

CALIFORNIA COASTAL COMMISSION

South Coast District Office
301 Ocean Blvd., Suite 300
Long Beach, CA 90802
(562) 590-5071



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LCP AMENDMENT NO. LCP-5-NPB-21-0036-1, Part D
City of Newport Beach – Transfer of Development Rights

SEPTEMBER 7, 2022

EXHIBITS

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Exhibit 1 – City Council Resolution 2019-90

RESOLUTION NO. 2019-90

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, AUTHORIZING SUBMITTAL OF LOCAL COASTAL PROGRAM AMENDMENT NO. LC2019-003 TO THE CALIFORNIA COASTAL COMMISSION TO AMEND TITLE 21 (LOCAL COASTAL PROGRAM IMPLEMENTATION PLAN) OF THE CITY OF NEWPORT BEACH MUNICIPAL CODE AND THE CITY OF NEWPORT BEACH LOCAL COASTAL PROGRAM COASTAL LAND USE PLAN REGULATING THE TRANSFER OF DEVELOPMENT RIGHTS (PA2019-154)

WHEREAS, Section 30500 of the California Public Resources Code requires each county and city to prepare a local coastal program (“LCP”) for that portion of the coastal zone within its jurisdiction;

WHEREAS, in 2005 the City adopted the City of Newport Beach Local Coastal Program Coastal Land Use Plan (“Local Coastal Program”) as amended from time to time including most recently on January 22, 2019, via Resolution No. 2019-8;

WHEREAS, the California Coastal Commission effectively certified the City of Newport Beach’s (“City”) Local Coastal Implementation Plan on January 13, 2017, and the City added Title 21 (Local Coastal Program Implementation Plan) (“Title 21”) to the City of Newport Beach Municipal Code (“NBMC”) whereby the City assumed coastal development permit-issuing authority on January 30, 2017;

WHEREAS, an amendment to Title 21 and the City of Newport Beach Local Coastal Program is necessary to allow for the transfer of development rights consistent with General Plan Land Use Element Policies LU 4.3 and 6.14.3 and implementing regulations of Chapter 20.46 of Title 20 (“Zoning Code”) of the NBMC;

WHEREAS, authorizing the amendment to Title 21 (Local Coastal Program Implementation Plan) of the NBMC and the City of Newport Beach Local Coastal Program regulating the transfer of development rights in the coastal zone (“LCP Amendments”) may further the policies in the Local Coastal Program and provide benefits and incentives to coastal resource protection including:

The preservation of historic buildings or buildings with special character-defining features that contribute to the visual qualities of the villages in the coastal zone, such as in Balboa Village or McFadden Square, which are popular visitor destination points,

The provision for and/or protection of public view corridors and public access,

Incentivizing the dedication or use of private parking lots for public use and access to the coast,

The preservation of marine-dependent uses and industries such as shipyards and boat storage facilities, and

Incentivizing planned retreat and dedication of open space as an adaptive strategy for future coastal hazards such as sea level rise;

WHEREAS, a public hearing was held by the Planning Commission on August 22, 2019, in the Council Chambers located at 100 Civic Center Drive, Newport Beach, California. A notice of time, place and purpose of the public hearing was given in accordance with the California Government Code Section 54950 *et seq.* the ("Ralph M. Brown Act") and Chapter 21.62 of the NBMC. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this public hearing;

WHEREAS, on August 22, 2019, the Planning Commission adopted Resolution No. PC2019-026 by a unanimous vote (7 ayes, 0 nays), recommending approval of Local Coastal Program Amendment No. LC2019-003 to the City Council;

WHEREAS, a public hearing was held by the City Council on October 8, 2019, in the Council Chambers located at 100 Civic Center Drive, Newport Beach, California. A notice of time, place and purpose of the public hearing was given in accordance with the California Government Code Section 54950 *et seq.* the ("Ralph M. Brown Act") and Chapter 21.62 of the NBMC. Evidence, both written and oral, was presented to, and considered by, the City Council at this public hearing; and

WHEREAS, pursuant to Section 13515 of the California Code of Regulations Title 14, Division 5.5, Chapter 8, Subchapter 2, Article 5 ("Public Participation"), drafts of the LCP Amendments were made available and a Notice of Availability was distributed on August 8, 2019 at least six (6) weeks prior to the City Council public hearing.

NOW, THEREFORE, the City Council of the City of Newport Beach resolves as follows:

Section 1: The City Council does hereby authorize City staff to submit Local Coastal Program Amendment No. LC2019-003, adding Chapter 21.46 (Transfer of Development Rights) to Title 21 (Local Coastal Program Implementation Plan) of the Newport Beach Municipal Code and amending the City of Newport Beach Local Coastal Program Coastal Land Use Plan, as attached in Exhibit A, and incorporated herein by reference, to the California Coastal Commission for review and approval.

Section 2: Local Coastal Program Amendment No. LC2019-003 shall not become effective until approved and adopted by the California Coastal Commission, including any modifications suggested by the California Coastal Commission, by resolution(s) and/or ordinance(s) of the City Council of the City of Newport Beach.

Section 3: The Local Coastal Program including the proposed amendment will be carried out in full conformity with the California Coastal Act codified in Public Resources Code Section 30000 *et seq.*


Section 4: The recitals provided in this resolution are true and correct and are incorporated into the operative part of this resolution.

Section 5: If any section, subsection, sentence, clause or phrase of this resolution is, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this resolution. The City Council hereby declares that it would have passed this resolution, and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

Section 6: The action proposed herein is not a project subject to the California Environmental Quality Act ("CEQA") in accordance with Section 21065 of the California Public Resources Code and Sections 15060 (c)(2), 15060 (c)(3), and 15378 of the California Code of Regulations Title 14, Division 6, Chapter 3 ("CEQA Guidelines"). The proposed action is also exempt pursuant to CEQA Guidelines Section 15061(b)(3), the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Lastly, pursuant to CEQA Guidelines Section 15265(a)(1), local governments are exempt from the requirements of CEQA in connection with the adoption of a Local Coastal Program. The Amendment itself does not authorize development that would directly result in physical change to the environment.

Section 7: This resolution shall take effect immediately upon its adoption by the City Council, and the City Clerk shall certify the vote adopting the resolution.

ADOPTED this 8th day of October, 2019.



DIANE B. DIXON
Mayor

ATTEST:



Leilani I. Brown
City Clerk



APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE



Aaron C. Harp
City Attorney

Attachment: Exhibit A - Proposed Amendment to the City of Newport Beach
Local Coastal Program Related to Transfer of Development Rights
(LC2019-003)

EXHIBIT "A"

Proposed Amendment to the City of Newport Beach Local Coastal Program Related to Transfer of Development Rights (LC2019-003)

Section 1: Amending Chapter 2.0 (Land Use and Development) of the Coastal Land Use Plan to add Policy 2.1.1-2 as follows, with all other provisions of the Coastal Land Use Plan remaining unchanged:

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.

Section 2: Amending Title 21 (Local Coastal Program Implementation Plan) of the Newport Beach Municipal Code to include the addition of Chapter 21.46 (Transfer of Development Rights) 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.

- 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 the findings set forth 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.

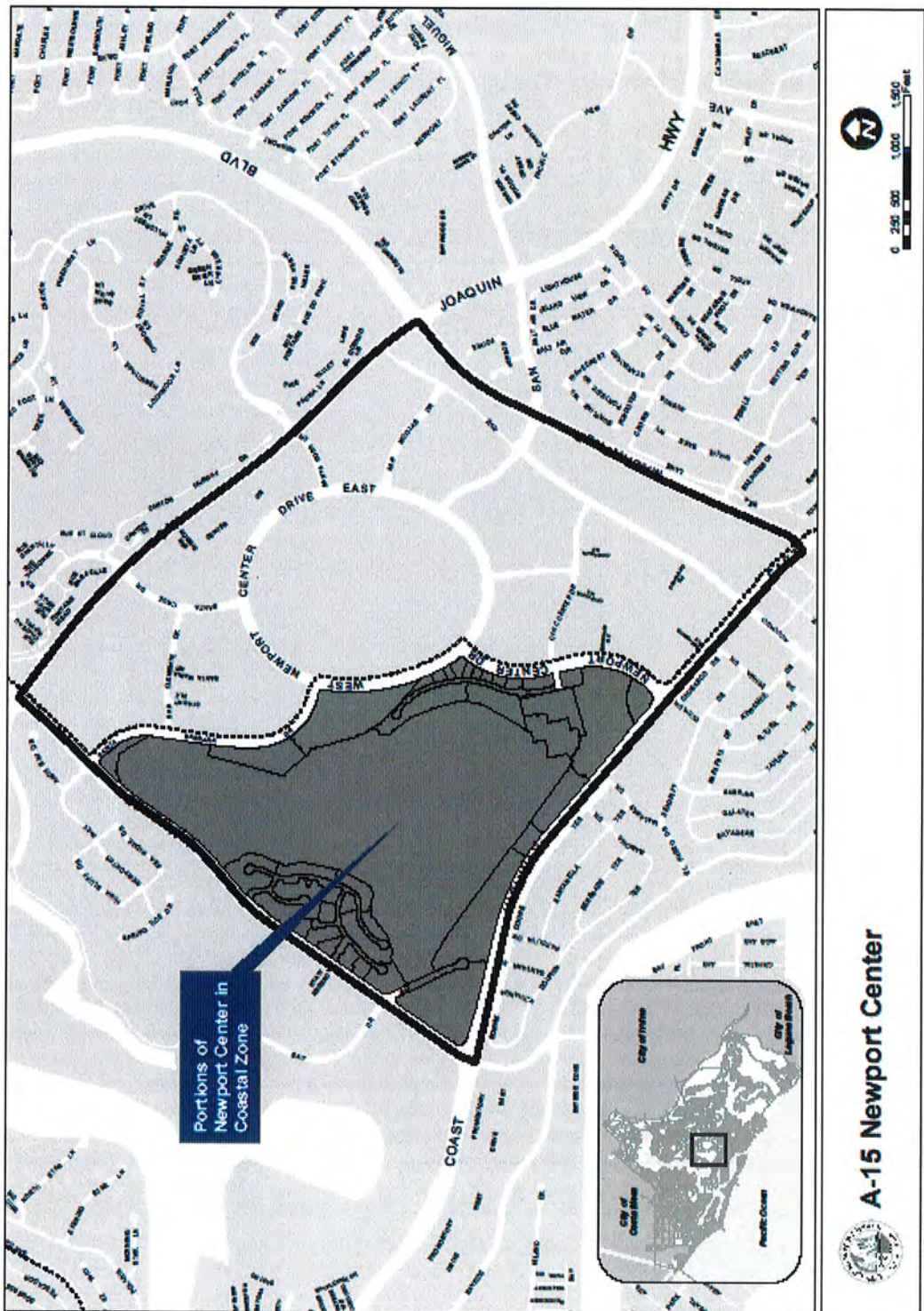
B. The transfer of development rights will not result in any adverse traffic impacts and would not result in greater intensity than development allowed without the transfer, and the proposed uses and physical improvements would not lend themselves to conversion to higher traffic generating uses;

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.

Section 3: Amending Section 21.80.010 (Area Maps) of Title 21 (Local Coastal Program Implementation Plan) of the Newport Beach Municipal Code to include Area Map A-15 – Newport Center as follows:



STATE OF CALIFORNIA
COUNTY OF ORANGE
CITY OF NEWPORT BEACH

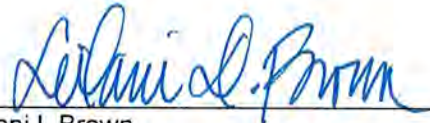
ss.

I, Leilani I. Brown, City Clerk of the City of Newport Beach, California, do hereby certify that the whole number of members of the City Council is seven; the foregoing resolution, being Resolution No. 2019-90, was duly introduced before and adopted by the City Council of said City at a regular meeting of said Council held on the 8th day of October, 2019; and the same was so passed and adopted by the following vote, to wit:

AYES: Mayor Diane Dixon, Mayor Pro Tem Will O'Neill, Council Member Brad Avery, Council Member Joy Brenner, Council Member Duffy Duffield, Council Member Jeff Herdman, Council Member Kevin Muldoon

NAYS: None

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the official seal of said City this 9th day of October, 2019.



Leilani I. Brown
City Clerk
Newport Beach, California

