

ENCROACHMENTS SUGGESTED MODS:

IP Sug Mods

Hi Sunset Beach friends and neighbors --

The following is our DRAFT Comment #6 which completes our initial draft review of the 50 pages of proposed changes by the California Coastal Commission (CCC) staff to the Sunset Beach Specific Plan (aka the "Local Coastal Plan."). Please submit your comments and concerns regarding these final DRAFT comments to gailbrice@roadrunner.com Once we have received all the comments to #6, we will combine all comments into one document and distribute it for final comments.

Background Information: When Sunset Beach was annexed by Huntington Beach, the CCC invalidated our LCP plan. We are now tasked with obtaining approval of a new LCP plan. As a starting point, the CCC has provided "suggested modules" (Sug Mods) for the modifications that mostly focus on their mandate for public access and preparing for sea level rise. The City of Huntington Beach has requested that comments be submitted regarding these proposed modifications through the Sunset Beach Local Coastal Plan (LCP) Committee.

Currently development in Sunset Beach must go through the staff of the CCC for approval. Once our new plan is approved and accepted by the CCC, Huntington Beach will be designated as the sole reviewer. This will be much more desirable for many reasons.

This is a big project and we'll need to pick our battles, but we believe that we can make a difference by focusing on our local realities rather than accepting the "one size fits all" suggested modules provided by the CCC staff. We look forward to your comments.

Your Sunset Beach LCP Committee

Add new Section 3.3.10 Beachfront Encroachments:

3.3 Regulations

Add new Section 3.3.10 below following proposed Section 3.3.8 Flood Plain District (page 60) and 3.3.9 Coastal Hazards Analysis (all language below would be new to the Specific Plan but is not bold, underlined for ease of reading):

Draft comments from the Sunset Beach LCP are provided below noting "LCP" red & underlined.

3.3.11 Beachfront Encroachments

A. Definitions.

LCP: As shown below, an additional category should be added to this Section for "existing encroachments" that do not have permits. This is especially needed as there was much confusion and different guidance provided by the various government entities over the past few years regarding encroachment permitting; these include the Coastal Commission staff, County of Orange and the City of Huntington Beach. Therefore, those with existing encroachments that do have permits should not be arbitrarily punished but rather, a one-year "grandfather" provision should be included that allow for compliance with this section.

1. For the purpose of this Section, the following words and phrases shall be defined as specified below:
 - a. “Existing encroachment with permit” shall mean any encroachment or improvement installed or constructed before the effective date of Huntington Beach Local Coastal Program Amendment LCP-5-HNB-16-0003-1 (Sunset Beach Specific Plan) for which a valid coastal development permit exists.
 - b. “Existing encroachment without permit” shall mean any encroachment or improvement installed or constructed before the effective date of Huntington Beach Local Coastal Program Amendment LCP-5-HNB-16-0003-1 (Sunset Beach Specific Plan) for which a valid coastal development permit does not exist. These properties will be allowed to secure a valid coastal development permit for up to one year after the effective date of the certification of the Sunset Beach Specific Plan by the California Coastal Commission.
 - c. “New encroachment” shall mean any encroachment or improvement installed or constructed after the effective date of Huntington Beach Local Coastal Program Amendment LCP-5-HNB-16-0003-1 (Sunset Beach Specific Plan).
 - d. “Encroachment” shall mean any object, thing or landscaping oceanward of the seaward property line of any oceanfront residential parcel within Sunset Beach.
 - e. “Application” shall mean any coastal development permit application that includes a request for an encroachment located seaward of the oceanfront property line of any oceanfront residential parcel pursuant to the provisions of this policy and the policies and requirements of the certified Local Coastal Program.

B. Encroachment Area.

LCP: Section A and B should be switched in order to know what the “Encroachment Area” means when reading the definitions.

Subject to compliance with the provisions of Sunset Beach Specific Plan Section 3.3.10 (this section) and upon approval of a Coastal Development Permit for an encroachment: The owner of an ocean front residential parcel in Sunset Beach may install improvements (as described in Section D, below) on the oceanside of the parcel up to 15 feet*** oceanward of the private property line and within an oceanward prolongation of the property lines on the side of the parcel, subject to the restrictions below.

LCP: ***The existing “improvements” (as described in Section D, below) in the encroachment areas are primarily decks that meet the restrictions below, i.e. without permanent foundations. However, historically, most of these decks extend to 20 feet oceanward of the private property line. There is no justification as to why this precedent should be arbitrarily changed to 15 feet. The primary reasons for these suggested modules are to: (1) ensure public access; and (2) plan for sea level rise. It’s totally unclear how requiring the removal of 5 feet from the existing decks would accomplish either of these goals. As discussed earlier in these comments, Sunset Beach is unmatched in providing public access to the beach. This includes providing 24 public access points to the one mile of sandy beach, this results in public access every 250 feet for the total length of Sunset Beach.

There is also a parkway along the entire length of Sunset Beach (with entirely free parking) and a pedestrian path the entire length of the parkway which provides access to the 24 public access points, every 250 feet to the sandy beach. The two roadways parallel to the sandy beach (with 15 mph speed limits) are also two wide bike paths that connect immediately south of Sunset Beach to the beach side bike trail in Huntington Beach State Park.

Within this context, let's consider the lack of value of reducing the encroachment improvement decks from 20 to 15 feet. Currently, there is limited space between the existing 20-foot decks and the permanent berms built in the early 1980's on the oceanside of the residential property line (and required to be maintained per the Sunset Beach Specific Plan). Increasing the space from the decks to the permanent berm by 5 feet provides no additional access space that would be usable and/or desirable by the public, especially as there is 200+ feet of sandy beach for the public to enjoy beyond the permanent berm.

Also, requiring the decks to be shortened by 5 feet will also not provide added protection from sea level rise. As described in Section D below, the decks must be built as "temporary/removable patio/deck units," i.e. without a permanent foundation, therefore in the future if, due to sea level rise, a 20-foot deck is no longer appropriate (e.g. if the mean tide line reaches x number feet oceanside of the permanent berm), then the reduction of the allowed encroachment area can be considered.

C. Prohibited Encroachments.

1. Any encroachment for which no coastal development permit has been approved is prohibited.

LCP: As noted above in definitions, encroachments should also be allowed for properties that secure a valid coastal development permit for up to one year after the effective date of the certification of the Sunset Beach Specific Plan by the California Coastal Commission.

2. Any structural, electrical, plumbing or other improvements which require issuance of a building permit.

LCP: This is confusing and contradicts allowed encroachments. One would think that a "structural" improvement would include decks which require the issuance of the building permit. The definition of structural needs to be provided.

3. Pressurized irrigation lines and valves.
4. Anything, including but not limited to, structures and landscaping, exceeding four feet in height above the street level of South Pacific Avenue.

LCP: Existing landscaping exceeding four feet should be allowed to be maintained on the property. Sunset Beach is fortunate to have numerous mature trees, their continued presence on Sunset Beach should be encouraged, especially as they sequester greenhouse gases.

5. Encroachments that would adversely impact sensitive habitat.

LCP: There are no current “sensitive habits” in the encroachment area of Sunset Beach. See later comments regarding Western Snowy Plovers.

- D. Subject to compliance with the provisions of this policy, permitted Encroachments shall be limited to the following types of development:
1. Temporary/removable patio/deck units, the top elevation/surface of which shall not exceed four feet above the street level of South Pacific Avenue;

LCP: Use of “temporary/removal” is confusing, best to describe as “without a permanent foundation.”

2. Landscaping not exceeding 30 inches in height above patio/deck surface at full growth and which is compatible with any existing native habitat within 100 feet of the proposed encroachment; LCP: See earlier comment regarding existing vegetation/trees.
3. Portable furniture.
4. Existing encroachments which were constructed in conjunction with development for which a valid building permit and coastal development permit were issued may be approved by the Community Development Director, or Coastal Commission on appeal, upon a finding that the improvement is consistent with or is modified to be consistent with this chapter.

LCP: After the certification of the Sunset Beach Specific Plan by the Coastal Commission, the appeal approval should just be by the appropriate staff person (s) at the City of Huntington Beach.

- E. Permit Process.

LCP: Major portions of this Permit Process section goes into a level of detail that is not appropriate for the Sunset Beach Specific Plan. They should be removed from this Section and where appropriate, included in the City of Huntington Beach building/planning ordinances. These sections have been highlighted below in yellow.

Note: The following is reference below as #9: *The coastal development permit application for the proposed encroachment shall be processed in accordance with the requirements of Chapter 245 Coastal Development Permits, of the Huntington Beach Zoning and Subdivision Ordinance.* If this is moved to #3 in this section, the details highlighted in yellow should be able to be eliminated.

1. An application for an encroachment may be included in a coastal development permit for development on the private parcel adjacent to the requested encroachment; or an application for an encroachment may be submitted as a separate coastal development permit application. However, for development on any site with an existing encroachment, the coastal development permit application must include either: a) request for retention of the encroachment or, b) removal of the encroachment from the project the site; the choice must be reflected on the project plans.

LCP: Isn't there a simpler way to say this?

2. The coastal development permit application shall be filed with the City of Huntington Beach Planning Department on a form provided by the City. The application shall be signed by the owner of the private property adjacent to the area of the requested encroachment, or an agent of the owner if the application is accompanied by a document, signed by the owner, granting the agent the power to act for the owner with respect to the application and property.
3. The coastal development permit application shall be accompanied by:
 - a) A site plan, drawn to scale and fully dimensioned, which accurately depicts the location, height, nature and extent of all proposed and/or existing improvements and objects within the encroachment zone; and shall request either:
 - i) retention of the encroachments (as modified if necessary to meet the standards of this Section 3.3.10), or
 - ii) removal of the encroachments.

LCP: See comments above regarding the removal of the detail highlighted in yellow.

b) When proposing to construct or retain an encroachment, a biological survey, prepared by an appropriately licensed professional, of all flora and fauna within 300 feet of all proposed or existing to be retained improvements and objects within the encroachment zone. The biological survey shall evaluate, among other things, the presence and extent of native dune vegetation and the presence of snowy plovers or evidence of snowy plover use of the area. If any sensitive and/or native species are present, the application shall include measures to be implemented to assure protection of the sensitive and/or native species, including but not limited to buffer zones between the sensitive/native species and any proposed encroachment, planting of additional native plant species to support the sensitive species in the area, and agreement to prohibit allowance of invasive landscaping species in the encroachment area. When the required biological survey reveals the presence of sensitive species, the application shall also be accompanied by a mitigation plan as described in Section K, below.

LCP: The length of Sunset Beach is approximately one mile long or 5280 feet (or a total number of 17.6, 300 feet sections). Like the rest of the oceanside section of Sunset Beach, the encroachment area is fairly uniform consisting of: (1) the existing decks and (2) the permanent berm, with ice plant being the primary vegetation (per the previous direction of the County of Orange). There is minimal or no “native dune vegetation,” although this could change based on earlier provisions of the suggested modules.

Regarding the western snowy plover there is no evidence that they would be (or want to be) in the “encroachment areas” of Sunset Beach. As discussed in greater detail in earlier comments, snowy plovers are present on Sunset Beach but, per the monthly surveys of the local Audubon Society, they are present near the shoreline in order to be near to their food source (see later comment). For example, in the winter they have always been found on the oceanside of the seasonal berm.

This behavior is supported by the following sections of the Audubon field guide regarding the beach habitat and diet of snowy plovers (shown in *italics*):

Council resolution shall provide a mechanism by which the annual fee may be increased (such as linking the fee to the Consumer Price Index or similar mechanism). Allowable uses of the encroachment fee fund are described in greater detail in Subsection 4 below.

*** The City Council should only establish the encroachment fee, “by resolution” after: publishing a proposed fee, identifying how the funds will be spent (see comments below) and securing comments from the public, especially those who would be paying these fees.

LCP: See comments regarding underlined sections in Subsection 4 below.

Note: This Subsection refers to Subsection 4 which then refers to Section J. All the uses of the annual encroachment fee should be combined into one section.

2. A condition of the approval of the coastal development permit shall require that the encroachment fee be paid annually for as long as the encroachment persists.
3. The first annual fee shall be due and payable prior to issuance of the approved coastal development permit and annually thereafter. The condition of approval shall establish the due date of the subsequent annual encroachment fee, which shall be no more than one year from the date of the first payment of the annual fee. The fee shall be considered delinquent thirty (30) days thereafter. Delinquent fees shall be established by resolution of the City Council.
4. The annual fee shall be used to defray City costs of administration, costs to enhance public access and use of the ocean beaches, and/or to establish/expand dune habitat on the adjacent berm/dune (located approximately 40 feet from the oceanward private property line) necessitated by impacts to public access and habitat caused by the private encroachments onto the public beach area of Sunset Beach. At least eighty-five (85%) percent of the fees shall be used by the City for specific projects that enhance public access in Sunset Beach or in Huntington Harbour and/or for habitat restoration of the adjacent berm/dune (see Section J, below). No more than fifteen percent (15%) of the fees shall be used by the City to defray costs of administration.

LCP: As discussed throughout these comments, Sunset Beach already provides unmatched public access to the community’s sandy beach. This is done through 100% free parking and public access to the sandy beach every 250 feet for a total of 24 access points along the one mile of the community’s sandy beach. As discussed above, why would the public want access to the < 20 feet of viewless sand between the encroachments (decks) and the adjacent permanent berm when -- It has total public access to + 200 feet of sandy beach that has incredible views of the Pacific Ocean! Therefore, the funding is not needed to “enhance public access” to the encroachment area but rather –

The LCP does encourage these funds to be used to establish dune habitat on the permanent berm. As noted earlier in these comments, the LCP supported the idea to replace the existing ice plants with native vegetation but questioned who would pay for this. The encroachment fee could address this issue.

The LCP does not, however, support the idea of using these funds to “expand dune habitat” if this means to arbitrarily make the permanent berm higher or wider. As discussed earlier, the permanent berm (located approximately 40 feet from the oceanward private property line) was originally constructed in the

- e. The obligation of permittee to defend, indemnify and hold the City (and the Coastal Commission where appropriate^{***}) and its employees harmless from and against any loss or damage arising from the use or existence of the encroachment.
- f. Permittee's waiver of any right to contest the City's street and public access easement over property within or oceanward of the encroachment areas.

LCP: As noted earlier, there is already 24 points of public access, every 250 feet, over the one-mile length of Sunset Beach, plus ... The Sunset Beach Community itself is surrounded by water and totally built-out, there is no room for an additional street. Therefore, this condition is not applicable to Sunset Beach and should not be added to the encroachment permit standard conditions.

- g. The right of the Community Development Director or his or her designee to inspect improvements within the encroachment area without notice to the permittee.
- h. The right of the City to cancel or modify any, or all, encroachment permit(s) upon a determination by the City Council or other public agency to construct a public access facility or improvement or habitat restoration within or adjacent to the encroachment zone in which the permittee's encroachment negatively impacts the ability of the City or other public agency to construct, operate, or maintain the proposed public access facility or improvement or habitat restoration.

LCP: What public access facility or improvement or habitat restoration would require the City to need the 20 feet space in front of the oceanfront residences? This should not be added to conditions without some justification as to why this is needed.

- 2. The construction of any seawall, revetment or other shoreline protective device necessary to control erosion and to protect existing primary development, if approved, shall occur on private property if feasible, or as close to private property line as feasible. No shoreline protective device shall be allowed for the sole purpose of protecting an encroachment(s).

LCP: See earlier comments regarding Oceanfront shoreline protective devices.

- 3. The Community Development Director, or the Coastal Commission on appeal^{***}, may impose additional standard conditions necessary or appropriate to insure compliance with, or to facilitate City administration of this policy.

^{***} As noted throughout, after the certification of the Sunset Beach Specific Plan by the Coastal Commission, all approvals and appeals should be done exclusively by the City of Huntington Beach.

I. Violations/Remedy.

- 1. The City shall, in addition to any right or remedy provided by law, have the right to do any or all of the following in the event a permittee is in violation of the provisions of this policy or any condition to the permit, or any encroachment violates the provisions of this policy:

- a. Revoke the permit after giving the permittee notice and an opportunity to be heard upon a determination that there is substantial evidence to support a violation of this policy. The Community Development Director shall establish the specific procedures designed to ensure that permittee receives due process of law.

LCP: These “specific procedures” should be submitted to the community for review and comment prior to incorporating into the Sunset Beach Specific Plan.

- b. Summarily abate any encroachment violative of this policy after giving the permittee or property owner ten (10) day's written notice of its intention to do so in the event the permittee or property owner fails to remove the encroachment. The permittee or property owner shall pay all costs incurred by the City in summarily abating the encroachment or improvement. The determination of the Community Development Director, or the Coastal Commission on appeal, with respect to abatement shall be final.

LCP: Subsection b. duplicates H. 1. above. Therefore these earlier comments also apply here: Per <https://definitions.uslegal.com/s/summary-abatement/> -- “*Summary abatement*” is the *abatement of a nuisance without any judicial proceeding. It involves the actual removal of conditions constituting a nuisance without resorting to judicial means. Summary abatement would mean to put down or destroy without process.*” What type of violation could a deck/encroachment cause that would be so onerous that the City could destroy in 10 days without process? This should be eliminated with only the remedy developed for Section I.1.a. used (see comment in I.1.a. above).

- J. Mitigation Plan.
To mitigate any impact on beach access and/or native/sensitive habitat resulting from the encroachments, the City shall specify the mitigation project to which the annual encroachment fee (per Section F.4) is to be directed as part of the City Council Resolution described in Section F above.

LCP: Section F. 1 and Subsection 4 and this Section J all refer to uses of the annual encroachment fee. All these requirements should be combined into one section. Also see earlier comments regarding the use of encroachment fees, including that they are not needed for “public access” in Sunset Beach.

- K. If in a legal action to quiet title a court determines the area seaward of an applicant’s oceanfront property lines is not public land, then these encroachment requirements will not apply to that applicant’s proposed development.

End of LCP Comments #6 (the final initial draft comments). Please send comments regarding Comment #6 to gailbrice@roadrunner.com. We will combine all comments into one document and distribute it for final comments.