

CALIFORNIA COASTAL COMMISSION

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F8a

Date: August 19, 2021

To: COMMISSIONERS AND INTERESTED PERSONS

From: KARL SCHWING, DEPUTY DIRECTOR, SOUTH COAST DISTRICT
AMBER DOBSON, DISTRICT MANAGER, SOUTH COAST DISTRICT
LILIANA ROMAN, COASTAL PLANNER, SOUTH COAST DISTRICT

Subject: STAFF RECOMMENDATION ON CITY OF NEWPORT BEACH MAJOR
AMENDMENT NO. LCP-5-NPB-20-0036-1 Part D (Transfer of Development
Rights) for Commission Meeting of September 9, 2021

SUMMARY OF LCP AMENDMENT REQUEST

The City of Newport Beach is requesting that the Commission certify an amendment to both the Land Use Plan (LUP) and the Implementing Plan (IP) portions of the Newport Beach certified Local Coastal Program (LCP). Amendment Request No. LCP-5-NPB-21-0036-1 Part D is a major amendment that would incorporate new provisions and regulations in the LUP and IP. The LCP amendment will add Policy 2.1.1-2 to Chapter 2 (Land Use and Development) of the LUP portion of the LCP to allow for the Transfer of Development Rights (TDR) from a property to one or more other properties and adds a new Chapter to the IP, Chapter 21.46.010 (Transfer of Development Rights) to incorporate procedures for the implementation of any potential transfer of development rights.

The Coastal Commission certified the City of Newport Beach LCP on January 13, 2017. The City's General Plan Land Use Element already contains a citywide TDR program that provides for the transfer of developments subject to certain parameters and City Council review. However, TDR provisions were not included in the adopted LCP. Thus, to avoid any ambiguity and provide clear authority to allow TDRs in the coastal zone, Amendment Request No. 2-19 would incorporate such new provisions and regulations in the LUP and IP.

The Newport Beach Planning Commission held a public hearing on August 22, 2019 and recommended approval of the proposed amendments to the City Council. The Newport Beach City Council held a public hearing on October 8, 2019 and passed City Council Resolution No. 2019-90 (**Exhibit 1**) authorizing City staff to submit the LCP amendment to the Coastal Commission. This subject LCP Amendment request was first submitted to the

Coastal Commission on October 30, 2019 and a staff report and recommendation was prepared for the Commission's December 9, 2020 meeting; however, the City withdrew the amendment request prior to Commission action. The City re-submitted the same LCP amendment request on April 29, 2021 as part of a four-part LCP amendment request. Amendment Request No. LCP-5-NPB-21-0036-1 Part A through Part D was filed complete on June 8, 2021 and is the City's first major LCP amendment submittal for this year. Pursuant to Section 30517 of the Coastal Act, the Commission granted a one-year time extension for Part C and Part D at its July 7, 2021 meeting. This report addresses Part D of the submittal. The City's submittal is consistent with the procedural requirements of the Coastal Act and the regulations which govern such submittals (Sections 30510, 30512, 30513, and 30514 of the Coastal Act, and Sections 13551, 13552 and 13553 of Title 14 of the California Code of Regulations).

SUMMARY OF STAFF RECOMMENDATION

The subject LCP amendment involves both the Land Use Plan (LUP) and Implementation Plan (IP) portions of the certified LCP. Staff recommends that the Commission, after public hearing, **approve** Amendment Request No. LCP-5-NPB-21-0036-1 Part D **with suggested modifications**. First, both the LUP and IP amendments must be denied as submitted. Then the Commission can approve both the LUP and IP amendments if modified as suggested in this staff report. Suggested modifications are necessary to ensure that the LUP is consistent with the requirements of the Coastal Act and the IP is consistent with the certified LUP, as modified herein.

One (1) suggested modification to the proposed new LUP Policy 2.1.1-2 is to clarify that the transfer of development rights may only occur within the same Statistical Areas (a Statistical Areas is a pre-established geographical area which the City uses to track density and development capacity); four (4) suggested modifications to the IP portion of the LCP are necessary to ensure the proposed new IP procedures implementing a TDR program adequately implement LUP policies that to give priority to visitor-serving commercial recreational facilities (Policy 2.31-3); protect special communities and neighborhoods which, because of their unique characteristics, are popular visitor destination points for recreational uses (Policy 2.3.1-5); allow the re-use of properties that assure coastal-dependent uses remain (Policy 2.4.1-3); and to avoid impacts to existing coastal-dependent and coastal-related developments (Policy 2.4.1-4); and finally, the suggested modifications add language to clarify that the required public benefit from the TDR donor site shall be specific to the coastal zone, such as incentivization of adaptive strategies for coastal hazards such as planned retreat due to sea level rise threats, provision of new or expanded public access, habitat restoration, and visitor-serving amenities above what is already required by the LCP.

The City is in agreement with the staff recommendation. If modified as suggested, the Commission finds that the City's LUP meets the requirements of, and is in conformity with, the Chapter 3 policies of the Coastal Act, and that the City's IP Ordinances conform with, and are adequate to carry out, the requirements of the certified LUP. The resolutions and motions begin on **Page 5**. The suggested modifications begin on **Page 7**. The findings for approval of the LCP amendment, if modified, begin on **Page 9**.

DEADLINE FOR COMMISSION ACTION: The submittal of LCP-5-NPB-21-0036-1 Part A through Part D was received on April 29, 2021 and was filed complete on June 8, 2021. The subject staff report and recommendation is for Part D of the submittal. Pursuant to Sections 30512, 30513 and 30514 of the Coastal Act, an LCP amendment that includes changes to both the LUP and IP portions of a certified LCP must be scheduled for a public hearing within ninety (90) working days of a complete submittal (90 working days from June 8th is October 18, 2021). Furthermore, pursuant to Coastal Act Section 30517, the City agreed to a one-year extension to this deadline. Accordingly, the Commission must act on this LCP amendment request on or before October 18, 2022.

ADDITIONAL INFORMATION

PLEASE NOTE THAT THIS WILL BE A VIRTUAL MEETING. As a result of the COVID-19 emergency and the Governor's Executive Orders 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-21-0036-1 Part D may be obtained from Liliana Roman, 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, September 3, 2021.

TABLE OF CONTENTS

SUMMARY OF LCP AMENDMENT REQUEST	1
SUMMARY OF STAFF RECOMMENDATION	2
I. PROCEDURAL ISSUES.....	5
A. STANDARD OF REVIEW	5
B. PUBLIC PARTICIPATION.....	5
C. PROCEDURAL REQUIREMENTS	5
D. DEADLINE FOR COMMISSION ACTION	6
II. MOTION AND RESOLUTIONS	6
A. DENY THE LUP AMENDMENT AS SUBMITTED.....	6
B. CERTIFY THE LUP AMENDMENT WITH SUGGESTED MODIFICATIONS	7
C. DENY THE IP AMENDMENT AS SUBMITTED	7
D. CERTIFY THE IP AMENDMENT WITH SUGGESTED MODIFICATIONS	8
III. SUGGESTED MODIFICATIONS	9
IV. FINDINGS AND DECLARATIONS FOR DENIAL AS SUBMITTED, AND APPROVAL OF THE AMENDMENT IF MODIFIED AS SUGGESTED ..	11
A. LCP AMENDMENT DESCRIPTION.....	12
B. CONSISTENCY ANALYSIS.....	15
C. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA).....	22

EXHIBITS

Exhibit 1 – City of Newport Beach Resolution No. 2019-90

I. PROCEDURAL ISSUES

A. STANDARD OF REVIEW

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

B. PUBLIC PARTICIPATION

Section 30503 of the Coastal Act requires public input in LCP development. It states: “During the preparation, approval, certification, and amendment of any LCP, the public, as well as all affected governmental agencies, including special districts, shall be provided maximum opportunities to participate. Prior to submission of an LCP for approval, local governments shall hold a public hearing or hearings on that portion of the program, which has not been subjected to public hearings within four years of such submission.” The City held a Planning Commission meeting on August 22, 2019 and a City Council meeting on October 8, 2019 with regard to the subject amendment request. All of those local hearings were duly noticed to the public. Notice of this subject LCP 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 30519. 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-21-0036-1 is legally adequate. If the City does not accept the suggested modifications within six months of the Commission’s action, then the LCP amendment remains uncertified and not effective within the coastal zone.

D. DEADLINE FOR COMMISSION ACTION

The City submitted the subject LCP amendment request on April 29, 2021. After a request for additional information, Commission staff deemed the submission to be complete on June 8, 2021. Pursuant to Sections 30512, 30513 and 30514 of the Coastal Act, an LCP amendment that includes changes to both the LUP and IP portions of a certified LCP must be scheduled for a public hearing within ninety (90) working days of a complete submittal (90 working days from June 8th is October 18, 2021). Pursuant to Coastal Act Section 30517, the Commission granted a one-year extension at its July 7, 2021 meeting. As such, the deadline for Commission action on this item is October 18, 2022.

II. MOTION AND RESOLUTIONS

Following a public hearing, staff recommends the Commission adopt the following resolutions and findings. The appropriate motion to introduce the resolution and a staff recommendation are provided just prior to each resolution.

A. DENY THE LUP AMENDMENT AS SUBMITTED

Motion I: *I move that the Commission **certify** the Land Use Plan Amendment No. LCP-5-NPB-21-0036-1 Part D for the City of Newport Beach as submitted.*

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

Resolution to Deny the LUP Amendment as Submitted:

The Commission hereby denies certification of Land Use Plan Amendment No. LCP-5-NPB-21-0036-1 Part D as submitted by the City of Newport Beach and adopts the findings set forth below on grounds that the amendment does not meet the requirements of, and is not in conformity with, the policies of Chapter 3 of the Coastal Act. Certification of the Land Use Plan Amendment would not comply with

the California Environmental Quality Act because there are feasible alternatives or mitigation measures which could substantially lessen any significant adverse impact which the Land Use Plan Amendment may have on the environment.

B. CERTIFY THE LUP AMENDMENT WITH SUGGESTED MODIFICATIONS

Motion II: *I move that the Commission certify Land Use Plan Amendment No. LCP-5-NPB-21-0036-1 Part D to the City of Newport Beach certified LCP if modified as suggested in this staff report.*

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

Resolution to Certify if Modified:

The Commission hereby certifies Amendment No. LCP-5-NPB-21-0036-1 Part D to the Land Use Plan for the City of Newport Beach certified LCP if modified as suggested and adopts the findings set forth below on grounds that the Land Use Plan Amendment with the suggested modifications will meet the requirements of and be in conformity with the policies of Chapter 3 of the Coastal Act. Certification of the Land Use Plan Amendment if modified as suggested complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the plan on the environment, or 2) there are no further feasible alternatives and mitigation measures that would substantially lessen any significant adverse impacts which the Land Use Plan Amendment may have on the environment.

C. DENY THE IP AMENDMENT AS SUBMITTED

Motion III: *I move that the Commission reject the Implementation Plan Amendment No. LCP-5-NPB-21-0036-1 Part D 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-21-0036-1 Part D to the Implementation Plan for the City of Newport Beach certified LCP as submitted by the City of Newport Beach and adopts the findings set forth below on grounds that the Amendment to the Implementation Plan as submitted does not conform with and is not adequate to carry out the provisions of the certified Land Use Plan. Certification of the Amendment to the Implementation Program would not meet the requirements of the California Environmental Quality Act as there are feasible alternatives and mitigation measures that would substantially lessen the significant adverse impacts on the environment that will result from certification of the Amendment to the Implementation Program as submitted.

D. CERTIFY THE IP AMENDMENT WITH SUGGESTED MODIFICATIONS

Motion IV: *I move that the Commission certify the Implementation Plan Amendment No. LCP-5-NPB-21-0036-1 Part D 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-21-0036-1 Part D to the Implementation Plan for the City of Newport Beach certified LCP if modified as suggested and adopts the findings set forth below on grounds that the Amendment to the Implementation Plan with the suggested modifications will be in conformance with and adequate to carry out the provisions of the certified Land Use Plan as amended. Certification of the Amendment to the Implementation Program if modified as suggested complies with the California Environmental Quality Act, because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the Implementation Plan on the environment, or 2) there are no further feasible alternatives and mitigation measures that would substantially lessen any significant adverse impacts on the environment.

III. SUGGESTED MODIFICATIONS

Certification of the LCP amendment is subject to the following modifications. The City's proposed new LUP Policy 2.1.1-2, new IP Chapter 21.46, and new Area Map A-15 – Newport Center are included as **Exhibit #1**. All new language is proposed to be added to the LUP and to the IP. No changes are proposed to existing certified language. The City's proposed new LCP language is shown as regular text. The Commission's proposed new text added by suggested modification is shown **bold and underlined**, and text suggested to be deleted is shown in ~~strike through~~.

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

Suggested Modification #1 – Modify the proposed LUP Policy 2.1.1-2 as follows:

2.1.1-2 Permit the transfer of development rights from a property to one or more other properties **within the same Statistical Area per the General Plan** when the transfer does not result in adverse traffic impacts, results in development that is compatible with surrounding development, and is implemented in a manner consistent with the LCP and applicable policies from Chapter 3 of the Coastal Act.

Suggested Modification #2 – Modify proposed new IP Section 21.46.010 (Purpose) as follows:

This chapter provides procedures for the transfer of development rights from a property to one or more other properties **within the same Statistical Area**.

Suggested Modification #3 – Modify proposed new IP Section 21.46.030 (General Requirements) to add a section addressing a proposed transfer request involving the transfer of development rights/development intensity from a non-residential use to residential use.

- A. Floor Area for a Donor Site. The maximum gross floor area allowed on a donor site shall be reduced by the amount of the transfer of development intensity to the receiving site.

- B. Residential Uses. When the transfer of development rights involve residential units, the transfer shall be on a unit-for-unit basis.
- C. **Prohibited Areas. The transfer of development rights from a site with a Visitor Serving Commercial (CV) coastal zoning district designation shall be prohibited.**

Suggested Modification #4 – Modify proposed new IP Section 21.46.050(A) regarding required findings for approval.

- A. The reduced density/intensity on the donor site provides benefits to the City, **including, but not limited to** ~~for example:~~
 - 1. The provision of extraordinary open space, **area(s) for new or expanded habitat restoration,** public view corridor(s), **public coastal access,** increased parking, or other **visitor-serving amenities, in addition to what is already required by the LCP;**
 - 2. Preservation of **natural resources,** a historic building, or a property **with special character-defining features that contribute to the visual qualities and special community character of areas such as Balboa Village or McFadden Square, that, because of their unique characteristics are popular visitor serving areas;** ~~or natural resources;~~
 - 3. Improvement of the area's scale and development character;
 - 4. Reduction of local vehicle trips and traffic congestion; ~~and~~
 - 5. More efficient use of land, **such as consolidation of lots to achieve a greater visitor-serving use, or a better architectural design than could be achieved without lot consolidation;**
 - 6. **Dedication or use of existing or proposed private parking lots for public use/access to the coast;**
 - 7. **Preservation of marine-dependent uses and industries such as shipyards and boat storage facilities;**
and

8. Incentivize planned retreat and dedication of open space as an adaptive strategy for coastal hazards, such as sea level rise.

Suggested Modification #5 – Modify proposed new IP Section 21.46.050(D) and (E) regarding required findings for approval.

- B. The transfer of development rights will not result in any adverse traffic impacts and would not result in greater intensity than development allowed without the transfer, and the proposed uses and physical improvements would not lend themselves to conversion to higher traffic generating uses;
- C. The increased development potential transferred to the receiving site will be compatible and in scale with surrounding development and will not create abrupt changes in scale or character;
- D. The receiving site is physically suitable for the development proposed taking into consideration adjacent circulation patterns, protection of significant public views and open space, and site characteristics, including **coastal hazard risks**, any slopes, submerged areas, and sensitive resources; and
- E. The transfer of development rights decision is consistent with the Coastal Land Use Plan **policies** and does not ~~negatively~~ **result in any significant adverse** impact **to coastal resources including** public access, public views, or sensitive ~~coastal~~ **biological** resources.

IV. FINDINGS AND DECLARATIONS FOR DENIAL AS SUBMITTED, AND APPROVAL OF THE AMENDMENT IF MODIFIED AS SUGGESTED

The following findings support the Commission's denial of the proposed LCP Amendment as submitted and approval if modified as suggested in Section III (Suggested Modifications) above.

The Commission hereby finds and declares as follows:

A. LCP AMENDMENT DESCRIPTION

LUP Amendment Request

The subject Amendment Request No. LCP-5-NPB-21-0036-1 Part D would add a new LUP policy pertaining to the transfer of development rights, as follows:

Policy 2.1.1-2 Permit the transfer of development rights from a property to one or more other properties when the transfer does not result in adverse traffic impacts, results in development that is compatible with surrounding development, and is implemented in a manner consistent with the LCP and applicable policies from Chapter 3 of the Coastal Act.

This new LUP policy would allow the City to implement a “Transfer of Development Rights” (TDR) program in the coastal zone through an IP amendment. A TDR program is a zoning technique that may be used for growth management by redirecting development that would otherwise occur on a “donor” parcel and transfer those development rights to another “receiving” parcel.

IP Amendment Request

The subject Amendment Request No. 2-19 would also amend the IP to add a new map to IP Section 21.80.010 (Area Maps) to include Area Map A-15 – Newport Center and would add a new chapter to the IP, Chapter 21.46 (Transfer of Development Rights) to incorporate a TDR program as follows:

Chapter 21.46 - TRANSFER OF DEVELOPMENT RIGHTS

Sections:

- 21.46.010 Purpose.
- 21.46.020 Applicability.
- 21.46.030 General Requirements.
- 21.46.040 Procedures.
- 21.46.050 Findings.

21.46.010 Purpose.

This chapter provides procedures for the transfer of development rights from a property to one or more other properties.

21.46.020 Applicability.

The provisions of this chapter shall apply within all coastal zoning districts.

21.46.030 General Requirements.

City of Newport Beach LCP Amendment No.
LCPA 5-NPB-21-0036-1
(Part D – Transfer of Development Rights)

- A. Floor Area for a Donor Site. The maximum gross floor area allowed on a donor site shall be reduced by the amount of the transfer of development intensity to the receiving site.
- B. Residential Uses. When the transfer of development rights involve residential units, the transfer shall be on a unit-for-unit basis.

21.46.040 Procedures.

The following procedure shall be used for the transfer of development rights:

- A. Application. The applicant shall submit a Coastal Development Permit application to the Department that identifies the quantity of development (e.g., residential units, floor area, hotel rooms, theater seats, etc.) to be relocated and the donor and receiving site(s). If the requested transfer includes the conversion of nonresidential uses, the application shall also identify the quantity of entitlement, by use category, before and after the transfer. The Coastal Development Permit shall be processed in accordance with Chapters 21.50 and 21.52.
- B. Traffic Analysis. The Traffic Engineer shall perform a traffic analysis to determine the total number of p.m. peak hour trips that would be generated by development allowed with and without the transfer. Trip generation rates shall be based on standard trip generation values in the current version of the Institute of Traffic Engineers "Trip Generation," unless the Traffic Engineer determines that other rates are more valid for the uses involved in the transfer.
- C. Detailed Traffic Analysis. Depending on the location of the donor and receiving site(s), the Traffic Engineer may determine that a more detailed traffic analysis is required to determine whether adverse traffic impacts will result from the transfer. This analysis shall demonstrate whether allowed development, with and without the transfer, would either cause or make worse an unsatisfactory level of service at any primary intersections for which there is no feasible mitigation.
- D. Land Use Intensity Analysis. If the transfer request involves the conversion of uses, the Director shall perform a land use intensity analysis to determine

the floor area that could be developed with and without the transfer.

- E. Council to Consider. Applications for transfer of development rights shall be considered by the Commission with a recommendation to the Council. The Council may approve a transfer of development rights only if it makes all of the findings in Section 21.46.050.
- F. Legal Assurances. A covenant or other legally binding agreement approved by the City Attorney shall be recorded against the donor site assuring that all of the requirements of the transfer of development rights will be met by the current and future property owners.

21.46.050 Findings.

When approving a coastal development permit authorizing a transfer of development rights in Newport Center, the Council shall only make findings set forth in (B) and (E) below. In all other areas, the Council shall make all of the following findings:

A. The reduced density/intensity on the donor site provides benefits to the City, for example:

1. The provision of extraordinary open space, public view corridor(s), increased parking, or other amenities;
 2. Preservation of a historic building or property, or natural resources;
 3. Improvement of the area's scale and development character;
 4. Reduction of local vehicle trips and traffic congestion; and
 5. More efficient use of land.
- B. The transfer of development rights will not result in any adverse traffic impacts and would not result in greater intensity than development allowed without the transfer, and the proposed uses and physical improvements would not lend themselves to conversion to higher traffic generating uses;
- C. The increased development potential transferred to the receiving site will be compatible and in scale with surrounding development and will not create abrupt changes in scale or character;

- D. The receiving site is physically suitable for the development proposed taking into consideration adjacent circulation patterns, protection of significant public views and open space, and site characteristics, including any slopes, submerged areas, and sensitive resources; and
- E. The transfer of development rights decision is consistent with the Coastal Land Use Plan and does not negatively impact public access, public views, or sensitive coastal resources.

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 the “Transfer of Development Rights” (TDR) in the coastal zone. A TDR is a zoning technique that may be used for growth management by redirecting development that would otherwise occur on a parcel and transferring those development rights to another parcel, thereby allowing an increase in the density or intensity of development at the receiving site. The additional building potential at the receiving site could be in the form of an additional building, additional height, or additional density, while the donor site would be limited in its building potential.

Currently, the City has a TDR program in place via a General Plan policy and implemented through its Municipal Code. However, TDR provisions were not included in the adopted LCP. The City proposes to add a new policy to the LUP in order to allow a TDR program to be added to the IP portion of the certified LCP. The proposed new LUP Policy 2.1.1-2 reads:

“Permit the transfer of development rights from a property to one or more other properties when the transfer does not result in adverse traffic impacts, results in development that is compatible with surrounding development, and is implemented in a manner consistent with the LCP and applicable policies from Chapter 3 of the Coastal Act.”

The applicable Chapter 3 policies are:

Section 30253(e) of the Coastal Act:

New development shall do all of the following:

[...]

(e) Where appropriate, protect special communities and neighborhoods that, because of their unique characteristics, are popular visitor destination points for recreational uses.

Section 30222 of the Coastal Act:

The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.

The proposed new LUP Policy 2.1.1-2 includes the wording “implemented in a manner consistent with the LCP and applicable policies from Chapter 3 of the Coastal Act.” This wording helps ensure that any transfer of development rights is consistent with the Coastal Act. However, the policy is also overly broad in scope as it does not indicate a limit to the TDR donor and receiving areas. As proposed, the policy is unclear whether TDRs would be transferred only within the coastal zone or outside of the coastal zone. The proposed new policy could possibly be inconsistent with Sections 30253(e) and 30222 of the Coastal Act by not protecting community character and priority coastal land uses. **Suggested Modification #1** adds language to clarify that the transfer of development rights may only be permitted from a property to one or more other properties within the same Statistical Area per the General Plan. This is necessary to add specific provisions and limitations to the area where TDRs could be traded. Statistical Areas are geographical areas in the City’s General Plan used to track density and development capacity. As previously stated, the City currently has procedures in place allowing TDRs in the General Plan and Municipal Code. These existing provisions limit TDR transactions to the same Statistical Area. This suggested modification would make the proposed LUP TDR policy consistent with the City’s General Plan TDR policy.

The modification would ensure that development rights are transferred within a given Statistical Area, so each area as a whole will not become denser than planned for in the LCP, thus preserving the community character by avoiding the effect of one area transferring a large amount of development rights to another area – causing one area to vastly exceed the development potential authorized pursuant to the LCP. The modification will still allow transfer of development rights from parcel to parcel within a given smaller neighborhood sized geographical area, maintaining and efficiently allocating development potential within the given area, without overburdening other areas, which is overall the intent of the City’s TDR program. Furthermore, this change to the proposed new LUP policy pertaining to TDRs is necessary to bring the LUP into compliance with Chapter 3 of the Coastal Act, specifically, Section 30222 prioritizing visitor-serving commercial

recreational development and public opportunities for coastal recreation over residential development. Therefore, the Commission finds that only as modified can the amendment to the CLUP to adopt a new policy to allow the transfer of development rights in the coastal zone be found consistent with the Coastal Act.

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 amendments must conform with, and be adequate to carry out, the provisions of the certified LUP (taking into account the proposed LUP amendment as modified).

The subject LCP amendment request would amend the IP to add a new chapter to the IP, Chapter 21.46 (Transfer of Development Rights), to incorporate a TDR program including a statement of purpose, applicability, general requirements, procedures and findings required in order for a proposed development project involving the transfer of development rights to receive a coastal development permit.

The subject LCP amendment request would also amend the IP to add a new map to IP Section 21.80.010 (Area Maps) to include Area Map A-15 – Newport Center. The map simply depicts Newport Center in its entirety (encompassing all of Statistical Area L1) and the coastal zone boundary which bisects it. The existing TDR program for Newport Center was previously approved by the Commission through LUP Amendment No. 1-92 and approval of a Development Agreement between the City of Newport Beach and the Irvine Company involving Corporate Plaza West, Newport Center. Newport Center is bisected by the coastal zone boundary line; half of Newport Center is within the coastal zone and the other half outside. The TDR previously approved by LUP Amendment No. 1-92 transferred development rights from a portion of Newport Center outside the coastal zone, to the portion of Newport Center within the coastal zone. Provisions of this LCP amendment will apply to new TDRs processed by the City of Newport Beach.

LUP Policies Pertaining to General Development

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.

- Policy 2.2.1-2** Require new development to be located in areas with adequate public services or in areas that are capable of having public services extended or expanded without significant adverse effects on coastal resources.
- Policy 2.3.1-3** On land designated for visitor-serving and/or recreational uses, give priority to visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation over other commercial uses, except for agriculture and coastal-dependent industry.
- Policy 2.3.1-5** Protect special communities and neighborhoods which, because of their unique characteristics, are popular visitor destination points for recreational uses
- Policy 2.3.1-7** Give priority to visitor-serving and recreational uses in the mixed-use areas of the Balboa Peninsula, and Balboa Island.
- Policy 2.4.1-3** Discourage re-use of properties that result in the reduction of coastal-dependent commercial uses. Allow the re-use of properties that assure coastal-dependent uses remain, especially in those areas with adequate infrastructure and parcels suitable for redevelopment as an integrated project.
- Policy 2.4.1-4** Design and site new development to avoid impacts to existing coastal-dependent and coastal-related developments. When reviewing proposals for land use changes, give full consideration to the impact on coastal-dependent and coastal-related land uses including not only the proposed change on the subject property, but also the potential to limit existing coastal-dependent and coastal-related land uses on adjacent properties.
- Policy 2.4.1-5** Maintain the Recreational and Marine Commercial (CM) land use category and allow CM uses in the Mixed-Use land use categories (MU-V, MU-H, and MU-W) in areas on or near the bay to encourage a continuation of coastal-dependent and coastal-related uses.

Policy 2.8.6-10 Site and design new structures to avoid the need for shoreline and bluffprotective devices during the economic life of the structure (75 years).

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

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

This IP amendment request, as proposed, would allow the creation of a TDR program that would enable development rights in visitor-serving residential zones to be transferred for rights to develop excess residential density. This could result in a reduction of visitor-servingfacilities and an increase in residential density in visitor-serving zones, inconsistent with numerous policies in the LUP: to give priority to visitor-serving commercial recreational facilities (Policy 2.31-3); protect special communities and neighborhoods which, because oftheir unique characteristics, are popular visitor destination points for recreational uses (Policy 2.3.1-5); allow the re-use of properties that assure coastal-dependent uses remain (Policy 2.4.1-3); and to avoid impacts to existing coastal-dependent and coastal-related developments (Policy 2.4.1-4). Thus, the proposed IP amendment as submitted does not conform with, and/or does not adequately carry out, the policies of the LUP pertaining land use development, public access,and coastal resource protection and must be denied pursuant to Section 30513 of the Coastal Act.

Suggested modifications are necessary to ensure the City’s proposed new IP section pertaining to TDRs is adequate to carry out the LUP. In order to be compliant with LUP policies, additional language is necessary to clarify how a TDR program could be implemented in the coastal zone compliant with certified LUP policies, and ensure that certain CDP findings must first be made determining that the project meets the necessaryTDR requirements and that the TDR donor site provides an adequate benefit to visitors ofthe coastal zone.

Suggested Modification #2

Suggested Modification #2 is needed to clarify that the purpose of this IP Chapter is to provide procedures for the transfer of development rights from a property to one or more other properties within the same Statistical Area. This is necessary to provide consistencywith the citywide TDR program and to ensure that a given

statistical area maintains the amount of density planned for in the LCP, while maintaining and efficiently allocating development potential within the given area.

Suggested Modification #3

As proposed, the new IP section contains general requirements for a development involving a TDR. The section clarifies that transfer of development rights involving residential units would be permitted on a unit-for-unit basis, but it does not address the possibility of a proposed transfer of development rights involving the conversion of uses. For example, a proposed development could involve the conversion and transfer of development rights (density) from a non-residential use to a residential use. This is typical in a TDR program. However, in the coastal zone, development of visitor-serving commercial uses has priority over residential development. Newport Beach LUP Policy 2.3.1-3 gives priority to visitor-serving commercial recreational facilities on land designated for visitor-serving and/or recreational uses. LUP Policies encourage a continuation of coastal-dependent and coastal-related uses (Policy 2.4.1-5); require avoidance of impacts to existing coastal-dependent and coastal-related developments (Policy 2.4.1-4); and give priority to visitor-serving and recreational uses in the mixed-use areas of the Balboa Peninsula and Balboa Island (Policy 2.3.1-7). The City has expressed an interest in the potential to transfer non-residential floor area from one site to another site in order to meet affordable housing requirements. For example, mixed-use coastal zoning districts have a minimum and maximum commercial floor-area-ratio (FAR) limit, and in some cases, developers are unable to build to the maximum FAR due to a lack of area to provide the required parking for the commercial use. The City views this situation as a potential possibility to transfer that unbuildable commercial floor area and convert it to add more density to a residential project at a different site.

The new proposed Section 21.46.020 (Applicability) states that the provisions of this new IP chapter shall apply within all coastal zoning districts. However, to ensure the proposed IP amendment conforms with, and adequately carries out, the aforementioned policies of the LUP which give priority to visitor-serving commercial recreational facilities on land designated for visitor-serving and/or recreational uses, Suggested Modification #3 is necessary to ensure that in no case shall non-residential uses in the Visitor Serving Commercial (CV) Coastal Zoning District be involved in the transfer and conversion to residential uses. The transfer of development rights from a commercial development to another commercial development at a different site could still occur in the CV Coastal Zoning District; however, the conversion of those commercial development rights to residential would not be permitted in the visitor serving commercial district. A transfer request involving the conversion of uses (to enable increased affordable housing or market rate housing) may still occur in all other coastal zoning districts.

Suggested Modifications #4

Suggested Modification #4 modifies Section 21.46.050(A) regarding the required CDP findings for approval of a development requesting a TDR. Section 21.46.050(A) requires that the resulting reduced density/intensity on the donor site provide a benefit or benefits to the City and it includes five (5) types of benefits: 1) The provision of extraordinary open space, public view corridor(s), increased parking, or other amenities; 2) Preservation of a historic building or property, or natural resources; 3) Improvement of the area's scale and development character; 4) Reduction of local vehicle trips and traffic congestion; and 5) More efficient use of land.

The suggested modifications that are included in Suggested Modification #4 are necessary to clarify that the cited examples are a non-exclusive list of potential benefits and for consistency with policies in the LUP to provide new or expanded public access, habitat restoration, and visitor-serving amenities above what is already required by the LCP; to protect, and where feasible enhance the scenic and visual qualities of the coastal zone; the preservation of historic structures; and the preservation of neighborhoods with special community character, that because of their unique characteristics are popular visitor serving areas. Suggested Modification #4 also adds additional examples of potential public benefits at the donor site such as dedication of private parking areas for public use/access to the coast; the preservation of marine-dependent uses, and incentivization of adaptive strategies for coastal hazards such as planned retreat due to sea level rise threats. These suggested modifications add language to clarify the type of public benefits that are specific to the coastal zone that would be required in order to approve a CDP for development involving a TDR request. The CDP required findings must determine that any such proposed project provides these type of benefits.

Suggested Modifications #5

Suggested Modification #5 modifies Section 21.46.050 (D) and (E) regarding the required CDP findings for approval of a development requesting a TDR. Suggested Modification #5 is required to ensure that per LUP Policy 2.8.6-10, coastal hazard risks are taken into consideration for a potential TDR receiving site in the necessary findings for approval of a development project including a TDR request. This suggested modification to Section 21.46.050 (E) is necessary to ensure that the transfer of development rights decision is consistent with the Coastal Land Use Plan policies and does not result in any significant adverse impact to coastal resources including public access, public views, or sensitive coastal biological resources per the LUP policies listed in the beginning of this staff report section.

Conclusion

If approved with the suggested modifications described above, 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 LUP amendment, with adoption of the suggested modifications listed in Section III of this report, is in conformity with the Chapter 3 policies of the Coastal Act. The Commission finds that, for the reasons discussed in this report, the proposed IP amendment, with adoption of the suggested modifications listed in Section III of this report, is in conformity with, and adequate to carry out the land use policies of the certified LUP, as modified by the suggested modifications. 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.