IP with early collaboration with Commission staff, and Commission staff has continued to work closely with the City after the proposed IP was submitted to the Commission for consideration. The end result of this ongoing collaboration is an IP as suggested to be modified that should serve to ably protect the significant coastal resources of the Newport Beach coastal zone for years to come. If modified as suggested in this report, staff believes that the IP is consistent with and adequate to carry out the policies of the certified LUP. Staff recommends that the Commission hold a public hearing and approve the IP subject to modifications. This will require the Commission to **deny** the IP as submitted, and then **approve** the IP if modified to incorporate the suggested modifications. The motions to accomplish this are found on page 10, below.



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**EXHIBITS**

Exhibit 1: Proposed Coastal Zoning Map

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

Exhibit 3: IP Maps with Coastal Commission Suggested Modifications

**ADDITIONAL INFORMATION**

For further information on the City of Newport Beach proposed Implementation Plan 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, 10<sup>th</sup> floor, Long Beach,

CA 90802 and at Liliana.Roman@coastal.ca.gov

## **MOTION AND RESOLUTION**

Staff recommends that the Commission approve the IP amendment if modified. The Commission needs to take two separate actions to effect this recommendation.

### **1. Denial of the Implementation Plan as Submitted**

Staff recommends a **YES** vote on the following motion. Passage of this motion will result in denial of the IP submittal and adoption of the following resolution and findings. The motion passes only upon an affirmative vote of a majority of the Commissioners present.

***Motion.** I move that the Commission reject Implementation Plan Amendment LCP-5-NPB-15-0039-1 as submitted by the City of Newport Beach, and I recommend a yes vote.*

***Resolution to Deny as Submitted.** The Commission hereby denies certification of the Implementation Plan as submitted by the City of Newport Beach and adopts the findings set forth below on grounds that the Implementation Plan as submitted does not conform with, and is inadequate to carry out, the provisions of the Land Use Plan. Certification of the Implementation Plan as submitted would not meet the requirements of the California Environmental Quality Act, as there are feasible alternatives and mitigation measures that would substantially lessen the significant adverse impacts on the environment that will result from certification of the Implementation Plan as submitted.*

### **2. Approval of the Implementation Plan with Suggested Modifications**

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

***Motion.** I move that the Commission certify Implementation Plan Amendment LCP-5-NPB-15-0039-1 for City of Newport Beach if it is modified as suggested in this staff report, and I recommend a yes vote.*

***Resolution to Approve if Modified.** The Commission hereby certifies the Implementation Plan submitted by the City of Newport Beach, if modified as suggested, and adopts the findings set forth below on grounds that the Implementation Plan with the suggested modifications conforms with, and is adequate to carry out, the provisions of the Land Use Plan. Certification of the Implementation Plan if modified as suggested complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the plan on the environment, or 2) there are no further feasible alternatives and mitigation measures that would substantially lessen any significant adverse impacts on the environment that will result from certification of the Implementation Plan if modified as suggested.*

## SUGGESTED MODIFICATIONS

The Commission finds and suggests that the following changes (i.e., “suggested modifications”) to the submitted Newport Beach Implementation Plan (IP) are necessary to ensure that the IP is consistent with and adequate to carry out the Commission-approved Land Use Plan (LUP). If the City accepts these suggested modifications on the IP within six months of Commission action, by formal resolution of the City Council, the City’s Implementation Plan will become effective upon Commission concurrence with the Executive Director finding that the City’s action and the notification procedures for appealable development are legally adequate to satisfy and specific requirements set forth in the Commission’s certification order.

Suggested modifications to the standards of the proposed Implementation Plan are shown in **Exhibit 2** (changes shown in ~~strike-out~~ are to be deleted, and changes shown in underline are to be added) chapter by chapter. Suggested modifications displayed in **blue** are those suggested modifications for which the City is in full agreement, modifications displayed in **red** are modifications the City is not in full agreement.

Commission staff and City staff worked together for a year prior to IP submittal on November 18, 2015 to clarify the IP standards and IP format and have continued to work together over the course of the time extension period since the application was deemed complete on February 11, 2016. Significant progress has been made toward resolving issues related to the type of development requiring a permit, sea level rise and shoreline protection, and the inclusion of development standards. Although many issues have been resolved, substantive differences remain, including those relating to coastal bluff regulations, parking management, and height limits. City staff has generated many of the suggested modifications contained herein, either in response to Commission staff concerns or to supplement various sections. Wherever possible, Commission staff has incorporated the City’s suggestions and language changes.

## FINDINGS AND DECLARATIONS

### DESCRIPTION OF PROPOSED IMPLEMENTATION PLAN

#### *Existing Land Use Plan (LUP)*

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. No implementation plan has ever previously been submitted. The standard of review for this IP is the certified LUP.

#### *Proposed Implementation Plan (IP)*

In 2013, the City initiated the IP process by establishing an LCP Implementation Committee which met over a period of three years, conducting four community workshops in early 2015, four City Planning Commission Study Sessions, a Planning Commission hearing in October 2015 and a City

Council hearing on November 10, 2015. Additionally, throughout 2015, Commission staff provided comments and collaborated on the initial IP draft over numerous meetings. On November 18, 2015, the City submitted the IP proposal, deemed complete on February 11, 2016 after receipt of additional information requested from the applicant. At its March 10, 2016 hearing, the Commission extended the 60-day LCP deadline an additional year. Commission action on this IP submittal is required by April 2017.

As submitted, the IP is not part of the City’s Municipal Code, but instead is an independent document, describing and implementing the land use planning and development standards that solely apply to development within the coastal zone. The proposed IP is comprised of a coastal zoning district map and ten parts. An outline of the complete IP submittal is provided below:

Part 1 Implementation Plan Applicability

Chapter 21.10 – Purpose and Applicability of the Implementation Plan

Chapter 21.12 – Interpretation of Implementation Plan Provisions

Chapter 21.14 – Coastal Maps

Part 2 Coastal Zoning Districts, Allowable Land Uses, and Coastal Zoning District Standards

- Chapter 21.16 – Development and Land Use Approval Requirements
- Chapter 21.18 – Residential Coastal Zoning Districts (R-A, R-1, R-BI, R-2, and RM)
- Chapter 21.20 – Commercial Coastal Zoning Districts (CC, CG, CM, CN, CV, CV-LV, OG)
- Chapter 21.22 – Mixed-Use Coastal Zoning Districts (MU-V, MU-MM, MU-CV/15th St, MU-W1, MU-W2)
- Chapter 21.26 – Special Purpose Coastal Zoning Districts (OS, PC, PF, PI, PR, and TS)
- Chapter 21.28 – Overlay Coastal Zoning Districts (MHP, PM, B, and C, and H)  
Mobile Home Park (MHP) Overlay District, Parking Management (PM) Overlay District, Bluff (B) Overlay District, Canyon (C) Overlay District, Height (H) Overlay District

Part 3 Site Planning and Development Standards

- Chapter 21.30 – Property Development Standards
  - 21.30.010 Purpose and Applicability
  - 21.30.015 General Site Planning and Development Standards
  - 21.30.025 Coastal Zone Subdivisions
  - 21.30.030 Natural Landform and Shoreline Protection
  - 21.30.040 Fences, Hedges, Walls, and Retaining Walls
  - 21.30.050 Grade Establishment
  - 21.30.060 Height Limits and Exceptions
  - 21.30.065 Signs
  - 21.30.070 Outdoor Lighting
  - 21.30.075 Landscaping
  - 21.30.085 Water Efficient Landscaping
  - 21.30.100 Scenic and Visual Quality Protection
  - 21.30.105 Cultural Resource Protection
  - 21.30.110 Setback Regulations and Exceptions

- 21.30.130 Traffic Safety Visibility Area
- 21.30.135 Water Quality Control
- Chapter 21.30A – Public Access and Recreation
  - 21.30A.010 Purpose
  - 21.30A.020 Applicability and Exemptions
  - 21.30A.030 Protection or Provision of Public Access Required
  - 21.30A.040 Determination of Public Access/Recreation Impacts
  - 21.30A.050 Development Standards
  - 21.30A.060 Access Title and Guarantee
  - 21.30A.070 Coastal Commission Review of Recorded Access Documents
  - 21.30A.080 Timing of Access Requirements
  - 21.30A.090 Management and Maintenance
  - 21.30A.100 Encroachments into Public Rights-of-way and Accessways
- Chapter 21.30B – Habitat Protection
  - 21.30B.010 Purpose
  - 21.30B.020 Initial Site Resources Survey
  - 21.30B.030 Environmentally Sensitive Habitat Areas
  - 21.30B.040 Wetlands, Deepwater Areas, and Other Water Areas
  - 21.30B.050 Coastal Dunes
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#### Part 4 Standards for Specific Land Uses

- Chapter 21.48 – Standards for Specific Land Uses
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  - 21.48.025 Visitor Accommodations
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- Chapter 21.50 – Permit Application Filing, Processing, Review, and Staff Report
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  - 21.52.010 Purpose
  - 21.52.015 Coastal Development Permits
  - 21.52.025 Emergency Coastal Development Permits
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- Chapter 21.54 – Permit Implementation, Time Limits, and Extensions
  - 21.54.010 Purpose
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Part 6 Implementation Plan Administration

- Chapter 21.62 – Public Hearings
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- Chapter 21.66 – Amendments
  - 21.66.010 Purpose
  - 21.66.020 Initiation of Amendment
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  - 21.66.040 Required Findings
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  - 21.66.075 Submittal to the Coastal Commission
  - 21.66.085 Effective Dates
- Chapter 21.68 – Enforcement
  - 21.68.010 Purpose
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- 21.68.050 Legal Remedies

#### Part 7 Definitions

- Chapter 21.70 – Definitions

#### Part 8 Maps

- Chapter 21.80 – Maps
  - 21.80.010 Area Maps
  - 21.80.020 Bluff Overlay
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  - 21.80.055 Planned Community Site Plans
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#### Part 9 Specific Plans

- Chapter 21.90 – Santa Ana Heights Specific Plan
  - 21.90.010 Purpose
  - 21.90.020 Land Use Regulations
  - 21.90.030 Open Space and Recreation District: SP-7 (OSR)
  - 21.90.060 Residential Equestrian District: SP-7 (REQ)

#### Part 10 Appendices

- Appendix A. Sea Level Rise
- Appendix B. Coastal Access Signing Program
- Appendix C. Eelgrass Protection and Mitigation Plan for Shallow Waters in Lower Newport Bay: An Ecosystem Management Plan

The proposed IP is structured in such a way as to list the allowable land uses and the general development standards for each of the coastal zone’s fourteen zoning districts specified in Chapters 21.18, 21.20, and 21.26, with special overlay coastal zoning districts identified in Chapter 21.28, with more detailed property development standards applicable to all coastal zoning districts specified in Chapter 21.30, and a separate chapter, Chapter 21.48 for standards applicable for specific land uses such as visitor accommodations, public beaches and public trust lands, and Chapter 21.49 for standards specific to wireless telecommunications facilities, resource protection and development standards applicable to all allowable coastal development in Chapter 21.30A (Public Access and Recreation), Chapter 21.30B(Habitat Protection), Chapter 21.30C(Harbor and Bay Regulations), Chapter 21.38(Nonconforming Uses and Structures), Chapter 21.40 (Off-Street Parking), Chapter 21.44 (Transportation and Circulation). Chapters 21.50, 21.52, and 21.54 provide procedures for coastal development permit (CDP) application filing, processing and specify what types of activities constitute development requiring a CDP and development exempt from CDP requirements. Chapters 21.621 and 21.64 provide noticing and hearing specifications, while Chapter 21.66 is solely dedicated to LCP amendment procedures and Chapter 21.68 outlines enforcement of CDP provisions.



Each of the ten parts and individual chapters within each part is explained in more detail, below.

### **Part 1 Implementation Plan Applicability**

Part 1 is the introductory chapter of the IP, setting forth the City's intention that all development within the coastal zone must be consistent with the IP in order to carry out the statutory requirements of the California Coastal Act. Stated in Part 1, Chapter 21.12 – Interpretation of Implementation Plan Provisions is that while all policies and regulations specified in the City's General Plan, zoning and any other ordinance apply in the coastal zone, in the event of any perceived conflict between those policies, the policies of the Coastal Land Use Plan shall take precedence. However, in no case, shall the policies of the Coastal Land Use Plan be interpreted to allow a development to exceed a development limit established by the General Plan or its implementing ordinances. Furthermore, Part 1 includes rules for resolving questions about the meaning or applicability of any part of this IP and a chapter explaining the coastal zoning districts established in the IP to implement the LUP (Chapter 21.14 – Maps).

### **Part 2 Coastal Zoning Districts, Allowable Land Uses, and Coastal Zoning District Standards**

Part 2 divides the coastal zone into twenty-three (23) zoning districts, includes the list of allowable land uses in each of those coastal zoning districts, the required development standards applicable for those listed uses and cross-references other IP chapters with additional standards. Chapter 21.16 – Development and Land Use Approval Requirements, as modified, clearly states that no new development (i.e., use of land, demolition, alteration, construction, expansion, reconstruction, or replacement of structures) shall be allowed unless the development complies with this Implementation Plan and the requirements of this chapter. The remainder of Part 2 includes Land Uses and Development Standards for all the coastal zoning districts:

- Chapter 21.18 – Residential Coastal Zoning Districts (R-A, R-1, R-BI, R-2, and RM)
- Chapter 21.20 – Commercial Coastal Zoning Districts (CC, CG, CM, CN, CV, CV-LV, OG)
- Chapter 21.22 – Mixed-Use Coastal Zoning Districts (MU-V, MU-MM, MU-CV/15th St, MU-W1, MU-W2)
- Chapter 21.26 – Special Purpose Coastal Zoning Districts (OS, PC, PF, PI, PR, and TS)

Each Chapter includes a purpose statement for each coastal zoning district and two tables, one table listing each zoning districts and the land uses allowable and not allowable in each, and a second table listing the development standards for each coastal zoning district which list the siting and design parameters applicable to development within each zoning district, including minimum lot area, maximum residential density, minimum setback requirements, height limits, and maximum floor area ratio (FAR) or references another Section or Chapter in the IP with the specific development standard language for more detailed standards such as landscaping, lighting, fencing, parking and signage. These land uses and development standards are based on the City's Zoning Code but are built upon to ensure compliance with the LUP policies for development within the coastal zone.

Also included in Part 2 is Chapter 21.28 –Overlay Coastal Zoning Districts: Mobile Home Park (MHP) Overlay District, Parking Management (PM) Overlay District, Bluff (B) Overlay District, Canyon (C) Overlay District, Height (H) Overlay District.

### **Part 3 Site Planning and Development Standards**

Part 3 contains all the pertinent property development standards used in the review of development in the Coastal Zone. Throughout its many chapters, it contains basic standards for grade establishment, heights, landscaping, outdoor lighting, fences/hedges/wall, setback regulations, parking and nonconforming structures; and most importantly provides regulations pertaining to the protection of coastal resources such as natural landform and shoreline protection, public access and recreation, habitat, cultural resource protection, and transportation and circulation are covered in Part 3. The standards contained in Part 3 of the IP apply to all Coastal Zoning Districts in combination with the standards contained in Part 4 (Standards for Specific Land Uses) of the IP.

#### **Part 4 Standards for Specific Land Uses**

Part 4 includes additional detailed development standards applicable to land uses previously described in broader general terms in earlier chapters. The chapters in Part 4 include additional use-specific provisions not included in Part 2 – Coastal Zoning Districts, Allowable Land Uses, and Coastal Zoning District Standards which provides the general listing of general development standards applicable for all uses throughout the coastal zone. The standards provide additional details on required development parameters specific to the particular use, specify in which coastal zoning district the use is allowed, and/or identify additional performance standards/permit requirements, including other local permits and authorizations that a particular use/development may need. Many of the development standards repeat and build upon applicable Land Use Plan policies specific to those uses. These chapters cover specific land uses critical to public coastal access requirements such as overnight visitor accommodations, Newport Harbor, public trust lands, and public beaches. Additionally covered in Part 4 are standards for special events, limited duration uses/structures, and wireless telecommunications facilities.

#### **Part 5 Planning Permit Procedures**

Part 5 consists of three Chapters 21.50, 21.52, and 21.54 which provide the procedures for filing, processing, and acting on CDPs, de minimis waivers, exemptions, and categorical exclusions. Once an application is received, the Director is required to determine whether the development is: (1) categorically excluded; (2) exempt from coastal development permit requirements; (3) requires a coastal development permit; or (3) is eligible for de minimis waiver. Furthermore, provisions related to required findings for CDP approval are included. The IP's CDP exemption provision is intended to track the Coastal Act and Regulation's detailed CDP exemption provisions with respect to minor improvements, repair and maintenance, replacement after disaster, and emergency work, among others.

Chapter 21.52, Section 21.52.055 includes a “de minimis waiver” procedure that allows the City to waive the requirement for obtaining a CDP for certain types of projects and when certain findings are made, including that the project cannot involve potential for adverse effects on coastal resources, must be consistent with the LCP, and cannot be of a type or in a location where the project would be subject to a CDP by the Coastal Commission.

Chapter 21.54 outlines the process for appealing those CDP decisions to both the Planning Commission and/or City Council, and finally to the Coastal Commission; sending a Notice of Final Action to the Coastal Commission after the City's action is considered final and no local appeals have been filed, recordation of documents and covenants, CDP extensions, and resubmittals among others.

### **Part 6 Implementation Plan Administration**

Part 6 Implementation Plan Administration consists of four chapters providing procedures for public hearings, appeals, amendments to the LCP, and enforcement of the IP and any conditions of a permit or approval.

### **Part 7 Definitions**

Chapter 21.70 provides a detailed glossary of terms and phrases used in the LCP.

### **Part 8 Maps**

The IP includes a large, color poster Coastal Zoning Map depicting the entire City including the City boundary and Coastal Zone boundary and all the coastal zoning districts described in the text of the IP. In addition to the Coastal Zoning Map, the IP includes Part 8 – Maps which includes additional maps, specifically, three Overlay Maps: Bluff, Canyon, and Parking Management Overlay District Maps, Height Limit Areas, Setback Maps, Planned Community (PC) Site Plans and Land Use Maps, and finally included in the IP is a Draft Post-LCP Certification Permit and Appeal Jurisdiction Map created by the City.

### **Part 9 Specific Plans**

Only one chapter is contained in this section, as only one Specific Plan is included in the IP, Chapter 21.90- Santa Ana Heights Specific Plan.

### **Part 10 Appendices**

Appendix A – Sea Level Rise

Appendix B – Coastal Access Signage Program

Appendix C – Eelgrass Protection and Mitigation Plan for Shallow Waters in Lower Newport Bay: An Ecosystem Management Plan

### *Related Past Commission Actions*

#### **Major LUP Amendments**

The City's Land Use Plan (LUP) was effectively certified in May 18, 1982. Recent major LUP amendments include a 2009 update changing the LUP classification and density/intensity system and LUP maps to reflect the new system adopted in the General Plan's Land Use Element, a number of land use changes to properties in the coastal zone, numerous new policies, and updates on existing LUP policies. Previously, in 2005, the Commission approved a comprehensive LUP update intended to replace the previous LUP, which was certified in 1982 and again in 1990. The City reorganized the LUP, rewrote the narrative, and substantially modified each policy section. The updated LUP consists of five chapters: Introduction, Land Use and Development, Coastal Access and Recreation, Coastal Resource Protection, and Glossary. Submittal of the comprehensive LUP update was the first part of the City's effort to gain Local Coastal Program (LCP) certification. Submittal of this IP and approval is the final step in LCP certification.

#### **Coastal Zone Boundary Adjustments**

The City of Newport Beach recently submitted for Commission approval a Minor Boundary Adjustment (MBA) to the Coastal Zone Boundary adjustments to make clear the location of the

Coastal Zone Boundary and avoid confusion in anticipation of this IP submittal. Section 30103(b) of the Coastal Act provides the Commission with the authority to make minor adjustments to the inland boundary of the coastal zone up to 100 yards landward and up to 200 yards seaward. This process does not authorize the Commission to make significant changes to the Coastal Zone Boundary that was defined by the legislature. These adjustments, however, may only be the minimum necessary to avoid bisecting a parcel or to conform to a readily identifiable natural or manmade feature. The City of Newport Beach requested the Commission consider eleven (11) adjustments to the Coastal Zone Boundary affecting 147 parcels. Of the eleven (11) proposed alignments, the Commission approved eight (8) of the City's proposed alignments, and approved an alternative adjustment to three (3). The maps contained in the IP submittal depict the Coastal Zone Boundary Adjustments as approved by the April 14, 2016 Commission action.

*Related Future Commission Actions*

**Categorical Exclusion**

In 1977 the Commission approved Categorical Exclusion Order E-77-5 providing a categorical exclusion from coastal development permit requirements for the demolition and/or construction single-family and two-family residences, within the specifically defined geographic areas, which fully conform to the requirements of the zoning ordinance in effect on the effective date of the Exclusion Order and in accordance with the terms and conditions of the Categorical Exclusion Order. The Categorical Exclusion did not include the first row of lots adjacent to the beach, bay, or wetlands, in-fill development only and not major undeveloped residential sites, planned community districts, or gated communities. Categorical Exclusion Order E-77-5 applies to R-1 and R-1B zoned areas of Corona del Mar, Balboa Island, Balboa Peninsula and West Newport and R-1, R-1B, R-2, R-3, and R-4 zoned areas of Lido Island, Bayshores, Irvine Terrace, Shorecliffs, Cameo Shores Corona Highlands, Cameo Highlands and Upper Newport Bay. Unless renewed, existing Cat Ex Orders expire upon certification of an LCP.

From the beginning of the City and Commission staff collaboration on this IP submittal, the City emphasized its request on continuation of the terms and conditions of Cat Ex Order E-77-5 post LCP certification. On February 8, 2016, the City submitted a formal request that certain categories of development within specific geographic areas be excluded from the coastal development permit requirements of Chapter 7 of the Coastal Act, with the intent that the exclusion become effective upon the certification of the LCP. The City's requested categorical exclusion is identical to the term and conditions of Categorical Exclusion Order E-77-5 approved by the Commission in 1977. The Commission must take a separate action from this IP submittal action in order to approve a new Categorical Exclusion per the City's request. It is the intent of Commission staff to bring forward to the Commission for action the City's request for Categorical Exclusion prior to approval of a final Post-Certification map and effective certification of the LCP, therefore, ensuring no lapse in the Categorical Exclusion.

**Delegation of Permit Authority to the City over Public Trust Lands**

Included in this IP submittal are a few sections referencing public trust lands delegated to the City pursuant to Coastal Act Section 30613. During conference calls and meetings between City and Commission staff, the City expressed its intent to assume coastal development permit authority over certain public trust lands the City deems "filled and developed and located within an area which is committed to urban uses" as part of the IP approval and final LCP certification. The Commission

interprets the language of Coastal Act Section 30613 as a provision to delegate coastal development permit authority over lands subject to the public trust, typically the Commission's retained permit jurisdiction, as being applicable only after a local government has been already been certified and permit authority has been delegated to the City, requiring a Commission action separate from the Commission action to certify an LCP. Furthermore, the determination of whether lands that are subject to the public trust are(1) filled and developed and (2) located within an area which is committed to urban uses is a process requiring consultation with the State Lands Commission. Full consultation with State Lands Commission was not possible in the timeframe for Commission action on this IP submittal.

### **Irvine/Newport Coast Annexation**

Senate Bill 516 passed in 2001 allows the County of Orange to continue to implement its certified LCP for the Irvine/Newport Coast following the area's annexation by the City of Newport Beach. The bill required the City of Newport Beach to submit to the Commission for approval and certification the City's Local Coastal Program (LCP) for all of the geographic area within the coastal zone and the city's corporate boundaries as of June 30, 2000, 24 months after the City of Newport Beach's annexation of the Irvine/Newport Coast area from the County of Orange. Per the bill, if the City of Newport Beach fails to submit an LCP for all of the geographic area within the coastal zone to the Commission for approval and certification or does not have an effectively certified LCP within six months after the Commission's approval of the LCP, the City of Newport Beach is required to submit a monthly late fee of one thousand dollars (\$1,000) to the State..

The City underwent a major LUP update in 2005 in anticipation of submittal of an IP and LCP certification for its entire geographic area, including Newport Coast. However, the certified LUP and the currently proposed IP do not include the Irvine/Newport Coast segment of the City. Therefore, should the Commission approve the IP and consequently, effectively certify the LCP, this certified LCP would still not serve to meet the requirements of Senate Bill 516. The City would have to amend the LCP, both the LUP and IP to incorporate the Irvine/Newport Coast into the certified LCP. In the meantime, the County of Orange will continue to implement its certified LCP for this segment of the City of Newport Beach and the City will continue to pay the monthly thousand dollar fee.

### **Future Annexation of Banning Ranch**

The current LUP refers to Banning Ranch as an area encompassing 505 acres located south of the Semeniuk Slough and Coast Highway and east of the Santa Ana River. Fifty-one (51) acres are within the City's boundaries and within the Coastal Zone and nearly all of Banning Ranch, 454 acres are located in unincorporated County of Orange but within the City's sphere of influence. The City identified in the LUP the entire 505 acres of the Banning Ranch site (both the area within the City boundary and the area outside of the City boundary) as an area to be designated by the Commission as a deferred certification area at the time LCP certification. If the Commission so agrees, the Post-Certification Map will identify all 505 acres of the Banning Ranch site as an area of deferred certification. Thus, should at a future date, the City finalize annexation of the 454 acres of the site located in unincorporated County of Orange and wish to incorporate the Banning Ranch site into the certified LCP, that action would require a Commission amendment to the LCP (both the LUP and IP).

## CONSISTENCY ANALYSIS

The standard of review for the proposed IP amendment is whether it is consistent with and adequate to carry out the certified LUP.

## LAND USE AND DEVELOPMENT

### A. Applicable Land Use Plan Policies

#### *Land Use Categories*

*2.1.1-1 The land use categories in Table 2.1.1-1 establish the type, density and intensity of land uses within the coastal zone. If there is a conflict between the development limits of the Land Use Element and the Coastal Land Use Plan, the provision that is most protective of coastal resources shall take precedence. However, in no case, shall the policies of the Coastal Land Use Plan be interpreted to allow a development to exceed a development limit established by the General Plan or its implementing ordinances.*

#### *District/Corridor Policies*

*2.1.2-1. Development in each district and corridor shall adhere to policies for land use type and density/intensity contained in Table 2.1.1-1, except as modified in Sections 2.1.3 to 2.1.8.*

#### *West Newport*

*2.1.3-1. Work with community groups and the County to facilitate the acquisition of a portion or all of the Western Entry Parcel (designated RM/OS) as open space, which may be used as a staging area for Orange Coast River Park with public parking, public park-related uses, and access to the ocean. As an alternative, accommodate multi-family residential on portions of the property not used for open space, public parking, and public park-related uses. Require the siting and design of new development, including landscaping and public access, to maintain buffers of sufficient size to protect sensitive or rare resources including but not limited to those within the Semeniuk Slough wetland against significant disruption of habitat values.*

*2.1.3-2. Allow local and visitor-serving retail consistent with the CV category in two centers at Prospect Street and Orange Street.*

#### *Mariner's Mile*

*2.1.4-1. For properties located on the inland side of Coast Highway in the Mariners' Mile Corridor that are designated as MU-H, (a) the Coast Highway frontages shall be developed for marine-related and highway-oriented general commercial uses in accordance with CM and CG categories; and (b) portions of properties to the rear of the commercial frontage may be developed for free-standing neighborhood-serving retail, multi-family residential units, or mixed-use buildings that integrate residential with retail uses on the ground floor in accordance with the CN, RM, CV, or MU-V categories respectively.*

*2.1.4-2. For bay-fronting properties that are designated as MU-W, encourage marine-related and visitor-serving retail, restaurant, hotel, institutional, and recreational uses. Vertically integrated mixed use structures are allowed as described below. Permitted uses include those permitted by the CM, CV, and MU-V categories. On sites developed with mixed-use structures,*

*a minimum of 50 percent of the permitted square footage shall be devoted to non-residential uses. Mixed-use structures may only be developed on sites with 200 feet or more of street frontage along Coast Highway and, in aggregate, no more than 50 percent of the waterfront land area along Coast Highway between the Arches Bridge and the Boy Scout Sea Base may be developed with mixed use structures.*

*2.1.4-3. Permit development intensities in areas designated as CG to be increased to a floor area ratio of 0.5 where parcels are consolidated to accommodate larger commercial development projects that provide sufficient parking.*

*2.1.4-4. For bay-fronting properties that are designated as CV or CM, encourage marine-related and visitor-serving retail, restaurant, hotel/motel, institutional, and recreational uses.*

*2.1.4-5. Development shall be designed and planned to achieve high levels of architectural quality and compatibility among on-site and off-site uses. Adequate pedestrian, non-automobile and vehicular circulation and parking shall be provided.*

*2.1.4-6. Require sufficient area be provided for individual uses to prevent fragmentation and assure each use's viability, quality, and compatibility with adjoining uses.*

*2.1.4-7. For bay-fronting properties, provide plazas and other open spaces that protect existing and provide new view corridors and access from Coast Highway to the Harbor.*

*2.1.4-8. For bay-fronting properties, require that development on the Bay frontage implement amenities that assure access for coastal visitors including the development of a public pedestrian promenade along the bayfront.*

*2.1.4-9. For bay-fronting properties require that buildings be located and sites designed to provide clear views of and access to the Harbor and Bay from the Coast Highway in accordance with the following principles, as appropriate:*

- *Clustering of buildings to provide open view and access corridors to the Harbor*
- *Modulation of building volume and mass*
- *Variation of building heights*
- *Inclusion of porticoes, arcades, windows, and other "see-through" elements in addition to the defined open corridor*
- *Minimization of landscape, fencing, parked cars, and other nonstructural elements that block views and access to the Harbor*
- *Prevention of the appearance of the harbor being walled off from the public right-of-way*

- *Inclusion of setbacks that in combination with setbacks on adjoining parcels cumulatively form functional view corridors*
- *Encourage adjoining property owners to combine their view corridors to achieve a larger cumulative corridor than would be achieved independently*
- *A site-specific analysis shall be conducted for new development to determine the appropriate size, configuration, and design of the view and access corridor that meets these objectives, which shall be subject to approval in the Coastal Development Permit process.*

***Balboa Peninsula***

***2.1.5-1.*** *For bay-fronting properties that are designated as MU-W, marine-related uses may be intermixed with buildings that provide residential on the upper floors. Permitted uses include those permitted by the CM, CV, and MU-V categories. In the MU-W designation, free-standing and ground floor residential shall not be permitted in Lido Marina Village, Cannery Village, McFadden Square, and Balboa Island.*

***2.1.5-2.*** *Encourage uses that take advantage of Lido Village's location at the Harbor's turning basin and its vitality and pedestrian character, including visitor-serving and retail commercial, small lodging facilities (bed and breakfasts, inns), and mixed-use buildings that integrate residential above the ground floor with retail uses.*

***2.1.5-3.*** *Discourage the development of new office uses on the ground floor of buildings in Lido Village that do not attract customer activity to improve the area's pedestrian character.*

***2.1.5-4.*** *In Lido Marina Village (designated as MU-W), marine-related uses may be intermixed with buildings that provide residential on the upper floors. Permitted uses include those permitted by the CM, CV, and MU-V categories. Free-standing residential shall not be permitted.*

***2.1.5-5.*** *For interior parcels in Cannery Village and at 15th Street (designated as MU-H), permit mixed-use structures, where the ground floor shall be restricted to nonresidential uses along the street frontage such as retail sales and restaurants and the rear and upper floors used for residential including seniors units and overnight accommodations (comparable to MU-V). Mixed-use or commercial buildings shall be required on parcels at street intersections with intervening parcels developed for mixed-use or free-standing housing.*

***2.1.5-6.*** *Allow retail and visitor-serving commercial along the Newport Boulevard Corridor consistent with the CV category.*

***2.1.5-7.*** *Accommodate visitor- and local-serving uses that take advantage of McFadden Square's waterfront setting including specialty retail, restaurants, and small scale overnight accommodations, as well as mixed-use buildings that integrate upper floor residential with ground level retail.*



**2.1.5-8.** *On the Lido Peninsula, CM development shall occupy 30 percent of the total land area and residential development shall occupy 70 percent of the land area. One residential dwelling unit is allowed for each 2,900 square feet of lot area.*

**2.1.5-9.** *On the Balboa Village bay frontage (designated as CV), prioritize water-dependent, marine-related retail and services and visitor-serving retail.*

**2.1.5-10.** *For the Balboa Village core properties that are designated as MU-V, encourage local- and visitor-serving retail commercial and mixed-use buildings that integrate residential with ground level retail or office uses that attract customer activity and improve pedestrian character.*

**2.1.5-11.** *Development and use of lands designated CV (Visitor Serving Commercial) within Balboa Village may include a component that is a visitor serving private institutional facility such as a nautical museum, or similar visitor serving private institutional use.*

### **Balboa Island**

**2.1.6-1.** *On Marine Avenue and Agate Avenue (designated as MU-W), marine-related uses may be intermixed with buildings that provide residential on the upper floors. Permitted uses include those permitted by the CM, CV, and MU-V category. Free-standing residential shall not be permitted.*

### **General Development Policies**

**2.2.1-1.** *Continue to allow redevelopment and infill development within and adjacent to the existing developed areas in the coastal zone subject to the density and intensity limits and resource protection policies of the Coastal Land Use Plan.*

**2.2.1-2.** *Require new development be located in areas with adequate public services or in areas that are capable of having public services extended or expanded without significant adverse effects on coastal resources.*

**2.2.1-3** *Provide commercial facilities within or adjoining residential development or in other areas that will minimize the use of coastal access roads.*

### **Nonconforming Structures and Uses**

**2.2.5-1.** *Legal nonconforming structures shall be brought into conformity in an equitable, reasonable, and timely manner as rebuilding occurs. Limited renovations that improve the physical quality and character of the buildings may be allowed. Rebuilding after catastrophic damage or destruction due to a natural event, an act of public enemy, or accident may be allowed in limited circumstances that do not conflict with other policies and of the Coastal Land Use Plan.*

**2.2.5-2.** *In the older commercial districts of Balboa Village and Corona del Mar, allow existing commercial buildings that exceed current intensity limits to be renovated, upgraded, or reconstructed to no more than their existing intensity only where a finding can be made that the development will not perpetuate or establish a physical impediment to public access to coastal resources, nor adversely impact coastal views or biological resources. Where such development*

*cannot meet current parking standards, such approval may only be granted if the proposed development includes at least as much parking as the existing development, and provides for or facilitates the use of alternative modes of transportation such as ride-sharing, carpools, vanpools, public transit, bicycling or walking to the extent feasible.*

*2.2.5-3. When proposed development would involve demolition or replacement of 50 percent or more of the exterior walls of an existing structure that is legally non-conforming due to a coastal resource protection standard, the entire structure must be made to conform with all current development standards and applicable policies of the Coastal Land Use Plan..*

*2.2.5-4. The enlargement or intensification of legally established nonconforming uses shall be limited to only those uses normally permitted by right or by the approval of a use permit, but which were made nonconforming by additional regulations of the district in which they are located. Such enlargement or intensification shall be subject to discretionary review and approval by the City and shall not increase the degree of the use's nonconformity.*

### ***Residential***

*2.7-1. Continue to maintain appropriate setbacks and density, floor area, and height limits for residential development to protect the character of established neighborhoods and to protect coastal access and coastal resources.*

*2.7-2. Continue the administration of provisions of State law relative to the demolition, conversion and construction of low and moderate-income dwelling units within the coastal zone.*

*2.7-3. Continue to authorize short-term rental of dwelling units pursuant to permits and standard conditions that ensure the rentals will not interfere with public access and enjoyment of coastal resources.*

*2.7-4. Continue to require Report of Residential Building Records inspections prior to the sale of residential properties to reduce and prevent violations of building and zoning codes by providing prospective owners of residential property with information as to permitted and illegal uses and construction.*

### ***Commercial***

*2.3.1-1. Permit visitor-serving retail and eating and drinking establishments in all commercially designated areas.*

*2.3.1-2. Continue to provide waterfront-oriented commercial uses, including eating and drinking establishments and recreation and entertainment establishments, as a means of providing public access to the waterfront.*

*2.3.1-3. On land designated for visitor-serving and/or recreational uses, give priority to visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation over other commercial uses, except for agriculture and coastal-dependent industry.*

*2.3.1-4. Protect oceanfront land designated for visitor-serving and/or recreational uses for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.*

*2.3.1-5. Protect special communities and neighborhoods which, because of their unique characteristics, are popular visitor destination points for recreational uses.*

*2.3.1-6. Where feasible, reserve upland areas necessary to support coastal recreational uses for such uses.*

*2.3.1-7. Give priority to visitor-serving and recreational uses in the mixed-use areas of the Balboa Peninsula, and Balboa Island.*

*2.3.1-8. LCP Amendment No. 2005-001 (NPB-MAJ-1-06 Part A) to the Coastal Land Use Plan changing a portion of land, not to exceed 4.25 acres in size, designated Visitor-Serving Commercial (CV) in Newport Center to a residential designation shall require a payment of a fee to mitigate for the loss of visitor-serving land. The mitigation fee shall be used for the protection, enhancement and provision of lower-cost visitor-serving uses at Crystal Cove State Park. The mitigation fee shall be in the amount of five million (5,000,000.00) dollars to off-set the loss of the priority land use in Newport Center. The mitigation fee shall be paid prior to issuance of any coastal development permit granted for any residential project within the newly designated area and to an entity, identified by the permitting agency, capable of implementing the mitigation at Crystal Cove State Park. Until paid in accordance with the terms and conditions of the coastal development permit, the amount shall be increased every July 1st by an amount calculated on the basis of the percentage change from the year 2007 in the California Consumer Price Index for Urban Consumers as determined by the entity that grants the coastal development permit.*

*2.3.1-9. In Mariner's Mile, require that development on the Bay frontage implement amenities that assure access for coastal visitors. Pursue development of a pedestrian promenade along the Bayfront.*

*2.3.1-10. Support continued operation of passenger/sightseeing boats, passenger/fishing boats ("day boats"), and long-term boat rentals and sales.*

*2.3.1-11. Support continued short-term rental of small boats while encouraging vendors to teach customers how to safely operate the watercraft.*

*2.3.1-12. Support continued operation of entertainment and tour boats subject to reasonable regulations designed to ensure the operations don't have an adverse impact, such as unsafe navigation, impaired water quality, reduced visual quality, excessive noise, unsafe street traffic conditions, or parking shortages on the environment and land uses surrounding the harbor.*

*2.3.1-13. Any proposal to demolish existing overnight accommodations shall be required to demonstrate that rehabilitation of the units is not feasible. Any hotel/motel rooms for which a certificate of occupancy has been issued on or before the effective date of adoption of Coastal*

*Land Use Plan Amendment No. 2007-001 (NPB-MAJ-1-07) shall not be permitted to convert to a Limited Use Overnight Visitor Accommodation, except as provided in Policy 2.3.3-7.*

**Visitor Accommodations**

**2.3.1-13.** *Any proposal to demolish existing overnight accommodations shall be required to demonstrate that rehabilitation of the units is not feasible. Any hotel/motel rooms for which a certificate of occupancy has been issued on or before the effective date of adoption of Coastal Land Use Plan Amendment No. 2007-001 (NPB-MAJ-1-07) shall not be permitted to convert to a Limited Use Overnight Visitor Accommodation, except as provided in Policy 2.3.3-7.*

**2.3.3-1.** *Lower-cost visitor and recreational facilities, including campgrounds, recreational vehicle parks, hostels, and lower-cost hotels and motels, shall be protected, encouraged and, where feasible, provided. Developments providing public recreational opportunities are preferred. New development that eliminates existing lower-cost accommodations or provides high-cost overnight visitor accommodations or limited use overnight visitor accommodations such as timeshares, fractional ownership and condominium-hotels shall provide lower-cost overnight visitor accommodations commensurate with the impact of the development on lower-cost overnight visitor accommodations in Newport Beach or pay an "in-lieu" fee to the City in an amount to be determined in accordance with law that shall be used by the City to provide lower-cost overnight visitor accommodations.*

**2.3.3-2.** *Encourage new overnight visitor accommodation developments to provide a range of rooms and room prices in order to serve all income ranges. Consistent with Section 30213 of the Coastal Act, the City shall in no event (1) require that overnight room rental be fixed at an amount certain for any privately owned and operated hotel, motel, or other similar visitor-serving facility located on either public or private land; nor (2) establish or approve any method for the identification of low or moderate income persons for the purpose of determining eligibility for overnight room rentals in any such facilities.*

**2.3.3-7.** *Permit limited-use overnight visitor accommodations on the hotel resort property located at 1107 Jamboree Road where such accommodations are provided together with traditional overnight, hotel visitor accommodations and which shall be subject to specific restrictions, including on: quantity (no less than 391 units shall be traditional hotel units available for transient overnight use by the general public year round and no more than 88 of the total 479 units planned may be limited-use overnight visitor accommodations), duration of owner use of such facilities (maximum use of 90 days per calendar year with a maximum of 29 days of use during any 60 day period), management of the units as part of the hotel facility and allowance for transient overnight use by the general public when not owner occupied; all of which shall be further defined in the implementing regulations for this land use plan (when such regulations are certified) and through the coastal development permit process.*

**2.3.3-8.** *A method to define whether a facility providing overnight accommodations is low, moderate, or high cost for the City of Newport Beach coastal zone shall be developed in the implementing regulations for this land use plan (when such regulations are certified) and through the coastal development permit process.*

**Short Term Rentals**

*2.3.3-6. Continue to issue short-term lodging permits for the rental of dwelling units as a means of providing lower-cost overnight visitor accommodations while continuing to prevent conditions leading to increase demand for City services and adverse impacts in residential areas and coastal resources.*

*2.7-3. Continue to authorize short-term rental of dwelling units pursuant to permits and standard conditions that ensure the rentals will not interfere with public access and enjoyment of coastal resources.*

**Visitor Serving Facilities**

*2.3.3-3. Identify, protect, encourage and provide lower-cost visitor-serving and recreation facilities, including museums and interpretative centers.*

*2.3.3-4. Encourage visitor-serving and recreational developments that provide public recreational opportunities.*

*2.3.3-5. Continue to provide and protect public beaches and parks as a means of providing free and lower-cost recreational opportunities.*

**B. LUP Background**

*Land Use Designations*

Chapter 2 – Land Use and Development of the LUP identifies the distribution of land uses in the coastal zone and provides land use categories, permitted land uses in those categories and density/intensity of use limits. The land uses are derived from the Land Use Element of the General Plan but may contain more precise development limits for specific sites to ensure the most protection of coastal resources, for example, land uses include:

Single Unit Residential Detached	RSD
Single Unit Residential Attached	RSA
Two-Unit Residential	RT
General Commercial	CG
Visitor Serving Commercial	CV
Mixed Use	MU
Open Space	OS
Parks and Recreation	PR

Additionally, Chapter 2 – Land Use and Development of the LUP provides an extensive background section describing the residential neighborhoods and commercial corridors of West Newport, Mariner’s Mile, and Balboa Peninsula. Throughout the Peninsula, priority is given to the retention of marine-related uses in the Balboa Peninsula areas of Lido Village, Cannery Village, McFadden Square, and Balboa Village. All of which are distinct pedestrian-oriented centers of the Peninsula interconnected along Newport/Balboa Boulevard, a waterfront promenade on Newport Harbor, and streets proving cross-access between the Harbor and beachfront. Lido Village, McFadden Square, and Balboa Village contain a mix of visitor-serving, retail, small overnight accommodation facilities, and residential housing. Balboa Island though mostly residential does

contain a two block retail district along Marine Avenue and is a popular visitor destination. Mariner's Mile is composed of bay fronting properties oriented toward boat sales and storage, sailing schools, marinas and visitor serving marinas.

The LUP contains general policies such as, *“Continue to allow redevelopment and infill development within and adjacent to the existing developed areas in the coastal zone subject to the density and intensity limits and resource protection policies of the Coastal Land Use Plan.”* and *“Require new development be located in areas with adequate public services or in areas that are capable of having public services extended or expanded without significant adverse effects on coastal resources.”*

#### *Nonconforming Uses and Structures*

LUP policies regarding legal nonconforming structures and uses call for these structures and uses to be brought into conformity in an equitable, reasonable, and timely manner as rebuilding occurs with allowances for limited renovations that improve the physical quality and character of the buildings. LUP Policy 2.2.5-2 makes an exception for the older commercial districts of Balboa Village and Corona del Mar, allowing existing commercial buildings that exceed current intensity limits to be renovated, upgraded, or reconstructed to no more than their existing intensity if a finding can be made that the development will not perpetuate or establish a physical impediment to public access to coastal resources, nor adversely impact coastal views or biological resources. Additionally the policy allows redevelopment of a commercial site even if it cannot meet current parking standards, if the proposed development includes at least as much parking as the existing development, and provides for or facilitates the use of alternative modes of transportation such as ride-sharing, carpools, vanpools, public transit, bicycling or walking to the extent feasible.

LUP Policy 2.2.5-3 provides a very general policy regarding re-development of a site with a nonconforming structure by simply stating that when proposed development would involve demolition or replacement of 50 percent or more of the exterior walls of an existing structure that is legally non-conforming due to a coastal resource protection standard, the entire structure must be made to conform with all current development standards and applicable policies of the Coastal Land Use Plan.

In regards to nonconforming uses, LUP Policy 2.2.5-4 limits the enlargement or intensification of legally established nonconforming uses and clarifies any approved enlargement or intensification of a nonconforming use shall not increase the degree of the use's nonconformity.

#### *Visitor Accommodations*

The LUP policies call for lower-cost visitor and recreational facilities, including campgrounds, recreational vehicle parks, hostels, and lower-cost hotels and motels, to be protected, encouraged and, where feasible, provided. The LUP specifically requires any proposal to demolish existing overnight accommodations to demonstrate that rehabilitation of the units is not feasible and that any new development that results in the loss of existing lower-cost accommodations or provides new high-cost overnight visitor accommodations shall also provide lower-cost overnight visitor accommodations commensurate with the impact of the development on lower-cost overnight visitor accommodations or pay an "in-lieu" fee. Additionally LUP policies encourage new overnight visitor accommodation developments to provide a range of rooms and room prices in order to serve all income ranges.

### **C. Proposed Implementation Plan**

In general, the proposed IP submitted by the City for Commission consideration aims to implement the LUP's policies in a manner that tracks the City's Zoning Code instead of tracking the LUP and policies contained within the LUP. This presents a challenge as one has to refer to multiple parts of the IP to get a full understanding of how the LUP policies are carried out by the IP.

As such, the LUP's Chapter 2.0 – Land Use Development policies identified above are addressed in various locations throughout the IP: The six (6) separate chapters of Part 2 (Coastal Zoning Districts, Allowable Land Uses, and Coastal Zoning District Standards) provide an accounting of all allowable uses and specific development standards for each Coastal Zoning District and provides additional development standards for commercial parking management, height, mobile home parks, coastal bluffs, and coastal canyons through Overlay Districts; Part 3 (Site Planning and Development Standards) includes numerous chapters with additional property development standards, and regulations regarding public access and recreation, habitat protection, harbor and bay regulations, nonconforming uses and structures, off-street parking, transportation and circulation, all intended to be considered in combination with Part 2 and Part 4; Part 4 (Standards for Specific Land Uses) focuses on specific land uses such as visitor accommodations, public beaches, and public trust lands, with a separate chapter focusing on wireless telecommunication facilities.

#### *Areas of Deferred Certification*

All policies contained within the Land Use Plan and Implementation Plan of the City of Newport Beach which refer to or establish policy for development within any area of deferred certification shall not be considered certified. All development within these excluded areas shall continue to be subject to a Coastal Development Permit from the Commission or its successor agency.

#### *Nonconforming Uses and Structures*

The LUP policies related to nonconforming structures and uses are all contained in IP Chapter 21.38 – Nonconforming Uses and Structures. It establishes procedures for the continuation and maintenance of legally established existing uses and structures, except signs, that become nonconforming to the provisions of this IP due to reclassification, ordinance changes or annexations. Section 21.38.040 establishes that nonconforming principal structures may undergo routine maintenance and repairs and may be altered, or added on to/expanded with a limit of a maximum of 50% gross floor area of the existing structure. A structure would only be required to be brought into conformance if proposed alterations or additions would result in demolition/replacement of more than 50% of exterior walls if the structure is non-conforming due to a coastal resource protection development regulation. Specific exceptions are granted to existing nonresidential structures within Corona del Mar and Balboa Village and Landmark Structures.

Section 21.38.050 – Nonconforming Uses establishes procedures for the continuation of nonconforming uses. In nonresidential coastal zoning districts and in areas where residential uses are not allowed, Planned Community Districts, or Specific Plan Districts, a use that was allowed by right, but which becomes nonconforming because of new permit regulations may be expanded or intensified. A specific exception is granted to existing landmark structures. And Section 21.38.060 includes provisions for when alterations may be allowed where a residential or nonresidential structure or use is nonconforming due to offstreet parking requirements.

*Visitor Accommodations*

Section 21.48.025 – Visitor Accommodations includes provisions applicable to CDP applications involving the development of new visitor accommodations or the demolition, conversion, closure, or cessation of existing visitor accommodations. It provides a definition for low cost, moderate cost, and high cost visitor accommodations, defines an adverse impact as a direct loss of existing low cost visitor accommodations due to demolition, conversion, closure, or cessation of a unit, and requires mitigation of that loss by replacement of the unit at a one-to-one ratio or payment of an in-lieu fee.

**D. Consistency Analysis - Denial as Submitted and Approval with Suggested Modifications**

Minor suggested modifications are made providing clarifying language to the chapters of Part 2 of the IP defining allowable land uses and providing specific development standards. However, numerous suggested modifications are necessary to ensure Part 2 Chapter 21.28 – Overlay Coastal Zoning Districts (Mobile Home Park, Parking Management, Bluff, and Canyon Overlays) complies with LUP policies.

*Nonconforming Uses and Structures*

Part 3 Chapter 21.38 – Nonconforming Uses and Structures aims to address the detailed LUP policies regarding nonconforming uses and structures, suggested modifications are required to make important clarifications in order to ensure full compliance with the LUP policies.

For example, beginning with the applicability of this chapter to “legally established uses and structures” a suggested modification is necessary to add, that in addition to this chapter applying to all legally established uses and structures that become nonconforming due to reclassification, ordinance changes, or annexations, uses and structures also become nonconforming due to landform and habitat changes, including bluff or shoreline erosion, wetland or dune migration. Another important necessary clarification is to Section 21.38.040 – Nonconforming Structures, clarifying that if a structure is nonconforming due to a coastal resource protection development regulation, the structure shall be brought into conformance with all current development regulations if proposed alterations or additions would result in demolition or *replacement of 50% or more of* exterior walls, rather than demolition or *replacement of more than 50%* of exterior walls.

Section 21.38.050 – Nonconforming Uses establishes procedures for the continuation of nonconforming uses. In nonresidential coastal zoning districts and in areas where residential uses are not allowed, Planned Community Districts, or Specific Plan Districts, a use that was allowed by right, but which becomes nonconforming because of new permit regulations may be expanded or intensified. As modified, language is added to clarify that although nonconforming uses are allowed to be expanded or intensified, such new development must first comply with the coastal protection policies of the LCP. The modification ensures that owners are put on notice that redeveloping a structure that is protected by a seawall will result, if feasible, in removal of the seawall so that it will stop causing ongoing impacts to sand supply, access, visual resources, etc.

Section 21.38.060 which makes allowances for alterations to residential or nonresidential structures or uses nonconforming due to offstreet parking requirements requires a suggested modification to clarify that the addition or alteration may only be made if it does not increase the nonconformity



*Visitor Accommodations*

Consistent with the overall IP, the proposed IP Section 21.48.025 addressing visitor accommodations generally implements the LUP's visitor serving and recreational development policies. The IP requires adherence to the LUP's policies, which themselves are very clear in their emphasis to protect, encourage and provide lower-cost visitor accommodations and recreational facilities and requires mitigation for losses "commensurate" with the impact the new development has on lower-cost overnight visitor accommodations. Protecting existing lower cost overnight visitor accommodations requires that any proposal to demolish existing units to demonstrate that rehabilitation of the units is not feasible (LUP Policy 2.3.1-13). While the proposed IP includes some specificity with respect to process, including a requirement for application requirements such as an impact analysis, there remains uncertainty about how LUP policies and requirements would be appropriately implemented. For example, the IP fails to adequately carry out LUP Policy 2.3.1-13, thus, a suggested modification is necessary to include a requirement for a Feasibility Analysis to explain the feasibility of providing lower cost visitor accommodations. The explanation would need to address at minimum land value, development costs, provide a breakdown of estimated annual revenues and operating cost and any other necessary information to address the feasibility of maintaining existing lower cost accommodations or providing lower cost accommodations on site. Additional suggested modifications are made to clarify that the requirements of this section do not only apply to development of *new* visitor accommodations, but also apply to the expansion, reduction, redevelopment, demolition, conversion, closure, or cessation of *existing* visitor accommodations per LUP Policy 2.3.3-1. Furthermore, a suggested modification to clarify how low-cost visitor accommodations are defined; and include failure to provide a range of affordability and failure to use land suitable for lower cost accommodations for that purpose as an impact as required by LUP Policy 2.3.3-2.

Furthermore, as proposed, the provision for mitigation of impacts is lacking the necessary detail required to ensure the LUP policies are adequately carried out by the IP. Thus, suggested modifications are made that clearly delineate the process for the review authority to determine whether the proposed development will impact *existing* lower cost visitor serving accommodations, or will provide *new* high or moderate cost accommodations or limited-use accommodations such as timeshares and condominium-hotels. If it so determined, then mitigation commensurate with the impact the development will have is required by replacement of rooms lost at a one-to-one ratio onsite, or at a suitable off-site location *and* provide in-kind mitigation for adverse impacts due to the creation of new moderate, high cost, or limited use visitor accommodations. Only if both are infeasible, then payment of an in-lieu fee may be considered as a viable mitigation measure.

Therefore, the proposed IP is not consistent with, and is not adequate to carry out, the certified LUP as approved by the Commission and must be denied as submitted. As modified, the IP conforms with and adequately implements the certified LUP's public land use and development policies.

## **COASTAL DEPENDENT/MARINE RELATED USES**

The IP includes a series of standards meant to implement the Land Use Plan's broad swath of coastal resource protection policies, including the protection of coastal-related commercial developments and the uses they support.

### **A. Applicable Land Use Plan Policies**

#### ***Coastal Dependent Development***

*2.4.1-1. Give priority to coastal-dependent uses over other uses on or near the shoreline.*

*2.4.1-2. When appropriate, accommodate coastal-related developments within reasonable proximity to the coastal-dependent uses they support.*

*2.4.1-3. Discourage re-use of properties that result in the reduction of coastal-dependent commercial uses. Allow the re-use of properties that assure coastal-dependent uses remain, especially in those areas with adequate infrastructure and parcels suitable for redevelopment as an integrated project.*

*2.4.1-4. Design and site new development to avoid impacts to existing coastal-dependent and coastal-related developments. When reviewing proposals for land use changes, give full consideration to the impact on coastal-dependent and coastal-related land uses including not only the proposed change on the subject property, but also the potential to limit existing coastal-dependent and coastal-related land uses on adjacent properties.*

*2.4.1-5. Maintain the Recreational and Marine Commercial (CM) land use category and allow CM uses in the Mixed Use land use categories (MU-V, MU-H, and MU-W) in areas on or near the bay to encourage a continuation of coastal-dependent and coastal-related uses.*

*2.4.1-6. Protect and encourage facilities that serve marine-related businesses and industries unless present and foreseeable future demand for such facilities is already adequately provided for in the area. Encourage coastal-dependent industrial facilities to locate or expand within existing sites and allowed reasonable long-term growth.*

*2.4.2-1. Continue to designate lands for coastal-dependent/related educational and recreational uses.*

*2.6-1. In the areas designated for industrial land uses, give priority to coastal-dependent and coastal-related industrial uses over other industrial uses on or near the shoreline.*

*2.6-6. Encourage coastal-dependent industrial facilities to locate or expand within existing sites and permit reasonable long-term growth where consistent with the Coastal Land Use Plan.*

### **B. Proposed Implementation Plan**

The LUP's policies identified above are addressed throughout the IP. Chapter 21.20 – Commercial Coastal Zoning Districts includes the Commercial Recreational and Marine (CM) Coastal Zoning District intended to provide for areas appropriate for commercial development on or near the waterfront that will encourage the continuation of coastal-dependent and coastal-related uses,

maintain the marine theme and character, encourage mutually supportive businesses, encourage visitor-serving and recreational uses, and encourage physical and visual access to the bay on sites located on or near the bay. Uses such as boat storage, boat yards, marine service stations, water transportation services are considered coastal-dependent/marine related and would have priority over other allowable uses in the CM Zone. Chapter 21.22 – Mixed-Use (MU) Coastal Zoning Districts includes numerous specific MU Coastal Districts, for example, MU-MM (Mariner’s Mile) which applies to properties inland of Coast Hwy along this corridor, MU-W1(Water) which applies to waterfront properties along Mariner’s Mile corridor, MU-W2 which applies to waterfront properties in which marine-related uses may be intermixed with other uses, and MU-CV/15<sup>th</sup> St. (Cannery Village and 15<sup>th</sup> St.) which allows a mixture of multi-unit dwelling units and nonresidential uses with residential and overnight accommodations allowed above the ground floor and the ground floor is restricted to nonresidential uses. Marine-related industry, marina support facilities, marine services such as boat storage, boat yards, marine service stations and boat rental/sales are uses allowed in these MU Coastal Zoning Districts.

Chapter 21.48 grants priority to coastal-dependent uses over other uses on or near the shoreline and lists the type of development on or near Newport Harbor considered to have priority such as low-cost public boat launching facilities, commercial boat landing facilities, public and private marinas, dry boat storage facilities, facilities and services for visiting vessels including moorings, and guest docks. Priority is given to coastal-dependent and coastal-related industrial uses over other industrial uses on or near the shoreline, encouraging such industrial uses to locate or expand within existing sites. Additionally, priority is given to the provision of coastal-dependent land uses on public trust lands.

### **C. Consistency Analysis - Denial as Submitted and Approval with Suggested Modifications**

Overall, the IP implements corresponding LUP policies protecting coastal-dependent and marine-related uses and development. Specifically, LUP requirements that identify the need to protect and provide for areas appropriate for commercial development on or near the waterfront that will encourage the continuation of coastal-dependent and coastal-related uses, maintain the marine theme and character, encourage mutually supportive businesses, encourage visitor-serving and recreational uses, and encourage physical and visual access to the bay on sites located on or near the bay, are implemented. Chapters 21.20 and 21.22 identified in the section above, adequately provide land use and general development standards for commercial coastal zoning districts which provide for the continuation of coastal-dependent and coastal-related uses in the CM Zone, MU-MM, MU-W1, MU-W2, and MU-CV/15<sup>th</sup> St.

Chapter 21.408 – Standards for Specific Land Uses Section 21.48.035 – Newport Harbor provides that priority shall be given to coastal-dependent uses over other uses on or near the shoreline and provides additional development standards for development in Newport Harbor that mirror the policies of the LUP that development shall, where applicable protect, and where feasible, expand and enhance such uses. Minor but important suggested modifications are necessary to Chapter 21.48 in order to clarify the requirements to give priority to coastal-dependent and coastal-related uses and development. As modified, the IP conforms with and adequately implements the certified LUP’s public land use and development policies.

## **PUBLIC ACCESS AND RECREATION**

The IP includes a series of standards meant to implement the Land Use Plan's broad swath of coastal resource protection policies, including adequacy of public services to serve new development, protection of visual resources and community character, and the provision of public access and recreation.

### **A. Applicable Land Use Plan Policies**

*3.1.1-1. Protect, and where feasible, expand and enhance public access to and along the shoreline and to beaches, coastal waters, tidelands, coastal parks, and trails.*

*3.1.1-2. Protect and enhance all existing public street ends providing public access to the shoreline, beaches, coastal parks, and trails.*

*3.1.1-3. Develop and implement a uniform coastal access signing program to assist the public in locating, recognizing, and utilizing public access trails. Where appropriate, include information advising the public of environmentally sensitive habitats, safety hazards, and to respect adjacent private property.*

*3.1.1-4. Identify and remove all unauthorized structures, including signs and fences, which inhibit public access.*

*3.1.1-5. Allow public access improvements in environmentally sensitive habitat areas (ESHA) when sited, designed, and maintained in a manner to avoid or minimize impacts to the ESHA.*

*3.1.1-7. Continue to protect the public's right of access to the sea where acquired through historic use or legislative authorization. Where substantial evidence of prescriptive rights exists, actively pursue public acquisition or require access easements as a condition for new development.*

*3.1.1-8. Where there is substantial evidence that prescriptive rights of access to the beach exist on a parcel, development on that parcel must be designed, or conditions must be imposed, to avoid interference with the prescriptive rights that may exist or to provide alternative, equivalent access.*

*3.1.1-9. Protect, expand, and enhance a system of public coastal access that achieves the following:*

- Maximizes public access to and along the shoreline;*
- Includes pedestrian, hiking, bicycle, and equestrian trails;*
- Provides connections to beaches, parks, and recreational facilities;*
- Provides connections with trail systems of adjacent jurisdictions;*

- Provides access to coastal view corridors;*
- Facilitates alternative modes of transportation;*
- Minimizes alterations to natural landforms;*
- Protects environmentally sensitive habitat areas;*
- Does not violate private property rights.*

**3.1.1-11.** *Require new development to minimize impacts to public access to and along the shoreline.*

**3.1.1-12.** *Implement building design and siting regulations to protect public access through setback and other property development regulations of the Zoning Code that control building placement.*

**3.1.1-13.** *Require a direct dedication or an Offer to Dedicate (OTD) an easement for lateral public access for all new waterfront development causing or contributing to adverse public access impacts. Such dedication or easement shall extend from the limits of public ownership (e.g. mean high tide line) landward to a fixed point seaward of the primary extent of development (e.g. intersection of sand with toe or top of revetment, vertical face of seawall, dripline of deck, or toe of bluff).*

**3.1.1-14.** *Require a direct dedication or an Offer to Dedicate (OTD) an easement for vertical access in all new development projects causing or contributing to adverse public access impacts, unless adequate access is available nearby. Vertical accessways shall be a sufficient size to accommodate two-way pedestrian passage and landscape buffer and should be sited along the border or side property line of the project site or away from existing or proposed development to the maximum feasible extent.*

**3.1.1-15.** *Encourage the acceptance, improvement and opening of OTDs to the public by the City, a public agency, a private association, or other appropriate entity.*

**3.1.1-16.** *Require all direct dedications or OTDs for public access to be made to a public agency or other appropriate entity that will operate the accessway on behalf of the public. Require accessways to be opened to the public once an appropriate entity accepts responsibility for maintenance and liability.*

**3.1.1-17.** *Require new development in waterfront commercial areas to provide public access easements to and along the waterfront. Where appropriate, integrate public access easements into the project designs, such as restaurants with outdoor waterfront dining areas and boarding areas for charter and excursion vessels.*

**3.1.1-18.** *Require new development on ocean-fronting, residentially zoned properties located between the Santa Ana River Jetties and the Newport Harbor West Jetty to conform to the*

*setback requirements of the Zoning Code in effect as of October 13, 2005 to prevent impacts to public access.*

***Public Access Along Waterfront Commercial Properties***

***3.1.1-20.*** *Extend the Lido Marina Village boardwalk across all of the waterfront commercial properties in Lido Village.*

***3.1.1-21.*** *Provide a continuous waterfront walkway along the Rhine Channel connecting Cannery Village and McFadden Square waterfront commercial areas with Las Arenas Beach at 19th Street.*

***3.1.1-22.*** *Provide a walkway connecting the Lido Village area with Mariner’s Mile, if feasible.*

***3.1.1-23.*** *Provide a continuous walkway along the Mariner’s Mile waterfront from the Coast Highway/Newport Boulevard Bridge to the Balboa Bay Club.*

***3.1.1-24.*** *Encourage the creation of new public vertical accessways where feasible, including Corona del Mar and other areas of limited public accessibility.*

***3.1.1-25.*** *Where marine sales and service equipment and operations present security or public safety concerns, waterfront access detours may be necessary in some areas in order to maintain facilities and services essential to the operation of the harbor.*

***3.1.1-26.*** *Consistent with the policies above, provide maximum public access from the nearest public roadway to the shoreline and along the shoreline with new development except where (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources or (2) adequate access exists nearby.*

***3.1.1-27.*** *Implement public access policies in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following:*

- Topographic and geologic site characteristics;*
- Capacity of the site to sustain use and at what level of intensity;*
- Fragility of natural resource areas;*
- Proximity to residential uses;*
- Public safety services, including lifeguards, fire, and police access;*
- Support facilities, including parking and restrooms;*
- Management and maintenance of the access;*
- The need to balance constitutional rights of individual property owners and the public's constitutional rights of access.*

***3.1.1-28.*** *Encourage the creation of waterfront public spaces and beaches, with adjacent water access and docking facilities that serves as the identity and activity “centers” of Newport Harbor for special events of community/regional interest.*

***Blufftop Access***

**3.1.2-1.** *Protect, and where feasible, expand and enhance public access to and along coastal bluffs.*

**3.1.2-2.** *Site, design, and maintain public access improvements in a manner to avoid or minimize impacts to coastal bluffs (see Section 4.4.3).*

**3.1.2-3.** *Continue to cooperate with the State Department of Parks and Recreation, the State Department of Fish and Game, the State Coastal Conservancy, Orange County, and private organizations to protect, expand and enhance public access to and along coastal bluffs.*

***Beach Encroachments***

**3.1.3-1.** *Continue to maintain and improve the Oceanfront public right-of-way for public access purposes.*

**3.1.3-2.** *Continue to restrict the nature and extent of improvements that may be installed over public rights of way on the oceanside of beachfront residences and to preserve the City's right to utilize oceanfront street easements for public projects.*

**3.1.3-3.** *Limit the maximum oceanward extent of encroachments to the following encroachment zones:*

- A. Santa Ana River to 52nd Street. A maximum of 15 feet oceanward of the rear (ocean facing) property line within the oceanward prolongation of the side property lines.*
- B. 52nd Street to 36th Street. A maximum of 10 feet oceanward of the rear (ocean facing) property line within the oceanward prolongation of the side property lines.*
- C. 36th Street to E Street. Between A Street and a point 250 feet southeast of E Street, up to the inland edge of the Oceanfront Boardwalk (7 to 8 feet oceanward of the rear property line) and within an oceanward prolongation of the side property lines.*
- D. E Street to Channel Road. No encroachments are permitted from a point 250 feet southeast of E Street to Channel Road, with the exception of landscaping trees existing prior to October 22, 1991 and groundcover.*

**3.1.3-4.** *Limit encroachments within encroachment zones as follows:*

- A. Prohibit any structural, electrical, plumbing or other improvements that require issuance of a building permit.*
- B. Prohibit pressurized irrigation lines and valves.*
- C. Prohibit any object that exceeds 36 inches in height, with the exception of landscaping.*
- D. Prohibit any encroachments that impact public access, recreation, views and/or coastal resources.*

- E. Require landscaping to be designed and maintained to avoid impacts to public access and views.*
- F. Restrict landscaping in dune habitat areas to native vegetation.*

**3.1.3-5.** *Require annual renewal of encroachment permits and a fee.*

**3.1.3-6.** *Require encroachment permits to specify that the property owner waives and gives up any right to contest the validity of the oceanfront street easement, and that the encroachment permit is revocable, without cause, if the City proposes to construct public improvements within that zone.*

**3.1.3-7.** *Require encroachment permits to specify that the construction of any seawall, revetment or other erosion control devices, if necessary, shall occur within, or as close as feasible to, private property.*

**3.1.3-8.** *Incorporate into the implementation plan regulations specifying the types of improvements permitted within encroachment zones, a prohibition on improvements that could impair or restrict public access or views, procedures for the encroachment permit applications, City administration of the policy, and other appropriate provisions.*

**3.1.3-9.** *As mitigation for any impact on beach access resulting from the encroachments:*

- A. Maintain 33 street ends between 36th Street and Summit to provide an average of 2 parking spaces per street, and additional spaces where feasible.*
- B. Meter West Newport street end parking spaces in the same manner as the West Newport Park in order to encourage public use of the spaces.*
- C. Maintain a hard surface walkway perpendicular to Seashore Drive at Orange Avenue. The walkway shall extend oceanward a sufficient distance to allow a view of the surfline by an individual seated in a wheelchair. At least one handicapped parking space shall be designated at the Orange Avenue street end and at least one other handicapped parking space at one other West Newport street end.*
- D. Require a minimum of 85 percent of the fees generated by encroachments will be used for the construction and maintenance of improvements which directly benefit the beach-going public such as parking spaces, restrooms, vertical or lateral walkways along the beach and similar projects.*

### ***Street Vacations***

**3.1.5-2.** *Prohibit new private streets, or the conversion of public streets to private streets, where such a conversion would inhibit public access to and along the shoreline and to beaches, coastal parks, trails, or coastal bluffs.*



***Private Gated Communities***

***3.1.5-1.*** Prohibit new development that incorporate gates, guardhouses, barriers or other structures designed to regulate or restrict access where they would inhibit public access to and along the shoreline and to beaches, coastal parks, trails, or coastal bluffs.

***3.1.5-2.*** Prohibit new private streets, or the conversion of public streets to private streets, where such a conversion would inhibit public access to and along the shoreline and to beaches, coastal parks, trails, or coastal bluffs.

***3.1.5-3.*** Require public access consistent with public access policies for any new development in private/gated communities causing or contributing to adverse public access impacts.

***Temporary Events***

***3.1.7-1.*** Continue to require special event permits for temporary events and continue to require applications to provide details on event characteristics, including duration (including set up/assembly and break down/dismantle start and completion times), event hours, per day estimated attendance, parking arrangements, traffic control, noise control, waste removal, insurance, equipment to be used, food service, entertainment, sponsorships, and advertising and marketing plans.

***3.1.7-2.*** Condition special event permits for temporary uses in the coastal zone to minimize impacts to public access, recreation and coastal resources.

***3.1.7-3.*** Continue to limit the number and frequency of temporary events in the coastal zone held from the Memorial Day weekend to Labor Day.

***3.1.7-4.*** Require a coastal development permit for temporary events held in the coastal zone that meet all of the following criteria:

- 1.*** Held between the Memorial Day weekend and Labor Day;
- 2.*** Occupy any portion of a public sandy beach area; and
- 3.*** Involve a charge for general public admission where no fee is currently charged for use of the same area.

*A coastal development permit shall also be required for temporary events that do not meet all of these criteria, but have the potential to result in significant adverse impacts to public access, recreation and/or coastal resources.*

***3.1.8-1.*** Pursuant to the Section 21101 of the Vehicle Code, the City may adopt rules and regulations regarding the temporary closing of portions of any street for celebrations, parades, local special events, and other purposes when necessary for public safety.

***3.1.8-2.*** The City may temporarily close certain streets in West Newport for a period of no more than twenty-four hours during the Independence Day holiday when, in the opinion of the

*Police Chief or his designee, the closure is necessary to protect the public safety. In no event shall any street closure prevent or interfere with the public's access to the beach or bay.*

***Open Space/Tidelands***

*2.3.2-1. Continue to use public beaches for public recreational uses and prohibit uses on beaches that interfere with public access and enjoyment of coastal resources.*

*2.3.2-2. Continue to designate lands to provide visitor-serving and recreational facilities and view parks on or adjacent to the shoreline.*

*2.3.2-4. Continue to administer the use of tidelands and submerged lands in a manner consistent with the tidelands trust.*

*2.5.2-1. Administer the use of tidelands and submerged lands in a manner consistent with the tidelands trust and all applicable laws, including Chapter 70 of the Statutes of 1927, the Beacon Bay Bill (Chapter 74, Statutes of 1978), SB 573 (Chapter 317, Statutes of 1997), AB 3139 (Chapter 728, Statutes of 1994), and Chapter 715, Statutes of 1984 and the Coastal Act.*

*2.5.2-2. Promote the public's right of access to the ocean, beach, and bay and to the provision of coastal dependent uses adjacent to the water in the leasing or re leasing of publicly owned land.*

*2.5.2-3. Evaluate and ensure the consistency of the proposed use with the public trust restrictions and the public interest at the time any tideland lease is re-negotiated or renewed.*

*2.5.2-4. Negotiate or renegotiate tidelands leases at the fair market value based on the uses authorized in the lease and use the funds as required by law or the public trust.*

*2.5.2-5. Require public access in a manner consistent with the policies of the Coastal Act and this LCP when the City issues new leases of public land, or renew existing leases. This requirement shall be understood to apply to all other public leaseholds in the coastal zone, including beaches leased to the Lido Isle Association.*

***Tidelands - Newport Dunes***

*2.1.7-1. Protect, and if feasible, expand and enhance, the variety of recreational and visitor-serving uses. Particular attention should be given to provision of lower cost uses.*

*2.1.7-2. New development shall provide for the protection of the water quality of the bay and adjacent natural habitats. New development shall be designed and sited to minimize impacts to public views of the water and coastal bluffs.*

*2.3.2-3. Cooperate with the County of Orange to continue to provide a variety of visitor-serving and recreational uses at the Newport Dunes, including recreational vehicle park and campground areas as a means of providing alternative and lower cost overnight accommodations.*

**Recreational Opportunities**

*3.2.1-1. Protect, and where feasible, expand and enhance recreational opportunities in the coastal zone.*

*3.2.1-2. Continue to provide opportunities for a wide range of recreational activities at City parks and beaches.*

*3.2.1-3. Provide adequate park and recreational facilities to accommodate the needs of new residents when allowing new development.*

*3.2.1-4. Continue to cooperate with the State Department of Parks and Recreation, the State Department of Fish and Game, and Orange County to protect, expand and enhance opportunities for recreational activities at County and State beaches and parks.*

*3.2.1-5. Continue to allow recreational commercial uses in commercial areas adjacent to beaches and the bay.*

**Harbor and Bay**

*3.1.4-1. Continue to regulate the construction of bay and harbor structures within established Bulkhead Lines, Pierhead Lines, and Project Lines.*

*3.1.4-2. When applicable, continue to require evidence of approval from the County of Orange, Coastal Commission, U.S. Army Corps of Engineers, and other resource management agencies, prior to issuing permits.*

*3.1.4-3. Design and site piers, including remodels of and additions to existing piers so as not to obstruct public lateral access and to minimize impacts to coastal views and coastal resources.*

*3.1.4-4. In residential areas, limit structures bayward of the bulkhead line to piers and floats. Limit appurtenances and storage areas to those related to vessel launching and berthing.*

*3.1.4-5. Encourage the joint ownership of piers at the prolongation of common lot lines as a means of reducing the number of piers along the shoreline.*

*3.1.4-6. Continue to prohibit private piers at street ends.*

*3.1.4-7. Design and site bulkheads to protect the character of the existing shoreline profiles and avoid encroachment onto public tidelands.*

*3.1.4-8. Limit bulkhead expansion or encroachment into coastal waters to the minimum extent necessary to repair, maintain, or replace an existing bulkhead and do not allow the backfill to create new usable residential land areas.*

**Piers and Docks**

*4.2.3-15. Require new development on the waterfront to design and site docking facilities in relationship to the water's depth and accessibility.*

*4.2.3-16. Design and site all structures permitted to encroach into open coastal waters, wetlands, and estuaries to harmonize with the natural appearance of the surrounding area.*

*4.2.3-17. Continue to limit residential and commercial structures permitted to encroach beyond the bulkhead line to piers and docks used exclusively for berthing of vessels. However, this policy shall not be construed to allow development that requires the filling of open coastal waters, wetlands or estuaries that would require mitigation for the loss of valuable habitat in order to place structures closer to the bulkhead line or create usable land areas.*

*4.2.3-18. Require restoration plans to be reviewed and approved by a qualified professional prior to accepting sites for mitigation.*

***Support Facilities and Services***

*3.2.2-1. Continue to protect public coastal access recreational opportunities through the provision of adequate support facilities and services.*

*3.2.2-2. Distribute support facilities and services in coastal areas to avoid overcrowding and overuse by the public.*

*3.2.2-3. Maintain the ability to distribute, remove and relocate support facilities and services in coastal areas in response to changes in demographics and recreational interests while continuing to provide comparable facilities and levels of service.*

*3.2.2-4. Develop parking management programs for coastal zone areas to minimize parking use conflicts between commercial uses, residential uses, and coastal zone visitors during peak summer months.*

*3.2.2-5. Continue to cooperate with the State Department of Parks and Recreation, the State Department of Fish and Game, Orange County, and private organizations to protect, expand and enhance support facilities and services at County and State beaches and parks.*

*3.2.2-6. As part of a uniform coastal access signing program, provide information to direct the public to parking areas, restrooms, and other support facilities.*

***Access for Persons with Disabilities***

*3.2.3-1. Ensure that planned public facilities include provisions for adequate access for the persons with disabilities and that existing facilities are appropriately retrofitted to include such access as required by the Americans with Disabilities Act in a manner consistent with the protection of coastal resources.*

*3.2.3-2. Continue to provide beach wheelchairs commensurate with demand.*

*3.2.3-3. Design guardrails on piers, trails, and public viewing areas to take into consideration the views at the eye level of persons in wheelchairs.*

*3.2.3-4. Encourage the State Department of Parks and Recreation, the State Department of Fish and Game, and Orange County to provide accessible facilities at County and State beaches and parks.*

## **B. LUP Background**

### *Public Access*

The LUP chapter on Public Access and Recreation describes existing vertical and lateral shoreline access to the Pacific Ocean beaches in West Newport, Balboa Peninsula, and Corona del Mar; bay access to Lower Newport Bay/Newport Harbor via West Newport, Balboa Peninsula, Mariner's Mile, Bayside, Corona del Mar, Lido Island and Balboa Island; access to the coastal wetlands of Upper Newport Bay via Back Bay Drive and access to the coastal salt marsh known as Semeniuk Slough via nine street ends in Newport Shores and the Newport Shores View Park. In addition to direct access to and along the shoreline, the City has preserved a number of prominent bluff top locations for public viewing of the shoreline such as a half-mile linear view park proving views of the harbor entrance and the ocean along the bluff top above Corona del Mar State Beach; Sunset View Park provides an ocean view trail along the bluff top above the lower campus of Hoag Hospital; Cliff Drive Park, a couple public parks located on the bluff top above Mariner's Mile and Coast Hwy provide views of the ocean and Lower Bay; and numerous bluff top parks provide public views of Upper Newport Bay.

The Public Access and Recreation chapter states that virtually all of the Pacific Ocean shoreline beaches are public and the bay even though heavily fortified by bulkheads protecting bayfront private residential properties, there are locations at which public shoreline access is available via various public beaches, parks shoreline trails, walkways and boardwalks.

LUP policies require all new development between the shoreline and first public road to be evaluated for impacts on public access to the coast, and requires new public access to be provided, if appropriate. However, there are a few pre-Coastal Act exclusive private island communities of Bay Island, Collins Island, Linda Isle and Harbor Island and private/gated communities of Balboa Coves, Bayshores, Bayside Place, De Anza Bayside Village on the mainland that impede public access to and along the shoreline. In certain areas of the City at high tide public horizontal beach access is limited due to bulkheads, bay/harbor encroachments such as dock piers and floats and permitted beach encroachments such as residential patio and landscaping encroachments.

### *Visitor Serving and Recreational Development*

Most of the lands suitable for visitor-serving and recreational uses are in the commercial areas surrounding and adjacent to the west end of Newport Harbor. Most of the waterfront land in this area has been designated for recreational and marine uses. Also, individual hotel and motel sites on the Balboa Peninsula, in West Newport, and adjacent to the Upper Newport Bay and other open space areas are designated for visitor-serving uses.

The LUP includes goals, objectives, and policies designed to protect, maintain, and improve a multitude of public access and recreational opportunities in the City's coastal zone. The LUP contains policies that facilitate the development of visitor-serving uses, and also lists

recommendations for development within public tidelands that would help further increase coastal recreational opportunities and access.

In terms of the recreation and support facilities, the LUP describes over 8 miles of public sandy beaches, opportunities for bay and harbor recreational activities such as boating, sailing, kayaking, and fishing , 180 acres of public parks in the coastal zone, two recreational piers, and County and State operated recreational areas such as the County’s 100-acre Newport Dunes Aquatic Park with opportunities for camping and water and beach activities, and the 752-acre Upper Newport Bay Marine Park and 140-acre Upper Newport Bay Nature Preserve Parks providing opportunities for kayaking, biking, hiking and horseback riding. Public parking, active and passive parks, picnic tables, benches, barbeques, and fire rings are also among the recreational support facilities provided throughout the City. Additionally, commercial areas adjacent to the bay and public beaches provide recreational services such as charter, entertainment and excursion vessels, sports equipment rentals, harbor facilities, boat launching facilities, amusement facilities, and shops and restaurants.

### **C. Proposed Implementation Plan**

#### *Protection and Provision of Public Access*

The proposed IP implements the LUP’s public access and recreation policies mostly in Chapter 21.30A – Public Access and Recreation, Chapter 21.30C – Harbor and Bay Regulations, Chapter 21.48 – Standards for Specific Land Uses. Chapter 21.30A provides procedures and standards for the preservation, dedication, and improvement of public access to and along the shoreline and coastal bluffs in conjunction with development proposals.

Chapter 21.30A – Public Access and Recreation addresses the LUP policies pertaining to the provision of public access from the nearest public roadway to the shoreline and along the shoreline with new development. Consistent with LUP Policy 3.1.1-13, Section 21.30A.030 requires new development be evaluated for impacts on public access, and a requirement to dedicate lateral, vertical and or bluff top access where such requirement is related in nature and extent to the impacts of the proposed development. Section 21.30A.040 an exact methodology to determine a development’s impacts (e.g., physical obstructions, visual impacts, shoreline processes, etc.) on public access and how the identified adverse impacts will be mitigated by the required access dedication. Section 21.30A050 provides extensive listing of standards for the location and configuration of public access while ensuring public safety, protecting public and private rights, and protecting natural resource areas from overuse. Additionally, Section 21.30A.050.I includes a provision addressing potential public rights to access based on prescriptive rights (rights based on historic public use).

#### *Tidelands*

Chapter 21.26 identifies public tidelands and submerged lands as TS (Tidelands and Submerged Lands) Coastal Zoning District, a special purpose district intended to protect, maintain, and enhance the natural resources of the tidelands and submerged lands in a manner consistent with Tidelands Trust. The TS Coastal Zoning District is not included Table 21.26-1 depicting specific allowable uses, prohibited uses or applicable development regulations, instead allowed uses in the TS Coastal Zoning District are uses subject to the Common Law Public Trust which limits uses to navigation, fishing, commerce, public access, water oriented recreation, open space and environmental protection. Furthermore, Section 21.48.085 provides additional detail regarding the applicability of the Public Trust, restrictions to leases of public trust lands administered by the City, and revenue

generated by such leases, and finally describes the exceptions to the Public Trust provided by State legislation modifications to the historic tidelands in Beacon Bay, the Balboa Bay Club, and Harbor Island.

*Public Beaches – Beach Hours and Beach Encroachments*

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

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

*Street Vacations and Abandonments*

As proposed the IP includes procedures providing the City Council authority to approve or disapprove applications to vacate public rights-of-way and to abandon public service easements by filing an application for vacation or abandonment pursuant to City Streets and Highways Code Section 8300-8363 and shall require a CDP if within the Coastal Zone.

*Recreational Boating and Harbor Support Facilities*

Chapter 21.30C – Harbor and Bay Regulations addresses the LUP policies pertaining to development in coastal waters such as dredging and dredge spoils disposal, protection of eelgrass (*Zostera marina*) through avoidance of impacts to greatest extent possible, designing and siting bulkhead to protect the character of the existing shoreline profile and avoiding encroachment into public tidelands, and designing and siting piers and docks as not to obstruct public lateral access and to minimize impacts to coastal resources, and protect, and where feasible, expand and enhance marinas, dry boat storage facilities, public launching facilities, shore and off-shore moorings, guest docks, pump-out stations and other harbor support facilities.

**D. Consistency Analysis - Denial as Submitted and Approval with Suggested Modifications**

IP Chapter 21.30A, as proposed, applies only to coastal development permit applications on sites located between the shoreline and the first public roadway paralleling the shoreline or on coastal bluffs and mostly focuses on providing standards for the provision of new public access for new proposed development when applicable. Thus, modifications are required to clarify the requirements of the chapter apply to all coastal development permit applications in the coastal zone, not just within the first public roadway paralleling the shoreline or on coastal bluffs. Furthermore, modifications are necessary to clarify the need to protect existing public access, and that new development shall be encouraged to provide new and to improve, expand, or enhance existing public access and enumerate the myriad of ways of achieving those policy goals and not just delineating if and when the provision of new public access is required by a new development.

*Protection and Provision of Public Access*

Chapter 21.30A – Public Access and Recreation addresses the LUP policies pertaining to the provision of public access. As submitted, the IP focuses mainly on implementing the Coastal Act and LUP policy pertaining to the provision of new public access from the nearest public roadway to

the shoreline and along the shoreline with *new* development. LUP Policy 3.1.1-26 requires consistent with other LUP policies, development provide maximum public access from the nearest public roadway to the shoreline and along the shoreline with new development except where (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources or (2) adequate access exists nearby. Suggested modifications are necessary requiring maximum access be conspicuously posted, and recreational opportunities provided for all the people consistent with public safety needs, and the need to protect public rights, rights of private property owners, and natural resource areas from overuse for *existing* public access and for the provision of *new* public access. Specifically encouraging the maximization of existing public access during the review of proposed new development by expanding and enhancing existing public access to and along the shoreline and to beaches, coastal waters, tidelands, coastal parks and trails by providing expanded hours of public use, widening existing public accessways, closing curb cutouts to provide additional on street parking, providing wayfinding signage, and prohibiting gates or barriers where they would inhibit public access to and along the shoreline.

#### *Tidelands*

As public trust lands are areas of Commission retained jurisdiction after LCP certification, a modification to Section 21.48.085 which provides additional detail regarding the applicability of the Public Trust, restrictions to leases of public trust lands administered by the City, and revenue generated by such leases is necessary to ensure that public access shall be provided in a manner consistent with Chapter 21.30A – Public Access and Recreation and the public access and recreation policies of Chapter 3 of the Coastal Act.

#### *Public Beaches*

Public beaches are designated as Coastal Zoning District PR – Parks and Recreation in the IP, suggested modifications are required to clarify the type of allowable development on public sandy beach areas, and to clarify that public beaches are also subject to the public trust and therefore development on sandy beach areas remain the Commission’s permit jurisdiction. Any proposed changes that would limit public beach parking hours, fees charged for parking, or change to method of fee collection would require a CDP from the Coastal Commission.

The Commission approved an LUP amendment in 1991 establishing an Oceanfront Encroachment Permit Policy in the LUP which allowed certain private improvements (paved patios, 4-foot tall patio walls) to encroach from a few feet to up to 15 feet onto the Oceanfront public right-of-way along with a mitigation program ensuring the encroachment permit fees will be used for construction and maintenance of improvements which directly benefit the beach-going public such as parking spaces, restrooms, and public walkways. The regulations provided in the IP for implementation of permitted beach encroachments per LUP go beyond the allowances provided by the LUP, therefore, suggested modifications are necessary to ensure that the regulations provided for in the IP match the intentions of the LUP policies.

Furthermore, there are other areas in the City where private encroachments similar to those allowed in the Oceanfront public right-of-way are allowed within other public right-of-ways with no encroachment permit or mitigation for impacts on public access. Therefore, a suggested modification is made to include any private encroachment into an unimproved or improved public right-of-way associated with lateral accessways identified in the LUP Coastal Access and Recreation Map 3-1 shall be required to participate in an annual encroachment permit consistent



with the Oceanfront Encroachment Permit as provided for in the IP, as modified. Another suggested modifications clarifies that any development such as grading, structures or landscaping within permitted encroachment zones aside from the requirement for an encroachment permit, is also considered development requiring a CDP.

Additionally, there is the issue of use of the beach at night. The City has a history of regulating beach hours at night and asserts in the IP that beach hours in effect prior to February 1, 1973, may continue to be effect. Suggested modifications are included protecting the public's right to gain access to State tidelands at all hours and requiring an LCP amendment for any change in beach regulations or hours impacting the public's right to access the beach or resulting in a closure to public use of any portion of the beach inland of the mean high tide line.

#### *Recreational Boating and Harbor Support Facilities*

Chapter 21.30C, as proposed simply states that this chapter applies to and within Newport Harbor and all tidelands and submerged lands under the jurisdiction of the City of Newport Beach, except where otherwise provided in this chapter. The chapter does not clearly state that all coastal waters, tidelands, and submerged lands remain within the Coastal Commission's area of retained coastal development permit jurisdiction. Therefore, modifications are necessary to clarify that point and to emphasize that the regulations within the chapter may be used by the Commission for guidance but that Chapter 3 policies of the Coastal Act remain the standard of review for development over the water. Chapter 21.408 – Standards for Specific Land Uses Section 21.48.035 – Newport Harbor provides that priority shall be given to coastal-dependent uses over other uses on or near the shoreline and provides additional development standards for development in Newport Harbor that mirror the policies of the LUP that development shall, where applicable protect, and where feasible, expand and enhance recreational opportunities.

#### *Right-of-Way Vacations and Abandonments*

Suggested modifications to Section 21.44.045 – Vacations and Abandonments are necessary to ensure that the IP is in conformity with LUP policies that require the protection and enhancement of public access to and along the shoreline. The suggested modifications clarify for future interpretation of these standards that the conversion of public streets to private streets is prohibited unless, in addition to the findings required for the coastal development permit application in Section 21.52.015 (F), findings are made, supported by substantial evidence, that such a conversion is consistent with applicable provisions of the certified LCP and, if located between the nearest public road and the sea, the public access and recreation policies of Chapter 3 of the Coastal Act, including but not limited to, specific findings that conversion of a public street to a private street would not inhibit public access to and along the shoreline and to beaches, coastal parks, trails, or coastal bluffs. And regarding coastal access easements, a suggested modification is necessary to clarify that no coastal access easement shall be abandoned or transferred to a private entity unless in association with an approved coastal development permit for a project which incorporates within its design a provision for equal or superior coastal access for the public. Most importantly, a suggested modification is necessary to clarify that vacations and abandonments require filing an application for a coastal development permit pursuant to Chapter 21.50 and Chapter 21.52.

Therefore, the proposed IP is not consistent with, and is not adequate to carry out, the certified LUP and must be denied as submitted. The IP can be approved only with the suggested modifications that further clarify meaning, procedural requirements and also refine the parameters necessary for

the provision of new public access and maximize protection of existing public access. As modified, the IP conforms with and adequately implements the conditionally certified LUP's public coastal access and recreation policies.

## COASTAL HAZARDS – NATURAL LANDFORM PROTECTION

### A. Applicable Land Use Plan Policies

#### *Coastal Bluff Setbacks*

*4.4.3-1. Require new planned communities to dedicate or preserve as open space the coastal bluff face and an area inland from the edge of the coastal bluff adequate to provide safe public access and to avoid or minimize visual impacts.*

*4.4.3-2. Maintain approved bluff edge setbacks for the coastal bluffs within the planned communities of Castaways, Eastbluff, Park Newport, Newporter North (Harbor Cove), and Bayview Landing to ensure the preservation of scenic resources and geologic stability.*

*4.4.3-3. Require all new bluff top development located on a bluff subject to marine erosion to be sited in accordance with the predominant line of existing development in the subject area, but not less than 25 feet from the bluff edge. This requirement shall apply to the principal structure and major accessory structures such as guesthouses and pools. The setback shall be increased where necessary to ensure safety and stability of the development.*

*4.4.3-4. On bluffs subject to marine erosion, require new accessory structures such as decks, patios and walkways that do not require structural foundations to be sited in accordance with the predominant line of existing development in the subject area, but not less than 10 feet from the bluff edge. Require accessory structures to be removed or relocated landward when threatened by erosion, instability or other hazards.*

*4.4.3-5. Require all new bluff top development located on a bluff not subject to marine erosion to be set back from the bluff edge in accordance with the predominant line of existing development in the subject area. This requirement shall apply to the principal structure and major accessory structures such as guesthouses and pools. The setback shall be increased where necessary to ensure safety and stability of the development.*

*4.4.3-6. On bluffs not subject to marine erosion, require new accessory structures such as decks, patios and walkways that do not require structural foundations, to be set back from the bluff edge in accordance with the predominant line of existing accessory development. Require accessory structures to be removed or relocated landward when threatened by erosion, instability or other hazards.*

*4.4.3-7. Require all new development located on a bluff top to be setback from the bluff edge a sufficient distance to ensure stability, ensure that it will not be endangered by erosion, and to avoid the need for protective devices during the economic life of the structure (75 years). Such setbacks must take into consideration expected long-term bluff retreat over the next 75 years, as*

*well as slope stability. To assure stability, the development must maintain a minimum factor of safety of 1.5 against landsliding for the economic life of the structure.*

**4.4.3-8.** *Prohibit development on bluff faces, except private development on coastal bluff faces along Ocean Boulevard, Carnation Avenue and Pacific Drive in Corona del Mar determined to be consistent with the predominant line of existing development or public improvements providing public access, protecting coastal resources, or providing for public safety. Permit such improvements only when no feasible alternative exists and when designed and constructed to minimize alteration of the bluff face, to not contribute to further erosion of the bluff face, and to be visually compatible with the surrounding area to the maximum extent feasible.*

**4.4.3-9.** *Where principal structures exist on coastal bluff faces along Ocean Boulevard, Carnation Avenue and Pacific Drive in Corona del Mar, require all new development to be sited in accordance with the predominant line of existing development in order to protect public coastal views. Establish a predominant line of development for both principle structures and accessory improvements. The setback shall be increased where necessary to ensure safety and stability of the development.*

**4.4.3-10.** *The coastal bluffs along Bayside Drive that have been cut and filled by the Irvine Terrace and Promontory Point developments are no longer subject to marine erosion. New development on these bluffs is subject to the setback restrictions established for bluff top development located on a bluff not subject to marine erosion.*

**4.4.3-11.** *Require applications for new development to include slope stability analyses and erosion rate estimates provided by a licensed Certified Engineering Geologist or Geotechnical Engineer.*

**2.8.7-3.** *Require applications for new development, where applicable [i.e., in areas of known or potential geologic or seismic hazards], to include a geologic/soils/geotechnical study that identifies any geologic hazards affecting the proposed project site, any necessary mitigation measures, and contains a statement that the project site is suitable for the proposed development and that the development will be safe from geologic hazard. Require such reports to be signed by a licensed Certified Engineering Geologist or Geotechnical Engineer and subject to review and approval by the City.*

**2.8.7-4.** *Continue to regularly update building and fire codes to reflect the best available standards for seismic safety design.*

**4.4.3-12.** *Employ site design and construction techniques to minimize alteration of coastal bluffs to the maximum extent feasible, such as:*

- A. Siting new development on the flattest area of the site, except when an alternative location is more protective of coastal resources.*
- B. Utilizing existing driveways and building pads to the maximum extent feasible.*

- C. *Clustering building sites.*
- D. *Shared use of driveways.*
- E. *Designing buildings to conform to the natural contours of the site, and arranging driveways and patio areas to be compatible with the slopes and building design.*
- F. *Utilizing special foundations, such as stepped, split level, or cantilever designs.*
- G. *Detaching parts of the development, such as a garage from a dwelling unit.*
- H. *Requiring any altered slopes to blend into the natural contours of the site.*

**4.4.3-13.** *Require new development adjacent to the edge of coastal bluffs to incorporate drainage improvements, irrigation systems, and/or native or drought-tolerant vegetation into the design to minimize coastal bluff recession.*

**4.4.3-14.** *Require swimming pools located on bluff properties to incorporate leak prevention and detection measures.*

**4.4.3-15.** *Design and site new development to minimize the removal of native vegetation, preserve rock outcroppings, and protect coastal resources.*

**4.4.3-16.** *Design land divisions, including lot line adjustments, to minimize impacts to coastal bluffs.*

**4.4.3-17.** *Identify and remove all unauthorized structures, including protective devices, fences, and stairways, which encroach into coastal bluffs.*

#### ***Hazards and Protective Devices***

**2.8.1-1.** *Review all applications for new development to determine potential threats from coastal and other hazards.*

**2.8.1-2.** *Design and site new development to avoid hazardous areas and minimize risks to life and property from coastal and other hazards.*

**2.8.1-3** *Design land divisions, including lot line adjustments, to avoid hazardous areas and minimize risks to life and property from coastal and other hazards.*

**2.8.1-4** *Require new development to 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.*

**2.8.6-6.** *Design and site protective devices to minimize impacts to coastal resources, minimize alteration of natural shoreline processes, provide for coastal access, minimize visual impacts, and eliminate or mitigate adverse impacts on local shoreline sand supply.*

**2.8.6-8.** *Limit the use of protective devices to the minimum required to protect existing development and prohibit their use to enlarge or expand areas for new development or for new development. “Existing development” for purposes of this policy shall consist only of a principle structure, e.g. residential dwelling, required garage, or second residential unit, and shall not include accessory or ancillary structures such as decks, patios, pools, tennis courts, cabanas, stairs, landscaping etc.*

## **B. LUP Background**

The City of Newport Beach coastal zone, and particularly the shoreline interface, is affected by a variety of coastal hazards, including shoreline and bluff retreat and erosion, ocean storms and waves, tsunamis, potential seismic events and liquefaction, and long-term sea level rise, all of which represent hazards for new and existing development. The City’s coastal zone contains numerous geologic features, including bluffs, steep slopes, and low-lying development subject to flooding. Significant portions of California’s coastline have already been armored with rock revetments, seawalls, or other shoreline protective devices. Structures on islands within Newport Bay and the bayside of Balboa Peninsula rely on shoreline protective devices, typically bulkheads to ensure protection against coastal flooding and shoreline retreat. Sea level rise is expected to lead to increased erosion, loss of coastal wetlands, permanent or periodic inundation of low-lying areas, increases in coastal flooding, and salt water intrusion into stormwater systems and aquifers. Structures located along bluffs, including those in Corona del Mar, Shorecliffs and Cameo Shores, may become susceptible to accelerated erosion. Low lying areas such as Balboa Peninsula, will likely experience an increase in these hazards from accelerated sea level rise. Sea level rise also threatens the integrity of roads and other public infrastructure.

The LUP contains a number of policies that address the siting and design of new development in hazardous locations which must be implemented through the certified IP. All development proposals on blufftops, within canyons and along the shoreline must prepare a coastal hazards analysis that evaluates the effect of geologic and other hazards at the site to ensure its stability and structural integrity for a minimum of 75 years, without factoring in any existing or proposed shoreline protective devices. For blufftop development, Policy 4.4.3-7 requires new development to maintain a minimum factor of safety of 1.5 against landsliding for the economic life of the structure. Policy 4.4.3-3 requires new structures on coastal bluffs subject to marine erosion to be set back a minimum of 25 feet distance from the bluff edge to ensure stability and structural integrity for a minimum of 75 years and to eliminate the need for any shoreline protective device. The bluff setback determination must be evaluated based on bluff retreat data from both historic and future sea level rise, as well as other climate impacts using the best available science.

For shoreline development, the required coastal hazards analysis must evaluate the effect of the development over time (taking into account sea level rise) on coastal resources, including impacts to public access, shoreline dynamics, natural landforms, and public views, and the analysis shall consider the entire structure, including driveways and utilities. Any approval for new shoreline development is required to be accompanied by conditions necessary to ensure that development is safe from hazards and will not need future shoreline protection, including measures to ensure that all permitted development can be relocated and/or removed before shoreline protection is needed.

### **C. Proposed Implementation Plan**

The submitted IP proposes to implement the aforementioned hazards policies through regulations contained in Chapter 21.28 Overlay Coastal Zoning Districts and Chapter 21.30 Property Development Standards.

#### *Bluff Overlay District*

Section 21.28.040 describes the Bluff (B) Overlay District as applicable to the lots identified as B Overlay in the IP's Coastal Zoning Map, and defines three development areas: Area A allows for the development and use of principal and accessory structures, Area B lists all of the allowable development and accessory structures, and Area C allows for limited accessory structures. The actual location of these three development areas are listed in Section 21.28.040D and depicted in Maps 1 - 8 in Part 8 – Maps Section 21.80.020 – Bluff Overlay. The development areas for each parcel on the B Overlay Maps are polygons established by the property lines and certain development lines. For example, Map B-2 depicts Dolphin Terrace with Development Area A identified between the front property line adjacent to Dolphin Terrace and a 10 foot setback from the top of the existing bluff; Area B as the area between the 10 foot setback from the top of the existing bluff and a line established at an elevation that is 13 feet below the average elevation of the top of the curb adjacent to the lot; and Area C as all portions of the lot not located in Areas A and B.

### **D. Consistency Analysis - Denial as Submitted and Approval with Suggested Modifications**

#### *Bluff (B) Overlay District*

The City aims to address the LUP policies pertaining to bluff top development through Bluff (B) Overlay Districts in the IP. Section 21.28.40 – Bluff (B) Overlay District. As described in the section above, the proposed B Overlay defines three development areas: Area A allows for the development and use of principal and accessory structures, Area B lists all of the allowable development and accessory structures, and Area C allows for limited accessory structures. The actual location of these three development areas are listed in Section 21.28.040D and depicted in Maps 1 - 8 contained in Chapter 21.80 – Maps Section 21.80.020 – Bluff Overlay. As proposed, the development zones A, B and C identified for the Bluff Overlay District have been developed to correspond, in general, to the line of existing development including principal and accessory structures.

The LUP policies the Bluff Overlay District is intended to implement are those that address the setbacks required for new blufftop development to assure stability and structural integrity and not require construction of shoreline protective devices that have adverse impacts to public access, recreation, visual quality and natural shoreline processes. The requirements of Section 30253 of the Coastal Act have been incorporated into the certified LUP and Policy 4.4.3-3 requires all new bluff top development located on a bluff subject to marine erosion to be sited in accordance with the predominant line of existing development in the subject area, but not less than 25 feet from the bluff edge. This requirement applies to the principal structure and major accessory structures such as guesthouses and pools. The setback shall be increased where necessary to ensure safety and stability of the development from geologic hazards.

Policy 4.4.3-4 applies to accessory structures and requires on bluffs subject to marine erosion that new accessory structures such as decks, patios and walkways that do not require structural foundations to be sited in accordance with the predominant line of existing development in the

subject area, but not less than 10 feet from the bluff edge. Accessory structures are required to be removed or relocated landward when threatened by erosion, instability or other hazards.

There are some areas of Newport Beach where the pattern of existing development includes development on the bluff face and the LUP contains policies that establish the predominant line of existing development to serve as the standard for new bluff development. These areas include Ocean Blvd., Carnation Ave., Pacific Drive and along Bayside Drive which are specifically addressed in Policies 4.4.3-8, 4.4.3-9 and 4.4.3-10. However, the 25 ft. setback for principal structures and the 10 ft. setback for accessory structures are specifically called out for development on bluffs subject to marine erosion and, in all cases, the setback shall be increased if determined by a site-specific geotechnical review to be necessary to ensure the safety and stability of the development. As proposed by the City, the specific blufftop setbacks for development on bluffs subject to marine erosion are not carried out by the standards in the Bluff Overlay District; therefore the IP must be denied as submitted and approved with suggested modifications.

The areas within the Bluff Overlay District that include bluffs subject to marine erosion are identified as Shorecliffs and Cameo Shores. The Commission is not taking issue with the delineation of the distinct development areas as mapped for Shorecliffs and Cameo Shores; however, as proposed, the overlay does not establish a specific setback for blufftop principal and accessory structures as called for in the LUP. Therefore, modifications are required to the description of Development Area A for these locations subject to marine erosion to include the setback of not less than 25 feet from the bluff edge, or further if required to protect the development from geologic hazards, for principal structures and major accessory structures such as guesthouses, and pools and not less than 10 feet from the bluff edge for accessory structures, to adequately carry out Policies 4.4.3-3 and 4.4.3-4 of the LUP.

The City did not include the bluffs above Upper Newport Bay as part of the Bluff Overlay District and the Commission's geologist has confirmed these bluffs are subject to marine erosion. As such, development on the blufftop lots should also be subject to the 25 ft. setback requirements contained in the LUP. In addition, Upper Newport Bay is a highly scenic area and provision of an adequate setback from the edge of the bluff serves to reduce the visual impact of the structure on the scenic viewshed as well as address geologic stability. Therefore, the bluff overlay must be modified to include the Upper Newport Bay Bluffs and establish development zones and a setback of not less than 25 feet from the bluff edge for principal structures and major accessory structures such as guesthouses, and pools and not less than 10 feet from the bluff edge for accessory structures, to adequately carry out Policies 4.4.3-3 and 4.4.3-4 of the LUP.

## **COASTAL HAZARDS – SHORELINE PROTECTION**

### **A. Applicable Land Use Plan Policies**

#### ***Tsunamis and Rogue Waves***

**2.8.2-1.** *Review local and distant tsunami inundation maps for Newport Beach and adjacent coastal communities as they are developed to identify susceptible areas and plan evacuation routes.*

*2.8.2-2. Periodically review and update tsunami preparation and response policies/practices to reflect current inundation maps and design standards.*

*2.8.2-3. Participate in any regional effort to develop and implement workable response plans that the City's emergency services can adopt immediately for evacuation in the case of a tsunami warning.*

*2.8.2-4. Prepare and deploy a system of tsunami detection and early warning systems.*

*2.8.2-5. Include tsunami evacuation route information as part of any overall evacuation route sign program implemented in the City. Evacuation routes off of the peninsula and islands in the Bay should be clearly posted. An evacuation route traffic monitoring system that provides real-time information on the traffic flow at critical roadways should be considered.*

*2.8.2-6. Continue projects like the Surfside-Sunset/West Newport Beach Replenishment program to maintain beach width. Wide beaches provide critical protection against tsunami runup for structures along the oceanfront.*

*2.8.2-7. Develop and implement a tsunami educational program for residents, visitors, and people who work in the susceptible areas.*

*2.8.2-8. Require overnight visitor-serving facilities in susceptible areas to provide tsunami information and evacuation plans.*

*2.8.2-9. Encourage the Newport-Mesa School District to include in their earthquake-preparedness curriculum information specifically related to the natural hazards that Newport Beach's citizens could face, and what to do about them.*

*2.8.2-10. Support tsunami research in the Newport Beach offshore and Newport Bay areas.*

### ***Storm Surge and Seiches***

*2.8.3-1. Require all coastal development permit applications for new development on a beach or on a coastal bluff property subject to wave action to assess the potential for flooding or damage from waves, storm surge, or seiches, through a wave uprush and impact reports prepared by a licensed civil engineer with expertise in coastal processes. The conditions that shall be considered in a wave uprush study are: a seasonally eroded beach combined with long-term (75 years) erosion; high tide conditions, combined with long-term (75 year) projections for sea level rise; storm waves from a 100-year event or a storm that compares to the 1982/83 El Niño event.*

*2.8.3-2. Prepare and periodically update (every 5 years) comprehensive wave uprush and impact reports for shoreline and coastal bluff areas subject to wave action that will be made available to applicants for new development on a beach or coastal bluff property for use in fulfilling the requirement of Policy 2.8.3-1 above.*

*2.8.3-3. Develop and implement shoreline management plans for shoreline areas subject to wave hazards and erosion. Shoreline management plans should provide for the protection of*



*existing development, public improvements, coastal access, public opportunities for coastal recreation, and coastal resources. Plans must evaluate the feasibility of hazard avoidance, restoration of the sand supply, beach nourishment and planned retreat.*

**2.8.3-4.** *Continue to utilize temporary sand dunes in shoreline areas to protect buildings and infrastructure from wave uprush, while minimizing significant impacts to coastal access and resources.*

**2.8.3-5.** *Encourage the use of sand dunes with native vegetation as a protective device in beach areas.*

**2.8.3-6.** *Encourage the use of non-structural methods, such as dune restoration and sand nourishment, as alternatives to shoreline protective structures.*

### ***Sea Level Rise and Coastal Erosion***

**2.8.6-1.** *Prepare and periodically update comprehensive studies of seasonal and long-term shoreline change, episodic and chronic bluff retreat, flooding, and local changes in sea levels, and other coastal hazard conditions.*

**2.8.6-2.** *Continue to monitor beach width and elevations and analyze monitoring data to establish approximate thresholds for when beach erosion or deflation will reach a point that it could expose the backshore development to flooding or damage from storm waves.*

**2.8.6-3.** *Develop and implement a comprehensive beach replenishment program to assist in maintaining beach width and elevations. Analyze monitoring data to determine nourishment priorities, and try to use nourishment as shore protection, in lieu of more permanent hard shoreline armoring options.*

**2.8.6-4.** *Maintain existing groin fields and jetties and modify as necessary to eliminate or mitigate adverse effects on shoreline processes.*

**2.8.6-5.** *Permit revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls and other structures altering natural shoreline processes or retaining walls when required to serve coastal-dependent uses or to protect existing principal structures or public beaches in danger from erosion and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply, unless a waiver of future shoreline protection was required by a previous coastal development permit.*

### ***Shoreline Protective Devices***

**2.8.6-6.** *Design and site protective devices to minimize impacts to coastal resources, minimize alteration of natural shoreline processes, provide for coastal access, minimize visual impacts, and eliminate or mitigate adverse impacts on local shoreline sand supply.*

**2.8.6-7.** *Discourage shoreline protective devices on public land to protect private property/development. Site and design any such protective devices as far landward as possible. Such protective devices may be considered only after hazard avoidance, restoration of the sand supply, beach nourishment and planned retreat are exhausted as possible alternatives.*

**2.8.6-8.** *Limit the use of protective devices to the minimum required to protect existing development and prohibit their use to enlarge or expand areas for new development or for new development. “Existing development” for purposes of this policy shall consist only of a principle structure, e.g. residential dwelling, required garage, or second residential unit, and shall not include accessory or ancillary structures such as decks, patios, pools, tennis courts, cabanas, stairs, landscaping etc.*

**2.8.6-9.** *Require property owners to record a waiver of future shoreline protection for new development during the economic life of the structure (75 years) as a condition of approval of a coastal development permit for new development on a beach, shoreline, or bluff that is subject to wave action, erosion, flooding, landslides, or other hazards associated with development on a beach or bluff. Shoreline protection may be permitted to protect existing structures that were legally constructed prior to the certification of the LCP, unless a waiver of future shoreline protection was required by a previous coastal development permit.*

**2.8.6-10.** *Site and design new structures to avoid the need for shoreline and bluff protective devices during the economic life of the structure (75 years).*

## **B. LUP Background**

The City of Newport Beach coastal zone, and particularly the coastal bluff interface, is affected by a variety of coastal hazards, including shoreline and bluff retreat and erosion, ocean storms and waves, tsunamis, potential seismic events and liquefaction, and long-term sea level rise, all of which represent hazards for new and existing development. The City’s coastal zone contains numerous geologic features, including bluffs, steep slopes, and low-lying development that may be subject to flooding. Structures within the islands in Lower Newport Bay rely on bulkheads to ensure protection against flooding. Coastal flooding has previously occurred in the past caused by major storms such as El Nino. Sea level rise is expected to lead to increased erosion, loss of coastal wetlands, permanent or periodic inundation of low-lying areas, and increases in coastal flooding. Structures located along bluffs, including those in Corona Del Mar, may become susceptible to accelerated erosion, and low lying areas along Balboa Peninsula will likely experience an increase in these hazards from accelerated sea level rise. Sea level rise also threatens the integrity of roads and other public infrastructure. The LUP recognizes these issues in the Hazards and Protective Devices chapter and provides the extensive detailed policies identified in the section above.

## **C. Proposed Implementation Plan**

The proposed IP implements the aforementioned environmental hazards policies in Chapter 21.30 – Property Development Standards and Appendix A – Sea Level Rise. The City included Appendix A as a means to address sea level rise with its purpose to ensure that sea level rise is adequately addressed in review of coastal development permit applications and in future updates and amendments to the City’s Local Coastal Program. Appendix A includes the City’s Plan of Action which indicates the City intends to undertake a proactive program to monitor the rate of sea level rise and be prepared to implement actions that may include public and privately-owned seawalls, extension of seawall caps per City standards, revising City standards for new seawall, top of seawall elevation and finished floor elevations, studying ways to maintain access to beaches, docks and piers, and monitoring and replenishing beach sand loss in the harbor and along the ocean. Future

steps include revising existing or devising new policies for consideration by the City Council. As stated, the City will continue to analyze the potential impacts of sea level rise on the community and will consider policies and corresponding development standards for public review and discussion.

Appendix A also includes a section addressing review of coastal development permits which states sea level rise should be considered in the review of a CDP when the project is on low-lying land, on eroding coastal bluffs, or are in proximity to water. There are steps identified to facilitate this review including; establish the projected sea level rise range for the project's planning horizon (life of project) using the best available science; determine how physical impacts from sea level rise may impact the project site, including erosion, structural instability, flooding and inundation. References are included to Section 21.30.015 of the IP (Property Development Standards) which require wave uprush and impact analysis and reports addressing geologic stability, erosion potential, flooding and inundation and other impacts. Other steps include: determine how the project may impact coastal resources including public access and recreation, coastal habitats, water quality, archaeological/paleontological resources and scenic resources, considering sea level rise; seek alternatives to avoid resource impacts and minimize risk to the project; and place appropriate conditions of approval on the project.

Chapter 21.30 Property Development Standards includes a stated purpose to ensure development is consistent with the Coastal Land Use Plan and provides general site planning and development standards for development along the waterfront and on bluffs and canyons. While this Chapter provides general considerations and standards of review acknowledging the need for a Coastal Hazards Report and Geologic Stability Report, there is no reference to Appendix A and insufficient detail as to how the provisions of Appendix A would be implemented through a coastal development permit. As discussed in the following findings, there are a number of changes and modifications required to both Appendix A and Chapter 21.30 to provide standards of review for development along the City's shorefront adequate to carry out the certified LUP policies.

#### **D. Consistency Analysis - Denial as Submitted and Approval with Suggested Modifications**

With this LCP Implementation Plan submittal, the City of Newport Beach is attempting to achieve certification of its LCP and assumption of coastal development permit authority for the first time. Although sea level rise must be acknowledged in review of coastal development permit applications now and in the future, it is not possible to incorporate a comprehensive program to address the long-term effects of sea level rise with the subject IP submittal. However, the proposed IP must serve as the implementing regulations for review of coastal development permit applications in the period of time between certification of the City's LCP and development of a comprehensive program to address sea level rise starting with an assessment of vulnerabilities and leading to development of a long-term adaptation strategy. The Commission finds, as submitted, the IP lacks the specificity required to adequately carry out the LUP policies addressing development along the bluffs and shoreline. Changes are required to Chapter 21.30 to assure the requirements of Appendix A are incorporated into the review of coastal development permit applications.

Therefore, the proposed IP is not consistent with, and is not adequate to carry out, the certified LUP and must be denied as submitted. The IP can be approved only with the following suggested modifications that add in all necessary detail to fully implement the certified LUP requirements. Commission staff has worked with City staff in development of the proposed changes, the majority of which are acceptable to City staff.

*Development in Shoreline Hazardous Areas*

Chapter 21.30 Property Development Standards is the only section of the IP that contains specific development standards for shorefront development; however, as submitted, the development standards which must be met to carry out the LUP policies need clarification because they don't adequately conform to the requirements relating to ensuring that proposed development minimizes risk to life and property from flooding and geologic hazards. For example, as proposed, the section titled Development in Hazardous Areas indicates in general new development shall be sited and designed to avoid hazardous areas and minimize risks to life and property from coastal, geologic, seismic, fire and other hazards. The section includes the requirement for a Coastal Hazards Report and a Geologic Stability Report. The proposed suggested modifications clarify the standards that would apply to coastal development permit applications for proposed development located in shoreline areas reasonably expected to be impacted by sea level rise based on the best available science over the project's lifetime.

Specifically, the modifications clarify the standards apply to shoreline areas identified in Appendix A of the IP those being:

- “Low-lying land areas” including Semeniuk Slough, West Newport, Lido Peninsula, Balboa Peninsula, Bay Island, Balboa Island, Little Balboa Island, Collins Island, Balboa Coves, Mariners' Mile, Balboa Bay Club Resort, Bay Shores, Harbor Island, and Beacon Bay; . It also applies to the shoreline areas;
- “Eroding coastal bluffs” including those along Ocean Blvd in Corona del Mar and in Shorecliffs and Cameo Shores; and
- “Proximity to water” including all of the above areas and shoreline properties in Newport Shores, Newport Island, Lido Isle, Harbor Island, Bayside, Carnation Cove, China Cove, Bayside Village, Newport Dunes and Dover Shores.
- The suggested modifications provide cross references between the methodology for Coastal Hazards Reports and Geologic Stability Reports detailed in Appendix A with the requirement for such reports in Chapter 21.30. The contents of such reports must be adequate to carry out a number of LUP policies detailing the type of analysis required to address erosion rates, slope stability and factor of safety necessary to assure stability for a 75 year economic life taking into consideration sea level rise without requiring a shoreline protective device (LUP Policy 2.8.3-1 and Policy 4.4.3-7).

*Bulkheads*

Due to the existing and pre-Coastal Act pattern of development on the islands and along the shoreline of Newport Bay, there are a number of areas where the existing infrastructure and development is reliant on bulkheads for protection from wave-runup, storm surge and flooding. This need for a barrier between development and the Bay will only increase as sea level rises. Protection of the public tidelands seaward of the bulkheads for public use is a primary concern and must be addressed on a comprehensive basis which the City has acknowledged in Appendix A. Potential adaptation measures will likely include a range of options to reduce risk to habitable areas and maintain private property while protecting public tidelands and beach areas for public use. The certified IP must include a number of standards for new and improvements to existing

structures to be implemented now and in the future that prioritize removal of non-conforming and unauthorized structures that encroach on public use areas to assure the beach and shoreline is protected for public use. There are a number of existing private encroachments including bulkheads and docks across public beach area that are capable of being removed as an adaptation option to address loss of State tidelands and what is referred to as “coastal squeeze”.

A large amount of the City’s development is located in the area between the sea and the first public roadway and thus new development must conform to the public access and recreation policies of the Coastal Act as an additional standard of review.

The suggested modifications address sites with an existing bulkhead and require a determination as to whether the existing bulkhead can be removed or if a bulkhead is required to protect existing principle structures or public facilities at the time of CDP application for redevelopment of the existing structure that the bulkhead protects. The modifications also require identification of necessary mitigation measures to address current hazardous conditions such as siting development away from hazardous areas and elevating the finished floor of structures to be at or above the base flood elevation. The analysis must include measures that may be required in the future to address increased erosion and flooding due to sea level rise such as waterproofing, flood shields, watertight doors, moveable floodwalls, partitions, water-resistive sealant devices, sandbagging and other similar flood-proofing techniques.

Where a coastal hazards report shows that an existing bulkhead on the site cannot be removed and/or an existing replacement bulkhead is required to protect existing principal structures or public facilities, the applicant must submit a bulkhead condition report that includes an analysis of the condition of any existing bulkhead including whether the top elevation meets current City standards for protection from flood hazards, the condition of the sheetpiles or panels, the condition of existing tiebacks and/or deadmen or similar, and any other relevant conditions of the bulkhead that are integral to its structural stability; recommendations regarding the need for repair, augmentation or replacement of the bulkhead or any parts thereof; if augmentation or replacement in the existing alignment is necessary, recommendations that will avoid seaward encroachment of the bulkhead; if replacement is necessary and the existing bulkhead is not in alignment with adjacent bulkheads, recommended alternatives that will relocate the bulkhead in as much in alignment with adjacent bulkheads, and as far landward, as possible.

Bulkheads are also addressed in the section of Chapter 21.30 addressing protective devices which, as modified, contains specific standards for development on bulkheaded sites to assure the principal structure shall be setback a sufficient distance from the existing or replacement bulkhead to allow for repair and maintenance of that bulkhead including access to any subsurface deadman or tiebacks; the principal structure shall be setback a sufficient distance to allow for realignment of necessary bulkheads as far landward as possible and in alignment with bulkheads on either side; and, as a condition of approval, an agreement shall be required between the landowner, including its successors and assigns, and the City in favor of the City, recorded by the applicant, waiving rights to future protection, including repair or maintenance, enhancement, reinforcement, or any other activity affecting the bulkhead, that results in any encroachment seaward of the authorized footprint of the bulkhead when public lands (tidelands or sandy beach area) are present seaward of the existing bulkhead. Therefore, as certified with suggested modifications, the IP will recognize the existing pattern of development that is reliant on bulkheads but will include measures that can be

implemented over time and keep adaptation options open, such as removal or landward relocation of both new development and bulkheads in the future to ensure the continued protection of the public tidelands seaward of the bulkheads for public use.

*Waterfront Development*

As submitted, the proposed IP lacks a section that provides specific considerations and standards for waterfront development, which are the majority of coastal development permit applications reviewed by the Commission in the past 40 years while implementing the Coastal Act for the City of Newport Beach, to ensure that that development is consistent with the coastal resource protection policies of the LUP. Therefore, suggested modifications include such a section which would carry out the LUP policies and apply to coastal development permit applications for development on residential and non-residential properties fronting on the waterfront of Newport Bay, the Pacific Ocean, the Old Channel of the Santa River (the Oxbow Loop), or the channels in West Newport and the shoreline areas identified in Section IV of Appendix A of this Implementation Plan.

The suggested modifications require the review authority to consider the following measures to ensure consistency with coastal resource protection policies in the LUP (i.e. hazards, community character/visual resources, public access and recreation, water quality) in its review of coastal development permit applications: the compatibility of the proposed development with the height, bulk, scale and building frontages of surrounding development; the presence of an existing bulkhead, retaining wall or other similar structure seaward of the proposed development and whether such structure is located on private property, public property or State tidelands and in alignment with structures on adjacent properties; the need for the existing or potential future bulkhead or similar device to protect the proposed development, and the ability to remove such protective device now or in the future; the development's ability to enhance public access to State tidelands and shoreline areas through project siting and design or conditions of approval; whether the development is designed and sited so as to minimize, and where feasible, avoid shoreline hazards identified in compliance with Section 21.30.015 (E) (Development in Shoreline Hazardous Areas); and whether any boating facilities (e.g. piers, pier platforms, gangways and dock floats) associated with the non-residential waterfront development are so sited and designed to protect, and where feasible, expand and enhance public access to and along shoreline areas. The suggested modifications also require the City to consider whether the structure is non-conforming with regard to setbacks from the shoreline, bluff and/or bulkhead and, for improvements to existing structures, whether the proposed improvements increase the degree of non-conformity or result in replacement of more than 50 percent of the existing structure.

Specific development standards are included in the suggested modification for new development and improvements to existing structures. The standards require the following: new development shall be designed and sited to assure stability and structural integrity and avoid destruction of the site and surrounding area by providing setbacks for principle structures that avoid the need for new or perpetuation of existing shoreline protective devices to the extent possible; the minimum required top of slab/finished floor elevation for interior living areas of all new structures shall be as established by the Flood Insurance Rate Maps recognized by the Building Division as part of flood safety requirements and maps adopted by the Council (see Section 21.30.060 (B)(3) or higher where recommended by the Coastal Hazards report required by Section 21.30.015 (F) with acknowledgement of potential need for adaption measures in the future to address flood potential and sea level rise. Notwithstanding the building elevations established by the Flood Insurance Rate Maps, the minimum required top of slab elevation for interior living areas of all new structures shall

be at least 9.00 (NAVD); the applicant and property owner shall acknowledge any hazards present at the site, assume the risk of injury and damage from such hazards, unconditionally waive any claim of damage or liability against the decision authority from such hazards, and to indemnify and hold harmless the decision making authority against any and all liability, claims, demands, damages, costs, expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

In addition the standards require: all nonconforming structures particularly when located on State tidelands or beaches available for public use shall be removed; any existing impediments to public access shall be removed, wherever possible; new development shall protect, and where feasible, expand and complete lateral public pedestrian access along the waterfront with connectivity to beaches, street-ends and shoreline areas providing public access in accordance with Chapter 21.30A (Public Access and Recreation); development shall comply with Chapter 21.30 addressing Development in Shoreline Hazardous Areas and Natural Landform and Shoreline Protection, as applicable; and new development and/or replacement structures shall be brought into conformity with current standards for setback from the shoreline, bluff and/or bulkhead.

*Natural Landform and Shoreline Protection*

As proposed by the City, the IP includes Section 21.30.030 – Natural Landform and Shoreline Protection with its stated purpose to provide regulations for the protection of natural landforms and shoreline features. The intent is to ensure that development is sited and designed to minimize hazards to life and property; to ensure the structural integrity of bluffs and canyons; to neither create nor contribute to erosion or adverse impacts on shoreline sand supply and the shoreline; and to protect public access, public views, and scenic qualities of the Coastal Zone; and to implement policies of the Coastal Land Use Plan.

Regarding applicability, the section applies to coastal development permit applications for development applications on lots that abut or include bluffs, canyons, beaches, or the shoreline. However, as proposed by the City, the section would not apply to public improvements that provide public access, protect coastal resources or provide public safety such as walkways, fences, benches lighting, etc. The suggested modification is to remove this exemption in this section of the IP, because such structures still require a coastal development permit and should be reviewed in accordance with the standards that address impacts to coastal resources. If an exemption is necessary due to the public nature of the improvements, that should be addressed in the land use provisions of the IP. In this particular case, the IP allows for public access improvements on the beach and bluff areas where private development would not ordinarily be allowed, thus establishing the type of exemption sought by the City here.

Also, because the applicability section only refers to exempt development, it is not entirely clear to what development these standards would apply. Therefore, a suggested modification is to clarify that development proposed on coastal bluffs or within coastal canyons or within shoreline areas identified in Section IV of Appendix A of this implementation Plan are subject to the following standards which address bluff and canyon setbacks with reference to the Bluff and Canyon Overlay Districts as the applicable standard of review. Suggested modifications necessary to address the concerns related to the need for a specific blufftop setback standard, i.e. 25 ft. for principal and 10 ft. for accessory structures, as required by the certified LUP, are addressed in previous findings and suggested changes to the Bluff Overlay District.

Another reason a specific blufftop setback is necessary, is to be able to conclude whether or not an existing blufftop structure is non-conforming with regard to setbacks. The suggested revisions to Chapter 21.38 addressing Non-Conforming Uses and Structures are designed to bring new development into conformance with today's standards and avoid perpetuation of non-conforming structures to close to the bluff edge that may lead to proposals for shoreline protective devices and impacts to natural landforms, public access and visual quality of the shoreline areas. Improvements to existing structures, such as replacement of foundation elements within the 25 ft. setback would increase the degree of non-conformity of the structure and would, therefore, not be permitted as modified. These revisions are necessary to carry out the certified LUP policies designed to assure stability of coastal development while protecting coastal resources for public use.

Section 21.30.030 as proposed in the IP includes a section addressing Protective Structures designed to carry out several LUP policies that specifically address when protective devices shall be permitted to protect existing principal structures and public beaches in danger from erosion and when designed to eliminate or mitigate adverse impacts to coastal resources, including but not limited to public access, recreation, and shoreline sand supply consistent with the certified LUP and Chapter 3 access and recreation policies of the Coastal Act. LUP Policy 2.8.6-5 includes a specific acknowledgment that this standard would not apply if there is a waiver of future shoreline protection required by a previous coastal development permit.

This Chapter implements Policy 2.8.6-9 which requires property owners to record a waiver of future shoreline protection as a condition of approval for new development on a beach, shoreline or bluff that is subject to wave action, erosion, flooding, landslides or other hazards associated with development on a beach or bluff. The policy specifically states shoreline protection may be permitted to protect existing structures that were legally constructed prior to the certification of the LCP, unless a waiver was required by a previous coastal development permit.

Throughout the years of implementation of the Coastal Act, the Commission has approved many coastal development permit applications for new development, including on lots where there is existing bulkheads or some form of protective device. As the impacts from such devices on public beaches has become more clear, the conditions of approval required for a permit have evolved to respond to the greater acknowledgement of risks associated with shorefront development and the need for the applicant to assume those risks. It is not possible to determine with certainty that any development will be safe in such a dynamic and hazardous environment, yet there is a strong desire on the part of the property owners to retain the development in a hazardous location and potentially harm's way. The condition requiring the waiver of any potential right to shoreline protection is a way to approve the development to remain as long as it is safe, but to acknowledge protective devices with their adverse effects on the adjacent public resources will not be permitted to protect the development at all costs to the public resources.

As changed through suggested modifications, Chapter 21.30.030 includes specific provisions consistent with the applicable LUP policies addressing siting of new development and allowance for protective structures including that the protective structures are limited to the minimum required to protect the existing structure and located on private land, not State tidelands. For purposes of this subsection, "existing structure" shall consist only of a principal structure (e.g., residential dwelling, required garage, second residential unit, etc.) and shall not include accessory structures (e.g., cabanas, decks, landscaping, patios, pools, stairs, tennis courts, etc.); the construction of protective



structures shall be prohibited for the purpose of enlarging or expanding areas for new development or for new development. Under no circumstances shall the backfill be used to create new usable land areas; in shoreline areas, temporary sand berms and/or permanent sand dunes may be installed to protect structures from wave uprush, provided that their installation minimizes significant impacts to coastal access and resources. Temporary sand berms shall avoid all areas of existing southern foredune and southern dune scrub habitat. When feasible, nonstructural methods (e.g., dune restoration, sand nourishment, etc.) shall be used instead of shoreline protective structures. Mitigation shall be required, either through in-lieu fees or other actions as applicable and feasible, for adverse impacts on local shoreline sand supply, for loss of sandy beach and other coastal habitats, and for adverse impacts to public access, visual, and other coastal resources. Periodic monitoring of the protective device and surrounding site shall be required to examine excessive scour, erosion, or other impacts to on-site and adjacent resources, exposure of subsurface elements, as well as damage to the protective device or movement from its initial footprint. The landowner shall apply for a coastal development permit to undertake any necessary repair and maintenance to return the structure to its authorized condition, including reburial of exposed subsurface elements and/or visual treatment.

Authorization of the protective device shall be limited to the development being protected. Such permits shall expire when the existing structure requiring protection is redeveloped, is no longer present, or no longer requires a protective device, whichever comes first. Coastal development permits shall also be conditioned to require the removal of shoreline protective devices when they are no longer needed. Encroachment permits and removal agreements shall be required for protective structures that are located on State tidelands and/or subject to potential future removal. As approved with suggested modifications, the certified IP will require that protective devices shall be designed and sited to be as far landward as possible and within private property, where feasible, and eliminate or mitigate adverse impacts to coastal resources. Public access to State tidelands and public recreational areas and facilities will be protected and maintained consistent with specific provisions of the certified LUP in a manner adequate to carry out those policies and the public access and recreation policies of the Coastal Act.

## **HABITAT RESOURCES**

### **A. Applicable Land Use Plan Policies**

#### ***Environmentally Sensitive Habitat Areas (ESHAs)***

**4.1.1-1.** *Define any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments as an environmentally sensitive habitat area (ESHA). Using a site-specific survey and analysis by a qualified biologist, evaluate the following attributes when determining whether a habitat area meets the definition of an ESHA:*

- A. The presence of natural communities that have been identified as rare by the California Department of Fish and Game.*

- B. The recorded or potential presence of plant or animal species designated as rare, threatened, or endangered under State or Federal law.*
- C. The presence or potential presence of plant or animal species that are not listed under State or Federal law, but for which there is other compelling evidence of rarity, such as designation as a 1B or 2 species by the California Native Plant Society.*
- D. The presence of coastal streams.*
- E. The degree of habitat integrity and connectivity to other natural areas.*

*Attributes to be evaluated when determining a habitat's integrity/connectivity include the habitat's patch size and connectivity, dominance by invasive/non-native species, the level of disturbance, the proximity to development, and the level of fragmentation and isolation.*

*Existing developed areas and existing fuel modification areas required by the City of Newport Beach Fire Department or the Orange County Fire Authority for existing, legal structures do not meet the definition of ESHA.*

- 4.1.1-2. Require a site-specific survey and analysis prepared by a qualified biologist as a filing requirement for coastal development permit applications where development would occur within or adjacent to areas identified as a potential ESHA. Identify ESHA as habitats or natural communities listed in Section 4.1.1 that possess any of the attributes listed in Policy 4.1.1-1. The ESA's depicted on Map 4-1 shall represent a preliminary mapping of areas containing potential ESHA.*
- 4.1.1-3. Prohibit new development that would necessitate fuel modification in ESHA.*
- 4.1.1-4. Protect ESHAs against any significant disruption of habitat values.*
- 4.1.1-5. Design land divisions, including lot line adjustments, to preclude new development within and minimize impacts to ESHAs.*
- 4.1.1-6. Require development in areas adjacent to environmentally sensitive habitat areas to be sited and designed to prevent impacts that would significantly degrade those areas, and to be compatible with the continuance of those habitat areas.*
- 4.1.1-7. Limit uses within ESHAs to only those uses that are dependent on such resources.*
- 4.1.1-8. Limited public access improvements and minor educational, interpretative and research activities and development may be considered resource dependent uses. Measures, including, but not limited to, trail creation, signage, placement of boardwalks, and fencing, shall be implemented as necessary to protect ESHA.*

- 4.1.1-9.** *Where feasible, confine development adjacent to ESHAs to low impact land uses, such as open space and passive recreation.*
- 4.1.1-10.** *Require buffer areas of sufficient size to ensure the biological integrity and preservation of the habitat they are designed to protect. Terrestrial ESHA shall have a minimum buffer width of 50 feet wherever possible. Smaller ESHA buffers may be allowed only where it can be demonstrated that 1) a 50-foot wide buffer is not possible due to site-specific constraints, and 2) the proposed narrower buffer would be amply protective of the biological integrity of the ESHA given the site-specific characteristics of the resource and of the type and intensity of disturbance.*
- 4.1.1-11.** *Provide buffer areas around ESHAs and maintain with exclusively native vegetation to serve as transitional habitat and provide distance and physical barriers to human and domestic pet intrusion.*
- 4.1.1-12.** *Require the use of native vegetation and prohibit invasive plant species within ESHAs and ESHA buffer areas.*
- 4.1.1-13.** *Shield and direct exterior lighting away from ESHAs to minimize impacts to wildlife.*
- 4.1.1-14.** *Require mitigation in the form of habitat creation or substantial restoration for allowable impacts to ESHA and other sensitive resources that cannot be avoided through the implementation of siting and design alternatives. Priority shall be given to on-site mitigation. Off-site mitigation measures shall only be approved when it is not feasible to fully mitigate impacts on-site. Mitigation shall not substitute for implementation of the project alternative that would avoid impacts to ESHA.*
- 4.1.1-15.** *Apply the following mitigation ratios for allowable impacts to upland vegetation: 2:1 for coastal sage scrub; 3:1 for coastal sage scrub that is occupied by California gnatcatchers or significant populations of other rare species; 3:1 for rare community types such as southern maritime chaparral, maritime succulent scrub; native grassland and 1:1 for southern mixed chaparral. The ratios represent the acreage of the area to be restored/created to the acreage impacted.*
- 4.1.1-16.** *For allowable impacts to ESHA and other sensitive resources, require monitoring of mitigation measures for a period of sufficient time to determine if mitigation objectives and performance standards are being met. Mid-course corrections shall be implemented if necessary to meet the objectives or performance standards. Require the submittal of monitoring reports during the monitoring period that document the success or failure of the mitigation. To help insure that the mitigation project is self-sustaining, final monitoring for all mitigation projects shall take place after at least three years with no remediation or maintenance activities other than weeding. If performance standards are not met by the end of the prescribed monitoring period, the monitoring period shall*

*be extended or the applicant shall submit an amendment application proposing alternative mitigation measures and implement the approved changes. Unless it is determined by the City that a differing mitigation monitoring schedule is appropriate, it is generally anticipated that monitoring shall occur for a period of not less than five years.*

- 4.1.1-17.** *In conjunction with new development, require that all preserved ESHA, buffers, and all mitigation areas, onsite and offsite, be conserved/dedicated (e.g. open space direct dedication, offer to dedicate (OTD), conservation easement, deed restriction) in such a manner as to ensure that the land is conserved in perpetuity. A management plan and funding shall be required to ensure appropriate management of the habitat area in perpetuity.*
- 4.1.1-18.** *Require all direct open space dedications or OTDs to be made to a public agency or other appropriate entity that will manage the open space area on behalf of the public.*
- 4.1.1-19.** *Encourage the acceptance of direct open space dedications or OTDs to the public by the City, a public agency, a private association, or other appropriate entity.*
- 4.1.1-20.** *Give consideration to applying the Open Space land use category to lands with open space restrictions, dedications, or offers to dedicate.*
- 4.1.1-21.** *Dedicated open space areas, or areas where there are open space offers to dedicate, open space easements, and/or open space deed restrictions shall be protected consistent with the requirements of the dedication, offer to dedicate, easement or deed restriction.*
- 4.1.1-22.** *The City shall maintain an inventory of open space dedications or offers to dedicate to ensure such areas are known to the public and are protected through the coastal development permit process.*

***Environmental Study Areas***

- 4.1.3-1.** *Utilize the following mitigation measures to reduce the potential for adverse impacts to ESA natural habitats from sources including, but not limited to, those identified in Table 4.1.1:*
  - A.** *Require removal of unauthorized bulkheads, docks and patios or other structures that impact wetlands or other sensitive habitat areas.*
  - B.** *Where pedestrian access is permitted, avoid adverse impacts to sensitive areas from pedestrian traffic through the use of well-defined footpaths, boardwalks, protective fencing, signage, and similar methods.*

- C. *Prohibit the planting of non-native plant species and require the removal of non-natives in conjunction with landscaping or revegetation projects in natural habitat areas.*
- D. *Strictly control encroachments into natural habitats to prevent impacts that would significantly degrade the habitat.*
- E. *Limit encroachments into wetlands to development that is consistent with Section 30233 of the Coastal Act and Policy 4.2.3-1 of the Coastal Land Use Plan.*
- F. *Regulate landscaping or revegetation of blufftop areas to control erosion and invasive plant species and provide a transition area between developed areas and natural habitats.*
- G. *Require irrigation practices on blufftops that minimize erosion of bluffs.*
- H. *Participate in implementation of Total Maximum Daily Loads (TMDLs) – see Section 4.3 (Water Quality).*
- I. *Participate in programs to control sedimentation into and within Upper Newport Bay.*
- J. *Use docent programs to actively manage and enforce CDFG regulations in marine protected areas regarding the taking of intertidal and subtidal plants and animals and to minimize incidental trampling.*
- K. *Manage public access as required to minimize damage to tide pools.*
- L. *Control upstream pollution sources from Buck Gully, Morning Canyon and storm drain runoff from local streets to the maximum extent practical to reduce sediment, nutrient, fecal coliform, and toxic pollutant loads.*
- M. *Implement TMDLs into Newport Bay and local watersheds to minimize water quality problems along the coastline.*
- N. *Prohibit invasive species and require removal in new development.*
- O. *Implement and enforce TMDLs in watershed and Upper Newport Bay to improve water quality in Newport Harbor.*
- P. *Require dredging and jetty reconstruction projects conducted within the Entrance Channel to include protection measures to avoid long-term impacts to kelp bed resources.*

*Q. Continue to require Caulerpa protocol surveys as a condition of City approval for projects in Newport Bay and immediately notify the SCCAT when found.*

- 4.1.3-2. Prohibit the planting of invasive species in non-urbanized areas.*
- 4.1.3-3. Prepare natural habitat protection overlays for Buck Gully ESA and Morning Canyon ESA for the purpose of providing standards to ensure both the protection and restoration of the natural habitats in these areas. Include in the overlays standards for the placement of structures, native vegetation/fuel modification buffers, and erosion and sedimentation control structures.*
- 4.1.3-4. Continue to work within the Newport Bay Watershed Executive Committee structure to address sedimentation, nutrient loading, and bacteria and toxins from runoff. The Committee includes representatives from the cities of Costa Mesa, Huntington Beach, Irvine, Lake Forest, Newport Beach, Orange, Santa Ana, and Tustin, in addition to the Irvine Ranch Water District, the California Regional Water Quality Control Board (Santa Ana Region), the California Department of Fish and Game, the U.S. Army Corps of Engineers, the County of Orange, and the Irvine Company. The Watershed Executive Committee, in implementing four separate "total maximum daily loads" for Newport Bay, has developed and is implementing plans to control sediment, nutrients, bacteria, and toxic materials in the Bay's watershed.*
- 4.1.3-5. Coordinate with the California Department of Fish and Game and the County of Orange in developing a management plan for the Upper Newport Bay Marine Park and the Upper Newport Bay Nature Preserve.*
- 4.1.3-6. Maintain public use of the Upper Newport Bay Marine Park to the extent such use is consistent with the preservation of sensitive resources.*
- 4.1.3-7. Coordinate with County and State resource agencies to monitor ecological conditions within the Newport Beach Marine Conservation Area and to implement management programs to protect this marine conservation area. Maintain public use of the refuges to the extent it is consistent with the preservation of intertidal and subtidal resources.*
- 4.1.3-8. Support the construction of tide pool exhibits at the Back Bay Science Center on Shellmaker Island to provide an educational alternative to the tide pools at Corona del Mar and Crystal Cove State Park beaches.*
- 4.1.3-9. Support giant kelp reforestation programs.*
- 4.1.3-10. Remove unauthorized structures that encroach into Semeniuk Slough, the Upper Newport Bay Marine Park, or other wetland areas. Prohibit future encroachment of structures into these areas unless structures are absolutely necessary for public*

*well being. Minimize any necessary encroachment into wetland habitats to the extent feasible and permanent loss of wetlands habitat shall be mitigated.*

- 4.1.3-11.** *Routine maintenance of drainage courses and facilities, sedimentation basins, trails, access roads, public infrastructure, and other related facilities may be allowed if carried out in accordance with the resource protection policies of the Coastal Land Use Plan.*

### ***Coastal Canyons***

**2.8.7-1.** *Conduct hydrological studies of Big Canyon, Buck Gully and Morning Canyon to develop methods to control water quality, sedimentation, erosion, and slope failure and to protect downstream areas from debris flows.*

**2.8.7-2.** *Require new development to provide adequate drainage and erosion control facilities that convey site drainage in a non-erosive manner in order to minimize hazards resulting from increased runoff, erosion and other hydrologic impacts to streams.*

**2.8.7-3.** *Require applications for new development, where applicable [i.e., in areas of known or potential geologic or seismic hazards], to include a geologic/soils/geotechnical study that identifies any geologic hazards affecting the proposed project site, any necessary mitigation measures, and contains a statement that the project site is suitable for the proposed development and that the development will be safe from geologic hazard. Require such reports to be signed by a licensed Certified Engineering Geologist or Geotechnical Engineer and subject to review and approval by the City.*

**2.8.7-4.** *Continue to regularly update building and fire codes to reflect the best available standards for seismic safety design.*

**4.4.3-18.** *Establish canyon development setbacks based on the predominant line of existing development for Buck Gully and Morning Canyon. Do not permit development 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. Establish development stringlines for principle structures and accessory improvements.*

### ***Eelgrass Meadows***

**4.1.4-1.** *Continue to protect eelgrass meadows for their important ecological function as a nursery and foraging habitat within the Newport Bay ecosystem.*

**4.1.4-2.** *Implement eelgrass restoration and enhancement programs in Newport Harbor.*

**4.1.4-3.** *Site and design boardwalks, docks, piers, and other structures that extend over the water to avoid impacts to eelgrass meadows. Encourage the use of materials that allow sunlight penetration and the growth of eelgrass.*

**4.1.4-4.** *Provide for the protection of eelgrass meadows and mitigation of impacts to eelgrass meadows in a comprehensive harbor area management plan for Newport Bay.*

- 4.1.4-5. Where applicable require eelgrass and *Caulerpa taxifolia* surveys to be conducted as a condition of City approval for projects in Newport Bay in accordance with operative protocols of the Southern California Eelgrass Mitigation Policy and *Caulerpa taxifolia* Survey protocols.*

**Coastal Foredunes**

- 4.1.5-1. Require the removal of exotic vegetation and the restoration of native vegetation in dune habitat.*
- 4.1.5-2. Direct public access away from dune habitat areas through the use of well-defined footpaths, boardwalks, protective fencing, signage, and similar methods.*
- 4.1.5-3. Design and site recreation areas to avoid impacts to dune habitat areas.*
- 4.1.5-4. Require a coastal development permit for earthmoving beach sand in dune habitat areas.*
- 4.1.5-5. Limit earthmoving of beach sand in dune habitat areas to projects necessary for the protection of coastal resources and existing development. Continue to protect eelgrass meadows for their important ecological function as a nursery and foraging habitat within the Newport Bay ecosystem.*

**Wetlands**

- 4.2.1-1. Recognize and protect wetlands for their commercial, recreational, water quality, and habitat value.*
- 4.2.1-2. Protect, maintain and, where feasible, restore the biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes.*
- 4.2.1-3. Channelizations, dams, or other substantial alterations of rivers and streams shall incorporate the best mitigation measures feasible, and be limited to (1) necessary water supply projects, (2) flood control projects where no other method for protecting existing structures in the floodplain is feasible and where such protection is necessary for public safety or to protect existing development, or (3) developments where the primary function is the improvement of fish and wildlife habitat.*
- 4.2.2-1. Define wetlands as areas where the water table is at, near, or above the land surface long enough to bring about the formation of hydric soils or to support the growth of hydrophytes. Such wetlands can include areas where vegetation is lacking and soil is poorly developed or absent as a result of frequent drastic fluctuations of surface water levels, wave action, water flow, turbidity or high concentration of salts or other substances in the substrate. Wetlands do not include areas which in normal rainfall years are permanently submerged (streams, lakes, ponds and impoundments), nor marine or estuarine areas below extreme low water of spring tides.*



- 4.2.2-2. *Require a survey and analysis with the delineation of all wetland areas when the initial site survey indicates the presence or potential for wetland species or indicators. Wetland delineations will be conducted in accordance with the definitions of wetland boundaries contained in section 13577(b) of the California Code of Regulations.*
- 4.2.2-3. *Require buffer areas around wetlands of a sufficient size to ensure the biological integrity and preservation of the wetland that they are designed to protect. Wetlands shall have a minimum buffer width of 100 feet wherever possible. Smaller wetland buffers may be allowed only where it can be demonstrated that 1) a 100-foot wide buffer is not possible due to site-specific constraints, and 2) the proposed narrower buffer would be amply protective of the biological integrity of the wetland given the site-specific characteristics of the resource and of the type and intensity of disturbance.*

***Dredging, Diking, and Filling***

4.2.3-1. *Permit the diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes in accordance with other applicable provisions of the LCP, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects and limited to the following:*

- A. *Construction or expansion of port/marine facilities.*
- B. *Construction or expansion of coastal-dependent industrial facilities, including commercial fishing facilities, and commercial ferry facilities.*
- C. *In open coastal waters, other than wetlands, including estuaries and streams, new or expanded boating facilities, including slips, access ramps, piers, marinas, recreational boating, launching ramps, and pleasure ferries, and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.*
- D. *Maintenance of existing and restoration of previously dredged depths in navigational channels, turning basins, vessel berthing, anchorage, and mooring areas, and boat launching ramps. The most recently updated U.S. Army Corps of Engineers maps shall be used to establish existing Newport Bay depths.*
- E. *Incidental public service purposes which temporarily impact the resources of the area, such as burying cables and pipes, inspection of piers, and maintenance of existing intake and outfall lines.*
- F. *Sand extraction for restoring beaches, except in environmentally sensitive areas.*
- G. *Restoration purposes.*

*H. Nature study, aquaculture, or similar resource-dependent activities.*

*I. In the Upper Newport Bay Marine Park, permit dredging, diking, or filling only for the purposes of wetland restoration, nature study, or to enhance the habitat values of environmentally sensitive areas.*

*4.2.3-2. Continue to permit recreational docks and piers as an allowable use within intertidal areas in Newport Harbor.*

*4.2.3-3. Continue support of the Upper Newport Bay Ecosystem Restoration Project to restore the Upper Newport Bay to its optimal ecosystem.*

*4.2.3-4. Require dredging and dredged material disposal to be planned and carried out to avoid significant disruption to marine and wildlife habitats and water circulation.*

*4.2.3-5. Secure federal funding for the Upper Newport Bay Ecosystem Restoration Project.*

*4.2.3-6. Secure permanent use designation for the LA-3 sediment disposal site for future dredging projects.*

*4.2.3-7. Require the following mitigation measures for dredging projects in the Upper Newport Bay Marine Park:*

- A. Dredging and spoils disposal must be planned and carried out to limit turbidity and to avoid significant disruption to marine and wildlife habitats and water circulation.*
- B. Maintenance dredging shall be encouraged where the dredging enhances commercial or recreational use of the Bay. When dredged material is of an appropriate grain size and grain percentage, this material may be used to restore or replace natural sandy sloping beaches in order to retain the current profiles of Newport Bay. Maintenance dredging activity shall have the approval of the U.S. Army Corps of Engineers and shall meet applicable U.S. Environmental Protection Agency standards.*
- C. Dredged material not suitable for beach nourishment or other permitted beneficial reuse shall be disposed of offshore at a designated U.S. Environmental Protection Agency disposal site or at an appropriate upland location.*
- D. Temporary dewatering of dredged spoils may be authorized within the Bay's drainage if adequate erosion controls are provided and the spoils are removed. A bond or a contractual arrangement shall be a precondition to dredging of the material, and final disposal of the dewatered material on the approved dump site shall be accomplished within the time period specified in the permit.*
- E. Dredged spoils shall not be used to fill riparian areas, wetlands, or natural canyons.*

- F. *Other mitigation measures may include opening areas to tidal action, removing dikes, improving tidal flushing, restoring salt marsh or eelgrass vegetation, or other restoration measures.*
- G. *Dredge spoils suitable for beach nourishment should be transported for such purposes to appropriate beaches or into suitable longshore current systems provided that the placement is permitted by a Section 404 permit.*

**4.2.3-8.** *Continue to cooperate with the U.S. Army Corps of Engineers in their maintenance and delineation of federal navigational channels at Newport Harbor in the interest in providing navigation and safety.*

**4.2.3-9.** *Continue to secure Regional General Permits through the U.S. Army Corps of Engineers and the California Coastal Commission to expedite permit processing for residential and commercial dock owners in the Bay.*

**4.2.3-10.** *Seek permits authorizing maintenance dredging under and around residential piers and floats subject to compliance with all conditions to the current Regional General Permit, including grain size requirements, availability of suitable dredge disposal site, and periodic bioassays.*

**4.2.3-11.** *Require the following minimum mitigation measures if a project involves diking or filling of a wetland:*

- A. *If an appropriate mitigation site is available, the applicant shall submit a detailed plan which includes provisions for (1) acquiring title to the mitigation site; (2) “in-kind” wetland restoration or creation where possible; (3) where “out-of-kind” mitigation is necessary, restoration or creation of wetlands that are of equal or greater biological productivity to the wetland that was filled or dredged; and (4) dedication of the restored or created wetland and buffer to a public agency, or permanent restriction of their use to open space purposes.*

*Adverse impacts shall be mitigated at a ratio of 3:1 for impacts to seasonal wetlands, freshwater marsh and riparian areas, and at a ratio of 4:1 for impacts to vernal pools and saltmarsh (the ratio representing the acreage of the area to be restored/created to the acreage of the area diked or filled), unless the applicant provides evidence establishing, and the approving authority finds, that restoration or creation of a lesser area of wetlands will fully mitigate the adverse impacts of the dike or fill project. However, in no event shall the mitigation ratio be less than 2:1 unless, prior to the development impacts, the mitigation is completed and is empirically demonstrated to meet performance criteria that establish that the created or restored wetlands are functionally equivalent or superior to the impacted wetlands. The mitigation shall occur on-site wherever possible. Where not possible, mitigation should occur in the same watershed. The mitigation site shall be purchased and legally restricted and/or dedicated before the dike or fill development may proceed.*

- B. *The applicant may, in some cases, be permitted to open equivalent areas to tidal action or provide other sources of surface water in place of creating or restoring wetlands pursuant to paragraph A. This method of mitigation would be appropriate if the applicant already owns, or can acquire, filled or diked areas which themselves are not environmentally sensitive habitat areas but which would become so if such areas were opened to tidal action or provided with other sources of surface water.*
- C. *However, if no appropriate sites under options (A) and (B) are available, the applicant shall pay an in-lieu fee of sufficient value to an appropriate public agency for the purchase and restoration of an area of equivalent productive value, or equivalent surface area.*

*This third option would be allowed only if the applicant is unable to find a willing seller of a potential restoration site. The public agency may also face difficulties in acquiring appropriate sites even though it has the ability to condemn property. Thus, the in-lieu fee shall reflect the additional costs of acquisition, including litigation, as well as the cost of restoration. If the public agency's restoration project is not already approved by the City, the public agency may need to be a co-applicant for a permit to provide adequate assurance that conditions can be imposed to assure that the purchase of the mitigation site shall occur prior to issuance of the permit. In addition, such restoration must occur in the same general region (e.g., within the same estuary) where the fill occurred.*

**4.2.3-12.** *All preferred restoration programs would remove fill from a formerly productive wetland or estuary that is now biologically unproductive dry land and would establish a tidal prism necessary to assure adequate flushing. Since restoration projects necessarily involve many uncertainties, restoration should precede the diking or filling project. At a minimum, permits will be conditioned to assure that restoration will occur simultaneously with project construction. Restoration and management plans shall be submitted with the permit application.*

**4.2.3-13.** *Where impacts to wetlands are allowed, require monitoring of mitigation measures for a period of sufficient time to determine if mitigation objectives and performance standards are being met. Mid-course corrections shall be implemented if necessary to meet the objectives or performance standards. Require the submittal of monitoring reports during the monitoring period that document the success or failure of the mitigation. To help insure that the mitigation project is self-sustaining, final monitoring for all mitigation projects shall take place after at least three years with no remediation or maintenance activities other than weeding. If performance standards are not met by the end of the prescribed monitoring period, the monitoring period shall be extended or the applicant shall submit an amendment application proposing alternative mitigation measures and implement the approved changes. Unless it is determined by the City that a differing mitigation monitoring schedule is appropriate, it is generally anticipated that monitoring shall occur for a period of not less than five years.*

**4.2.3-14.** *Require that any project that includes diking, filling or dredging of a wetland or estuary, as permitted pursuant to Policy 4.2.3-1, maintain the functional capacity of the wetland or estuary. Functional capacity means the ability of the wetland or estuary to be self-sustaining*

*and to maintain natural species diversity. In order to establish that the functional capacity is being maintained, the applicant must demonstrate all of the following:*

- A. That the project does not alter presently occurring plant and animal populations in the ecosystem in a manner that would impair the long-term stability of the ecosystem; i.e., natural species diversity, abundance, and composition are essentially unchanged as a result of the project.*
- B. That the project does not harm or destroy a species or habitat that is rare or endangered.*
- C. That the project does not harm a species or habitat that is essential to the natural biological functioning of the wetland or estuary.*
- D. That the project does not significantly reduce consumptive (e.g., fishing, aquaculture and hunting) or non-consumptive (e.g., water quality and research opportunity) values of the wetland or estuarine ecosystem.*

***Eelgrass Protection and Restoration***

- 4.2.5-1. Avoid impacts to eelgrass (*Zostera marina*) to the greatest extent possible. Mitigate losses of eelgrass at a 1.2 to 1 mitigation ratio and in accordance with the Southern California Eelgrass Mitigation Policy. Encourage the restoration of eelgrass throughout Newport Harbor where feasible.*
- 4.2.5-2. Continue to cooperate with the County of Orange, the U.S. Army Corps of Engineers, and resource agencies to establish eelgrass restoration sites.*
- 4.2.5-3. Conduct studies to establish an eelgrass acreage baseline for Newport Harbor based on the distribution, density, and productivity, necessary for eelgrass meadows to fulfill their ecological function.*
- 4.2.5-4. Cooperate with the National Marine Fisheries Service to incorporate a provision into the Southern California Eelgrass Mitigation Policy that would allow exemptions to mitigation requirements for harbor maintenance projects for provided the eelgrass acreage baseline is maintained.*
- 4.2.5-5. Cooperate with the U.S. Army Corps of Engineers, the Coastal Commission, and the Santa Ana Regional Water Quality Control Board to incorporate the eelgrass acreage baseline exemption provision into the City's Regional General Permit and into any individual property owner's dredging or dock construction permit that qualifies under future applications.*
- 4.2.5-6. Perform periodic surveys of the distribution of eelgrass in Newport Bay in cooperation with the National Marine Fisheries Services to insure that the eelgrass baseline is maintained.*

- 4.2.5-7. Cooperate with resource agencies to conduct a comprehensive evaluation of biological, recreational, commercial and aquatic resources of Newport Harbor and to develop a Harbor Area Management Plan (HAMP) that will maintain all of the intended beneficial uses of the harbor.*

## **B. LUP Background**

The Chapter 4: Coastal Resource Protection of the Land Use Plan describes the terrestrial (non-marine) natural habitats and environment of the City of Newport Beach's coastal zone as containing a broad range of dune, scrub, chaparral, riparian woodlands, marsh, grassland, vernal pools, freshwater seeps, and alkali meadows. It describes the waters of Newport Beach as very diverse marine habitats. These sensitive biological resources are easily disturbed and support communities of rare plants and protected species of fish and wildlife such as California gnatcatcher, etc. In Newport Bay, eelgrass beds occur within its shallow waters that are critical for particular species of migratory birds, and for fish species that use the vegetation as foraging and nursery habitat. The rocky points, intertidal areas, and shoreline substrate in Newport Bay provide habitat for many distinct invertebrate communities. The wetlands areas in Upper Newport Bay is one of the largest coastal wetlands remaining in Southern California and is an ecological resource of national significance.

The LUP includes a detailed set of policies that define ESHA, specify the uses allowed within it, specify the required buffers around the ESHA and the allowed uses within those buffers. The LUP protects the City's significant natural habitats primarily through the designation of Environmental Study Areas (ESAs) and the designation and protection of ESHA.

As described above, LUP outlines how to determine whether a habitat area meets the definition of ESHA, how to identify the extent of ESHA through site-specific survey and analysis prepared by a qualified biologist, document any site constraints and sensitive biological resources, recommend precise buffer widths to protect the habitat, and recommend appropriate restoration/mitigation. Allowable uses within ESHA as identified in the LUP mirror those allowed in the Coastal Act.

Newport Beach has several relatively large, undeveloped areas that contain natural habitats and may be capable of supporting sensitive biological resources. These areas are designated as environmental study areas to define them geographically, provide an overview of known and potential biological resources, identify potential threats to those resources, and propose potential mitigation measures. The following areas are designated as environmental study areas:

1. Semeniuk Slough (Santa Ana River Marsh)
2. North Star Beach
3. West Bay
4. Upper Newport Bay Marine Park and DeAnza/Bayside Marsh Peninsula
5. San Diego Creek
6. Eastbluff Remnant
7. Mouth of Big Canyon
8. Newporter North
9. Buck Gully
10. Morning Canyon
11. Newport Beach Marine Conservation Area

12. Castaways

13. Kelp Beds in Newport Harbor Entrance Channel

Most of these study areas are protected as parks, conservation areas, nature preserves, and other open space areas. Nevertheless, the natural habitats in each of these study areas are subjected to various potential impacts from the surrounding urban environment. Potential adverse impacts and mitigation measures to reduce those impacts are identified in the LUP. Portions of the environmental study areas listed above are known to contain habitat that constitutes Environmentally Sensitive Habitat Area (ESHA). As such, they will be subject to more stringent development controls and resource protection measures. Within these study areas, those natural communities/habitats are presumed to be ESHA, unless there is compelling site-specific evidence to the contrary, large portions of these environmental study areas support one or more community types that meet the definition of ESHA.

Eelgrass meadows within Newport Bay and coastal foredunes on the Balboa Peninsula are not included in the list of environmental study areas since their locations shift due to fluctuations in growing conditions but are afforded additional biological protections through numerous LUP policies.

Eelgrass is abundant in several sections of Newport Harbor and has been expanding its distribution in both Lower and Upper Newport Bay over the last several years due to favorable growing conditions, lack of heavy rainfall, minimal runoff, and more stringent water quality regulations. Eelgrass grows extensively within the Harbor Entrance Channel, where it covers approximately 20 acres of underwater sandy bottom habitat. Other sections of Newport Bay that currently support extensive eelgrass beds include the eastern shoreline of the Bay between Carnation Cove to the Coast Guard Base, Balboa Island (and in the Grand Canal), along the eastern end of the Balboa Peninsula, around Harbor Island, within the Linda Isle Basin, and in the channels around its perimeter. Locations where smaller beds have become established within the last few years include the southern edge of the Bayshores development, a shoal immediately south of the Coast Highway Bridge near the Swales Marina; Lido Isle, and on the north side of Lido Reach between the Bayshores community west to the Balboa Bay Club.

The presence of eelgrass in Newport Beach Harbor waters adds a significant amount of biological value to the Harbor. However, ongoing maintenance of harbor structures (residential and commercial pier replacements) and periodic dredging is essential to protect the Newport Harbor's value as a commercial and recreational resource. The LUP provides policies to achieve a comprehensive and balanced management approach in order to maintain the recreational and commercial uses of the harbor while protecting its natural marine resources. Thus, the LUP's Biological Resources chapter includes a clear, comprehensive and appropriate set of policies to meet the goal of protecting, maintaining, enhancing, and restoring coastal streams, wetlands, and ESHA.

### **C. Proposed Implementation Plan**

The proposed IP implements the aforementioned LUP policies primarily through Chapter 21.30B – Habitat Protection.

*Terrestrial*

*ESHA*

Chapter 21.30B describes the submittal requirements applicable for proposed development, including the process by which an initial site resource survey shall be required for proposed development located within 100 feet of an ESA, or ESHA, ESHA buffer, or an area where there is substantial evidence of the presence of a wetland or ESHA; the required biological resource assessments required to designate ESHA; provides for a minimum buffer width of 50 feet or more wherever possible; required habitat mitigation for development allowed within ESHA; and the requirements for restoration and monitoring plans. Specifically, this IP section requires the applicant to conduct an initial site assessment screening of all new development applications, using the LCP's resource maps, past coastal permit actions, site inspections, and other necessary resources to determine the potential presence of ESHA. Should this initial study reveal the potential presence of ESHA within 100 feet of the proposed project site, then a biological site assessment shall be required.

*Canyon Overlay District*

Section 21.28.050 describes the Canyon (C) Overlay District as applicable to lots located in the in the C Overlay District as depicted on the Coastal Zoning Map, indicates the uses allowed in the C Overlay District, identifies "development stringline" based on the predominant line of development as the method of establishing a canyon lot's development setback, includes provisions by which the review authority may adjust the development stringline (i.e., to ensure slope stability, erosional factors, provide an adequate open space protective buffer), and references other applicable Chapter 21.30 provisions related to landscaping and irrigation, coastal hazards and geologic stability reports, erosion control plans, natural landform protection, and scenic and visual quality protection.

*Wetlands*

Per subsection 21.30B.040, a wetland delineation is required prepared by a qualified biologist, confirming both the existence and extent of ESHA, and recommending appropriate siting and design measures, buffer widths, and mitigation measures in order to protect the resource; contains a provision for the removal of unauthorized structures that impact or encroach into wetlands; mirrors Coastal Act Section 30233 limiting development involving the diking, filling or dredging of open coastal waters, wetlands, and estuaries to certain allowable uses.

*Coastal Dunes*

Section 21.30B.050 puts certain provisions in place to protect southern coastal foredune and southern dune scrub areas such as requiring public access and recreation improvements to be designed, sited, and maintained in a manner to avoid or minimize impacts to dune habitats.

*Mitigation and Monitoring for Habitat Impacts*

Section 21.30B.060 clearly states that mitigation shall be required for allowable impacts to ESHA and other sensitive resources that cannot be avoided through the implementation of siting and design alternatives and that impacts to ESHA, wetlands or other sensitive resources shall be in the form of habitat creation or substantial restoration. Table 21.30B-1 provides mitigation ratio requirements for different habitat communities known to exist in Newport Beach such as scrub, chaparral, and grassland communities, fresh and salt water wetlands, and marine eelgrass. And provides all the necessary requirements for a successful habitat mitigation plan: specific mitigation objectives and performance standards, provisions for acquiring mitigation site, provisions for the dedication of the restored habitat or wetland and associated buffer areas to the public through



easements and dedications, monitoring and management program, or payment of an in lieu fee for terrestrial habitat or wetland impacts if no appropriate mitigation site can be acquired.

**D. Consistency Analysis - Denial as Submitted and Approval with Suggested Modifications**

In general, the proposed IP submitted by the City for Coastal Commission consideration implements the LUP's required biological resource protection standards and offers additional details on the CDP submittal requirements necessary to ensure such sensitive habitat protection. As discussed above, Chapter 21.30B references corresponding LUP policies, thereby ensuring that the LUP's detailed provisions for defining ESHA, listing the allowable uses within them, and noting their required buffers, are appropriately implemented. However, certain modifications are required in order for this section of the IP to be fully LUP consistent.

*Habitat Mitigation Ratios (acreage restored to acreage impacted)*

Section 21.30B.060.D provides Table 21.30B-1 outlining mitigation ratio requirements for different habitat communities per LUP policy. However, a suggested modification is necessary to make clear that if an applicant requests a lower mitigation ratio for wetland restoration, that a wetland mitigation ratio may only be reduced if the applicant provides evidence establishing, and the approving authority finds, that restoration or creation of a lesser area of wetlands will fully mitigate the adverse impacts of the proposed development. However, in no event shall the mitigation ratio be less than 2:1 unless, prior to the development impacts, the mitigation is completed and is empirically demonstrated to meet performance criteria that establish that the created or restored wetlands are functionally equivalent or superior to un-impacted reference wetlands.

*Habitat Mitigation In-Lieu Fees*

As previously described, Section 21.30B.060.F – In Lieu Fee provides for an in-lieu fee payment to an appropriate public agency to mitigate habitat or wetland impacts, if no appropriate mitigation site can be acquired. However, LUP Policy 4.2.3-1 which is the only LUP policy pertaining to payment of in-lieu fees for habitat mitigation, only provides for payment of an in-lieu fee as a possible allowable mitigation measure for development involving the diking or filling of a wetland. There are no allowances in the LUP for payment of in-lieu fee as a mitigation measure for impacts to other habitat types. Thus, the suggested modification to clarify this important distinction is necessary.

*Allowable Uses in ESHA*

As written, Section 21.30B.030.G – Required Findings could be interpreted to mean that any development could be allowed within ESHA so long as the City determines that the resource will not be significantly degraded, it is the least environmentally damaging alternative with respect to ESHA impacts, and all feasible mitigation measures have been adopted. Allowing potentially any type of new development within ESHA is inconsistent with LUP Policy 4.1.1-7, which specifically states that the only allowed uses to be sited within ESHA are those that are resource-dependent. Therefore, a modification is required in Section 21.30B.030.G to state that the only an allowed use, one that is resource-dependent can be considered for siting within ESHA or wetlands per LUP policies. Mitigating for ESHA habitat loss/adverse impacts is only allowed as a mitigation strategy for otherwise permissible uses specifically identified in the LUP when there are no feasible alternatives, including the no project alternative that would avoid ESHA impacts altogether. A similar modification is also required in Section ---, which clarifies that new development proposed within coastal waters is only permitted for the uses identified in LUP Policy ---, and not for other

types of proposed uses. These modifications make clear that any new development proposed to be sited within ESHA, and the mitigation standards required for it, is only for specifically allowed land uses, and not just for all development, consistent with the LUP.

#### *Coastal Dunes*

Section 21.30B.050 provides requirements for development in areas with coastal dunes and puts certain provisions in place to protect southern coastal foredune and southern dune scrub areas. As such, modifications are added to state that, development in dune habitat is prohibited and to clarify that earthmoving of beach sand in dune habitat areas shall be limited to dune restoration projects. Suggested modifications aim to clarify the difference between sand dunes considered sensitive habitat and temporary/seasonal sand dunes (i.e., sand berms) used to protect buildings and infrastructure from wave uprush during storm events. Suggested modifications allow for such sand berms while modifications to Section 21.30B.050 clarify that coastal dunes are considered habitat worthy of protection.

#### *Coastal Canyons*

The City aims to address the LUP policies pertaining to development on coastal canyon lots through the Canyon (C) Overlay Districts as outlined in the IP Section 21.28.50 – Canyon (C) Overlay District. As described in the section above, the proposed (C) Overlay utilizes stringline as the form of development setback from the canyon. A stringline is drawn between nearest adjacent corner of existing structures. Development stringlines are required for both principal and accessory structures.

The LUP policies the Canyon Overlay District intends to implement are those that address the setbacks requirements for new development on canyon sites, to assure stability and structural integrity, minimize landform alteration, to provide adequate drainage and erosion control in order to minimize hazards resulting from increased runoff, erosion and other hydrologic impacts to streams, and not permitting development to extend beyond the predominant line of existing development by establishing a development stringline. The requirements of Section 30253 of the Coastal Act have been incorporated into the certified LUP and Policy 2.8.7-3 requires applications for new development to include a geologic/soils/geotechnical study that identifies any geologic hazards, any necessary mitigation measures, and contains a statement that the project site is suitable for the proposed development and that the development will be safe from geologic hazard. Thus, a suggested modification is necessary to include a requirement for new development to waive future protection from geologic hazards. Additionally, a suggested modification is necessary to ensure that the regulations contained in other applicable IP chapters such as Chapter 21.30B – Habitat Protection are considered during review of canyon site projects as the coastal canyons of Buck Gully and Morning Canyon are identified as Environmental Study Areas (ESAs) and may contain habitat. Finally, a suggested modification is required to strikeout a provision to allow existing principal and accessory structures that extend beyond the development stringline setback to be modified or completely replaced with like principal and accessory structures. Only as modified is the IP adequate to carry out the policies of the LUP regarding development on canyon sites.

## **WATER QUALITY**

### **A. Applicable Land Use Plan Policies**

#### ***Water Quality***

- 4.1.2-1. Maintain, enhance, and, where feasible, restore marine resources.*
- 4.1.2-2. Provide special protection to marine resource areas and species of special biological or economic significance.*
- 4.1.2-3. Require that uses of the marine environment 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.*
- 4.1.2-4. Continue to cooperate with the state and federal resource protection agencies and private organizations to protect marine resources.*
- 4.1.2-5. Continue to require Caulerpa protocol surveys as a condition of City approval of projects in the Newport Bay and immediately notify the SCCAT when found.*

#### ***TDMLs***

- 4.3.1-1. Continue to develop and implement the TMDLs established by the Regional Board and guided by the Newport Bay Watershed Executive Committee (WEC).*
- 4.3.1-2. Secure funding for the Upper Newport Bay Ecosystem Restoration Project.*
- 4.3.1-3. Establish and protect a long-term funding source for the regular dredging of Upper Newport Bay and dredging of the Lower Newport Bay so that the City and its watershed partners achieve the goals and directives of the Sediment and Nutrient TMDLs adopted for Newport Bay.*
- 4.3.1-4. Preserve, or where feasible, restore natural hydrologic conditions such that downstream erosion, natural sedimentation rates, surface flow, and groundwater recharge function near natural equilibrium states.*
- 4.3.1-5. Require development on steep slopes or steep slopes with erosive soils to implement structural best management practices (BMPs) to prevent or minimize erosion consistent with any load allocation of the TMDLs adopted for Newport Bay.*
- 4.3.1-6. Require grading/erosion control plans to include soil stabilization on graded or disturbed areas.*
- 4.3.1-7. Require measures be taken during construction to limit land disturbance activities such as clearing and grading, limiting cut-and-fill to reduce erosion and sediment loss, and avoiding steep slopes, unstable areas, and erosive soils. Require construction to minimize disturbance of natural vegetation, including significant*

*trees, native vegetation, root structures, and other physical or biological features important for preventing erosion or sedimentation.*

- 4.3.1-8.** *Protection against the spillage of crude oil, gas, petroleum products, or hazardous substances shall be provided in relation to any development or transportation of such materials. Effective containment and cleanup facilities and procedures shall be provided for accidental spills that do occur.*

**NPDES**

- 4.3.2-1.** *Promote pollution prevention and elimination methods that minimize the introduction of pollutants into coastal waters, as well as the generation and impacts of dry weather and polluted runoff.*

- 4.3.2-2.** *Require that development not result in the degradation of coastal waters (including the ocean, estuaries and lakes) caused by changes to the hydrologic landscape.*

- 4.3.2-3.** *Support and participate in watershed-based runoff reduction and other planning efforts with the Regional Board, the County of Orange, and upstream cities.*

- 4.3.2-4.** *Continue to update and enforce the Newport Beach Water Quality Ordinance consistent with the MS4 Permit.*

- 4.3.2-5.** *Develop and maintain a water quality checklist to be used in the permit review process to assess potential water quality impacts.*

- 4.3.2-6.** *Implement and improve upon best management practices (BMPs) for residences, businesses, new development and significant redevelopment, and City operations.*

- 4.3.2-7.** *Incorporate BMPs into the project design in the following progression:*

- *Site Design BMPs.*
- *Source Control BMPs.*
- *Treatment Control BMPs.*

*Include site design and source control BMPs in all developments. When the combination of site design and source control BMPs are not sufficient to protect water quality as required by the LCP or Coastal Act, structural treatment BMPs will be implemented along with site design and source control measures.*

- 4.3.2-8.** *To the maximum extent practicable, runoff should be retained on private property to prevent the transport of bacteria, pesticides, fertilizers, pet waste, oil, engine coolant, gasoline, hydrocarbons, brake dust, tire residue, and other pollutants into recreational waters.*

- 4.3.2-9.** *To the maximum extent practicable, limit the use of curb drains to avoid conveying runoff directly to the City's street drainage system without the benefit of absorption by permeable surfaces and natural treatments such as landscaped areas and planters.*
- 4.3.2-10.** *Provide storm drain stenciling and signage for new storm drain construction in order to discourage dumping into drains.*
- 4.3.2-11.** *Require new development to minimize the creation of and increases in impervious surfaces, especially directly connected impervious areas, to the maximum extent practicable. Require redevelopment to increase area of pervious surfaces, where feasible.*
- 4.3.2-12.** *Require development to protect the absorption, purification, and retention functions of natural drainage systems that exist on the site, to the maximum extent practicable. Where feasible, design drainage and project plans to complement and utilize existing drainage patterns and systems, conveying drainage from the developed area of the site in a non-erosive manner. Disturbed or degraded natural drainage systems should be restored, where feasible.*
- 4.3.2-13.** *Site development on the most suitable portion of the site and design to ensure the protection and preservation of natural and sensitive site resources by providing for the following:*
- A. Protecting areas that provide important water quality benefits, areas necessary to maintain riparian and aquatic biota and/or that are susceptible to erosion and sediment loss;*
  - B. Analyzing the natural resources and hazardous constraints of planning areas and individual development sites to determine locations most suitable for development;*
  - C. Preserving and protecting riparian corridors, wetlands, and buffer zones;*
  - D. Minimizing disturbance of natural areas, including vegetation, significant trees, native vegetation, and root structures;*
  - E. Ensuring adequate setbacks from creeks, wetlands, and other environmentally sensitive habitat areas;*
  - F. Promoting clustering of development on the most suitable portions of a site by taking into account geologic constraints, sensitive resources, and natural drainage features*
  - G. Utilizing design features that meet water quality goals established in site design policies.*

- 4.3.2-14.** *Whenever possible, divert runoff through planted areas or sumps that recharge the groundwater dry wells and use the natural filtration properties of the earth to prevent the transport of harmful materials directly into receiving waters.*
- 4.3.2-15.** *Where infiltration of runoff would exacerbate geologic hazards, include equivalent BMPs that do not require infiltration.*
- 4.3.2-16.** *Require structural BMPs to be inspected, cleaned, and repaired as necessary to ensure proper functioning for the life of the development. Condition coastal development permits to require ongoing application and maintenance as is necessary for effective operation of all BMPs (including site design, source control, and treatment control).*
- 4.3.2-17.** *Utilize permeable surfaces that permit the percolation of urban runoff in non-sidewalk areas within the City's parkway areas, to the maximum extent practicable.*
- 4.3.2-18.** *Condition coastal development permits to require the City, property owners, or homeowners associations, as applicable, to sweep permitted parking lots and public and private streets frequently to remove debris and contaminated residue.*
- 4.3.2-19.** *Require parking lots and vehicle traffic areas to incorporate BMPs designed to prevent or minimize runoff of oils and grease, car battery acid, coolant, gasoline, sediments, trash, and other pollutants to receiving waters.*
- 4.3.2-20.** *Require commercial development to incorporate BMPs designed to prevent or minimize the runoff of pollutants from structures, landscaping, parking areas, loading and unloading dock areas, repair and maintenance bays, and vehicle/equipment wash areas.*
- 4.3.2-21.** *Require service stations, car washes and vehicle repair facilities to incorporate BMPs designed to prevent or minimize runoff of oil and grease, solvents, car battery acid, coolant, gasoline, and other pollutants to stormwater system from areas including fueling areas, repair and maintenance bays, vehicle/equipment wash areas, and loading/unloading dock areas.*
- 4.3.2-22.** *Require beachfront and waterfront development to incorporate BMPs designed to prevent or minimize polluted runoff to beach and coastal waters.*
- 4.3.2-23.** *Require new development applications to include a Water Quality Management Plan (WQMP). The WQMP's purpose is to minimize to the maximum extent practicable dry weather runoff, runoff from small storms (less than 3/4" of rain falling over a 24-hour period) and the concentration of pollutants in such runoff during construction and post-construction from the property.*
- 4.3.2-24.** *To further reduce runoff, direct and encourage water conservation via the use of weather- and moisture-based irrigation controls, tiered water consumption rates,*

*and native or drought-tolerant plantings in residential, commercial, and municipal properties to the maximum extent practicable.*

- 4.3.2-25.** *Effectively communicate water quality education to residents and businesses, including the development of a water quality testing lab and educational exhibits at the Back Bay Science Center on Shellmaker Island.*

**Sanitary Sewer Overflows**

- 4.3.3-1.** *Develop and implement sewer system management plans to replace or reline older wastewater lines and upgrade pump stations.*
- 4.3.3-2.** *Conduct additional public education reminding property owners and food preparation facilities to clean sewer laterals often, maintain private grease control systems, keep roots under control, and to immediately report SSOs.*
- 4.3.3-3.** *Require waste discharge permits with all food preparation facilities that produce grease and require such permits to include:*
- *Agreements to follow appropriate BMPs;*
  - *Maximum grease intrusion levels;*
  - *Maintenance/posting of appropriate educational material;*
  - *Maintenance log for laterals (at least quarterly);*
  - *Maintenance of a log for any grease control device or vat;*
  - *Funding for regular compliance inspections;*
  - *Acknowledgement of City's ability to fine for non-compliance.*
- 4.3.3-4.** *Monitor food preparation facilities via waste discharge permits and monitor spill reduction progress.*
- 4.3.3-5.** *Participate with other sewer collection and treatment agencies to investigate alternatives to grease interceptors.*
- 4.3.3-6.** *Continue to renovate all older sewer pump stations and install new plumbing according to most recent standards.*
- 4.3.3-7.** *Comply with the Regional Board's Waste Discharge Requirements (WDRs) associated with the operation and maintenance of a sewage collection system.*

**B. LUP Background**

The Chapter 4: Coastal Resource Protection of the Land Use Plan provides background information on the City of Newport Beach watershed. Newport Bay receives urban runoff from the Newport Bay watershed, an area that includes unincorporated County territory and areas within the cities of Costa Mesa, Laguna Woods, Lake Forest, Irvine, Newport Beach, Orange, Santa Ana, and Tustin. The primary tributaries to Newport Bay are the Santa Ana/Delhi Channel (draining the cities of Costa Mesa and Santa Ana), San Diego Creek (draining the cities of Irvine, Laguna Woods, Lake Forest, portions of Newport Beach, Orange, and Tustin), and Big Canyon Creek (draining Newport Beach). Newport Bay is designated as "water quality-limited" for four impairments under the

Federal Clean Water Act's Section 303(d) List, meaning that it is "not reasonably expected to attain or maintain water quality standards" due to these impairments without additional regulation. As a water quality-limited body, the California Regional Water Quality Control Board and the U.S. Environmental Protection Agency have developed total maximum daily loads ("TMDLs") for the following substances: sediment, nutrients, fecal coliform, and toxic pollutants. The Board included these TMDLs in the Regional Board's Basin Plan for the region. Furthermore, The City of Newport Beach operates a municipal separate storm sewer system (MS4) permitted by the Regional Board under the National Pollutant Discharge Elimination System (NPDES). The City's MS4 permit is extensive in its obligation to keep waterways clean by reducing or eliminating contaminants from storm water and dry-weather runoff through an aggressive Water Quality Ordinance, specific municipal practices to maintain city facilities, the use of "best management practices" (BMPs) in many residential, commercial, and development-related activities to further cut runoff, and public education campaigns for protection of water quality. The policies in the LUP aim to meet the TMDLs and the City's MS4 permit through broad regional participation policies down to specific site development BMPs. As listed in the section above, the LUP includes extensive and detailed policies to meet the goals of pollution prevention, protecting and restoring the quality of coastal waters.

### **C. Proposed Implementation Plan**

The proposed IP attempts to implement the aforementioned LUP policies in Chapter 21.30 – Property Development Standards Section 21.30.135 – Water Quality Control. The proposed IP submitted by the City for Commission consideration simply contains broad, general provisions for incorporation of BMPs into proposed project design, requirements for a construction phase Storm Water Pollution Prevention Plan (SWPPP) and post construction Water Quality Management Plan (WQMP).

### **D. Consistency Analysis - Denial as Submitted and Approval with Suggested Modifications**

Although the City may have a comprehensive Water Quality Ordinance in place, the City's ordinances are not part of the IP and thus not included in the LCP. The IP as submitted does not contain any of the necessary detail pertaining to what those BMPs should be for different types of projects (i.e., residential, commercial, harbor development), nor does it contain the necessary detail pertaining to the adequacy of components of construction phase and post construction phase water quality protection plans to ensure compliance with the detailed LUP policies. Thus, the suggested modification to strike out Section 21.30.145 – Water Quality Control entirely from Chapter 21.30 and create an entire new chapter, Chapter 21.35 – Water Quality. As modified, Chapter 21.35 implements the LUP's required water quality protection standards and offers additional details on the CDP submittal requirements necessary to ensure the uses of the marine environment 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.

For example, as proposed, Section 21.30.145.D.2 simply states *"To the maximum extent feasible, development shall preserve, or where feasible, restore natural hydrologic conditions such that downstream erosion, natural sedimentation rates, surface flow, and groundwater recharge function near natural equilibrium states."* However, no indication is given as far as what type of information or analysis is necessary in the project review phase to actually achieve restoration of natural hydrologic conditions. As modified, the IP requires submittal of a host of data/information about



the existing project site conditions (i.e., topography and drainage, location of nearby coastal waters and ESHA, whether runoff discharges to receiving waters listed for water quality impairment, an accounting of existing pervious and impervious surface areas, and explanation of previous land uses on the site to determine whether there is the potential for a historic source of contamination) to enable evaluation of the project's potential water quality and hydrology impacts. Such is the level of detail required in the IP to ensure that new development proposals preserve and if feasible restore natural hydrologic conditions. The rest of the suggested modifications further detail all of the necessary components of the required water quality protection plans (both a construction phase plan and a post development plan) for development that requires a coastal development permit and has the potential for adverse water quality or hydrology impacts to coastal waters. Only as modified is the IP adequate to carry out LUP policy requiring development not result in the degradation of coastal waters caused by changes to the hydrologic landscape.

## VISUAL RESOURCES

### A. Applicable Land Use Plan Policies

#### *Coastal Views*

*4.4.1-1. Protect and, where feasible, enhance the scenic and visual qualities of the coastal zone, including public views to and along the ocean, bay, and harbor and to coastal bluffs and other scenic coastal areas.*

*4.4.1-2. Design and site new development, including landscaping, so as to minimize impacts to public coastal views.*

*4.4.1-3. Design and site new development to minimize alterations to significant natural landforms, including bluffs, cliffs and canyons.*

*4.4.1-4. Where appropriate, require new development to provide view easements or corridors designed to protect public coastal views or to restore public coastal views in developed areas.*

*4.4.1-5. Where feasible, require new development to restore and enhance the visual quality in visually degraded areas.*

*4.4.1-6. Protect public coastal views from the following roadway segments:*

- Backbay Drive.*
- Balboa Island Bridge.*
- Bayside Drive from Coast Highway to Linda Island Drive.*
- Bayside Drive at Promontory Bay.*
- Coast Highway/Santa Ana River Bridge.*
- Coast Highway/Newport Boulevard Bridge and Interchange.*
- Coast Highway from Newport Boulevard to Marino Drive.*
- Coast Highway/Newport Bay Bridge.*
- Coast Highway from Jamboree Road to Bayside Drive.*
- Eastbluff Drive from Jamboree Road to Backbay Drive.*

- Irvine Avenue from Santiago Drive to University Drive.*
- Jamboree Road from Eastbluff Drive/University Drive to State Route 73.*
- Jamboree Road in the vicinity of the Big Canyon Park.*
- Jamboree Road from Coast Highway to Bayside Drive.*
- Lido Island Bridge.*
- Newport Boulevard from Hospital Road/Westwinster Avenue to Via Lido Drive.*
- Newport Center Drive from Newport Center Drive E/W to Farallon Drive/Granville Drive.*
- Ocean Boulevard.*
- State Route 73 from Bayview Way to University Drive.*
- Superior Avenue from Hospital Road to Coast Highway.*
- University Drive from Irvine Avenue to the Santa Ana – Delhi Channel.*

**4.4.1-7.** *Design and site new development, including landscaping, on the edges of public coastal view corridors, including those down public streets, to frame and accent public coastal views.*

**4.4.1-8.** *Require that buildings be located and sites designed to provide clear views of and access to the Harbor and Bay from the Coast Highway and Newport Boulevard rights-of-way in accordance with the following principles, as appropriate:*

- Clustering of buildings to provide open view and access corridors to the Harbor.*
- Modulation of building volume and masses.*
- Variation of building heights.*
- Inclusion of porticoes, arcades, windows, and other “see-through” elements in addition to the defined open corridor.*
- Minimization of landscape, fencing, parked cars, and other nonstructural elements that block views and access to the Harbor.*
- Prevention of the appearance of the public right-of-way being walled off from the Harbor.*
- Inclusion of setbacks that in combination with setbacks on adjoining parcels cumulatively form functional view corridors.*
- Encouragement of adjoining properties to combine their view corridors that achieve a larger cumulative corridor than would have been achieved independently.*
- A site-specific analysis shall be conducted for new development to determine the appropriate size, configuration, and design of the view and access corridor that meets these objectives, which shall be subject to approval in the coastal development plan review process.*

**4.4.1-9.** *Design and maintain parkway and median landscape improvements in public rights-of-way so as not to block public coastal views at maturity.*

**4.4.1-10.** *Where feasible, provide public trails, recreation areas, and viewing areas adjacent to public coastal view corridors.*

**4.4.1-11.** *Restrict development on sandy beach areas to those structures directly supportive of visitor-serving and recreational uses, such as lifeguard towers, recreational equipment,*

*restrooms, and showers. Design and site such structures to minimize impacts to public coastal views.*

***Height Limitations***

*4.4.2-1. Maintain the 35-foot height limitation in the Shoreline Height Limitation Zone, as graphically depicted on Map 4-3.*

*4.4.2-2. Continue to regulate the visual and physical mass of structures consistent with the unique character and visual scale of Newport Beach.*

*4.4.2-3. Implement the regulation of the building envelope to preserve public views through the height, setback, floor area, lot coverage, and building bulk regulation of the Zoning Code in effect as of October 13, 2005 that limit the building profile and maximize public view opportunities.*

*4.4.2-4. Prohibit projections associated with new development to exceed the top of curb on the bluff side of Ocean Boulevard. Exceptions for minor projections may be granted for chimneys and vents provided the height of such projections is limited to the minimum height necessary to comply with the Uniform Building Code.*

***Signs and Utilities***

*4.4.4-1. Design and site signs, utilities, and antennas to minimize visual impacts to coastal resources.*

*4.4.4-2. Continue to implement the special sign regulations in Mariner's Mile and on the Balboa Peninsula.*

*4.4.4-3. Update sign regulations for the West Newport, Marine Avenue, and Corona del Mar commercial areas.*

*4.4.4-4. Implement programs to remove illegal signs and amortize legal nonconforming signs.*

*4.4.4-5. Prohibit new billboards and roof top signs and regulate the bulk and height of other freestanding signs that affect public coastal views. Heritage signs are not subject to this restriction.*

*4.4.4-6. Continue to require new development to underground utilities.*

*4.4.4-7. Continue programs to remove and underground overhead utilities.*

**B. LUP Background**

Section 4.4 – Scenic and Visual Resources of the LUP describes the City of Newport Beach as located in a unique physical setting that provides a variety of spectacular coastal views, including those of the open waters of the ocean and bay, sandy beaches, rocky shores, wetlands, canyons, and coastal bluffs. Views to these coastal scenic and visual resources are provided by a system of public parks, piers, trails, and viewing areas. Coastal views are also provided from a number of

streets and highways and, due to the grid street pattern in West Newport, Balboa Peninsula, Balboa Island, and Corona del Mar, many north-south tending streets provide view corridors to the ocean and bay.

LUP Policy 4.4.1-6 specifically identifies certain roadway segments from which public coastal views shall be protected, and LUP Policy 4.4.1-8 requires new development designed and sited to provide clear view of and access to the Newport Harbor and Bay from Coast Hwy and Newport Blvd. LUP Policy 4.4.2-1 calls for limits on all development to be a maximum of 35 feet in the Shoreline Height Limitation Zone. In an effort to preserve public views, LUP Policy 4.4.2-3 requires limiting a development's building envelope through height, setback, floor area, lot coverage and building bulk regulation based on the limits put in place by the October 13, 2005 Zoning Code. LUP Policy 4.4.1-3 specifically requires new development to be designed and sited to minimize alterations to significant natural landforms including bluffs, cliffs, and canyons in an effort to maintain the City's unique physical setting.

Furthermore, LUP policies also prohibit new billboards and roof top signs that affect public coastal views and require new signs to be of a size, location, and appearance so they do not detract from scenic areas or views from public roads and other viewing points. Finally, visually prominent and potentially obtrusive utilities such as telecommunications facilities are required to minimize visual impacts to coastal resources.

### **C. Proposed Implementation Plan**

The proposed IP implements these LUP policies primarily through Chapter 21.30 – Property Development Standards, which addresses the applicable LUP policies. For example, the purpose of IP Section 21.30.100 – Visual Impacts is “to insure that development shall be sited and designed to protect and, where feasible, enhance the scenic and visual qualities of the Coastal Zone, including public views to and along the ocean, bay, and harbor and to coastal bluffs and other scenic coastal areas.” This section includes a provision requiring an initial evaluation of visual impacts for all development located between the first public roadway paralleling ocean, on a bay, harbor, channels, estuary, marsh, or slough site, located on a coastal bluff or canyon, on a site adjacent to, or within the viewshed of, a public view point, coastal view road, public park or beach, or public accessway, as identified on Coastal Land Use Plan Map 4-3 (Coastal Views) and a site containing significant natural landforms or natural vegetation. And where the initial evaluation indicates that a proposed development has the potential to significantly impact a public view or viewshed or the scenic and visual qualities of the Coastal Zone, a view impact analysis will be required. Additionally, this section provides principles for siting and design to protect visual coastal resources

#### *Shoreline Height Limitation Zone*

Other examples include IP Section 21.30.060 – Height Limits and Exceptions which establishes regulations for determining compliance with the maximum allowable height limits established for each coastal zoning district, and IP Section 21.30.065 – Signs with Table 21.30-2 which provides standards for free standing signs in all coastal zoning districts and specifies what type of signs are prohibited.

Although primarily addressed in IP Chapter 21.30, implementation of LUP policies pertaining to protection of coastal views are also found addressed in other Chapters of the IP, for example LUP Policy 4.4.1-11 to “restrict development on sandy beach areas to those structures directly supportive

of visitor-serving and recreational uses, such as lifeguard towers, recreational equipment, restrooms, and showers, designed and sited to minimize impacts to coastal views.” is addressed in IP Chapter 21.48 Section 21.48.055 – Public Beaches. Additionally, the proposed IP contains an entire chapter, Chapter 21.49(Wireless Telecommunication Facilities) for the implementation of LUP Policy 4.4.4-1 requiring utilities and antennas to be designed and sited to minimize impacts to coastal resources.

**D. Consistency Analysis - Denial as Submitted and Approval with Suggested Modifications**

In general, the IP implements corresponding LUP visual resource protection policies. Therefore, LUP requirements that specify the need to protect and where feasible, enhance the scenic and visual qualities of the coastal zone, including public views to and along the ocean, bay, and harbor and to coastal bluffs and other scenic coastal areas, are implemented.

*Shoreline Height Limitation Zone*

However, the IP also includes provisions in Section 21.30.060(C) allowing for increases in height limits established for coastal zoning districts in contrast with the LUP Section 4.4.2 – Bulk and Height Limitation. The LUP states that concerns over the intensity of development around Lower Newport Bay led to the adoption of ordinances in the early 1970s that established more restrictive height and bulk development standards. As a result, new development would be limited to 35 feet within an identified “Shoreline Height Limitation Zone.” The LUP identified residential height limits within the Shoreline Height Limitation Zone as limited to a height of 24 to 28 feet and non-residential development limited to a height of 26 to 35 feet. Outside of the Shoreline Height Limitation Zone, heights of up to 50 feet are permitted, with two properties in the coastal zone that are within the High Rise Height Limitation Zone which are permitted heights up to 375 feet. These Height Limitation Zones are graphically depicted in the LUP and are also included in Chapter 21.80- Maps, Section 21.80.030 – Height Limit Areas of the IP. These height limits are described in the LUP and LUP Policy 4.4.2-1 specifically requires the 35 foot height limit in the Shoreline Height Limitation Zone be maintained.

According to Section 21.30.060(C), height limits established for structures in R-A, R-1, R-BI, and R-2 coastal zoning districts are identified as 24 feet/flat roof and 29 feet/sloped roof but that height may be increased up to 4 feet, a maximum of 28 feet/flat roof or 33 feet/sloped roof. In the RM coastal zoning district the height limit is identified as 28 feet/flat roof and 33 feet/sloped roofs but may also be increased an extra maximum 4 feet, 32 feet/flat roof and 37 feet/sloped roof. Non-residential structures are identified as having a height limit 26 feet/flat roof and 31 feet/sloped roof but may be increased an additional 5 feet to 35 to 40 feet. In order to allow an increase in the height of a structure above the height limit, Section 21.30.060(C) calls for certain findings to be made such as structures over 35 feet in height shall not occupy more than 25% of the total area of the site and structures over 45 feet in height shall not occupy more than 15% of the total area of the site.

There is no basis in the LUP to justify increases to established height limits. LUP Policy 4.4.2-1 specifically requires maintenance of the 35 foot height limit in the Shoreline Height Limitation Zone. There have only been two exceptions made to the 35 foot Shoreline Height Limitation and those have actually required LUP amendments, these are the Marina Park Lighthouse feature and the Lido House Hotel. Thus, a suggested modification would only allow City proposed height increases proposed exceptions to height limits everywhere other than within the Shoreline Height Limitation Zone. As modified, property development standards pertaining to height limits of

residential, mixed-used, and commercial structures are consistent with the LUP's visual protection policies.

*Wireless Telecommunication Facilities*

With respect to telecommunications facilities, Chapter 21.49 implements the requirements of LUP Policy 4.4.4-1 that ensure, through design and siting measures that telecommunication facilities are designed and constructed to minimize visual impacts and protect coastal resources. However, suggested modifications are required to Chapter 21.26 to clarify that although utilities and wireless telecommunication facilities are allowable uses in Open Space (OS), Public Parks and Recreation (PR) Coastal Zoning Districts, they are not an allowed use in areas identified as ESHA or on recreational public sandy beach areas. As modified, the telecommunications requirements in IP provide enhanced requirements for these types of facilities and are consistent with the LUP's visual, and biological protection policies.

As modified, the IP conforms with and adequately implements the certified LUP visual resource and community character policies, including specifying the types of views that are protected, where development is allowed in relation to ridgelines, and the process by which building height and setback is determined. Therefore, the IP, as modified, conforms with and is adequate to implement the conditionally certified LUP.

**CULTURAL RESOURCES**

**A. Applicable Land Use Plan Policies**

***Paleontological and Archaeological Resources***

***4.5.1-1.*** *Require new development to protect and preserve paleontological and archaeological resources from destruction, and avoid and minimize impacts to such resources. If avoidance of the resource is not feasible, require an in situ or site-capping preservation plan or a recovery plan for mitigating the effect of the development.*

***4.5.1-2.*** *Require a qualified paleontologist/archeologist to monitor all grading and/or excavation where there is a potential to affect cultural or paleontological resources. If grading operations or excavations uncover paleontological/archaeological resources, require the paleontologist/archeologist monitor to suspend all development activity to avoid destruction of resources until a determination can be made as to the significance of the paleontological/archaeological resources. If resources are determined to be significant, require submittal of a mitigation plan. Mitigation measures considered may range from in-situ preservation to recovery and/or relocation. Mitigation plans shall include a good faith effort to avoid impacts to cultural resources through methods such as, but not limited to, project redesign, in situ preservation/capping, and placing cultural resource areas in open space.*

***4.5.1-3.*** *Notify cultural organizations, including Native American organizations, of proposed developments that have the potential to adversely impact cultural resources. Allow qualified representatives of such groups to monitor grading and/or excavation of development sites.*

*4.5.1-4. Where in situ preservation and avoidance are not feasible, require new development to donate scientifically valuable paleontological or archaeological materials to a responsible public or private institution with a suitable repository, located within Orange County, whenever possible.*

*4.5.1-5. Where there is a potential to affect cultural or paleontological resources, require the submittal of an archeological/cultural resources monitoring plan that identifies monitoring methods and describes the procedures for selecting archeological and Native American monitors and procedures that will be followed if additional or unexpected archeological/cultural resources are encountered during development of the site. Procedures may include, but are not limited to, provisions for cessation of all grading and construction activities in the area of the discovery that has any potential to uncover or otherwise disturb cultural deposits in the area of the discovery and all construction that may foreclose mitigation options to allow for significance testing, additional investigation and mitigation.*

*4.5.1-6. Continue to protect Upper Newport Bay cliff faces to serve as a reference section for micropaleontological studies.*

#### **Historical Resources**

*4.5.2-1. Maintain and periodically update the Newport Beach Register of Historical Property for buildings, objects, structures, and monuments having importance to the history or architecture of Newport Beach and require photo documentation of inventoried historic structures prior to demolition.*

*4.5.2-2. Provide incentives, such as granting reductions or waivers of applications fees, permit fees, and/or any liens placed by the City to properties listed in the National or State Register or the Newport Beach Register of Historical Property in exchange for preservation easements.*

*4.5.2-3. Continue to allow the Dory Fishing Fleet to be launched and stored and to sell fish on the public beach adjacent to Newport Pier within reasonable limits to protect the historical character of the fleet, the coastal access and resources, and the safety of beach users in the vicinity.*

#### **B. LUP Background**

The LUP provides a short geologic history of Newport Beach and background on early human occupation of Southern California. Evidence of the earliest human occupation in Orange County has been found at archaeological sites around Upper Newport Bay. These and other archaeological sites in Newport Beach present evidence of native peoples as far back as 9,500 years. For thousands of years, members of the Tongva and Juaneño/Luiseño nations long inhabited this area. The LUP provides numerous specific policies that require new development protect and preserve paleontological and archaeological resources from destruction primarily through avoidance of impacts. Most importantly, where even the potential to affect cultural or paleontological resources is present, the LUP calls for submittal of a plan to monitor all grading and/or excavation, notification to cultural organizations and specific requirements pertaining to the steps necessary if resources are uncovered.

### **C. Proposed Implementation Plan**

The proposed IP implements the LUP's policies in Section 21.30.105 – Cultural Resource Protection, this section is intended to apply to development involving grading or excavation in all Coastal Zoning Districts located within 300 feet of an identified paleontological/archaeological site or a site deemed to potentially significant paleontological/archaeological resources based on evidence from an initial study. Procedures are identified requiring a report prepared by a qualified archaeologist/paleontologist, the elements of the report, a requirement for notification to cultural organizations of proposed development that has the potential to adversely impact cultural resources, a requirement for a qualified paleontologist/archeologist to monitor all grading and/or excavation activities, an allowance for cultural organizations to also monitor grading and/or excavation, and provides procedures if cultural resources are uncovered including mitigation measures. Such required procedures include suspension of development activity, notification to the City Planning Director, and submittal of a mitigation plan to the Planning Director for review and approval should the resources be determined to be significant.

### **D. Consistency Analysis - Denial as Submitted and Approval with Suggested Modifications**

The certified Land Use Plan contains goals, objectives, and policies regarding protection of archaeological/cultural resources. These LUP standards, cited previously, require that significant archaeological resources be identified and protected to the maximum extent feasible.

When development of a site is contemplated where there is a high potential for the presence of archaeological resources, a higher degree of scrutiny is appropriate and necessary. Site development, including preliminary measures such as grading and trenching, can disturb (sometimes irreparably) cultural resources that may be present. Over the course of reviewing projects where archaeological resources have been present, the Commission has found that identifying the presence and significance of resources on a site *prior to* consideration of development proposals to be the far superior course of action. The alternative of simply monitoring for resources during grading has not provided optimum results in terms of protecting resources. If resources are identified up front, a project can be tailored to address the presence of cultural resources. However, in those cases where resources are not discovered until a project has reached the grading stage, it becomes much more difficult to tailor a project in a way that is most protective of resources. There is a high expectation for the discovery of archaeological resources when a project site contains a mapped archaeological site, when the potential for the presence of archaeological/cultural resources is revealed through the CEQA process, and/or when archaeological/cultural resources are otherwise known or reasonably suspected to be present. In cases where there is a low expectation for resources on site, conditioning the project to be monitored during grading can be sufficient to protect resources. However, in the case where the expectation is high, greater protections must be put in place. In order to discover whether or not resources are in fact present, and to know the level of significance of any resources found on site, an Archaeological Research Design (ARD) must be prepared and implemented prior to review of the site's proposed development. A development decision that is most protective of the resource cannot be made without the necessary information regarding presence and significance of on-site resources. That information only results when an approved ARD has been fully implemented for the specific project site, thereby making available the full range of mitigation options to decision makers before the resources are disrupted. Thus, suggested modifications to the proposed IP provide just for these scenarios.



As modified, the IP includes a requirement that an ARD be prepared and implemented for sites with a high expectation for the presence of archaeological resources, and provides standards for preparation and implementation of the ARD, and clarifying that any subsequent development contemplated for that site shall be guided by the results of the ARD. In order to discover the extent and significance of any archaeological resources that may be present on a site where there is a high expectation the resources, sub-surface work including trenching and test pits must be conducted. Trenching and test-pits constitute development, thus, a coastal development permit would be required for implementation of the ARD. Any future development of the site must be guided by the results of the approved and implemented ARD to assure that archaeological resources are protected to the maximum extent feasible. Therefore, the process for development of a site, where archaeological resources are a significant issue, involves at least two coastal development permits, one to implement an ARD, and one for further site development. As such, only as modified can the IP can be found to be consistent with and adequate to carry out the archaeological protection policies of the certified LUP.

## **MOBILITY – TRANSPORTATION AND PARKING**

### **A. Applicable Land Use Plan Policies**

#### ***Public Transit***

**2.9.1-1.** *Continue to implement the Transportation Demand Management Ordinance.*

**2.9.1-2.** *Continue to require new development to dedicate transit facilities, such as bus turnouts, benches, shelters and similar facilities, where appropriate.*

**2.9.1-3.** *Locate and design larger commercial and residential developments to be served by transit and provide non-automobile circulation to serve new development to the greatest extent possible.*

**2.9.1-4.** *Encourage the use of commercial and institutional parking areas for use as public parking during weekends and holidays in conjunction with public transit or shuttles to serve coastal recreational areas.*

**2.9.1-5.** *Encourage OCTA to continue and expand summer bus service to coastal recreational areas.*

**2.9.1-6.** *Maintain and enhance existing public water transportation services and encourage and provide incentives for expansion of these uses and land support facilities.*

**2.9.1-7.** *The City shall study alternative funding mechanisms to provide a low-cost public transportation system to serve beach areas impacted by traffic during summertime, peak-use periods. The City shall address feasible implementation measures for a summertime shuttle or other transit opportunities in the Implementation Plan of the LCP.*

**2.9.1-8.** *Employment, retail, and entertainment districts and coastal recreational areas should be well served by public transit and easily accessible to pedestrians and bicyclists.*

*Streets, sidewalks, bicycle paths, and recreational trails (including the Coastal Trail) should be designed and regulated to encourage walking, bicycling, and transit ridership.*

**2.9.1-9.** *The City shall encourage employers to provide incentives for transit ridership (e.g. subsidies for transit use, shuttles to transit stations), ridesharing, vanpools, and other transportation demand measures designed to reduce vehicle miles traveled.*

**2.9.1-10.** *Encourage new developments to design projects to facilitate transit ridership and ridesharing through such means as locating and designing building entries that are convenient to pedestrians and transit riders.*

***Bikeways and Trails***

**2.9.2-1.** *Maintain, expand, and encourage the use of bikeways and trails as alternative circulation routes.*

**2.9.2-2.** *Continue to cooperate with state, federal, county and local agencies to coordinate bikeways and trails throughout the region.*

**2.9.2-3.** *Develop and implement a uniform signing program to assist the public in locating, recognizing, and utilizing public bikeways and trails.*

**2.9.2-4.** *Design and site new development to provide connections to existing and proposed bikeways and trail systems.*

**2.9.2-5.** *Where appropriate, provide bicycle racks and hitching posts at public beaches and parks.*

**2.9.2-6.** *Require new non-residential developments with floor areas of 10,000 square feet or more to provide bicycle racks for use by customers. Encourage smaller non-residential developments to provide such facilities, when feasible.*

**2.9.2-7.** *Require new non-residential developments with a total for 100 or more employees to provide bicycle racks, lockers, and showers for use by employees and tenants who commute by bicycle. Encourage smaller non-residential developments to provide such facilities, when feasible.*

**3.1.1-6.** *Continue to cooperate with the State Department of Parks and Recreation, the State Department of Fish and Game, the State Coastal Conservancy, Orange County, and private organizations to protect, expand and enhance public access to and along the shoreline and to beaches, coastal parks, and trails.*

**3.1.1-10.** *Cooperate with state agencies in planning and implementing the Newport Beach segment of the California Coastal Trail.*

**3.1.1-19.** *Develop and implement a long-range plan for public trails and walkways to access all appropriate commercial areas of the harbor.*

**Parking**

**2.9.3-1.** *Site and design new development to avoid use of parking configurations or parking management programs that are difficult to maintain and enforce.*

**2.9.3-2.** *Continue to require new development to provide off-street parking sufficient to serve the approved use in order to minimize impacts to public on-street and off-street parking available for coastal access.*

**2.9.3-3.** *Require that all proposed development maintain and enhance public access to the coast by providing adequate parking pursuant to the off-street parking regulations of the Zoning Code in effect as of October 13, 2005.*

**2.9.3-4.** *Periodically review and update off-street parking requirements to ensure that new development provides off-street parking sufficient to serve approved uses.*

**2.9.3-5.** *Continue to require off-street parking in new development to have adequate dimensions, clearances, and access to insure their use.*

**2.9.3-6.** *Prohibit new development that would result in restrictions on public parking that would impede or restrict public access to beaches, trails or parklands, (including, but not limited to, the posting of “no parking” signs, red curbing, and physical barriers), except where such restrictions are needed to protect public safety and where no other feasible alternative exists to provide public safety.*

**2.9.3-7.** *If public parking restrictions are allowed to protect public safety, require new development to provide an equivalent quantity of public parking nearby as mitigation for impacts to coastal access and recreation, where feasible.*

**2.9.3-8.** *Continue to require properties with nonconforming parking to provide code-required off-street parking when new uses, alterations or additions result in increased parking demand.*

**2.9.3-9.** *Approve no application for a modification or waiver of off-street parking requirements that are found to impact public parking available for coastal access.*

**2.9.3-10.** *Require new development to minimize curb cuts to protect on-street parking spaces. Close curb cuts to create new public parking wherever feasible.*

**2.9.3-11.** *Continue to require alley access to parking areas for all new development in areas where alley access exists.*

**2.9.3-12.** *Provide incentives to encourage lot consolidation where lots are of insufficient size to accommodate on-site parking and sufficient commercial intensity of development.*

**2.9.3-13.** *Encourage commercial and institutional development located near beaches and other coastal resources to provide parking for public access during weekends and holidays.*

**2.9.3-15.** *Set in-lieu parking fees commensurate with actual market value for the provision of off-street parking.*

**2.9.3-16.** *Continue to rigorously enforce parking ordinances.*

***Parking Management Programs***

**2.9.3-14.** *Develop parking management programs for coastal zone areas that achieve the following:*

- Provides adequate, convenient parking for residents, guests, business patrons, and visitors of the coastal zone;*
- Optimizes use of existing parking spaces;*
- Provides for existing and future land uses;*
- Reduces traffic congestion;*
- Limits adverse parking impacts on user groups;*
- Provides improved parking information and signage;*
- Generates reasonable revenues to cover City costs;*
- Accommodates public transit and alternative modes of transportation.*

**3.2.2-4.** *Develop parking management programs for coastal zone areas to minimize parking use conflicts between commercial uses, residential uses, and coastal zone visitors during peak summer months.*

***Preferential Parking***

**3.1.6-1.** *Prohibit the establishment of new preferential parking districts in the coastal zone except where such restrictions would not have a direct impact to coastal access, including the ability to use public parking.*

**3.1.6-2.** *Require a coastal development permit to establish new, or modify existing, preferential parking districts.*

**3.1.6-3.** *Use preferential parking permit fees to fund programs to mitigate impacts to coastal access.*

**3.1.6-4.** *Where appropriate, establish a graduated preferential parking permit fee schedule where progressively higher fees are required for each permit for households with multiple permits.*

**3.1.6-5.** *Limit the number of preferential parking permits issued per household to reduce potential adverse impacts to public access.*

## **B. LUP Background**

The Transportation policies in the LUP are mostly found in Chapter 2 – Land Use and Development, with policies regarding Preferential Parking Zones in Chapter 3 – Public Access.

Coastal access and public parking are statewide issues. Visitors come from far distances to access the coast, which is well known for its popular wide beaches, public piers, fishing, and boating opportunities. Public transportation is limited in Newport Beach, especially when traveling from outside of the local area. Often, personal vehicles are the only option for people to access this area. The Chapter 3 public access polices of the Coastal Act state that maximum access shall be provided for all the people, that development shall not interfere with the public’s ability to access the coast, and that lower cost facilities, including parking, shall be protected. It is fundamentally important to protect public parking supplies that support coastal access, especially in areas with high demands and limited ability to improve public parking, such as the subject area.

Public transportation services in Newport Beach are provided by the Orange County Transportation Authority District (OCTA) and consist of regular fixed-route bus services. Demand for bus service from the inland areas to Newport Beach is greatest during the summer peak months requiring OCTA to add buses to beach routes most in demand. The City provides an extensive system of bikeways and trails serving pedestrians, bicyclists, and equestrians. In addition to providing coastal access along coastal bluffs and the shoreline, these trails also serve as alternative modes of transportation. LUP policies pertain to the maintenance, expansion and encouragement of use of trails; bike rack requirements for certain types of development, the design and siting new development to provide connections to existing and proposed bikeways and trail systems, and continuation of cooperative efforts between State, federal, county and local agencies to coordinate trails throughout the region, including the California Coastal Trail.

## **C. Proposed Implementation Plan**

The IP includes a series of standards meant to implement the Land Use Plan’s broad swath of coastal resource protection policies regarding the provision of public access through transit, off-street parking requirements and system of bikeways and trails.

The IP implements the LUP’s transportation, circulation and parking policies in Chapter 21.44 – Transportation and Circulation, Chapter 21.40 – Off Street Parking and Chapter 21.30A – Public Access.

### *Off-Street Parking Requirements*

Chapter 21.40 – Off Street Parking provides standards to ensure that sufficient parking facilities are available to meet the needs generated by specific uses and that adequate parking is provided, for example, two-unit dwellings require 2 parking spaces per unit (1 in a garage and 1 covered), live/work units require 2 parking spaces per unit in a garage, plus 2 for guest/customer parking, marinas require 0.75 space per slip or 0.75 per 25 feet of mooring space. Section 21.40.110 provides procedures for when a reduction of required off-street parking may be considered, and Section 21.40.130 allows for an in-lieu parking fee payment for a reduction in parking. This chapter also provides standards for bicycle parking for non-residential developments. Section 21.40.120 simply states that properties within a Parking Management Overlay District may be exempted from all or part of the off-street parking requirements of Chapter 21.40 in compliance with the provisions of the adopted Parking Management Overlay District. Section 21.40.145 sets

procedures for the establishment of Preferential Parking Zones including required findings for establishment of the zone, the number of preferential parking permits allowed per household, and how the permit fees collected shall be used to fund programs to mitigate impacts to coastal access and parking facilities.

The Chapter begins with Section 21.28.10 stating that an Overlay District may be initiated as a Coastal Zoning Map amendment which would require an IP amendment. As described above, Chapter 21.28 establishes five (5) Overlay Coastal Zoning Districts, Mobile Home Parks (MHP), Parking Management (PM), Bluff (B), Canyon (C), and Height (H). A brief description of the underlying purpose for each Overlay District is provided, (however, a description for the PM district is missing) and stating that all development shall comply with the applicable Coastal Zoning District development standards in addition to those of the Overlay District.

#### *Parking Management Overlay District*

Chapter 21.28 – Overlay Coastal Zoning Districts includes provisions for the creation of Parking Management (PM) Districts. Section 21.28.030.A states that the City shall first approve a parking management district plan before approving a land area to a PM District; Section 21.28.030B requires the City approved parking management district plan to identify existing and planned parking facilities within the district and lists eight (8) issues that the parking management district plan should address; Section 21.28.030C includes a requirement for the parking management district plan to include a formula or procedure establishing the extent to which properties shall be exempted from the requirements of Chapter 21.40 – OffStreet Parking. Finally, Section 21.28.030D identifies “Balboa Village Parking Management Overlay District” as an established PM District.

#### *Preferential Parking Zones (PPZ)*

Chapter 21.40.145 – Preferential Parking Zones (PPZ) includes provisions for the creation of Preferential Parking Zones on residential streets or alleys for the benefit of residents of the established PPZ to be exempt from on-street public parking prohibitions or restrictions. The actual on-street parking restrictions may differ from street to street and from preferential parking zone to preferential parking zone, for example, a parking restriction may be “1 Hour Parking, Except by Permit, 5pm-10pm” or “No Parking, Except by Permit, 6am-10pm” depending on the request by residents of that area. This chapter provides criteria for PPZ establishment, a provision for periodic review to ensure that the criteria used to establish the PPZ continues to reflect current conditions, and provisions for the maximum number of PPZ permits issued per dwelling, permit fees and use of funds.

#### *Transit*

Chapter 21.44 – Transportation and Circulation promotes the LUP policies requiring development promote alternative transportation through site design and preparation of Transportation Demand Management Programs. This chapter also contains provisions regarding City vacations and abandonments of public right-of-ways.

#### *Bikeways and Trails Including the California Coastal Trail (CCT)*

In regards to bikeways and trails, Chapter 21.30A – Public Access Section 21.44.025.A.2 contains this: “Streets, sidewalks, bicycle paths, and recreational trails (including the Coastal Trail) should be designed and regulated to encourage walking, bicycling, and transit ridership.” and Appendix B – Coastal Access Signing Program mentions that any segment of the California Coastal Trail should

incorporate official Commission “foot and wave” logo and/or the words ‘California Coastal Trail.’

#### **D. Consistency Analysis - Denial as Submitted and Approval with Suggested Modifications**

##### *Off-Street Parking Requirements*

The proposed IP implements, relevant LUP policies applicable to mobility and parking issues. However, in order to ensure the IP is adequate to fully carry out the LUP, suggested modifications to Chapter 21.40 provide additional detail and specificity to off-street parking requirements, in the allowances made for a reduction in the number of parking spaces, provisions for off-site parking, bicycle parking requirements and to parking development standards such as actually providing exact parking space standards and strikes out all standards and procedures related to Preferential Parking Districts.

As proposed, the off-street parking requirements in Chapter 21.40 for a particular use could be reduced if an applicant has provided a verifiable study generated by qualified professionals indicating that data collected shows that parking demand will be less than required or other parking spaces are available including nearby municipal parking lots or if joint use of existing parking spaces between two uses is a viable option. Thus, a modification is required to ensure that any action to reduce a proposed development’s parking requirement is made after consideration of the data including an analysis of the development’s parking requirement and a parking utilization study which concludes that proposed parking reduction will not impact public parking used for public coastal access. Additionally, a Parking Management Plan to mitigate impacts associated with a reduction in the number of required parking spaces is required, and to adequately carry out the LUP policies, a suggested modification requires the utilization of Transportation Demand Management strategies to promote the use of alternative transportation modes as part of the required Parking Management Plan.

On a separate but related note, there may be instances involving a proposed development where all or a portion of required off-street parking cannot be provided on site and parking is provided for off-site. Thus, a modification is necessary to provide standards ensuring that provision of off-site parking facilities are adequate to meet the policies of the LUP.

##### *Overlay Districts*

LUP Policy 2.9.3-14 allows for the development of parking management programs for coastal zone areas that achieve the following:

1. provides adequate, convenient parking for residents, guests, business patrons, and visitors of the Coastal Zone;
2. Optimizes use of existing parking spaces;
3. Provides for existing and future land uses;
4. Reduces traffic congestion;
5. Limits adverse parking impacts on user groups;
6. Provides improved parking information and signage;
7. Generates reasonable revenues to cover City costs;
8. Accommodates public transit and alternative modes of transportation.

As proposed, the IP sets up the parameters for the creation of PM Overlay Districts and also proposes the approval of an actual PM Overlay District, the “Balboa Village Parking Management

Overlay District” as depicted on Map PM-1 in Chapter 21.80 Maps Section 21.80.035. IP Section 21.28.030.B requires the City first approve a parking management district plan to govern the proposed PM Overlay District that identifies existing and planned parking facilities within the district and establishes parking management programs necessary to adequately serve the parking needs of the area and provides for the same eight (8) issues identified in LUP Policy 2.9.3-14, and additionally, requires the parking management plan to also include a formula or procedure establishing the extent to which properties shall be exempted from off-street parking requirements.. However, Section 21.28.030.D which aims to actually adopt approval of a PM District over Balboa Village area does not include a parking management plan that clearly explains how the eight issues identified by the LUP and IP are addressed. For example, the City only identifies municipal parking lots within the Balboa Village PM District, including the Balboa Pier beach parking lot, and even includes on-street parking spaces in the parking inventory, but off-street parking spaces are not counted. The map of the Balboa Village PM Overlay District which is provided in the IP Maps Section, simply depicts a greyed out area on the Balboa Peninsula between Adams Street and A Street, it does not identify existing parking facilities as required. There is no description or analysis of existing and future land uses within the PM District. There is no analysis or description of area’s user groups. No traffic/parking studies or data is provided. No provisions in the proposed PM District regarding parking information and signage or accommodations made in regards to public transit and alternative modes of transportation. Thus, as the proposed Balboa Village PM Overlay District as described in Section 21.28.030.D does not provide sufficient information to ensure that the Balboa Village PM Overlay District achieves the goals of a parking management program as provided in the LUP, a modification is necessary to strike out Section 21.28.030.D and strike out Map PM-1 in Chapter 21.80 Maps Section 21.80.035. The City may at a future date provide all the necessary information to establish a PM Overlay in the Balboa Village and establish the PM through an LCP amendment.

#### *Preferential Parking Districts*

The City’s proposed IP would create provisions in Section 21.40.145 – Preferential Parking Zones (PPZ) that would allow the City to authorize preferential parking zones on public streets in the coastal zone including on streets located seaward of the first public road. While there is an LUP policy that would eventually allow the City to incorporate regulations in the certified LCP that would allow the establishment of preferential parking areas, the regulations included in the IP submittal are insufficient such that the Commission could not find them consistent with all applicable coastal access and recreation policies of the Land Use Plan.

The proposed provisions would allow the City to establish prohibitions that prevent the public from accessing established public on-street parking space in a highly popular coastal area. The City’s LCP policies call for the City to create more visitor-serving parking spaces in the area, not to remove them. The proposed regulations could allow for restricting public use of established public parking seaward of the first public road and therefore restrict the public’s right to access coastal trails, the shoreline, and coastal views. It is therefore inconsistent with the public access protection policies of the LCP and Chapter 3 of the Coastal Act.

Coastal access and preferential parking are statewide issues. Public transportation is limited here, especially when traveling from outside of the local area. Often, personal vehicles are the only option for people to access this area. The Chapter 3 public access polices of the Coastal Act state that maximum access shall be provided for all the people, that development shall not interfere with the



public's ability to access the coast, and that lower cost facilities, including parking, shall be protected. It is fundamentally important to protect public parking supplies that support coastal access, especially in areas with high demands and limited ability to improve public parking, such as in certain areas of the City such as Balboa Peninsula and Balboa Island.

The implementation of resident-only parking restrictions on one street could result in an increase of use on adjacent streets, which could lead to additional requests for residential-only parking restrictions. The provisions in the IP as submitted do not provide sufficient detail to ensure that the IP is adequate to carry out the LUP policies. For example, it is not clear who would initiate a PPZ request and the criteria for PPZ establishment simply requires "the majority of households and property owners adjacent to the proposed zone desire, agree to or request preferential parking privileges," no definition of "majority" is provided nor a procedure to determine the "majority" be it a survey or ballot vote. Furthermore, as proposed the IP is unclear how the City will reach the necessary findings to establish a PPZ, as the IP does not provide procedures for data collection, such as traffic studies, parking occupancy surveys, etc. that would be necessary to determine if indeed the area is highly impacted by non-residential parking.

Public parking is explicitly called out as a significant resource to be protected under the Coastal Act (Coastal Act section 30212.5). The Coastal Act sets high standards to protect public access. Adherence to these standards is important to all residents of California. LUP Policy 3.1.6-1 prohibits the establishment of new preferential parking districts in the coastal zone except where such restrictions would not have a direct impact to coastal access, including the ability to use public parking. Authorization of the proposed Preferential Parking Zone regulations cannot be found consistent with the public access policies of the certified LUP and the Coastal Act. Thus, the suggested modification to strike out Section 21.40.145 – Preferential Parking Zones in its entirety.

#### *Transit*

LUP policies and the IP as submitted are intended to mirror the City's Transportation Demand Management Ordinance requiring new nonresidential development that employ 100 or more employees to reduce the number of peak-period vehicle trips, promote and encourage the use of alternative modes of transportation, and provide support facilities for alternative modes of transportation. However, as submitted Chapter 21.44 – Transportation and Circulation Section 21.44.035 – Transportation Demand Management states that the requirements of this section shall apply to new nonresidential development that employ 250 or more persons. Thus, a suggested modification is necessary in order to ensure compliance with the LUP and require the transportation demand management measures for new nonresidential development that employs 100 people or more.

#### *Bikeways and Trails Including the California Coastal Trail (CCT)*

A few minor suggested modifications to incorporate the California Coastal Trail (CCT) throughout various chapters of the IP plus a major addition to Chapter 21.30A – Public Access of a new Section 21.30A.050.K tracking LUP Policy 3.1.1-10 requiring coordination and collaboration with state agencies in planning and implementing the Newport Beach segment of the CCT and also providing the latest CCT site planning and design standards.

As modified, the IP conforms with and adequately implements the certified LUP's parking, transit, and public coastal access policies.

## **MAPS CONTAINED IN THE IMPLEMENTATION PLAN**

### **A. Proposed Implementation Plan**

Chapter 21.14 – Coastal Maps Section 21.14.10 – Coastal Zoning Map introduces the Coastal Zoning Map depicting the boundaries, designations and locations of the coastal zoning districts established by this IP. The Coastal Zoning Districts implement the Land Use Categories of the LUP. Table 21.14-1 shows each of the Coastal Zoning Districts, the symbol associated with each district and the corresponding Land Use Plan designation. For example, Single-Unit Residential Detached Coastal Zoning Districts (R-A, R-1, R-1-6,000) in the IP, correspond to Single-Unit Residential (RS-D) in the LUP. Additionally, Section 21.14.045 – Permit and Appeal Jurisdiction Map states that “the boundaries of the Coastal Zone, permit jurisdiction areas, appeals areas, exclusion areas, deferred certification areas, and other coastal related areas within the Coastal Zone shall be shown upon the Permit and Appeal Jurisdiction Map” and provides a definition of all of these areas.

Aside from the Coastal Zoning Districts Map, Part 8- Maps of the IP submittal includes numerous maps including: area maps, bluff overlays, canyon overlays, height limit area, parking management overlay district map, setback maps, planned community maps and the aforementioned Permit and Appeal Jurisdiction Map.

### **D. Consistency Analysis - Denial as Submitted and Approval with Suggested Modifications**

Regarding the Coastal Zoning Map depicting the coastal zoning districts established by the IP, a necessary point of clarification is made to Section 21.14.010 through a suggested modification that any changes to IP maps or addition of new maps to the IP shall be adopted through an IP amendment.

The IP as submitted includes relevant detailed maps such as area maps, height limit maps, planned community land use maps, it also includes a Permit and Appeal Jurisdiction Map, Categorical Exclusion Map, Area of Deferred Certification Map, and Map displaying public trust lands where permit authority is requested to be delegated to the City. It is premature, however, to include these maps in the IP, as approval for all of these maps require individual, separate Commission actions after approval of the IP. The Commission Mapping Unit is tasked with creation of the Post-Certification Permit and Appeal Jurisdiction Map for Commission adoption Post Certification of the IP. Any existing Categorical Exclusions (Cat Ex) become null and void after LCP certification. The City has one Cat Ex, Categorical Exclusion Order E-77-5 which will expire upon LCP certification. The City has submitted a request for a new Cat Ex identical to the terms and conditions of Cat Ex Order E-77-5. In order to prevent a lapse in time between LCP certification and Cat Ex renewal, staff has committed to bring the Cat Ex action for Commission action within the six month period between Commission action and final Commission E.D. checkoff. Regarding an Area of Deferred Certification (ADC), the LUP identifies the Banning Ranch site as a future ADC at the time LCP certification. Thus, the Commission will retain permit authority, applying Chapter 3 as the standard of review, over any proposed development on the Banning Ranch site, after effective certification of the LCP. Finally, included in the IP submittal, is a request for permit authority over certain public trust lands per Coastal Act Section 30613. The IP should not effectively authorize such a transfer of permit authority over Commission retained jurisdiction areas. Any Section 30613 request must be submitted to the Commission, separate from the IP submittal, after E.D. checkoff of the full LCP, once the City has obtained permit jurisdiction. The request for permit transfer may then be considered by and acted upon by the Commission and may

occur as part of the Post-Certification Map adoption. Thus, the suggested modifications to strike out Map 21.80.045 – Permit and Appeal Jurisdiction Map and the proposed modifications to Section 21.14.045 clarifying that a final Post-LCP Certification Permit and Appeal Jurisdiction Map shall be produced by the Commission and adopted by the City and furthermore clarifying that should the Commission take a separate action at a future date to delegate permit authority to the City over public trust lands, then those areas shall be depicted upon the final Post-LCP Certification Permit and Appeal Jurisdiction Map.

Additional suggested modifications include deletion of Section 21.80.035(Parking Management Overlay District Maps) to reflect Commission suggested modifications in Section 21.28.030.D to strike out the proposed Balboa Village PM Overlay District from the IP and a suggested modification requiring the creation of a new Bluff Overlay Map, Map B-9 – Upper Newport Bay Bluffs depicting bluff development areas A, B, and C for the coastal bluffs along Galaxy Drive, Polaris Drive, Mariner’s Drive, Santiago Drive, and Cliff Drive corresponding to suggested modifications to Section 21.28.040 – Bluff (B) Overlay District. Therefore, the IP, as modified, conforms with and is adequate to carry out the certified Land Use Plan.

#### **COASTAL DEVELOPMENT PERMITTING PROCEDURES**

The Coastal Act defines the activities that constitute development, requires a coastal development permit (CDP) that is consistent with the Coastal Act or the local government’s Commission-certified LCP for the activities that meet the definition of development, and then lists the different types of coastal development permits. The Coastal Act’s implementing regulations then offer detailed provisions that specify permitting procedures, including required noticing, hearing dates, and appeals procedures. The approved Land Use Plan does not contain detailed policies regarding coastal development permit processing or procedures. The implementation and processing of CDPs for all development (with the exception of development that is exempt or excluded from the CDP requirement) is one of the most critical means of implementing the coastal resource protection policies of the LUP.

The CDP provisions of the IP are divided into two parts, Part 5: Planning Permit Procedures and Part 6: Implementation Plan Administration. Collectively, these chapters list coastal development permitting procedures, including specifying what activities in the coastal zone constitute development and therefore require a CDP, the different types of CDPs and the types of projects that can processed according to those CDP types, the applicable noticing and hearing requirements, and the findings required for each permit. In general, the proposed sections are consistent with the Coastal Act and its implementing regulations, and suggested modifications to these sections are solely to add terms or requirements that are explicitly stated in the Act and/or its implementing regulations, some modifications are more substantive, as described below.

#### **Chapter 21.50 – Permit Application Filing and Processing**

##### *“CEQA Review”*

Section 21.50.070(A) and Section 21.50.070(D) both pertain to CEQA review and compliance with CEQA. Proposed modifications in Chapter 21.50 strike out all mention of CEQA and instead reference the certified LCP and the public access and recreation policies of Chapter 3 of the Coastal

Act, if applicable. CEQA is a completely different process with different guidelines that the City has to independently apply apart from the requirements of the Coastal Act. Should the Commission certify the LCP, the Commission will delegate permit authority pursuant to Coastal Act Section 30519(a), not authority to process applications for CEQA compliance. Therefore, as amended, the IP ensures that the environmental review for a proposed development shall be reviewed in compliance with the applicable policies of the LCP and kept separate from the CEQA review.

*“Determination of Whether a Development is Categorically Excluded, Exempt, Non-Appealable, or Appealable”*

The addition of Section 21.50.050(B) in its entirety is a suggested modification. The IP clearly states that determination of whether a development is categorically excluded, non-appealable or appealable to the Coastal Commission for purposes of notice, hearing and appeals procedures shall be made by the Planning Director at the time the coastal development application is submitted to the City; however, procedures were not included in the IP in the event that an applicant, interested person, or the City has a question regarding whether a proposed project was appropriately designated as categorically excluded, non-appealable or appealable. The suggested modification cross-references Title 14 California Code of Regulations §13569, a part of the Commission’s regulations, which is the regulation governing dispute resolution procedures for disputes relative to the City’s determination of whether a proposed project was appropriately designated as categorically excluded, non-appealable or appealable. The proposed modification lays out this process providing language which makes clear that all such permit determinations are subject to the Commission’s dispute resolution process, whereby disputes between the public, or the Commission’s Executive Director and the City regarding whether proposed development is Categorically Excluded, exempt from coastal permit requirements or not, are heard before and decided by the Coastal Commission. Therefore, as amended, the IP includes a process by which the City determines whether a project is Categorically Excluded, appealable, exempt, requires a CDP or qualifies for a De Minimis Waiver, as well as a process by which those determinations can be disputed, consistent with the Coastal Act and its regulations.

*Posting Notice*

The addition of Section 21.50.080 – Posting of a Sign and Notice in its entirety is a suggested modification. Included as part of the CDP application process is adequate public notification. Section 30006 of the Coastal Act provides that “the public has a right to fully participate in decisions affecting coastal planning, conservation and development; that achievement of sound coastal conservation and development is dependent upon public understanding and support; and that the continuing planning and implementation of programs for coastal conservation and development should include the widest opportunity for public participation.” A proposed modification is therefore suggested to ensure that the Commission and members of the public are made aware of any CDP application. As amended, the IP includes a process for the applicant to post notice at the site that an application for a CDP has been submitted to the City *at the time an applicant submits a CDP application for filing*. This is a separate noticing requirement from the *public hearing* noticing requirements which the City included in Part 6: Implementation Plan Administration, Chapter 21.62 Public Hearings. Section 21.62.020 – Notice of Public Hearing specifically details the content of the public notice, method of notice distribution such as mailing or publication in a newspaper at least ten (10) days before the scheduled hearing. However, Section 21.62.020 also includes in Section 21.62.020(B)(3) – Posting of a Sign and Notice, a requirement that a notice to be posted on or close to the subject property in a prominent location at least ten (10) days before the scheduled

public hearing. This is inadequate to meet Coastal Act regulations. Therefore, staff suggests striking out the language of in Section 21.62.020(B)(3) – Posting of a Sign and Notice and replacing it with the modified language in Section 21.50.080 – Posting of a Sign and Notice.

#### Chapter 21.52 – Coastal Development Review Procedures

This chapter provides procedures to ensure that all development (public and private) in the Coastal Zone is consistent with the Coastal Act and the LCP regulations.

##### *Notice of Final Action*

Section 13571 of the Commission’s regulations states that when a local government takes an action on a coastal development permit, the local government shall send notification of its final action to the Commission by certified mail within seven calendar days from the date of making the decision. The regulations specify the required materials to be included in the notice, including conditions of approval, written findings, and the procedures for appeal of the local decision to the Coastal Commission. IP Section 21.52.015.H lists the process for sending the Notice of Final Action on a CDP, mirroring Section 13571’s requirements that within 7 calendar of the final decision on a CDP application the City is to send to the Commission the conditions, findings, and appeal procedures. As modified, the IP this section also requires notification to the Commission on the City’s final local action on an exemptions (e.g., deeming a project exempt from CDP requirements) as well as on a CDP application and the materials used to support them.

##### *Emergency Coastal Development Permits*

Section 21.52.025 is a provision for issuance of temporary permits to proceed with remedial measures in response to an emergency until such a time as a full coastal development permit application is filed. The provisions in Coastal Act Section 30211 are for issuance of emergency permits by the Executive Director of the Commission. A local government may issue emergency permits per Coastal Act Section 30624. As submitted, the IP appears to blend both of these provisions, thus various modifications are necessary to reflect procedures provided by Coastal Act Section 30624, not Section 30611. A suggested modification is necessary to clarify that the City may only issue emergency permits in non-appealable areas since issuing emergency permits in appealable areas would be subject to potential appeals and delay the issuance of timely emergency permits. Given such a scenario, the Commission will continue to issue emergency permits in appealable areas to ensure timely issuance of those permits. Furthermore, suggested modifications to include additional detail in the emergency permit application review and approval process, such as requirements that the City verify the facts, including the existence and the nature of the emergency, insofar as time allows, a finding that the work proposed is the minimum amount necessary to address the emergency and is consistent with the LUP policies, and the requirement for the imposition of terms and conditions including expiration date and the necessity for a regular permit application.

##### *Exempt Development*

IP Section 21.52.035 – Projects Exempt from Coastal Permit Requirements establishes when a proposed development may be determined to be exempt from the requirement for a coastal development permit. Suggested modifications to this section are as minor as providing clarity of intent and making changes to terminology, to more significant modifications clarifying that certain types of development, such as maintenance dredging and ongoing routine repair and maintenance activities (i.e., periodic public beach maintenance utilizing mechanized equipment, construction of

temporary sand berms for shoreline protection, maintenance and replacement of storm drains, and repair and maintenance of public recreational piers and private piers) are not necessarily exempt from coastal development permit requirements and must go through the CDP process to ensure the projects are in compliance with the LCP.

*Categorically Excluded Development*

IP Section 21.52.045 references the City of Newport Beach Categorical Exclusion Order E-77-5 approved by the Commission in 1977 and provides the terms and conditions under which certain types of development may be determined to be categorically excluded from the requirement for a coastal permit. Categorical Exclusion Order E-77-5 which will expire upon LCP certification. The City has submitted a request for a new Cat Ex identical to the terms and conditions of Cat Ex Order E-77-5. It is anticipated that a new Cat Ex will be in place and becomes effective after the effective date of the LCP. Commission approval of a Categorical Exclusion Order is a process separate from the LCP certification process. A new Categorical Exclusion Order would stand on its own and is not required to be part of an LCP. As such, suggested modifications are included to strike out mention of Categorical Exclusion Order E-77-5 and its terms and conditions, while keeping a reference to the provisions in Sections 30610(e) or 30610.5 of the Public Resources Code and Subchapters 4 or 5 of Chapter 6 of Division 5.5 of Title 14 of the California Code of Regulations (Sections 13215-235 and 240-249) that the Commission may adopt another Categorical Exclusion Order after certification of this IP.

*De Minimis Waivers*

Section 21.52.055 of the proposed IP authorizes the Planning Director to waive the requirements for a CDP when certain criteria and procedural requirements are met. The ability of the City to issue a de minimis waiver stems from Coastal Act Section 30624.7, which allows the Executive Director of the Commission to waive the requirement for a coastal development permit on a project that otherwise would require one if it: involves no potential for any adverse effect, either individually or cumulatively, on coastal resources, and that it is consistent with the policies of Chapter 3 of the Coastal Act. The de minimis waiver process is thus one tool to help local governments streamline certain types of development with no coastal resource impacts that are not otherwise covered by the City's categorical exclusion order nor the statutory exemptions listed in the Coastal Act and its regulations. The proposed IP requires findings similar to those specified in Coastal Act 30624.7 in order to waive CDP requirements, including that it involves no potential for adverse effects, either individually or cumulatively, on coastal resources; is consistent with the certified LCP; and is not of a type or in a location where the project would be subject to a Coastal Permit issued by the Coastal Commission. The Planning Director is also to notify the Executive Director of the proposed waiver, and if he/she determines that a waiver should not be issued, the applicant is required to obtain a regular CDP.

However, as proposed the IP only provides the Planning Director with this authority and determination of applicability, therefore, modifications are required that clearly identify the types of development that may be considered for possible permit waiver, clearly identify public notice requirements and the content of said public notice, and finally consistent with 30624.7's requirement that a waiver not be effective until it has been reported to the Coastal Commission. Therefore, as modified, the IP includes a process by which the City may streamline the processing of certain types of development by waiving the otherwise required need for a CDP, so long as it

meets specific criteria, findings, and noticing requirements, all consistent with Coastal Act Section 30624.7.

#### Chapter 21.54 – Permit Implementation, Time Limits, and Extensions

This chapter provides requirements for the implementation or “exercising” of permits such as to when an application is deemed approved and the actual effective date of a CDP, a 24-month time limit in which to exercise the permit, provisions for filing and action on an extension request, permit expiration, resubmittal after denial action, recordation of covenants, and provisions for changes to an approved CDP. It does not include provisions for amendment to an approved CDP, instead it requires an applicant to re-apply for a new CDP if a substantial change(s) is proposed to an approved development.

#### Chapter 21.62 – Public Hearings

This chapter provides procedures for public hearings as required by this IP. Suggested modifications to Section 21.62.050 – Notice of Public Hearing are necessary to ensure that the information contained in the public hearing notice shall also include a statement of whether or not the proposed development is in the Appeals Zone and appealable to the Commission, provides additional requirements regarding the aspect of the public hearing notice envelopes for mailed notices, clarifying that hearing notices shall be mailed to any person known to be an interested party, including any person who has testified or submitted written comments for any previously held local hearing, clarifies the difference between the “notice of public hearing” and the “posting notice” posted at the site of the proposed development notifying the public of a pending CDP application for that site, and clarifies the effective date of the local government’s final action on an appealable development per the appeal procedures in Section 21.64.035.

#### Chapter 21.64 – Appeals and Calls for Review

##### *Appeals of Coastal Permit Decision*

This chapter provides procedures for the appeal or call for review of determinations and decisions by the local government and establishes provisions for appeals to the Commission.

A suggested modification is necessary to clearly indicate that a decision by the City on a CDP application within the appeal areas identified in Public Resources Code Section 30603(a) as generally depicted on the Post-LCP Certification Permit and Appeal Jurisdiction Map or on any development *approved or denied* by the City on a CDP application for a project that constitutes a major public works project or energy facility may be appealed to the Coastal Commission. An additional modification is necessary to clarify language regarding requirements that an applicant or other aggrieved person may first exhaust all local appeals before appealing to the Commission and the exemptions identified in Section 13573 of the Commission’s regulations

#### Chapter 21.66 – Amendments

As proposed, the IP includes an entire chapter outlining IP amendment procedures. It is inappropriate for an IP to include these procedures as the regulations for LCP amendments are solely governed by the Coastal Act and its implementing regulations. The purpose of an LCP is to delegate permitting authority under the Coastal Act and, in doing so, to carry out the Chapter 3 – Coastal Resources Planning and Management policies of the Coastal Act, not for the purpose of adopting regulations and procedures for LCP amendments. Any procedures regarding local government actions belong elsewhere, for example, if the City wants procedures in place for the initiation and processing of LCP amendments at the local level prior to submittal to the

Commission, such amendment procedures would be appropriate alongside procedures for General Plan amendments.

#### Chapter 21.68 – Enforcement

This chapter establishes provisions intended to ensure an applicant’s compliance with the requirements of the IP and any conditions of a permit or approval

Finally, Section 21.52.015.F includes requirements for the economic evaluation of a takings analysis. As proposed, the analysis only is required for development that raises takings issues based on ESHA constraints. A suggested modification broadens the applicability of the takings provisions, facilitating the analysis for any development that raises takings concerns, including, for example, development subject to coastal hazards.

#### Conclusion

As modified, the IP’s Chapters 21.50 through 21.68 identify what constitutes development requiring a CDP, the different types of CDPs available, what development is exempt from CDP requirements, and the standards that must be met, all consistent with Coastal Act and LUP requirements. In addition, the IP, as modified, maximizes public involvement in coastal permitting decisions. The IP as modified as it pertains to coastal development permitting procedures is thus consistent with, and adequate to carry out, the conditionally certified Land Use Plan.

#### **CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

The City of Newport Beach City Council conducted a public hearing on November 10, 2015 and approved City Council Resolution No. 2015-99 approving the LCP Implementation Plan for submittal to the California Coastal Commission. As part of their local action, Resolution No. 2015-99 also includes a finding that per Title 14, Sections 15250 and 15251(f) of the California Code of Regulations (“CEQA Guidelines,”) that the preparation, approval, and certification of the LCP Implementation Plan is exempt from the requirement for preparation of an Environmental Impact Report (EIR) because the California Coastal Commission’s review and approval process has been certified by the Secretary of Resources as being the functional equivalent of the EIR process required by CEQA in Sections 21080.5 and 21080.9 of the Public Resources Code.

Section 21080.9 of the California Public Resources Code – within the California Environmental Quality Act (CEQA) – exempts local government from the requirement of preparing an environmental impact report (EIR) in connection with its activities and approvals necessary for the preparation and adoption of a local coastal program. Therefore, local governments are not required to prepare an EIR in support of their proposed LCP submittal, although the Commission can and does use any environmental information that the local government submits in support of its proposed LCP. Instead, the CEQA responsibilities are assigned to the Coastal Commission and the Commission’s LCP review and approval program has been found by the Resources Agency to be the functional equivalent of the environmental review required by CEQA, pursuant to CEQA Section 21080.5. Therefore the Commission is relieved of the responsibility to prepare an EIR for each LCP.

Nevertheless, the Commission is required, in approving an LCP submittal, to find that the approval of the proposed LCP, as amended, does conform with CEQA provisions, including the requirement in CEQA section 21080.5(d)(2)(A) that the LCP Implementation Plan will not be approved or



adopted as proposed if there are feasible alternative or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. 14 C.C.R. §§ 13542(a), 13540(f), and 13555(b).

As discussed herein, the LCP Implementation Plan as originally submitted does not conform with, and is not adequate to carry out, the policies of the certified LUP. The Commission has, therefore, modified the proposed Implementation Plan to include all feasible measures to ensure that such environmental impacts of new development are minimized to the maximum extent feasible. These modifications represent the Commission's detailed analysis and thoughtful consideration of all public comments received, including with regard to potential direct and cumulative impacts of the proposed IP, as well as potential alternatives to the proposed IP, including the no project alternative. As discussed in the preceding sections, the Commission's suggested modifications bring the proposed amendment into conformity with the certified LUP and represent the most environmentally protective alternative. As modified, the Implementation Plan provisions and coastal zoning maps carry out the policies and programs in the LUP by indicating which land uses are appropriate in each part of the Coastal Zone.

The IP also contains specific requirements that apply to development projects and detailed procedures for applicants to follow in order to obtain a coastal permit. Thus, future individual projects would require coastal development permits, issued by the City of Newport Beach, and in the case of areas of original jurisdiction, by the Coastal Commission. Throughout the coastal zone, specific impacts to coastal resources resulting from individual development projects are assessed through the coastal development review process; thus, any individual project will be required to undergo environmental review under CEQA. Therefore, the Commission finds that there are no other feasible alternatives or mitigation measures under the meaning of CEQA which would further reduce the potential for significant adverse environmental impacts.