

CALIFORNIA COASTAL COMMISSION

SOUTH COAST DISTRICT OFFICE
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W9a

Date: November 4, 2021

To: **COMMISSIONERS AND INTERESTED PERSONS**

From: **KARL SCHWING, DEPUTY DIRECTOR, SOUTH COAST DISTRICT
AMBER DOBSON, DISTRICT MANAGER, SOUTH COAST DISTRICT
AMRITA SPENCER, COASTAL PLANNER, SOUTH COAST DISTRICT**

Subject: **STAFF RECOMMENDATION ON CITY OF NEWPORT BEACH MAJOR
AMENDMENT NO. LCP-5-NPB-20-0025-1 Parts A and B (Cottage
Preservation, and Lido Isle Hedge Heights) for Commission Meeting of
November 19, 2021**

SUMMARY OF LCP AMENDMENT REQUEST

The City of Newport Beach is requesting that the Commission certify an amendment to the Land Use Plan (LUP) and Implementing Plan (IP) portion of the Newport Beach certified Local Coastal Program (LCP). Amendment Request No. LCP-5-NPB-21-0036-1 Parts A and B is a major amendment that would revise the existing regulations in the LUP and IP regarding cottage preservation and maximum hedge heights in Lido Isle. Part A of this LCP amendment would amend LUP Policy 2.9.3-8 and IP Section 21.38.060 to allow additions of up to 50 percent of the existing floor area (but in no case more than 750 sq. ft.) of cottage without the requirement to bring nonconforming parking into conformity with the current parking standards. Part B of the LCP amendment would amend IP Section 21.30-040 to increase the maximum hedge height along Lido Isle stradas (walkways) from 42 in. to 60 in., and would amend IP Section 21.80.010 (Area Maps) to include Map A-10 specifically identifying Lido Isle and the associated stradas in the IP.

The Newport Beach Planning Commission held two public hearings on the Cottage Preservation Element on October 17, 2019, and November 21, 2019. The Newport Beach City Council held a public hearing on January 28, 2020, to initiate the LCP Amendment and on February 11, 2020, adopted City Council Resolution No. 2020-4 authorizing City staff to submit the LCP Amendment to the Coastal Commission (**Exhibit 1**).

The Newport Beach Planning Commission held a public hearing on the Lido Isle Hedge Height on December 5, 2019. The Newport Beach City Council held a public hearing on February 11, 2020 to initiate the LCP Amendment and on February 25, 2020, adopted City

Council Resolution No. 2020-7 authorizing City staff to submit the LCP Amendment to the Coastal Commission (**Exhibit 2**).

Amendment Request No. LCP-5-NPB-21-0025-1 Parts A through Part C (Cottage Preservation, Lido Isle Hedge Heights, and ADUs) was the City's first major LCP amendment submittal in 2020. This report addresses Parts A and B of the submittal. Part C of the submittal is still pending. Parts A and B of City's submittal are consistent with the procedural requirements of the Coastal Act and the regulations which govern such proposals (Sections 30510 and 30514 of the Coastal Act, and Sections 13551, 13552 and 13553 of Title 14 of the California Code of Regulations).

SUMMARY OF STAFF RECOMMENDATION

The subject LCP amendment involves the Land Use Plan (LUP) and Implementation Plan (IP) portions of the certified LCP. With regard to Part A, Staff recommends that the Commission, after public hearing, **approve** Amendment Request No. LCP-5-NPB-20-0025-1 Part A, a combined LUP and IP amendment, **with suggested modifications**. The LUP amendment must first be denied as submitted, then the Commission can approve the LUP amendment if modified as suggested in this staff report. Staff recommends one suggested modification to ensure the proposed changes to existing LUP Policy is adequately protective of public access and coastal resources. **Suggested Modification #1** clarifies that the LCP policies pertaining to coastal views, setbacks, public access, coastal hazards, and sensitive habitat must be applied to minor remodels of cottages whether or not the cottage is permitted to maintain nonconforming parking. Likewise, the Part A IP amendment must first be denied as submitted, then the Commission can approve the IP amendment if modified as suggested in this staff report. Staff recommends six suggested modifications to ensure the proposed changes to existing IP procedures implementing LUP Policies pertaining to public parking and development (detailed below) adequately carry out the intent of the LUP policies regulating residential development, including minor remodels. The amendment must limit the properties that can undertake this addition exception to properties that the City believes fit the "beach cottage" criteria in order to minimize impacts to public parking. Therefore, **Suggested Modification #2** adds a general definition of cottage, which applies throughout the coastal zone, not only on beach-fronting lots, on approximately 1,000 structures based on a City survey. This modification is necessary to limit the properties that can undertake this addition exception to properties that the City believes fit the "beach cottage" criteria. **Suggested Modification #3** adds a new subsection (a) to IP Section 21.38.060(A)(4)(b) to reiterate that existing onsite parking should be maintained with remodel projects. The amendment must also require cottage additions to be protective of public access and coastal resources, consistent with the provisions of the certified LCP. **Suggested Modification #4** expands

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section 21.38.030(A)(4)(b) to include consistency requirements with the bluff overlay district policies, waterfront development policies, shoreline hazardous development policies, public access and recreation policies, habitat protection policies, and scenic and visual quality policies found elsewhere in the IP. **Suggested Modification #5** clarifies that the cottage addition must remain consistent with the prescribed building envelope for cottages. **Suggested Modification #6** limits the occupancy to six for cottage short term rentals (STRs) that utilize the cottage preservation amendment. If a cottage owner wishes to increase the total occupancy beyond six occupants, then the owner must bring the cottage parking into conformity with the current parking standards. **Suggested Modification #7** adds the STR requirements detailed in **Suggested Modification #6** to the deed restriction requirements.

If modified as suggested, the City's IP Ordinances will conform with, and will be adequate to carry out, the requirements of the certified LUP. The resolutions and motions begin on **Page 6**. The suggested modifications begin on **Page 9**. The findings for approval of the LCP amendment, if modified as suggested, begin on **Page 16**.

With regard to Part B, Staff recommends that the Commission, after public hearing, **approve as submitted** Amendment Request No. LCP-5-NPB-20-0025-1 Part B an IP-only amendment. The resolutions and motions are found on **Page 8**. The findings for approval of the LCP amendment as submitted begin on **Page 11**.

ADDITIONAL INFORMATION

PLEASE NOTE THAT THIS WILL BE A VIRTUAL MEETING. As a result of the COVID-19 emergency, California Assembly Bill 361, and the Governor's Executive Orders N-15-21, N-29-20, and N-33-20, this Coastal Commission meeting will occur virtually through video and teleconference. Please see the Coastal Commission's Virtual Hearing Procedures posted on the Coastal Commission's webpage at www.coastal.ca.gov for details on the procedures of this hearing. If you would like to receive a paper copy of the Coastal Commission's Virtual Hearing Procedures, please call 415-904-5202.

Further information on the City of Newport Beach LCP Amendment LCP-5-NPB-20-0025-1 Parts A and B may be obtained from Amrita Spencer, Coastal Program Analyst, at (562) 590-5071. If you wish to comment on the proposed amendment, please do so via regular mail (directed to the South Coast District Office) or email (by emailing southcoast@coastal.ca.gov) by 5pm on Friday, November 12, 2021.

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EXHIBITS

[Exhibit 1 – City of Newport Beach Resolution No. 2020-4](#)
[Exhibit 2- Proposed LUP/IP Amendment: Cottage Preservation](#)

[Exhibit 3 – City of Newport Beach Resolution No. 2020-7](#)
[Exhibit 4- Proposed IP Amendment: Lido Isle Hedge Heights](#)

I. PROCEDURAL ISSUES

A. STANDARD OF REVIEW

The standard of review for the proposed amendment to the LCP Implementing Ordinances (IP), pursuant to Sections 30513 and 30514(b) of the Coastal Act, is that the proposed IP amendments conform with, and are adequate to carry out, the provisions of Newport Beach’s certified Land Use Plan (LUP). The standard of review for the proposed amendment to the LUP is Chapter 3 of the Coastal Act.

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 an LCP amendment prior to submittal to the Commission for review. The Newport Beach Planning Commission held public hearings on the Cottage Preservation Amendment on October 17, 2019, and November 21, 2019. The Newport Beach City Council held a public hearing on January 28, 2020, to initiate the LCP Cottage Preservation Amendment and on February 11, 2020, adopted City Council Resolution No. 2020-4 ([Exhibit 1](#)) authorizing City staff to submit the LCP Amendment to the Coastal Commission.

The Newport Beach Planning Commission held a public hearing on the Lido Isle Hedge Height on December 5, 2019. The Newport Beach City Council held a public hearing on February 11, 2020 to initiate the LCP Amendment and on February 25, 2020, adopted City Council Resolution No. 2020-7 authorizing City staff to submit the LCP Amendment to the Coastal Commission ([Exhibit 3](#)).

All of the local hearings for the Cottage Preservation and Lido Isle Hedge Height amendments 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 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 30517. Here, 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 LCP-5-NPB-20-0025-1 Parts A and B 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. MOTION AND RESOLUTIONS

Following a public hearing, staff recommends the Commission adopt the following resolutions and findings.

A. DENY LUP AMENDMENT LCP-5-NPB-20-0025-1, PART A AS SUBMITTED

Motion I: I move that the Commission certify Implementation Plan Amendment No. LCP-5-NPB-20-0025-1 Part A as submitted by the City of Newport Beach.

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

Resolution to Deny as Submitted:

The Commission hereby denies certification of the Land Use Plan Amendment LCP-5-NPB-20-0025-1, PART A as submitted by the City of Newport Beach and adopts the findings set forth below on the grounds that the amendment does not conform with the policies of Chapter 3 of the Coastal Act. Certification of the Land Use Plan amendment

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would not comply with the California Environmental Quality Act because there are feasible alternatives or mitigation measures which could substantially lessen any significant adverse impact which the Land Use Plan Amendment may have on the environment.

B. CERTIFY LUP AMENDMENT LCP-5-NPB-20-0025-1, PART A WITH SUGGESTED MODIFICATIONS

Motion II: I move that the Commission certify the City of Newport Beach's Implementation Plan Amendment No. LCP-5-NPB-20-0025-1 Part A if modified as suggested in this staff report.

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

Resolution to Certify if Modified:

The Commission hereby certifies the Land Use Plan Amendment LCP-5-NPB-20-0025-1, PART A if modified as suggested and adopts the findings set forth below on the grounds that the amendment conforms with the policies of Chapter 3 of the Coastal Act. Certification of the Land Use Plan amendment as modified 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 LUP on the environment, or 2) there are no feasible alternatives or mitigation measures which could substantially lessen any significant adverse impact which the Land Use Plan Amendment may have on the environment.

C. DENY IP AMENDMENT LCP-5-NPB-20-0025-1, PART A AS SUBMITTED

Motion III: I move that the Commission reject the Implementation Plan Amendment No. LCP-5-NPB-20-0025-1 Part A for the City of Newport Beach as submitted.

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

Resolution to Deny as Submitted:

The Commission hereby denies certification of Amendment No. LCP-5-NPB-20-0025-1 Part A to the Implementation Plan of the City of Newport Beach's certified

LCP as submitted and adopts the findings set forth below on grounds that the Amendment to the Implementation Plan as submitted does not conform with and is not adequate to carry out the provisions of the certified Land Use Plan. Certification of the Amendment to the Implementation Program would not meet the requirements of the California Environmental Quality Act as there are feasible alternatives and mitigation measures that would substantially lessen the significant adverse impacts on the environment that will result from certification of the Amendment to the Implementation Program as submitted.

D. CERTIFY IP AMENDMENT LCP-5-NPB-20-0025-1, PART A WITH SUGGESTED MODIFICATIONS

Motion IV: I move that the Commission certify the Implementation Plan Amendment No. LCP-5-NPB-20-0025-1 Part A to the City of Newport Beach certified LCP if modified as suggested in this staff report.

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

Resolution to Certify if Modified:

The Commission hereby certifies Amendment No. LCP-5-NPB-20-0025-1 Part A 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.

E. CERTIFY IP AMENDMENT LCP-5-NPB-20-0025-1, PART B AS SUBMITTED

Motion V: I move that the Commission reject the Implementation Plan Amendment No. LCP-5-NPB-20-0025-1 Part B for the City of Newport Beach as submitted.

Staff recommends a **NO** vote. Passage of this motion will result in the certification of the IP Amendment with suggested modifications and adoption of the following resolution and

findings. The motion to certify with suggested modifications passes only upon an affirmative vote of the majority of the appointed Commissioners present.

Resolution to Certify as submitted:

The Commission hereby certifies the LCP-5-NPB-20-0025-1, PART B Implementation Program Amendment for the City of Newport Beach as submitted and adopts the findings set forth below on grounds that the Implementation Program conforms with, and is adequate to carry out, the provisions of the certified Land Use Plan, and certification of the Implementation Program will meet the requirements of 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 Program on the environment, or 2) there are no further feasible alternatives or mitigation measures that would substantially lessen any significant adverse impacts on the environment that will result from certification of the Implementation Program.

III. SUGGESTED MODIFICATIONS

Certification of the LCP amendments listed above are subject to the following modifications. The City’s proposed new LCP language is shown as underlined text and language proposed to be deleted is in ~~single strikethrough~~. The Commission’s proposed new text added by suggested modification is shown in **bold and double-underline** and text suggested to be deleted is shown in ~~double strikethrough~~.

Suggested Modifications to LUP Amendment LCP-5-NPB-20-0025-1, Part A

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

Suggested Modification #1 – Modify amended LUP Policy 2.9.3-8 as follows:

2.9.3-8 Continue to require properties with nonconforming parking to provide code-required off-street parking when new uses, alterations, or additions result in increased parking demand. However, additions of up to fifty (50) percent of the existing floor area, but not greater than 750 square feet, of a residential development of three (3) units or less may be allowed without requiring the code-required parking when the project would result in the preservation of the cottage character of the existing development and a building envelope representative of traditional development patterns in the City. **However, the LCP policies pertaining to hazards, setbacks,**

public access, habitat protection, and visual resource protection shall apply to such properties with additions.

Suggested Modifications to IP Amendment LCP-5-NPB-20-0025-1, Part A

The following suggested modifications are necessary to carry out the provisions of the certified IP:

Suggested Modification #2 – Modify amended IP Section 21.38.60(A)(4) as follows:

4. Exception for Cottage Preservation. **For the purposes of eligibility as a “cottage” for this section, the existing development prior to the addition shall consist of either a residential single-unit dwelling, duplex, or triplex, with individual unit sizes of 1,500 square feet or less, and does not exceed one story and sixteen (16) feet in height on the front half of the lot, and does not exceed two stories and twenty-four (24) feet in height on the rear half of the lot.** Notwithstanding the provisions of subsections (A)(1)(b) and (A)(2)(b) of this section, additions of up to fifty (50) percent of the existing floor area of the structure, but no greater than 750 square feet, are permitted for a **cottage** that complies with the following criteria.

Suggested Modification #3 – Modify amended IP Section 21.38.60(A)(4)(b) as follows:

b. The addition shall comply with all applicable development standards and use regulations of this Implementation Plan, **including the coastal resource protection development regulations of Section 21.28.040 (Bluff (B) Overlay District), Section 21.28.050 (Canyon (C) Overlay District), Section 21.30.015(D) (Waterfront Development).** Section

**21.30.015(E)(2) (Development in Shoreline Hazardous Areas),
Section 21.30(A) (Public Access and Recreation), Section
21.30(B) (Habitat Protection), and Section 21.30.100 (Scenic
and Visual Quality Protection):**

Suggested Modification #4– Modify amended IP Section 21.38.60(A)(4)(d) as follows:

d. The height of the residential structure **including the cottage
addition** shall not exceed the following, regardless of roof pitch:

- i. Front half of lot: single story with a maximum height of sixteen (16) feet; and
- ii. Rear half of lot: two story with a maximum height of twenty-four (24) feet;

Suggested Modification #5 – Add IP Section 21.38.60(A)(4)(f) as follows:

**f. In addition to limitations of Section 21.48.115 (Short Term Lodging),
any cottage preservation project used for short-term lodging shall be
restricted to a maximum of six (6) occupants.**

Suggested Modification #6– Modify IP Section 21.38.60(A)(4)(g) as follows:

**g. Deed Restriction and Recordation Required. Prior to the issuance
of a building permit for a cottage preservation project, the property
owner shall record a deed restriction with the Orange County
Recorder’s Office, the form and content of which is satisfactory to the
City Attorney, agreeing to maintain the property consistent with the
limitations specified above for cottage preservation **and the
restrictions on short-term lodging.** The deed restriction document
shall notify future owners of the restriction. This deed restriction shall
remain in effect so long as the cottage preservation project exists on
the property; and [subdivision (g) ends here]**

IV. FINDINGS AND DECLARATIONS – DENIAL OF AMENDMENT NO. LCP-5-NPB-20-0025-1, PART A (COTTAGE PRESERVATION) AS SUBMITTED AND APPROVAL AS MODIFIED

A. LCP AMENDMENT DESCRIPTION- COTTAGE PRESERVATION

This amendment would amend LUP Policy 2.9.3-8 and IP Section 21.38.060 (Nonconforming parking) of the City's LCP to provide additional flexibility to homeowners to remodel and preserve cottages, which tend to be smaller and older homes, compared to new development in the city ([Exhibit 2](#)).

To incentivize the preservation of cottages, the City is proposing to amend the above-referenced LUP Policy and IP section to allow additions of up to 50 percent of the existing floor area or 750 sq. ft to cottages with nonconforming parking. These improvements would allow the cottages to maintain their nonconforming parking, but no existing parking may be removed to make way for cottage improvements or additions.

The proposed new LUP language is as follows:

2.9.3-8 Continue to require properties with nonconforming parking to provide code-required off-street parking when new uses, alterations, or additions result in increased parking demand. However, additions of up to fifty (50) percent of the existing floor area, but not greater than 750 square feet, of a residential development of three (3) units or less may be allowed without requiring the code-required parking when the project would result in the preservation of the cottage character of the existing development and a building envelope representative of traditional development patterns in the City.

The proposed new IP language is as follows:

21.38.060 Nonconforming Parking

A. Residential. Where a residential structure or use is nonconforming only because it does not conform to the off-street parking requirements of this Implementation Plan, the following provisions shall apply:

1. Number of Spaces. A residential development having less than the required number of parking spaces per dwelling unit shall be allowed the following repairs, alterations, and additions:

a. Repair and maintenance, interior alterations, and structural alterations, as provided for in Section [21.38.040\(A\)](#) through (F);

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- b. Additions up to a maximum of ten (10) percent of the existing floor area of the structure as provided in Section 21.38.040(G);
 - c. Any repair, maintenance, or additions shall not result in loss of existing parking spaces; and
 - d. Required parking shall be provided where feasible.
- 2. Dimensions or Type of Parking Spaces. Residential developments that are nonconforming because they do not have the required type of covered or enclosed parking spaces or because amendments to this Implementation Plan have changed the dimensions of required parking spaces subsequent to the original construction of the structure may be altered or expanded as follows:
 - a. All improvements and expansions allowed under subsection (A)(1) of this section;
 - b. Additions larger than those allowed under subsection (A)(1) of this section may be allowed subject to the approval of a coastal development permit.
- 3. Alley Access. Where applicable, residential development involving repairs, alterations, and additions to residential development having less than the required number of parking spaces per dwelling unit shall provide alley access to parking area if it would result in additional public street parking.
- 4. Exception for Cottage Preservation. Notwithstanding the provisions of subsections (A)(1)(b) and (A)(2)(b) of this section, additions of up to fifty (50) percent of the existing floor area of the structure, but no greater than 750 square feet, are permitted for a residential dwelling, duplex, or triplex that comply with the following criteria:
 - a. The floor area of any addition, together with the floor area of the existing structure, shall not exceed the allowed maximum floor area for the coastal zoning district where the property is located;
 - b. The addition shall comply with all applicable development standards and use regulations of this Implementation Plan;

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c. The square footage of residential parking area additions identified below shall be excluded from the allowed expansion under subsection (A)(4), but shall be included as gross floor area;

<u>Required Parking</u>	<u>Maximum Excluded Area</u>
<u>One-car garage</u>	<u>200 square feet</u>
<u>Two-car garage</u>	<u>400 square feet</u>
<u>Three-car garage</u>	<u>600 square feet</u>

d. The height of the residential structure shall not exceed the following, regardless of roof pitch:

- i. Front half of lot: single story with a maximum height of sixteen (16) feet; and
- ii. Rear half of lot: two story with a maximum height of twenty-four (24) feet;

e. The residential structure shall not include a third floor deck;

f. Dwellings within the residential development shall not be rented for periods of less than thirty (30) days;

g. Deed Restriction and Recordation Required. Prior to the issuance of a building permit for a cottage preservation project, the property owner shall record a deed restriction with the Orange County Recorder's Office, the form and content of which is satisfactory to the City Attorney, agreeing to maintain the property consistent with the limitations specified above for cottage preservation and the restrictions on short-term lodging. The deed restriction document shall notify future owners of the restriction. This deed restriction shall remain in effect so long as the cottage preservation project exists on the property; and

h. The addition complies with the limitations of Section 21.38.040(G)(1).

B. CONSISTENCY ANALYSIS

LUP Amendment Request

Under Sections 30512(c) and 30514(b), the Commission shall certify a land use plan amendment that meets the requirements of, and is in conformance with, the Chapter 3 policies of the Coastal Act. The City proposes to add a new policy to the certified LUP Chapter 2 – Land Use Development to allow cottages with nonconforming parking to undertake additions of up to 50 percent of the existing floor area (but in no case more than 750 sq. ft.) without bringing onsite parking into conformance with the city's parking standards.

The applicable Chapter 3 policies are as follows:

Section 30211: Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Section 30240: (a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

Section 30250: (a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. In addition, land divisions, other than leases for agricultural uses, outside existing developed areas shall be permitted only where 50 percent of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of surrounding parcels.

(b) Where feasible, new hazardous industrial development shall be located away from existing developed areas.

(c) Visitor-serving facilities that cannot feasibly be located in existing developed areas shall be located in existing isolated developments or at selected points of attraction for visitors.

Section 30251: The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

Section 30252: The location and amount of new development should maintain and enhance public access to the coast by (1) facilitating the provision or extension of transit service, (2) providing commercial facilities within or adjoining residential development or in other areas that will minimize the use of coastal access roads, (3) providing nonautomobile circulation within the development, (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation, (5) assuring the potential for public transit for high intensity uses such as high-rise office buildings, and by (6) assuring that the recreational needs of new residents will not overload nearby coastal recreation areas by correlating the amount of development with local park acquisition and development plans with the provision of onsite recreational facilities to serve the new development.

Section 30253: New development shall do all of the following:

(a) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.

(b) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of

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protective devices that would substantially alter natural landforms along bluffs and cliffs.

(c) Be consistent with requirements imposed by an air pollution control district or the State Air Resources Board as to each particular development.

The proposed LUP amendment for policy 2.9.3-8 provides that residential structures (up to three units) may undergo minor remodels (less than 50 percent addition to the existing floor area, but no larger than a 750 sq. ft. addition) while maintaining nonconforming parking. The intent of the LUP policy is to encourage the preservation of smaller, older cottages that may not have adequate onsite parking by applying leniency in providing the typically required parking for residential development. However, the LUP amendment, as submitted, is not clear that that the only nonconformity that may be retained (in limited circumstances) is a parking nonconformity. This ambiguity could result in remodel/addition projects that are also deficient with regard to height and setbacks. These deficiencies could present adverse impacts to public views, public access and other coastal resources. These adverse impacts are exacerbated if the site is located in a hazardous area, such as a coastal bluff/canyon lot or an ocean-fronting lot. **Suggested Modification #1** clarifies that the LCP policies pertaining to coastal views, setbacks, public access, coastal hazards, and sensitive habitat must be applied to minor remodels of cottages whether or not the cottage is permitted to maintain nonconforming parking.

IP Amendment Request

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

Relevant LUP Policies

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.

2.2.5-1. Legal nonconforming structures shall be brought into conformity in an equitable, reasonable, and timely manner as rebuilding occurs. Limited renovations that improve the physical quality and character of the buildings may be allowed. Rebuilding after catastrophic damage or destruction due to a natural event, an act of public enemy, or

accident may be allowed in limited circumstances that do not conflict with other policies and of the Coastal Land Use Plan.

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

2.7-1. Continue to maintain appropriate setbacks and density, floor area, and height limits for residential development to protect the character of established neighborhoods and to protect coastal access and coastal resources.

2.8.1-1. Review all applications for new development to determine potential threats from coastal and other hazards.

2.8.1-2. Design and site new development to avoid hazardous areas and minimize risks to life and property from coastal and other hazards.

2.8.1-4. Require new development to assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

2.8.3-1. Require all coastal development permit applications for new development on a beach or on a coastal bluff property subject to wave action to assess the potential for flooding or damage from waves, storm surge, or seiches, through a wave uprush and impact reports prepared by a licensed civil engineer with expertise in coastal processes. The conditions that shall be considered in a wave uprush study are: a seasonally eroded beach combined with long-term (75 years) erosion; high tide conditions, combined with long-term (75 year) projections for sea level rise; storm waves from a 100-year event or a storm that compares to the 1982/83 El Niño event.

2.8.7-3. Require applications for new development, where applicable [i.e., in areas of known or potential geologic or seismic hazards], to include a geologic/soils/geotechnical study that identifies any geologic hazards affecting the proposed project site, any necessary mitigation measures, and contains a statement that the project site is suitable for the proposed development and that the development will be safe from geologic hazard. Require such reports to be signed by a licensed Certified Engineering Geologist or Geotechnical Engineer and subject to review and approval by the City.

2.8.8-2. Site and design new development to avoid fire hazards and the need to extend fuel modification zones into sensitive habitats.

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2.9.3-2. Continue to require new development to provide off-street parking sufficient to serve the approved use in order to minimize impacts to public on-street and off-street parking available for coastal access.

2.9.3-3. Require that all proposed development maintain and enhance public access to the coast by providing adequate parking pursuant to the offstreet parking regulations of the Zoning Code in effect as of October 13, 2005.

2.9.3-5. Continue to require off-street parking in new development to have adequate dimensions, clearances, and access to insure their use.

2.9.3-8. Continue to require properties with nonconforming parking to provide code-required off-street parking when new uses, alterations or additions result in increased parking demand.

2.9.3-9. Approve no application for a modification or waiver of off-street parking requirements that are found to impact public parking available for coastal access.

The City proposes to amend IP Section 21.38.060 (Nonconforming Parking) to permit additions of up to 50 percent of the existing floor area (but in no case more than 750 sq. ft.) of cottages without the requiring onsite parking to be brought into conformity with the current parking standards (2 spaces per residential unit). This exception – which is proposed as a new subsection (4) of IP Section 21.38.060(A) – further provides that the cottage (including the addition) must comply with all applicable development standards in the IP, and must remain within the prescribed building envelope. For the purposes of this proposed section, the residential structure must not exceed one-story (16 ft.) on the front half of the lot, and must not exceed two stories (24 ft.) on the rear half of the lot. This section would apply to a single-unit residential structure, duplex, or triplex. A deed restriction would be required for the additions to ensure the prescribed building envelope is retained and the property owner doesn't subsequently add additional floor area that violates the building envelope. However, the deed restriction would not require the cottage be preserved indefinitely. If a property owner redevelops the property in future, the deed restriction would allow the site to be redeveloped in compliance with all of the LCP development standards in affect at the time (including the parking requirements).

The City has proposed this IP amendment to incentivize the preservation of traditional cottages. The City has observed that cottages (which were mostly constructed prior to passage of the Coastal Act in 1977) do not provide adequate onsite parking consistent with the parking requirements of the LCP. Currently, any proposed additions to residences with nonconforming parking is limited to ten percent of the existing area. This development constraint has led many property owners to demolish the cottages and redevelop their lots with large, three-story residences that maximize the allowable building envelope. The

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approval of this amendment would make it easier for homeowners to undertake renovations and minor additions to their cottages as opposed to redeveloping the site to build a larger residence. Although the cottages would be permitted to maintain their nonconforming parking under this provision, the residences would still be expected to be consistent with all of the other applicable LCP policies to protect public access and coastal resources.

The certified LCP prioritizes the protection of public coastal access, both through structural development standards (i.e. the provision of adequate structural setbacks) and through providing adequate parking to access the coast. LUP policies 2.9.3-2 and 2.9.3.3 require development to provide, maintain, and enhance public coastal access by providing adequate off-street parking. LUP policy 2.9.3-8 requires properties with nonconforming parking to provide code-required off-street parking when new uses, alterations, or additions result in increased parking demand. LUP policy 2.9.3-9 prohibits changes to waivers of off-street parking requirements if the proposed modification or waiver would adversely impact the amount of public parking available for coastal access. The main question raised is whether the proposed amendment to IP Section 21.38.060 would result in an adverse impact to coastal access by limiting the amount of public street parking available to access the coast.

In its IP amendment submittal, the City clarified the extent of existing parking nonconformities for the cottages. Specifically, the City noted that many cottages are nonconforming due to the size of the existing parking spaces, not the number of spaces. A majority of the single-unit dwelling cottages provide two parking spaces, but due to changes in Zoning Code requirements, no longer comply with minimum interior garage dimensions. For instance, the old standard for a 2-car garage was 17 ft. 6 in. wide x 19 ft. deep, whereas the current two-car garage requirement is 20 ft. wide x 20 ft. deep. Therefore, many traditional cottages are now considered nonconforming due to parking requirements and are subject to the current 10 percent addition limitation.

The proposed amendment would only permit cottages to maintain their existing nonconforming parking if additions are limited to less than 50 percent or a maximum of 750 sq. ft. However, the proposed amendment as submitted does not clearly define what a cottage is. Without a clear definition of a cottage, many homeowners could take advantage of the nonconforming parking exception under the auspice of a cottage improvement, applying the incentive to many more properties than the City or Commission intend through a change to the implementation plan, which could increase adverse impacts on public access.

In order to identify the intended scope of the incentive program, the City undertook a GIS survey to identify residential structures that would qualify for the cottage preservation amendment. City staff identified approximately 1,000 structures (including single-unit

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residences, duplexes, and triplexes) that would likely qualify for the cottage preservation program. These structures are typically at least five decades old, do not exceed 1,500 sq. ft. per residential unit, and are largely one-story residences (although some have a second story addition at the rear of the residence). Although the identified cottages have a fairly predictable building envelope, the cottages vary widely with regard to architectural character.

According to the City's findings, the number of residences that are likely to qualify for the proposed IP amendment is a fairly small portion of the approximately 40,000 residential units currently available in Newport Beach and would not likely have a substantive effect on the availability of public street parking for coastal access. However, clarifications to the proposed amendment are needed to identify the scope of the parking requirement exception and minimize impacts to coastal access. **Suggested Modification #2** adds a general definition of cottage based on the City's survey detailed above. This modification is necessary to limit the properties that can undertake this addition exception to properties that the City believes fit the "beach cottage" criteria. **Suggested Modification #3** adds a new subsection (a) to IP Section 21.38.060(A)(4)(b) to reiterate that existing onsite parking should be maintained with remodel projects. This applies to all usable parking, regardless of whether it is conforming. The proposed amendment can only be found consistent with the certified LCP's parking policies if adopted with the Commission's suggested modifications.

Section 21.38.060(A)(4)(b) states that the cottage additions must apply with all applicable development standards found in the implementation plan. However, the amendment, as submitted, is not clear in its requirement for cottage additions to be protective of public access and coastal resources, consistent with the provisions of the certified LCP.

Suggested Modification #4 expands section 21.38.030(A)(4)(b) to include consistency requirements with the bluff overlay district policies, waterfront development policies, shoreline hazardous development policies, public access and recreation policies, habitat protection policies, and scenic and visual quality policies found elsewhere in the IP.

Suggested Modification #5 clarifies that the cottage addition must remain consistent with the prescribed building envelope for cottages.

In its amendment submittal, the City expressed concern that cottage homeowners who operate a cottage as a short-term rental unit (STR) may use the cottage preservation program to increase the total occupancy of their cottage for STRs. The increased guest load could increase street parking demand and impact public access. Therefore, the City's amendment submittal includes a short-term rental restriction for cottages that is enforced through a deed restriction (Section 31.38.030(A)(4)(f)).

While the City's concern regarding the potential of cottage STRs to impact public parking if they are expanded in a manner that increases rental occupancy is valid, the proposed STR restriction would place additional limits on STR allowances in a manner inconsistent with the provisions of the City's recent STR amendments (LCP-5-NPB-20-0070-3 and LCP-5-NPB-21-0036-1, Part C), which the Commission approved in October 2021. Therefore, Suggested Modification #6 proposes a compromise approach to address the City's STR concern without imposing an additional STR restriction. **Suggested Modification #6** limits the occupancy of cottage STRs that utilize the cottage preservation amendment to six occupants. If a cottage owner wishes to increase the total occupancy beyond six occupants, then the owner must bring the cottage parking into conformity with the current parking standards. This would allow cottages which host STRs to be improved consistent with the ordinance, but would prevent them from hosting large numbers of guests who might adversely impact the coastal parking supply. **Suggested Modification #7** adds the STR requirements detailed in **Suggested Modification #6** to the deed restriction requirements.

Overall, the proposed amendment can only be found to be consistent with the LUP public access, development, and sensitive habitat policies if approved with the Commission's suggested modifications detailed above.

V. FINDINGS AND DECLARATIONS FOR APPROVAL OF AMENDMENT NO. LCP-5-NPB-20-0025-1, PART B (LIDO ISLE HEDGE HEIGHTS) AS SUBMITTED

The following findings support the Commission's approval of LCP Amendment No. LCP-5-NPB-20-0025-1, Part B as submitted.

The Commission hereby finds and declares as follows:

A. LCP AMENDMENT DESCRIPTION – LIDO ISLE HEDGE HEIGHTS

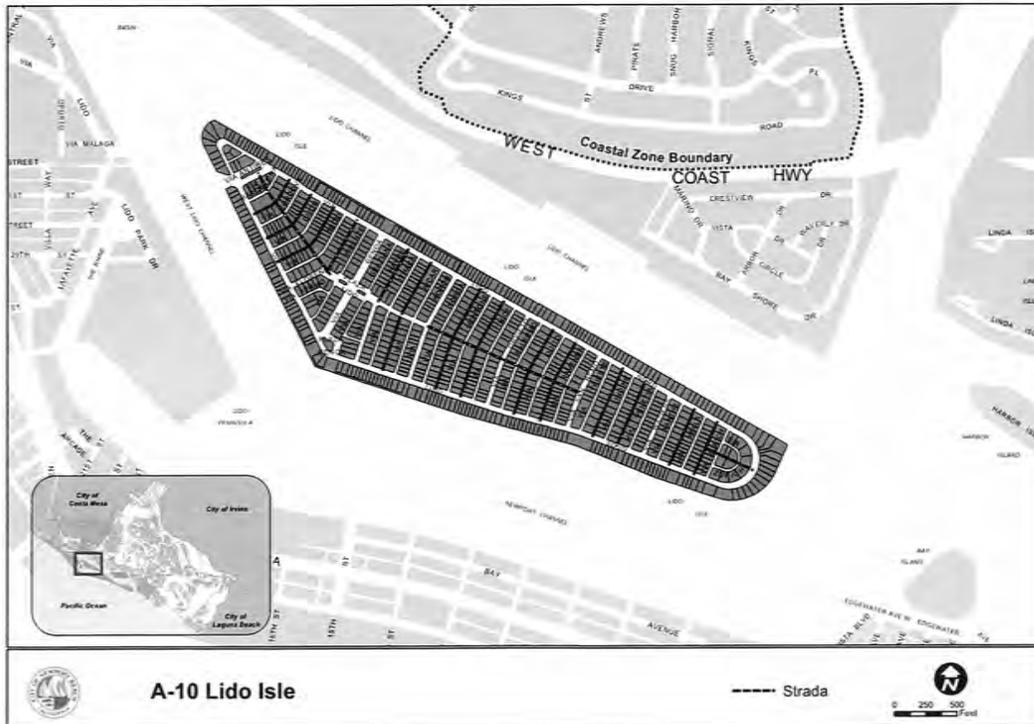
The proposed amendment would add a new subsection (6) to IP Section 21.30.040 (Fences, Hedges, and Retaining Walls). This new subsection would raise the maximum hedge height limitation in front setbacks abutting stradas on Lido Isle from 42 in. to 60 in. Additionally, as the proposed new subsection would only apply to Lido Isle, the amendment would also add a new Area Map A-10 to IP Section 21.80.010 (Area Maps) to identify Lido Isle and the location of the stradas ([Exhibit 4](#)).

The proposed new IP language is as follows:

Section 1: Section 21.30.040(C)(6) (Hedges in Lido Isle) of Title 21 of the NewportBeach Municipal Code is hereby added to read as follows:

6. Hedges in Lido Isle. In front setback areas abutting stradas in Lido Isle, themaximum hedge height shall be five (5) feet.

IP Section 21.80.010 (Area Maps)



A-10 – Lido Isle

B. CONSISTENCY ANALYSIS

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

a subsection (6) to Section 21.30.040(C) to increase the maximum hedge height from 42 in. to 60 in. on Lido Isle only.

Relevant LUP Policies

Policy 2.7.1 Continue to maintain appropriate setbacks and density, floor area, and height limits for residential development to protect the character of established neighborhoods and to protect coastal access and coastal resources.

LUP Policy 2.7.1 requires residential developments to establish and maintain appropriate development standards (including setbacks, height, floor area, and density) to protect neighborhood character, coastal access, and coastal resources.

Lido Isle is a triangular-shaped island community in Newport Bay that is surrounded by water channels on all sides and accessible via a single bridge (Via Lido). The island consists of an isolated residential neighborhood that primarily contains R-1 zoned residential lots. However, Lido Isle also contains some R-M (multi-unit residential) lots, 14 Parks and Recreation lots (which contain public docks, parks, and public tennis courts), and one Private Institution-zoned lot (Lido Isle Yacht Club). Public access to bay waters is available along 13 street ends within the community, where one could launch a kayak or paddleboard; however, there are no recreational ocean-fronting beaches. Lido Isle does not have visitor-serving amenities such as restaurants, shops, or significant recreational opportunities.

Titles 20 and 21 of the City's municipal code (which is not part of the certified LCP) currently establish a hedge height of 42 in. within a required front setback area. In 2001, the Lido Isle Community Association (LICA) amended its Covenants, Conditions, and Restrictions (CC&Rs) to change the hedge height limits within its stradas (or public walkways) from 42 in. to 60 in. The discrepancy between the LICA CC&Rs and the City's code creates a discrepancy that may cause homeowners to incur City violations although their hedge heights may be consistent with their homeowners' association requirements. The proposed amendment to the IP would eliminate the discrepancy between the LICA CC&Rs and the City hedge height regulations within the Lido Isle Stradas. The remainder of Lido Isle would be required to observe the standard hedge height maximum of 42 in.

Lido Isle has two segments of one strada (Strada Centro) that bisects the island across its length. The southeastern segment of Strada Centro runs from Via San Remo to Via Koron. The northwestern segment of Strada Centro runs from Via Florence to Via Antibes. The strada areas are developed with an approximately 10-ft. wide public sidewalk and landscaping. The strada is surrounded on either side by residences. Neither of the strada segments connects directly to the bay, so the stradas do not provide direct coastal access.

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The proposed IP amendment to increase the hedge height along the Lido Isle stradas would not adversely impact coastal resources. The proposed 60-in. height limit would not cause any changes to residential structures, including height or structural setbacks. As mentioned earlier, the 10-ft. wide stradas do not provide direct public access to Newport Bay. Moreover, the stradas do not provide public views of Newport Bay. Therefore, the proposed amendment would not result in adverse impacts to public views or public access. Because the stradas are located within an urbanized neighborhood, and are not adjacent to sensitive habitat areas, the amendment would not adversely impact sensitive coastal resources. Finally, increasing the hedge heights from 42 in. to 60 in. is not expected to have any substantive impact on the neighborhood character of Lido Isle.

Conclusion

As submitted, the proposed 60-in. maximum height for Lido Isle strada hedge heights conform with and are adequate to carry out LUP Policy 2.7-1, which requires development in residential areas (such as Lido Isle) to protect coastal access and coastal resources. Thus, the Commission finds that the City's IP would conform with, and is adequate to carry out, the requirements of the certified LUP, as approved herein, consistent with Section 30513 of the Coastal Act.

C. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

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

The Commission finds that, for the reasons discussed in this report, the proposed IP amendment Part B, as submitted, is in conformity with and adequate to carry out the land use policies of the certified LUP.

The Commission finds that, for the reasons discussed in this report, the proposed IP amendment Part A, with adoption of the suggested modifications listed in Section III of this

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