A G E N D A

General Plan/LCP Implementation Committee
December 10, 2008
3:30 p.m.

PLEASE NOTE THE MEETING WILL BE HELD IN THE FIRE CONFERENCE ROOM*

1. Approve Action Minutes from November 19, 2008
   Attachment No. 1 — 3:30-3:35pm

2. Draft Zoning Code Review
   - Review No. 11 – Resource Protection with attached policy reference guide

   Attachment No. 2 — 3:35-5:15pm

3. Items for Future Agenda — 5:15- 5:25pm

4. Public Comments on non-agenda items — 5:25-5:30pm

5. Adjourn to January 14, 2008

Attachments:

1. Draft Action Minutes for November 19, 2008
2. Draft Code Review No. 11 – Resource Protection with attached policy reference guide

Attachment No. 1

CITY OF NEWPORT BEACH GENERAL PLAN/LCP IMPLEMENTAION COMMITTEE

DRAFT ACTION MINUTES

Action Minutes of the General Plan/LCP Implementation Committee held at the City Council Chambers, City of Newport Beach, on **Wednesday, November 19, 2008**

Members Present:

X	Ed Selich, Mayor, Chairman
E	Leslie Daigle, Mayor Pro Tem
X	Don Webb, Council Member
X	Barry Eaton, Planning Commissioner
X	Robert Hawkins, Planning Commissioner
X	Michael Toerge, Planning Commissioner

Advisory Group Members Present:

	Mark Cross
	Larry Frapwell
	William Guidero
X	Ian Harrison
X	Brion Jeannette
	Don Krotee
	Todd Schooler
	Kevin Weeda
	Dennis Wood

Staff Representatives:

X	Sharon Wood, Assistant City Manager
X	David Lepo, Planning Director
	Robin Clauson, City Attorney
X	James Campbell, Senior Planner
X	Gregg Ramirez, Senior Planner
X	Melinda Whelan, Assistant Planner

E = Excused Absence

Committee Actions

1. **Agenda Item No. 1** – Approval of minutes of November 5, 2008.

   Action: Committee approved draft minutes.

   Vote: Consensus

2. **Agenda Item No. 2** – Committee meeting schedule

- **Discussion of meeting schedule**

  Action: The Committee scheduled the next four meetings on the following Wednesdays at 3:30: December 10th, January 14th, January 28th, and February 18th.

  Vote: Consensus

3. **Agenda Item No. 3** – Zoning Code Re-Write

- **Review of Part 6 Zoning Code Administration**

  Action: The Committee reviewed comments prepared by Committee members Eaton and Hawkins regarding Part 6 Zoning Code Administration of the draft code. The Committee and Advisory Members discussed and directed staff to:
  - revise Section 20.74.010 pg. 6-3 - add "hearing officer"
  - revise Section 20.64.060 pg. 6-5 - add a subsection of "imposition of conditions"
  - revise Section 20.74.030 subsection B.1. pg. 6-4 – add "City Municipal Code" and delete "Zoning Code"
  - revise Section 20.78.030 subsection C.3.(a) pg. 6-14 – add reference to Section 20.66.095 subsection G.2.
  - revise Section 20.78.050 pg.6-16 to separate and add clarity
  - revise Section 20.80.040 A.2. pg. 6-18 to state that failure of the Commission to take action shall be deemed to be a denial
  - revise Section 20.80.060 subsection B.1. pg. 6-18 – add "consistent with all applicable sections and policies…"
  - revise Section 20.80.050 subsection B. pg. 6-18 – delete "or the Commission shall be represented at the hearing"
  - Section 20.82.060 subsection B. pg. 6-24 – staff take another look at this
  - move Section 20.84.010 pg. 6-26 to Part 1 Section 20.10.040

  Vote: Consensus

4. **Agenda Item No. 4** – Public Comments on non-agenda items

The public provided comments to the Committee and staff regarding:

- Objection of minutes for the October 15, 2008 meeting – requesting the following revision of the public comments: "parking in the side setback, owner at 3600 Seashore disturbed with neighbor parking several cars in the side setback next to 4

bedroom windows, a revision to the draft code side setback rear parking only on the Peninsula would answer owners' problem."

Meeting Adjourned 4:45 p.m.

Attachment No. 2

Draft Code Review No. 11
Resource Protection

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1. **Archaeological/ Paleontological Resources**
   - Existing Code: None
   - Draft Code: Section 20.42.020 pg. 3-75 – new chapter to provide provisions for protection of archaeological/paleontological resources in the coastal zone including required reports, monitoring and mitigation implementing General Plan and Local Coastal Plan policies. See attached reference guide for policies.

2. **Historical and Architectural Resources**
   - Existing Code: None
   - Draft Code: Section 20.42.030 pg. 3-77 – new chapter to provide provisions for protection of historical and architectural resources in the coastal zone including guidelines for initial evaluation and studies, rehabilitation incentives and relocation requirements implementing General Plan and Local Coastal Plan policies. See attached reference guide for policies.

3. **Resource Protection in the Coastal Zone**
   - Existing Code: None
   - Draft Code: Ch. 20.44 pg. 3-79 – new chapter to provide provisions for determining environmental sensitive habitat areas and buffer areas including , permitted activities and uses, within the coastal zone addressing wetlands, diking dredging and filing, vegetation, lighting, subdivisions, development standards, permit requirements, mitigations measures and habitat restoration or creation implementing General Plan and Local Coastal Plan policies. See attached reference guide for policies.

4. **Resource Protection outside the Coastal Zone**
   - Existing Code: None
   - Draft Code: Ch. 20.46 pg. 3-89 – new chapter which provides the same provisions as the previous Ch. 20.44 except it is for resource protection outside of the Coastal Zone implementing General Plan policies. See attached reference guide for policies.

5. **Public Access in the Coastal Zone**
   - Existing Code: Section 20.60.070 provides access regulations for waterfront developments within commercial and specific plan districts
   - Draft Code: Ch. 20.59 pg. 3-193 – new chapter provides provisions for protection or provision, determination, and development standards including permit requirements for public access within the Coastal Zone implementing General Plan and Local Coastal Plan policies. See attached reference guide for policies.

Local Coastal Plan and General Plan Policy Reference Guide - Draft Code Review 11

1. Archaeological/Paleontological Resources Section 20.42.020

General Plan Policies:

NR 18.1 New Development Require new development to protect and preserve paleontological and archaeological resources from destruction, and avoid and minimize impacts to such resources in accordance with the requirements of CEQA. Through planning policies and permit conditions, ensure the preservation of significant archeological and paleontological resources and require that the impact caused by any development be mitigated in accordance with CEQA.

NR 18.2 Maintenance of Database Information Prepare and maintain sources of information regarding paleontological or archaeological sites and the names and addresses of responsible organizations and qualified individuals who can analyze, classify, record, and preserve paleontological and archaeological findings.

NR 18.3 Potential for New Development to Impact Resources 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.

NR 18.4 Donation of Materials Require new development, where on site preservation and avoidance are not feasible, to donate scientifically valuable paleontological or archaeological materials to a responsible public or private institution with a suitable repository, located within Newport Beach or Orange County, whenever possible.

HR 2.1New Development Activities Require that, in accordance with CEQA, new development protect and preserve paleontological and archaeological resources from destruction, and avoid and mitigate impacts to such resources. Through planning policies and permit conditions, ensure the preservation of significant archeological and paleontological resources and require that the impact caused by any development be mitigated in accordance with CEQA.

HR 2.2 Grading and Excavation Activities
Maintain sources of information regarding paleontological and archeological sites and the names and addresses of responsible organizations and qualified individuals, who can analyze, classify, record, and preserve paleontological or archeological findings.
Require a qualified paleontologist/archeologist to monitor all grading and/or excavation where there is a potential to affect cultural, archeological or paleontological resources. If these resources are found, the applicant shall implement the recommendations of the paleontologist/archeologist, subject to the approval of the City Planning Department.

HR 2.3 Cultural Organizations
Notify cultural organizations, including Native American organizations, of proposed developments that have the potential to adversely impact cultural resources. Allow representatives of such groups to monitor grading and/or excavation of development sites.

HR 2.4 Paleontological or Archaeological Materials

Require new development to donate scientifically valuable paleontological or archaeological materials to a responsible public or private institution with a suitable repository, located within Newport Beach, or Orange County, whenever possible.

Coastal Land Use Policies:

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.

2. Historical and Architectural Resources Section 20.42.030

General Plan Policies:

HR 1.1Historical Resources Inventory 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.

HR 1.2 Preservation or Re-Use of Historical Structures Encourage the preservation of structures listed on the National Register of Historic Places and/or the list of California Historical Landmarks, and/or the Newport Beach Register of Historical Property. Provide incentives, such as grading reductions or waivers of application 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.

HR 1.4 Adaptive Re-use Encourage alternatives to demolition of historical sites or structures by promoting architecturally compatible rehabilitation or adaptive re-use. Provide incentives such as permit and application fee waivers, flexible building requirements and free technical advice by person(s) qualified in historical preservation.

HR 1.5 Historical Elements within New Projects Require that proposed development that is located on a historical site or structure incorporate a physical link to the past within the site or structural design, if preservation or adaptive reuse is not a feasible option. For example, incorporate historical photographs or artifacts within the proposed project or preserve the location and structures of existing pathways, gathering places, seating areas, rail lines, roadways, or viewing vantage points within the proposed site design.

HR 1.6 Documentation Require that, prior to the issuance of a demolition or grading permit, developers of a property that contains an historic structure as defined by CEQA retain a qualified consultant to record the structure in accordance with U.S. Secretary of Interior guidelines (which includes drawings, photographs, and written data) and submit this information to the Newport Beach Historical Society, Orange County Public Library, and City Planning Department.

HR 1.7 Offer for Relocation of Historic Structure Require that, prior to the demolition of a historic structure, developers offer the structure for relocation by interested parties.

Coastal Land Use Policies:

4.5.2-1. Continue to maintain the Newport Beach Register of Historical Property for buildings, objects, structures, and monuments having importance to the history or architecture of Newport Beach.

4.5.2-2. Allow the application of the State Historical Building Code to buildings or structures listed in the Newport Beach Register of Historical Property.

4.5.2-3. 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 Newport Beach Register of Historical Property in exchange for preservation easements.

3. Resource Protection in the Coastal Zone Ch. 20.44

General Plan Policies:

LU 3.7 Natural Resource or Hazardous Areas Require that new development is located and designed to protect areas with high natural resource value and protect residents and visitors from threats to life or property.

NR 3.6 Watershed Runoff Quality Control Represent Newport Beach by participating in

watershed-based runoff reduction, water quality control, and other planning efforts with the California Regional Water Quality Control Board (RWQCB), the County of Orange, and upstream cities. Promote regulation of upstream dischargers (cities, Orange County, residential and commercial uses) in the San Diego Creek and Santa Ana/Delhi Channel watersheds.

NR 10.3 Analysis of Environmental Study Areas Require a site-specific survey and analysis prepared by a qualified biologist as a filing requirement for any development permit applications where development would occur within or contiguous to areas identified as ESAs.

NR 10.4 New Development Siting and Design Require that the siting and design of new development, including landscaping and public access, protect sensitive or rare resources against any significant disruption of habitat values.

NR 10.5 Development in Areas Containing Significant or Rare Biological Resources
Limit uses within an area containing any significant or rare biological resources to only those uses that are dependent on such resources, except where application of such a limitation would result in a taking of private property. If application of this policy would likely constitute a taking of private property, then a non-resource-dependent use shall be allowed on the property, provided development is limited to the minimum amount necessary to avoid a taking and the development is consistent with all other applicable resource protection policies. Public access improvements and educational, interpretative and research facilities are considered resource dependent uses.

NR 10.6 Use of Buffers Maintain a buffer of sufficient size around significant or rare biological resources, if present, to ensure the protection of these resources. Require the use of native vegetation and prohibit invasive plant species within these buffer areas.

NR 14.5 New *Structure Design* Require that all structures permitted to encroach into open coastal waters, wetlands, and estuaries be sited and designed to be consistent with the natural appearance of the surrounding area.

NR 16.6 Water-Related Education and Research within Upper Newport Bay Promote facilities in and around Upper Newport Bay to adequately serve as water quality and estuarine education and research programs.

NR 13.1 Wetland Protection Recognize and protect wetlands for their commercial, recreational, water quality, and habitat value.

NR 13.2 Wetland Delineation 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 established by California Department of Fish and Game, and/or United States Fish and Wildlife Service.

NR 14.4 Wetland or Estuary Capacity Require that any project that includes diking, filling or dredging of an estuary must maintain the capacity of the wetland or estuary as required by state and federal law.

NR 15.1 Dredging Projects Monitor dredging projects within the region to identify opportunities to reduce disposal costs and utilize dredge spoils for beach nourishment.
Coastal Land Use Policies:

NR 12.1 Exotic Vegetation Removal and Native Vegetation Restoration Require the removal of exotic vegetation and the restoration of native vegetation in dune habitat.

NR 10.7 Exterior Lighting Shield and direct exterior lighting away from significant or rare biological resources to minimize impacts to wildlife.

Coastal Land Use Policies:

2.2.2-4. Implement building design and siting regulations to protect coastal resources and public access through height, setback, floor area, lot coverage, building bulk, and other property development standards of the Zoning Code intended to control building placement, height, and bulk.

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.

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.

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.

4.1.1-6. 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.

4.1.1-5. Design land divisions, including lot line adjustments, to preclude new development within and minimize impacts to ESHAs.

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.

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.

4.1.2-1. 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.

4.1.3-1 (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.

4.1.3-1 (N). Prohibit invasive species and require removal in new development.

4.1.3-2. Prohibit the planting of invasive species in non-urbanized areas.

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.

4.2.1-1. 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.

4.2.2-1. 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.

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 wetland areas only, entrance channels for new or expanded boating facilities; and in a degraded wetland, identified by the Department of Fish and Game pursuant to subdivision (b) of Section 30411, for boating facilities if, in conjunction with such boating facilities, a substantial portion of the degraded wetland is restored and maintained as a biologically productive wetland. The size of the wetland area used for boating facilities, including berthing space, turning basins, necessary navigation channels, and any necessary support service facilities shall not exceed 25 percent of the degraded wetland.
D. 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.
E. 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.
F. 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.
G. Sand extraction for restoring beaches, except in environmentally sensitive areas.
H. Restoration purposes.
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.

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.

4.2.3-14. 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.

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.

4.2.3-10. 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.

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

4.2.4-2. Monitor dredging projects within the region to identify opportunities to reduce disposal costs and utilize dredge spoils for beach nourishment.

4.2.4-3. Dredged materials suitable for beneficial reuse shall be transported for such purposes to appropriate areas and placed in a manner that minimizes adverse effects on the environment.

4.6-5. Where development is proposed within or adjacent to ESHA, wetlands or other sensitive resources require the City staff member(s) and/or contracted employee(s) to consider the individual and cumulative impacts of the development, define the least environmentally damaging alternative, and recommend modifications or mitigation measures to avoid or minimize impacts. The City may impose a fee on applicants to recover the cost of review of a proposed project when required by this policy.

4. Resource Protection outside Coastal Zone Ch. 20.46

General Plan Policies:

Policies are the same as the previous section General Plan Policies.

Coastal Land Use Policies: None

5. Public Access in the Coastal Zone Ch. 20.59

General Plan Policies:

LU 3.6 Waterfront Access Use public beaches for public recreational uses and prohibit uses on beaches that interfere with public access and enjoyment of coastal resources. Encourage the expansion and improvement of access to the waterfront and water-related uses that provide important links to waterfront uses such as beaches, launching facilities, public docks, and other similar public water area uses.

LU 6.2.10 Gated Communities Discourage the creation of new private entry gates in existing residential neighborhoods that currently do not have a gate located at the entrance of the community.

LU 6.19.9 Harbor and Bay Views and Access 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

R 2.3 Preservation of Public Beaches Preserve all public beaches for public only purposes.

R 9.1 Provision of Public Coastal Access Provide adequate public access to the shoreline, beach, coastal parks, trails, and bay, acquire additional public access points to these areas and provide parking, where possible.

R 9.2 Waterfront Public Walkways Expand waterfront public walkways per policies in the Circulation Element.

R 9.3 Sign Program As part of a uniform coastal access signing program, provide information to direct the public to parking areas, restrooms, and other support facilities.

R 9.5 Private/Gated Communities Protect public access to coastal resources from encroachment from private/gated communities.

Coastal Land Use Policies:

2.2.2.-4. Implement building design and siting regulations to protect coastal resources and public access through height, setback, floor area, lot coverage, building bulk, and other property development standards of the Zoning Code intended to control building placement, height, and bulk.

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

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

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.

3.1.1-6. 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.

3.1.1-7. 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.

3.1.1-14. 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.

3.1.1-17. 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.

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

3.1.1-27. 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.

3.1.5-1. 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.

3.2.1-1. Protect, and where feasible, expand and enhance recreational opportunities in the coastal zone.
3.2.1-3. Provide adequate park and recreational facilities to accommodate the needs of new residents when allowing new development.

3.3.1-1. Protect, and where feasible, expand and enhance vessel-launching facilities in Newport Harbor.

3.3.1-2. Protect, and where feasible, expand and enhance low-cost public launching facilities, such as trailer launch ramps, boat hoists, commercial landing facilities, and organized recreational boating launch facilities.

3.3.1-3. Develop and implement a signage program to assist boat owners/operators and the public to locate public launching facilities.

4.1.3-1 (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.

4.1.3-1 (K). Manage public access as required to minimize damage to tide pools.

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.

4.4.1-9. Where feasible, provide public trails, recreation areas, and viewing areas adjacent to public coastal view corridors.

CITY OF NEWPORT BEACH GENERAL PLAN/LCP IMPLEMENTAION COMMITTEE

DRAFT ACTION MINUTES

Action Minutes of the General Plan/LCP Implementation Committee held at the City Council Chambers, City of Newport Beach, on **Wednesday, November 19, 2008**

Members Present:

X	Ed Selich, Mayor, Chairman
E	Leslie Daigle, Mayor Pro Tem
X	Don Webb, Council Member
X	Barry Eaton, Planning Commissioner
X	Robert Hawkins, Planning Commissioner
X	Michael Toerge, Planning Commissioner

Advisory Group Members Present:

	Mark Cross
	Larry Frapwell
	William Guidero
X	Ian Harrison
X	Brion Jeannette
	Don Krotee
	Todd Schooler
	Kevin Weeda
	Dennis Wood

Staff Representatives:

X	Sharon Wood, Assistant City Manager
X	David Lepo, Planning Director
	Robin Clauson, City Attorney
X	James Campbell, Senior Planner
X	Gregg Ramirez, Senior Planner
X	Melinda Whelan, Assistant Planner

E = Excused Absence

Committee Actions

1. **Agenda Item No. 1 –** Approval of minutes of November 5, 2008.

   Action: Committee approved draft minutes.

   Vote: Consensus

2. **Agenda Item No. 2 –** Committee meeting schedule

   - **Discussion of meeting schedule**

     Action: The Committee scheduled the next four meetings on the following Wednesdays at 3:30: December 10th, January 14th, January 28th, and February 18th.

     Vote: Consensus

3. **Agenda Item No. 3 –** Zoning Code Re-Write

   - **Review of Part 6 Zoning Code Administration**

     Action: The Committee reviewed comments prepared by Committee members Eaton and Hawkins regarding Part 6 Zoning Code Administration of the draft code. The Committee and Advisory Members discussed and directed staff to:
     - revise Section 20.74.010 pg. 6-3 - add "hearing officer"
     - revise Section 20.64.060 pg. 6-5 - add a subsection of "imposition of conditions"
     - revise Section 20.74.030 subsection B.1. pg. 6-4 – add "City Municipal Code" and delete "Zoning Code"
     - revise Section 20.78.030 subsection C.3.(a) pg. 6-14 – add reference to Section 20.66.095 subsection G.2.
     - revise Section 20.78.050 pg.6-16 to separate and add clarity
     - revise Section 20.80.040 A.2. pg. 6-18 to state that failure of the Commission to take action shall be deemed to be a denial
     - revise Section 20.80.060 subsection B.1. pg. 6-18 – add "consistent with all applicable sections and policies…"
     - revise Section 20.80.050 subsection B. pg. 6-18 – delete "or the Commission shall be represented at the hearing"
     - Section 20.82.060 subsection B. pg. 6-24 – staff take another look at this
     - move Section 20.84.010 pg. 6-26 to Part 1 Section 20.10.040

     Vote: Consensus

4. **Agenda Item No. 4 –** Public Comments on non-agenda items

   The public provided comments to the Committee and staff regarding:

   - Objection of minutes for the October 15, 2008 meeting – requesting the following revision of the public comments: "parking in the side setback, owner at 3600 Seashore disturbed with neighbor parking several cars in the side setback next to 4

bedroom windows, a revision to the draft code side setback rear parking only on the Peninsula would answer owners' problem."

Meeting Adjourned 4:45 p.m.