



**CITY OF NEWPORT BEACH
ENVIRONMENTAL QUALITY AFFAIRS
COMMITTEE**

AGENDA

DATE/TIME: Monday, March 15, 2004 7:00 p.m.

**LOCATION: Police Department Auditorium
870 Santa Barbara Drive**

Roll Call

1. Minutes of February 17, 2004 (*draft minutes attached*)
2. Coastal Land Use Plan report from the LCP Subcommittee (*draft report attached*)
3. Report from Membership Subcommittee
4. Report from EQAC Representative to GPUC
5. Report from EQAC Members on GPAC
6. Report on LCP process
7. Council Member Reports
8. Report from staff on current projects
9. Public Comments
10. Future Agenda Items

NEXT MEETING DATE: April 19, 2004

LOCATION: Police Department Auditorium

*Draft attachments can be found on the City's website <http://www.city.newport-beach.ca.us>. Click on **City Council** and then click on **Agendas and Minutes**. The Attachments are also available in the City of Newport Beach Planning Department, 3300 Newport Boulevard, Building C, 2nd Floor



CITY OF NEWPORT BEACH ENVIRONMENTAL QUALITY AFFAIRS COMMITTEE

DRAFT Minutes 02-17-04

Minutes of the Environmental Quality Affairs Citizens Advisory Committee held at the City Council Chambers, 3300 Newport Boulevard, on February 17, 2004.

Members Present

Robert Hawkins, Chairperson
Cris Trapp, Vice Chair
Steven Bromberg, Council Member
Barry Allen
Brent Cooper
Ray Halowski

Sandra Haskell
Carol Hoffman
Phillip Lugar
Dolores Otting
Jennifer Winn

Staff Representatives

Sharon Wood, Assistant City Manager

Guests Present

Norris Brandt, IRWD
Tom Smith, Bon Terra

Merritt Van Sant
Walt Lazicki

Members not present

Richard Nichols, Council Member
Gus Chabre
Laura Dietz
Thomas Eastmond
Maggie Fitzgerald

Tom Hyans – Sick Leave
Richard Rivett
Louis Von Dyl
Christopher Welsh

The meeting was called to order at 7:10 p.m.

Self introductions

The agenda was reordered to begin with item no. 2.

2. IRWD Presentation of the Natural Treatment System (NTS) Project and Report from the Subcommittee on IRWD Draft Environmental Impact Report (DEIR) on the Natural Treatment System

Norris Brandt presented background on IRWD and San Diego Creek Watershed Natural Treatment System, followed by Committee questions and answers. Discussion of and changes to subcommittee report ensued.

Motion: Barry Allen to approve report, deleting references to recirculation and instead asking for issues to be addressed in Final EIR.

Seconded: Phillip Lugar

Motion passes. 3 nays.

1. Minutes of January 20, 2004

Motion: Barry Allen to approve.

Seconded: Jennifer Winn

Motion passes unanimously.

3. Report from Membership Subcommittee

Report by Dolores Otting on new applicants and potential for review of EQAC Resolution.

Motion: Chairperson Hawkins to forward Messrs. Van Sant and Lazicki to City Council members to consider their appointment.

Seconded: Phillip Lugar

Motion passes unanimously.

4. Report from EQAC Representative to GPUC

No report.

5. Report from EQAC Members on GPAC

Sharon Wood reported on the meetings of January 26 and February 9.

6. Report on LCP Process

Council Member Bromberg announced that the draft LUP is out and will be going to the Planning Commission.

Sandra Haskel and Brent Cooper were added to the LCP Subcommittee.

7. Council Member Reports

None

8. Report from Staff on Current Projects

Sharon Wood reported on City of Irvine meetings regarding development in the Irvine Business Center (IBC).

9. Public Comments

None

10. Future Agenda Items

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Chairperson Hawkins adjourned the meeting at 9:00 p.m.



MEMORANDUM

To: Members of the City Council and Planning Commission
City of Newport Beach

From: Environmental Quality Affairs Advisory Committee
City of Newport Beach

Subject: Local Coastal Program, Draft Land Use Plan

Date: March 10, 2004

We would like to thank the City of Newport Beach planning staff, the City Council and the Planning Commission for the outstanding job in putting this Local Coastal Program, Draft Land Use Plan ("LCP") together. It was a huge undertaking, and overall, the document is both comprehensive and comprehensible. We appreciate the fact that most of our comments from the earlier draft have been incorporated into this document. As with our earlier comments, our goal is to assist in improving the final LCP. We offer the following comments and corrections:

Chapter 2 – Land Use and Development

Section 2.1.1 (Page 2-1) states: "However, in no case, shall the polices 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." This repeats verbatim the last sentence of the preceding paragraph. One should be eliminated.

Section 2.2.1 (Page 2-3) lists development intensity for various land uses. Most of the categories are quite specific. However two uses, Visitor Serving Commercial (CV) and Commercial Office (CO) include extremely wide floor area ratio intensities (.3 to 1.25 and .25 to 1.25 respectively). The upper end of the range is at least four times greater than the lower end. Such a wide range does not allow for the physical shaping of a city. Is this because of a perceived need to "grandfather" certain developments that would not today be allowed? If we are satisfied that the existing intensities are physically appropriate, then perhaps these two categories should be subdivided into at least two subcategories (i.e., CV Low and CV High). Narrower intensity ranges would better serve to preserve the existing City form.

Section 2.2.3 (Page 2-13) states that "(r)esidential floor areas and building heights have been strictly controlled since the early 1970's to insure that the scale, size, and character of new development is compatible with existing development in the surrounding area." As evidenced by the trend toward "mansionization" in several areas in the City, including Balboa Island, the Peninsula and Corona del Mar, it is not clear that "the scale, size, and character of new development is compatible with existing development in the surrounding area." If the City wants to maintain control over development in these areas by means of a new categorical

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exclusion from the provisions of the Coastal Act, it would be beneficial to acknowledge the mansions trend and discuss the measures that the City is considering to deal with it.

Policy 2.2.3-4 (Page 2-14) states: "Depict the properties covered by categorical exclusions on the Exclusion Areas Map." It may also be useful for the exclusion areas to be depicted on the Land Use map, perhaps through use of a black crosshatch pattern over the color.

Policies 2.3.1-3 and 2.3.1-4 (Page 2-20) as written are not consistent with the language of the Coastal Act. They reference land "designated" for visitor and recreational use, while the Coastal Act refers to land "suitable" for such uses. These sections should be changed to use the language of the Coastal Act.

Policy 2.4.1-5 (Page 2-25) should be changed to read: "...unless an applicant can demonstrate through a comprehensive commercial needs study that the demand for the displaced land use no longer exists." The added text will serve to prevent project developers from using this as a "loophole."

Section 2.9.2 (Page 2-57) addresses the bikeways and trails system in Newport Beach. The policies for this section should include a specific reference to the policies in Section 3.1 regarding development of public walkways around the harbor. These are an excellent means of providing coastal access to pedestrians. Perhaps the intent of Section 2.9.2 would be clarified if the title read "Bikeways and Pedestrian/Multi-use Trails." In addition, there should be a discussion of the bicycle trail gap along Mariners Mile. We recommend that a policy be added stating: "If feasible, provide Class 2 lanes on both sides of Pacific Coast Highway through Newport Beach."

Chapter 3 – Public Assess and Recreation

Section 3.1.1 (Page 3-2) in discussing Little Corona Beach, the report appears to suggest that additional public access is necessary to the Newport Beach Marine Conservation Area. Given the sensitive natural habitats to this area, the ending of the sentence that begins "Vertical access is provided by..." should be revised to add the words "and this degree of public access is appropriate given the sensitive natural habitats in the Newport Beach Marine Conservation Area." Delete the next sentence that discusses additional public access.

Section 3.1.1 (Page 3-6) Please clarify whether additional public access is necessary at North Star Beach, Big Canyon Nature Park, and Semeniuk Slough. These parks may already have adequate access. The statement that provision of additional access must be consistent with the protection of resources may not be necessary if access to the park is not an issue of concern. This comment also applies to the discussion of Newporter Knoll Park and Newporter North View Park on Page 3-12.

Section 3.1.1 (Page 3-6) Delete the third full paragraph on this page. It is a duplicate of the second paragraph.

Policy 3.1.3-7 (Page 3-14) For clarity, revise the first sentence as follows: "Require encroachment permits to specify that the construction of any seawall, revetment or other erosion control devices, if necessary, shall occur within, or as close as feasible to, private property"

Policy 3.1.3-8 (Page 3-15) Are the terms of the implementation plan referenced in this policy consistent with the mitigation plan adopted by the City Council in 1991, which is referred to in the introductory paragraph on Beach Encroachments? (Page 3-13)

Section 3.1.5 (Page 3-17) The first paragraph in this section is editorial and does not contribute facts that benefit the discussion of gated communities within Newport Beach. The paragraph should be deleted.

Section 3.1.8 (Page 3-23) The first paragraph needs to be revised to more professionally describe the circumstances that lead to beach closures. The tone of this section and words such as "pack", "party heavily", "evening wears on" and "rowdy" sound informal and imply a personal bias. Reference to problems caused by younger residents and their friends should be removed from the discussion unless the fact that they are younger increases the severity of the problem. If so, provide some documentation that shows the problem is factual and not driven by personal bias.

Policy 3.2.3-1 (Page 3-32) Add to this policy the statement that consideration of additional handicapped access must ensure the protection of natural habitats.

Policy 3.3.3-3 (Page 3-37) This policy is unclear. Please revise to make its intent more apparent.

Chapter 4 – Coastal Resource Protection

Section 4.1.3 (Page 4-11) The policies for this section are incorrectly numbered 4.1.2-1 through 10. In our earlier comments in June 2003, we noted that one of the policies in this section stated that the Planning Commission and/or City Council would determine ESHA boundaries based on the site-specific environmental studies. We suggested that a special committee or task force be named that would include individuals with the expertise to evaluate the environmental studies to determine ESHA boundaries. The policies addressing ESHAs in this revised draft have eliminated any discussion of how the ESHA boundaries will be determined. This is an important issue, and the document should be revised to address it.

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The eelgrass meadows within Newport Bay are not classified as an ESHA in this Draft LCP; therefore, eelgrass should not be referenced or discussed in this section. Because it may lead the review/approval authority to conclude that eelgrass should be classified as an ESHA, we recommend that the last paragraph on page 4-11 be deleted.

Policy 4.1.2(sic)-1. J (Page 4-33) The use of docents will not ensure that the areas are consistently patrolled, and they will have no real enforcement power. The City should consider hiring special Rangers as they have done for the Parks with the ability to hand out fines. These areas are too valuable to leave to volunteers.

Policy 4.1.5-1. (Page 4-39) Replace "Encourage" with "Enforce." If there is no penalty, it is likely that people there will continue to plant exotic, nonnative vegetation.

Policy 4.2.1-1. (Page 4-42) "Recognize and project wetlands" should be "Recognize and protect wetlands."

Policy 4.2.2-2. (Page 4-43) Factors to consider when ambiguities in wetland characteristics exist should include historic as well as recent precipitation patterns.

Table 4.1-1 (Page 4-30) Policies 4.1.3-11 - A through R do not exist in this Draft LCP. If the author of the plan meant to reference Policies 4.1.2-1 - A through Q, the table should be revised to reflect the correct policy numbers.

Section 4.1.4 (Page 4-36) This section heading should be numbered 4.1.3, and Section/Policies 4.1.5, Coastal Foredunes, should be renumbered as 4.1.4.

Section 4.1.4 (sic)(Page 4-37) The second paragraph on page 4-37 discusses a large-scale eelgrass restoration program for Newport Harbor. However, the Federal funding to support the restoration program has not been provided, and the program is in doubt.

Section 4.1.4 (sic)(Page 4-37) The discussion on page 4-36 attributes the abundance or lack of eelgrass in Newport Bay to growing conditions that are the result of the amount of rainfall, minimal runoff, and the quality of the water. Dredging and dock and bulkhead construction projects have existed in the Bay for the last 75 years and do not seem to be the main contributor to the abundance or lack of eelgrass in the Bay. Therefore the statement "high potential to impact eelgrass" is a conclusion and is not supported by scientific data. We therefore recommend that the word "high" in the first sentence of the third paragraph on page 37 be deleted.

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Section 4.2.5 (Page 4-54) This section should be eliminated. The eelgrass has been covered under Section 4.1.4 with appropriate policies to encourage its growth and protection in Newport Bay.

An alternative would be to leave Section 4.2.5 in the document but rewrite it deleting all references to and discussions of the Southern California Eelgrass Mitigation Policy. The Southern California Eelgrass Mitigation Policy has prevented the proper maintenance of Newport Harbor waterways, docks and seawalls by forcing expensive and sometimes impossible procedures to allow repair and dredging to take place. The result has been an economic impact on the property owners and economy of the Newport Beach.

In January 2003, the United States Court of Appeals for the Ninth Circuit ruled the National Marine Fisheries Service ("NMFS") was in violation of the Magnuson-Stevens Fishery Act and the Administrative Procedure Act when they issued specifications and management measures without proper public notice and opportunity to comment. The policies which were the subject of the Courts' decision were similar in their intent to the Southern California Eelgrass Mitigation Policy. The basis of the Court ruling is that NMFS must provide notice and the opportunity for public comment before issuing specifications and management measures.

The Southern California Eelgrass Mitigation Policy is susceptible to a legal challenge by the citizens of Newport Beach for lack of notice and public comment. It is poor public policy to base a long term Coastal Land Use Plan on a document which can easily be challenged resulting in litigation that the City must defend.

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