

CALIFORNIA COASTAL COMMISSION

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W24b

November 29, 2018

- TO:** Commissioners and Interested Persons
- FROM:** Karl Schwing, Deputy Director, South Coast District
Charles Posner, Supervisor of Planning
Liliana Roman, Coastal Program Analyst
- RE:** Amendment Request No. 4-17 Part C (LCP-5-NPB-17-0084-1) to the City of Newport Beach Local Coastal Program (LCP), for Commission Action at its December 12, 2018 meeting in Newport Beach.

SUMMARY OF LCP AMENDMENT REQUEST NO. 4-17 PART C

The City of Newport Beach is requesting that the Commission certify an amendment to both the Land Use Plan (LUP) and the Implementing Plan (IP) portions of the Newport Beach certified Local Coastal Program (LCP). The LCP amendment will modify Policy 4.4.2-1 to Chapter 4 (Coastal Resource Protection) of the LUP portion of the LCP to allow certain exemptions to the Shoreline Height Limit Zone. The LCP amendment also modifies IP Section 21.30.060 (Height Limits and Exceptions), IP Section 21.30.015(E)(5) (Waiver of Future Protection), IP Section 21.38.040 (Nonconforming Structures), and adds a new section to the IP (Section 21.52.090 Relief from Implementation Plan Development Standards) to allow for modifications and waivers of IP requirements.

The Coastal Commission certified the City of Newport Beach LCP on January 13, 2017. Amendment Request No. 4-17 Part C is a major LCP amendment that would incorporate new regulations and provisions in the LUP and IP. The Newport Beach Planning Commission held a public hearing on May 4, 2017 and recommended approval of the proposed amendments to the City Council. The Newport Beach City Council held a public hearing on July 11, 2017 and passed City Council Resolution No. 2017-45 (**Exhibit 1**) authorizing City staff to submit the LCP amendment to the Coastal Commission. On December 4, 2017 the City submitted the LCP amendment request for Coastal Commission certification. Amendment Request No. 4-17 was deemed by staff to be complete on May 3, 2018 and the Commission granted a one-year time extension at its June 8, 2018 meeting. The City's submittal is consistent with the procedural requirements of the Coastal Act and the regulations which govern such proposals (Sections 30501, 30510 and 30514 of the Coastal Act, and Sections 13551, 13552 and 13553 of Title 14 of the California Code of Regulations).

SUMMARY OF STAFF RECOMMENDATION

The subject LCP amendment involves both the Land Use Plan (LUP) and Implementation Plan (IP) portions of the certified LCP. Staff recommends that the Commission, after public hearing, **approve** Amendment Request No. 4-17 Part C with suggested modifications. First, both the LUP and IP amendments must be denied as submitted. Then the Commission can approve both the LUP and IP amendments with suggested modifications. The suggested modifications are necessary to ensure that the LUP is consistent with the requirements of the Coastal Act and the IP is consistent with the certified LUP, as modified herein. The City is in agreement with the staff recommendation. If modified as suggested, the Commission finds that the City's LUP meets the requirements of, and is in conformity with, the Chapter 3 policies of the Coastal Act, and that the City's IP Ordinances conform with, and are adequate to carry out, the requirements of the certified LUP.

The resolutions and motions begin on **Page 5**. The suggested modifications begin on **Page 7**. The findings for approval of the LUP portion of the LCP amendment, if modified begin on **Page 25**. The findings for approval of the IP portion of the LCP amendment, if modified, begin on **Page 27**.

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EXHIBITS

1. City Council Resolution No. 2017-45
2. Redline Version of proposed LUP and IP changes
3. IP Shoreline Height Limitation Zone Map H-1

I. PROCEDURAL ISSUES

A. STANDARD OF REVIEW

The standard of review for the proposed amendment to the Coastal Land Use Plan (CLUP), pursuant to Section 30512(c) and 30514(b) of the Coastal Act, is that the proposed LUP amendment meets the requirements of, and is in conformance with, the Chapter 3 policies of the Coastal Act. The standard of review for the proposed amendment to the LCP Implementing Ordinances (IP), pursuant to Sections 30513 and 30514(b) of the Coastal Act, is that the proposed IP amendment conforms with, and is adequate to carry out, the provisions of the certified Land Use Plan (LUP), as proposed to be amended.

B. PUBLIC PARTICIPATION

Section 30503 of the Coastal Act requires public input in LCP development. It states: “During the preparation, approval, certification, and amendment of any LCP, the public, as well as all affected governmental agencies, including special districts, shall be provided maximum opportunities to participate. Prior to submission of an LCP for approval, local governments shall hold a public hearing or hearings on that portion of the program, which has not been subjected to public hearings within four years of such submission.”

Section 30503 of the Coastal Act requires local governments to provide the public with the maximum amount of opportunities to participate in the development of the LCP amendment prior to submittal to the Commission for review. The City has held Planning Commission and City Council meetings with regard to each of the proposed IP changes and the LUP change which comprise the subject amendment request. All of those local hearings were duly noticed to the public. Notice of the subject amendment has been distributed to all known interested parties.

C. PROCEDURAL REQUIREMENTS

Pursuant to Section 13551(b) of Title 14 of the California Code of Regulations, the City resolution for submittal may specify that an LCP Amendment will either require formal local government adoption after the Commission approval, or that it is an amendment that will take effect automatically upon the Commission's approval pursuant to Public Resources Code Sections 30512, 30513, and 30519. Should the Commission deny the LCP amendment, as submitted, without suggested modifications, no further action is required by either the Commission or the City, and the LCP amendment is not effective. Should the Commission deny the LCP amendment, as submitted, but then approve it with suggested modifications, then the City Council may consider accepting the suggested modifications and submitting them by resolution to the Executive Director for a determination that the City's acceptance is consistent with the Commission's action. The modified LCP amendment will become final at a subsequent Commission meeting if the Commission concurs with the Executive Director's Determination that the City's action in accepting the suggested modifications approved by the Commission for LCP Amendment 4-17 Part C is legally adequate. If the City does not accept the suggested modifications within six months of the Commission's action, then the LCP amendment remains uncertified and not effective within the coastal zone.

D. DEADLINE FOR COMMISSION ACTION

The City submitted the LCP amendment request on December 4, 2017. After a request for additional

information, the amendment request was deemed by staff to be complete on May 3, 2018 and the Commission granted a one-year extension at its June 8, 2018 meeting. As such, the last date for Commission action on this item is August 1, 2019. (*See* Pub. Res. Code § 30511(a).)

FOR ADDITIONAL INFORMATION

The LCP Amendment file is available for review at the South Coast District office located at 200 Oceangate, Suite 1000, Long Beach, 90802. The staff report can be viewed on the Commission's website: www.ca.coastal.ca.gov. For additional information, contact Liliana Roman or Charles Posner in the South Coast District office at (562) 590-5071.

II. MOTIONS AND RESOLUTIONS

A. DENY THE LUP AMENDMENT AS SUBMITTED

Motion I: *I move that the Commission **certify** the Land Use Plan Amendment No.4-17 Part C for the City of Newport Beach as submitted.*

Staff recommends a **NO** vote of the motion. Failure of this motion will result in denial of the LUP Amendment as submitted and adoption of the following resolution and findings. The motion to certify passes only by an affirmative vote of the majority of the appointed Commissioners present.

Resolution to Deny the LUP Amendment as Submitted:

The Commission hereby denies certification of Land Use Plan Amendment No. 4-17 Part C as submitted by the City of Newport Beach and adopts the findings set forth below on grounds that the amendment does not meet the requirements of, and is not in conformity with, the policies of Chapter 3 of the Coastal Act. Certification of the Land Use Plan Amendment would not comply with the California Environmental Quality Act because there are feasible alternatives or mitigation measures which could substantially lessen any significant adverse impact which the Land Use Plan Amendment may have on the environment.

B. CERTIFY THE LUP AMENDMENT WITH SUGGESTED MODIFICATIONS

Motion II: *I move that the Commission **certify** Land Use Plan Amendment No.4-17 Part C to the City of Newport Beach certified LCP if modified as suggested in this staff report.*

Staff recommends a **YES** vote. Passage of this motion will result in the certification of the LUP Amendment with suggested modifications and adoption of the following resolution and findings. The motion to certify with suggested modifications passes only upon an affirmative vote of the majority of the appointed Commissioners present.

Resolution to Certify if Modified:

The Commission hereby certifies Amendment No. 4-17 Part C to the Land Use Plan for the City of Newport Beach certified LCP if modified as suggested and adopts the findings set forth below on grounds that the Land Use Plan Amendment with the suggested modifications will meet the requirements of and be in conformity with the policies of Chapter 3 of the Coastal Act. Certification of the Land Use Plan Amendment if modified as suggested complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the plan on the environment, or 2) there are no further feasible alternatives and mitigation measures that would substantially lessen any significant adverse impacts which the Land Use Plan Amendment may have on the environment.

C. DENY THE IP AMENDMENT AS SUBMITTED

Motion III: *I move that the Commission **reject** the Implementation Plan Amendment No.4-17 Part C for the City of Newport Beach as submitted.*

Staff recommends a **YES** vote. Passage of this motion will result in rejection of the Implementation Plan Amendment and adoption of the following resolution and findings. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

Resolution to Deny as Submitted:

The Commission hereby denies certification of Amendment No. 4-17 Part C to the Implementation Plan for the City of Newport Beach certified LCP as submitted by the City of Newport Beach and adopts the findings set forth below on grounds that the Amendment to the Implementation Plan as submitted does not conform with and is not adequate to carry out the provisions of the certified Land Use Plan. Certification of the Amendment to the Implementation Program would not meet the requirements of the California Environmental Quality Act as there are feasible alternatives and mitigation measures that would substantially lessen the significant adverse impacts on the environment that will result from certification of the Amendment to the Implementation Program as submitted.

D. CERTIFY THE IP AMENDMENT WITH SUGGESTED MODIFICATIONS

Motion IV: *I move that the Commission **certify** the Implementation Plan Amendment No.4-17 Part C to the City of Newport Beach certified LCP if modified as suggested in this staff report.*

Staff recommends a **YES** vote. Passage of this motion will result in the certification of the IP Amendment with suggested modifications and adoption of the following resolution and findings. The motion to certify with suggested modifications passes only upon an affirmative vote of the majority of the appointed Commissioners present.

Resolution to Certify if Modified:

The Commission hereby certifies Amendment No. 4-17 Part C to the Implementation Plan for

the City of Newport Beach certified LCP if modified as suggested and adopts the findings set forth below on grounds that the Amendment to the Implementation Plan with the suggested modifications will be in conformance with and adequate to carry out the provisions of the certified Land Use Plan as amended. Certification of the Amendment to the Implementation Program if modified as suggested complies with the California Environmental Quality Act, because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the Implementation Plan on the environment, or 2) there are no further feasible alternatives and mitigation measures that would substantially lessen any significant adverse impacts on the environment.

III. SUGGESTED MODIFICATIONS

Certification of the LCP amendment is subject to the following modifications. All of the City's proposed changes are shown in **Exhibit #2**.

Existing certified language is shown in regular text. The City's proposed LCP amendment language changes are shown in single underline and ~~single strikethrough~~. The Commission's proposed new text added by suggested modification is shown ***bold, italicized and underlined***, and text suggested to be deleted is shown in ~~double strikethrough~~.

The following suggested modifications are necessary to carry out the provisions of the Coastal Act and of the certified LUP:

Suggested Modification #1 – Modify the LUP to add maximum height limits to the proposed height limit exceptions and other qualifications in the Shoreline Height Limitation Zone, and clarify that solar equipment and telecom facilities are not subject to the Shoreline Height Limitation Zone:

4.4.2-1. Maintain the 35-foot height limitation in the Shoreline Height Limitation Zone, as graphically depicted on Map 4-3; ~~except for the following sites: with the exceptions described below. As with all permitted development, exceptions to the Shoreline Height Limitation Zone shall only be allowed when it is designed and sited to protect existing views to and along the ocean and scenic coastal areas, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. for assembly and meeting facilities, government facilities, architectural features, boat cranes, chimneys and vents, dormers, elevator shafts, flagpoles, landmark buildings, light standards, mechanical equipment, solar equipment, peaks of sloping roofs and other similar fixtures and exterior structures specified in, and regulated by, the certified Local Coastal Program Implementation Plan.~~

A. *The peaks of sloped roofs shall be permitted to exceed the height limit by five feet.*

B. *Structures used as places of worship may be allowed to exceed the height limit*

up to a maximum of 70 feet.

- C. *Governmental facilities may be allowed to exceed the height limit where the increase in height is necessary to accommodate design features required for the facility to function, such as lifeguard towers, tsunami warning sirens, and architectural design features that accommodate emergency vehicles or essential equipment.*
- D. *Boat cranes used in conjunction with an approved marine-oriented nonresidential use may be allowed to exceed the height limit up to a maximum operating height of 70 feet.*
- E. *Chimneys and vents, dormers, elevator shafts, enclosed stairwells, mechanical equipment, skylights and roof windows and other similar fixtures and exterior structures may be permitted to exceed the height limit when required by building or safety codes and/or when regulated by the certified Local Coastal Program Implementation Plan to insure appropriate proportionality with the main structure.*
- F. *Flagpoles mounted on tops of buildings located in nonresidential coastal zoning districts may be allowed to exceed the height limit by up to 20 feet.*
- G. *Light Standards may be permitted to exceed the height limit to the minimum height required to effectively illuminate the subject area.*
- H. *An alteration or addition to a landmark building may be allowed to exceed the height limit by up to 20 feet.*
- I. *Solar equipment and panels used for the production of solar energy are not subject to the height limit pursuant to State law.*
- J. *Telecom facilities may be permitted to exceed the height limit up to a maximum of 15 feet.*

A. Marina Park located at 1600 West Balboa Boulevard: A single, up to maximum 73 foot tall faux lighthouse architectural tower, that creates an iconic landmark for the public to identify the site from land and water as a boating safety feature, may be allowed. No further exceptions to the height limit shall be allowed, including but not limited to, exceptions for architectural features, solar equipment or flag poles. Any architectural tower that exceeds the 35 foot height limit shall not include floor area above the 35 foot height limit, but shall house screened communications or emergency equipment, and shall be sited and designed to reduce adverse visual impacts and be compatible with the character

~~of the area by among other things, incorporating a tapered design with a maximum diameter of 34 feet at the base of the tower. Public viewing opportunities shall be provided above the 35 feet, as feasible. (Resolution 2013-44)~~

B. Former City Hall Complex at 3300 Newport Blvd and 475 32nd Street (the site):

- ~~• At least 75% of the total area of the site shall be 35 feet in height or lower.~~
- ~~• Buildings and structures up to 55 feet in height with the peaks of sloping roofs and elevator towers up to 60 feet in height, provided it is demonstrated that development does not adversely impact public views.~~
- ~~• Architectural features such as domes, towers, cupolas, spires, and similar structures may be up to 65 feet in height.~~
- ~~• Buildings and structures over 35 feet in height, including architectural features, shall not occupy more than 25 percent of the total area of the site.~~
- ~~• Buildings and structures over 45 feet in height, architectural features, shall not occupy more than 15 percent of the total area of the site.~~
- ~~• With the exception of a fire station, all buildings and structures over 35 feet in height, including architectural features, shall be setback a minimum of 60 feet from the Newport Boulevard right of way and 70 feet from the 32nd Street right of way.~~
- ~~• A fire station may be located in its current location and may be up to 40 feet in height. A fire station may include architectural features up to 45 feet in height to house and screen essential equipment.~~
- ~~• The purpose of allowing limited exceptions to the 35-foot height limit on this site is to promote vertical clustering resulting in increased publically accessible on-site open space and architectural diversity while protecting existing coastal views and providing new coastal view opportunities. (Resolution 2016-29)~~

K. Site-Specific Exceptions:

1. Marina Park located at 1600 West Balboa Boulevard: A single, up to maximum 73-foot- tall faux lighthouse architectural tower, that creates an iconic landmark for the public to identify the site from land and water as a boating safety feature, may be allowed. No further exceptions to the height limit shall be allowed, including but not limited to, exceptions for architectural features, solar equipment or flag poles. Any architectural tower that exceeds the 35-foot height limit shall not include floor area above the 35-foot height limit, but shall house screened communications or emergency equipment, and shall be sited and designed to reduce adverse visual impacts and be compatible with the character of the area by among other things, incorporating a tapered design with a maximum diameter of 34-feet at the base of the tower. Public viewing opportunities shall be provided above 35-feet, as feasible. (Resolution 2013-44)

2. Former City Hall Complex at 3300 Newport Blvd and 475 32nd Street:

- At least 75% of the total area of the site shall be 35 feet in height or lower.
- Buildings and structures up to 55 feet in height with the peaks of sloping roofs and elevator towers up to 60 feet in height, provided it is demonstrated that development does not adversely impact public views.
- Architectural features such as domes, towers, cupolas, spires, and similar structures may be up to 65 feet in height.
- Buildings and structures over 35 feet in height, including architectural features, shall not occupy more than 25 percent of the total area of the site.
- Buildings and structures over 45 feet in height, architectural features, shall not occupy more than 15 percent of the total area of the site.
- With the exception of a fire station, all buildings and structures over 35 feet in height, including architectural features, shall be setback a minimum of 60 feet from the Newport Boulevard right-of-way and 70 feet from the 32nd Street right-of-way.
- A fire station may be located in its current location and may be up to 40 feet in height. A fire station may include architectural features up to 45 feet in height to house and screen essential equipment.

- *The purpose of allowing limited exceptions to the 35-foot height limit on this site is to promote vertical clustering resulting in increased publically accessible on-site open space and architectural diversity while protecting existing coastal views and providing new coastal view opportunities. (Resolution 2016-29)*

Suggested Modification #2 - Modify IP Sections 21.30.60(C) and 21.30.60(D) to allow height limit exceptions:

C. Increase in Height Limit.

1. Procedure. The height limits established in Part 2 of this Implementation Plan (Coastal Zoning Districts, Allowable Land Uses, and Coastal Zoning District Standards) may be increased within specified areas with approval of a coastal development permit when all applicable findings are met in compliance with subsection (C)(3) of this section (Required Findings). ~~No increase above thirty-five (35) feet may be authorized for commercial, mixed-use and residential structures within the Shoreline Height Limitation Zone, except as specified for the Lido House Hotel and Marina Park Lighthouse Feature identified in subsection (D) of this section, Exceptions to Height Limits.~~ Height limits established as part of an adopted planned community shall not be subject to this subsection (See Section 21.26.055 (Planned Community Coastal Zoning District Development Standards)).

2. Height Limit Areas. The height limit areas shall be as follows:

a. R-A, R-1, R-BI, and R-2 Coastal Zoning Districts Height Limit Area. In this height limit area the base height limit for structures with flat roofs is twenty-four (24) feet (including guardrails and parapet walls) and the base height limit for structures with sloped roofs is twenty-nine (29) feet. The height of a structure may be increased up to a maximum of twenty-eight (28) feet with a flat roof or thirty-three (33) feet with a sloped roof through the approval of a coastal development permit as provided above. This height limit applies in all R-A, R-1, R-BI, and R-2 Coastal Zoning Districts as shown on the Coastal Zoning Map.

b. RM Coastal Zoning District Height Limit Area. In this height limit area the base height limit for structures with flat roofs is twenty-eight (28) feet (including guardrails and parapet walls) and the base height limit for structures with sloped roofs is thirty-three (33) feet. The height of a structure may be increased up to a maximum of thirty-two (32) feet with a flat roof or ~~thirty-five (35) feet in the Shoreline Height Limitation Zone and thirty-seven (37) feet outside the Shoreline Height Limitation Zone~~ with a sloped roof through the approval of a coastal development permit as provided above. This height limit applies in the RM Coastal Zoning District as shown on the Coastal Zoning Map.

c. Nonresidential, Shoreline Height Limit Area. In this height limit area the base height limit for nonresidential and mixed-use structures with flat roofs is twenty-six (26) feet and the base height limit for structures with sloped roofs is thirty-one (31) feet. The height of a structure may be increased up to a maximum of thirty-five (35) feet with a flat roof or, ~~outside the Shoreline Height Limitation Zone,~~ forty (40) feet with a sloped roof through the approval of a coastal development permit application as provided above. The shoreline height limit shall

apply to all nonresidential coastal zoning districts and mixed-use coastal zoning districts within the boundaries of the Shoreline Height Limit Area shown on the High Rise and Shoreline Height Limit Areas Map (See Map H-1 in Part 8 (Maps) of this Implementation Plan).

d. Nonresidential, Nonshoreline Height Limit Area. In this height limit area the base height limit for nonresidential and mixed-use structures with flat roofs is thirty-two (32) feet and the base height limit for structures with sloped roofs is thirty-seven (37) feet. The height of a structure may be increased up to a maximum of fifty (50) feet with a flat roof or fifty-five (55) feet with a sloped roof through the approval of a coastal development permit as provided above. This height limit shall apply to all nonresidential, nonshoreline coastal zoning districts and mixed-use coastal zoning districts within its boundaries. The nonresidential, nonshoreline height limit area is identified as all of the area outside the Shoreline Height Limit Area shown on the High Rise and Shoreline Height Limit Areas Map (See Map H-1 in Part 8 (Maps) of this Implementation Plan).

e. High Rise Height Area. In this height limit area, the maximum height limit shall be three hundred (300) feet and no further increase to the maximum allowed height is available. This height limit is applicable to all nonresidential coastal zoning districts within its boundaries as indicated on the High Rise and Shoreline Height Limit Areas Map (See Map H-1 in Part 8 (Maps) of this Implementation Plan).

f. Planned Communities Coastal Zoning District. Height limits established as part of an adopted planned community shall be as specified in Section 21.26.055 (Planned Community Coastal Zoning District Development Standards). If a PC District is located within the Shoreline Height Limit Area, per Map H- 1, the height of a structure may be increased through the approval of a coastal development permit application as provided above, up to a maximum of thirty-five (35) feet with a flat roof or, forty (40) feet with a sloped roof notwithstanding any other higher height limit identified in a PC District.

3. Required Findings. The review authority may approve a coastal development permit to allow an increase in the height of a structure above the base height limit only after first making all of the following findings in addition to the findings required in Section 21.52.015(F):

- a. The project is sited and designed to protect public views to and along the ocean and scenic coastal areas; and
- b. The project is sited and designed to minimize visual impacts and be visually compatible with the character of surrounding areas; and
- c. Where feasible, the project will restore and enhance visual quality in visually degraded areas; ~~and~~
- d. ~~Where the project is located in the Shoreline Height Limitation Zone, the project will not exceed thirty five (35) feet.~~

D. Exceptions to Height Limits. ~~Except as specified in subsections (D)(3), (14) and (15) of this section, the following apply everywhere other than within the Shoreline Height Limitation Zone: **In cases where the exception to a height limit requires the approval of a coastal development permit.**~~

the review authority may approve a coastal development permit to allow an increase in the height of a structure above the base height limit as described below and only after first making all of the findings in subsection C(3) of this section, in addition to the findings required in Section 21.52.015(F).

1. Assembly and Meeting Facilities. Structures used as places of worship may be allowed to exceed the height limit subject to the approval of a coastal development permit in compliance with Chapter 21.52 (Coastal Development Review Procedures). Where more than one structure exists or is proposed for the site, only the principal structure shall be eligible for approval to exceed the maximum height limit. *No increase above seventy (70) feet may be authorized within the Shoreline Height Limit Area.*
2. Architectural Features. Architectural features (e.g., cupolas, weathervanes, and other decorative rooftop features) of an open nature, but excluding guardrails, parapet walls, and similar features, may be allowed up to the height limit for a sloped roof. Architectural features with a height greater than that allowed for a sloped roof shall be subject to the approval of a coastal development permit *in compliance with Chapter 21.52 (Coastal Development Review Procedures).*
3. Boat Cranes. Boat cranes used in conjunction with an approved marine-oriented nonresidential use may be allowed to exceed the maximum height limit up to a maximum operating height of seventy (70) feet, subject to the approval of a coastal development permit *in compliance with Chapter 21.52 (Coastal Development Review Procedures).*

Suggested Modification #3 – Modify proposed new IP Section 21.30.060(D)(16) outlining the height exceptions for government facilities:

16. Government Facilities. Structures owned, operated, or occupied by the City or other governmental agency to provide a governmental service to the public may be allowed to exceed the height limit subject to the approval of a coastal development permit in compliance with Chapter 21.52 (Coastal Development Review Procedures) where the increase in height is necessary to accommodate design features required for the facility to function (e.g., lifeguard towers, tsunami warning sirens, architectural design features that accommodate emergency vehicles or essential equipment, etc.).

Suggested Modification #4 – Modify IP Section 21.30.015(E)(5) regarding the waiver of future protection for shoreline protective devices for development in shoreline hazardous areas.

5. Waiver of Future Protection. As a condition of approval of new development, the review authority shall require an agreement between an applicant, including its successors and assigns, and the City in favor of the City, in a form approved by the City Attorney, and recorded by the applicant, waiving any potential right to future protection ~~that results in any encroachment seaward of the authorized footprint of the protective device~~ to address situations in the future in which development is threatened with damage or destruction from waves, erosion, storm conditions, landslides, seismic activity, bluff retreat, sea level rise, or other natural hazards. The applicant shall agree to:

- a. Never construct structures or features over the economic life of the development to protect the development ~~that results in any encroachment seaward of the authorized footprint of the protective device~~; and
- b. Remove and relocate all portions of a development, including associated fallen debris at the base of a bluff or canyon and/or State tidelands, if a government agency determines that the development is hazardous or a threat to the public.

Bulkheads are subject to the requirements and limitations in Section 21.30.030(C)(3)(i).

Suggested Modification #5 – Modify IP Section 21.38.040(G) regarding nonconforming structures.

G. Additions. Nonconforming structures may be expanded and the existing nonconforming elements of the structure shall not be required to be brought into compliance with the development standards of this Implementation Plan subject to the following limitations and the limitations provided in Section 21.38.060 (Nonconforming Parking):

1. **The addition shall only be permitted if the nonconforming structure:**

a. Does not block or impede public access to and along the sea or shoreline and to coastal parks, trails, or coastal bluffs;

b. Does not block or impair public views to and along the sea or shoreline or to coastal bluffs and other scenic coastal areas;

c. Conforms to coastal resource protection development regulations of Section 21.28.040 (Bluff (B) Overlay District), Section 21.28.050 (Canyon (C) Overlay District), Section 21.30.030 (Natural Landform and Shoreline Protection), Chapter 21.30A (Public Access and Recreation), or Chapter 21.30B (Habitat Protection).

d. Is not located within an area identified as hazardous due to erosional factors or coastal hazards.

2. Expansion shall be limited to a maximum of fifty (50) percent of the gross floor area of the existing structure; expansion of residential structures may be permitted up to a maximum of seventy-five (75) percent with the approval of a coastal development permit. **When reviewing an application for an expansion of a nonconforming residential structure, the review authority shall consider:**

a. Whether the nonconforming structure can be modified to, or replaced with, a conforming structure that would restore or enhance visual quality in a visually degraded area;

b. Whether the nonconforming structure, with or without the proposed addition, is visually compatible with the character of the surrounding area; and

c. Whether the nonconforming structure is architecturally or historically significant.

3. The floor area of any addition, together with the floor area of the existing structure, shall not exceed the allowed maximum floor area for the coastal zoning district;
4. The addition shall comply with all applicable development standards and use regulations of this Implementation Plan; ~~and~~
5. Additional parking shall be provided in compliance with Section 21.38.060 (Nonconforming Parking); ~~and~~

6. The square footage of the required residential parking area additions identified below shall be excluded from the allowed expansion under subsection (G)(1) of this section, but shall be included as gross floor area.

<u>Required Parking</u>	<u>Maximum Excluded Areas</u>
<u>One-Car Garage</u>	<u>200 square feet, maximum</u>
<u>Two-Car Garage</u>	<u>400 square feet, maximum</u>
<u>Three-Car Garage</u>	<u>600 square feet, maximum</u>

Suggested Modification# 6 – Modify proposed new IP Section 21.52.090 adding new provisions for modifications and variances to ensure any modification or variance will not result in development that has an adverse effect, either individually or cumulatively, on coastal resources and coastal access.

21.52.090 Relief from Implementation Plan Development Standards.

- A. Purpose. The purpose of this section is to provide relief from the development standards of this Implementation Plan when so doing is consistent with the purposes of the certified Local Coastal Program and will not have an adverse effect, either individually or cumulatively, on coastal resources.
- B. Applicability. Any development standard of this Implementation Plan may be modified or waived through the approval of a coastal development permit, except: allowed and prohibited uses; residential density; nonresidential floor area ratios; specific prohibitions (for example, prohibitions intended to protect coastal resources, prohibited barriers to public access, limits on the use of protective structures, prohibited materials, prohibited plant species, prohibited signs, etc.); or procedural requirements.
 1. Modifications. Minor deviations for the following development standards may be permitted when practical difficulties associated with the property and that the strict application of the Implementation Plan results in physical hardships:
 - a. Height modifications from exceptions identified in Part 3 of this title (Site Planning and Development Standards). The following modifications are limited to not more than a ten (10) percent deviation from the standard being modified.

- i. Chimneys, rooftop architectural features, and vents in excess of the exception to the allowed height limits identified in Part 3 of this title (Site Planning and Development Standards);
 - ii. Flag poles in excess of the exception to the allowed height limits; and
 - iii. Heights of fences, hedges, or walls (except retaining walls).
- b. Setback Modifications. The following modifications are limited to not more than a ten (10) percent deviation from the standard being modified.
- i. Encroachments in front, side, or rear setback areas while still maintaining the minimum clearances required by Section 21.30.110 (Setback Regulations and Exceptions). Exceptions include the following:
 - (A) Modifications shall not be allowed for encroachments into alley setbacks; and
 - (B) Modifications shall not be allowed for encroachments into bluff setback areas.
 - ii. Structural appurtenances or projections that encroach into front, side, or rear setback areas.
- c. Sign Modifications. Modifications shall be allowed for an increase in allowed number and area of signs and an increase in allowed height modifications for pylon signs up to a maximum of 24 feet, and up to a maximum of 8 feet for monument signs.*
- d. Retaining Wall Modifications. Modifications shall be allowed for an increase in the allowed height of retaining walls up to a maximum of 10 feet.*
- ~~e. e.~~ Other Modifications. Except as otherwise provided, the following modifications are not limited in the amount of deviation from the standard being modified:
- i. Distances between structures located on the same lot;
 - ii. Landscaping standards in compliance with Chapter 21.30.075 (Landscaping), except for subsection (B)(3);
 - iii. Size or location of parking spaces, access to parking spaces, and landscaping within parking areas, *provided the modification does not result in an adverse impact to public on-street parking spaces;*
 - ~~iv.~~ *iv.* Increase in allowed floor area of additions for uses that have nonconforming parking; *provided required parking for the additional square footage is provided and other requirements per Section 21.38.060 (Nonconforming*

Parking).

~~vi. Increase in allowed height, number, and area of signs;~~

~~vii. Increase in the allowed height of retaining walls; and~~

~~viii. Increase in allowed floor area of additions for nonconforming residential structures as identified in Section 21.38.040 (Nonconforming Structures).~~

2. Variances. Waiver or modification of certain standards of this Implementation Plan may be permitted when, because of special circumstances applicable to the property, including location, shape, size, surroundings, topography, or other physical features, the strict application of the development standards otherwise applicable to the property denies the property owner privileges enjoyed by other property owners in the vicinity and in the same coastal zoning district.
3. Modifications and Waivers Authorized Elsewhere. This section is not applicable when a modification or waiver to a development standard is specifically authorized elsewhere in this Implementation Plan.

C. Considerations. In reviewing a coastal development permit application for development requesting a modification or variance, the review authority shall consider the following:

1. **Whether or not the development is consistent with the certified Local Coastal Program to the maximum extent feasible; and**
2. **Whether or not there are feasible alternatives that would provide greater consistency with the certified Local Coastal Program and/or that are more protective of coastal resources.**

D. Findings and Decision. The review authority may approve or conditionally approve a modification or waiver to a development standard of this Implementation Plan only after first making all of the following findings:

1. The granting of the modification is necessary due to practical difficulties associated with the property and that the strict application of the Implementation Plan results in physical hardships; or
2. The granting of the variance is necessary due to special circumstances applicable to the property, including location, shape, size, surroundings, topography, and/or other physical features, the strict application of the development standards otherwise applicable to the property denies the property owner privileges enjoyed by other property owners in the vicinity and in the same coastal zoning district; and

3. The modification or variance complies with the findings required to approve a coastal development permit in Section 21.52.015(F);
4. *The modification or variance will not result in development that blocks or significantly impedes public access to and along the sea or shoreline and to coastal parks, trails, or coastal bluffs;*
5. *The modification or variance will not result in development that blocks or significantly impairs public views to and along the sea or shoreline or to coastal bluffs and other scenic coastal areas;*
6. The modification or variance will not have *result in development that has* an adverse effect, either individually or cumulatively, on coastal resources: *including wetlands, sensitive habitat, vegetation, or wildlife species;* and
7. The granting of the modification or variance will not be contrary to, or in conflict with, the purpose of this Implementation Plan, nor to the applicable policies of the certified Local Coastal Program.

IV. FINDINGS AND DECLARATIONS

A. DESCRIPTION OF THE LCP (LUP AND IP) AMENDMENT REQUESTS

Amendment Request No. 4-17 Part C modifies Policy 4.4.2-1 to Chapter 4 (Coastal Resource Protection) of the LUP to allow certain exemptions to the Shoreline Height Limit Zone, modifies IP Section 21.30.060 (Height Limits and Exceptions), IP Section 21.38.040 (Nonconforming Structures), and adds a new IP Section 21.52.090 (Relief from Implementation Plan Development Standards) to allow for modifications and waivers of LCP requirements under certain conditions. A redline/strikeout version of the City's amendment is included as Exhibit #2.

LUP Amendment Request

The LUP amendment would modify LUP policy 4.4.2-1 pertaining to Shoreline Height Limit Zone, which is currently certified as follows:

Policy 4.4.2-1. Maintain the 35-foot height limitation in the Shoreline Height Limitation Zone, as graphically depicted on Map 4-3, except for the following sites:

- A. *Marina Park located at 1600 West Balboa Boulevard: A single, up to maximum 73-foot- tall faux lighthouse architectural tower, that creates an iconic landmark for the public to identify the site from land and water as a boating safety feature, may be allowed. No further exceptions to the height limit shall be allowed, including but not limited to, exceptions for architectural features, solar equipment or flag poles. Any architectural tower that exceeds the 35-foot height limit shall not include floor area above the 35-foot*

height limit, but shall house screened communications or emergency equipment, and shall be sited and designed to reduce adverse visual impacts and be compatible with the character of the area by among other things, incorporating a tapered design with a maximum diameter of 34-feet at the base of the tower. Public viewing opportunities shall be provided above the 35-feet, as feasible. (Resolution 2013-44)

B. Former City Hall Complex at 3300 Newport Blvd and 475 32nd Street (the site):

- *At least 75% of the total area of the site shall be 35 feet in height or lower.*
- *Buildings and structures up to 55 feet in height with the peaks of sloping roofs and elevator towers up to 60 feet in height, provided it is demonstrated that development does not adversely impact public views.*
- *Architectural features such as domes, towers, cupolas, spires, and similar structures may be up to 65 feet in height.*
- *Buildings and structures over 35 feet in height, including architectural features, shall not occupy more than 25 percent of the total area of the site.*
- *Buildings and structures over 45 feet in height, architectural features, shall not occupy more than 15 percent of the total area of the site.*
- *With the exception of a fire station, all buildings and structures over 35 feet in height, including architectural features, shall be setback a minimum of 60 feet from the Newport Boulevard right-of-way and 70 feet from the 32nd Street right-of-way.*
- *A fire station may be located in its current location and may be up to 40 feet in height. A fire station may include architectural features up to 45 feet in height to house and screen essential equipment.*
- *The purpose of allowing limited exceptions to the 35-foot height limit on this site is to promote vertical clustering resulting in increased publically accessible on-site open space and architectural diversity while protecting existing coastal views and providing new coastal view*

opportunities. (Resolution 2016-29)

The LUP amendment would modify LUP Policy 4.4.2-1 pertaining to Shoreline Height Limit Zone, as follows:

Policy 4.4.2-1 Maintain the 35-foot height limitation in the Shoreline Height Limitation Zone, as graphically depicted on Map 4-3, with exceptions for assembly and meeting facilities, government facilities, architectural features, boat cranes, chimneys and vents, dormers, elevator shafts, flagpoles, landmark buildings, light standards, mechanical equipment, solar equipment, peaks of sloping roofs and other similar fixtures and exterior structures specified in, and regulated by, the certified Local Coastal Program Implementation Plan. ~~except for the following sites:~~

- ~~A. Marina Park located at 1600 West Balboa Boulevard: A single, up to maximum 73 foot tall faux lighthouse architectural tower, that creates an iconic landmark for the public to identify the site from land and water as a boating safety feature, may be allowed. No further exceptions to the height limit shall be allowed, including but not limited to, exceptions for architectural features, solar equipment or flag poles. Any architectural tower that exceeds the 35 foot height limit shall not include floor area above the 35-foot height limit, but shall house screened communications or emergency equipment, and shall be sited and designed to reduce adverse visual impacts and be compatible with the character of the area by among other things, incorporating a tapered design with a maximum diameter of 34 feet at the base of the tower. Public viewing opportunities shall be provided above the 35 feet, as feasible. (Resolution 2013-44)~~
- ~~B. Former City Hall Complex at 3300 Newport Blvd and 475 32nd Street (the site):~~
- ~~• At least 75% of the total area of the site shall be 35 feet in height or lower.~~
 - ~~• Buildings and structures up to 55 feet in height with the peaks of sloping roofs and elevator towers up to 60 feet in height, provided it is demonstrated that development does not adversely impact public views.~~
 - ~~• Architectural features such as domes, towers, cupolas, spires, and similar structures may be up to 65 feet in height.~~
 - ~~• Buildings and structures over 35 feet in height, including architectural features, shall not occupy more than 25 percent of the total area of the site.~~
 - ~~• Buildings and structures over 45 feet in height, architectural features,~~

~~shall not occupy more than 15 percent of the total area of the site.~~

- ~~• With the exception of a fire station, all buildings and structures over 35 feet in height, including architectural features, shall be setback a minimum of 60 feet from the Newport Boulevard right of way and 70 feet from the 32nd Street right of way.~~
- ~~• A fire station may be located in its current location and may be up to 40 feet in height. A fire station may include architectural features up to 45 feet in height to house and screen essential equipment.~~
- ~~• The purpose of allowing limited exceptions to the 35-foot height limit on this site is to promote vertical clustering resulting in increased publically accessible on-site open space and architectural diversity while protecting existing coastal views and providing new coastal view opportunities. (Resolution 2016-29)~~

This change would allow exceptions to the existing 35-foot Shoreline Height Limitation Zone for assembly and meeting facilities, government facilities, and certain fixtures and exterior structures (i.e., architectural features, boat cranes, chimneys and vents, dormers, elevator shafts, flagpoles, landmark buildings, light standards, mechanical equipment, solar equipment, and peaks of sloping roofs) and would remove the specific references to two particular sites at Marina Park and the former City Hall Complex. The height limit exceptions made previously approved for both those sites required LUP amendments.

IP Amendment Request

The City's proposed IP amendment as outlined in City Resolution No. 2017-45 (Exhibit #1) would make the following changes:

- 1) Allows numerous modifications to IP Section 21.30.060(C) and (D) in order to allow exceptions to the 35-foot Shoreline Height Limitation Zone for certain fixtures and exterior structures to be authorized for commercial, mixed-use and residential structures by deleting language that makes most exceptions to the height limits inapplicable in the Shoreline Height Limitation Zone and adds IP Section 21.30.060(D)(16) allowing government structures to exceed the height limit subject to the approval of a CDP, if the increase in height is necessary for the facility to function (i.e., lifeguard towers, tsunami warning sirens, etc.).
- 2) Modifies IP Section 21.30.015(E)(5) regarding the waiver of future protection for shoreline protective devices for development in shoreline hazardous areas. The amendment would limit the requirement that as a condition of approval for new development, an applicant must record an agreement to waive any potential right to future protective device to only impose this requirement if and when the protective device encroaches seaward of a previously authorized footprint. See section below for specific language changes.

- 3) Modifies IP Section 21.38.040(G) regarding nonconforming structures by increasing the limit of allowed gross floor area expansion/addition to an existing nonconforming residential structure from 50% to 75% without requiring the nonconforming elements of the structure to be brought into compliance with the IP development standards.
- 4) Adds a new IP Section 21.52.090 incorporating provisions for modifications and variances into the IP.

Exceptions to the Shoreline Height Limitation Zone 35-foot Limit

The City adopted the Shoreline Height Limitation Zone in 1972 establishing the 35-foot Shoreline Height Limitation Zone. The City's first certified LUP included a policy to maintain the 35-foot height limit in the Shoreline Height Limitation Zone, as depicted in a map included in the LUP. That policy was later amended to allow project specific exceptions for two large scale projects, one at Marina Park allowing a 73-foot tall faux lighthouse, and one at the former City Hall complex allowing very specific and limited height increases above the 35-foot height limit for buildings, structures, architectural features and a fire station on this site to promote vertical clustering that would result in increased publically accessible on-site open space while protecting existing coastal views and providing new coastal view opportunities.

According to information provided by the City, since 1972, the City historically has allowed minor 5-foot projections for sloped roofs in the Shoreline Height Limitation Zone in order to encourage variation of rooflines to reduce the apparent scale of large structures and provide visual interest and variety and, thus, the 35-foot height limit in the Shoreline Height Limitation Zone was not intended and historically has not been treated as an absolute. When the IP was certified in 2017, the language of the IP made the Shoreline Height Limit an absolute and what had previously been common 5-foot height "exceptions" for things like roof peaks, chimneys, flagpoles, vents, mechanical equipment, etc., were no longer applicable in the Shoreline Height Limitation Zone. This includes areas in single family zoning districts (R-A, R-1, R-BI, and R-2) where the maximum height limit is below 35 feet.

Thus, the City proposes this IP amendment to modify IP Section 21.30.060(C) and (D) in order to "restore" exceptions that have been allowed since the 35-foot Shoreline Height Limitation Zone was established for certain fixtures and exterior structures to be authorized for commercial, mixed-use and residential structures by deleting language that makes most exceptions to the height limits inapplicable in the IP in the Shoreline Height Limitation Zone. Additionally the proposed amendment would also add IP Section 21.30.060(D)(16) allowing government structures to exceed the height limit subject to the approval of a CDP, if the increase in height is necessary for the facility to function (i.e., lifeguard towers, tsunami warning sirens, etc.).

Waiver of Potential Right to Future Protective Device in Shoreline Hazardous Areas

The amendment would modify IP Section 21.30.015(E)(5) regarding the waiver of future protection for shoreline protective devices for development in shoreline hazardous areas, as follows:

5. Waiver of Future Protection. As a condition of approval of new development, the review authority shall require an agreement between an applicant, including its successors and assigns, and the City in favor of the City, in a form approved by the City Attorney, and recorded by the applicant, waiving any potential right to future protection that results in any encroachment seaward

of the authorized footprint of the protective device to address situations in the future in which development is threatened with damage or destruction from waves, erosion, storm conditions, landslides, seismic activity, bluff retreat, sea level rise, or other natural hazards. The applicant shall agree to:

- a. Never construct structures or features over the economic life of the development to protect the development that results in any encroachment seaward of the authorized footprint of the protective device; and
- b. Remove and relocate all portions of a development, including associated fallen debris at the base of a bluff or canyon and/or State tidelands, if a government agency determines that the development is hazardous or a threat to the public.

Increase the Allowable Addition to Nonconforming Structures

The amendment would modify IP Section 21.38.040(G) regarding nonconforming structures by increasing the limit of allowed gross floor area expansion/addition to an existing nonconforming residential structure from 50% to 75% without requiring the nonconforming elements of the structure to be brought into compliance with the IP development standards.

The City deemed the amendment necessary to address instances where a residential property is nonconforming due to the requirement to provide a minimum number of off-street enclosed parking (e.g., garage parking) and the required addition of parking would likely account for a substantial portion of the 50% allowance (a 2-car garage is approximately 400 sq. ft.). This concern is more significant when the existing structure is small in relation to the lot size. As a result, there is no incentive to bring the property into conformance with off-street parking standards. The property owner is therefore more likely to pursue other renovation options in order to avoid the requirement to bring the property into compliance with this development standard.

Add Provisions for Variances and Modifications (minor variances)

The amendment would add a new section to IP Chapter 21.52 (Coastal Development Review Procedures), Section 21.52.090 (Modifications and Variances) to incorporate provisions for modifications and variances for certain zoning regulations. The LCP currently does not have a provision for minor modifications and variances when special circumstances result in hardships that may result in the loss of property interests. Modifications (e.g., a minor variances) allow minor deviations (usually no more than 10% deviation) to a limited range of development standards when practical difficulties associated with the property would result in physical hardship with the strict application of that development standard. Variances allow for the modification or full waiver of a development standard when, because of special unique circumstances applicable to the property such as its location, shape, size, surroundings, topography, or other such physical features, the strict application of the development standard would deny the property owner privileges enjoyed by other property owners in the vicinity within the same zoning district. A variance can only be approved with substantial evidence of the special, unique circumstances, peculiar physical characteristics of the site creating a hardship, and evidence that the variance would not provide a special privilege but simply bring parity with other properties, nor be detrimental to public welfare or coastal resources.

The new provisions would not allow modification/waiver of land use controls, density/intensity limits, procedural requirements or specific prohibitions such as those intended to protect coastal resources and public access, or allow modification of limits on the use of protective structures or any

prohibitions. Additionally, the new provisions include a requirement for additional findings requiring consistency with the LCP and protection of coastal resources.

B. DENY THE LUP AMENDMENT REQUEST AS SUBMITTED

Under Sections 30512(c) and 30514(b), the Commission shall certify a land use plan amendment that meets the requirements of, and is in conformance with, the Chapter 3 policies of the Coastal Act. The City proposes to modify a certified policy in the LUP, certified LUP Policy 4.4.2-1 contained in Chapter 4 – Coastal Resource Protection, Section 4.4 Scenic and Visual Resources, to allow exceptions to the Shoreline Height Limitation Zone. The Shoreline Height Limitation Zone controls development within the Newport Bay area to reduce impacts to public views. The character of the surrounding area is defined by the scale and height of the development. Currently, this LUP section contains policies aimed at limiting the bulk and height of structures with the intent to regulate the visual and physical mass of structures consistent with the unique character and visual scale of the neighborhoods along the City’s shoreline. Since the early 1970s the City has limited height in an area established as the Shoreline Height Limitation Zone to a maximum of 35 feet for both residential and non-residential development.

The City proposes to modify certified LUP Policy 4.4.2-1 and add a blanket exception from the Shoreline Height Limit Zone for assembly and meeting facilities, government facilities, architectural features, boat cranes, chimneys and vents, dormers, elevator shafts, flagpoles, landmark buildings, light standards, mechanical equipment, solar equipment, peaks of sloping roofs and other similar fixtures and exterior structures specified in, and regulated by, the certified Local Coastal Program Implementation Plan. Indeed, as part of this LCP amendment, the City also proposes amendments to the IP portion of the LCP pertaining to height limit exceptions, specifically, to allow exceptions in the Shoreline Height Limitation Zone. However, the proposed LUP amendment is overly broad in scope and does not include any limit to how high a structure or architectural feature could be built if allowed to go beyond the 35-foot Shoreline Height Limit per this LUP policy. Additionally, the amendment would also delete exceptions to the 35-foot Shoreline Height Limit at two particular sites: Marina Park and the former City Hall Complex. The Shoreline Height Limit exceptions for both those sites were previously approved by the Commission through two LUP amendments to allow project specific exceptions for these two large scale projects, such as a 73-foot tall faux lighthouse at Marina Park, and at the former City Hall complex allowing very specific and limited height increases above the 35-foot height limit for buildings, structures, architectural features and a fire station on this site to promote vertical clustering that would result in increased publically accessible on-site open space while protecting existing coastal views and providing new coastal view opportunities.

Section 30251 of the Coastal Act states, in relevant part:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas...

Thus, the proposed LUP amendment allowing blanket and unlimited exceptions to the height limit, without provisions to protect visual resources, is inconsistent with Section 30251 of the Coastal Act.

Also, the proposed deletion of the detailed project specific height exceptions for Marina Park and the former City Hall complex raises significant Coastal Act issues related to visual quality and public access. The proposed new policy would weaken the intent of a policy crafted to protect coastal views. Therefore, the Commission finds that the proposed policy changes are not in conformance with, the Chapter 3 policies of the Coastal Act, including the public access requirements of Section 30212.

C. CERTIFY THE LUP AMENDMENT WITH SUGGESTED MODIFICATIONS

Pursuant to Sections 30512 and 30514 of the Coastal Act, in order to be certified by the Commission, the proposed LUP amendment must conform with and meet the requirements of the relevant Chapter 3 policies of the Coastal Act. Here, the LUP amendment can be certified only if it is modified to include policies that will protect scenic resources as required by Chapter 3 of the Coastal Act.

As previously noted, Section 30251 of the Coastal Act states that the scenic and visual qualities of coastal areas shall be protected and that new development shall be visually compatible with the character of the surrounding area. The LUP amendment request would modify LUP Policy 4.4.2-1 contained in Chapter 4 – Coastal Resource Protection, Section 4.4 Scenic and Visual Resources to allow blanket exceptions to the Shoreline Height Limitation Zone without limit and would delete specific exceptions to two particular sites at Marina Park and the former City Hall Complex from the LUP policy. The City incorporated the language of these site-specific exceptions into the IP when the IP was certified in January 2017 and is now amending the LUP to delete the language from the LUP.

Suggested Modification #1 adds specific provisions and limitations to the 35-foot Shoreline Height Limit Zone exceptions (i.e., peaks of sloped roofs are only allowed a 5-foot height increase, landmark buildings and flagpoles up to 20 ft., and places of worship and boat cranes up to a maximum height of 70 ft.). Suggested Modification #1 also includes a qualification that the exception shall only be allowed when it is designed and sited to protect existing views to and along the ocean and scenic coastal areas and where feasible, to restore and visual quality. Additionally, the site specific height exceptions to the Marina Park and former City Hall Complex are restored thus, maintaining the detail of those exceptions as the standard of review for the IP. These changes to the LUP are necessary to bring the LUP into compliance with Chapter 3 of the Coastal Act, specifically, Section 30251 policies protecting visual resources and compatibility with the surrounding area.

Therefore, the Commission finds that only as modified can the amendment to the CLUP to adopt the suggested changes to the Shoreline Height Limitation Zone (CLUP Policy 4.4.2-1) be found to be consistent with Section 30251 of the Coastal Act.

D. DENY THE IP AMENDMENT REQUEST AS SUBMITTED

Under Sections 30513 and 30514(b) of the Coastal Act, the Commission shall certify a proposed amendment to an IP unless it does not conform with, or is inadequate to carry out, the provisions of the certified LUP. Thus, the standard of review for amendment to the IP is the LUP. The proposed IP amendment must conform with, and be adequate to carry out, the provisions of the certified LUP (taking into account the proposed LUP amendment as modified).

The City's IP amendment includes provisions that would allow exceptions to the 35-foot Shoreline Height Limit, which pertains to a specific land use policy of the certified LUP. The proposed IP

amendment would also modify the requirement to record a waiver of any potential right to future protection for new development in shoreline hazardous areas; increase the allowance of additions to nonconforming residential structures from 50% to 75% of gross floor area without bringing the nonconforming elements into compliance with the IP standards; and add new provisions for modifications and variances from the development standards of the IP.

LUP Policies pertaining to scenic and visual qualities

- Policy 4.4.1.1** *Protect and, where feasible, enhance the scenic and visual qualities of the coastal zone, including public views to and along the ocean, bay, and harbor and to coastal bluffs and other scenic coastal areas.*

- Policy 4.4.1-7** *Design and site new development, including landscaping, on the edges of public coastal view corridors, including those down public streets, to frame and accent public coastal views.*

- Policy 4.4.2-1 (in part)** *Maintain the 35-foot height limitation in the Shoreline Height Limitation Zone... (full text of Policy is included in the section above).*

- Policy 4.4.2-2** *Continue to regulate the visual and physical mass of structures consistent with the unique character and visual scale of Newport Beach.*

This IP amendment request would allow blanket exceptions in the IP to the 35-foot Shoreline Height Limit, inconsistent with numerous policies in the LUP to protect, and where feasible enhance the scenic and visual qualities of the coastal zone including public views to and along the ocean, bay, harbor and to coastal bluffs and other scenic coastal areas and calling for regulation of the visual and physical mass of structures consistent with the unique character and visual scale of the City. In order to be compliant with LUP policies, additional language is necessary to clarify that in order to approve an exception to the height limit (resulting in an increase in the height of a structure above the base height limit), certain CDP findings must first be made determining that the project is sited and designed to protect public views to and along the ocean and scenic coastal areas, minimizes visual impacts, or restores and enhances visual quality, and is visually compatible with the character of the surrounding area.

LUP Policy pertaining to additions to waiver of Future Protection

- Policy 2.8.6-9** *Require property owners to record a waiver of future shoreline protection for new development during the economic life of the structure (75 years) as a condition of approval of a coastal development permit for new development on a beach, shoreline, or bluff that is subject to wave action, erosion, flooding, landslides, or other hazards associated with development on a beach or bluff. Shoreline protection may be permitted to protect existing structures that were legally constructed prior to the certification of the LCP, unless a waiver of future shoreline protection was required by a previous coastal development permit.*

The proposed IP amendment would only require property owners to record a waiver of any potential right to future protection that results in any encroachment seaward of the authorized footprint of an existing protective device. Corona del Mar, Shorecliffs, and Cameo Shores are areas fronting the

ocean (as opposed to fronting Newport Bay waters) and historically have not been protected by bulkhead/seawalls. This IP amendment would effectively delete the language in the IP that implements this LUP policy in shoreline hazardous areas, including the eroding coastal bluffs of Corona del Mar, Shorecliffs, and Cameo Shores and thus the amendment request cannot be found consistent with the LUP.

LUP Policies pertaining to additions to nonconforming structures

Policy 2.2.5-1 *Legal nonconforming structures shall be brought into conformity in an equitable, reasonable, and timely manner as rebuilding occurs. Limited renovations that improve the physical quality and character of the buildings may be allowed.*

Policy 2.2.5-3 *When proposed development would involve demolition or replacement of 50% or more of the exterior walls of existing structure that is legally non-conforming due to a coastal resource protection standard, the entire structure must be made to conform with all current development standards and applicable policies of the Coastal Land Use Plan*

The proposed IP amendment would increase the allowance of additions to nonconforming residential structures from 50% to 75% of gross floor area without bringing the nonconforming elements into compliance with the IP standards. In order for this proposed change to be consistent with the LUP policies it is necessary to ensure that the addition does not have an adverse impact to coastal resources. Specifically, that the addition does not block or impede public access to and along the sea or shoreline and to coastal parks, trails, or coastal bluffs, or block or impair public views to and along the sea or shoreline or to coastal bluffs and other scenic coastal areas; is not located within an area identified as hazardous due to erosion or coastal hazards; and conforms to all the coastal resource protection development regulations of the IP.

The proposed IP amendment as submitted, does not conform with, and/or does not adequately carry out, the policies of the LUP pertaining to hazards and protective devices, land use development, public access, and coastal resource protection and must be denied pursuant to Section 30513 of the Coastal Act.

E. CERTIFY THE IP AMENDMENT WITH SUGGESTED MODIFICATIONS

Suggested modifications are necessary to ensure the City's proposed new regulations and modifications to existing regulations are adequate to carry out the LUP. If approved with suggested modifications, the Commission finds that the City's IP would conform with, and is adequate to carry out, the requirements of the certified LUP, as approved herein, consistent with Section 30513 of the Coastal Act.

Suggested Modifications #2 and #3

Suggested modification #2 adds a new Subsection 21.30.060(C)(2)(f) to address Planned Communities (PCs) located within the Shoreline Height Limitation Zone. It clearly states that the maximum height limit for a structure within a PC District located within the Shoreline Height Limitation Zone is the 35-foot height limit, notwithstanding any other higher height limit identified in a PC District development standard. Suggested Modification #3 adds language to the City's proposed new Subsection 21.30.060.(D)(16) pertaining to Shoreline Height Limitation Zone

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exceptions for government facilities clarifying that an approval allowing a government facility to exceed the height limit only where the increase in height is necessary to accommodate a design feature required for the facility to function. These suggested modifications are necessary for consistency with the numerous policies in the LUP to protect, and where feasible enhance the scenic and visual qualities of the coastal zone including public views to and along the ocean, bay, harbor and to coastal bluffs and other scenic coastal areas and calling for regulation of the visual and physical mass of structures consistent with the unique character and visual scale of the City. These suggested modifications add language to clarify that in order to approve an exception to the height limit (resulting in an increase in the height of a structure above the base height limit), certain findings must first be made. The CDP required findings must determine that the project is sited and designed to protect public views to and along the ocean and scenic coastal areas, minimizes visual impacts, or restores and enhances visual quality, and is visually compatible with the character of the surrounding area.

Suggested Modification #4 deletes the City's proposed new language to IP Section 21.30.015(E)(5) regarding the waiver of future protection for protective devices for development in shoreline hazardous areas and adds new language stating that existing bulkheads and seawalls may be maintained, repaired or replaced subject to the requirements of IP Section 21.30.030(C)(3)(i).

This amendment would add the same qualification already included in IP Section 21.30.030(C)(3) to Section 21.30.015(E)(5), which applies more broadly to shoreline hazardous areas, "including eroding coastal bluffs of Corona del Mar, Shorecliffs, and Cameo Shores." Corona del Mar, Shorecliffs, and Cameo Shores are areas fronting the ocean (as opposed to fronting Newport Bay waters) and historically have not been protected by bulkhead/seawalls. Protective devices in these broader areas covered by Section 21.30.015(E)(5) are not limited to bulkhead/seawalls but include all types of bluff protective devices, such as caissons, retaining walls, shotcrete, etc. New development in hazardous areas are required to be sited and constructed in a way that will not require future protection from hazards, that is why the IP also contains a requirement for a geotechnical report and hazards report, to ensure that the proposed project is safe from coastal hazards and will not need protection from coastal hazards for the life of the structure. As currently certified in Section 21.30.015(E)(5), a condition of approval for new development requires the applicant to waive any potential right to future protection. IP Section 21.30.030(C)(3) addresses the unique situation presented by the Newport Harbor and the areas fronting the harbor protected by historic bulkhead/seawalls. Existing bulkhead/seawalls may be maintained, repaired, or replaced as long as it does not result in an encroachment seaward of the authorized footprint of the bulkhead/seawall (i.e., protective device). Thus, a waiver of any potential right to future protection is not necessary for sites such as these with existing bulkheads, and the proposed amendment to the IP to limit the waiver of future shoreline protection to devices that encroaches seaward of the existing protective device would not be appropriate in coastal bluff areas not fronting the harbor.

The City's intention with this amendment was to avoid ambiguity and maintain consistency in the certified LCP by including the same language in both sections. However, a distinction is necessary between these two IP sections, therefore, this suggested modification is necessary to delete the City's amended language and add a reference to Section 21.30.030(C)(3)(i) relating to development already protected with an existing bulkhead, thus preserving the IP requirement for the waiver of future protection for protective devices for development in shoreline hazardous areas.

Suggested Modification #5 adds specific qualifications to the amendment to IP Section 21.38.040(G) increasing the limit of allowed gross floor area expansion/addition to an existing nonconforming residential structure from 50% to 75% without requiring the nonconforming elements of the structure to be brought into compliance with the IP development standards. This suggested modification is necessary to ensure that the addition does not block or impede public access to and along the sea or shoreline and to coastal parks, trails, or coastal bluffs, or block or impair public views to and along the sea or shoreline or to coastal bluffs and other scenic coastal areas; and conforms to all the coastal resource protection development regulations of the IP. Additionally, the suggested modification ensures that the addition is not located within an area identified as hazardous due to erosion or coastal hazards.

Suggested Modification# 6 to proposed new IP Section 21.52.090 adding new provisions for modifications and variances into the IP is necessary to ensure any modification or variance will not result in development that has an adverse effect, either individually or cumulatively, on coastal resources and coastal access.

The purpose for this proposed new IP Section is to provide relief from the development standards of this IP when so doing is consistent with the purposes of the certified LCP and will not have an adverse effect, either individually or cumulatively, on coastal resources. The new provisions for modifications and variances would not allow modification/waiver of land use controls, density/intensity limits, procedural requirements or specific prohibitions such as those intended to protect coastal resources and public access, or allow modification of limits on the use of protective structures or any prohibitions. However, the requirement for additional findings requiring consistency with the LCP and protection of coastal resources needs greater detail and specificity in order to clearly identify those coastal resources. Therefore, a suggested modification is necessary to clearly state the necessary findings to ensure resource protection by spelling out those resources.

Suggested modification #6 adds this language:

The modification or variance will not result in development that blocks or significantly impedes public access to and along the sea or shoreline and to coastal parks, trails, or coastal bluffs;

The modification or variance will not result in development that blocks or significantly impairs public views to and along the sea or shoreline or to coastal bluffs and other scenic coastal areas;

The modification or variance will not have result in development that has an adverse effect, either individually or cumulatively, on coastal resources; including biological resources, including, but not limited to, wetlands, sensitive habitat, vegetation, or wildlife species; and

Only as modified, will provisions for modifications and variances into the IP adequately carry out, the coastal access and coastal resource protection provisions of the certified LUP.

Conclusion

With the suggested modifications described above, the Commission can find that the IP amendment

conforms with and is adequate to carry out the requirements of the certified LUP, consistent with Section 30513 of the Coastal Act.

F. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

As set forth in Section 21080.9 of the California Public Resources Code, the California Environmental Quality Act (CEQA) exempts local governments from the requirement of preparing an environmental impact report (EIR) in connection with its activities and approvals necessary for the preparation and adoption of a local coastal program (LCP). The Commission's LCP review and approval program has been found by the Resources Agency to be functionally equivalent to the EIR process. (14 CCR § 15251(f).) Nevertheless, the Commission is required in approving an LCP submittal to find that the LCP conforms with the provisions of CEQA, including the requirement in CEQA section 21080.5(d)(2)(A) that the amended LCP will not be approved or adopted as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment.

The Commission finds that, for the reasons discussed in this report, the proposed LUP amendment, with adoption of the suggested modifications listed in Section III of this report, is in conformity with the Chapter 3 policies of the Coastal Act. The Commission finds that, for the reasons discussed in this report, the proposed IP amendment, with adoption of the suggested modifications listed in Section III of this report, is in conformity with, and adequate to carry out the land use policies of the certified LUP, as modified by the suggested modification. The Commission finds that approval of the LCP Amendment with suggested modifications will not result in significant adverse environmental impacts within the meaning of CEQA. Certification of the LCP if modified as suggested complies with CEQA because: 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the plan on the environment, and 2) there are no further feasible alternatives and mitigation measures that would substantially lessen any significant adverse impacts which the LCP Amendment may have on the environment. The Commission finds that the proposed LCP amendment if modified as suggested will be consistent with Section 21080.5(d)(2)(A) of the Public Resources Code.