

CALIFORNIA COASTAL COMMISSION

SOUTH COAST DISTRICT OFFICE
301 E. OCEAN BLVD, SUITE 300
LONG BEACH, CA 90802-4325
VOICE (562) 590-5071
FAX (562) 590-5084



W11a

ADDENDUM

DATE: September 6, 2022

TO: Coastal Commissioners and Interested Parties

FROM: South Coast District Staff

SUBJECT: **ADDENDUM TO ITEM W11a, CITY OF NEWPORT BEACH MAJOR AMENDMENT NO. LCP-5-NPB-21-0036-1 Part D (Transfer of Development Rights) for the Commission Meeting of Wednesday, September 7, 2022.**

I. CORRESPONDENCE AND REVISIONS TO THE STAFF REPORT

Staff received a comment letter from Mr. Jim Mosher dated September 2, 2022 related to Item W11a, the City of Newport Beach's Local Coastal Program (LCP) major amendment request for both the Land Use Plan (LUP) and the Implementing Plan (IP) portions of the certified LCP to add Policy 2.1.1-2 to Chapter 2 (Land Use and Development) of the LUP to allow for the Transfer of Development Rights (TDR) from a property to one or more other properties and add 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. Mr. Mosher's letter urges the Commission to deny the amendment with the recommended suggested modifications; the letter is included under the correspondence tab. Commission staff recommends that the Commission incorporate the following responses into the findings included in the August 25, 2022 staff report which aims to address the issues raised in Mr. Mosher's statement of concerns.

Overall, Mr. Mosher opines that this LCP Amendment is unwise and unnecessary because of potential abuse by the City. He cites past examples of City actions such as the City approval of a 159-unit luxury residential tower replacing possible hotel rooms on a Visitor-Serving Commercial designated parcel, providing entitlements for 79 apartment units to San Joaquin Plaza outside of the Coastal Zone through "transfer and conversion" of 79 hotel rooms from the Visitor-Serving Commercial (CV-B) designated Marriott Hotel within the Coastal Zone and another instance when the City "converted" 17 out of 24 tennis courts at the Balboa Bay Tennis Club to entitlements for 17 hotel rooms. If denied as proposed and approved with staff's suggested modifications protecting Visitor-Serving Commercial coastal zoning districts, staff finds the proposed amendment conforms with, and is adequate to carry out, the requirements of the certified LUP.

Mr. Mosher also does not agree with limiting TDRs to within the same Statistical Area since some are partly in the CZ and partly out of the CZ. Again, if denied as proposed and approved with staff's suggested modifications to ensure that the site receiving the additional density/intensity is suitable taking into account coastal hazard risks and that the transfer of development rights from the donor site may serve to incentivize planned retreat and dedication of open space as an adaptive strategy for coastal hazard risks, such as sea level rise, but still within the same region/neighborhood, the LCP amendment conforms with, and is adequate to carry out, the requirements of the certified LUP.

Mr. Mosher comments that a traffic analysis based on peak hour trips seems inconsistent with the State's new focus on vehicle miles traveled. According to the City, trip generation based on peak hour trips is not inconsistent with the State's new focus on encouraging reductions in vehicle miles traveled (VMT). VMT consideration remains as part of an CEQA considerations or required analysis and the City has adopted CEQA guidelines for future projects consistent with State guidelines. A reduction in VMT could be a project benefit that could support a future TDR request; however it is important to note that the City also continues to implement a local traffic analysis ordinance called the Traffic Phasing Ordinance (TPO). The TPO requires consideration traffic impacts utilizing the traditional level of service (LOS) methodology based on peak hour trips. Implementation of the City's TPO is necessary to ensure implementation of the City's Circulation Element and to fund construction of planned future street intersections and roadway segments to improve access for residents, visitors, and businesses. Thus, staff agrees with the City that trip generation based on peak hour trips is not inconsistent with the State's new focus on encouraging reductions in vehicle miles traveled.

Mr. Mosher also expresses disagreement with use of the term "development intensity" in relation to the transfer of development rights, as may not be sufficiently specific. However, Subsection 21.46.030 provides clarification how intensity should be defined for the purposes of these sections, Subsection 21.46.030(A) reads as follows: "Floor Area for a Donor Site. The maximum gross floor area allowed on a donor site shall be reduced by the amount of transfer of development intensity to the receiving site." Intensity as used in this provision is clarified to reflect gross floor area. Furthermore, Subsection 21.46.030(B) reads as follows: "Residential Uses. When the transfer of development rights involves residential units, the transfer shall be on a unit-for-unit basis". In this case dwelling units are the measurement of intensity.

Intensity, as used in Section 21.46.040(D) addresses intensity as used in the possibility of changes in uses. In this case a land use intensity analysis is based on traffic generation, which is the typical method of comparing intensity between different uses. The use of traffic generation to compare intensity is clarified in Finding B of Subsection 21.46.050 which states transfers should not result in additional traffic impacts or higher traffic generating uses. Staff agrees with Mr. Mosher's comment that the City may use any measure of "intensity" to transfer to a receiving site to an equivalent amount of floor area (sq. ft.) to subtract from the donor site; however, ultimately, the City has to make the finding that the decision to transfer development rights is consistent with the Coastal Land Use Plan policies and does not negatively result in any significant adverse impact to sensitive coastal resource areas.

Mr. Mosher states that the subject staff report lacks findings explaining why the proposed new Section 21.43.050(Findings) calls out the Newport Center (Map-A-15) to only require certain findings in order to approve TDRs within Newport Center. In response this concern, Commission staff recommends additional findings as included in the section below.

Additionally, Mr. Mosher raises concern with staff's Suggested Modification #5 to the IP Subsection 21.46.050 (E) adding the term "sensitive coastal resource areas" and deleting "public access, public views, or sensitive coastal resources." In response this concern, Commission staff recommends additional findings in the section below in support of Suggested Modification #5 be included in the staff report.

Lastly, Mr. Mosher does not agree with the wording of staff's Suggested Modification #3. This modification is intended to protect Visitor Serving Commercial (CV) coastal zoning district designated parcels by prohibiting TDRs in CV designated parcels. The City agrees with this suggested modification, however, noted that they could see a benefit to allow TDRs from a CV zoned site to another CV zoned site. The City suggested that the wording of the modification indicate that TDRs from a CV to a non-CV site shall be prohibited. Mr. Mosher's concern is that somehow the wording of this section would allow for the transfer of development rights from the CV to non-CV zoning districts outside the Coastal Zone. In response this concern, Commission staff recommends additional language changes to Suggested Modification #3 included in the staff report. Proposed deleted language is shown in ~~double strikethrough~~ and new proposed language is in double underline to differentiate from the suggested modifications from the staff report which depict deleted language in ~~single strikethrough~~ and new added language in **bold and single underline**

1) On page 9 of the staff report, modify Suggested Modification #3 as follows:

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 to a non-CV coastal zoning district shall be prohibited. The transfer of development rights from a site with a CV coastal zoning district to any area outside the coastal zone is prohibited.**

2) On Page 9 of the staff report, modify Suggested Modification #4 as follows:

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

21.46.050 Findings.

When approving a coastal development permit authorizing a transfer of development rights **within** Newport Center **(Map A-15)**, 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 public benefits to the City, **in furtherance of the goals provisions of the LCP, including, but not limited to for example:**

3) On Page 10 of the staff report, correct a scrivner’s error on Suggested Modification #5 that accidentally deleted the subheading letter E. from Section 21.46.050(E)

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 **“Sensitive Coastal Resource Areas”** and public access, public views, or sensitive coastal resources.

4) On Page 17 of the staff report, add the additional findings regarding the required findings for approval of transfer of development rights specifically with respect to Newport Center.

As proposed, Section 21.46.050(Findings), when approving a CDP authorizing a transfer of development rights in Newport Center, the City shall only make findings that it will not result in any adverse traffic impacts and would not result in greater intensity than development allowed without the transfer; and that the transfer of development rights decision is consistent with the Coastal Land Use Plan. In all other areas outside of Newport Center, the City must make additional findings regarding receiving site’s compatibility and scale with surrounding development, circulation patterns, site characteristics, etc. The difference in the required findings reflects the difference in the City’s existing TDR policies and regulations applicable to Newport Center as compared to the rest of the City. General Plan Land Use Element Policy LU 4.3 (Transfer of Development Rights) establishes the City’s current TDR program and is implemented by Municipal Code Chapter 20.46 (Transfer of Development Rights). The policy does not apply to the Newport Center area of the City that is governed by General Plan Policy 6.14.3 (Transfer of Development Rights).

LU 4.3 Transfer of Development Rights

Permit the transfer of development rights from a property to one or more other properties when:

- a. The donor and receiver sites are within the same Statistical Area.

b. The reduced density/intensity on the donor site provides benefits to the City such as, but not limited to, the (1) provision of extraordinary open space, public visual corridor(s), parking or other amenities; (2) preservation of a historic building or property or natural landscapes; (3) improvement of the area's scale and development character; (4) consolidation of lots to achieve a better architectural design than could be achieved without lot consolidation; and/or (5) reduction of local vehicle trips and traffic congestion;

c. The increment of growth transferred to the receiver site complements and is in scale with surrounding development, complies with community character and design policies contained in this Plan, and does not materially degrade local traffic conditions and environmental quality.

d. Transfer of Development Rights in Newport Center is governed by Policy 6.14.3 (Imp 2.1, 5.1, 10.2)

LU 6.14.3 Transfers of Development Rights

Development rights may be transferred within Newport Center, subject to the approval of the City with the finding that the transfer is consistent with the intent of the General Plan and that the transfer will not result in any adverse traffic impacts. (Imp 2.1)

The City's 2006 General Plan created additional residential and nonresidential development capacity within Newport Center, and due to the area's mixed-use nature, variation in building heights, and small geographical area, the ability to transfer development within the area was always anticipated and the policy was intended to be more flexible.

The proposed LCP Amendment is intended to mirror, to the extent possible, the City's existing TDR provisions, but with added findings to ensure that the TDR is consistent with the Coastal Land Use Plan policies and will not result in impacts to coastal resources.

On the bottom of Page 20 of the staff report, include additional findings as follow in support of Suggested Modification #5

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. The term "Sensitive Coastal Resource Areas" used in this section is defined in the LUP as those identifiable and geographically bounded land and water areas within the coastal zone of vital interest and sensitivity. Sensitivecoastal resource areas include the following:

1. Special marine and land habitat areas, wetlands, lagoons, and estuaries as mapped and designated in Part 4 of the coastal plan.
2. Areas possessing significant recreational value.
3. Highly scenic areas.
4. Archaeological sites referenced in the California Coastline and Recreation Plan or as designated by the State Historic Preservation Officer.
5. Special communities or neighborhoods that are significant visitor destination areas.
6. Areas that provide existing coastal housing or recreational opportunities for low- and moderate-income persons.
7. Areas where divisions of land could substantially impair or restrict coastal access.