



**CITY OF NEWPORT BEACH  
CITY COUNCIL AGENDA**

**OCTOBER 12, 2021**

**CITY COUNCIL CHAMBERS – 100 CIVIC CENTER DRIVE, NEWPORT BEACH, CA 92660**

**STUDY SESSION – 4:00 P.M. (PUBLIC WELCOME)  
CLOSED SESSION – FOLLOWS STUDY SESSION  
REGULAR MEETING – 7:00 P.M.**

**BRAD AVERY, Mayor  
KEVIN MULDOON, Mayor Pro Tem  
NOAH BLOM, Council Member  
JOY BRENNER, Council Member  
DIANE B. DIXON, Council Member  
DUFFY DUFFIELD, Council Member  
WILL O’NEILL, Council Member**

**GRACE K. LEUNG, City Manager  
AARON C. HARP, City Attorney  
LEILANI I. BROWN, City Clerk**

**NOTICE REGARDING PRESENTATIONS REQUIRING USE OF CITY EQUIPMENT**

Any presentation requiring the use of the City of Newport Beach’s equipment must be submitted to the City Clerk 24 hours prior to the scheduled City Council meeting.

**PUBLIC HEARINGS**

If in the future, you wish to challenge in court any of the matters on this agenda for which a public hearing is to be conducted, you may be limited to raising only those issues which you (or someone else) raised orally at the public hearing or in written correspondence received by the City at or before the hearing.

**NOTICE TO THE PUBLIC**

Any times listed in this agenda are provided as a courtesy and the actual item may be heard either before or after the time given.

This agenda was prepared by the City Clerk and staff reports are available in the City Council Chambers lobby located at 100 Civic Center Drive. Staff reports or other written documentation have been prepared or organized with respect to the items of business listed on the agenda. If you have any questions or require copies of any of the staff reports or other documentation regarding any item of business on the agenda, please contact City Clerk staff at 949-644-3005. Agendas and staff reports are also available on the City’s webpage at [newportbeachca.gov/agendas](http://newportbeachca.gov/agendas).

The City of Newport Beach’s goal is to comply with the Americans with Disabilities Act (ADA) in all respects. If, as an attendee or a participant at this meeting, you will need special assistance beyond what is normally provided, we will attempt to accommodate you in every reasonable manner. Please contact City Clerk Leilani Brown prior to the meeting to inform us of your particular needs and to determine if accommodation is feasible (949-644-3005 or [cityclerk@newportbeachca.gov](mailto:cityclerk@newportbeachca.gov)).

**NEWPORT BEACH CITY COUNCIL AGENDA  
CITY COUNCIL CHAMBERS  
100 CIVIC CENTER DRIVE, NEWPORT BEACH, CA 92660  
OCTOBER 12, 2021  
STUDY SESSION – 4:00 P.M. (PUBLIC WELCOME)  
CLOSED SESSION – FOLLOWS STUDY SESSION  
REGULAR MEETING – 7:00 P.M.**

**I. ROLL CALL – 4:00 p.m.**

**II. CURRENT BUSINESS**

**SS1. Clarification of Items on the Consent Calendar**

**SS2. Discussion on the Current Condition and Potential Rehabilitation of McFadden Plaza, Newport Pier and Ocean Front Parking Lot Areas**

Council Members Dixon and Blom requested further discussion with the City Council, staff and the public regarding the current condition of the McFadden Plaza, Newport Pier and Ocean Front Parking Lot areas, and if the City and community should explore rehabilitation or reconstruction of these public facilities and spaces.

**SS3. Discussion on Potential Exclusive Commercial Solid Waste Collection and Recycling Franchise Areas within the City**

Council Member Brenner requested discussion with the City Council, staff and the public on whether the City should explore establishing one or more exclusive commercial solid waste collections and recycling franchise areas. Possible commercial business areas that could be considered include Corona del Mar Business District, Balboa Island and/or Balboa Village Business District.

**III. PUBLIC COMMENTS**

*The City Council of Newport Beach welcomes and encourages community participation. Public comments are invited on items listed on the agenda and non-agenda items. Speakers must limit comments to three (3) minutes per person to allow everyone to speak. Written comments are encouraged as well. The City Council has the discretion to extend or shorten the time limit on agenda or non-agenda items.*

**IV. CLOSED SESSION – After Study Session – Council Chambers Conference Room**

**A. CONFERENCE WITH LABOR NEGOTIATORS**

**(Government Code § 54957.6):** 1 matter

**Agency Designated Representatives:** Grace K. Leung, City Manager, Barbara Salvini, Human Resources Director, and Charles Sakai, Esq., Negotiators.

**Employee Organizations:** Association of Newport Beach Ocean Lifeguards (ANBOL), Newport Beach Police Association (NBPA), Newport Beach Firefighters Association (NBFA), and Newport Beach Employees League (NBEL).

**B. CONFERENCE WITH LEGAL COUNSEL  
ANTICIPATED LITIGATION - INITIATION OF LITIGATION**

**(Government Code § 54956.9(d)(4)):** 1 matter

**C. CONFERENCE WITH LABOR NEGOTIATORS**

**(Government Code § 54957.6):** 3 matters

**Agency Designated Representative(s):** Brad Avery, Mayor; and Kevin Muldoon, Mayor Pro Tem

**Unrepresented Employees:** Grace K. Leung, City Manager; Aaron C. Harp, City Attorney; and Leilani I. Brown, City Clerk

V. RECESS

VI. RECONVENE AT 7:00 P.M. FOR REGULAR MEETING

VII. ROLL CALL

VIII. CLOSED SESSION REPORT

IX. INVOCATION – Reverend James Pike, Lutheran Church of the Resurrection, Huntington Beach

X. PLEDGE OF ALLEGIANCE

XI. NOTICE TO THE PUBLIC

*The City Council of Newport Beach welcomes and encourages community participation. Public comments are generally limited to three (3) minutes per person to allow everyone to speak. Written comments are encouraged as well. The City Council has the discretion to extend or shorten the time limit on agenda or non-agenda items.*

XII. CITY COUNCIL ANNOUNCEMENTS AND ORAL REPORTS FROM CITY COUNCIL ON COMMITTEE ACTIVITIES

XIII. MATTERS WHICH COUNCIL MEMBERS HAVE ASKED TO BE PLACED ON A FUTURE AGENDA

- **Consider taking all action necessary to call the June 7, 2022 Statewide Direct Primary Election or the November 8, 2022 General Municipal Election for the purpose of submitting proposed amendments to the Newport Beach City Charter to provide for the direct election of the Mayor, consistent with the initiative documents submitted to the City Clerk on Friday, September 3, 2021 [Blom]**

XIV. PUBLIC COMMENTS ON CONSENT CALENDAR

*This is the time in which Council Members may pull items from the **CONSENT CALENDAR** for discussion (**ITEMS 1 – 14**). Public comments are also invited on Consent Calendar items. Speakers must limit comments to three (3) minutes. Before speaking, please state your name for the record. If any item is removed from the Consent Calendar by a Council Member, members of the public are invited to speak on each item for up to three (3) minutes per item.*

*All matters listed under **CONSENT CALENDAR** are considered to be routine and will all be enacted by one motion in the form listed below. Council Members have received detailed staff reports on each of the items recommending an action. There will be no separate discussion of these items prior to the time the City Council votes on the motion unless members of the City Council request specific items to be discussed and/or removed from the Consent Calendar for separate action.*

XV. CONSENT CALENDAR

**READING OF MINUTES AND ORDINANCES**

**1. Minutes for the October 12, 2021 City Council Regular Meeting**

Waive reading of subject minutes, approve as written, and order filed.

**2. Reading of Ordinances**

Waive reading in full of all ordinances under consideration, and direct the City Clerk to read by title only.

**ORDINANCES FOR ADOPTION**

- 3. Ordinance Nos. 2021-19 and 2021-20: Zone Change and Development Agreement for a Residential Project at 150 Newport Center Drive (PA2020-020)**
- a) Find that the Residences at Newport Center project Environmental Impact Report (EIR) No. ER2021-002 (SCH No. 2020110087) certified by the City Council on October 12, 2021, by Resolution No. 2021-90 was prepared for the project in compliance with the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and City Council Policy K-3;
  - b) Conduct second reading and adopt Ordinance No. 2021-19, *An Ordinance of the City Council of the City of Newport Beach, California, Approving Development Agreement No. DA2020-001 for the Residences at Newport Center Located at 150 Newport Center Drive (PA2020-020)*; and
  - c) Conduct second reading and adopt Ordinance No. 2021-20, *An Ordinance of the City Council of the City of Newport Beach, California, Approving Zoning Code Amendment No. CA2020-008 and Planned Community Development Plan No. PC2020-001 Establishing the Residences at Newport Center Located at 150 Newport Center Drive (PA2020-020)*.
- 4. Ordinance No. 2021-21: Zone Change from Multiple Unit Residential to Private Institutions at 1499 Monrovia Avenue (PA2021-068)**
- a) Find this action proposed herein is not subject to the California Environmental Quality Act (CEQA) pursuant to Section 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly; and
  - b) Conduct second reading and adopt Ordinance No. 2021-21, *An Ordinance of the City Council of the City of Newport Beach, California, Approving Zoning Code Amendment No. CA2021-003 to Change the Zoning Code Designation from RM 2420/3100 (Multiple Residential) to PI 0.49 FAR (Private Institutions) for the Property Located at 1499 Monrovia Avenue (PA2021-068)*.

**RESOLUTIONS FOR ADOPTION**

- 5. Resolution No. 2021-95: Request for Petition Certification and Funding for Expanding Underground Assessment District No. 120-2 (Santa Ana Avenue and Cliff Drive Area)**
- a) Find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15302(d) (conversion of overhead electric utility distribution system facilities to underground including connection to existing overhead electric utility distribution lines where the surface is restored to the condition existing prior to the undergrounding);
  - b) Adopt Resolution No. 2021-95, *A Resolution of the City Council of the City of Newport Beach, California, Accepting the Petition for the Formation of Underground Utility Assessment District No. 120-2*; and
  - c) Approve Budget Amendment No. 22-017 authorizing an advance from the General Fund in the amount of \$37,500 and appropriating said amount to Account No. 66902-941006 (AD-120 Assessment Engineering). Funds remaining in any fiscal year will be carried forward to future annual budgets per Council Policy F-3.
- 6. Resolution No. 2021-96: Authorizing the Public Works Director, City Engineer or Designees to Execute Right-of-Way Certifications**
- a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and
  - b) Adopt Resolution No. 2021-96, *A Resolution of the City Council of the City Newport Beach, California, Authorizing the Public Works Director, City Engineer, and Their Designees to Execute Right-of-Way Certifications*.

**CONTRACTS AND AGREEMENTS**

- 7. Underground Utility Assessment District No. 116, 116B and Underground Utilities District No. 22 Phase I – Notice of Completion for Contract No. 7572-1 (19A11)**
  - a) Accept the completed work and authorize the City Clerk to file a Notice of Completion for the project;
  - b) Authorize the City Clerk to release the Labor and Materials Bond 65 days after the Notice of Completion has been recorded in accordance with applicable portions of Civil Code; and
  - c) Release Faithful Performance Bond one year after acceptance by the City Council.
  
- 8. Police Station Locker Room Remodel – Notice of Completion for Contract No. 7872-1 (21F12)**
  - a) Accept the completed work and authorize the City Clerk to file a Notice of Completion for the project;
  - b) Authorize the City Clerk to release the Labor and Materials Bond 65 days after the Notice of Completion has been recorded in accordance with applicable portions of Civil Code; and
  - c) Release Faithful Performance Bond one year after acceptance by the City Council.
  
- 9. Civic Center Park Pathway Replacement – Notice of Completion for Contract No. 7879-1 (21P12)**
  - a) Accept the completed work and authorize the City Clerk to file a Notice of Completion for the project;
  - b) Authorize the City Clerk to release the Labor and Materials Bond 65 days after the Notice of Completion has been recorded in accordance with applicable portions of Civil Code; and
  - c) Release Faithful Performance Bond one year after acceptance by the City Council.
  
- 10. Approval of Professional Services Agreement with Coastal Frontiers for Oceanfront Sand Monitoring Program (22H04)**
  - a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and
  - b) Approve a Professional Services Agreement with Coastal Frontiers for Annual Oceanfront Sand Monitoring at a total not-to-exceed price of \$147,589, and authorize the Mayor and City Clerk to execute the Agreement.
  
- 11. Approval of Amendment No. 3 to Maintenance and Repair Services Agreement with GCI Construction Inc. for On-Call Beach Maintenance Services**
  - a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly;
  - b) Approve Amendment No. 3 to the Maintenance and Repair Services Agreement with GCI Construction Inc. (C-8501-1) to add \$500,000 to the current contract for a total not-to-exceed amount of \$1,225,000;
  - c) Authorize the Mayor and City Clerk to execute the amendment; and
  - d) Approve Budget Amendment No. 22-016 appropriating \$350,000 in increased expenditures in Account No. 10001-980000-22H04 (Beach and Bay Sand Management) from the unappropriated Tidelands Maintenance fund balance.
  
- 12. Temporary Employment Agreement for a Senior Civil Engineer – Plan Check**
  - a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and
  - b) Authorize the Mayor and Community Development Director to execute the Temporary Employment Agreement with Soon Cho to temporarily fill the position of a Senior Civil Engineer – Plan Check.

**MISCELLANEOUS**

**13. Planning Commission Agenda for the October 7, 2021 Meeting**

Receive and file.

**14 Annual Review of Visit Newport Beach Audited Financial Statements and Expenditure Report**

- a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and
- b) Receive and file.

***ACTION: MOVE AFFIRMATIVE ACTION OF THE CONSENT CALENDAR, EXCEPT FOR THOSE ITEMS REMOVED***

**XVI. ITEMS REMOVED FROM THE CONSENT CALENDAR**

**XVII. PUBLIC COMMENTS ON NON-AGENDA ITEMS**

*Public comments are invited on non-agenda items generally considered to be within the subject matter jurisdiction of the City Council. Speakers must limit comments to three (3) minutes. Before speaking, please state your name for the record.*

**XVIII. PUBLIC HEARINGS**

**15. Ordinance No. 2021-22: Zoning Code Amendment Related to Setback Map Corrections (PA2020-006)**

- a) Conduct a public hearing;
- b) Find this amendment statutorily exempt from the California Environmental Quality Act (CEQA) pursuant to Section 21065 of CEQA and State CEQA Guidelines Sections 15060(c)(2), 15060(c)(3) and 15378. The proposed action is also exempt pursuant to State CEQA Guidelines Section 15061(b)(3) because it has no potential to have a significant effect on the environment;
- c) Waive full reading, direct the City Clerk to read by title only, introduce Ordinance No. 2021-22, *An Ordinance of the City Council of the City of Newport Beach, California, Adopting Zoning Code Amendment No. CA2020-001 to Amend Title 20 (Planning and Zoning) of the City of Newport Beach Municipal Code Correcting Setback Map Errors (PA2020-006)*, and pass to second reading on October 26, 2021; and
- d) Adopt Resolution No. 2021-97, *A Resolution of the City Council of the City of Newport Beach, California, Authorizing Submittal of Local Coastal Program Amendment No. LC2020-001 to the California Coastal Commission to Amend Title 21 (Local Coastal Program Implementation Plan) of the City of Newport Beach Municipal Code Correcting Setback Map Errors (PA2020-006)*.

**16. Resolution No. 2021-98: Notice of Intent to Override the Orange County Airport Land Use Commission's Determination of Inconsistency to the Draft Housing Element Update (PA2017-141)**

- a) Conduct a public hearing;
- b) Find this project is not subject to CEQA pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines because it has no potential for resulting in physical change to the environment, directly or indirectly; and

- c) Adopt Resolution No. 2021-98, *A Resolution of the City Council of the City of Newport Beach, California, Notifying the Orange County Airport Land Use Commission and the State Division of Aeronautics of the City's Intention to Find the General Plan Housing Element Update is Consistent with the Purposes of the State Aeronautics Act and Overrule the Orange County Airport Land Use Commission's Determination that the Housing Element Update is Inconsistent with the 2008 John Wayne Airport Environs Land Use Plan (PA2017-141).*

**XIX. CURRENT BUSINESS**

**17. Resolution No. 2021-99: Ratifying the October 5, 2021 Proclamation of Local Emergency**

- a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and
- b) Adopt Resolution No. 2021-99, *A Resolution of the City Council of the City of Newport Beach, California, (i) Ratifying the Proclamation of a Local Emergency Issued on October 5, 2021, by City Manager Grace Leung, the Director of Emergency Services of the City of Newport Beach, and (ii) Approving and Authorizing Certain Actions Relating Thereto.*

**XX. MOTION FOR RECONSIDERATION**

*A motion to reconsider the vote on any action taken by the City Council at either this meeting or the previous meeting may be made only by one of the Council Members who voted with the prevailing side.*

**XXI. ADJOURNMENT**

Testimony given before the City Council is recorded.  
The timer light will turn yellow when the speaker has one minute remaining.  
The timer light will turn red when the speaker has 10 seconds remaining.

PLEASE TURN CELL PHONES OFF OR SET IN SILENT MODE





**City Council Meeting Minutes  
Study Session and Regular Meeting  
September 28, 2021**

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**I. ROLL CALL – 4:00 p.m.**

Present: Mayor Brad Avery, Mayor Pro Tem Kevin Muldoon (arrived at 4:05 p.m.), Council Member Noah Blom (via Zoom), Council Member Joy Brenner, Council Member Diane Dixon, Council Member Duffy Duffield, Council Member Will O'Neill

**II. CURRENT BUSINESS**

**SS1. Clarification of Items on the Consent Calendar – None**

**SS2. Newport Beach Arts Foundation Check Presentation**

Newport Beach Arts Foundation President Juanita Holley presented Mayor Avery with a \$20,000 check, noted a recent celebration of Phase VII of the Sculpture Garden, and thanked Library Services Director Hetherton for his work with cultural arts. City Arts Commissioner Arlene Greer thanked the Newport Beach Arts Foundation for supporting art in the City.

**Presentation to Assistant City Manager Carol Jacobs**

Mayor Avery recognized Assistant City Manager Jacobs for her service to the City and community, and presented her with a certificate.

**SS3. Discussion and Review of Library Lecture Hall Project**

Public Works Director Webb and Library Lecture Hall Design Committee Chair Jill Johnson-Tucker utilized a presentation to discuss the Library Lecture Hall Design Committee (LLHDC), need for a lecture hall, location, recommended conceptual design, floor plan and Americans With Disability Act (ADA) accessibility, primary materials, design approvals, and architectural design guidelines. Chair Johnson-Tucker noted that Karen Clark and Walter Stahr negotiated the terms of the Memorandum of Understanding (MOU) with assistance from Larry Tucker.

In response to City Council questions, Public Works Director Webb reported that Council may direct the architect to source materials locally, which may affect the cost, and currently some construction materials are not readily available, and stated that staff seeks Council comments regarding the concept and terms of the MOU, and guidance regarding the design.

Larry Tucker continued the presentation, highlighting the status of MOU negotiations and fundraising, estimated cost, including site work and other expected costs totaling \$11.8 million, Library Foundation funding and offer, and next steps.

Public Works Director Webb concluded the presentation with details of the preliminary cost estimate and schedule.

Council Member O'Neill discussed the cost estimate, the need to have a sense of whether the cost increase is absorbable and whether Council is comfortable with design costs, needs versus wants, the City's financial picture, investing in social infrastructure, his recommendation to move the design forward with a cap on costs or 50% of the costs, and completing the design or the MOU first.

Mayor Avery concurred with Council Member O'Neill's comments and noted that the lecture hall should pay for itself in terms of maintenance, wanted to see maximum usage and revenue

generation, and commended Library Foundation board members for obtaining funding and Irvine Company approval.

Council Member Dixon indicated that the Library Foundation and Board of Library Trustees are committed to the project, the lecture hall will be compatible with the Civic Center, and one-time funds may be available for the project. In response to her question, Council Member O'Neill believed MOU negotiations could be completed in about 60 days, but Council needs to provide authorization. Council Member Dixon supported moving forward with the design of the lecture hall, a 50/50 split of costs and a not-to-exceed amount for the City's costs, completing the MOU, and releasing an incremental amount of funding for design costs.

In response to Council Member Brenner's question, Jerold Kappel, Executive Director of the Library Foundation, stated that the City will receive a quantifiable return on its investment, and the community supports the Library and the lecture hall project.

Board of Library Trustees Chair Paul Watkins supported the project and asked Council for their support by moving it forward.

Walkie Ray believed that fundraising would be successful.

Dorothy Larson, past Library Foundation Chair, indicated that the City needs the lecture hall to continue elevating its cultural profile, and the Library Foundation has a fiduciary responsibility to its donors.

***With Mayor Pro Tem Muldoon voting "no," there was a 6-1 straw vote for authorization to negotiate a 50/50 split with a \$6.5 million cap.***

***With Mayor Pro Tem Muldoon voting "no," there was a 6-1 straw vote to approve the concept and design at the \$6.5 million cap.***

### **III. PUBLIC COMMENTS ON AGENDA AND NON-AGENDA ITEMS**

Phil Bettencourt commended Council for approving the lecture hall, City Manager Leung for her participation in Coastal Cleanup Day, and appreciated the 1/1 Marine relationship with the City.

Joe Angelo discussed pedestrian safety on the boardwalk and requested that Council ban electric bikes and enforce skateboard use on the boardwalk.

Denys Oberman reiterated concerns for the safety of pedestrians on the boardwalk and expressed the opinion that electric bikes should be banned, speed should be regulated, and the boardwalk ambassadors need enforcement powers.

Michelle Rosenthal expressed disappointment with the City's and Police Department's lack of support for residents regarding two unlicensed residential care facilities in her neighborhood and requested that Council agendaize a discussion at its next meeting and tighten the language of the ordinance.

Laura Curran sought City action, empathy, and engagement to investigate Miramar Recovery for fraudulent ownership and operation, and remarked that the Newport Beach Municipal Code does not allow integral facilities in R-2 zones.

Linda Delaney expressed the opinion that Item 11 (Ocean Boulevard Sidewalk Improvements Between Carnation Avenue and Fernleaf Avenue – Award of Contract No. 7623-1) will create a safety issue by narrowing the width of Ocean Boulevard and requested a temporary installation so that the community can understand the proposed changes and engage with the City.

Denys Oberman noted the September 8, 2021 court ruling regarding the City of Costa Mesa's ordinance for residential care facilities and the fact that the City of Newport Beach's ordinance has not been challenged in court.

Catherine Callender, addressing Item 11, requested a temporary installation of the proposed project so that the neighborhood can see the changes and potential safety issues.

City Attorney Harp announced that a community meeting regarding residential care facilities will be held on October 11, 2021.

***Out of an abundance of caution, Mayor Pro Tem Muldoon recused himself on Closed Session Item IV.A due to potential business interest conflicts.***

***City Attorney Harp announced that the City Council would adjourn to Closed Session to discuss the items listed in the Closed Session agenda and read the titles.***

**IV. CLOSED SESSION – Council Chambers Conference Room**

**A. CONFERENCE WITH LEGAL COUNSEL  
ANTICIPATED LITIGATION – INITIATION OF LITIGATION  
(Government Code § 54956.9(d)(4)): 2 matters**

*Delux Public Charter, LLC D/B/A/ JSX Air and JetSuiteX, Inc. v. County of Orange, et al.*  
United States District Court, Central District Case No. 8:20-CV-2344-JLS (KES)

(The City Council will be meeting with legal counsel regarding the lawsuit filed by Delux Public Charter, LLC D/B/A/ JSX Air and JetSuiteX, Inc. against the County of Orange, which relates JSX's operations and John Wayne Airport, and one other matter.)

**B. CONFERENCE WITH LABOR NEGOTIATORS  
(Government Code § 54957.6): 1 matter**

**Agency Designated Representatives:** Grace K. Leung, City Manager, Carol Jacobs, Assistant City Manager, Barbara Salvini, Human Resources Director, and Charles Sakai, Esq., Negotiators.

**Employee Organizations:** Association of Newport Beach Ocean Lifeguards (ANBOL), Newport Beach Police Association (NBPA), Newport Beach Professional and Technical Employees Association (NBPTA), Newport Beach City Employees Association (NBCEA), Newport Beach Firefighters Association (NBFA), and Newport Beach Employees League (NBEL).

**V. RECESSED – 5:50 p.m.**

**VI. RECONVENED – 6:30 p.m.**

**VII. ROLL CALL**

Present: Mayor Brad Avery, Mayor Pro Tem Kevin Muldoon, Council Member Noah Blom (via Zoom), Council Member Joy Brenner, Council Member Diane Dixon, Council Member Duffy Duffield, Council Member Will O'Neill

**VIII. CLOSED SESSION REPORT**

City Attorney Harp reported Council direction regarding Closed Session Item IV.A remained unchanged from the July 13, 2021 City Council meeting. Further, upon motion by Council Member Dixon and second by Council Member Blom, Council authorized the City Attorney's Office to file a mandatory fee arbitration

case against Cooley LLP, William O'Connor, and Andrew Barr for disgorgement of fees. With the exception of Mayor Pro Tem Muldoon, who recused himself, all Council Members voted in favor of the motion.

**IX. INVOCATION – Reverend Keith Horwitz, Soul Center OC**

**X. PLEDGE OF ALLEGIANCE – Council Member Duffield**

**XI. NOTICE TO THE PUBLIC**

**XII. CITY COUNCIL ANNOUNCEMENTS AND ORAL REPORTS FROM CITY COUNCIL ON COMMITTEE ACTIVITIES**

Council Member Brenner:

- Toured the Orange Coast College (OCC) Professional Mariner Training Center
- Attended the League of California Cities (CalCities) Conference, Sculpture Garden grand opening, Spyglass Hill picnic, OASIS Senior Center Cars and Coffee event, Orange County Mosquito and Vector Control Board meeting, and the Newport Beach Arts Show at Bistango
- Utilized slides to discuss the Newport Beach Police Department's e-bike and traffic safety presentation, announce a Shred and E-Waste Event on October 16, and thank City staff for prosecuting the construction of an unauthorized trail in Buck Gully

Council Member O'Neill:

- Attended the Corona del Mar Residents Association (CdMRA) meeting with Council Member Brenner, Spyglass Hill picnic, OASIS Senior Center Cars and Coffee event, and the Crystal Cove Soiree where it was announced that the State will fund the restoration of the remaining cottages

Council Member Dixon:

- Attended the Aviation Committee meeting, City Arts Commission reception in the Sculpture Garden, Spyglass Hill picnic, concert at Marina Park, Concert on the Green, and OASIS Senior Center Cars and Coffee
- Utilized a slide to announce a District 1 Town Hall on October 5 at Marina Park

Council Member Duffield:

- Attended an Executive Watershed Committee meeting
- Utilized a slide to announce a community meeting to discuss residential care facilities on October 11 at 6:00 p.m.

Mayor Avery:

- Attended the Spyglass Hill picnic, Balboa Island Art Walk, Sculpture Garden grand opening, OASIS Senior Center Cars and Coffee event, and the opening of the OCC Professional Mariner Training Center

**XIII. PUBLIC COMMENTS ON CONSENT CALENDAR**

Jim Mosher, addressing Item 6 (Resolution No. 2021-86: Creating the City Council Ad Hoc Redistricting Committee), remarked that a realistic cost estimate for the redistricting effort would be helpful, and inquired about the necessity of this work if a pending ballot initiative could change the number of districts in the City. Regarding Item 12 (Contract with Arts Orange County to Manage Phase VII of the Sculpture Exhibition in Civic Center Park), he noted that the staff report and contract conflict with respect to the selection process.

Linda Delaney stated that Catherine Callender requests that Council delay its vote on Item 11 so that the community may engage with Council.

Regarding Item 12, City Attorney Harp advised that staff will ensure that the contract matches the staff report.

At Council Member Brenner's request, City Arts Commission Chair Greer related that the process has changed to allow the public greater input into the selection of artwork for the Sculpture Garden.

**XIV. CONSENT CALENDAR**

***READING OF MINUTES AND ORDINANCES***

**1. Minutes for the September 7, 2021 City Council Special Meeting and September 14, 2021 City Council Regular Meeting [100-2021]**

Waive reading of subject minutes, approve as amended, and order filed.

**2. Reading of Ordinances**

Waive reading in full of all ordinances under consideration, and direct the City Clerk to read by title only.

***ORDINANCES FOR ADOPTION***

**3. Ordinance No. 2021-16: Amending the LCP Implementation Plan Related to Residential Design Standards Addressing Third Story Massing (PA2019-070) [100-2021]**

- a) Find this amendment exempt from the California Environmental Quality Act (CEQA) pursuant to Section 21065 of CEQA and State CEQA Guidelines Sections 15060 (c)(2), 15060 (c)(3), and 15378. The proposed action is also exempt pursuant to State CEQA Guidelines Section 15061(b)(3) because it has no potential to have a significant effect on the environment; and
- b) Conduct second reading and adopt Ordinance No. 2021-16, *An Ordinance of the City Council of the City of Newport Beach, California, Amending Title 21 (Local Coastal Program Implementation Plan) of the Newport Beach Municipal Code and Adopting Local Coastal Program Amendment No. LC2019-006 Related to Residential Design Standards (PA2019-070).*

**4. Ordinance No. 2021-17: Amending the LCP Implementation Plan Related to Setback Maps S-3A and S-3B on Lido Isle (PA2016-066) [100-2021]**

- a) Find this amendment exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15305 of the CEQA Guidelines, Class 5 (Minor Alterations in Land Use Limitations) because it has no potential to have a significant impact on the environment; and
- b) Conduct second reading and adopt Ordinance No. 2021-17, *An Ordinance of the City Council of the City of Newport Beach, California, Amending Title 21 (Local Coastal Program Implementation Plan) of the Newport Beach Municipal Code and Adopting Local Coastal Program Amendment No. LC2017-004 Related to Certain Front Yard and Side Yard Setbacks on Lido Isle (PA2016-066).*

**5. Ordinance No. 2021-18: Amending the LCP Implementation Plan Related to the Amortization of Nonconforming Signs (PA2019-184) [100-2021]**

- a) Find this amendment exempt pursuant to California Environmental Quality Act ("CEQA") Guidelines Section 15061(b)(3), and Section 15265(a)(1), because it has no potential to have a significant effect on the environment and local governments are exempt from the requirements of CEQA in connection with the adoption of a Local Coastal Program; and
- b) Conduct second reading and adopt Ordinance No. 2021-18, *An Ordinance of the City Council of the City of Newport Beach, California, Amending Title 21 (Local Coastal Program Implementation Plan) of the City of Newport Beach Municipal Code Related to the Amortization of Nonconforming Signs (PA2019-184).*

***Council Member Duffield recused himself from Item 5 due to business interest conflicts.***

***RESOLUTIONS FOR ADOPTION***

**6. Resolution No. 2021-86: Creating the City Council Ad Hoc Redistricting Committee [24/100-2021]**

- a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly;
  - b) Adopt Resolution No. 2021-86, *A Resolution of the City Council of the City Newport Beach, California, Creating the Ad Hoc Redistricting Committee to Study the Adjustment of Voting District Boundaries as a Result of the United States Census Bureau's 2020 Census*; and
  - c) Confirm the appointments of Mayor Avery, Council Member Will O'Neill, and Council Member Diane Dixon to serve on the City Council Ad Hoc Redistricting Committee.
- 7. Resolution No. 2021-87: Creating the City Council Ad Hoc General Plan Update Committee (PA2017-141) [24/100-2021]**
- a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in any physical change to the environment, directly or indirectly; and
  - b) Adopt Resolution No. 2021-87, *A Resolution of the City Council of the City of Newport Beach, California, Creating the Ad Hoc General Plan Update Committee*; and
  - c) Confirm Mayor Brad Avery's appointments of Council Member Joy Brenner, Council Member Will O'Neill, and himself to the Ad Hoc General Plan Update Committee.
- 8. Resolution No. 2021-88: Accepting a Grant from the State of California, Division of Boating and Waterways for the Surrendered and Abandoned Vessel Exchange (SAVE) Program [100-2021]**
- a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly;
  - b) Adopt Resolution No. 2021-88, *A Resolution of the City Council of the City of Newport Beach, California, Accepting a Grant from the State of California, Department of Parks and Recreation, Division of Boating and Waterways for the Surrendered and Abandoned Vessel Exchange Program (SAVE)*; and
  - c) Approve Budget Amendment No. 22-014 recognizing \$175,000 in grant revenue from the California Division of Boating and Waterways (13501-431385-22H13) and appropriating \$175,000 to Account No. 13501-980000-22H13 and \$17,500 to Account No. 10001-980000-22H13 (Abandoned Watercraft Abatement CIP Expenditure).
- 9. Resolution No. 2021-89: Investment Policy Update [100-2021]**
- a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and
  - b) Adopt Resolution No. 2021-89, *A Resolution of the City Council of the City of Newport Beach, California, Finding Consistency with Stated Investment Objectives and Amending City Council Policy F-1 (Statement of Investment Policy) to Add Clarifying Language that is Consistent with Government Code Section 53600, et seq.*

#### **CONTRACTS AND AGREEMENTS**

- 10. Via Lido Soud and Nord Water Main Replacement – Notice of Completion for Contract No. 7645-2 (20W12) [38/100-2021]**
- a) Accept the completed work and authorize the City Clerk to file a Notice of Completion for the project;
  - b) Authorize the City Clerk to release the Labor and Materials Bond 65 days after the Notice of Completion has been recorded in accordance with applicable portions of Civil Code; and
  - c) Release Faithful Performance Bond one year after acceptance by the City Council.
- 11. Removed from the Consent Calendar**

- 12. Contract with Arts Orange County to Manage Phase VII of the Sculpture Exhibition in Civic Center Park (C-8463-5) [38/100-2021]**
- a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and
  - b) Approve a contract with Arts Orange County for project management of Phase VII of the Sculpture Exhibition in Civic Center Park for a total amount not to exceed \$119,000, and authorize the Mayor and City Clerk to sign the contract.
- 13. Mutual Aid Agreement with the County of Orange for the COVID-19 Vaccination Effort (C-8773-1) [38/100-2021]**
- a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and
  - b) Approve the Mutual Aid Agreement with the County of Orange for the COVID-19 Vaccination Effort.
- 14. Amendment No. 4 to the Crossing Guard Services Agreement with All-City Management Services (C-8521-1) [38/100-2021]**
- a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly;
  - b) Approve Amendment No. Four to the Crossing Guard Services Agreement with All-City Management Services, Inc. of Santa Fe Springs, California adding two crossing guards for Ensign Intermediate School, and authorize the Mayor and City Clerk to execute the Amendment; and
  - c) Approve Budget Amendment No. 22-013 appropriating \$25,380 in increased expenditures in Account No. 01035354-811008 from the unappropriated General Fund balance.

**MISCELLANEOUS**

- 15. Budget Amendment to Accept a Check from the Newport Beach Arts Foundation and Appropriate Funds to the Cultural Arts' Fiscal Year 2021-22 Maintenance and Operation Budget [100-2021]**
- a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and
  - b) Accept a check in the amount of \$20,000 from the Newport Beach Arts Foundation and approve Budget Amendment No. 22-012 to increase expenditures by the same amount in Division 01060603 (Cultural Arts).

**Motion by Mayor Pro Tem Muldoon, seconded by Council Member Brenner,** to approve the Consent Calendar, except the item removed (Item 11); and noting the recusal by Council Member Duffield to Item 5, and the amendments to Item 1.

**The motion carried unanimously.**

**XV. ITEM REMOVED FROM THE CONSENT CALENDAR**

- 11. Ocean Boulevard Sidewalk Improvements Between Carnation Avenue and Fernleaf Avenue – Award of Contract No. 7623-1 (18R25) [38/100-2021]**

Harley Broviak noted discrepancies between using a stop sign and a yield sign, expressed concern about the proposed sidewalk widths, and requested an accurate and updated diagram, a physical mockup of the improvement, and a formal traffic impact study of Ocean Boulevard.

An unidentified speaker suggested staff prepare a more formal design.

At Council Member Brenner's request, Public Works Director Webb utilized a presentation to describe the project, standards, and revisions in response to community concerns. He reported that the street would meet current residential standards for traffic and staff does not feel there will be any problems.

Assistant City Engineer Sinacori reported that staff painted a centerline on the street to demonstrate traffic movement and noted the concern about the sidewalk since people gather at the same spot each evening and block the sidewalk. He stated that, if Council wishes, staff can meet with residents again to review the project.

Council Member Brenner recalled residents' initial negative response to the project more than three years ago, additional meetings with residents, and the impetus for a stop sign. She noted that staff has agreed to work with residents, but Council cannot afford to delay the project.

Mayor Pro Tem Muldoon noted that staff would not typically conduct a traffic study for this type of project and pointed out that street and sidewalk widths are set by City standards.

**Motion by Mayor Pro Tem Muldoon seconded by Council Member Dixon**, to a) find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 (repair and maintenance of existing highways and streets, sidewalks, and gutters involving no expansion of use) of the CEQA Guidelines, because this project has no potential to have a significant effect on the environment; b) approve project drawings and specifications; c) award Contract No. 7623-1 to Vido Samarzich, Inc. for the total bid price of \$449,470, and authorize the Mayor and City Clerk to execute the contract; and d) establish \$45,000 (approximately 10 percent) contingency to cover the cost of unforeseen work not included in the original contract.

**The motion carried unanimously.**

**XVI. PUBLIC COMMENTS ON NON-AGENDA ITEMS**

Steven related that five group homes are located within three blocks of one another in his neighborhood, 12-15 people live in some of the homes, residents do not feel safe, and noted the difference between Costa Mesa's ordinance and Newport Beach's ordinance. He requested Council agendaize a discussion of the issues and work with residents to change State laws.

**XVII. PUBLIC HEARINGS**

**16. Ordinance Nos. 2021-19 and 2021-20: A General Plan Amendment for the Residences at Newport Center Located at 150 Newport Center Drive (PA2020-020) [38/100-2021]**

Community Development Director Jurjis and Associate Planner Westmoreland utilized a presentation to discuss the proposed project, share a vicinity map, and discuss existing conditions, requested entitlements, display the site plan, garage access, renderings and plan sections, review Charter Section 423 analysis, California Environmental Quality Act (CEQA) analysis, highlight the Environmental Impact Report (EIR) and Development Agreement (DA), Planning Commission recommendations, conditions of approval, and staff's recommendation.

***Mayor Avery opened the public hearing.***

Coralee Newman, Government Solutions, Glen Butler, architect, and Mark Schattinger, MJS landscape architect, utilized a presentation to review the applicant's requests, community meetings, location, project statistics, perspectives, colors and materials, site plans, traffic circulation, common area amenities, surrounding building heights, photo simulations, and terms of the DA.



Council Member Dixon thanked the applicant for listening to the community, providing a beautiful project, reducing the size, and agreeing to a DA. She noted that the project conforms to General Plan requirements.

Council Member Brenner disclosed an ex parte meeting with the applicant and applicant's representative to review the project and stated that the improvements are impressive.

Jim Mosher discussed the addition of housing units in Newport Center, the requirement for a vote of the electorate, height limits and the proposed building's height, and the project's failure to comply with the definition of a Planned Community.

***Hearing no further testimony, Mayor Avery closed the public hearing.***

**Motion by Mayor Pro Tem Muldoon, seconded by Council Member Dixon,** to a) adopt Resolution No. 2021-90, *A Resolution of the City Council of the City of Newport Beach, California, Certifying Environmental Impact Report No. ER2021-002 (SCH No. 2020110087), Adopting the Mitigation Monitoring and Reporting Program, and Adopting California Environmental Quality Act Findings of Fact for the Residences at Newport Center Located at 150 Newport Center Drive (PA2020-020)*; b) adopt Resolution No. 2021-91, *A Resolution of the City Council of the City of Newport Beach, California, Adopting General Plan Amendment No. GP2020-001 for the Residences at Newport Center Located at 150 Newport Center Drive (PA2020-020)*; c) adopt Resolution No. 2021-92, *A Resolution of the City Council of the City of Newport Beach, California, Approving Major Site Development Review No. SD2020-001 for the Residences at Newport Center and Rescinding Use Permit No. UP1461 for a Car Wash Located at 150 Newport Center Drive (PA2020-020)*; d) adopt Resolution No. 2021-93, *A Resolution of the City Council of the City of Newport Beach, California, Approving Tentative Tract Map No. NT2020-001 for the Residences at Newport Center Located at 150 Newport Center Drive (PA2020-020)*; e) waive full reading, direct the City Clerk to read by title only, introduce Ordinance No. 2021-19, *An Ordinance of the City Council of the City of Newport Beach, California, Approving Development Agreement No. DA2020-001 for the Residences at Newport Center Located at 150 Newport Center Drive (PA2020-020) (C-8217-2)*, and pass to second reading on October 12, 2021; and f) waive full reading, direct the City Clerk to read by title only, introduce Ordinance No. 2021-20, *An Ordinance of the City Council of the City of Newport Beach, California, Approving Zoning Code Amendment No. CA2020-008 and Planned Community Development Plan No. PC2020-001 Establishing the Residences at Newport Center Located at 150 Newport Center Drive (PA2020-020)*, and pass to second reading on October 12, 2021.

**The motion carried unanimously.**

**17. Ordinance No. 2021-21: Zoning Code Amendment and General Plan Amendment to Change the Land Use Designation and Zoning District from Multiple Unit Residential to Private Institutions at 1499 Monrovia Avenue (PA2021-068) [100-2021]**

Community Development Director Jurjis reported the item proposes to change the designation from residential to Private Institution (PI) to allow Pacifica Christian High School to occupy the site, and noted that a use permit will be presented to Council at a future meeting.

***Mayor Avery opened the public hearing.***

Shawna Schaffner, applicant representative, requested Council approve the General Plan Amendment and Zoning Code Amendment.

Katherine Anderson urged Council to approve the amendments.

Mark McCardle shared his family's positive experiences with Pacifica Christian High School and asked Council to approve the amendments.

*Hearing no further testimony, Mayor Avery closed the public hearing.*

Council Member O'Neill commented that Pacifica Christian High School enriches the community and individual families.

**Motion by Council Member O'Neill, seconded by Council Member Brenner**, to a) find this project not subject to the California Environmental Quality Act (CEQA) pursuant to Section 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly; c) adopt Resolution No. 2021-94, *A Resolution of the City Council of the City of Newport Beach, California, Approving General Plan Amendment No. GP2021-002 to Change the Land Use Designation from RM 18 DU/AC (Multiple Residential) to PI 0.49 FAR (Private Institutions) for the Property Located at 1499 Monrovia Avenue (PA2021-068)*; and c) waive full reading, direct the City Clerk to read by title only, introduce Ordinance No. 2021-21, *An Ordinance of the City Council of the City of Newport Beach, California, Approving Zoning Code Amendment No. CA2021-003 to Change the Zoning Code Designation from RM 2420/3100 (Multiple Residential) to PI 0.49 FAR (Private Institutions) for the Property Located at 1499 Monrovia Avenue (PA2021-068)*, and pass on to second reading on October 12, 2021.

Council Member Dixon disclosed that she took a site visit and indicated the Pacifica Christian High School's administration cares about the community, and the school and its students benefit Newport Beach.

Council Member Brenner disclosed that she took a tour of the school.

**The motion carried unanimously.**

## **XVIII. CURRENT BUSINESS**

### **18. Approval of a Mobile Crisis Response Team to Assist Residents and Homeless Individuals Experiencing Mental Health Crises Related to COVID-19 and a Community Development Block Grant and Professional Services Agreement (C-8778-1) [38/100-2021]**

Assistant City Manager Jacobs utilized a presentation to discuss the City's homeless population, successes, and the City's approach. She noted that the missing piece was a means to assist with mental health issues.

In response to Council Member Dixon's questions, Marshall Moncrief, Chief Executive Officer of Be Well OC/Mind OC, advised that Be Well can begin providing services in Newport Beach starting December 2021, is awaiting delivery of a van, and can often avoid facility-based care by providing services promptly.

Assistant City Manager Jacobs concluded the presentation with how the program works, costs, and funding.

In response to Council Member Dixon's questions, Assistant City Manager Jacobs indicated that the homeless population changes almost daily, the core group of homeless individuals is getting smaller, a small percentage of clients stop services and return to the streets, and clients in the shelter can transition to Be Well.

In response to Mayor Avery's question, Mr. Moncrief related that one team and van can cover the projected call volume, Be Well will monitor response times and adjust as needed, and Be Well resources can be shared among cities in which it operates.

Reverend Cindy Vorhees, St. James Episcopal Church, urged Council to support the project, shared her experiences working with people suffering mental health issues, and noted the excellent quality of Be Well's services.

Council Member Brenner emphasized the cost savings of utilizing Be Well's services and pointed out that Be Well also provides services to people suffering mental health issues that are not homeless.

Council Member Dixon thanked staff for their efforts over the past 18 months.

**Motion by Council Member Dixon, seconded by Council Member Brenner**, to a) determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; b) approve Budget Amendment No. 22-015 in the amount of \$717,079 in COVID-19 Community Development Block Grant Funds and \$376,101 from the General Fund to provide funding for a pilot program; and c) authorize the City Manager and City Clerk to execute a three-year Community Development Block Grant Public Services and Professional Services Agreement with Mind OC for the Be Well OC Mobile Crisis Response Team Program, in the amount of \$1,093,180.00 for a term of one year with the option for two additional one-year extensions, in a form substantially similar to the agreement prepared by the City Attorney.

**The motion carried unanimously.**

**XX. MOTION FOR RECONSIDERATION – None**

**XXI. ADJOURNMENT – 8:36 p.m.**

**The agenda was posted on the City's website and on the City Hall electronic bulletin board located in the entrance of the City Council Chambers at 100 Civic Center Drive on September 23, 2021 at 4:00 p.m.**

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**Brad Avery  
Mayor**

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**Leilani I. Brown  
City Clerk**





# NEWPORT BEACH

## City Council Staff Report

October 12, 2021  
Agenda Item No. 3

**TO:** HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

**FROM:** Seimone Jurjis, Community Development Director - 949-644-3232, sjurjis@newportbeachca.gov

**PREPARED BY:** Liz Westmoreland, Associate Planner, lwestmoreland@newportbeachca.gov

**PHONE:** 949-644-3234

**TITLE:** Ordinance Nos. 2021-19 and 2021-20: Zone Change and Development Agreement for a Residential Project at 150 Newport Center Drive (PA2020-020)

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### **ABSTRACT:**

For the City Council's consideration are two ordinances for adoption to change the existing zoning district from "Office Regional (OR)" to "Planned Community (PC-61)" and approve a Development Agreement between the City of Newport Beach (City) and Newport Center Anacapa Associates, LLC for the Residences at Newport Center, located at 150 Newport Center Drive. The attached ordinances were introduced and considered at the September 28, 2021, City Council Meeting.

### **RECOMMENDATION:**

- a) Find that the Residences at Newport Center project Environmental Impact Report (EIR) No. ER2021-002 (SCH No. 2020110087) certified by the City Council on September 28, 2021, by Resolution No. 2021-90 was prepared for the project in compliance with the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and City Council Policy K-3;
- b) Conduct second reading and adopt Ordinance No. 2021-19, *An Ordinance of The City Council of the City of Newport Beach, California, Approving Development Agreement No. DA2020-001 for the Residences at Newport Center Located at 150 Newport Center Drive (PA2020-020)*; and
- c) Conduct second reading and adopt Ordinance No. 2021-20, *An Ordinance of the City Council of the City of Newport Beach, California, Approving Zoning Code Amendment No. CA2020-008 and Planned Community Development Plan No. PC2020-001 Establishing the Residences at Newport Center Located at 150 Newport Center Drive (PA2020-020)*.

**DISCUSSION:**

On September 28, 2021, the City Council heard a presentation to change the general plan to allow 28 residential units at the property located at 150 Newport Center Drive. At the meeting, the City Council introduced and passed to a second reading and adoption Ordinance No. 2021-20, which changes the existing Zoning District from “Office Regional (OR)” to “Planned Community (PC-61)”. The City Council also introduced and passed to second reading and adoption Ordinance No. 2021-19, which approves a Development Agreement between the City and Newport Center Anacapa Associates, LLC.

**FISCAL IMPACT:**

A voluntary Development Agreement has been requested by Newport Center Anacapa Associates, LLC. As part of the Development Agreement, the applicant has agreed to pay a public benefit fee to the City in the sum of \$2,500,000, or \$89,285.71 per residential dwelling unit. The developer is required to pay the public benefit fee to the City at the time of the City’s issuance of the first building permit for the project.

The Development Agreement allocates the total fee into the following categories:

- \$1,875,000 for any public purpose that the City determines to be in the public interest
- \$325,000 for affordable housing
- \$150,000 to fund services for those experiencing homelessness
- \$150,000 to fund public safety

**ENVIRONMENTAL REVIEW:**

EIR No. ER2021-002 (SCH No. 2020110087) was prepared in accordance with the implementing guidelines of CEQA, the State CEQA Guidelines, and the City Council Policy K-3, which included an analysis of the proposed zoning changes and Agreement. The City Council certified the EIR on September 28, 2021, by Resolution No. 2021-90.

**NOTICING:**

The agenda item has been noticed according to the Brown Act (72 hours in advance of the meeting at which the City Council considers the item).

**ATTACHMENTS:**

Attachment A – Ordinance No. 2021-19 (DA)

Attachment B – Ordinance No. 2021-20 (PC)

# **Attachment A**

Ordinance No. 2021-19 (DA)

## ORDINANCE NO. 2021-19

### AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING DEVELOPMENT AGREEMENT NO. DA2020-001 FOR THE RESIDENCES AT NEWPORT CENTER LOCATED AT 150 NEWPORT CENTER DRIVE (PA2020-020)

**WHEREAS**, Section 200 of the City of Newport Beach (“City”) Charter vests the City Council with the authority to make and enforce all laws, rules and regulations with respect to municipal affairs subject only to the restrictions and limitations contained in the Charter and the State Constitution, and the power to exercise, or act pursuant to any and all rights, powers, and privileges, or procedures granted or prescribed by any law of the State of California;

**WHEREAS**, an application was filed by Newport Center Anacapa Associates, LLC (“Applicant”), with respect to property located at 150 Newport Center Drive and legally described in Exhibit “A,” which is attached hereto and incorporated herein by reference (“Property”);

**WHEREAS**, the project includes the demolition of an existing 2,085-square-foot car wash, convenience market, and gas station and the construction of a four-story structure consisting of 28 condominium units and common space amenity areas over a two-level below-grade parking garage (“Project”) which require the following approvals from the City:

- General Plan Amendment No. GP2020-001 – to change the Property’s land use designation from Regional Commercial Office (CO-R) to Multiple Residential (RM) and create a new Anomaly Location for the Property that authorizes a maximum development density of 28 dwelling units;
- Zoning Code Amendment No. CA2020-008 – to change the Property’s zoning designation from Office Regional (OR) to Planned Community (PC) District;
- Planned Community Development Plan No. PC2020-001 - to establish land uses and development standards for the Property including a waiver of the minimum site area;
- Major Site Development Review No. SD2020-001 – to allow for the development of a four-story structure containing 28 luxury condominium units and common space areas over a two-level below-grade parking garage;



- Tentative Tract Map No. NT2020-001 – to establish a 28-unit residential condominium subdivision map on the 1.26-acre Property that would allow each unit to be sold individually;
- Development Agreement No. DA2020-001 – to provide the Applicant with the vested right to develop the Project subject to the rules and regulations in effect at the time of Project approval and to provide the City with assurance that certain obligations of the Applicant will be met, including public benefit fees;
- Environmental Impact Report No. ER2021-002 - to disclose reasonably foreseeable environmental impacts resulting from the legislative and project specific discretionary approvals, the City has determined that an Initial Study and Environmental Impact Report (“EIR”) are warranted for the Project pursuant to California Public Resources Code Section 23000 *et seq.* (“CEQA”), Title 14, Division 6, Chapter 3 of the California Code of Regulations (“CEQA Guidelines”), and City Council Policy K-3; and
- Rescind Use Permit No. UP1461 – rescind use permit since the Project will replace the operation of the existing car wash;

**WHEREAS**, the Property is designated Regional Commercial Office (CO-R) by the City of Newport Beach General Plan (“General Plan”) Land Use Element and is located within the Office Regional (OR) Zoning District;

**WHEREAS**, the Property is not located within the coastal zone;

**WHEREAS**, a study session was held on May 6, 2021, in the Council Chambers located at 100 Civic Center Drive, Newport Beach to introduce the project to the Planning Commission and discuss the procedures for environmental review;

**WHEREAS**, the Planning Commission held a public hearing on August 19, 2021 in the Council Chambers at 100 Civic Center Drive, Newport Beach. A notice of time, place and purpose of the hearing was given in accordance with California Government Code Section 54950 *et seq.* (“Ralph M. Brown Act”) and Chapters 15.45 (Development Agreements), 19.12 (Tentative Map Review), 20.56 (Planned Community District Procedures) and 20.62 (Public Hearings) of the Newport Beach Municipal Code (“NBMC”). Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this public hearing;

**WHEREAS**, at the hearing, the Planning Commission adopted Resolution No. PC2021-024 by a unanimous vote (7 ayes, 0 nays) recommending the City Council approve the Project; and

**WHEREAS**, the City Council held a public hearing on September 28, 2021, in the Council Chambers located at 100 Civic Center Drive, Newport Beach. A notice of time, place and purpose of the hearing was given in accordance with the Ralph M. Brown Act and Chapters 15.45 (Development Agreements), 19.12 (Tentative Map Review), 20.56 (Planned Community District Procedures) and 20.62 (Public Hearings) of the Newport Beach Municipal Code (“NBMC”). Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this public hearing.

**NOW THEREFORE**, the City Council of the City of Newport Beach ordains as follows:

**Section 1:** The City Council has considered the recommendation of the Planning Commission and determined that modifications to the Project made by the City Council, if any, are not major changes that require referral back to the Planning Commission for consideration and recommendation.

**Section 2:** The City Council of the City of Newport Beach hereby approves Development Agreement No. DA2020-001, as set forth in Exhibit “B,” which is attached hereto and incorporated herein by reference.

Development Agreement No. DA2020-001 satisfies the requirements of Chapter 15.45 (Development Agreements) of the NBMC as provided hereafter:

1. A voluntary development agreement has been requested by the Applicant as the Project would add new residential dwelling units within Statistical Area L1 (Newport Center). The development agreement includes all the mandatory elements, including a term of 10 years, and public benefits that are appropriate to support conveying the vested development rights consistent with the General Plan, NBMC, and California Government Code Sections 65864 *et seq.*
2. Public benefits include the payment of \$1,875,000 for any public purpose that the City determines to be in the public interest; \$325,000 for affordable housing; \$150,000 to fund services for those experiencing homelessness; and \$150,000 to fund public safety.

3. With the adoption of Resolution No. 2021-91 approving General Plan Amendment No. GP2020-001 changing the General Plan land use designation of 150 Newport Center Drive from CO-R (Regional Commercial Office) to RM (Multiple Residential), revising the existing Anomaly 35 and establishing a new anomaly (Table LU2 Anomaly Locations) designation for a maximum development intensity of 28 dwelling units, the Project is consistent with the General Plan.
4. Additionally, with the adoption of Ordinance No. 2021-20 changing the Zoning District designation from OR (Office Regional) to PC - 61 (Residences at Newport Center) over the entire site, the Project is consistent with the Zoning Code.

**Section 3:** The recitals provided in this ordinance are true and correct and are incorporated into the substantive portion of this ordinance.

**Section 4:** If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

**Section 5:** The Residences at Newport Center Final Environmental Impact Report (SCH No. 2020110087) was prepared for the project in compliance with CEQA, the State CEQA Guidelines, and City Council Policy K-3. By Resolution No. 2021-90, the City Council, having final approval authority over the project, adopted and certified as complete and adequate the Residences at Newport Center Final Environmental Impact Report (SCH No. 2020110087) and adopted "Mitigation Monitoring and Reporting Program." Resolution No. 2021-90, including all findings contained therein, is hereby incorporated by reference.

**Section 6:** The Mayor shall sign and the City Clerk shall attest to the passage of this ordinance. The City Clerk shall cause the ordinance, or a summary thereof, to be published pursuant to City Charter Section 414.

This ordinance was introduced at a regular meeting of the City Council of the City of Newport Beach held on the 28th day of September, 2021, and adopted on the 12th day of October, 2021, by the following vote, to-wit:

AYES: \_\_\_\_\_

NAYS: \_\_\_\_\_

ABSENT: \_\_\_\_\_

\_\_\_\_\_  
BRAD AVERY, MAYOR

**ATTEST:**

\_\_\_\_\_  
LEILANI I. BROWN, CITY CLERK

**APPROVED AS TO FORM:**  
CITY ATTORNEY'S OFFICE

  
\_\_\_\_\_  
AARON C. HARP, CITY ATTORNEY

Attachment(s):      Exhibit A - Legal Description  
                                 Exhibit B - Development Agreement

## **Exhibit "A"**

### **Legal Description**

The property is legally described as Parcel 1 of Parcel Map No. 29-34 (Resubdivision No. 282) being a portion of Block 93 of Irvine's subdivision as per map recorded in Book 1, Page 88 of Miscellaneous Record Maps, records of Orange County, California.

**Exhibit "B"**  
**Development Agreement**

RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO:

City of Newport Beach  
100 Civic Center Drive  
Newport Beach, CA 92660  
Attn: City Clerk

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(Space Above This Line Is for Recorder's Use Only)

This Agreement is recorded at the request and for the benefit of the City of Newport Beach and is exempt from the payment of a recording fee pursuant to Government Code §§ 6103 and 27383.

**DEVELOPMENT AGREEMENT NO. DA2020-001**

**between**

**CITY OF NEWPORT BEACH**

**and**

**NEWPORT CENTER ANACAPA ASSOCIATES, LLC,  
a California limited liability company**

**CONCERNING 150 NEWPORT CENTER**

## DEVELOPMENT AGREEMENT

**(Pursuant to California Government Code sections 65864-65869.5)**

This DEVELOPMENT AGREEMENT (the "Agreement") is dated for reference purposes as of the \_\_\_ day of \_\_\_\_\_, 2021, and is being entered into by and between the CITY OF NEWPORT BEACH ("City") a California municipal corporation and charter city, organized and existing under and by virtue of its Charter and the Constitution, and the laws of the State of California, and NEWPORT CENTER ANACAPA ASSOCIATES, LLC, a California limited liability company ("Developer"). City and Developer are sometimes collectively referred to in this Agreement as the "Parties" and individually as a "Party."

### RECITALS

A. As of the "Agreement Date" (defined below) Developer holds fee title to that certain real property located in the City of Newport Beach, County of Orange, State of California commonly referred to as 150 Newport Center, located at 150 Newport Center Drive, Newport Beach, California 92660-6906 (APN # 442-231-12), bounded by Newport Center Drive on the north, Anacapa Drive on the east, the existing Gateway Plaza office complex on the south, and a parking lot that services the existing Corporate Plaza office park on the west (the "Property"). Accordingly, Developer has an equitable interest in the Property, and City and Developer are authorized to enter into this Agreement pursuant to Government Code Section 65865(a) and Newport Beach Municipal Code Chapter 15.45. The Property is more particularly described in the legal description attached hereto as Exhibit A and is depicted on the site map attached hereto as Exhibit B.

B. In order to encourage investment in, and commitment to, comprehensive planning and public facilities financing, strengthen the public planning process and encourage private implementation of the local general plan, provide certainty in the approval of projects in order to avoid waste of time and resources, and reduce the economic costs of development by providing assurance to property owners that they may proceed with projects consistent with existing land use policies, rules, and regulations, the California Legislature adopted California Government Code sections 65864-65869.5 (the "Development Agreement Statute") authorizing cities and counties to enter into development agreements with persons or entities having a legal or equitable interest in real property located within their jurisdiction.

C. On March 13, 2007, the City Council adopted Ordinance No. 2007-6, entitled "Ordinance Amending Chapter 15.45 of City of Newport Beach Municipal Code Regarding Development Agreements" (the "Development Agreement Ordinance"). This Agreement is consistent with the Development Agreement Ordinance.

D. As detailed in Section 3 of this Agreement and the Development Plans (as defined herein), and in consideration of the significant benefits outlined in this Agreement, Developer has agreed to pay a public benefit fee to City in the sum of Two Million Five Hundred Thousand Dollars and 00/100 (\$2,500,000.00), including an annual adjustment to the public benefit fee based on the Consumer Price Index ("CPI"). City has determined that Developer's payment of this public benefit fee provides a significant public benefit to City and constitutes adequate consideration for City's entering into and performing its obligations set forth in this Agreement.



Developer shall pay the Public Benefit Fee to the City at the time of the City's issuance of the first building permit for the Project (as defined herein).

E. The following land use entitlements for the "Project" as detailed herein are being adopted and approved by the City Council concurrently with its approval of this Agreement:

**General Plan Amendment No. GP2020-001** proposes to change the existing land use designation for the Property from "Regional Commercial Office (CO-R)" to "Multiple Residential (RM)" And create a new Anomaly Location that authorizes a maximum density of 28 units.

**Zoning Code Amendment No. CA2020-008** proposes to change the zoning designations for the Property from Office Regional Commercial (OR) to Planned Community (PC) District over the Property.

**Planned Community Development Plan No. PC2020-001** proposes a new Planned Community to establish land uses and development standards for the Project site. In order to establish a planned community development plan, a waiver of the minimum site area of 10 acres of developed land is necessary.

**Major Site Development Review No. SD2020-001** proposes to allow for the development of a four-story structure containing 28 condominium units and common space areas over a two-level below-grade parking garage.

**Tentative Tract Map No. NT2020-001** proposes to establish a 28-unit residential condominium subdivision map on the 1.26-acre Project site that would allow each unit to be sold individually.

**Development Agreement No. DA2020-001** proposes to provide the Applicant with the assurance that the development of the Project may proceed subject to the rules and regulations in effect at the time of Project approval and to provide the City with assurance that certain obligations of the Applicant will be met.

**Final Environmental Impact Report No. ER2021-002 (SCH No. 2020110087)** proposes to address reasonably foreseeable environmental impacts resulting from the legislative and project specific discretionary approvals and, also, including the Mitigation Monitoring and Reporting Program prepared and approved in conjunction therewith.

**Use Permit No. UP1461 Revocation.**

F. This Agreement is consistent with the City of Newport Beach General Plan, as amended by the City Council prior to or concurrently with its approval of this Agreement in order to establish appropriate zoning to regulate land use and development of the Property consistent with the General Plan.

G. In recognition of the significant public benefits that this Agreement provides, the City Council has found that this Agreement: (i) is consistent with the City of Newport Beach General Plan; (ii) is in the best interests of the health, safety, and general welfare of City, its residents, and the public; (iii) is entered into pursuant to, and constitutes a present exercise of,

City's police power; (iv) is consistent with the provisions of the California Environmental Quality Act ("CEQA"), including all criteria, standards and procedures of CEQA and the CEQA Guidelines requiring the preparation of an Initial Study and the Environmental Impact Report (SCH No. 2020110087) ("EIR"), all of which analyze the environmental effects of the proposed development of the Project on the Property, and all of the findings, conditions of approval and mitigation measures related thereto; and (v) has been approved consistent with provisions of California Government Code section 65867 and City of Newport Beach Municipal Code Chapter 15.45.

H. On August 19, 2021, City's Planning Commission held a public hearing on this Agreement, made findings and determinations with respect to this Agreement, and recommended to the City Council that the City Council approve this Agreement.

I. On September 28, 2021, the City Council also held a public hearing on this Agreement and considered the Planning Commission's recommendations and the testimony and information submitted by City staff, Developer, and members of the public. On October 12 2021, consistent with applicable provisions of the Development Agreement Statute and Development Agreement Ordinance, the City Council adopted its Ordinance No. 2021-19 (the "Adopting Ordinance"), finding this Agreement to be consistent with the City of Newport Beach General Plan in approving this Agreement.

#### AGREEMENT

NOW, THEREFORE, City and Developer agree as follows:

1. Definitions.

In addition to any terms defined elsewhere in this Agreement, the following terms when used in this Agreement shall have the meanings set forth below:

"Action" shall have the meaning ascribed in Section 8.10 of this Agreement.

"Adopting Ordinance" shall mean City Council Ordinance No. 2021-19 approving and adopting this Agreement.

"Agreement" shall mean this Development Agreement No. DA2020-001, as the same may be amended from time to time.

"Agreement Date" shall mean the date first written above which date is the date the City Council adopted the Adopting Ordinance.

"CEQA" shall mean the California Environmental Quality Act (California Public Resources Code sections 21000-21177) and the implementing regulations promulgated thereunder by the Secretary for Resources (California Code of Regulations, Title 14, Division 6, Chapter 3, Section 15000 *et seq.*), as the same may be amended from time to time.

"City" shall mean the City of Newport Beach, a California municipal corporation and charter city, and any successor or assignee of the rights and obligations of the City of Newport Beach hereunder.

“City Council” shall mean the governing body of City.

“City’s Affiliated Parties” shall have the meaning ascribed in Section 10.1 of this Agreement.

“Claim” shall have the meaning ascribed in Section 10.1 of this Agreement.

“CPI Index” shall mean the Consumer Price Index published from time to time by the United States Department of Labor for all urban consumers (all items) for the smallest geographic area that includes the City or, if such index is discontinued, such other similar index as may be publicly available that is selected by City in its reasonable discretion.

“Cure Period” shall have the meaning ascribed in Section 8.1 of this Agreement.

“Default” shall have the meaning ascribed to that term in Section 8.1 of this Agreement.

“Develop” or “Development” shall mean to improve or the improvement of the Property for the purpose of completing the structures, improvements, and facilities comprising the Project, including but not limited to: grading; the construction of infrastructure and public facilities related to the Project, whether located within or outside the Property; the construction of all of the private improvements and facilities comprising the Project; the preservation or restoration, as required of natural and man-made or altered open space areas; and the installation of landscaping. The terms “Develop” and “Development,” as used herein, do not include the maintenance, repair, reconstruction, replacement, or redevelopment of any structure, improvement, or facility after the initial construction and completion thereof.

“Developer” shall mean Newport Center Anacapa Associates, LLC, a California limited liability company, and any successor or assignee to all or any portion of the right, title, and/or interest of Newport Center Anacapa Associates, LLC, in and to ownership of all or a portion of the Property and/or the Project.

“Development Agreement Ordinance” shall mean Chapter 15.45 of the City of Newport Beach Municipal Code.

“Development Agreement Statute” shall mean California Government Code Sections 65864-65869.5, inclusive.

“Development Exactions” shall mean any requirement of City in connection with or pursuant to any ordinance, resolution, rule, or official policy for the dedication of land, the construction or installation of any public improvement or facility, or the payment of any fee or charge in order to lessen, offset, mitigate, or compensate for the impacts of Development of the Project on the environment or other public interests.

“Development Plan” shall mean all of the land use entitlements, approvals and permits approved by the City for the Project on or before the Agreement Date, as the same may be amended from time to time consistent with this Agreement. Such land use entitlements, approvals and permits include, without limitation, the following: (1) the Development rights as provided under this Agreement; (2) General Plan Amendment No. GP2020-001; (3) Zoning Code Amendment No. CA2020-008; (4) Planned Community Development Plan No. PC2020-

001; (5) Major Site Development Review No. SD2020-001; (6) Tentative Tract Map No. NT2020-001; (7) Final Environmental Impact Report No. ER2021-002 for the Project, including the Mitigation Monitoring and Reporting Program approved in conjunction therewith; (8) Use Permit No. UP1461 Revocation; and (9) all conditions of approval and all mitigation measures approved for the Project on or before the Agreement Date.

“Development Regulations” shall mean the following regulations as they are in effect as of the Effective Date and to the extent they govern or regulate the development of the Property, but excluding any amendment or modification to the Development Regulations adopted, approved, or imposed after the Effective Date that affects the Development of the Property, unless such amendment or modification is expressly authorized by this Agreement or is agreed to by Developer in writing: the General Plan; the Development Plan; and, to the extent not expressly superseded by the Development Plan or this Agreement, all other land use and subdivision regulations governing the permitted uses, density and intensity of use, design, improvement, and construction standards and specifications, procedures for obtaining required City permits and approvals for development, and similar matters that may apply to the Development of the Project on the Property during the Term of this Agreement that are set forth in Title 15 of the Municipal Code (buildings and construction), Title 19 of the Municipal Code (subdivisions and inclusionary housing), and Title 20 of the Municipal Code (planning, zoning and density bonus), but specifically excluding all other sections of the Municipal Code, including without limitation Title 5 of the Municipal Code (business licenses and regulations). Notwithstanding the foregoing, the term “Development Regulations,” as used herein, does not include any City ordinance, resolution, code, rule, regulation or official policy governing any of the following: (i) the conduct of businesses, professions, and occupations; (ii) taxes and assessments; (iii) the control and abatement of nuisances; (iv) the granting of encroachment permits and the conveyance of rights and interests which provide for the use of or the entry upon public property; or (v) the exercise of the power of eminent domain.

“Effective Date” shall mean the latest of all of the following occurring, as applicable: (i) the date that is thirty (30) calendars days after the Agreement Date; (ii) if a referendum concerning the Adopting Ordinance, the Development Plan, or any of the Development Regulations approved on or before the Agreement Date is timely qualified for the ballot and a referendum election is held concerning the Adopting Ordinance or any of such Development Regulations, the date on which the referendum is certified resulting in upholding and approving the Adopting Ordinance and the Development Regulations; or (iii) if a lawsuit is timely filed challenging the validity or legality of the Adopting Ordinance, this Agreement, the Development Plan, and/or any of the Development Regulations approved on or before the Agreement Date, the date on which said challenge is finally resolved in favor of the validity or legality of the Adopting Ordinance, this Agreement, the Development Plan, and/or the applicable Development Regulations, whether such finality is achieved by a final non-appealable judgment, voluntary or involuntary dismissal (and the passage of any time required to appeal an involuntary dismissal), or binding written settlement agreement. Promptly after the Effective Date occurs, the Parties agree to cooperate in causing an appropriate instrument to be executed and recorded against the Property memorializing the Effective Date. Notwithstanding any other provision set forth in this Agreement to the contrary, however, in the event that for any reason the Effective Date does not occur on or before the third (3<sup>rd</sup>) anniversary of the date on which the City Council adopts the Adopting Ordinance then City shall have the right, exercisable in its sole and absolute discretion,

to rescind the Adopting Ordinance and terminate this Agreement, and in such event neither Party shall have any additional rights or obligations hereunder after the effective date of such action(s).

“EIR” shall mean Final Environmental Impact Report No. ER2021-002 (SCH No. 2020110087) (including the Mitigation Monitoring and Reporting Program) prepared for the Project and certified as fully compliant with the CEQA and the CEQA Guidelines by the City Council.

“Environmental Laws” means all federal, state, regional, county, municipal, and local laws, statutes, ordinances, rules, and regulations which are in effect as of the Agreement Date, and all federal, state, regional, county, municipal, and local laws, statutes, rules, ordinances, rules, and regulations which may hereafter be enacted and which apply to the Property or any part thereof, pertaining to the use, generation, storage, disposal, release, treatment, or removal of any Hazardous Substances, including without limitation the following: the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 U.S.C. Sections 9601, et seq., as amended (“CERCLA”); the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Sections 6901, et seq., as amended (“RCRA”); the Emergency Planning and Community Right to Know Act of 1986, 42 U.S.C. Sections 11001 et seq., as amended; the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., as amended; the Clean Air Act, 42 U.S.C. Sections 7401 et seq., as amended; the Clean Water Act, 33 U.S.C. Section 1251, et seq., as amended; the Toxic Substances Control Act, 15 U.S.C. Sections 2601 et seq., as amended; the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. Sections 136 et seq., as amended; the Federal Safe Drinking Water Act, 42 U.S.C. Sections 300f et seq., as amended; the Federal Radon and Indoor Air Quality Research Act, 42 U.S.C. Sections 7401 et seq., as amended; the Occupational Safety and Health Act, 29 U.S.C. Sections 651 et seq., as amended; and California Health and Safety Code Section 25100, et seq.

“General Plan” shall mean City’s 2006 General Plan adopted by the City Council on July 25, 2006, by Resolution No. 2006-76, and any amendments to the 2006 General Plan that became effective before the Effective Date. The term “General Plan” shall exclude any amendments that became effective after the Effective Date unless such amendment is expressly authorized by this Agreement, or is specifically agreed to by Developer. The Land Use Plan of the Land Use Element of the General Plan was approved by City voters in a general election on November 7, 2006.

“Hazardous Substances” means any toxic substance or waste, pollutant, hazardous substance or waste, contaminant, special waste, industrial substance or waste, petroleum or petroleum-derived substance or waste, or any toxic or hazardous constituent or additive to or breakdown component from any such substance or waste, including without limitation any substance, waste, or material regulated under or defined as “hazardous” or “toxic” under any Environmental Law.

“Mortgage” shall mean a mortgage, deed of trust, sale and leaseback arrangement, or any other form of conveyance in which the Property, or a part or interest in the Property, is pledged as security and contracted for in good faith and for fair value.

“Mortgagee” shall mean the holder of a beneficial interest under a Mortgage or any successor or assignee of the Mortgagee.

“Notice of Default” shall have the meaning ascribed in Section 8.1 of this Agreement.

“Party” or “Parties” shall mean either City or Developer or both, as determined by the context.

“Project” shall mean all on-site and off-site improvements, as provided in this Agreement and the Development Regulations, as the same may be modified or amended from time to time consistent with this Agreement and applicable law.

“Property” is described in Exhibit A and depicted on Exhibit B.

“Public Benefit Fee” shall have the meaning ascribed in Section 3.1 of this Agreement.

“Subsequent Development Approvals” shall mean all discretionary development and building approvals that Developer is required to obtain to Develop the Project on and with respect to the Property after the Agreement Date consistent with the Development Regulations and this Agreement.

“Term” shall have the meaning ascribed in Section 2.4 of this Agreement.

“Termination Date” shall have the meaning ascribed in Section 2.4 of this Agreement.

“Transfer” shall have the meaning ascribed in Section 11 of this Agreement.

## 2. General Provisions.

### 2.1 Plan Consistency, Zoning Implementation.

This Agreement and the Development Regulations applicable to the Property will cause City’s zoning and other land use regulations for the Property to be consistent with the General Plan.

### 2.2 Binding Effect of Agreement.

The Property is hereby made subject to this Agreement. Development of the Property is hereby authorized and shall be carried out in accordance with the terms of this Agreement.

### 2.3 Developer Representations and Warranties Regarding Ownership of the Property and Related Matters Pertaining to this Agreement.

Developer and each person executing this Agreement on behalf of Developer hereby represents and warrants to City as follows: (i) that Developer is the fee simple title to the Property; (ii) if Developer or any co-owner comprising Developer is a legal entity that such entity is duly formed and existing and is authorized to do business in the State of California; (iii) if Developer or any co-owner comprising Developer is a natural person that such natural person has the legal right and capacity to execute this Agreement; (iv) that all actions required to be taken by all persons and entities comprising Developer to enter into this Agreement have been

taken and that Developer has the legal authority to enter into this Agreement; (v) that Developer's entering into and performing its obligations set forth in this Agreement will not result in a violation of any obligation, contractual or otherwise, that Developer or any person or entity comprising Developer has to any third party; and (vi) that neither Developer nor any co-owner comprising Developer is the subject of any voluntary or involuntary bankruptcy or insolvency petition; and (vii) that Developer has no actual knowledge of any pending or threatened claims of any person or entity affecting the validity of any of the representations and warranties set forth in clauses (i)-(vi), inclusive, or affecting Developer's authority or ability to enter into or perform any of its obligations set forth in this Agreement.

#### 2.4 Term.

The term of this Agreement ("Term") shall commence on the Effective Date and shall terminate on the "Termination Date."

Notwithstanding any other provision set forth in this Agreement to the contrary, if any Party reasonably determines that the Effective Date of this Agreement will not occur because (i) the Adopting Ordinance or any of the Development Regulations approved on or before the Agreement Date for the Project has/have been disapproved by City's voters at a referendum election or (ii) a final non-appealable judgment is entered in a judicial action challenging the validity or legality of the Adopting Ordinance, this Agreement, and/or any of the Development Regulations for the Project approved on or before the Agreement Date such that this Agreement and/or any of such Development Regulations is/are invalid and unenforceable in whole or in such a substantial part that the judgment substantially impairs such Party's rights or substantially increases its obligations or risks hereunder or thereunder, then such Party, in its sole and absolute discretion, shall have the right to terminate this Agreement upon delivery of a written notice of termination to the other Party, in which event neither Party shall have any further rights or obligations hereunder except that Developer's indemnity obligations set forth in Article 10 shall remain in full force and effect and shall be enforceable, and the Development Regulations applicable to the Project and the Property only (but not those general Development Regulations applicable to other properties in the City) shall similarly be null and void at such time.

The Termination Date shall be the earliest of the following dates: (i) the tenth (10th) anniversary of the Effective Date; (ii) such earlier date that this Agreement may be terminated in accordance with Articles 5, 7, and/or Section 8.3 of this Agreement and/or Sections 65865.1 and/or 65868 of the Development Agreement Statute; or (iii) completion of the Project in accordance with the terms of this Agreement, including Developer's complete satisfaction, performance, and payment, as applicable, of all Development Exactions, the issuance of all required final occupancy permits, and acceptance by City or applicable public agency(ies) or private entity(ies) of all required offers of dedication.

Notwithstanding any other provision set forth in this Agreement to the contrary, the provisions set forth in Article 10 and Section 14.11 (as well as any other Developer obligations set forth in this Agreement that are expressly written to survive the Termination Date) shall survive the Termination Date of this Agreement.

### 3. Public Benefits.

#### 3.1 Public Benefit Fee.

As consideration for City's approval and performance of its obligations set forth in this Agreement, Developer shall pay to City a fee that shall be in addition to any other fee or charge to which the Property and the Project would otherwise be subject (herein, the "Public Benefit Fee") in the sum of Eighty-Nine Thousand Two Hundred Eighty-Five Dollars and 71/100 (\$89,285.71) per residential dwelling unit developed as part of the Project for a total amount of Two Million Five Hundred Thousand Dollars and 00/00 (\$2,500,000.00). Developer shall pay the Public Benefit Fee at the time the City issues the first building permit for the Development Plan. The amount of the Public Benefit Fee shall be increased based upon percentage increases in the CPI Index. The first CPI adjustment to the Public Benefit Fee shall occur on the third anniversary of the Agreement Date (the first "Adjustment Date") and subsequent CPI adjustments shall occur on each anniversary of the first Adjustment Date thereafter until expiration of the Term of this Agreement (each, an "Adjustment Date"). The amount of the CPI adjustment on the first Adjustment Date shall be the percentage increase in the CPI Index between the second anniversary of the Agreement Date and the third anniversary of the Agreement Date. The amount of the CPI adjustment on each subsequent Adjustment Date shall be the percentage increase between said Adjustment Date and the immediately preceding Adjustment Date. The amount of the percentage increase in the CPI Index on the applicable Adjustment Dates shall in each instance be calculated based on the then most recently available CPI Index figures such that, for example, if the first Adjustment Date occurs on September 1, 2019, and the most recently available CPI Index figure on that date is the CPI Index for July 2019 (2 months prior to the first Adjustment Date), the percentage increase in the CPI Index on the first Adjustment Date shall be calculated by comparing the CPI Index for July 2018 with the CPI Index for July 2019. In no event, however, shall application of the CPI Index on any Adjustment Date reduce the amount of the Public Benefit Fee (or unpaid portion thereof) below the amount in effect prior to that Adjustment Date. Notwithstanding any other provision set forth in this Agreement to the contrary, during the Term of this Agreement City shall not increase the Public Benefit Fee except pursuant to the CPI Index as stated in this Section 3.1.

Developer acknowledges by its approval and execution of this Agreement that it is voluntarily agreeing to pay the Public Benefit Fee, that its obligation to pay the Public Benefit Fee is an essential term of this Agreement and is not severable from City's obligations and Developer's vesting rights to be acquired hereunder, and that Developer expressly waives any constitutional, statutory, or common law right it might have in the absence of this Agreement to protest or challenge the payment of such fee on any ground whatsoever, including without limitation pursuant to the Fifth and Fourteenth Amendments to the United States Constitution, California Constitution Article I Section 19, the Mitigation Fee Act (California Government Code Section 66000 *et seq.*), or otherwise. In addition to any other remedy set forth in this Agreement for Developer's Default, if Developer, including any Permitted Transferee, shall fail to timely pay any portion of the Public Benefit Fee when due City shall have the right to (i) withhold issuance of the occupancy permit and any other building, inspection, or development permit or approval for the unit(s) for which the Public Benefit Fee remains unpaid or (ii) withhold issuance of building, occupancy, and other building or development permits for any other portion of the Project that at that time is under common ownership with Developer or Permitted Transferee, as applicable.



City shall have the right to spend One Million Eight Hundred Seventy-Five Thousand Dollars and 00/100 (\$1,875,000.00) of the total Public Benefit Fee on any public purpose that City determines to be in the public interest, as designated by City in its sole and absolute discretion. The City will use the remainder of the Public Benefit Fee, in its discretion as follows: Three Hundred Twenty-Five Thousand Dollars and 00/100 (\$325,000.00) of the Public Benefit Fee for affordable housing, One Hundred Fifty Thousand Dollars and 00/100 (\$150,000.00) to fund services for those experiencing homelessness, and One Hundred Fifty Thousand Dollars and 00/100 (\$150,000.00) to fund public safety.

The Public Benefit Fee is not intended to constitute a Development Exaction, is in addition to the Development Exactions applicable to the Project, and is not subject to restrictions on the use of various forms of Development Exactions.

#### 4. Development of Project.

##### 4.1 Applicable Regulations: Developer's Vested Rights and City's Reservation of Discretion With Respect to Subsequent Development Approvals.

Other than as expressly set forth in this Agreement, during the Term of this Agreement, (i) Developer shall have the vested right to Develop the Project on and with respect to the Property in accordance with the terms of the Development Regulations and this Agreement and (ii) City shall not prohibit or prevent development of the Property on grounds inconsistent with the Development Regulations or this Agreement. Notwithstanding the foregoing, nothing herein is intended to limit or restrict the City's discretion with respect to (i) review and approval requirements contained in the Development Regulations, (ii) exercise of any discretionary authority City retains under the Development Regulations, (iii) the approval, conditional approval, or denial of any Subsequent Development Approvals that are required for Development of the Project as of the Effective Date, or (iv) any environmental approvals that may be required under CEQA or any other federal or state law or regulation in conjunction with any Subsequent Development Approvals that may be required for the Project, and in this regard, as to future actions referred to in clauses (i)-(iv) of this sentence, City reserves its full discretion to the same extent City would have such discretion in the absence of this Agreement. In addition, it is understood and agreed that nothing in this Agreement is intended to vest Developer's rights with respect to any laws, regulations, rules, or official policies of any other governmental agency or public utility company with jurisdiction over the Property or the Project; or any applicable federal or state laws, regulations, rules, or official policies that may be inconsistent with this Agreement and that override or supersede the provisions set forth in this Agreement, and regardless of whether such overriding or superseding laws, regulations, rules, or official policies are adopted or applied to the Property or the Project prior or subsequent to the Agreement Date.

Developer has expended and will continue to expend substantial amounts of time and money planning and preparing for Development of the Project. Developer represents and City acknowledges that Developer would not make these expenditures without this Agreement, and that Developer is and will be making these expenditures in reasonable reliance upon its vested rights to Develop the Project as set forth in this Agreement.

Developer may apply to City for permits or approvals necessary to modify or amend the Development specified in the Development Regulations, provided that the request does not propose an increase in the maximum density, intensity, height, or size of proposed structures, or a change in use that generates more peak hour traffic or more daily traffic and, in addition, Developer may apply to City for approval of minor amendments to existing tentative tract maps, tentative parcel maps, or associated conditions of approval, consistent with City of Newport Beach Municipal Code Section 19.12.090. This Agreement does not constitute a promise or commitment by City to approve any such permit or approval, or to approve the same with or without any particular requirements or conditions, and City's discretion with respect to such matters shall be the same as it would be in the absence of this Agreement.

#### 4.2 No Conflicting Enactments.

Except to the extent City reserves its discretion as expressly set forth in this Agreement, during the Term of this Agreement City shall not apply to the Project or the Property any ordinance, policy, rule, regulation, or other measure relating to Development of the Project that is enacted or becomes effective after the Effective Date to the extent it conflicts with this Agreement. This Section 4.2 shall not restrict City's ability to enact an ordinance, policy, rule, regulation, or other measure applicable to the Project pursuant to California Government Code Section 65866 consistent with the procedures specified in Section 4.3 of this Agreement. In *Pardee Construction Co. v. City of Camarillo* (1984) 37 Cal.3d 465, the California Supreme Court held that a construction company was not exempt from a city's growth control ordinance even though the city and construction company had entered into a consent judgment (tantamount to a contract under California law) establishing the company's vested rights to develop its property consistent with the zoning. The California Supreme Court reached this result because the consent judgment failed to address the timing of development. The Parties intend to avoid the result of the *Pardee* case by acknowledging and providing in this Agreement that Developer shall have the vested right to Develop the Project on and with respect to the Property at the rate, timing, and sequencing that Developer deems appropriate within the exercise of Developer's sole subjective business judgment, provided that such Development occurs in accordance with this Agreement and the Development Regulations, notwithstanding adoption by City's electorate of an initiative to the contrary after the Effective Date. No City moratorium or other similar limitation relating to the rate, timing, or sequencing of the Development of all or any part of the Project and whether enacted by initiative or another method, affecting subdivision maps, building permits, occupancy certificates, or other entitlement to use, shall apply to the Project to the extent such moratorium or other similar limitation restricts Developer's vested rights in this Agreement or otherwise conflicts with the express provisions of this Agreement.

#### 4.3 Reservations of Authority.

Notwithstanding any other provision set forth in this Agreement to the contrary, the laws, rules, regulations, and official policies set forth in this Section 4.3 shall apply to and govern the Development of the Project on and with respect to the Property.

4.3.1 Procedural Regulations. Procedural regulations relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals, and any other matter of procedure shall apply to the Property, provided that such procedural regulations are adopted and applied City-wide or to all other properties similarly situated in City.

4.3.2 Processing and Permit Fees. City shall have the right to charge and Developer shall be required to pay all applicable processing and permit fees to cover the reasonable cost to City of processing and reviewing applications and plans for any required Subsequent Development Approvals, building permits, excavation and grading permits, encroachment permits, and the like, for performing necessary studies and reports in connection therewith, inspecting the work constructed or installed by or on behalf of Owner, and monitoring compliance with any requirements applicable to Development of the Project, all at the rates in effect at the time fees are due.

4.3.3 Consistent Future City Regulations. City ordinances, resolutions, regulations, and official policies governing Development which do not conflict with the Development Regulations, or with respect to such regulations that do conflict, where Developer has consented in writing to the regulations, shall apply to the Property.

4.3.4 Development Exactions Applicable to Property. During the Term of this Agreement, Developer shall be required to satisfy and pay all Development Exactions at the time performance or payment is due to the same extent and in the same amount(s) that would apply to Developer and the Project in the absence of this Agreement. In addition, nothing in this Agreement is intended or shall be deemed to vest Developer against the obligation to pay any of the following (which are not included within the definition of "Development Exactions") in the full amount that would apply in the absence of this Agreement: (i) City's normal fees for processing, environmental assessment and review, tentative tract and parcel map review, plan checking, site review and approval, administrative review, building permit, grading permit, inspection, and similar fees imposed to recover City's costs associated with processing, reviewing, and inspecting project applications, plans, and specifications; (ii) fees and charges levied by any other public agency, utility, district, or joint powers authority, regardless of whether City collects those fees and charges; or (iii) community facility district special taxes or special district assessments or similar assessments, business license fees, bonds or other security required for public improvements, transient occupancy taxes, sales taxes, property taxes, sewer lateral connection fees, water service connection fees, new water meter fees, and the Property Development Tax payable under Section 3.12 of City's Municipal Code.

4.3.5 Overriding Federal and State Laws and Regulations. Federal and state laws and regulations that override Developer's vested rights set forth in this Agreement shall apply to the Property, together with any City ordinances, resolutions, regulations, and official policies that are necessary to enable City to comply with the provisions of any such overriding federal or state laws and regulations, provided that (i) Developer does not waive its right to challenge or contest the validity of any such purportedly overriding federal, state, or City law or regulation; and (ii) upon the discovery of any such overriding federal, state, or City law or regulation that prevents or precludes compliance with any provision of this Agreement, City or Developer shall provide to the other Party a written notice identifying the federal, state, or City law or regulation, together with a copy of the law or regulation and a brief written statement of the conflict(s) between that law or regulation and the provisions of this Agreement. Promptly thereafter City and Developer shall meet and confer in good faith in a reasonable attempt to determine whether a modification or suspension of this Agreement, in whole or in part, is necessary to comply with such overriding federal, state, or City law or regulation. In such negotiations, City and Developer agree to preserve the terms of this Agreement and the rights of Developer as derived from this Agreement to the maximum feasible extent while resolving the

conflict. City agrees to cooperate with Developer at no cost to City in resolving the conflict in a manner which minimizes any financial impact of the conflict upon Developer. City also agrees to process in a prompt manner Developer's proposed changes to the Project and any of the Development Regulations as may be necessary to comply with such overriding federal, state, or City law or regulation; provided, however, that the approval of such changes by City shall be subject to the discretion of City, consistent with this Agreement.

4.3.6 Public Health and Safety. Any City ordinance, resolution, rule, regulation, program, or official policy that is necessary to protect persons on the Property or in the immediate vicinity from conditions dangerous to their health or safety, as reasonably determined by City, shall apply to the Property, even though the application of the ordinance, resolution, rule regulation, program, or official policy would result in the impairment of Developer's vested rights under this Agreement.

4.3.7 Uniform Building Standards. Existing and future building and building-related standards set forth in the uniform codes adopted and amended by City from time to time, including building, plumbing, mechanical, electrical, housing, swimming pool, and fire codes, and any modifications and amendments thereof shall all apply to the Project and the Property to the same extent that the same would apply in the absence of this Agreement.

4.3.8 Public Works Improvements. To the extent Developer constructs or installs any public improvements, works, or facilities, the City standards in effect for such public improvements, works, or facilities at the time of City's issuance of a permit, license, or other authorization for construction or installation of same shall apply.

4.3.9 No Guarantee or Reservation of Utility Capacity. Notwithstanding any other provision set forth in this Agreement to the contrary, nothing in this Agreement is intended or shall be interpreted to require City to guarantee or reserve to or for the benefit of Developer or the Property any utility capacity, service, or facilities that may be needed to serve the Project, whether domestic or reclaimed water service, sanitary sewer transmission or wastewater treatment capacity, downstream drainage capacity, or otherwise, and City shall have the right to limit or restrict Development of the Project if and to the extent that City reasonably determines that inadequate utility capacity exists to adequately serve the Project at the time Development is scheduled to commence. Notwithstanding the foregoing, City covenants to provide utility services to the Project on a non-discriminatory basis (i.e., on the same terms and conditions that City undertakes to provide such services to other similarly situated new developments in the City of Newport Beach as and when service connections are provided and service commences).

#### 4.4 Tentative Subdivision Maps

City agrees that Developer may file and process new and existing vesting tentative maps for the Property consistent with California Government Code sections 66498.1-66498.9 and City of Newport Beach Municipal Code Chapter 19.20. Pursuant to the applicable provision of the California Subdivision Map Act (California Government Code section 66452.6(a)), the life of any tentative subdivision map approved for the Property, whether designated a "vesting tentative map" or otherwise, shall be extended for the Term of this Agreement.

5. Amendment or Cancellation of Agreement.

Other than modifications of this Agreement under Section 8.3 of this Agreement, this Agreement may be amended or canceled in whole or in part only by mutual written and executed consent of the Parties in compliance with California Government Code section 65868 and City of Newport Beach Municipal Code section 15.45.060 or by unilateral termination by City in the event of an uncured default of Developer.

6. Enforcement.

Unless this Agreement is amended, canceled, modified, or suspended as authorized herein or pursuant to California Government Code section 65869.5, this Agreement shall be enforceable by either Party despite any change in any applicable general or specific plan, zoning, subdivision, or building regulation or other applicable ordinance or regulation adopted by City (including by City's electorate) that purports to apply to any or all of the Property.

7. Annual Review of Developer's Compliance With Agreement.

7.1 General.

City shall review this Agreement once during every twelve (12) month period following the Effective Date for compliance with the terms of this Agreement as provided in Government Code section 65865.1. Developer (including any successor to the owner executing this Agreement on or before the date of the Adopting Ordinance) shall pay City a reasonable fee in an amount City may reasonably establish from time to time to cover the actual and necessary costs for the annual review. City's failure to timely provide or conduct an annual review shall not constitute a Default hereunder by City.

7.2 Developer Obligation to Demonstrate Good Faith Compliance.

During each annual review by City, Developer is required to demonstrate good faith compliance with the terms of the Agreement. Developer agrees to furnish such evidence of good faith compliance as City, in the reasonable exercise of its discretion, may require, thirty (30) calendar days prior to each anniversary of the Effective Date during the Term.

7.3 Procedure.

The Zoning Administrator shall conduct a duly noticed hearing and shall determine, on the basis of substantial evidence, whether or not Developer has, for the period under review, complied with the terms of this Agreement. If the Zoning Administrator finds that Developer has so complied, the annual review shall be concluded. If the Zoning Administrator finds, on the basis of substantial evidence, that Developer has not so complied, written notice shall be sent to Developer by first class mail of the Zoning Administrator's finding of non-compliance, and Developer shall be given at least ten (10) calendar days to cure any noncompliance that relates to the payment of money and thirty (30) calendar days to cure any other type of noncompliance. If a cure not relating to the payment of money cannot be completed within thirty (30) calendar days for reasons which are beyond the control of Developer, Developer must commence the cure within such thirty (30) calendar days and diligently pursue such cure to completion. If Developer fails to cure such noncompliance within the time(s) set forth above, such failure shall

be considered to be a Default and City shall be entitled to exercise the remedies set forth in Article 8 below.

7.4 Annual Review a Non-Exclusive Means for Determining and Requiring Cure of Developer's Default.

The annual review procedures set forth in this Article 7 shall not be the exclusive means for City to identify a Default by Developer or limit City's rights or remedies for any such Default.

8. Events of Default.

8.1 General Provisions.

In the event of any material default, breach, or violation of the terms of this Agreement ("Default"), the Party alleging a Default shall deliver a written notice (each, a "Notice of Default") to the defaulting Party. The Notice of Default shall specify the nature of the alleged Default and a reasonable manner and sufficient period of time (twenty (20) calendar days if the Default relates to the failure to timely make a monetary payment due hereunder and not less than thirty (30) calendar days in the event of non-monetary Defaults) in which the Default must be cured (the "Cure Period"). During the Cure Period, the Party charged shall not be considered in Default for the purposes of termination of this Agreement or institution of legal proceedings. If the alleged Default is cured within the Cure Period, then the Default thereafter shall be deemed not to exist. If a non-monetary Default cannot be cured during the Cure Period with the exercise of commercially reasonable diligence, the defaulting Party must promptly commence to cure as quickly as possible, and in no event later than thirty (30) calendar days after it receives the Notice of Default, and thereafter diligently pursue said cure to completion. Notwithstanding the foregoing, the City is not required to give Developer notice of default and may immediately pursue remedies for a Developer Default that result in an immediate threat to public health, safety or welfare.

8.2 Default by Developer.

If Developer is alleged to have committed a Default and it disputes the claimed Default, it may make a written request for an appeal hearing before the City Council within ten (10) calendar days of receiving the Notice of Default, and a public hearing shall be scheduled at the next available City Council meeting to consider Developer's appeal of the Notice of Default. Failure to appeal a Notice of Default to the City Council within the ten (10) calendar day period shall waive any right to a hearing on the claimed Default. If Developer's appeal of the Notice of Default is timely and in good faith but after a public hearing of Developer's appeal the City Council concludes that Developer is in Default as alleged in the Notice of Default, the accrual date for commencement of the thirty (30) calendar day Cure Period provided in Section 8.1 shall be extended until the City Council's denial of Developer's appeal is communicated to Developer in writing.

8.3 City's Option to Terminate Agreement.

In the event of an alleged Developer Default, City may not terminate this Agreement without first delivering a written Notice of Default and providing Developer with the opportunity

to cure the Default within the Cure Period, as provided in Section 8.1, and complying with Section 8.2 if Developer timely appeals any Notice of Default. A termination of this Agreement by City shall be valid only if good cause exists and is supported by evidence presented to the City Council at or in connection with a duly noticed public hearing to establish the existence of a Default. The validity of any termination may be judicially challenged by Developer. Any such judicial challenge must be brought within ninety (90) calendar days of service on Developer, by first class mail, postage prepaid, of written notice of termination by City or a written notice of City's determination of an appeal of the Notice of Default as provided in Section 8.2.

#### 8.4 Default by City.

If Developer alleges a City Default and alleges that the City has not cured the Default within the Cure Period, Developer may pursue any equitable remedy available to it under this Agreement, including, without limitation, an action for a writ of mandamus, injunctive relief, or specific performance of City's obligations set forth in this Agreement. Upon a City Default, any resulting delays in Developer's performance hereunder shall neither be a Developer Default nor constitute grounds for termination or cancellation of this Agreement by City and shall, at Developer's option (and provided Developer delivers written notice to City within thirty (30) calendar days of the commencement of the alleged City Default), extend the Term for a period equal to the length of the delay.

#### 8.5 Waiver.

Failure or delay by either Party in delivering a Notice of Default shall not waive that Party's right to deliver a future Notice of Default of the same or any other Default.

#### 8.6 Specific Performance Remedy.

Due to the size, nature, and scope of the Project, it will not be practical or possible to restore the Property to its pre-existing condition once implementation of this Agreement has begun. After such implementation, both Developer and City may be foreclosed from other choices they may have had to plan for the development of the Property, to utilize the Property or provide for other benefits and alternatives. Developer and City have invested significant time and resources and performed extensive planning and processing of the Project in agreeing to the terms of this Agreement and will be investing even more significant time and resources in implementing the Project in reliance upon the terms of this Agreement. It is not possible to determine the sum of money which would adequately compensate Developer or City for such efforts. For the above reasons, City and Developer agree that damages would not be an adequate remedy if either City or Developer fails to carry out its obligations under this Agreement. Therefore, specific performance of this Agreement is necessary to compensate Developer if City fails to carry out its obligations under this Agreement or to compensate City if Developer fails to carry out its obligations under this Agreement.

#### 8.7 Monetary Damages.

The Parties agree that monetary damages shall not be an available remedy for either Party for a Default hereunder by the other Party; provided, however, that (i) nothing in this Section 8.7 is intended or shall be interpreted to limit or restrict City's right to recover the Public Benefit Fees due from Developer as set forth herein; and (ii) nothing in this Section 8.7 is intended or

shall be interpreted to limit or restrict 'Developer's indemnity obligations set forth in Article 10 or the right of the prevailing Party in any Action to recover its litigation expenses, as set forth in Section 8.10. In no event shall damages be awarded against the City upon an event of default or upon termination of this Agreement. Developer expressly agrees that the City, any City agencies and their respective elected and appointed councils, boards, commissions, officers, agents, employees, volunteers and representatives (collectively, for purposes of this Section 8.7, "City") shall not be liable for any monetary damage for a Default by the City or any claims against City arising out of this Agreement. Developer hereby expressly waives any such monetary damages against the City. The sole and exclusive judicial remedy for Developer in the event of a Default by the City shall be an action in mandamus, specific performance, or other injunctive or declaratory relief.

8.8 Additional City Remedy for Developer's Default.

In the event of any Default by Developer, in addition to any other remedies which may be available to City, whether legal or equitable, City shall be entitled to receive and retain any Development Exactions applicable to the Project or the Property, including any fees, grants, dedications, or improvements to public property which it may have received prior to Developer's Default without recourse from Developer or its successors or assigns.

8.9 No Personal Liability of City Officials, Employees, or Agents.

No City official, employee, or agent shall have any personal liability hereunder for a Default by City of any of its obligations set forth in this Agreement.

8.10 No Recovery of Legal Expenses by Prevailing Party in Any Action.

In any judicial proceeding, arbitration, or mediation (collectively, an "Action") between the Parties that seeks to enforce the provisions of this Agreement or arises out of this Agreement, the prevailing Party shall not recover any of its costs and expenses, regardless of whether they would be recoverable under California Code of Civil Procedure section 1033.5 or California Civil Code section 1717 in the absence of this Agreement. These costs and expenses include, but are not limited to, court costs, expert witness fees, attorneys' fees, and costs of investigation and preparation before initiation of the Action.

9. Force Majeure.

Neither Party shall be deemed to be in Default where failure or delay in performance of any of its obligations under this Agreement is caused, through no fault of the Party whose performance is prevented or delayed, by floods, earthquakes, other acts of God, fires, wars, riots or similar hostilities, strikes or other labor difficulties, state or federal regulations, or court actions. Except as specified above, nonperformance shall not be excused because of the act or omission of a third person. In no event shall the occurrence of an event of force majeure operate to extend the Term of this Agreement. In addition, in no event shall the time for performance of a monetary obligation, including without limitation Developer's obligation to pay Public Benefit Fees, be extended pursuant to this Section.



10. Indemnity Obligations of Developer.

10.1 Indemnity Arising From Acts or Omissions of Developer.

Except to the extent caused by the intentional misconduct or gross active negligence of City or one or more of City's officials, employees, agents, attorneys, and contractors (collectively, the "City's Affiliated Parties"), Developer shall indemnify, defend, and hold harmless City and City's Affiliated Parties from and against all suits, claims, liabilities, losses, damages, penalties, obligations, and expenses (including but not limited to reasonable attorneys' fees and costs) (collectively, a "Claim") that may arise, directly or indirectly, from the acts, omissions, or operations of Developer or Developer's agents, contractors, subcontractors, agents, or employees in the course of Development of the Project or any other activities of Developer relating to the Property or Project or pursuant to this Agreement. City shall have the right to select and retain separate counsel to represent City against the Claim and the City's defense costs for its separate counsel shall be included in Developer's indemnity obligation, provided that such counsel shall reasonably cooperate with Developer in an effort to minimize the total litigation expenses incurred by Developer. In the event either City or Developer recovers any attorney's fees, expert witness fees, costs, interest, or other amounts from the party or parties asserting the Claim, Developer shall be entitled to retain the same (provided it has fully performed its indemnity obligations hereunder). The indemnity provisions in this Section 10.1 shall commence on the Agreement Date, regardless of whether the Effective Date occurs, and shall survive the Termination Date.

10.2 Third Party Litigation.

In addition to its indemnity obligations set forth in Section 10.1, Developer shall indemnify, defend, and hold harmless City and City's Affiliated Parties from and against any Claim against City or City's Affiliated Parties seeking to attack, set aside, void, or annul the approval of this Agreement, the Adopting Ordinance, any of the Development Plan approvals for the Project (including without limitation any actions taken pursuant to CEQA with respect thereto), any Subsequent Development Approval, or the approval of any permit granted pursuant to this Agreement. Said indemnity obligation shall include payment of reasonable attorney's fees, expert witness fees, City staff costs (including overhead), and court costs. City shall promptly notify Developer of any such Claim and City shall cooperate with Developer in the defense of such Claim. Developer shall not be responsible to indemnify, defend, and hold City harmless from such Claim until Developer is so notified and if City fails to cooperate in the defense of a Claim Developer shall not be responsible to defend, indemnify, and hold harmless City during the period that City so fails to cooperate or for any losses attributable thereto. City shall be entitled to retain separate counsel to represent City against the Claim and the City's reasonable defense costs for its separate counsel shall be included in Developer's indemnity obligation, provided that such counsel shall reasonably cooperate with Developer in an effort to minimize the total litigation expenses incurred by Developer. In the event either City or Developer recovers any attorney's fees, expert witness fees, costs, interest, or other amounts from the party or parties asserting the Claim, Developer shall be entitled to retain the same (provided it has fully performed its indemnity obligations hereunder). No settlement of any Claim against City or City's Affiliated Parties shall be executed without the written consent of both the City and Developer. The indemnity provisions in this Section 10.2 shall commence on

the date of the Agreement Date, regardless of whether the Effective Date occurs, and shall survive the Termination Date.

### 10.3 Environmental Indemnity.

In addition to its indemnity obligations set forth in Section 10.1, from and after the Effective Date Developer shall indemnify, defend, and hold harmless City and City's Affiliated Parties from and against any and all Claims for personal injury or death, property damage, economic loss, statutory penalties or fines, and damages of any kind or nature whatsoever, including without limitation reasonable attorney's fees, expert witness fees, and costs, based upon or arising from any of the following: (i) the actual or alleged presence of any Hazardous Substance on or under any of the Property in violation of any applicable Environmental Law; (ii) the actual or alleged migration of any Hazardous Substance from the Property through the soils or groundwater to a location or locations off of the Property; and (iii) the storage, handling, transport, or disposal of any Hazardous Substance on, to, or from the Property and any other area disturbed, graded, or developed by Developer in connection with Developer's Development of the Project. The indemnity provisions in this Section 10.3 shall commence on the Effective Date occurs, and shall survive the Termination Date.

### 11. Assignment.

Developer shall have the right to sell, transfer, or assign (hereinafter, collectively, a "Transfer") Developer's interest in or fee title to the Property, in whole or in part, to a Permitted Transferee (which successor, as of the effective date of the Transfer, shall become the "Developer" under this Agreement) at any time from the Agreement Date until the Termination Date; provided, however, that no such Transfer shall violate the provisions of the Subdivision Map Act (Government Code Section 66410 et seq.) or City's local subdivision ordinance and any such transfer shall include the assignment and assumption of Developer's rights, duties, and obligations set forth in or arising under this Agreement as to the Property or the portion thereof so Transferred and shall be made in strict compliance with the following conditions precedent: (i) no transfer or assignment of any of Developer's rights or interest under this Agreement shall be made unless made together with the Transfer of all or a part of Developer's interest in the Property; and (ii) prior to the effective date of any proposed Transfer, Developer (as transferor) shall notify City, in writing, of such proposed Transfer and deliver to City a written assignment and assumption, executed in recordable form by the transferring and successor Developer and in a form subject to the reasonable approval of the City Attorney of City (or designee), pursuant to which the transferring Developer assigns to the successor Developer and the successor Developer assumes from the transferring Developer all of the rights and obligations of the transferring Developer with respect to the Property and this Agreement, or interest in the Property, or portion thereof to be so Transferred, including in the case of a partial Transfer the obligation to perform such obligations that must be performed outside of the Property so Transferred that are a condition precedent to the successor Developer's right to develop the portion of the Property so Transferred. Any Permitted Transferee shall have all of the same rights, benefits, duties, obligations, and liabilities of Developer under this Agreement with respect to the portion of, or interest in, the Property sold, transferred, and assigned to such Permitted Transferee; provided, however, that in the event of a Transfer of less than all of the Property, or interest in the Property, no such Permitted Transferee shall have the right to enter into an amendment of this Agreement that jeopardizes or impairs the rights or increases the

obligations of the Developer with respect to the balance of the Property, without Developer's written consent.

Notwithstanding any Transfer, the transferring Developer shall continue to be jointly and severally liable to City, together with the successor Developer, to perform all of the transferred obligations set forth in or arising under this Agreement unless there is full satisfaction of all of the following conditions, in which event the transferring Developer shall be automatically released from any and all obligations with respect to the portion of the Property so Transferred: (i) the transferring Developer no longer has a legal or equitable interest in the portion of the Property so Transferred other than as a beneficiary under a deed of trust; (ii) the transferring Developer is not then in Default under this Agreement and no condition exists that with the passage of time or the giving of notice, or both, would constitute a Default hereunder; (iii) the transferring Developer has provided City with the notice and the fully executed written and recordable assignment and assumption agreement required as set forth in the first paragraph of this Section 11; and (iv) the successor Developer either (A) provides City with substitute security equivalent to any security previously provided by the transferring Developer to City to secure performance of the successor Developer's obligations hereunder with respect to the Property, or interest in the Property, or the portion of the Property so Transferred, as determined in the City's sole discretion, or (B) if the transferred obligation in question is not a secured obligation, the successor Developer either provides security reasonably satisfactory to City or otherwise demonstrates to City's reasonable satisfaction, as determined in the City's sole discretion, that the successor Developer has the financial resources or commitments available to perform the transferred obligation at the time and in the manner required under this Agreement and the Development Regulations for the Project. Any determination by the City in regards to the second paragraph of Section 11, subpart (iv) (A), (B), shall be documented in writing.

## 12. Mortgagee Rights.

### 12.1 Encumbrances on Property.

The Parties agree that this Agreement shall not prevent or limit Developer in any manner from encumbering the Property, any part of the Property, or any improvements on the Property with any Mortgage securing financing with respect to the construction, development, use, or operation of the Project.

### 12.2 Mortgagee Protection.

This Agreement shall be superior and senior to the lien of any Mortgage. Nevertheless, no breach of this Agreement shall defeat, render invalid, diminish, or impair the lien of any Mortgage made in good faith and for value. Any acquisition or acceptance of title or any right or interest in the Property or part of the Property by a Mortgagee (whether due to foreclosure, trustee's sale, deed in lieu of foreclosure, lease termination, or otherwise) shall be subject to all of the terms and conditions of this Agreement. Any Mortgagee who takes title to the Property or any part of the Property shall be entitled to the benefits arising under this Agreement.

12.3 Mortgagee Not Obligated.

Notwithstanding the provisions of this Section 12.3, a Mortgagee will not have any obligation or duty under the terms of this Agreement to perform the obligations of Developer or other affirmative covenants of Developer, or to guarantee this performance except that: (i) the Mortgagee shall have no right to develop the Project under the Development Regulations without fully complying with the terms of this Agreement; and (ii) to the extent that any covenant to be performed by Developer is a condition to the performance of a covenant by City, that performance shall continue to be a condition precedent to City's performance.

12.4 Notice of Default to Mortgagee; Right of Mortgagee to Cure.

Each Mortgagee shall, upon written request to City, be entitled to receive written notice from City of: (i) the results of the periodic review of compliance specified in Article 7 of this Agreement, and (ii) any default by Developer of its obligations set forth in this Agreement.

Each Mortgagee shall have a further right, but not an obligation, to cure the Default within thirty (30) calendar days after receiving a Notice of Default with respect to a monetary Default and within sixty (60) calendar days after receiving a Notice of Default with respect to a non-monetary Default. If the Mortgagee can only remedy or cure a non-monetary Default by obtaining possession of the Property, then the Mortgagee shall have the right to seek to obtain possession with diligence and continuity through a receiver or otherwise, and to remedy or cure the non-monetary Default within sixty (60) calendar days after obtaining possession and, except in case of emergency or to protect the public health or safety, City may not exercise any of its judicial remedies set forth in this Agreement to terminate or substantially alter the rights of the Mortgagee until expiration of the sixty (60) calendar day period. In the case of a non-monetary Default that cannot with diligence be remedied or cured within sixty (60) calendar days, the Mortgagee shall have additional time as is reasonably necessary to remedy or cure the Default, provided the Mortgagee promptly commences to cure the non-monetary Default within sixty (60) calendar days and diligently prosecutes the cure to completion.

13. Bankruptcy. The obligations of this Agreement shall not be dischargeable in bankruptcy.

14. Miscellaneous Terms.

14.1 Notices.

Any notice or demand that shall be required or permitted by law or any provision of this Agreement shall be in writing. If the notice or demand will be served upon a Party, it either shall be personally delivered to the Party; deposited in the United States mail, certified, return receipt requested, and postage prepaid; or delivered by a reliable courier service that provides a receipt showing date and time of delivery with courier charges prepaid. The notice or demand shall be addressed as follows:

TO CITY:

City of Newport Beach  
100 Civic Center Drive  
Newport Beach, California 92660  
Attn: City Manager

With a copy to: City Attorney  
City of Newport Beach  
100 Civic Center Drive  
Newport Beach, California 92660

TO DEVELOPER: Newport Center Anacapa Associates, LLC  
901 Dove Street, Suite 270  
Newport Beach, CA 92660  
Attn: \_\_\_\_\_

With a copy to:

Either Party may change the address stated in this Section 14.1 by delivering notice to the other Party in the manner provided in this Section 14.1, and thereafter notices to such Party shall be addressed and submitted to the new address. Notices delivered in accordance with this Agreement shall be deemed to be delivered upon the earlier of: (i) the date received or (iii) three business days after deposit in the mail as provided above.

#### 14.2 Project as Private Undertaking.

The Development of the Project is a private undertaking. Neither Party is acting as the agent of the other in any respect, and each Party is an independent contracting entity with respect to the terms, covenants, and conditions set forth in this Agreement. This Agreement forms no partnership, joint venture, or other association of any kind. The only relationship between the Parties is that of a government entity regulating the Development of private property by the owner of the property.

#### 14.3 Cooperation.

Each Party shall cooperate with and provide reasonable assistance to the other Party to the extent consistent with and necessary to implement this Agreement. Upon the request of a Party at any time, the other Party shall promptly execute, with acknowledgement or affidavit if reasonably required, and file or record the required instruments and writings and take any actions as may be reasonably necessary to implement this Agreement or to evidence or consummate the transactions contemplated by this Agreement.

#### 14.4 Estoppel Certificates.

At any time, either Party may deliver written notice to the other Party requesting that that Party certify in writing that, to the best of its knowledge: (i) this Agreement is in full force and effect and is binding on the Party; (ii) this Agreement has not been amended or modified either orally or in writing or, if this Agreement has been amended, the Party providing the certification shall identify the amendments or modifications; and (iii) the requesting Party is not in Default in the performance of its obligations under this Agreement and no event or situation has occurred that with the passage of time or the giving of Notice or both would constitute a Default or, if such is not the case, then the other Party shall describe the nature and amount of the actual or prospective Default. Such estoppel certificates may be relied upon only by the Parties, their respective successors and assigns, and, in the event of an estoppel certificate issued by City, a

Mortgagee of Developer, including a Permitted Transferee, and its actual or prospective Mortgagee. City shall be entitled to payment/reimbursement for its actual and reasonable costs of investigation and preparation of an estoppel certificate prior to issuing the same.

The Party requested to furnish an estoppel certificate shall execute and return the certificate within thirty (30) calendar days following receipt.

#### 14.5 Rules of Construction.

The singular includes the plural; the masculine and neuter include the feminine; "shall" is mandatory; and "may" is permissive.

#### 14.6 Time Is of the Essence.

Time is of the essence regarding each provision of this Agreement as to which time is an element.

#### 14.7 Waiver.

The failure by a Party to insist upon the strict performance of any of the provisions of this Agreement by the other Party, and failure by a Party to exercise its rights upon a Default by the other Party, shall not constitute a waiver of that Party's right to demand strict compliance by the other Party in the future.

#### 14.8 Counterparts.

This Agreement may be executed in two or more counterparts, each of which shall be identical and may be introduced in evidence or used for any other purpose without any other counterpart, but all of which shall together constitute one and the same agreement.

#### 14.9 Entire Agreement.

This Agreement constitutes the entire agreement between the Parties and supersedes all prior agreements and understandings, both written and oral, between the Parties with respect to the subject matter addressed in this Agreement.

#### 14.10 Severability.

The Parties intend that each and every obligation of the Parties is interdependent and interrelated with the other, and if any provision of this Agreement or the application of the provision to any Party or circumstances shall be held invalid or unenforceable to any extent, it is the intention of the Parties that the remainder of this Agreement or the application of the provision to persons or circumstances shall be rendered invalid or unenforceable. The Parties intend that neither Party shall receive any of the benefits of the Agreement without the full performance by such Party of all of its obligations provided for under this Agreement. Without limiting the generality of the foregoing, the Parties intend that Developer shall not receive any of the benefits of this Agreement if any of Developer's obligations are rendered void or unenforceable as the result of any third party litigation, and City shall be free to exercise its legislative discretion to amend or repeal the Development Regulations applicable to the Property

and Developer shall cooperate as required, despite this Agreement, should third party litigation result in the nonperformance of Developer's obligations under this Agreement. The provisions of this Section 14.10 shall apply regardless of whether the Effective Date occurs and after the Termination Date.

#### 14.11 Construction.

This Agreement has been drafted after extensive negotiation and revision. Both City and Developer are sophisticated parties who were represented by independent counsel throughout the negotiations or City and Developer had the opportunity to be so represented and voluntarily chose to not be so represented. City and Developer each agree and acknowledge that the terms of this Agreement are fair and reasonable, taking into account their respective purposes, terms, and conditions. This Agreement shall therefore be construed as a whole consistent with its fair meaning, and no principle or presumption of contract construction or interpretation shall be used to construe the whole or any part of this Agreement in favor of or against either Party.

#### 14.12 Successors and Assigns; Constructive Notice and Acceptance.

The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the Parties to this Agreement. Except for those provisions relating to indemnity in Section 10, all other, all other provisions of this Agreement shall, from and after the Effective Date hereof, be enforceable as equitable servitudes and constitute covenants running with the land. Subject to occurrence of the Effective Date, each covenant to do or refrain from doing some act hereunder with regard to Development of the Property: (i) is for the benefit of and is a burden upon every portion of the Property; (ii) runs with the Property and each portion thereof; and (iii) is binding upon each Party and each successor in interest during its ownership of the Property or any portion thereof. Every person or entity who now or later owns or acquires any right, title, or interest in any part of the Project or the Property is and shall be conclusively deemed to have consented and agreed to every provision of this Agreement. This Section 14.12 applies regardless of whether the instrument by which such person or entity acquires the interest refers to or acknowledges this Agreement and regardless of whether such person or entity has expressly entered into an assignment and assumption agreement as provided for in Section 11.

#### 14.13 No Third Party Beneficiaries.

The only Parties to this Agreement are City and Developer. This Agreement does not involve any third-party beneficiaries, and it is not intended and shall not be construed to benefit or be enforceable by any other person or entity.

#### 14.14 Applicable Law and Venue.

This Agreement shall be construed and enforced consistent with the laws of the State of California, without regard to conflicts of law principles. Any action at law or in equity arising under this Agreement or brought by any Party for the purpose of enforcing, construing, or determining the validity of any provision of this Agreement shall be filed and tried in the Superior Court of the County of Orange, State of California, or the United States District Court for the Central District of California. The Parties waive all provisions of law providing for the removal or change of venue to any other court.

14.15 Section Headings.

All section headings and subheadings are inserted for convenience only and shall not affect construction or interpretation of this Agreement.

14.16 Incorporation of Recitals and Exhibits.

All of the Recitals are incorporated into this Agreement by this reference. Exhibits A and B are attached to this Agreement and incorporated by this reference as follows:

EXHIBIT DESIGNATION	DESCRIPTION
A	Legal Description of Property
B	Depiction of the Property

14.17 Recordation.

The City Clerk of City shall record this Agreement and any amendment, modification, or cancellation of this Agreement in the Office of the County Recorder of the County of Orange within the period required by California Government Code section 65868.5 and City of Newport Beach Municipal Code section 15.45.090. The date of recordation of this Agreement shall not modify or amend the Effective Date or the Termination Date.

*[Signature page follows]*



**SIGNATURE PAGE TO  
DEVELOPMENT AGREEMENT**

“DEVELOPER”

NEWPORT CENTER ANACAPA ASSOCIATES, LLC,  
a California limited liability company

By: \_\_\_\_\_  
\_\_\_\_\_

“CITY”

CITY OF NEWPORT BEACH

By: \_\_\_\_\_  
Brad Avery, Mayor

ATTEST:

\_\_\_\_\_  
Leilani I. Brown, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Aaron Harp, City Attorney

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of Orange )

On \_\_\_\_\_, before me, \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of Orange )

On \_\_\_\_\_, before me, \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

**EXHIBIT A**

**LEGAL DESCRIPTION OF PROPERTY**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF ORANGE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL A

PARCEL 1, IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP FILED IN BOOK 29, PAGE 34, OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

PARCEL B:

A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS OVER PARCEL A, IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP FILED IN BOOK 76 PAGE 32 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THEREFROM ANY AND ALL OIL, OIL RIGHTS, MINERALS, MINERAL RIGHTS, NATURAL GAS RIGHTS, AND OTHER HYDROCARBONS BY WHATSOEVER NAME KNOWN, GEOTHERMAL STEAM, AND OTHER MATERIAL RESOURCES AND ALL PRODUCTS DERIVED FROM ANY OF THE FOREGOING, THAT MAY BE WITHIN OR UNDER THE LAND, TOGETHER WITH THE PERPETUAL RIGHT OF DRILLING, MINING, EXPLORING AND OPERATING THEREFOR AND STORING IN AND REMOVING THE SAME FROM THE LAND OR ANY OTHER LAND, INCLUDING THE RIGHT TO WHIPSTOCK OR DIRECTIONALLY DRILL AND MINE FROM LANDS OTHER THAN THOSE CONVEYED HEREBY, OIL OR GAS WELLS, TUNNELS AND SHAFTS INTO, THROUGH OR ACROSS THE SUBSURFACE OF THE LAND, AND TO BOTTOM SUCH WHIPSTOCKED OR DIRECTIONALLY DRILLED WELLS, TUNNELS AND SHAFTS UNDER AND BENEATH OR BEYOND THE EXTERIOR LIMITS THEREOF, AND TO REDRILL, RETUNNEL, EQUIP, MAINTAIN, REPAIR, DEEPEN AND OPERATE ANY SUCH WELLS OR MINES, WITHOUT HOWEVER, THE RIGHT TO DRILL, MINE, STORE, EXPLORE AND OPERATE THROUGH THE SURFACE OR THE UPPER 500 FEET OF THE SUBSURFACE OF THE LAND, AS RESERVED IN THE DEED FROM THE IRVINE COMPANY, A MICHIGAN CORPORATION, RECORDED FEBRUARY 20, 1992, AS INSTRUMENT NO. 92-099183, OF OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM ANY AND ALL WATER, RIGHTS OR INTERESTS THEREIN, NO MATTER HOW ACQUIRED BY GRANTOR, AND OWNED OR USED BY GRANTOR IN CONNECTION WITH OR WITH RESPECT TO THE LAND, TOGETHER WITH THE RIGHT AND POWER TO EXPLORE, DRILL, REDRILL, REMOVE AND STORE THE SAME FROM THE LAND OR TO DIVERT OR OTHERWISE UTILIZE SUCH WATER RIGHTS OR INTERESTS ON ANY OTHER PROPERTY OWNED OR LEASED BY GRANTOR, WHETHER SUCH WATER RIGHTS SHALL BE RIPARIAN, OVERLYING, APPROPRIATIVE, LITTORAL, PERCOLATING, PRESCRIPTIVE, ADJUDICATED, STATUTORY OR CONTRACTUAL, BUT WITHOUT, HOWEVER, ANY RIGHT TO ENTER UPON THE SURFACE OF THE LAND IN THE EXERCISE OF SUCH RIGHTS, AS RESERVED IN THE DEED FROM THE IRVINE COMPANY, A MICHIGAN CORPORATION, RECORDED FEBRUARY 20, 1992, AS INSTRUMENT NO. 92-099183, OF OFFICIAL RECORDS.

APN: 442-231-12

**EXHIBIT B**  
**DEPICTION OF PROPERTY**

# **Attachment B**

Ordinance No. 2021-20 (PC)

## ORDINANCE NO. 2021-20

### AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING ZONING CODE AMENDMENT NO. CA2020-008 AND PLANNED COMMUNITY DEVELOPMENT PLAN NO. PC2020-001 ESTABLISHING THE RESIDENCES AT NEWPORT CENTER LOCATED AT 150 NEWPORT CENTER DRIVE (PA2020-020)

**WHEREAS**, Section 200 of the City of Newport Beach (“City”) Charter vests the City Council with the authority to make and enforce all laws, rules and regulations with respect to municipal affairs subject only to the restrictions and limitations contained in the Charter and the State Constitution, and the power to exercise, or act pursuant to any and all rights, powers, and privileges, or procedures granted or prescribed by any law of the State of California;

**WHEREAS**, an application was filed by Newport Center Anacapa Associates, LLC (“Applicant”), with respect to property located at 150 Newport Center Drive and legally described in Exhibit “A,” which is attached hereto and incorporated herein by reference (“Property”);

**WHEREAS**, the Project includes the demolition of an existing 2,085-square-foot car wash, convenience market, and gas station and the construction of a four-story structure consisting of 28 condominium units and common space amenity areas over a two-level below-grade parking garage (“Project”) which require the following approvals from the City:

- General Plan Amendment No. GP2020-001 – to change the Property’s land use designation from Regional Commercial Office (CO-R) to Multiple Residential (RM) and create a new Anomaly Location for the Property that authorizes a maximum development density of 28 dwelling units;
- Zoning Code Amendment No. CA2020-008 – to change the Property’s zoning designation from Office Regional (OR) to Planned Community (PC) District;
- Planned Community Development Plan No. PC2020-001 - to establish land uses and development standards for the Property including a waiver of the minimum site area;
- Major Site Development Review No. SD2020-001 – to allow for the development of a four-story structure containing 28 luxury condominium units and common space areas over a two-level below-grade parking garage;

- Tentative Tract Map No. NT2020-001 – to establish a 28-unit residential condominium subdivision map on the 1.26-acre Property that would allow each unit to be sold individually;
- Development Agreement No. DA2020-001 – to provide the Applicant with the vested right to develop the Project subject to the rules and regulations in effect at the time of Project approval and to provide the City with assurance that certain obligations of the Applicant will be met, including public benefit fees;
- Environmental Impact Report No. ER2021-002 - to disclose reasonably foreseeable environmental impacts resulting from the legislative and project specific discretionary approvals, the City has determined that an Initial Study and Environmental Impact Report (“EIR”) are warranted for the Project pursuant to California Public Resources Code Section 23000 *et seq.* (“CEQA”), Title 14, Division 6, Chapter 3 of the California Code of Regulations (“CEQA Guidelines”), and City Council Policy K-3; and
- Rescind Use Permit No. UP1461 – rescind use permit since the Project will replace the operation of the existing car wash;

**WHEREAS**, the Property is designated Regional Commercial Office (CO-R) by the City of Newport Beach General Plan (“General Plan”) Land Use Element and is located within the Office Regional (OR) Zoning District;

**WHEREAS**, the Property is not located within the coastal zone;

**WHEREAS**, a study session was held on May 6, 2021, in the Council Chambers located at 100 Civic Center Drive, Newport Beach to introduce the Project to the Planning Commission and discuss the procedures for environmental review;

**WHEREAS**, the Planning Commission held a public hearing on August 19, 2021 in the Council Chambers at 100 Civic Center Drive, Newport Beach. A notice of time, place and purpose of the hearing was given in accordance with California Government Code Section 54950 *et seq.* (“Ralph M. Brown Act”) and Chapters 15.45 (Development Agreements), 19.12 (Tentative Map Review), 20.56 (Planned Community District Procedures), and 20.62 (Public Hearings) of the Newport Beach Municipal Code (“NBMC”). Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this public hearing;

**WHEREAS**, at the hearing, the Planning Commission adopted Resolution No. PC2021-024 by a unanimous vote (7 ayes, 0 nays) recommending the City Council approve the Project; and

**WHEREAS**, the City Council held a public hearing on September 28, 2021, in the Council Chambers located at 100 Civic Center Drive, Newport Beach. A notice of time, place and purpose of the public hearing was given in accordance with the Ralph M. Brown Act and Chapters 15.45 (Development Agreements), 19.12 (Tentative Map Review), 20.56 (Planned Community District Procedures), and 20.62 (Public Hearings) of the NBMC. Evidence, both written and oral, was presented to, and considered by, the City Council at this public hearing.

**NOW THEREFORE**, the City Council of the City of Newport Beach ordains as follows:

**Section 1:** The City Council has considered the recommendation of the Planning Commission and determined that modifications to the Project made by the City Council, if any, are not major changes that require referral back to the Planning Commission for consideration and recommendation.

**Section 2:** Zoning Code Amendment No. CA2020-008 is hereby approved to rezone the Property from OR (Office Regional) to PC-61 (Residences at Newport Center Planned Community), as depicted in Exhibit “B,” which is attached hereto and incorporated herein by reference.

**Section 3:** Planned Community Development Plan is hereby approved, as depicted in Exhibit “C,” which is attached hereto and incorporated herein by reference, thereby establishing the permitted uses, development standards, and design guidelines for the Property. Additionally, the City Council hereby waives the minimum acreage requirement for the establishment of a PC District as authorized in Section 20.25.020 (Area Requirements) of the NBMC.

**Section 4:** Amendments to Title 20 (Planning and Zoning) of the NBMC are legislative acts. Neither Chapters 20.66 (Amendments) and 20.56 (Planned Community Development District Procedures) of Title 20 (Planning and Zoning) of the Newport Beach Municipal Code, the Charter of the City of Newport Beach, nor Article 2 (Adoption of Regulations) of Chapter 4 (Zoning Regulations) of Division 1 (Planning and Zoning) of Title 7 (Planning and Land Use) of the California Government Code set forth any required findings for either approval or denial of amendments to the NBMC. Nevertheless, rezoning the Property to PC-61 Residences at Newport Center is



consistent with the purpose of Planned Community Districts as specified in NBMC Section 20.56.010 for the reasons set forth below.

Facts in Support of Finding:

1. PC-61 (Residences at Newport Center Planned Community) District meets the intent and purpose for a PC as specified in NBMC Section 20.56.010 (Purpose) given its location in the Newport Center area which includes a mixture of shopping, hotels, commercial support uses, professional offices, and residential developments that cumulatively contain the ingredients of a planned community. PC-61 (Residences at Newport Center Planned Community) District PC District adds to this diversity assisting the City in larger scale community planning.
2. PC-61 (Residences at Newport Center Planned Community) District would establish appropriate site and project specific setbacks, density, and height limits to the Property given its urban location. All required parking is provided on-site. The Property is fully developed and does not support any natural resources and all potential environmental impacts associated with the project are appropriately addressed through standard building permit procedures, conditions of approval, and the mitigation measures identified in the Environmental Impact Report and contained in the Mitigation Monitoring and Reporting Program.
3. The size, density and character of the proposed dwelling units complement the existing land uses in the project area and include design elements consistent with Land Use Element Policy 5.1.9 (Character and Quality of Multi-Family Residential) that require multi-family dwellings to be designed to convey a high-quality architectural character. Consistent with General Plan Policy LU 6.2.1 (Residential Supply), the provision of 28 dwelling units on the Property would accommodate Newport Beach population needs identified in the General Plan Housing Element and accommodate market demand for residential uses.
4. The Property is located in an area of the City that has sufficient utilities systems to serve the Project.
5. A waiver of the 10-acre minimum of developed site area is requested as part of the establishment of the PC Zoning District. The Newport Center area is an urban, developed region of the City that cumulatively includes all of the necessary ingredients of a Planned Community.

6. The future development of the Property affected by the proposed amendment will be consistent with the goals and policies of the Land Use Element of the General Plan; and will be consistent with the purpose and intent of the proposed Residences at Newport Center Planned Community (PC) Zoning District of the NBMC.
7. A voluntary development agreement has been requested by the Applicant as the Project would add new residential dwelling units within Statistical Area L1 (Newport Center). The Development Agreement includes all the mandatory elements for consideration and public benefits that are appropriate to support conveying the vested development rights consistent with the General Plan, NBMC, and Government Code Section 65864 *et seq.*

**Section 5:** The recitals provided in this ordinance are true and correct and are incorporated into the substantive portion of this ordinance.

**Section 6:** If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

**Section 7:** The Residences at Newport Center Final Environmental Impact Report (SCH No. 2020110087) was prepared for the project in compliance with CEQA, the State CEQA Guidelines, and City Council Policy K-3. By Resolution No. 2021-90, the City Council, having final approval authority over the Project, adopted and certified as complete and adequate the Residences at Newport Center Final Environmental Impact Report (SCH No. 2020110087) and adopted “Mitigation Monitoring and Reporting Program.” Resolution No. 2021-90, including all findings contained therein, is hereby incorporated by reference.

**Section 8:** Except as expressly modified in this ordinance, all other sections, subsections, terms, clauses and phrases set forth in the Newport Beach Municipal Code shall remain unchanged and shall be in full force and effect.

**Section 9:** The Mayor shall sign and the City Clerk shall attest to the passage of this ordinance. The City Clerk shall cause the ordinance, or a summary thereof, to be published pursuant to City Charter Section 414.

This ordinance was introduced at a regular meeting of the City Council of the City of Newport Beach held on the 28th day of September, 2021, and adopted on the 12th day of October, 2021, by the following vote, to-wit:

AYES: \_\_\_\_\_

NAYS: \_\_\_\_\_

ABSENT: \_\_\_\_\_

\_\_\_\_\_  
BRAD AVERY, MAYOR

**ATTEST:**

\_\_\_\_\_  
LEILANI I. BROWN, CITY CLERK

**APPROVED AS TO FORM:**  
CITY ATTORNEY'S OFFICE

  
\_\_\_\_\_  
AARON C. HARP, CITY ATTORNEY

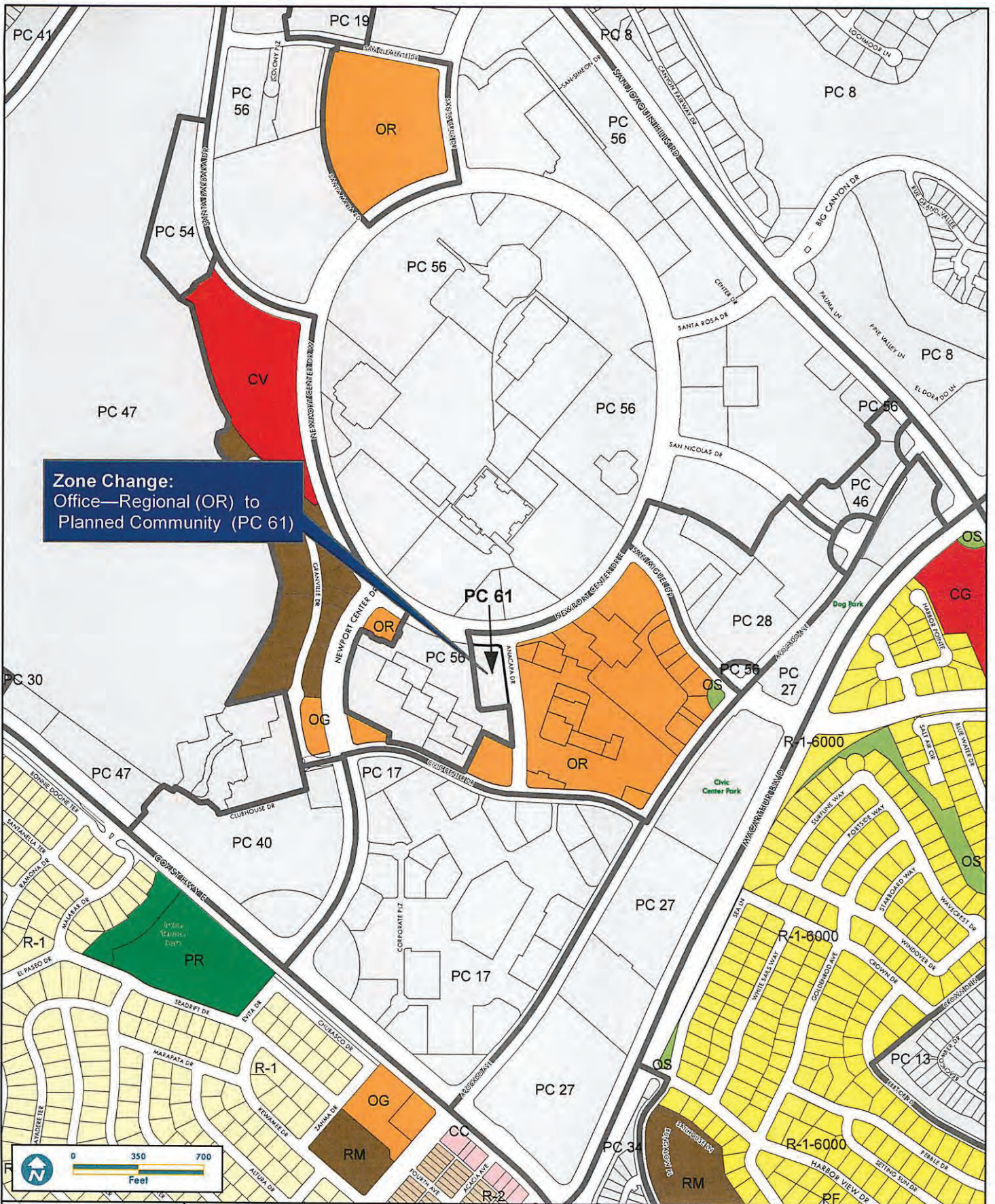
Attachment(s)      Exhibit A - Legal Description  
                             Exhibit B - Zoning Map Amendment  
                             Exhibit C - PC-61 (Residences at Newport Center Planned  
                             Community Development Plan)

## **Exhibit "A"**

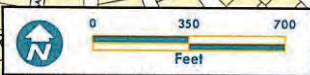
### **Legal Description**

The property is legally described as Parcel 1 of Parcel Map No. 29-34 (Resubdivision No. 282) being a portion of Block 93 of Irvine's subdivision as per map recorded in Book 1, Page 88 of Miscellaneous Record Maps, records of Orange County, California.

**Exhibit "B"**  
**Zoning Map Amendment**



**Zone Change:**  
Office—Regional (OR) to  
Planned Community (PC 61)



**CA2020-008 (PA2020-020)**  
Zoning Code Amendment  
150 Newport Center Dr



City of Newport Beach  
GIS Division  
August 30, 2021

**Exhibit "C"**

**PC-61 (Residences at Newport Center Planned Community Development Plan)**

**RESIDENCES  
AT NEWPORT CENTER**

**Planned Community Development Plan**

Date: April 19, 2021

Ordinance No. \_\_\_\_\_  
Adopted \_\_\_\_\_, 2020



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### LIST OF EXHIBITS

Exhibits Name	Exhibit Number
Conceptual Site Plan & Project Summary	A
Setback Exhibit	B
Building Tabulation	C
Sections	D

## 1.0 INTRODUCTION AND PURPOSE

---

The Residences at Newport Center Planned Community Development Plan (PC) is composed of 28 condominium units located in 4 story buildings totaling 103,158 square feet of gross building area connected by a common lobby and entry. The project is located at the southwest intersection of Newport Center Drive and Anacapa Drive in Newport Center on a 54,949 square feet parcel. The vision presented in the plan shows two luxury residential buildings with a common entrance and lobby intended to integrate a casual urban lifestyle with a contemporary California building design.

The unit mix includes 8 residential units on the ground floor, 16 flats on levels 2 and 3 and four penthouses on Level 4. The square footage of the residential units is 85,236 square feet. Level 1 will also have a lobby and a lounge with a kitchen, fitness room/spa, lap pool and office that is approximately 5,518 square feet (not including pool area) and does not include circulation.

The project is designed for two levels of parking below grade. Level B-1 is partially at grade on the southern edge to allow tenant and visitor access. General delivery will occur at the building entry off Anacapa Drive and moving van access is provided on the south of the building. All units have a private 2-car garage located within the lower levels. Further, there is one-way vehicular access to the garage from the front entry of the project primarily for visitors.

The PC identifies land use relationships and associated development standards for the district identified as the Residences at Newport Center. To that end, it coordinates and complements the broader scale and massing of the Newport Center area and specifically Block 100. The PC ensures a broader coordination and consistency with the surrounding neighborhood, to include a high level of contemporary architectural quality supporting the Newport Center environment along with pedestrian connectivity.

The PC includes a specific set of standards incorporated through a comprehensive review of the project within Newport Center while ensuring substantial compliance with the spirit and intent of the Zoning Code. The PC ensures the following site development review objectives are met:

1. Ensure consistency with General Plan policies related to the preservation of established community character, and expectations for high quality development.
2. Respect the physical and environmental characteristics of the site.
3. Ensure safe and convenient access and circulation for pedestrians and vehicles.
4. Allow for and encourage individual identity for specific uses and structures.
5. Encourage the maintenance of a distinct neighborhood and/or community identity.

6. Minimize or eliminate negative or undesirable visual impacts.
7. Ensure protection of significant views from public right(s)-of-way in compliance with NBMC Section [20.30.100](#) (Public View Protection);
8. Allow for different levels of review depending on the significance of the development project (Newport Beach, 2015a).

Whenever the regulations contained in the PC conflict with the regulations of the Newport Beach Municipal Code (NBMC), the regulations contained in the PC shall take precedence. The NBMC shall regulate all development within the PC when such regulations are not provided within the PC Regulations.

## **2.0 LAND USE AND DEVELOPMENT**

---

The following development standards shall apply to the residential condominium units.

### **2.1 ARCHITECTURAL DESIGN**

The Residences at Newport Center design is inspired by creating a casual yet elegant architecture that is conceived as two casual and contemporary 4 story buildings that are linked together via a modern glass entry with a water feature creating the entry into the lobby. Architecturally, the buildings are proportioned with a defined base, middle, and top that is reinforced by flat plate structure and glass walls. The elevations are presented through the use of massing, setbacks and subtle variations in the roof line.

The building's material palate consists of stone neutrals and glass building façade compatible with the surrounding development in Newport Center. The design will complement, enhance, and be compatible with the adjacent retail and office properties. In keeping with this philosophy, the exterior will be comprised predominately of stone base, stone cladding, metal finishes and glass. Massing offsets, variations of roof line, varied textures, recesses, articulation, and design accents on the elevation are integrated to enhance the expression of a unique and contemporary architectural style.

All first floor residences include outdoor patios and resident entries from the public lobby. Fenestration of the buildings is developed around the "California Coastal" view of indoor – outdoor living. Openings above level 1 will have foldable doors allowing for the full aperture to engage with interior living. Connections to the common area are reinforced via a social gathering space within the lobby that incorporates both interior and exterior landscape areas.

The exterior landscaping will further enhance the feel of a luxury lifestyle at the adjacent intersection of Anacapa and Newport Center Drive. The crosswalks at the corner of Newport Center Drive and Anacapa Drive shall enhance the visual connection to the adjoining office, entertainment, restaurants, and medical districts. Along Anacapa Drive, the project will provide resident access via a 27 foot wide driveway served by a luxurious lobby and entry water feature.

Further, there is access to the visitor parking via a one-way ramp to the lower level. Optionable valet parking will be provided at the entry level. A dog run on the ground level at the southwest corner is provided for the residents.

**2.2 PERMITTED USES**

- a. Condominiums (Multi-Family Residential).
- b. On-site recreational facilities, valet station, wine storage, separate dedicated storage areas, and other structures ancillary to residential uses.
- c. Telecommunications facilities are permitted in accordance with Chapter 20.49 (Wireless Telecommunications Facilities) of the NBMC.
- d. Land uses that are not listed above are not allowed, except as provided by Chapter 20.12 (Interpretation of Zoning Code Provisions) of the NBMC or as required by State Law.
- e. Temporary uses may be allowed only upon approval of a limited term permit pursuant to Section 20.52.040 (Limited Term Permits) of the NBMC.

**2.3 BUILDING SETBACKS**

a. Above grade level podium (required/provided)

Anacapa Drive easement)	15 feet/26 feet (including a 3-foot pedestrian 21 feet for the roof overhang
Newport Center Drive	15 feet /15 feet 10 feet at the roof overhang
Western property line	0 feet/19 feet 13 feet 6 inches at the roof overhang
Southern property line	0 feet/ 19 feet (Including a 10-foot private pedestrian walkway easement)

b. Below grade level podium (required/provided)

Anacapa Drive	0 feet/ 15 feet
Newport Center Drive	0 feet/ 15 feet

Western Property Line	0 feet/ 7 feet for basement walls
Southern Property line	0 feet/ 10 feet

Patios may encroach up to 7 feet 4 inches into required setback areas. Decks and balconies may encroach up to 2 feet 6 inches into the required setback. Decorative architectural features such as roof overhangs, brackets, and eaves may encroach up to 30 inches into a required setback area, provided that no architectural features shall project closer than twenty-four inches from a side property line. Further, the roof overhang on Newport Center Drive may extend up to 60 inches into the setback. The footings on the south of the building may encroach up to 3 feet into the easement. Fences, hedges, and walls may encroach into the required setback areas subject to the requirements set forth in Section 2.14.

## 2.4 DENSITY

The maximum allowable number of condominium residential units shall be 28.

## 2.5 FLOOR AREA

### a. Building Area

The maximum gross building area limit for the development is 103,158 gross square feet at a floor area ratio (FAR) of 1.88.

#### Gross building Area Definition:

The following areas shall be included in calculations of gross floor area:

- a) Any interior finished portion of a structure that is accessible and that measures more than six feet from finished floor to ceiling.

The following areas shall be excluded:

1. Stairwells and elevator shafts above the first level.
2. The surrounding exterior patio areas.
3. Parking structures including private garages and mechanical areas within the parking structure.

### b. Floor Area per Unit. Residential uses are measured on a per unit basis.

#### i. Ground floor (1<sup>st</sup> floor):

1,430 square feet minimum

#### ii. Units on floor 2:

2,493 square feet minimum

iii. Units on floor 3:

2,316 square feet minimum

iii. Penthouses (floor 4):

5,223 square feet minimum

## 2.6 STANDARDS FOR ALLOWABLE HEIGHTS

The building heights are measured from established grade as hereinafter defined. The building is on a sloping surface and the measurement of height is taken from the building entrance at 167.75 feet (NAVD88). Thus, established grade shall be defined at an elevation of 167 feet 9 inches (NAVD88).

## 2.7 HEIGHT

The building height shall not exceed 52 feet 11 inches from the established grade (167.75 feet NAVD88) of the site or 220 feet 8 inches above mean sea level (AMSL). The height of the open area between the buildings is approximately 19 feet 8 inches above the established grade of the site or 187 feet 6 inches NAVD88.

Rooftop appurtenances are permitted and may exceed the maximum building height by up to 7 feet (227.66 feet NAVD88). Rooftop appurtenances may include, but are not limited to, stairwell and elevator shaft housing, antennae, window washing equipment, and wireless communication facilities. The mechanical equipment for this project shall be sited in the interior of the 2-level parking structure. Rooftop appurtenances shall not exceed 30 percent of the overall roof area and shall be focused toward the interior of the building footprint adjacent to the elevator override and stairway. Rooftop appurtenances must be screened from view; the height of rooftop appurtenances shall not exceed the height of the screening. Supports for window washing equipment are permitted and are not required to be screened from view. Rooftop appurtenances within the 7-foot limitation are subject to the review and approval of the Planning Division.

Architectural features may exceed the maximum building height up to 2 feet (169.75 feet NAVD88). Architectural features include the building rooftop edge and other decorative rooftop features defined as visually prominent or formally significant elements of a building that express its architectural language and style in a complementary fashion. Architectural features should be logical extensions of the massing, details, materials, and color of the building which complement and celebrate its overall aesthetic character. Such features must be an extension of the architectural style of the building in terms of materials, design, and color.

## 2.8 LANDSCAPING AND IRRIGATION

A minimum of 15 percent of the lot area shall be landscaped (8,242 square feet). Landscaping and irrigation shall be provided in all areas not devoted to structure, driveways, walkways, and private patios to enhance the appearance of the development, reduce heat and glare, control soil erosion, conserve water, screen adjacent land uses, and preserve the integrity of the PC.

Site landscaping and irrigation will be designed and planted in accordance with [Chapter 20.36 \(Landscaping Standards\)](#) of the Newport Beach Municipal Code (NBMC) and [Chapter 14.17 \(Water-Efficient Landscaping\)](#) of the Newport Beach Municipal Code. Plants shall be adapted to the coastal climate of Newport Beach and appropriate to the specific soil, topographic, and sun/shade conditions of the project site. Drought-tolerant plants shall be used to the maximum extent practicable. Plant species having comparable water requirements shall be grouped together for efficient use of irrigation water. All plant materials shall conform to or exceed the plant quality standards of the latest edition of American Standard for Nursery Stock published by the American Association of Nurserymen, or the equivalent. Plant selection shall be harmonious to the character of the project and surrounding projects and shall not be listed as an invasive species by the California Invasive Plant Council.

### a. Minimum Landscape Requirements:

1. Landscaping shall incorporate a street tree species along Newport Center Drive (existing Mexican Fan Palms to be protected on Newport Center Drive) and Anacapa Drive (Lemon scented Gum, Eucalyptus citriodora or other tree to the satisfaction of the General Services Division). The same species street tree shall be planted on both sides of Anacapa Drive, north of the drive entry (upon the adjacent property owner's approval).
2. The Anacapa Drive parkway shall be maintained and landscaped to complement the existing on-site landscaping. Landscaping and irrigation shall consist of a combination of trees, shrubs, and groundwater and hardscape improvements.
3. The landscaped island at the southern entry within the ingress/egress easement shall be one continuous landscape area as shown on the attached Exhibit A (upon the underlying property owner's approval).
4. Landscaping shall be located so as not to impede vehicular sight distance to the satisfaction of the City Traffic engineer.
5. Planting areas adjacent to vehicular entrances shall be protected by a continuous concrete curb or similar perimeter barrier.
6. The ground floor landscape area shall include a dog run for use by the occupants of the project.
7. Landscape areas shall provide a minimum width dimension of 2.5 feet to provide adequate planting area.
8. Evergreen planting a minimum of 5 feet high shall be used to screen the podium wall along the eastern property line (along Newport Center Drive).

9. All landscape materials and irrigation systems shall be maintained in accordance with the approved landscape and irrigation plans. All landscaped areas shall be maintained in a healthy and growing condition in accordance with the NBMC and shall receive regular pruning, fertilizing, mowing and trimming. All landscaped areas shall be kept free of weeds and debris. All irrigation systems shall be kept operable, including adjustments, replacements, repairs, and cleaning as part of regular maintenance.
10. Landscape planting and irrigation plans and specifications shall be submitted by the applicant for review and approval by the Planning Division prior to the issuance of a building permit.

b. Irrigation Guidelines

An irrigation system shall be installed and shall incorporate appropriate locations, numbers, and types of water distribution and emitters to provide appropriate amounts of water to all plant materials. Application rates and spray patterns shall be consistent with the varying watering requirement of different plant groupings.

Irrigation systems and controls shall include technology that minimizes over watering by either: (a) directly measuring soil moisture levels, plant types, and soil types and adjusting irrigation accordingly, or, (b) receiving weather information at least on a daily basis via satellite or similar transmission and adjusting irrigation accordingly. The irrigation system shall be designed to prevent over-watering and minimize overspray and runoff onto streets, sidewalks, driveways, buildings, fences, and window consistent with water conservation and pollution run-off control objectives.

Should reclaimed water infrastructure be constructed along Newport Center Drive, the site's existing potable irrigation system shall be converted and connected to said infrastructure within one year of its availability.

## **2.9 LIGHTING**

All new outdoor lighting shall be designed, shielded, aimed, located and maintained to shield adjacent uses/properties and to not produce glare onto adjacent uses/properties. Lighting plans shall be prepared in compliance with [Chapter 20.30.040 \(Outdoor Lighting\)](#) of the NBMC. All lighting and lighting fixtures that are provided shall be maintained in accordance with the approved lighting plans.

Light fixtures on buildings shall be full cut-off fixtures. Light spillover may not exceed one foot-candle at the subject property line. Lighting of building interior common areas, exteriors and parking entrances shall be developed in accordance with City Standards and shall be designed and maintained in a manner which minimizes impacts on adjacent land uses. Nighttime lighting shall be limited to that necessary for security.



The plans for lighting shall be prepared and signed by a licensed electrical engineer and shall be subject to review and approval of the Community Development Director or their designee. If in the opinion of the Director existing illumination creates an unacceptable negative impact on surrounding land uses or sensitive habitat areas, the Director may order the dimming of light sources or other remediation upon finding that the site is excessively illuminated.

## **2.10 MECHANICAL EQUIPMENT**

Roof-top mechanical equipment shall not exceed 7 feet above the maximum height of the building and shall comply with Section 20.30.020 (Buffering and Screening) of the NBMC. All mechanical appurtenances on building roof tops and utility vaults shall be screened in a manner meeting the approval of the Director of Community Development or their designee. It is the intent to place the mechanical equipment in the garage, if feasible. If placement of mechanical equipment in the garage is not possible, then the standards articulated in this section shall be implemented.

All new mechanical appurtenances (e.g., air conditioning, heating, ventilation ducts, exhaust vents, telecom antennas & support equipment, swimming pool and spa pumps, filters, transformers, utility vaults, and emergency power generators) shall be screened from the public view and adjacent land uses. The enclosure design shall be approved by the Community Development Department. All rooftop equipment shall be architecturally treated or screened from off-site views in a manner compatible with the building materials prior to final building permit clearance. The mechanical equipment shall be subject to sound rating in accordance with the [Chapter 20.30.20 \(Buffering and Screening\)](#) of the NBMC. There shall be a garage exhaust tower that is 10 feet above finished grade in the buildable area along Anacapa Drive.

## **2.11 OPEN SPACE**

### **a. Common Outdoor Space**

Common outdoor space consists of land area within the residential development that is not individually owned or dedicated for public use that is designed, intended, and reserved exclusively for the shared enjoyment or use by all residents and their guests. Common outdoor space may be active or passive. Illustrative examples include areas of scenic or natural beauty, barbecue areas, landscaped areas, play areas, swimming pools, pet areas, or turf areas.

A minimum of 5% of lot area (2,750 square feet for 28 dwelling units) of common open space shall be provided. Common outdoor space shall be provided either at grade, podium level, or roof level. Common outdoor space areas shall have a minimum dimension of 15 feet. A minimum of 10 percent of the common outdoor space must be landscaped. All common outdoor space must be accessible to all residents.

### **b. Common Indoor Space**

The building shall provide at least one community room of at least 500 square feet available for use by all residents of the project. The area should be located adjacent to, and accessible from, common/public space. This area may contain active or passive recreational facilities or meeting space and must be accessible through a common/public area.

c. Private Open Space

Private open space shall be a minimum of 30 square feet per dwelling unit (6-foot by 5-foot minimum). At least 50 percent of all dwelling units shall provide private open space, on a balcony, patio, or roof terrace. Balconies should be proportionately distributed throughout the project in relationship to floor levels and sizes of units. Qualifying private open space areas shall be permanently open on one full side or substantially open on multiple sides.

Private open space consists of an outdoor or unenclosed area directly adjoining and accessible to a dwelling unit, reserved for the exclusive private enjoyment and use of residents of the dwelling unit and their guests (e.g., balcony, deck, porch, terrace, etc.). Boundaries are evident by use of fences, gates, hedges, walls, or other similar methods of controlling access and maintaining privacy.

## **2.12 PARKING**

Parking to the project shall be underground and not visible from the public right-of-way and surrounding area. Parking spaces, driveways, maneuvering aisles, and turnaround areas shall be kept free of dust, graffiti, and litter. All components of the parking area including striping, paving, wheel stops, walls, and lighting of the parking area shall be permanently maintained in good working condition. Access, location, parking space and lot dimensions, and parking area improvements shall be in compliance with parking standards of Title 20 of the NBMC. All required parking shall be provided on-site. There shall be a gated entry into the lower level for the resident owner with an electronic entry key.

The main driveway entry shall be approximately 27 feet wide in front of the lobby entrance. The lobby shall have a concierge to provide services to residences such as U.S mail delivery, package delivery, mailing, receiving food delivery and meeting guests. There shall be optional valet services for the guests. Guest shall have the option to self-park . The guests parking spaces are accessed by the valet by a one-way internal ramp at the south end of the driveway and the parking spaces are at the first lower level. Valet service shall return the vehicles to the front entry via the main entry on Anacapa if the guests did not self-park. The rules and regulations of these operations shall be established by the Home Owners Association.

A minimum of two (2) enclosed private parking spaces shall be provided for each of the dwelling units on Level 1. The units on Level 2 through 4 shall have a minimum of two (2) enclosed parking spaces per unit. One half (1/2) guest parking space shall be provided per unit for a total of 14 guest parking spaces including 1 ADA stall. Each two-car garage shall provide minimum clear interior

dimensions of 17 feet 6 inches in width by 19 feet in depth and shall be maintained so that it is accessible to vehicles.

Guest parking spaces shall maintain a minimum width of 8 feet 6 inches in width by 17 feet in depth. There shall be 10 employee spaces on the lower level of the garage. The total visitor and employee parking shall be 24 stalls. There shall be 4 guest charging stations for electric vehicles.

All resident and guest parking spaces shall be maintained clear of obstructions and available for parking of vehicles at all times. Vehicle parking and maneuvering areas shall be restricted to the operation, maneuvering and parking of operable vehicles.

### **2.13 SIGNS**

If three (3) or more signs are proposed for the development, a comprehensive sign program application for the Residences at Newport Center shall be submitted for review and approval by the Zoning Administrator. Sign allowance and standards will be in accordance with [Chapter 20.42 \(Sign Standards\)](#) of the NBMC.

### **2.14 FENCES, HEDGES, AND WALLS**

Walls and hedges shall be in accordance with the NBMC except as shown on the Site Development Review plans and described in the PC. This does not apply to exempt signs per the NBMC. Where a nonresidential zoning abuts a residential zoning district, consideration of a landscape buffer as mitigation for wall heights, shall be reviewed as part of the Site Development Review.

#### **a. Podium Walls**

The subject property is a sloping site with an elevation change of approximately 11 feet from the northeast corner to the southwest corner. Specifically, the northeast corner is at an elevation of approximately 170 feet and the southwest corner is at an elevation of 159 feet (all elevations reference NAVD88). Further, the site on the north property line drops from the northeast corner of 170 feet to 164 feet at the northwest corner. The project is designed for two levels of parking below grade. Level B-1 is partially at grade on the southern edge to allow access from the private driveway, and Level 2 is below grade.

The entire project has a podium that incorporates the parking garage and the residential units are built on the podium deck. The podium lower level has a floor elevation of 148 feet and rises to a ceiling height of 169 feet 6 inches for most of the building. The ceiling height below Flat 1 and 2 is 2 feet 6 inches higher than the 169 feet 6 inch referenced above to accommodate the entry for trucks and vans on the south end of the building. The walls, floor and ceiling heights define the podium.

The podium walls on the southwest of the building are exposed from elevation 159 up to 173 feet at Flats 1 and 2. The top of wall is 13.8 feet above the adjacent ground elevation of 159 feet. There is a 42-inch glass railing above the podium. On the western property line there is enhanced landscaping to mitigate the exposed podium wall. The sections shown in Exhibit D graphically illustrate the elevation changes.

b. Patio Walls

The patios on the north of the complex may encroach into the setback area up to 7'6" feet. The top of wall elevations on the patios on the north side may reach 176.5 feet (NAVD88) for Flats 6 through 8. The grading plan includes raising the grade in front of the patio walls by approximately 1 to 2 feet. Further, there shall be enhanced landscaping in front of the patio walls to buffer the view of patio walls from the streetscape.

**2.17 TRASH SERVICE**

Trash disposal service will be provided by CR&R (or other provider) as contracted by the City of Newport Beach and shall be subject to applicable regulations, permits and fees as prescribed by the city.

Trash container storage and bins shall be located within the lower level parking structure in an area to be designed and engineered for odor control and accessible for pick-up. Common trash bins provided shall be a minimum of 192 square feet for Trash and Recycling in accordance with [Chapter 20.30.120 \(Solid Waste and Recyclable Materials\)](#) of the NBMC. The bins will be brought by a scout truck from their regular storage areas in the basement to the southerly residential access drive for pick-up by regular trash trucks. Trash pick-up and staging shall not block vehicular access through the southerly access drive. Trash pick-up and loading is not permitted within the Anacapa Drive right-of-way.

**2.18 CONSTRUCTION REQUIREMENTS**

a. Archaeological/Paleontological

Grading of the site is subject to the provisions of the City Council policies K-4 & K-5 regarding archaeological and paleontological resources.

b. Building Codes

Construction shall comply with applicable provisions of the California Building Code and the various other mechanical, electrical, and plumbing codes related thereto as adopted by the NBMC.

c. Grading

Grading and excavation of the development area shall be conducted and undertaken in a manner both consistent with grading manual standards and ordinances of the City of Newport Beach and in accordance with a grading and excavation plan approved by the City of Newport Beach Building Division.

d. Telephone, Gas and Electrical Service

All “on-site” gas lines, electrical lines and telephone lines shall be placed underground. Transformer or terminal equipment shall be visually screened from view from streets and adjacent properties.

e. Sewage Service

All sewer lines shall be designed in accordance with the Utilities Manager approval.

f. Storm Water Management

The project shall adhere to the Water Quality Management Plan (WQMP) approved in conjunction with the issuance of building permits. Drainage and water quality assurance measures will be implemented as per the City Public Works and Municipal Separate Storm Sewer System (MS4) requirements. Development of the property will be undertaken in accordance with the flood protection policies of the City.

g. Water service

Water service to the site will be provided by the City of Newport Beach and is subject to applicable regulations, permits and fees as prescribed by the City. The project shall provide the infrastructure for Fire Protection Water Service and Domestic water. Each water meter shall be served and installed in accordance with the Public Works Department approval.

### **3.0 SITE DEVELOPMENT REVIEW**

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#### **3.1 PURPOSE**

The purpose of the Site Development Review (SDR) process is to ensure new development within the Newport Center Residences Planned Community Development is consistent with the goals and policies of the General Plan, and provisions of the Planned Community Development Plan.

#### **3.2 APPLICATION**

Prior to the issuance of building permits for the original site development, a SDR application shall be required for the Newport Center Residences Planned Community Development in accordance with [Section 20.52.080 \(Site Development Reviews\)](#) of the NBMC.

#### **3.3 DESIGN (ELEVATIONS) AND SITE DEVELOPMENT OF BUILDING**

The SDR shall be part of this PC and shall be reviewed concurrently with the PC. The submitted site plans and elevations shall be part of this application.

# PROJECT SUMMARY

<h2 style="margin: 0;">PROJECT SUMMARY</h2> <p style="margin: 5px 0 0 20px;"><u>MULTI-STORY PROJECT</u></p> <p style="margin: 0;"><b>PROJECT DESCRIPTION</b></p>	4/15/2021																
<p>THE PROJECT CONSISTS OF (1) MULTI-STORY RESIDENTIAL BUILDING</p> <p>4 STORIES OF RESIDENTIAL</p> <p>2 LEVELS OF UNDERGROUND PARKING</p> <p>28 DWELLING UNITS</p> <p><b>BUILDING CODE :</b> CALIFORNIA BUILDING CODE 2019</p>	<p><b>SETBACKS *</b></p> <p>REQUIRED / PROVIDED (FT)</p> <table border="1" style="width: 100%; border-collapse: collapse; margin: 5px 0;"> <thead> <tr> <th style="width: 60%;"></th> <th style="width: 20%; text-align: center;">ABOVE PODIUM</th> <th style="width: 20%; text-align: center;">BELOW PODIUM</th> </tr> </thead> <tbody> <tr> <td>ANACAPA FRONTAGE</td> <td style="text-align: center;">15' / 26'</td> <td style="text-align: center;">0 / 15'</td> </tr> <tr> <td>NEWPORT CENTER DR.</td> <td style="text-align: center;">15' / 15'</td> <td style="text-align: center;">0 / 15'</td> </tr> <tr> <td>WESTERN PRTY LINE</td> <td style="text-align: center;">0 / 19'</td> <td style="text-align: center;">0 / 7'</td> </tr> <tr> <td>SOUTHERN PRTY LINE</td> <td style="text-align: center;">0 / 19'</td> <td style="text-align: center;">0 / 10'</td> </tr> </tbody> </table> <p>NOTE: SETBACKS DO NOT INCLUDE ARCHITECTURAL PROJECTIONS</p>		ABOVE PODIUM	BELOW PODIUM	ANACAPA FRONTAGE	15' / 26'	0 / 15'	NEWPORT CENTER DR.	15' / 15'	0 / 15'	WESTERN PRTY LINE	0 / 19'	0 / 7'	SOUTHERN PRTY LINE	0 / 19'	0 / 10'	
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NEWPORT  
CENTER DRIVE

LEGEND

- BUILDING OUTLINE ABOVE PODIUM LEVEL
- - - LIMIT OF GARAGE LEVELS

15'  
REQUIRED  
BLDG  
SETBACK  
ABOVE PODIUM  
0' REQUIRED  
BELOW GRADE

R/W

PATIO/DECK  
(TYP)

UNDERGROUND  
PARKING  
GARAGE  
FOOTPRINT  
(SHOWN RED  
ON ORIGINAL  
DOCUMENT)

R/W

ANACAPA DRIVE

15'  
REQUIRED  
BLDG  
SETBACK  
ABOVE PODIUM  
0' REQUIRED  
BELOW GRADE

PL

0' SETBACK  
REQUIRED AT PL

UNDERGROUND  
PARKING  
GARAGE  
FOOTPRINT  
(SHOWN RED  
ON ORIGINAL  
DOCUMENT)

UNIT TERRACES  
(LOADING BELOW)

SCALE:  
1" = 50'

PL

0' SETBACK  
REQUIRED AT PL



**FUSCOE**  
ENGINEERING

16795 Von Karman, Suite 100, Irvine, California 92606  
tel 949.474.1960 • fax 949.474.5315 • www.fuscoe.com

EXHIBIT B  
BUILDING SETBACK EXHIBIT

03/30/21

F:\PROJECTS\1317\001\EXHIBITS\1317-001XH-BUILDING SETBACKS.DWG (03-30-2021 12:31:23PM) Plotted by: Mark Nero

## Building Tabulation

RESIDENTIAL AREA			PLANNING AREAS (gross sf*)		9/2/2020
Unit #	Level	Area (gross sf*)	first floor residential	15,903	
1	1	2,271	first floor circulation / misc	5585	
2	1	1,430	offices	602	
3	1	2,043	storage	441	
4	1	1,478	entry	489	
5	1	2,121	loungue	1100	
6	1	2,228	concierge	691	
7	1	1,647	condo meeting & kitchen	999	
8	1	2,685	fitness	1196	
9	2	2,832	first floor total		27,006
10	2	3,789			
11	2	2,963	second floor residential	24,284	
12	2	2,493	second floor circulation / misc	2267	
13	2	2,521	second floor total		26,551
14	2	2,954			
15	2	3,766			
16	2	2,966			
17	3	2,649	third floor residential	23,239	
18	3	3,646	third floor circulation / misc	2325	
19	3	2,866	third floor total		25,564
20	3	2,316			
21	3	2,344			
22	3	2,955	fourth floor residential	21,810	
23	3	3,667	fourth floor circulation / misc	2227	
24	3	2,796	fourth floor total		24,037
25	4	5,636			
26	4	5,223			
27	4	5,262	TOTAL GROSS PLANNING AREAS	103,158	
28	4	5,689			
Total Residential Units		85,236	Additional Areas		
Circulation, Lobbies, Fitness, etc		17,922	Parking -1	37,674	
Total Gross planning area		103,158	Parking -2	33,782	
NOTE		* All areas are shown as gross numbers (including exterior walls & finishes). Condo units are sold as interior airspace and would be smaller area.			







# NEWPORT BEACH

## City Council Staff Report

October 12, 2021  
Agenda Item No. 4

**TO:** HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

**FROM:** Seimone Jurjis, Community Development Director - 949-644-3232, sjurjis@newportbeachca.gov

**PREPARED BY:** Chelsea Crager, Associate Planner  
ccrager@newportbeachca.gov

**PHONE:** 949-644-3227

**TITLE:** Ordinance No. 2021-21: Zone Change from Multiple Unit Residential to Private Institutions at 1499 Monrovia Avenue (PA2021-068)

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### **ABSTRACT:**

For the City Council's consideration is the adoption of Ordinance No. 2021-21, to change the existing zoning district from Multiple Unit Residential (RM) to Private Institutions (PI) at 1499 Monrovia Avenue. The attached ordinance was introduced and considered at the September 28, 2021, City Council meeting.

### **RECOMMENDATION:**

- a) Find this action proposed herein is not subject to the California Environmental Quality Act (CEQA) pursuant to Section 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly; and
- b) Conduct second reading and adopt Ordinance No. 2021-21, *An Ordinance of the City Council of the City of Newport Beach, California, Approving Zoning Code Amendment No. CA2021-003 to Change the Zoning Code Designation from RM 2420/3100 (Multiple Residential) to PI 0.49 FAR (Private Institutions) for the Property Located at 1499 Monrovia Avenue (PA2021-068).*

### **DISCUSSION:**

On September 28, 2021, the City Council introduced and passed to a second reading Ordinance No. 2021-21 which changes the zoning district designation from Multiple Unit Residential (RM 2420/3100) to Private Institution (PI 0.49 FAR) for a property located at 1499 Monrovia Avenue. The subject property is currently, and has historically been, used as a commercial property since its development. The existing office building operates under an abatement to the residential zoning designation, and the property has never been used for residential development, and no such development is planned for the site. As a result, residential uses will not be impacted because there is no residential use on the property. Any future use will be consistent with the Private Institution General Plan land use designation and zoning regulations.

**FISCAL IMPACT:**

There is no fiscal impact related to this item.

**ENVIRONMENTAL REVIEW:**

The Code Amendment is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and Section 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

This action is further covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment (Section 15061(b)3 of the State CEQA Guidelines). It can be seen with certainty that there is no possibility that this activity will have a significant effect on the environment. Therefore, this activity is not subject to CEQA.

It can be seen with certainty that there is no possibility that the approved General Plan Amendment and Code Amendment will have a significant effect on the environment because the property is currently developed with an office building and no additional development is contemplated as a part of this General Plan Amendment and Code Amendment. There is no expansion of use or intensification beyond the existing office use, rather the Amendments will allow the possibility of the existing office building to be reutilized to a private institution use.

**NOTICING:**

The agenda item has been noticed according to the Brown Act (72 hours in advance of the meeting at which the City Council considers the item).

**ATTACHMENT:**

Attachment A – Ordinance No. 2021-21

# **Attachment A**

Ordinance No. 2021-21

## ORDINANCE NO. 2021-21

### AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA APPROVING ZONING CODE AMENDMENT NO. CA2021-003 TO CHANGE THE ZONING CODE DESIGNATION FROM RM 2420/3100 (MULTIPLE RESIDENTIAL) TO PI 0.49 FAR (PRIVATE INSTITUTIONS) FOR THE PROPERTY LOCATED AT 1499 MONROVIA AVENUE (PA2021-068)

**WHEREAS**, Section 200 of the City of Newport Beach (“City”) Charter vests the City Council with the authority to make and enforce all laws, rules and regulations with respect to municipal affairs subject only to the restrictions and limitations contained in the Charter and the State Constitution, and the power to exercise, or act pursuant to any and all rights, powers, and privileges, or procedures granted or prescribed by any law of the State of California;

**WHEREAS**, on March 26, 2021, an application was filed by Pacifica Christian High School (“Applicant”), with respect to the property located at 1499 Monrovia Avenue, and legally described as a portion of Parcel 2 of Lot Line Adjustment No. LA2007-002 (“Property”);

**WHEREAS**, the Property is designated RM 18 du/ac (Multiple Residential) by the City General Plan (“General Plan”) and is located within the RM 2420/3100 (Multiple Residential) Zoning District under Title 20 (Planning and Zoning) of the Newport Beach Municipal Code (“NBMC”);

**WHEREAS**, the Applicant requests an amendment to the land use and zoning designation (“Project”) for the Property which requires the following approvals by the City:

- General Plan Amendment No. GP2021-002 to change the land use designation from RM 18 du/ac (Multiple Residential) to PI 0.49 FAR (Private Institutions); and
- Zoning Code Amendment No. CA2021-003 to change the zoning designation from RM 2420/3100 (Multiple Residential) to PI 0.49 FAR (Private Institutions);

**WHEREAS**, the Property is not located within the coastal zone, therefore, amending the City Coastal Land Use Plan or Title 21 (Local Coastal Program Implementation Plan) of the NBMC is not required;



**WHEREAS**, the Planning Commission held a public hearing on August 19, 2021 in the Council Chambers located at 100 Civic Center Drive, Newport Beach, California. A notice of time, place and purpose of the hearing was given in accordance with the California Government Code Section 54950 *et seq.* (“Ralph M. Brown Act”) and Chapter 20.62 (Public Hearings) of the NBMC. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this hearing; and

**WHEREAS**, at the hearing, the Planning Commission adopted Resolution No. PC2021-025 by a majority vote (6 ayes, 1 nay) recommending the City Council approve General Plan Amendment No. GP2021-002 and Zoning Code Amendment No. CA2021-003.

**NOW THEREFORE**, the City Council of the City of Newport Beach ordains as follows:

**Section 1:** The City Council has considered the recommendation of the Planning Commission and determined that modifications to the Project made by the City Council, if any, are not major changes that require referral back to the Planning Commission for consideration and recommendation.

**Section 2:** The City Council of the City of Newport Beach hereby approves Zoning Code Amendment No. CA2021-003 to rezone the Property from RM 18 du/ac (Multiple Residential) to PI 0.49 FAR (Private Institutions), as depicted in Exhibit “A,” which is attached hereto and incorporated herein by reference.

**Section 3:** Amendments to Title 20 (Planning and Zoning) of the NBMC are legislative acts. Neither Chapters 20.66 (Amendments) of the NBMC, the Charter of the City of Newport Beach, nor Article 2 (Adoption of Regulations) of Chapter 4 (Zoning Regulations) of Division 1 (Planning and Zoning) of Title 7 (Planning and Land Use) of the California Government Code set forth any required findings for either approval or denial of amendments to the NBMC. Nevertheless, Zoning Code Amendment No. CA2021-003 is consistent with Title 20 (Planning and Zoning) and the General Plan. The Property has historically operated as a non-residential use and is surrounded by other non-residential uses. Although the 2006 General Plan Update process envisioned residential use for this Property, it has continued to operate as a legal non-conforming office use. With the adoption of Resolution No. 2021-94, the General Plan Land Use designation of the Property will change from RM 18 du/ac (Multiple Residential) to PI 0.49 FAR (Private Institutions) such that a revision to the zoning designation from RM 2420/3100 (Multiple Residential) to PI 0.49 FAR (Private Institutions) will ensure consistency between the General Plan and Title 20 (Planning and Zoning) of the NBMC.

**Section 4:** The recitals provided in this ordinance are true and correct and are incorporated into the substantive portion of this ordinance.

**Section 5:** If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

**Section 6:** The City Council finds the introduction and adoption of this ordinance is not subject to the California Environmental Quality Act (“CEQA”) pursuant to Section 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment); Section 15060(c)(3) (the activity is not a project as defined in Section 15378) because it has no potential for resulting in physical change to the environment, directly or indirectly; and Section 15061(b)(3) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it can be seen with certainty that there is no possibility that this activity will have a significant effect on the environment.

**Section 7:** Except as expressly modified in this ordinance, all other Sections, Subsections, terms, clauses and phrases set forth in the Newport Beach Municipal Code shall remain unchanged and shall be in full force and effect.

**Section 8:** The Mayor shall sign and the City Clerk shall attest to the passage of this ordinance. The City Clerk shall cause the ordinance, or a summary thereof, to be published pursuant to City Charter Section 414.

This ordinance was introduced at a regular meeting of the City Council of the City of Newport Beach held on the 28th day of September, 2021, and adopted on the 12th day of October, 2021, by the following vote, to-wit:

AYES: \_\_\_\_\_

NAYS: \_\_\_\_\_

ABSENT: \_\_\_\_\_

\_\_\_\_\_  
BRAD AVERY, MAYOR

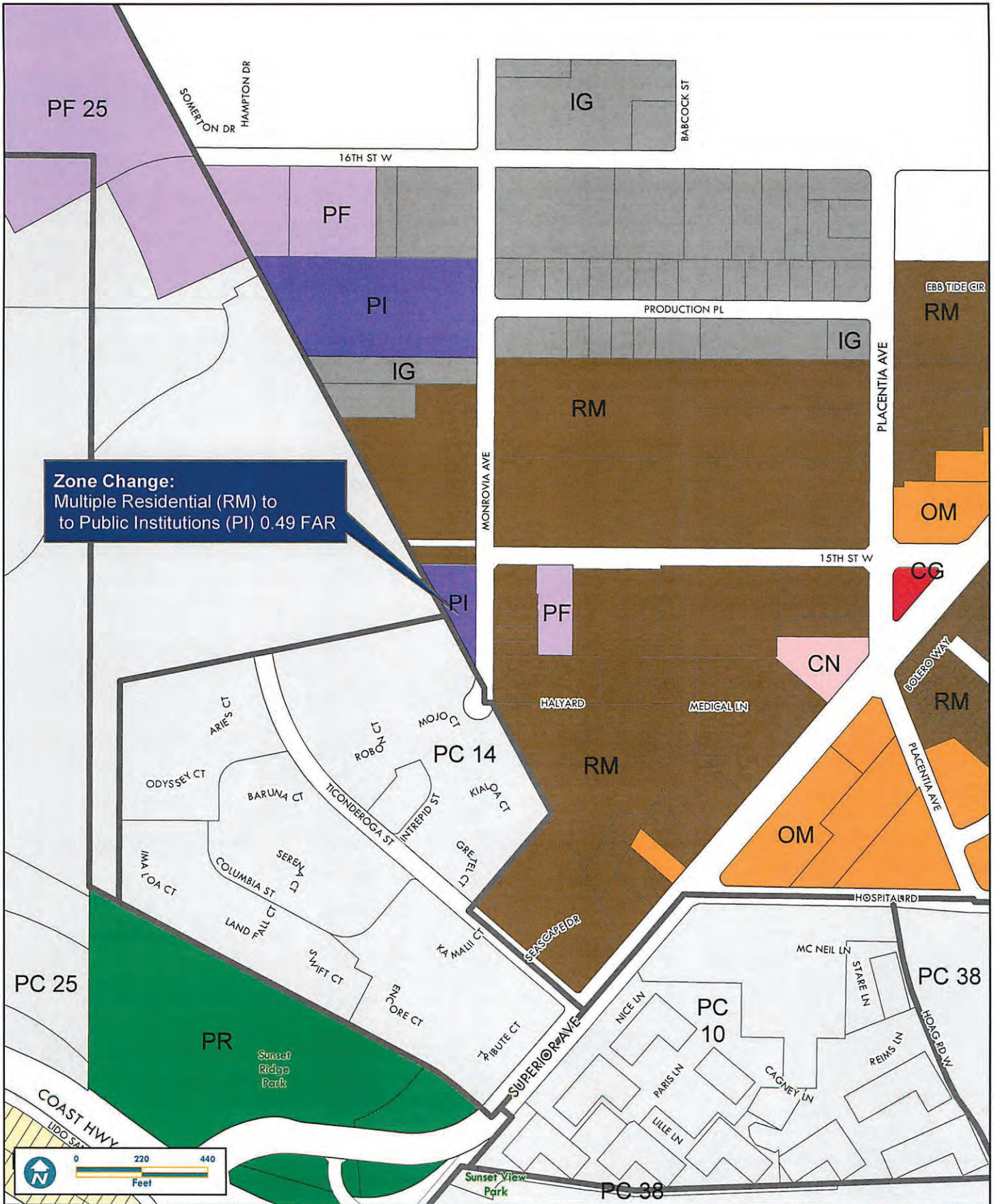
**ATTEST:**

\_\_\_\_\_  
LEILANI I. BROWN, CITY CLERK

**APPROVED AS TO FORM:**  
CITY ATTORNEY'S OFFICE

  
\_\_\_\_\_  
AARON C. HARP, CITY ATTORNEY

Attachment: Exhibit A - Zoning Map Amendment



CA2021-003 (PA2021-068)  
Zoning Code Amendment  
1499 Monrovia Ave



City of Newport Beach  
GIS Division  
August 16, 2021



# NEWPORT BEACH

## City Council Staff Report

October 12, 2021  
Agenda Item No. 5

**TO:** HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

**FROM:** David A. Webb, Public Works Director - 949-644-3311,  
dawebb@newportbeachca.gov

**PREPARED BY:** Michael J. Sinacori, P.E, Assistant City Engineer  
msinacori@newportbeachca.gov

**PHONE:** 949-644-3342

**TITLE:** Resolution No. 2021-95: Request for Petition Certification and Funding for Expanding Underground Assessment District No. 120-2 (Santa Ana Avenue and Cliff Drive Area)

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### **ABSTRACT:**

The City Council formed Undergrounding Utility Assessment District No. 120 on April 13, 2021, after a positive vote of 23 property owners. Shortly after that approval, residents on the adjacent La Jolla Drive and La Jolla Lane expressed a strong desire to be included in the approved district. As a result, a request to expand the district was made. The larger assessment district has 42 property owners. At least 60 percent of these property owners have signed and submitted a petition to the City of Newport Beach (City), requesting the formation of the larger assessment district. The next step in the assessment district process would be for the City to advance funds to have the assessment engineer prepare a new Engineer's Report and to circulate ballots for the property owners to vote on the revised assessments for the larger district. Staff will assist the process by developing and soliciting a property owner vote in the coming months. It will be based on a conservative cost estimate developed at the completion of the schematic level design.

### **RECOMMENDATION:**

- a) Find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15302(d) (conversion of overhead electric utility distribution system facilities to underground including connection to existing overhead electric utility distribution lines where the surface is restored to the condition existing prior to the undergrounding);
- b) Adopt Resolution No. 2021-95, *A Resolution of the City Council of the City of Newport Beach, California, Accepting the Petition for the Formation of Underground Utility Assessment District No. 120-2*; and
- c) Approve Budget Amendment No. 22-017 authorizing an advance from the General Fund in the amount of \$37,500 and appropriating said amount to Account No. 66902-941006 (AD-120 Assessment Engineering). Funds remaining in any fiscal year will be carried forward to future annual budgets per Council Policy F-3.

## **DISCUSSION:**

The City Council formed Undergrounding Utility Assessment District No. 120 on April 13, 2021, after a majority vote of 23 property owners in this two-block area. Shortly after that approval, residents on the adjacent La Jolla Drive and La Jolla Lane expressed a strong interest to be included in the approved district. As a result, a request to expand the district was made. Because there is no process under assessment district law to expand an existing assessment district as desired, a new assessment district, 120-2 will have to be formed that will include both the area within Undergrounding Utility District No. 120 and the adjacent properties on La Jolla Drive and La Jolla Lane. The larger 120-2 assessment district has 42 property owners who have submitted a petition to the City, signed by at least 60 percent of the owners, requesting the formation of the larger assessment district. The boundaries of the proposed larger assessment district are shown in Attachment A.

The submitted petition signatures represent just over 65 percent of the assessable land within the proposed larger district. The City's guidelines require a minimum of 60 percent in favor of the district in order to proceed with the formation of a district. Harris & Associates has reviewed and certified that owners representing over 60 percent of the assessable property within the proposed larger district had signed the petition in support of undergrounding overhead utilities.

Staff is proposing that the expedited formation process be utilized for this district that has been done for the four recently approved districts (AD-111, 113, 116, 116b, 117 and 124). This process reduces the financial risk to the City and builds on the momentum that has occurred during the signature gathering time for the petition. The process proposed will be as follows: City staff retains an Assessment Engineer to prepare the Engineer's Report and prepare ballots for the property owners to vote on the undergrounding proposal. The assessments will be based on a conservative cost estimate developed at the completion of the schematic level design in November 2021, rather than waiting for the completion of all the necessary utility company design work (which has been ranging around 18-24 months).

If the vote for the larger 120-2 district is successful, with formation completed, the City will then direct final utility design. It is estimated to take approximately two years after a successful early vote to complete the design and to bid the work. If the larger assessment district is ultimately formed, then the City Council will adopt a resolution to dissolve the original Undergrounding Utility District Assessment District No. 120. If the vote for the larger 120-2 district is unsuccessful, the City will stop all further work and not incur additional design costs on the expanded district. The original approved Undergrounding Utility District Assessment District No. 120 would go forward as Council directed on April 13, 2021.

**FISCAL IMPACT:**

The Budget Amendment appropriates \$37,500 in increased expenditure appropriations in Account No. 66902-941006 (AD Assessment Engineering) for AD-120. The following is a summary of expenditures:

<b>Account Description</b>	<b>Account No.</b>	<b>Expensed to Date</b>	<b>Estimated Total Cost</b>
AD-120 Assessment Engineering	66902-941006	\$55,580	\$137,045

The expenditures to date for this district include efforts to prepare the engineers report and balloting for the original district approved by the City Council on April 13, 2021. In addition, the notice of assessment was mailed to all 23 property owners, which resulted in one owner paying. An additional \$37,500 will be required to prepare the new engineers report and complete the second balloting efforts.

In the event that formation of the larger district is successful, these additional costs will be reimbursed by cash contributions and bond proceeds from 42 property owners within the larger district. If the larger district fails to be formed, funds advanced for this second balloting effort cannot be recovered from the original district property owners. In such case, the General Fund will cover the advance used for second balloting formation costs.

**ENVIRONMENTAL REVIEW:**

Staff recommends the City Council find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15302(d) (conversion of overhead electric utility distribution system facilities to underground including connection to existing overhead electric utility distribution lines where the surface is restored to the condition existing prior to the undergrounding).

**NOTICING:**

The agenda item has been noticed according to the Brown Act (72 hours in advance of the meeting at which the City Council considers the item).

**ATTACHMENTS:**

Attachment A – Resolution No. 2021-95

Attachment B – Budget Amendment





## ATTACHMENT A

### RESOLUTION NO. 2021- 95

#### **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, ACCEPTING THE PETITION FOR THE FORMATION OF UNDERGROUND UTILITY ASSESSMENT DISTRICT NO. 120-2**

**WHEREAS**, after receiving a petition from certain property owners, the City of Newport Beach ("City") undertook proceedings to form Assessment District Number 120 ("AD 120") in order to finance certain public works of improvement, namely, the conversion of certain overhead electrical, cable and communication facilities to underground locations, together with appurtenant work ("AD 120 Improvements");

**WHEREAS**, after a public hearing on April 13, 2021, the property owners within AD 120 cast sufficient ballots in favor of the district's formation, and the City recorded a Notice of Assessment against each parcel within AD 120 for the purpose of securing the assessments required to finance the AD 120 Improvements;

**WHEREAS**, subsequent to the formation of AD 120, owners of several parcels neighboring the district ("Neighboring Parcels") expressed to the City a desire to finance improvements similar to the AD 120 Improvements;

**WHEREAS**, some of the proposed improvements in the Neighboring Parcels would benefit parcels in AD 120 and the cost per parcel to finance the AD 120 Improvements and improvements in the Neighboring Parcels (collectively, "Combined Improvements") on a combined basis would be less than the cost per parcel to finance the improvements separately due to economies of scale;

**WHEREAS**, a number of property owners within AD 120 and a number of the owners of the Neighboring Parcels (collectively, "Owners") desire to form a new assessment district to finance the Combined Improvements and have filed with the City Clerk several signed counterparts of a petition requesting the implementation of a project to finance the Combined Improvements ("Petition"), the cost of which is to be specifically assessed against each parcel of land benefiting from such improvements as shown on a map attached to the Petition;

**WHEREAS**, in the event the new assessment district is formed, the City Council would dissolve AD 120;

**WHEREAS**, the Petition contains an express waiver of statutory proceedings under the Special Assessment Investigation, Limitation and Majority Protest Act of 1931, as provided in California Streets and Highways Code Section 2804 and satisfies the requirements for instituting proceedings for the conversion of existing overhead electric and communication facilities to underground locations in accordance with California Streets and Highways Code Section 5896.5;

**WHEREAS**, the City Clerk has also received a certificate to the effect that the Petition has been signed by persons owning lands constituting more than sixty percent (60%) in area of the land subject to assessment within the proposed assessment district; and

**WHEREAS**, this City Council finds that the owners of more than sixty percent (60%) in area of the land proposed to be assessed for the proposed improvements, including the owners of more than five of the subject parcels, have signed the Petition and that the Petition contains the matters required by California Streets and Highways Code Sections 2804 and 2804.5.

**NOW, THEREFORE**, the City Council of the City of Newport Beach resolves as follows:

**Section 1:** The Petition, as filed with the City Clerk, is hereby found to be legally sufficient and is accepted.

**Section 2:** The special assessment proceedings shall be undertaken by the terms of the Petition, pursuant to the Municipal Improvement Act of 1913 and without further compliance with the Special Assessment Investigation, Limitation and Majority Protest Act of 1931 (commencing with California Streets and Highways Code Section 2800).

**Section 3:** The City Council hereby finds and determines that the public interest and convenience will be served by the taking of such proceedings.

**Section 4:** The recitals provided in this resolution are true and correct and are incorporated into the operative part of this resolution.

**Section 5:** If any section, subsection, sentence, clause or phrase of this resolution is, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this resolution. The City Council hereby declares that it would have passed this resolution, and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

**Section 6:** The City Council finds the adoption of this resolution exempt from the California Environmental Quality Act ("CEQA") pursuant to Section 15302(d) (conversion of overhead electric utility distribution system facilities to underground including connection to existing overhead electric utility distribution lines where the surface is restored to the condition existing prior to the undergrounding) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment.

**Section 7:** This action is "final" within the meaning of California Streets and Highways Code Section 3012.

**Section 8:** This resolution shall take effect immediately upon its adoption by the City Council, and the City Clerk shall certify the vote adopting the resolution.


**ADOPTED** this 12th day of October, 2021.

\_\_\_\_\_  
Brad Avery, Mayor

**ATTEST:**

\_\_\_\_\_  
Leilani I. Brown  
City Clerk

**APPROVED AS TO FORM:**  
CITY ATTORNEY'S OFFICE

  
\_\_\_\_\_  
Aaron C. Harp  
City Attorney

Attachment: Exhibit A - Certificate of Sufficiency of Petition

## EXHBIT A

### CERTIFICATE OF SUFFICIENCY OF PETITION

STATE OF CALIFORNIA  
COUNTY OF ORANCE  
CITY OF NEWPORT BEACH

The undersigned hereby CERTIFIES as follows:

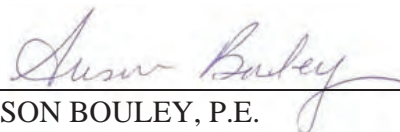
That I am the duly appointed ASSESSMENT ENGINEER of the CITY OF NEWPORT BEACH, CALIFORNIA.

That on the 27<sup>th</sup> day of September, 2021, I reviewed a Petition for the formation of an Assessment District for certain public works of improvement, together with appurtenances, appurtenant work and acquisition, where necessary, in a special assessment district known and designated as ASSESSMENT DISTRICT NO. 120-02 (hereinafter referred to as the "Assessment District"), a copy of which is on file in the Office of the City Clerk.

The undersigned hereby further specifically certifies as follows:

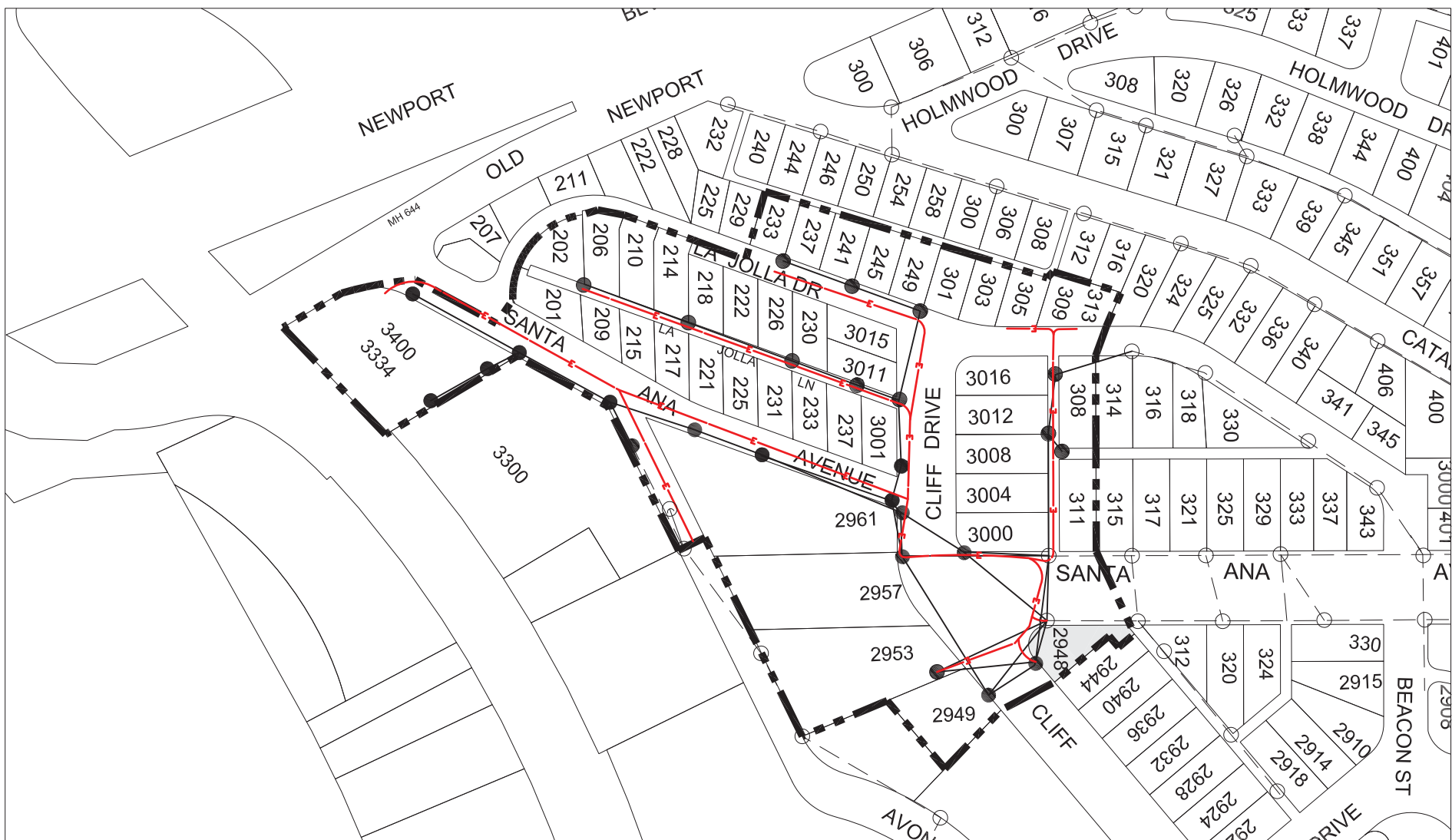
1. That I caused said Petition to be examined and my examination revealed that said Petition was signed by not less than five (5) owners of assessable land in the proposed Assessment District as shown by the last equalized assessment roll used by the City, owning lands constituting more than fifty percent (50%) of the area of all assessable lands within the proposed Assessment District, all as prescribed by Section 5896.6 of the Streets and Highways Code of the State of California.
2. Pursuant to the Special Assessment Investigation, Limitation and Majority Protest Act of 1931, that said Petition did represent sixty-five and three tenths of a percent (65.30%) of the assessable area of property within the proposed boundaries of the Assessment District.

Executed this 27<sup>th</sup> day of September, 2021 at Irvine, California.





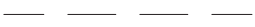





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ALISON BOULEY, P.E.  
HARRIS & ASSOCIATES  
ASSESSMENT ENGINEER  
CITY OF NEWPORT BEACH  
STATE OF CALIFORNIA



**PROPOSED ASSESSMENT DISTRICT NO. 120-2**

-  POLES TO REMAIN
-  POLES TO BE REMOVED (27)
-  GUY / RISER POLE TO BE ADDED (1)
-  OVERHEAD LINES TO BE REMOVED
-  OVERHEAD LINES TO REMAIN

-  ASSESSMENT DISTRICT BOUNDARY
-  PROPOSED JOINT TRENCH (3,000 LF)
-  PARCELS TO RETAIN OVERHEAD CONNECTION (1)



N  
1"=200'

FIGURE 1A

PARCELS: 42

Assessment Number	District Number	APN	No.	Street	Petition Signed	Verified Petition	Lot SF	Petition Signer	Property Owner	Comments
1	120	049-101-05	3016	CLIFF DR	YES	YES	6,500	ANN WINTHROP	WINTHROP MARC JOEL TR WINTHROP LIVING TR	Winthrop Living Trust provided trust information naming Ann Winthrop as a trustee.
2	120	049-101-06	3012	CLIFF DR	YES	YES	6,625	RAYMOND P RAMMING	RAMMING RAYMOND PHILLIP III & KATHI	
3	120	049-101-07	3008	CLIFF DR	NO	NO	6,625		WONG DARRYL TR FBO MARIKO WONG	
4	120	049-101-08	3004	CLIFF DR	NO	NO	6,625		RIPLEY CARMEN B TR	
5	120	049-101-09	3000	CLIFF DR	YES	YES	6,625	FRAN BENNETT	BENNETT WILLIAM B TR BENNETT FAMILY TR	Bennett Family Trust provided formation documents listing Fran Bennett as a trustee.
6	120	049-103-01	2961	CLIFF DR	YES	YES	33,253	CHAU HALLER	HALLER DAVID DANG, CHAU	
7	120	049-103-02	2957	CLIFF DR	NO	NO	23,313		DAVIDSSON STURE TR	
8	120	049-110-01	3334	W COAST HWY	YES	YES	31,154	MARIANNE BROOKS	BROOKS MARIANNE C TR	APN 049-110-01 includes 3334 W. Coast Hwy and 3400 W. Coast Hwy.
9	120	425-383-09	3015	CLIFF DR	YES	YES	4,601	PAUL SMITH	SMITH PAUL LYLE TR	
10	120	425-383-10	3011	CLIFF DR	YES	YES	4,601	ELANA M SPIVACK	SPIVACK ADAM I & ELANA M	
11	120	425-383-12	233	SANTA ANNA AVE	YES	YES	4,600	SANDY GOLDBERG	GOLDBERG ROSE & SANDY	
12	120	425-383-13	231	SANTA ANNA AVE	NO	NO	4,601		BEGET JUSTIN T TR THE BEGET FAMILY TR	
13	120	425-383-14	225	SANTA ANNA AVE	YES	YES	4,601	RON HAUGHEY	HAUGHEY RON S	
14	120	425-383-15	221	SANTA ANNA AVE	YES	YES	4,550	MAUREEN ORTLIEB	ORTLIEB MICHAEL A TR ORTLIEB FAMILY LIVING TR	Ortlieb Trust provided formation documents listing Maureen Ortlieb as a trustee.
15	120	425-383-16	217	SANTA ANNA AVE	YES	YES	3,870	KIMBERLY SODERSTROM	SODERSTROM CHARLES W TR KIMBERLEY A SODERSTROM IRREVOC TR	
16	120	425-383-17	215	SANTA ANNA AVE	YES	YES	4,131	ANTHONY CLARK	CLARK ANTHONY E & KIMBERLY	
17	120	425-383-18	209	SANTA ANNA AVE	YES	YES	3,229	C WAYNE RAY	RAY C WAYNE TR	
18	120	425-383-19	201	SANTA ANNA AVE	YES	YES	5,160	SHIRLEY VON BOGENBERG	VON BOGENBERG SHIRLEY TR S VON BOGENBERG LIVING TR	
19	120	425-383-20	237	SANTA ANNA AVE	NO	NO	4,601		WESTPHAL JAY V & LYDIA	
20	120	425-383-21	3001	CLIFF DR	YES	YES	4,600	FERIT KURTKAN	KURTKAN FERIT TR KURTKAN FAMILY TR	
21	120	049-102-04	2948	CLIFF DR	YES	YES	6,098	LESLIE ALSENZ	ALSENZ, LESLIE JO TR	
22	120	049-103-08	2949	CLIFF DR	YES	YES	11,200	ANTONIO CAGNOLO	CAGNOLO ANTONIO G	
23	120	049-103-03	2953	CLIFF DR	NO	NO	26,700		WANG HUEI YU TR	
24	120	425-383-01	202	LA JOLLA LN	YES	YES	5,000	RONALD AXE	AXE RONALD D & TERESA F	
25	120	425-383-02	206	LA JOLLA DR	YES	YES	4,250	RAYMOND SMITH	SMITH RAYMOND A TR	
26	120	425-383-03	210	LA JOLLA DR	NO	NO	4,601		BARAGHOUSH AFSHAN	
27	120	425-383-04	214	LA JOLLA DR	NO	NO	4,601		PM INVESTMENT GROUP INC	
28	120	425-383-05	218	LA JOLLA DR	YES	YES	4,601	MIKE POMEROY	POMEROY MICHAEL L TR	
29	120	425-383-06	222	LA JOLLA DR	YES	YES	3,600	TAYLOR WILLIS COSTA	COSTA TAYLOR W	
30	120	425-383-07	226	LA JOLLA DR	YES	YES	4,601	GORDON DE BOER	DE BOER GORDON W	
31	120	425-383-08	230	LA JOLLA DR	YES	YES	4,601	CHRISTY COLEMAN	COLEMAN JEFFREY & CHRISTY	
32	120	425-382-37	233	LA JOLLA DR	YES	YES	4,000	NICOLE CONNERS	CONNERS LOREN C & NICOLE E	
33	120	425-382-36	237	LA JOLLA DR	NO	NO	4,000		MOORE PATRICIA REGINA TR	
34	120	425-382-35	241	LA JOLLA DR	NO	NO	4,000		SHAFONSKY KIRK	
35	120	425-382-34	245	LA JOLLA DR	YES	YES	4,379	LESLIE STOPHER	STOPHER LESLIE	
36	120	425-382-33	249	LA JOLLA DR	YES	YES	4,350	CHARLES JEFFREY DUN	DUN CHARLES J & BLYTHE E	
37	120	425-382-32	301	LA JOLLA DR	YES	YES	4,300	ELIZABETH PRATTY	PRATTY LOUIS P & ELIZABETH A	
38	120	425-382-31	303	LA JOLLA DR	NO	NO	5,924		BENSON MICHAEL S TR THE BENSON FAMILY TR	
39	120	425-382-30	305	LA JOLLA DR	NO	NO	4,225		SILVER MOUNT REALTY LLC	
40	120	425-382-29	309 / 313	LA JOLLA DR	YES	YES	4,225	AMY OGBURN	OGBURN JOHN J TR	Ogburn Family Trust provided formation documents listing Amy L. Ogburn as a trustee.
41	120	049-101-04	308	LA JOLLA DR	YES	YES	6,229	JONATHON & KRISTEN COLLINS	COLLINS JONATHON & KRISTEN	Property Transered in July of 2021.
42	120	049-101-10	311	SANTA ANNA AVE	NO	NO	6,229		EDELHAUSER WILLIAM J JR TR	

<b>Total</b>	<b>305,580</b>
<b>Verified Petitions Square Footage</b>	<b>199,534</b>
<b>Percentage of Verified Petitions by Area</b>	<b>65.30%</b>



**City of Newport Beach**  
**BUDGET AMENDMENT**  
 2021-22

**BA#: 22-017**

Department: Public Works

Requestor: Theresa Schweitzer

CITY MANAGER'S APPROVAL ONLY

COUNCIL APPROVAL REQUIRED

**ONE TIME:**  Yes  No

Approvals	
Finance Director:	Date <u>9/28/21</u>
City Clerk:	Date

**EXPLANATION FOR REQUEST:**

To increase expenditure appropriations in Assessment District #120 with an advance from General Fund unappropriated fund balance to have the assessment engineer prepare a new Engineer's Report and to circulate ballots for property owners votes on the revised assessments.

from existing budget appropriations  
 from additional estimated revenues  
 from unappropriated fund balance

**REVENUES**

Fund #	Org	Object	Project	Description	Increase or (Decrease) \$
669	66999	691010		INTERFUND TRANSFERS - TRANSFER IN GENERAL FUND	37,500.00
Subtotal					\$ 37,500.00

**EXPENDITURES**

Fund #	Org	Object	Project	Description	Increase or (Decrease) \$
669	66902	941006		AD #120 - AD ASSESSMENT ENGINEERING	37,500.00
010	01099	991669		GENERAL FUND INTERFUND TRANSFR - TRANSFER OUT AD#120	37,500.00
Subtotal					\$ 75,000.00

**FUND BALANCE**

Fund #	Object	Description	Increase or (Decrease) \$
010	300000	GENERAL FUND - FUND BALANCE CONTROL	(37,500.00)
669	300000	ASSESSMENT DIST #120 - FUND BALANCE CONTROL	
Subtotal			\$ (37,500.00)

*Fund Balance Change Required*







# NEWPORT BEACH

## City Council Staff Report

October 12, 2021  
Agenda Item No. 6

**TO:** HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

**FROM:** David A. Webb, Public Works Director - 949-644-3311,  
dawebb@newportbeachca.gov

**PREPARED BY:** Andy Tran, Senior Civil Engineer, atran@newportbeachca.gov

**PHONE:** 949-644-3315

**TITLE:** Resolution No. 2021-96: Authorizing the Public Works Director, City Engineer or Designees to Execute Right-of-Way Certifications

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### **ABSTRACT:**

Local agencies are required to execute Right-of-Way Certifications for all projects that involve federal funding or projects located on state highways. To simplify the right-of-way review process, staff recommends adopting Resolution No. 2021-96, to authorize the Public Works Director, City Engineer, or their designees, to sign Caltrans' Right-of-Way Certifications.

### **RECOMMENDATION:**

- a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and
- b) Adopt Resolution No. 2021-96, *A Resolution of the City Council of the City of Newport Beach, California, Authorizing the Public Works Director, City Engineer, and Their Designees to Execute Right-of-Way Certifications.*

### **DISCUSSION:**

The City of Newport Beach administers various improvement projects that involve federal funding. Federally funded projects, as well as projects that are not federally funded but within Caltrans' right-of-way, require review and approval by the Federal Highway Administration. This approval authority has been delegated to the State of California Department of Transportation (Caltrans).

In accordance with the Caltrans Local Assistance Procedures Manual (LAPM), right-of-way certifications are required for projects that involve federal funding as well as projects on state highways. Local agencies are required to sign Right-of-Way Certifications as described in the LAPM.

Historically the City Engineer has undertaken this function of Certifying the Right-of Way, by verifying all the project street Right-of-Way is in place and under control of the agency (City). However, we currently do not have that authority function designation identified in documentation. To formalize the right-of-way review process, staff recommends adopting Resolution No. 2021-96, to authorize the Public Works Director, City Engineer, and their designees, to sign Right-of-Way Certifications.

**FISCAL IMPACT:**

There is no fiscal impact related to this item.

**ENVIRONMENTAL REVIEW:**

Staff recommends the City Council find this action is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

**NOTICING:**

The agenda item has been noticed according to the Brown Act (72 hours in advance of the meeting at which the City Council considers the item).

**ATTACHMENT:**

Attachment A – Resolution No. 2021-96

## ATTACHMENT A

### RESOLUTION NO. 2021- 96

#### A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, AUTHORIZING THE PUBLIC WORKS DIRECTOR, CITY ENGINEER, AND THEIR DESIGNEES TO EXECUTE RIGHT-OF-WAY CERTIFICATIONS

**WHEREAS**, the City of Newport Beach ("City") has transportation projects that are eligible to receive federal funding and are administered through the California Department of Transportation ("Caltrans") and also has transportation projects that are not federally funded but are within Caltrans' right-of-way;

**WHEREAS**, these projects require the City to certify that any right-of-way interests necessary for the project have been, or are being secured in accordance with applicable laws and regulations, or that no additional property rights or rights-of-way are required ("Right-of-Way Certifications"); and

**WHEREAS**, Right-of-Way Certifications are required to be signed by a City official authorized by the City Council to act on behalf of the City.

**NOW, THEREFORE**, the City Council of the City of Newport Beach resolves as follows:

**Section 1:** The City Council does hereby authorize the Public Works Director, City Engineer, and their designees to sign all Right-of-Way Certifications required for the above-referenced transportation projects.

**Section 2:** The recitals provided in this resolution are true and correct and are incorporated into the operative part of this resolution.

**Section 3:** If any section, subsection, sentence, clause or phrase of this resolution is, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this resolution. The City Council hereby declares that it would have passed this resolution, and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

**Section 4:** The City Council finds the adoption of this resolution is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

**Section 5:** This resolution shall take effect immediately upon its adoption by the City Council, and the City Clerk shall certify the vote adopting the resolution.


**ADOPTED** this 12th day of October, 2021.

\_\_\_\_\_  
Brad Avery  
Mayor

**ATTEST:**

\_\_\_\_\_  
Leilani I. Brown  
City Clerk

**APPROVED AS TO FORM:**  
CITY ATTORNEY'S OFFICE

  
\_\_\_\_\_  
Aaron C. Harp  
City Attorney



# NEWPORT BEACH

## City Council Staff Report

October 12, 2021  
Agenda Item No. 7

**TO:** HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

**FROM:** David A. Webb, Public Works Director - 949-644-3311,  
dawebb@newportbeachca.gov

**PREPARED BY:** Michael J. Sinacori, Assistant City Engineer,  
msinacori@newportbeachca.gov

**PHONE:** 949-644-3342

**TITLE:** Underground Utility Assessment District No. 116, 116B and  
Underground Utilities District No. 22 Phase I – Notice of Completion  
for Contract No. 7572-1 (19A11)

**ABSTRACT:**

On April 9, 2019, the City Council awarded Contract No. 7572-1 for the Underground Utility Assessment District Nos. 116, 116B and Underground Utilities District No. 22 Phase I project to Asplundh Construction Corp. The project replaced existing overhead utilities with a new underground system. The work is now complete and staff requests City Council acceptance and close out of the contract.

**RECOMMENDATION:**

- a) Accept the completed work and authorize the City Clerk to file a Notice of Completion for the project;
- b) Authorize the City Clerk to release the Labor and Materials Bond 65 days after the Notice of Completion has been recorded in accordance with applicable portions of Civil Code; and
- c) Release Faithful Performance Bond one year after acceptance by the City Council.

**DISCUSSION:**

**Overall Contract Cost/Time Summary**

Awarded Contract Amount	Final Cost at Completion	Contingency Allowance	Actual Contract Change	% Due to Directed Change	% Due to Unforeseen Change
\$3,813,399.61	\$4,176,751.01	10% or less	+9.5%	+6.08%	+3.42%
Allowed Contract Time + Approved Extensions (days) =		220	Actual Time Under (-) or Over (+)		-5

The Underground Utility Assessment District No. 116, 116B and UUD22-1 project is the second City of Newport Beach (City) managed and constructed utility undergrounding project that undergrounded overhead power, telephone and cable facilities. AD 116 is the area bounded by 44<sup>th</sup> Street to 38<sup>th</sup> Street and Balboa Boulevard to Rivo Alto Channel. AD 116B is on the east and west side of Balboa Boulevard between 47<sup>th</sup> and 45<sup>th</sup> Street. UUD22 Phase 1 is located on Balboa Boulevard between 36<sup>th</sup> Street and West Coast Highway.

The contract specifically provided for traffic control; water pollution control; trenching; construction of vaults, vents, pull boxes, handholes; installing conduit; and associated items necessary such as backfilling, pavement restoration, resurfacing and replacement of existing concrete improvements for the conversion of existing overhead electrical power, telephone, and cable television services to underground locations.

The project was very complex and proved to be challenging due to issues with parking and traffic management, groundwater, and obstructions with abandoned gas, water main and street light conduit. There were also water main breaks and water service leaks that needed repair, and additional effort was required to remove the old concrete street sections on Balboa Boulevard in order to trench and install conduits. Furthermore, crews working at various locations along Balboa Boulevard, River Avenue and adjacent alleys encountered existing pockets of oil left over from prior historic drilling operations that required special handling.

The contracted work has now been completed to the satisfaction of the Public Works Department. A summary of the construction cost is as follows:

Original bid amount:	\$3,813,399.61
Actual Cost of Bid Items Constructed:	\$3,566,503.93
Total Change Orders:	\$610,247.08
<b>Final Contract Cost:</b>	<b>\$4,176,751.01</b>

Eleven change orders totaling \$610,247.08 in increased contract cost were approved as part of the project. The change orders addressed costs for the abovementioned work including costs to install 3-inch conduit and pull boxes for the City’s traffic signalization system and additional concrete alley restoration not included in the original bid.

With the completion of the project, the final contract cost is approximately 9.5 percent above the original bid amount. A summary of the project schedule is as follows:

Estimated Start of Construction per Annual Baseline Schedule	June 3, 2019
Actual Start of Construction Per Notice to Proceed	June 17, 2019
Extended Contract Completion Date Inclusive of Extra Work	October 19, 2021
Actual Substantial Construction Completion Date	June 12, 2020

The project was substantially completed to the satisfaction of the Public Works Department by June 12, 2020, but left open to address any issues during the property owner connections to the new underground system, which there were a few.

**FISCAL IMPACT:**

Funds for this construction contract were included within the approved Capital Improvement Program budget and were expended from the following accounts:

<u>Account Description</u>	<u>Account Number</u>	<u>Amount</u>
AD116 Utility Construction	65902-941032	\$1,476,725.32
AD116B Utility Construction	66102-941032	\$566,089.81
UUD22-1 CIP Expenditures for GL	13501-980000-19A11	\$1,966,752.72
General Fund	01201928-980000-19A11	\$48,523.52
AD117 Street Rehabilitation	65802-941003	<u>\$118,659.64</u>
	<b>Total:</b>	<b>\$4,176,751.01</b>

**ENVIRONMENTAL REVIEW:**

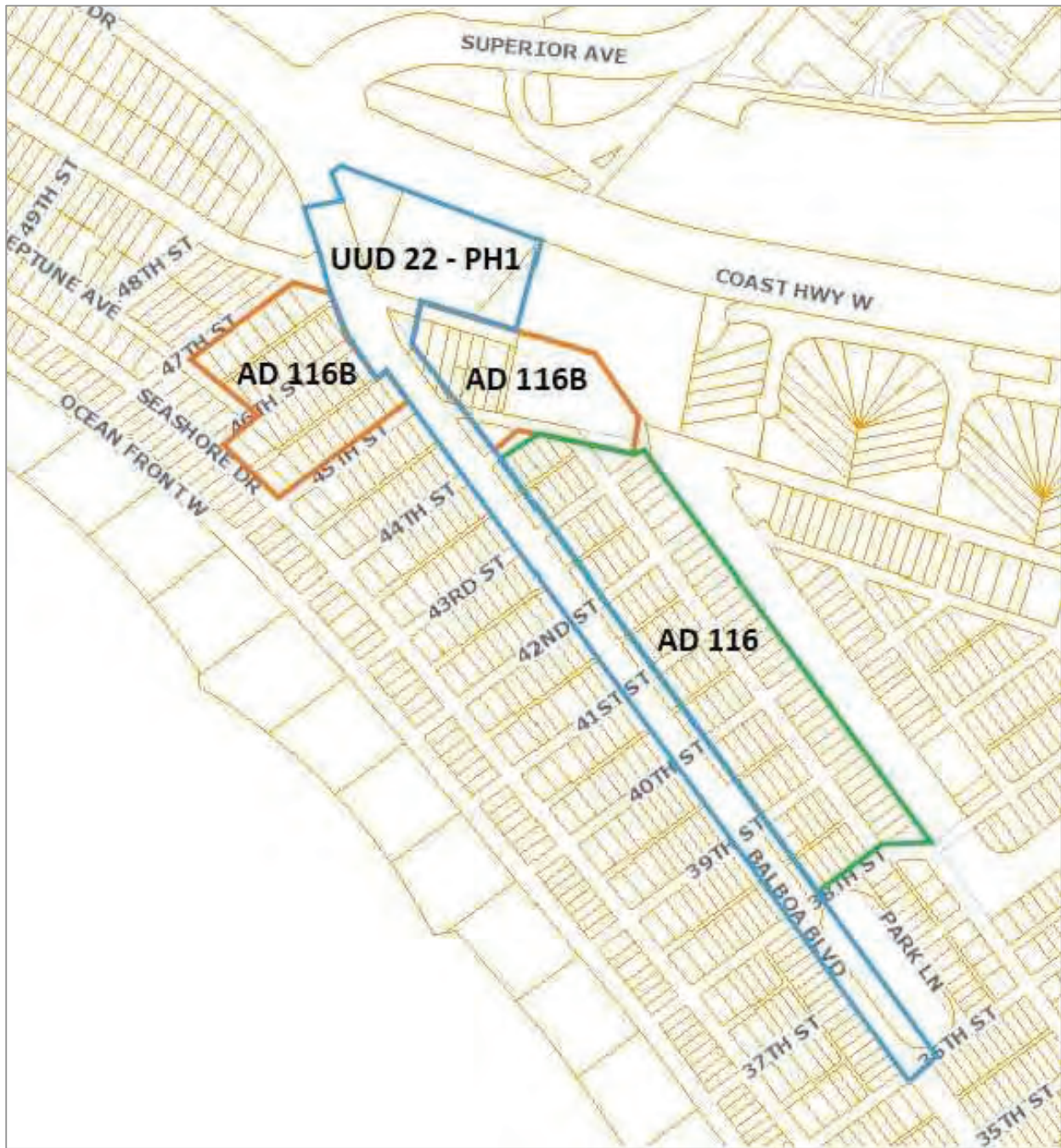
On April 9, 2019, City Council found this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15302(d) (conversion of overhead electrical utility distribution lines where the surface is restored to the condition existing prior to the undergrounding) of the CEQA Guidelines, California Code Regulations, Title 1, Chapter 3, because it will not have an adverse effect on the environment.

**NOTICING:**

The agenda item has been noticed according to the Brown Act (72 hours in advance of the meeting at which the City Council considers the item).

**ATTACHMENT:**

Attachment A – Location Map



UNDERGROUND UTILITY ASSESSMENT  
DISTRICTS NO. 116, 116B AND UNDERGROUND  
UTILITY DISTRICT NO. 22 - PHASE 1  
LOCATION MAP

CITY OF NEWPORT BEACH  
PUBLIC WORKS DEPARTMENT

C-7572-1

10/12/21

F:\Users\PBW\Shared\Contracts\FY18-19 CURRENT PROJECTS\800 - MISCELLANEOUS\ASSESSMENT DISTRICT NO. 116\_116B\PLANS AND EXHIBITS PW.08.P\location map.dwg 03/25/19 - 10:24am abaddenegro





# NEWPORT BEACH

## City Council Staff Report

October 12, 2021  
Agenda Item No. 8

**TO:** HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

**FROM:** David A. Webb, Public Works Director - 949-644-3311,  
dawebb@newportbeachca.gov

**PREPARED BY:** Peter Tauscher, Senior Civil Engineer  
**PHONE:** 949-644-3316

**TITLE:** Police Station Locker Room Remodel – Notice of Completion for  
Contract No. 7872-1 (21F12)

**ABSTRACT:**

On February 9, 2021, the City Council awarded Contract No. 7872-1 for the Police Station Locker Room Remodel project to Optima RPM, Inc. The project updated the men’s and women’s locker rooms, restrooms and adjacent hallways in the Police Department Headquarters located at 870 Santa Barbara Drive. The work is now complete and staff requests City Council acceptance and close out of the contract.

**RECOMMENDATION:**

- a) Accept the completed work and authorize the City Clerk to file a Notice of Completion for the project;
- b) Authorize the City Clerk to release the Labor and Materials Bond 65 days after the Notice of Completion has been recorded in accordance with applicable portions of Civil Code; and
- c) Release Faithful Performance Bond one year after acceptance by the City Council.

**DISCUSSION:**

**Overall Contract Cost/Time Summary**

Awarded Contract Amount	Final Cost at Completion	Contingency Allowance	Actual Contract Change	% Due to Directed Change	% Due to Unforeseen Change
\$762,000.00	\$834,075.73	12.9% or less	+9.46%	0%	9.46%
Allowed Contract Time + Approved Extensions (days) =		107	Actual Time Under (-) or Over (+)		0

The Police Station Locker Room Remodel project (Contract No. 7872-1) provided a more efficient use of space, an energy-efficient LED lighting system, increased ventilation, and new lockers with additional capacity. The work also included replacing a portion of the ground-floor hallways, wall covering, lighting and flooring.

The contracted work has now been completed to the satisfaction of the Public Works Department. A summary of the construction cost is as follows:

Original bid amount:	\$762,000.00
Actual Cost of Bid Items Constructed:	\$834,075.73
Total Change Orders:	\$72,075.73
<b>Final Contract Cost:</b>	<b>\$834,075.73</b>

Four change orders totaling \$72,075.73 in increased contract cost were approved. Over half the change order total, \$34,358.80, was due to necessary asbestos abatement not identified until after demolition began. Additional change orders included rerouting HVAC ducting; upgrading hallway flooring and locker room cabinets, and rebuilding a wall not identified correctly on the plans. After the project was awarded, Police Department staff also requested rehabilitation of the Crime Scene Investigation Lab (CSI Lab) to match the hallway improvements. The additional work increased the overall cost of the project. However, the cost was less than doing the work separately since the contractor was already working onsite and with the same products. Pursuant to Council Policy F-14 (Authority to Contract), the City Manager was able to approve this change order, adding 2.9 percent to the Council approved 10 percent contingency. The Police Department provided the necessary funding to increase the contingency allowance to 12.9 percent in order to address this added work.

A summary of the project schedule is as follows:

Estimated Start of Construction per Annual Baseline Schedule	April 5, 2021
Actual Start of Construction Per Notice to Proceed	March 29, 2021
Extended Contract Completion Date Inclusive of Extra Work	August 20, 2021
Actual Substantial Construction Completion Date	August 20, 2021

**FISCAL IMPACT:**

Funds for the construction contract were expended from the following accounts:

<u>Account Description</u>	<u>Account Number</u>	<u>Amount</u>
Facilities Maintenance CIP	57101-980000-19F02	\$ 455,282.31
Facilities Maintenance CIP	57101-980000-21F02	357,792.56
CSI Lab	01035353-811025	21,000.86
<b>Total:</b>		<b>\$ 834,075.73</b>

**ENVIRONMENTAL REVIEW:**

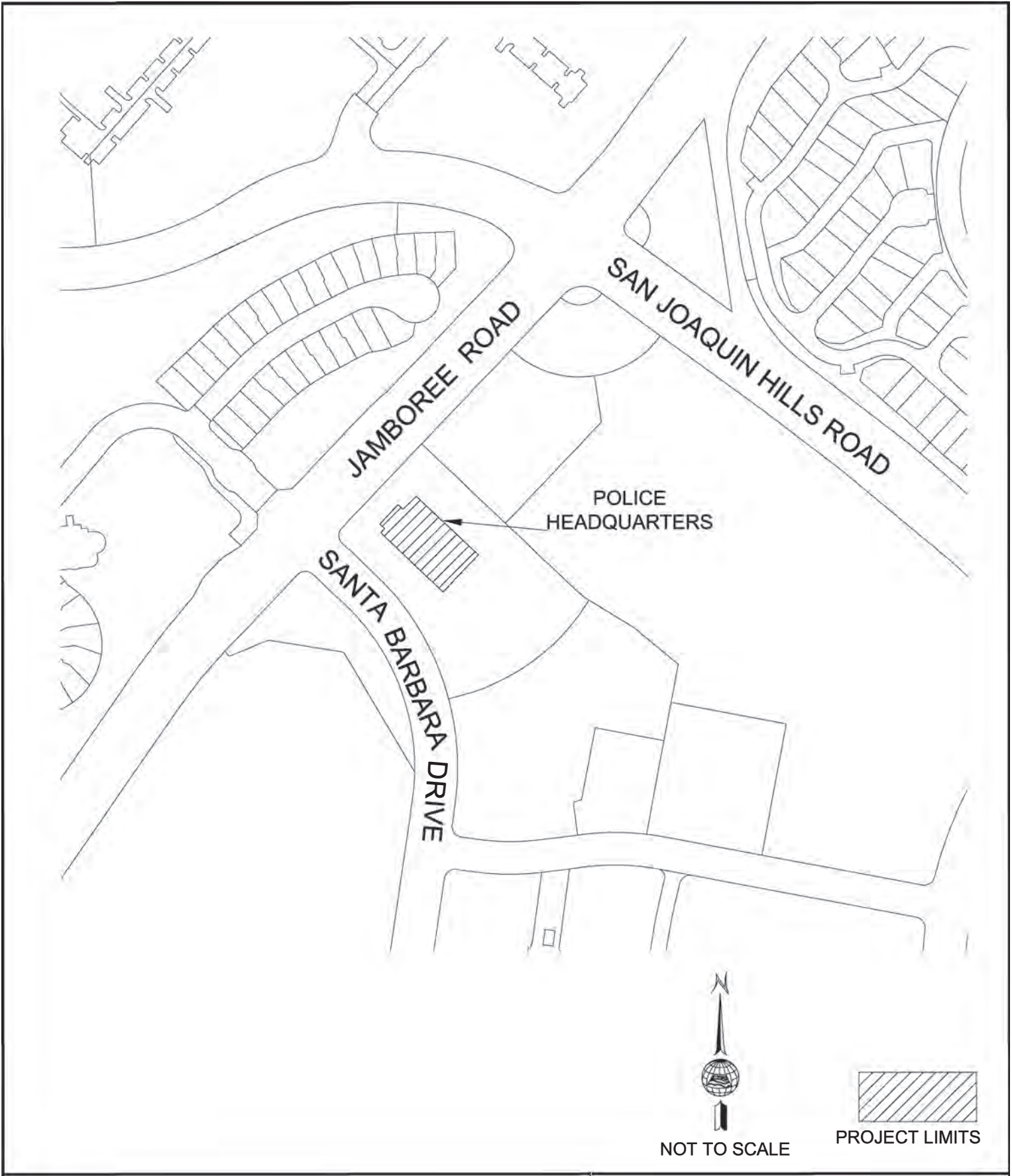
On February 9, 2021, City Council found this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 (Existing Facilities) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because this project has no potential to have a significant effect on the environment.

**NOTICING:**

The agenda item has been noticed according to the Brown Act (72 hours in advance of the meeting at which the City Council considers the item).

**ATTACHMENT:**

Attachment A – Location Map



NEWPORT BEACH  
POLICE DEPARTMENT LOCKER  
ROOM REMODEL

LOCATION MAP

CITY OF NEWPORT BEACH  
PUBLIC WORKS DEPARTMENT

C-7872-1

10/12/2021



# NEWPORT BEACH

## City Council Staff Report

October 12, 2021  
Agenda Item No. 9

**TO:** HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

**FROM:** David A. Webb, Public Works Director - 949-644-3311,  
dawebb@newportbeachca.gov

**PREPARED BY:** Tom Sandefur, Assistant City Engineer,  
tsandefur@newportbeachca.gov

**PHONE:** 949-644-3321

**TITLE:** Civic Center Park Pathway Replacement – Notice of Completion for  
Contract No. 7879-1 (21P12)

**ABSTRACT:**

On September 22, 2020, the City Council awarded Contract No. 7879-1 for the Civic Center Park Pathway Replacement Project to Civic Construction Associates (CCA). The project replaced the deteriorating natural pathways throughout the sculpture garden at Civic Center Park. The work is now complete and staff requests City Council acceptance and close out of the contract.

**RECOMMENDATION:**

- a) Accept the completed work and authorize the City Clerk to file a Notice of Completion for the project;
- b) Authorize the City Clerk to release the Labor and Materials Bond 65 days after the Notice of Completion has been recorded in accordance with applicable portions of Civil Code; and
- c) Release Faithful Performance Bond one year after acceptance by the City Council.

**DISCUSSION:**

**Overall Contract Cost/Time Summary**

Awarded Contract Amount	Final Cost at Completion	Contingency Allowance	Actual Contract Change	% Due to Directed Change	% Due to Unforeseen Change
\$155,000	\$149,845	10% or less	+0%	3.33%	0%
Allowed Contract Time + Approved Extensions (days) =		44	Actual Time Under (-) or Over (+)		+55

The Civic Center Park Pathway Replacement Project (Contract No. 7879-1) replaced the natural pathway that winds through the sculpture garden north of the Civic Center. The existing path was showing advanced deterioration and material failure and had been patched in several areas over the past eight years. The existing epoxy-based pathway material is no longer available and a new, natural-looking material was chosen that provides the look and feel of a natural path.

The contracted work has now been completed. A summary of the construction cost is as follows:

Original bid amount:	\$155,000
Actual Cost of Bid Items Constructed:	\$155,000
Back-charged cost of work done by City forces:	<u>(\$5,155)</u>
<b>Final Contract Cost:</b>	<b>\$149,845</b>

While the natural path replacement project has now been completed, it experienced significant delays and quality issues associated with the contractor, CCA. After the Notice to Proceed was issued, CCA failed to report to the worksite and begin work per their contract obligations. Per the contract documents, the City of Newport Beach (City) filed a Notice of Default and Demand to Cure with the contractor and contractor's surety to force the contractor to begin work. CCA responded to the notices satisfactorily and began removing the existing pathway.

As CCA removed the existing pathway and started the grading of the subsurface for the new material, an issue arose with the general public regularly disregarding the installed closure and detour signs, and pedestrian safety measures, often tearing down construction tape and moving barricades to access the pathway at all hours, day and night. Staff identified this issue and tried to have the contractor expedite the schedule so that that the new pathway was installed as quickly as possible to provide safe passage for the pedestrians continuously using the park.

During pathway reconstruction, further contractor performance issues began to arise as the contractor's supervisor regularly failed to be present at the worksite, without explanation. City construction inspectors consistently required CCA to make adjustments to its installation procedures to correct deficiencies. At several locations, the final work product was deemed unacceptable, and the City required full replacement.

CCA failed to maintain an acceptable level of communication throughout the project. Phone calls and emails were often ignored and requests that the contractor set up their voicemail system were unheeded.

One change order totaling -\$5,155 in decreased contract cost was approved as part of the project. These costs were back-charged to the contractor for work done by the City's forces to correct issues with the job. In particular, the City was required to remove spoils and leftover construction material that CCA left on-site, uncovered. The City was also required to rehabilitate portions of the landscaping and to restripe the crosswalk which was damaged by the work.

CCA incurred code enforcement fines for uncovered and uncontained construction materials after being repeatedly warned about these violations.

While the final installation of the path is determined to be safe and provide a natural-looking and acceptable walking surface, several areas of variation in the surface texture and material coloration are apparent. CCA was required to use a small grinding machine to re-level portions of the pathway to smooth out surface deviations. Staff consulted with the material provider and it is the supplier’s opinion that the color variation will fade and better blend in over time, with weathering and the continued use of the path.

The contractor disputes that there is any issue with the installation and claims that all problems are related to the material supplied. The material supplier points to any of these quality concerns as associated with installation and workmanship.

Based on the replacement sections, there is a noticeable color variation that occurs with different batch installs. Further removal operations to address color and surface imperfection may destabilize and damage otherwise acceptable portions of the pathway, resulting in additional areas of removal. Therefore, staff recommends filing for project completion and monitoring the pathway through the warranty period. Any further required replacements of the pathway in this period will either be completed by CCA or through its bonding and surety.

A summary of the project schedule is as follows:

Actual Start of Construction Per Notice to Proceed	April 5, 2021
Extended Contract Completion Date Inclusive of Extra Work	May 24, 2021
Actual Substantial Construction Completion Date	August 20, 2021

**FISCAL IMPACT:**

Funding for this project was provided from a \$500,000 Local Assistance Specified Grant appropriated in the State of California’s FY 2019-20 budget, which was also designated for the Civic Center Park Sculpture Exhibition Phases V and VI. Funds for the construction contract and work done by City forces were expended from the following account:

<u>Account Description</u>	<u>Account Number</u>	<u>Amount</u>
Contributions	13501-980000-21P12	\$ 155,000
<b>Total:</b>		<b>\$ 155,000</b>

**ENVIRONMENTAL REVIEW:**

On September 22, 2020, the City Council found this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301(d), (restoration of deteriorated or damaged existing facility) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential to have a significant effect on the environment.

**NOTICING:**

The agenda item has been noticed according to the Brown Act (72 hours in advance of the meeting at which the City Council considers the item).

**ATTACHMENT:**

Attachment A – Location Map





LEGEND

 PATHWAY REPLACEMENT

CIVIC CENTER PATHWAY REPLACEMENT  
LOCATION MAP

CITY OF NEWPORT BEACH  
PUBLIC WORKS DEPARTMENT

07/08/20

C-7879-1

B-5289-S

SHEET  
1 OF 1

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# NEWPORT BEACH

## City Council Staff Report

October 12, 2021  
Agenda Item No. 10

**TO:** HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

**FROM:** David A. Webb, Public Works Director - 949-644-3311,  
dawebb@newportbeachca.gov

**PREPARED BY:** Michael J. Sinacori, P.E, Assistant City Engineer  
msinacori@newportceachca.gov

**PHONE:** (949) 644-3342

**TITLE:** Approval of Professional Services Agreement with Coastal Frontiers  
for Oceanfront Sand Monitoring Program (22H04)

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### **ABSTRACT:**

The City of Newport Beach's (City's) ocean beaches appear to have experienced significant erosion, movement, and/or loss of sand in the past several years mostly due to the larger and more consistent than normal south swells and the lack of winter storms (La Nina condition). In years past, Coastal Frontiers has been contracted by the City to perform beach surveys that are consistent with past Army Corps of Engineers (Army Corps) surveys. Staff is requesting approval of a five-year professional services agreement with Coastal Frontiers to collect annual beach profile survey information as well as to provide necessary data to the Army Corps and other regulatory agencies to support actions that may be necessary to replenish the sand lost within Newport Beach coastlines. Coastal Frontiers is uniquely qualified to perform these surveys, is recognized by the Army Corps, and is well respected in the coastal agency community.

### **RECOMMENDATION:**

- a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and
- b) Approve a Professional Services Agreement with Coastal Frontiers for Annual Oceanfront Sand Monitoring at a total not-to-exceed price of \$147,589, and authorize the Mayor and City Clerk to execute the Agreement.

### **DISCUSSION:**

City ocean beaches appear to have experienced significant erosion, movement and/or loss of sand in the past several years due mostly to the larger and more consistent than normal south swells and the lack of winter storms (La Nina condition).

Since 2006, Coastal Frontiers has been assisting the City and other regulatory agencies in collecting data and evaluating the conditions of the ocean coastline to document and understand the changing beach sand profile to assist with sand replenishment efforts. Their survey efforts led to modifications to the Army Corps-led Surfside/Sunset Stage 12 project in 2009. During that project, sand was moved from the upper jetties back to the lower jetties where the beaches had narrowed. This effort is referred to as back passing in industry terms. The Army Corp has its planned Stage 13 project designed and ready for implementation, which will include back passing efforts in Newport Beach. However, funding has not yet been fully secured nor have the final agreements between partner agencies been completed. In addition, the County of Orange (County) is starting its annual Santa Ana River mouth sand management efforts later this month. For both projects, a review of the coast by a recognized expert is important to direct the County and the Army Corps on where to place the sand during its back pass operations.

The last annual survey completed by Coastal Frontiers was in Fall 2018. Staff had planned to complete the next survey in the fall of 2020; however, due to budget concerns during the COVID pandemic, the effort was postponed. Staff is requesting approval of a five-year professional services agreement with Coastal Frontiers to provide data to the Army Corps, County, and other regulatory agencies that demonstrates action may be necessary to replenish the sand lost along the ocean coastline in Newport Beach. If approved, this year's effort would start immediately and prior to the County sand management efforts to the lower peninsula jetties. Coastal Frontiers is uniquely qualified to perform these surveys and is well respected in the Coastal agency community.

**FISCAL IMPACT:**

The current Capital Improvement Project (CIP) adopted budget includes sufficient funding for this year's survey efforts, \$27,522. Services will be expensed to the Beach and Bay Sand Management CIP Account No. 10001-980000-22H04. Future year's funding will be requested during the annual budget process.

**ENVIRONMENTAL REVIEW:**

Staff recommends the City Council find this action is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

**NOTICING:**

The agenda item has been noticed according to the Brown Act (72 hours in advance of the meeting at which the City Council considers the item).

**ATTACHMENT:**

Attachment A – Professional Services Agreement with Coastal Frontiers

## ATTACHMENT A

### PROFESSIONAL SERVICES AGREEMENT WITH COASTAL FRONTIERS CORPORATION FOR 2021-2025 BEACH PROFILE SURVEY PROGRAM

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered into as of this 12th day of October, 2021 ("Effective Date"), by and between the CITY OF NEWPORT BEACH, a California municipal corporation and charter city ("City"), and COASTAL FRONTIERS CORPORATION, a California corporation ("Consultant"), whose address is 882 A Patriot Drive, Moorpark, California 93021, and is made with reference to the following:

#### RECITALS

- A. City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the Charter of City.
- B. City desires to engage Consultant to provide beach profile surveys for 2021 through 2025 based on profile data obtained along 13 shore-perpendicular beach profile transects located between the Santa Ana River and Corona del Mar ("Project").
- C. Consultant possesses the skill, experience, ability, background, certification and knowledge to provide the professional services described in this Agreement.
- D. City has solicited and received a proposal from Consultant, has reviewed the previous experience and evaluated the expertise of Consultant, and desires to retain Consultant to render professional services under the terms and conditions set forth in this Agreement.

**NOW, THEREFORE**, it is mutually agreed by and between the undersigned parties as follows:

#### 1. TERM

The term of this Agreement shall commence on the Effective Date, and shall terminate on June 30, 2026, unless terminated earlier as set forth herein.

#### 2. SERVICES TO BE PERFORMED

Consultant shall diligently perform all the services described in the Scope of Services attached hereto as Exhibit A and incorporated herein by reference ("Services" or "Work"). City may elect to delete certain Services within the Scope of Services at its sole discretion.

### 3. TIME OF PERFORMANCE

3.1 Time is of the essence in the performance of Services under this Agreement and Consultant shall perform the Services in accordance with the schedule included in Exhibit A. In the absence of a specific schedule, the Services shall be performed to completion in a diligent and timely manner. The failure by Consultant to strictly adhere to the schedule set forth in Exhibit A, if any, or perform the Services in a diligent and timely manner may result in termination of this Agreement by City.

3.2 Notwithstanding the foregoing, Consultant shall not be responsible for delays due to causes beyond Consultant's reasonable control. However, in the case of any such delay in the Services to be provided for the Project, each party hereby agrees to provide notice within two (2) calendar days of the occurrence causing the delay to the other party so that all delays can be addressed.

3.3 Consultant shall submit all requests for extensions of time for performance in writing to the Project Administrator as defined herein not later than ten (10) calendar days after the start of the condition that purportedly causes a delay. The Project Administrator shall review all such requests and may grant reasonable time extensions for unforeseeable delays that are beyond Consultant's control.

3.4 For all time periods not specifically set forth herein, Consultant shall respond in the most expedient and appropriate manner under the circumstances, by hand-delivery or mail.

### 4. COMPENSATION TO CONSULTANT

4.1 City shall pay Consultant for the Services on a fixed fee not-to-exceed basis in accordance with the provisions of this Section and the Schedule of Billing Rates attached hereto as Exhibit B and incorporated herein by reference. Consultant's compensation for all Work performed in accordance with this Agreement, including all reimbursable items and subconsultant fees, shall not exceed **One Hundred Forty Seven Thousand Five Hundred Eighty Nine Dollars and 00/100 (\$147,589.00)**, without prior written authorization from City. No billing rate changes shall be made during the term of this Agreement without the prior written approval of City.

4.2 Consultant shall submit invoices to City upon completion of each of the tasks as outlined in Scope of Services, and a description of any reimbursable expenditures. City shall pay Consultant no later than thirty (30) calendar days after approval of the monthly invoice by City staff.

4.3 City shall reimburse Consultant only for those costs or expenses specifically identified in Exhibit B to this Agreement or specifically approved in writing in advance by City.

4.4 Consultant shall not receive any compensation for Extra Work performed without the prior written authorization of City. As used herein, "Extra Work" means any Work that is determined by City to be necessary for the proper completion of the Project,

but which is not included within the Scope of Services and which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Compensation for any authorized Extra Work shall be paid in accordance with the Schedule of Billing Rates as set forth in Exhibit B.

## **5. PROJECT MANAGER**

5.1 Consultant shall designate a Project Manager, who shall coordinate all phases of the Project. This Project Manager shall be available to City at all reasonable times during the Agreement term. Consultant has designated Christopher Scott to be its Project Manager. Consultant shall not remove or reassign the Project Manager or any personnel listed in Exhibit A or assign any new or replacement personnel to the Project without the prior written consent of City. City's approval shall not be unreasonably withheld with respect to the removal or assignment of non-key personnel.

5.2 Consultant, at the sole discretion of City, shall remove from the Project any of its personnel assigned to the performance of Services upon written request of City. Consultant warrants that it will continuously furnish the necessary personnel to complete the Project on a timely basis as contemplated by this Agreement.

5.3 If Consultant is performing inspection services for City, the Project Manager and any other assigned staff shall be equipped with a cellular phone to communicate with City staff. The Project Manager's cellular phone number shall be provided to City.

## **6. ADMINISTRATION**

This Agreement will be administered by the Public Works Department. City's Public Works Director or designee shall be the Project Administrator and shall have the authority to act for City under this Agreement. The Project Administrator shall represent City in all matters pertaining to the Services to be rendered pursuant to this Agreement.

## **7. CITY'S RESPONSIBILITIES**

To assist Consultant in the execution of its responsibilities under this Agreement, City agrees to provide access to and upon request of Consultant, one copy of all existing relevant information on file at City. City will provide all such materials in a timely manner so as not to cause delays in Consultant's Work schedule.

## **8. STANDARD OF CARE**

8.1 All of the Services shall be performed by Consultant or under Consultant's supervision. Consultant represents that it possesses the professional and technical personnel required to perform the Services required by this Agreement, and that it will perform all Services in a manner commensurate with community professional standards and with the ordinary degree of skill and care that would be used by other reasonably competent practitioners of the same discipline under similar circumstances. All Services shall be performed by qualified and experienced personnel who are not employed by City. By delivery of completed Work, Consultant certifies that the Work conforms to the

requirements of this Agreement, all applicable federal, state and local laws, and legally recognized professional standards.

8.2 Consultant represents and warrants to City that it has, shall obtain, and shall keep in full force and effect during the term hereof, at its sole cost and expense, all licenses, permits, qualifications, insurance and approvals of whatsoever nature that is legally required of Consultant to practice its profession. Consultant shall maintain a City of Newport Beach business license during the term of this Agreement.

8.3 Consultant shall not be responsible for delay, nor shall Consultant be responsible for damages or be in default or deemed to be in default by reason of strikes, lockouts, accidents, acts of God, or the failure of City to furnish timely information or to approve or disapprove Consultant's Work promptly, or delay or faulty performance by City, contractors, or governmental agencies.

## **9. HOLD HARMLESS**

9.1 To the fullest extent permitted by law, Consultant shall indemnify, defend and hold harmless City, its City Council, boards and commissions, officers, agents, volunteers, employees and the State of California (collectively, the "Indemnified Parties"), from and against any and all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including, without limitation, attorneys' fees, disbursements and court costs) of every kind and nature whatsoever (individually, a Claim; collectively, "Claims"), and which relate (directly or indirectly) to the negligence, recklessness, or willful misconduct of the Consultant or its principals, officers, agents, employees, vendors, suppliers, subconsultants, subcontractors, anyone employed directly or indirectly by any of them or for whose acts they may be liable, or any or all of them.

9.2 Notwithstanding the foregoing, nothing herein shall be construed to require Consultant to indemnify the Indemnified Parties from any Claim arising from the sole negligence, active negligence or willful misconduct of the Indemnified Parties. Nothing in this indemnity shall be construed as authorizing any award of attorneys' fees in any action on or to enforce the terms of this Agreement. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by the Consultant.

## **10. INDEPENDENT CONTRACTOR**

It is understood that City retains Consultant on an independent contractor basis and Consultant is not an agent or employee of City. The manner and means of conducting the Work are under the control of Consultant, except to the extent they are limited by statute, rule or regulation and the expressed terms of this Agreement. No civil service status or other right of employment shall accrue to Consultant or its employees. Nothing in this Agreement shall be deemed to constitute approval for Consultant or any



of Consultant's employees or agents, to be the agents or employees of City. Consultant shall have the responsibility for and control over the means of performing the Work, provided that Consultant is in compliance with the terms of this Agreement. Anything in this Agreement that may appear to give City the right to direct Consultant as to the details of the performance of the Work or to exercise a measure of control over Consultant shall mean only that Consultant shall follow the desires of City with respect to the results of the Services.

#### **11. COOPERATION**

Consultant agrees to work closely and cooperate fully with City's designated Project Administrator and any other agencies that may have jurisdiction or interest in the Work to be performed. City agrees to cooperate with the Consultant on the Project.

#### **12. CITY POLICY**

Consultant shall discuss and review all matters relating to policy and Project direction with City's Project Administrator in advance of all critical decision points in order to ensure the Project proceeds in a manner consistent with City goals and policies.

#### **13. PROGRESS**

Consultant is responsible for keeping the Project Administrator informed on a regular basis regarding the status and progress of the Project, activities performed and planned, and any meetings that have been scheduled or are desired.

#### **14. INSURANCE**

Without limiting Consultant's indemnification of City, and prior to commencement of Work, Consultant shall obtain, provide and maintain at its own expense during the term of this Agreement or for other periods as specified in this Agreement, policies of insurance of the type, amounts, terms and conditions described in the Insurance Requirements attached hereto as Exhibit C, and incorporated herein by reference.

#### **15. PROHIBITION AGAINST ASSIGNMENTS AND TRANSFERS**

Except as specifically authorized under this Agreement, the Services to be provided under this Agreement shall not be assigned, transferred contracted or subcontracted out without the prior written approval of City. Any of the following shall be construed as an assignment: The sale, assignment, transfer or other disposition of any of the issued and outstanding capital stock of Consultant, or of the interest of any general partner or joint venturer or syndicate member or cotenant if Consultant is a partnership or joint-venture or syndicate or co-tenancy, which shall result in changing the control of Consultant. Control means fifty percent (50%) or more of the voting power or twenty-five percent (25%) or more of the assets of the corporation, partnership or joint-venture.

## **16. SUBCONTRACTING**

The subcontractors authorized by City, if any, to perform Work on this Project are identified in Exhibit A. Consultant shall be fully responsible to City for all acts and omissions of any subcontractor. Nothing in this Agreement shall create any contractual relationship between City and any subcontractor nor shall it create any obligation on the part of City to pay or to see to the payment of any monies due to any such subcontractor other than as otherwise required by law. City is an intended beneficiary of any Work performed by the subcontractor for purposes of establishing a duty of care between the subcontractor and City. Except as specifically authorized herein, the Services to be provided under this Agreement shall not be otherwise assigned, transferred, contracted or subcontracted out without the prior written approval of City.

## **17. OWNERSHIP OF DOCUMENTS**

17.1 Each and every report, draft, map, record, plan, document and other writing produced, including but not limited to, websites, blogs, social media accounts and applications (hereinafter "Documents"), prepared or caused to be prepared by Consultant, its officers, employees, agents and subcontractors, in the course of implementing this Agreement, shall become the exclusive property of City, and City shall have the sole right to use such materials in its discretion without further compensation to Consultant or any other party. Additionally, all material posted in cyberspace by Consultant, its officers, employees, agents and subcontractors, in the course of implementing this Agreement, shall become the exclusive property of City, and City shall have the sole right to use such materials in its discretion without further compensation to Consultant or any other party. Consultant shall, at Consultant's expense, provide such Documents, including all logins and password information to City upon prior written request.

17.2 Documents, including drawings and specifications, prepared by Consultant pursuant to this Agreement are not intended or represented to be suitable for reuse by City or others on any other project. Any use of completed Documents for other projects and any use of incomplete Documents without specific written authorization from Consultant will be at City's sole risk and without liability to Consultant. Further, any and all liability arising out of changes made to Consultant's deliverables under this Agreement by City or persons other than Consultant is waived against Consultant, and City assumes full responsibility for such changes unless City has given Consultant prior notice and has received from Consultant written consent for such changes.

17.3 CADD data delivered to City shall include the professional stamp of the engineer or architect in charge of or responsible for the Work. City agrees that Consultant shall not be liable for claims, liabilities or losses arising out of, or connected with (a) the modification or misuse by City, or anyone authorized by City, of CADD data; (b) the decline of accuracy or readability of CADD data due to inappropriate storage conditions or duration; or (c) any use by City, or anyone authorized by City, of CADD data for additions to this Project, for the completion of this Project by others, or for any other Project, excepting only such use as is authorized, in writing, by Consultant. By acceptance of CADD data, City agrees to indemnify Consultant for damages and liability

resulting from the modification or misuse of such CADD data. All original drawings shall be submitted to City in the version of AutoCAD used by the City in .dwg file format, on a CD, and should comply with the City's digital submission requirements for improvement plans available from the City's Public Works Department. The City will provide Consultant with City title sheets as AutoCAD file(s) in .dwg file format. All written documents shall be transmitted to City in formats compatible with Microsoft Office and/or viewable with Adobe Acrobat.

17.4 All improvement and/or construction plans shall be prepared with indelible waterproof ink or electrostatically plotted on standard twenty-four inch (24") by thirty-six inch (36") Mylar with a minimum thickness of three (3) mils. Consultant shall provide to City 'As-Built' drawings and a copy of digital Computer Aided Design and Drafting ("CADD") and Tagged Image File Format (.tiff) files of all final sheets within ninety (90) days after finalization of the Project. For more detailed requirements, a copy of the City of Newport Beach Standard Design Requirements is available from the City's Public Works Department.

## **18. CONFIDENTIALITY**

All Documents, including drafts, preliminary drawings or plans, notes and communications that result from the Services in this Agreement, shall be kept confidential unless City expressly authorizes in writing the release of information.

## **19. INTELLECTUAL PROPERTY INDEMNITY**

Consultant shall defend and indemnify City, its agents, officers, representatives and employees against any and all liability, including costs, for infringement or alleged infringement of any United States' letters patent, trademark, or copyright, including costs, contained in Consultant's Documents provided under this Agreement.

## **20. RECORDS**

Consultant shall keep records and invoices in connection with the Services to be performed under this Agreement. Consultant shall maintain complete and accurate records with respect to the costs incurred under this Agreement and any Services, expenditures and disbursements charged to City, for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to Consultant under this Agreement. All such records and invoices shall be clearly identifiable. Consultant shall allow a representative of City to examine, audit and make transcripts or copies of such records and invoices during regular business hours. Consultant shall allow inspection of all Work, data, Documents, proceedings and activities related to the Agreement for a period of three (3) years from the date of final payment to Consultant under this Agreement.

## **21. WITHHOLDINGS**

City may withhold payment to Consultant of any disputed sums until satisfaction of the dispute with respect to such payment. Such withholding shall not be deemed to

constitute a failure to pay according to the terms of this Agreement. Consultant shall not discontinue Work as a result of such withholding. Consultant shall have an immediate right to appeal to the City Manager or designee with respect to such disputed sums. Consultant shall be entitled to receive interest on any withheld sums at the rate of return that City earned on its investments during the time period, from the date of withholding of any amounts found to have been improperly withheld.

## **22. ERRORS AND OMISSIONS**

In the event of errors or omissions that are due to the negligence or professional inexperience of Consultant which result in expense to City greater than what would have resulted if there were not errors or omissions in the Work accomplished by Consultant, the additional design, construction and/or restoration expense shall be borne by Consultant. Nothing in this Section is intended to limit City's rights under the law or any other sections of this Agreement.

## **23. CITY'S RIGHT TO EMPLOY OTHER CONSULTANTS**

City reserves the right to employ other Consultants in connection with the Project.

## **24. CONFLICTS OF INTEREST**

24.1 Consultant or its employees may be subject to the provisions of the California Political Reform Act of 1974 (the "Act") and/or Government Code §§ 1090 et seq., which (1) require such persons to disclose any financial interest that may foreseeably be materially affected by the Work performed under this Agreement, and (2) prohibit such persons from making, or participating in making, decisions that will foreseeably financially affect such interest.

24.2 If subject to the Act and/or Government Code §§ 1090 et seq., Consultant shall conform to all requirements therein. Failure to do so constitutes a material breach and is grounds for immediate termination of this Agreement by City. Consultant shall indemnify and hold harmless City for any and all claims for damages resulting from Consultant's violation of this Section.

## **25. NOTICES**

25.1 All notices, demands, requests or approvals, including any change in mailing address, to be given under the terms of this Agreement shall be given in writing, and conclusively shall be deemed served when delivered personally, or on the third business day after the deposit thereof in the United States mail, postage prepaid, first-class mail, addressed as hereinafter provided.

25.2 All notices, demands, requests or approvals from Consultant to City shall be addressed to City at:

Attn: Public Works Director  
Public Works Department  
City of Newport Beach  
100 Civic Center Drive  
PO Box 1768  
Newport Beach, CA 92658

25.3 All notices, demands, requests or approvals from City to Consultant shall be addressed to Consultant at:

Attn: Christopher Scott  
Coastal Frontiers Corporation  
882 A Patriot Drive  
Moorpark, CA 93021

## **26. CLAIMS**

26.1 Unless a shorter time is specified elsewhere in this Agreement, before making its final request for payment under this Agreement, Consultant shall submit to City, in writing, all claims for compensation under or arising out of this Agreement. Consultant's acceptance of the final payment shall constitute a waiver of all claims for compensation under or arising out of this Agreement except those previously made in writing and identified by Consultant in writing as unsettled at the time of its final request for payment. Consultant and City expressly agree that in addition to any claims filing requirements set forth in the Agreement, Consultant shall be required to file any claim Consultant may have against City in strict conformance with the Government Claims Act (Government Code sections 900 et seq.).

26.2 To the extent that Consultant's claim is a "Claim" as defined in Public Contract Code section 9204 or any successor statute thereto, the Parties agree to follow the dispute resolution process set forth therein. Any part of such "Claim" remaining in dispute after completion of the dispute resolution process provided for in Public Contract Code section 9204 or any successor statute thereto shall be subject to the Government Claims Act requirements requiring Consultant to file a claim in strict conformance with the Government Claims Act. To the extent that Contractor/Consultant's claim is not a "Claim" as defined in Public Contract Code section 9204 or any successor statute thereto, Consultant shall be required to file such claim with the City in strict conformance with the Government Claims Act (Government Code sections 900 et seq.).

## **27. TERMINATION**

27.1 In the event that either party fails or refuses to perform any of the provisions of this Agreement at the time and in the manner required, that party shall be deemed in default in the performance of this Agreement. If such default is not cured within a period of two (2) calendar days, or if more than two (2) calendar days are reasonably required to cure the default and the defaulting party fails to give adequate assurance of due performance within two (2) calendar days after receipt of written notice of default,

specifying the nature of such default and the steps necessary to cure such default, and thereafter diligently take steps to cure the default, the non-defaulting party may terminate the Agreement forthwith by giving to the defaulting party written notice thereof.

27.2 Notwithstanding the above provisions, City shall have the right, at its sole and absolute discretion and without cause, of terminating this Agreement at any time by giving no less than seven (7) calendar days' prior written notice to Consultant. In the event of termination under this Section, City shall pay Consultant for Services satisfactorily performed and costs incurred up to the effective date of termination for which Consultant has not been previously paid. On the effective date of termination, Consultant shall deliver to City all reports, Documents and other information developed or accumulated in the performance of this Agreement, whether in draft or final form.

## **28. STANDARD PROVISIONS**

28.1 Recitals. City and Consultant acknowledge that the above Recitals are true and correct and are hereby incorporated by reference into this Agreement.

28.2 Compliance with all Laws. Consultant shall, at its own cost and expense, comply with all statutes, ordinances, regulations and requirements of all governmental entities, including federal, state, county or municipal, whether now in force or hereinafter enacted. In addition, all Work prepared by Consultant shall conform to applicable City, county, state and federal laws, rules, regulations and permit requirements and be subject to approval of the Project Administrator and City.

28.3 Waiver. A waiver by either party of any breach, of any term, covenant or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition contained herein, whether of the same or a different character.

28.4 Integrated Contract. This Agreement represents the full and complete understanding of every kind or nature whatsoever between the parties hereto, and all preliminary negotiations and agreements of whatsoever kind or nature are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions herein.

28.5 Conflicts or Inconsistencies. In the event there are any conflicts or inconsistencies between this Agreement and the Scope of Services or any other attachments attached hereto, the terms of this Agreement shall govern.

28.6 Interpretation. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of the Agreement or any other rule of construction which might otherwise apply.

28.7 Amendments. This Agreement may be modified or amended only by a written document executed by both Consultant and City and approved as to form by the City Attorney.

28.8 Severability. If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

28.9 Controlling Law and Venue. The laws of the State of California shall govern this Agreement and all matters relating to it and any action brought relating to this Agreement shall be adjudicated in a court of competent jurisdiction in the County of Orange, State of California.

28.10 Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, sex, sexual orientation, age or any other impermissible basis under law.

28.11 No Attorneys' Fees. In the event of any dispute or legal action arising under this Agreement, the prevailing party shall not be entitled to attorneys' fees.

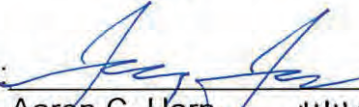
28.12 Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original and all of which together shall constitute one (1) and the same instrument.

**[SIGNATURES ON NEXT PAGE]**

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the dates written below.

APPROVED AS TO FORM:  
CITY ATTORNEY'S OFFICE

Date: 9/30/21

By:   
fa Aaron C. Harp www 9.29.21  
City Attorney

ATTEST:

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Leilani I. Brown  
City Clerk

CITY OF NEWPORT BEACH,  
a California municipal corporation

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Brad Avery  
Mayor

CONSULTANT: Coastal Frontiers  
Corporation, a California corporation

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Craig B. Leidersdorf  
Chief Executive Officer

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Gregory E. Hearon  
Secretary

[END OF SIGNATURES]

Attachments: Exhibit A – Scope of Services  
Exhibit B – Schedule of Billing Rates  
Exhibit C – Insurance Requirements



**EXHIBIT A  
SCOPE OF SERVICES  
CITY OF NEWPORT BEACH  
2021-2025 BEACH PROFILE SURVEY PROGRAM**

Beach profile data will be obtained along 13 shore-perpendicular beach profile transects located between the Santa Ana River and Corona del Mar (Figure 1). The proposed survey methods are similar to those employed on previous survey programs conducted on behalf of the City. The data acquired along each transect will form a continuous profile from the back beach to the offshore terminus, which will be the 45-ft isobath, Mean Lower Low Water (MLLW) Datum.



**Figure 1. Location Map**

The work will include up to five beach profile surveys to be conducted between Fall 2021 and Fall 2025. For the purposes of developing this scope and cost estimate, it is assumed that each of the five surveys will be conducted in the fall, as shown below:

- Task 1 – Fall 2021 Beach Profile Survey
- Task 2 – Fall 2022 Beach Profile Survey
- Task 3 – Fall 2023 Beach Profile Survey
- Task 4 – Fall 2024 Beach Profile Survey
- Task 5 – Fall 2025 Beach Profile Survey

Each of the survey tasks will consist of field data acquisition, data reduction, and reporting as described in the sub-sections that follow.

### *Task 1a - Fall 2021 Field Data Acquisition*

Bathymetric data will be collected with a single-beam echo sounder operated from a shallow-draft survey vessel. A dynamic motion sensor, which filters the data record to reduce the influence of wave contamination and vessel motion, will be used. The boat will transit each transect from the offshore terminus to the surf zone. The position of each sounding will be obtained using a GPS receiver with differential position corrections (DGPS). The calibration of the echo sounder will be checked at the beginning and end of the survey using a standard "bar check" procedure. In addition, the speed of sound in sea water will be calculated at the offshore end of each transect using a device that measures conductivity, temperature, and depth (CTD) along a vertical profile within the water column.

The subaerial beach and surf zone will be surveyed using a total station and a survey rodman. The total station will be operated from the beach to determine the position and elevation at each location occupied by the rodman. The rodman will gather data through the surf zone to the calmer waters offshore in an effort to obtain data overlap with the survey vessel. It is assumed that the survey control used in prior monitoring programs is in good condition. If the control markers are found to be destroyed, new control points will be established at an additional cost.

### *Task 1b – Fall 2021 Data Reduction and Reporting*

The soundings will be adjusted to MLLW Datum utilizing tide measurements collected by the U.S. Department of Commerce, NOAA, at Los Angeles Harbor. The water levels recorded in Los Angeles will be adjusted using the time and height differences published by NOAA for the study area.

Data collected with the total station will be reduced using proprietary survey software. The wading data will be merged with the processed soundings, and the resulting information will be used to create a continuous beach profile.

A concise letter report will be prepared which documents the survey methods and results. The report shall include an assessment of short- and long-term changes in the following parameters:

- Beach Profile Plots
- MSL Beach Width
- Shorezone Volume (back beach to depth-of-closure)

The report shall summarize recent beach management activities undertaken in the region and the impacts (if any) that these activities had on the local beaches. Digital data files containing the survey data shall be submitted with the report.

### *Task 2a – Fall 2022 Field Survey Activities*

Identical to Task 1a

*Task 2b – Fall 2022 Data Reduction and Reporting*  
Identical to Task 1b

*Task 3a – Fall 2023 Field Survey Activities*  
Identical to Task 1a

*Task 3b – Fall 2023 Data Reduction and Reporting*  
Identical to Task 1b

*Task 4a – Fall 2024 Field Survey Activities*  
Identical to Task 1a

*Task 4b – Fall 2024 Data Reduction and Reporting*  
Identical to Task 1b

*Task 5a – Fall 2025 Field Survey Activities*  
Identical to Task 1a

*Task 5b – Fall 2025 Data Reduction and Reporting*  
Identical to Task 1b

## **DELIVERABLES**

As noted above, the methods and results shall be documented in a concise letter report following each survey. The report shall include beach profile plots developed from the survey data and will contain select profiles from prior surveys to provide historical context. Tabulated values of Mean Sea Level Beach Widths and Shorezone Volumes (back beach to the depth-of-closure) will be provided. The report shall summarize recent beach management activities undertaken in the region and the impacts (if any) that these activities had on the local beaches. Digital data files containing the survey data shall be submitted with the report.

It is assumed that the Fall surveys will be conducted in October. It should be noted that field operations are typically limited to periods of favorable weather conditions, including light winds and wave heights less than three feet. The final letter report will be delivered to the City within 90 days of completing each survey.

**EXHIBIT B  
SCHEDULE OF BILLING RATES**

**CITY OF NEWPORT BEACH  
2021-2025 BEACH PROFILE SURVEY PROGRAM**

Consultant shall conduct the 2021 Beach Profile Survey on a lump-sum (fixed price) basis, with a cost of \$27,522. The cost to conduct each of the four subsequent surveys (Fall 2022 – Fall 2025) has been escalated by 3.5% per-year to account for inflation. The net cost for the 2021-2025 Beach Profile Survey Program is \$147,589. A cost summary is provided below:

- Task 1 – Fall 2021 Beach Profile Survey: .....\$27,522.00
- Task 2 – Fall 2022 Beach Profile Survey: .....\$28,486.00
- Task 3 – Fall 2023 Beach Profile Survey: .....\$29,483.00
- Task 4 – Fall 2024 Beach Profile Survey: .....\$30,515.00
- Task 5 – Fall 2025 Beach Profile Survey: .....\$31,583.00

**Not to Exceed Total    \$147,589.00**

As noted above, the lump-sum cost has been developed assuming that each of the five surveys are conducted in the fall. Spring surveys, if requested, will be conducted at the same cost as the fall survey for that year. Additionally, the fixed price above does not include the cost to reestablish any destroyed survey control markers, if necessary.

## EXHIBIT C

### INSURANCE REQUIREMENTS – PROFESSIONAL SERVICES

1. Provision of Insurance. Without limiting Consultant's indemnification of City, and prior to commencement of Work, Consultant shall obtain, provide and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory to City. Consultant agrees to provide insurance in accordance with requirements set forth here. If Consultant uses existing coverage to comply and that coverage does not meet these requirements, Consultant agrees to amend, supplement or endorse the existing coverage.
2. Acceptable Insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.
3. Coverage Requirements.
  - A. Workers' Compensation Insurance. Consultant shall maintain Workers' Compensation Insurance, statutory limits, and Employer's Liability Insurance with limits of at least one million dollars (\$1,000,000) each accident for bodily injury by accident and each employee for bodily injury by disease in accordance with the laws of the State of California, Section 3700 of the Labor Code.

Consultant shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of City, its City Council, boards and commissions, officers, agents, volunteers, employees and the State of California.
  - B. General Liability Insurance. Consultant shall maintain commercial general liability insurance, and if necessary umbrella liability insurance, with coverage at least as broad as provided by Insurance Services Office form CG 00 01, in an amount not less than one million dollars (\$1,000,000) per occurrence, two million dollars (\$2,000,000) general aggregate. The policy shall cover liability arising from premises, operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).
  - C. Automobile Liability Insurance. Consultant shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of Consultant arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented

vehicles, in an amount not less than one million dollars (\$1,000,000) combined single limit each accident.

- D. Professional Liability (Errors & Omissions) Insurance. Consultant shall maintain professional liability insurance that covers the Services to be performed in connection with this Agreement, in the minimum amount of one million dollars (\$1,000,000) per claim and two million dollars (\$2,000,000) in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the Effective Date of this Agreement and Consultant agrees to maintain continuous coverage through a period no less than three years after completion of the Services required by this Agreement.

4. Other Insurance Requirements. The policies are to contain, or be endorsed to contain, the following provisions:

- A. Waiver of Subrogation. All insurance coverage maintained or procured pursuant to this Agreement shall be endorsed to waive subrogation against City, its City Council, boards and commissions, officers, agents, volunteers, employees and the State of California or shall specifically allow Consultant or others providing insurance evidence in compliance with these requirements to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against City, and shall require similar written express waivers from each of its subconsultants.

- B. Additional Insured Status. All liability policies including general liability, excess liability, pollution liability, and automobile liability, if required, but not including professional liability, shall provide or be endorsed to provide that City, its City Council, boards and commissions, officers, agents, volunteers, employees and the State of California shall be included as insureds under such policies.

- C. Primary and Non Contributory. All liability coverage shall apply on a primary basis and shall not require contribution from any insurance or self-insurance maintained by City.

- D. Notice of Cancellation. All policies shall provide City with thirty (30) calendar days' notice of cancellation (except for nonpayment for which ten (10) calendar days' notice is required) or nonrenewal of coverage for each required coverage.

5. Additional Agreements Between the Parties. The parties hereby agree to the following:

- A. Evidence of Insurance. Consultant shall provide certificates of insurance to City as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation and other endorsements as specified herein for each coverage. Insurance certificates and endorsement must be approved by City's Risk Manager prior to

commencement of performance. Current certification of insurance shall be kept on file with City at all times during the term of this Agreement. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15) days prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the City. If such coverage is cancelled or reduced, Consultant shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

- B. City's Right to Revise Requirements. City reserves the right at any time during the term of the Agreement to change the amounts and types of insurance required by giving Consultant sixty (60) calendar days' advance written notice of such change. If such change results in substantial additional cost to Consultant, City and Consultant may renegotiate Consultant's compensation.
- C. Right to Review Subcontracts. Consultant agrees that upon request, all agreements with subcontractors or others with whom Consultant enters into contracts with on behalf of City will be submitted to City for review. Failure of City to request copies of such agreements will not impose any liability on City, or its employees. Consultant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Consultant shall ensure that City is an additional insured on insurance required from subcontractors. For CGL coverage, subcontractors shall provide coverage with a format at least as broad as CG 20 38 04 13.
- D. Enforcement of Agreement Provisions. Consultant acknowledges and agrees that any actual or alleged failure on the part of City to inform Consultant of non-compliance with any requirement imposes no additional obligations on City nor does it waive any rights hereunder.
- E. Requirements not Limiting. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Consultant maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for higher limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

- F. Self-insured Retentions. Any self-insured retentions must be declared to and approved by City. City reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these requirements unless approved by City.
- G. City Remedies for Non-Compliance. If Consultant or any subconsultant fails to provide and maintain insurance as required herein, then City shall have the right but not the obligation, to purchase such insurance, to terminate this Agreement, or to suspend Consultant's right to proceed until proper evidence of insurance is provided. Any amounts paid by City shall, at City's sole option, be deducted from amounts payable to Consultant or reimbursed by Consultant upon demand.
- H. Timely Notice of Claims. Consultant shall give City prompt and timely notice of claims made or suits instituted that arise out of or result from Consultant's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies. City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve City.
- I. Consultant's Insurance. Consultant shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the Work.





# NEWPORT BEACH

## City Council Staff Report

October 12, 2021  
Agenda Item No. 11

**TO:** HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

**FROM:** David A. Webb, Public Works Director - 949-644-3311,  
dawebb@newportbeachca.gov

**PREPARED BY:** Michael J. Sinacori, Assistant City Engineer  
msinacori@newportbeachca.gov

**PHONE:** 949-644-3342

**TITLE:** Approval of Amendment No. 3 to Maintenance and Repair Services Agreement with GCI Construction Inc. for On-Call Beach Maintenance Services

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### **ABSTRACT:**

On June 13, 2017, following a competitive Request for Proposal (RFP) procurement process, the City Council approved two, on-call contracts for beach maintenance services for three-year terms. The City of Newport Beach (City) uses service agreements to perform maintenance and repairs throughout Newport Harbor and along City beaches to supplement City staff efforts. With the update to Council Policy F-14 (Authority to Contract) in 2018, these contracts were extended two years and are now set to expire at the end of May 2022. In August 2020, the not-to-exceed (NTE) contract amounts were extended for both contracts due to the efforts required for the July 3, 2020 large wave event and flooding on the Balboa Peninsula. With additional contractual effort needed to address the large wave events during the past few months, the contract NTE is close to being reached again for GCI Construction Inc. (GCI). Staff is seeking an additional NTE amount for GCI to provide contract sand management capacity to assist the County of Orange in the upcoming Santa Ana River Mouth sand management project, as well as have reserve contract capacity to address issues associated with possible winter storms and large wave events before the contract expires on May 31, 2022.

### **RECOMMENDATION:**

- a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly;
- b) Approve Amendment No. 3 to the Maintenance and Repair Services Agreement with GCI Construction Inc. (C-8501-1) to add \$500,000 to the current contract for a total not-to-exceed amount of \$1,225,000;
- c) Authorize the Mayor and City Clerk to execute the amendment; and
- d) Approve Budget Amendment No. 22-016 appropriating \$350,000 in increased expenditures in Account No. 10001-980000-22H04 (Beach and Bay Sand Management) from the unappropriated Tidelands Maintenance fund balance.

## **DISCUSSION:**

The City uses private sector contractors and consultants to fulfill various operational and maintenance needs of Newport Harbor, the Upper Bay and Newport beaches. Contracted work includes mooring and marina management, dock and marina repairs/maintenance, beach cleanup and algae removal, engineering services, and other services as needs arise. Beach maintenance and sand management is handled by a combination of City staff and contractors.

Public Works oversees the sand management projects and maintenance for the ocean beaches and bay beaches within Newport Harbor, and assists with capital needs and emergency work. Normal, day-to-day ocean beach maintenance services are performed by the Public Works staff. Contract services are used to supplement staff and address large projects, occasional peak or emergency needs, and special work efforts such as maintaining beaches on Balboa Island where sand is moved up from the low tide line and groomed to achieve a desirable slope appropriate for public access to the beach.

On March 28, 2017, a Request for Proposals for on-call beach maintenance services was released to the public. Seventeen vendors were notified of the opportunity. Only two firms submitted proposals and on June 13, 2017, both firms, GCI and Tight Quarters, Inc., were given contracts as they each have specialized equipment and staff the City requires for different types of beach maintenance activities.

Each contractor has performed well over the past four years. At times, both contractors have been utilized at the same time to expedite efforts prior to peak summer beach use. For instance, this past June, GCI focused on preparing the Balboa Pier area for the summer crowds while Tight Quarters addressed bay beaches around Balboa Island. In addition, the County of Orange (County) began an annual maintenance effort, clearing the mouth of the Santa Ana River, and moved most of the sand to the Newport jetties. While that operation was taking place, GCI and Tight Quarters worked in concert and moved additional sand to Balboa Pier and adjacent areas. This same operation is required by the County this fall as the Santa Ana River Mouth sand has built up again. The two-month effort will begin in mid-October 2021.

Recently, GCI has been used to address high wave events in August and September which required maintaining the sand berm at Balboa Pier prior to the events. As a result, GCI has nearly reached its NTE contract amount. With the County operation starting shortly, and potential storm and rain events this coming winter, staff is requesting a third contract amendment with GCI. Tight Quarters' contract NTE amount has not been reached yet and there is enough capacity for the remaining contract term. Staff recommends approval of Amendment No. 3 with GCI to provide contract sand management capacity to assist the County in its upcoming Santa Ana River Mouth sand management project, as well as have reserve contract capacity to address any beach sand issues associated with possible winter storms and large wave events before the contact expires May 31, 2022.

**FISCAL IMPACT:**

The Budget Amendment appropriates \$350,000 in increased expenditure appropriations from unappropriated Tidelands Maintenance fund balance to the Beach and Bay Sand Management CIP Account No. 10001-980000-22H04 to allow for the remaining known funding needs through the contract period. Additional funds may be required if significant storm or large wave events are experienced between now and the end of May 2022. Staff will return to the City Council and request additional funds, if required.

**ENVIRONMENTAL REVIEW:**

Staff recommends the City Council find this action is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

**NOTICING:**

The agenda item has been noticed according to the Brown Act (72 hours in advance of the meeting at which the City Council considers the item

**ATTACHMENTS:**

Attachment A – Amendment No. 3 to Maintenance and Repair Services Agreement  
Attachment B – Draft Public Notice of County 2021 Sand Management Efforts  
Attachment C – Budget Amendment



## ATTACHMENT A

### AMENDMENT NO. THREE TO ON-CALL MAINTENANCE/REPAIR SERVICES AGREEMENT WITH GCI CONSTRUCTION, INC. FOR BEACH MAINTENANCE SERVICES

THIS AMENDMENT NO. THREE TO ON-CALL MAINTENANCE/REPAIR SERVICES AGREEMENT ("Amendment No. Three") is made and entered into as of this 12th day of October, 2021 ("Effective Date"), by and between the CITY OF NEWPORT BEACH, a California municipal corporation and charter city ("City"), and GCI CONSTRUCTION, INC., a California corporation ("Contractor"), whose address is 1031 Calle Recodo, Suite D, San Clemente, California 92673, and is made with reference to the following:

#### RECITALS

- A. On June 13, 2017, City and Contractor entered into an On-Call Maintenance/Repair Services Agreement ("Agreement") for Contractor to perform on-call maintenance and/or repair service for City ("Project").
- B. On October 15, 2019, City and Contractor entered into Amendment No. One to the Agreement ("Amendment No. One") to extend the term of the Agreement to May 31, 2022, to increase the total compensation, update the Schedule of Billing Rates, the terms of responsibility for damages or injury, prevailing wages, conflicts of interest, and Insurance requirements.
- C. On August 25, 2020, City and Contractor entered into Amendment No. Two to reflect additional Services not included in the Agreement, as amended, to increase the total compensation, and to update Insurance requirements.
- D. The parties desire to enter into this Amendment No. Three to increase the total compensation due to an increase in the volume of Work.

**NOW, THEREFORE**, it is mutually agreed by and between the undersigned parties as follows:

#### 1. COMPENSATION TO CONTRACTOR

Section 4.1 of the Agreement is amended in its entirety and replaced with the following: "City shall pay Contractor for the Services on a time and expense not-to-exceed basis in accordance with the provisions of this Section and the Letter Proposal and the Schedule of Billing Rates attached hereto as Exhibit B and incorporated herein by reference. Except as otherwise provided herein, no rate changes shall be made during the term of this Agreement without the prior written approval of City. Contractor's compensation for all Services performed in accordance with this Agreement, including all reimbursable items, shall not exceed **One Million Two Hundred Twenty Five Thousand Dollars and 00/100 (\$1,225,000.00)**, without prior written amendment to the Agreement."

The total amended compensation reflects Contractor's additional compensation for additional Services to be performed in accordance with this Amendment No. Three, including all reimbursable items and subconsultant fees, in an amount not to exceed **Five Hundred Thousand Dollars and 00/100 (\$500,000.00)**.

## **2. INTEGRATED CONTRACT**


Except as expressly modified herein, all other provisions, terms, and covenants set forth in the Agreement shall remain unchanged and shall be in full force and effect.

**[SIGNATURES ON NEXT PAGE]**

IN WITNESS WHEREOF, the parties have caused this Amendment No. Three to be executed on the dates written below.

APPROVED AS TO FORM:  
CITY ATTORNEY'S OFFICE

Date: 9/27/21

for By:   
Aaron C. Harp  
City Attorney *was 9.27.21*

ATTEST:

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Leilani I. Brown  
City Clerk

CITY OF NEWPORT BEACH,  
a California municipal corporation

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Brad Avery  
Mayor

CONTRACTOR: GCI CONSTRUCTION,  
INC., a California corporation

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Terry D. Gillespie  
Chief Executive Officer

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Richard D. Kay  
Secretary

[END OF SIGNATURES]





# PROJECT ALERT

## Santa Ana River Flood Control Channel

### Annual Maintenance: Excess Sand Removal from Channel Outlet

Large equipment will be used to remove excess sand that has naturally accumulated in the flood channel outlet area. This is routine maintenance performed annually before storm season (starting in October) to prevent potential water flow blockages.

#### WHERE

At the Santa Ana River flood control channel outlet between the cities of Huntington Beach and Newport Beach, west of Pacific Coast Highway.

\* See other side for sand placement locations



#### WHAT

1. Approximately 53,000 cubic yards of accumulated sand will be removed from the channel outlet, as allowed through regulatory permits for flood control maintenance. Removing the excess sand minimizes potential flood risks during rain events and also maintains the natural tidal flow with the adjacent Newport Shores marsh area.
2. Additionally, in coordination with the City of Newport Beach, crews will transport the removed sand to City beach areas that will benefit most from sand replenishment.

**Your safety is the top priority!** Large equipment will be used. Please observe all caution signs / barriers and stay a safe distance from the work area.

#### WHEN

##### Anticipated Project Duration:

As early as mid-October through mid-February 2022

##### Equipment Operation:

Monday through Saturday, 7:00 a.m. — 5:30 p.m.

*Crew members may be on site starting at 6:00 a.m. Work schedule is tentative and subject to change.*

#### CONTACT INFORMATION

  Shannon Widor, OCPW | 714.667.9759

 [www.ocpublicworks.com](http://www.ocpublicworks.com)


 [ProjectInfo@ocpw.ocgov.com](mailto:ProjectInfo@ocpw.ocgov.com)

 [Facebook.com/ocpublicworks](https://www.facebook.com/ocpublicworks)

 [Twitter.com/ocpublicworks](https://twitter.com/ocpublicworks)

# Santa Ana River Flood Control Channel Annual Maintenance: Excess Sand Removal

## Sand Placement Locations

-  Potential sand replenishment areas:
- (1) between 52nd Street and 40th Street, and;
  - (2) Immediately west of the Balboa Pier





**City of Newport Beach**  
**BUDGET AMENDMENT**  
 2021-22

BA#: 22-016

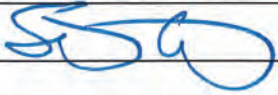
Department: Public Works

Requestor: Theresa Schweitzer

ONE TIME:  Yes  No

CITY MANAGER'S APPROVAL ONLY

COUNCIL APPROVAL REQUIRED

Approvals	
Finance Director: 	Date <u>10/4/21</u>
City Clerk:	Date

**EXPLANATION FOR REQUEST:**

To increase expenditure appropriations from unappropriated Tidelands Maintenance fund balance to fund the Beach and Bay Sand Management CIP Account to allow for the remaining known funding needs through the contract period.

- from existing budget appropriations
- from additional estimated revenues
- from unappropriated fund balance

**REVENUES**

Fund #	Org	Object	Project	Description	Increase or (Decrease) \$
					Subtotal \$ -

**EXPENDITURES**

Fund #	Org	Object	Project	Description	Increase or (Decrease) \$
100	10001	980000	22H04	TIDE&SUBMERGED LAND CIP - CIP EXPENDITURES FOR GL	350,000.00
					Subtotal \$ 350,000.00

**FUND BALANCE**

Fund #	Object	Description	Increase or (Decrease) \$
100	300000	TIDE & SUBMERGED LANDS FUND - FUND BALANCE CONTROL	(350,000.00)
		-	-
		-	-
		-	-
		-	-
			Subtotal \$ (350,000.00)

*Fund Balance Change Required*





# NEWPORT BEACH

## City Council Staff Report

October 12, 2021  
Agenda Item No. 12

**TO:** HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

**FROM:** Seimone Jurjis, Community Development Director - 949-644-3232, sjurjis@newportbeachca.gov

**PREPARED BY:** Samir Ghosn, Deputy Community Development Director/ Chief Building Official, sghosn@newportbeachca.gov

**PHONE:** 949-644-3277

**TITLE:** Temporary Employment Agreement for a Senior Civil Engineer – Plan Check

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### **ABSTRACT:**

For the City Council’s consideration is a temporary employment agreement with Soon Cho, a retired City of Newport Beach (City) employee, to assume the duties of a Senior Civil Engineer to provide plan check services in the Building Division. The proposed agreement would be effective October 12, 2021 through September 30, 2022, and would not exceed 960 hours.

### **RECOMMENDATION:**

- a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and
- b) Authorize the Mayor and Community Development Director to execute the Temporary Employment Agreement with Soon Cho to temporarily fill the position of a Senior Civil Engineer – Plan Check.

### **DISCUSSION:**

Council Policy F-14 requires the City Council to consider any contract with a person formerly employed by the City of Newport Beach (City) within the past five years. The Community Development Department seeks to temporarily employ Soon Cho on a part-time basis to assist the department due to the vacancy of one, full-time Senior Civil Engineer, and a surge in development activity due to low interest rates. Soon would assist the Building Division by providing plan check services during the recruitment and training of a new Civil Engineer. Mr. Cho was a long-tenured and well-respected City employee. He worked for the City for over 12 years and is very familiar with the City’s policies, codes, procedures and staff. He retains the necessary knowledge, skills and training to perform the anticipated duties to help the department maintain a high level of customer service.

In accordance with Government Code Section 7522.56, the City has met the following requirements:

1. Waited in excess of 180 days since the employee's retirement under PERS rules.
2. Ensured the employee is not earning less than the minimum, nor exceeding the maximum, of other employees in the classification.
3. The employee has certified that he has not received unemployment insurance compensation arising out of prior employment with a public employer during the last 12 months.

The Agreement complies with Council Policy F-14 and PERS rules:

1. On October 12, 2021, the City will engage with Mr. Cho at \$70.92 per hour; the amount does not exceed the maximum of other City employees in the classification.
2. The employee will not be authorized to work or receive overtime pay.

**FISCAL IMPACT:**

The FY 2021-22 department budget and salary savings due to the vacant Senior Civil Engineer position will fund this agreement. The agreement will be expensed to the Community Development Department, Part Time Salaries Account No. 0105042–711003.

**ENVIRONMENTAL REVIEW:**

Staff recommends the City Council find this action is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

**NOTICING:**

The agenda item has been noticed according to the Brown Act (72 hours in advance of the meeting at which the City Council considers the item).

**ATTACHMENT:**

Attachment A – Temporary Employment Agreement

## ATTACHMENT A

### POST RETIREMENT TEMPORARY EMPLOYMENT AGREEMENT WITH SOON CHO FOR SENIOR CIVIL ENGINEER SERVICES

THIS AGREEMENT FOR POST RETIREMENT TEMPORARY EMPLOYMENT ("Agreement") is made effective as of the 12th day of October 2021 ("Effective Date"), by and between the CITY OF NEWPORT BEACH, a California municipal corporation and charter city ("City") and SOON CHO ("Employee") whose mailing address is 127 Toretta, Irvine, California 92602, with reference to the following:

#### RECITALS

- A. City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the Charter of the City.
- B. City requires temporary Senior Civil Engineer services.
- C. In accordance with Government Code Section 21224(a), a retired person may serve without reinstatement from retirement or loss or interruption of benefits provided by this system upon appointment by the appointing power of a state agency or public agency employer either during an emergency to prevent stoppage of public business or because the retired person has specialized skills needed in performing work of limited duration. These appointments shall not exceed a combined total of 960 hours for all employers each fiscal year. The compensation for the appointment shall not exceed the maximum monthly base salary paid to other employees performing comparable duties as listed on a publicly available pay schedule divided by 173.333 to equal an hourly rate. A retired person appointed pursuant to this section shall not receive any benefit, incentive, compensation in lieu of benefits, or other form of compensation in addition to the hourly pay rate. A retired annuitant appointed pursuant to this section shall not work more than 960 hours each fiscal year regardless of whether he or she works for one or more employers.
- D. The City desires to employ Employee on a provisional "at will" basis and to enter into an Agreement with Employee for temporary Senior Civil Engineer employment ("Position") services upon the terms and conditions in this Agreement.
- E. Employee is willing to accept such temporary employment on the terms and conditions set forth in this Agreement.

**NOW, THEREFORE**, it is mutually agreed by and between the undersigned parties as follows:

## 1. TERM

The term of this Agreement shall commence on October 12, 2021, or earlier as directed, in writing, by the Community Development Director, and shall end September 30, 2022, unless terminated earlier as provided herein.

## 2. SERVICES TO BE PERFORMED BY EMPLOYEE

2.1 Services shall include the following: Senior Civil Engineer, as further described in the Job Description attached hereto as Exhibit A and incorporated herein by reference.

2.2 All duties shall be performed in compliance with City ordinances, policies, rules and regulations. Employee shall familiarize him or herself with the City's Employee Manual. At all times, Employee agrees to perform all services related to Employee's employment hereunder faithfully and diligently and to discharge the responsibilities thereof to the best of Employee's ability.

## 3. COMPENSATION

3.1 As consideration for the performance of specified services under this Agreement, Employee shall be compensated as follows:

3.1.1 Pay of **Seventy Dollars and 92/100 (\$70.92)** per hour for hours worked pursuant to this Agreement. Employee shall be paid on a bi-weekly basis corresponding to the City's payroll schedule and Employee is subject to State and Federal income tax withholdings. \$70.92 per hour shall be considered just compensation and no additional benefits or holiday pay will be provided under this Agreement.

3.1.2 Employee shall maintain and submit complete records of time expended pursuant to this Agreement and corresponding to City's payroll schedule.

## 4. HOURS

4.1 Hours of work are not guaranteed. Employee's services will be provided on an as needed, per project basis, upon written request of the Department Director or City Manager. Hours of work shall not exceed 30 hours per week.

4.2 It is expressly understood that Employee is a nonexempt Employee and employment is for a provisional, "at will" position.

4.3 Notwithstanding any federal and state laws, regulations or orders, Employee shall not work more than 960 hours during the term of the Agreement in accordance with CalPERS post retirement employment guidelines. The Employee shall be responsible for monitoring the hours worked during these time periods to ensure full compliance. Employee shall not work more than 960 hours during the term of the Agreement in accordance with CalPERS post retirement employment guidelines. The Employee shall be responsible for monitoring the hours worked during these time periods to ensure full compliance.



## **5. ADMINISTRATION**

This Agreement will be administered by the Community Development Department. City's Community Development Director or designee shall be the Administrator and shall have the authority to act for City under this Agreement. The Administrator shall represent City in all matters pertaining to the services to be rendered pursuant to this Agreement.

## **6. NOTICES**

6.1 All notices, demands, requests or approvals, including any change in mailing address, to be given under the terms of this Agreement shall be given in writing, and conclusively shall be deemed served when delivered personally, or on the third business day after the deposit thereof in the United States mail, postage prepaid, first-class mail, addressed as hereinafter provided.

6.2 All notices, demands, requests or approvals from Employee to City shall be addressed to City at:

Attn: Seimone Jurjis  
Community Development Department  
City of Newport Beach  
100 Civic Center Drive  
PO Box 1768  
Newport Beach, CA 92658

6.3 All notices, demands, requests or approvals from City to Employee shall be addressed to Consultant at:

Soon Cho  
127 Toretta  
Irvine, CA 92602

## **7. TERMINATION**

7.1 Employee's employment is "at will" which means that Employee's employment with City may be terminated at any time, with or without cause, by either party by giving 24 hours prior written notice to the other party.

7.2 Provisional Employee shall mean any person who, pursuant to an Appointment, contract or otherwise, performs work that is generally identified in the Annual Budget and is of limited duration or seasonal in nature.

7.3 Employee's employment status cannot be changed except in writing on a form signed by the Department Director, City Manager and Employee.

7.4 Nothing in this agreement shall prevent, limit or otherwise interfere with the right of the Employee to resign at any time from the temporary position with the City.

7.5 No promises or representations regarding regular, full time or permanent employment status have been made to Employee and Employee has no expectation of permanent employment with the City. Furthermore, Employee has no expectation of Civil Service classification, rights or status under this Agreement.

7.6 Upon termination of this Agreement, the City shall pay to Employee that portion of compensation specified in this Agreement that is earned and unpaid prior to the effective date of termination.

## **8. EFFECT OF PRIOR AGREEMENTS**

This Agreement supersedes any prior agreement between the City and the Employee, except that this agreement shall not affect or operate to reduce any benefit or compensation inuring to the Employee of a kind elsewhere provided and not expressly provided in this Agreement.

## **9. OWNERSHIP OF DOCUMENTS**

Each and every report, draft, map, record, plan, document and other writing produced (hereinafter "Documents"), prepared or caused to be prepared by Employee, in the course of implementing this Agreement, shall become the exclusive property of City, and City shall have the sole right to use such materials in its discretion without further compensation to Employee or any other party.

## **10. CONFIDENTIALITY**

Employee shall hold and safeguard confidential information in trust for the City and shall not, without the prior written consent of the City, misappropriate or disclose or make available to anyone for use outside the City at any time, either during his employment with the City or subsequent to the termination of his employment with the City for any reason, including, without limitation, termination by the City for cause or without cause, any confidential information, whether or not developed by Employee, except as required in the performance of Employee's duties to the City. All documents, including drafts, preliminary drawings or plans, notes and communications that result from the services in this Agreement, shall be kept confidential unless City authorizes in writing the release of information.

## **11. CONFLICTS OF INTEREST**

11.1 The Employee may be subject to the provisions of the California Political Reform Act of 1974 (the "Act"), which (1) requires such persons to disclose any financial interest that may foreseeably be materially affected by the work performed under this Agreement, and (2) prohibits such persons from making, or participating in making, decisions that will foreseeably financially affect such interest.

11.2 If subject to the Act, Employee shall conform to all requirements of the Act. Failure to do so constitutes a material breach and is grounds for immediate termination of this Agreement by City.

## 12. OUTSIDE ACTIVITIES

12.1 Employee is expected to devote his/her full time, attention and efforts to the performance of his or her assigned duties. An Employee shall not engage in any outside employment or business activities during his/her workday. An Employee shall not engage in any employment, outside activity, or enterprise that is inconsistent, incompatible or in conflict with, or that interferes with, his/her ability to perform the duties, functions, or responsibilities of his/her Position.

12.2 Employees may obtain and/or maintain employment with persons or entities other than the City or self-employment (outside employment) subject to written approval by the Department Director.

## 13. STANDARD PROVISIONS

13.1 Recitals. City and Employee acknowledge that the above Recitals are true and correct and are hereby incorporated by reference into this Agreement.

13.2 Compliance with all Laws. Employee shall, at its own cost and expense, comply with all statutes, ordinances, regulations and requirements of all governmental entities, including federal, state, county or municipal, whether now in force or hereinafter enacted. In addition, all work prepared by Employee shall conform to applicable City, county, state and federal laws, rules, regulations and permit requirements and be subject to approval of the Department Director and City.

13.3 Conflicts or Inconsistencies. In the event there are any conflicts or inconsistencies between this Agreement and the Job Description or any other attachments attached hereto, the terms of this Agreement shall govern.

13.4 Waiver. A waiver by either party of any breach, of any term, covenant or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition contained herein, whether of the same or a different character.

13.5 Integrated Contract. This Agreement represents the full and complete understanding of every kind or nature whatsoever between the parties hereto, and all preliminary negotiations and agreements of whatsoever kind or nature are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions herein.

13.6 Interpretation. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of the Agreement or any other rule of construction which might otherwise apply.

13.7 Amendments. This Agreement may be modified or amended only by a written document executed by both Employee and City and approved as to form by the City Attorney.

13.8 Severability. If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

13.9 Controlling Law and Venue. The laws of the State of California shall govern this Agreement and all matters relating to it and any action brought relating to this Agreement shall be adjudicated in a court of competent jurisdiction in the County of Orange, State of California.

13.10 No Attorneys' Fees. In the event of any dispute or legal action arising under this Agreement, the prevailing party shall not be entitled to attorneys' fees.

13.11 Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original and all of which together shall constitute one (1) and the same instrument.

[SIGNATURES ON NEXT PAGE]

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed on the dates written below.

**CITY OF NEWPORT BEACH,**  
a California municipal corporation  
Date: \_\_\_\_\_

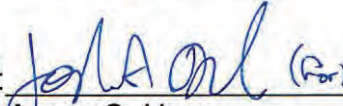
**CITY OF NEWPORT BEACH,**  
a California municipal corporation  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Seimone Jurjis  
Community Development Director

By: \_\_\_\_\_  
Brad Avery  
Mayor

**APPROVED AS TO FORM:**  
**CITY ATTORNEY'S OFFICE**  
Date: 09/30/21

**EMPLOYEE:** Soon Cho  
Date: \_\_\_\_\_

By:  (For)  
Aaron C. Harp  
City Attorney

By: \_\_\_\_\_  
Soon Cho

*09.30.21  
sam*

**ATTEST:**  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Leilani I. Brown  
City Clerk

**[END OF SIGNATURES]**

Attachments:

Exhibit A: Job Description

**EXHIBIT A  
JOB DESCRIPTION**



# CIVIL ENGINEER, SENIOR

Class Code:  
400098

Bargaining Unit: Professional & Technical Association

CITY OF NEWPORT BEACH  
Revision Date: Jul 30, 2014

## SALARY RANGE

\$51.71 - \$72.74 Hourly  
\$4,136.77 - \$5,819.04 Biweekly  
\$8,963.00 - \$12,607.92 Monthly  
\$107,555.97 - \$1,512,950.04 Annually

### DEFINITION:

To perform advanced level professional engineering work in an area of assignment; to provide technical and some direct supervision to professional and technical engineering staff; and to provide responsible staff assistance to management staff.

**DISTINGUISHING CHARACTERISTICS:** This is the beginning level technical/supervisor class in the registered professional engineering series. Positions assigned to this class can be distinguished from lower level engineering classes by performance of complex engineering tasks requiring a high degree of knowledge related to all areas of design, plan review and contract administration. Positions assigned to this class can be further distinguished from lower level engineering classes by the performance of lead supervisory activities such as assigning work, monitoring project progress and providing technical assistance and training to other professional and technical staff. This class can be distinguished from higher level engineering classes by limited supervisory responsibility for an assigned section and by assignment of less complex projects.

**SUPERVISION RECEIVED AND EXERCISED:** Receives direction from higher level management staff. Exercises technical and functional supervision over professional, technical and clerical staff. May exercise direct supervision over assigned professional staff.

### ESSENTIAL DUTIES:

The following essential functions are typical for this classification. Incumbents may not perform all of the listed functions and/or may be required to perform additional or different functions from those below, to address business needs and changing business practices:

- Provide lead supervision to professional and technical engineering staff; assign daily work and monitor work progress; evaluate work in progress and provide training and technical assistance;
- Plan work schedules and project assignments;
- Resolve work problems and interpret administrative policies to subordinates, other departments, consultants, contractors and the public;
- Coordinate Section activities with those of other departments and outside agencies and organizations;
- Provide information to the public; respond to and resolve citizen inquiries and complaints;

- Plan, organize, evaluate, and participate in the functions and activities of the section to which assigned including design, cooperative projects, plan review and capital improvement projects;
- Assist in negotiation of right of way agreements, professional services agreement, and cooperative agreements;
- Prepare requests for proposals, and contracts for consulting services; review and check plans of consulting engineers and private contractors; make technical engineering decisions and establish technical criteria;
- Provide information to the public; respond to and resolve citizen inquiries and complaints;
- Process and coordinate underground utility districts with service providers, engineers and property owners; coordinate construction inspection of projects; process records of easements, rights-of-way easements, records of survey and certificates of compliance;
- Check plans for complex projects to determine compliance with applicable codes; check engineering methods used in building design and verify accuracy of structural calculations; check plans and reports for conformance with subdivision improvement plans; tract and parcel maps; grading, street improvement, storm drains, underground utility and landscape plans, drainage and soils reports and other applicable criteria; review City Encroachment Permits, Street Closure Permits, site plans, Special Events Permits and Caltrans encroachment permits for conformance with City standards and state and federal regulations;
- Calculate the quantity, quality and cost of materials; prepare plans and specifications related to assigned project;
- Coordinate or perform the construction inspection of assigned projects, ensure conformance with contract plans, specifications and applicable codes; approve progress payments; approve change orders as needed;
- Administer, design, and review assigned projects; ensure compliance with codes and local regulations;
- Direct the preparation and filing of deeds, maps and legal descriptions as needed;
- Process assessment district proceedings for Public Works projects;
- Regularly and predictably attend work; and
- Perform related duties as assigned.

### **QUALIFICATIONS:**

To perform this job successfully, an individual must be able to perform each essential function. The requirements listed below are representative of the knowledge, skill, and/or ability required.

#### **Knowledge of:**

Principles and practices of civil engineering;

Pertinent Federal, State and local rules, regulations and ordinances;

Recent developments, current literature and sources of information regarding civil and



structural engineering;

Basic principles and practices of project management;

Principals of supervision and training; and

Methods, materials, and techniques used in the construction of public works projects.

**Ability to:**

Prepare plans and drawings neatly and accurately;

Make engineering design computations and check, design, and prepare engineering plans;

Understand and interpret engineering construction plans, specifications and other contract documents;

Perform technical research and solve difficult engineering problems;

Manage a broad range of engineering projects including supervision of professional, technical and consulting staff;

Prepare contracts, agreements, specifications and contract documents;

Conduct comprehensive engineering studies and prepare reports with appropriate recommendations;

Ensure project compliance with State, Federal and local rules, laws and regulations;

Prepare and monitor a program budget;

Interpret and apply pertinent laws, rules and regulations;

Provide lead supervision and training to assigned personnel;

Communicate clearly and concisely, both orally and in writing; and

Establish and maintain cooperative working relationship with those contacted in the course of work.

This position may be required to work overtime hours as needed.

**EXPERIENCE & EDUCATION AND LICENSE/CERTIFICATE:**

A combination of experience and education that would likely provide the required knowledge and abilities may be qualifying. A typical way to obtain the knowledge and abilities would be:

Experience: Four years of increasingly responsible professional civil engineering experience including some project management responsibilities.

Education: Equivalent to a Bachelor's degree from an accredited college or university with major course work in civil engineering or a related field.

License/Certificate: Due to the performance of some field duties which require the operation of a personal or City vehicle, a valid and appropriate California driver's license and an acceptable driving record are required.

Possession of a Certificate of Registration as a professional civil engineer in the State of California.

**Please Note:** Candidates deemed most qualified, as reflected in their application materials, will be invited to continue in the recruitment process. The prospective candidate must successfully complete a thorough background review, including being fingerprinted by the Newport Beach Police Department. The resulting report of your conviction history, (if any), will be evaluated along with the other information received in connection with your application. Except as otherwise required by law, a criminal conviction will not necessarily disqualify you from the position. The nature, date, surrounding circumstances, and the relevance of the offense to the position applied for may, however, be considered.

**Disaster Service Worker:** In accordance with Government Code Section 3100, City of Newport Beach Employees, in the event of a disaster, are considered disaster service workers and may be asked to respond accordingly.

NEWPORT BEACH PLANNING COMMISSION AGENDA  
CITY COUNCIL CHAMBERS – 100 CIVIC CENTER DRIVE  
THURSDAY, OCTOBER 7, 2021  
REGULAR MEETING – 6:30 P.M.

I. CALL TO ORDER

II. PLEDGE OF ALLEGIANCE

III. ROLL CALL

IV. PUBLIC COMMENTS

*Public comments are invited on non-agenda items generally considered to be within the subject matter jurisdiction of the Planning Commission. Speakers must limit comments to three (3) minutes. Before speaking, please state your name for the record and print your name on the blue forms provided at the podium.*

V. REQUEST FOR CONTINUANCES

VI. CONSENT ITEMS

ITEM NO. 1 MINUTES OF SEPTEMBER 9, 2021

**Recommended Action:** Approve and file

VII. DISCUSSION ITEMS

ITEM NO. 2 APPOINTMENT OF COMMISSIONERS FOR THE FORMATION OF ADU  
AD HOC COMMITTEE FOR ACCESSORY DWELLING UNIT REGULATIONS  
UPDATE (PA2021-113)

The Chair will appoint two or three Commissioners creating an ad hoc committee to review potential changes to the assessor dwelling unit regulations.

VIII. PUBLIC HEARING ITEMS

*Speakers must limit comments to three (3) minutes on all items. Before speaking, please state your name for the record and print your name on the blue forms provided at the podium.*

*If in the future, you wish to challenge in court any of the matters on this agenda for which a public hearing is to be conducted, you may be limited to raising only those issues, which you (or someone else) raised orally at the public hearing or in written correspondence received by the City at or before the hearing.*

ITEM NO. 3 NEW LOOK SKIN PLANNED COMMUNITY AMENDMENT (PA2021-047)  
Site Location: 4241 MacArthur Boulevard

**Summary:**

A planned community development plan amendment to the Newport Place Planned Community (PC-11) affecting the referenced site location only to change its land use category from Restaurant Site 1 to General Commercial Site 8. The applicant is proposing to improve and convert the restaurant existing building to a skin care facility (medical office), which would be a permitted use within the proposed Commercial Site 8 category.

**Recommended Action:**

1. Conduct a public hearing;
2. Find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15303 under Class 3 (New Construction or Conversion of Small Structures) of the CEQA Guidelines, because it has no potential to have a significant effect on the environment; and
3. Adopt Resolution No. PC2021-028 recommending the City Council approve Planned Community Development Plan Amendment No. PD2021-001.

**ITEM NO. 4 BSP BRISTOL, LLC MEDICAL OFFICES (PA2020-052)**  
**Site Location: 1400 and 1420 North Bristol Street**

**Summary:**

A conditional use permit and traffic study to convert 70 percent of an existing professional office complex to medical office use, which requires a reduction of 27 parking spaces. The remaining 30 percent of floor area will remain as professional office use. The applicant also requests a condominium conversion in conjunction with a tentative parcel map to convert both existing two-story office buildings to condominiums, creating between 22 to 30 ownership units.

**Recommended Action:**

1. Conduct a public hearing;
2. This project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 under Class 1 (Existing Facilities) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has not potential to have a significant effect on the environment; and
3. Adopt Resolution No. PC2021-027 approving Condominium Conversion No. CC2020-002, Tentative Parcel Map No. NP2020-003, Conditional Use Permit No. UP2020-185, and Traffic Study No. TS2021-001.

**ITEM NO. 5 CORONA DEL MAR 76 SERVICE STATION REMODEL (PA2019-027)**  
**Site Location: 2201 East Coast Highway**

**Summary:**

Conditional use permit and coastal development permit to allow the remodel and 232-square-foot addition to an existing automobile service station and convenience market, to operate as a convenience market only. The application includes a request for deviations from minimum lot size, setbacks for the retail building, the location of the air/water dispenser, and minimum landscaping requirements pursuant to Newport Beach Municipal Code (NBMC) Section 20.48.210 (Service Stations). The application also includes the addition of a Type 20 (Off-Sale Beer and Wine) Alcoholic Beverage Control (ABC) license. If approved, accepted and implemented, this coastal development permit and conditional use permit would supersede and replace Use Permit No. UP1580 that authorizes the existing facility.

**Recommended Action:**

1. Conduct a public hearing;
2. Find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 under Class 1 (Existing Facilities) of the CEQA Guidelines, because it has no potential to have a significant impact on the environment; and
3. Adopt Resolution No. PC2021-029 approving Coastal Development Permit No. CD2019-005 and Conditional Use Permit No. UP2019-004.

**IX. STAFF AND COMMISSIONER ITEMS**

**ITEM NO. 6      MOTION FOR RECONSIDERATION**

**ITEM NO. 7      REPORT BY THE COMMUNITY DEVELOPMENT DIRECTOR OR REQUEST FOR  
MATTERS WHICH A PLANNING COMMISSION MEMBER WOULD LIKE  
PLACED ON A FUTURE AGENDA.**

**ITEM NO. 8      REQUESTS FOR EXCUSED ABSENCES**

**X. ADJOURNMENT**





# NEWPORT BEACH

## City Council Staff Report

October 12, 2021  
Agenda Item No. 14

**TO:** HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

**FROM:** Scott Catlett, Finance Director – 949-644-3123,  
scatlett@newportbeachca.gov

**PREPARED BY:** Steve Montano, Deputy Finance Director,  
smontano@newportbeachca.gov

**PHONE:** 949-644-3240

**TITLE:** Annual Review of Visit Newport Beach Audited Financial Statements  
and Expenditure Report

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### **ABSTRACT:**

In accordance with Sections 6(d) and 6(e) of the City of Newport Beach’s agreement with Visit Newport Beach (VNB), originally entered into on September 27, 2011, and amended on August 5, 2015, VNB’s audited financial statements, management letters, and compliance expenditure report are attached for the City Council’s review.

### **RECOMMENDATION:**

- a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and
- b) Receive and file.

### **DISCUSSION:**

The following reports are subject to review by the City Council:

#### **Audited Financial Statements and Management Letters**

VNB shall submit to the City of Newport Beach audited financial statements for its most recently ended year, including any management letter associated with the audited financial statements. The City Council shall review the audited financial statements and management letters.

#### **Expenditure Report**

VNB shall submit an expenditure report, which shall be certified by VNB and a Certified Public Accountant to the effect that the funds received pursuant to the Agreement were expended in accordance with the Agreement in the previous fiscal year for purposes authorized by the Agreement. This report shall include reasonable detail in support of the certification, including expenditures for or contributions to special events and not-for-profit organizations in Newport Beach.

The audited financial statements and expenditure report were reviewed by the audit firm of KMJ Corbin & Company. Their review indicated that the financial statements of both Newport Beach & Company and Visit Newport Beach presented fairly, in all material respects, the financial position of each entity. In other words, the audit of both entities was clean with no audit findings. The firm's review of the required expenditure report indicated that they concurred with the assertion by VNB's management that they complied with the applicable provisions of the Agreement with the City relative to expenditures.

**FISCAL IMPACT:**

Under its agreement with the City, VNB receives 18% of all Transient Occupancy Tax revenue collected by the City to fund destination marketing services and activities. Additionally, VNB receives revenue from the Newport Beach Tourism Business Improvement District (TBID), which is funded by a levy of 3% of most revenues from short-term stays at participating lodging businesses within the City. The TBID funds are dedicated to meeting and event sales promotion and marketing programs. Total revenues from these sources, as outlined in the attached financial statements, amounted to approximately \$4.8 million in 2021, down from \$9.4 million in 2020 due to the impacts of the COVID-19 pandemic.

**ENVIRONMENTAL REVIEW:**

Staff recommends the City Council find this action is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

**NOTICING:**

The agenda item has been noticed according to the Brown Act (72 hours in advance of the meeting at which the City Council considers the item).

**ATTACHMENTS:**

- Attachment A – Visit Newport Beach Audited Financial Statements for the Year Ended June 30, 2021, and Accompanying Management Letter Dated September 30, 2021 (Exhibit 1)
- Attachment B – Newport Beach and Company Audited Financial Statements for the Year Ended June 30, 2021, and Accompanying Management Letter Dated September 30, 2021 (Exhibit 2)
- Attachment C – Visit Newport Beach Expenditure Compliance Report for the Year Ended June 30, 2021



# **Attachment A**

Visit Newport Beach Audited Financial Statements for the Year Ended June 30, 2021,  
and Accompanying Management Letter dated September 30, 2021 (Exhibit 1)

**VISIT NEWPORT BEACH INC.**  
**(A Non-Profit Organization)**

**FINANCIAL STATEMENTS AND SUPPLEMENTAL INFORMATION**

**For The Years Ended June 30, 2021 and 2020**

*with*

**INDEPENDENT AUDITORS' REPORT THEREON**

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VISIT NEWPORT BEACH INC.  
(A Non-Profit Organization)

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Schedule II – Statement of Activities by Funding Source ..... 21



## **Independent Auditors' Report**

Board of Directors  
Visit Newport Beach Inc.

We have audited the accompanying financial statements of Visit Newport Beach Inc. (a non-profit organization) (the “Organization”), which comprise the statements of financial position as of June 30, 2021 and 2020, and the related statements of activities and cash flows for the years then ended, and the related notes to the financial statements.

### ***Management’s Responsibility for the Financial Statements***

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

### ***Auditors’ Responsibility***

Our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditors’ judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity’s preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity’s internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

## ***Opinion***

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Visit Newport Beach Inc. as of June 30, 2021 and 2020, and the changes in its net assets and its cash flows for the years then ended in accordance with accounting principles generally accepted in the United States of America.

## ***Emphasis of Matter - Related Party Transactions***

As discussed in Note 9 to the financial statements, Visit Newport Beach Inc. has significant transactions with a related non-profit organization. Our opinion is not modified with respect to this matter.

## ***Other Matter***

As discussed in Note 2 to the financial statements, the Organization changed its method for revenue recognition in 2021 as a result of the adoption of the amendments to the Financial Accounting Standards Board Accounting Standards Codification resulting from Accounting Standards Update 2014-09, *Revenue from Contracts with Customers*, effective July 1, 2020. Our opinion is not modified with respect to this matter.

## ***Other Matter - Supplemental Information***

Our audit was conducted for the purpose of forming an opinion on the financial statements taken as a whole. The supplemental information contained in Schedules I and II on pages 20-21 is presented for purposes of additional analysis and is not a required part of the 2021 financial statements. Such information is the responsibility of management and was derived from and relates directly to the underlying accounting and other records used to prepare the 2021 financial statements. The information has been subjected to the auditing procedures applied in the audit of the 2021 financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the 2021 financial statements or the financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America. In our opinion, the information is fairly stated in all material respects in relation to the 2021 financial statements as a whole.

*KMJ Corbin & Company LLP*  
KMJ Corbin & Company LLP

Irvine, California  
September 30, 2021

**VISIT NEWPORT BEACH INC.**  
(A Non-Profit Organization)

**STATEMENTS OF FINANCIAL POSITION**

	June 30,	
	2021	2020
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents	\$ 5,918,574	\$ 1,698,312
Short-term investments	-	2,606,273
Accounts receivable	-	145,623
Related-party receivables, net	-	32,739
Prepaid expenses and other current assets	182,475	197,685
Total current assets	6,101,049	4,680,632
Property and equipment, net	19,541	31,767
Website development costs, net	-	96,628
Deposits and other assets	9,619	9,619
	\$ 6,130,209	\$ 4,818,646
<b>LIABILITIES AND NET ASSETS</b>		
Current liabilities:		
Accounts payable	\$ 100,796	\$ 91,351
Related party payables, net	17,611	-
Accrued expenses	41,041	33,340
Accrued payroll and related expenses	74,727	27,510
Group booking incentive reserve	6,500	31,300
Loan payable, current portion	3,256	-
Total current liabilities	243,931	183,501
Deferred rent, net of current portion	3,071	22,123
Loan payable, net of current portion	146,024	150,000
Total liabilities	393,026	355,624
Commitments and contingencies		
Net assets without donor restrictions	5,737,183	4,463,022
	\$ 6,130,209	\$ 4,818,646

*See accompanying notes to financial statements*

**VISIT NEWPORT BEACH INC.**  
**(A Non-Profit Organization)**

**STATEMENTS OF ACTIVITIES**

	<b>For The Years Ended June 30,</b>	
	<b>2021</b>	<b>2020</b>
Support and revenues:		
Service fee revenues	\$ 4,757,188	\$ 9,412,997
Interest income	3,677	25,118
Other income	<u>22,800</u>	<u>10,000</u>
Total support and revenues	<u>4,783,665</u>	<u>9,448,115</u>
Expenses:		
Marketing (including \$1,248,512 and \$2,129,382 to Newport Beach & Company during 2021 and 2020, respectively – see Note 9)	2,310,049	5,836,561
Salaries and benefits	799,805	1,392,718
Other	290,796	470,634
Depreciation and amortization	<u>108,854</u>	<u>107,788</u>
Total expenses	<u>3,509,504</u>	<u>7,807,701</u>
Change in net assets without donor restrictions	1,274,161	1,640,414
Net assets without donor restrictions, beginning of year	<u>4,463,022</u>	<u>2,822,608</u>
Net assets without donor restrictions, end of year	<u>\$ 5,737,183</u>	<u>\$ 4,463,022</u>

*See accompanying notes to financial statements*

**VISIT NEWPORT BEACH INC.**  
(A Non-Profit Organization)

**STATEMENTS OF CASH FLOWS**

	<b>For The Years Ended June 30,</b>	
	<b>2021</b>	<b>2020</b>
<b>Cash flows from operating activities:</b>		
Change in net assets without donor restrictions	\$ 1,274,161	\$ 1,640,414
Adjustments to reconcile change in net assets without donor restrictions to net cash provided by operating activities:		
Depreciation and amortization	108,854	107,788
Accrued interest income	887	22,639
Changes in operating assets and liabilities:		
Accounts receivable	145,623	(145,623)
Related-party receivables/payables, net	50,350	(140,085)
Prepaid expenses and other current assets	15,210	119,811
Accounts payable	9,445	(10,723)
Accrued expenses	7,701	11,380
Accrued payroll and related expenses	47,217	(197,459)
Group booking incentive reserve	(24,800)	(66,906)
Deferred rent	(19,052)	3,773
Net cash provided by operating activities	<u>1,615,596</u>	<u>1,345,009</u>
<b>Cash flows from investing activities:</b>		
Purchases of investments	(6,466,614)	(4,756,191)
Proceeds from sales/maturities of investments	9,072,000	3,423,000
Website development costs	-	(39,735)
Purchases of property and equipment	-	(11,805)
Net cash provided by (used in) investing activities	<u>2,605,386</u>	<u>(1,384,731)</u>
<b>Cash flows from financing activities:</b>		
Proceeds from loan	-	150,000
Payments on loan payable	(720)	-
Net cash (used in) provided by financing activities	<u>(720)</u>	<u>150,000</u>
Net increase in cash and cash equivalents	4,220,262	110,278
Cash and cash equivalents at beginning of year	<u>1,698,312</u>	<u>1,588,034</u>
Cash and cash equivalents at end of year	<u>\$ 5,918,574</u>	<u>\$ 1,698,312</u>
<b>Supplemental disclosure of cash flow information:</b>		
Cash paid during the year for interest	<u>\$ 4,046</u>	<u>\$ -</u>

*See accompanying notes to financial statements*



NOTES TO FINANCIAL STATEMENTS

For The Years Ended June 30, 2021 and 2020

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**NOTE 1 – ORGANIZATION**

Nature of Operations

Visit Newport Beach Inc. (the “Organization”) is a non-profit organization formed under the laws of the State of California.

Transient Occupancy Tax (“TOT”)

The Organization currently has an agreement (“TOT Agreement”) with the City of Newport Beach (the “City”) through December 31, 2024 to promote tourism and serve the needs of visitors to the City. Under the terms of the TOT Agreement, the Organization is responsible to develop, plan, carry out and supervise a program to market and promote the Newport Beach brand and to promote tourism in, and serve the needs of, visitors to the City as well as increase the amount of Transient Occupancy Tax collected through its promotional activities.

The City collects a Transient Occupancy Tax as well as a Visitor’s Service Fee applied to the transient rental of lodging rooms (collectively, the “TOT”). The City pays the Organization 18% of the annual TOT in monthly installments. As the Organization is not entitled to its share of the TOT until paid by the City, amounts are recognized as revenue when received. Adjustments to monthly revenues paid during the year ended June 30, 2020 have been recorded as accounts receivable as of June 30, 2020, comprising 38% of the accounts receivable. There were no adjustments noted as of June 30, 2021.

The City shall have the right, in its sole discretion, to adjust the payment (increase or decrease the percentage of TOT paid to the Organization) as part of its once-annual budget adoption process for any reason after notice to the Organization and an opportunity for the Organization to formally comment on the adjustment. For the years ended June 30, 2021 and 2020, the Organization received approximately 65% and 55%, respectively, of its service fee revenues from the City through the TOT. The City has the right to terminate the TOT Agreement, without cause, by giving the Organization 365 days’ written notice of its intention to terminate. Should the City reduce or stop its funding to the Organization due to the Organization’s default or termination of the TOT Agreement, the Organization’s operations will be impacted.

Tourism Business Improvement District (“TBID”)

The Newport Beach Tourism Business Improvement District (“NBTBID”) was established April 28, 2009, and expires on January 31, 2024, pursuant to the Management District Plan, as amended (the “Plan”). The NBTBID is funded by assessments levied on participating lodging businesses within a specified district. The assessments are restricted for use for sales promotion and marketing programs to market the City as a tourist, meeting and event destination as outlined in

NOTES TO FINANCIAL STATEMENTS

For The Years Ended June 30, 2021 and 2020

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**NOTE 1 – ORGANIZATION, continued**

the Plan. Either party may terminate this agreement by providing the other party ninety calendar days' written notice prior to the effective date of termination. As the Organization is not entitled to its share of the assessments collected until paid by the City, amounts are recognized as revenue when received. For the years ended June 30, 2021 and 2020, the Organization received approximately 35% and 45%, respectively, of its service fee revenues from the City through TBID assessments. Adjustments to monthly revenues paid during the year ended June 30, 2020 have been recorded as accounts receivable as of June 30, 2020, comprising 62% of the accounts receivable. There were no adjustments noted as of June 30, 2021.

As of June 30, 2021 and 2020, the NBTBID is represented by nine (9) hotels within the City of Newport Beach which collect a 3.0% tax on short-term stays. The City is entitled to 0.25% of the receipts annually for the collection of the assessments and disbursements of the NBTBID.

**NOTE 2 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

**Basis of Presentation**

The accompanying financial statements have been prepared on the accrual basis of accounting in accordance with accounting principles generally accepted in the United States of America. Net assets and revenues, expenses, gains, and losses are classified based on the existence or absence of donor-imposed restrictions. Accordingly, net assets and changes therein are classified and reported as follows:

*Without donor restrictions* – Net assets that are not subject to donor-imposed stipulations. These assets are available to support the Organization's general activities and operations at the discretion of the Board of Directors.

*With donor restrictions* – Net assets that are subject to donor-imposed restrictions. Some donor-imposed restrictions are temporary in nature, such as those that will be met by the passage of time or other events specified by the donor. Other donor-imposed restrictions are perpetual in nature, where the donor stipulates that such resources be maintained in perpetuity. Generally, the donors of these assets permit the Organization to use all or part of the income earned on related investments for general or specific purposes.

As of and for the years ended June 30, 2021 and 2020, the Organization had no net assets with donor restrictions.

NOTES TO FINANCIAL STATEMENTS

For The Years Ended June 30, 2021 and 2020

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**NOTE 2 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES, continued**

Revenues are reported as increases in net assets without donor restrictions unless use of the related assets is limited by donor-imposed restrictions. Expenses are reported as decreases in net assets without donor restrictions. Gains and losses on investments and other assets are reported as increases or decreases in net assets without donor restrictions unless their use is restricted by explicit donor stipulations or by law.

Liquidity

In December 2019, a novel strain of coronavirus disease (“COVID-19”) was first reported in Wuhan, China. Less than four months later, on March 11, 2020, the World Health Organization declared COVID-19 a global pandemic. The extent of COVID-19’s effect on the Organization’s operational and financial performance will depend on future developments, including the duration, spread and intensity of the pandemic, all of which are uncertain and difficult to predict considered the rapidly evolving landscape. The Organization is currently analyzing the potential impacts to all of its business segments. At this time, it is not possible to determine the magnitude of the overall impact of COVID-19 on the Organization. However, it could have a material adverse effect on the Organization’s financial condition, liquidity, results of operations, and cash flows. In the short term, one of the impacts of the pandemic is that the Organization’s revenues have declined, but the Organization cannot predict whether this decline is temporary or not. During the year ended June 30, 2021, the Organization took certain cost cutting measures including reducing discretionary marketing and other expenses, and reducing payroll through pay cuts, furloughs, and reduction in its workforce. The Organization believes these measures, along with its existing cash and cash equivalents, will be sufficient to cover its cash flow requirements for at least the next twelve months from the date of issuance of these financial statements (see Note 3). However, there can be no assurance that the Organization will not use its existing capital resources sooner than currently expected.

Use of Estimates

The preparation of financial statements requires the Organization to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosures of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Significant estimates made by the Organization’s management include, but are not limited to, the sufficiency of its cash and investment resources to fund operations for the next twelve months, the collectability of receivables, the recoverability of long-lived assets, fair value of investments and the allocation of expenses to program activities and general and administrative. Actual results may differ from those estimates.

NOTES TO FINANCIAL STATEMENTS

For The Years Ended June 30, 2021 and 2020

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**NOTE 2 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES, continued**

Cash and Cash Equivalents

The Organization considers all highly liquid investments purchased with an initial maturity of three months or less to be cash equivalents. The Organization maintains its cash and cash equivalent balances at various financial institutions. The total cash balances are insured by the Federal Deposit Insurance Corporation (“FDIC”) up to \$250,000 per institution. At June 30, 2021, the Organization had approximately \$5,258,000 of uninsured cash and cash equivalent balances. The Organization periodically reviews the quality of the financial institutions it has deposits with to minimize risk of loss. To date, no losses have been incurred.

Accounts Receivable

Accounts receivable are carried at original invoice amount less an estimate made for doubtful receivables based on a review of all outstanding amounts at year end. Management determines the allowance for doubtful accounts by identifying troubled accounts based on current and historical experience. There were no accounts receivable as of the year ended June 30, 2021. At June 30, 2020, the Organization considered its accounts receivable to be fully collectible and accordingly did not record an allowance for doubtful accounts.

As of June 30, 2020, one customer accounted for 100% of the Organization’s total accounts receivable balance.

Investments and Fair Value Measurements

Investments and cash equivalents consist of U.S. Treasury Bills which are carried at amortized cost, which approximates fair value.

Accounting guidance defines fair value as the exchange price that would be received for an asset or paid to transfer a liability (an exit price) in the principal, or in the absence of a principal market, the most advantageous market for the asset or liability, in an orderly transaction between market participants on the measurement date. Accounting guidance establishes a fair value hierarchy that requires an entity to maximize the use of observable inputs and minimize the use of unobservable inputs when measuring fair value. The standard describes three levels of inputs in priority that may be used to measure fair value:

Level 1—Quoted prices in active markets for identical assets or liabilities;

**VISIT NEWPORT BEACH INC.**  
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**NOTES TO FINANCIAL STATEMENTS**

**For The Years Ended June 30, 2021 and 2020**

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**NOTE 2 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES, continued**

Level 2—Observable inputs other than quoted prices included within Level 1, such as quoted prices for similar assets or liabilities; quoted prices in markets that are not active; inputs other than quoted prices that are observable for the asset or liability (such as interest rates and yield curves, credit risks, and default rates) or other inputs that are principally derived from or corroborated by observable market data by correlation or by other means; and

Level 3—Unobservable inputs that are supported by little or no market activity and that are significant to the fair value of the assets or liabilities.

The fair value of the Organization’s U.S. Treasury Bills are based partially upon quoted prices in markets that are not active or inputs which are observable, either directly or indirectly, for substantially the full term of the assets. These instruments have been classified within Level 2 of the valuation hierarchy.

As of June 30, 2020, the Organization’s investments measured at fair value on a recurring basis were as follows:

	<b>June 30, 2020</b>		
	<b>Quoted Prices in Active Markets for Identical Assets (Level 1)</b>	<b>Significant Other Observable Inputs (Level 2)</b>	<b>Significant Unobservable Inputs (Level 3)</b>
Short-term investments:			
U.S. Treasury Bills	\$ _____ -	\$ <u>2,606,273</u>	\$ _____ -

**Property and Equipment**

Property and equipment are stated at cost. Donated assets are recorded at their fair market value when received. The cost of purchased assets or fair market value of donated assets is depreciated using the straight-line method over the estimated useful lives of the related assets which range from three to seven years. Leasehold improvements are amortized over the lesser of their estimated useful lives or the related lease term. Maintenance and repairs are charged to expense as incurred. Significant renewals and betterments are capitalized.

NOTES TO FINANCIAL STATEMENTS

For The Years Ended June 30, 2021 and 2020

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**NOTE 2 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES, continued**

It is the Organization's policy to capitalize property and equipment over \$1,500. At the time of retirement or other disposition of property and equipment, the cost and accumulated depreciation or amortization are removed from the accounts and any resulting gain or loss is reflected in the statements of activities.

Website Development Costs

The Organization accounts for the costs of developing its mobile apps and websites by capitalizing the costs during the application development stage when it is probable that the project will be completed and the property will be used to perform the function intended. Website development costs are amortized on a straight-line basis over their estimated useful lives when completed, which are typically the earlier of approximately three years or term based on estimated disposal date. The recoverability of intangible assets is evaluated periodically, taking into account events or circumstances that warrant revised estimates of useful lives or that indicate that impairment exists.

For the years ended June 30, 2021 and 2020, the Organization capitalized website development costs of \$0 and \$39,735, respectively.

For the years ended June 30, 2021 and 2020, the Organization recorded amortization expense on website development costs totaling \$96,628 and \$90,046, respectively.

Impairment of Long-Lived Assets

The Organization evaluates long-lived assets for impairment whenever events or changes in circumstances indicate that the carrying value of an asset may not be recoverable. If the estimated future cash flows (undiscounted and without interest charges) from the use of an asset are less than the carrying value, a write-down would be recorded to reduce the related asset to its estimated fair value. At June 30, 2021 and 2020, the Organization's management believes there is no impairment of its long-lived assets. There can be no assurance, however, that market conditions will not change or demand for the Organization's services will continue, which could result in impairment of long-lived assets in the future.

Group Booking Incentive

The Organization has established an incentive program for businesses by paying for certain costs of conferences and group meetings held in Newport Beach hotels in order to attract businesses and groups to the City. Costs are considered incurred upon the reservation of the hotel for future meetings. As of June 30, 2021 and 2020, group booking accruals were \$6,500 and \$31,300, respectively.

VISIT NEWPORT BEACH INC.  
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NOTES TO FINANCIAL STATEMENTS

For The Years Ended June 30, 2021 and 2020

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**NOTE 2 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES, continued**

Contributed Materials and Services

Donated materials and other noncash contributions (if any) are reflected in the accompanying financial statements at their estimated fair market values at date of receipt. Contributions of services are recognized if the services received create or enhance nonfinancial assets or require specialized skills, are provided by individuals possessing those skills and would typically need to be purchased if not provided by donation. Other volunteer services that do not meet these criteria are not recognized in the financial statements as there is no objective basis of deriving their value.

One of the services provided by the Organization in its efforts to promote the City is to organize site inspections and other promotional events with a variety of potential visiting groups. These groups are introduced by the Organization's staff to the various hotels, restaurants, and other local businesses involved in the tourism industry in Newport Beach. All businesses visited are also sponsors of the Organization. Many of the Organization's sponsors contribute materials, such as meals and rooms, in connection with this program. During the years ended June 30, 2021 and 2020, the Organization determined there were no significant contributed materials and services. Additionally, a substantial number of unpaid volunteers have made significant contributions of time to the Organization. No amounts have been reflected in the financial statements for these contributions as they do not meet the required criteria.

Income Tax Status

The Organization qualifies as a tax-exempt organization for Federal income taxes under Section 501(c)(6) of the United States Internal Revenue Code and for California state income taxes under Section 23701(d) of the California Revenue and Taxation Code; therefore, the Organization has no provision for federal or state income taxes. During the years ended June 30, 2021 and 2020, the Organization had no unrelated business income.

The Organization annually evaluates tax positions as part of the preparation of its exempt tax return. This process includes an analysis of whether tax positions the Organization takes with regard to a particular item of income or deduction would meet the definition of an uncertain tax position under current accounting guidance. The Organization believes its tax positions are appropriate based on current facts and circumstances. The Organization's policy is to recognize interest accrued related to unrecognized tax benefits in interest expense and penalties in operating expenses. At June 30, 2021 and 2020, the Organization did not have any unrecognized tax benefits.

The Organization is no longer subject to U.S. federal, state or local income tax examinations by tax authorities for years before 2017.

NOTES TO FINANCIAL STATEMENTS

For The Years Ended June 30, 2021 and 2020

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**NOTE 2 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES, continued**

Allocated Expenses

The costs of providing program activities and supporting services have been summarized on a functional basis in Note 5. The Organization incurs expenses that directly relate to, and can be assigned to, a specific program or supporting activity. The Organization also conducts a number of activities which benefit both its program objectives as well as supporting services. These costs, which are not specifically attributable to a specific program or supporting activity, are allocated by management on a consistent basis among program and supporting services benefited, based on either financial or nonfinancial data, such as headcount, occupancy or estimates of time and effort incurred by personnel.

Recent Accounting Pronouncements

On July 1, 2020, the Organization adopted Accounting Standards Update (“ASU”) 2014-09, *Revenue from Contracts with Customers*, as codified in Accounting Standards Codification (“ASC”) 606, by applying the modified retrospective method for all contracts. The Organization evaluated its revenue streams to identify whether each stream would be subject to the provisions of ASC 606 and any differences in the timing, measurement, or presentation of revenue recognition compared to ASC 605, *Revenue Recognition* (“ASC 605”). Based on the assessment of the Organization’s revenue streams, the pattern and timing of recognition of the Company’s revenues under ASC 606 are similar to the manner in which the Company previously recognized revenue under ASC 605, so there was no effect of the Organization’s adoption of ASC 606.

In February 2016, the FASB issued ASU 2016-02, *Leases (Topic 842)*, which requires the lease rights and obligations arising from lease contracts, including existing and new arrangements, to be recognized as assets and liabilities on the statement of financial position. ASU 2016-02, as amended, is effective for reporting periods beginning after December 15, 2021, with early adoption permitted. While still evaluating this update, the Organization expects the adoption of this update to have a material effect on its financial condition due to the recognition of the lease rights and obligations as assets and liabilities. The Organization does not expect this update to have a material effect on its results of operations and cash flows.



NOTES TO FINANCIAL STATEMENTS

For The Years Ended June 30, 2021 and 2020

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**NOTE 2 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES, continued**

In September 2020, the Financial Accounting Standards Board (“FASB”) issued ASU No. 2020-07, *Presentation and Disclosures by Not-for-Profit Entities for Contributed Nonfinancial Assets (Topic 958)*, which requires the Organization to change its financial statement presentation and disclosure of contributed nonfinancial assets, or gifts-in-kind. ASU No. 2020-07 defines gifts-in-kind as contributed nonfinancial assets donations made for goods or services the Organization would purchase in the normal course of business. Gifts-in-kind of tangible property include items like operating facilities, utilities, office furniture, and supplies provided to the Organization; items donated to the Organization to be auctioned through charitable events; and items used in program activities, such as medical supplies, building supplies, appliances, and fixtures. Intangible gifts-in-kind include items like copyrights, patents, and royalties; specialized volunteer services, such as those from nurses for medical organizations or project managers and builders for construction projects; and expertise, such as accounting, legal, and consulting services. ASU No. 2020-07 is effective for the Organization for fiscal year 2022. Early adoption is permitted. The Organization is currently evaluating the impact that the adoption of ASU No. 2020-07 will have on its financial statements.

Subsequent Events

The Organization has evaluated subsequent events through September 30, 2021, the date which the financial statements were available to be issued. Based upon its evaluation, management has determined that no subsequent events have occurred that would require recognition in the accompanying financial statements or disclosure in the notes thereto except as disclosed herein.

**NOTE 3 – LIQUIDITY AND AVAILABILITY**

At June 30, 2021, the Organization has \$5,918,574 of financial assets available within one year of the statement of financial position date to meet cash needs for general expenditures consisting of cash and cash equivalents of \$5,918,574. None of the financial assets are subject to donor or other contractual restrictions that make them unavailable for general expenditures within one year of the statement of financial position. Prior to COVID-19, the Organization had a goal to maintain financial assets, which consist of cash, cash equivalents and short-term investments, on hand to meet 90 days of normal operating expenses, which are, on average, approximately \$395,000 per month. The Organization has a policy to structure its financial assets to be available as its general expenditures, liabilities, and other obligations come due. The Organization invests cash in excess of daily requirements in various short-term treasury instruments.

**VISIT NEWPORT BEACH INC.**  
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**NOTES TO FINANCIAL STATEMENTS**

**For The Years Ended June 30, 2021 and 2020**

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**NOTE 3 – LIQUIDITY AND AVAILABILITY, continued**

Funding for the Organization is dependent on the hotel room nights booked in certain Newport Beach hotels each year and the subsequent portion of the TOT that is allocated through the City to the Organization and the portion of the TBID assessments that are sent to the Organization from the TBID participants. Annual revenue fluctuates depending on annual visitors to Newport Beach. As a result, the Organization closely monitors the monthly projected and received revenue to determine if any change needs to be made to budgeted annual expenditures.

As discussed in Note 2, in response to COVID-19, the Organization has performed an analysis to determine whether it will have sufficient cash to fund operations for the next 12 months. Based on budgeting for necessary expenses and obligations due along with minimal service fee revenues as a result of the impact of COVID-19 on hotel stays, the Organization has concluded that it will have sufficient cash to fund operations for at least 12 months from the date of issuance of these financial statements.

**NOTE 4 – PROPERTY AND EQUIPMENT**

Property and equipment consists of the following at June 30:

	<u>2021</u>	<u>2020</u>
Leasehold improvements	\$ 38,468	\$ 38,468
Computer equipment	40,516	40,516
Office furniture and fixtures	<u>136,812</u>	<u>136,812</u>
	215,796	215,796
Less accumulated depreciation and amortization	<u>(196,255)</u>	<u>(184,029)</u>
	<u>\$ 19,541</u>	<u>\$ 31,767</u>

For the years ended June 30, 2021 and 2020, the Organization recorded depreciation expense on property and equipment totaling \$12,226 and \$17,742, respectively.

**VISIT NEWPORT BEACH INC.**  
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**NOTES TO FINANCIAL STATEMENTS**

**For The Years Ended June 30, 2021 and 2020**

**NOTE 5 – STATEMENT OF FUNCTIONAL EXPENSES**

The statements of functional expenses for the years ended June 30, 2021 and 2020 are as follows:

	2021			2020
	Program Activities	General and Administrative	Total	Total (Summarized)
Salaries and benefits:				
Salaries	\$ 453,995	\$ 131,603	\$ 585,598	\$ 1,074,593
Payroll taxes and employee benefits	165,486	48,721	214,207	318,125
Total salaries and benefits	619,481	180,324	799,805	1,392,718
Other expense:				
Marketing	1,974,684	335,365	2,310,049	5,836,561
Office lease	88,607	29,536	118,143	116,808
Repairs and maintenance	-	18,683	18,683	24,614
Insurance	-	7,651	7,651	9,426
Office supplies	-	3,518	3,518	10,869
Equipment and equipment rental	9,699	21,130	30,829	34,518
Postage and other dues and fees	58,367	4,876	63,243	115,853
Meeting and education	5,181	11,166	16,347	46,321
Professional fees and services	-	26,304	26,304	59,460
Bad debt	-	557	557	31,500
Interest	-	4,046	4,046	-
Depreciation and amortization	96,628	12,226	108,854	107,788
Travel and related	1,475	-	1,475	21,265
Total functional expenses	\$ 2,854,122	\$ 655,382	\$ 3,509,504	\$ 7,807,701

The Organization incurred expenses related to program activities totaling approximately \$6,554,000 for the year ended June 30, 2020.

**NOTE 6 – LOAN AGREEMENT**

On June 3, 2020, the Company entered into an Economic Injury Disaster Loan (the “Loan”) administered by the U.S. Small Business Administration. The loan has an original principal balance of \$150,000, bears interest at 2.75% per annum and matures on June 3, 2050. The loan requires monthly payments beginning in June 2021. Payments are first applied to interest accrued and then principal. The amount borrowed under the Loan is guaranteed by substantially all of the Organization’s assets. The Organization will use all the proceeds of this Loan solely as working capital to alleviate economic injury caused by COVID-19. The Loan contains customary events of default, and the occurrence of an event of default may result in a claim for the immediate repayment of all amounts outstanding under the Loan.

**VISIT NEWPORT BEACH INC.**  
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**NOTES TO FINANCIAL STATEMENTS**

**For The Years Ended June 30, 2021 and 2020**

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**NOTE 6 – LOAN AGREEMENT, continued**

Future minimum payments under the Organization’s loan agreement are as follows:

<u>Years Ending June 30,</u>	
2022	\$ 3,256
2023	3,731
2024	3,835
2025	3,942
2026	4,052
Thereafter	<u>130,464</u>
	<u>\$ 149,280</u>

**NOTE 7 – COMMITMENTS AND CONTINGENCIES**

Lease Agreements

The Organization is obligated under a lease for its facility, which is accounted for as an operating lease. The lease expires in September 2022, and rent, as amended, is payable between \$8,359 and \$12,016 per month. As a result of the fourth amendment to this lease, the Organization assigned its rights to Newport Beach & Company (“NB & Co.”), a related party. Under the terms of this lease, this assignment does not relieve the Organization of its lease obligations. As a result, the Organization continues to be liable for future rent payments. The facility lease contains a five-year extension option at the end of the lease term.

Total rent expense incurred by the Organization under operating leases was approximately \$118,000 and \$117,000 for the years ended June 30, 2021 and 2020, respectively, and is included in other expenses. Such amounts are net of the amounts paid by the related party pursuant to the Agreement disclosed in Note 9.

Future minimum payments due on the Organization’s allocated portion of the non-cancelable facility lease commitment in excess of one year are as follows:

<u>Years Ending June 30,</u>	
2022	\$ 133,000
2023	<u>31,000</u>
	<u>\$ 164,000</u>

NOTES TO FINANCIAL STATEMENTS

For The Years Ended June 30, 2021 and 2020

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**NOTE 7 – COMMITMENTS AND CONTINGENCIES, continued**

Commitments

The Organization also has several commitments for databases and services regarding marketing, promotion and other contracts ranging from approximately \$287 to \$5,000 per month over various terms with 20 months or less remaining at June 30, 2021 and 24 months or less remaining at June 30, 2020. From these commitments, the Organization incurred approximately \$253,000 and \$504,000 of expenses for the years ended June 30, 2021 and 2020, respectively, which are recorded in marketing expenses in the accompanying statements of activities.

The Organization has a commitment to contribute \$150,000 annually, commencing on June 1, 2014 through December 31, 2024, to the City to be spent on programs or activities that benefit the public, which is recorded in marketing expenses for the years ended June 30, 2021 and 2020. Due to the rights of termination per the agreement, these commitments are considered due each June and December.

Guarantees and Indemnities

The Organization has made certain indemnities and guarantees, under which it may be required to make payments to a guaranteed or indemnified party, in relation to certain actions or transactions. The Organization indemnifies its directors, officers, employees and agents, as permitted under the laws of the State of California. Pursuant to the TOT Agreement, the Organization also indemnifies the City and all of its related boards, councils, officers, employees, and volunteers from claims related to the conduct of the Organization or any of its officers, employees, or associated individuals. In connection with its facility lease, the Organization has indemnified its lessor for certain claims arising from the use of the facilities. The duration of the guarantees and indemnities varies, and is generally tied to the life of the agreement. These guarantees and indemnities do not provide for any limitation of the maximum potential future payments the Organization could be obligated to make. Historically, the Organization has not been obligated nor incurred any payments for these obligations and, therefore, no liabilities have been recorded for these indemnities and guarantees in the accompanying statements of financial position.

**NOTE 8 – RETIREMENT PLAN**

The Organization has a 401(k) retirement plan covering all eligible employees. The plan provided matching contributions based upon employees' voluntary contributions and the Organization's contributions. Effective March 31, 2020, the Organization amended the 401(k) retirement plan to exclude employer matching contributions. Effective December 13, 2020, the Organization amended the 401(k) retirement plan to reinstate employer matching contributions. The total expense recorded by the Organization during the years ended June 30, 2021 and 2020 was approximately \$28,000 and \$73,000, respectively, and is included in salaries and benefit expenses in the accompanying statements of activities.

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**NOTES TO FINANCIAL STATEMENTS**

**For The Years Ended June 30, 2021 and 2020**

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**NOTE 9 – RELATED-PARTY TRANSACTIONS**

During the years ended June 30, 2021 and 2020, the Organization had transactions with a related party that is also a non-profit organization. The related entity, NB & Co., specializes in marketing and promotion services that promote economic development with the City. Pursuant to an Agreement for Services (“Agreement”) dated April 1, 2013, the Organization appointed NB & Co. as an exclusive provider of services that the Organization shall need to carry out its mission and obligations to the City. In consideration for these services, the Organization agreed to pay NB & Co. annual fees totaling \$108,000 for the years ended June 30, 2021 and 2020. The Organization has also agreed to reimburse NB & Co. for all reasonable expenses incurred by it in carrying out its duties to the Organization, including rent and related facility costs, payroll and related benefits, and other direct marketing costs. For the years ended June 30, 2021 and 2020, the Organization incurred \$1,140,512 and \$2,021,382, respectively, from NB & Co. for these costs, which are recorded in marketing expenses in the accompanying statements of activities. NB & Co.’s costs for the years ended June 30, 2021 and 2020 were broken out as follows: \$33,305 and \$140,093, respectively, of direct marketing, \$770,095 and \$1,556,505, respectively, of salaries and benefits, and \$337,112 and \$324,784, respectively, of other (including rent and related facility costs). The Agreement, as amended, expires on June 30, 2024.

As of June 30, 2021 and 2020, the Organization has net related-party (payables) receivables of \$(17,611) and \$32,739, respectively, in the accompanying statements of financial position. These amounts do not bear interest, are not collateralized, and have no stated repayment terms.

**VISIT NEWPORT BEACH INC.**  
**(A Non-Profit Organization)**

**SCHEDULE I - STATEMENT OF FINANCIAL POSITION BY FUNDING SOURCE**

**June 30, 2021**

	<u>TOT*</u>	<u>TBID</u>	<u>Eliminations</u>	<u>Total</u>
<b>Current assets:</b>				
Cash and cash equivalents	\$ 3,723,457	\$ 2,195,117	\$ -	\$ 5,918,574
Prepaid expenses and other current assets	<u>44,663</u>	<u>137,812</u>	<u>-</u>	<u>182,475</u>
Total current assets	3,768,120	2,332,929	-	6,101,049
Property and equipment, net	11,038	8,503	-	19,541
Deposits and other assets	<u>9,619</u>	<u>-</u>	<u>-</u>	<u>9,619</u>
	<u>\$ 3,788,777</u>	<u>\$ 2,341,432</u>	<u>\$ -</u>	<u>\$ 6,130,209</u>
<b>Current liabilities:</b>				
Accounts payable	\$ 79,271	\$ 21,525	\$ -	\$ 100,796
Related-party payables, net	17,461	150	-	17,611
Accrued expenses	5,000	36,041	-	41,041
Accrued payroll and related expenses	-	74,727	-	74,727
Group booking incentive reserve	-	6,500	-	6,500
Loan payable, current portion	<u>3,256</u>	<u>-</u>	<u>-</u>	<u>3,256</u>
Total current liabilities	104,988	138,943	-	243,931
Deferred rent, net of current portion	-	3,071	-	3,071
Loan payable	<u>146,024</u>	<u>-</u>	<u>-</u>	<u>146,024</u>
Total liabilities	251,012	142,014	-	393,026
Net assets without donor restrictions	<u>3,537,765</u>	<u>2,199,418</u>	<u>-</u>	<u>5,737,183</u>
	<u>\$ 3,788,777</u>	<u>\$ 2,341,432</u>	<u>\$ -</u>	<u>\$ 6,130,209</u>

\* Includes balances for other marketing and administrative costs.

**VISIT NEWPORT BEACH INC.**  
**(A Non-Profit Organization)**

**SCHEDULE II - STATEMENT OF ACTIVITIES BY FUNDING SOURCE**

**For The Year Ended June 30, 2021**

	<u>TOT*</u>	<u>TBID</u>	<u>Eliminations</u>	<u>Total</u>
Support and revenues:				
Service fee revenues	\$ 3,075,276	\$ 1,681,912	\$ -	\$ 4,757,188
Interest income	2,183	1,494	-	3,677
Other income	<u>-</u>	<u>22,800</u>	<u>-</u>	<u>22,800</u>
Total support and revenues	<u>3,077,459</u>	<u>1,706,206</u>	<u>-</u>	<u>4,783,665</u>
Expenses:				
Marketing	1,936,510	373,539	-	2,310,049
Salaries and benefits	-	799,805	-	799,805
Other	53,886	236,910	-	290,796
Depreciation and amortization	<u>77,120</u>	<u>31,734</u>	<u>-</u>	<u>108,854</u>
Total expenses	<u>2,067,516</u>	<u>1,441,988</u>	<u>-</u>	<u>3,509,504</u>
Change in net assets without donor restrictions	1,009,943	264,218	-	1,274,161
Net assets, beginning of year	<u>2,527,822</u>	<u>1,935,200</u>	<u>-</u>	<u>4,463,022</u>
Net assets, end of year	<u>\$ 3,537,765</u>	<u>\$ 2,199,418</u>	<u>\$ -</u>	<u>\$ 5,737,183</u>

\* Includes balances for other marketing and administrative costs.



# **Exhibit 1**

Visit Newport Beach Audited Financial Statements for the Year Ended June 30, 2021,  
Accompanying Management Letter dated September 30, 2021

September 30, 2021

To the Board of Directors of  
Visit Newport Beach Inc.  
1600 Newport Center Drive  
Newport Beach, California 92660

We have audited the financial statements of Visit Newport Beach Inc. (the “Organization”) as of and for the year ended June 30, 2021, and have issued our report thereon dated September 30, 2021. Professional standards require that we advise you of the following matters relating to our audit.

### **Our Responsibility in Relation to the Financial Statement Audit**

As communicated in our engagement letter dated May 20, 2021, our responsibility, as described by professional standards, is to form and express an opinion about whether the financial statements that have been prepared by management with your oversight are presented fairly, in all material respects, in accordance with accounting principles generally accepted in the United States of America. Our audit of the financial statements does not relieve you or management of its respective responsibilities.

Our responsibility, as prescribed by professional standards, is to plan and perform our audit to obtain reasonable, rather than absolute, assurance about whether the financial statements are free of material misstatement. An audit of financial statements includes consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Organization’s internal control over financial reporting. Accordingly, as part of our audits, we considered the internal control of the Organization solely for the purpose of determining our audit procedures and not to provide any assurance concerning such internal control.

In conjunction with the annual audit, we also performed an examination of management’s assertion included in the Management Statement Regarding Compliance with Certain Provisions of the Agreement Between the City of Newport Beach and the Organization for Tourism Promotion, Branding, and Marketing Services (the “Agreement”), that the Organization complied with the provisions in Section 4 of the Agreement regarding the 2021 Expenditures Report, summarizing the expenditures of funds received pursuant to the Agreement during the year ended June 30, 2021.

We are also responsible for communicating significant matters related to the audit that are, in our professional judgment, relevant to your responsibilities in overseeing the financial reporting process. However, we are not required to design procedures for the purpose of identifying other matters to communicate to you.

## **Planned Scope and Timing of the Audit**

We conducted our audit consistent with the planned scope and timing we previously communicated to you in a letter dated September 7, 2021.

## **Compliance with All Ethics Requirements Regarding Independence**

The engagement team, others in our firm, as appropriate, and our firm have complied with all relevant ethical requirements regarding independence.

As part of the audit, we assisted you in preparing a draft of your financial statements and related notes, a nonattest service. With respect to any nonattest service we performed, the Organization's management has been responsible for (a) making all management decisions and performing all management functions; (b) assigning a competent individual to oversee the services; (c) evaluating the adequacy of the services performed; (d) evaluating and accepting responsibility for the results of the services performed; and (e) establishing and maintaining internal controls, including monitoring ongoing activities.

## **Qualitative Aspects of the Entity's Significant Accounting Practices**

### *Significant Accounting Policies*

Management has the responsibility to select and use appropriate accounting policies. A summary of the significant accounting policies adopted by the Organization is included in Note 2 to the financial statements. Other than the adoption of ASU 2014-09 – *Revenue from Contracts with Customers*, there have been no initial selection of accounting policies and no changes in significant accounting policies or their application during the year ended June 30, 2021. No matters have come to our attention that would require us, under professional standards, to inform you about (1) the methods used to account for significant unusual transactions and (2) the effect of significant accounting policies in controversial or emerging areas for which there is a lack of authoritative guidance or consensus.

### *Significant Accounting Estimates*

Accounting estimates are an integral part of the financial statements prepared by management and are based on management's current judgments. Those judgments are normally based on knowledge and experience about past and current events and assumptions about future events. Certain accounting estimates are particularly sensitive because of their significance to the financial statements and because of the possibility that future events affecting them may differ markedly from management's current judgments. Significant estimates made by the Organization's management include, but are not limited to, the sufficiency of its cash and investment resources to fund operations for the next twelve months, the collectability of accounts receivable, the recoverability of long-lived assets, fair value of investments and the allocation of expenses to program activities and general and administrative.

- Management's estimate of the sufficiency of its cash and investment resources to fund operations for the next twelve months is based on the Organization's forecast of future income and obligations.
- Management's estimate of the collectability of accounts receivables is based on assessing the potential uncollectible receivables outstanding using the specific identification method.
- Management's estimate of the recoverability of long-lived assets is based on comparing forecasts of undiscounted cash flows expected to result from the use and eventual disposition of the long-lived asset to its carrying value.
- Management's estimate of the fair value of investments is based on the exchange price that would be received for an asset or paid to transfer a liability (an exit price) in the principal, or in the absence of a principal market, the most advantageous market for the asset or liability, in an orderly transaction between market participants on the measurement date.
- Management's estimate of allocation of expenses to program activities and general and administrative is based on assessing the purpose and nature of the expenditures incurred during the year.

We evaluated the key factors and assumptions used to develop the estimates and determined that they are reasonable in relation to the financial statements taken as a whole.

#### *Financial Statement Disclosures*

Certain financial statement disclosures involve significant judgment and are particularly sensitive because of their significance to financial statement users. The most sensitive disclosures affecting the Organization's financial statements relate to disclosure of COVID-19 impacts including liquidity and related-party transactions.

#### **Identified or Suspected Fraud**

We have not identified or obtained information that indicates that fraud may have occurred.

#### **Significant Difficulties Encountered during the Audit**

We encountered no significant difficulties in dealing with management relating to the performance of the audit.

### **Uncorrected and Corrected Misstatements**

For purposes of this communication, professional standards require us to accumulate all known and likely misstatements identified during the audit, other than those that we believe are trivial, and communicate them to the appropriate level of management. Further, professional standards require us to also communicate the effect of uncorrected misstatements related to prior periods on the relevant classes of transactions, account balances or disclosures, and the financial statements as a whole. There were no uncorrected misstatements during the year ended June 30, 2021.

In addition, professional standards require us to communicate to you all material, corrected misstatements that were brought to the attention of management as a result of our audit procedures. There were no material corrected misstatements that we identified as a result of our audit procedures that were brought to the attention of, and corrected by, management.

### **Disagreements with Management**

For purposes of this letter, professional standards define a disagreement with management as a matter, whether or not resolved to our satisfaction, concerning a financial accounting, reporting, or auditing matter, which could be significant to the Organization's financial statements or the auditors' report. No such disagreements arose during the course of the audit.

### **Representations Requested from Management**

We have requested certain written representations from management, which are included in a separate letter dated September 30, 2021.

### **Management's Consultations with Other Accountants**

In some cases, management may decide to consult with other accountants about auditing and accounting matters. Management informed us that, and to our knowledge, there were no consultations with other accountants regarding auditing and accounting matters.

### **Other Significant Findings or Issues**

In the normal course of our professional association with the Organization, we generally discuss a variety of matters, including the application of accounting principles and auditing standards, operating and regulatory conditions affecting the Organization, and operational plans and strategies that may affect the risks of material misstatement. None of the matters discussed resulted in a condition to our retention as the Organization's auditors.

## Supplemental Information

The supplementary information contained in Schedules I and II of the financial statements is presented for purposes of additional analysis and is not a required part of the 2021 financial statements. Such information is the responsibility of management and was derived from and relates directly to the underlying accounting and other records used to prepare the 2021 financial statements. The information has been subjected to the auditing procedures applied in the audit of the 2021 financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the 2021 financial statements or the financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America.

This report is intended solely for the information and use of the Board of Directors and management of the Organization, and is not intended to be and should not be used by anyone other than these specified parties.

Very truly yours,

A handwritten signature in brown ink that reads "KMJ Corbin & Company LLP". The signature is written in a cursive, professional style.

KMJ Corbin & Company LLP

## **Attachment B**

Newport Beach and Company Audited Financial Statements for the Year Ended June 30, 2021, and Accompanying Management Letter dated September 30, 2021  
(Exhibit 2)

**NEWPORT BEACH & COMPANY**  
**(A Non-Profit Organization)**

**FINANCIAL STATEMENTS**

**For The Years Ended June 30, 2021 and 2020**

*with*

**INDEPENDENT AUDITORS' REPORT THEREON**

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**NEWPORT BEACH & COMPANY**  
**(A Non-Profit Organization)**

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## Independent Auditors' Report

Board of Directors  
Newport Beach & Company

We have audited the accompanying financial statements of Newport Beach & Company (a non-profit organization) (the “Organization”), which comprise the statements of financial position as of June 30, 2021 and 2020, and the related statements of activities and cash flows for the years then ended, and the related notes to the financial statements.

### *Management’s Responsibility for the Financial Statements*

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

### *Auditors’ Responsibility*

Our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditors’ judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity’s preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity’s internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

## ***Opinion***

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Newport Beach & Company as of June 30, 2021 and 2020, and the changes in its net assets and its cash flows for the years then ended in accordance with accounting principles generally accepted in the United States of America.

## ***Emphasis of Matter - Related Party Transactions***

As discussed in Note 9 to the financial statements, Newport Beach & Company has significant transactions with a related non-profit organization and the Organization derives substantial support and revenue from that related non-profit organization. Our opinion is not modified with respect to this matter.

## ***Other Matter***

As discussed in Note 2 to the financial statements, the Organization changed its method for revenue recognition in 2021 as a result of the adoption of the amendments to the Financial Accounting Standards Board Accounting Standards Codification resulting from Accounting Standards Update 2014-09, *Revenue from Contracts with Customers*, effective July 1, 2020. Our opinion is not modified with respect to this matter.

*KMJ Corbin & Company LLP*

KMJ Corbin & Company LLP

Irvine, California  
September 30, 2021

**NEWPORT BEACH & COMPANY**  
(A Non-Profit Organization)

**STATEMENTS OF FINANCIAL POSITION**

	June 30,	
	2021	2020
<b>ASSETS</b>		
Current assets:		
Cash	\$ 219,454	\$ 72,690
Accounts receivable	12,891	43,753
Related-party receivables, net	17,611	-
Prepaid expenses and other current assets	76,649	32,672
Total current assets	326,605	149,115
Property and equipment, net	38,142	64,843
	\$ 364,747	\$ 213,958
<b>LIABILITIES AND NET ASSETS</b>		
Current liabilities:		
Accounts payable	\$ 6,049	\$ 6,171
Related-party payables, net	-	32,739
Accrued expenses	131,671	72,522
Accrued payroll and related expenses	123,767	51,661
Current portion of deferred compensation	-	20,000
Loan payable, current portion	1,009	-
Total current liabilities	262,496	183,093
Deferred rent, net of current portion	14,229	100,891
Loan payable, net of current portion	108,441	-
Total liabilities	385,166	283,984
Commitments and contingencies		
Net assets without donor restrictions	(20,419)	(70,026)
	\$ 364,747	\$ 213,958

*See accompanying notes to financial statements*

**NEWPORT BEACH & COMPANY**  
**(A Non-Profit Organization)**

**STATEMENTS OF ACTIVITIES**

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	<b>For The Years Ended June 30,</b>	
	<u>2021</u>	<u>2020</u>
Support and revenues:		
Service fees from related party	\$ 1,248,512	\$ 2,129,382
Community marketing income	227,621	309,391
Paycheck protection program grant	<u>227,527</u>	<u>-</u>
Total support and revenues	<u>1,703,660</u>	<u>2,438,773</u>
Expenses:		
Marketing	111,740	169,364
Salaries and benefits	982,803	1,588,115
Other	532,809	615,560
Depreciation	<u>26,701</u>	<u>35,059</u>
Total expenses	<u>1,654,053</u>	<u>2,408,098</u>
Increase in net assets without donor restrictions	49,607	30,675
Net assets without donor restrictions, beginning of year	<u>(70,026)</u>	<u>(100,701)</u>
Net assets without donor restrictions, end of year	\$ <u>(20,419)</u>	\$ <u>(70,026)</u>

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*See accompanying notes to financial statements*

**NEWPORT BEACH & COMPANY**  
(A Non-Profit Organization)

**STATEMENTS OF CASH FLOWS**

	<b>For The Years Ended June 30,</b>	
	<b>2021</b>	<b>2020</b>
Cash flows from operating activities:		
Change in net assets without donor restrictions	\$ 49,607	\$ 30,675
Adjustments to reconcile change in net assets without without donor restrictions to net cash provided by operating activities:		
Depreciation	26,701	35,059
Loss on disposal of equipment	-	1,675
Changes in operating assets and liabilities:		
Accounts receivable	30,862	6,392
Related-party receivables/payables, net	(50,350)	140,085
Prepaid expenses and other current assets	(43,977)	7,173
Accounts payable	(122)	(80,354)
Accrued expenses	59,149	50,746
Accrued payroll and related expenses	72,106	(146,785)
Deferred compensation	(20,000)	(20,000)
Deferred rent	<u>(86,662)</u>	<u>3,301</u>
Net cash provided by operating activities	37,314	27,967
Cash flows used in investing activities:		
Purchases of property and equipment	-	(9,821)
Cash flows provided by financing activities:		
Proceeds from loan	<u>109,450</u>	<u>-</u>
Net increase in cash	146,764	18,146
Cash at beginning of year	<u>72,690</u>	<u>54,544</u>
Cash at end of year	<u>\$ 219,454</u>	<u>\$ 72,690</u>

*See accompanying notes to financial statements*

**NEWPORT BEACH & COMPANY**  
**(A Non-Profit Organization)**

**NOTES TO FINANCIAL STATEMENTS**

**For The Years Ended June 30, 2021 and 2020**

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**NOTE 1 – ORGANIZATION**

Nature of Operations

Newport Beach & Company (the “Organization”) is a non-profit organization formed under the laws of the State of California in 2013. The Organization specializes in marketing and promotion services related to enhancing the economic development for the City of Newport Beach (the “City”). The Organization currently has agreements with the City to manage its public access television channel and to provide services to the Balboa Village Merchants Association. Through June 30, 2021, the Organization also had an agreement with the City to provide services to the Newport Beach Restaurant Association Business Improvement District. By embracing a variety of neighborhoods, businesses and individual unique voices into a complementary story, the Organization seeks to strengthen all of its partners, drive new revenue to the City and enhance the City’s overall economic vibrancy.

Newport Beach TV (“NBTV”)

The agreement between the Organization and the City provides management and consulting services in support of NBTV. Such services include production, administrative, and sponsorship services. This agreement expires on April 30, 2023.

Newport Beach Restaurant Association Business Improvement District (“NBRA BID”)

The agreement between the Organization and the City, which expired on June 30, 2021, provided marketing planning and programming, public and media relations, research and measurement, membership and community events services to the City related to the NBRA BID.

**NOTE 2 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

Basis of Presentation

The accompanying financial statements have been prepared on the accrual basis of accounting in accordance with accounting principles generally accepted in the United States of America. Net assets and revenues, expenses, gains, and losses are classified based on the existence or absence of donor-imposed restrictions. Accordingly, net assets and changes therein are classified and reported as follows:

*Without donor restrictions* – Net assets that are not subject to donor-imposed stipulations. These assets are available to support the Organization’s general activities and operations at the discretion of the Board of Directors.

NOTES TO FINANCIAL STATEMENTS

For The Years Ended June 30, 2021 and 2020

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**NOTE 2 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES, continued**

*With donor restrictions* - Net assets that are subject to donor-imposed restrictions. Some donor-imposed restrictions are temporary in nature, such as those that will be met by the passage of time or other events specified by the donor. Other donor-imposed restrictions are perpetual in nature, where the donor stipulates that such resources be maintained in perpetuity. Generally, the donors of these assets permit the Organization to use all or part of the income earned on related investments for general or specific purposes.

Revenues are reported as increases in net assets without donor restrictions unless use of the related assets is limited by donor-imposed restrictions. Expenses are reported as decreases in net assets without donor restrictions. Gains and losses on investments and other assets are reported as increases or decreases in net assets without donor restrictions unless their use is restricted by explicit donor stipulations or by law.

As of and for the years ended June 30, 2021 and 2020, the Organization had no net assets with donor restrictions.

Liquidity

In December 2019, a novel strain of coronavirus disease (“COVID-19”) was first reported in Wuhan, China. Less than four months later, on March 11, 2020, the World Health Organization declared COVID-19 a global pandemic. The extent of COVID-19’s effect on the Organization’s operational and financial performance will depend on future developments, including the duration, spread and intensity of the pandemic, all of which are uncertain and difficult to predict considered the rapidly evolving landscape. The Organization is currently analyzing the potential impacts to all of its business segments. At this time, it is not possible to determine the magnitude of the overall impact of COVID-19 on the Organization. However, it could have a material adverse effect on the Organization’s financial condition, liquidity, results of operations, and cash flows. In the short term, one of the impacts of the pandemic is that the Organization’s revenues have declined, but the Organization cannot predict whether this decline is temporary or not. During the year ended June 30, 2021, the Organization took certain cost cutting measures including reducing discretionary marketing and other expenses, and reducing payroll through pay cuts, furloughs, and reduction in its workforce. The Organization believes these measures, along with its existing cash, will be sufficient to cover its cash flow requirements for at least the next twelve months from the date of issuance of these financial statements (see Note 3). However, there can be no assurance that the Organization will not use its existing capital resources sooner than currently expected.



NOTES TO FINANCIAL STATEMENTS

For The Years Ended June 30, 2021 and 2020

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**NOTE 2 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES, continued**

Use of Estimates

The preparation of financial statements requires the Organization to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosures of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Significant estimates made by the Organization's management include, but are not limited to, the sufficiency of its cash resources to fund operations for the next twelve months, the collectability of receivables, the recoverability of long-lived assets and the allocation of expenses to program activities and general and administrative. Actual results may differ from those estimates.

Cash and Cash Equivalents

The Organization considers all highly liquid investments purchased with an initial maturity of three months or less to be cash equivalents. The Organization maintains its cash balances at various financial institutions. The total cash balances are insured by the Federal Deposit Insurance Corporation ("FDIC") up to \$250,000 per institution. At June 30, 2021, the Organization had no uninsured balances. The Organization periodically reviews the quality of the financial institutions it has deposits with to minimize risk of loss. To date, no losses have been incurred.

Accounts Receivable

Accounts receivable are carried at original invoice amount less an estimate made for doubtful receivables based on a review of all outstanding amounts at year end. Management determines the allowance for doubtful accounts by identifying troubled accounts based on current and historical experience. At June 30, 2021 and 2020, the Organization considers its accounts receivable to be fully collectible and accordingly did not record an allowance for doubtful accounts. As of June 30, 2021 and 2020, one and two customers, respectively, accounted for approximately 99% and 95% respectively, of the Organization's total accounts receivable balance.

Property and Equipment

Property and equipment are stated at cost. Donated assets are recorded at their fair market value when received. The cost of purchased assets or fair market value of donated assets is depreciated using the straight-line method over the estimated useful lives of the related assets which range from three to seven years. Leasehold improvements are amortized over the lesser of their estimated useful lives or the related lease term. Maintenance and repairs are charged to expense as incurred. Significant renewals and betterments are capitalized.

NOTES TO FINANCIAL STATEMENTS

For The Years Ended June 30, 2021 and 2020

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**NOTE 2 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES, continued**

It is the Organization's policy to capitalize property and equipment over \$1,500. At the time of retirement or other disposition of property and equipment, the cost and accumulated depreciation or amortization are removed from the accounts and any resulting gain or loss is reflected in the statements of activities.

Deferred Compensation

Deferred compensation represents a commitment to make annual \$20,000 annuity payments through 2021 to a member of the Organization's management. There were no amounts due as of June 30, 2021.

Impairment of Long-Lived Assets

The Organization evaluates long-lived assets for impairment whenever events or changes in circumstances indicate that the carrying value of an asset may not be recoverable. If the estimated future cash flows (undiscounted and without interest charges) from the use of an asset are less than the carrying value, a write-down would be recorded to reduce the related asset to its estimated fair value. At June 30, 2021 and 2020, the Organization's management believes there is no impairment of its long-lived assets. There can be no assurance, however, that market conditions will not change or demand for the Organization's services will continue, which could result in impairment of long-lived assets in the future.

Contributed Materials and Services

Donated materials and other noncash contributions (if any) are reflected in the accompanying financial statements at their estimated fair market values at date of receipt. Contributions of services are recognized if the services received create or enhance nonfinancial assets or require specialized skills, are provided by individuals possessing those skills and would typically need to be purchased if not provided by donation. Other volunteer services that do not meet these criteria are not recognized in the financial statements as there is no objective basis of deriving their value.

During the years ended June 30, 2021 and 2020, the Organization did not have significant contributed materials and services.

NOTES TO FINANCIAL STATEMENTS

For The Years Ended June 30, 2021 and 2020

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**NOTE 2 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES, continued**

Income Tax Status

The Organization qualifies as a tax-exempt organization for Federal income taxes under Section 501(c)(6) of the United States Internal Revenue Code and for California state income taxes under Section 23701(d) of the California Revenue and Taxation Code; therefore, the Organization has no provision for federal or state income taxes. During the years ended June 30, 2021 and 2020, the Organization had no unrelated business income. The Organization annually evaluates tax positions as part of the preparation of its exempt tax return. This process includes an analysis of whether tax positions the Organization takes with regard to a particular item of income or deduction would meet the definition of an uncertain tax position under current accounting guidance. The Organization believes its tax positions are appropriate based on current facts and circumstances. The Organization's policy is to recognize interest accrued related to unrecognized tax benefits in interest expense and penalties in operating expenses. At June 30, 2021 and 2020, the Organization did not have any unrecognized tax benefits.

The Organization is no longer subject to income tax examinations by tax authorities for years before 2017.

Allocated Expenses

The costs of providing program activities and supporting services have been summarized on a functional basis in Note 5. The Organization incurs expenses that directly relate to, and can be assigned to, a specific program or supporting activity. The Organization also conducts a number of activities which benefit both its program objectives as well as supporting services. These costs, which are not specifically attributable to a specific program or supporting activity, are allocated by management on a consistent basis among program and supporting services benefited, based on either financial or nonfinancial data, such as headcount, occupancy or estimates of time and effort incurred by personnel.

Recent Accounting Pronouncements

On July 1, 2020, the Organization adopted Accounting Standards Update ("ASU") 2014-09, *Revenue from Contracts with Customers*, as codified in Accounting Standards Codification ("ASC") 606, by applying the modified retrospective method for all contracts. The Organization evaluated its revenue streams to identify whether each stream would be subject to the provisions of ASC 606 and any differences in the timing, measurement, or presentation of revenue recognition compared to ASC 605, *Revenue Recognition* ("ASC 605"). Based on the assessment of the Organization's revenue streams, the pattern and timing of recognition of the Company's revenues under ASC 606 are similar to the manner in which the Company previously recognized revenue under ASC 605, so there was no effect as a result of the Organization's adoption of ASC 606.

NOTES TO FINANCIAL STATEMENTS

For The Years Ended June 30, 2021 and 2020

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**NOTE 2 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES, continued**

In February 2016, the Financial Accounting Standards Board (“FASB”) issued ASU 2016-02, *Leases (Topic 842)*, which requires the lease rights and obligations arising from lease contracts, including existing and new arrangements, to be recognized as assets and liabilities on the statement of financial position. ASU 2016-02, as amended, is effective for reporting periods beginning after December 15, 2021, with early adoption permitted. While still evaluating this update, the Organization expects the adoption of this update to have a material effect on its financial condition due to the recognition of the lease rights and obligations as assets and liabilities. The Organization does not expect this update to have a material effect on its results of operations and cash flows.

In September 2020, the FASB issued ASU No. 2020-07, *Presentation and Disclosures by Not-for-Profit Entities for Contributed Nonfinancial Assets (Topic 958)*, which requires the Organization to change its financial statement presentation and disclosure of contributed nonfinancial assets, or gifts-in-kind. ASU No. 2020-07 defines gifts-in-kind as contributed nonfinancial assets donations made for goods or services the Organization would purchase in the normal course of business. Gifts-in-kind of tangible property include items like operating facilities, utilities, office furniture, and supplies provided to the Organization; items donated to the Organization to be auctioned through charitable events; and items used in program activities, such as medical supplies, building supplies, appliances, and fixtures. Intangible gifts-in-kind include items like copyrights, patents, and royalties; specialized volunteer services, such as those from nurses for medical organizations or project managers and builders for construction projects; and expertise, such as accounting, legal, and consulting services. ASU No. 2020-07 is effective for the Organization for fiscal year 2022. Early adoption is permitted. The Organization is currently evaluating the impact that the adoption of ASU No. 2020-07 will have on its financial statements.

**Subsequent Events**

The Organization has evaluated subsequent events through September 30, 2021, the date which the financial statements were available to be issued. Based upon its evaluation, management has determined that no subsequent events have occurred that would require recognition in the accompanying financial statements or disclosure in the notes thereto except as disclosed herein.

**NOTE 3 – LIQUIDITY AND AVAILABILITY**

The Organization has \$232,345 of financial assets available within one year of the statement of financial position date to meet cash needs for general expenditures consisting of cash of \$219,454 and accounts receivable of \$12,891. None of the financial assets are subject to donor or other contractual restrictions that make them unavailable for general expenditures within one year of the statement of financial position. The Organization has a policy to structure its financial assets to be available as its general expenditures, liabilities, and other obligations come due.

**NEWPORT BEACH & COMPANY**  
**(A Non-Profit Organization)**

**NOTES TO FINANCIAL STATEMENTS**

**For The Years Ended June 30, 2021 and 2020**

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**NOTE 3 – LIQUIDITY AND AVAILABILITY, continued**

Funding for the Organization is dependent on funding received from a related party (see Note 9) and revenue generated through marketing efforts. As a result, the Organization closely monitors the monthly projected and received revenue to determine if any changes need to be made to budgeted annual expenditures.

As discussed in Note 2, in response to COVID-19, the Organization has performed an analysis to determine whether it will have sufficient cash to fund operations for the next twelve months. Based on budgeting for necessary expenses and obligations due along with minimal service fee revenues as a result of the impact of COVID-19 on hotel stays, the Organization has concluded that it will have sufficient cash to fund operations for at least twelve months from the date of issuance of these financial statements.

**NOTE 4 – PROPERTY AND EQUIPMENT**

Property and equipment consists of the following at June 30:

	<u>2021</u>	<u>2020</u>
Leasehold improvements	\$ 79,990	\$ 79,990
Computer equipment	126,456	126,456
Office furniture and fixtures	<u>81,409</u>	<u>81,409</u>
	287,855	287,855
Less accumulated depreciation and amortization	<u>(249,713)</u>	<u>(223,012)</u>
	<u>\$ 38,142</u>	<u>\$ 64,843</u>

**NEWPORT BEACH & COMPANY**  
(A Non-Profit Organization)

**NOTES TO FINANCIAL STATEMENTS**

**For The Years Ended June 30, 2021 and 2020**

**NOTE 5 – STATEMENT OF FUNCTIONAL EXPENSES**

The statements of functional expenses for the years ended June 30, 2021 and 2020 are as follows:

	2021			2020
	Program Activities	General and Administrative	Total	Total (Summarized)
Salaries and benefits:				
Salaries	\$ 611,597	\$ 169,780	\$ 781,377	\$ 1,210,112
Payroll taxes and employee benefits	147,842	53,584	201,426	378,003
Total salaries and benefits	759,439	223,364	982,803	1,588,115
Other expense:				
Marketing	111,478	262	111,740	169,364
Office lease	305,478	101,826	407,304	409,271
Repairs and maintenance	-	21,083	21,083	30,322
Insurance	-	6,086	6,086	6,944
Office supplies	-	3,580	3,580	16,628
Equipment and equipment rental	15,269	28,049	43,318	49,525
Postage and fees	1,859	16,455	18,314	5,319
Meeting and education	1,093	4,451	5,544	44,133
Professional fees and services	-	23,117	23,117	22,639
Depreciation	-	26,701	26,701	35,059
Bad debt	-	-	-	4,888
Travel and related	2,641	1,822	4,463	25,891
Total functional expenses	\$ 1,197,257	\$ 456,796	\$ 1,654,053	\$ 2,408,098

The Organization incurred expenses related to program activities totaling approximately \$1,733,000 for the year ended June 30, 2020.

**NOTE 6 – PAYCHECK PROTECTION PROGRAM GRANT/LOAN**

In January 2021, the Organization entered into an unsecured promissory note for a loan (the “Loan”) in the principal amount of \$336,997 and received cash proceeds of the same amount, pursuant to the Paycheck Protection Program (the “PPP”), which is administered by the U.S. Small Business Administration (the “SBA”). Under the terms of the Loan, interest accrues on the outstanding principal at the rate of 1.0% per annum. The term of the Loan is five years, unless sooner required in connection with an event of default under the Loan. To the extent the Loan amount is not fully forgiven by the SBA, the Organization is obligated to make equal monthly payments of principal and interest beginning on the earlier of: (1) the date the SBA sends the loan forgiveness amount to the lender or (2) ten months after the covered 24-week period, until the maturity date.

**NEWPORT BEACH & COMPANY**  
**(A Non-Profit Organization)**

**NOTES TO FINANCIAL STATEMENTS**

**For The Years Ended June 30, 2021 and 2020**

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**NOTE 6 – PAYCHECK PROTECTION PROGRAM GRANT/LOAN, continued**

The PPP provides a mechanism for forgiveness of up to the full amount borrowed. Under the PPP, the Organization may apply for and be granted forgiveness for all or part of the PPP Loan. The amount of loan proceeds eligible for forgiveness is based on a formula that takes into account a number of factors, including the amount of loan proceeds used by the Organization during the 24-week period after the loan origination for certain purposes including payroll costs, interest on certain mortgage obligations, rent payments on certain leases, and certain qualified utility payments (it being anticipated that at least 60% of the loan amount will be required to be used for eligible payroll costs); the employer maintaining or rehiring employees and maintaining salaries at certain levels; and other factors. Subject to the other requirements and limitations on loan forgiveness, only loan proceeds spent on payroll and other eligible expenses during the covered 24-week period will qualify for forgiveness.

The Organization has used \$227,527 of the proceeds for purposes consistent with the PPP and believes that its use of this portion of the loan proceeds will meet the conditions for forgiveness. While management believes that it is probable that \$227,527 will be forgiven, no definite assurance can be provided that forgiveness for any portion of the PPP Loan will be obtained. Since the Company used \$227,527 of the proceeds from the PPP Loan for such qualifying expenses before June 30, 2021, the Company recorded this amount of the PPP Loan proceeds as a conditional cost-reimbursed government grant in the accompanying consolidated statements of activities for the year ended June 30, 2021 pursuant to relevant technical accounting guidance.

Future minimum payments under the Organization’s loan agreement (net of estimated forgiveness) are as follows:

<u>Years Ending June 30,</u>	
2022	\$ 1,009
2023	29,873
2024	30,173
2025	30,476
2026	<u>17,919</u>
	<u>\$ 109,450</u>

**NEWPORT BEACH & COMPANY**  
**(A Non-Profit Organization)**

**NOTES TO FINANCIAL STATEMENTS**

**For The Years Ended June 30, 2021 and 2020**

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**NOTE 7 – COMMITMENTS AND CONTINGENCIES**

Lease Agreements

The Organization is obligated under a lease for its facility, which is accounted for as an operating lease. The lease expires in September 2022 and rent, as amended, is payable between \$6,922 and \$32,905 per month. As a result of the fourth amendment to this lease, the Organization is a party to the lease originally entered into by Visit Newport Beach Inc. (“VNB”), a related party. Under the terms of this lease, each assignee shall be deemed to assume all lease obligations, and as a result, the Organization may be liable for future rent payments. The facility lease contains a five-year extension option at the end of the lease term.

Total rent expense incurred by the Organization under its operating lease was approximately \$407,000 and \$409,000 for the years ended June 30, 2021 and 2020, respectively, and is included in other expenses. Such amounts are net of the amounts paid by VNB pursuant to the Agreement discussed in Note 9.

Future minimum payments due on its allocated portion of the non-cancelable facility lease commitment in excess of one year are as follows:

<u>Years Ending June 30,</u>	
2022	\$ 480,000
2023	<u>113,000</u>
	<u>\$ 593,000</u>

Guarantees and Indemnities

The Organization has made certain indemnities and guarantees (including under its PPP Loan), under which it may be required to make payments to a guaranteed or indemnified party, in relation to certain actions or transactions. The Organization indemnifies its directors, officers, employees and agents, as permitted under the laws of the State of California. In connection with its facility lease, the Organization has indemnified its lessor for certain claims arising from the use of the facilities. The duration of the guarantees and indemnities varies, and is generally tied to the life of the agreement. These guarantees and indemnities do not provide for any limitation of the maximum potential future payments the Organization could be obligated to make. Historically, the Organization has not been obligated nor incurred any payments for these obligations and, therefore, no liabilities have been recorded for these indemnities and guarantees in the accompanying statements of financial position.



**NEWPORT BEACH & COMPANY**  
**(A Non-Profit Organization)**

**NOTES TO FINANCIAL STATEMENTS**

**For The Years Ended June 30, 2021 and 2020**

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**NOTE 8 – RETIREMENT PLAN**

The Organization has a 401(k) retirement plan covering all eligible employees. The plan provided matching contributions based upon employees' voluntary contributions and the Organization's contributions. Effective March 31, 2020, the Organization amended the 401(k) retirement plan to exclude employer matching contributions. Effective December 13, 2020, the 401(k) retirement plan was further amended to reinstate the employer matching contributions. The total expense recorded by the Organization during the years ended June 30, 2021 and 2020 was approximately \$27,000 and \$70,000, respectively, which is recorded in salaries and benefits expenses in the accompanying statements of activities.

**NOTE 9 – RELATED-PARTY TRANSACTIONS**

During the years ended June 30, 2021 and 2020, the Organization had transactions with a related party that is also a non-profit organization. The related entity, VNB, initiates, sponsors, promotes and carries out plans, policies and activities to attract conferences and visitors to the City. VNB was the driving force behind the formation of the Organization. Pursuant to an Agreement for Services ("Agreement") dated April 1, 2013, the Organization was appointed by VNB as an exclusive provider of services that VNB shall need to carry out its mission and obligations to the City. In consideration for these services, VNB agreed to pay monthly fees totaling \$108,000 for the years ended June 30, 2021 and 2020. VNB has also agreed to reimburse the Organization for all reasonable expenses incurred by it in carrying out its duties to VNB, including rent and related facility costs, payroll and related benefits, and other direct marketing costs. For the years ended June 30, 2021 and 2020, the Organization billed \$1,140,512 and \$2,021,382, respectively, to VNB for these fees and costs, which are recorded as service fees from related party in the accompanying statements of activities. The Agreement, as amended, expires on June 30, 2024.

As of June 30, 2021 and 2020, the Organization has net related-party receivables (payables) of \$17,611 and (\$32,739), respectively, in the accompanying statements of financial position. These amounts do not bear interest, are not collateralized and have no stated repayment terms.

## **Exhibit 2**

Newport Beach and Company Audited Financial Statements for the Year Ended June 30, 2021, Accompanying Management Letter dated September 30, 2021

September 30, 2021

To the Board of Directors of  
Newport Beach & Company  
1600 Newport Center Drive  
Newport Beach, California 92660

We have audited the financial statements of Newport Beach & Company (the “Organization”) as of and for the year ended June 30, 2021, and have issued our report thereon dated September 30, 2021. Professional standards require that we advise you of the following matters relating to our audit.

### **Our Responsibility in Relation to the Financial Statement Audit**

As communicated in our engagement letter dated May 20, 2021 our responsibility, as described by professional standards, is to form and express an opinion about whether the financial statements that have been prepared by management with your oversight are presented fairly, in all material respects, in conformity with accounting principles generally accepted in the United States of America. Our audit of the financial statements does not relieve you or management of its respective responsibilities.

Our responsibility, as prescribed by professional standards, is to plan and perform our audit to obtain reasonable, rather than absolute, assurance about whether the financial statements are free of material misstatement. An audit of financial statements includes consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Organization’s internal control over financial reporting. Accordingly, as part of our audit, we considered the internal control of the Organization solely for the purpose of determining our audit procedures and not to provide any assurance concerning such internal control.

We are also responsible for communicating significant matters related to the audit that are, in our professional judgment, relevant to your responsibilities in overseeing the financial reporting process. However, we are not required to design procedures for the purpose of identifying other matters to communicate to you.

### **Planned Scope and Timing of the Audit**

We conducted our audit consistent with the planned scope and timing we previously communicated to you in a letter dated September 7, 2021.

## **Compliance with All Ethics Requirements Regarding Independence**

The engagement team, others in our firm, as appropriate, and our firm have complied with all relevant ethical requirements regarding independence.

As part of the audit, we assisted you in preparing a draft of your financial statements and related notes, a nonattest service. With respect to any nonattest service we performed, the Organization's management has been responsible for (a) making all management decisions and performing all management functions; (b) assigning a competent individual to oversee the services; (c) evaluating the adequacy of the services performed; (d) evaluating and accepting responsibility for the results of the services performed; and (e) establishing and maintaining internal controls, including monitoring ongoing activities.

## **Qualitative Aspects of the Entity's Significant Accounting Practices**

### *Significant Accounting Policies*

Management has the responsibility to select and use appropriate accounting policies. A summary of the significant accounting policies adopted by the Organization is included in Note 2 to the financial statements. Other than the adoption of ASU 2014-09 – *Revenue from Contracts with Customers*, there have been no initial selection of accounting policies and no changes in significant accounting policies or their application during the year ended June 30, 2021. No matters have come to our attention that would require us, under professional standards, to inform you about (1) the methods used to account for significant unusual transactions and (2) the effect of significant accounting policies in controversial or emerging areas for which there is a lack of authoritative guidance or consensus.

### *Significant Accounting Estimates*

Accounting estimates are an integral part of the financial statements prepared by management and are based on management's current judgments. Those judgments are normally based on knowledge and experience about past and current events and assumptions about future events. Certain accounting estimates are particularly sensitive because of their significance to the financial statements and because of the possibility that future events affecting them may differ markedly from management's current judgments. Significant estimates made by the Organization's management include, but are not limited to, the sufficiency of its cash to fund operations for the next twelve months, the collectability of accounts receivable, the recoverability of long-lived assets, and the allocation of expenses to program activities and general and administrative.

- Management's estimate of the sufficiency of its cash and investment resources to fund operations for the next twelve months is based on the Organization's forecast of future income and obligations.

- Management's estimate of the collectability of accounts receivables is based on assessing the potential uncollectible receivables outstanding using the specific identification method.
- Management's estimate of the recoverability of long-lived assets is based on comparing forecasts of undiscounted cash flows expected to result from the use and eventual disposition of the long-lived asset to its carrying value.
- Management's estimate of allocation of expenses to program activities and general and administrative is based on assessing the purpose of the expenditures incurred during the year.

We evaluated the key factors and assumptions used to develop the estimates and determined that they are reasonable in relation to the financial statements taken as a whole.

#### *Financial Statement Disclosures*

Certain financial statement disclosures involve significant judgment and are particularly sensitive because of their significance to financial statement users. The most sensitive disclosures affecting the Organization's financial statements relate to related-party transactions.

#### **Identified or Suspected Fraud**

We have not identified or obtained information that indicates that fraud may have occurred.

#### **Significant Difficulties Encountered during the Audit**

We encountered no significant difficulties in dealing with management relating to the performance of the audit.

#### **Uncorrected and Corrected Misstatements**

For purposes of this communication, professional standards require us to accumulate all known and likely misstatements identified during the audit, other than those that we believe are trivial, and communicate them to the appropriate level of management. Further, professional standards require us to also communicate the effect of uncorrected misstatements related to prior periods on the relevant classes of transactions, account balances or disclosures, and the financial statements as a whole. There were no uncorrected misstatements during the year ended June 30, 2021.

In addition, professional standards require us to communicate to you all material, corrected misstatements that were brought to the attention of management as a result of our audit procedures. There were no material corrected misstatements that we identified as a result of our audit procedures that were brought to the attention of, and corrected by, management.

### **Disagreements with Management**

For purposes of this letter, professional standards define a disagreement with management as a matter, whether or not resolved to our satisfaction, concerning a financial accounting, reporting, or auditing matter, which could be significant to the Organization's financial statements or the auditors' report. No such disagreements arose during the course of the audit.

### **Representations Requested from Management**

We have requested certain written representations from management, which are included in the attached letter dated September 30, 2021.

### **Management's Consultations with Other Accountants**

In some cases, management may decide to consult with other accountants about auditing and accounting matters. Management informed us that, and to our knowledge, there were no consultations with other accountants regarding auditing and accounting matters.

### **Other Significant Findings or Issues**

In the normal course of our professional association with the Organization, we generally discuss a variety of matters, including the application of accounting principles and auditing standards, operating and regulatory conditions affecting the Organization, and operational plans and strategies that may affect the risks of material misstatement. None of the matters discussed resulted in a condition to our retention as the Organization's auditors.

This report is intended solely for the information and use of the Board of Directors and management of the Organization, and is not intended to be and should not be used by anyone other than these specified parties.

Very truly yours,

*KMJ Corbin & Company LLP*

KMJ Corbin & Company LLP

# **Attachment C**

Visit Newport Beach Expenditure Compliance Report for the Year Ended  
June 30, 2021

**VISIT NEWPORT BEACH INC.  
(a Non-Profit Organization)**

**EXPENDITURES REPORT**

**For The Year Ended June 30, 2021**

*with*

**INDEPENDENT AUDITORS' REPORT THEREON**

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## Independent Auditors' Report

Board of Directors of  
Visit Newport Beach Inc.

We have examined management's assertion, included in the accompanying Management Statement Regarding Compliance With Certain Provisions of the Agreement Between the City of Newport Beach and Visit Newport Beach Inc. for Tourism Promotion, Branding, and Marketing Services, that Visit Newport Beach Inc. (the "Organization") complied with the provisions in Section 4 of the Agreement Between the City of Newport Beach and Visit Newport Beach Inc. for Tourism Promotion, Branding, and Marketing Services (the "Agreement") regarding the attached 2021 Expenditures Report, summarizing the expenditures of funds received pursuant to the Agreement during the period July 1, 2020 to June 30, 2021. The Organization's management is responsible for its assertion. Our responsibility is to express an opinion on management's assertion about the Organization's compliance with the specified requirements based on our examination.

Our examination was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants. Those standards require that we plan and perform the examination to obtain reasonable assurance about whether management's assertion about compliance with the specified requirements is fairly stated, in all material respects. The nature, timing, and extent of the procedures selected depend on our judgment, including an assessment of the risks of material misstatement of management's assertion, whether due to fraud or error. We believe that the evidence we obtained is sufficient and appropriate to provide a reasonable basis for our opinion.

Our examination does not provide a legal determination on the Organization's compliance with the specified requirements.

In our opinion, management's assertion that Visit Newport Beach Inc. complied with the provisions of Section 4 of the Agreement regarding the attached 2021 Expenditures Report for the year ended June 30, 2021 is fairly stated, in all material respects.

This report is intended solely for the information and use of Visit Newport Beach, Inc. and the City of Newport Beach and is not intended to be and should not be used by anyone other than these specified parties.

*KMJ Corbin & Company LLP*  
KMJ Corbin & Company LLP

Irvine, California  
September 30, 2021



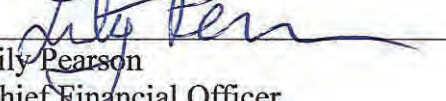
**Management Statement Regarding Compliance With Certain Provisions of the Agreement Between the City of Newport Beach and Visit Newport Beach Inc. for Tourism Promotion, Branding, and Marketing Services**

We, as members of management of Visit Newport Beach Inc. (the “Organization”), are responsible for complying with the provisions of Section 4 of the Agreement Between the City of Newport Beach and Visit Newport Beach Inc. (collectively, the “Parties”) for Tourism Promotion, Branding, and Marketing Services (the “Agreement”) in that funds received by the Organization pursuant to this Agreement were expended in accordance with this Agreement. We are responsible for establishing and maintaining effective internal controls over compliance with the provisions of Section 4 of the Agreement. We have performed an evaluation of the Organization’s compliance with the provisions of Section 4 of the Agreement regarding funds expended during the year ended June 30, 2021, as summarized in the attached 2021 Expenditures Report. Based on this evaluation, we assert that the Organization was in compliance with the provisions of Section 4 of the Agreement as described below:

Section 4 of the Agreement requires the Organization to “develop, plan, carry out, and supervise a program to market and promote the Newport Beach brand and to promote tourism in, and serve the needs of, visitors to Newport Beach as well as increase the amount of TOT collected through their promotional activities (“Services”). Subject to the foregoing sentence, the Services shall, at a minimum, include the following: (a) the maintenance of suitable office space and the employment of competent personnel to carry out the promotional, branding and marketing duties; (b) the preparation of brochures, publications, guides, on-line promotions, social network efforts, and other marketing materials and information that inform prospective tourists and visitors of the recreational activities, cultural assets, shopping and dining opportunities, night-time stay opportunities, and natural beauty of Newport Beach; (c) the dissemination of information described in this section by way of the media, direct mail, handouts, social networking, websites, smart phone applications, or other means of distribution; and (d) the development and implementation of specific marketing programs designed to increase awareness of the Newport Beach brand and to increase business and visitor trade in Newport Beach; and (e) any additional Services when proposed by the City which are consistent with the promotion of tourism and the Newport Beach brand which are mutually agreeable and acceptable to the Parties.”

Visit Newport Beach Inc.

By   
Gary Sherwin  
President/CEO

By   
Lily Pearson  
Chief Financial Officer

# VISIT NEWPORT BEACH, INC.

## 2021 Expenditures Report

**July 1, 2020 -  
June 30, 2021**

<b>2021 Expenses</b>	
General and Administrative Expenses	
Operating Expenses	
64100 - Office Supplies	173
64125 - Computer Software (non-deprec)	5,844
64130 - Voice and Data - Office	79
64145 - Shipping Charges	238
64150 - Bank Fees	290
64160 - Membership Dues	29,888
64170 - Team Meetings	3,750
64175 - Governance Meeting Expenses	750
Total Operating Expenses	<u>41,012</u>
Insurance	
63100 - General Liability Insurance	1,337
63300 - Board of Directors Insurance	2,488
Total Insurance	<u>3,825</u>
Professional Fees	
64207 - Bloggers	5,121
64201 - Audit Fees	4,000
64202 - Tax Preparation Fees	1,000
Total Professional Fees	<u>10,121</u>
Miscellaneous Expense	
64350 - Interest Expense	4,046
Total Miscellaneous Expense	<u>4,046</u>
Total General and Administrative	<u>59,004</u>
Advertising Expenses	
66101 - Advertising - Purchased	252,081
66102 - Advertising - Local Events	480
66121 - Promotional Gift Cards	1,250
66202 - Ad Production	19,436
66203 - Creative Design/Development	61,010
66205 - Photography/Video Production	63,618
66212 - Community Sponsorships	150,000
Total Advertising Expenses	<u>547,875</u>
Marketing Expenses	
Community Relations	
67101 - Research	29,540
67102 - Christmas Boat Parade	19,936
67105 - Awards	450
67107 - Promotional Items	236
Total Community Relations	<u>50,162</u>
Marketing Collateral	
67312 - Collateral Distribution	7,650
Total Marketing Collateral	<u>7,650</u>
Digital Marketing	
67501 - Social Media	38,633
67502 - Website Maintenance	45,956
67503 - Online Search Advertising	46,273
67504 - Digital Advertising	11,212
67511 - Digital Lifestyle Channel Production	250
66211 - CRM Maintenance	19,204
Total Digital Marketing	<u>161,528</u>
Communications/Public Relations	
67601 - Media Services	12,816
67602 - Media FAM Tours	1,234
67607 - Media Relations	4,518
67608 - Digital Assets/Media Library	4,794
Total Communications/Public Relations	<u>23,362</u>
Total Marketing Expenses	<u>242,702</u>
International Marketing Initiatives	
67401 - International Brand Awareness Fees	-
67412 - International Brand Events	300
Total International Marketing Initiatives	<u>300</u>
NB&Company Fees	
68001 - NB&Co Fees	1,140,512
Total NB&Company Fees	<u>1,140,512</u>
Total Expenses	<u>1,990,393</u>

**Other Expenditures:**

Fixed asset additions capitalized	-
Website development costs capitalized	-
Change in other prepaid expenses and current liabilities, net	(58,086)
	<u>(58,086)</u>
	<u><u>\$ 1,932,307</u></u>

**NOTES:**

- A** Included in this account are expenditures for or contributions to special events and not-for-profit organizations in Newport Beach as follows:

<b>Vendor</b>	<b>Event</b>	<b>Amount</b>
City of Newport Beach	Arts Sponsorship	150,000
		<u>\$ 150,000</u>

- B** Consist of reimbursements for costs incurred by Newport Beach & Company as follows:

<b>Class of Expense</b>	<b>Amount</b>
Salaries/Benefits	\$ 690,712
Marketing Expenses	\$ 345,677
G&A Overhead	\$ 104,123
	<u>\$ 1,140,512</u>



# NEWPORT BEACH

## City Council Staff Report

October 12, 2021  
Agenda Item No. 15

**TO:** HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

**FROM:** Seimone Jurjis, Community Development Director - 949-644-3232, sjurjis@newportbeachca.gov

**PREPARED BY:** Jaime Murillo, Principal Planner, jmurillo@newportbeachca.gov

**PHONE:** 949-644-3209

**TITLE:** Ordinance No. 2021-22: Zoning Code Amendment Related to Setback Map Corrections (PA2020-006)

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### **ABSTRACT:**

For the City Council's consideration are amendments to Newport Beach Municipal Code NBMC) Title 20 (Planning and Zoning) and NBMC Title 21 (Local Coastal Program Implementation Plan) to correct identified errors in setback maps. The amendments were initiated by the City Council on April 23, 2019, and were recommended for approval by the Planning Commission on July 22, 2021.

### **RECOMMENDATION:**

- a) Conduct a public hearing;
- b) Find this amendment statutorily exempt from the California Environmental Quality Act (CEQA) pursuant to Section 21065 of CEQA and State CEQA Guidelines Sections 15060(c)(2), 15060(c)(3) and 15378. The proposed action is also exempt pursuant to State CEQA Guidelines Section 15061(b)(3) because it has no potential to have a significant effect on the environment;
- c) Waive full reading, direct the City Clerk to read by title only, introduce Ordinance No. 2021-22, *An Ordinance of the City Council of the City of Newport Beach, California, Adopting Zoning Code Amendment No. CA2020-001 to Amend Title 20 (Planning and Zoning) of the City of Newport Beach Municipal Code Correcting Setback Map Errors (PA2020-006)*, and pass to second reading on October 26, 2021; and
- d) Adopt Resolution No. 2021-97, *A Resolution of the City Council of the City of Newport Beach, California, Authorizing Submittal of Local Coastal Program Amendment No. LC2020-001 to the California Coastal Commission to Amend Title 21 (Local Coastal Program Implementation Plan) of the City of Newport Beach Municipal Code Correcting Setback Map Errors (PA2020-006)*.

## **DISCUSSION:**

### Setback Map Background

The City of Newport Beach (City) Planning and Zoning Code (Title 20) and Local Coastal Program Implementation Plan (Title 21) of the Newport Beach Municipal Code (NBMC) have a series of maps that provide minimum setbacks for various, but not all, blocks throughout the City (setback maps). The practice began in 1943 as a way to recognize existing and varying conditions that did not match the citywide, default, front yard setback standard of 20 feet. These maps provide the minimum distance a primary residential structure must be set back from a property line or other identified line such as a bulkhead or abandoned right-of-way line.

These setback maps also serve to illustrate which setback areas should be treated as front yard setback areas for the purposes of regulating accessory structures. For example, the height of fences, hedges and walls within side and rear setbacks are typically allowed up to a height of 6 feet; however, if a side or rear setback area is designated as a front yard by virtue of being depicted on a setback map, the maximum height of such structures would be limited to 42 inches. Some properties may be illustrated on the setback maps with multiple setbacks to be treated as front setbacks.

Currently, the 33 citywide and 26 coastal zone setback maps are the descendants of the original 1943 maps (previously called districting maps), and several of them contain errors and omissions that should be corrected. These errors occurred when the districting maps were converted into the current setback maps as part of the 2010 comprehensive update to Title 20. In 2017, the California Coastal Commission certified Title 21, which incorporated the same setback maps for properties located within the coastal zone. Since the adoption of the 2010 update to Title 20 and certification of Title 21, staff has encountered a number of maps requiring correction.

### Initiation of Amendments

Zoning Code Section 20.66.020 (Initiation of Amendment) provides that a Title 20 code amendment may be initiated by the City Council, with or without a recommendation from the Planning Commission. City Council Policy K-1 (General Plan and Local Coastal Program) provides that a City-sponsored amendment to the certified Local Coastal Program (LCP) shall be initiated by the City Council. The subject amendments were initiated by the City Council on April 23, 2019 (Attachment C).

### Planning Commission Approval

On July 22, 2021, the Planning Commission considered the proposed amendments and adopted Resolution Nos. PC2021-020 and PC2021-021 (Attachments D and E) by a unanimous vote (4- 0), recommending approval of Code Amendment No. CA2020-001 to the City Council and recommending the City Council authorize submittal of Local Coastal Program Amendment No. LC2020-001 to the California Coastal Commission. The meeting minutes are included as Attachment F.

### California Coastal Commission Review (Title 21)

Any amendments to the LCP, including Title 21, must be reviewed and approved by the City Council, with a recommendation from the Planning Commission, prior to submitting the amendment request to the Coastal Commission. The Coastal Commission is the final decision-making authority on amendments to the certified LCP; however, the City retains the ability to reject an LCP amendment in its entirety if the Coastal Commission includes suggested modifications.

Upon approval of the proposed LCP Amendment by the California Coastal Commission, staff will return to the City Council with an ordinance formally adopting the Title 21 amendment to the setback maps.

### Proposed Map Changes

Application of the incorrect setbacks results in development standards that are inconsistent with the existing pattern of development and several homes being considered nonconforming. A nonconforming status would subject these homes to additional development regulations affecting additions and remodels and a loss of buildable area. There was no intent to make these homes nonconforming to setback standards with the 2010 update to Title 20. In some cases, the amendments serve to clarify the correct location these setbacks are measured from, such as a vacated right-of-way line or bulkhead line, to maintain the existing pattern of development on a block. Therefore, these amendments are needed to correct the identified errors in the setback maps and re-establish setbacks consistent with the original districting maps and existing pattern of development.

To illustrate the proposed corrections, Attachment G includes a table and exhibits summarizing the corrections or clarifications needed to each affected Setback Map, including the affected property or properties. For each affected setback map, the exhibits include the proposed setback map, existing setback, historical districting map, and highlighted changes. Setback maps included in Title 21 mirror the Title 20 maps, with the exception that Title 21 maps only illustrate setbacks for properties located within the coastal zone. With the exception of Setback Map S5-A which affects property completely outside the coastal zone, all setback maps affect both Title 20 and Title 21.

The various changes to the setback maps will correct errors and resolve ambiguities to reflect the original intent of the prior districting maps. The changes do not affect the buildable area or floor area of the affected lots. Once the maps are adopted by the City Council, the City will seek approval from the California Coastal Commission for the setback maps within Title 21 (Local Coastal Program Implementation Plan).

### **FISCAL IMPACT:**

There is no fiscal impact related to this item.

**ENVIRONMENTAL REVIEW:**

The action proposed herein is not a project subject to CEQA in accordance with Section 21065 of CEQA and State CEQA Guidelines Sections 15060(c)(2), 15060(c)(3) and 15378. The proposed action is also exempt pursuant to State CEQA Guidelines Section 15061(b)(3) because it has no potential to have a significant effect on the environment. Lastly, pursuant to CEQA Guidelines Section 15265(a)(1), local governments are exempt from the requirements of CEQA in connection with the adoption of a Local Coastal Program. The Amendments themselves do not authorize development that would directly result in physical change to the environment.

**NOTICING:**

The agenda item has been noticed according to the Brown Act (72 hours in advance of the meeting at which the City Council considers the item). In addition, notice of this amendment was published in the Daily Pilot as an eighth-page advertisement, consistent with the provisions of the Municipal Code and State law.

Pursuant to Section 13515 of the California Code of Regulations, a review draft of the LCP Amendment was made available and a Notice of Availability was distributed on July 9, 2021, to all persons and agencies on the Notice of Availability mailing list.

Lastly, a courtesy letter and public hearing notice were mailed to all affected property owners.

**ATTACHMENTS:**

- Attachment A – Ordinance No. 2021-22 (Title 20 Amendment)
- Attachment B – Resolution No. 2021-97 (Title 21 Amendment)
- Attachment C – Resolution No. 2019-41 (Initiation)
- Attachment D – Planning Commission Resolution No. PC2021-020 (Title 20)
- Attachment E – Planning Commission Resolution No. PC2021-021 (Title 21)
- Attachment F – July 22, 2021 Planning Commission Minutes
- Attachment G – Table and Exhibit of Setback Map Corrections
- Attachment H – Director’s Determination No. DD2021-002 (PA2021-115)



## ATTACHMENT A

### ORDINANCE NO. 2021-22

#### **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, ADOPTING ZONING CODE AMENDMENT NO. CA2020-001 TO AMEND TITLE 20 (PLANNING AND ZONING) OF THE CITY OF NEWPORT BEACH MUNICIPAL CODE CORRECTING SETBACK MAP ERRORS (PA2020-006)**

**WHEREAS**, Section 200 of the Charter of the City of Newport Beach ("Charter") vests the City Council with the authority to make and enforce all laws, rules and regulations with respect to municipal affairs subject only to the restrictions and limitations contained in the Charter and the State Constitution, and the power to exercise, or act pursuant to any and all rights, powers, and privileges or procedures granted or prescribed by any law of the State of California;

**WHEREAS**, both Title 20 (Planning and Zoning) ("Title 20") and Title 21 (Local Coastal Program Implementation Plan) ("Title 21") of the Newport Beach Municipal Code ("NBMC") incorporate a series of maps that provide minimum setbacks for various, but not all, blocks throughout the City;

**WHEREAS**, the practice began in 1943 as a way to recognize existing and varying conditions that did not match the citywide default front yard setback standard of 20 feet;

**WHEREAS**, the current setback maps are the descendants of the original 1943 maps (previously called districting maps), and several of them contain errors and omissions that occurred when the districting maps were converted into the current setback maps as part of the 2010 comprehensive update to Title 20 (Planning and Zoning);

**WHEREAS**, in 2017, the California Coastal Commission certified Title 21 (Local Coastal Program Implementation Plan), which incorporated the same setback maps for properties located within the coastal zone;

**WHEREAS**, application of the incorrect setbacks results in development standards that are inconsistent with the existing pattern of development and several homes being considered nonconforming, which subjects these homes to additional development regulations affecting additions and remodels and a loss of buildable area;

**WHEREAS**, an amendment to Title 20 (Planning and Zoning) is necessary to correct identified errors to various setback maps ("Zoning Code Amendment");

**WHEREAS**, the Zoning Code Amendment serves to clarify the correct location these setbacks are measured from, such as a vacated right-of-way line or bulkhead line, to maintain the existing pattern of development on a block, to correct identified errors in the setback maps and re-establish setbacks consistent with the original districting maps and existing pattern of development;

**WHEREAS**, on April 23, 2019, the City Council initiated the Zoning Code Amendment under Resolution No. 2019-41;

**WHEREAS**, the Planning Commission held a public hearing on July 22, 2021, in the Council Chambers located at 100 Civic Center Drive, Newport Beach, California. A notice of time, place and purpose of the public hearing was given in accordance with the California Government Code Section 54950 *et seq.* ("Ralph M. Brown Act") and Chapter 20.62 (Public Hearings) of the NBMC. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this public hearing;

**WHEREAS**, at the conclusion of the hearing, the Planning Commission adopted Resolution No. PC2021-020 by a unanimous vote (4 ayes, 0 naves) recommending to the City Council approval of Zoning Code Amendment No. CA2020-001; and

**WHEREAS**, the City Council held a public hearing on October 12, 2021, in the Council Chambers located at 100 Civic Center Drive, Newport Beach, California. A notice of time, place and purpose of the public hearing was given in accordance with the Ralph M. Brown Act and Chapter 20.62 (Public Hearings) of the NBMC. Evidence, both written and oral, was presented to, and considered by, the City Council at this public hearing.

**NOW THEREFORE**, the City Council of the City of Newport Beach ordains as follows:

**Section 1:** The City Council does hereby approve Zoning Code Amendment No. CA2020-001 amending Setback Map Nos. S-1A – West Newport, S-2A – Balboa Peninsula, S-2E – Balboa Peninsula, S-2F – Balboa Peninsula, S-2G Balboa Peninsula, S-5A – Newport Heights, S-6 – Cliff Haven / Bay Shores, S-8 – Harbor Island, S-10A – Corona del Mar, S-10B – Corona del Mar, and S-10D – Corona del Mar contained within NBMC Section 20.80.040 (Setback Maps) as set forth in Exhibit "A," which is attached hereto and incorporated herein by reference.

**Section 2:** An amendment to Title 21 (Local Coastal Program Implementation Plan) is also underway pursuant to Resolution 2021-\_\_ to approve LCP Amendment No. LC2020-001. Zoning Code Amendment No. CA2020-001 shall not apply to projects located in the coastal zone for which Title 21 is applicable until approval of the LCP Amendment No. LC2020-001 by the California Coastal Commission and adoption, including any modification suggested by the California Coastal Commission, by resolution and/or ordinance of the City Council.

**Section 3:** The recitals provided in this ordinance are true and correct and are incorporated into the substantive portion of this ordinance.

**Section 4:** If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

**Section 5:** City Council finds the introduction and adoption of this ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to Section 15061(b)(3), of Title 14, Division 6, Chapter 3 of the California Code of Regulations ("CEQA Guidelines") the general rule that CEQA applies only to projects, which have the potential for causing a significant effect on the environment. The Zoning Code Amendment corrects errors in setback maps that are inconsistent with historically established setbacks and generally reflects setbacks that are consistent with existing development on the affected lots. The Zoning Code Amendment does not authorize any new development that would directly result in physical change to the environment.

**Section 6:** Except as expressly modified in this ordinance, all other sections, subsections, terms, clauses and phrases set forth in the Newport Beach Municipal Code shall remain unchanged and shall be in full force and effect.

**Section 7:** The Mayor shall sign and the City Clerk shall attest to the passage of this ordinance. The City Clerk shall cause the ordinance, or a summary thereof, to be published pursuant to City Charter Section 414.

This ordinance was introduced at a regular meeting of the City Council of the City of Newport Beach held on the 12th day of October, 2021, and adopted on the 26th day of October, 2021, by the following vote, to-wit:

AYES, COUNCILMEMBERS \_\_\_\_\_

NOES, COUNCILMEMBERS \_\_\_\_\_

ABSENT COUNCILMEMBERS \_\_\_\_\_

\_\_\_\_\_  
BRAD AVERY, MAYOR

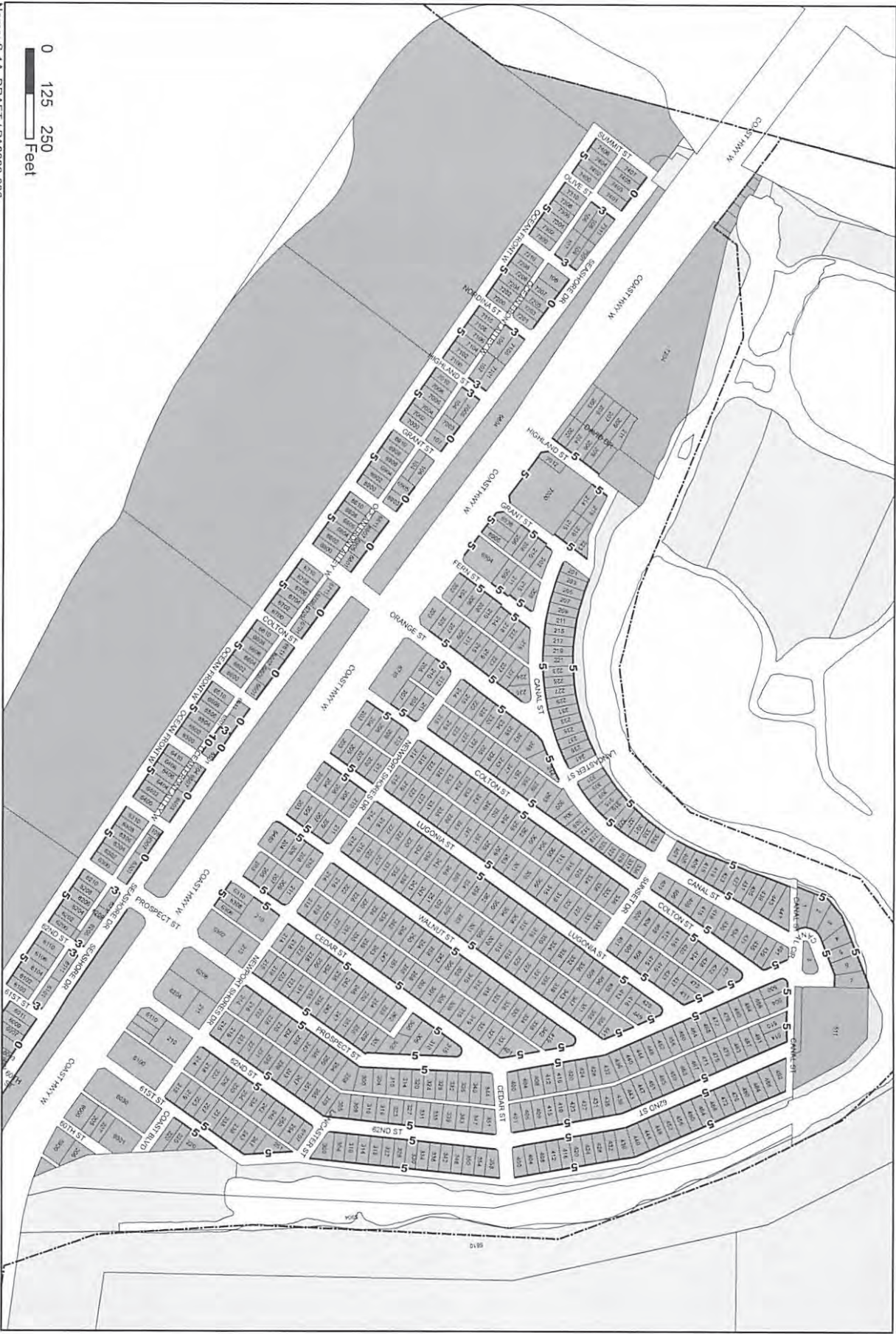
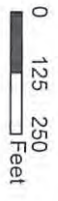
**ATTEST:**

\_\_\_\_\_  
LEILANI I. BROWN, CITY CLERK

**APPROVED AS TO FORM:**  
CITY ATTORNEY'S OFFICE

  
\_\_\_\_\_  
AARON C. HARP, CITY ATTORNEY

Attachment(s):      Exhibit A- Revised Title 20 Setback Maps



**S-1A - West Newport**

**Setback Map**



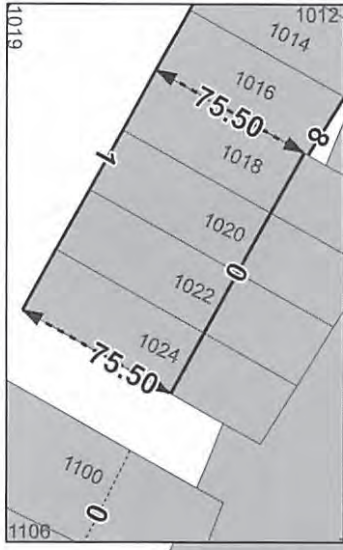
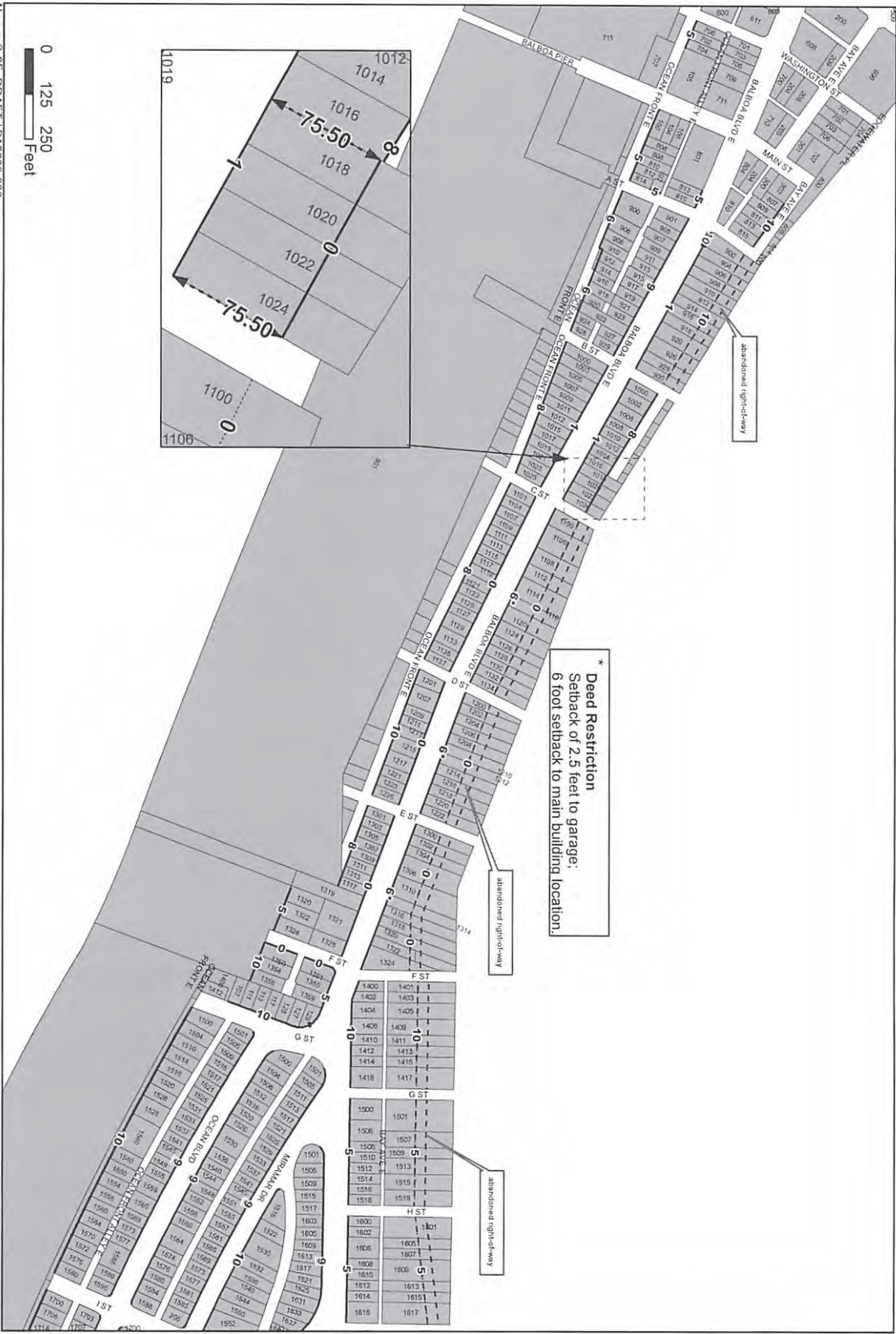
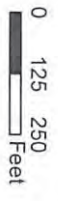
S-2A - Balboa Peninsula

Setback Map



S-2E - Balboa Peninsula

Setback Map

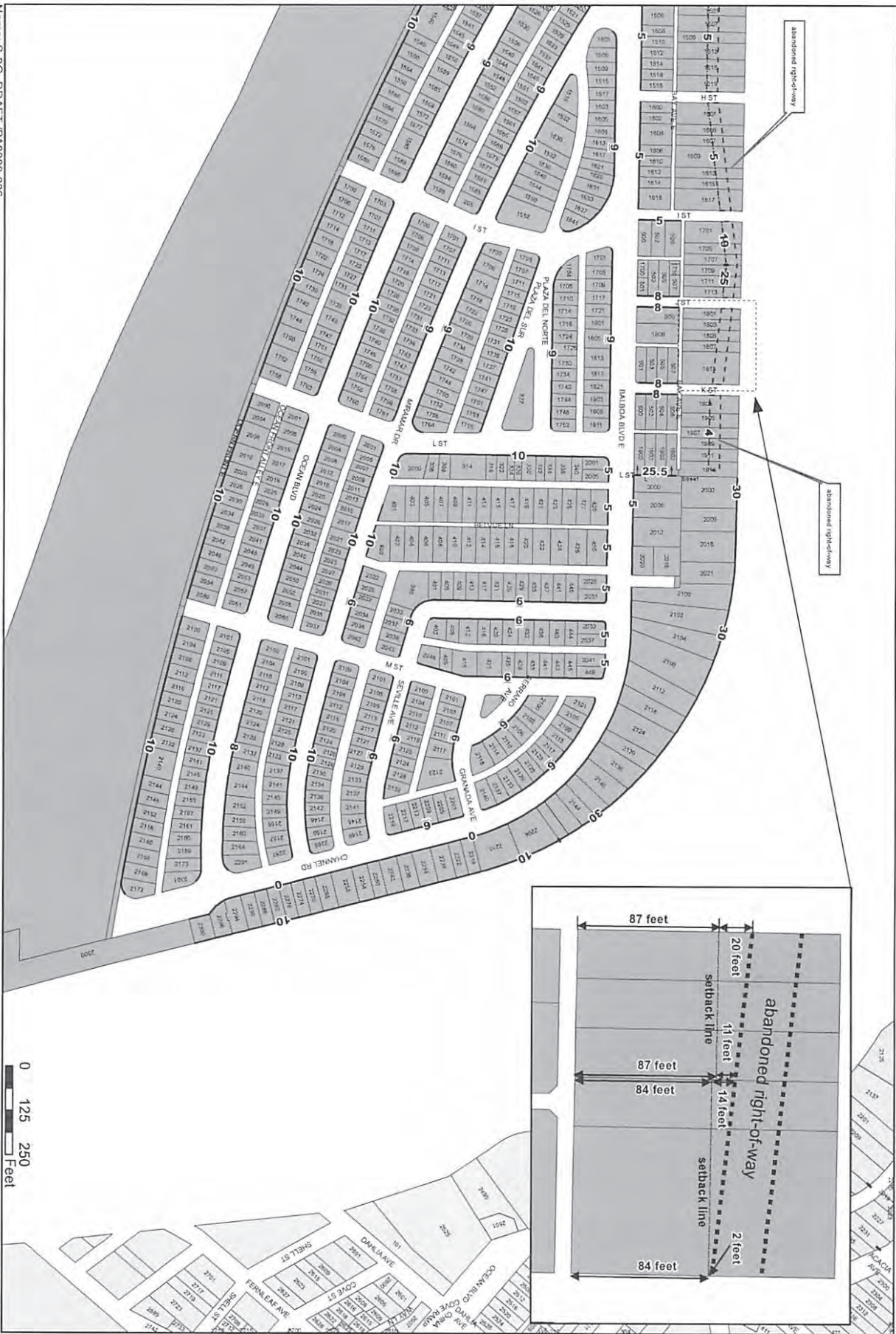


\* Deed Restriction  
Setback of 2.5 feet to garage;  
6 foot setback to main building location.

S-2F - Balboa Peninsula

Setback Map





S-2G - Balboa Peninsula

Setback Map

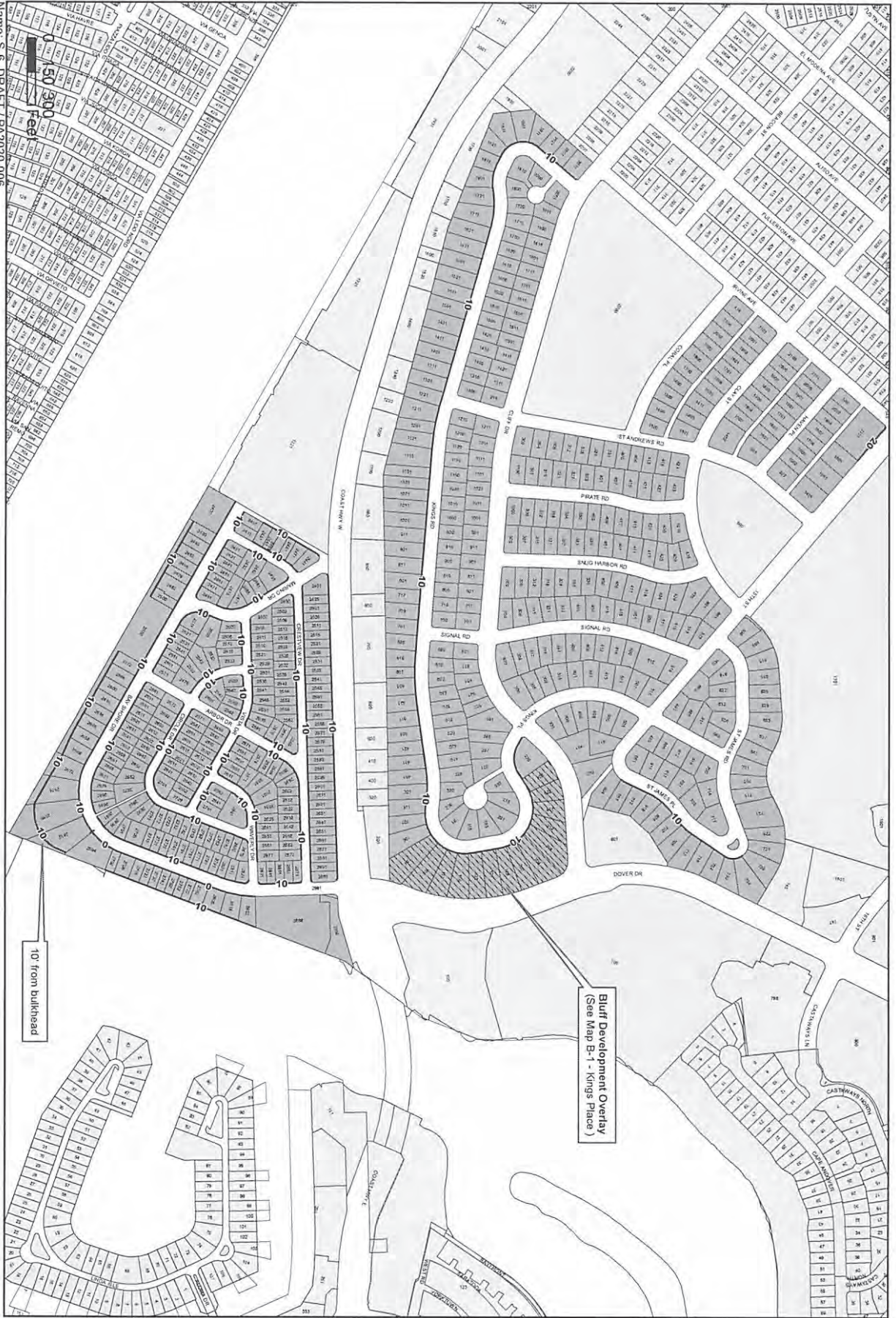
Name: S-5A\_DRAFT\_PA2020-006



**S-5A - Newport Heights**

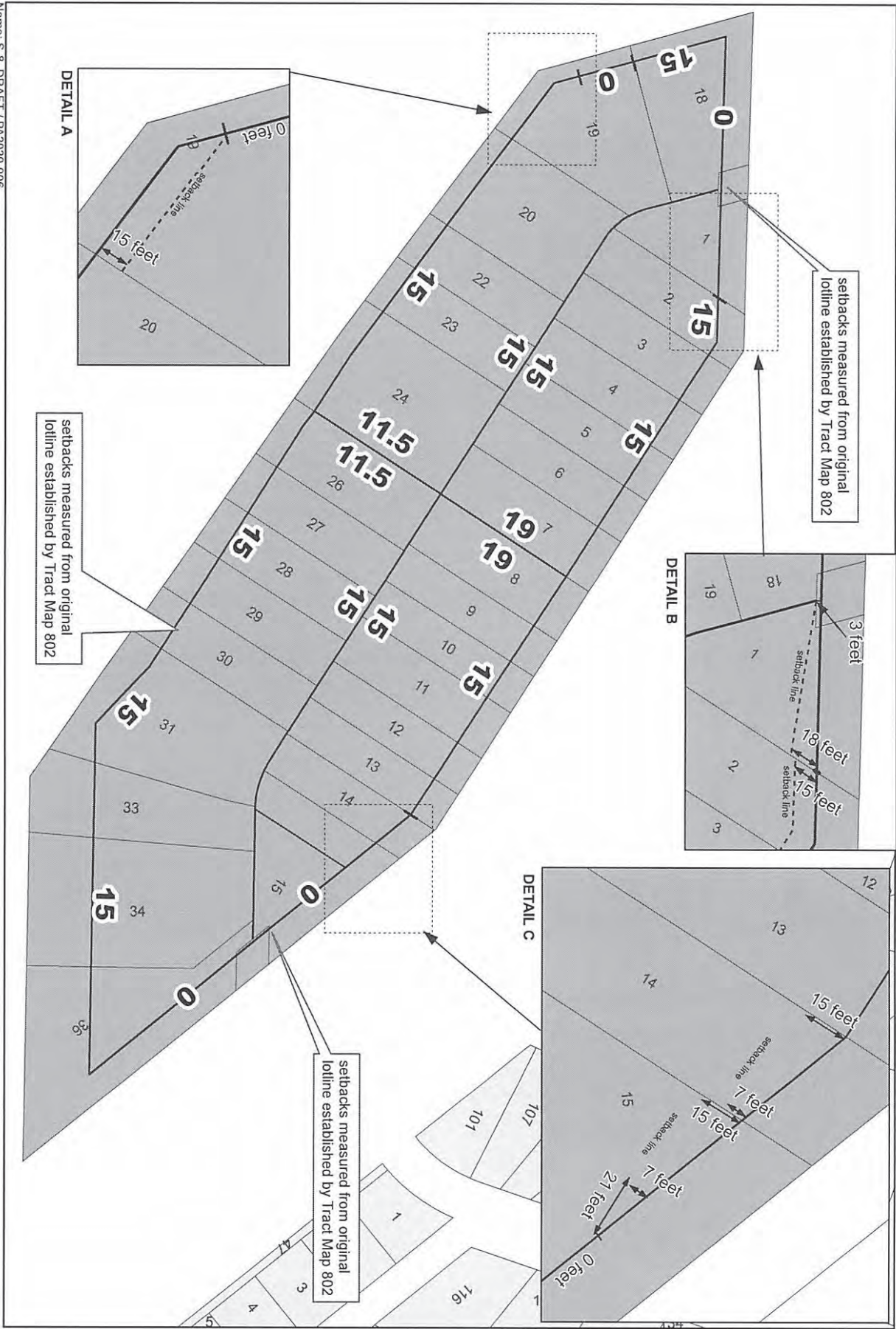
**Setback Map**

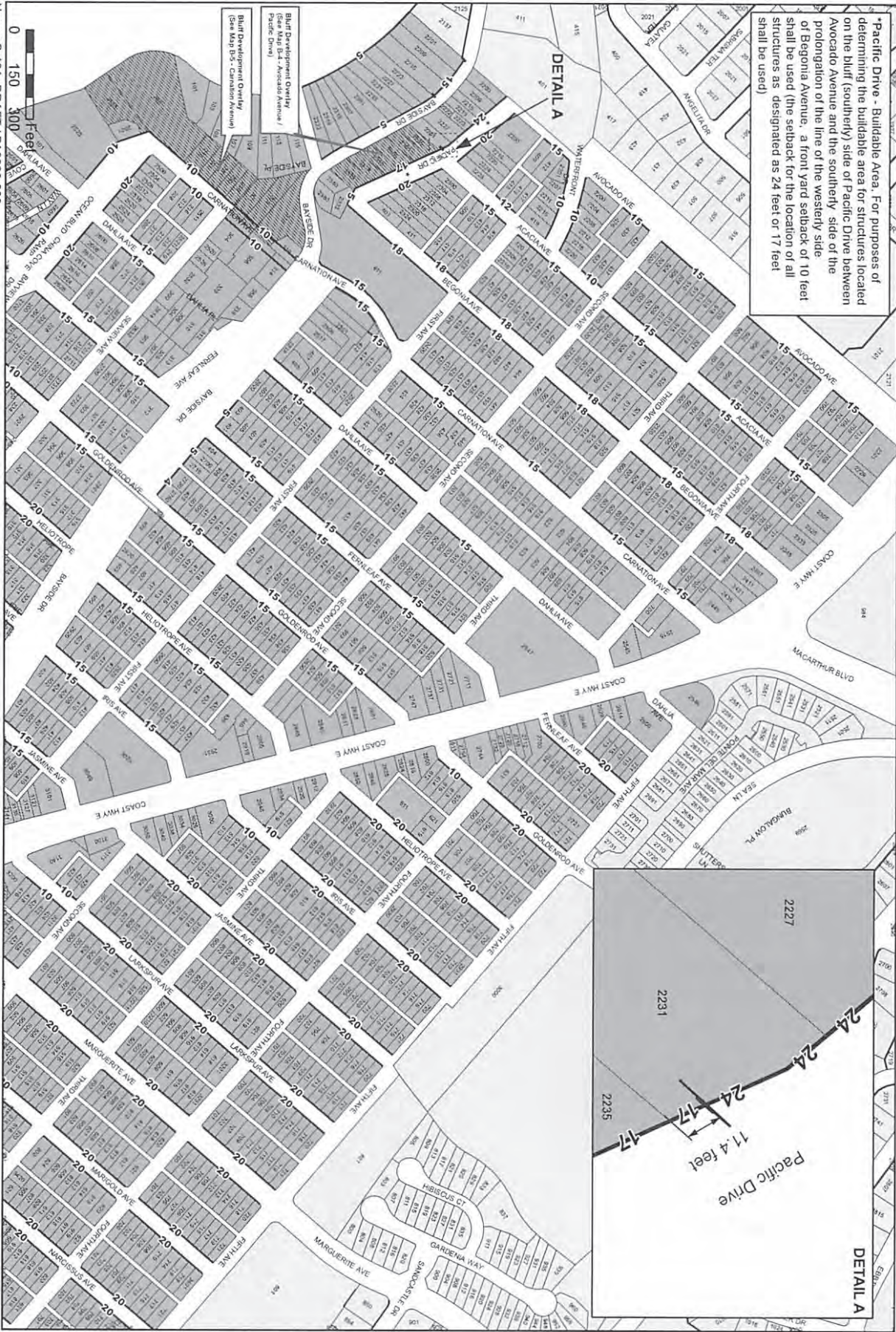
Name: S-6 - DRAFT / PA2020-006

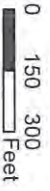


**S-6 - Cliff Haven / Bay Shores**

**Setback Map**





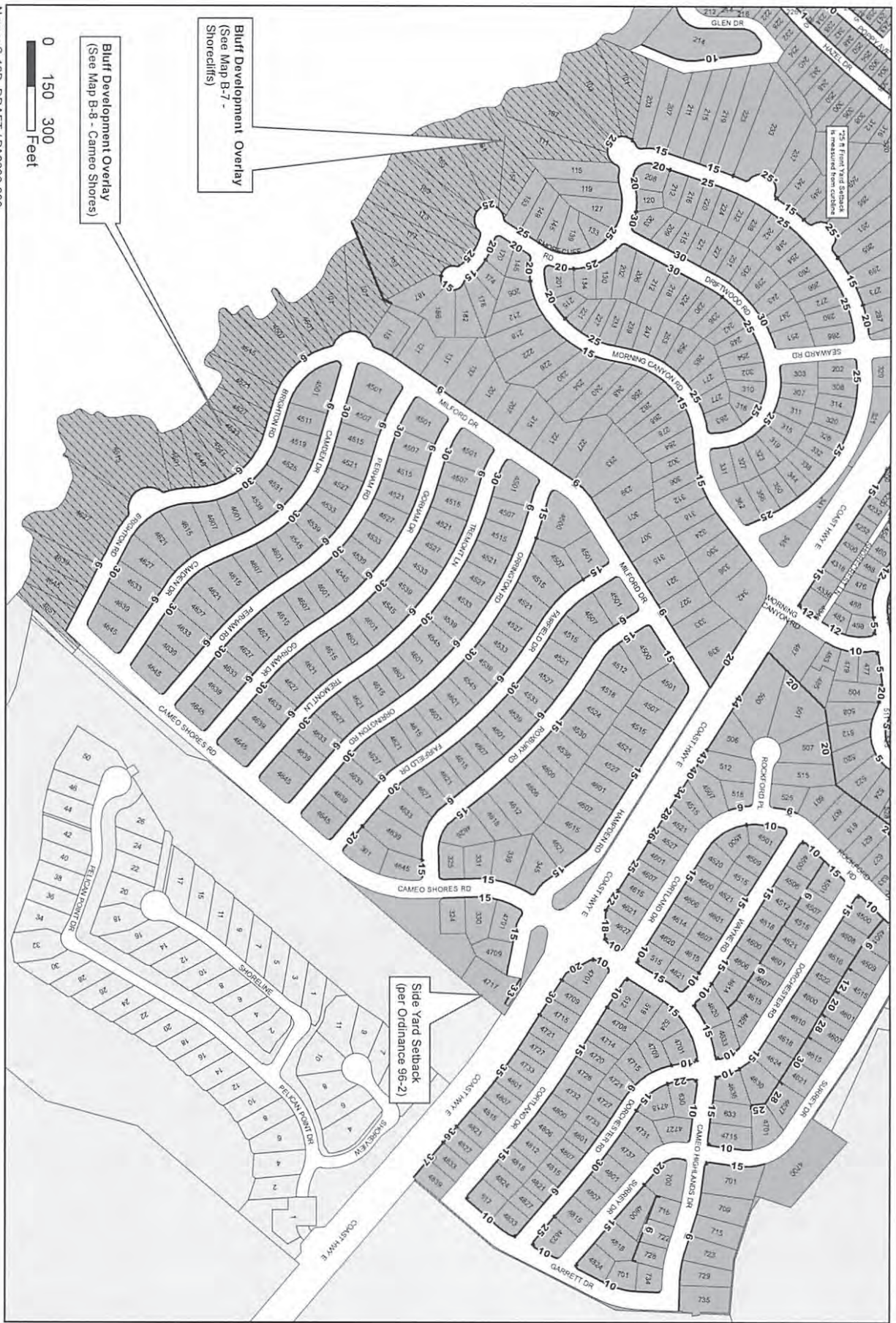


Bluff Development Overlay  
(See Map B-6 - Ocean Boulevard / Breakers Drive)

Bluff Development Overlay  
(See Map B-6 - Ocean Boulevard / Breakers Drive)

25' Front Yard Setback  
Frontal Street Frontal Setback

S-10B - Corona del Mar Setback Map



# S-10D - Corona del Mar

# Setback Map





## ATTACHMENT B

### RESOLUTION NO. 2021- 97

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, AUTHORIZING SUBMITTAL OF LOCAL COASTAL PROGRAM AMENDMENT NO. LC2020-001 TO THE CALIFORNIA COASTAL COMMISSION TO AMEND TITLE 21 (LOCAL COASTAL PROGRAM IMPLEMENTATION PLAN) OF THE CITY OF NEWPORT BEACH MUNICIPAL CODE CORRECTING SETBACK MAP ERRORS (PA2020-006)**

**WHEREAS**, Section 200 of the Charter of the City of Newport Beach ("Charter") vests the City Council with the authority to make and enforce all laws, rules and regulations with respect to municipal affairs subject only to the restrictions and limitations contained in the Charter and the State Constitution, and the power to exercise, or act pursuant to any and all rights, powers, and privileges or procedures granted or prescribed by any law of the State of California;

**WHEREAS**, Section 30500 of the California Public Resources Code requires each county and city to prepare a Local Coastal Program ("LCP") for that portion of the coastal zone within its jurisdiction;

**WHEREAS**, an amendment to Title 21 (Local Coastal Program Implementation Plan) is necessary to correct identified errors to various setback maps ("LCP Amendment");

**WHEREAS**, in 2005, the City of Newport Beach ("City") adopted the City of Newport Beach Local Coastal Program Coastal Land Use Plan as amended from time to time including most recently on September 14, 2021, via City Council Resolution No. 2021-79;

**WHEREAS**, the California Coastal Commission effectively certified the City's Local Coastal Program Implementation Plan on January 13, 2017, and the City added Title 21 (Local Coastal Program Implementation Plan) ("Title 21") to the City of Newport Beach Municipal Code ("NBMC") whereby the City assumed coastal development permit-issuing authority on January 30, 2017;

**WHEREAS**, both Title 20 (Planning and Zoning Code) ("Title 20") and Title 21 (Local Coastal Implementation Plan) of the NBMC incorporate a series of maps that provide minimum setbacks for various, but not all, blocks throughout the City;

**WHEREAS**, the practice began in 1943 as a way to recognize existing and varying conditions that did not match the citywide default front yard setback standard of 20 feet;

**WHEREAS**, the current setback maps are the descendants of the original 1943 maps (previously called districting maps), and several of them contain errors and omissions that occurred when the districting maps were converted into the current setback maps as part of the 2010 comprehensive update to Title 20 (Planning and Zoning);

**WHEREAS**, in 2017, the California Coastal Commission certified Title 21 (Local Coastal Implementation Plan), which incorporated the same setback maps for properties located within the coastal zone;

**WHEREAS**, application of the incorrect setbacks results in development standards that are inconsistent with the existing pattern of development and several homes being considered nonconforming, which subjects these homes to additional development regulations affecting additions and remodels and a loss of buildable area;

**WHEREAS**, the Zoning Code and LCP Amendments serves to clarify the correct location these setbacks are measured from, such as a vacated right-of-way line or bulkhead line, to maintain the existing pattern of development on a block, to correct identified errors in the setback maps and re-establish setbacks consistent with the original districting maps and existing pattern of development;

**WHEREAS**, on April 23, 2019, the City Council initiated the LCP Amendment under City Council Resolution No. 2019-41;

**WHEREAS**, pursuant to Section 13515 (Public Participation and Agency Coordination Procedures) of the California Code of Regulations Title 14, Division 5.5, Chapter 8, Subchapter 2, Article 5, drafts of LCP Amendment No. LC2020-001 were made available and a notice of availability was distributed at least six weeks prior to the City Council public hearing;

**WHEREAS**, the Planning Commission held a public hearing on July 22, 2021, in the Council Chambers located at 100 Civic Center Drive, Newport Beach, California. A notice of time, place and purpose of the public hearing was given in accordance with the California Government Code Section 54950 *et seq.* ("Ralph M. Brown Act") and Chapter 21.62 (Public Hearings) of the NBMC. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this public hearing;

**WHEREAS**, at the conclusion of the hearing, the Planning Commission adopted Resolution No. PC2021-021 by a unanimous vote (4 ayes, 0 nays) recommending to the City Council approval of Local Coastal Program Amendment No. LC2020-001; and

**WHEREAS**, the City Council held a public hearing on October 12, 2021, in the Council Chambers located at 100 Civic Center Drive, Newport Beach, California. A notice of time, place and purpose of the public hearing was given in accordance with the Ralph M. Brown Act and Chapter 21.62 (Public Hearings) of the NBMC. Evidence, both written and oral, was presented to, and considered by, the City Council at this public hearing.

**NOW, THEREFORE**, the City Council of the City of Newport Beach resolves as follows:

**Section 1:** The City Council does hereby authorize City staff to submit Local Coastal Program Amendment No. LC2020-001, amending Setback Map Nos. S-1A – West Newport, S-2A – Balboa Peninsula, S-2E – Balboa Peninsula, S-2F – Balboa Peninsula, S-2G - Balboa Peninsula, S-6 – Bay Shores, S-8 – Harbor Island, S-10A – Corona del Mar, S-10B – Corona del Mar, and S-10D – Corona del Mar contained within NBMC Section 21.80.040 (Setback Maps) as set forth in Exhibit "A," which is attached hereto and incorporated herein by reference, to the California Coastal Commission for review and approval.

**Section 2:** Local Coastal Program Amendment No. LC2020-001 shall not become effective until approval by the California Coastal Commission and adoption, including any modifications suggested by the California Coastal Commission, by resolution(s) and/or ordinance(s) of the City Council.

**Section 3:** The Local Coastal Program including Local Coastal Program Amendment No. LC2020-001, will be carried out in full conformance with the California Coastal Act of 1976 as set forth in the California Public Resources Code Section 30000 *et seq.*

**Section 4:** The recitals provided in this resolution are true and correct and are incorporated into the operative part of this resolution.

**Section 5:** If any section, subsection, sentence, clause or phrase of this resolution is, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this resolution. The City Council hereby declares that it would have passed this resolution, and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

**Section 6:** The City Council finds the LCP Amendment is exempt pursuant to California Environmental Quality Act ("CEQA") Section 15061(b)(3), of Title 14, Division 6, Chapter 3 of the California Code of Regulations ("CEQA Guidelines") the general rule that CEQA applies only to projects, which have the potential for causing a significant effect on the environment. The LCP Amendment corrects errors in setback maps that are inconsistent with historically established setbacks and generally reflects setbacks that are consistent with existing development on the affected lots. The LCP Amendment does not authorize any new development that would directly result in physical change to the environment. Additionally, pursuant to CEQA Guidelines Section 15265(a)(1), local governments are exempt from the requirements of CEQA in connection with the adoption of a Local Coastal Program.

**Section 7:** This resolution shall take effect immediately upon its adoption by the City Council, and the City Clerk shall certify the vote adopting the resolution.


**ADOPTED** this 12th day of October 2021.

\_\_\_\_\_  
Brad Avery  
Mayor

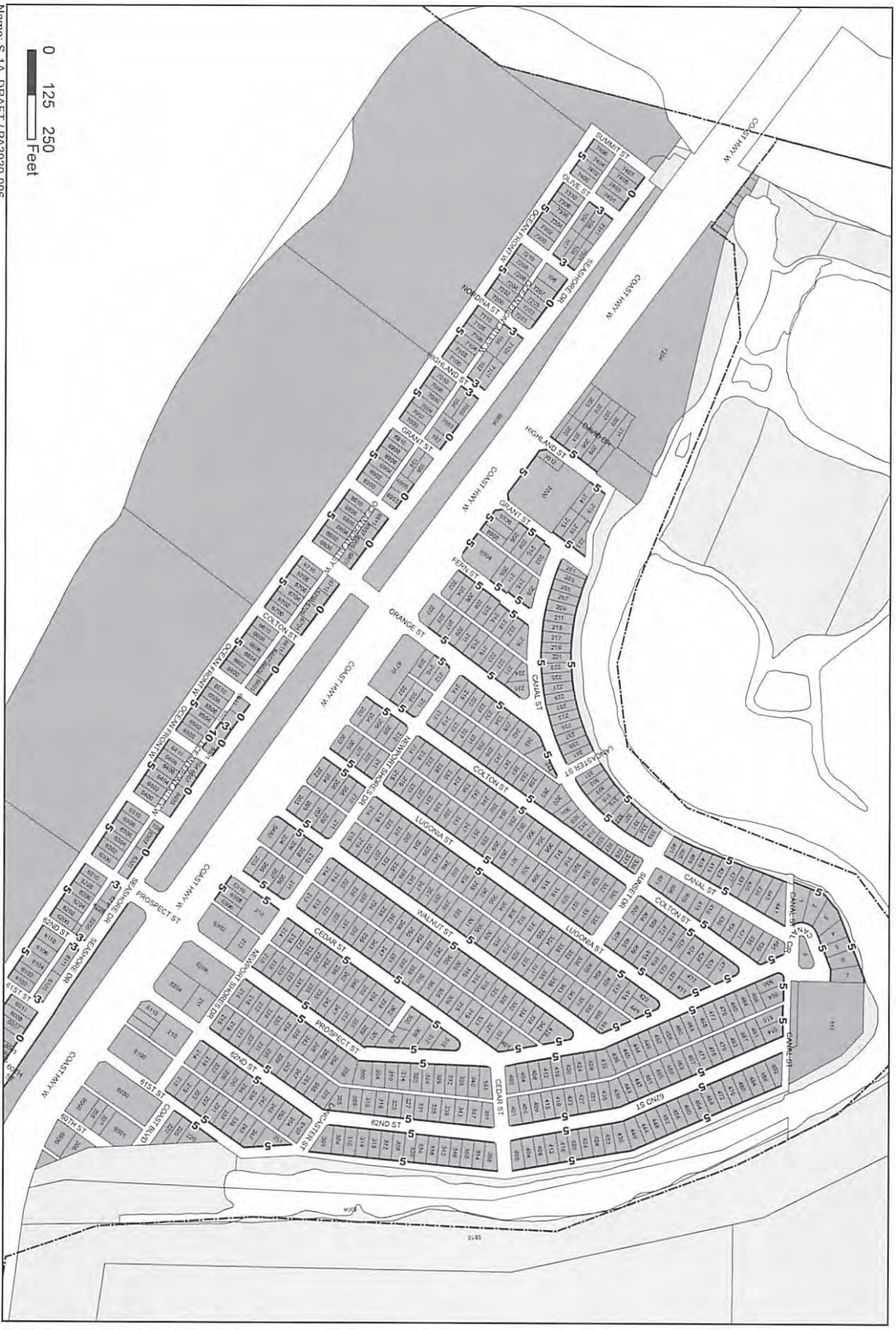
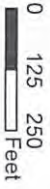
**ATTEST:**

\_\_\_\_\_  
Leilani I. Brown  
City Clerk

**APPROVED AS TO FORM:**  
CITY ATTORNEY'S OFFICE

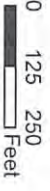
  
\_\_\_\_\_  
Aaron C. Harp  
City Attorney

Attachment(s):      Exhibit A- Title 21 Setback Map Revisions



S-1A - West Newport

Setback Map



S-2A - Balboa Peninsula

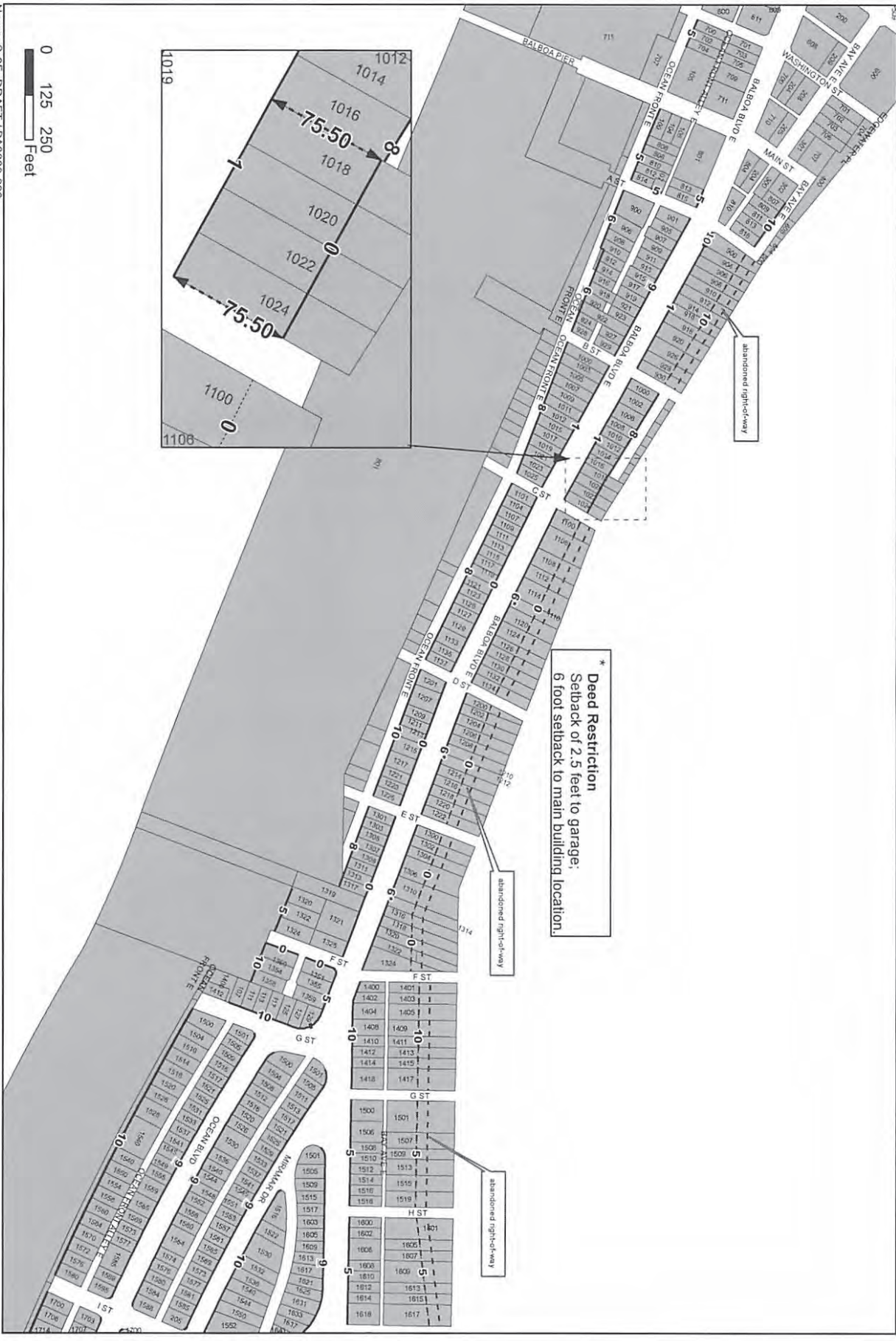
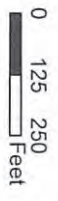
Setback Map



S-2E - Balboa Peninsula

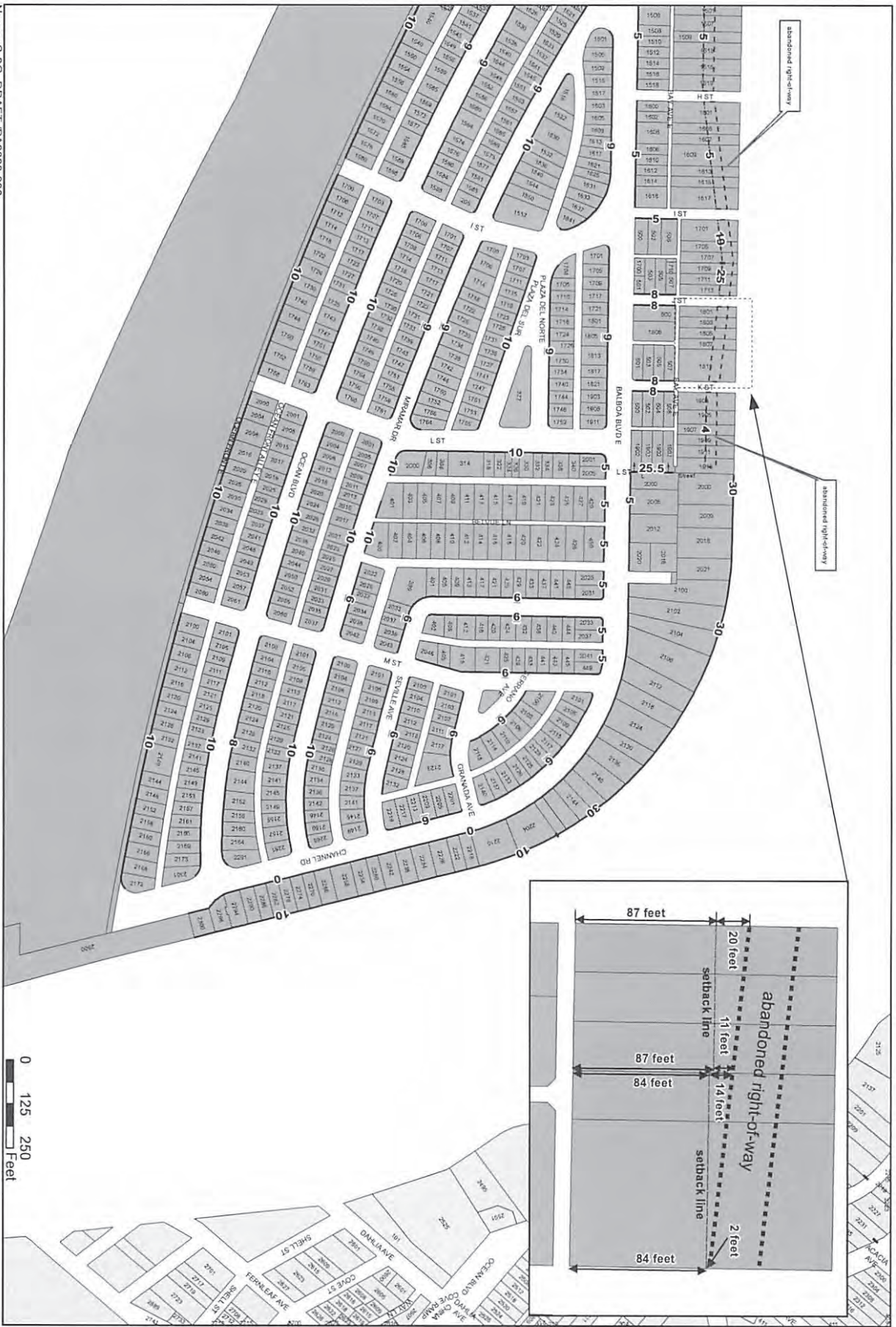
Setback Map





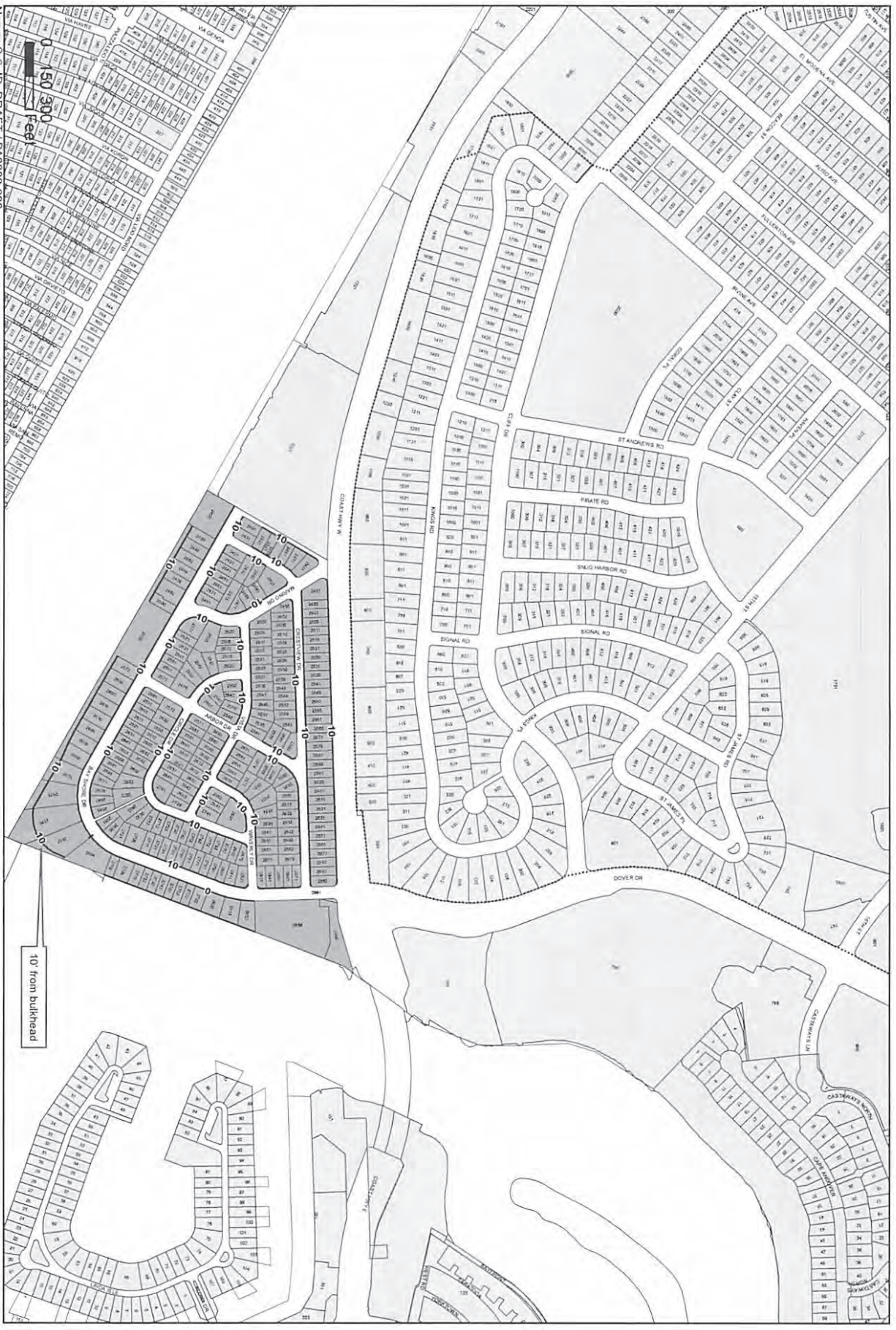
S-2F - Balboa Peninsula

Setback Map



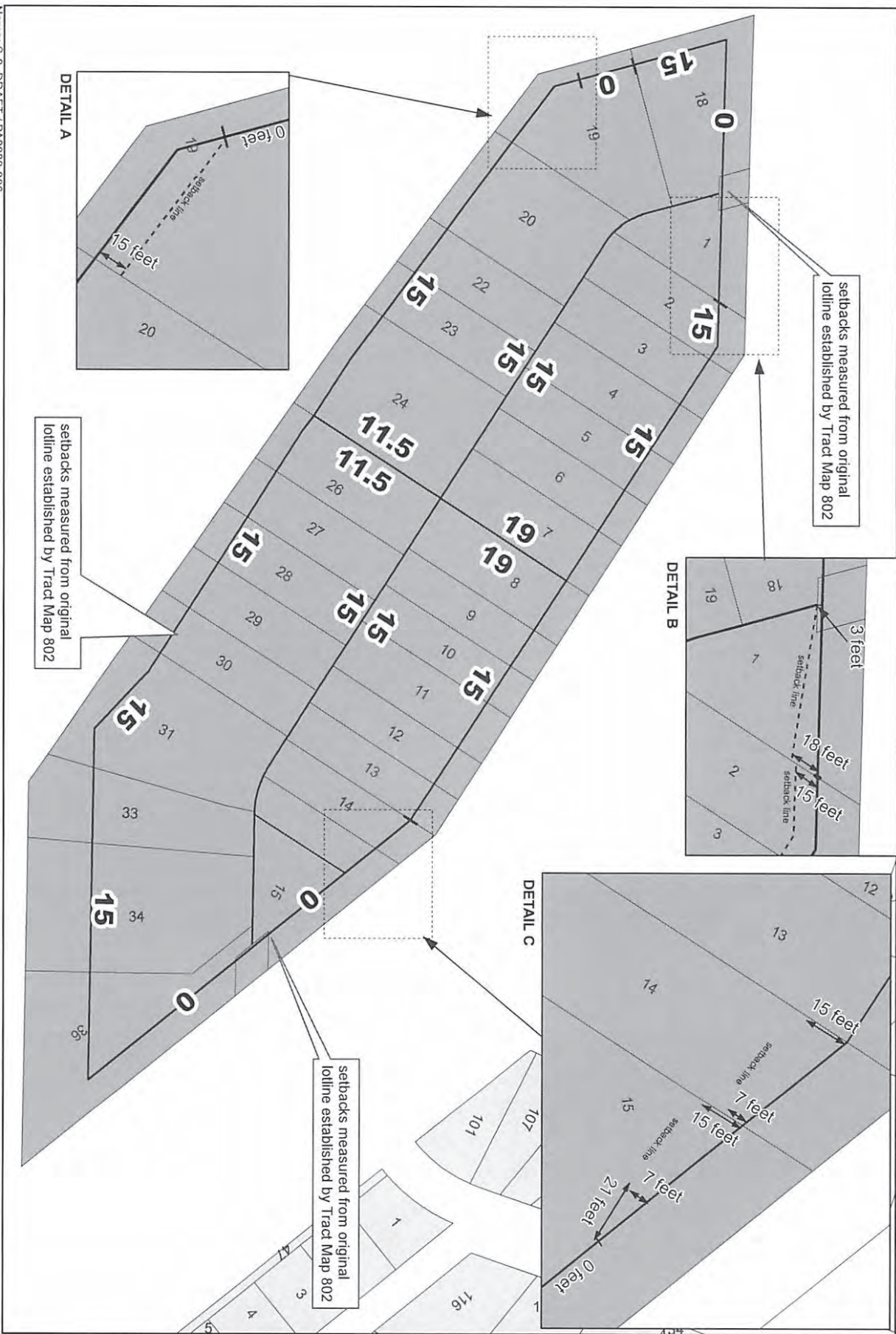
S-2G - Balboa Peninsula

Setback Map



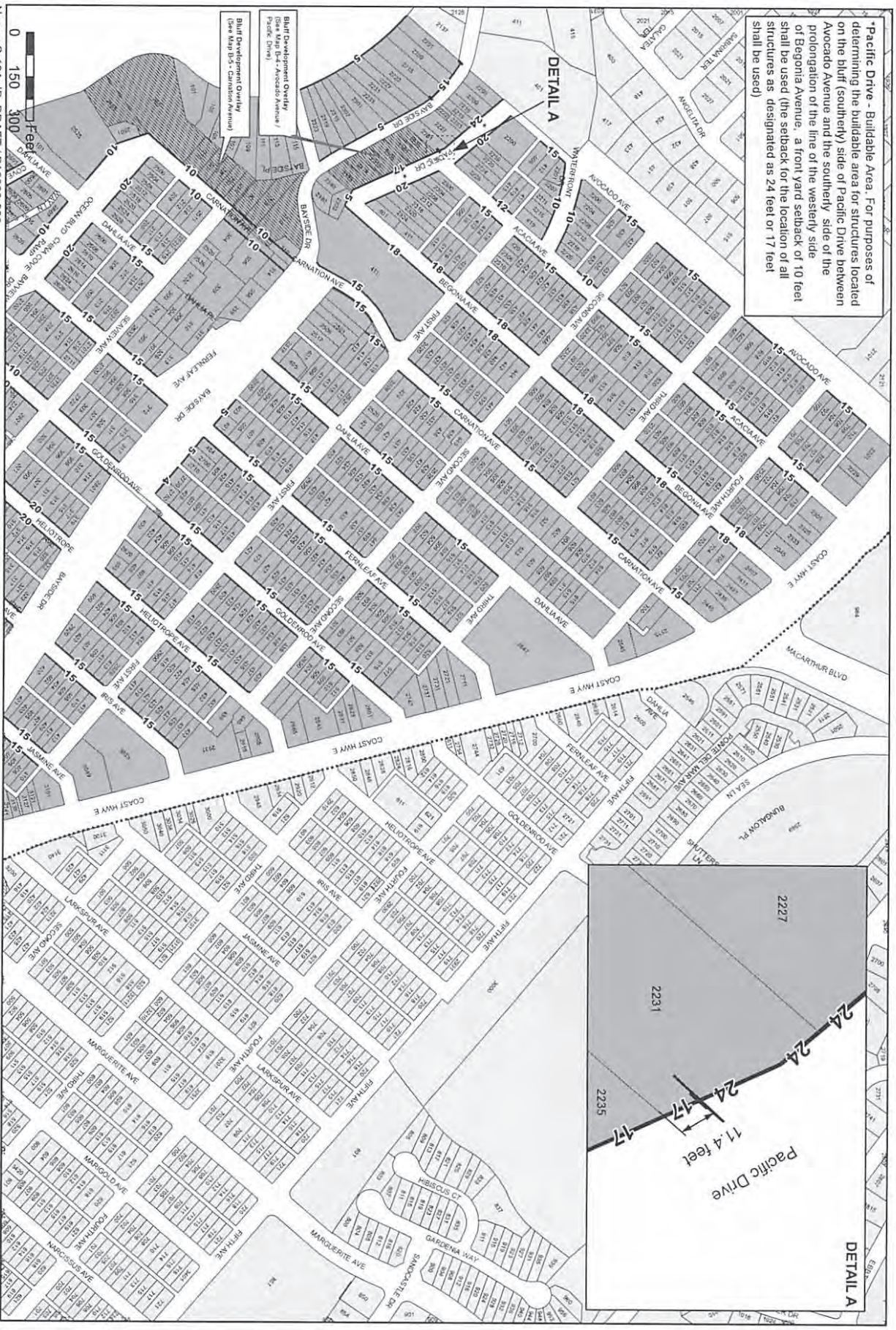
**S-6 - Bay Shores**

**Setback Map**



S-8 - Harbor Island

Setback Map



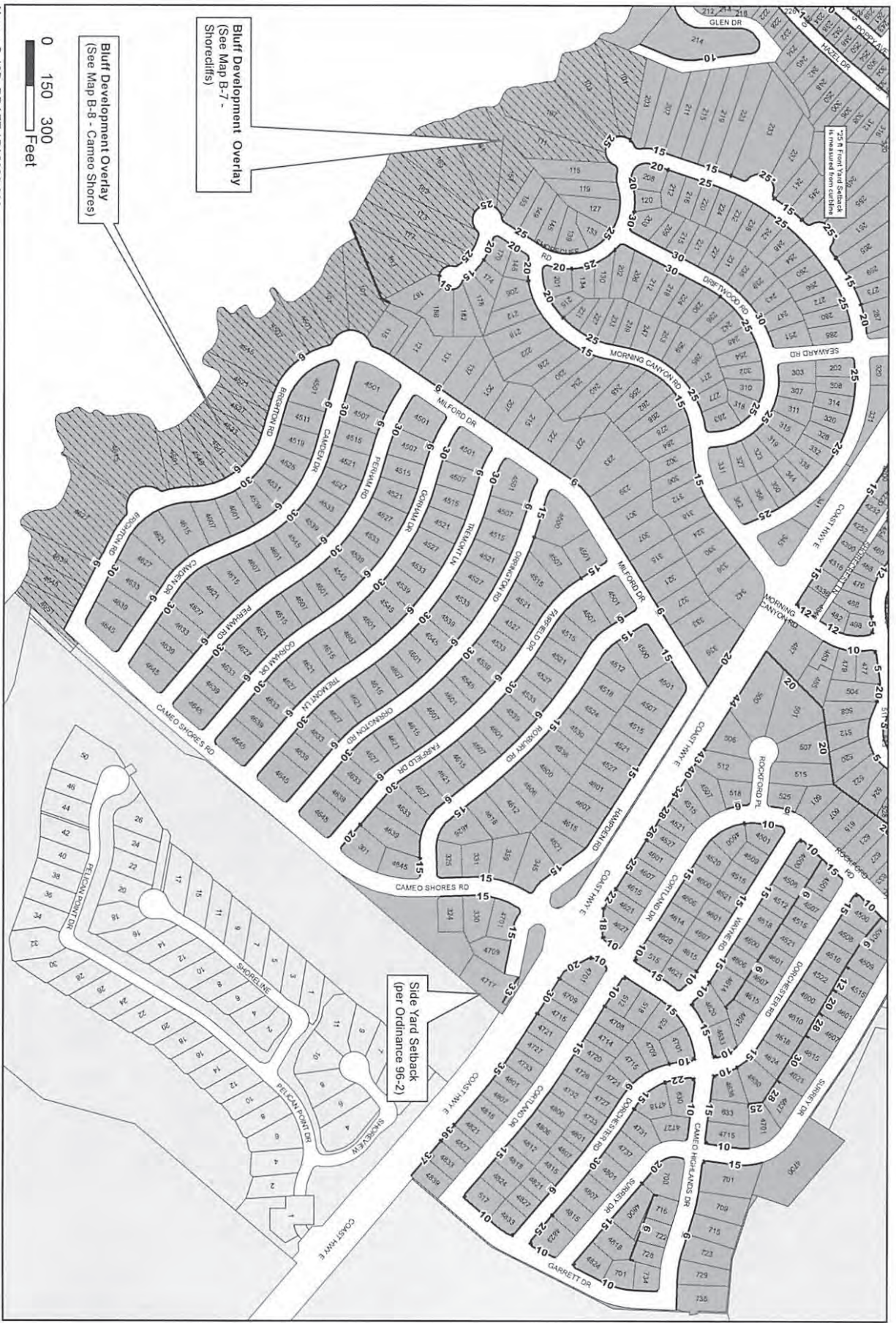
**S-10A - Corona del Mar**

**Setback Map**



# S-10B - Corona del Mar

# Setback Map



**S-10D - Corona del Mar** **Setback Map**





# **Attachment C**

Resolution No. 2019-41 (Initiation)

## RESOLUTION NO. 2019-41

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, INITIATING AMENDMENTS TO TITLE 20 ENTITLED "PLANNING AND ZONING" AND TITLE 21 ENTITLED "LOCAL COASTAL PROGRAM IMPLEMENTATION PLAN" OF THE CITY OF NEWPORT BEACH MUNICIPAL CODE RELATED TO MINIMUM LOT SIZE AND DIMENSIONS, OVERLAY ZONING DISTRICTS, PUBLIC HEARING NOTIFICATION, CORRECTIONS TO SETBACK MAPS AND THE TRANSFER OF DEVELOPMENT RIGHTS (PA2019-055)**

**WHEREAS**, Newport Beach Municipal Code ("NBMC") Section 20.66.020 provides that the City Council of the City of Newport Beach ("City Council") may initiate an amendment to the Zoning Code with or without a recommendation from the Planning Commission;

**WHEREAS**, City Council Policy K-1 entitled "General Plan and Local Coastal Program" requires amendments to the City of Newport Beach certified Local Coastal Program codified in NBMC Title 21 to be initiated by the City Council; and

**WHEREAS**, the City Council desires to amend NBMC Title 20 and Title 21 to modify regulations relating to minimum lot size and dimensions, overlay zoning districts, public hearing notification, corrections to setback maps, and the transfer of development rights.

**NOW, THEREFORE**, the City Council of the City of Newport Beach resolves as follows:

**Section 1:** The City Council hereby initiates amendments to NBMC Title 20 "Planning and Zoning" and Title 21 "Local Coastal Program Implementation Plan" to modify regulations relating to minimum lot size and dimensions, overlay zoning districts, public hearing notification, corrections to setback maps, and the transfer of development rights.

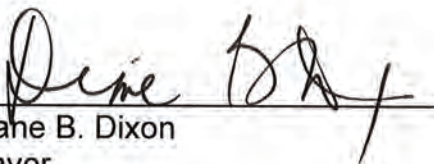
**Section 2:** If any section, subsection, sentence, clause or phrase of this resolution is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this resolution. The City Council hereby declares that it would have passed this resolution and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

**Section 3:** The recitals provided in this resolution are true and correct and are incorporated into the substantive portion of this resolution.

**Section 4:** The City Council finds the adoption of this resolution is exempt from environmental review under the California Environmental Quality Act ("CEQA") pursuant to Section 15262 of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it involves feasibility or planning studies for possible future actions which the agency, board, or commission has not approved or adopted.

**Section 5:** This resolution shall take effect immediately upon its adoption by the City Council, and the City Clerk shall certify the vote adopting this resolution.

**ADOPTED** this 23<sup>rd</sup> day of April, 2019.

  
Diane B. Dixon  
Mayor

ATTEST:

  
Leilani I. Brown  
City Clerk



**APPROVED AS TO FORM:**  
CITY ATTORNEY'S OFFICE

  
for Aaron C. Harp  
City Attorney

STATE OF CALIFORNIA  
COUNTY OF ORANGE  
CITY OF NEWPORT BEACH

}  
}  
} ss.

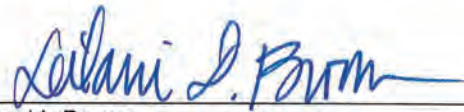
I, Leilani I. Brown, City Clerk of the City of Newport Beach, California, do hereby certify that the whole number of members of the City Council is seven; the foregoing resolution, being Resolution No. 2019-41 was duly introduced before and adopted by the City Council of said City at a regular meeting of said Council held on the 23<sup>rd</sup> day of April, 2019; and the same was so passed and adopted by the following vote, to wit:

AYES: Council Member Brad Avery, Council Member Joy Brenner, Council Member Duffy Duffield, Council Member Jeff Herdman, Council Member Kevin Muldoon, Mayor Diane Dixon

NAYS: None

RECUSED: Mayor Pro Tem Will O'Neill

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the official seal of said City this 24<sup>th</sup> day of April, 2019.



\_\_\_\_\_  
Leilani I. Brown  
City Clerk  
Newport Beach, California



# **Attachment D**

Planning Commission Resolution No. PC2021-020  
(Title 20)

## RESOLUTION NO. PC2021-020

### **A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH, CALIFORNIA, RECOMMENDING THE CITY COUNCIL ADOPT ZONING CODE AMENDMENT NO. CA2020-001 TO AMEND TITLE 20 (PLANNING AND ZONING) OF THE CITY OF NEWPORT BEACH MUNICIPAL CODE CORRECTING SETBACK MAP ERRORS (PA2020-006)**

THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

#### SECTION 1. STATEMENT OF FACTS.

1. Both Title 20 (Planning and Zoning) (“Title 20”) and Title 21 (Local Coastal Program Implementation Plan) (“Title 21”) of the Newport Beach Municipal Code (“NBMC”) have a series of maps that provide minimum setbacks for various, but not all, blocks throughout the City (“setback maps”). The practice began in 1943 as a way to recognize existing and varying conditions that did not match the citywide default front yard setback standard of 20 feet.
2. The current setback maps are the descendants of the original 1943 maps (previously called districting maps), and several of them contain errors and omissions that should be corrected. These errors occurred when the districting maps were converted into the current setback maps as part of the 2010 comprehensive update to Title 20. In 2017, the California Coastal Commission certified Title 21, which incorporated the same setback maps for properties located within the coastal zone.
3. An amendment to Title 20 is necessary to correct identified errors to various setback maps (“Zoning Code Amendment”).
4. On April 23, 2019, the City Council initiated the Zoning Code Amendment under Resolution No. 2019-41 authorizing staff to make corrections to the setback maps.
5. A public hearing was held on July 22, 2021, in the Council Chambers located at 100 Civic Center Drive, Newport Beach, California. A notice of time, place and purpose of the public hearing was given in accordance with the California Government Code Section 54950 *et seq.* (“Ralph M. Brown Act”) and Chapter 20.62 (Public Hearings) of the NBMC. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this public hearing.

#### SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This Zoning Code Amendment is exempt pursuant to California Environmental Quality Act (“CEQA”) Section 15061(b)(3) of Title 14, Chapter 3 of the California Code of Regulations (“CEQA Guidelines”), the general rule that CEQA applies only to projects, which have the potential for causing a significant effect on the environment. This amendment corrects errors in setback maps that are inconsistent with historically

established setbacks and generally reflects setbacks that are consistent with existing development on the affected lots. The Zoning Code Amendment does not authorize any new development that would directly result in physical change to the environment.

**SECTION 3. REQUIRED FINDINGS.**

1. Application of the incorrect setbacks results in development standards that are inconsistent with the existing pattern of development and several homes being considered nonconforming. A nonconforming status would subject these homes to additional development regulations affecting additions and remodels and a loss of buildable area. There was no intent to make these homes nonconforming to setback standards. In some cases, the amendments serve to clarify the correct location these setbacks are measured from, such as a vacated right-of-way line or bulkhead line, to maintain the existing pattern of development on a block. This Zoning Code Amendment is needed to correct the identified errors in the setback maps and re-establish setbacks consistent with the original districting maps and existing pattern of development.

**SECTION 4. DECISION.**

**NOW, THEREFORE, BE IT RESOLVED:**

1. The Planning Commission finds the proposed Zoning Code Amendment is exempt pursuant to Section 15061(b)(3), and Section 15265(a)(1), of the CEQA Guidelines because it has no potential to have a significant effect on the environment and local governments are exempt from the requirements of CEQA in connection with the adoption of a Local Coastal Program.
2. The Planning Commission of the City of Newport Beach hereby recommends the City Council approve Code Amendment No. CA2020-001 to amend Setback Map Nos. S-1A – West Newport, S-2A – Balboa Peninsula, S-2E – Balboa Peninsula, S-2F – Balboa Peninsula, S-2G Balboa Peninsula, S-5A – Newport Heights, S-6 – Cliff Haven / Bay Shores, S-8 – Harbor Island, S-10A – Corona del Mar, S-10B – Corona del Mar, S-10D – Corona del Mar contained within NBMC Section 20.80.040 (Setback Maps) as set forth in Exhibit “A,” which is attached hereto and incorporated herein by reference.

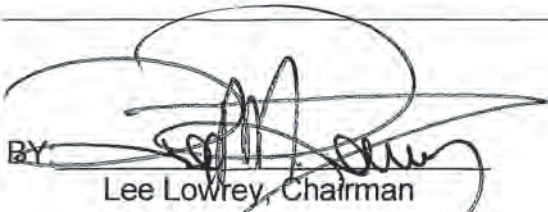
**PASSED, APPROVED, AND ADOPTED THIS 22ND DAY OF JULY, 2021.**


AYES: Koetting, Lowrey, Rosene, and Weigand

NOES:

ABSTAIN: Ellmore

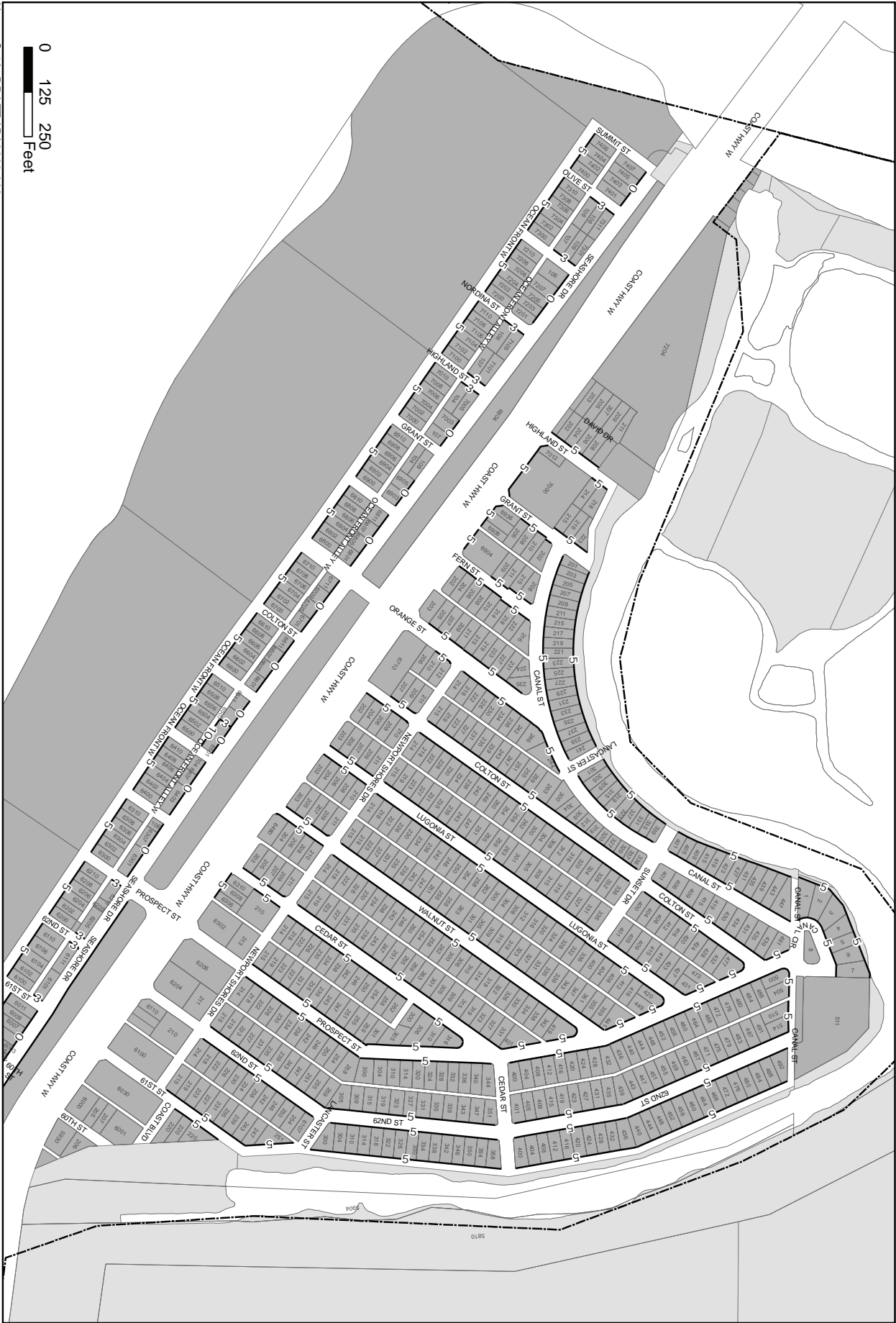
ABSENT: Klaustermeier and Kleiman

BY:   
Lee Lowrey, Chairman

BY:   
Curtis Ellmore, Secretary

Attachment: Exhibit A – Title 20 Setback Maps





**S-1A - West Newport**

**Setback Map**



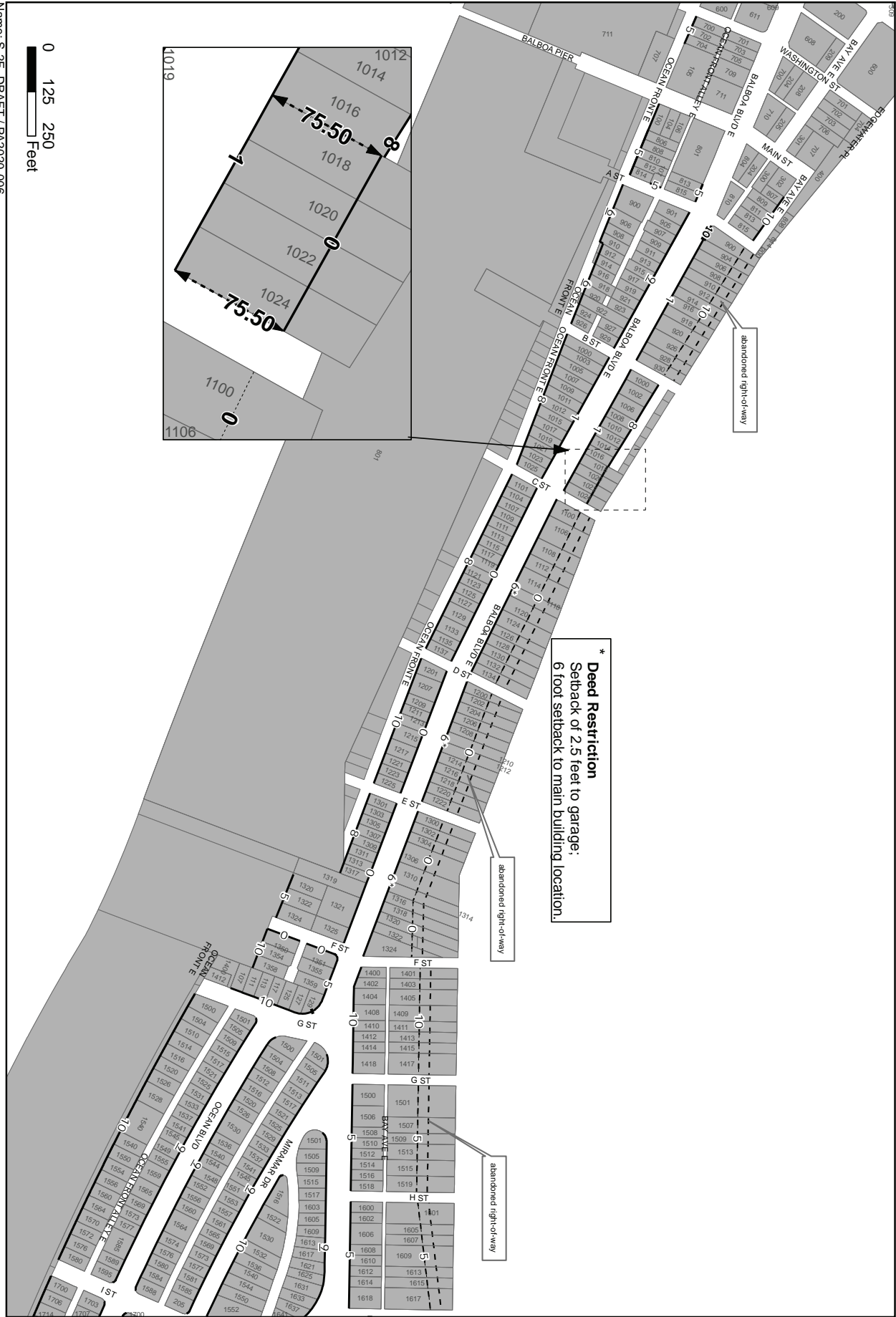
# S-2A - Balboa Peninsula

# Setback Map



S-2E - Balboa Peninsula

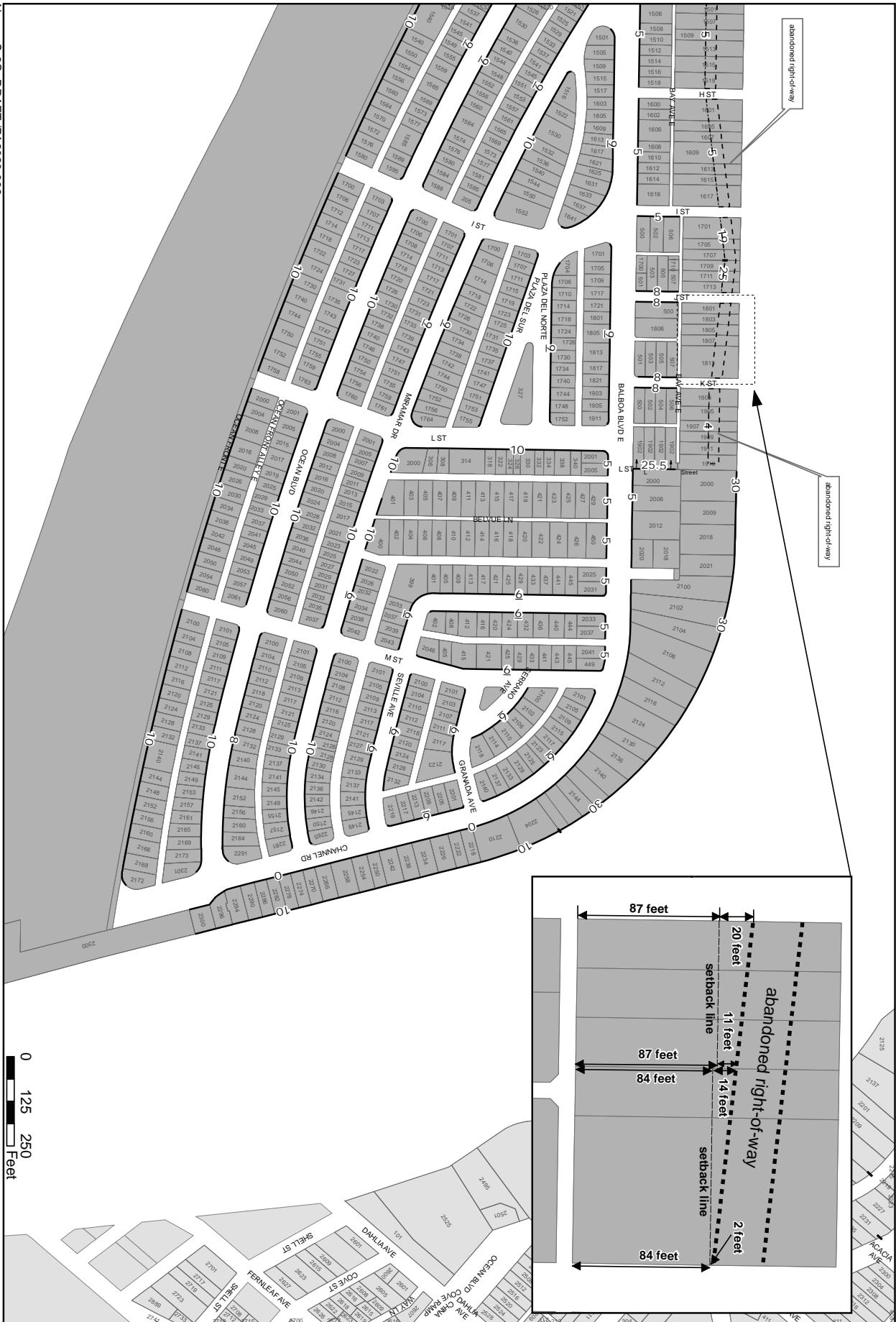
Setback Map



Name: S-2F\_DRAFT / PA2020-006

**S-2F - Balboa Peninsula**

**Setback Map**



# S-2G - Balboa Peninsula

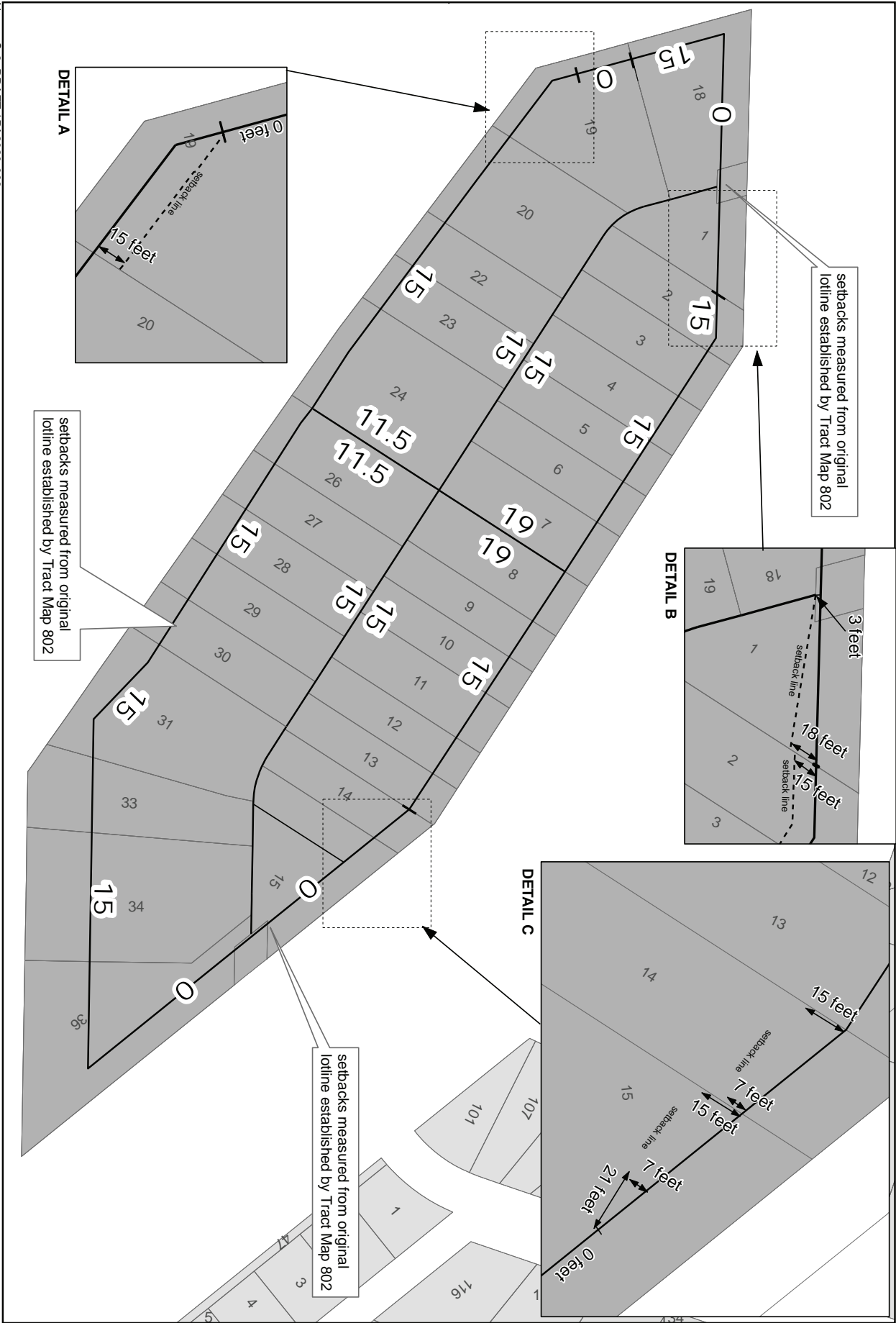
# Setback Map



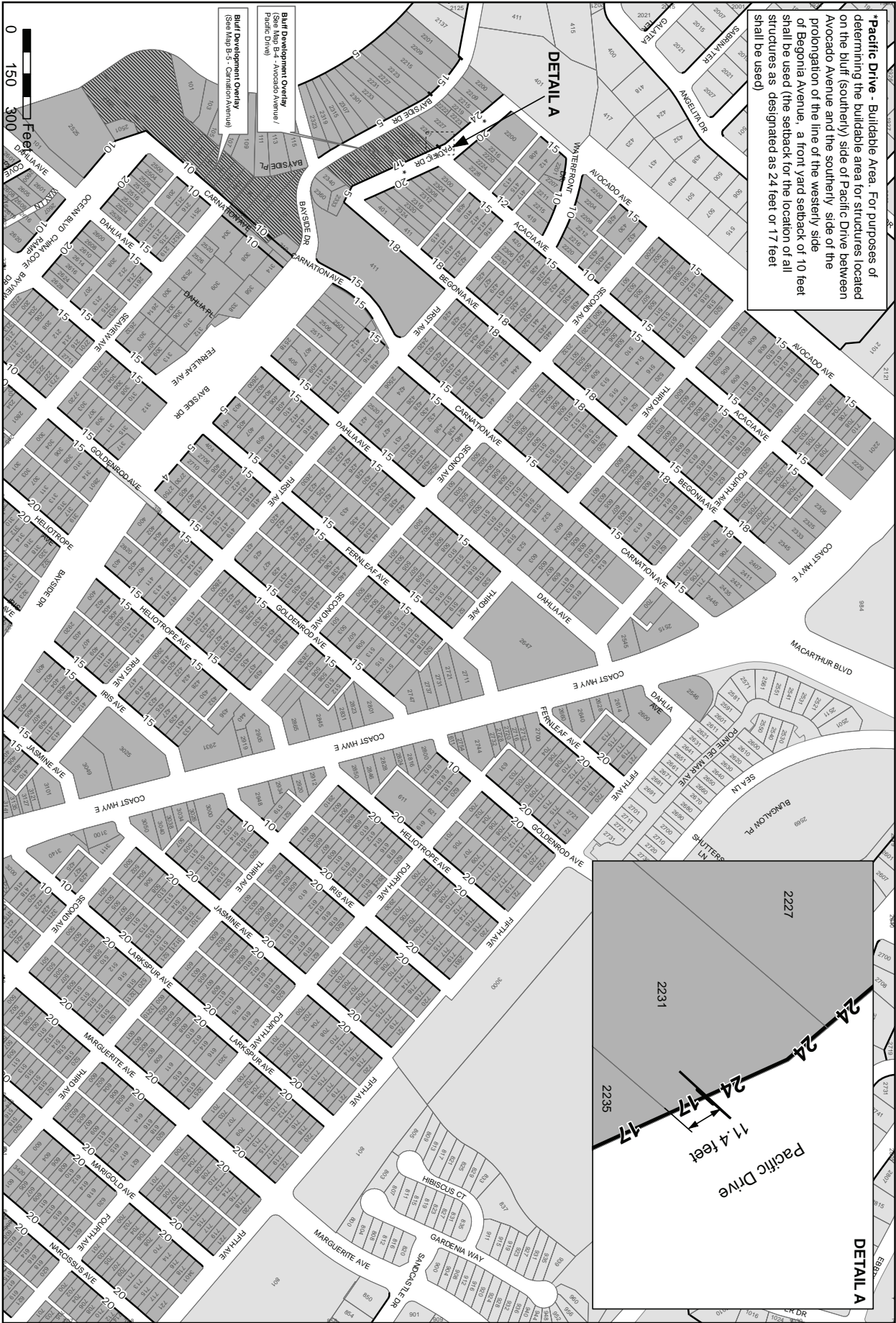
# S-5A - Newport Heights

# Setback Map

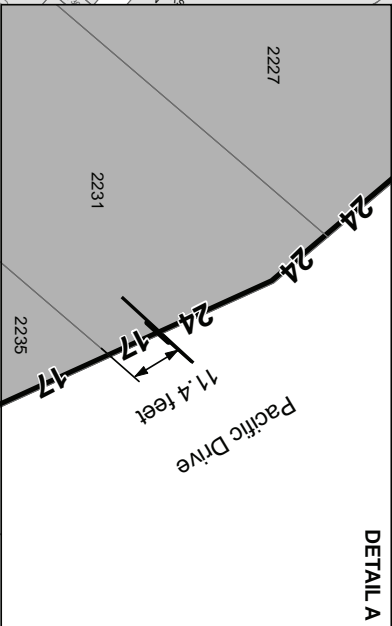






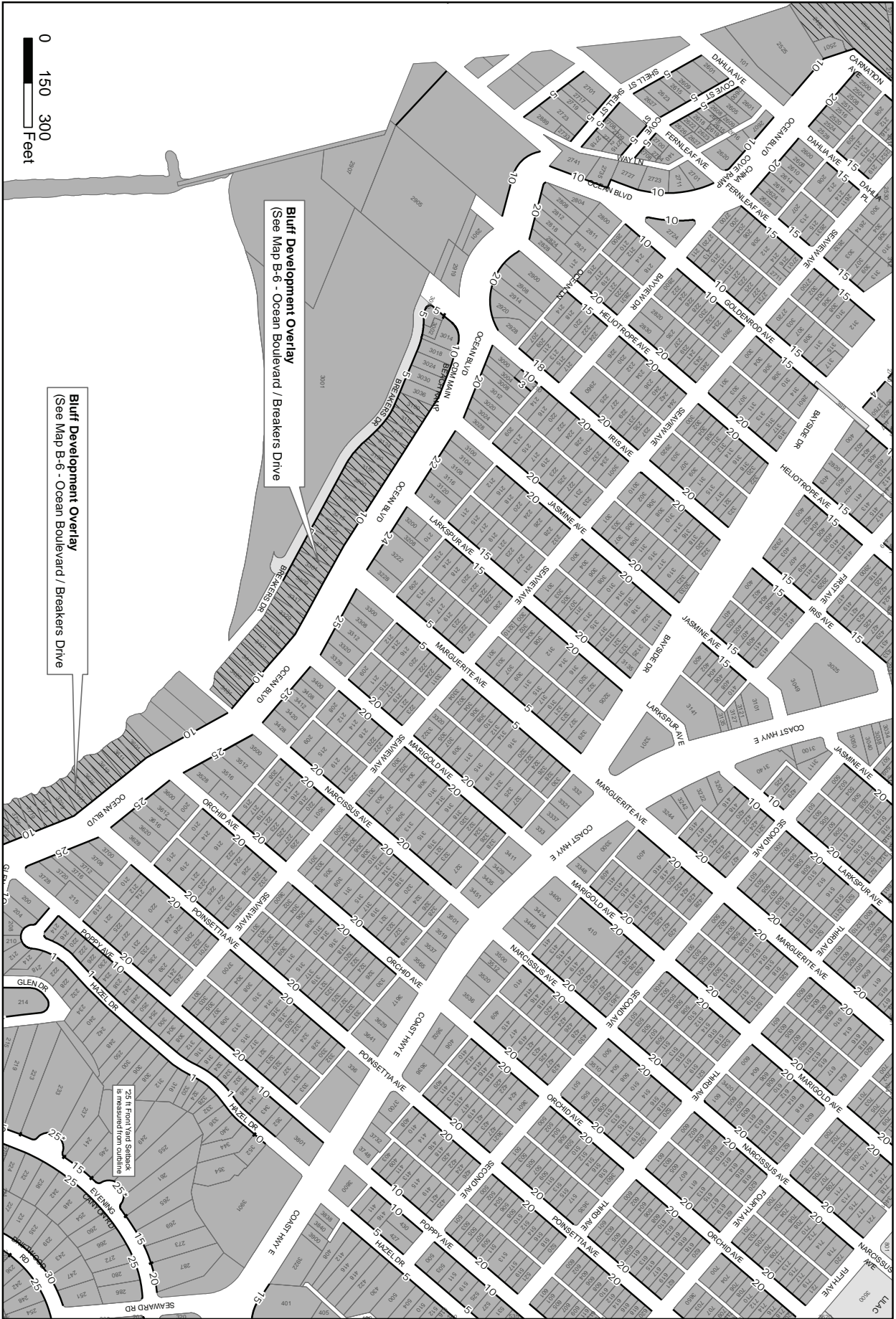


**Pacific Drive - Buildable Area.** For purposes of determining the buildable area for structures located on the bluff (southerly) side of Pacific Drive between Avocado Avenue and the southerly side of the prolongation of the line of the westerly side of Begonia Avenue, a front yard setback of 10 feet shall be used (the setback for the location of all structures as designated as 24 feet or 17 feet shall be used).



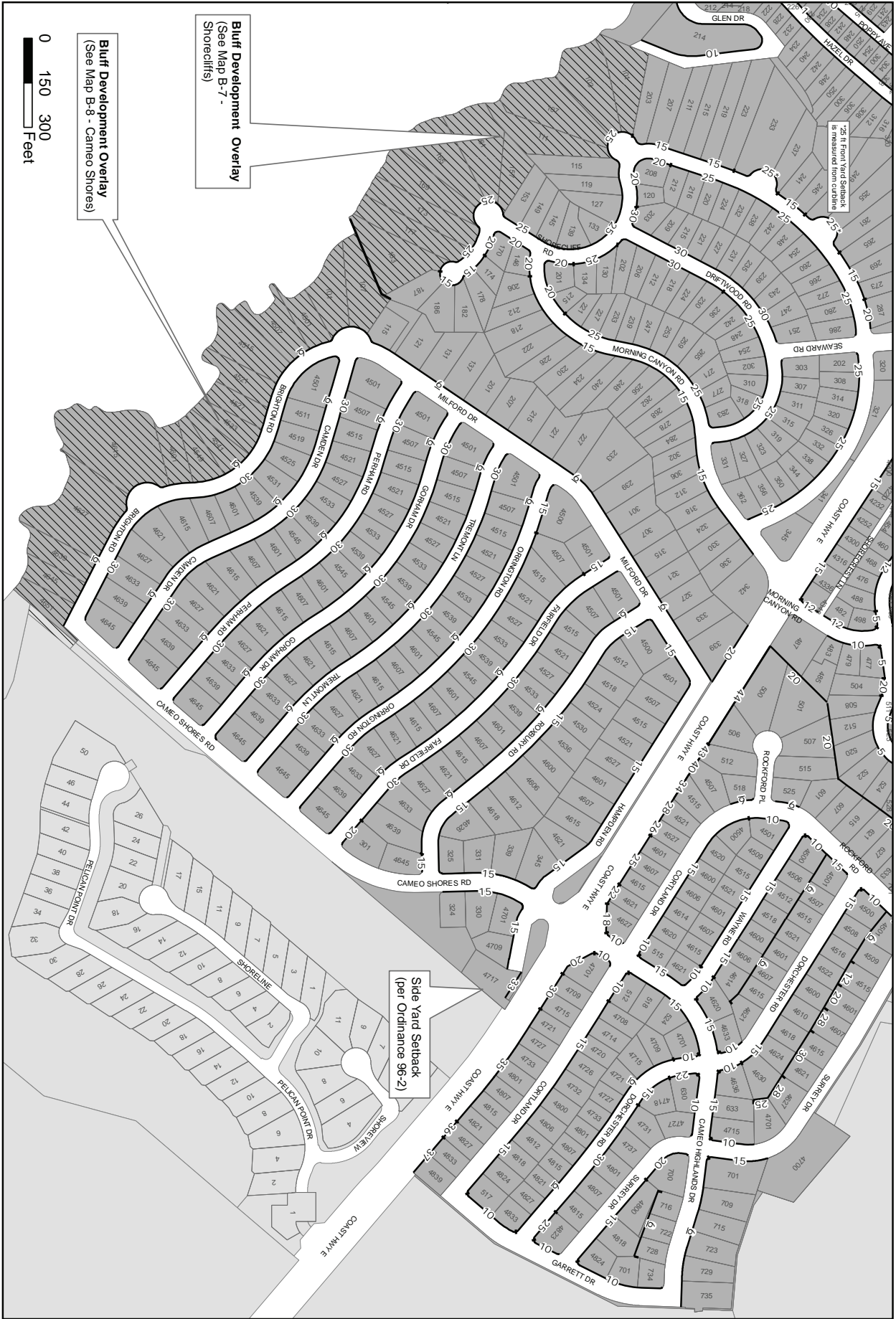
**S-10A - Corona del Mar**

**Setback Map**



# S-10B - Corona del Mar

# Setback Map



Name: S-10D\_DRAFT / PA2020-006

**S-10D - Corona del Mar**

**Setback Map**



# **Attachment E**

Planning Commission Resolution No. PC2021-021  
(Title 21)

## RESOLUTION NO. PC2021-021

### **A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH, CALIFORNIA, RECOMMENDING THE CITY COUNCIL AUTHORIZE SUBMITTAL OF LOCAL COASTAL PROGRAM AMENDMENT NO. LC2020-001 TO THE CALIFORNIA COASTAL COMMISSION TO AMEND TITLE 21 (LOCAL COASTAL PROGRAM IMPLEMENTATION PLAN) OF THE CITY OF NEWPORT BEACH MUNICIPAL CODE CORRECTING SETBACK MAP ERRORS (PA2020-006)**

THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

#### SECTION 1. STATEMENT OF FACTS.

1. Section 30500 of the California Public Resources Code requires each county and city to prepare a Local Coastal Program (“LCP”) for that portion of the coastal zone within its jurisdiction.
2. In 2005, the City of Newport Beach (“City”) adopted the City of Newport Beach Local Coastal Program Coastal Land Use Plan as amended from time to time including most recently on February 12, 2019, via City Council Resolution No. 2019-16.
3. The California Coastal Commission effectively certified the City’s Local Coastal Program Implementation Plan on January 13, 2017, and the City added Title 21 (Local Coastal Program Implementation Plan) (“Title 21”) to the City of Newport Beach Municipal Code (“NBMC”) whereby the City assumed coastal development permit-issuing authority on January 30, 2017.
4. Both Title 20 (Planning and Zoning Code) (“Title 20”) and Title 21 of the NBMC have a series of maps that provide minimum setbacks for various, but not all, blocks throughout the City (“setback maps”). The practice began in 1943 as a way to recognize existing and varying conditions that did not match the citywide default front yard setback standard of 20 feet.
5. The current setback maps are the descendants of the original 1943 maps (previously called districting maps), and several of them contain errors and omissions that should be corrected. These errors occurred when the districting maps were converted into the current setback maps as part of the 2010 comprehensive update to Title 20. In 2017, the California Coastal Commission certified Title 21, which incorporated the same setback maps for properties located within the coastal zone.
6. An amendment to Title 21 is necessary to correct identified errors to various setback maps (“LCP Amendment”).
7. On April 23, 2019, the City Council initiated the LCP Amendment under City Council Resolution No. 2019-41 authorizing staff to make corrections to the setback maps.

8. Pursuant to Section 13515 (Public Participation and Agency Coordination Procedures) of the California Code of Regulations Title 14, Division 5.5, Chapter 8, Subchapter 2, Article 5 (“Public Participation”), drafts of LCP Amendment No. LC2020-001 were made available and a Notice of Availability was distributed at least six (6) weeks prior to the City Council public hearing.
9. A public hearing was held on July 22, 2021, in the Council Chambers located at 100 Civic Center Drive, Newport Beach, California. A notice of time, place and purpose of the public hearing was given in accordance with the California Government Code Section 54950 *et seq.* (“Ralph M. Brown Act”), Chapter 21.62 (Public Hearings) of the NBMC, and Section 13515 of the California Code of Regulations. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this public hearing.

## SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This LCP Amendment is exempt pursuant to California Environmental Quality Act (“CEQA”) Section 15061(b)(3), of Title 14, Chapter 3\_of the California Code of Regulations (“CEQA Guidelines”) the general rule that CEQA applies only to projects, which have the potential for causing a significant effect on the environment. This amendment corrects errors in setback maps that are inconsistent with historically established setbacks and generally reflects setbacks that are consistent with existing development on the affected lots. The LCP Amendment does not authorize any new development that would directly result in physical change to the environment. Additionally, pursuant to CEQA Guidelines Section 15265(a)(1), local governments are exempt from the requirements of CEQA in connection with the adoption of a Local Coastal Program.

## SECTION 3. REQUIRED FINDINGS.

1. Application of the incorrect setbacks results in development standards that are inconsistent with the existing pattern of development and several homes being considered nonconforming. A nonconforming status would subject these homes to additional development regulations affecting additions and remodels and a loss of buildable area. There was no intent to make these homes nonconforming to setback standards. In some cases, the amendments serve to clarify the correct location these setbacks are measured from, such as a vacated right-of-way line or bulkhead line, to maintain the existing pattern of development on a block. This LCP Amendment is needed to correct the identified errors in the setback maps and re-establish setbacks consistent with the original districting maps and existing pattern of development.
2. This LCP Amendment shall not become effective until approval by the California Coastal Commission and adoption, including any modifications suggested by the California Coastal Commission, by resolution and/or ordinance of the City Council of the City of Newport Beach.

3. The LCP, including this LCP Amendment, will be carried out fully in conformity with the California Coastal Act.
4. The recitals provided in this resolution are true and correct and are incorporated into the operative part of this resolution.

**SECTION 4. DECISION.**

**NOW, THEREFORE, BE IT RESOLVED:**

1. The Planning Commission finds the proposed LCP Amendment is exempt pursuant to Section 15061(b)(3), and Section 15265(a)(1), of the CEQA Guidelines because it has no potential to have a significant effect on the environment and local governments are exempt from the requirements of CEQA in connection with the adoption of a Local Coastal Program.
2. The Planning Commission of the City of Newport Beach hereby recommends the City Council approve LCP Amendment No. LC2020-001 to amend Setback Map Nos. S-1A – West Newport, S-2A – Balboa Peninsula, S-2E – Balboa Peninsula, S-2F – Balboa Peninsula, S-2G - Balboa Peninsula, S-6 – Bay Shores, S-8 – Harbor Island, S-10A – Corona del Mar, S-10B – Corona del Mar, and S-10D – Corona del Mar contained within NBMC Section 21.80.040 (Setback Maps) as set forth in Exhibit "A," which is attached hereto and incorporated herein by reference.

**PASSED, APPROVED, AND ADOPTED THIS 22ND DAY OF JULY, 2021.**

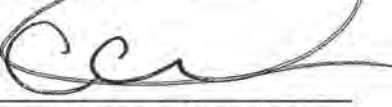
AYES: Koetting, Lowrey, Rosene, and Weigand

NOES:

ABSTAIN: Ellmore

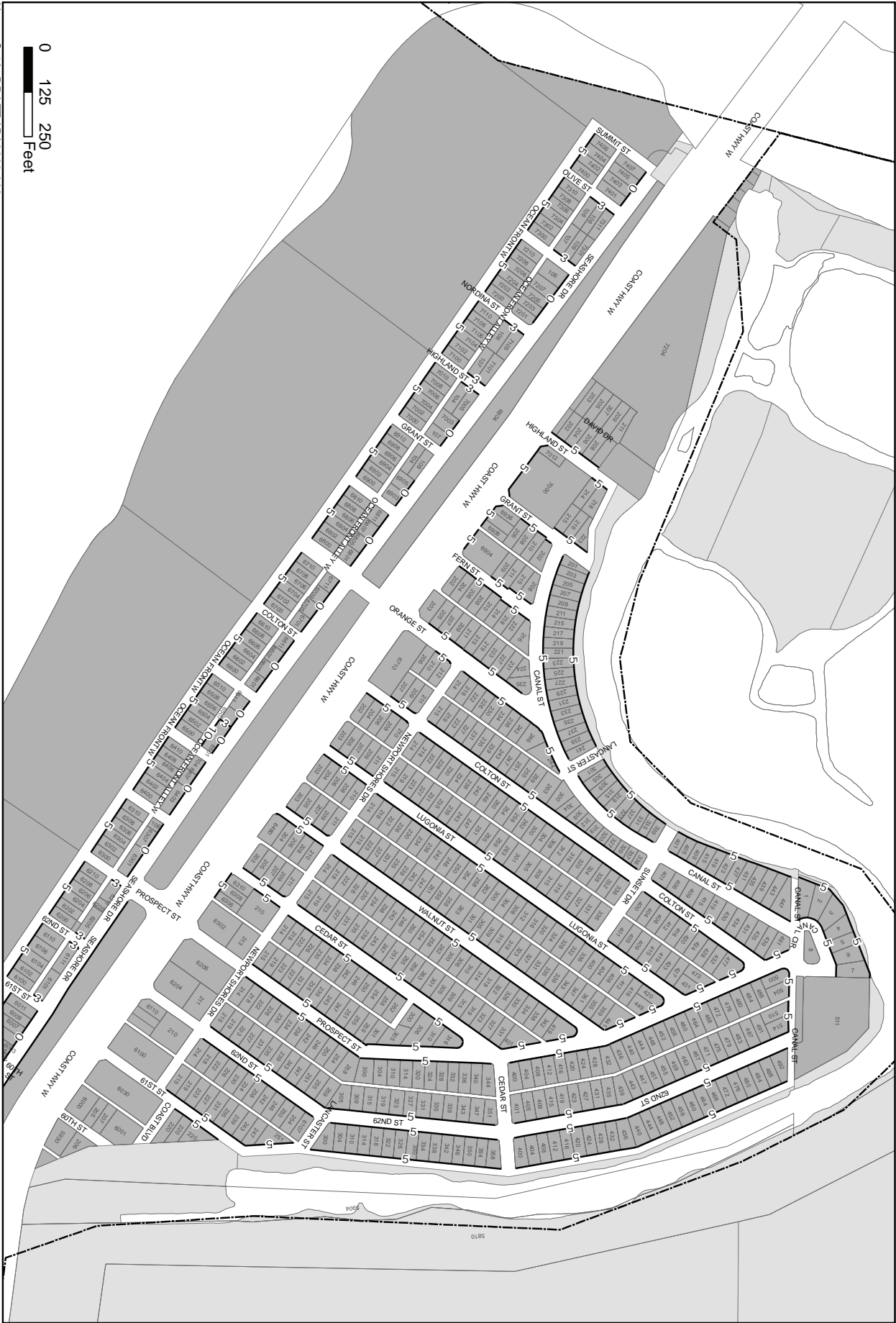
ABSENT: Klaustermeier and Kleiman

BY:   
Lee Lowrey, Chairman

BY:   
Curtis Ellmore, Secretary

Attachment: Exhibit A – Title 21 Setback Maps





**S-1A - West Newport**

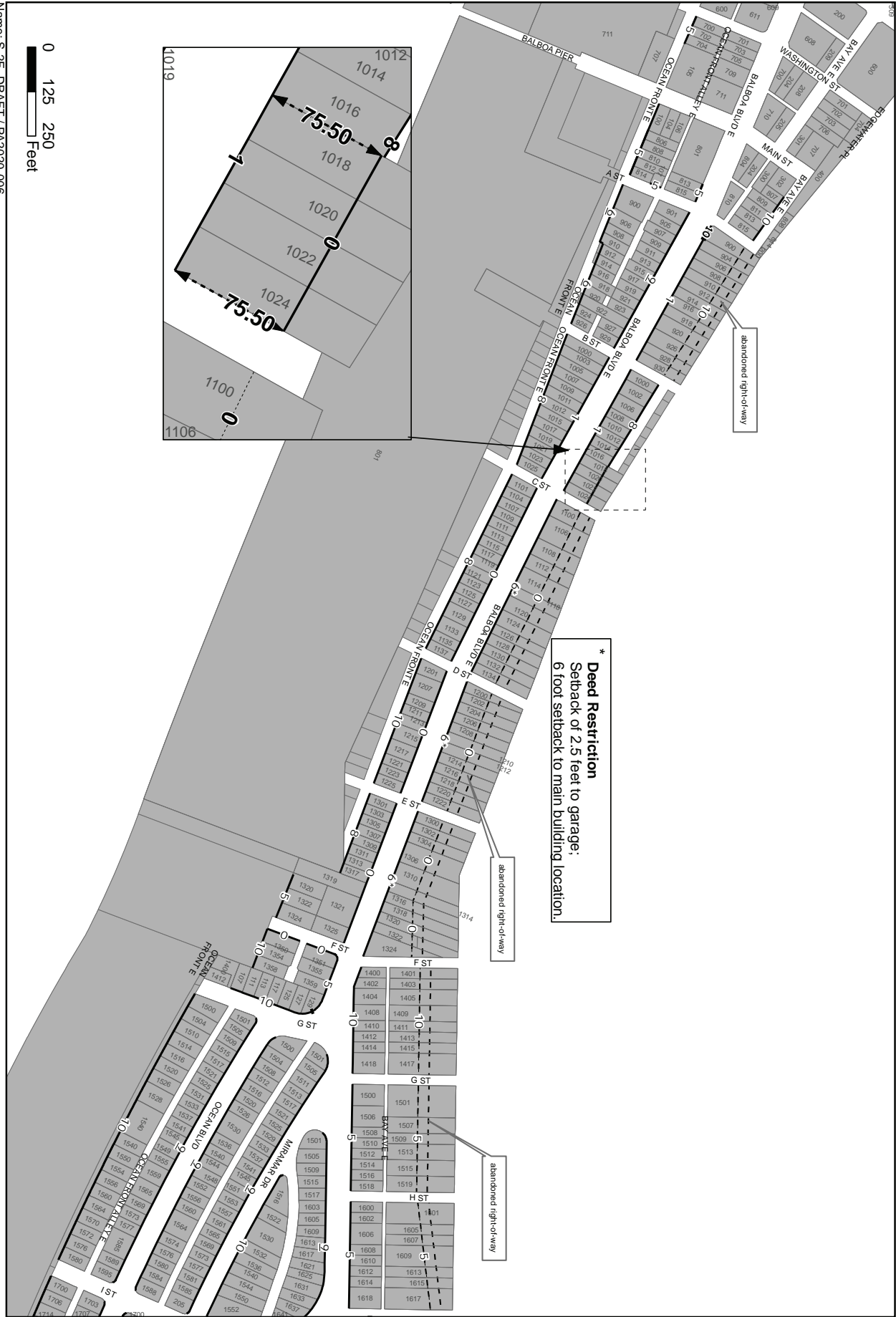
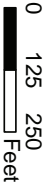
**Setback Map**





S-2E - Balboa Peninsula

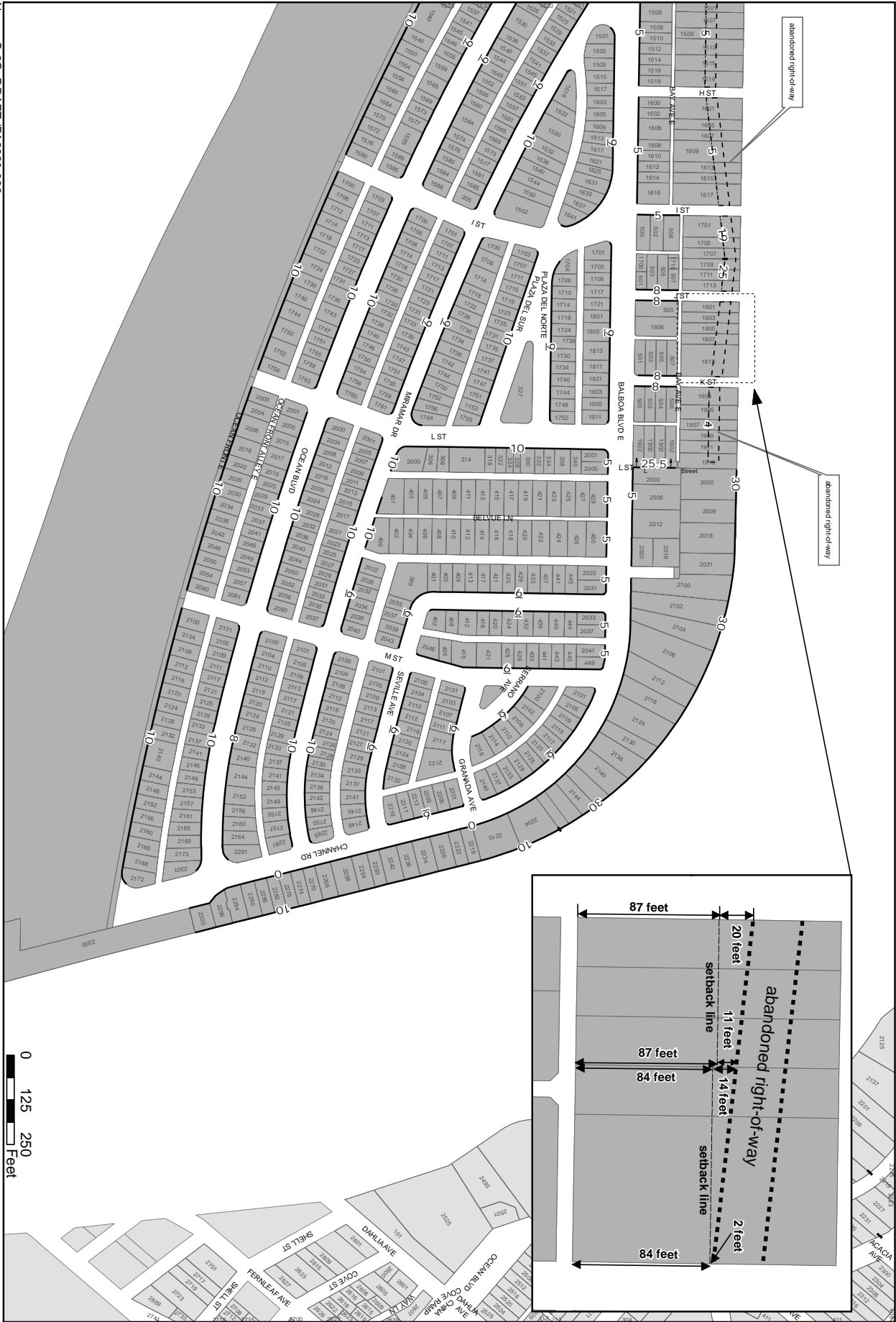
Setback Map



\* Deed Restriction  
Setback of 2.5 feet to garage;  
6 foot setback to main building location.

S-2F - Balboa Peninsula

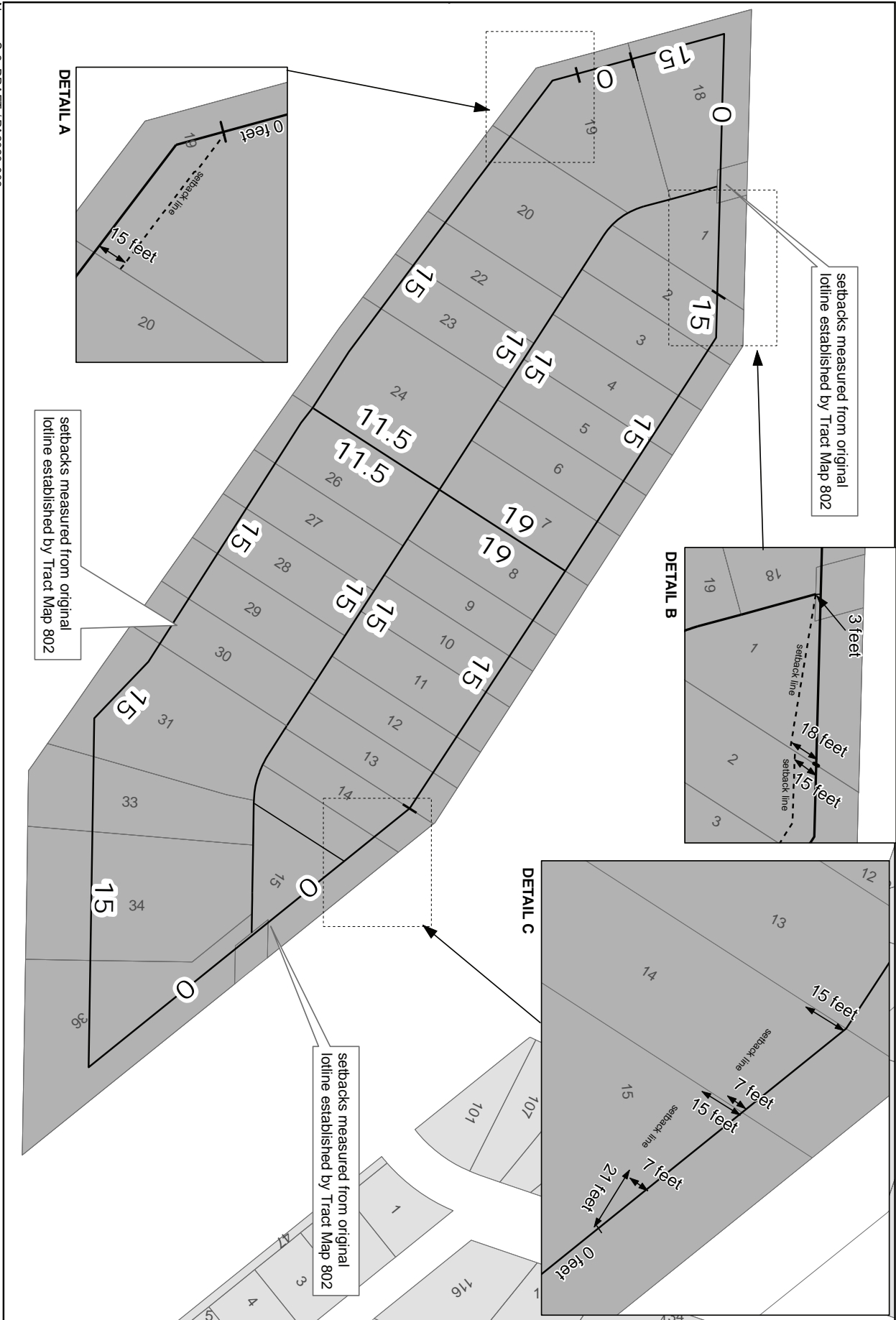
Setback Map



# S-2G - Balboa Peninsula

# Setback Map

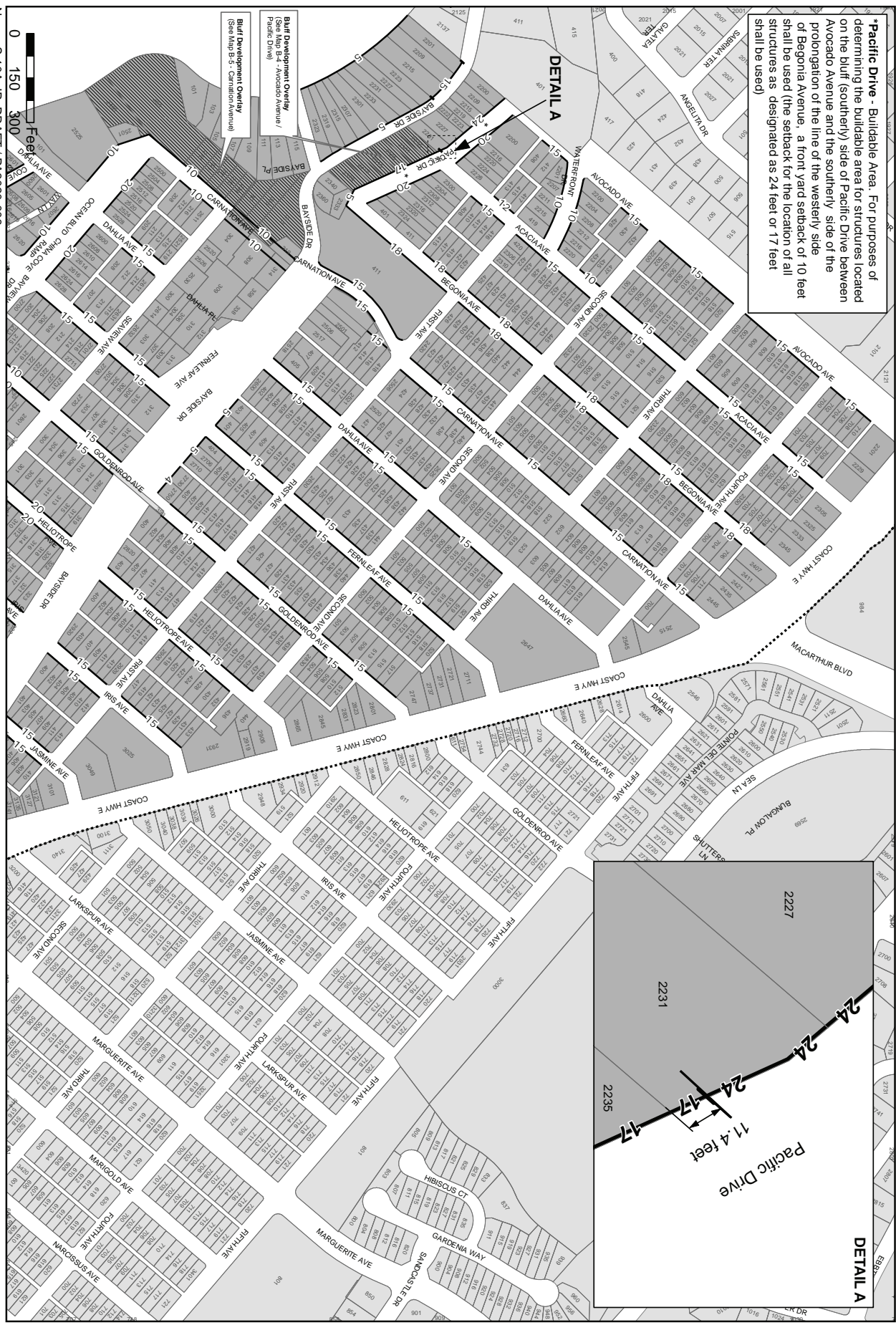




**S-8 - Harbor Island**

**Setback Map**

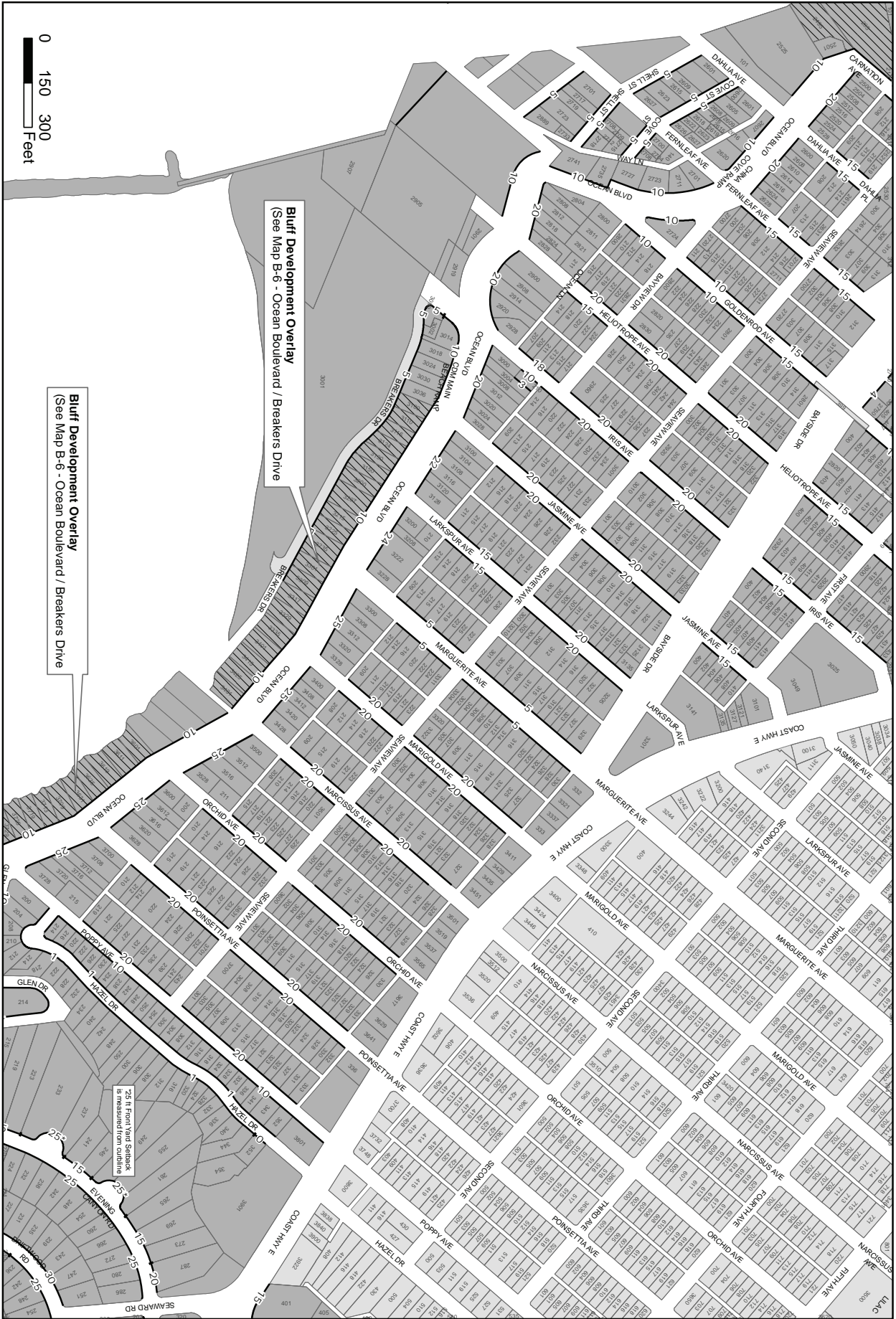
**Pacific Drive - Buildable Area.** For purposes of determining the buildable area for structures located on the bluff (southerly) side of Pacific Drive between Avocado Avenue and the southerly side of the prolongation of the line of the westerly side of Begonia Avenue, a front yard setback of 10 feet shall be used (the setback for the location of all structures as designated as 24 feet or 17 feet shall be used).



Name: S-10A\_IP\_DRAFT / PA2020-006

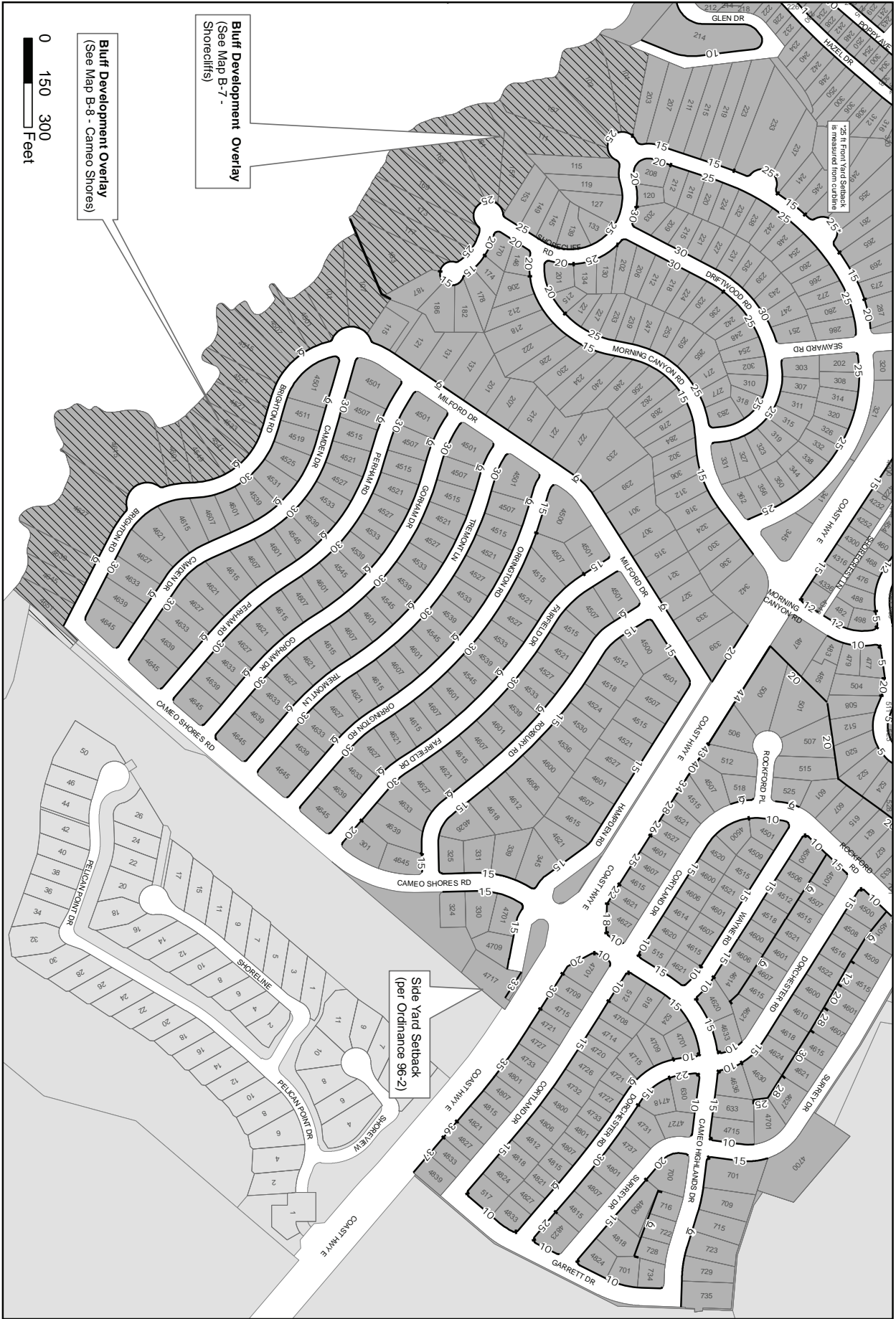
**S-10A - Corona del Mar** **Setback Map**





# S-10B - Corona del Mar

# Setback Map



Name: S-10D\_DRAFT / PA2020-006

**S-10D - Corona del Mar**

**Setback Map**

# **Attachment F**

July 22, 2021, Planning Commission Minutes

Principal Planner Schneider indicated a tattoo establishment that received approval prior to a parcel being rezoned for residential use has the right to continue operations.

**Motion** made by Commissioner Weigand and seconded by Commissioner Rosene to approve the staff recommendation.

Commissioners Rosene and Weigand and Chair Lowrey appreciated the information staff provided in response to Commissioners' requests at the May 6 hearing.

AYES: Ellmore, Koetting, Lowrey, Rosene, and Weigand

NOES:

ABSTAIN:

ABSENT: Klaustermeier and Kleiman

**ITEM NO. 4 SETBACK MAP CORRECTIONS ZONING CODE AND LCP AMENDMENT (PA2020-006)**  
**Site Location: Citywide**

**Summary:**

Amendments to the Planning and Zoning Code (Title 20) and Local Coastal Program Implementation Plan (Title 21) of the Newport Beach Municipal Code (NBMC) to correct identified errors in the setback maps contained in NBMC Sections 20.80.040 and 21.80.040 (Setback Maps). These maps provide the minimum distance a primary residential structure must be set back from a property line or other identified line such as a bulkhead or abandoned right-of-way line. These setbacks also establish front yard setback areas regulating accessory structures that differ from side or rear yard setback areas.

**Recommended Action:**

1. Conduct a public hearing;
2. Find this project statutorily exempt from the California Environmental Quality Act (CEQA) pursuant to Section 21065 of CEQA and State CEQA Guidelines Sections 15060(c)(2), 15060(c)(3) and 15378. The proposed action is also exempt pursuant to State CEQA Guidelines Section 15061(b)(3) because it has no potential to have a significant effect on the environment;
3. Adopt Resolution No. PC2021-020 recommending the City Council approve Code Amendment No. CA2020-001; and
4. Adopt Resolution No. PC2021-021 recommending the City Council authorize staff to submit Local Coastal Program Amendment No. LC2020-001 to the California Coastal Commission.

Secretary Ellmore recused himself from the item due to a conflict of real property interests.

Assistant City Attorney Summerhill noted Vice Chair Kleiman's absence and real property conflicts that recused her from the item.

Principal Planner Jaime Murillo reported the item is intended to correct a number of errors that resulted from the 2010 comprehensive Zoning Code Update. Setback maps began in 1943 as districting maps. Districting maps identified front yard setbacks that differed from the standard 20-foot setback and in some cases used to establish multiple yards that should be treated as a front yard. The maps were modernized in 2010 and incorporated into the Local Coastal Program (LCP) Implementation Plan in 2017. Staff has discovered a number of errors in the maps, and the errors create nonconformities, limit development rights, and create inconsistencies with historical development patterns. He shared examples of two errors and their consequences for property owners. After publication of the staff report, staff found an additional error and distributed a memorandum with proposed modification of Setback Map S-2E. Mr. Mosher submitted written comments regarding another error, and staff requests the motion include correction of that error. Amendments to the LCP will require California Coastal Commission approval.

Chair Lowrey opened and closed the public hearing with no comment from the public.

Commissioner Koetting and Chair Lowrey commended staff for finding and correcting these errors.

In answer to Commissioner Rosene's query, Principal Planner Murillo advised that he sent a courtesy notice to property owners affected by corrections listed in the staff report and memorandum and will send a courtesy notice to the property owners affected by staff's adoption of Mr. Mosher's proposed correction.

**Motion** made by Commissioner Koetting and seconded by Chair Lowrey to approve the staff recommendation with staff's proposed corrections to Setback Maps S-2E and S-6.

AYES: Koetting, Lowrey, Rosene, and Weigand  
NOES:  
RECUSED: Ellmore  
ABSENT: Klaustermeier and Kleiman

**VIII. STAFF AND COMMISSIONER ITEMS**

**ITEM NO. 5 MOTION FOR RECONSIDERATION**

Community Development Director Seimone Jurjis advised Commissioner Koetting that he could change his vote on Item 3 as Commissioner Koetting was present for the May 6, 2021, hearing. Commissioner Koetting changed his vote to support the motion.

**ITEM NO. 6 REPORT BY THE COMMUNITY DEVELOPMENT DIRECTOR OR REQUEST FOR MATTERS WHICH A PLANNING COMMISSION MEMBER WOULD LIKE PLACED ON A FUTURE AGENDA.**

Deputy Community Development Director Campbell mentioned several items for the next Planning Commission meeting. An appeal of the Director's Determination regarding accessory residential uses at hotels is tentatively scheduled for City Council review on August 24, 2021.

In reply to Commissioner Koetting's queries, Deputy Community Development Director Campbell indicated SPON appealed the Director's Determination. He also noted that The Residences at Newport Center project is ready for review.

**ITEM NO. 7 REQUESTS FOR EXCUSED ABSENCES**

None

**IX. ADJOURNMENT – 7:20 p.m.**

The agenda for the July 22, 2021, Planning Commission meeting was posted on Thursday, July 15, 2021, at 2:40 p.m. in the Chambers binder, on the digital display board located inside the vestibule of the Council Chambers at 100 Civic Center Drive, and on the City's website on Thursday, July 15, 2021, at 2:30 p.m.

  
Lee Lowrey, Chairman

  
Curtis Ellmore, Secretary



# **Attachment G**

Table and Exhibit of Setback Map Corrections

Affected Setback Map	Affected Properties	Affected Titles	Clarification / Correction Needed
<b>S-1A</b>	202-210 Lugonia Ave. (even addresses)	20 & 21	<ul style="list-style-type: none"> <li>Setback map not consistent with intent of Districting Map No. DM1.</li> <li>The districting map referenced Specific Plan No. 4 (Newport Shores), which no longer exists, but required a 5-foot front setback. The setback map reflects a 5-foot front setback on other blocks previously subject to the Specific Plan, but the 5-foot setback was inadvertently left off one block affecting 202-210 Lugonia Ave.</li> </ul>
<b>S-2A</b>	Various in Balboa Coves	20 & 21	<ul style="list-style-type: none"> <li>Setback map misinterpreted Districting Map No. DM3.</li> <li>15-foot front setback not intended to apply to side property lines and does not represent existing development pattern.</li> </ul>
	308-312 38 <sup>th</sup> St.	20 & 21	<ul style="list-style-type: none"> <li>Setback map not consistent with intent of Districting Map No. DM3 due to ambiguities resulting from short block length.</li> <li>3-foot front setback indicator along 38<sup>th</sup> St. should apply to 308-312 38<sup>th</sup> St, consistent with existing development pattern.</li> </ul>
	601 Clubhouse Dr.	20 & 21	<ul style="list-style-type: none"> <li>Setback map not consistent with intent of Districting Map No. DM3 due to ambiguities resulting from short block length.</li> <li>8-foot front setback indicator along 35<sup>th</sup> St. should apply to 601 Clubhouse Drive, consistent with existing development pattern.</li> </ul>
<b>S-2E</b>	201-205 6 <sup>th</sup> St. and 601-605 W. Bay Ave.	20 & 21	<ul style="list-style-type: none"> <li>Setback map not consistent with intent of Districting Map No. DM10.</li> <li>10-foot front setback omitted from map for 201-205 6<sup>th</sup> St.</li> <li>9-foot front setback omitted from map for 601-605 W. Bay Ave.</li> </ul>
<b>S-2F</b>	1317 East Balboa Blvd.	20 & 21	<ul style="list-style-type: none"> <li>Setback map not consistent with intent of Districting Map No. DM12 due to ambiguities in property line locations.</li> <li>Limits of 8-foot setback shall include subject lot.</li> </ul>
<b>S-2G</b>	1707 East Bay Ave.	20 & 21	<ul style="list-style-type: none"> <li>Setback map not consistent with intent of Districting Map No. DM12 due to ambiguities in property line locations.</li> <li>Delineation between 19-foot front and 25-foot front setback indicators should occur at easterly side property line of lot, not within center of subject lot.</li> </ul>
<b>S-5A</b>	202, 206, 210, 214 La Jolla Dr.	20	<ul style="list-style-type: none"> <li>Setback map misinterpreted Districting Map No. DM5.</li> </ul>



Affected Setback Map	Affected Properties	Affected Titles	Clarification / Correction Needed
			<ul style="list-style-type: none"> <li>5-foot front setback intended to be maintained from vacated La Jolla Dr. right-of-way line, consistent with existing development pattern.</li> </ul>
<b>S-6</b>	Various lots in Bayshores and 2011 Kings Rd.	20 & 21	<ul style="list-style-type: none"> <li>Setback map not consistent with Districting Map No. DM23.</li> <li>10-foot front setback line missing from 2691-2821 Bay Shore Dr. (even addresses).</li> <li>18 corner lots inadvertently labeled with two street front yards inconsistent with existing development. Side street frontages should be regulated as a side setback. See Attachment H for Director's Determination No. DD2021-002 (PA2021-115) for more details.</li> <li>10-foot waterside front setback should be measured from actual bulkhead instead of U.S. Bulkhead Line, consistent with existing development pattern.</li> <li>2011 Kings Rd. inadvertently labeled with two street front yards inconsistent with existing development.</li> </ul>
<b>S-8</b>	24 and 26 Harbor Island	20 & 21	<ul style="list-style-type: none"> <li>Setback map not consistent with Districting Map No. DM23.</li> <li>The correct setback should be 11.5 feet (not 19 feet) as shown on the districting map to accurately reflect the location of the 15-foot-wide pedestrian walkway easement and an additional 4-foot setback for either property.</li> </ul>
<b>S-10A</b>	412-418 Carnation Ave.	20 & 21	<ul style="list-style-type: none"> <li>Ambiguities in both setback map and Districting Map No. DM16 due to vacated right-of-way along Carnation Ave. frontages.</li> <li>15-foot front setback for 412 Carnation Ave. should be measured from vacated right-of-way line.</li> <li>15-foot front setback for 414-148 Carnation Ave. should be measured from actual property line.</li> </ul>
	300 - 319 Carnation Ave.	20 & 21	<ul style="list-style-type: none"> <li>Setback map not consistent with Districting Map No. DM17.</li> <li>10-foot front setback lines missing as measured from vacated right-of-way line and consistent with existing development pattern.</li> </ul>
<b>S-10B</b>	3000 and 3002 Breakers Dr.	20 & 21	<ul style="list-style-type: none"> <li>Setback map not consistent with Districting Map No. DM18.</li> <li>5-foot front setback inadvertently omitted from map.</li> </ul>
<b>S-10D</b>	4717 Hampden Rd.	20 & 21	<ul style="list-style-type: none"> <li>Setback map not consistent with Districting Map No. DM31.</li> <li>15-foot setback indicator along the easterly side property line adjacent to golf course should include a note clarifying it is a side setback per Ordinance 96-2.</li> </ul>

# Setback Map S-1A

# Proposed Map



Setback Map

S-1A - West Newport

# Setback Map S-1A

# Existing Map

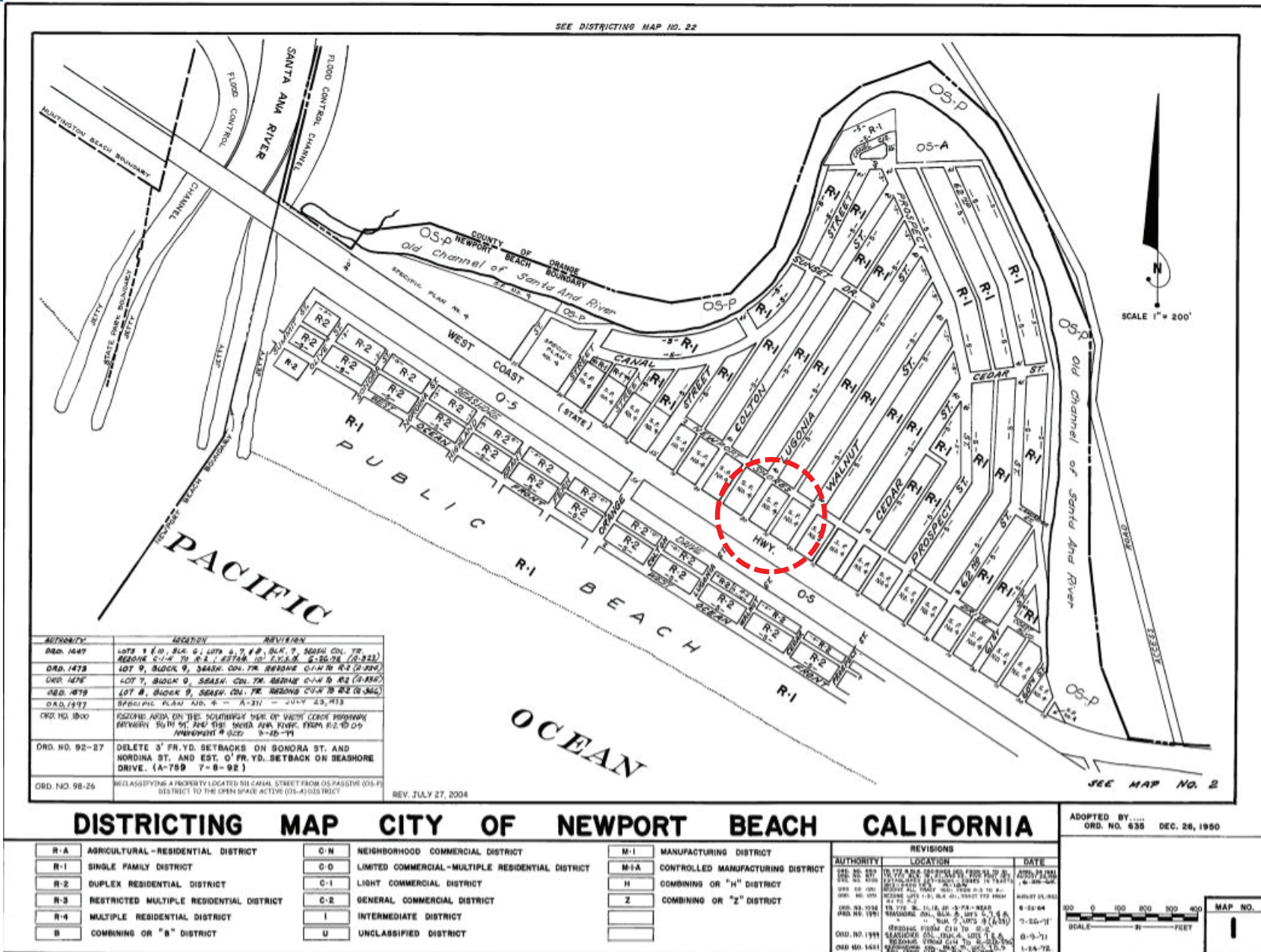


Setback Map

S-1A - West Newport

# Setback Map S-1A

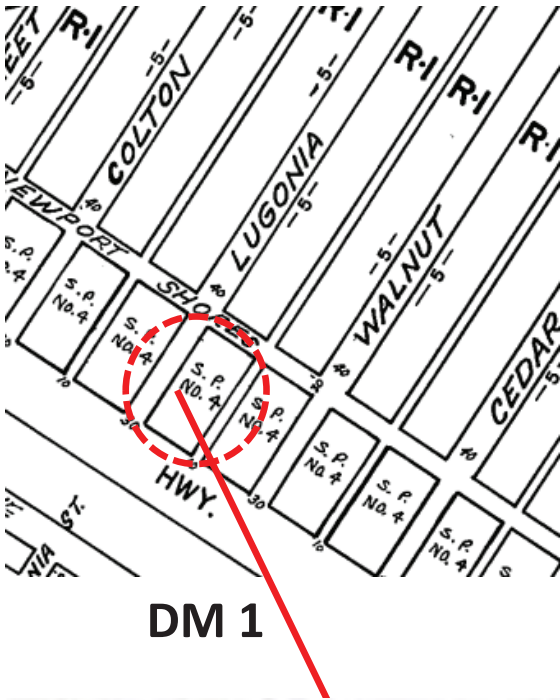
# Districting Map DM 1 In effect prior to 2010



# Setback Map S-1A

## Highlighted Changes

202-210 Lugonia Ave (even addresses)



### 20.41.060 Residential Development: Property Development Regulations

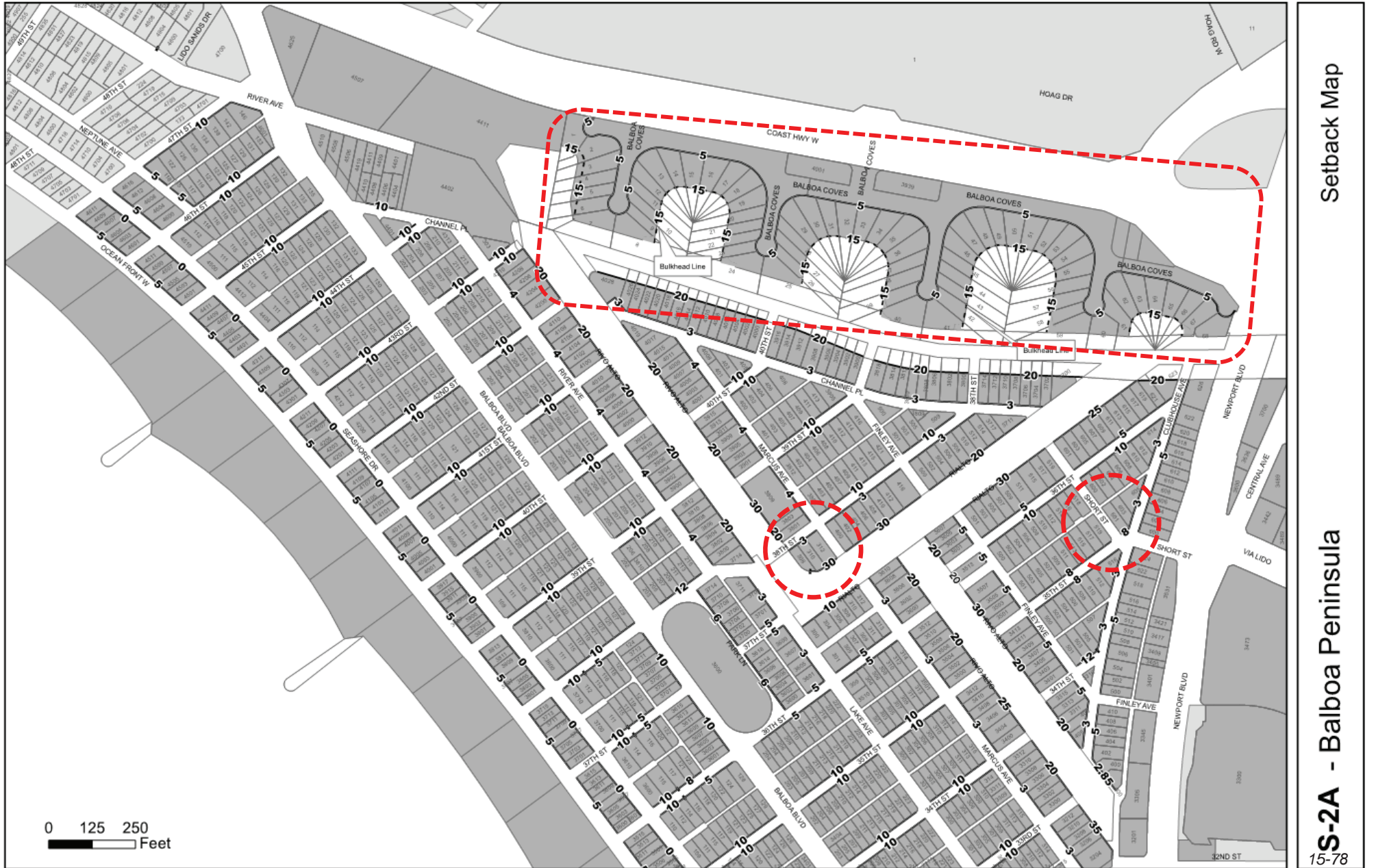
The following schedule prescribes development regulations for residential development areas. The columns prescribe basic requirements for permitted and conditional uses. Letters in parentheses in the "Additional Regulations" column reference regulations following the schedule or located elsewhere in this code.

Residential Development: Property Development Regulations		
	Residential Development	Additional Regulations
Minimum Site Area per Unit (sq. ft.)	1200;1500	(A), (B)
Minimum Yards:		
Front (ft.)	5	(C), (D), (E)
Side (ft.)	3;4	(C), (D), (E), (F)
Rear (ft.)	5	(C), (D), (E)

The districting map referenced Specific Plan No. 4 (Newport Shores), which no longer exists, but required a 5-foot front setback. The setback map reflects a 5-foot front setback on other blocks previously subject to the Specific Plan, but the 5-foot setback was inadvertently left off one block affecting 202-210 Lugonia Avenue.

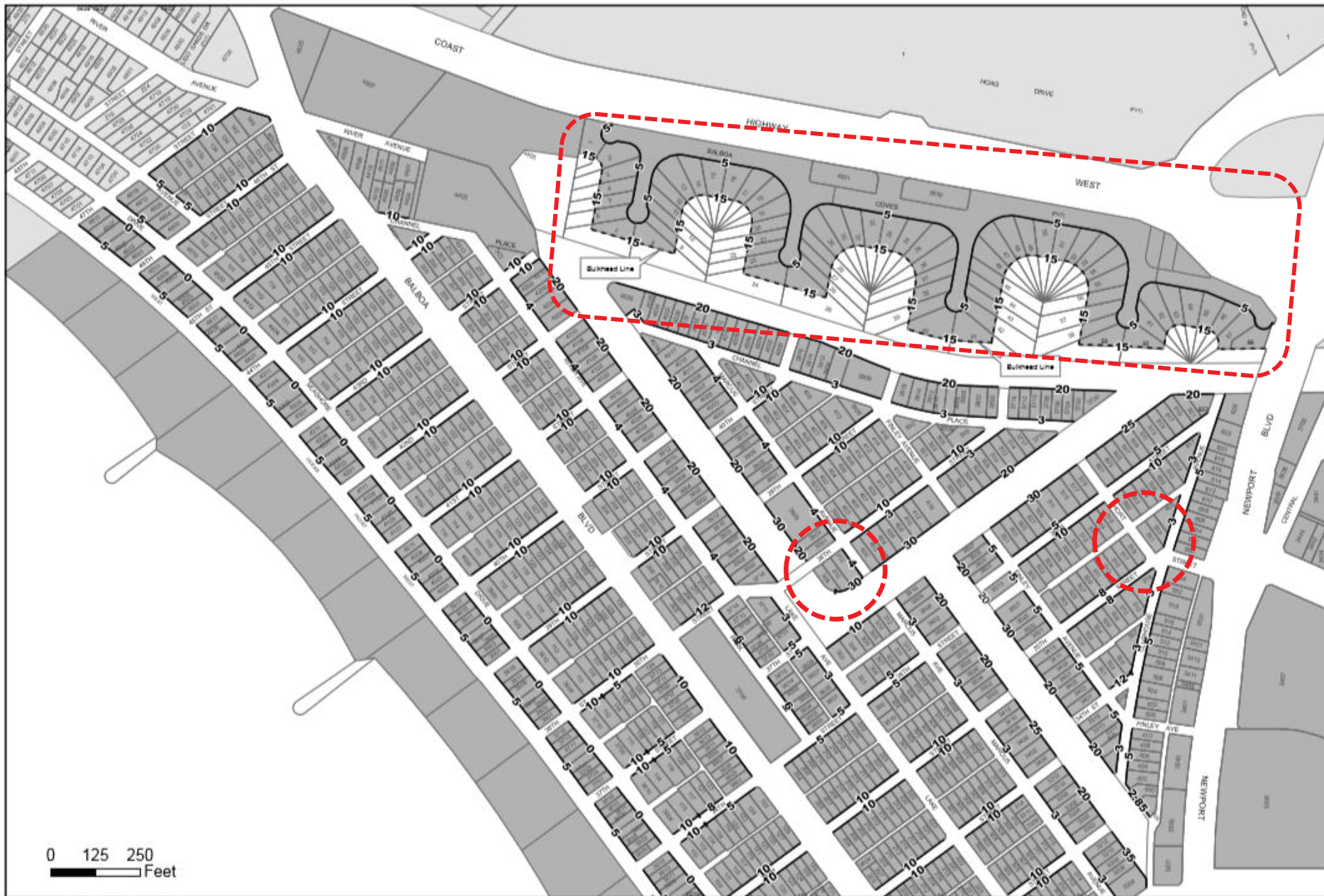
# Setback Map S-2A

# Proposed Map



# Setback Map S-2A

# Existing Map



Setback Map

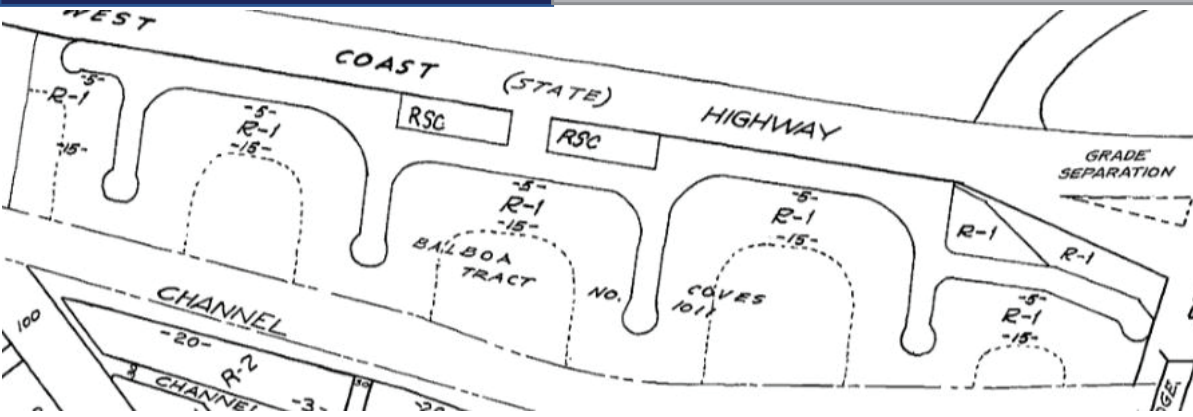
S-2A - Balboa Peninsula  
15-79



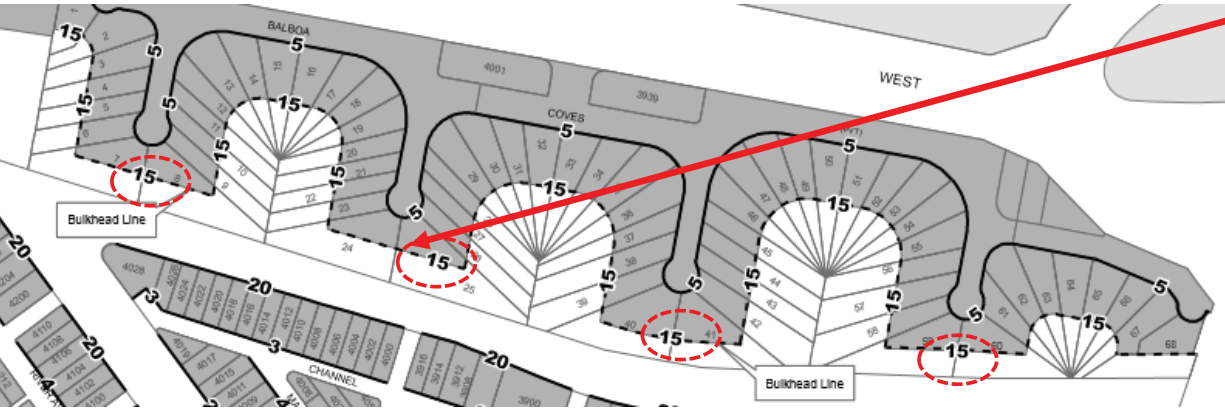
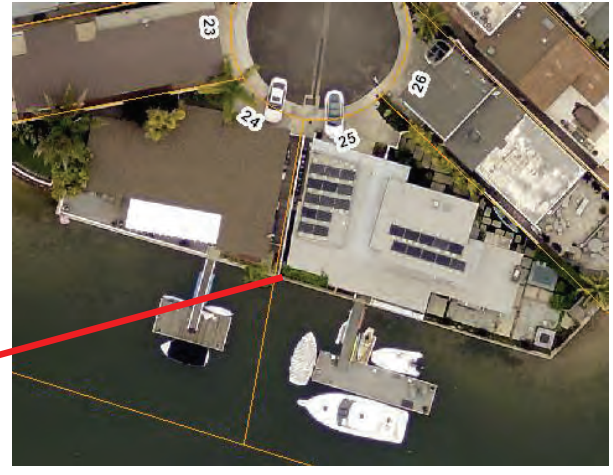


# Setback Map S-2A

# Highlighted Changes Balboa Coves

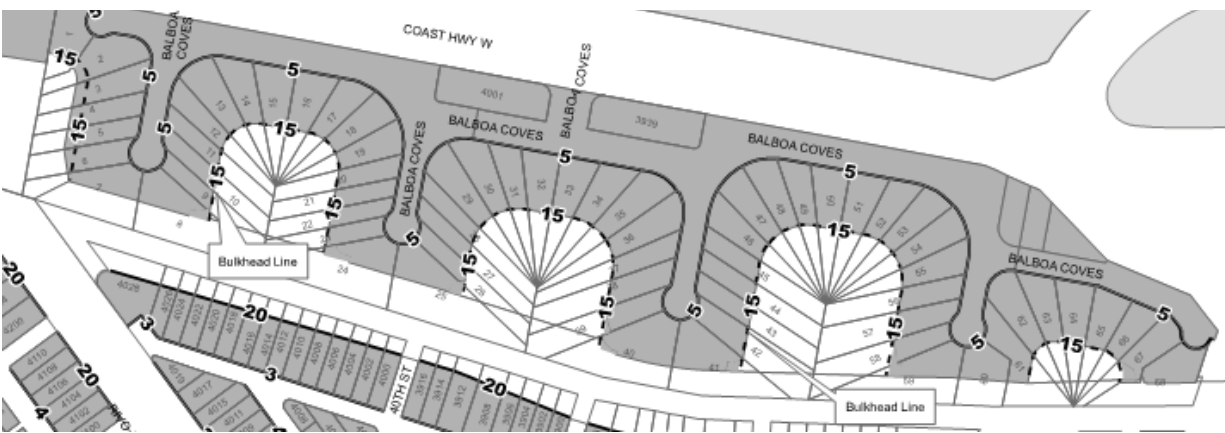


DM 3



Current S-2A

15' waterfront setback not intended to apply to sides abutting water.

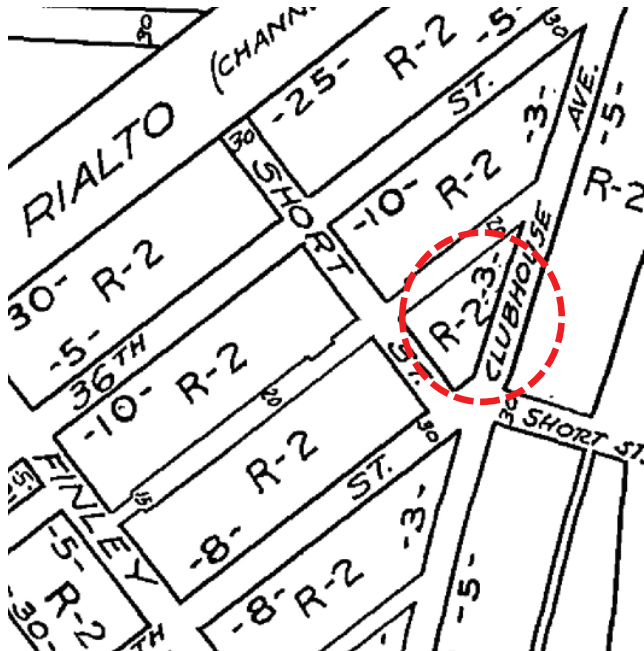


Proposed S-2A



# Highlighted Changes

## 601 Clubhouse Ave



DM 3



Current S-2A



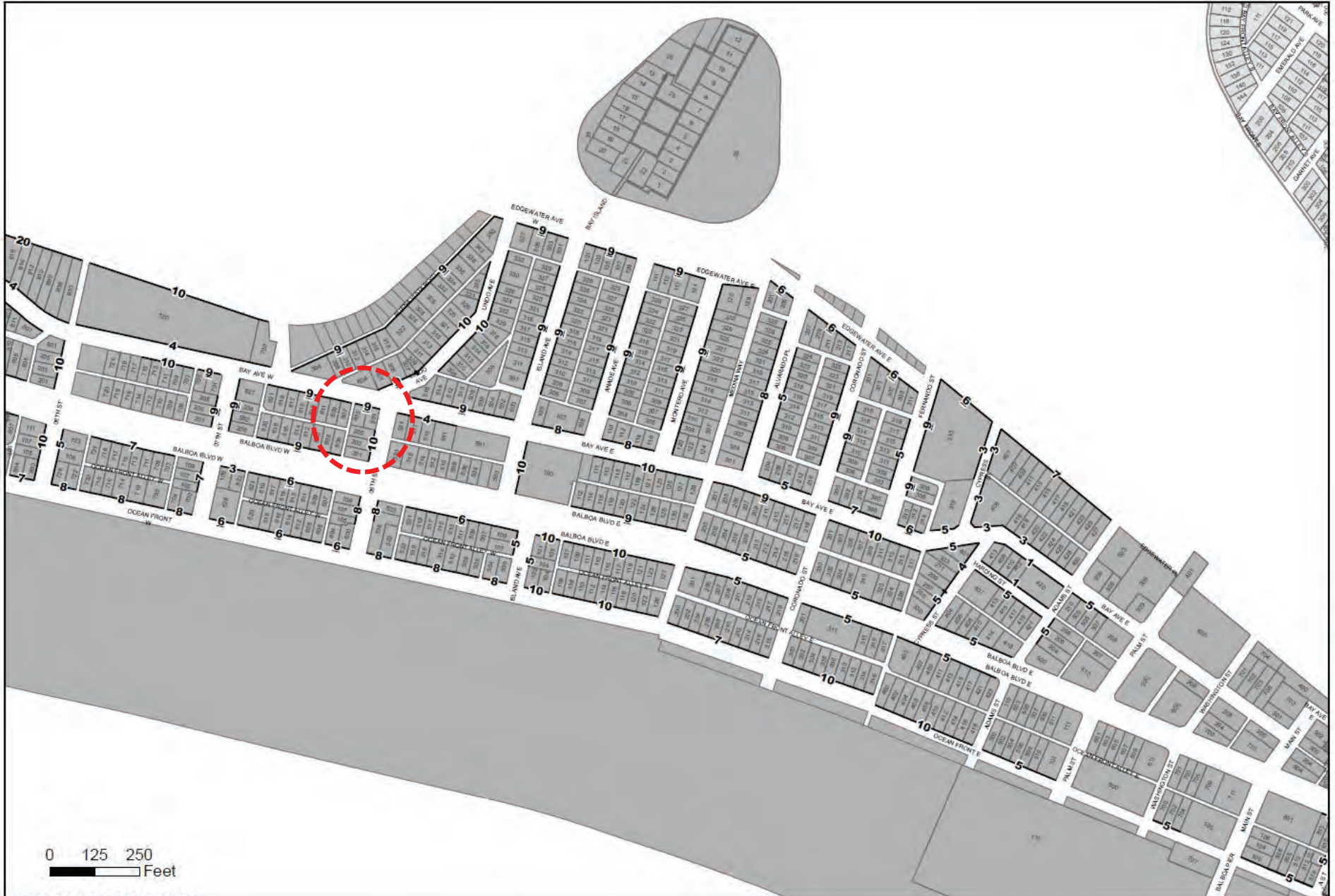
Proposed S-2A

8' front setback should apply to 601 Clubhouse Dr., consistent with existing development and setback of adjacent block .



# Setback Map S-2E

# Proposed Map



Setback Map

S-2E - Balboa Peninsula

# Setback Map S-2E

# Existing Map

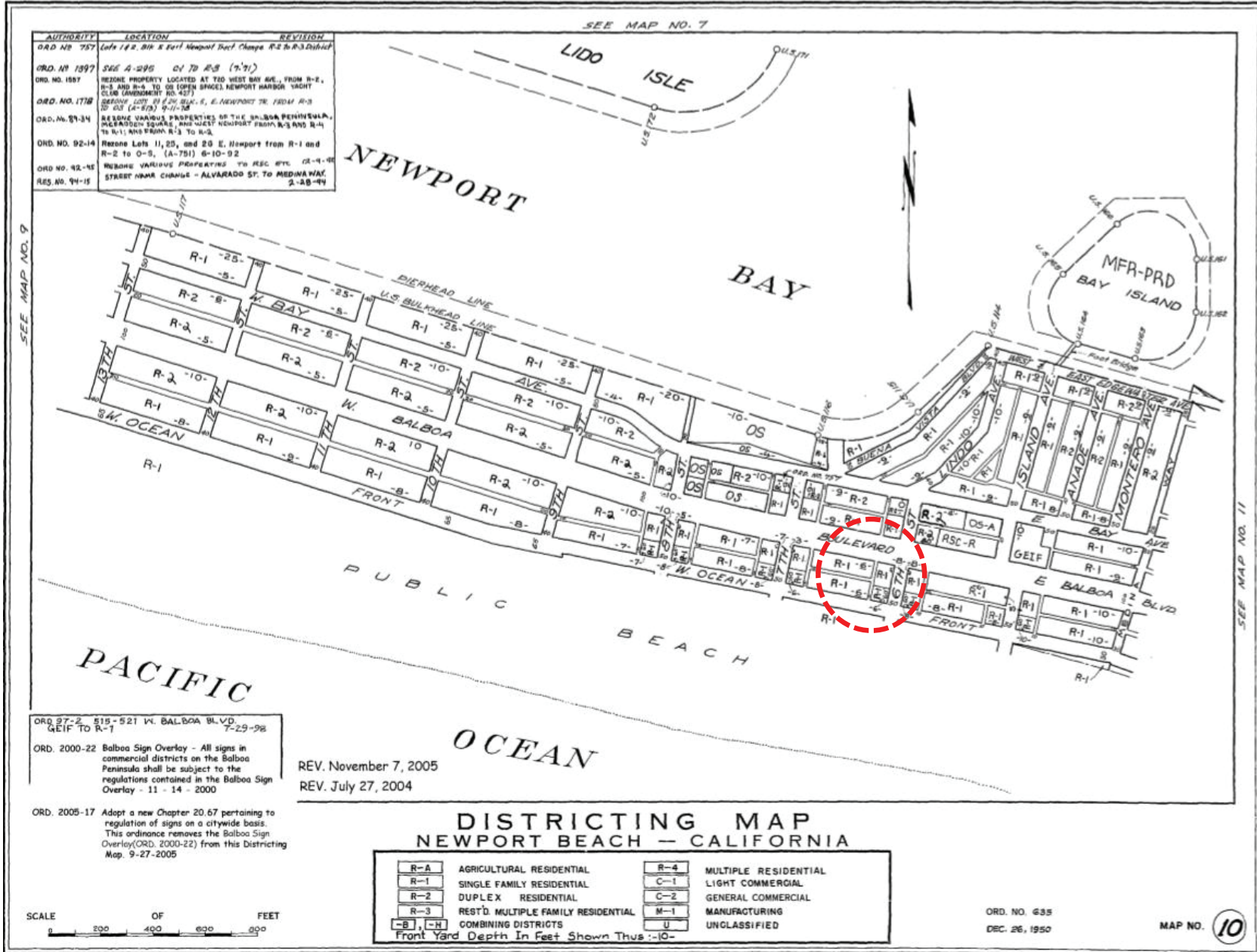


Setback Map

S-2E - Balboa Peninsula  
15-85

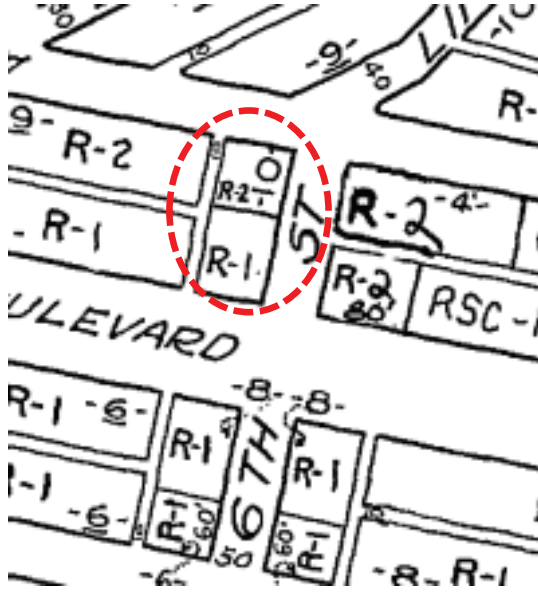
# Setback Map S-2E

# Districting Map DM 10 In effect prior to 2010



# Highlighted Changes

201-205 6<sup>th</sup> Street and 601-605 West Bay Ave



DM 10



Current S-2E



Proposed S-2E

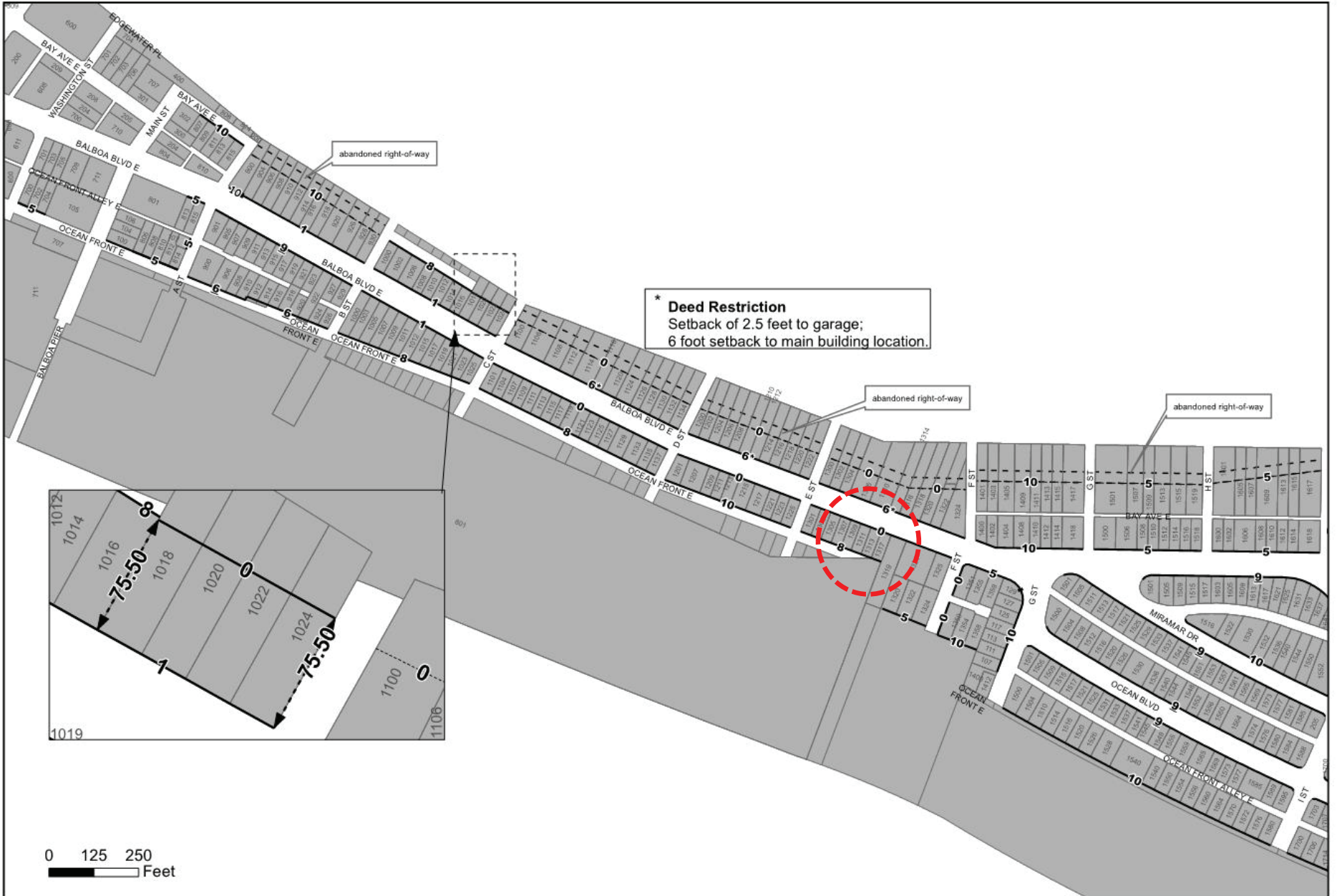


Structures constructed with 9' front setbacks and 3' side setbacks

Structures constructed with 10' front setbacks

# Setback Map S-2F

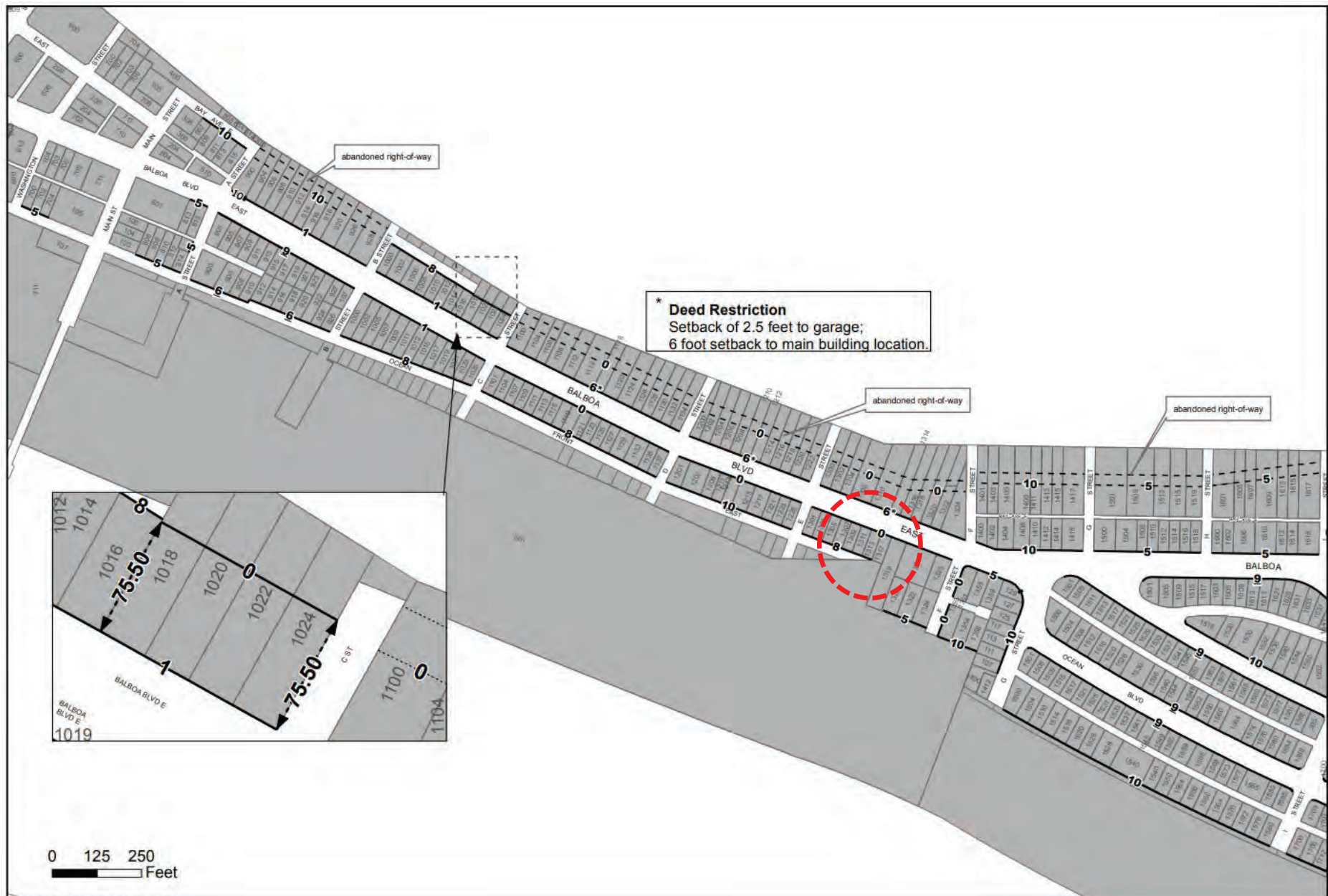
# Proposed Map





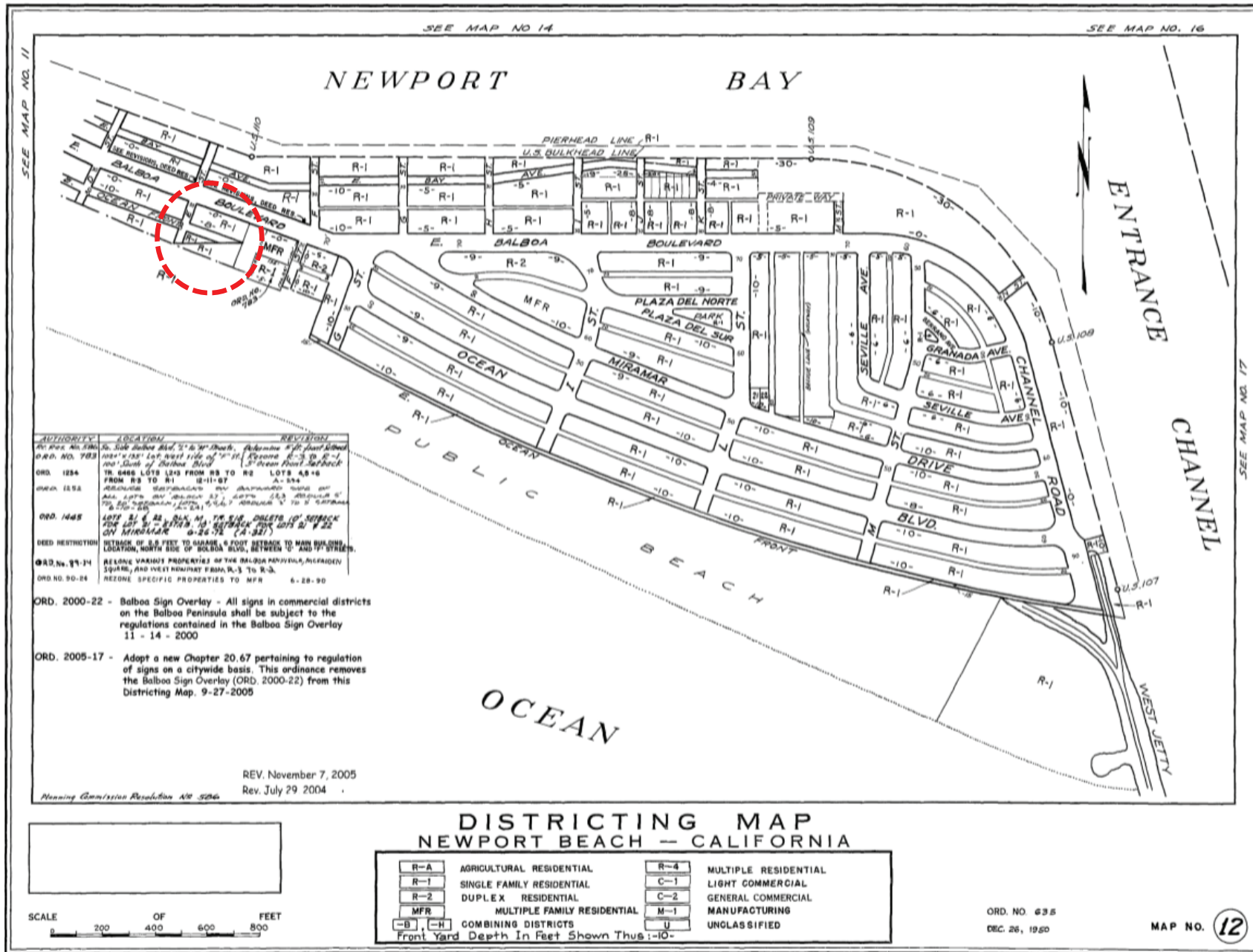
# Setback Map S-2F

# Existing Map



Setback Map

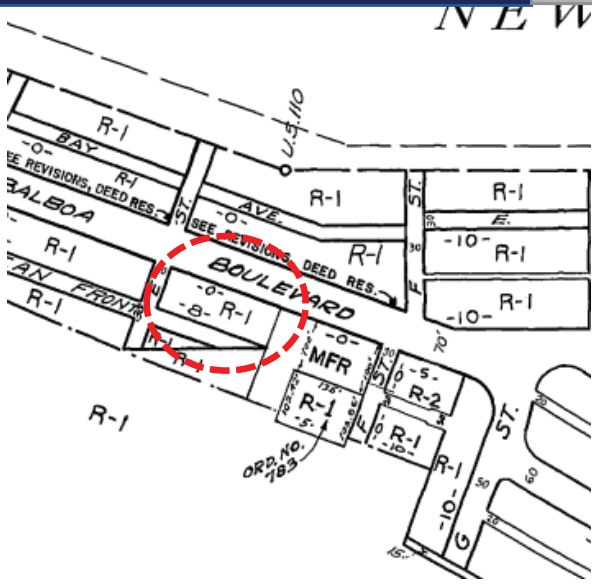
S-2F - Balboa Peninsula  
15-89



# Setback Map S-2F

# Highlighted Changes

## 1317 East Balboa Blvd



DM 12



Current S-2E



Proposed S-2E



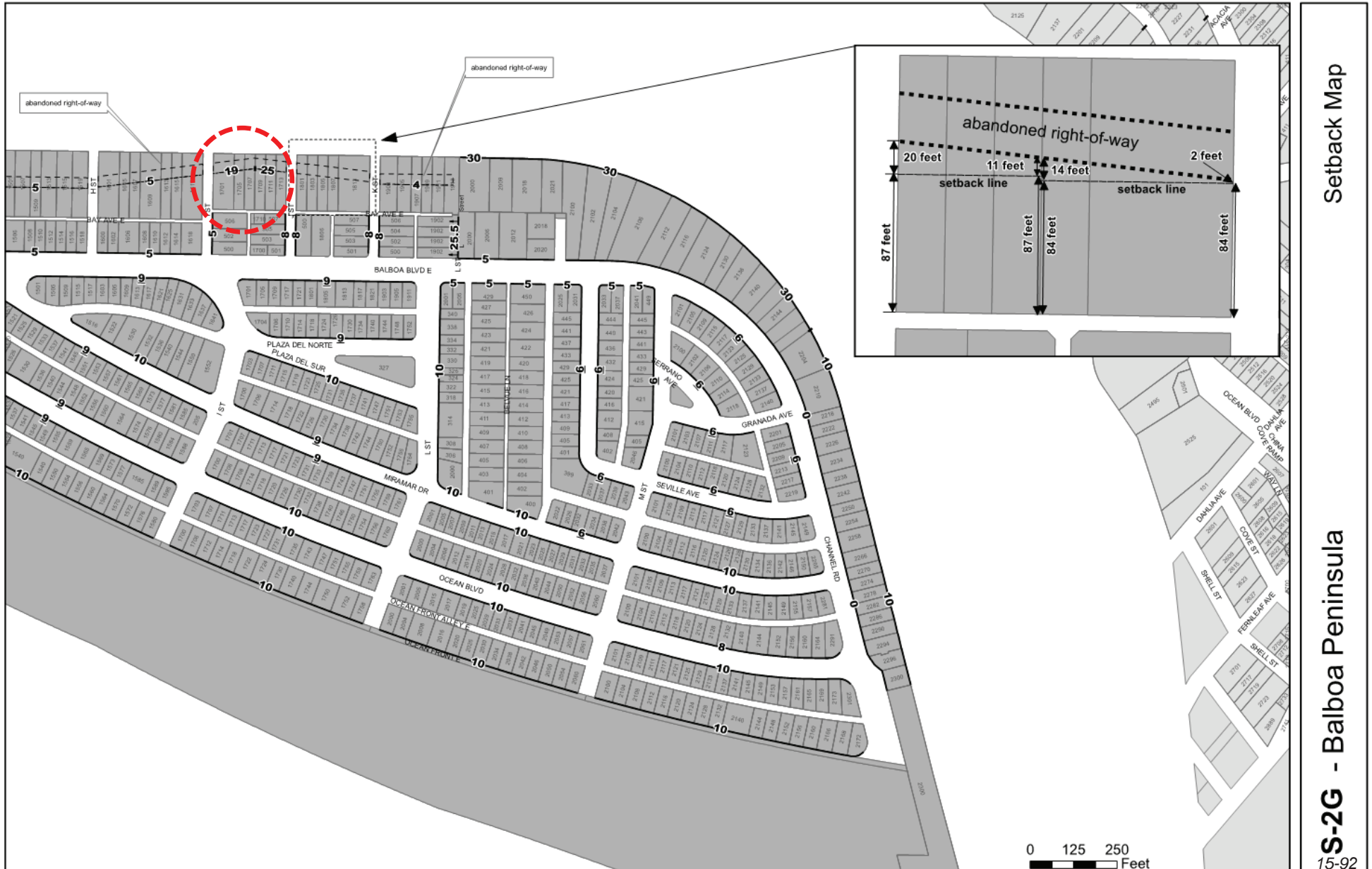
Setback map not consistent with intent Districting Map No. DM12 due to ambiguities in property line locations.

Limits of 8-foot setback shall include 1317 East Balboa Blvd.

# Setback Map

## S-2G

# Proposed Map



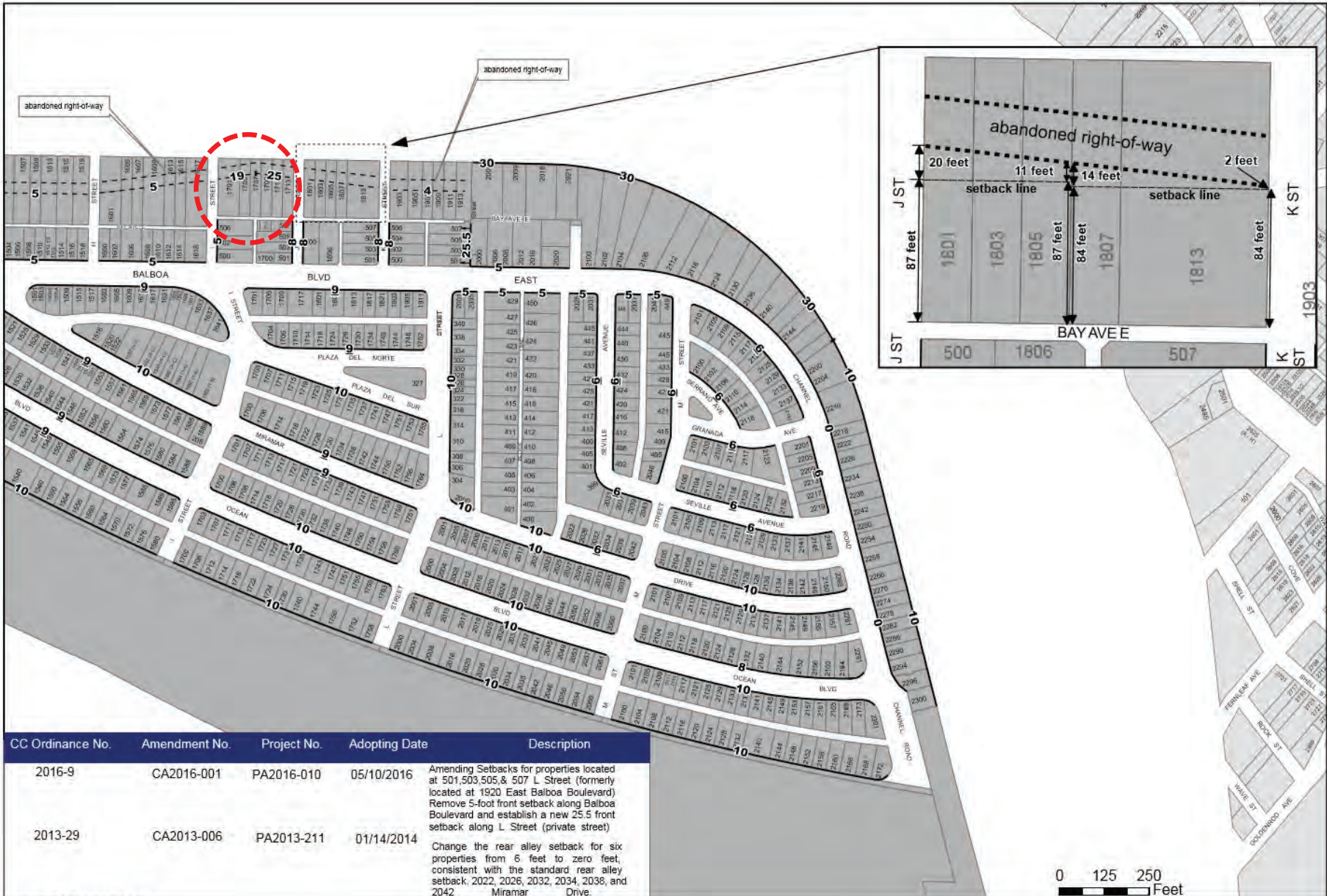
Setback Map

S-2G - Balboa Peninsula  
15-92

# Setback Map

# S-2G

# Existing Map



CC Ordinance No.	Amendment No.	Project No.	Adopting Date	Description
2016-9	CA2016-001	PA2016-010	05/10/2016	Amending Setbacks for properties located at 501,503,505,& 507 L Street (formerly located at 1920 East Balboa Boulevard) Remove 5-foot front setback along Balboa Boulevard and establish a new 25.5 foot setback along L Street (private street)
2013-29	CA2013-006	PA2013-211	01/14/2014	Change the rear alley setback for six properties from 6 feet to zero feet, consistent with the standard rear alley setback. 2022, 2026, 2032, 2034, 2036, and 2042 Miramar Drive.

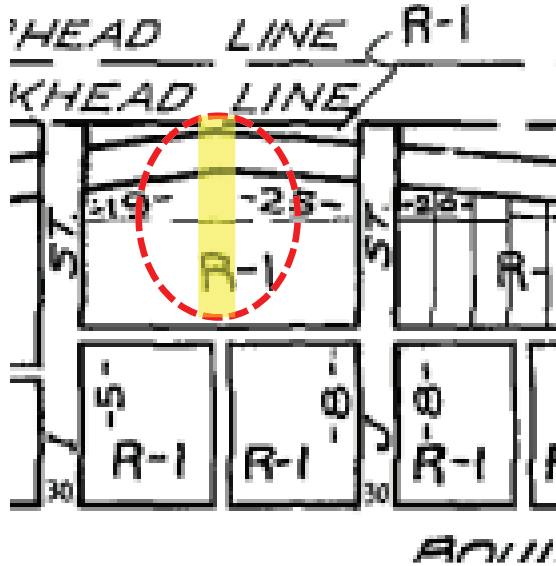
Name: S-2G / June 9, 2016



# Setback Map S-2G

# Highlighted Changes

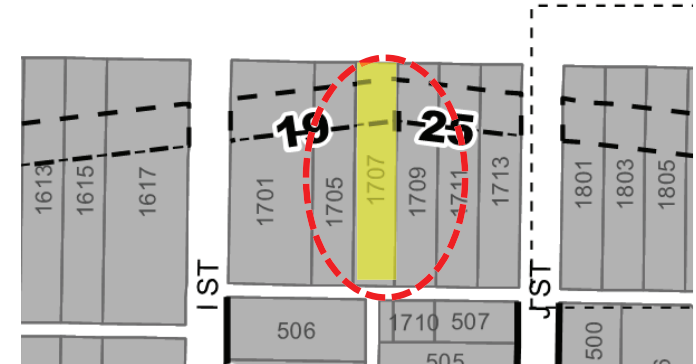
## 1707 East Bay Ave



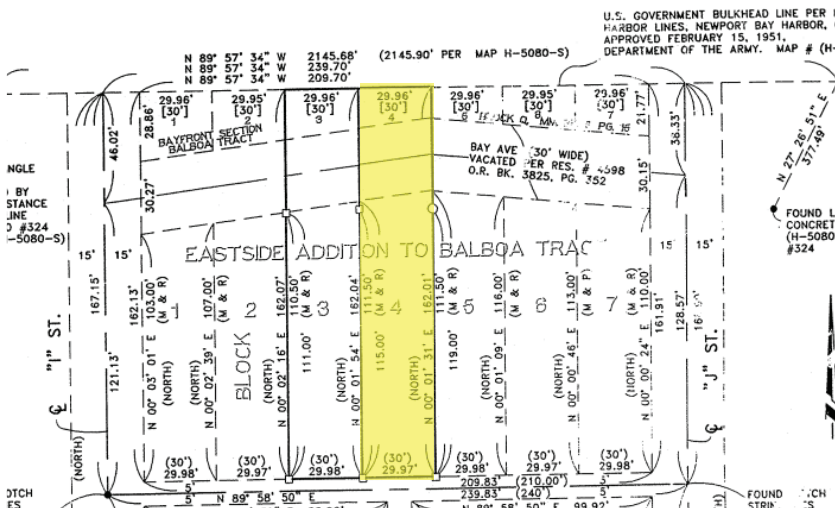
DM 12



Current S-2G



Proposed S-2G



Setback map not consistent with intent of Districting Map No. DM12 due to ambiguities in property line locations.

Delineation between 19-foot front and 25-foot front setback indicators should occur at easterly side property line of lot, not within center of subject lot.

# Setback Map S-5A

# Proposed Map



Setback Map

S-5A - Newport Heights  
15-96



# Setback Map S-5A

# Existing Map

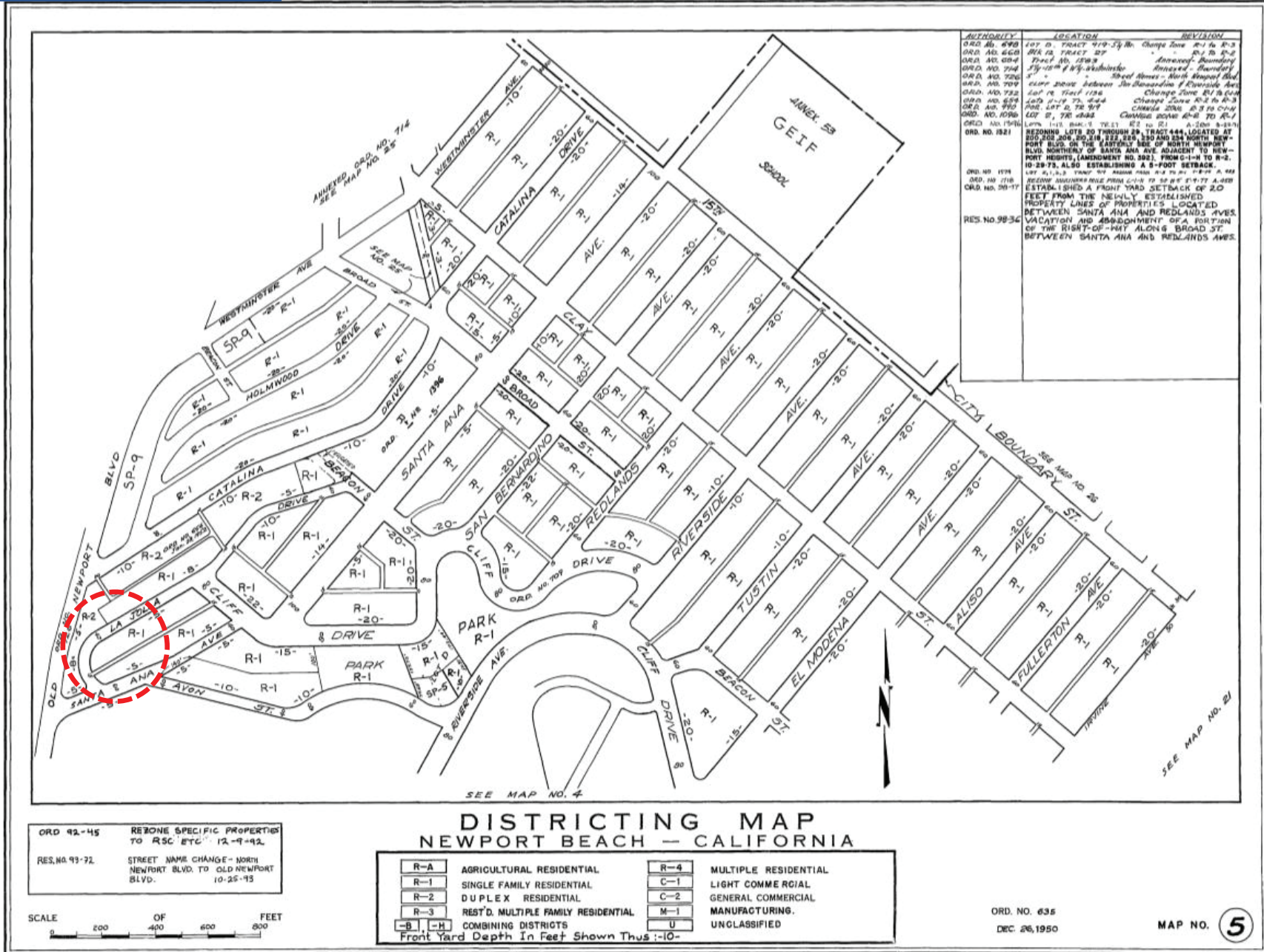


Setback Map

S-5A - Newport Heights  
15-97

# Setback Map S-5A

# Districting Map DM 5 In effect prior to 2010



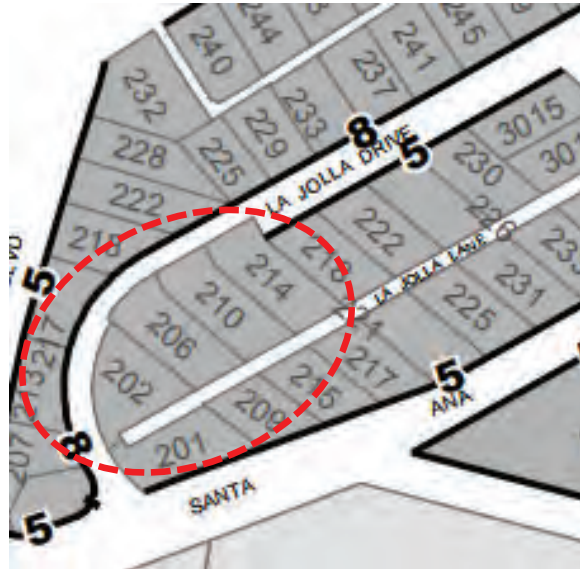
# Setback Map S-5A

## Highlighted Changes

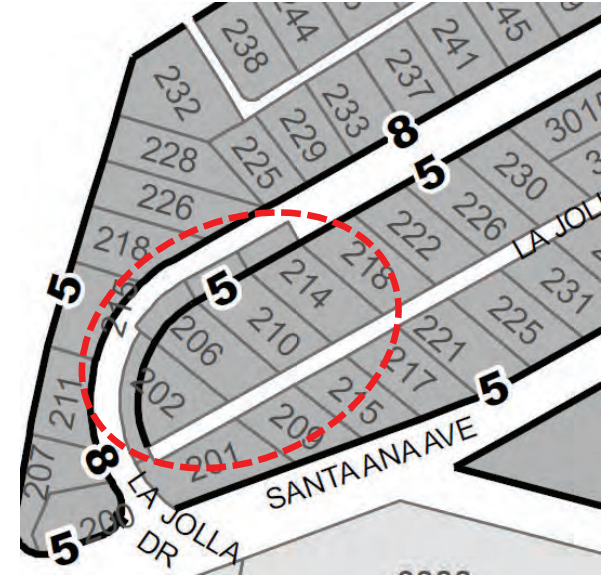
202, 206, 210, 214 La Jolla Dr



DM 5



Current S-5A



Proposed S-5A

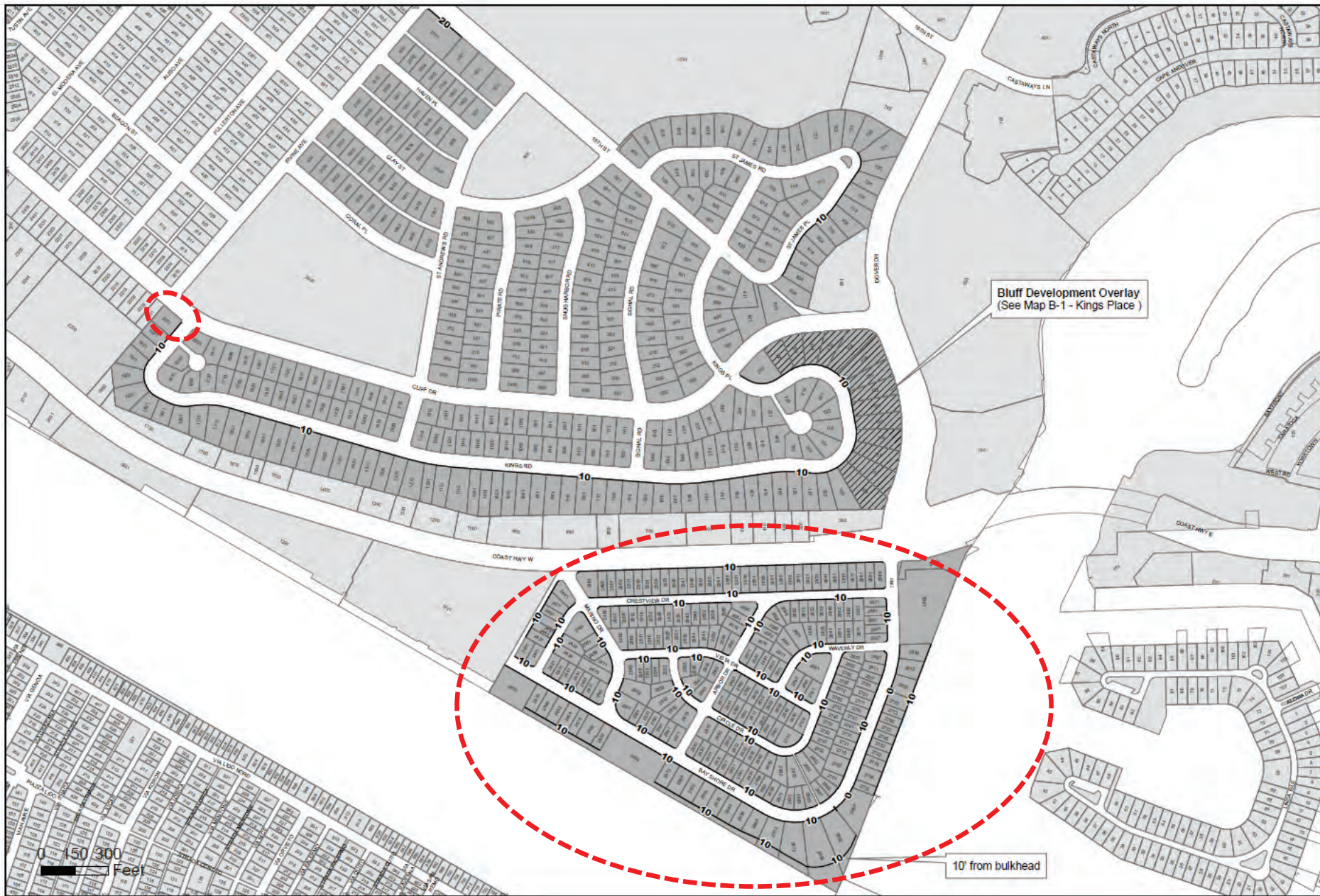
Setback map misinterpreted Districting Map No. DM5.

5-foot front setback intended to be maintained from abandoned La Jolla Dr. right-of-way line, consistent with existing development pattern.



# Setback Map S-6

# Proposed Map



Setback Map

S-6 - Cliff Haven / Bay Shores  
15-100

# Setback Map

## S-6

# Existing Map



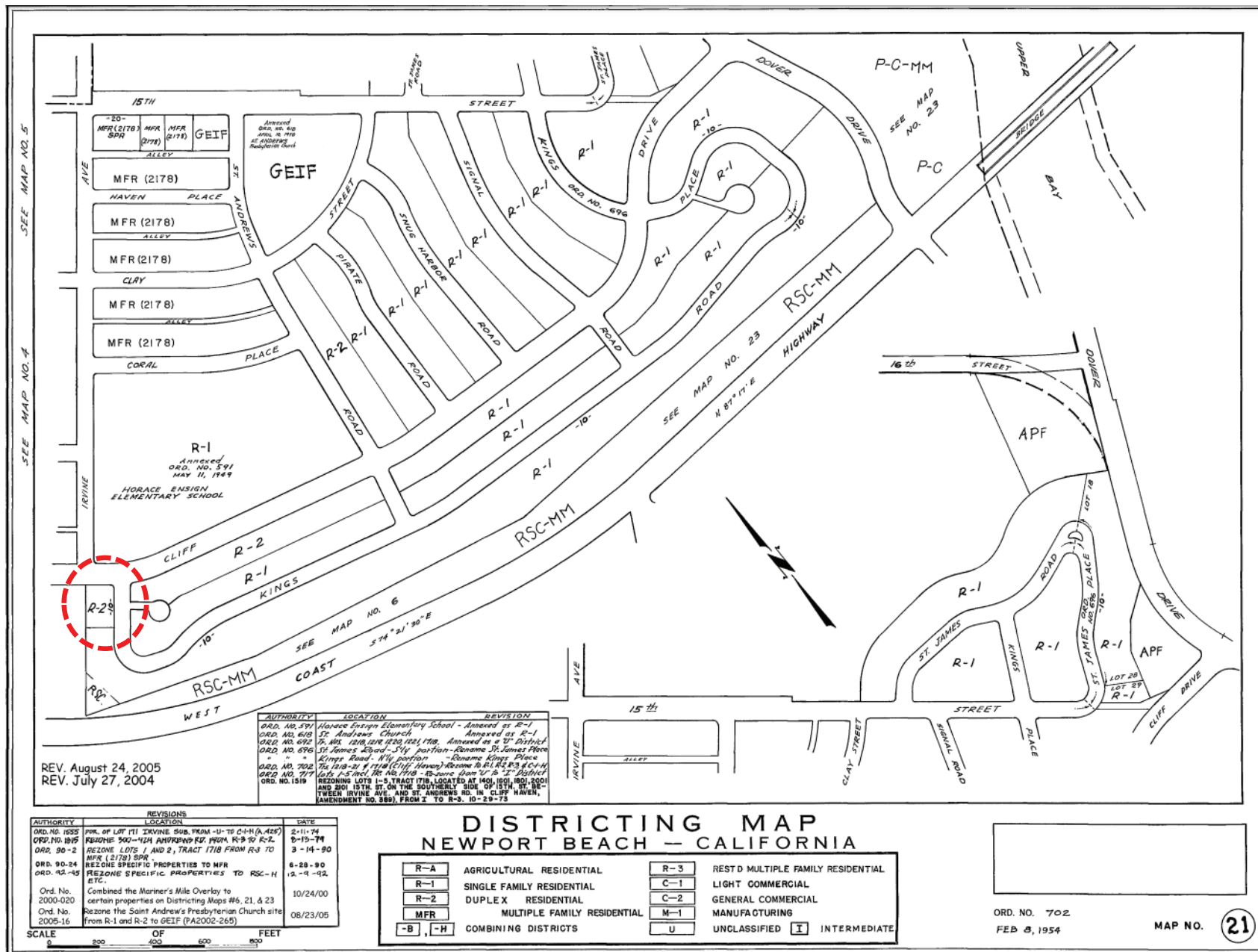
Setback Map

S-6 - Cliff Haven / Bay Shores



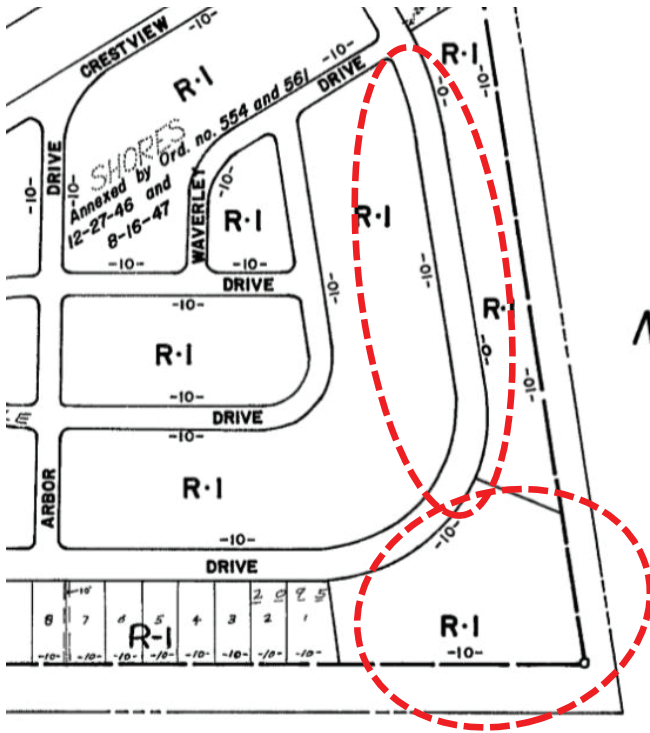
# Districting Map DM 21

## In effect prior to 2010



# Setback Map S-6

# Highlighted Changes Bayshores



DM 23



Current S-6



Proposed S-6

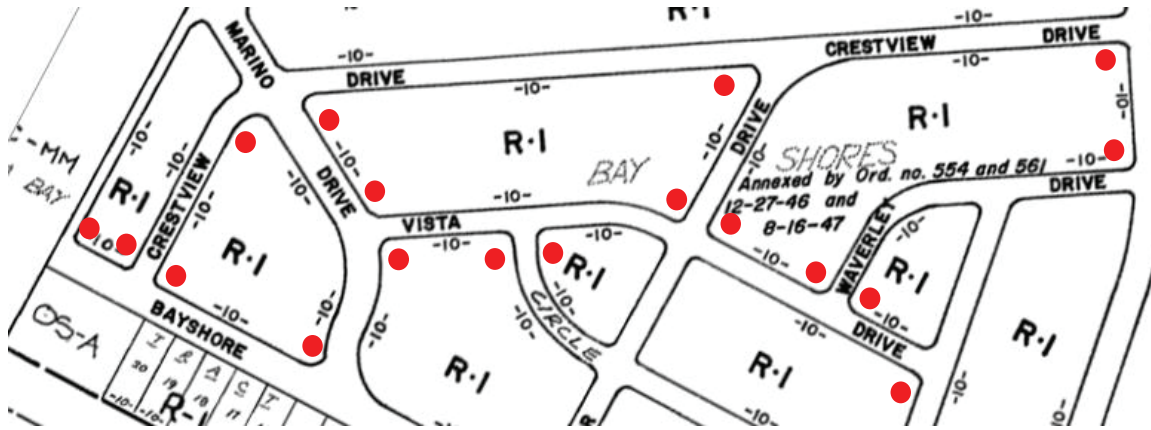
- 10-foot front setback line missing from 2691- 2821 Bayshores Dr (even addresses).
- 10-foot waterside front setback should be measured from actual bulkhead instead of U.S. Bulkhead Line, consistent with existing development pattern.





# Setback Map S-6

# Highlighted Changes Bayshores



DM 23

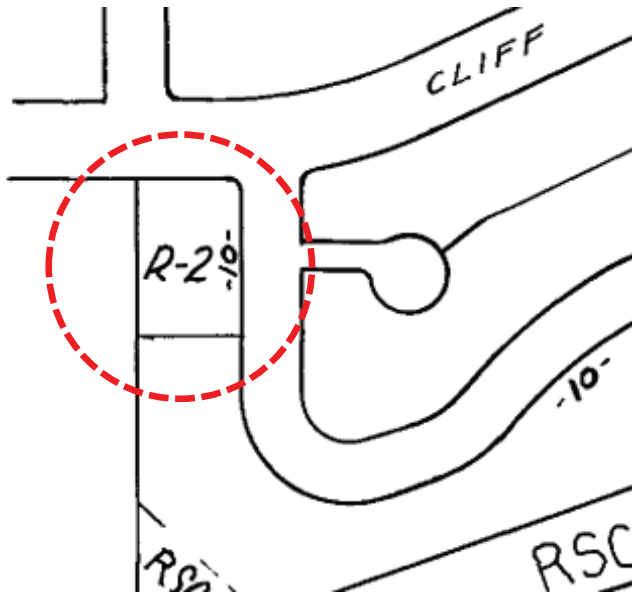


Current S-6

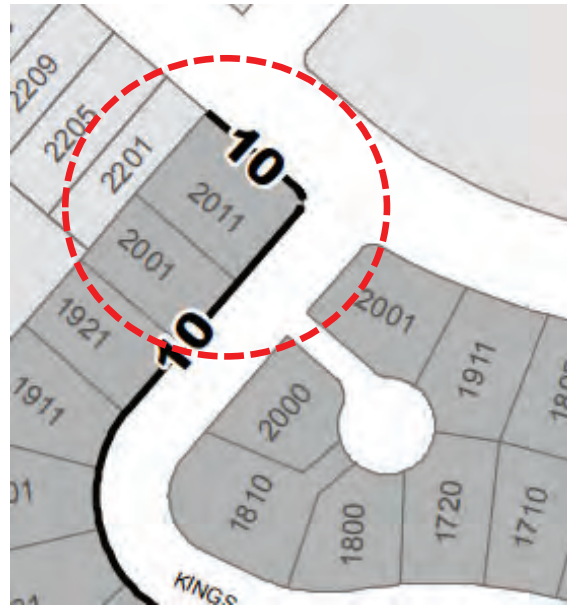


Proposed S-6

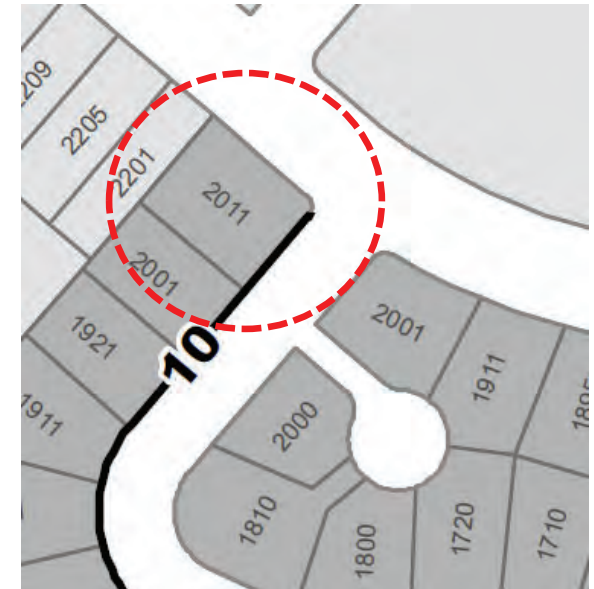
18 corner lots inadvertently labeled with two street front yards inconsistent with existing development. Side street frontages should be regulated as a side setback. See Director's Determination No. 2021-002 for more details.



DM 21



Current S-6



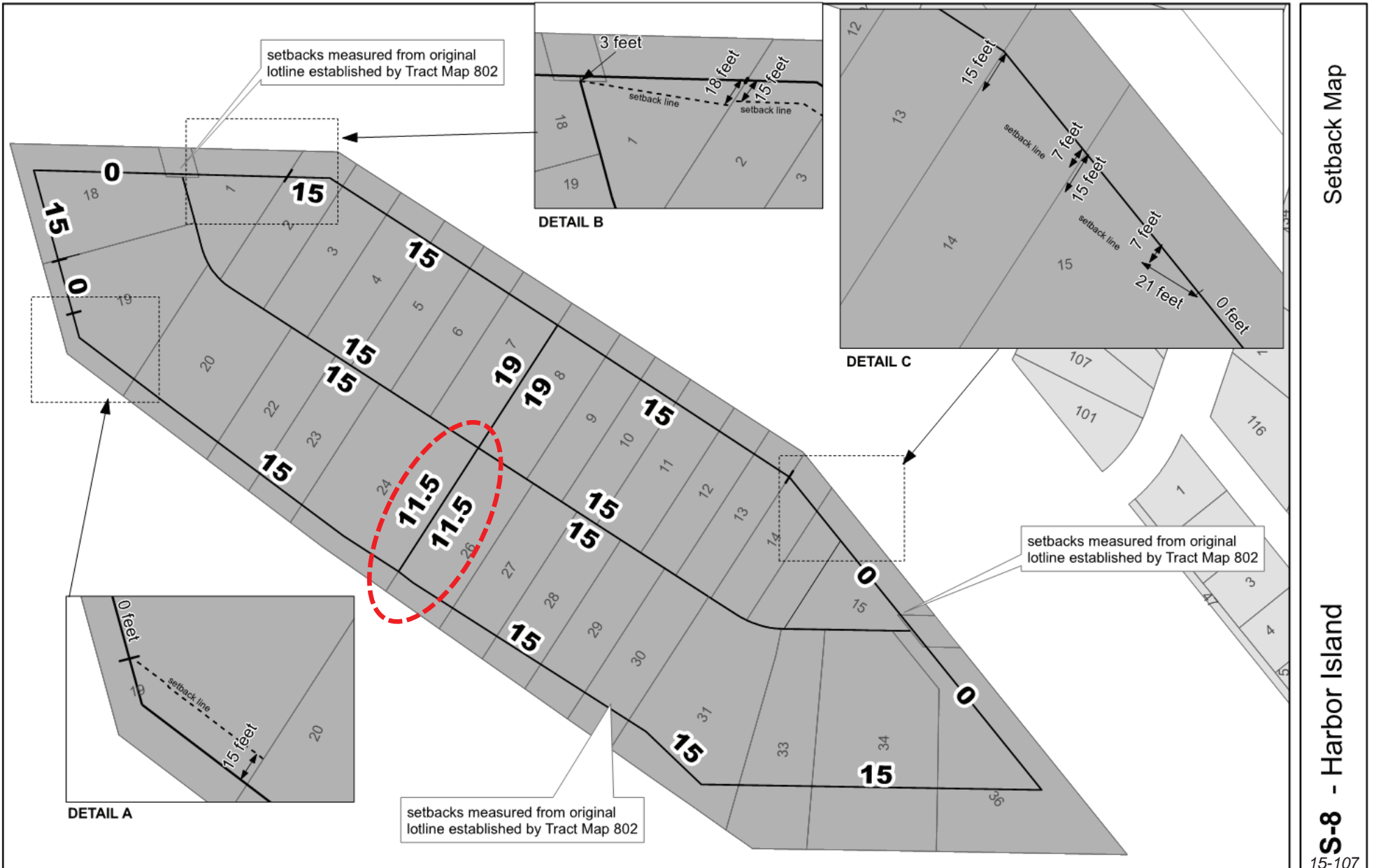
Proposed S-6

- Setback map not consistent with Districting Map No. DM21.
- Cliff Drive frontage historically regulated and developed as a 4-foot side yard.
- Affects Title 20 only



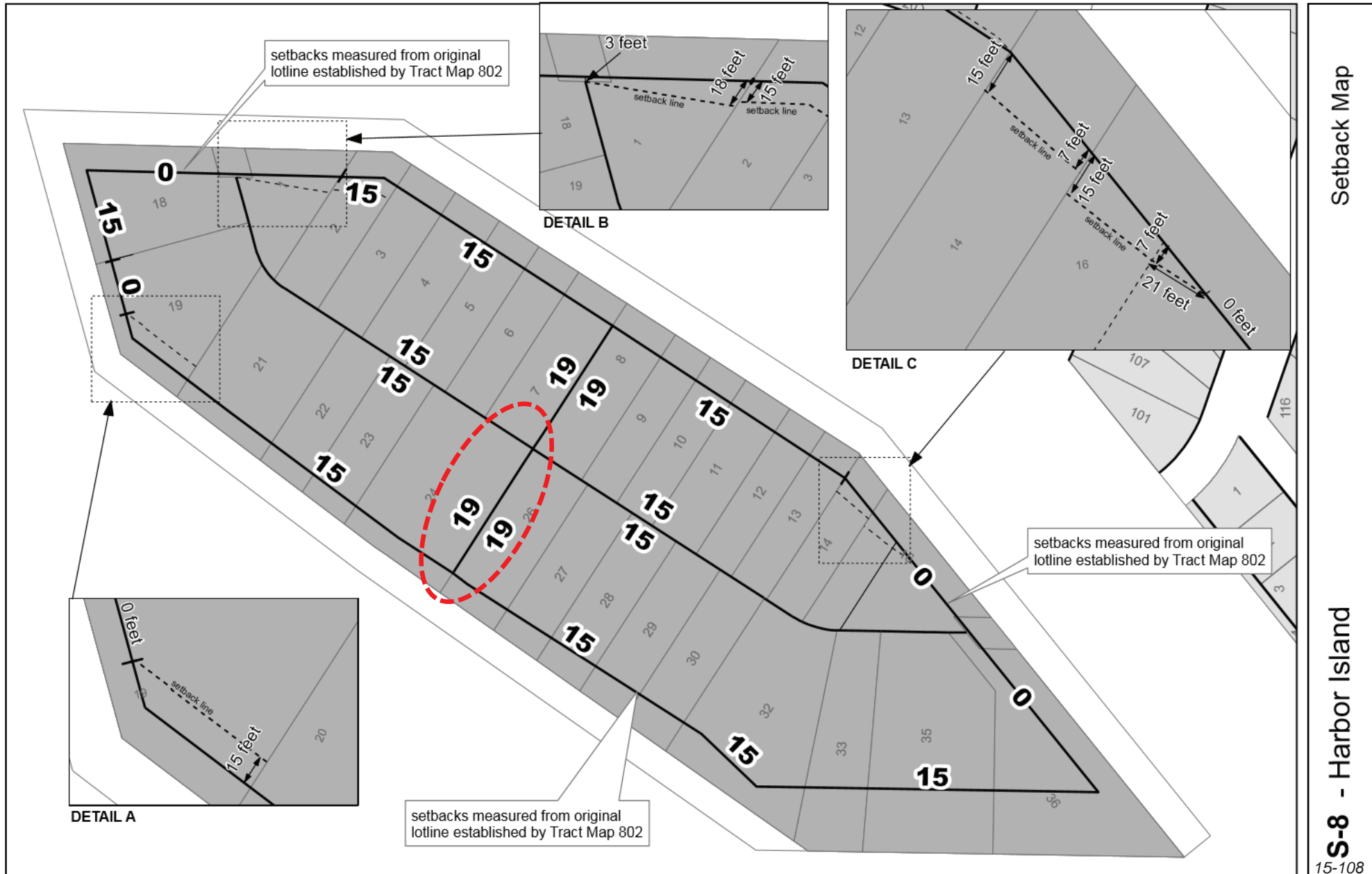
# Setback Map S-8

# Proposed Map



# Setback Map S-8

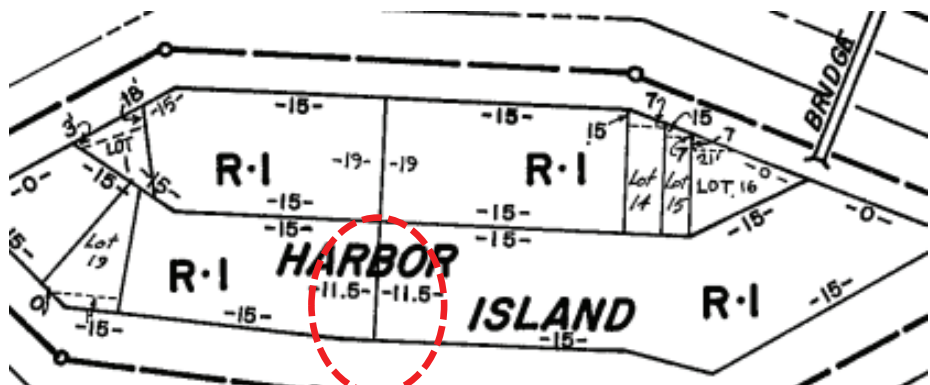
# Existing Map



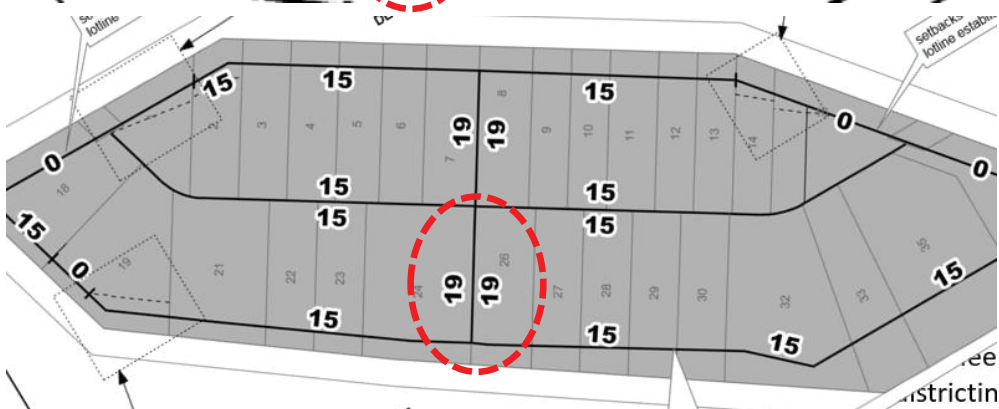


# Highlighted Changes

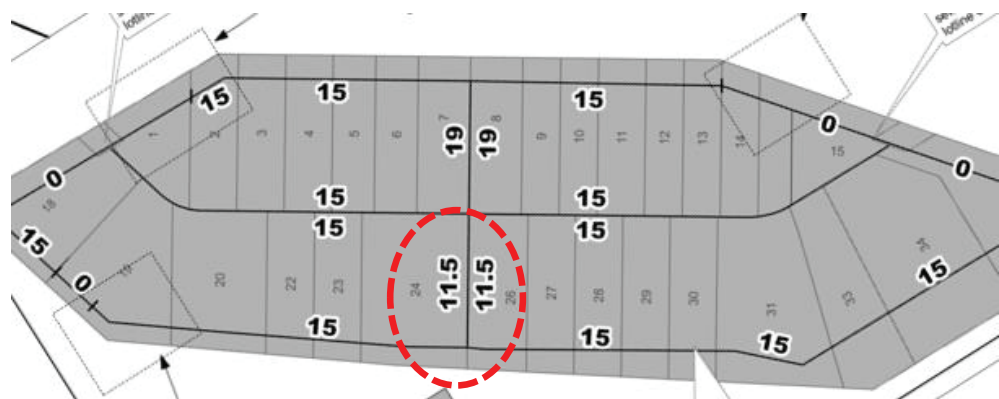
## 24 and 26 Harbor Island



DM 23



Current S-8

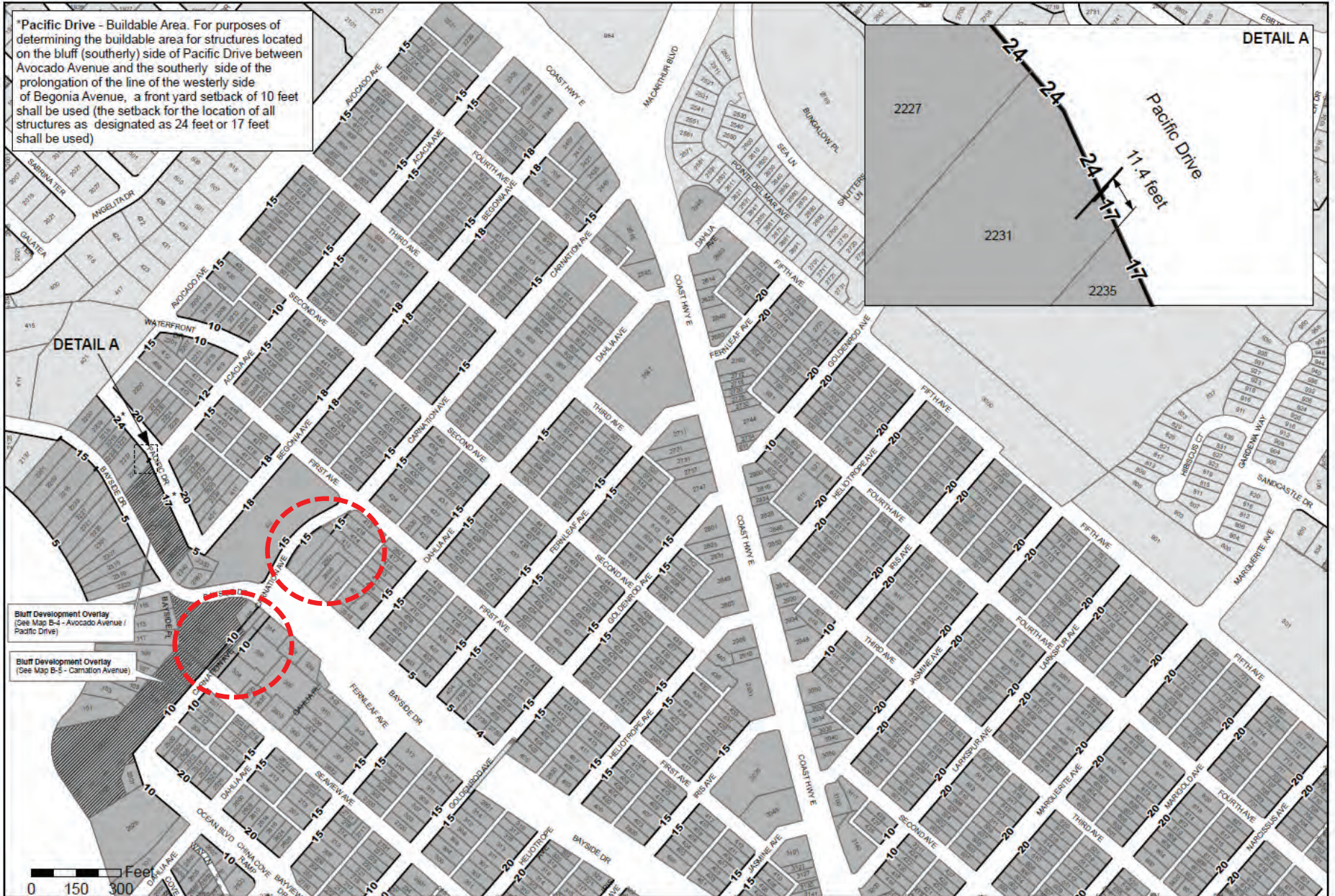


Proposed S-8

The correct setback should be 11.5 feet (not 19 feet) as shown on the districting map to accurately reflect the location of the 15-ft wide pedestrian walkway easement and an additional 4-foot setback for either property.

# Setback Map S-10A

# Proposed Map



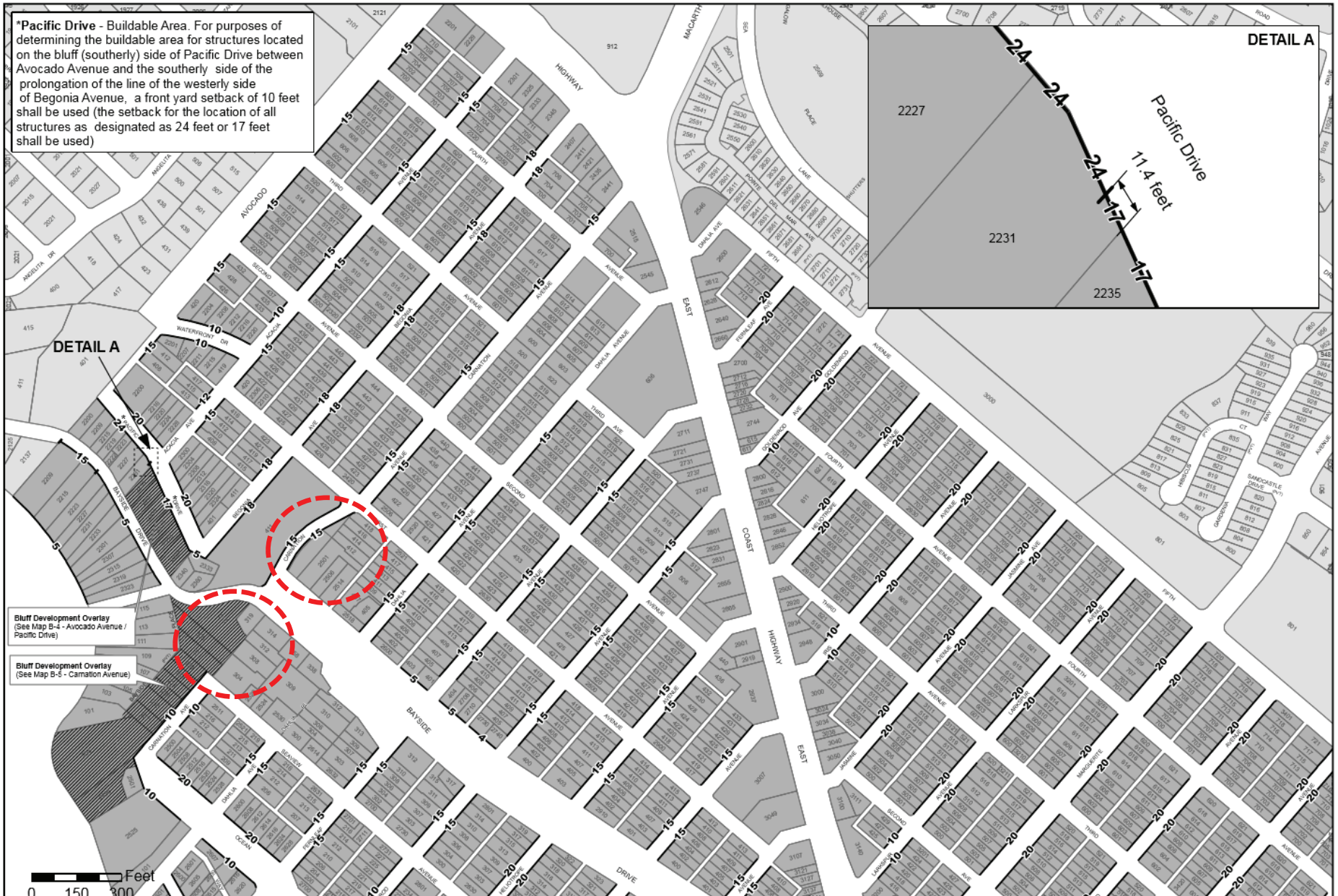
Setback Map

S-10A - Corona del Mar

15-111

# Setback Map S-10A

# Existing Map



Setback Map

S-10A - Corona del Mar

15-112







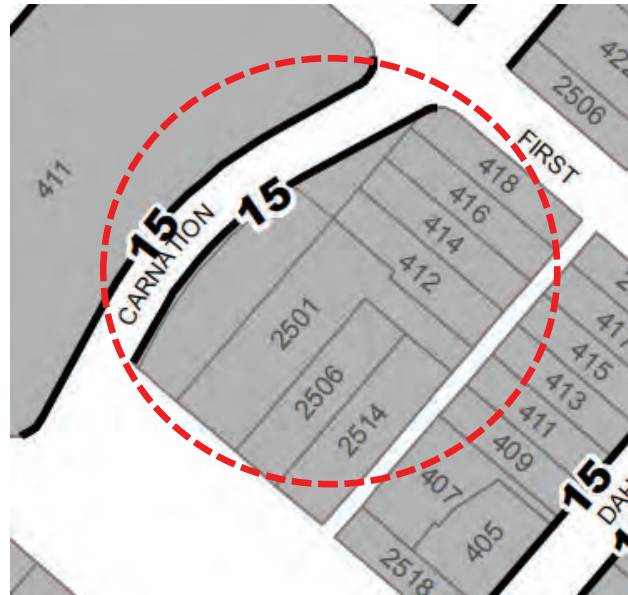
# Setback Map S-10A

## Highlighted Changes

412-418 Carnation Ave



DM 16

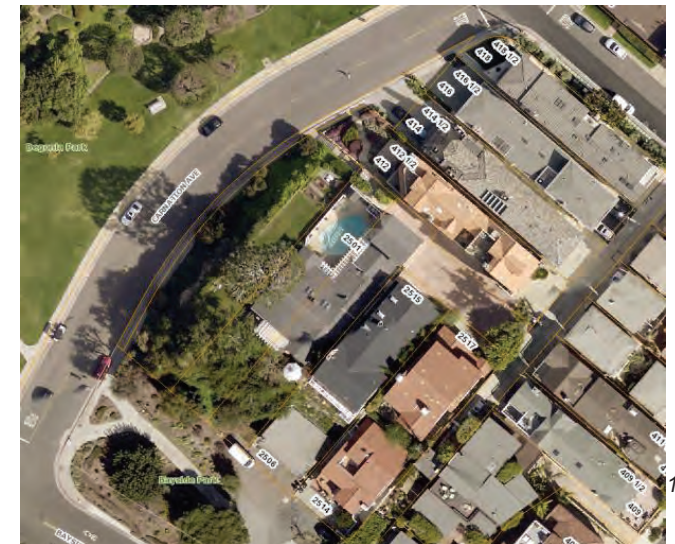


Current S-10A



Proposed S-10A

- Ambiguities in both setback map and Districting Map No. DM16 due to vacated right-of-way along Carnation Ave. frontages.
- 15-foot setback for 412 Carnation should be measured from abandoned right-of-way line.
- 15-foot setback for 414-418 Carnation should be measured from actual property line.



# Setback Map S-10A

# Highlighted Changes

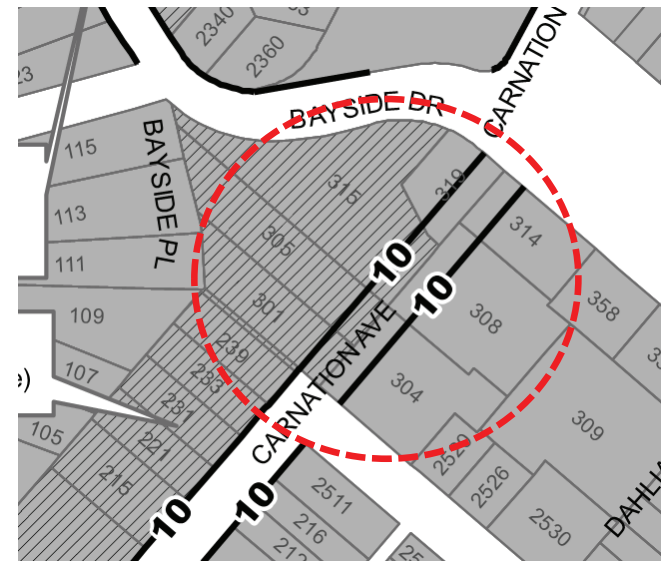
## 300-319 Carnation Ave



**DM 17**



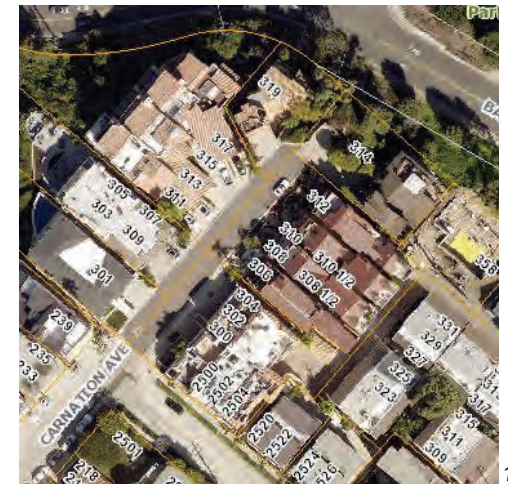
**Current S-10A**



**Proposed S-10A**

Setback map not consistent with Districting Map No. DM17.

10-foot front setbacks missing from 300-319 Carnations Ave as measured from abandoned right-of-way line and consistent with existing development pattern.



# Setback Map S-10B

# Proposed Map



Setback Map

S-10B - Corona del Mar

# Setback Map S-10B

# Existing Map

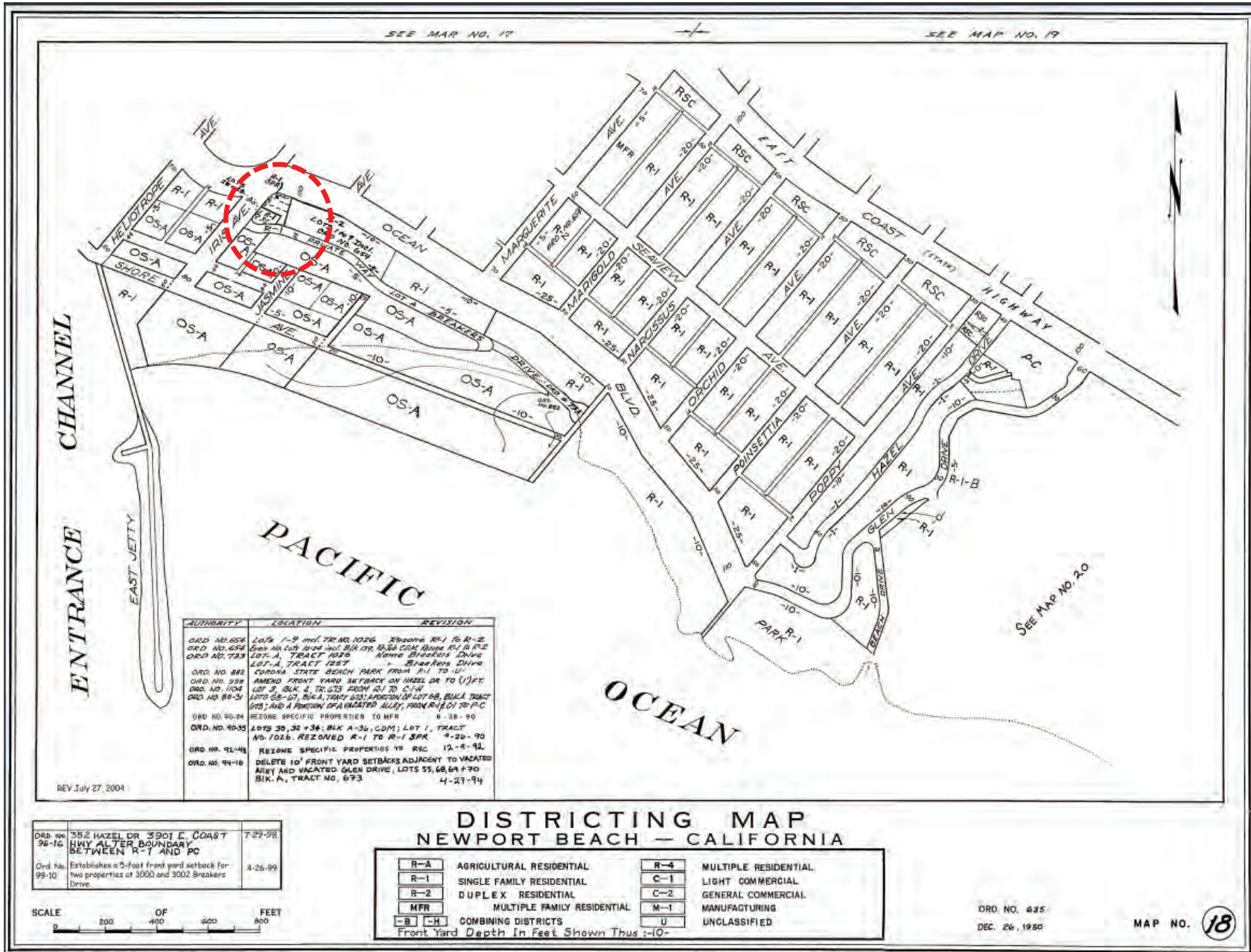


Setback Map

S-10B - Corona del Mar  
15-118

# Setback Map S-10B

# Districting Map DM 18 In effect prior to 2010



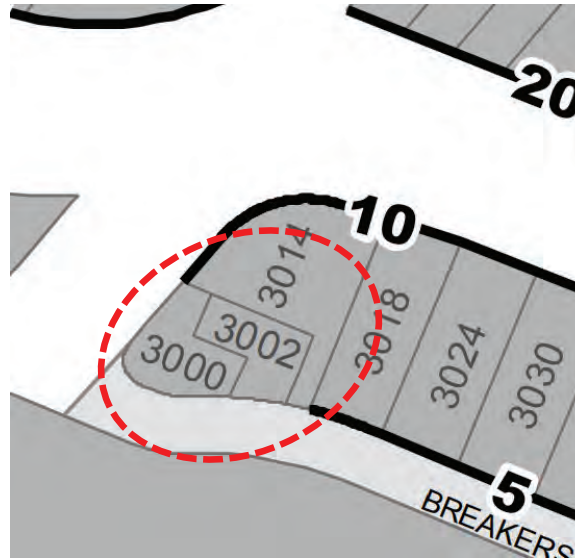
# Setback Map S-10B

# Highlighted Changes

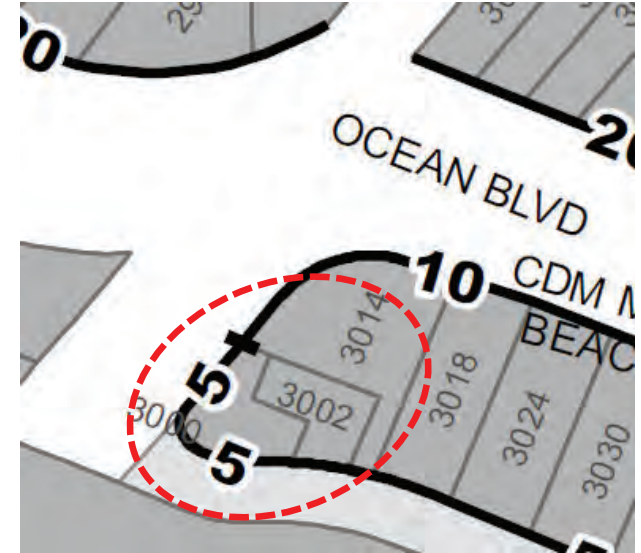
3000 Breakers Dr.



DM 18



Current S-10B



Proposed S-10B



- Setback map not consistent with Districting Map No. DM18.
- 5-foot front setback left off map



# Setback Map S-10D

# Proposed Map



Setback Map

S-10D - Corona del Mar

# Setback Map S-10D

# Existing Map

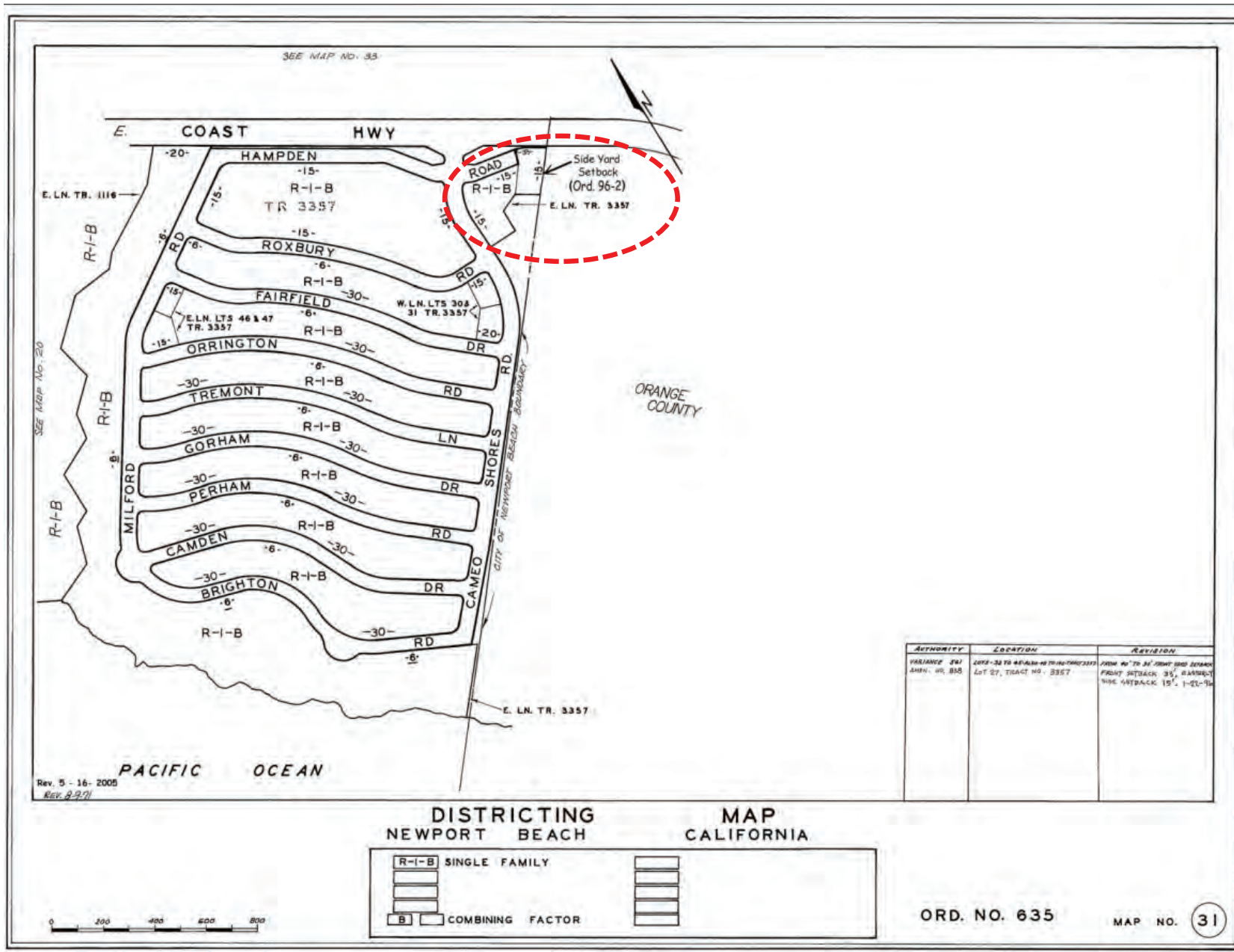


Setback Map

S-10D - Corona del Mar

# Setback Map S-10D

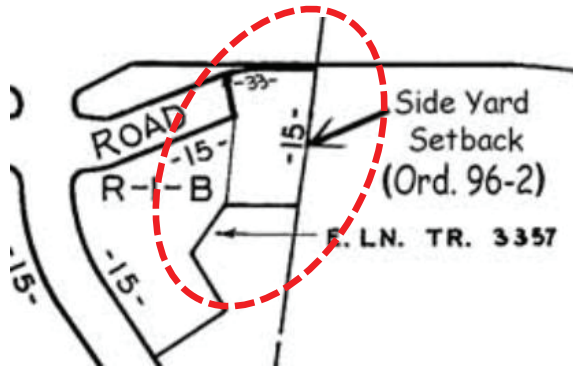
# Districting Map DM 31 In effect prior to 2010



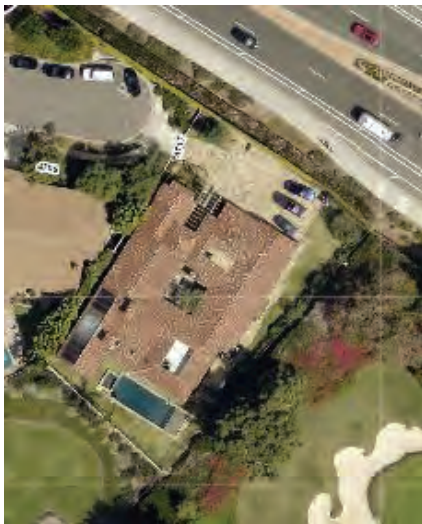
# Setback Map S-10D

# Highlighted Changes

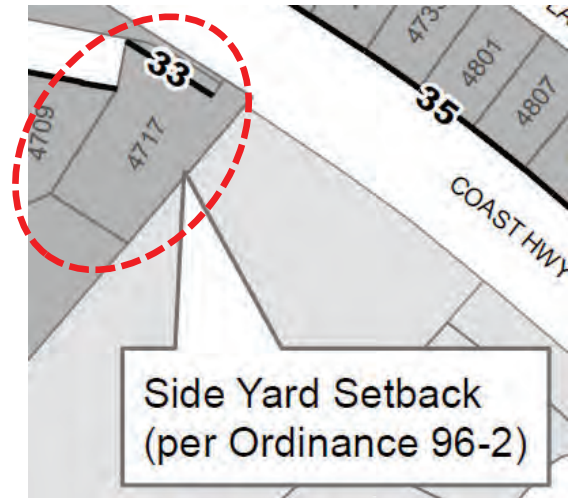
4717 Hampden Rd.



DM 31



Current S-10D



Proposed S-10D

- Setback map not consistent with Districting Map No. DM31.
- 15-foot setback indicator along the easterly side property line adjacent to golf course should include a note clarifying it is a side setback per Ordinance 96-2.

# **Attachment H**

Director's Determination No. DD2021-002



## Director's Determination

**To:** Planning Division

**From:** Seimone Jurjis, Community Development Director

**Date:** May 21, 2021

**Re:** Director's Determination No. DD2021-002 Regarding Setbacks within the Bayshores Community (PA2021-115)

---

### Summary

Setback Maps adopted as part of the Comprehensive Zoning Code Update in 2010 were intended to carry over the same setbacks indicated on the Districting Maps of the previous Zoning Code. Unfortunately, a number of errors resulting from the update were identified on Setback Map S6 applicable to the Bayshores Community.

Amendments to the Zoning Code (Title 20) and Local Coastal Program Implementation Plan (Title 21) of the Newport Beach Municipal Code (NBMC) to correct and clarify various Setback Maps, including Setback Map S6, are underway. However, the amendment process may take up to two years. In the interim, the Community Development Department Director has determined that it is appropriate to utilize Districting Map 23 (Attachment A) for the application of setbacks in the Bayshores Community.

### Background

- The area of the City commonly referred to as "Bayshores" was first annexed to the City in 1947.
- Districting Map 23, first adopted in 1951 as part of Ordinance No. 646, created the R-1 zoning for the Bayshores Community (Attachment B), and was amended over time to reflect changes in zoning to other properties on the map.
- The Zoning Code in effect at the time, and up until the 2010 Zoning Code Update, referred to Districting Maps for the purposes of establishing front yard setbacks only (Attachment C).
- Front, side, and rear setbacks are defined terms in the Zoning Code. Districting Maps did not define setback areas but rather they established the depth of front yard setbacks.

- Districting Map 23 identifies either 0 or 10-foot front yard setbacks along frontages where lots would have a front yard facing a street or waterfront. Unfortunately, Districting Map 23 does not illustrate each individual lot, which resulted in confusion and an inconsistent application of setbacks over time for some corner lots where side yards were treated like front yards.
- Setback Maps as part of the 2010 Zoning Code update were intended to carry over the same setbacks indicated on the earlier Districting Maps they replaced. The Setback Maps provide more specific information by illustrating individual lots and thereby how setbacks would be applied to them. The Bayshores Community is depicted on Setback Map S6 (Attachment D).
- The 2010 Zoning Code Update also changed how Setback Maps were to be used. Instead of only establishing setbacks for front yards only as with the previous Districting Maps, the Update, which standards remains in effect today, refers to Setback Maps for the purposes of establishing different setbacks for any yard area (i.e., front, side, or rear) (Attachment E).

#### Setback Map S6 Errors

- The block of lots between 2691 through 2821 Bay Shore Drive (west side of street) should be subject to a 10-foot front yard setback facing the street as illustrated on Districting Map 23 and as each of these homes were originally constructed. Setback Map S6 inadvertently did not include the 10-foot front setback label and line, resulting in that block now being subject to a 20-foot front yard setback and the block of homes being considered nonconforming (Attachment F). A nonconforming status would subject these homes to additional development regulations affecting additions and remodels and a loss of buildable area. There was no intent to make these homes subject to a different setback standard from the standard established by Districting Map 23 or to make these homes nonconforming.
- Setback Map S6 inadvertently identified 18 corner lots within the community as having 10-foot setbacks on both the front and side yards facing the two street frontages. Districting Map 23 did not identify setbacks on a lot specific level and the 10-foot setback was only intended to apply to the front yard setback, not side yard setbacks. Research of the 18 affected corner lots confirms that 14 of the said lots were originally constructed with homes in compliance with a standard 4-foot side setback, not a 10-foot setback as suggested by the current Setback Map S6. Application of a 10-foot side setback per Setback Map S6 would result in several homes being considered nonconforming. A nonconforming status would subject these homes to additional development regulations affecting additions and remodels and a loss of buildable area (Attachment G). Again, there was no intent to make these homes nonconforming to setback standards.

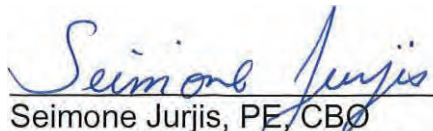
Authority

Sections 20.12.020 and 21.12.020 (Rules of Interpretation) of the NBMC authorize the Community Development Director to interpret the meaning of provisions of the Zoning Code and Local Coastal Program Implementation Plan, including maps, and to apply and/or enforce the codes.

Director's Determination

The Community Development Director of the City of Newport Beach hereby determines that Districting Map 23 (Attachment A) shall be utilized for the identification of required front yard of setbacks in the Bayshores Community until such time that Setback Map S6 is corrected. Setbacks depicted on Districting Map 23 shall only apply to front yards whether they face the street, or the water and they shall not establish side yard setbacks or be construed to define a side yard as a front yard.

All decisions of the Community Development Director may be appealed to, or called for review by, the Planning Commission pursuant to NBMC Chapters 20.64 and 21.64 (Appeals and Calls for Review) and within fourteen (14) days following the date of this decision.

  
Seimone Jurjis, PE/CBO  
Community Development Director

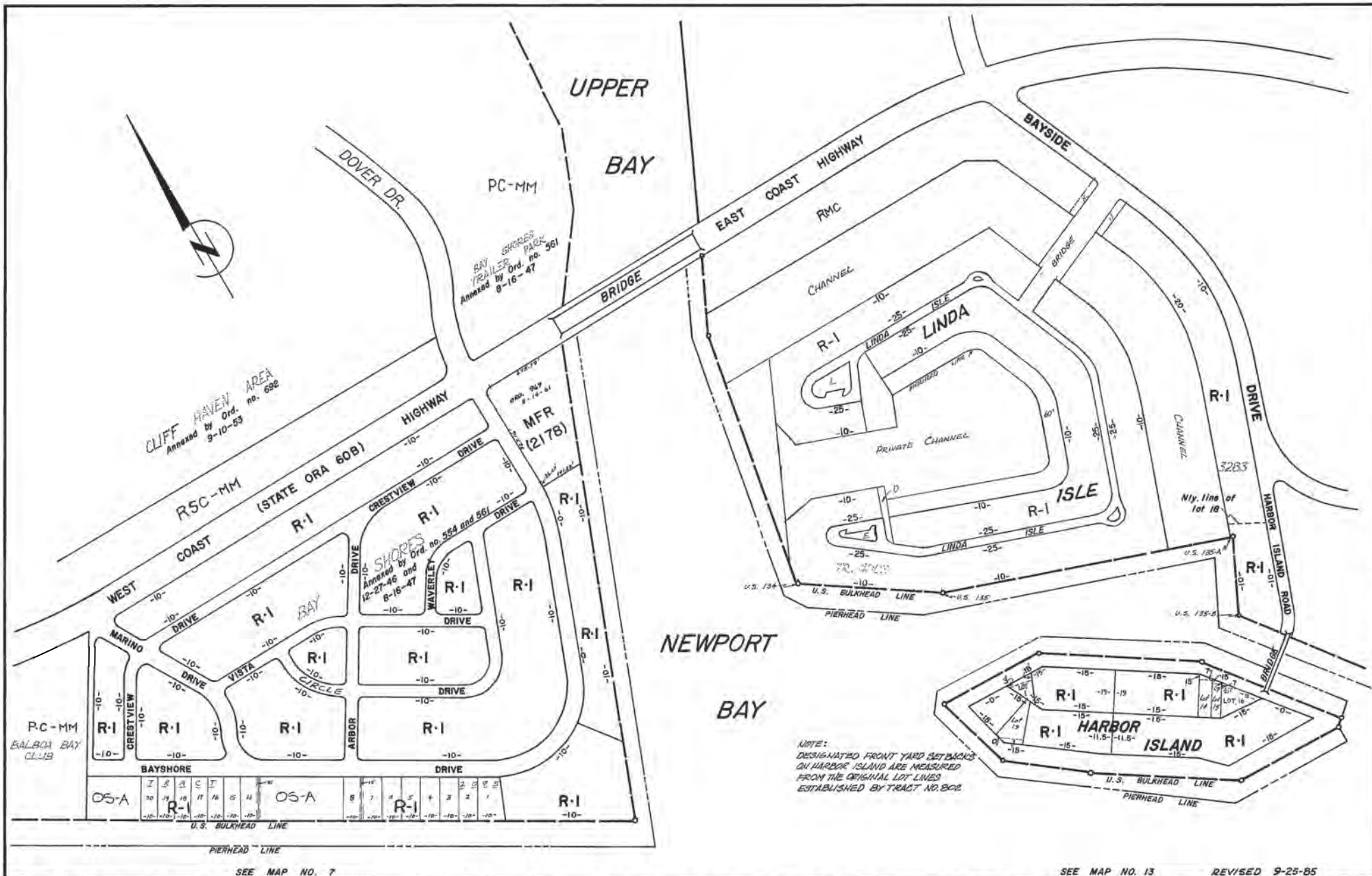
Attachments:

- A Most Recent Districting Map 23
- B Original Districting Map 23
- C Pre-2010 Zoning Code Provisions Addressing Use of Districting Maps
- D Setback Map S6
- E 2010 Zoning Code Provisions Addressing Use of Setback Maps
- F Error Affecting 2691 through 2821 Bay Shore Drive
- G Error Affecting 18 Corner Lots



# **ATTACHMENT A**

Districting Map 23



NOTE:  
 DESIGNATED FRONT YARD SETBACKS  
 ON HARBOR ISLAND ARE MEASURED  
 FROM THE ORIGINAL LOT LINES  
 ESTABLISHED BY TRACT NO. 802

SEE MAP NO. 13 REVISED 9-25-85

# DISTRICTING MAP CITY OF NEWPORT BEACH CALIFORNIA

ADOPTED BY...  
 ORD. NO. 635 -- 12-26-50

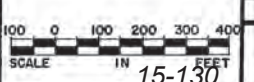
R-A	AGRICULTURAL - RESIDENTIAL DISTRICT
R-1	SINGLE FAMILY DISTRICT
R-2	DUPLEX RESIDENTIAL DISTRICT
MFR	MULTIPLE RESIDENTIAL
R-4	MULTIPLE RESIDENTIAL DISTRICT
B	COMBINING OR "B" DISTRICT

C-N	NEIGHBORHOOD COMMERCIAL DISTRICT
C-O	LIMITED COMMERCIAL - MULTIPLE RESIDENTIAL DISTRICT
C-1	LIGHT COMMERCIAL DISTRICT
C-2	GENERAL COMMERCIAL DISTRICT
R-3	REST'D MULTIPLE FAMILY RESIDENTIAL
U	UNCLASSIFIED DISTRICT

REVISIONS (CONT.)		
AUTHORITY	LOCATION	DATE
ORD. NO. 1536	BOUNDED ON THE NORTH BY WEST-CLIFF DR., EAST BY UPPER NEWPORT BAY, SOUTH BY WEST COAST HWY. AND WEST BY DOVER DR. (AMENDMENT NO. 408) FROM C-1-H AND R-4 AND U- TO P-C.	12-17-73
ORD. NO. 1550	PROPERTY LOCATED AT 101, 107 AND 115 HARBOR ISLAND RD. ADJACENT TO THE HARBOR ISLAND BRIDGE (AMENDMENT NO. 432) FROM U- TO REZONE SPECIFIC PROPERTIES TO MFR	1-28-74
ORD. 90-24	REZONE SPECIFIC PROPERTIES TO MFR	5-28-90

REVISIONS		
AUTHORITY	LOCATIONS	DATE
ORD. NO. 646	BAYSHORES TRAILER PARK - U- TO R-3 & C1H BAYSHORES TR'S 104-102-100 U TO R1	
ORD. NO. 701	LINDA ISLE ANNEXATION	
ORD. NO. 722	TR. 2095 LOTS 1 TO 58 U TO R1	
ORD. NO. 840	TR. 3277 FROM U TO R1	
ORD. NO. 897	TR. 3283 FROM U TO R1	
ORD. NO. 969	FOR LOT 17, 82A, 84 WYVINE SUB. U TO R3	
ORD. NO. 983	FOR BULK 24 WYVINE'S SUB. U TO C1H	
ORD. NO. 1103	TR 4200 LOTS 1-107 U TO R1	
ORD. NO. 1498	TR 2095 LOTS 1 TO 8 AND 14 TO 20 FROM U TO R-1	
ORD. NO. 85-5	LOT 1, TRACT 802, FROM 16' TO 24' 10"	
ORD. NO. 85-34	LOT 16, TR. 802, FROM 15' TO 0' 6"	

ORD. NO. 94-36 REZONE BALBOA BAY CLUB MARINA  
 ORD. NO. 92-45 REZONE PROPERTIES TO RES-4  
 12-21-82

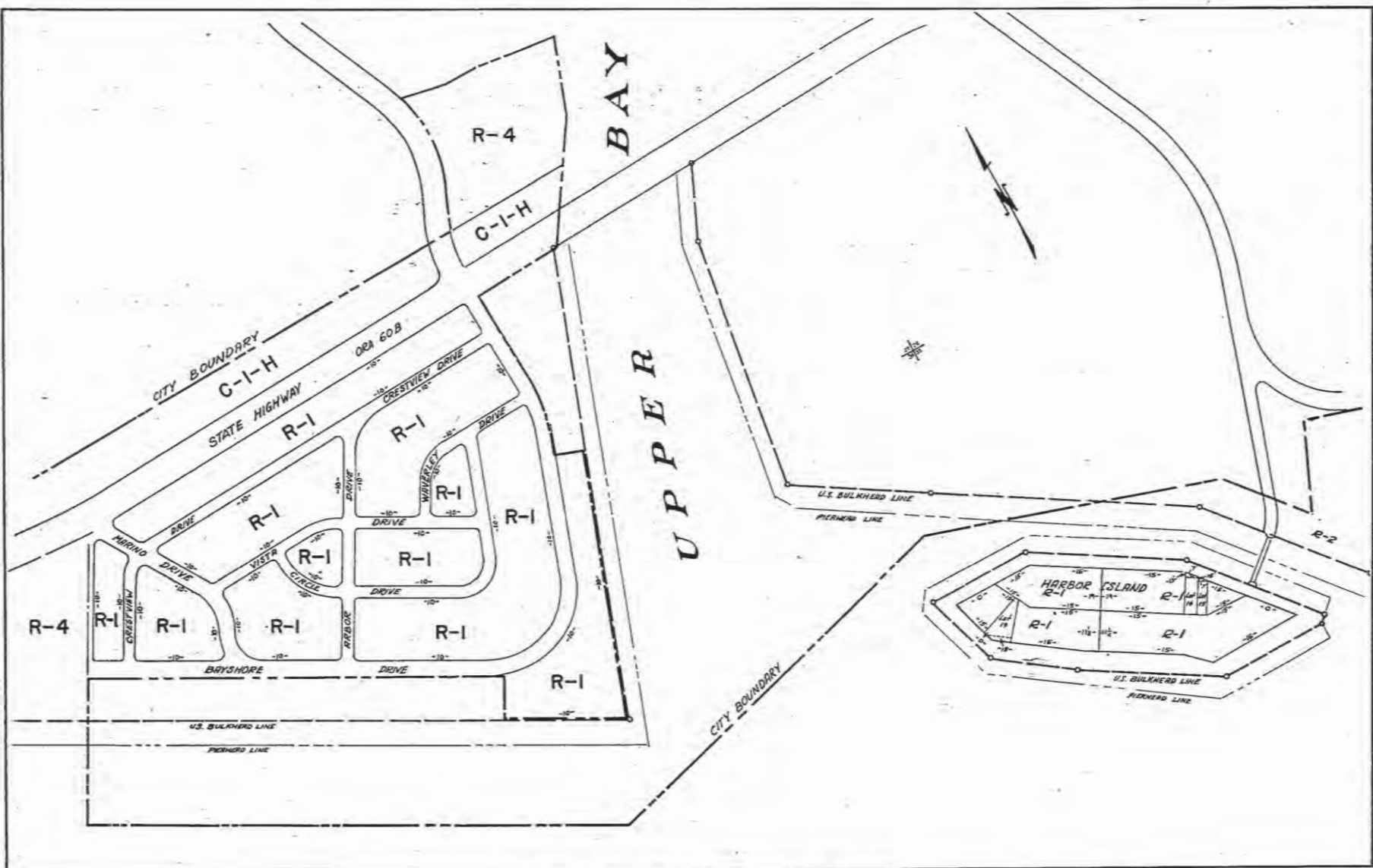


MAP NO.  
**23**

FRONT YARD DEPTH IN FEET SHOWN THIS -10-

# **ATTACHMENT B**

Original Districting Map 23



**DISTRICTING MAP  
NEWPORT BEACH — CALIFORNIA**

PREPARED UNDER THE DIRECTION  
OF  
J. B. WEBB CITY ENGINEER  
HARRY BLODGETT ATTORNEY  
HAHN, CAMPBELL & ASSOC. CONSULTANTS

PLANNING COMMISSION  
WALTER LONGMOOR CHAIRMAN  
RAY COPELIN SECRETARY

R-A	AGRICULTURAL RESIDENTIAL	R-4	MULTIPLE RESIDENTIAL
R-1	SINGLE FAMILY RESIDENTIAL	C-1	LIGHT COMMERCIAL
R-2	DUPLEX RESIDENTIAL	C-2	GENERAL COMMERCIAL
R-3	REST'D. MULTIPLE FAMILY RESIDENTIAL	M-1	MANUFACTURING
-B, -H	COMBINING DISTRICTS	U	UNCLASSIFIED



ORD. NO. 635 SHEET NO. 24  
DEC. 26, 1950 OF 24 SHEETS

23

# **ATTACHMENT C**

Pre-2010 Zoning Code Provisions  
Addressing Use of Districting Maps

# Excerpt from 1950 Zoning Code

## Section 9103.15. Yards Required:

- (a) **Front yards:** Minimum required twenty (20) feet and maximum permitted thirty-five feet, except as may be otherwise indicated on the Districting Maps. Distances shown on Districting Maps are to be measured from front line.
- (b) **Side yards:** Each side yard shall not be less than three (3) feet wide on building sites forty (40) feet wide or less, or four (4) feet on lots wider than forty (40) feet, provided that the side yard on the rear twenty feet of the street side of a corner lot, where there is reversed frontage, shall not be less than the front yard required or existing on the adjacent reversed frontage.
- (c) **Rear yards:** Minimum requirement of ten (10) feet. (Where alleys exist, see Section 9105.4 (d)).

# Excerpt from Pre-2010 Zoning Code

## Residential Districts: Property Development Regulations

	R-A	R-1	R-1.5	R-2	MFR	RMD	Additional Regulations
Minimum Site Area per Unit (sq.ft.)	---	---	1,000	1,000	1,200	3,000	(A), (B)
Minimum Lot Area (sq. ft.)	87,120	5,000	5,000	5,000	5,000	5,000	(A)
-Corner Lots (sq. ft.)	87,120	6,000	5,000	6,000	6,000	6,000	(A)
Minimum Lot Width (ft.)	125	50	---	50	50	---	(A)
-Corner Lots (ft.)	125	60	---	60	60	---	(A)
Minimum Yards:							
<b>Front (ft.)</b>	20	20	20	20	20	20	(C), (D), (E), <b>(F)</b> , (H), (K)
Side (ft.)	5	3;4	3;4	3;4	3;4	5	(C), (D), (E), (G), (H)
Corner Side (ft.)	5	3;4	3;4	3;4	3;4	5	(C), (D), (E), (G), (H)
Rear (ft.)	5;25	10	10	10	10	25	(C), (D), (E), (H), (Q)
-Abutting an alley (ft.)							(I)

- (F)** R-1, R-1.5, R-2, and MFR Districts. **The minimum depth required for front yards shall be 20 feet, except as may be otherwise indicated on the Districting Maps.** Distances shown on the Districting Maps are to be measured from the front property line, unless a different line is shown on the Districting Map.

# **ATTACHMENT D**

Setback Map S6





# **ATTACHMENT E**

## 2010 Zoning Code Provisions Addressing Use of Setback Maps



**20.18.030 Residential Zoning Districts General Development Standards.**

New land uses and structures, and alterations to existing land uses and structures, shall be designed, constructed, and/or established in compliance with the requirements in Tables 2-2 and 2-3, in addition to the development standards in Part 3 of this title (Site Planning and Development Standards).

**TABLE 2-2**

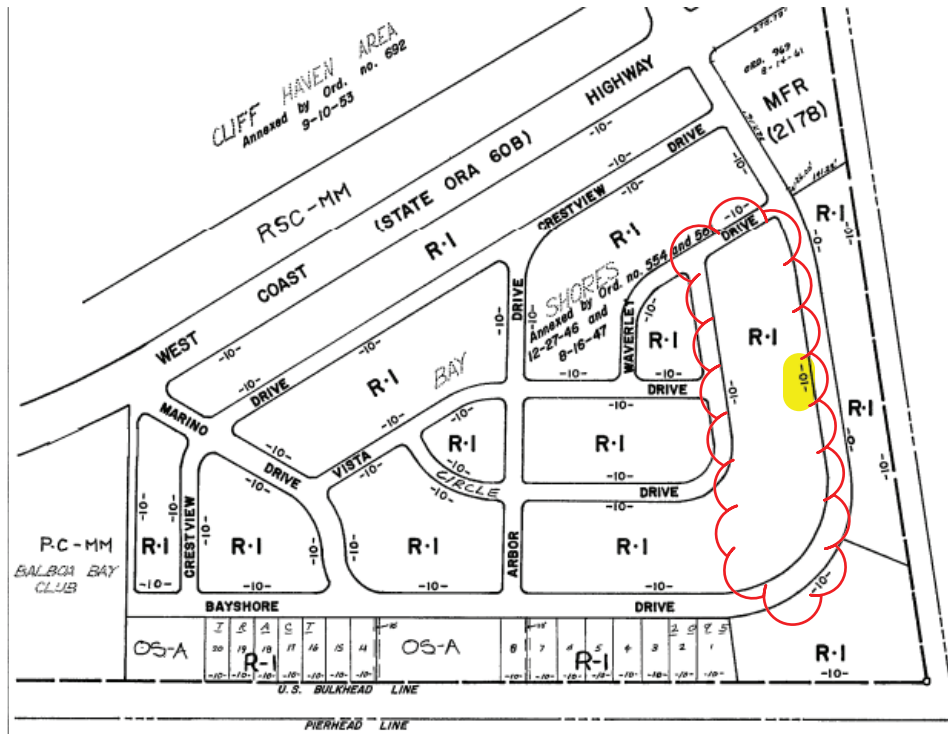
**DEVELOPMENT STANDARDS FOR SINGLE-UNIT RESIDENTIAL ZONING DISTRICTS**

<b>Development Feature</b>	<b>R-A</b>	<b>R-1</b>	<b>R-1-6,000</b>	<b>R-1-7,200</b>	<b>R-1-10,000</b>	<b>Additional Requirements</b>
Lot Dimensions	Minimum dimensions required for each newly created lot.					
Lot Area (1) (2)						
Corner lot	87,120 sq. ft.	6,000 sq. ft.	6,000 sq. ft.	7,200 sq. ft.	10,000 sq. ft.	
Interior lot	87,120 sq. ft.	5,000 sq. ft.	6,000 sq. ft.	7,200 sq. ft.	10,000 sq. ft.	
Lot Width						
Corner lot	125 ft.	60 ft.	60 ft.	70 ft.	90 ft.	
Interior lot	125 ft.	50 ft.	60 ft.	70 ft.	90 ft.	
Lot Depth	N/A	N/A	80 ft.	90 ft.	100 ft.	
Density/Intensity	Each legal lot shall be allowed one single-unit detached dwelling. Accessory dwelling units and junior accessory dwelling units may be allowed pursuant to Section 20.48.200.					
Setbacks	The distances below are minimum setbacks required for primary structures. See Section 20.30.110 (Setback Regulations and Exceptions) for setback measurement, allowed projections into setbacks, and exceptions. <u>The following setbacks shall apply, unless different requirements are identified on the setback maps in which case the setback maps shall control.</u> (See Part 8 of this title.) Side and rear setback areas shown on the setback maps shall be considered front setback areas for the purpose of regulating accessory structures. Also refer to Section 20.48.180 (Residential Development Standards and Design Criteria).					
Front:	20 ft.	20 ft.	20 ft.	20 ft.	15 ft.	20.30.110

						20.48.180
Side (interior, each):						
Lots 40 ft. wide or less	5 ft.	3 ft. (4)	6 ft.	5 ft.	10 ft.	20.30.110 20.48.180
Lots wider than 40 ft.	5 ft.	4 ft.	6 ft.	5 ft.	10 ft.	
Side (street side):						
Lots 40 ft. wide or less	5 ft.	3 ft.	6 ft.	5 ft.	10 ft.	20.30.110 20.48.180
Lots wider than 40 ft.	5 ft.	4 ft.	6 ft.	5 ft.	10 ft.	
Rear:	25 ft.	10 ft.	6 ft.	20 ft.	10 ft.	Lots abutting a 10 ft. alley or less that are directly across the alley from the side yard of a lot abutting an alley shall provide a setback for the first floor of at least 10 ft. from the alley.
Abutting Alley:						
10 ft. wide or less	N/A	5 ft.	N/A	N/A	N/A	
15 ft. wide or less	N/A	5 ft.	N/A	N/A	N/A	
15'1" to 19'11"	N/A	3'9"	N/A	N/A	N/A	
20 ft. wide or more	N/A	0	N/A	N/A	N/A	
Bluff edge setback	As provided in Section 20.28.040 (Bluff (B) Overlay District).					
Bulkhead setback	Structures shall be set back a minimum of 10 ft. from the bulkhead in each zoning district.					
Site Coverage	Maximum percentage of the total lot area that may be covered by structures.					
Lots 40 ft. wide or less	N/A	N/A	60%	60%	60%	
Lots wider than 40 ft.	40%	N/A	60%	60%	60%	

# **ATTACHMENT F**

Error Affecting 2691 Through 2821 Bay  
Shore Drive



DM23



S6

# **ATTACHMENT G**

Error Affecting 18 Corner Lots







# NEWPORT BEACH

## City Council Staff Report

October 12, 2021  
Agenda Item No. 16

**TO:** HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

**FROM:** Seimone Jurjis, Community Development Director - 949-644-3232, sjurjis@newportbeachca.gov

**PREPARED BY:** Benjamin M. Zdeba, Senior Planner

**PHONE:** 949-644-3253, bzdeba@newportbeachca.gov

**TITLE:** Resolution No. 2021-98: Notice of Intent to Override the Orange County Airport Land Use Commission's Determination of Inconsistency to the Draft Housing Element Update (PA2017-141)

---

### **ABSTRACT:**

Pursuant to Section 4.3 of the John Wayne Airport Environs Land Use Plan (AELUP) and Section 21676(b) of the California Public Utilities Code, the City of Newport Beach (City) is required to submit the draft 6<sup>th</sup> Cycle Housing Element update to the Airport Land Use Commission (ALUC) for a consistency determination with the AELUP. ALUC conducted a hearing on the matter on September 16, 2021, and found the draft was inconsistent with the AELUP.

For the City Council's consideration is a request to override the ALUC finding of inconsistency. This action would authorize staff to formally provide notice, pursuant to Public Utilities Code Section 21676 (b), to the ALUC and the State Division of Aeronautics of the City's intention to override the ALUC inconsistency finding.

### **RECOMMENDATION:**

- a) Conduct a public hearing;
- b) Find this project is not subject to CEQA pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines because it has no potential for resulting in physical change to the environment, directly or indirectly; and
- c) Adopt Resolution No. 2021-98, A Resolution of the City Council of the City of Newport Beach, California, Notifying the Orange County Airport Land Use Commission and the State Division of Aeronautics of the City's Intention to Find the General Plan Housing Element Update is Consistent with the Purposes of the State Aeronautics Act and Overrule the Orange County Airport Land Use Commission's Determination that the Housing Element Update is Inconsistent with the 2008 John Wayne Airport Environs Land Use Plan (PA2017-141).

## **DISCUSSION:**

### Airport Land Use Commission

Section 4.3 of the AELUP and Section 21676(b) of the Public Utilities Code require the City to submit the draft 6<sup>th</sup> Cycle Housing Element Update (i.e., a General Plan amendment) to the ALUC for a consistency determination with the AELUP. ALUC conducted a hearing on the matter on September 16, 2021 (Attachment B). City staff attended the hearing and provided a brief overview of the City's efforts to comply with the Regional Housing Needs Assessment (RHNA) allocation and the need to locate additional housing opportunities in the Airport Area and its proximity. After review and discussion, ALUC voted unanimously (7-0) to find the City's Draft Housing Element Update inconsistent with the AELUP based on noise, safety and general concerns of land use incompatibility that are inconsistent with ALUC's purpose and responsibilities.

#### *Noise*

The AELUP uses the Community Noise Equivalent Level (CNEL) system for measuring noise impacts, which is a weighted average of noise over time. The AELUP defines the noise exposure in the 60-65 dBA CNEL noise contour (Noise Impact Zone 2) as "Moderate Noise Impact" and in the 65-70 dBA CNEL noise contour (Noise Impact Zone 1) as "High Impact." (AELUP Sections 3.2.3, 3.2.4.) Residential uses are identified as "conditionally consistent" for the 60-65 dBA CNEL noise contour and "normally inconsistent" for the 65-70 dBA CNEL noise contour (AELUP Section 3, Table 1 [Limitations on Land Use Due to Noise]). However, residential uses are not outright prohibited. Instead, they are required to be developed with advanced insulation systems to bring the sound attenuation to no more than 45 dB inside. In addition, residential uses within the 65-70 dBA CNEL noise contour are required to be "indoor-oriented," which helps to ensure quality of life for residents in this area.

The City's General Plan Land Use and Noise Elements currently require that residential development in the Airport Area be located outside of the 65 dBA CNEL noise contour (Policies LU 6.15.3 and N 3.2). However, as part of the City's comprehensive update to the General Plan, these policies will be updated to reflect and allow the additional housing opportunity sites in the higher impact noise zones.

#### *Safety*

AELUP Section 2.1.2 (Safety Compatibility Zones) sets forth zones depicting which land uses are acceptable in various portions of John Wayne Airport (JWA) environs. Most of the housing opportunity sites, with the exception of portions of three properties, are all within Safety Zone 6. Allowed uses in Safety Zone 6 include residential and most nonresidential uses, excepting outdoor stadiums and similar uses with very high intensities. Uses that should be avoided include children's schools, large day-care centers, hospitals, and nursing homes. Risk factors associated with Safety Zone 6 generally include a low likelihood of accident occurrence.

General Plan Safety Element Policy S 8.6 demonstrates that the City acknowledges the importance of the JWA Safety Zones:

**S 8.6 John Wayne Airport Traffic Pattern Zone**

*Use the most currently available John Wayne Airport (JWA) Airport Environs Land Use Plan (AELUP) as a planning resource for evaluation of land use compatibility and land use intensity in areas affected by JWA operations. In particular, future land use decisions within the existing JWA Clear Zone/Runway Protection Zone (Figure S5) should be evaluated to minimize the risk to life and property associated with aircraft operations.*

Compliance with these policies and regulations will ensure that future development within the JWA Airport Planning Area will follow the safety standards of the AELUP.

*General Land Use Compatibility*

The standards and policies set forth in AELUP Sections 2 and 3 were adopted to prevent the creation of new noise and safety problems. As set forth above, any development on the proposed housing opportunity sites will comply with the noise criteria and safety standards established in Sections 2 and 3. Compliance with the AELUP standards will also be evaluated and demonstrated at the time development projects are proposed in the future.

Override Process

As a final review authority on legislative acts, the City Council may choose to override ALUC's determination by following a two-step process, which is established in Public Utilities Code Section 21676. The first step in the process is to conduct a public hearing to adopt a resolution of intention to override, a copy of which would be sent to ALUC and the State Division of Aeronautics to provide formal notification of the City's intent.

The second step in the process is that, not less than 45-days after notification has been sent to ALUC and State Division of Aeronautics, the City Council may conduct a second public hearing to consider adopting a resolution to override the ALUC. At that time, the City Council may also consider taking final action and adopting the Housing Element.

The following points are important to consider:

- The Council's adoption of the attached notification resolution does not constitute the Housing Element's approval, nor does it predispose the City Council's future action on either the Element or the consistency determination;
- The attached resolution notifying ALUC and the State Division of Aeronautics of the City's intent, and the resolution to overrule ALUC, which will be presented at a future hearing, must be adopted by a two-thirds vote. Since there are seven Council districts, five affirmative votes are needed to pass the resolution.

- Should the City Council ultimately overrule the ALUC decision, that action will not immediately affect the City's status as a consistent agency with the AELUP. ALUC would need to place an item on its future agenda to consider deeming the City an inconsistent agency.

Public Utilities Code Section 21678 states that if the City overrides ALUC's action or recommendation, the operator of the airport shall be immune to liability from damages to property or personal injury caused by or resulting directly or indirectly from the City's decision to overrule the ALUC determination.

**FISCAL IMPACT:**

There is no fiscal impact related to this item.

**ENVIRONMENTAL REVIEW:**

Staff recommends the City Council find this action is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

**NOTICING:**

Notice of this hearing was published in the *Daily Pilot* in a larger 1/8<sup>th</sup> page format. Notice was also provided by way of an email subscribers of the Planning Division's notification list. The item also appears on the agenda for this meeting, which was posted at City Hall and on the City website in accordance with the Brown Act.

**ATTACHMENTS:**

Attachment A – Resolution No. 2021-98  
Attachment B – ALUC Letter of Determination

## ATTACHMENT A

### RESOLUTION NO. 2021- 98

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, NOTIFYING THE ORANGE COUNTY AIRPORT LAND USE COMMISSION AND THE STATE DIVISION OF AERONAUTICS OF THE CITY'S INTENTION TO FIND THAT THE GENERAL PLAN HOUSING ELEMENT UPDATE IS CONSISTENT WITH THE PURPOSES OF THE STATE AERONAUTICS ACT AND OVERRULE THE ORANGE COUNTY AIRPORT LAND USE COMMISSION'S DETERMINATION THAT THE HOUSING ELEMENT UPDATE IS INCONSISTENT WITH THE 2008 JOHN WAYNE AIRPORT ENVIRONS LAND USE PLAN (PA2017-141)**

**WHEREAS**, Section 200 of the City of Newport Beach ("City") Charter vests the City Council with the authority to make and enforce all laws, rules and regulations with respect to municipal affairs subject only to the restrictions and limitations contained in the Charter and the State Constitution, and the power to exercise, or act pursuant to any and all rights, powers, and privileges, or procedures granted or prescribed by any law of the State of California;

**WHEREAS**, City of Newport Beach ("City") staff has been working alongside its consultants, the Housing Element Update Advisory Committee ("HEUAC"), the Planning Commission, City Council and the community over the past two years to draft the 2021-2029 6<sup>th</sup> Cycle Housing Element ("Project") as required by California Government Code Section 65588;

**WHEREAS**, California Public Utilities Code Section 21676(b) requires the City to refer the Project to the Orange County Airport Land Use Commission ("ALUC") to review for consistency with the 2008 John Wayne Airport Environs Land Use Plan ("AELUP");

**WHEREAS**, on September 16, 2021, the ALUC voted unanimously finding the Project inconsistent with the AELUP;

**WHEREAS**, pursuant to California Public Utilities Code Sections 21670 and 21676, the City Council may, after a public hearing, propose to overrule the ALUC by a two-thirds vote, if it makes specific findings that the Project is consistent with California Public Utilities Code Section 21670 purpose of protecting the public health, safety, and welfare by ensuring the orderly expansion of airports and the adoption of land use measures that minimize the public's exposure to excessive noise and safety hazards within areas around public airports to the extent that these areas are not already devoted to incompatible uses; and

**WHEREAS**, the City Council held a public hearing on October 12, 2021, in the City Council Chambers located at 100 Civic Center Drive, Newport Beach, California. A notice of time, place, and purpose of the hearing was given in accordance with California Public Utilities Code Section 21676(b) and Government Code Section 54950 *et seq.* Evidence, both written and oral, was presented to, and considered by, the City Council at this hearing.

**NOW, THEREFORE**, the City Council of the City of Newport Beach resolves as follows:

**Section 1:** The City Council finds that the Project is consistent with the purposes of California Public Utilities Code Section 21670 and the AELUP of protecting the public health, safety, and welfare by ensuring the orderly expansion of airports and the adoption of land use measures that minimize the public's exposure to excessive noise and safety hazards within areas around public airports to the extent that these areas are not already devoted to incompatible uses.

Facts in Support

1. *The Project is consistent with the noise standards of the AELUP.*

The AELUP guides the orderly development of John Wayne Airport ("JWA") and the surrounding area through implementation of the standards in AELUP Section 2 (Planning Guidelines) and Section 3 (Land Use Policies). Implementation of these standards are intended to protect the public from the adverse effects of aircraft noise, ensure that people and facilities are not concentrated in areas susceptible to aircraft accidents, and ensure that no structures or activities adversely affect navigable airspace.

AELUP Section 2.1.1 sets forth the Community Noise Equivalent Level ("CNEL") standards. The Project includes 23 new housing opportunity sites within the 60-65 dBA CNEL contour and 28 new housing opportunity sites within the 65-70 dBA CNEL contour.

Sections 3.2.3 and 3.2.4, respectively, of the AELUP define the noise exposure in the 60-65 dBA CNEL noise contour (Noise Impact Zone 2) as "Moderate Noise Impact" and in the 65-70 dBA CNEL noise contour (Noise Impact Zone 1) as "High Impact." Section 3, Table 1 (Limitations on Land Use Due to Noise) of the AELUP identifies residential use as "conditionally consistent" with the 60-65 dBA CNEL noise contour and "normally inconsistent" with the 65-70 dBA CNEL noise contour. However, residential uses are not outright prohibited. Instead, AELUP Section 3.2.3 requires residential uses to be developed with advanced insulation systems to bring the sound attenuation to no more than 45 dB inside. In addition, residential uses within the 65-70 dBA CNEL noise contour are required to be "indoor-oriented" to preclude noise impingement on outdoor living areas.

The City's General Plan Land Use Element Policy LU 6.15.3 and Noise Element Policy N 3.2 currently require that residential development in the Airport Area are to be located outside of the 65 dBA CNEL noise contour. However, as part of the City's comprehensive update to the General Plan, these policies will be updated to reflect and allow the additional housing opportunity sites in the higher impact noise zones.

The Newport Beach General Plan Noise Element additionally requires residential developers to notify purchasers or tenants of aircraft overflight and noise. The Project, which is an update to the Housing Element, does not remove this requirement and future developments will remain subject to review, which will include consideration of compliance with the applicable Noise Element policies.

Compliance with these policies and regulations will ensure that future development within the John Wayne Airport Planning Area will follow the noise standards of the AELUP.

2. *The proposed Project is consistent with the safety standards of the AELUP.*

AELUP Section 2.1.2 (Safety Compatibility Zones) sets forth zones depicting which land uses are acceptable in various portions of the JWA environs. Most of the housing opportunity sites, with exception of portions of three properties, are all within Safety Zone 6. Allowed uses in Safety Zone 6 include residential and most nonresidential uses, excepting outdoor stadiums and similar uses with very high intensities. Uses that should be avoided include children's schools, large day-care centers, hospitals, and nursing homes. Risk factors associated with Safety Zone 6 generally include a low likelihood of accident occurrence.

The Newport Beach Golf Course and the Young Men's Christian Association ("YMCA") properties are partially located within Safety Zone 4. Safety Zone 4 limits residential uses to very low density (if not deemed unacceptable because of noise) and advises against nonresidential uses having moderate or higher usage intensities. The proposed housing opportunity sites for these properties will comply with the density limitations.

The City's General Plan Safety Element Policy S 8.6 demonstrates the importance of the JWA Safety Zones to the City:

**"S 8.6 John Wayne Airport Traffic Pattern Zone**

Use the most currently available John Wayne Airport (JWA) Airport Environs Land Use Plan (AELUP) as a planning resource for evaluation of land use compatibility and land use intensity in areas affected by JWA operations. In particular, future land use decisions within the existing JWA Clear Zone/Runway Protection Zone (Figure S5) should be evaluated to minimize the risk to life and property associated with aircraft operations."

In accordance with Policy S 8.6, the Project does not include any housing opportunity sites in the JWA Clear Zone/Runway Protection Zone. Compliance with these policies and regulations will ensure that future development within the JWA Airport Planning Area will follow the safety standards of the AELUP.

*3. The proposed Project is consistent with the purpose and intent of the AELUP and will not result in incompatible land uses adjacent to JWA.*

The standards and policies set forth in Sections 2 (Planning Guidelines) and 3 (Land Use Policies) of the AELUP were adopted to prevent the creation of new noise and safety problems. As set forth above, any development on the proposed housing opportunity sites will comply with the noise criteria and safety standards established in Sections 2 and 3. Further, compliance with the AELUP standards will be evaluated and demonstrated at the time development projects are proposed in the future.

**Section 2:** Based upon the foregoing finds, the City Council provides this notice of intention to overrule the ALUC's determination that the Project is inconsistent with the AELUP.

**Section 3:** The City Council hereby directs City staff to provide the ALUC and Caltrans Department of Transportation, Division of Aeronautics, with notice of the City's intent to overrule the ALUC's determination of inconsistency for the Project.



**Section 4:** The recitals provided in this resolution are true and correct and are incorporated into the operative part of this resolution.

**Section 5:** If any section, subsection, sentence, clause or phrase of this resolution is, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this resolution. The City Council hereby declares that it would have passed this resolution, and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

**Section 6:** The City Council finds the adoption of this resolution is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly. Specifically, the resolution does not have the potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment because it is limited to the City's proposal to overrule the ALUC's determination and does not commit the City to approve the Project. The Project will be independently reviewed and evaluated pursuant to CEQA.

**Section 7:** This resolution shall take effect immediately upon its adoption by the City Council, and the City Clerk shall certify the vote adopting the resolution.



**ADOPTED** this 12th day of October, 2021.

\_\_\_\_\_  
Brad Avery  
Mayor

**ATTEST:**

\_\_\_\_\_  
Leilani I. Brown  
City Clerk

**APPROVED AS TO FORM:  
CITY ATTORNEY'S OFFICE**

   
\_\_\_\_\_  
Aaron C. Harp  
City Attorney

# **Attachment B**

ALUC Letter of Determination



# AIRPORT LAND USE COMMISSION

FOR ORANGE COUNTY

3160 Airway Avenue • Costa Mesa, California 92626 • 949.252.5170 fax: 949.252.6012

September 17, 2021

Jim Campbell  
Deputy Community Development Director  
City of Newport Beach  
100 Civic Center Drive  
Newport Beach, CA 92660

Subject: ALUC Determination for City of Newport Beach Housing Element Update (2021-2029)

Dear Mr. Campbell:

During the public meeting held on September 16, 2021, the Airport Land Use Commission (ALUC) for Orange County considered the subject item. The matter was duly discussed, and with a unanimous vote of 6-0, the Commission found the proposed Draft Housing Element Update (2021-2029) to be Inconsistent with the *Airport Environs Land Use Plan (AELUP) for John Wayne Airport (JWA)* per:

- Section 2.1.1 Aircraft Noise that the “aircraft noise emanating from airports may be incompatible with general welfare of the inhabitants within the vicinity of an airport.”
- Section 2.1.2 Safety Compatibility Zones in which “the purpose of these zones is to support the continued use and operation of an airport by establishing compatibility and safety standards to promote air navigational safety and to reduce potential safety hazards for persons living, working or recreating near JWA.”
- Section 2.1.4, and PUC Section 21674 which state that the Commission is charged by PUC Section 21674(a) “to assist local agencies in ensuring compatible land uses in the vicinity of ...existing airports to the extent that the land in the vicinity of those airports is not already devoted to incompatible uses,” and PUC Section 21674(b) “to coordinate planning at the state, regional and local levels so as to provide for the orderly development of air transportation, while at the same time protecting the public health, safety and welfare.”

Please contact Julie Fitch at [jfitch@ocair.com](mailto:jfitch@ocair.com) or at (949) 252-5284 if you require additional information or have questions regarding this proceeding.

Sincerely,

Lea U. Choum  
Executive Officer

cc: ALUC



# NEWPORT BEACH

## City Council Staff Report

October 12, 2021  
Agenda Item No. 17

**TO:** HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

**FROM:** Grace K. Leung, City Manager - 949-644-3001,  
gleung@newportbeachca.gov

**PREPARED BY:** Tara Finnigan, Deputy City Manager,  
tfinnigan@newportbeachca.gov

**PHONE:** 949-644-3035

**TITLE:** Resolution No. 2021-99: Ratifying the October 5, 2021 Proclamation of Local Emergency

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### **ABSTRACT:**

On October 5, 2021, City Manager Grace Leung, serving in her capacity as director of emergency services for the City of Newport Beach (City), signed a proclamation of local emergency in response to the oil spill that occurred approximately five miles off the coast of Huntington Beach and was first reported to the City on October 2. The oil reached City beaches on October 3.

### **RECOMMENDATION:**

- a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and
- b) Adopt Resolution No. 2021-99, *A Resolution of the City Council of the City of Newport Beach, California, (i) Ratifying the Proclamation of a Local Emergency Issued on October 5, 2021, by City Manager Grace Leung, the Director of Emergency Services of the City of Newport Beach, and (ii) Approving and Authorizing Certain Actions Relating Thereto.*

### **DISCUSSION:**

The City was notified on Saturday, October 2, of an oil spill located approximately five miles off the coast of Huntington Beach. The spill created an oil slick that stretched approximately 13 square miles. On Sunday, October 3, oil was observed onshore on City beaches, between 52<sup>nd</sup> Street and the Santa Ana River. The City issued a public notice advising residents and visitors to avoid contact with ocean water and the oiled areas of the beach.

The multi-agency, cleanup response and incident investigation is being led by the United States Coast Guard (Coast Guard). It includes the State of California (State), County of Orange (County), and the cities of Huntington Beach, Newport Beach and Laguna Beach.

The County, in coordination with the Coast Guard and State, closed the entrance to Newport Harbor on October 4. That same day, California Governor Gavin Newsom proclaimed a State of Emergency in Orange County in response to the oil spill. The City of Huntington Beach also declared a local emergency on October 4, and the County of Orange and the City of Laguna Beach approved their local emergency declarations on October 5.

Also on October 5, City Manager Grace Leung, serving in her capacity as director of emergency services for the City of Newport Beach (City), signed a proclamation of local emergency.

As of the writing of this staff report on October 5, the spill is estimated at 126,000 gallons and is impacting 15.67 miles of Orange County's shoreline. Oil is now on City beaches along its entire stretch of coastline, and is impacting the shorelines of Huntington Beach and Laguna Beach as well. City staff, including personnel from the Fire Department/Lifeguard Division, Harbor Department, Public Works, Police Department and City Manager's Office continue to work closely with the incident response team.

City beaches have remained open with the water advisory in place. Though boats are prohibited from entering and exiting Newport Harbor, vessels are permitted to operate within the harbor itself. There is a growing concern that the oil's effects on local beaches and ocean water, coupled with the loss of harbor access, will create economic hardships for tourism-related businesses, commercial and recreational fishing, charter operations, watersports, and other businesses.

Staff recommends the City Council adopt Resolution No. 2021-99, thus confirming and ratifying the October 5 proclamation of local emergency. If approved, the order will remain in effect until the local emergency is terminated by proclamation of the City Council.

#### **FISCAL IMPACT:**

The City has and will continue to expend resources on its response to the oil spill. The proclamation of local emergency will bolster the City's ability to access federal and state disaster assistance if needed, pursue reimbursement for its costs associated with the oil spill, and allow the City to procure services and goods in an expedient manner if necessary.

#### **ENVIRONMENTAL REVIEW:**

Staff recommends the City Council find this action is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

**NOTICING:**

The agenda item has been noticed according to the Brown Act (72 hours in advance of the meeting at which the City Council considers the item).

**ATTACHMENT:**

Attachment A – Resolution No. 2021-99





## ATTACHMENT A

### RESOLUTION NO. 2021-99

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, (i) RATIFYING THE PROCLAMATION OF A LOCAL EMERGENCY ISSUED ON OCTOBER 5, 2021, BY CITY MANAGER GRACE LEUNG, THE DIRECTOR OF EMERGENCY SERVICES OF THE CITY OF NEWPORT BEACH, AND (ii) APPROVING AND AUTHORIZING CERTAIN ACTIONS RELATING THERETO**

**WHEREAS**, Section 8630 of the Government Code and Section 2.20.060 of the Newport Beach Municipal Code empowers City Manager Grace Leung, the Director of Emergency Services of the City of Newport Beach, to proclaim the existence or threatened existence of a local emergency when the City of Newport Beach is affected or likely to be affected by a public calamity and the City Council is not in session;

**WHEREAS**, on Saturday October 2, 2021, the City of Newport Beach was informed that there was an oil spill of approximately 125,000 gallons of oil, five miles off the coast of Huntington Beach, causing an oil slick, originally estimated to be 13 square miles;

**WHEREAS**, on Saturday October 2, 2021, oil was observed onshore between 52nd Street and the Santa Ana River in the City of Newport Beach;

**WHEREAS**, on Sunday October 3, 2021, the City of Newport Beach issued an advisory warning the public to avoid contact with ocean water and oiled areas of the beach;

**WHEREAS**, due to the oil spill, on October 4, 2021, the County of Orange, in coordination with the United States Coast Guard and the California Department of Fish and Wildlife's Office of Spill Prevention and Response, announced the closure of Newport Beach Harbor, prohibiting boats from entering and exiting Newport Beach Harbor;

**WHEREAS**, the oil spill has impacted and continues to threaten the environment and marine life in the area, including marine mammals, birds, and fish;

**WHEREAS**, the oil spill has caused or may cause economic impacts for community members, businesses, and the City of Newport Beach due to the loss of access, tourism and impacts to commercial and recreational fishing, charters, and watersports;

**WHEREAS**, as part of the State of California's response to the oil spill, on October 4, 2021, Governor Gavin Newsom proclaimed a State of Emergency to exist in Orange County ("State of Emergency");

**WHEREAS**, on October 5, 2021, in response to the oil spill, City Manager Grace Leung, the Director of Emergency Services of the City of Newport Beach, issued a Proclamation of Local Emergency ("Proclamation"), a copy of which Proclamation is attached hereto as Attachment 1 and incorporated herein by this reference, because the response to the oil spill and declared State of Emergency may be beyond the control of the services, personnel, equipment, and facilities of the City of Newport Beach and may require the combined forces of other political subdivisions and other agencies to combat;

**WHEREAS**, the City Council was not in session at the time the Proclamation was issued; and

**WHEREAS**, the City Council does hereby find that the aforesaid conditions of extreme peril did warrant and necessitate the issuance of the Proclamation by the Director of Emergency Services.

**NOW, THEREFORE, BE IT RESOLVED** as follows:

**Section 1:** The City Council hereby confirms and ratifies that certain Proclamation of the Existence of a Local Emergency by the Director of Emergency Services, which Proclamation is dated October 5, 2021.

**Section 2:** The local emergency shall be deemed to continue to exist throughout the City of Newport Beach and shall remain in effect until the local emergency is terminated by proclamation of the City Council of the City of Newport Beach.

**Section 3:** The City Manager is hereby authorized to order, undertake, and/or direct such other measures as may be necessary or appropriate to respond to the oil spill.

**Section 4:** The City Manager is hereby authorized to issue any orders and regulations and to enter into agreements as may be necessary or appropriate to respond to the oil spill.

**Section 5:** A copy of this resolution and Proclamation shall be forwarded to the Director of the California Governor's Office of Emergency Services requesting that the Director find it acceptable and in accordance with state law; that recovery assistance be made available under the California Disaster Assistance Act; that the state expedite access to state and federal resources and any other appropriate federal disaster relief programs; and to the extent not already addressed in the State of Emergency, that the Governor waive any regulations that may hinder response and recovery efforts.

**Section 6:** The recitals provided in this resolution are true and correct and are incorporated into the operative part of this resolution.

**Section 7:** If any section, subsection, sentence, clause, or phrase of this resolution is, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this resolution. The City Council hereby declares that it would have passed this resolution, and each section, subsection, sentence, clause, or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid or unconstitutional.

**Section 8:** The City Council finds the adoption of this resolution is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

**Section 9:** This resolution shall take effect immediately upon its adoption by the City Council, and the City Clerk shall certify the vote adopting the resolution.


**ADOPTED** this 12th day of October 2021.

\_\_\_\_\_  
Brad Avery  
Mayor

**ATTEST:**

\_\_\_\_\_  
Leilani I. Brown  
City Clerk

**APPROVED AS TO FORM:**  
CITY ATTORNEY'S OFFICE

  
\_\_\_\_\_  
Aaron C. Harp  
City Attorney

Attachment 1: Proclamation of Local Emergency dated October 5, 2021

ATTACHMENT 1

**PROCLAMATION OF THE EXISTENCE OF A LOCAL EMERGENCY  
BY THE DIRECTOR OF EMERGENCY SERVICES  
OF THE CITY OF NEWPORT BEACH**

**WHEREAS**, Section 8630 of the Government Code and Section 2.20.060 of the Newport Beach Municipal Code empower the Director of Emergency Services of the City of Newport Beach to proclaim the existence of a local emergency due to the existence of conditions of disaster or extreme peril to the safety of persons or property within the City of Newport Beach, if the City Council is not in session; and

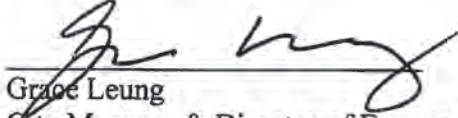
**WHEREAS**, the Emergency Services Director of the City of Newport Beach does hereby find as follows:

1. On Saturday, October 2, 2021, the City of Newport Beach was informed that there was an oil spill of approximately 125,000 gallons of oil, five miles off the coast of Huntington Beach, causing an oil slick, originally estimated to be 13 square miles;
2. On Saturday October 2, 2021, oil was observed onshore between 52<sup>nd</sup> Street and the Santa Ana River in the City of Newport Beach;
3. On Sunday October 3, 2021, the City of Newport Beach issued an advisory warning the public to avoid contact with ocean water and oiled areas of the beach;
4. Due to the oil spill, on October 4, 2021, the County of Orange, in coordination with the United States Coast Guard and the California Department of Fish and Wildlife's Office of Spill Prevention and Response, announced the closure of Newport Beach Harbor, prohibiting boats from entering and exiting Newport Beach Harbor;
5. On October 4, 2021, Governor Gavin Newsom proclaimed a State of Emergency to exist in Orange County due to the oil spill;
6. The oil spill has impacted and continues to threaten the environment and marine life in the area, including marine mammals, birds, and fish;
7. The oil spill has caused or may cause economic impacts for community members, businesses, and the City of Newport Beach due to the loss of access, tourism and impacts to commercial and recreational fishing, charters, and watersports; and
8. The City Council of the City of Newport Beach is not in session.

**NOW, THEREFORE, BE IT PROCLAIMED** that a local emergency now exists within the City of Newport Beach, which has been caused by the oil spill, which impacts the safety of persons and property within the City of Newport Beach which is beyond the control of the services, personnel, equipment, and facilities of the City of Newport Beach and which requires the combined forces of this City with other political subdivisions.

This proclamation is effective as of October 5, 2021 and shall continue in full force and effect until rescinded or amended, or until the local emergency is proclaimed terminated.

Dated: October 5, 2021

  
\_\_\_\_\_  
Grace Leung  
City Manager & Director of Emergency  
Services of the City of Newport Beach