



City of Newport Beach

General Plan/LCP Implementation Committee Agenda
Newport Beach Civic Center - 100 Civic Center Drive
Newport Coast Meeting Room (Bay E, Second Level, Room 2017)
Wednesday, March 26, 2014 - 12:30 p.m. to 2:30 p.m.

Committee Members:

Edward Selich, Mayor Pro Tem (Chair)
Tony Petros, Council Member
Nancy Gardner, Council Member
Bradley Hillgren – Planning Commission Chair
Fred Ameri – Planning Commissioner
Jay Myers – Planning Commissioner
Michael Toerge – At-Large Member

Staff Members:

Kimberly Brandt, Community Development Director
Brenda Wisneski, Deputy Community Development Director
Patrick Alford, Planning Manager
Leonie Mulvihill, Assistant City Attorney
Daniel Campagnolo, Systems and Administration Manager

1) CALL MEETING TO ORDER

2) ROLL CALL

3) APPROVAL OF MINUTES

Recommended Action: Approve January 29, 2014 Minutes (attached)

4) CURRENT BUSINESS

- A. **Coastal Commission Update.** A update on recent discussions with the Coastal Commission staff.

Recommended Action: Receive information; provide direction to staff.

- B. **Draft Implementation Plan.** Draft chapters on environmentally sensitive areas and public access.

Recommended Action: Review draft chapters (attached); provide direction to staff.

5) COMMITTEE ANNOUNCEMENTS OR MATTERS WHICH MEMBERS WOULD LIKE PLACED ON A FUTURE AGENDA FOR DISCUSSION, ACTION OR REPORT (NON-DISCUSSION ITEM)

6) PUBLIC COMMENTS

Public comments are invited on agenda and non-agenda items generally considered to be within the subject matter jurisdiction of the Committee. Speakers must limit comments to three (3) minutes. Before speaking, we invite, but do not require, you to state your name for the record. The Committee has the discretion to extend or shorten the speakers' time limit on agenda or non-agenda items, provided the time limit adjustment is applied equally to all speakers.

7) NEXT MEETING

Wednesday, April 23, 2014, 12:30 p.m.

8) ADJOURNMENT

This Committee is subject to the Ralph M. Brown Act. Among other things, the Brown Act requires that the Committee's agenda be posted at least seventy-two (72) hours in advance of each regular meeting and that the public be allowed to comment on agenda items before the Committee and items not on the agenda but are within the subject matter jurisdiction of the Committee. The Committee may limit public comments to a reasonable amount of time, generally three (3) minutes per person.

It is the intention of the City of Newport Beach to comply with the Americans with Disabilities Act ("ADA") in all respects. If, as an attendee or a participant at this meeting, you will need special assistance beyond what is normally provided, the City of Newport Beach will attempt to accommodate you in every reasonable manner. If requested, this agenda will be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof. Please contact the City Clerk's Office at least forty-eight (48) hours prior to the meeting to inform us of your particular needs and to determine if accommodation is feasible at (949) 644-3005 or cityclerk@newportbeachca.gov.

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Attachment No. 1

Draft Minutes – January 29, 2014

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**City of Newport Beach
General Plan/LCP Implementation Committee Minutes**

Date: January 29, 2014

Location: Newport Beach Civic Center – 100 Civic Center Drive
Newport Coast Meeting Room (Bay E, Second Level, Room 2017)

Members Present: Edward Selich, Mayor Pro Tem (Chair); Tony Petros, Council Member; Nancy Gardner, Council Member; Fred Ameri, Planning Commissioner; Jay Myers, Planning Commissioner; and Michael Toerge, Member-At-Large

Members Absent: Bradley Hillgren, Planning Commission Chair

Staff: Kimberly Brandt, Community Development Director; Brenda Wisneski, Deputy Community Development Director; Patrick Alford, Planning Manager; and Daniel Campagnolo, Administrative Systems Manager

Public: Jim Mosher, Philip Bettencourt, Mike Mohler, George Basye, Chris Yelich, and Bill Dildene

1) CALL MEETING TO ORDER

The meeting was called to order at 3:32 p.m.

2) ROLL CALL

Chair Selich invited everyone to introduce themselves.

3) APPROVAL OF MINUTES

Mr. Jim Mosher pointed out a few typographical errors.

The minutes of the January 15, 2014, meeting were approved as amended by a vote of 6-0 with Selich, Gardner, Petros, Ameri, Myers, and Toerge voting in favor.

4) CURRENT BUSINESS

A. LCP Phasing

Planning Manager Patrick Alford informed the Committee that California Coastal Commission (CCC) staff was unable to attend the meeting; therefore, discussion on this item would be deferred.

B. Permit Jurisdiction

Mr. Alford gave a PowerPoint presentation (attached) covering the following topics:

- An overview of coastal development permits, exemptions, and categorical exclusions
- Categorical Exclusion Order No. E-77-5

- Post certification permit authority and appeal areas

Administrative Systems Manager Daniel Campagnolo continued the presentation by explaining how the Post Certification Permit and Appeal Jurisdiction Map would be drawn.

Mr. Alford presented potential phasing options that could be used if the Categorical Exclusion Order (Cat Ex) were allowed to continue in the canyon areas and the bluff properties in Irvine Terrace and Pacific Drive. He used the City of Santa Barbara Cat Ex as an example and its limitations.

A discussion ensued on the restrictions contained in the Santa Barbara Cat Ex, properties that would be subject to appeal to the CCC, the appeal process, and the prospect of keeping the Cat Ex in appealable areas.

Chair Selich summarized the Committee's direction as moving ahead with a program that maintains the Cat Ex and minimizes the impacts of the appeal areas.

Mr. Alford stated that staff would proceed with redrawing the Permit and Appeal Jurisdiction Map, but would start from scratch rather than using the 1981 map as a starting point.

Mr. Jim Mosher commented on the following:

- Whether the timeshare exemption was in the original Coastal Act.
- How sea level rise would affect boundaries based on the mean high time line.
- Appeal boundaries bisecting properties.
- Whether the City would have permit authority on County properties.
- CCC findings necessary to approve a Cat Ex.

Mr. Bill Dildene commented on land use issues that brought up with the Land Use Element Advisory Committee and the Balboa Village Advisory Committee.

5) COMMITTEE ANNOUNCEMENTS OR MATTERS WHICH MEMBERS WOULD LIKE PLACED ON A FUTURE AGENDA FOR DISCUSSION, ACTION OR REPORT (NON-DISCUSSION ITEM)

A discussion ensued on how the Committee can be best proceed given the lack of participation by CCC staff.

6) PUBLIC COMMENTS

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None.

7) **NEXT MEETING**

Wednesday, February 26, 2014, at 12:30 p.m.

8) **ADJOURNMENT**

The meeting adjourned at approximately 4:43 p.m.

Edward Selich, Chair

DRAFT

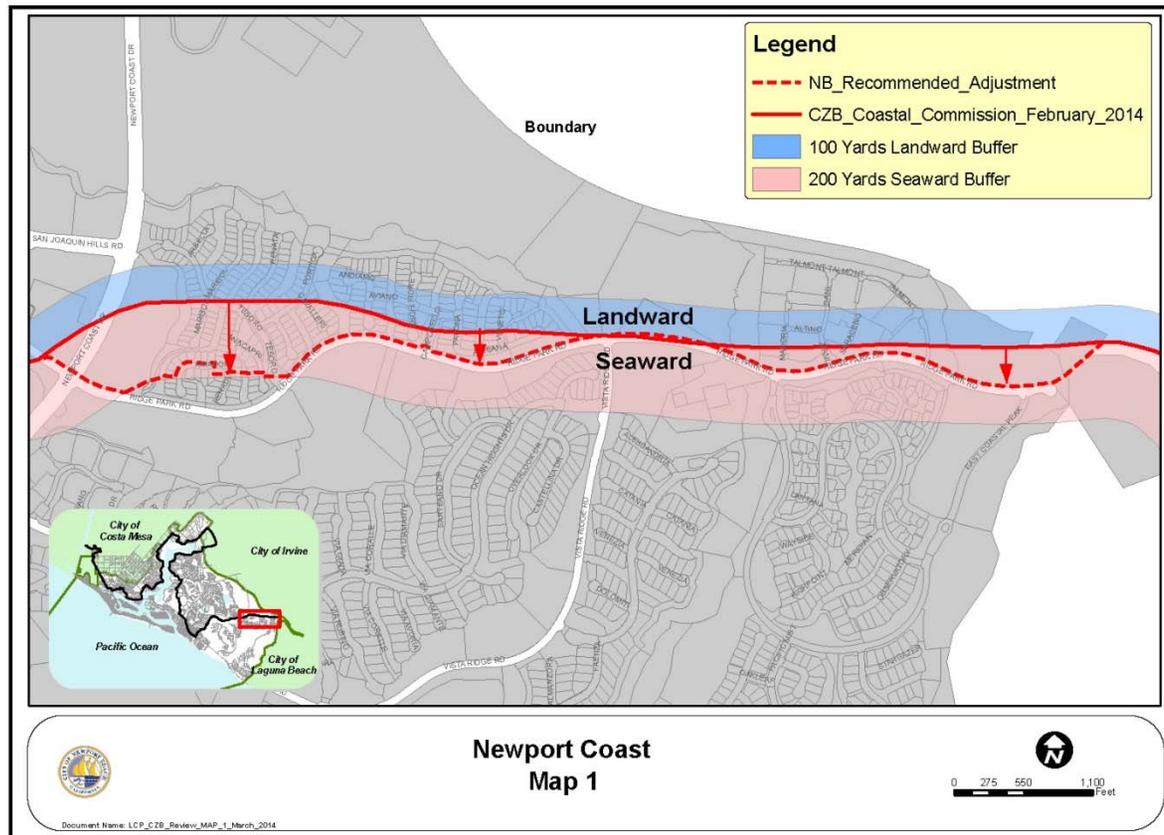
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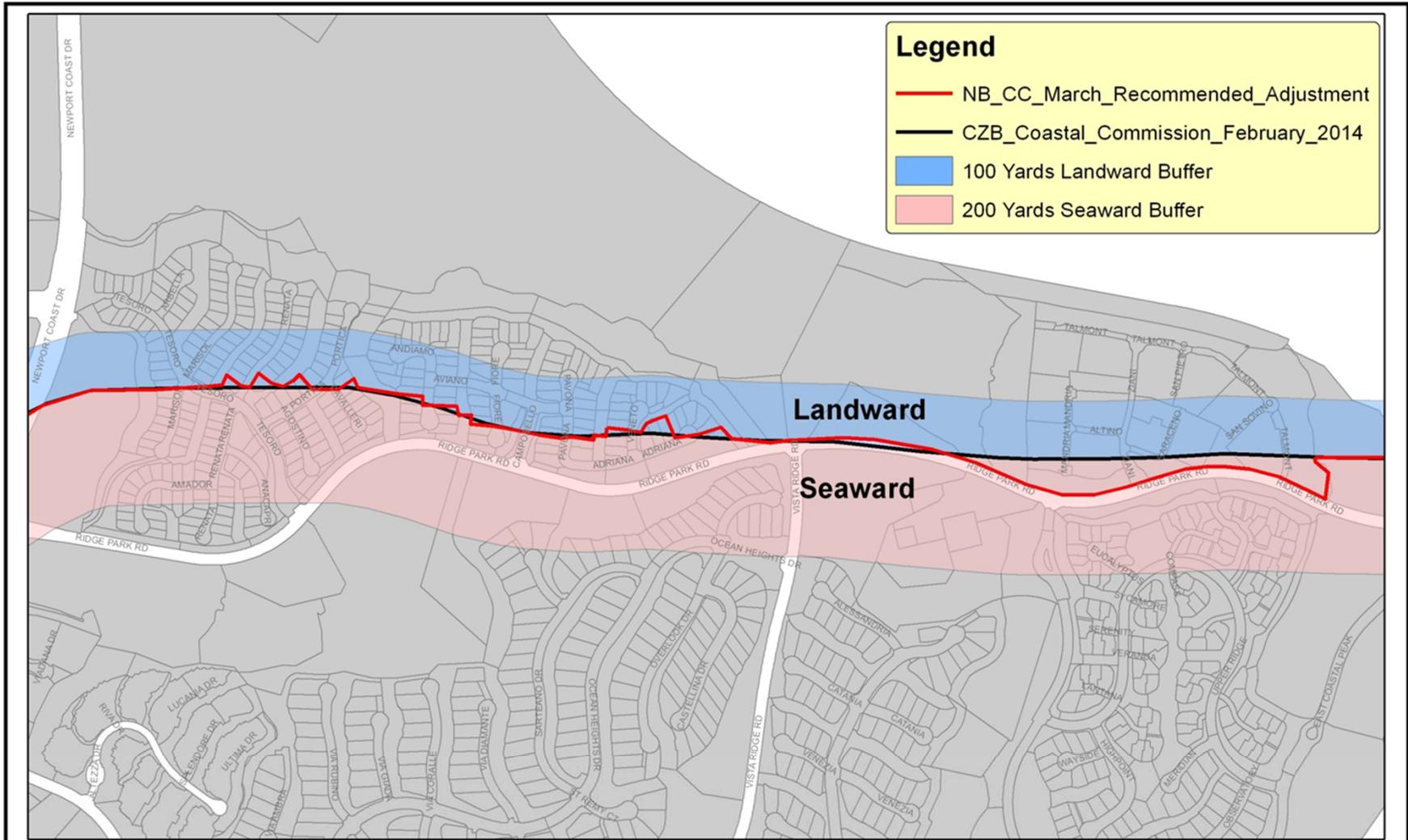
Coastal Zone Boundary

GP/LCP Implementation Committee
March 26, 2014



Newport Coast





Legend

- NB_CC_March_Recommended_Adjustment
- CZB_Coastal_Commission_February_2014
- 100 Yards Landward Buffer
- 200 Yards Seaward Buffer

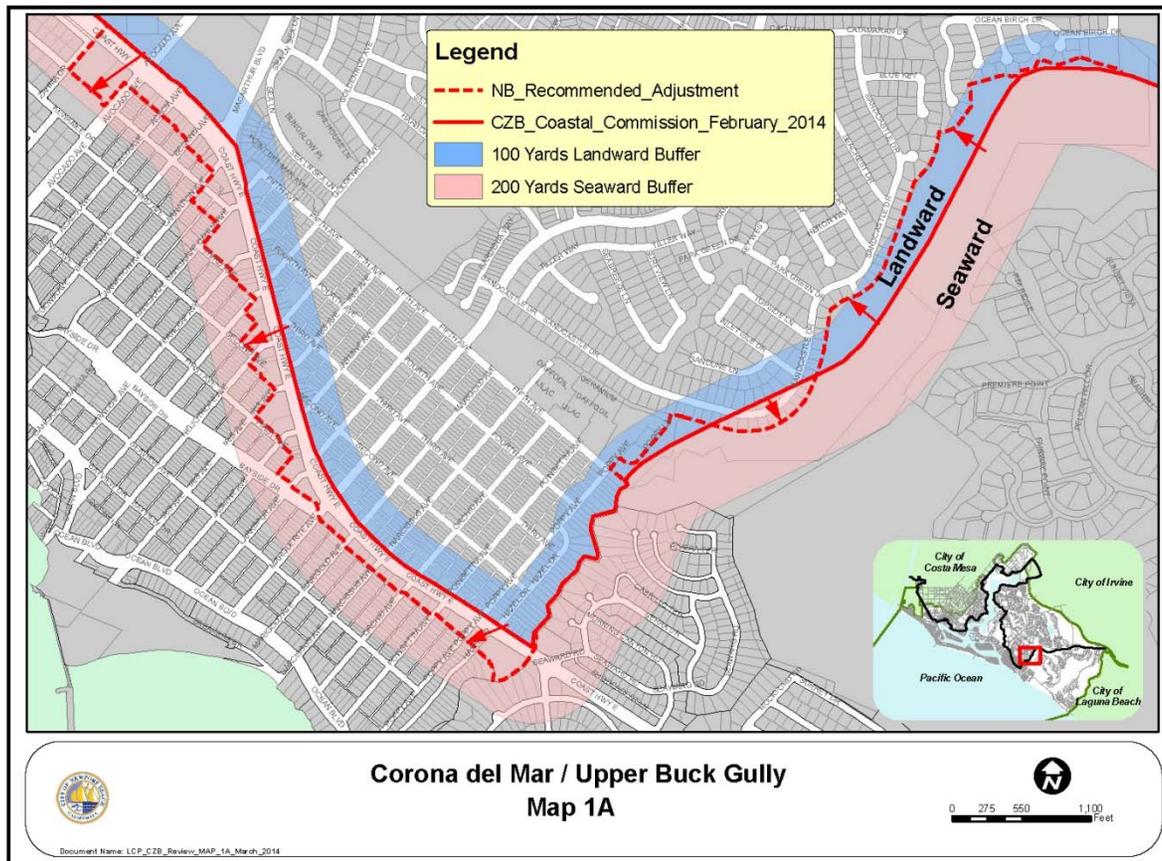


**Newport Coast
Map 1**

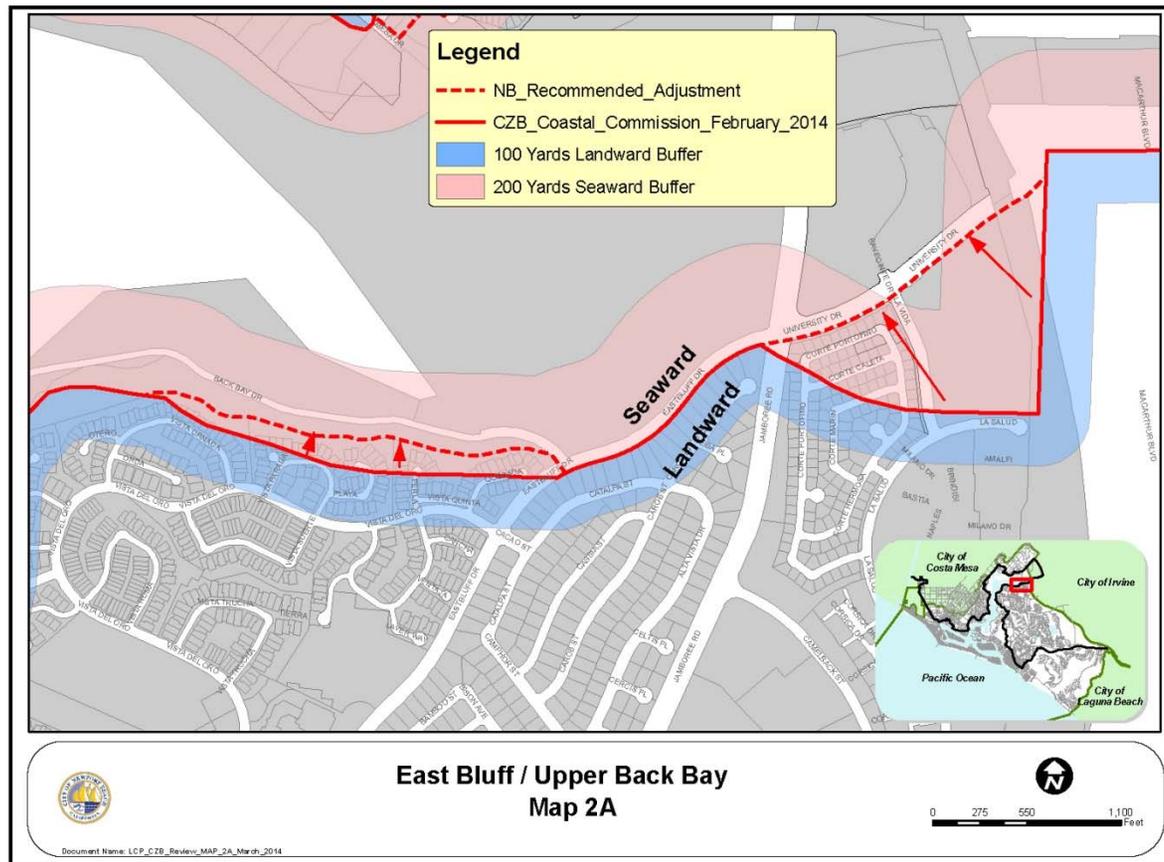


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Feet

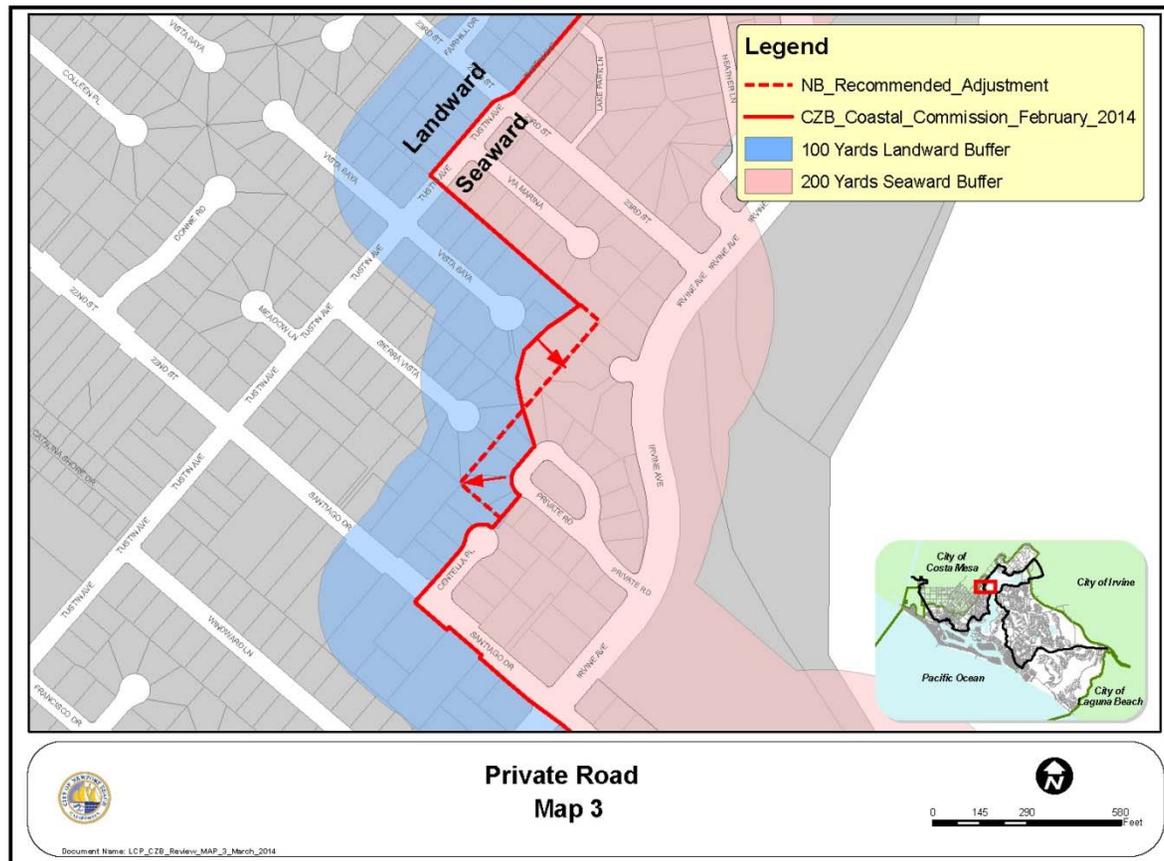
CdM/ Upper Buck Gulley



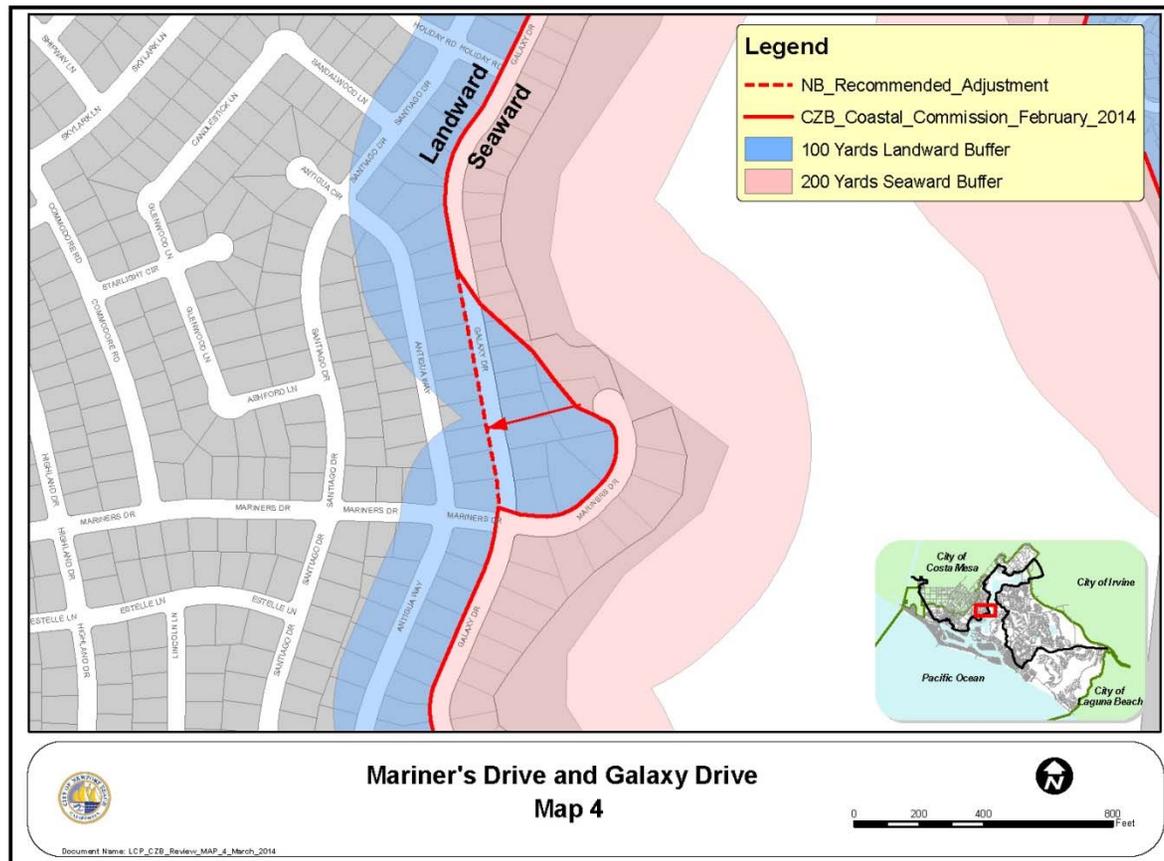
East Bluff/ Upper Back Bay



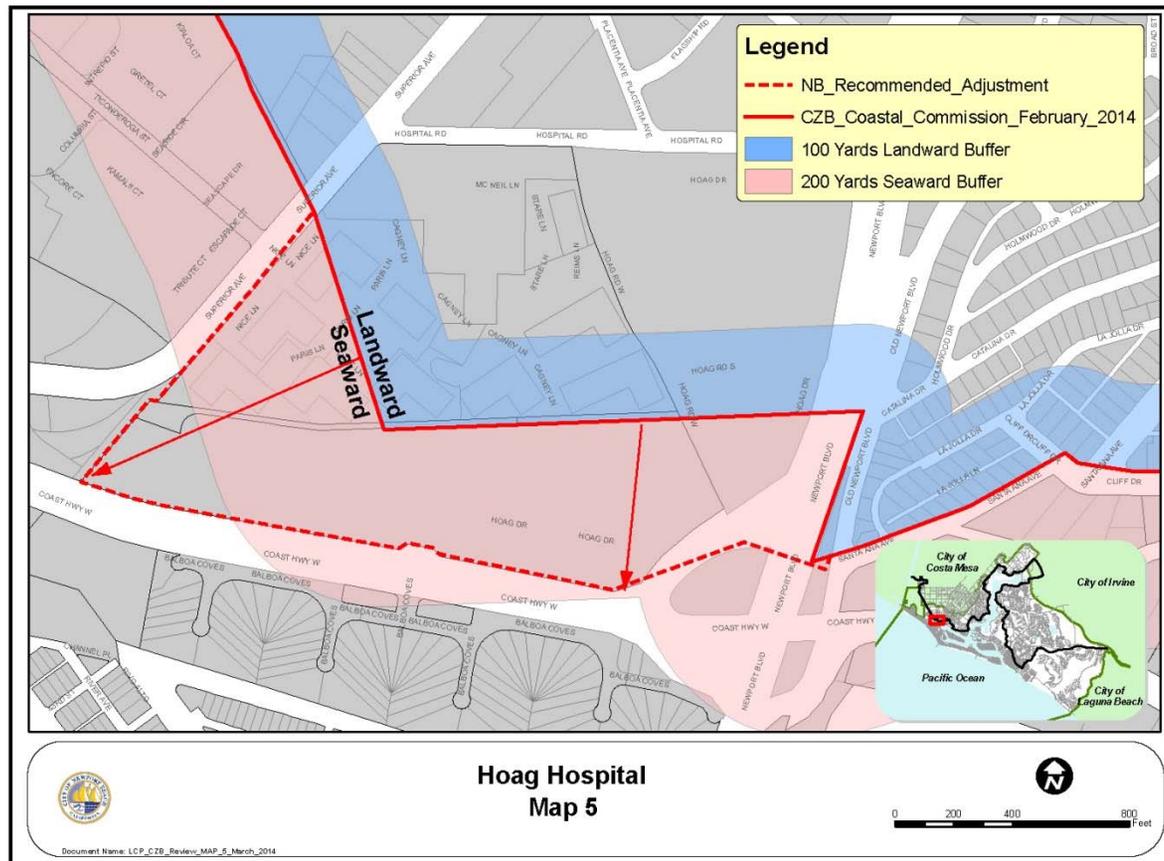
Private Road



Mariner's Drive/ Galaxy Drive



Hoag Hospital





For more information contact:

Patrick J. Alford, Planning Manager
949-644-3235
PAlford@newportbeachca.gov
www.newportbeachca.gov

Attachment No. 2

Draft Chapters

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Chapter 21.30A – Public Access and Recreation

Sections:

21.30A.010	Purpose
21.30A.020	Applicability
21.30A.030	Protection or Provision of Public Access Required
20.30A.040	Determination of Public Access/Recreation Impacts
20.30A.050	Shoreline and Bluff Top Access
20.30A.060	Design and Siting
20.30A.070	Access Title and Guarantee
20.30A.080	Timing of Access Requirements
20.30A.090	Management and Maintenance
20.30A.100	Posting
20.30A.110	Joint Use of Parking for Public Access

21.30A.010 – Purpose

This section provides requirements for the dedication and improvement of public access to, and along the coast, in conjunction with proposed development and new land uses. The intent of this section is to ensure public rights of access to the coast are protected as guaranteed by the California Constitution. Coastal access standards are also established by this section to satisfy the intent of the certified LCP Coastal Land Use Plan and California Public Resources Code Section 30000 through 30900.

21.30A.020 – Applicability

This section applies to new development in the Coastal Zone located between the first public roadway paralleling the shoreline, unless exempt in compliance with subsection (E)(3) of this section, or waived in compliance with subsection (E)(4) of this section.

21.30A.030 – Protection or Provision of Public Access Required

- A. **Protection of Existing Public Access.** Development shall not interfere with public right of access to the shoreline or coastal bluffs where the rights have been acquired through use or legislative authorization. Public access rights may include, but are not limited to, the use of dry sand and rocky beaches to the first line of terrestrial vegetation.
- B. **Provision of New Public Access.** Development located between the shoreline and the first public road paralleling the shoreline shall provide public access (i.e., lateral access and vertical access) to the shoreline or to coastal bluffs, unless exempt in compliance with subsection (E)(3) of this section or waived by the review authority in compliance with subsection (E)(4) of this section. The type and extent of public access to be dedicated, granted, constructed, and/or maintained, as well as the method by which its continuing

availability for public use is to be guaranteed, shall be established at coastal development permit approval in compliance with Chapter 21.52.

1. **Public Access.** An offer to dedicate an easement (or other legal mechanism pursuant to subsection (G) of this section for the permanent right of lateral, vertical, and/or coastal bluff access shall be required as a condition of approval and prior to issuance of a coastal development permit or other authorization for any new development causing or contributing to adverse impacts to public access. Where feasible, public access to and along the shoreline and to beaches, coastal waters, tidelands, coastal parks, and trails shall be expanded and enhanced.
2. **Recreation.** Park and recreational facilities provided for by dedications and/or in lieu fees shall be required as a condition of approval and prior to issuance of a coastal development permit or other authorization for any new development causing or contributing to adverse impacts to public recreation. Where feasible, recreational opportunities in the Coastal Zone shall be expanded and enhanced.

20.30A.040 – Determination of Public Access/Recreation Impacts

In determining a new development's impact on public access, the City shall evaluate the factors listed below. Any access dedication required as a condition of approval shall be supported by substantial evidence in the record and findings shall explain how the adverse effects that have been identified will be alleviated or mitigated by the dedication. As used in this section, "cumulative effect" means the effect of the individual project in combination with the effects of past projects, other current projects, and probable future projects.

- A. **Historic Public Use.** Evidence of use of the site by members of the general public, including for access (vertical, lateral, or coastal bluff) or for recreational use (active or passive), and the project's effects on public use of the site.
- B. **Land Use.** The project's cumulative effect on use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation and other priority uses specified in California Public Resources Code Section 30222 and Section 30223.
- C. **Demand for Access and Recreation.** The project's cumulative effects upon the use and capacity of the identified access and recreation opportunities, including the ocean, harbor, bay, channels, estuaries, salt marshes, sloughs, beaches, coastal parks, trails, or coastal bluffs; the capacity of coastal access roads; public parking; and recreational support facilities and services.
- D. **Obstructions.** Any physical aspects of the project that would block or impede public access to and along the sea or shoreline and to coastal parks, trails, or coastal bluffs, including placement of structures, private streets, shoreline protective structures, barriers, guardhouses, gates, fences, or signs.
- E. **Visual Access.** The project's cumulative effects on public access to public views to the ocean, harbor, bay, channels, estuaries, salt marshes, sloughs, beaches, coastal bluffs, and other scenic coastal areas.

- F. **Vessel Launching, Berthing, and Storage.** The project's cumulative effects on vessel launching, berthing, and storage facilities and other facilities providing public access to the ocean, harbor, bay, channels, estuaries, salt marshes, and sloughs.
- G. **Shoreline Processes.** The project's cumulative effects upon shoreline conditions, including beach profile; the character, extent, accessibility and usability of the beach; erosion or accretion; character and sources of sand; wave and sand movement; and any other anticipated changes to shoreline processes that have the potential to adversely impact public access to and along the shoreline and to the harbor, bay, channels, estuaries, salt marshes, sloughs, and coastal bluffs.
- H. **Other Impacts.** Any other aspects of the project, which, individually or cumulatively, are likely to diminish the public's use of the ocean, harbor, bay, channels, estuaries, salt marshes, sloughs, beaches, coastal parks, trails, or coastal bluffs.

20.30A.050 – Shoreline and Bluff Top Access

- A. **Shoreline Access.** An offer to dedicate an easement (or other legal mechanism pursuant to subsection (G) of this section for one or more types of public access to and along the shoreline of the ocean, harbor, bay, channels, estuaries, salt marshes, sloughs shall be required as follows.
 - 1. **Lateral Access.** Lateral public access and passive recreational use along shoreline shall be required along the entire width of the property:
 - a. On lots or parcels with dry sand or rocky coastal beaches, landward ten feet from mean high tide, or to a fixed point at the most seaward of the primary extent of development, the toe of the bluff, or the first line of terrestrial vegetation, if the width of the beach is greater than ten feet.

For purposes of this section, the primary extent of development shall mean the intersection of sand with toe of revetment, the vertical face of seawall, or other appropriate boundary such as dripline of a deck.
 - b. On lots or parcels where the shoreline consists of seawalls, bulkheads, or other shoreline protective devices, seaward of the seawall (or other shoreline protective device). In addition, lateral public access along the seawall (or other shoreline protective device) shall be required. Lateral public access shall be a minimum of six feet wide.
 - 2. **Vertical Access.** Vertical access from the nearest public roadway to the sea or shoreline or to an established public lateral access or coastal bluff access shall be required. Vertical public access shall be a minimum of six feet wide.
- B. **Coastal Bluff Access.** Public access to coastal bluff areas shall be provided through design of the local street system and through the location of public trails and walkways adjacent to the bluffs. Areas adjacent to coastal bluffs having significant view potential

shall be designated for use as view parks or vista points consistent with parkland dedication requirements.

C. **Exemptions.** The public access requirements of this section shall not apply to the following new development in compliance with the Coastal Act (Public Resources Code Section 30212):

1. **Structures Destroyed By Disaster.** The replacement of a structure, other than a public works facility, destroyed by disaster, provided that the replacement structure:

- a. Conforms to applicable coastal zoning district requirements in Part 2 (Coastal Zoning Districts, Allowable Land Uses, and Coastal Zoning District Standards);
- b. Is for the same use as the destroyed structure;
- c. Not exceed the floor area, height, or bulk (i.e., total interior cubic volume as measured from the exterior surface of the structure) of the destroyed structure by more than 10 percent;
- d. Is sited in the same location on the affected property as the destroyed structure; and
- e. Does not extend the replacement structure seaward on a sandy beach or beachfronting bluff lot.

2. **Demolition and Reconstruction.** The demolition and reconstruction of a single-family residence, provided that the reconstructed residence:

- a. Does not exceed either the floor area, height, or bulk (i.e., total interior cubic volume as measured from the exterior surface of the structure) of the former structure by more than 10 percent;
- b. Is sited in the same location on the affected property as the former structure;
- c. Does not extend seaward of the demolished residence on a sandy beach or beachfronting bluff lot; and
- d. Does not include or necessitate a new or enlarged shoreline protective device within the economic life of the structure.

3. **Improvements.** Improvements to a structure that do not:

- a. Change the intensity of its use;
- b. Increase either the floor area, height, or bulk of the structure by more than 10 percent;

- c. Block or impede access;
 - d. Result in a seaward encroachment by the structure; and
 - e. Include or necessitate a new or enlarged shoreline protective device within the economic life of the structure.
4. **Repair and Maintenance.** A repair or maintenance activity consistent with Public Resources Code Section 30212.b.(5) .
 5. **Repair and Maintenance of a Shoreline Protective Device.** The reconstruction or repair of a bulkhead; provided that the reconstructed or repaired bulkhead is not seaward of the location of the former bulkhead.

D. Modification or Waiver of Public Access Requirements.

1. **Lateral Access.** The lateral access requirements specified in Section 20.30A.050 (A) (1) may be waived or modified in the following situations:
 - a, When the applicant can demonstrate, based on an engineering analysis, that all or a portion of such access is physically infeasible and there are no design alternatives capable of overcoming topographical or site constraints that jeopardize public safety or fragile coastal resources.
 - (2) Where marine sales and service equipment and operations present security or public safety concerns, waterfront access detours are necessary in order to maintain facilities and services essential to the operation of the harbor.
- b. **Vertical Access.** The vertical access requirements specified in Section 20.30A.050 (A) (2) may be waived or modified in the following situations:
 - (1) When the provisions of new accessways are inconsistent with public safety, military security needs, or the protection of fragile resources.
 - (2) When adequate access exists nearby.
- c. **Coastal Bluff Access.** The coastal bluff access requirements specified in Section 20.30A.050 (B) may be waived or modified in the following situations:
 - (1) When the design of the existing local street system and/or the location of existing public trails and walkways cause all or a portion of such access to be physically infeasible and there are no design alternatives capable of overcoming these constraints.
 - (2) When the applicant can demonstrate, based on an engineering analysis, including slope stability analysis and erosion rate estimates, that all or a portion of such access is physically infeasible and there are no design

alternatives capable of overcoming topographical or site constraints that jeopardize public safety or fragile coastal resources.

- (3) When adequate access exists nearby.

20.30A.060 – Design and Siting

- A. **General.** Public access improvements shall be designed to achieve the following:
1. Maximize public access to and along the shoreline;
 2. Provide new vertical accessways in areas of limited public accessibility, where feasible;
 3. Incorporate pedestrian, hiking, bicycle, and equestrian trails, where appropriate;
 4. Provide connections to beaches, parks, and recreational facilities, where possible;
 5. Provide connections with trail systems of adjacent jurisdictions, where possible;
 6. Provide access to coastal view corridors, where possible;
 7. Facilitate alternative modes of transportation, where possible;
 8. Minimize alterations to natural landforms;
 9. Protect environmentally sensitive habitat areas;
 10. Protect private property rights.
- B. **Setbacks.** Public access easements may be provided within required setback areas.
- C. **Privacy Buffers.** Separation between a public accessway and adjacent residential use may be provided when necessary to protect the landowner's privacy or security as well as the public's right to use the accessway. Any such buffer shall be provided within the development area. Access should not be sited closer than 10 feet to any residential structure. The buffer can be reduced where separation is achieved through landscaping, fences or grade separation.
- D. **Sensitive Areas.** Public access improvements shall be allowed in environmentally sensitive habitat areas (ESHAs), tidepools, and other sensitive areas when sited, designed, and maintained in a manner to avoid or minimize impacts to the resource through the use of well-defined footpaths, boardwalks, protective fencing, signage, and similar methods.
- E. **Prescriptive Rights.** Where there is substantial evidence that prescriptive rights of access to the beach exist on a parcel, development on that parcel shall be designed, or

conditions shall be imposed, to avoid interference with the prescriptive rights that may exist or to provide alternative, equivalent access.

F. **Lateral Access.**

- a. **Onshore Access Required.** Lateral access shall be provided on land whenever possible. Lateral access consisting of decking and/or boardwalks extending over the water or floating walkways may be permitted only when existing development makes onshore lateral access infeasible or as part of a comprehensive program to provide waterfront access.
- b. **Shoreline Access in Commercial Areas.** Waterfront commercial development shall provide public access easements to and along the shoreline. Shoreline access (lateral and vertical) may be achieved in the form of walkways and/or breezeways under a cantilevered structure when designed to be as close as possible to the shoreline, to afford views of the water, and to provide the most direct, convenient connection between adjacent existing and potential lateral public accessways. Enclosed or covered accessways shall provide a minimum vertical clearance of 8 feet above grade.

- G. **Unauthorized Structures.** All unauthorized structures, including signs and fences, which inhibit public access shall be removed.

20.30A.070 – Access Title and Guarantee

Where public coastal accessways are required as a condition of approval of a coastal development permit or other authorization, a guarantee of the access through deed restriction, or dedication of right-of-way or easement shall be required. Prior to the approval of a coastal development permit or other authorization, the method and form of the access guarantee shall be approved by City Attorney, and shall be recorded in the office of the County Recorder, identifying the precise location and area to be set aside for public access. The method of access guarantee shall be chosen according to the following criteria:

- A. **Deed Restriction.** A deed restriction shall be used only where an owner, association or corporation agrees to assume responsibility for maintenance of and liability for the public access area, subject to approval by the Planning Director.
- B. **Grant of Fee Interest or Easement.** A grant of fee interest or easement shall be used when a public agency or private organization approved by the City Council is willing to assume ownership, maintenance and liability for the access.
- C. **Offer of Dedication.** An offer of dedication shall be used when no public agency, private organization or individual is willing to accept fee interest or easement for accessway maintenance and liability. These offers shall not be accepted until maintenance responsibility and liability is established.

20.30A.080 – Timing of Access Requirements

The type and extent of access to be dedicated, and/or constructed and maintained, as well as the method by which its continuing availability for public use is to be guaranteed, shall be established at the time of coastal development permit approval or other authorization, as provided by this section.

- A. **Dedication.** Dedication shall occur before issuance of construction permits or the start of any construction activity not requiring a permit.
- B. **Construction of Improvements.** Construction of improvements shall occur at the same time as construction of the approved development, unless another time is established through conditions of coastal development permit approval or other authorization.
- C. **Interference with Public Use Prohibited.** Following an offer to dedicate public access pursuant to this section; the property owner shall not interfere with use by the public of the areas subject to the offer before and after acceptance by the responsible entity.

20.30A.090 – Management and Maintenance

- A. **Controls.** The City may require controls on the time, place and manner of public access when justified by site characteristics, including topographic and geologic conditions, the intensity of use and the capacity of the site to sustain the use, the fragility of natural resource areas, the need to protect the privacy or security of residential development, public safety services access, and the provision of support facilities.
- B. **Management Plan.** A management plan may be required in conjunction with a dedication of public access in any case where there is substantial evidence of potential conflicts between public access use and other uses on or immediately adjacent to the site.
- C. **Maintenance.** A dedicated public accessway shall not be required to be opened to public use until a public agency or private association approved by the City Council agrees to accept responsibility for maintenance and liability of the access, except in cases where immediate public access is implemented through a deed restriction.

20.30A.100 – Posting

All public accessways shall be properly signed and conform to the coastal access signing program and any applicable Coastal Conservancy/Coastal Commission access standards and guidelines.

20.30A.110 – Joint Use of Parking for Public Access

Where feasible, commercial or institutional development causing or contributing to adverse impacts to public access or recreation shall provide mitigation by allowing use of parking areas for public access outside of normal business hours, such as on weekends and holidays. Parking areas may be used in conjunction with public transit or shuttles to serve coastal recreational areas.

Chapter 21.30B – Environmentally Sensitive Areas

Sections:

20.30B.010	Purpose
20.30B.020	Applicability
20.30B.030	Determination of Sensitive Areas and Buffer Areas
20.30B.040	Allowed Activities and Uses
20.30B.050	Development Standards
20.30B.060	Permit Requirements

20.30B.010 – Purpose

This Chapter regulates development in areas where plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem that could easily be disturbed or degraded by human activities and developments.

20.44.020 – Applicability

A. **Environmentally Sensitive Areas.** This Chapter applies to development on lots that abut or include Environmental Study Areas (ESA) that are indicated in Map 4-1 (Environmental Study Areas) in the certified Coastal Land Use Plan. Within an ESA, sensitive areas shall include the following:

1. **Environmentally Sensitive Habitat Areas (ESHA).** Areas that are currently identified as ESHA or areas that may include ESHA; and
2. **Wetlands.** Wetlands that are currently delineated or that may be deemed suitable for delineation.

20.30B.030 – Determination of Sensitive Areas and Buffer Areas

This Section provides procedures for identifying sensitive areas and buffer areas.

A. **Initial Biological Resources Survey.** An applicant shall submit an initial biological resources survey that indicates the presence or potential for sensitive habitat or species on a site. The report shall be prepared by a qualified biologist and shall include the following:

1. Photographs of the site;
2. A discussion of the site's physical characteristics (e.g., topography, soil types, streams, etc.);
3. An identification of the presence or expected presence on the site of:

- a. Natural communities identified as rare by the California Department of Fish and Game;
 - b. Rare, threatened, or endangered plant or animal species that are designated or are candidates for listing as rare, threatened, or endangered under State or Federal law; and
 - c. Any other species for which there is compelling evidence of rarity (e.g., plants designated "1B" or "2" by the California Native Plant Society; identification in the List of California Terrestrial Natural Communities Recognized by the California Natural Diversity Database maintained by the California Department of Fish and Game; etc.).
4. A description of the degree of habitat integrity and connectivity to other natural areas. Attributes to be evaluated include the:
- a. Habitat's size and connectivity;
 - b. Dominance by invasive/non-native species;
 - c. Level of disturbance;
 - d. Proximity to development; and
 - e. Level of fragmentation and isolation.
5. A map depicting the location of biological resources.

B. Biological Resources Impact Report. If the initial biological resources survey indicates the presence or potential for sensitive habitat or species on the site, an applicant shall submit a detailed biological resources impact report. The report shall be prepared by a qualified biologist and shall include the following:

- 1. A map depicting the overall boundaries of the sensitive area and recommended buffer areas;
- 2. A determination that the buffer areas required by Section 20.30B.050 (Development Standards) will be adequate to protect the sensitive habitat or species, or a recommendation of more effective buffer areas, where applicable;
- 3. An evaluation of the individual and cumulative impacts of the proposed development on the habitat or species;
- 4. An analysis of unauthorized development, including grading or vegetation removal, that may have contributed to the degradation or elimination of habitat area;
- 5. A list of uses that are consistent with the preservation of habitat values, based upon the allowed uses listed in Section 20.30B.040 (Allowed Activities and Uses);

6. A description of mitigation measures, including identification of potential mitigation sites, that would minimize or mitigate residual impacts that cannot be avoided.
- C. **ESHA Designation.** 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 shall be designated as an environmentally sensitive habitat area (ESHA).
- D. **Presumption of ESHA.** For the purposes of this Chapter, habitats that are presumed to be an ESHA are identified in Table 3-10 (Habitats Presumed to be Environmentally Sensitive Habitat Areas), unless there are strong site-specific reasons to rebut that presumption. 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.

**TABLE 3-10
HABITATS PRESUMED TO BE
ENVIRONMENTALLY SENSITIVE HABITAT AREAS**

Wetland Habitats	Terrestrial Habitats
Alkali meadows Coastal brackish marsh Coastal freshwater marsh Freshwater seeps Southern coastal salt marsh Southern hardpan vernal pools	Maritime succulent scrub Southern coastal bluff scrub Southern dune scrub Southern maritime chaparral Southern willow scrub Southern cottonwood willow riparian forest Southern arroyo willow forest Southern black willow forest Southern sycamore alder riparian woodland Southern coastal purple needlegrass grassland Southern coast live oak riparian forest Coastal sage scrub (When adjacent to coastal salt marsh or other wetlands)

- E. **Wetland Delineation.** If the initial biological resources survey and/or the biological resources impact report indicate(s) the presence or potential for wetland species or indicators on the site, an applicant shall submit a delineation of wetland areas on the site. The delineation shall be prepared by a qualified biologist and shall be based on the following:
1. Definitions contained in Section 13577(b) of Title 14 of the California Code of Regulations. A preponderance of hydric soils or a preponderance of wetland indicator species shall be considered presumptive evidence of wetland conditions; and
 2. Statewide Interpretive Guidelines for Wetlands and Other Environmentally Sensitive Habitat Areas published by the California Coastal Commission.

Although vegetation is often the most readily observed parameter, sole reliance on vegetation or either of the other parameters as the determinant of wetlands can sometimes be misleading. Many plant species can grow successfully in both wetlands and non-wetlands, and hydrophytic vegetation and hydric soils may persist for decades

following alteration of hydrology that will render an area a non-wetland. Where ambiguities in wetland delineation exist due to the demonstrated presence of both upland and wetland characteristics, factors other than the standard field indicators of wetland hydrology, wetland vegetation and wetland soils may be analyzed as part of the delineation. Such factors may include topography, soil permeability, drainage patterns, adjacency to identified wetlands, and comparisons of hydrology at the ambiguous site and at nearby upland and wetland reference sites following significant rainfall events. The simple lack of field indicators of hydrology during a routine delineation is not strong evidence of upland characteristics (Coastal Commission findings for approval of the Coastal Land Use Plan, October 13, 2005).

20.30B.040 – Allowed Activities and Uses

This Section lists uses that may be allowed in sensitive areas and buffer areas.

- A. **Sensitive Areas.** The following uses may be allowed in sensitive areas, provided that they are consistent with the preservation of animal or plant life:
1. Biology-related educational, interpretive, or scientific research uses (e.g., bird-watching, noncommercial fishing, nature study, etc.) that do not significantly impair plant and animal life;
 2. Wildlife refuge;
 3. Habitat restoration projects where the purpose is restoration of the habitat;
 4. Open space;
 5. Passive recreation;
 6. Public access boardwalks, paths, and trails;
 7. Other resource-dependant uses; and
 8. Diking, dredging, and filling activities that comply with Subsection C, below.
- B. **Buffer Areas.** All of the activities and uses allowed in sensitive areas listed in Subsection A, above, and any of the following shall be allowed in buffer areas:
1. Fences;
 2. Road and bridge replacements;
 3. Incidental public facilities when there is no other feasible, environmentally less damaging alternative;
 4. Signs and small information kiosks; and
 5. Other improvements necessary to protect habitat resources.

C. Diking, redging, and filling.

1. For diking, dredging, and filling activities affecting lands and waters below the mean high water line, see Municipal Code Title 17 (Harbor Code).
2. Diking, dredging, and filling of wetlands above the mean high water line shall be limited to the following activities, provided that there is no feasible, less environmentally damaging alternative and that mitigation measures have been provided to minimize adverse environmental effects:
 - a. Construction or expansion of port/marine facilities;
 - b. Construction or expansion of coastal-dependent industrial facilities (e.g., commercial fishing facilities, commercial ferry facilities, etc.);
 - c. In open coastal waters, other than wetlands, including estuaries and streams, new or expanded boating facilities (i.e., slips, access ramps, piers, marinas, launching ramps) and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities;
 - d. Incidental public service activities that temporarily impact the resources of the area (e.g., burying cables and pipes, inspection of piers, maintenance of existing intake and outfall pipes, etc.);
 - e. Recreational docks and piers within the intertidal areas, including wetlands, in Newport Harbor;
 - f. Maintenance or replacement of existing bulkheads when expansion or encroachment into coastal waters is limited to the minimum extent necessary to repair, maintain, or replace an existing bulkhead and the backfill is not used to create new usable residential land areas;
 - g. Sand extraction for restoring beaches, except in environmentally sensitive habitat areas;
 - h. Restoration activities; and
 - i. Nature study, aquaculture, or similar resource-dependent activities.
 - j. 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.
3. Restoration activities listed in Paragraph 2, above, may include some fill if the wetlands are small, extremely isolated, and incapable of being restored. Small, extremely isolated parcels that are incapable of being restored to biologically productive systems may be filled and developed for uses not ordinarily allowed only if the actions establish stable and logical boundaries between urban and wetland areas and if the applicant provides funds sufficient to accomplish an approved restoration program in the same general region. All of the following

criteria shall be satisfied before the filling may be allowed:

- a. The area of the wetland to be filled is less than 1 acre;
- b. The wetland to be filled is not contiguous or adjacent to a larger wetland;
- c. The wetland to be filled is so small and isolated that it is not capable of recovering and maintaining a high level of biological productivity without major restoration activities;
- d. The wetland does not provide significant habitat value to marine and wildlife species, and is not used by any species that are rare or endangered;
- e. Restoration of another wetland to mitigate for fill can most feasibly be achieved in conjunction with filling a small wetland. The mitigation measure shall be carried out in a manner that would result in no net loss of either wetland acreage or habitat value;
- f. Restoration site is abutting or adjacent to a larger, contiguous wetland area providing significant habitat value to fish and wildlife that would benefit from the addition of more area;
- g. The restoration site is within the general area surrounding the wetland where the fill occurred; and
- h. The California Department of Fish and Game and the U.S. Fish and Wildlife Service has determined that the proposed restoration project can be successfully carried out.

20.30B.050 –Development Standards

This Section provides standards applicable to sensitive areas and buffer areas.

- A. **Buffer Areas.** Development shall provide the following minimum buffer areas as measured from the boundary of the sensitive area, unless a greater or lesser width is required or allowed by the review authority:
 1. Adjacent to an Environmentally Sensitive Habitat Area – 50-foot-wide buffer area; and
 2. Adjacent to a Wetland – 100-foot-wide buffer area.
- B. **Diking, Dredging, and Filling.**
 1. Diking, dredging, and filling of a wetland above the mean high water line shall avoid significant disruption of marine and wildlife habitats and water circulation.
 2. Activities shall maintain functional capacity of habitat areas. For the purposes of this Section, functional capacity means the ability of the wetland to be self-sustaining and to maintain natural species diversity. In order to establish that

the functional capacity is being maintained, the development shall not:

- a. 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. Harm or destroy a species or habitat that is rare or endangered;
- c. Harm a species or habitat that is essential to the natural biological functioning of the wetland or estuary; or
- d. Significantly reduce consumptive (e.g., fishing, etc.) or non-consumptive (e.g., water quality, research opportunity, etc.) values of the wetland ecosystem.

C. Fencing.

1. During and after construction, fencing shall be installed to minimize adverse impacts on sensitive areas.
2. Fencing shall not impact public views or the free passage of native wildlife and shall employ design and materials determined by the review authority to be compatible with the visual and biological character of the habitat.

D. Vegetation.

1. Buffer areas shall be planted and maintained exclusively with vegetation that is consistent with the adjacent habitat values and indigenous native plants. Invasive plant species shall be prohibited.
2. Fuel modification zones shall comply with **Section 21.38.080 (Fuel Modification)**.

E. Lighting. Lighting fixtures shall shield and direct exterior lighting away from sensitive habitat areas in compliance with Section 21.30.070 (Outdoor Lighting).

F. Site Planning and Design.

1. Development shall be designed and sited to protect against any significant disruption of habitat values and to avoid the need to extend fuel modification zones into sensitive areas.
2. Development shall be compatible with the continued viability of sensitive resources.
3. Land divisions, including lot line adjustments, shall be designed to avoid new development within sensitive areas and to minimize adverse impacts to sensitive resources.

G. Erosion and Sediment Control. Erosion and sediment controls, including best

management practices (BMPs) to minimize siltation, sedimentation, and erosion, shall be installed before and during construction and shall be left in place until the site is stabilized with permanent vegetation.

- H. **Removal of Unauthorized Structures.** Unauthorized structures shall be removed before issuance of any permit.
- I. **No Net Loss.** Wetland areas shall sustain "no net loss."

20.30B.060 – Permit Requirements

- A. **Application requirements.** Permit applications for new development shall include the:
 - 1. Information required by Section 20.66.020 (Coastal Development Permits); and
 - 2. Initial biological resources survey required in Section 20.30B.030 (Determination of Sensitive Areas and Buffer Areas); and/or the
 - 3. Biological resources impact report required in Section 20.30B.030 (Determination of Sensitive Areas and Buffer Areas).
- B. **Subdivisions.** If a sensitive area is within the boundaries of a proposed subdivision, the sensitive area shall be shown on the Tentative Map and offered for dedication to the City. When a sensitive area is already in existence at the time a Tentative Map is filed, the status of the sensitive area, whether public or private, shall be identified on the Tentative Map.
- C. **Habitat Restoration or Creation.** As a condition of permit approval, the review authority may require habitat restoration or creation.
 - 1. **Timing.** The restoration or creation of habitat may be required before completion of a development, unless a performance guarantee is provided in compliance with Section 21.54.050 (Performance Guarantees) to ensure restoration and monitoring of the effort.
 - 2. **Restoration and Monitoring Plan.** A restoration and monitoring plan may be required that includes the following:
 - a. A clear statement of the goals of the restoration for all habitat types.
 - b. A description of the desired habitat.
 - c. Quantitative description of the chosen restoration site;
 - d. Identification of a qualified biologist who will serve as the restoration manager and be personally responsible for all phases of the restoration;
 - f. A specific grading plan if the topography must be altered;
 - e. An erosion control plan, if soil or other substrate will be significantly

disturbed during the course of the restoration;

- h. A plan that specifies the eradication and control of invasive plants;
- i. A planting plan that specifies a detailed plant palette using local native stock or using plants, cuttings, or seeds, which are obtained from a nursery that certifies the local origin. The planting plan should provide specifications for preparation of nursery stock and include technical details of planting methods (e.g., spacing, micorrhizal inoculation, etc.);
- j. An irrigation plan that describes the method and timing of watering and ensures removal of watering infrastructure by the end of the monitoring period;
- k. An interim monitoring plan that includes maintenance and remediation activities, interim performance goals, assessment methods, and schedule; and
- l. A final monitoring plan to determine whether the restoration has been successful that specifies:
 - (1) A basis for selection of the performance criteria;
 - (2) Types of performance criteria;
 - (3) Procedure for judging success;
 - (4) Formal sampling design;
 - (5) Sample size;
 - (6) Approval of a final report; and
 - (7) Provision for possible further action.

D. **Evidence of Other Permits.** Before any construction, alteration, or other improvement in areas designated as wetlands, the applicant shall submit the following:

- 1. **Section 404 Permit.** A Section 404 permit from the U.S. Army Corps of Engineers;
- 2. **Letter from CDFG.** Letter from the California Department of Fish and Game confirming compliance with Section 1602 of the California Fish and Game Code; and
- 3. **Waiver/Certificate from RWQCB.** A waiver or certificate of conformance with water quality standards issued by the Santa Ana Regional Water Quality Control Board, if applicable.

E. **Mitigation Measures.** If a project involves diking, dredging, or filling of a wetland, the review authority may require any of the following minimum mitigation measures as a condition of approval:

1. **Create or Restore Wetlands.**

a. **Plan Elements.** If an appropriate mitigation site is available, the applicant shall submit a detailed plan that 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.

b. **Mitigation Ratio.**

- (1) 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.
- (2) 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.

c. **Location of Mitigation.** The mitigation shall occur on-site wherever possible. Where not possible, mitigation should occur in the same watershed.

d. **Acquisition of Mitigation Site.** The mitigation site shall be purchased and legally restricted and/or dedicated before the dike or fill development may proceed.

2. **Open Equivalent (Diked) Areas to Tidal Action.** The review authority may allow the applicant to open equivalent areas to tidal action or provide other sources of surface water in place of creating or restoring wetlands as required by Subparagraph 1, above.

3. **Timing.** Restoration may precede the diking, dredging, or filling project. At a minimum, the review authority shall require restoration to occur simultaneously with project construction.

4. **Monitoring.** Where impacts to wetlands are allowed, the review authority shall 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. Monitoring reports shall be submitted during the monitoring period that document the success or failure of the mitigation. To help ensure that the mitigation project is self-sustaining, final monitoring for all mitigation projects shall take place after at least 3 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 the review authority determines that a different mitigation monitoring schedule is appropriate, monitoring shall occur for a period of not less than 5 years.

Subject: FW: Spot Zoning rather than legitimate Land Use Planning?

Begin forwarded message:

From: Denys Oberman <dho@obermanassociates.com>
Date: February 2, 2014, 1:38:50 PM PST
To: <lbrown@newportbeachca.gov>
Subject: FW: Spot Zoning rather than legitimate Land Use Planning?

PLEASE DISTRIBUTE TO THE GENERAL PLAN LUE AMENDMENT AND LCP COMMITTEES
AND ENTER INTO THE PUBLIC RECORD.

Thank you,
Denys Oberman

.....

Regards,
Denys H. Oberman, CEO



OBERMAN Strategy and Financial Advisors

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From: Denys Oberman [<mailto:dho@obermanassociates.com>]
Sent: Sunday, February 02, 2014 11:41 AM
To: eselich@roadrunner.com
Cc: lbrown@citynewport.ca.gov; ngardner@newportbeachca.gov
Subject: Spot Zoning rather than legitimate Land Use Planning?

Ed,

Did you really suggest this as an option---

What happened to the legitimate land use elements that residents requested by addressed in the GP LUE update, such as:

- Compatible Mix of Uses(height is not the only factor in compatibility)
- Concentration (alcohol establishments, other Uses)
- “Opportunities for Change”—why is Mariners Mile the only coastal area called out to address Specific Plans/planning in the West Newport coastal areas?(Is the Committee only taking Mr. Ridgeway seriously, and not all of the other residents and groups).
- The entire area along and adjoining the coastal highway west of Jamboree needs some serious plan Policy to Prevent Over-Intensification causing cumulative Traffic and other environmental and safety impacts that cannot be mitigated given inherent infrastructure constraints.

Staff has addressed in its report the elimination of certain Specific Plans. Please clarify and confirm that the GPLUE Policy is NOT suggesting the elimination of Specific Plans en toto. Specific planning is needed to assure that , particularly in coastal areas ,economic revitalization is achieved without compromising environmental and residential neighborhood integrity .

Once again, we respectfully request that these items be explicitly addressed by the Committee/the City .

There are a number of specific elements that ARE included in the GP—why the inconsistency of approach?

These elements DO need to be carefully considered and addressed, by the City with adequate public process.

We would appreciate a response prior to or at the February 4th GP LUE Amendment Committee meeting.

Thank you,

Denys Oberman

.....

Regards,
Denys H. Oberman, CEO



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