

Supplemental Regulations of the Coastal Overlay Zone Section of the CPA's CVCC Report on Proposed Changes to the SD Muni Code

02.26.2023

After reviewing the establishment and enforcement of coastal view corridors in La Jolla, it is clear neither is adequate and La Jolla is losing views of the ocean, which are of great value to La Jolla. Therefore, the La Jolla Community Planning Association (LJCPA) Ad-Hoc Coastal View Corridors Committee (CVCC) proposes changes to each of the following:

- I. La Jolla Community Plan and Local Coastal Program Land Use Plan Aug 2014 (LJ Plan);
- II. La Jolla Planned District (LJPD) (San Diego Municipal Code Chapter 15: Planned Districts (3-2007) Article 9);
- III. La Jolla Shores Planned District (LJSPD) (San Diego Municipal Code Chapter 15, Planned Districts (10-2022) Article 10, Division 3 Zones);
- IV. Coastal Overlay Zone Development Regulations (San Diego Municipal Code, Chapter 13: Zones (3-2021), Article 2: General Development Regulations, Division 4: Coastal Overlay Zone);
- V. Coastal Development Permit Procedures (San Diego Municipal Code Ch 13 Article Development Permits, Division 7, Coastal Development Permit Procedures); and
- VI. City of San Diego Procedures and Policies

The CVCC believes the proposed changes will improve the preservation, enhancement or restoration of existing public views or the realization of potential public views of coastal resources, where such views refer to views to and along the ocean and/or shoreline. The California coastline along San Diego, including La Jolla, is a significant natural asset. The changes proposed here are intended to ensure visitors and residents enjoy continued access to views of coastal resources as is intended by the California Coastal Act, as well as by local plans and regulations. This report presents the proposed changes in Sections I–VI.

The proposed changes include descriptions of the suggested types of changes and suggested edits (i.e., specific additions or deletions), which are marked with Track Changes. For the Division 7, Coastal Development Permit Procedures, the report presents potential concerns and questions the LJCPA needs to address before the CVCC can propose changes to that part of the Municipal Code. The report contains a large number of proposed changes and provides an overall justification for them. However, with two exceptions, it does not provide a separate justification for each change.

The first exception is the proposed addition of a private right of action when the property owner does not comply with the conditions of the coastal view corridor easements. When there is a private right of action, a private individual or entity, not just the state, government or a public body, can assert legal rights under the law, which means a private individual or entity can sue a property owner who is not meeting the conditions of the coastal view corridor easements. The CVCC proposes adding this to the LJ Plan, LJPD and §132.0403 Supplemental Regulations of the Coastal Overlay Zone because the City does not have the resources to enforce the conditions of the coastal view corridor easements across private property between the ocean and the first public roadway or it does not have a sufficient desire to do so. Establishing a private right of action would provide an enforcement mechanism, which is needed when the City fails to act. The second exception is that in Section IV, we provide a separate justification for some types of proposed changes.

The CVCC will use the reviews of this paper by the LJCPA, its committees and other interested community groups or individuals in La Jolla to improve the proposed changes before the LJCPA presents them to the City.

IV. Proposed Changes San Diego Municipal Code, Chapter 13: Zones (3-2021), Article 2: General Development Regulations, Division 4: Coastal Overlay Zone

A major concern is that unlike the LJ Plan and LJPD, these regulations do not require unobstructed coastal view corridors. The proposed changes principally address that concern and often are based on language in the grant deeds used to establish coastal view corridor easement across private property in La Jolla. The proposed changes are to §132.0403 Supplemental Regulations of the Coastal Overlay Zone; therefore, only that part of Division 4: Coastal Overlay Zone is included below.

Brief justifications for some types of proposed changes are as follows:

1. We propose combining the current §132.0403 (a) and (b) because we believe the same rules should apply to both of the following: (a) an existing or potential public view when the site is designated in the applicable land use plan as a public view to be protected and b) any site between the ocean and the first public roadway.
2. The additions to §132.0403(a)(2) are intended to make it explicit how the decision maker shall condition the project to ensure that critical public views will be preserved, enhanced restored, or realized.
3. §132.0403(a)(3) was added to specify the responsibilities of the property owner.
4. The new §132.0403(b) was added to specify what may be permitted within the coastal view corridors and visual accessways and eliminate the ambiguity of the “significantly obstruct public views” language currently in the regulations.
5. The new §132.0403(b)(1) was added to define “open fencing” and eliminate the ambiguity of that term currently in the regulations.
6. The new §132.0403(b)(2) was added to specify the height of permitted landscaping and there is a lower height limit on the side of the property toward the ocean because such

landscaping has a greater adverse effect on the cone of vision from the street to and along the ocean and/or shoreline. .

7. The new §132.0403(b)(3) was added to specify the minimum canopy height and the “no farther than 20 feet from the first public roadway” restriction is intended to avoid a greater adverse effect on the cone of vision from the street to and along the ocean and/or shoreline that would occur as landscaping with such a canopy is farther from the street.

§132.0403 Supplemental Regulations of the Coastal Overlay Zone

(a) If there is an existing or potential public view and the site is designated in the applicable land use plan as a public view to be protected or if the site is between the ocean and the first public roadway,

(1) The applicant shall design and site the coastal development or improvements in such a manner as to preserve, enhance or restore the existing or realize the potential ~~designated~~ public view; and

(2) The decision maker shall condition the project to ensure that critical public views to and along the ocean and shoreline are maintained or enhanced, in part by doing the following:

(i) as a condition of Coastal Development Permit approval, use deed restrictions to establish -coastal view corridor easements of not less than the side yard setbacks or more than 10 feet in width, whichever is greater, and running the full depth of the premises; and

(ii) require the property owner to file the deed restrictions with the County of San Diego prior to issuing a Coastal Development Permit.

(3) The property owner shall:

(i) grant to the City of San Diego the coastal view corridor easements and relinquish all rights to construct, erect or maintain all structures, masonry walls, monument signs; plant or maintain shrubbery or hedges or do anything that would obstruct the coastal view corridors;

(ii) file the deed restrictions with the County of San Diego prior to beginning construction of the development or improvements;

(iii) annually, complete and sign a form provided by the City to certify consistent compliance with the conditions of the coastal view corridor easements;

(iv) agree to pay a fee established by the City Council to cover the City’s reasonable cost of recording, monitoring and enforcing the conditions of the coastal view corridor easements;

(v) allow reasonable periodic examination by City staff to verify compliance with the conditions of the coastal view corridor easements; and

(vi) agree to a private right of action when the property owner does not comply with the conditions of the coastal view corridor easements.

~~(b) A visual corridor of not less than the side yard setbacks or more than 10 feet in width, and running the full depth of the premises, shall be preserved as a deed restriction as a condition of Coastal Development Permit approval whenever the following conditions exist:~~

~~(1) The proposed development is located on premises that lies between the shoreline and the first public roadway, as designated on Map Drawing No. C-731; and~~

~~(2) The requirement for a visual corridor will serve to preserve, enhance or restore public views of the ocean or shoreline identified in the applicable land use plan.~~

~~(c) If there is an existing or potential public view between the ocean and the first public roadway, but the site is not designated in a land use plan as a view to be protected, it is intended that views shall be preserved, enhanced or restored by deed restricting required side yard setback areas to cumulatively form functional view corridors and preventing a walled effect from authorized development.~~

~~(d) Where remodeling is proposed and existing legally established development is to be retained that precludes establishment of the desired visual access as delineated above, preservation of any existing public view on the site will be accepted, provided that the existing public view is not reduced through the proposed remodeling.~~

~~(b) The following may be permitted within the coastal view corridors and visual accessways, provided they do not significantly obstruct public views to and along the ocean and/or shoreline.~~

~~(1) Open fencing that does not exceed three feet in height and that maintains at least 75 percent of the vertical surface open to light and air in order to preserve public views;~~

~~(2) Landscaping that does not exceed three feet in height at the roadside edge of the property or two feet in height at the ocean side edge of the property and that is planted and maintained to preserve public views;~~

~~(3) A canopy that is a minimum of eight feet above the sidewalk grade and no farther than 20 feet from the first public roadway may be permitted within the view corridors and visual accessways, provided such improvements do not significantly obstruct public views of the ocean. Landscaping shall be planted and maintained to preserve public views.~~