

## **CALIFORNIA COASTAL COMMISSION**

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# **W22a**

### **MAJOR LCP AMENDMENT REQUEST 3-17**

**LCP 5-NPB-17-0053-2 (LCP CLEAN-UP)**

**JULY 11, 2018**

### **EXHIBITS**

**Exhibit #1 City Council Resolution N. 2017-45**

**Exhibit #2 Public Correspondence – Letter from Mr. Jim Mosher dated November 2, 2017**

**Exhibit #3 City of Newport Beach response to public correspondence**

**RESOLUTION NO. 2017-45**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
NEWPORT BEACH, CALIFORNIA, AUTHORIZING THE  
SUBMITTAL OF LOCAL COASTAL PROGRAM AMENDMENT  
NO. LC2017-002 TO THE CALIFORNIA COASTAL  
COMMISSION (PA2017-047)**

**WHEREAS**, Section 30500 of the Public Resources Code requires each county and city to prepare a local coastal Program ("LCP") for that portion of the coastal zone within its jurisdiction;

**WHEREAS**, the California Coastal Commission effectively certified the City of Newport Beach ("City") LCP on January 13, 2017, and the City assumed coastal development permit-issuing authority on January 30, 2017;

**WHEREAS**, LCP Amendment No. LC2017-002 is necessary to address issues that have arisen since the LCP was certified, incorporate land use and property regulations adopted by the City after submission of the LCP to the California Coastal Commission and to clarify LCP administrative procedures;

**WHEREAS**, a public hearing was held by the Planning Commission of the City of Newport Beach on May 4, 2017, in the Council Chambers located at 100 Civic Center Drive, Newport Beach, California. A notice of time, place and purpose of the public hearing was given in accordance with the NBMC and Section 13515 of the California Code of Regulations. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this public hearing. At the conclusion of the public hearing, the Planning Commission voted (5 ayes, 0 noes, 2 absent) to adopt Planning Commission Resolution No. 2055, recommending City Council approval of LCP Amendment No. LC2017-002;

**WHEREAS**, a public hearing was held by the City Council on July 11, 2017, in the Council Chambers located at 100 Civic Center Drive, Newport Beach, California. A notice of time, place and purpose of the public hearing was given in accordance with the NBMC and Section 13515 of the California Code of Regulations. Evidence, both written and oral, was presented to, and considered by, the City Council at this public hearing; and

**WHEREAS**, pursuant to Section 13515 of the California Code of Regulations, review drafts of LCP Amendment No. LC2017-002 were made available and a notice of the availability was distributed a minimum of six weeks prior the City Council public hearing.

**NOW, THEREFORE**, the City Council of the City of Newport Beach resolves as follows:

**Section 1:** The City Council does hereby authorize City staff to submit LCP Amendment No. LC2017-002 to the California Coastal Commission for review and approval, as attached in Exhibit A, and incorporated herein by reference.

**Section 2:** The City Council does hereby further authorize City staff to submit the component amendments of LCP Amendment No. LC2017-002 to the California Coastal Commission grouped as either "de minimis," "minor" and/or "major," as necessary, based on direction received from California Coastal Commission staff.

**Section 3:** LCP Amendment No. LC2017-002 shall not become effective until approval by the California Coastal Commission and adoption, including any modifications suggested by the California Coastal Commission, by resolution(s) and/or ordinance(s) of the City Council of the City of Newport Beach.

**Section 4:** The LCP including the proposed amendment will be carried out fully in conformity with the California Coastal Act.

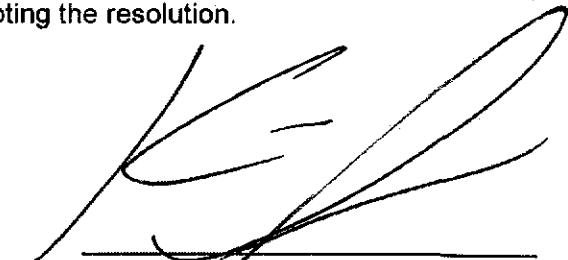
**Section 5:** The recitals provided in this resolution are true and correct and are incorporated into the operative part of this resolution.

**Section 6:** If any section, subsection, sentence, clause or phrase of this resolution is, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this resolution. The City Council hereby declares that it would have passed this resolution, and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

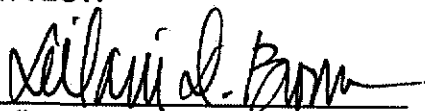
**Section 7:** Pursuant to the authority and criteria contained in the California Environmental Quality Act ("CEQA"), LCP Amendment No. LC2017-002 is statutorily exempt from CEQA pursuant to Section 15265(a)(1) of the California Code of Regulations, Title 14, and Chapter 3 of the Coastal Act. Section 15265(a)(1), which exempts local governments from the requirements of preparing an environmental impact report or otherwise complying with CEQA in connection with the adoption of a Local Coastal Program.

**Section 7:** This resolution shall take effect immediately upon its adoption by the City Council, and the City Clerk shall certify the vote adopting the resolution.

ADOPTED this 11<sup>th</sup> day of July, 2017.

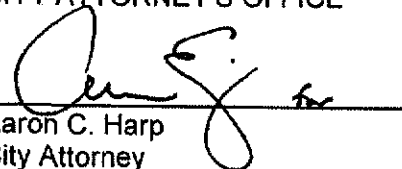
  
Kevin Muldoon  
Mayor

ATTEST:

  
Leilani I. Brown  
City Clerk



APPROVED AS TO FORM:  
CITY ATTORNEY'S OFFICE

  
Aaron C. Harp  
City Attorney

**EXHIBIT A**

LC2017-002

~~1. Amend Policy 4.4.2-1 of the City of Newport Beach Coastal Land Use Plan to read as follows:~~

~~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.~~

#1 NOT A PART OF THIS AMENDMENT

2. Amend Section 21.26.055 of the Newport Beach Municipal Code to add Section 21.26.055(V) to read as follows, with all other provisions of Section 21.26.055 remaining unchanged:

V. Lido Villas (PC-59).

1. Lot Size: 52,099 square feet (1.2 acres)
2. Density/intensity Limit: twenty-three (23) dwelling units.
3. Setbacks.
  - a. Via Lido: 9 feet (first floor); 4 feet, 5 inches (second floor)
  - b. Via Malaga: 7 feet, 3 inches (first floor); 6 feet, 6 inches (second floor)
  - c. Via Oporto: 6 feet (first floor); 3 feet (second floor)
  - d. North Interior Property Line: 5 feet
4. Height: Thirty-five (35) feet.

~~3. Amend Section 21.30.010.015(E)(5) and Section 21.30.015(E)(5)(a) of the Newport Beach Municipal Code to read as follows, with all other provisions of Section 21.30.015 remaining unchanged:~~

~~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:~~

#3 NOT A PART OF THIS AMENDMENT

- ~~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~~

4. Amend Section 21.30.060(C) and Section 21.30.060(D) of the Newport Beach Municipal Code to read as follows, with all other provisions of Section 21.30.060(C) and Section 21.30.060(D) remaining unchanged:

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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).

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-seven (37) feet 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 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 thirty-five (35) foot height limit shall prevail over 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.

D. Exceptions to Height Limits.

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.

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.

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.

4. Chimneys and Vents. Chimneys and spark arrestors for fireplaces and roof-mounted vents shall be allowed to exceed the allowed height limits as follows:

- a. Chimneys may extend above the allowed height limit a maximum of two feet or a greater height if required by the City's Building Code;
- b. Spark arrestors may extend above the top of a chimney a maximum of two feet, provided they do not exceed a width of two feet and a length of four feet; and
- c. Roof-mounted vents may extend above the allowed height limit a maximum of twelve (12) inches or a greater height if required by the City's Building Code.

5. Dormers. Dormers may be allowed to exceed the maximum height; provided, that:

- a. The total width of the dormer that exceeds the height limit shall not be greater than thirty-five (35) percent of the length of the side of the structure where the dormer is located;
- b. The roof pitch of the dormer shall not be less than 2:12; and
- c. The peak of the dormer shall not be higher than the peak of the roof on which it is located.

6. Elevator Shafts, Enclosed Stairwells. Elevator shafts and enclosed stairwell housings may exceed the allowed height limit by the minimum height required by the California Building Code, provided they do not exceed thirty (30) square feet in area, unless a larger elevator is required by the California Building Code and/or the Fire Department. In these instances, the area of the elevator or stair housing shall not exceed the minimum size required by the California Building Code and/or the Fire Department. Elevator shafts and enclosed stairwell housings that exceed thirty (30) square feet in area shall have sloped roofs with a minimum 3/12 pitch.
7. Fences, Hedges, and Walls. Section 21.30.040 (Fences, Hedges, Walls, and Retaining Walls) sets forth exceptions to height limits for these structures.
8. Flagpoles.
  - a. Ground-mounted flagpoles shall be allowed in residential coastal zoning districts to a maximum height of twenty-eight (28) feet and in nonresidential coastal zoning districts to a maximum height of thirty-five (35) feet.
  - b. Flagpoles mounted on tops of buildings located in nonresidential coastal zoning districts shall be allowed to exceed the maximum height limit by up to twenty (20) feet.
9. Landmark Buildings. An alteration or addition to a landmark building shall be exempt from height limits; provided, that structural alterations or additions that exceed the height of the existing structure shall require approval of a coastal development permit in compliance with Chapter 21.52 (Coastal Development Review Procedures) and shall not exceed a maximum of fifty-five (55) feet in height. The coastal development permit may be approved only if all of the following findings are first made in addition to those findings identified in Section 21.52.015(F):
  - a. The portion of the structural alteration or addition that exceeds the height of the existing structure does not significantly impact public views from public rights-of-way.
  - b. The portion of the structural alteration or addition that exceeds the height of the existing structure will not be used in a manner that increases the intensity of the use of the landmark building.
  - c. The allowed height of the landmark building will not be detrimental to the health, safety, peace, comfort, or general welfare of persons residing or working in the neighborhood of the landmark building.
10. Light Standards. Light standards may be allowed to exceed maximum height limits, subject to the approval of a coastal development permit in compliance with Chapter 21.52 (Coastal Development Review Procedures). All light fixtures and standards shall comply with the requirements of Section 21.30.070 (Outdoor Lighting).
11. Mechanical Equipment.
  - a. Nonresidential Coastal Zoning Districts. In nonresidential coastal zoning districts, roof-mounted mechanical equipment, totaling not more than thirty (30) percent of the total roof area, including required screening devices, shall be allowed to exceed the maximum height limit by up to five feet.
  - b. Residential Coastal Zoning Districts. In residential coastal zoning districts, roof-mounted equipment is not allowed to exceed the maximum height limit for the coastal zoning district.
12. Solar Equipment. The height limit regulations in this Implementation Plan do not apply to equipment and panels used for the production of solar energy.

- ~~13. Skylights and Roof Windows. Skylights or roof windows shall be allowed to exceed the maximum height limit by up to six inches on conforming roofs.~~
- ~~14. Marina Park Lighthouse Feature. A single, up to maximum seventy-three (73) foot tall, faux lighthouse architectural tower, that creates an iconic landmark for the public to identify the site (1600 West Balboa Boulevard) 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 flagpoles. Any architectural tower that exceeds the thirty-five (35) foot height limit shall not include floor area above the thirty-five (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 thirty-four (34) feet at the base of the tower. Public viewing opportunities shall be provided above the thirty-five (35) feet, as feasible.~~
- ~~15. Lido House Hotel. At the former City Hall, 3300 Newport Boulevard and 475 32nd Street:~~
- ~~a. At least seventy-five (75) percent of the total area of the site shall be thirty-five (35) feet in height or lower.~~
  - ~~b. Buildings and structures up to fifty-five (55) feet in height with the peaks of sloping roofs and elevator towers up to sixty (60) feet in height provided it is demonstrated that development does not adversely materially impact public views.~~
  - ~~c. Architectural features such as domes, towers, cupolas, spires, and similar structures may be up to sixty-five (65) feet in height.~~
  - ~~d. Buildings and structures over thirty-five (35) feet in height, including architectural features, shall not occupy more than twenty-five (25) percent of the total area of the site.~~
  - ~~e. Buildings and structures over forty-five (45) feet in height, including architectural features, shall not occupy more than fifteen (15) percent of the total area of the site.~~
  - ~~f. With the exception of a fire station, all buildings and structures over thirty-five (35) feet in height, including architectural features, shall be set back a minimum of sixty (60) feet from the Newport Boulevard right-of-way and seventy (70) feet from the 32nd Street right-of-way.~~
  - ~~g. A fire station may be located in its current location and may be up to forty (40) feet in height.~~
  - ~~h. A fire station may include architectural features up to forty-five (45) feet in height to house and screen essential equipment. (Ord. 2016-19 § 1 (Exh. A)(part), 2016)~~
- ~~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 for the facility to function (e.g., lifeguard towers, tsunami warning sirens, architectural design features that accommodate emergency vehicles or essential equipment, etc.).~~
5. Amend Section 21.30.075(B)(4)(b) of the Newport Beach Municipal Code to read as follows, with all other provisions of 21.30.075(B)(4)(b) remaining unchanged:
- b. Landscaped areas shall be maintained in a healthy and growing condition and shall receive regular pruning, fertilizing, mowing and trimming. Lawn areas shall be exempt from the healthy and growing condition provision when the City Council has declared a Level Three water supply shortage and all



**#6 NOT A PART OF THIS AMENDMENT**

lawn, landscape, and other vegetated areas shall be exempt from the healthy and growing condition requirement when the City Council has declared a Level Four water supply shortage.

6. ~~Amend Section 21.38.040(G)(1) of the Newport Beach Municipal Code to read as follows, with all other provisions of 21.38.040(G)(1) remaining unchanged:~~

~~1. 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.~~

7. Amend Table 21.50-1 of Section 21.51.020 of the Newport Beach Municipal Code to read as follows, with all other provisions of Table 21.50-1 of Section 21.51.020 remaining unchanged:

**TABLE 21.50-1 – REVIEW AUTHORITY**

Type of Action	Applicable Code Chapter /Section	Role of Review Authority (1)					
		Director	Zoning Administrator	Harbor Resources Manager	Commission	Council (2)	Coastal Commission
<b>Administrative and Legislative</b>							
Interpretations	Section 21.12.020	Determination (3)			Appeal	Appeal	Appeal (8)
LCP Amendments					Recommend	Decision (4)	Decision (4)
Approvals in Concept	Section 21.52.015(B)(1)(a)		Determination (3)	Determination (5)	Appeal	Appeal	
Waiver for De Minimis Development	Section 21.52.055	Decision (9)				(9)	
<b>Permits and Approvals</b>							
Coastal Development Permits	Section 21.52.015		Decision (6)		Appeal	Appeal	Decision (7) Appeal (2)
Emergency Coastal Development Permits	Section 21.52.025	Decision (3)			Appeal	Appeal	

Notes:

(1) "Recommend" means that the Commission makes a recommendation to the Council; "Determination" and "Decision" mean that the review authority makes the final determination or decision on the matter; "Appeal" means that the review authority may consider and decide upon appeals to the decision of a previous decision making body, in compliance with Chapter 21.64 (Appeals and Calls for Review).

- (2) The Council is the final review authority for all applications in the City. A decision by the City on a coastal development permit application within the appeal areas depicted on the Post-LCP Certification Permit and Appeal Jurisdiction Map or a project that constitutes a major public works project or energy facility may be appealed to the Coastal Commission in compliance with Chapter 21.64 (Appeals and Calls for Review).
- (3) The Director or Zoning Administrator may defer action and refer the request to the Commission for consideration and final action.
- (4) The California Coastal Commission is the final decision making authority on amendments to the Local Coastal Program.
- (5) For development located on tidelands or submerged lands that did not involve a discretionary action authorized by this Implementation Plan where the authority is specifically assigned to the Council, Commission, Director, or Zoning Administrator.
- (6) If the project also requires another discretionary approval (e.g., conditional use permit, variance, etc.), then the applicable review authority shall be the authority for the other discretionary approval.
- (7) All development on tidelands, submerged lands, and public trust lands as described in California Public Resources Code Section 30519(b) and in deferred certification areas designated by the Local Coastal Program shall require a permit issued by the Coastal Commission in accordance with procedures specified by the Coastal Commission, in addition to other permits or approvals required by the City. This provision does not include those tidelands, submerged lands, and public trust lands where permit authority may be delegated to the City at a future date if determined by the Coastal Commission to be filled and developed and located within an area committed to urban uses pursuant to Coastal Act Section 30613.
- (8) Appeal procedure for interpretations shall only apply to interpretations made by the Director on the determination of whether a development is categorically excluded, exempt, nonappealable or appealable to the Coastal Commission according to the dispute resolution process in compliance with Section 21.50.050(B).
- (9) A waiver shall not take effect until after the Director makes his/her report to the City Council. If one-third of the City Council (two members) so request, such issuance shall not be effective and, instead, the application for a coastal development permit shall be processed in accordance with the coastal development permit provisions of Chapter 21.52 (Coastal Development Permit Review Procedures).
8. Amend Section 21.52.035(C)(4) of the Newport Beach Municipal Code to renumber Section 21.52.035(C)(4)(c)(iii) to Section 21.52.035(C)(4)(d) with all other provisions of 21.52.035(C)(4) remaining unchanged:
- d. Unless destroyed by disaster, the replacement of fifty (50) percent or more of a single-unit residence, seawall, revetment, bluff retaining wall, breakwater, groin or any other structure is not repair and maintenance under California Public Resources Code Section 30610(d) but instead constitutes a replacement structure requiring a coastal development permit.
9. Amend Section 21.52.052(H) of the Newport Beach Municipal Code to read as follows, with all other provisions of 21.52.052(H) remaining unchanged:
- H. Notice of Final Action. Within seven days of the date of the City's final local action on an exemption or coastal development permit application and meeting the requirements of Title 14 California Code of Regulations Section 13570, a notice of its final action shall be sent by first class mail, to the applicant, the Coastal Commission, and any persons who specifically request such notice by submitting a self-addressed, stamped envelope. Such notice shall be accompanied by a copy of the exemption, denial or conditions of approval and written findings and the procedures for appeal of the action to the Coastal Commission.

10. Amend Section 21.52.055 of the Newport Beach Municipal Code to read as follows, with all other provisions of Section 21.52.055 remaining unchanged:

F. Report to the City Council. The Director shall report to the City Council at its next available public meeting those projects for which waivers are proposed, with sufficient description to give notice of the proposed development to the City Council. A list of waivers issued by the Director shall be available for public inspection at the public counter of the Department and at the City Council meeting during which any waivers are reported. A waiver shall not take effect until after the Director makes his/her report to the City Council. If two members of the City Council so request, such issuance shall not be effective and, instead, the application for a coastal development permit shall be processed in accordance with the coastal development permit provisions of this chapter.

11. Amend Chapter 21.52 of the Newport Beach Municipal Code add Section 21.52.090 to read as follows, with all other provisions of Chapter 21.52 remaining unchanged:

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**21.52.090 Relief from Implementation Plan Development Standards.**

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. 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;
  - v. Increase in allowed floor area of additions for uses that have 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).
- 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.
2. 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. 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 as applicable:
1. The granting of the modification is necessary due 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 have an adverse effect, either individually or cumulatively, on coastal resources; and
5. 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.

12. Amend Chapter 21.62 of the Newport Beach Municipal Code to add Section 21.62.050 to read as follows, with all other provisions of Chapter 21.62 remaining unchanged:

Section 21.62.050      Public Hearing Waiver for Minor Development.

A. Purpose. The purpose of this section is to provide a process, in accordance with Section 30624.9 of the Coastal Act, through which the public hearing requirement may be waived for certain minor developments that require coastal development permits.

B. Minor Development Defined. For purposes of this section, "minor development" means a development that the Director determines satisfies all of the following requirements:

1. Is consistent with the certified Local Coastal Program;
2. Requires no discretionary approvals other than a coastal development permit; and
3. Has no adverse effect either individually or cumulatively on coastal resources or public access to the shoreline or along the coast.

C. Procedure. The Director may waive the requirement for a public hearing on a Coastal Development Permit application for a minor development, if all of the following occur:

1. Notice is mailed or delivered to all persons and agencies required to be notified under Section 21.62.020(B)(2). The notice shall contain and shall contain all of the information required in Section 21.62.020(A). In addition, the notice of waiver of public hearing for the pending application shall contain the following:
  - a. A statement that a public hearing will be held upon the written request of any person provided that such written request is received by the Department within fifteen (15) working days from the date of sending the notice; and
  - b. For proposed development within the appealable area, a statement that failure by a person to submit a written request for a public hearing may result in the loss of that person's ability to appeal to the Coastal Commission any action taken by the City on a coastal development permit application in this matter.
2. No request for public hearing is received by the Department within fifteen (15) working days from the date of sending the notice pursuant to subsection (1) of this section.

3. Requests for hearing must be made in writing to the Department. Upon receipt of a request for a hearing, the Department shall schedule the matter for a public hearing and issue notice of such hearing consistent with the provisions of this Chapter.

13. Amend Section 21.64.050(A) of the Newport Beach Municipal Code to read as follows, with all other provisions of Section 21.64.050(A) remaining unchanged:

A. Director. Interpretations and decisions of the Director may be appealed or called for review to the Planning Commission, with the exception of waivers for de minimis development, which are reported to the City Council pursuant to Section 21.52.055(E).

14. Amend Section 21.64.035(C)(2) of the Newport Beach Municipal Code to read as follows, with all other provisions of Section 21.64.035(C)(2) remaining unchanged:

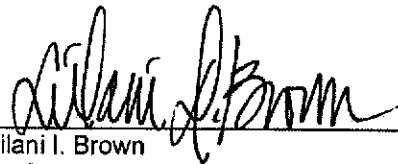
2. An appeal of a City decision was filed by two members of the Coastal Commission in compliance with Public Resources Code Section 30625. Notice of a Coastal Commissioner's appeal shall be transmitted to the City in compliance with Title 14 California Code of Regulations Section 13111(d). The Director may transmit the Coastal Commissioners' appeal to the local appellate body (which considers appeals from the review authority that rendered the final decisions subject to the Coastal Commissioners' appeal), and the Coastal Commissioners' appeal may be suspended pending a decision on the merits by that City appellate body. If the final action by an appellate body modifies or reverses the previous decision, the Coastal Commissioners appeal shall be required to file a new appeal from that decision.

STATE OF CALIFORNIA                    }  
COUNTY OF ORANGE                    }  
CITY OF NEWPORT BEACH                }            ss.

I, Leilani I. Brown, City Clerk of the City of Newport Beach, California, do hereby certify that the whole number of members of the City Council is seven; that the foregoing resolution, being Resolution No. 2017-45 was duly introduced before and adopted by the City Council of said City at a regular meeting of said Council held on the 11<sup>th</sup> day of July, 2017, and that the same was so passed and adopted by the following vote, to wit:

AYES: Council Member Jeff Herdman, Council Member Brad Avery, Council Member Diane Dixon, Council Member Scott Peotter, Council Member Will O'Neill, Mayor Kevin Muldoon  
NAYS: None  
ABSENT: Mayor Pro Tem Duffy Duffield

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the official seal of said City this 12<sup>th</sup> day of July, 2017.



Leilani I. Brown  
City Clerk  
Newport Beach, California

(Seal)



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

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

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

Dear Ms. Roman,

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Yours sincerely,

A handwritten signature in blue ink that reads "James M. Mosher". The signature is written in a cursive style with a long horizontal stroke at the end.

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



November 16, 2017

Charles R. Posner, Supervisor of Planning  
California Coastal Commission  
South Coast District Office  
200 Oceangate, 10th Floor  
Long Beach, CA 90802-4416

Subject: Response to Comments on Minor Amendment Request No. 3-17 (LCP-5-NPB-17-0053-2)

Dear Mr. Posner,

The City of Newport Beach submits the following responses to comments received on the amendment:

**Amendment No. 2**

All of the PC-59 development standards proposed for incorporation into the LCP Implementation Plan (i.e., density/intensity, setbacks and height) are the same as those the City approved locally with the adoption of PC-59 and those authorized by the Coastal Commission through the approval of the Lido Villas coastal development permit.

Mr. Mosher states that the Newport Villas Planned Community (PC-59) is a “never-before seen ‘Planned Community.’” However, the City’s Planning Commission reviewed PC-59 at public hearings on August 22, 2013 and September 5, 2013 and the City Council adopted PC-59 at a public hearing on November 12, 2013. Mr. Mosher participated in this process and expressed his opposition to the project at that time.

The Coastal Commission approved an associated Coastal Land Use Plan amendment for the Lido Villas project on March 12, 2014. The Coastal Commission approved the coastal development permit for the actual Lido Villas project on October 9, 2014. Mr. Mosher also expressed his opposition to the project at that time.

Any comparison of the authorized PC-59 development standards with those of the RM (Multiple Residential) Coastal Zoning District is, at best, misleading. This amendment merely updates the Implementation Plan to include development standards that the City and the Coastal Commission previously considered and adopted. Therefore, the amendment does not change the kind, location, intensity, or density of use.

By the time all of the PC-59 became effective locally and the final form of the Lido Villas project was approved by the Coastal Commission, the City had already completed the draft LCP Implementation Plan (IP) and submitted it to the Coastal Commission staff for comments. An extensive community outreach process on the draft IP was also underway. This amendment does nothing more than to allow the Implementation Plan to catch up with approvals that occurred while it was under Coastal Commission and public consideration.

### **Amendment No. 7**

We apologize for not correcting this minor inconsistency in the footnote. If the Commission can consider this a scrivener's error, the City will correct it. Otherwise, the City will correct it with a future minor LCP amendment.

### **Amendments No. 8, 9 and 10**

Such minor errors are inevitable when multiple persons from two different agencies are collaborating on a document over the course of years. However, the perfect is the enemy of the good and much good has come from the certification of the LCP. Since the LCP became effective in January 2017, the City has processed over 100 coastal development permit applications with no appeals. There is no doubt that there are other such topographic errors in the over 400 pages of the Implementation Plan. The City will endeavor to correct such errors as they are discovered.

### **Amendment 12**

We apologize for not catching these topographical errors. If the Commission can consider these scrivener's errors, the City will correct it. Otherwise, the City will correct it with a future minor LCP amendment.

Placing aside Mr. Mosher's uncertainty on whether Coastal Act Section 30624.9 is good policy, it was included in the Coastal Act for sound reasons. It allows a more streamlined process for development that does not impact coastal resources. This provision is included in numerous certified LCPs for decades and does not appear to have resulted in any unintended consequences.

There is merit in Mr. Mosher's suggested modification. However, it does not warrant changing this amendment to a major LCP amendment. Rather, Mr. Mosher should present his suggestion to the City where it can be properly vetted through the LCP amendment process.

### **Amendment No. 13**

While it is true that the City Council resolution description of the amendment has an incorrect section number, the actual text changes the submitted to the Coastal Commission are to the correct section.

### **Amendment 14**

We apologize for not catching two of the changes to the references appeals by Coast Commissioners. If the Commission can be consider these scrivener's errors, the City will correct it. Otherwise, the City will correct it with a future minor LCP amendment. The use of italics that Mr. Mosher refers to are not in the document submitted to the Coastal Commission. What appears to be italics may be the result of an error in document scanning.

If you have any questions or need additional information, please do not hesitate to contact me at (949) 644-3235, palford@newportbeachca.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "Patrick J. Alford". The signature is fluid and cursive, with the first name "Patrick" being the most prominent part.

Patrick J. Alford, Planning Program Manager