

CALIFORNIA COASTAL COMMISSION

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W24b

LCP AMENDMENT NO. 4-17 PART C

(LCP-5-NPB-17-0084-1)

DECEMBER 12, 2018

CORRESPONDENCE

Letter from Dr. James Mosher dated December 7, 2018

Letter from the City of Newport Beach – Response to Dr. Mosher’s comment letter

Date of comment: December 7, 2018
Agenda Item: **W24b-12-2018**
My position: needs work!

To: Liliana Roman, Coastal Program Analyst
200 Oceangate, Suite 1000,
Long Beach, CA 90802

Re: Amendment Request No. 4-17 Part C (LCP-5-NPB-17-0084-1) to the City of Newport Beach
Local Coastal Program (LCP)

This item is more difficult than normal for the public to understand and comment on because of the multipart way in which it is being handled. Exhibit 1 contains a long list of requests for LCP amendments from the City of Newport Beach. But only those parts shown by ~~strikeout~~ or underlining in Exhibit 2 are changes *currently* under consideration by the Coastal Commission, and most, but possibly not all, of those have suggested modifications from CCC staff called out in the staff report.

I will try to comment by the numbered CCC modifications, hoping I'm not missing anything else the CCC is being asked to adopt. But I might note it would be helpful in future items like this to ask the City to show their requested changes by redlining directly in the original City resolution, and then for CCC staff to number each request in the margin, both so they can be easily referred to and so there is no doubt what set of changes the CCC is being asked to approve (some, possibly, without modification).

Suggested Modification #1 (35' Shoreline Height Limitation in LUP, staff report page 7, Exhibit 2 page 1 of 10)

1. I appreciate the clarifications suggested by CCC staff.
2. However, in Subpart C, I find citing "lifeguard towers" as an example of structures that might need to exceed 35' to function to be confusing. Most lifeguard towers in Newport Beach are nothing like that tall.
3. **Subpart H allowing *additions* to "landmark buildings" to go to 55', without any further qualification, is very problematic to me.** Not only are "landmark buildings" not clearly defined in the LUP, but one has to assume their landmark status would, in part, be due to their current design. It is totally unclear to me why they should be privileged to change their design, possibly radically, by extending their height to 55', regardless of what their current height might be. An example would be the historic 34' Balboa Theater building, for which there is a proposal to add a 55' roof deck. Since the addition has no relation to the structure's historic character, not only is it hard to see why a roof deck on that building would be *more* appropriate than on any other, but it would actually seem *less* appropriate there, since it conflicts with the historic design.
4. In view of the preceding exceptions, site-specific exception K.1 (Marina Park faux lighthouse, staff report page 10) now seems mostly superfluous: I believe it would now qualify as a "government facility" under exception C.

- a. It is also unclear if the prohibition on further exceptions to the height limit for “architectural features, solar equipment or flag poles” is intended to apply only to the faux lighthouse, or to Marina Park as whole.
 - b. Whichever it may be, exception I (page 8) appears to suggest solar equipment *is* allowed on all structures. So it’s unclear which prevails.
5. Under site-specific exception K.2 (Former City Hall complex), I believe the last two bullets on page 10, specifying exceptions for a fire station, are no longer necessary. My understanding is the City intends to relocate the fire station, and even if it were to remain, it would seem to fit under the “government facilities” exception.

Suggested Modification #2 (height limit exceptions, staff report pages 11ff, Exhibit 2 pages 4ff of 10)

1. City staff appears to have given CCC staff an incorrect redline version for Exhibit 2. It does not match the changes requested in the City Council resolution reproduced as Exhibit 1.
 - a. In particular, “C.1” is shorter in the resolution, and the resolution contains a “C.2.f” not found in the redline of Exhibit 2.
 - b. This may be understandable, but it is particularly troubling, since the reference to “planned communities” at the end of “C.1” is the one thing about the staff-prepared resolution that the Newport Beach City Council discussed and asked to be removed.
2. In that connection, **the “f” paragraph shown as a CCC-suggested insertion on staff report page 12 appears to be a CCC-staff-modified version of the City-resolution version on page 5 of 14 of Exhibit 1.**
 - a. **Neither of these, I believe, correctly implements the height restrictions on planned communities that existed at the time the LUP was originally certified or recertified in 2005.**
 - b. The height limits of C.2.a through C.2.e on staff report pages 11 through 12 are essentially those enacted by the Newport Beach City Council in the summer of 1972 and intended, much like the Coastal Initiative then making its way to the ballot (predecessor of the Coastal Act), to prevent future overdevelopment of the coast.
 - i. Under this scheme, each structure type has a base height allowed by right and a maximum height permitted through a discretionary process.
 - ii. Height limits in *existing* planned communities that did not conform to the new limits were grandfathered in with an understanding that to use those limits to build to a non-conforming height in the future would require a discretionary approval.
 - iii. Height limits for structures in *new* planned communities were expected to conform to the same restrictions as would apply to the same structure type in a “non-planned” area. The approval of a planned community text was simply one of the possible discretionary processes that could be used to permit heights up to the maximums – and, indeed, to pre-approve such a conforming height limit for future construction. New planned communities were never

seen as a vehicle for exceeding the height limits specified in what is here C.2.a through C.2.e.

- c. Since LUP Policy 4.4.2-3 commits to keeping buildings within the envelopes permitted by “the Zoning Code in effect as of October 13, 2005,” and since the rules described above were in effect on October 13, 2005, any implementation that deviates from them is in conflict with the LUP.
 - d. I believe the “f” paragraph needs to be re-worked.
 - e. In an attempt to capture the above concepts, I would suggest something like: “*f. Planned Communities Coastal Zoning District. Height limits established as part of an existing planned community shall be as specified in Section 21.26.055 (Planned Community Coastal Zoning District Development Standards). Height limits established as part of a new or amended planned community may not exceed the maximums applicable to structures of the same type outside a planned community. Notwithstanding any higher height limit identified in a PC District, the allowed height for structures located within the Shoreline Height Limit Area, per Map H- 1, may not exceed thirty-five (35) feet with a flat roof or, forty (40) feet with a sloped roof.*”
3. In the second line on staff report page 13, the word “and” seems unintentional.
 4. CCC staff’s Suggested Modification #2 suggests changes to exceptions 1, 2, and 3 on Page 5 of 14 of Exhibit 1, but makes no mention of exceptions 4 through 15. **Is this an oversight? Or does CCC staff feel no similar clarifications are needed to them?** As explained under Suggested Modification #1, above, I find exception “9. Landmark Buildings” particularly problematic.

Suggested Modification #3 (height exceptions for government facilities, staff report page 13, Exhibit 2 page 6 of 10)

1. I appreciate CCC staff’s suggested clarification.
2. As indicated above, unless Newport Beach has a radically new design in mind, “lifeguard towers” in seem an odd example of a government structure needing a height exception.

Suggested Modification #4 (shoreline protective devices, staff report page 13, Exhibit 2 page 3 of 10)

1. I agree with CCC staff’s rejection of the City’s requested modification.

Suggested Modification #5 (nonconforming structures, staff report pages 14ff, Exhibit 2 page 7 of 10)

1. **I assume a Coastal Development Permit is required for additions to non-conforming structures**, just as it would be for additions to a conforming one. Unlike the following Section 21.38.050 (Nonconforming Uses), the existing Section 21.38.040 (Nonconforming Structures) does not make this clear, at least to me.
2. That said, I appreciate CCC staff’s added required findings in the proposed new Subsection G.1.

3. The City's primary request here is for the authority to approve 75% expansion of non-conforming residential structures, in what CCC staff is numbering Subsection G.2.
 - a. When comparable language was added to the Newport Beach Zoning Code ([NBMC Section 21.38.040.G.2](#)) there was considerable debate and the Planning Commission insisted on additional safety valves, including that the Planning Commission itself make a series of required findings.
 - b. Those provisions are lacking here. Not only have off-shoots of the extra required findings become mere matters to "consider," but as the IP is written, it would seem a CDP allowing this large expansion could be approved at staff level by the Zoning Administrator. **I believe the review authority for a 75% expansion should be the Planning Commission.**
 - c. My memory of the 2015 Planning Commission meeting where it was recommended be added to the Zoning Code being a bit vague, I am unable to grasp the City's justification for increasing the 50% limit to 75% as conveyed on page 23 of the present staff report – or whether it had relevance to the Coastal Act.
 - d. The above said, the Zoning Code contains language allowing additions to non-conforming structures to be repeated every 10 years.
 - i. I was pleased to see that deleted when the IP was initially certified.
 - ii. Is it the CCC's interpretation that the 50% and 75% are lifetime limits to the expansion allowed once a structure becomes non-conforming?
4. The double-underlined sentence on staff report page 15, proposed by CCC staff to be inserted as Subsection G.6 is essentially copied from the corresponding passage in the Newport Beach Zoning Code.
 - a. **At a minimum, in the translation, "(G)(1)" in the initial sentence should be changed to "(G)(2)".**
 - b. That said, the intent of the sentence was never clear to me in the Zoning Code, and since it is simply being copied, it remains unclear here:
 - i. I believe I understand that "*shall be excluded from the allowed expansion*" means the required parking area can be added without counting it toward the limit.
 - ii. I remain puzzled by what "*but shall be included as gross floor area*" was intended to mean. Since the allowable expansion is based on the gross floor area, does this mean the applicant can add the size of an *unbuilt* future garage (based on the table) to the existing floor area *before* calculating how much non-garage area they are allowed to add? Or does it mean *existing* garages are included as part of the area of the existing home, from which the maximum allowed expansion is calculated (and then a new garage, per the table, can be added to that)?
 1. I believe the language should make clear how the calculation is intended to work.

Suggested Modification #6 (new provisions for modifications and variances, staff report pages 15ff, Exhibit 2 pages 8ff of 10)

1. I would first note that the Newport Beach IP was originally certified *without* a mechanism for locally-approved deviations from the certified development standards, even though the City may have requested that.
2. Given the City Council's historically uncomfortable relation with the Coastal Act, and its strange notions regarding such things as whether its harbor would fit the definition of a commercial port, I guessed this might have been intentional. But I never knew.
3. Against that background, the City has offered a lot of language, which oddly doesn't quite parallel the language for modifications and variances in its own Zoning Code (where "modifications" and "variances" are in different sections, NBMC [Sec. 20.52.50](#) and [Sec. 20.52.90](#)).
 - a. CCC staff has added some modifications to that language, which I appreciate.
 - b. But my foundational questions are:
 - i. **Is it normal for an IP to include such locally-approvable variance language?**
 - ii. **While I appreciate one of the core ideas of the Coastal Act is that different localities will have different coastal development standards, shouldn't the rules under which deviations from those are granted be pretty uniform throughout the coastal zone?**
 - iii. **How does this language differ from the standard language, if there is any? And if it does, why?**
4. My personal preference would be for all requests for deviations from the certified standards to be referred to the Coastal Commission.

Yours sincerely,



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VIA ELECTRONIC MAIL AND USPS DELIVER

December 11, 2018

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Subject: December 12, 2018 Agenda Item No. W24b – City of Newport Beach LCP Amendment No. 4-18 Part C – Response to Comments

Dear Ms. Roman,

Thank you for forwarding Mr. Mosher's comments on the LCP Amendment No. 4-18 Part C and the opportunity to respond.

Comments on Suggested Modification No. 1

Comment No. 2: Including lifeguard towers as an example of government facilities that may require a height limit exception is valid. The peak of the Lifeguard Headquarters on Newport Pier is approximately 44 feet, 7 inches above grade. Future lifeguard towers may also be located on the Newport Pier, Balboa Pier or some other structure.

Comment No. 3: Landmark Structures are clearly defined in certified LCP Implementation Plan (IP) Section 21.38.070(B). It should also be noted that the Coastal Commission approved the coastal development permit (CDP) for the Balboa Theater project in 2011 and was deemed consistent with the certified Coastal Land Use Plan (CLUP). The additional height for the Balboa Theater was required to provide handicapped access in the form of an elevator. This helped facilitate adaptive reuse of the structure.

Comment No. 4: The Government Facilities exception is too narrowly restricted to allow an iconic architectural feature like the Marina Park Lighthouse. It is generally accepted practice in the interpretation of policies the specific prevails over the general. Therefore, the "no further exceptions" provision would prevail over more generalized exceptions.

Comment No. 5: The City is considering relocating the Fire Station No. 2; however, no decision has been made at this time.

Comments on Suggested Modification No. 2

Comment No. 1: The Coastal Commission staff was made aware of this error and a correction is forthcoming.

Comments No. 2a-c: The process of establishing height limits in planned communities is the same as when the CLUP was certified in 2005. Then, as now, a discretionary permit is required to exceed the base height limit, up to the maximum height limit. Then, as now, Planned Communities (PC) could be approved, by ordinance, to exceed the maximum height limit. The key difference is that in the coastal zone, after local approval of ordinance to approve a new or amended PC, a LCP amendment is now required to incorporate the new or amended PC into a certified LCP. This applies to any new or amended PC regulation, not only for height limits.

Comments No. 2d-e: The requested revision to IP Section 21.30.030(C)(2)(f) has no basis in certified LCP policies or regulations; furthermore, it has no basis in any other City policy or regulation. It was not proposed at any City public community workshop, study session, or public hearing during the LCP certification process and was not proposed during any public hearing on the current LCP amendment. In short, this proposal is completely new and would establish a new policy and regulation without any opportunity for public input or consideration by the City's Planning Commission and City Council.

Comments on Suggested Modification No. 3

Comment No. 2: • See response to Suggested Modification No. 1, Comment No. 2.

Comments on Suggested Modification No. 5

Comment No. 1: Some additions may not require a CDP because of a categorical exclusion or exemption. The CDP requirement will ensure that an addition to a nonconforming structure is consistent with the certified LCP.

Comment No. 3: Per IP Section 21.50.020 (Table 21.50-1, Note No. 6), the Planning Commission is the review authority for a CDP to increase the floor area of a nonconforming structure by more than fifty (50) percent.

Comment No. 4a: The reference to subsection (G)(1) should be changed to subsection (G)(2).

Comment No. 4b: Under this provision, required parking, such as a garage, does not count towards the percentage limit for the addition; however, required parking will continue to count towards the total floor area limit. The intent is not to penalize an addition to a nonconforming structure for providing required off-street parking.

Comments on Suggested Modification No. 6

Comment No. 3: The purpose of the LCP amendment is not to replicate the procedures for the review of modifications and variances in the LCP. Rather, the amendment is intended to recognize that relief from LCP standards is sometimes necessary and can be authorized when they are consistent with the certified LCP to the maximum extent feasible.

Sincerely,



Patrick J. Alford, Planning Program Manager