

**CALIFORNIA COASTAL COMMISSION**

South Coast Area Office  
200 Oceangate, Suite 1000  
Long Beach, CA 90802-4302  
(562) 590-5071



# Th11a

## ADDENDUM

November 7, 2017

TO: Coastal Commissioners and Interested Parties

FROM: South Coast District Staff

SUBJECT: Minor LCP Amendment Request 3-17 (LCP 5-NPB-17-0053-2) for the Commission meeting of November 9, 2017 in Bodega Bay.

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The purpose of this addendum is to substitute the City of Newport Beach Minor LCP Amendment Request No. 3-17 (LCP-5-NPB-17-0053-2) staff report with a Request to Extend the 60-Day Time Limit for action for up to one year.

On September 25, 2017, the Commission's South Coast District office in Long Beach received LCP Amendment Request No. 3-17, affecting only the City's Implementation Plan (IP) to correct a number of inconsistencies, clarify ambiguities, designate the Lido Villas community as a Planned Community, and add a regulation to clarify the public notification hearing procedures for minor development. Staff determined the amendment to be minor and scheduled the item for Commission action at its November 9, 2017 meeting. After mailing of the Commission's public meeting notice, staff received public correspondence on November 3, 2017, attached as **Exhibit #1** raising relevant concerns with the processing of the amendment as Minor and raising issues that staff must take into consideration that may result in some of the proposed amendments to instead be processed as a Major LCP amendment. To allow for time for Commission staff and the City of Newport Beach to adequately respond to the issues raised by the public commenter, on November 7, 2017, the City of Newport Beach requested a postponement from the November 9, 2017 Commission meeting.

Pursuant to Section 30513 of the Coastal Act, an IP Amendment must be scheduled for a public hearing and the Commission must take action, within 60 days of receipt of a complete submittal. The 60th day for this IP is November 24, 2017. Section 30517 of the Coastal Act and Section 13535(c), Title 14 of the California Code of Regulations allows the Commission to extend, for good cause, the 60-day time limit for up to one year. Commission staff is requesting this extension to allow additional time to evaluate the issues and concerns submittal and consult with the City of Newport Beach on suggested modifications. The full one-year extension is requested

because extensions are only considered once and it is prudent to allow for the maximum amount of time in case of unexpected delays. City staff has been notified of this time extension requires and is in agreement.

### **STAFF RECOMMENDATION**

Staff recommends the Commission vote YES to extend the deadline for Commission action for one year.

**MOTION:** *“I move that the Commission extend the 60-day time limit to act on the City of Newport Beach LCP Amendment Request No. 3-17 for a period of one year.”*

An affirmative vote of the majority of the Commissioners present is needed to pass the motion.

Date of comments: November 2, 2017  
Agenda Item: [th11a-11-2017](#)  
Minor Amendment Request No. 3-17 (LCP-5-NPB-17-0053-2)

California Coastal Commission (attn: Liliana Roman)  
South Coast Area Office  
200 OceanGate, Suite 1000  
Long Beach, CA 90802-4302

Re: "Minor" Amendment Request to the City of Newport Beach LCP

Dear Ms. Roman,

Thank you for noticing me on this item. I believe the task of the Commission and the public in attempting to review this would have been substantially simplified if Coastal staff had provided a [redline version](#), so that what is actually being proposed to be changed would have been more apparent. Beyond that, I would like to comment on the amendments below, identified by the numbers under which they are listed in the table in staff report:

**Amendment No. 2** (Lido Villas): This proposed amendment adds never-before-seen "Planned Community" regulations to [an IP](#) that went into effect on January 30, 2017. I strongly object to processing the certification of that as a "minor" amendment. Planned Communities normally allow development that would not be allowed in the absence of the PC. In other words, they modify otherwise existing development regulations. While it's true the existing IP's [Coastal Zoning Map](#) contains a property labeled "PC-59," neither the Commission nor the public have previously seen any proposed development standards for it. According to the criteria articulated in the staff report, adding such new regulations could not possibly qualify as a minor LCP amendment because it is not confined to "*changes in wording ... which do not change the kind, location, intensity, or density of use*" from what could have been approved without the amendment.

Indeed, in the City's [CLUP](#), that property is designated for "[RM-D, \(20.0 - 29.9 DU/AC\)](#)" development, for which, in the absence of PC text, the maximum height for flat-roofed construction per IP [Sec. 21.30.60.C.2.b](#) would be 28 feet, with the CDP approval process allowing an increase to at most 32 feet, and then only if the findings of Sec. 21.30.60.C.3 to be made. By contrast, the only constraint imposed after certification of the proposed PC text would be the vague "Height: Thirty-five (35) feet" (apparently allowed "by right," without any need for findings). It is unclear why this RM-D property should be so privileged.

Likewise, existing IP [Table 21.18-4](#) appears to require setbacks of 20' front, 10' rear and 8% of the lot width on the sides for RM properties. The proposed PC-59 text appears to allow development with substantially smaller. Again, it is not clear why this property should be so privileged.

In addition, at 1.2 acres, PC-59 is much smaller in land area than the minimum 10 acres normally expected (per NBMC [Sec. 20.56.020](#)) to qualify for relaxation of development standards through creation of a "planned community."

The only justification I can find in the staff report for allowing this substantial relaxation in development standards to be regarded as a “minor LCP amendment” is that “*This planned community did not become effective until after the submission of the LCP to the Coastal Commission for certification.*”

I’m not sure what this means, since the City’s own “[PC-59](#)” (an extension of its Zoning Code) was adopted by the City Council on November 26, 2013, and became “[effective](#)” with the Coastal Commission’s certification of the change of CLUP land use designation for the former church portion of this property from PI to RM-D, completed on [March 12, 2014](#). All of that happened long before the City’s first draft IP was submitted to the CCC in [November 2015](#).

I can only conclude the submission of a draft IP showing a “PC-59” on a map, but providing no supporting information for it, was an act of inadvertence, not a procedural necessity.

The City may argue that this is simply the PC text “it intended to submit” had it remembered to do so. The fact remains it *was not* submitted and has not previously been reviewed for Coastal Act consistency. And I don’t see why inadvertence should be rewarded by giving the City a free pass to add whatever PC text it might now want without the scrutiny of a major amendment.

Coastal staff may argue that this is not really a big deal because as [Item Th10d](#) in October 2014 the Commission approved CDP Application 5-14-0613, permitting a development similar to what the presently proposed PC-59 *text* seems designed to allow on this site – and which, in approving the CDP, the Commission found consistent with Coastal Act and the City’s CLUP.

However, the City did not have an IP in 2014, and the only guidance the Commission had as to acceptable heights and setbacks had to be found in the City’s certified CLUP, and the only guidance it attempted to apply was the policy that structures could not exceed 35’ (which the applicant promised to redesign their project to fit within).

The City now has not only a CLUP, but also an IP (with more specific, and some cases more stringent standards) to weigh development against. The fact that the Commission found the 2014 development consistent with the CLUP does not guarantee it would find it consistent with the new IP. Relaxing those standards through certification of the proposed PC-59 text, giving the 2014 CDP a kind of retroactive consistency with the IP does not seem appropriate to me. It certainly doesn’t seem appropriate to be processed as a “minor” amendment.

Finally, even if staff continues to regard Amendment No. 2 as a “minor” IP amendment, to be consistent with the PC Districts already certified in the IP, it would seem the City would need to submit not only the proposed new IP Section 21.26.055(V) , but also a revision to IP [Table 21.26-9](#) (or insertion of a new table) to define the allowable uses in PC-59, as well as a Land Use Map for inclusion in IP [Section 21.80.065](#), defining where those uses are allowed (and, somewhat trivially, revisions to the Tables of Contents of the IP and its Map section). I see none of this in the present proposal.

I urge Commission staff to inform City staff that: (1) the Commission needs a complete proposal (including associated land use map and table changes), not a partial PCD description, and (b) if the proposal will allow development that would not be allowed without the new text, then the addition of the new text must be reviewed as a major IP amendment, not a minor one.

**Amendment No. 7** (IP Table 21.50-1): The City proposes to modify the table and add a footnote “(9)” to clarify the procedure by which the Council may override the Community Development Director’s determination that the requirement for a CDP can be waived for a development deemed “de minimis.” Unfortunately, the proposed footnote “(9)” perpetuates exactly the ambiguity which the City later tells us needs to be corrected with Amendment No. 10 – namely, the reference to “*one-third of the City Council (two members)*” when (as recognized in Amendment No. 10) it takes three members to qualify as one-third of seven member Council.

**If the Commission wants an internally consistent IP, Footnote (9) needs to be revised to read simply “two City Council members,” deleting “one-third” altogether.**

**Amendments No. 8, 9 and 10**: It is commendable City staff wants to correct these errors. It is less clear why City and Coastal staff show less interest in correcting the many other errors and inconsistencies that crept into the IP as a result of its rushed certification.

**Amendment No. 12**: Before considering the merits of this amendment, I might point out that in considering proposed IP Section 21.62.050.C.1, one might hope the Commission would want to correct “*The notice shall contain and shall contain ...*” to read “*The notice shall contain ..*” (or whatever they think it was meant to say). That lack of attention to detail in the City’s submission (and Coastal staff’s review of it?) raises doubts about the integrity of the other proposals, as well as the IP itself.

Regarding the substance, proposals requiring only a CDP are currently being routed through public hearings, noticed on the City’s website, before the City’s [Zoning Administrator](#) (a staff member, and currently the one who is likely the author of these amendments). Most of those hearings are, admittedly, perfunctory, but the proposed amendment would completely eliminate many of them, absent individual public objection by persons who know about the request to waive the public hearing requirement. Despite an allowance for that in Section 30624.9 of the Coastal Act, I’m not sure that’s good public policy.

Given the CDP process is supposed to be for the benefit of all Californians, not just those who live or own property near the project site, the most problematic aspect of this, for me, is that “minor” (as declared by the local Director) can actually be what many would object to as quite “major” and the request to waive the hearing, let alone the existence of the CDP application, is likely to be known only to neighboring property owners and residents. Even then, per existing IP [Section 21.62.020\(B\)\(2\)](#) it seems to be up to the applicant to tell the City who should be notified. This creates the peculiar situation that the existence of projects needing a CDP will be less widely known than ones for which the Director believes to be so minor no CDP is needed (all of the Director’s requests for “De Minimis Waivers,” and project details, appearing on the widely circulated City Council agendas).

To correct this, **I would suggest the Commission add a provision requiring that in addition to the mailed notices, the City maintain a webpage listing all the Director’s pending requests to waive a hearing, with links to a copy of the mailed notice.**

As to the proposed text of this new Section, in addition to the apparent typo cited above, it has a number of technical defects:

1. Without rethinking amendment, the requirement of C.1 that “*The notice shall contain and shall contain all of the information required in [Section 21.62.020\(A\)](#)*” seems impossible to comply with. The very first requirement of Section 21.62.020.A.1.a is to include “*The date, time and place of the hearing*” (as well as, per Section 21.62.020.A.1.d, a statement about interested persons’ right to appear at that hearing, and appeal). But as I understand it, under the proposed new section, no date, time or place would be set unless the Director receives a response to the notice.
2. The sentence listed as C.3 does not logically fit in the position assigned to it, and suggests the clauses need to be renumbered. The lead sentence of 21.62.050.C calls out the numbered items under it as steps needed to waive a hearing. But “3.” is definitely *not* a step needed to waive a hearing, but rather describes what to do when it is found the hearing cannot be waived. To correct this, I believe that portion of the amendment (setting aside its other defects) should be structured something like this:
  - “C. Procedure.
    1. The Director may waive the requirement for a public hearing on a Coastal Development Permit application for a minor development, if all of the following occur:
      - a. Notice is ....
        - i. A statement that ...
        - ii. For proposed development within ...
      - b. No request for public hearing is received ...
    2. Requests for hearing must be made in writing to the Department. Upon receipt of a request for a hearing, the Department shall schedule the matter for a public hearing and issue notice of such hearing consistent with the provisions of this Chapter.”

Finally, since it proposes to add a new section to the IP, this amendment, if certified, would also appear to necessitate changes to the IP’s Tables of Contents, which are not shown.

**Amendment No. 13:** This is erroneously identified as a proposed amendment to IP “**Section 21.64.050(A)**.” There is no such section. Instead, it appears to be a proposed amendment to IP [Section 21.64.020\(A\)](#). Again, that lack of attention to detail in the City’s submission (and Coastal staff’s review of it) raises doubts about the integrity of the other proposals, as well as the IP itself.

In that same vein, although the reference to reporting “*to the City Council pursuant to Section 21.52.055(E)*” is correct, what is being referred to is a dangling paragraph at the end of a subsection entitled “E. **Content of Public Notice**,” and which, other than the final paragraph, entirely deals with that subject. Reporting to Council does not logically fit under a “Content of Public Notice” heading, so I believe that as part of this minor amendment package the City should have requested that the dangling paragraph at the end of [Section 21.52.055](#) be recast as a subsection of its own labeled “F. **Report to City Council**.”

**Amendment No. 14**: This indeed appears to be a “minor amendment” proposing to change the wording of an existing IP section to clarify its meaning. Although the changes are probably an improvement, the result, strangely, does not seem to have been able to achieve consistency as to how “Commissioners” should be spelled when used as a possessive adjective (employing, as it does, three variations, one with no apostrophe at all), and it is unclear why the phrase “or reverses the previous decision” has been italicized (it is not in the existing IP).

Yours sincerely,



James M. Mosher, Ph.D.  
2210 Private Road  
Newport Beach, CA. 92660  
[jimmosher@yahoo.com](mailto:jimmosher@yahoo.com)