

CALIFORNIA COASTAL COMMISSION

301 E. Ocean Blvd. Suite 300
Long Beach, CA 90802
(562) 590-5071



W11a

LCP-5-NPB-21-0036-1, Part D

September 6, 2022

CORRESPONDENCE

- 1. Letter received September 2, 2022 from Jim Mosher**

Date of comment: September 2, 2022

Date of hearing: September 7, 2022

Agenda Item: **W11a-9-2022**

My position: deny

To: Liliana Roman
301 E. Ocean Blvd, Suite 300
Long Beach, CA, 90802-4830

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

Dear Ms. Roman,

Although they appear never to have been posted online, I submitted fairly extensive comments on the identical LCP amendment request when it was before the Coastal Commission as Item W12a in December 2020, but withdrawn. Those comments included reasons I believe the City's request should be viewed with caution.

I continue to think its certification is both unneeded and unwise.

It is unneeded because the changes in land use associated with a TDR can already be accomplished through the more carefully reviewed conventional LCP amendment process.

It is unwise because of its potential for abuse by a city that has taken pride in thumbing its nose at the CCC in areas where it thinks it is safe from CCC oversight, as in the City's recent approval of a CDP for a 22-story, 159-unit luxury residential tower (the Ritz Carlton Residences) replacing hotel rooms on a parcel the LCP reserves for visitor-serving commercial uses (the Newport Center Marriott). Because the property is outside the appeal area, the approval could not be appealed to the CCC even though it was clearly inconsistent with what the CCC and City had designated for the property in the LCP.

In asking to make TDRs something that can be approved by a CDP, the City is effectively asking, outside the appeal area, for permission to amend the LCP however the City likes, without any recourse by the CCC other than litigation filed within 90 days of the City approval.

I do not see how replacing review at a CCC hearing with review by litigation serves the people of California.

Beyond those general reasons for denial, I have these specific comments:

Proposed NBMC Sec. 21.46.010:

Coastal staff proposes inserting "*statistical areas*," which is an improvement, but still needs more thought since some of the City's statistical areas are partly in the coastal zone and partly out. I doubt the CCC wants to pre-authorize transfers of development *into* the coastal zone from an area outside it and never part of the LCP, especially since most of this would be outside the appeal area.

Proposed NBMC Sec. 21.46.030.A: "*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.*"

What the City or CCC staff thinks this mean, or what a judge reviewing it might think this means is completely unknown, which suggests to me it will be a source of great misunderstanding.

The IP (NBMC Sec. 21.70.020) defines “intensity” in extremely vague terms as: *““Intensity” means a relative measure of development impact as defined by physical and operational characteristics (e.g., number of dwelling units per acre, amount of parking required, amount of traffic generated, etc.).”*

It appears the City could use any measure it pleases as the amount of “intensity” transferred to the receiving site, and use a formula of its own invention to translate that into what it claims is some equivalent amount of floor area to subtract from the donor site.

If, instead, it is meant to mean the floor area removed is equal to the floor area transferred, it should say so. If it is meant to mean equal amounts of traffic generated at the two ends, it should say so.

The fact that it avoids a clear statement of how it will be applied is troubling.

Proposed NBMC Sec. 21.46.030.C:

CCC staff proposes prohibiting transfers “a Visitor Serving Commercial (CV) coastal zoning district designation to a non-CV coastal zoning district.

This needs more thought, for I read it as *allowing* transfer to coastal CV allocations to a non-CV district outside the coastal zone. Yet I doubt the CCC wants to allow that.

Proposed NBMC Sec. 21.46.040.B & C:

The traffic analysis based on peak hour trips seems inconsistent with the state’s new focus on vehicle miles travelled.

Proposed NBMC Sec. 21.46.040.D:

This, again, uses the ambiguous word “intensity.”

Proposed NBMC Sec. 21.46.050:

I am unaware of any reason why a transfer in Newport Center should require fewer findings than a transfer in any other statistical area, and I find no explanation in the staff report.

In Subsection A, it is hard to see how providing “benefits to the City” is an appropriate standard for an LCP. Shouldn’t be “benefits to the people of California” – for whose benefit I thought the Coastal Act exists?

I also sense a fundamental difference between City staff and CCC staff as to how the list in Subsection A is to be applied. I believe City staff intends to require *just one* of the listed benefits be provided. It is unclear to me what CCC staff is trying to accomplish with their changed wording. Does CCC staff want to be more liberal in allowing TDR’s that provide none of the benefits identified by the City? Or does it want to see one or more of the new benefits it has added in addition to one or more of those previously listed by City staff?

In other words, if certified as written by CCC staff, will it mean just one in the long list of possible benefits has to be provided? Or more than one? If more than one, how many?

In CCC staff's recommended modification to Subsection E (bottom of staff report page 10), the letter "E" appears to be recommended for deletion. I don't know why. I also don't understand why CCC staff wants to eliminate denial based on adverse impacts to "*public access, public views*" (top line of staff report page 11). How is it possible that weakening this protection is necessary to make the proposal consistent with the Coastal Act? **Crossing out "*public access, public views*" on pages 10-11 seems completely inconsistent with the explanation of Modification #5 on staff report page 20.**

And Suggested Modification #6 (page 11) seems innocuous enough, but on page 20, where it would be expected, I find no explanation of why it is necessary.

In summary, due to the potential it presents for abuse by the City, I believe this unnecessary LCP amendment request should be rejected as inconsistent with the Coastal Act as submitted. If it were to be certified, I believe it needs work.

Yours sincerely,



James M. Mosher, Ph.D.
2210 Private Road
Newport Beach, CA. 92660