

CALIFORNIA COASTAL COMMISSION

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



W22a

June 28, 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: Major LCP Amendment Request No. 3-17 (LCP-5-NPB-17-0053-2) to the City of Newport Beach LCP, for Commission Action at its July 11-13, 2018 meeting in Scotts Valley.

Local Coastal Program Amendment Request No. 3-17

The City of Newport Beach is requesting that the Commission certify an amendment to the Implementation Plan (IP) portion of the Newport Beach certified Local Coastal Program (LCP). The LCP amendment will correct a number of inconsistencies and clarify ambiguities in the IP, add a new planned community, and add a regulation to clarify the public notification hearing procedures for minor development.

Local Coastal Program Amendment Request No. 3-17 affects only the City's IP, which is the implementing ordinances portion of the certified LCP, and does not propose any land use changes. The Newport Beach City Council held a public hearing on July 11, 2017 and passed City Council Resolution No. 2017-45 authorizing City staff to submit the LCP amendment to the Coastal Commission for certification.

SUMMARY OF STAFF RECOMMENDATION

Staff recommends that the Commission, after public hearing, **APPROVE** Amendment Request No. 3-17 with six suggested modifications. The City is in agreement with the staff recommendation. The suggested modifications are necessary to clearly carry out the policies of the certified Land Use Plan (LUP). The suggested modifications will correct minor grammatical and scrivener errors, correct citations to the Coastal Act and Coastal Commission Regulations, add a new regulation on public notification hearing procedures for minor development, and add a list of allowable uses to the proposed Lido Villas Planned Community. If modified as suggested the proposed changes to the IP will conform with and carry out the certified LUP.

Therefore, staff recommends that the Commission, after public hearing:

- 1. Deny the IP amendment request as submitted; and,**
- 2. Certify, only if modified, the IP amendment request.**

The motions and resolutions are found on **Page Five**.

LOCAL REVIEW AND DEADLINE FOR COMMISSION ACTION

The City of Newport Beach Planning Commission held a public hearing for the IP amendment on May 4, 2017. The City Council held a public hearing on July 11, 2017. On September 25, 2017, the City submitted the amendment request for Coastal Commission certification with City Council Resolution No. 2017-45. On November 9, 2017, the Commission authorized a one-year extension of the sixty-day time limit for action on an IP amendment request. As such, the last date for Commission action on this item is November 25, 2018.

FOR ADDITIONAL INFORMATION

The file is available for review at the South Coast District office located in the Molina Center, 200 Oceangate, Suite 1000, Long Beach, 90802. The staff report can be viewed on the Commission's website: <http://www.coastal.ca.gov/mtgcurr.html>. For additional information, contact Liliana Roman in the South Coast District office at (562) 590-5071.

TABLE OF CONTENTS

- I. PROCEDURAL ISSUES4**
 - A. STANDARD OF REVIEW 4
 - B. PUBLIC PARTICIPATION 4
 - C. PROCEDURAL REQUIREMENTS 4
- II. MOTIONS AND RESOLUTIONS.....5**
 - A. DENIAL OF THE IP AMENDMENT AS SUBMITTED 5
 - B. APPROVAL OF THE IP AMENDMENT IF MODIFIED AS SUGGESTED..... 5
- III. SUGGESTED MODIFICATIONS6**
- IV. FINDINGS13**
 - A. DESCRIPTION OF THE IP AMENDMENT REQUEST 13
 - B. DENY THE IP AMENDMENT REQUEST AS SUBMITTED 14
 - C. CERTIFY THE IP AMENDMENT WITH SUGGESTED MODIFICATIONS 14
 - D. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) 17

EXHIBITS

- [Exhibit 1: City Council Resolution No. 2017-45](#)
- [Exhibit 2: Public Correspondence](#)
- [Exhibit 3: City of Newport Beach response to public correspondence](#)

I. PROCEDURAL ISSUES

A. STANDARD OF REVIEW

The standard of review for the proposed amendment to the Implementing Ordinances (IP) of the City of Newport Beach certified LCP, pursuant to Sections 30513 and 30514 of the Coastal Act, is whether the IP amendment conforms with, and is adequate to carry out the provisions of the Land Use Plan (LUP) portion of the City of Newport Beach's certified LCP.

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 Zoning Text Amendments and the Zoning Map Amendment, 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. In this case, if the Commission certifies the LCP amendment as submitted, no further City Council action will be necessary. The City's submittal resolution indicates that the ordinance will only become final after certification by the Commission, but no formal action is required. 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 3-17 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.

II. MOTIONS AND RESOLUTIONS

A. DENIAL OF THE IP AMENDMENT AS SUBMITTED

Motion I:

*I move that the Commission **reject** the Implementation Plan Amendment No.3-17 as submitted by the City of Newport Beach.*

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 I:

The Commission hereby denies certification of the Amendment 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.

B. APPROVAL OF THE IP AMENDMENT IF MODIFIED AS SUGGESTED

Motion II:

*I move that the Commission **certify** the Implementation Plan Amendment No.3-17 to the City of Newport Beach certified LCP if it is 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 II:

The Commission hereby certifies the Amendment 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. 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 IP amendment is subject to the following modifications. All of the City’s proposed changes are shown below (See Description of Proposed IP Amendment on page 13 for Table describing proposed amendment change Nos. 1-9 listed below). The City’s proposed IP amendment language changes are shown in single underline and ~~single strikethrough~~. Text added by suggested modification is ***bold, italicized and underlined***, and text suggested to be deleted is shown in ~~double strikethrough~~.

A. City Proposed Amendment Change #1 - New IP Section 21.26.055(V) to create Planned Community PC-59 Lido Villas

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.

SUGGESTED MODIFICATION: Add New Table 21.26-10 Allowed Uses

<u>TABLE 21.26-10 ALLOWED USES</u>	<u>Lido Villas (PC-59)</u>	
	<u>A Allowed</u> <u>= Not Allowed *</u>	
<u>Land Use</u> <u>See Part 7 of this Implementation Plan for land use definitions.</u> <u>See Chapter 21.12 for unlisted uses.</u>	<u>PC-59</u>	<u>Specific Use Regulations</u>
<u>Residential Uses</u>		
<u>Home Occupations</u>	<u>A</u>	
<u>Multi-Unit Dwellings</u>	<u>A</u>	
<u>Visitor Accommodations, Residential</u>		
<u>Short-Term Lodging</u>	<u>A</u>	
<u>Other Uses</u>		
<u>Utilities, Minor</u>	<u>A</u>	
<u>Wireless Telecommunication Facilities</u>	<u>A</u>	<u>Chapter 21.49</u>
<u>Accessory Structures and Uses</u>	<u>A</u>	
<u>Personal Property Sales</u>	<u>A</u>	
<u>Special Events</u>	<u>A</u>	

<u>TABLE 21.26-10 ALLOWED USES</u>	<u>Lido Villas (PC-59)</u> <u>A Allowed</u> <u>= Not Allowed *</u>	
<u>Land Use</u> <u>See Part 7 of this Implementation Plan for land use definitions.</u> <u>See Chapter 21.12 for unlisted uses.</u>	<u>PC-59</u>	<u>Specific Use Regulations</u>
<u>Temporary Uses</u>	<u>A</u>	
<u>* Uses Not Listed. Land uses that are not listed in the table above, or are not shown in a particular coastal zoning district, are not allowed, except as provided by Chapter 21.12 (Interpretation of Implementation Plan Provisions).</u>		

B. City Proposed Amendment Change #2: Revise IP Section 21.30.075(B)(4)(b) – NO SUGGESTED MODIFICATION

b. Landscaped areas shall be maintained in 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 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.

C. City Proposed Amendment Change #3: Revise IP Section 21.50.020, Table 21.50-1 SUGGESTED MODIFICATION: Clarification to Table 21.50-1 Footnote #9

**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
Administrative and Legislative							
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		Determination (3)	Determination (5)	Appeal	Appeal	
Waiver for De Minimis Development	Section 21.52.055	<u>Determination (9)</u>	Determination (3)		Appeal	Appeal (9)	
Permits and Approvals							
Coastal Development Permits	Section 21.52.015		Decision (6)		Appeal	Appeal	Decision (7) Appeal (2)

City of Newport Beach
LCP Amendment No. 3-17 (Major)

Type of Action	Applicable Code Chapter/Section	Role of Review Authority (1)					
		Director	Zoning Administrator	Harbor Resources Manager	Commission	Council (2)	Coastal Commission
Emergency Coastal Development Permits	Section 21.52.025	Decision (3)			Appeal	Appeal	
<p>Notes:</p> <p>(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).</p> <p>(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 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).</p> <p>(3) The Director or Zoning Administrator may defer action and refer the request to the Commission for consideration and final action.</p> <p>(4) The California Coastal Commission is the final decision making authority on amendments to the Local Coastal Program. See Chapter 21.66 (Amendments).</p> <p>(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</p> <p>(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.</p> <p>(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.</p> <p>(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, non-appealable or appealable to the Coastal Commission according to the dispute resolution process in compliance with Section 21.50.050(B).</p> <p>(9) A waiver shall not take effect until after the Director makes his/her report to the City Council. <u>If one-third two members 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).</u></p>							

D. City Proposed Amendment Change #4: Revise IP Section 21.52.015(H)

SUGGESTED MODIFICATION: Correct citation.

H. **Notice of Final Action.** Within ~~five (5)~~ seven calendar 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 to the City. Such notice shall be accompanied by a copy of the exemption, denial, or coastal development permit approval with conditions of approval and written findings and the procedures for appeal of the action to the Coastal Commission.

E. City Proposed Amendment Change #5: Revise IP Section 21.52.035(C)(4)(c)(3)

SUGGESTED MODIFICATION: Correct Citations

4. **Repair and Maintenance.** Repair or maintenance activities, with the exception of the following activities that involve a risk of substantial adverse environmental impacts:
 - a. Any method of repair or maintenance of a seawall revetment, bluff retaining wall, breakwater, groin, culvert, outfall, or similar shoreline work that involves:
 - (1) Repair or maintenance involving substantial alteration of the foundation of the protective work including pilings and other surface or subsurface structures; or
 - (2) The placement, whether temporary or permanent, of rip rap, or artificial berms of sand, or any other form of solid material, on a beach or in coastal waters, streams, wetlands, estuaries, or on shoreline protective works; or
 - (3) The replacement of 20 percent or more of the materials of an existing structure with materials of a different kind; or
 - (4) The presence, whether temporary or permanent, of mechanized construction equipment or construction materials on any sand area or bluff or within 20 feet of coastal waters or streams.
 - b. Any method of routine maintenance dredging that involves:
 - (1) The dredging of 100,000 cubic yards or more within a 12 month period; or
 - (2) The placement of dredged spoils of any quantity within an environmentally sensitive habitat area, or any sand area, or within 50 feet of the edge of a coastal bluff or environmentally sensitive habitat area, or within 20 feet of coastal waters or streams; or
 - (3) The removal, sale, or disposal of dredge spoils of any quantity that would be suitable for beach nourishment in an area the Coastal Commission has declared by resolution to have a critically short sand supply that must be maintained for protection of structures, coastal access or public recreational use.
 - c. Any repair or maintenance to facilities or structures or work located in an environmentally sensitive habitat area, any sand area, within 50 feet of the edge

of a coastal bluff or environmentally sensitive habitat area; or within 20 feet of any coastal waters and streams that include:

- (1) The placement or removal, whether temporary or permanent, of rip rap, rocks, sand or other beach materials or any other forms of solid materials;
 - (2) The presence, whether temporary or permanent, of mechanized equipment or construction materials, except that the use of such equipment solely for routine beach cleaning and park maintenance shall not require a coastal development permit;
 - (3) All repair and maintenance activities governed by subsection ~~(DC)~~ (4) shall be subject to the permit regulations promulgated pursuant to the Coastal Act, including but not limited to the regulations governing administrative and emergency permits. The provisions of subsection ~~(DC)~~(4) shall not be applicable to those activities specifically in the document entitled Repair, Maintenance and Utility Hookups, adopted by the Commission on September 5, 1978 unless a proposed activity will have a risk of substantial adverse impact on public access, environmentally sensitive habitat area, wetlands, or public views to the ocean.
- ~~(3)~~d. Unless destroyed by disaster, the replacement of 50 percent or more of a single-family 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.

In any particular case, even though an improvement falls into one of the classes set forth in subsection (C)(4) above, the Director may, upon finding that the impact of the development on coastal resources or coastal access to be insignificant, waive the requirement of a permit pursuant to Section 21.52.055 (Waiver for De Minimis Development).

F. City Proposed Amendment Change #6: Revise IP Section 21.52.055 – NO SUGGESTED MODIFICATION

F. Report to the City Council. The Director shall report to the City Council at its next available public hearing 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 Community Development 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 ~~one-third~~ two members 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 this chapter.

G. City Proposed Amendment Change #7: New IP Section 21.62.050

SUGGESTED MODIFICATION: Delete text repetition.

Section 21.62.040 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 all 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.

H. City Proposed Amendment Change #8: Revise IP Section 21.64.020(A) – NO SUGGESTED MODIFICATION

21.64.20 – Appeals or Calls for Review

A. **Director.** Interpretations 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).

I. Proposed Amendment Change #9: Revise IP Section 21.64.035(C)(2)

SUGGESTED MODIFICATION: Grammar and Citation corrections

C. **Exhaustion of City Appeals Required.** An applicant or other aggrieved person may appeal a City decision on a Coastal Development Permit application to the Coastal Commission only after exhausting all appeals to the Planning Commission and Council in compliance with this Chapter. Exhaustion of all local appeals shall not apply to any circumstance identified in Code of Regulations Section 13573, including, but not limited to, the following circumstances:

1. An appellant was denied the right of the initial local appeal under this Chapter because City notice and hearing procedures did not comply with Title 14, Division 5.5, Chapter 8, Subchapter 2, Article 17 of the California Code of Regulations; or
2. An appeal of a City decision was filed by two-~~(2)~~ members of the Coastal Commission in compliance with Public Resources Code Section 30625. Notice of a Coastal Commissioners' appeal shall be transmitted to the City in compliance with Title 14 California Code of Regulations Section 13111(d). The ~~City~~ Director may transmit the Commissioners' appeal to the local appellate body (which considers appeals from the local body that rendered the final decisions subject to the Commissioner appeal), and the Commissioners' *appeal* may be suspended pending a decision on the merits by that local appellate body. If the final action by an appellate body modifies or reverses the previous decision, the Coastal Commissioners shall be required to file a new appeal from that decision.

IV. FINDINGS AND DECLARATIONS

A. DESCRIPTION OF THE IP AMENDMENT REQUEST

The City of Newport Beach IP was just recently certified on January 13, 2017. The subject Amendment Request No. 3-17 is basically an “IP Clean-Up” major amendment with nine proposed changes to the IP, seven of which are “clean-up” revisions to seven different IP sections and the addition of two new IP sections described in the table below:

Newport Beach LCP Clean-up Amendments		
No.	IP Section	Description
#1	New IP Section 21.26.055(V)	Add the Lido Villas Planned Community (PC) into the IP including land use and property development regulations. This residential community is already developed. The maximum number of dwelling units permitted is the same as what was allowed under the previous RM Land Use Designation and the height limit is 35-feet per the approved CDP 5-14-0613 issued in 2014. The proposed amendment does not result in any change in intensity of use.
#2	Revise IP Section 21.30.075(B)(4)(b)	Adds exceptions to landscape maintenance standards during water supply shortages.
#3	Revise IP Section 21.50.020 Table 21.50-1	Correction identifying the Community Development Director as the review authority for CDP de minimis waivers and clarifies that the de minimis waiver does not take effect until after it is reported to the City Council.
#4	Revise IP Section 21.52.015(H)	Correction to the time limit for reporting the City’s final action on a CDP from five (5) days to seven (7) days to be consistent with California Code of Regulations Section 13571.
#5	Revise IP Section 21.52.035(C)(4)(c)(3)	Corrects a formatting error by re-numbering the IP Section 21.52.035(C)(4)(c)(3) to IP Section 21.52.035(C)(4)(d).
#6	Revise IP Section 21.52.055	Corrects an ambiguity as to the number of City Council members required to object to a coastal development permit waiver; and corrects a formatting error by renumbering as subsection (F).
#7	New IP Section 21.62.050	Adds new allowance for the Community Development Director to waive the public hearing requirement for coastal development permits involving minor development pursuant to Coastal Act Section 30624.9.
#8	Revise IP Section 21.64.020(A)	Clarifies procedures relating to appeals and calls for review, per Coastal Act Section 30625.
#9	Revise IP Section 21.64.035(C)(2)	Clarifies procedures for appeals to the Coastal Commission.

B. DENY THE IP AMENDMENT REQUEST AS SUBMITTED

The proposed IP amendment is for the most part, a “clean-up” amendment, making seven revisions to correct and or clarify ambiguities in the language of the document, and adding two new IP Sections. The proposed amendment would add Section 21.26.055(V) which would add the Lido Villas Planned Community (PC-59) and outline its land use and property development regulations to the IP, and add new IP Section 21.62.050 which would add a procedure allowing for the Community Development Director to waive the public hearing requirement for coastal development permits involving “minor development” pursuant to Coastal Act Section 30624.9.

The proposed IP amendments do not pertain to specific land use policies of the certified LUP, they mostly pertain to the actual implementation, (i.e, carrying out) of the land use policies of the certified LUP. Thus, the proposed IP amendments correct minor grammatical and scrivener errors, clarify the local permitting process for “minor development” per the Coastal Act regulations, and designate a new Planned Community in the IP. The proposed amendments do not change the uses or the priority of uses allowed in the various coastal zoning districts, or affect any regulation that directly addresses coastal resources or public access. However, some minor suggested modifications are necessary to ensure internal consistency within the IP document by fixing additional minor grammatical and scrivener errors, and correct citations to the Coastal Act or Coastal Commission Regulations. Therefore, the proposed IP amendment as submitted, is not consistent with, and/or does not adequately carry out, the provisions of the LUP, and must be denied pursuant to Section 30513 of the Coastal Act.

C. CERTIFY THE IP AMENDMENT WITH SUGGESTED MODIFICATIONS

In order to be certified by the Commission, the IP amendment must be consistent with, and adequately carry out, the provisions of the Land Use Plan. As the proposed six (6) suggested modifications address the aforementioned issues of serving to provide detail, clarity, and correct numerous reference and enumeration errors, the Commission finds that the City’s Implementation Plan, conforms with and is adequate to carry out the requirements of the certified LUP, consistent with Section 30513 of the Coastal Act.

Applicable LUP Policies – Proposed Addition of Lido Villas Planned Community (PC-59)

The LUP generally requires new development in districts/corridors specifically identified in the LUP to adhere to specific policies for land use type and density/intensity in order to maintain their uniquely identifiable character.

LUP Policy 2.1.3 Development in each district and corridor shall adhere to policies for land use type and density/intensity contained in Table 2.1.1-1, except as modified in Section 2.13 to 2.1.8.

LUP Policy 2.2.1-1 Continue to allow redevelopment and infill development within and adjacent to the existing developed areas in the coastal zone subject to the density and intensity limits and resource protection policies of the Coastal Land Use Plan.

LUP Policy 2.2.2-4 Implement building design and siting regulations to protect coastal resources and public access through height, setback, floor area, lot coverage, building bulk, and other property development standards of the Zoning Code intended to control building placement, height, and bulk.

The Lido Villas is a residential development located on a 1.2 acre parcel at 3303/3355 Via Lido in the City's Lido Village District on the Balboa Peninsula. The LUP describes the Lido Village District as primarily developed with commercial uses including grocery stores, restaurants, salons, home furnishings, apparel, and other specialty shops. It also includes Lido Marina Village, a pedestrian-oriented waterfront development that includes visitor-serving commercial uses, specialty stores, and marine uses. In February 2014, the Commission approved a LUP amendment (LCP-5-NPB-13-0227-1) changing the land use designation on a portion of the subject site from private institution (previous use was a church and parking lot) to Multiple-Unit Residential (RM-D). In 2014, when the Commission approved an LUP amendment changing the designation of the subject property to RM-D, while not a high priority use under the Coastal Act, the Commission made the finding that this change would not result in the reduction of visitor-serving commercial uses, coastal-dependent and coastal-related uses, and lower cost visitor and recreation facilities because the site was not previously zoned for such uses. The change to residential use was found to support nearby higher priority visitor-serving commercial uses, coastal-dependent and coastal-related uses, and lower cost visitor and recreation facilities. Furthermore, in 2012, the Commission had previously approved another LUP amendment changing the land use designations for 3363, 3369 and 3377 Via Lido and 3378 Via Oporto, adjacent to the subject property, from Multiple-Unit Residential (RM) to Mixed-Use Vertical (MU), thereby providing the opportunity for additional higher priority uses in an area where none had previously existed. Thus, overall, the Lido Marina Village area maintains a mix of residential and visitor-serving retail and commercial uses.

On October 9, 2014, the Commission then approved CPD 5-14-0613 for demolition of the 7,176 sq. ft. church structure and a 32,469 sq. ft. three-story commercial office building and construction of 23 townhouses incorporated into five buildings including, one duplex building, one four-plex building, one five-plex building, and two six-plex buildings, consisting of 2- and 3-bedroom units, 46 covered onsite parking spaces [two (2) private parking spaces in each townhouse garage], and 12 guest parking spaces; and 2,483 sq. ft. of open space with landscaping consisting of native or non-native drought tolerant non-invasive species. This development, now constructed, is the Lido Villas Planned Community.

The proposed IP amendment would add new IP Section 21.26.055(V) to incorporate Lido Villas as a Planned Community (PC), PC-59, in the IP and adding land use and property development regulations for the PC. The maximum number of dwelling units permitted is the same as what was allowed under the previous RM District and the height limit is 35-feet per the approved CDP; therefore, this amendment would not result in any change in intensity of use. In addition to the City's proposed new IP Section 21.26.055(V), a Suggested Modification is necessary also identify the allowed uses within PC-59. Therefore, a Suggested Modification is made to add Lido Villas (PC-59) to the end of Table 21.26, creating Table 21.26-10 outlining the allowable residential uses as multi-unit dwellings, home occupations, and short-term rentals plus other allowable uses such as minor utilities, wireless telecom facilities, accessory structures and uses, personal property sales, special events, and temporary uses. No other suggested modifications are required to incorporate PC-59 into the IP. The City's certified Coastal Zoning Map also identifies PCs in the coastal zone, PC-59 is currently identified in the Coastal Zoning map.

Applicable LUP Policies – Proposed Addition of Public Hearing Waiver for Minor Development

LUP Policy 2.2.2-1 After certification of the LCP, require a coastal development permit for all development within the coastal zone, subject to exceptions provided for under the Coastal Act as specified in the LCP.

LUP Policy 2.2.2-2 Incorporate coastal development permit procedures into the implementation plan to ensure that all public and private development in the coastal zone is consistent with the LCP.

The proposed amendment includes addition of a new IP section, Section 21.60.050, that provides a process, in accordance with Section 30624.9 of the Coastal Act allowing for the waiver of public hearing requirement for certain “minor developments” that require coastal development permits. The new section defines “minor development” per the definition provided in Coastal Act Section 30624.9 verbatim. 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.

The Community Development Director may waive the requirement for a public hearing on a Coastal Development Permit application for a minor development, if notice is mailed or delivered to all persons and agencies required to be notified under IP Section 21.62.020(B)(2).

In addition to the required mailed public notice within the project vicinity and to known interested parties, the City also maintains an online case log on its public website listing all planning activities including all CDP applications on file. The online case log provides a project description, type of approval sought (coastal development permit, variance, etc.). Furthermore, the City also publishes a weekly Planning Division Action Report, which lists all actions by the City’s Zoning Administrator and Planning Division staff undertaken without a public hearing. These administrative approvals (e.g., tentative parcel maps, lot line adjustments, lot mergers) are appealable to the City’s Community Development Director.

As proposed by the City, the new IP section language requires the City notice of pending action a CDP for “Minor Development” contain 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. Coastal Act Section 30624.9 on which this new regulation is based, does not specifically state that the notice has to be in writing. It states only that the local government may waive the requirement for a public hearing on a CDP application for minor development only if “No request for public hearing is received by the local government within 15 working days from the date of sending the notice pursuant to paragraph (1).” As proposed, there is an argument that the City’s language is stricter than the statute and would limit public participation. To avoid this possibility, a suggested modification is made to strike out the word *written* from the proposed new regulation language.

The remaining suggested modifications address minor typographical errors.

Conclusion

The proposed six (6) suggested modifications address the aforementioned issues of serving to provide detail, clarity, and correct numerous reference and enumeration errors, the Commission finds that the City's Implementation Plan, conforms with and is adequate to carry out the requirements of the certified LUP, consistent with Section 30513 of the Coastal Act.

D. 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 does conform 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 LCP 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. Therefore, the Commission finds that approval of the LCP Amendment with suggested modifications will not result in significant adverse environmental impacts under the meaning of CEQA. Certification of the LCP if modified as suggested complies with the 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.