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STATE OF CALIFORNIA
COASTAL COMMISSION

ORIGINAL

CITY OF NEWPORT BEACH)
LAND USE CHANGES) Local Coastal Program
COUNTY OF ORANGE) Amendment No. NPB-MAJ-1-07

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Thursday
February 5, 2009
Agenda Item No. 18.d.

(Fragmented Portion Only)

Huntington Beach City Hall
City Council Chambers
2000 Main Street
Huntington Beach, California

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A P P E A R A N C E S

COMMISSIONERS

Bonnie Neely, Chair
William A. Burke, Vice Chair
Khatchik Achadjian
Steve Blank
Larry Clark
Alonso Gonzalez, Alternate
Steven Kram
Dave Potter
Mike Reilly
Mary Shallenberger
Sara Wan

STAFF

Peter Douglas, Executive Director
Hope Schmeltzer, Staff Counsel
Dan Olivas, Deputy Attorney General
Sherilyn Sarb, District Director

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1 California Coastal Commission
2 February 5, 2009
3 City of Newport Beach LCP Amendment No. NPB-MAJ-1-07
4 (Land Use Changes)

5 * * * * *

6 (Fragmented Portion, Following Close of Public Testimony)

7 **CHAIR NEELY:** Bring it back to staff, for
8 comments.

9 **DEPUTY DIRECTOR SARB:** Thank you, Madam Chair.

10 First, I would like to address staff's response to
11 the city's claim that we don't have the authority to address
12 the impact of the proposed development on lands designated
13 for visitor-serving uses, and to protect lower-cost over-
14 night accommodations in the coastal zone. We think it is
15 reasonable to assume that there is a reduction in the land
16 area available for strictly commercial uses associated with
17 this LCP amendment.

18 The purpose of the amendment is to consolidate the
19 commercial nodes, and to allow residential use in commercial
20 areas, where it is not currently allowed. So, we think it is
21 reasonable to assume that there will be pressure to redevelop
22 those commercial areas for something other than commercial
23 uses.

24 Our response is to assure that there is sufficient
25 land area set aside for the high priority uses in the coastal

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1 zone, and that being the visitor-serving uses, in particular
2 the lower-cost visitor overnight accommodations.

3 And, in reference to the city's numbers, we think
4 that those are taken from the General Plan. They are
5 referring to commercial square footage, and not to land area
6 that is set aside for commercial uses.

7 And, their reference to whether or not there is an
8 increase in the hotel motels in the city, they indicated
9 those numbers show that there is an increase in the lower-
10 cost hotel motels in the city, and it is just a number that
11 reflects that there may be an increase in the hotels and
12 motels in general.

13 We think it is reasonable to address limited use
14 overnight accommodations at the new land use that is not
15 addressed in the Land Use Plan. It is not permitted in
16 visitor-commercial land areas now. We know that the city
17 disagrees with that position. It is a relatively new use,
18 these condominium hotels and fractionals, and we think that
19 it is only prudent for the Land Use Plan to address that use.

20 We are clarifying that it is a prohibited use in
21 visitor commercial areas. The city has provided information
22 for one site, the Hyatt site, that we have looked at in a
23 manner similar to the way the Commission has addressed this
24 issue in other LCP amendments. We have looked at the
25 existing stock in the city. We have looked at the number of

1 traditional hotel units on that site, and we are recommending
2 that the amount of limited use overnight accommodations on
3 that site be allowed through this LUP amendment. It amounts
4 to not more than 18 percent, which is consistent with the
5 numbers that the Commission has approved, and there would be
6 restrictions on the use, to maximize the availability of
7 those units to the general public when they are not owner
8 occupied.

9 The city objects to Suggested Modification No. 14,
10 which prohibits the limited use overnight accommodations on
11 the other visitor-serving commercial sites in the city. We
12 think that is appropriate at this time. It does not prevent
13 the city from proposing a Land Use Plan amendment in the
14 future that would address those sites, if they have a
15 proposal, and they feel that the use is warranted.

16 The city also objects to Suggested Modification
17 No. 3. This one prevents conversion of the existing hotels
18 to limited use overnight accommodations. This, again, is to
19 protect the existing stock of overnight accommodations, and
20 this is one policy that has been supported by the Commission
21 in all of your deliberations on this issues, in other LCP
22 amendments.

23 Suggested Modifications Nos. 34 and 35, the city
24 objects to those, and they specifically include Land Use Plan
25 policies that would address in-lieu fees. And, these include

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1 the specific circumstances when a fee would be required,
2 specifically, if lower-cost overnight accommodations are
3 demolished, and not replaced, or if high cost accommodations
4 are proposed. The policy is recommending that the fee be
5 applied to 25 percent of those units.

6 We feel that the fee should be used as a
7 mitigation for loss of lower-cost accommodations, and they
8 should be used to provide lower-cost accommodations in the
9 Newport Beach coastal zone.

10 The city has suggested some alternative language
11 to address the fee. The language removes some of the
12 specificity as to when the fee would be required, but it also
13 allows that the fees could be used for visitor and
14 recreational facilities, and not overnight accommodations.

15 We urge the Commission, if you are inclined to
16 accept the city's language to remove some of the specificity
17 regarding the fee, that you do not accept use of the fees for
18 anything other than provision of lower-cost overnight
19 accommodations in the coastal zone.

20 And, Suggested Modification No. 39, is a
21 definition of limited use overnight accommodations, similar
22 to what has been used in other Commission actions in other
23 LCPs. We feel that there needs to be a definition in the
24 LUP. It is referred to in Suggested Modification No. 38,
25 that the city is now objecting to.

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1 And, I think, at this point, I will turn this over
2 to the Chief Counsel for comments on some case law and legal
3 points that the city has raised.

4 **CHAIR NEELY:** Thank you.

5 Counsel.

6 **CHIEF COUNSEL SCHMELTZER:** Thank you, Madam Chair.

7 The city, today alluded to, in one of its letter,
8 specifically raised some case law, arguing that, first, that
9 the in-lieu fees have not been supported in the past, and are
10 not supported by current case law. We think that they have
11 misread the case law that they cite to.

12 In both the Schneider case and the SNG case, which
13 they raise to suggest that the Commission doesn't have
14 authority in this matter, those both address permit appeals,
15 and neither address the scope of the Commission's authority
16 when reviewing LCP amendments, and neither are pertinent
17 here.

18 The case law that the city cites, regarding its
19 nexus argument, actually, undercuts the city's position.
20 Both the *Home Builder's Association v. Napa*, and *San Remo*
21 *Hotel v. the City and County of San Francisco*, involve
22 challenges by property owners to city ordinances regarding
23 inclusionary housing, or the protection of residential
24 hotels. In both cases, the courts upheld the ordinances, and
25 rejected the property owner's arguments that the court should

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1 apply the *Nollan Dolan* standards.

2 They said that their nexus and rough proportional-
3 ity tests do not apply to fees that are established by rules
4 that apply to everyone, within a reasonably defined category
5 of applicants, and fees that are established by ordinance, or
6 other generally applicably rules, do need to be reasonably
7 related. But, they were clear that this was not *Nollan*
8 *Dolan*. and is more lenient, so we don't believe that their
9 argument helps their case.

10 And, we do believe that we do have the authority,
11 and that we do meet the standard required in this case.

12 **CHAIR NEELY:** Anything else from staff?

13 **DEPUTY DIRECTOR SARB:** That concludes our
14 comments.

15 **CHAIR NEELY:** All right, thank you very much. I
16 will bring it back to the Commission.

17 Commissioner Shallenberger.

18 **COMMISSIONER SHALLENBERGER:** Yes, I was out of the
19 room for a short period, at the beginning of the present-
20 ation, and I just wanted to put on the record, that I have
21 read the staff report, and all of the information that the
22 city provided beforehand, and in fact, some of the time that
23 I was out of the room, I also was monitoring the sound, so I
24 feel quite comfortable being able to participate in the
25 debate and voting on this issue, because I have read

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1 everything that was on the record.

2 CHAIR NEELY: Thank you.

3 Commissioner Clark.

4 COMMISSIONER CLARK: Yes, thank you, Madam Chair.

5 I am going to put a motion forward, and if I get a
6 "second" then I'll talk to the motion.

7 CHAIR NEELY: All right.

8 COMMISSIONER CLARK: I am going to move that the
9 Commission deny certification of the City of Newport Beach
10 Land Use Amendment NPB-MAJ-1-07 as submitted, with the
11 following modifications to the findings:

12 A. Delete from the findings for denial the section
13 entitled Low-Cost Overnight Accommodations, pages 34 through
14 --

15 CHIEF COUNSEL SCHMELTZER: Madam Chair.

16 CHAIR NEELY: Yes, hold on just a moment, Counsel
17 wants to give you some advice here.

18 COMMISSIONER CLARK: Oh, okay.

19 CHIEF COUNSEL SCHMELTZER: I believe that if you
20 would like to make any changes, you would need to make the
21 main motion first --

22 COMMISSIONER CLARK: Right.

23 CHIEF COUNSEL SCHMELTZER: -- and then,
24 subsequently, you could make amending motions, but we do need
25 a main motion on the floor.

1 [MOTION]

2 COMMISSIONER CLARK: I'll start over.

3 I move that the Commission certify the City of
4 Newport Beach Land Use Plan Amendment NPB-MAJ-1-07 as
5 submitted, and recommend a "No" vote.

6 COMMISSIONER POTTER: Second.

7 CHAIR NEELY: All right, we have a motion by
8 Commissioner Clark, and a "second" by Commission Potter.

9 COMMISSIONER CLARK: Right.

10 CHAIR NEELY: And, they are both recommending a
11 "No" vote. Failure of the motion will result in the denial
12 of the Land Use Plan Amendment as submitted, and adoption of
13 the resolutions and findings in the staff report.

14 Would you like to speak to that motion,
15 Commissioner Clark?

16 COMMISSIONER CLARK: No, but I will speak to the
17 next one.

18 CHAIR NEELY: All right.

19 Commissioner Potter?

20 COMMISSIONER POTTER: No.

21 CHAIR NEELY: Okay, is there any objection to a
22 unanimous roll call vote on this item?

23 [No Response]

24 Okay, then the Commission hereby denies the City
25 of Newport Beach Land Use Plan Amendment NPB-MAJ-1-07 as

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1 submitted.

2 **COMMISSIONER CLARK:** Okay, then I will make a
3 second motion, and the motion is I move that the Commission
4 certify the City of Newport Beach Land Use Plan Amendment
5 NPB-MAJ-1-07 as modified suggested in the staff report, but
6 incorporating the following changes and findings and
7 suggested modifications, and the are contained in the handout
8 from the city, the city's proposed --

9 **CHAIR NEELY:** Okay, let me ask staff, is that the
10 correct motion? or could you give some guidance to
11 Commissioner Clark?

12 **CHIEF COUNSEL SCHMELTZER:** Yes, I think it would
13 be helpful to make separate amending motions for the
14 different items that you are specifically asking to be
15 changed per the city's recommendation.

16 **CHAIR NEELY:** In other words, he would do Motion 2
17 on page 6, and then before we vote on that make motions to
18 amend?

19 **CHIEF COUNSEL SCHMELTZER:** Yes.

20 **CHAIR NEELY:** That would be appropriate?

21 **CHIEF COUNSEL SCHMELTZER:** Yes, we need to hear
22 specifically what is happening, and I think they need to be
23 separate motions.

24 **CHAIR NEELY:** All right, so if you could get
25 Motion 2 on Page 6 on the floor, and then you can propose

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1 some amending motions consistent with --

2 COMMISSIONER CLARK: Okay.

3 CHIEF COUNSEL SCHMELTZER: And, if I may make one
4 other suggestion.

5 COMMISSIONER CLARK: Yes.

6 CHIEF COUNSEL SCHMELTZER: In the recommended
7 motions, there are suggestions for not just changing some of
8 the suggested modifications, but also making some deletions
9 from the findings.

10 COMMISSIONER CLARK: Right.

11 CHIEF COUNSEL SCHMELTZER: If you are making -- if
12 the Commission does wish to go with the city's recommend-
13 ation, it would be helpful for staff to have the ability to
14 make the revised findings necessary to support those.

15 COMMISSIONER CLARK: Right.

16 CHIEF COUNSEL SCHMELTZER: And, I think what the
17 city is suggesting is somewhat limited as far as deletions
18 and changes to the findings.

19 And, I think it would be more helpful to us to be
20 able to give us the direction of following their suggestions
21 in revising the findings, so that we can come back with
22 appropriate revised findings.

23 COMMISSIONER ACHADJIAN: Madam Chair.

24 CHAIR NEELY: Commissioner Clark has the floor
25 right now.

1 **COMMISSIONER CLARK:** Well, okay, let me go to --
2 if I understood Counsel correctly if -- it is my intent,
3 basically, to introduce the city's position, in a motion.

4 If I heard you correctly, in terms of condition
5 changes, we need revised findings, if the Commission as a
6 whole is of a mind to adopt the city's position, is that
7 correct?

8 **CHIEF COUNSEL SCHMELTZER:** Yes, that is correct.

9 **COMMISSIONER CLARK:** And, so I am a little bit,
10 procedurally, how to proceed on that, now. So the next
11 motion I would make, though -- based on the previous comment
12 -- would be the motion on page 6, the second motion, correct?

13 **CHIEF COUNSEL SCHMELTZER:** I am sorry, my
14 numbering is different --

15 **EXECUTIVE DIRECTOR DOUGLAS:** The motion to adopt
16 the --

17 **COMMISSIONER CLARK:** Okay.

18 **EXECUTIVE DIRECTOR DOUGLAS:** -- the plan as
19 modified by staff, per staff.

20 **CHIEF COUNSEL SCHMELTZER:** Yes, right, we have
21 already made that motion.

22 **COMMISSIONER CLARK:** Right.

23 **CHIEF COUNSEL SCHMELTZER:** However, you are
24 looking at their motion No. 1. Their motion No. 1 is --
25 [General Discussion]

1 CHIEF COUNSEL SCHMELTZER: -- and we are now --

2 CHAIR NEELY: No, we have not made the second
3 motion yet.

4 EXECUTIVE DIRECTOR DOUGLAS: They have not done
5 that yet.

6 CHIEF COUNSEL SCHMELTZER: Okay, I am sorry.

7 EXECUTIVE DIRECTOR DOUGLAS: You haven't had a
8 "second" on the motion to adopt it, as modified by staff
9 recommendation, so you need to do that.

10 [MOTION]

11 COMMISSIONER CLARK: Okay, I move that the
12 Commission certify the City of Newport Beach Land Use
13 Amendment NPB-MAJ-1-07, if modified as suggested by staff
14 report, and recommend a "No" vote --

15 EXECUTIVE DIRECTOR DOUGLAS: Just hold off on your
16 recommendation.

17 COMMISSIONER CLARK: Okay.

18 EXECUTIVE DIRECTOR DOUGLAS: We need a "second".

19 CHAIR NEELY: Is there a "second"?

20 COMMISSIONER POTTER: Second.

21 CHAIR NEELY: We have a motion by Commissioner
22 Clark, and a "second" by Commissioner Potter. They haven't
23 made a recommendation yet.

24 EXECUTIVE DIRECTOR DOUGLAS: Now, you can make a
25 motion to make --

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1 CHAIR NEELY: Amendments.

2 EXECUTIVE DIRECTOR DOUGLAS: -- a motion for any
3 additional amendments.

4 COMMISSIONER CLARK: Okay.

5 And, there, I would turn to the city's suggested
6 motion, correct, Counsel?

7 CHIEF COUNSEL SCHMELTZER: Yes.

8 COMMISSIONER CLARK: Okay, so I am recommending
9 deletion of the findings for denial of --

10 CHAIR NEELY: You would like to propose an
11 amending motion?

12 COMMISSIONER CLARK: Yes.

13 CHAIR NEELY: All right, and that amending motion
14 would be to?

15 COMMISSIONER CLARK: I move that the Commission --

16 CHIEF COUNSEL SCHMELTZER: If I may assist here.

17 COMMISSIONER CLARK: Yes, please.

18 CHIEF COUNSEL SCHMELTZER: If you would like, and
19 I suggested doing them separately, but you could do them
20 together, deleting the suggested modifications as they are
21 numbered in CND by the city, and then giving direction to the
22 staff to make revised findings compatible with those, because
23 the staff would make revised findings consistent with the
24 other direction, but somewhat different from what is
25 suggested.

1 **CHAIR NEELY:** He is still in the motion 1 on the
2 amendment, I think.

3 Commissioner Achadjian, did you have a suggestion?

4 **COMMISSIONER ACHADJIAN:** Question to the staff.

5 I hear where Mr. Clark is going with this. Does
6 it have to be a tentative motion, so that he can come back at
7 another hearing?

8 **COMMISSIONER WAN:** No, no.

9 **COMMISSIONER ACHADJIAN:** Already got an answer
10 here on this side.

11 **EXECUTIVE DIRECTOR DOUGLAS:** Could you repeat the
12 question, please?

13 **COMMISSIONER ACHADJIAN:** Okay, let me ask the
14 question.

15 Because of the newly amending motion by
16 Commissioner Clark, does it have to be a tentative motion, so
17 that staff can come back with the correct findings?

18 **EXECUTIVE DIRECTOR DOUGLAS:** No, what happens is,
19 right now, we are at the point where Commissioner Clark is
20 proposing amendments to the motion that is on the floor, to
21 reflect what the city is asking for.

22 **COMMISSIONER CLARK:** Right.

23 **EXECUTIVE DIRECTOR DOUGLAS:** If that motion
24 passes, they we will make revised findings to support the
25 action that the Commission took.

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1 **COMMISSIONER CLARK:** Okay.

2 So, I am moving that we delete Suggested
3 Modifications 14, page 11, prohibiting limited use of
4 overnight accommodations within the visiting-serving CV land
5 use category.

6 **CHAIR NEELY:** Anything else?

7 **COMMISSIONER CLARK:** And, delete Suggested
8 Modifications No. 33, 34, 35, 36.

9 **COMMISSIONER REILLY:** Madam Chair, can we have a
10 separation of those two?

11 **CHAIR NEELY:** Okay, but, it is up to the maker of
12 the motion.

13 **COMMISSIONER CLARK:** Yes, fine, we can.

14 **CHAIR NEELY:** All right, we have an amending
15 motion to delete Suggested Modification 14, on page 11.

16 And, do we have a "second" on that?

17 **COMMISSIONER POTTER:** Yes.

18 **CHAIR NEELY:** Second from Commissioner Potter.
19 The maker and the seconder are recommending a "Yes" vote on
20 the amending motion.

21 Would you like to speak to your motion,
22 Commissioner Clark?

23 **COMMISSIONER CLARK:** Yeah, on 14 and 11, I am
24 persuaded by the city's position that -- and I respect where
25 staff is coming from on this, with respect to the fact that

1 they are suggesting that the city can come back in on a land
2 use amendment for a specific project, to deal with the
3 staff's proposed limited use overnight accommodations within
4 a visitor-serving land use category for a specific project.

5 But, I think I am more persuaded by providing --
6 not taking it out in totality, as it would do on 14, as the
7 staff has recommended, so I would not like to see us take it
8 out at this point in time.

9 **CHAIR NEELY:** Thank you.

10 Commissioner Potter, did you want to speak to the
11 motion?

12 **COMMISSIONER POTTER:** Just briefly.

13 I think that it can be found consistent with the
14 *Coastal Act*, that the low cost, visitor serving is part of
15 the equation here, as far as the visitor-serving aspects
16 goes. And, this financing mechanism allows you to be able to
17 provide that opportunity. It is consistent with the
18 decisions we have had in other areas, also, so for that
19 reason I am willing to go in the direction we are moving
20 here.

21 **CHAIR NEELY:** Okay, and also to the motion,
22 Commissioner Wan, would you like to address the Commission.

23 **COMMISSIONER WAN:** Yeah, I'll talk about this, and
24 then later I will talk about some of the others.

25 Actually, it is not consistent with what we have

1 done in the past, and here is the reason why: staff is saying
2 that for the Hyatt, yes, they have enough information, but as
3 of right now, this is precluded under the current LUP -- it
4 is not an LCP, it is an LUP, as I understand it, am I
5 correct? Okay.

6 What is lacking here, on the part of the city, is
7 all of the conditions, and descriptions, and details that we
8 have put in relative to other conversions, and other
9 timeshare conversions, and staff is recommending that this
10 come back as a separate LUP amendment so that we can deal
11 with these issues very specifically.

12 What the city is proposing, doesn't even allow for
13 -- in the conditions and modifications -- that they are
14 suggesting be eliminated, doesn't even allow for a definition
15 of what these things are. And, yet, the Commission, in the
16 past, when they have allowed timeshares or condo conversions,
17 have done so with conditions that are very specific about the
18 percentage of the hotel that can be condos, about the way in
19 which the hotels are run with those condos, so that they are
20 run just as a hotel, and very specific about the amount of
21 time that people can stay in these units.

22 So, I think that this needs a much more thorough
23 airing in the kind of LUP amendment that the staff is
24 referring to, and it is inappropriate to do it in this, where
25 there is just this blanket that you can go ahead and do it.

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1 And, I can't support it.

2 COMMISSIONER POTTER: Madam Chair, if I might just

3 --

4 CHAIR NEELY: Okay.

5 COMMISSIONER POTTER: -- that I think that was
6 directed to me.

7 COMMISSIONER WAN: No, it was directed at --

8 COMMISSIONER POTTER: In the other cases, they
9 have been project driven, LCP changes, and in this case, we
10 will see a project at the time, and that is the difference, I
11 think, in this project, as this is simply an LCP amendment
12 without a project, or a known project, at this moment, before
13 us.

14 COMMISSIONER WAN: Well, and that is precisely
15 what I am saying, is that you need, if you are going to allow
16 this, you need to have some conditions.

17 Staff, am I correct?

18 We have -- there is nothing in here that would, in
19 the future, if you put this in the way the city wants it, as
20 I read it -- and maybe I am wrong, and don't understand this
21 -- but, if this goes forward in this manner, then anything
22 that comes forward in the future, they simply have a current
23 --

24 [General Discussion]

25 COMMISSIONER REILLY: Well, that is not the --

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1 **CHAIR NEELY:** Hold on, a second, Commissioner
2 Reilly is next.

3 **COMMISSIONER WAN:** No, let's go to staff, and have
4 staff --

5 **CHAIR NEELY:** Okay.

6 **COMMISSIONER WAN:** No, let's go to staff.

7 **DEPUTY DIRECTOR SARB:** Let me try to explain the
8 purpose of Suggested Modification No. 14.

9 Currently, the LUP is silent on whether or not
10 limited use overnight accommodations are allowed in visitor-
11 serving zones, visitor-serving land use designated areas.
12 Staff is clarifying with the suggested modification that they
13 are a prohibited use in visitor-serving zones, except at the
14 Hyatt site.

15 So, simply diluting this statement does not
16 necessarily allow for limited use overnight accommodations,
17 in all visitor-serving zones, if that is the intent.

18 **COMMISSIONER REILLY:** Well, the question was,
19 though, because there is not a project in front of us, the
20 question was if there was a project, subsequently, for a
21 condo hotel, would that come before the Commission?

22 **DEPUTY DIRECTOR SARB:** At this point in time it
23 would, because we have permit authority, and our position
24 would be it is not consistent with the Land Use Plan.

25 **COMMISSIONER WAN:** But, is that the city's

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1 position?

2 **DEPUTY DIRECTOR SARB:** No, the city disagrees that
3 limited use overnight accommodations are not a permitted use
4 in visitor-serving zones. They feel that they are visitor-
5 serving uses, and that the Land Use Plan doesn't have to
6 specifically allow for them.

7 **COMMISSIONER REILLY:** Are these visitor-serving
8 zones all in the appeals zone?

9 **DEPUTY DIRECTOR SARB:** Again, this is not a
10 certified LCP.

11 **COMMISSIONER REILLY:** Would they be?

12 **DEPUTY DIRECTOR SARB:** No, they would not, they
13 would not all be subject to appeal to the Commission.

14 **COMMISSIONER WAN:** And, that is what my concern
15 is, that is why this needs to be dealt with appropriately by
16 an LUP amendment that deals just with this issue, so that it
17 can be clarified, and we are not left in a situation where
18 the staff is saying, "You can't do it under the current LUP,"
19 and the city is saying, "You can".

20 And, if the city is going to take that position,
21 then there are developments that could go forward without any
22 of the conditions that the Commission generally puts on these
23 things. I am not saying not to have it. I am saying I don't
24 believe that this is the appropriate way to deal with it.

25 **CHAIR NEELY:** Commissioner Clark.

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1 **COMMISSIONER CLARK:** This is helpful discussion,
2 but could we ask the city to come back up --

3 **CHAIR NEELY:** We certainly can.

4 **COMMISSIONER CLARK:** -- to explain their intent
5 with this particular --

6 **CHAIR NEELY:** Would the city's rep please come up
7 and answer Commissioner Clark's questions.

8 **MR. CAMPBELL:** Yes.

9 **COMMISSIONER CLARK:** You have heard the
10 discussions around --

11 **CHAIR NEELY:** Give your name, for the record,
12 please.

13 **MR. CAMPBELL:** Jim Campbell, City of Newport
14 Beach.

15 **COMMISSIONER CLARK:** Mr. Campbell, you have heard
16 the discussion of the Commission around potentially moving in
17 the direction of the city's recommendation on Modification
18 No. 14, on overnight accommodations.

19 As I understand it now, in terms of clarification
20 from staff, as they said, it is currently silent, and so this
21 would make it a prohibited use. If we took that out, there
22 would be, potentially, and my thought was that projects would
23 have to come back to the Commission for those, if you will,
24 the array of conditions we put on condo hotels, et cetera.

25 What I think I have heard from staff is if we take

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1 it out, there could be projects that go through that never
2 come to the Commission on that, is that correct?

3 **MR. CAMPBELL:** Correct.

4 **COMMISSIONER CLARK:** And, did you realize that,
5 from the city's standpoint.

6 **MR. CAMPBELL:** I am not actually sure that is
7 correct, because, again, the Coastal Commission has permit
8 jurisdiction. We can't just issue Coastal Development
9 Permits, so you would see that project. We have a difference
10 of opinion as to whether LCPs might allow these. I mean,
11 these would have to be resolved when a project comes forward,
12 and we would address it at that time. We can also address
13 this in the Implementation Plan, as well.

14 **COMMISSIONER CLARK:** Well, but Mr. Campbell, what
15 I think I have heard -- correct me if I am wrong, staff --
16 what I think I have heard is that there are some projects
17 that could forward, by the city, without ever coming back,
18 that were condo hotel projects.

19 **MR. CAMPBELL:** No.

20 **EXECUTIVE DIRECTOR DOUGLAS:** That's correct, once
21 the LCP is certified, that is absolutely correct. Right now,
22 it is not a fully certified LCP.

23 **COMMISSIONER CLARK:** So, all of them would come
24 back now?

25 **EXECUTIVE DIRECTOR DOUGLAS:** Right now, because it

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1 is not a fully certified LCP.

2 **COMMISSIONER CLARK:** Right.

3 **EXECUTIVE DIRECTOR DOUGLAS:** Once that is done,
4 they wouldn't, unless they are in an appeal area.

5 **COMMISSIONER BLANK:** So, Commissioner Clark, do
6 you want me to help.

7 **CHAIR NEELY:** We have 3 or 4 before you, I think
8 Reilly is next, and then you, Commissioner Blank, and
9 Counsel. Let's hear from Counsel, first.

10 **COMMISSIONER REILLY:** Let me ask this.

11 In terms of the IP which they are still working
12 on, and we haven't seen, would that be the most appropriate
13 place to put those detailed kinds of conditions, and stuff
14 that we normally have?

15 **DEPUTY DIRECTOR SARB:** Commissioner, the Land Use
16 Plan should have the specificity, and provide the guidance,
17 because the standard used for the Implementation Plan is the
18 ability to carry out the Land Use Plan.

19 **EXECUTIVE DIRECTOR DOUGLAS:** In other words, you
20 shouldn't be silent in the Land Use Plan --

21 **COMMISSIONER REILLY:** Well, I am just saying is if
22 you are not prohibiting them in the Land Use Plan, why
23 couldn't you have, in the event that you have a condo hotel
24 project, then these kinds of conditions would need to be
25 placed on it. I mean, if it is not prohibited in the Land

1 Use Plan, why couldn't you have that be in the IP?

2 **DEPUTY DIRECTOR SARB:** Any IP amendment that came
3 in that addressed limited use overnight accommodations should
4 be accompanied by a Land Use Plan amendment that also does
5 so, because right now, again, the LUP is silent.

6 **COMMISSIONER REILLY:** All right.

7 **COMMISSIONER WAN:** Can I finish my discussion?

8 **CHAIR NEELY:** Commissioner Wan wants to finish,
9 and then Commissioner Blank.

10 **COMMISSIONER WAN:** This is what I was trying to
11 say, is the appropriate place is in the LUP, because the LUP
12 and the IP have to be consistent with each other.

13 The IP are the ordinances necessary to carry out
14 the LUP. If you don't have anything about it in the LUP, I
15 don't see how you can actually put it in the IP. That is not
16 the appropriate place. That is not where we have done this
17 in the past.

18 And, while we do allow time shares in condos,
19 again, this is not the appropriate way to deal with this.

20 **CHAIR NEELY:** Okay.

21 Commissioner Blank.

22 **COMMISSIONER BLANK:** So, maybe I am just getting
23 more confused, but wouldn't a potential amendment,
24 Commissioner Clark, actually put in this LUP amendment
25 authorizing time shares, but suggesting that they all need to

1 be reviewed, automatically by the Commission.

2 COMMISSIONER CLARK: Yes, and my motivation here

3 --

4 COMMISSIONER BLANK: Wouldn't that solve the
5 problem?

6 COMMISSIONER CLARK: Right.

7 COMMISSIONER BLANK: Then, why don't we just
8 modify your motion, if you like, to do that, where they all
9 come --

10 EXECUTIVE DIRECTOR DOUGLAS: Excuse me --

11 COMMISSIONER BLANK: -- back in front of the
12 Commission.

13 EXECUTIVE DIRECTOR DOUGLAS: -- you can't do that,
14 because your appeal jurisdiction is limited by statute, and
15 you can't, by a plan, give the Commission authority that it
16 doesn't have by law.

17 COMMISSIONER BLANK: So, therefore, even if we
18 didn't allow condos and time shares, then the ones outside of
19 our appeal jurisdiction, wouldn't be in our appeals -- I mean
20 --

21 EXECUTIVE DIRECTOR DOUGLAS: No, but they wouldn't
22 be permitted, if they are not allowed in the Land Use Plan.

23 COMMISSIONER CLARK: Madam Chair.

24 CHAIR NEELY: Commissioner Reilly would like to
25 finish, and then we will go back to Commissioner Clark.

1 **COMMISSIONER REILLY:** I understand the dilemma, in
2 terms of us wanting to make sure that any condo hotel, or
3 limited use hotels, are properly conditioned, I understand
4 that. Here is my problem with what I see staff doing on
5 this.

6 You guys have come out against every condo hotel
7 project we've had since the beginning. The Commission has
8 consistently approved them. Now, you are trying to wipe them
9 out at an LCP level, you know, and what developer is going to
10 come in with a prohibition in the LCP for that kind of hotel,
11 go through the dollars, and the development costs for
12 proposing one, if that is what the language is?

13 That is problem I am having with what you are
14 suggesting.

15 **CHAIR NEELY:** All right, if you are finished, then
16 Commissioner Clark.

17 **COMMISSIONER CLARK:** Yes, actually, Mike said it
18 much better than I could, but that is the reason I am
19 supporting the city on this. We go from a silent position to
20 a prohibition, and that is the issue I have.

21 **CHAIR NEELY:** Okay, and so we have an amending
22 motion to delete Suggested Modification No. 14.

23 So, staff, do you have anything else to add?

24 **DEPUTY DIRECTOR SARB:** No.

25 **CHAIR NEELY:** Okay.

1 **COMMISSIONER ACHADJIAN:** Question, Madam Chair.

2 **EXECUTIVE DIRECTOR DOUGLAS:** Let me remind the
3 Commission that it takes 7 votes to approve an amendment to
4 an LCP.

5 **CHAIR NEELY:** Okay.

6 Commissioner Achadjian, you are next.

7 **COMMISSIONER ACHADJIAN:** Thank you, Madam Chair.

8 I hear Mr. Reilly, and I want to go that route,
9 but I am hearing that no matter what we are going, either
10 from having the discretion to look at a project on its own
11 merits, or not being able to do that at all.

12 **COMMISSIONER REILLY:** Right.

13 **COMMISSIONER ACHADJIAN:** The way the city is
14 approaching us, it is a done deal their way. The way the
15 staff is approaching it, it is a done deal our way. Am I
16 confusing it? I guess that a question for me.

17 **CHAIR NEELY:** Is that a question for Commissioner
18 Clark?

19 **COMMISSIONER ACHADJIAN:** Not necessarily, staff,
20 or anybody else.

21 **CHAIR NEELY:** All right, staff, first.

22 **DEPUTY DIRECTOR SARB:** I was going to just make
23 one point, additional point of clarification, that the
24 staff's suggested modification only prohibits limited use
25 overnight accommodations in lands designated visitor serving.

1 They are allowed in all other commercial areas, residential
2 areas, wherever the city wants to allow them. Our protection
3 is of the prime visitor-serving sites, that we have tried to
4 focus on with this LUP amendment.

5 **COMMISSIONER ACHADJIAN:** May I ask another
6 question, Madam Chair?

7 **CHAIR NEELY:** Certainly.

8 **COMMISSIONER ACHADJIAN:** So, what can you do,
9 instead of eliminating giving us the discretion, so that it
10 can come forward for us to make a decision, based on the
11 project, itself, other than a blanket policy?

12 **EXECUTIVE DIRECTOR DOUGLAS:** Well, if that is the
13 will of the majority of the Commission, that you don't want
14 to just outright prohibit these kinds of uses in the visitor-
15 serving areas, then you could make a motion to allow that,
16 but that the requirements, the conditions, and all of the
17 provisions that Commissioner Wan talked about, have to be
18 addressed in either the Implementation Plan -- well, either
19 there, or in the project when it comes back, if you don't
20 have a fully certified LCP, it would be before you.

21 But, you, basically, would be authorizing it but
22 making clear that the conditions have to be provided for, in
23 terms of the usage, and that this Commission would see it,
24 either in the Implementation Plan, or in the permit prior to
25 full certification.

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1 **COMMISSIONER ACHADJIAN:** So, what would the basis,
2 as we have projects come to us, and we have the discretion to
3 approve them as we see fit?

4 **EXECUTIVE DIRECTOR DOUGLAS:** Well, that is what
5 you have done in the past, so far, that you have imposed
6 certain restrictions, in terms of time of use, and all of the
7 things that Commission Wan identified, and the number of
8 units, and you would do that either as the project comes in,
9 prior to certification, or in the Implementation Plan, that
10 would be the full certification. Either way, the Commission
11 would be looking at it, and then making a decision at that
12 time, as to what the conditions would be.

13 **COMMISSIONER CLARK:** Right.

14 **EXECUTIVE DIRECTOR DOUGLAS:** If that is what you
15 want to do, then that would be the --

16 **COMMISSIONER ACHADJIAN:** That is what I am looking
17 for.

18 **CHAIR NEELY:** Commissioner Clark.

19 **COMMISSIONER CLARK:** Yes, I think the Director has
20 stated it very well.

21 Again, my motivation here is not to rule out or
22 prohibit in this amendment the use of condo hotels, et
23 cetera. But, obviously, the model conditions that we have
24 used in other projects, we need to memorialize, and if -- as
25 I think Commissioner Reilly said -- why not in the

1 Implementation Plan? because, that will be before any
2 project, correct? so why can't we go down that path?

3 **CHAIR NEELY:** Staff.

4 **EXECUTIVE DIRECTOR DOUGLAS:** If the majority of
5 the Commission wants to do that, for the visitor-serving
6 areas, then you could just make a motion to permit these
7 types of uses, provided that the conditions of that use will
8 be addressed either at the permit stage, or at the
9 implementation stage, by the Commission.

10 **COMMISSIONER REILLY:** Madam Chair.

11 **CHAIR NEELY:** Yes.

12 **COMMISSIONER REILLY:** Can I ask the representative
13 of the city to come up?

14 **CHAIR NEELY:** Yes.

15 **COMMISSIONER REILLY:** Do you understand what we
16 are trying to get to?

17 **MR. CAMPBELL:** I believe I do -- Jim Campbell,
18 City of Newport Beach.

19 We hadn't thought to resolve the dispute with
20 staff in this fashion, but what you are talking about would
21 work for us. Again, permission, then addressing the
22 conditions of operations that the Commission is seeking at
23 the IP, and our position would be that that would be the
24 perfect way to go, and we would support that amendment.

25 **COMMISSIONER REILLY:** All right, thank you.

1 **CHAIR NEELY:** All right.
2 Commissioner Clark, are you changing your motion?
3 [**MOTION**]
4 **COMMISSIONER CLARK:** Yes, I am just wondering --
5 okay, I will change the motion.
6 I'll move that --
7 **COMMISSIONER REILLY:** To modify Condition 14.
8 **COMMISSIONER CLARK:** -- we modify Condition No. 14
9 to permit overnight accommodations within the visitor-serving
10 land use category, subject to the conditions associated with
11 that, being memorialized in the Land Use Implementation Plan.
12 **COMMISSIONER REILLY:** Or project.
13 **COMMISSIONER CLARK:** Or a project, or project --
14 **EXECUTIVE DIRECTOR DOUGLAS:** Or, the project prior
15 to certification.
16 **COMMISSIONER CLARK:** -- prior to certification,
17 yes.
18 **CHAIR NEELY:** And, does the "seconder" agree with
19 that?
20 **COMMISSIONER POTTER:** Yes.
21 **CHAIR NEELY:** Okay, we have an amending motion on
22 the floor by Commissioner Clark, a "second" by Commissioner
23 Potter, and they are both recommending a "Yes" vote, and will
24 result in the modification of No. 14.
25 Any discussion on this item?

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1 [No Response]

2 Is there a need for a roll call.

3 COMMISSIONER WAN: Yes.

4 CHAIR NEELY: Okay, could the Clerk please call
5 the roll.

6 SECRETARY MILLER: Commissioner Achadjian?

7 COMMISSIONER ACHADJIAN: Yes.

8 SECRETARY MILLER: Achadjian, "Yes".
9 Commissioner Blank?

10 COMMISSIONER BLANK: Yes.

11 SECRETARY MILLER: Blank, "Yes."
12 Commissioner Clark?

13 COMMISSIONER CLARK: Yes.

14 SECRETARY MILLER: Clark, "Yes".
15 Commissioner Gonzalez?

16 COMMISSIONER GONZALEZ: Yes.

17 SECRETARY MILLER: Gonzalez, "Yes".
18 Commissioner Potter?

19 COMMISSIONER POTTER: Aye.

20 SECRETARY MILLER: Potter, "Yes".
21 Commissioner Reilly?

22 COMMISSIONER REILLY: Yes.

23 SECRETARY MILLER: Reilly, "Yes".
24 Commissioner Shallenberger?

25 COMMISSIONER SHALLENBERGER: No.

1 **SECRETARY MILLER:** Shallenberger, "No".
2 Commissioner Wan?
3 **COMMISSIONER WAN:** No.
4 **SECRETARY MILLER:** Wan, "No."
5 Commissioner Neely?
6 **CHAIR NEELY:** Yes.
7 **SECRETARY MILLER:** Neely, "Yes."
8 The vote is 7, 2.
9 **CHAIR NEELY:** All right, the amending motion
10 passes.
11 Commissioner Clark, did you have anything else?
12 **COMMISSIONER CLARK:** [Inaudible]
13 **CHAIR NEELY:** All right.
14 Any other amending motions, or are we back to the
15 main motion?
16 **COMMISSIONER CLARK:** I believe I need to deal with
17 -- I am sympathetic to the city's position on modifications
18 to Conditions 33 --
19 **CHAIR NEELY:** You would need to put that in a
20 motion form, then.
21 [Pause]
22 As soon as possible.
23 [General Discussion]
24 **COMMISSIONER CLARK:** I am going to let my
25 "second" do that.

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1 **CHAIR NEELY:** Okay.

2 Commissioner Potter, you have been volunteered.

3 **COMMISSIONER POTTER:** That is so nice.

4 I move that the we delete Suggested Modifications
5 33, 34, 35, 36, 39, as seen on pages 15 through 18, in
6 regards to low cost accommodation mitigations, and now I need
7 a "second".

8 **COMMISSIONER CLARK:** I'll second that.

9 **COMMISSIONER POTTER:** And, I do that in those
10 specific areas for consistency, because that is where those
11 policy representations are made regarding the lower-cost
12 accommodation mitigations.

13 **CHAIR NEELY:** Okay, staff, did you want to comment
14 on that amending motion?

15 **DEPUTY DIRECTOR SARB:** I just wanted to make sure
16 that it is clear that there were five suggested modifications
17 to deal with separate issues.

18 The first one is the one that prohibits conversion
19 of existing hotels and motels to lower-cost overnight
20 accommodations.

21 The 34, 35, and 36 address the in-lieu fee
22 provisions, and identify under what circumstances the in-lieu
23 fee would be required.

24 And, No. 39 is the definition of lower-cost
25 overnight accommodations, and I believe they stand what you

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1 just did, and the other provisions that are in the LUP the
2 city should want that definition in the Land Use Plan.

3 **CHAIR NEELY:** Okay --

4 **MR. CAMPBELL:** Would you repeat the question, real
5 quick?

6 **COMMISSIONER POTTER:** Do you want those in or out?

7 **COMMISSIONER REILLY:** No. 39.

8 **MR. CAMPBELL:** The definition of that? we would
9 prefer it out.

10 **COMMISSIONER POTTER:** And, your reasoning behind
11 that?

12 **MR. CAMPBELL:** Well, we don't believe it is
13 necessary at this point in time. We would like to have the
14 definition in the Implementation Plan.

15 **COMMISSIONER POTTER:** I was trying to be
16 consistent with the intent in the first motion, and that is
17 why I did it.

18 **CHAIR NEELY:** So, Items 34 through 36 regarding
19 the in-lieu fee, are you leaving those in?

20 **COMMISSIONER POTTER:** I am deleting those, at this
21 time.

22 **CHAIR NEELY:** Okay, all of them are being deleted,
23 then?

24 **COMMISSIONER POTTER:** Because, if you come back,
25 at the project, specifically, you can deal with them.

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1 **CHAIR NEELY:** All right.

2 Staff, would you like to comment?

3 **EXECUTIVE DIRECTOR DOUGLAS:** As I understand it,
4 there are two main effects of this motion.

5 One is to eliminate the prohibition on the
6 conversion of existing visitor overnight accommodations to
7 condominiums or time shares. And, it doesn't matter whether
8 they are lower cost, or what, that is one.

9 The other is it eliminates the in-lieu fee
10 requirement, and that is something we strongly recommend you
11 not --

12 **COMMISSIONER POTTER:** There is nothing for an
13 in-lieu fee right now.

14 **EXECUTIVE DIRECTOR DOUGLAS:** Pardon me?

15 **COMMISSIONER POTTER:** There is no project at this
16 moment.

17 **EXECUTIVE DIRECTOR DOUGLAS:** No, but, the point is
18 the Land Use Plan should indicate that if you do have a
19 project to convert, that you ought to have an in-lieu fee,
20 and this would eliminate that, as I understand it.

21 **CHAIR NEELY:** I am going to let Commissioner
22 Potter finish, and then we are going to Reilly, unless you
23 would like him to go now?

24 **COMMISSIONER POTTER:** We can go to Reilly.

25 **CHAIR NEELY:** Commissioner Reilly.

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1 **COMMISSIONER REILLY:** Well, I guess my -- the city
2 had also offered a motion related to mitigations, and on 34,
3 35, and 36, is it your intention to just eliminate those, and
4 leave it silent? or is it your intention to substitute the
5 city's motion for those three conditions?

6 **COMMISSIONER POTTER:** Substitute in the city's
7 motion.

8 **COMMISSIONER REILLY:** And, if that is the
9 intention, then there was also a very strong recommendation
10 by Counsel that you modify the city's motion to insure that
11 those mitigation funds can only be used for visitor-serving
12 housing, and not for other kinds of recreation projects.

13 **COMMISSIONER POTTER:** Is that your understanding,
14 also?

15 **DEPUTY DIRECTOR SARB:** That is what we suggested,
16 that if you were inclined to accept the city's language, that
17 you should not allow those fees to be used for visitor and
18 recreational facilities, but instead substitute that to
19 lower-cost overnight accommodations.

20 **COMMISSIONER POTTER:** Could we have the city back
21 up, again -- why not just stay up there.

22 **MR. CAMPBELL:** Jim Campbell, City of Newport
23 Beach, and I'll stay.

24 **COMMISSIONER POTTER:** Okay.

25 You know, frankly, this seems to be just

1 complicating an already complicated issue by doing these
2 actions at this time, but I was trying to do a little bit of
3 clean up here, and it doesn't seem to me, necessarily,
4 deleterious for you. What is your feeling on this?

5 **MR. CAMPBELL:** To put a provision in the policy
6 that would require the funds to be paid to be used for
7 lower-cost accommodations, and accommodations only?

8 **COMMISSIONER POTTER:** Well, like the parcel that
9 is before us, exactly.

10 **COMMISSIONER CLARK:** Right.

11 **MR. CAMPBELL:** Okay, we would prefer not to do
12 that at this time, because we when a project comes forward,
13 we could evaluate it at that time, and find out what is
14 really feasible, and in some cases it might not be feasible,
15 and we would like to have the flexibility to look at other
16 priority uses in accordance with *Section 30213* of the *Coastal*
17 *Act*, which actually talks about visitor serving and
18 recreational facilities.

19 So, we want to have a little bit of flexibility,
20 so that we can look at all three.

21 **COMMISSIONER POTTER:** I am inclined to withdraw my
22 motion.

23 **CHAIR NEELY:** Okay.
24 Commissioner Reilly.

25 ///

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1 [MOTION]

2 **COMMISSIONER REILLY:** I'll offer a motion that
3 staff's Conditions Nos. 34, 35, and 36 be substituted with
4 the city's recommended language, taking out the option of
5 using in-lieu fees for recreation, and making it solely for
6 low-cost visitor serving.

7 **COMMISSIONER CLARK:** Second.

8 **CHAIR NEELY:** We have an amending motion, and a
9 "second".

10 Any other comments from Commissioners or staff?
11 Staff.

12 **EXECUTIVE DIRECTOR DOUGLAS:** I just wanted to
13 respond to what the representative from the city said, which
14 now is not as necessary, but there are lower-cost overnight
15 accommodations that are in the area that need funding, and
16 they will continue to be, so if you are going to go along
17 with the city on this, we strongly recommend that you go in
18 the direction of the current motion.

19 **CHAIR NEELY:** All right.

20 And, any other Commissioner comments?

21 Commissioner Wan.

22 **COMMISSIONER WAN:** I can't support the motion,
23 because we have been dealing with requiring in-lieu fees for
24 all of these types of developments, under these
25 circumstances, everywhere else. In Huntington Beach, just

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1 what was it, last month, we dealt with Lane Field, and we
2 required in-lieu fees. It sets such an incredibly bad
3 precedent, what this Commission says, in essence.

4 [General Discussion]

5 But, you have taken out, if I am reading this
6 correctly -- you want to explain -- that they are taking out
7 a requirement for in-lieu fees.

8 **COMMISSIONER REILLY:** No, it still requires
9 in-lieu. You are taking out the detail of the actually the
10 25 percent, and those --

11 **COMMISSIONER WAN:** Just taking out the details,
12 all right.

13 **EXECUTIVE DIRECTOR DOUGLAS:** That's right, the
14 in-lieu fee remains. They can either provide a lower-cost
15 accommodation off set, or provide for an in-lieu fee for that
16 purpose.

17 **COMMISSIONER WAN:** Okay.

18 **EXECUTIVE DIRECTOR DOUGLAS:** It is not eliminated,
19 it is just not set at this time out.

20 **CHAIR NEELY:** All right, any other comments from
21 Commissioners?

22 **COMMISSIONER REILLY:** Well, I just would note that
23 I, specifically, did not include 33 in there, because I
24 couldn't support a motion that included 33.

25 **CHAIR NEELY:** And, 39.

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1 **COMMISSIONER REILLY:** And, 39.

2 **CHAIR NEELY:** All right.

3 We have a motion by Commissioner Reilly, and a
4 "second" by Commissioner Clark.

5 Any other comments from Commissioners?

6 [No Response]

7 Would you please call the roll.

8 **SECRETARY MILLER:** Commissioner Blank?

9 **COMMISSIONER BLANK:** Yes.

10 **SECRETARY MILLER:** Blank, "Yes".

11 Commissioner Clark?

12 **COMMISSIONER CLARK:** Yes.

13 **SECRETARY MILLER:** Clark, "Yes".

14 Commissioner Gonzalez?

15 **COMMISSIONER GONZALEZ:** Yes.

16 **SECRETARY MILLER:** Gonzalez, "Yes".

17 Commissioner Potter?

18 **COMMISSIONER POTTER:** Aye.

19 **SECRETARY MILLER:** Potter, "Yes".

20 **SECRETARY MILLER:** Commissioner Reilly?

21 **COMMISSIONER REILLY:** Yes.

22 **SECRETARY MILLER:** Reilly, "Yes."

23 Commissioner Shallenberger?

24 **COMMISSIONER SHALLENBERGER:** Yes.

25 **SECRETARY MILLER:** Shallenberger, "Yes."

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PRISCILLA PIKE
Court Reporting Services
mtncris@sti.net

39672 WHISPERING WAY
OAKHURST, CA 93644

TELEPHONE
(559) 683-8230

1 Commissioner Wan?

2 **COMMISSIONER WAN:** Yes.

3 **SECRETARY MILLER:** Commissioner Wan, "Yes."
4 Wan, "Yes."

5 Commissioner Achadjian?

6 **COMMISSIONER ACHADJIAN:** Aye.

7 **SECRETARY MILLER:** Commissioner Achadjian, "Yes."
8 Chairman Neely?

9 **CHAIR NEELY:** Yes.

10 **SECRETARY MILLER:** Neely, "Yes," unanimous.

11 **CHAIR NEELY:** We have a unanimous vote for the
12 last amending motion.

13 And, now we will go back to the main motion --

14 **COMMISSIONER REILLY:** As amended.

15 **CHAIR NEELY:** -- as amended, and the maker and the
16 "seconders" are recommending a "Yes" vote.

17 Is there any objection to a unanimous roll call
18 vote on this item?

19 [No Response]

20 Seeing none, the Commission hereby certifies the
21 Land Use Plan Amendment NPB-MAJ-1-07 for the City of Newport
22 Beach, as amended.

23 And, I think we will take a 5-minute break right
24 now.

25 * * [Whereupon the hearing concluded 4:35 p.m.]

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STATE OF CALIFORNIA)
) SS.
COUNTY OF MADERA)

I, PRISCILLA PIKE, Hearing Reporter for the State of California, do hereby certify that the foregoing 42 pages represent a full, true, and correct transcript of the proceedings as reported by me before the California Coastal Commission for their hearing of February 5, 2009.

Dated: February 17, 2009


PRISCILLA PIKE