**CALIFORNIA COASTAL COMMISSION**
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October 27, 2005

Patrick J. Alford
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City of Newport Beach Planning Department
3300 Newport Boulevard—P.O. Box 1768
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**SUBJECT: Newport Beach LUP Amendment 1-04 (Comprehensive Update)**

Dear Mr. Alford:

The Commission approved the City's Land Use Plan Amendment NPB-MAJ-1-04 at a public hearing held in San Diego on October 13, 2005. The Land Use Plan (LUP) amendment was approved with suggested modifications.

Attached (as Exhibit A) is a complete set of the Commission's suggested modifications to the LUP. Pursuant to Section 13544 of the California Code of Regulations, LUP Amendment NPB-MAJ-1-04 will not become effective until the suggested modifications made by the Commission are adopted by the City of Newport Beach and the Commission's Executive Director reviews and certifies to the Commission that the City has complied with the Commission's action. Section 13537 of the California Code of Regulations states that the Commission's action to certify the LUP amendment with suggested modifications shall expire six months from the date of the Commission's action. Therefore, the City has until April 11, 2006 to accept and adopt the amendment with the suggested modifications. The LUP amendment cannot become effectively certified until the Executive Director concludes that the City has adopted the amendment modifications as shown on Exhibit A. If you have any questions regarding this matter, please feel free to call me or Anne Blemker at (562) 590-5071.

Sincerely,

Teresa Henry
District Manager

Attachment: Suggested Modifications of NPB-MAJ-1-04

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# EXHIBIT A

# SUGGESTED MODIFICATIONS
# NPB-MAJ-1-04

1. Number the maps included in the Land Use Plan.

## CHAPTER 1 (INTRODUCTION)

2. 1.1 Purpose

This document establishes the Coastal Land Use Plan of the Local Coastal Program of the City of Newport Beach, prepared in accordance with the California Coastal Act of 1976. The Coastal Land Use Plan sets forth goals, objectives, and policies that govern the use of land and water in the coastal zone within the City of Newport Beach and its sphere of influence**,** with the exception of Newport Coast and Banning Ranch. ***The physical boundaries of the area to which the Coastal Land Use Plan applies are shown on the Coastal Land Use Map, included as Map [Suggested Mod 1].*** Newport Coast is governed by the previously certified and currently effective Newport Coast ***segment of the Orange County*** Local Coastal Program. Banning Ranch is a Deferred Certification Area (DCA) due to unresolved issues relating to land use, ***public access*** and the protection of coastal resources (see Section 2.2.4).

3. 1.3 General Policies

The following policies shall be applied to achieve the goals and objectives of the Coastal Act in applying the policies of this Coastal Land Use Plan:

1. The policies of Chapter 3 of the Coastal Act (PRC Sections 30200 – ~~30263~~ ***30265.5***) shall be the guiding policies of the Coastal Land Use Plan.

~~2. When policies within the Coastal Land Use Plan conflict, such conflicts shall be resolved in a manner which on balance is most protective of significant coastal resources.~~

~~3.~~***2.*** Where there are conflicts between the policies set forth in this Coastal Land Use Plan and those set forth in any element of the City's General Plan, zoning, or any other ordinance, the policies of the Coastal Land Use Plan shall take precedence. However, in no case, shall the policies of the Coastal Land Use Plan be interpreted to allow a development to exceed a development limit established by the General Plan or its implementing ordinances.

***3. In the event of any ambiguities or silence in this Coastal Land Use Plan not resolved by (1) or (2) above, or by other provisions of the City's LCP, the Chapter 3 policies of the Coastal Act shall guide interpretation of this Coastal Land Use Plan.***

***4. This Coastal Land Use Plan is not intended, and shall not be construed, as authorizing the Coastal Commission or City to exercise its power to grant or deny a permit in a manner that will take or damage private property for public use, without the payment of just compensation therefor. This Section is not intended to increase or decrease the rights of any owner of property under the Constitution of the State of California or the United States.***

***5. No provision of the Coastal Land Use Plan or the Coastal Act is a limitation on any of the following:***

***A. On the power of the City to declare, prohibit, and abate nuisances.***

***B. Except as otherwise limited by state law, on the power of the City to adopt and enforce additional regulations, not in conflict with the Coastal Land Use Plan or the Coastal Act, imposing further conditions, restrictions, or limitations with respect to any land or water use or other activity which might adversely affect the resources of the coastal zone.***

4. Section 1.4, last paragraph on page 1-3:

After certification of an LCP, coastal development permit authority is delegated to the appropriate local government. The Coastal Commission retains original permit jurisdiction over certain specified lands, such as submerged lands, tidelands, and public trust lands, and has appellate authority over development approved by local government in specified geographic areas ***and for major public works projects and major energy facilities.*** In authorizing coastal development permits, the local government must make the finding that the development conforms to the certified LCP. ***Furthermore, after certification of the LCP, City actions on applications for Coastal Act authority to conduct certain types of development and development within certain geographic areas, are appealable to the Coastal Commission.***

**CHAPTER 2 (LAND USE AND DEVELOPMENT)**

5. Section 2.1.1, Planning Study Areas, Planning Study Area 3 (McFadden Square), Modify second paragraph on page 2-7 as follows:

Retail and Service Commercial areas are intended to provide for a broad range of coastal-related and visitor-serving commercial uses. Professional and business offices not providing goods and services to the public, or not ancillary to an otherwise permitted use, are allowed only on the second floor

or above. ***In the primary visitor-serving core, non-priority commercial uses are prohibited on the ground floor. The McFadden Square primary visitor-serving core is bounded to the west by the first row of properties fronting on 23rd Street, to the north by Balboa Boulevard, to the east by the first row of properties fronting on McFadden Place, and to the south by the sandy beach, excluding properties currently designated and constructed as residential uses.***

6. Section 2.1.1, Planning Study Areas, Planning Study Area 4 (Balboa Village), Modify last paragraph on page 2-8 as follows:

   Although the Balboa Village provides a number of businesses that are oriented to visitors of the coastal zone, a wide range of commercial uses need to be permitted in order to maintain year-~~a~~round economic viability. ***However, within the primary visitor-serving core, non-priority commercial uses are prohibited on the ground floor. The Balboa Village primary visitor-serving core is bounded to the west by Adams Street, to the north by the Newport Harbor, to the east by A Street, and to the south by the sandy beach, excluding properties currently designated and constructed as residential uses or as public facilities.***

7. Section 2.1.1, Planning Study Areas, Establish new Planning Study Area 7 (Marine Avenue) and insert following text:

   ***Planning Study Area 7 (Marine Avenue). Marine Avenue is a two-block retail district on Balboa Island. Marine Avenue reflects the unique characteristics of the Balboa Island community. Balboa Island is known for its casual and laid-back lifestyle and Marine Avenue serves as its town square. Marine Avenue has a number of small-scale, locally-owned businesses, including restaurants, retail shops, art galleries, and services. This small-town downtown atmosphere has made Marine Avenue a popular visitor destination.***

   ***Although Marine Avenue does not have the typical "tourist-driven" mix of shops and businesses, visitors are drawn there to experience a Southern California coastal island community. The number and variety of businesses cannot be supported by the local economy alone and without local support, most of these businesses could not survive year-round. Therefore, the continued success of the retail economy on Marine Avenue is contingent on businesses that serve both local residents and visitors.***

   ***The area is designated for Commercial Residential and Public Facilities. Residential uses are permitted in commercial areas on the second floor or above where the ground floor is occupied by a commercial use. Non-***

***priority commercial uses are prohibited on the ground floor. The maximum floor area to land area ratio for commercial-residential development is 1.25.***

8. 2.2.1-1 Continue to allow redevelopment and infill development within and adjacent to the existing developed areas in the coastal zone subject to the density and intensity limits ***and resource protection policies*** of the Coastal Land Use Plan.

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

***10.*** Section 2.2.2 In order to ensure that development within the coastal zone is consistent with the LCP ***and any applicable policies from Chapter 3 of the Coastal Act***, the City will require a coastal development permit prior to commencement of any development in the coastal zone, with the exceptions of developments in areas where the Coastal Commission retains permit jurisdiction, ***developments where an amendment to a Coastal Commission-issued permit is required***, developments determined to be categorically excluded according to the categories and standards established by the Coastal Commission, and developments determined to be excluded from the coastal development permit requirements pursuant to Public Resources Code Section 30610 ***and its implementing regulations. Development may also be excluded from permit requirements pursuant to Public Resources Code Sections 30005 (b), 30608 and 30600 (e), which address nuisance abatement, vested rights and emergency circumstances, respectively.***

11. 2.2.2-3 Incorporate the terms and conditions of categorical exclusions into the ~~Zoning Code~~ ***Implementation Plan***.

***12.*** New Policy (Section 2.2.2) ***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.***

***13.*** 2.2.3-4. ***Provide a graphical*** ~~Depict~~ ***representation of*** the terms of the ***categorical exclusion order by depicting the subject*** properties ~~covered by categorical exclusions~~ on ~~the Exclusion Areas~~ ***a Permit and Appeal Jurisdiction*** Map ***and incorporate into the Implementation Plan. In case a conflict exists between the Permit and Appeal Jurisdiction Map and the text of the categorical exclusion order, the text of the categorical exclusion order shall govern the terms of the exclusion.***

14. 2.2.4 Banning Ranch shall remain a deferred certification area until such time as the future land uses for the property are resolved and policies are adopted to address the future of the oil and gas operations, ***public access***, and the protection of the coastal resources on the property.

15. 2.2.5-1 Legally established nonconforming structures may be maintained and repaired***, as specified by the terms of this policy***. Interior alterations, structural alterations, and additions shall be limited as follows. ***Individual project review will determine when a coastal development permit is required.***

    1. Nonstructural interior alterations shall not exceed 50 percent of the replacement cost of a nonconforming structure.

    2. Alteration of more than 25 percent of the structural elements of a nonconforming structure shall be subject to discretionary review and approval by the City.

    3. Additions shall be permitted to structures that are legally nonconforming due to reasons other than for parking, open space, ***resource protection***, floor area, or building bulk. Additions of more than 25 percent of the gross floor area of a nonconforming structure shall be subject to discretionary review and approval by the City.

    4. No alternations or additions to a nonconforming structure shall increase the degree of the structure's nonconformity.

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

16. New Policy (Section 2.3.1). ***Protect special communities and neighborhoods which, because of their unique characteristics, are popular visitor destination points for recreational uses.***

17. New Policy (Section 2.3.1). ***Where feasible, reserve upland areas necessary to support coastal recreational uses for such uses.***

***18.*** New Policy (Section 2.3.1). ***Prohibit the following non-priority commercial uses on the ground floor of commercial properties within***

***the primary visitor-serving areas of McFadden Square (PSA 3) and Balboa Village (PSA 4), and along Marine Avenue (PSA 7):***

***1. Daycare***
***2. Residential Care***
***3. Building Materials and Services***
***4. Funeral and Internment Services***
***5. Laboratories***
***6. Health/Fitness Clubs***
***7. Research and Development***
***8. SRO Residential Hotels***
***9. Industry***
***10. Mining and Processing***
***11. Clubs and Lodges***
***12. Government Offices***
***13. Religious Assembly***
***14. Major Utilities***
***15. Animal Hospitals***
***16. Maintenance and Repair Services***
***17. Offices, Business and Professional (not serving visitors)***
***18. Vehicle Sales***
***19. Vehicle Storage***

19. 2.3.2-1. Continue to use public beaches for public recreational uses and prohibit ~~commercial~~ uses on beaches that interfere with public access and enjoyment of coastal resources.

***20.*** 2.4.1-5 ***Protect and*** ~~E~~***e***ncourage ~~and maintain~~ facilities that serve marine-related businesses and industries unless ~~the demand for such facilities no longer exists~~ ***present and foreseeable future demand for such facilities are already adequately provided for in the area. Encourage coastal-dependent industrial facilities to locate or expand within existing sites and allowed reasonable long-term growth.***

21. 2.5.2-1. ~~Continue to a~~***A***dminister the use of tidelands and submerged lands in a manner consistent with the tidelands trust and ***all applicable laws, including Chapter 70 of the Statutes of 1927,*** the Beacon Bay Bill (Chapter 74, Statu***t***es of 1978), SB 573 (Chapter 317, Statu***t***es of 1997), AB 3139 (Chapter 728, Statu***t***es of 1994), and Chapter 715, Statu***t***es of 1984 ***and the Coastal Act***.

22. 2.5.2-2. ~~Give full consideration to~~ ***Promote*** the public's right of access to the ocean, beach, and bay and to the provision of coastal dependent uses adjacent to the water in the leasing or re leasing of publicly owned land.

23. 2.5.2-3. ~~Give full consideration to~~ ***Evaluate and ensure*** the consistency of the proposed use with the public trust restrictions and the public interest at the time any tideland lease is re-negotiated or renewed.

24. New Policy (Section 2.6): ***Where feasible, locate new hazardous industrial development away from existing developed areas.***

25. New Policy (Section 2.6): ***Encourage coastal-dependent industrial facilities to locate or expand within existing sites and permit reasonable long-term growth where consistent with the Coastal Land Use Plan.***

26. 2.6-1 ***In the areas designated for industrial land uses, give priority to*** ~~C~~***c***oastal-dependent and coastal-related industrial uses ~~shall have priority~~ over other industrial uses on or near the shoreline.

*27.* 2.6-2. ~~Prohibit new onshore oil and gas development facilities, except as may be necessary in conjunction with the operation of the West Newport Oil Field, including the City of Newport Beach oil facilities.~~

28. 2.6-3. ~~Prohibit the construction of onshore oil processing, refining or transportation facilities, including facilities designed to transport oil produced from offshore tracts, with the exception of slant drilling from onshore oil fields.~~

***29.*** New Policy (Section 2.8.1): ***Require new development to assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.***

30. New Policy (Section 2.8.2): ***Require overnight visitor-serving facilities in susceptible areas to provide tsunami information and evacuation plans.***

***31.*** New Policy (Section 2.8.2): ***Periodically review and update tsunami preparation and response policies/practices to reflect current inundation maps and design standards.***

***32.*** 2.8.3-3. Develop and implement shoreline management plans for shoreline areas subject to wave hazards and erosion. Shoreline management plans should provide for the protection of ~~private property~~ ***existing development***, public improvements, coastal access, public opportunities for coastal recreation, and coastal resources. ***Plans must evaluate the feasibility of hazard avoidance, restoration of the sand supply, beach nourishment and planned retreat.***

33. 2.8.6-5. Permit revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls and other structures altering natural shoreline processes or retaining walls when required to serve coastal-dependent uses or to protect existing ***principal*** structures or public beaches in danger from erosion and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply***, unless a waiver of future shoreline protection was required by a previous coastal development permit***.

34. 2.8.6-7. Discourage shoreline protective devices on public land to protect private property/development. Site and design any such protective devices as far landward as possible. ***Such protective devices may be considered only after hazard avoidance, restoration of the sand supply, beach nourishment and planned retreat are exhausted as possible alternatives.***

35. 2.8.6-9. Require property owners to record a waiver of future shoreline protection for new development during the economic life of the structure (75 years) as a condition of approval of a coastal development permit for new development on a beach, ~~or~~ shoreline ***or bluff*** that is subject to wave action, erosion, flooding, landslides, or other hazards associated with development on a beach or bluff. Shoreline protection may be permitted to protect existing structures that were legally constructed prior to the certification of the LCP, unless a waiver of future shoreline protection was required by a previous coastal development permit.

36. 2.8.8-2. Site and design new development to avoid ***fire hazards and*** the need to extend fuel modification zones into sensitive habitats.

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

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

***39.*** 2.9.3-6. ~~Continue to r~~***R***equire new development to minimize curb cuts to protect on-street parking spaces. ***Close curb cuts to create public parking wherever feasible.***

***40.*** New Policy (Section 2.9): ***Require that all proposed development maintain and enhance public access to the coast by providing adequate***

***parking pursuant to the off-street parking regulations of the Zoning Code in effect as of [date of Commission action].***

***41.*** New Policy (Section 2.9): ***Periodically review and update off-street parking requirements to ensure that new development provides off-street parking sufficient to serve approved uses.***

**CHAPTER 3 (PUBLIC ACCESS AND RECREATION)**

42. 3.1.1-1. Protect, and where feasible, expand and enhance public access to and along the shoreline and to beaches, ***coastal waters, tidelands,*** coastal parks, and trails.

43. 3.1.1-11. Require ***a direct dedication or*** an Offer to Dedicate (OTD) an easement for lateral public access for all new shorefront development causing or contributing to adverse public access impacts. ***Such dedication or easement shall extend from the limits of public ownership (e.g. mean high tide line) landward to a fixed point seaward of the primary extent of development (e.g. intersection of sand with toe or top of revetment, vertical face of seawall, dripline of deck, or toe of bluff).***

44. 3.1.1-12. 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.***

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

46. New Policy (Section 3.1.1) ***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.***

47. New Policy (Section 3.1.1) ***Require new development on ocean-fronting, residentially zoned properties located between the Santa Ana River Jetties and the Newport Harbor West Jetty to conform to the setback***

***requirements of the Zoning Code in effect as of [date of Commission action] to prevent impacts to public access.***

48. New Policy (Section 3.1.1) ***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.***

***49.*** New Policy (Section 3.1.1) ***Encourage the acceptance, improvement and opening of OTDs to the public by the City, a public agency, a private association, or other appropriate entity.***

***50.*** New Policy (Section 3.1.1) ***Encourage the creation of new public vertical accessways where feasible, including Corona del Mar and other areas of limited public accessibility.***

51. Section 3.1.1 Add new symbol to Coastal Access Map to reflect potential public access points.

52. 3.1.3-9 (A) Maintain 33 street ends between 36th Street and Summit to provide an average of 2 parking spaces per street***, and additional spaces where feasible***.

53. New Policy (After 3.1.4-7) ***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.***

54. 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 ~~when there is substantial evidence that prescriptive rights exist~~.

55. 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 ~~when there is substantial evidence that prescriptive rights exist~~.

***56.*** 3.1.6-1. Prohibit the establishment of new preferential parking districts in the coastal zone except ~~in areas~~ where such restrictions would not have a direct impact to coastal access, including the ability to use public parking~~, or where no other practical or feasible alternative exists to protect the public health, safety or general welfare~~.

57. 3.1.6-5. Limit the number of preferential parking permits issued per household ***to reduce potential adverse impacts to public access.***

***58.*** New Policy (Section 3.2): ***Provide adequate park and recreational facilities to accommodate the needs of new residents when allowing new development.***

***59.*** New Policy (Section 3.3.1) ***Develop and implement a signage program to assist boat owners/operators and the public to locate public launching facilities.***

***60.*** New Policy (Section 3.3.2) ***Provide a variety of berthing opportunities reflecting State and regional demand for slip size and affordability throughout Newport Harbor.***

61. 3.3.3-5. Develop strategies to preserve uses that provide essential support for the vessels berthed or moored in the Harbor. ~~The strategies must be feasible, cost effective, and respect the property rights of waterfront owners and lessees. The strategies may include parking waivers, development transfers, density bonuses and voluntary purchase of conservation easements.~~

**CHAPTER 4 (COASTAL RESOURCE PROTECTION)**

62. Page 4-2 (First full paragraph) ~~The California Department of Fish and Game (CDFG) California Natural Diversity Database (CNDDB) identifies natural communities that are considered rare because of their highly limited distribution. These communities may or may not contain rare, threatened, or endangered species.~~ The following ~~CNDDB terrestrial natural communities~~ ***terrestrial (non-marine) natural communities*** are known to occur within the coastal zone in Newport Beach and the City's sphere of influence:

***63.*** Page 4-2 (Insert after bulleted list) ***The California Department of Fish and Game's (CDFG) "List of California Terrestrial Natural Communities Recognized by the California Natural Diversity Database" (CNDDB) provides an inventory of California's natural communities and identifies those that are considered rare because of their highly limited distribution. These rare communities may or may not contain individual species that are rare, threatened, or endangered.***

64. Pages 4-3 through 4-4 (narrative) In determining whether a habitat area meets the statutory definition of ESHA contained in Section 30107.5 of the Coastal Act, the following attributes need to taken into consideration:

- ~~The Identification of CDFG/CNDDB natural communities.~~ ***The presence of natural communities that have been identified as rare by the California Department of Fish and Game.***

- The recorded or potential presence of plant or animal species designated as rare, threatened, or endangered under State or Federal law.

- ***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.***

- The presence of coastal streams ~~or wetlands~~.

- The degree of habitat integrity~~/~~ ***and*** connectivity ***to other natural areas.***

~~While most of the above habitat characteristics can be documented from a variety of sources, habitat integrity/connectivity is a more subjective measure of biological value, which considers various attributes affecting a given habitat's quality in a particular geographic area. Attributes contributing to or detracting from habitat integrity include:~~

- ~~Patch size and connectivity. Large "pieces" of habitat adjacent to or contiguous with similar or related habitats are particularly useful for more mobile species that rely on larger territories for food and cover.~~

- ~~Presence of invasive/non-native species. Invasive/non-native species often provide poorer habitat for wildlife than native vegetation. Proliferation of exotic plant species alters ecosystem processes and threatens certain native species with extirpation.~~

- ~~Disturbance. This includes disturbance due to human activities such as access (trails), dumping, vegetation removal, development, pollution, etc.~~

- ~~Proximity to development. Habitat areas bordering development provide marginal habitat values to wildlife due to impacts from negative edge effects. This proximity presents the possibility of secondary effects to the habitat due to spillover or human intrusion. Deterioration of habitat results from intrusion of lighting, non-native invasive plant species, domestic animals, and human activity.~~

- ~~Fragmentation. The converse of "connectedness", habitat fragmentation is the result of development of large blocs of undisturbed, contiguous habitat. The resulting breaking up of these areas into isolated, disjunct parcels can create barriers to migration, reduce wildlife food and water resources and generally compress territory size to reduce existing wildlife populations to non-viability. Fragmentation increases negative edge effects, whereby the interior area of habitat is affected by the different conditions of the disturbance on its edges. The smaller a particular habitat is, the greater the proportion of its area which experiences the edge effect, and this can lead to dramatic changes in plant and animal communities. In general, loss of habitat produces a decline in species total population size, and fragmentation of habitat can isolate small subpopulations from each other.~~

~~If, based on site-specific analysis by a qualified biologist, a habitat area is degraded beyond the point of restoration or is isolated in a manner that it no longer has habitat value or a special nature or role in the ecosystem, the habitat area does not meet the statutory definition of ESHA contained in Section 30107.5 of the Coastal Act. Therefore, such habitat areas do not warrant the special land use and development restrictions of Section 30240 of the Coastal Act.~~

***Several of the natural communities that occur in Newport Beach are designated rare by the CDFG and are easily disturbed or degraded by human activity and therefore are presumed to meet the definition of ESHA under the Coastal Act. These include southern dune scrub, southern coastal bluff scrub, maritime succulent 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, and southern coastal purple needlegrass grassland.***

***Although not all riparian habitat types are rare throughout the state, in southern California over 90% of the original riparian habitats had been lost to development by 1989. All remaining native riparian habitats in southern California, including southern coast live oak riparian forest, meet the definition of ESHA both because of their rarity and because of their important roles in the ecosystem. For example, many species of birds nest and roost in riparian habitat but forage in adjacent coastal sage scrub and chaparral.***

***Another important habitat within the City of Newport Beach is coastal sage scrub (CSS). Although CSS has suffered enormous losses in California (estimates are as high as 85%), there are still thousands of***

***acres in existence and this community type is no longer listed as rare by CDFG. Nevertheless, where CSS occurs adjacent to coastal salt marsh or other wetlands, or where it is documented to support or known to have the potential to support rare species such as the coastal California gnatcatcher, it meets the definition of ESHA because of its especially valuable role in the ecosystem. CSS is important transitional or "edge" habitat adjacent to saltmarsh, providing important functions such as supporting pollinators for wetland plants and essential habitat for edge-dependent animals like several species of butterflies that nectar on upland plants but whose caterpillars require wetland vegetation. CSS also provides essential nesting and foraging habitat for the coastal California gnatcatcher, a rare species designated Threatened under the Federal Endangered Species Act.***

***Wetland habitats with the City of Newport Beach that may meet the definition of ESHA include coastal brackish marsh, coastal freshwater marsh, southern coastal salt marsh, southern hardpan vernal pools, freshwater seeps, and alkali meadows.***

***Areas within the City of Newport Beach that are dominated by one of the habitats discussed above are presumed to be ESHA, unless there are strong site-specific reasons to rebut that presumption. Factors that should be considered when making site-specific assessments include:***

- ***Patch size and connectivity. Very small patches of habitat that are effectively isolated from other natural areas may lose many of their natural ecological functions. Functional patch size is dependent upon both the ecological needs of the species of importance supported by the habitat and the spatial scale of the habitat. For example, what is isolated for a small mammal may not be for a bird and what is small for a coyote may not be for some insects.***

- ***Dominance by invasive, non-native species. Non-native species often provide poorer habitat for wildlife than native vegetation and proliferation of exotic plant species alters ecosystem processes and may threaten certain native species with extirpation. However, there are probably no habitats in southern California that have not been invaded by exotic species, and the remaining stands of native grassland are almost always dominated by non-native annual species. Only where exotic species are so overwhelmingly dominant that the native community can no longer perform its functions in the ecosystem***

***should the presence of exotic species rebut the presumption of ESHA.***

- ***Disturbance and proximity to development. Disturbance is the negative effect of human activities such as dumping, vegetation removal, development, pollution, etc. Habitat areas bordering development may be subject to impacts from negative edge effects, such as lighting, non-native invasive plant species, domestic animals, and human activity. The negative effects of disturbance are strongest immediately adjacent to development and decline with distance from the edge. However, where very small patches of habitat are effectively surrounded by development, these impacts may be severe. In general, disturbance by itself is not enough to rebut the finding of ESHA. Disturbance that is clearly reversible (e.g., presence of trash or illegal dumping) is not determinative.***

- ***Fragmentation and isolation. Where there are large areas of more-or-less continuous development, native communities may be reduced to small islands of habitat that are distant from other natural habitats. This fragmentation and isolation can create barriers to migration, reduce wildlife food and water resources and generally compress territory size to reduce existing wildlife populations to non-viability. The smaller a particular habitat patch is, the greater the proportion of its area that experiences negative edge effects.***

***Where the habitats discussed above occur in the City of Newport Beach the presumption is that they are ESHA and the burden of proof is on the property owner or project proponent to demonstrate that that presumption is rebutted by site-specific evidence. However, if quantitative data gathered by a qualified biologist demonstrates that a habitat area is degraded beyond the point of restoration, or that it is not rare and is so small and isolated that it no longer has habitat value or a special nature or role in the ecosystem, the habitat area does not meet the statutory definition of ESHA contained in Section 30107.5 of the Coastal Act. Therefore, such habitat areas do not warrant the special land use and development restrictions established for ESHA in this Coastal Land Use Plan.***

65. New Policy (Section 4.1.1): ***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.***

66. 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 Identification of CDFG/CNDDB natural communities~~. ***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.***

~~C.~~ ***D.*** The presence of coastal streams ~~and wetlands~~.

~~D.~~ ***F.*** 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*** ~~the presence of~~ 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.

67. 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 [Suggested Mod 1] shall represent a preliminary mapping of areas containing potential ESHA.***

68. 4.1.1-3. ~~Design and site new development, including landscaping, to~~ ***P***~~p~~rotect ESHAs against any significant disruption of habitat values.

69. 4.1.1-5. Limit uses within ESHAs 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 the application of ESHA policies 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~~.

***70.*** 4.1.1-6 ***Limited*** ~~P~~***p***ublic access improvements and ***minor*** educational, interpretative and research ~~facilities are~~ ***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.***

***71.*** New Policy (Section 4.1.1) ***Prohibit new development that would necessitate fuel modification in ESHA.***

72. New Policy (After 4.1.1-7) ***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.***

73. 4.1.1-8. ~~Maintain a~~ ***Require*** buffer~~s~~ ***areas*** of sufficient size to ensure ~~the protection of ESHAs~~ ***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.***

74. New Policy (Section 4.1.1) ***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.***

75. New Policy (Section 4.1.1) ***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.***

76. New Policy (Section 4.1.1) ***For allowable impacts to ESHA and other sensitive resources, require monitoring of mitigation measures for a period of sufficient time to determine is 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.***

77. Section 4.1.3 (Narrative on page 4-11):

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

The following areas are designated as environmental study areas:

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

10. Morning Canyon
11. Newport Beach Marine Conservation Area
12. Castaways
13. Kelp Beds in Newport Harbor Entrance Channel

Most of these study areas are protected as parks, conservation areas, nature preserves, and other open space areas. Nevertheless, the natural habitats in each of these study areas are subjected to various potential impacts from the surrounding urban environment. Potential adverse impacts and mitigation measures to reduce those impacts ***are*** identified in the narratives below and summarized in Table 4.1-1 (Environmental Study Area Environmental Impacts and Mitigation Measures).

***Portions of the environmental study areas listed above are known to contain habitat that constitutes Environmentally Sensitive Habitat Area (ESHA). As such, they will be subject to more stringent development controls and resource protection measures. Within these study areas, those natural communities/habitats identified in Section 4.1.1 are presumed to be ESHA, unless there is compelling site-specific evidence to the contrary. As is evident from the descriptions provided below, large portions of these environmental study areas support one or more community types that meet the definition of ESHA.***

78. 4.1.3-1 Utilize the following mitigation measures to reduce the potential for adverse impacts to ESA natural habitats from ~~the potential impacts~~ ***sources including, but not limited to, those*** identified in Table 4.1.1:…

79. Modify Table 4.1.1 to include "POLICY 4.1.3-1 (N)" within the column labeled "Mitigations to Reduce the Potential Impacts of Identified Threats" for each ESA.

80. 4.1.3-1 (A) Require removal of unauthorized bulkheads, docks and patios or other structures that ~~impinge upon~~ ***impact*** wetlands ***or other sensitive habitat areas***.

81. 4.1.3-1 (B) Where pedestrian access is permitted, ~~control public access~~ ***avoid adverse impacts*** to sensitive areas ***from pedestrian traffic*** through the use of well-defined footpaths, boardwalks, protective fencing, signage, and similar methods.

82. 4.1.3-1 (E) Limit encroachments into wetlands to development that is consistent with ~~the~~ Section 30233 of the Coastal Act ***and Policy 4.2.3-1 of the Coastal Land Use Plan*** ~~(see Section 4.2 – Wetlands and Deepwater Areas) and mitigate any wetlands losses~~.

***83.*** 4.1.3-1 (N) ~~Monitor for~~ ***Prohibit*** invasive species ***and require removal in new development***~~; remove if necessary~~.

84. 4.1.3-2 Prepare natural habitat protection overlays for Buck Gully ESA ***and*** Morning Canyon ESA for the purpose of providing standards to ensure both the protection ***and restoration*** of the natural habitats in these areas ~~and of private property rights~~. Include in the overlays standards for the placement of structures, native vegetation/fuel modification buffers, and erosion and sedimentation control structures.

85. 4.1.3-10. ~~Resource protection policies are not intended to prevent public agencies and private property owners from maintaining drainage courses and facilities, sedimentation basins, trails, access roads, public infrastructure, and other related facilities in a safe and effective condition with minimal impact on the environment, nor are they intended to prohibit public infrastructure when the environmental process demonstrates that adverse impacts can be mitigated, or that the benefits outweigh the adverse impacts. However, any such infrastructure installed in an ESHA or wetland must be in conformance with the uses designated in Section 30240 and Section 30233 of the Coastal Act, respectively.~~ ***Routine maintenance of drainage courses and facilities, sedimentation basins, trails, access roads, public infrastructure, and other related facilities may be allowed if carried out in accordance with the resource protection policies of the Coastal Land Use Plan.***

86. 4.1.4-5 ***Where applicable*** ~~Continue to~~ require ***eelgrass and*** Caulerpa ***taxifolia*** ~~protocol~~ surveys ***to be conducted*** as a condition of City approval for projects in Newport Bay ***in accordance with operative protocols of the Southern California Eelgrass Mitigation Policy and Caulerpa taxifolia Survey Protocols*** ~~and immediately notify the SCCAT when found~~.

***87.*** New Policy (Section 4.2.1): ***Channelizations, dams, or other substantial alterations of rivers and streams shall incorporate the best mitigation measures feasible, and be limited to (1) necessary water supply projects, (2) flood control projects where no other method for protecting existing structures in the floodplain is feasible and where such protection is necessary for public safety or to protect existing development, or (3) developments where the primary function is the improvement of fish and wildlife habitat.***

88. Section 4.2.2 (Narrative on page 4-43):

~~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. In situations where ambiguities in wetland characteristics exist, the judgment of a qualified biologist may be required to determine whether an area meets the definition of a wetland. The presence or absence of more than one parameter may be considered along with other factors, such as recent precipitation patterns, topography, drainage patterns, and adjacency to identified wetlands.~~

89. 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~~, nor vernally wet areas where the soils are not hydric~~.

90. 4.2.2-2. ~~Where ambiguities in wetland characteristics exist, the presence or absence of more than one wetland parameter may be considered along with other factors, including recent precipitation patterns, topography, drainage patterns, and adjacency to identified wetlands, to determine whether an area meets the definition of a wetland and to delineate wetland boundaries.~~

***91.*** 4.2.2-4. 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.***

92. 4.2.3-1 (B) Construction or expansion of coastal-dependent industrial facilities, including commercial fishing facilities, ~~haul-out boat yards,~~ and commercial ferry facilities.

93. 4.2.3-1 (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, ~~haul-out boat yards,~~ and pleasure ferries, and the placement of structural pilings for

public recreational piers that provide public access and recreational opportunities.

94. 4.2.3-5 (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***.

95. 4.2.3-8. ~~Issue~~ ***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.

96. 4.2.3-9. Require the following minimum mitigation measures if a project involves diking or filling of a wetland:

A. If an appropriate ~~restoration~~ ***mitigation*** site is available, the applicant shall submit a detailed ~~restoration~~ 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*** ~~purchase and restoration of an equivalent area~~ of equal or greater biological productivity ***to the wetland that was filled or dredged;*** and ***(4)*** dedication of the ***restored or created*** ~~land~~ ***wetland and buffer*** to a public agency***,*** or ~~otherwise~~ permanent~~ly~~ restrict~~s~~***ion of*** ~~its~~ ***their*** use ~~for~~ ***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 own***s,*** ~~ed~~ ***or can acquire,*** filled~~,~~ ***or*** diked areas which themselves ~~were~~ ***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.

97. New Policy (after 4.2.3-10) ***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.***

98. 4.2.3-11, First sentence. Require that any project that includes diking, filling or dredging of a wetland or estuary***, as permitted pursuant to Policy 4.2.3-1,*** ~~must~~ maintain the functional capacity of the wetland or estuary.

99. 4.2.3-12 ~~Require that new development on the waterfront to design and site docking facilities in relationship to the usable water area~~. ***Require new development on the waterfront to design and site docking facilities in relationship to the water's depth and accessibility.***

***100.*** New Policy (Section 4.2.3) ***Require dredging and dredged material disposal to be planned and carried out to avoid significant disruption to marine and wildlife habitats and water circulation.***

101. Narrative (Section 4.2.4): ***Erosion control and flood control facilities constructed on water courses can impede the movement of sediment and nutrients which would otherwise be carried by storm runoff into coastal waters. To facilitate the continued delivery of these sediments to the littoral zone, whenever feasible, the material removed from these facilities may be placed at appropriate points on the shoreline where feasible mitigation measures have been provided to minimize adverse environmental effects. Aspects that shall be considered before issuing a coastal development permit for such purposes are the method of placement, time of year of placement, and sensitivity of the placement area.***

***102.*** New Policy (Section 4.2.4) ***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.***

103. New Policy (Section 4.2.4): ***Material removed from erosion control and flood control facilities suitable for beach replenishment should be transported for such purposes to appropriate beaches or into suitable long shore current systems.***

***104.*** Section 4.2.5, Narrative, page 4-55, First full paragraph:
***The City is developing a conceptual eelgrass mitigation program that will address the establishment of eelgrass acreage baselines for Newport Harbor.*** ~~An eelgrass acreage baseline for Newport Harbor is needed.~~ The baseline would be the minimum acreage, based on the distribution, density, and productivity, necessary for eelgrass meadows to fulfill their ecological function. Once the baseline is determined, projects may be granted exemptions to the Southern California Eelgrass Mitigation Policy mitigation requirements, provided the eelgrass acreage baseline is maintained. The National Marine Fisheries Service, as the lead agency, would need to incorporate such a provision into Southern California

Eelgrass Mitigation Policy and the U.S. Army Corps of Engineers, the Coastal Commission, and the Santa Ana Regional Water Quality Control Board to incorporate the provision into the City's Regional General Permit and into any individual property owner's dredging or dock construction permit that qualifies under future applications. The establishment of a baseline for eelgrass meadows will serve to protect their important ecological function while allowing the periodic dredging that is essential to protect the Newport Harbor's value as a commercial and recreational resource. ***The eelgrass mitigation program is conceptual in nature and will need further review and agency approval.***

105. 4.2.5-2 ~~When eelgrass planted in a mitigation area migrates into adjacent areas that did not previously contain eelgrass, further mitigation for dredging those adjacent areas shall not be required.~~

106. 4.2.5-4. ~~Allow successful eelgrass restoration sites to serve as mitigation sites for City projects and as a mitigation bank from which eelgrass mitigation credits will be issued to private property owners for eelgrass removal resulting from dock and channel dredging projects~~.

***107.*** New Policy (Section 4.3): ***Protection against the spillage of crude oil, gas, petroleum products, or hazardous substances shall be provided in relation to any development or transportation of such materials. Effective containment and cleanup facilities and procedures shall be provided for accidental spills that do occur.***

108. 4.3.1-3. Establish and protect a long-term funding source for the regular dredging of Upper Newport Bay ~~(including the Robinson-Skinner Annuity)~~ and dredging of the Lower Newport Bay so that the City and its watershed partners achieve the goals and directives of the Sediment and Nutrient TMDLs adopted for Newport Bay.

109. 4.3.1-5. Require development on steep slopes or steep slopes with erosive soils to implement structural best management practices (BMPs) to prevent or minimize erosion ***consistent with any load allocation of the TDMLs adopted for Newport Bay.***

110. 4.3.2-4. Continue to update and enforce the Newport Beach Water Quality Ordinance ***consistent with the MS4 Permit***.

111. 4.3.2-14. Whenever possible, divert runoff through planted areas or sumps that recharge the groundwater dry wells and use the natural filtration properties of the earth to prevent the transport of harmful materials directly into ~~recreational~~ ***receiving*** waters.

112. 4.3.2-23. Require new development applications to include a Water Quality Management Plan (WQMP). The WQMP's purpose is to minimize to the maximum extent practicable dry weather runoff, ~~and~~ runoff from small storms (less than 3/4" of rain falling over a 24-hour period) ***and the concentration of pollutants in such runoff*** during construction and post-construction from the property.

113. 4.3.3-1. ~~Continue to~~ ***Develop and*** implement ~~the Sewer System Management Plan and the Sewer Master Plan~~ ***sewer system management plans to replace or reline older wastewater lines and upgrade pump stations***.

***114.*** New Policy (Section 4.4.1): ***Design and site new development to minimize alterations to significant natural landforms, including bluffs, cliffs and canyons.***

115. 4.4.2-1. Maintain the 35-foot height limitation in the Shoreline Height Limitation Zone***, as graphically depicted in Map [Suggested Mod 116].***

116. New Map: Add a graphic depicting the Shoreline Height Limitation Zone.

117. New Policy (Section 4.4.2): ***Implement the regulation of the building envelope to preserve public views through the height, setback, floor area, lot coverage, and building bulk regulation of the Zoning Code in effect as of [date of Commission action] that limit the building profile and maximize public view opportunities.***

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

119. Section 4.4.3 Narrative (pages 4-69 through 4-70)

**~~4.4.3 Coastal Bluffs~~** ***Natural Landform Protection***

***Newport Beach coastal zone contains a number of distinctive topographic features. The central and northwestern portions of the City are situated on a broad mesa that extends southeastward to join the San Joaquin Hills, commonly known as Newport Mesa. This upland has been deeply dissected by stream erosion, resulting in moderate to steep bluffs along the Upper Newport Bay estuary, one of the most striking and biologically diverse natural features in***

***Orange County. The nearly flat-topped mesa rises from about 50 to 75 feet above mean sea level at the northern end of the estuary in the Santa Ana Heights area, to about 100 feet above sea level in the Newport Heights, Westcliff, and Eastbluff areas.***

***Along the southwestern margin of the City, sediments flowing from the Santa Ana River and San Diego Creek, the two major drainage courses that transect the mesa, have formed the beaches, sandbars, and mudflats of Newport Bay and West Newport. These lowland areas were significantly modified during the last century in order to deepen channels for navigation and form habitable islands. Balboa Peninsula, a barrier beach that protects the bay, was once the site of extensive low sand dunes.***

***In the southern part of the City, the San Joaquin Hills rise abruptly from the sea, separated from the present shoreline by a relatively flat, narrow shelf. Originally formed by wave abrasion, this platform (also called a terrace) is now elevated well above the water and is bounded by steep bluffs along the shoreline. The coastal platform occupied by Corona Del Mar ranges from about 95 to 100 feet above sea level.***

***The bluffs, cliffs, hillsides, canyons, and other significant natural landforms are an important part of the scenic and visual qualities of the coastal zone and are to be protected as a resource of public importance.***

***Coastal Bluffs***

***Coastal bluffs are formed by a rapid uplift of the shore relative to sea level. Coastal bluffs are dynamic, evolving landforms. Coastal bluffs can be impacted by processes at both the bottom and top of the cliffs. Pounding by waves during high tide and storm surges can undercut the base and lead to eventual collapse of the bluff. Bluffs are also shaped by wind, surface runoff, and ground water erosion (see Sections 2.8.3, 2.8.5, and 2.8.6).***

Coastal bluffs are a prominent landform in Newport Beach. There are ocean facing coastal bluffs along the shoreline of Corona del Mar, Shorecliffs, and Cameo Shores. There are also coastal bluffs facing the wetlands of Upper Newport Bay, Semeniuk Slough, and the degraded wetlands of the Banning Ranch property. Finally, there are coastal bluffs surrounding Lower Newport Bay. These can be seen along Coast Highway from the Semeniuk Slough to Dover Drive and in Corona del Mar above the Harbor Entrance. These bluffs faced the open ocean before the

Balboa Peninsula formed and are now generally separated from the shoreline. Coastal bluffs are considered significant scenic and environmental resources and are to be protected.

Most of the coastal bluff top lands have been subdivided and developed over the years. However, many have been preserved as parkland and other open space. Also, most of the faces of the coastal bluff surrounding the Upper Newport Bay have been protected by dedication to the Upper Newport Bay Nature Preserve or dedicated as open space as part of ***the Castaways, Eastbluff, Park Newport, Newporter North (Harbor Cove), and Bayview Landing*** planned residential developments. In other areas, including ~~Newport Heights, Cliff Haven, Irvine Terrace,~~ ***Dover Shores,*** Corona del Mar, Shorecliffs, and Cameo Shores, the coastal bluffs fall within conventional residential subdivisions. Development on these lots occurs mainly on a lot-by-lot basis. As a result, some coastal bluffs remain pristine and others are physically or visually obliterated by structures, landform alteration or landscaping.

~~Policies regarding coastal bluffs need to make a distinction between areas where the coastal bluff is essentially unaltered and those in developed areas where the coastal bluff has been altered.~~ ***Development restrictions, including setbacks, must be established to ensure geologic stability while addressing current patterns of development. Where the bluff is subject to marine erosion, development on bluff top lots must be set back at least 25 feet from the bluff edge. On bluff top lots where the bluff is not subject to marine erosion, the setback from the bluff edge should be based on the predominant line of existing development along the bluff edge in each neighborhood. These bluff edge setbacks may be increased to maintain sufficient distance to ensure stability, ensure that it will not be endangered by erosion, and to avoid the need for protective devices during the economic life of the structure (75 years).***

~~In areas with unaltered coastal bluffs,~~ ~~d~~***D***evelopment on the bluff face ~~should be~~ ***is generally*** prohibited, with exceptions for certain public improvements ***or private improvements determined to be consistent with the predominant line of development.***, ~~and development of bluff top should be controlled. In areas where the coastal bluff has been altered, development on the bluff face and bluff top should be controlled to minimize further alteration.~~

***Corona del Mar is one of the few areas in the coastal zone where there is extensive development of the bluff face; specifically, residential development on Avocado Avenue, Pacific Drive, Carnation Avenue, and Ocean Boulevard. The initial subdivision and***

***development of these areas occurred prior to the adoption of policies and regulations intended to protect coastal bluffs and other landforms. Development in these areas is allowed to continue on the bluff face to be consistent with the existing development pattern and to protect coastal views from the bluff top. However, development on the bluff face is controlled to minimize further alteration.***

The bluffs along Bayside Drive were at one time exposed to the Lower Newport Bay. However, these bluffs separated from the shoreline when abutting tidelands were filled and reclaimed in the 1920s and later developed into the communities of Promontory Bay, Beacon Bay, and Bayside. Later development of Irvine Terrace and Promontory Point cut and filled these bluffs~~. to an extent that they can be best identified as manufactured slopes rather than natural slopes. Given that the bluffs along Bayside Drive have faces that are not the result of erosion, faulting, or folding and are no longer subject to marine erosion, they did not meet the definition of coastal bluffs and are not subject to the policies of this section.~~ ***Development in these areas is subject to setbacks established for bluffs not subject to marine erosion.***

***Coastal Canyons***

***There are three significant canyons in the coastal zone, Big Canyon, Buck Gully, and Morning Canyon. The steep slopes and vegetation of these canyons are distinctive features on the shoreline of the ocean and bay. Big Canyon is protected as a nature park. However, Buck Gully and Morning Canyon are under private ownership and there is extensive residential development on the slopes of both canyons. Therefore, any effort to protect and enhance the visual quality of these canyons will require the cooperation of the property owners.***

***Other Landforms***

***Some of the edges of Newport Mesa and the San Joaquin Hills are located a considerable distance from the shoreline, but are still highly visible from public view points, roadways, or the water. These areas have moderate to steep slopes, accentuated in places by gullies, ravines, and rock outcroppings. In order to protect the overall visual quality of the coastal zone, new development in these areas need to be sited and designed to minimize the alteration of natural land forms and to be visually compatible with the character of surrounding areas.***

120. 4.4.3-1. ~~In areas where the coastal bluff remains essentially unaltered, r~~***R***equire new ~~development~~ ***planned communities*** to dedicate or preserve as open space the ***coastal*** bluff face and an area inland from the edge of the ***coastal*** bluff adequate to provide safe public access and to avoid or minimize visual impacts.

121. 4.4.3-2. ~~In areas where the coastal bluff remains essentially unaltered, ~~***R***~~r~~equire all new development located on a bluff top to be set back from the bluff edge a sufficient distance to ensure ***stability, ensure*** that it will not be endangered by erosion***,*** and to avoid the need for protective devices during the economic life of the structure (75 years). ***Such setbacks must take into consideration expected long-term bluff retreat over the next 75 years, as well as slope stability. To assure stability, the development must maintain a minimum factor of safety of 1.5 against landsliding for the economic life of the structure.***

122. 4.4.3-3. ~~In areas where the coastal bluff remains essentially unaltered, ~~***P***~~p~~rohibit development on bluff faces, except ***private development on coastal bluff faces along Ocean Boulevard, Carnation Avenue and Pacific Drive in Corona del Mar determined to be consistent with the predominant line of existing development or*** public improvements providing public access, protecting coastal resources, or providing for public safety. Permit such improvements only when no feasible alternative exists and when designed and constructed to minimize alteration of the bluff face, to not contribute to further erosion of the bluff face, and to be visually compatible with the surrounding area to the maximum extent feasible.

123. 4.4.3-4 ~~In areas where the coastal bluff has been altered, establish setback lines for principal and accessory structures based on the predominant line of existing development along the bluff in each block. Apply the setback line downward from the edge of the bluff and/or upward from the toe of the bluff to restrict new development from extending beyond the predominant line of existing development.~~

124. 4.4.3-5. ~~In areas where the coastal bluff has been altered, design and site development to minimize alteration of those portions of coastal bluffs with slopes in excess of 20 percent (5:1 slope). Prohibit development on those portions of coastal bluffs with unaltered natural slopes in excess of 40 percent (2.5:1 slope), unless the application of this policy would preclude any reasonable economic use of the property.~~

125. 4.4.3-6. ***The c***~~C~~oastal bluffs ~~do not include bluffs~~ along Bayside Drive that have been cut and filled by the Irvine Terrace and Promontory Point development ~~and~~ are no longer subject to marine erosion. ***New development on these bluffs is subject to the setback restrictions***

***established for blufftop development located on a bluff not subject to marine erosion.***

126. 4.4.3-8. Employ site design and construction techniques to minimize alteration of coastal bluffs ***to the maximum extent feasible***, such as:

A. Siting new development on the flattest area of the site, except when an alternative location is more protective of coastal resources.

B. Utilizing existing driveways and building pads to the maximum extent feasible.

C. Clustering building sites.

D. Shared use of driveways.

E. Designing buildings to conform to the natural contours of the site, and arranging driveways and patio areas to be compatible with the slopes and building design.

F. Utilizing special foundations, such as stepped, split level, or cantilever designs.

G. Detaching parts of the development, such as a garage from a dwelling unit.

H. Requiring any altered slopes to blend into the natural contours of the site.

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

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

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

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

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

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

***133.*** New Policy (Section 4.4.3): ***Require swimming pools located on bluff properties to incorporate leak prevention and detection measures.***

***134. New Policy (Section 4.4.3) Establish canyon development setbacks based on the predominant line of existing development for Buck Gully and Morning Canyon. Do not permit development to extend beyond the predominant line of existing development by establishing a development stringline where a line is drawn between nearest adjacent corners of existing structures on either side of the subject property. Establish development stringlines for principle structures and accessory improvements.***

***135.*** Add note at end of Section 4.4.3: ***Note: See Sections 2.8.6 and 2.8.7 for technical submittal requirements on beach, bluff and canyon properties.***

136. 4.4.4-5. ~~Continue to strictly limit~~ ***Prohibit new*** billboards and ***roof top signs and regulate the bulk and height of*** other ~~off-site~~ ***freestanding*** signs ***that affect public coastal views. Heritage signs are not subject to this restriction.***

***137.*** 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 found to be significant require the site(s) to be preserved for a reasonable period of time to allow a recovery plan to be completed to assure the protection of the paleontological/archeological 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.***

138. 4.5.1-4. ***Where in situ preservation and avoidance are not feasible,*** ~~R~~***r***equire 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.

***139.*** New Policy (Section 4.5.1): ***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.***

140. Insert new section 4.6 (Environmental Review)

***4.6 Environmental Review***

***The protection of coastal resources and protection from coastal hazards requires that applications for new development undergo appropriate environmental review. In most cases, the City conducts this review through implementation of the California Environmental Quality Act.***

***The California Environmental Quality Act (CEQA) requires the state to review the environmental impacts of projects that require state or local government approval. CEQA requires appropriate mitigation of projects that contain significant environmental impacts. Specifically, CEQA states that agencies must identify potential environmental impacts, alter projects to avoid such impacts where feasible, seek alternatives that will minimize unavoidable impacts, and require mitigation for any unavoidable impacts that are necessary. CEQA mandates that the responsible agencies consider a reasonable range of project alternatives that offer substantial environmental advantages over the project proposal. CEQA adds that the agency responsible for the project's approval must deny approval if there would be "significant adverse effects" when feasible alternatives or feasible mitigation measures could substantially lessen such effects.***

***To ensure consistency with the resource protection policies of the Coastal Land Use Plan, applications for new development subject to coastal development permit requirements will be reviewed by qualified City staff, contracted employee/consultant and/or advisory committee in accordance with the CEQA requirements, as well as those contained in the Local Coastal Program.***

***Policies:***

***4.6-1. Review all new development subject to California Environmental Quality Act (CEQA) and coastal development permit requirements in accordance with the principles, objectives, and criteria contained in CEQA, the State CEQA Guidelines, the Local Coastal Program, and any environmental review guidelines adopted by the City.***

***4.6-2. Integrate CEQA procedures into the review procedures for new development within the coastal zone.***

***4.6-3. Require a qualified City staff member, advisory committee designated by the City, or consultant approved by and under the supervision of the City, to review all environmental review***

***documents submitted as part of an application for new development and provide recommendations to the appropriate decision-making official or body.***

***4.6-4. Require the City staff member(s) and/or contracted employee(s) responsible for reviewing site specific surveys and analyses to have technical expertise in biological resources, as appropriate for the resource issues of concern (e.g. marine/coastal, wetland/riparian protection and restoration, upland habitats and connectivity) and be knowledgeable about the City of Newport Beach.***

***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.***

***4.6-6. 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 include the following in any recommendations of approval: an identification of the preferred project alternative, required modifications, or mitigation measures necessary to ensure conformance with the Coastal Land Use Plan. The decision making body (Planning Director, Planning Commission, or City Council) shall make findings relative to the project's conformance to the recommendations of the City staff member(s) and/or contracted employee(s).***

***4.6-7. Require City staff member(s) and/or contracted employee(s) to make a recommendation to the decision making body as to whether an area constitutes an ESHA, and if recommended as an ESHA, then establish the boundaries thereof and appropriate buffers.***

***4.6-8. Coordinate with the California Department of Fish and Game, U.S. Fish and Wildlife Service, National Marine Fisheries Service, and other resource management agencies, as applicable, in the review of development applications in order to ensure that impacts to ESHA and marine resources, including rare, threatened, or endangered species, are avoided or minimized such that ESHA is not significantly degraded, habitat values are not significantly disrupted,***

***and the biological productivity and quality of coastal waters is preserved.***

***4.6-9. Require applications for new development, where applicable, to include a geologic/soils/geotechnical study that identifies any geologic hazards affecting the proposed project site, any necessary mitigation measures, and contains statements that the project site is suitable for the proposed development and that the development will be safe from geologic hazard for its economic life. For development on coastal bluffs, including bluffs facing Upper Newport Bay, such reports shall include slope stability analyses and estimates of the long-term average bluff retreat rate over the expected life of the development. Reports are to be signed by an appropriately licensed professional and subject to review and approval by qualified city staff member(s) and/or contracted employee(s).***

**CHAPTER 5 (GLOSSARY)**

***141.*** New Definition: ***Appealable Development: After certification of the Newport Beach Local Coastal Program, an action taken by the City of Newport Beach on a coastal development permit application may be appealed to the Coastal Commission for only the following types of developments:***

***(1) Developments approved by the City between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance.***

***(2) Developments approved by the City not included within paragraph (1) that are located on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, within 300 feet of the top of the seaward face of any coastal bluff.***

***(3) Developments approved by the City not included within paragraph (1) or (2) that are located in a sensitive coastal resource area.***

***(4) Any development approved by a coastal county that is not designated as the principal permitted use under the zoning ordinance or zoning district map approved pursuant to Chapter 6 (commencing with Section 30500 of the Coastal Act).***

***(5) Any development which constitutes a major public works project or a major energy facility.***

***142.*** Bluff: ~~A scarp or steep face of rock, decomposed rock, sediment or soil resulting from erosion, faulting, or folding of the land mass with 10 feet or more in vertical extent~~. ***A high bank or bold headland with a broad, precipitous, sometimes rounded cliff face overlooking a plain or body of water. A bluff may consist of a steep cliff face below and a more sloping upper bluff above.***

143. Bluff, Coastal: A bluff overlooking a beach or shoreline or that is subject to marine erosion. ***Many coastal bluffs consist of a gently sloping upper bluff and a steeper lower bluff or sea cliff. The term "coastal bluff" refers to the entire slope between a marine terrace or upland area and the sea. The term "sea cliff" refers to the lower, near vertical portion of a coastal bluff.*** For purposes of establishing jurisdictional and permit boundaries ***coastal bluffs include***, (1) those bluffs, the toe of which is now or was historically (generally within the last 200 years) subject to marine erosion; and (2) those bluffs, the toe of which is not now or was not historically subject to marine erosion, but the toe of which lies within an area otherwise identified as an Appealable Area.

144. Bluff Edge: The upper termination of a bluff, cliff, or seacliff: In cases where the top edge of the ~~cliff~~ ***bluff*** is rounded away from the face of the ~~cliff~~ ***bluff*** as a result of erosional processes related to the presence of the steep ~~cliff~~ ***bluff face***, the bluff line or edge shall be defined as that point nearest the ~~cliff~~ ***bluff*** beyond which the downward gradient of the surface increases more or less continuously until it reaches the general gradient of the ~~cliff~~ ***bluff.*** In a case where there is a steplike feature at the top of the ~~cliff~~ ***bluff*** face, the landward edge of the topmost riser shall be taken to be the ~~cliff~~ ***bluff*** edge. ***Bluff edges typically retreat landward due to coastal erosion, landslides, development of gullies, or by grading (cut). In areas where the bluff top or bluff face has been cut or notched by grading, the bluff edge shall be the landwardmost position of either the current of historic bluff edge. In areas where fill has been placed near or over the historic bluff edge, the original natural bluff edge, even if buried beneath fill, shall be taken to be the bluff edge.***

***145.*** BMPs: Best Management Practices. ***Schedules of activities, prohibitions of practices, operation and maintenance procedures, and other management practices to prevent or reduce the conveyance of pollution in stormwater and urban runoff, as well as, treatment requirements and structural treatment devices designed to do the same.***

***146.*** New Definition: ***Buffer: A buffer is a development setback that provides essential open space between development and protected habitat. Buffers keep disturbance at a distance, accommodate errors in***

***the estimation of habitat boundaries, and provide important auxiliary habitat that may be used, for example, for foraging, maintenance of pollinators, or refuge from high tides. Buffers should be measured from the delineated boundary of an ESHA or wetland or, for streams, from the top of bank or the landward edge of riparian vegetation, which ever provides the larger buffer.***

***147.*** New Definition: ***Canyon Edge: The upper termination of a canyon: In cases where the top edge of the canyon is rounded away from the face of the canyon as a result of erosional processes related to the presence of the canyon face, the canyon edge shall be defined as that point nearest the canyon beyond which the downward gradient of the surface increases more or less continuously until it reaches the general gradient of the canyon. In a case where there is a steplike feature at the top of the canyon face, the landward edge of the topmost riser shall be taken to be the canyon edge.***

***148.*** New Definition: ***Cliff: A high, very steep to perpendicular or overhanging face of rock.***

149. New Definition: ***Demolition: The deliberate removal or destruction of the frame or foundation of any portion of a building or structure for the purpose of preparing the site for new construction or other use.***

150. Ephemeral: Short lived (~~i.e.~~, ***e.g.,*** an ephemeral stream ***only flows immediately after rainfall***).

151. ESA: Environmental study area. ***Relatively large, undeveloped areas containing natural habitats and may be capable of supporting sensitive biological resources.***

152. ~~ESHA Buffer: Open space that horizontally separates and protects environmentally sensitive habitat areas from development areas. Buffer areas should be contiguous with the sensitive habitat but are not in themselves a part of the environmentally sensitive habitat area to be protected.~~

***153.*** Exclusion Area: That portion of the coastal zone within an exclusion area boundary adopted pursuant to the Coastal Act and approved by the Coastal Commission ***after the effective date of the delegation of development review authority*** and depicted on the ***certified*** Permit and Appeal Jurisdiction Map. ***Development within this area is excluded from coastal development permit requirements if certain criteria identified in the adopted exclusion are met.***

***154.*** New Definition: ***First Public Road Paralleling the Sea -- shall mean that road nearest the sea, as defined in this Section, and which meets all of the following criteria:***

***1. The road is lawfully open and suitable for uninterrupted use by the public;***

***2. The road is maintained by a public agency;***

***3. The road contains an improved all-weather surface open to motor vehicle traffic in at least one direction;***

***4. The road is not subject to any restrictions on use by the public except during an emergency or for military purposes; and***

***5. The road connects with other public roads providing a continuous access system and generally parallels and follows the shoreline of the sea so as to include all portions of the sea where the physical features such as bays, lagoons, estuaries and wetlands cause the waters of the sea to extend landward of the generally continuous coastline.***

***155.*** Groin: ~~A structure that extends from a beach or bulkhead perpendicularly to the shoreline into tidal waters, intended to trap and retain and/or reduce the erosion of sand and retard the general erosion of the shoreline and undermining of shore protection structures (bulkheads, riprap slopes, etc.).~~ ***A shoreline protection structure built, usually perpendicular to the shoreline, to trap nearshore sediment or retard erosion of the shore. A series of groins acting together to protect a section of beach is known as a groin system or groin field.***

156. Habitat: The locality***, including the physical and biological environment,*** in which a plant or animal lives.

157. Local Coastal Program: A local government's (a) land use plans, (b) zoning ordinances, (c) zoning district maps, and (d) within sensitive coastal resources areas, other implementing actions, which, when taken together, meet the requirements of, and implement the provisions and policies of, ~~this division~~ ***the Coastal Act*** at the local level.

158. Monitoring: Systematic collection of physical, biological, or economic data or a combination of these data ~~on a beach nourishment project~~ in order to make decisions regarding project operation or to evaluate project performance. ***Monitoring is typically required for beach nourishment projects and habitat restoration projects.***

159. New Definition: ***Non-conforming structure: A structure that was lawfully erected, but which does not conform with the property development regulations prescribed in the regulations for the district in which the structure is located by reason of adoption or amendment of this code or by reason of annexation of territory to the City.***

***160.*** New Definition: ***Non-conforming use: A use of a structure or land that was lawfully established and maintained, but which does not conform with the use regulations or required conditions for the district in which it is located by reason of adoption or amendment of this code or by reason of annexation of territory to the City.***

***161.*** New Definition: ***Predominant Line of Development: The most common or representative distance from a specified group of structures to a specified point or line (e.g. topographic line or geographic feature). For example, the predominant line of development for a block of homes on a coastal bluff (a specified group of structures) could be determined by calculating the median distance (a representative distance) these structures are from the bluff edge (a specified line).***

***162.*** New Definition: ***Sea cliff: A vertical or very steep cliff or slope produced by wave erosion, situated at the seaward edge of the coast or the landward side of the wave-cut platform, and marking the inner limit of beach erosion.***

163. Scarp (Beach Scarp): An almost vertical slope along the beach caused by wave erosion. It may vary in height from a few ***inches to several feet*** ~~centimeters to a meter~~ or more, depending on wave action and the nature and composition of the beach.

164. New Definition: ***Stream: A topographic feature that at least periodically conveys water through a bed or channel having banks. This includes watercourses having a surface or subsurface flow that supports or has supported riparian vegetation.***

165. Tidal Epoch (National Tidal Datum Epoch): The specific 19-year period adopted by the National Ocean Service as the official time segment over which tide observations are taken and averaged to form tidal datums, ***such as Mean Lower Low Water. The 19-year period includes an 18.6 year astronomical cycle that accounts for all significant variations in the moon and sun that cause slowly varying changes in the range of tides. A calendar day is 24 hours and a "tidal day" is approximately 24.84 hours. Due to the variation between calendar day and tidal day, it takes 19 years for these two time cycles to establish a repeatable pattern.***

***Thus, if the moon is full today, then the moon will be full again on this day of the year 19 years from today.*** The present tidal epoch used is ~~1960 through 1978~~ ***1983 - 2001.***

166. New Definition: ***TMDL (Total Maximum Daily Load): The maximum amount of a pollutant that can be discharged into a water body from all sources (point and non-point) and still maintain water quality standards. Under Clean Water Act section 303(d), TMDLs must be developed for all water bodies that do not meet water quality standards after application of technology-based controls. TMDL also refers to the written, quantitative analysis and plan for attaining and maintaining water quality standards in all seasons for a specific waterbody and pollutant.***

167. New Policy (Section 4.2.3): ***Continue to permit recreational docks and piers as an allowable use within intertidal areas in Newport Harbor.***

***168.*** New Policy (Section 4.1): ***Prohibit the planting of invasive species in non-urbanized areas.***

***169.*** New Definition: ***Qualified Biologist. A person who has earned a minimum of a Bachelor of Science degree in biology or a related field from an accredited college or university and has demonstrated field experience evaluating land use impacts on marine or wildlife species and their habitats. Biologists who conduct wetland delineations shall have completed the U.S. Army Corps of Engineers' "Reg IV" wetland delineation training, or the equivalent, and shall have the demonstrated ability to independently conduct wetland delineations.***