

CALIFORNIA COASTAL COMMISSION

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W13b

DATE: April 25, 2024

TO: Commissioners and Interested Persons

FROM: Karl Schwing, Deputy Director
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Amrita Spencer, District Supervisor
Fernie Sy, Coastal Program Analyst

SUBJECT: Major Amendment Request No. LCP-5-NPB-22-0056-1 (Part C) to the City of Newport Beach certified Local Coastal Program, for Public Hearing and Commission Action at its May 8, 2024, meeting.

SUMMARY OF LCP AMENDMENT REQUEST NO.

LCP-5-NPB-22-0056-1 (Part C)

The City of Newport Beach is requesting an amendment to the City's certified Local Coastal Program (LCP). The amendment would modify the certified Implementation Plan (IP) of the City's certified LCP to clarify development allowances for residential uses that are nonconforming due to density and modify side setback allowances for properties in the R-1-6,000, R-2-6,000, and the RM-6,000 coastal zoning districts. The LCP Amendment was submitted for Coastal Commission action on December 9, 2022, via Newport Beach City Council Resolution No. 2022-82.

SUMMARY OF STAFF RECOMMENDATION

The proposed LCP Amendment would: amend Section 21.38.050 (Nonconforming Structures) of the IP to clarify that residential properties that are nonconforming due to density may be maintained, altered, or expanded pursuant Section 21.38.040 (Nonconforming Structures) of the IP; modify side setback allowances for properties in the R-1-6,000, R-2-6,000, and the RM-6,000 coastal zoning districts of the IP; and clarify that structures in these identified three zoning districts are exempt from the restrictions of the nonconforming structures section of the IP (Section 21.38.040).

City of Newport Beach LCP-5-NPB-22-0056-1 (Part C)

The Coastal Land Use Plan (CLUP) for the City of Newport Beach was effectively certified by the Commission in 2006, and updated in 2009. The Implementation Plan (IP) and complete LCP was certified by the Commission on January 13, 2017.

Commission staff is recommending approval of the LCP Amendment as submitted. With the proposed changes to the identified zoning districts and nonconforming structures and uses sections of the IP, the IP remains in conformance with and adequate to carry out the policies of the City's certified Coastal Land Use Plan (CLUP), as amended. The motions and resolutions to accomplish this recommendation are found on **Page 5** of this staff report.

DEADLINE FOR COMMISSION ACTION: The City submitted the Implementation Plan (IP) Amendment request on December 9, 2022. The City submitted additional information on February 6, 2023, and the amendment request was deemed by Commission staff to be complete on April 12, 2023. On May 10, 2023, the Commission authorized a one-year extension of the ninety-day time limit for action on the CLUP and IP Amendment request. As such, the last date for Commission action on this item is July 7, 2024.

ADDITIONAL INFORMATION

Copies of the staff report are available on the Commission's website at www.coastal.ca.gov. For additional information, contact Fernie Sy in the South Coast District Office of the Coastal Commission at ferniesy@coastal.ca.gov (562) 590-5071.

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Exhibits

[Exhibit No. 1 – City Council Resolution No. 2022-82](#)

I. PROCEDURAL ISSUES

A. STANDARD OF REVIEW

The standard of review for the LCP Implementing Ordinances, pursuant to Sections 30513 and 30514 of the Coastal Act, is that the proposed IP amendment conforms with and is adequate to carry out the provisions of the certified Coastal Land Use Plan (CLUP).

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 local coastal program, the public, as well as all affected governmental agencies, including special districts, shall be provided maximum opportunities to participate. Prior to submission of a local coastal program 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 Council adopted LCP Amendment No. LC2022-002 to amend the City’s certified IP. The proposed changes were submitted for Coastal Commission action via City Council Resolution No. 2022-82 ([Exhibit No 1](#)).

The City Council held one public hearing on the proposed LCP Amendment on November 22, 2022. The Planning Commission held a public hearing on the proposed LCP Amendment on October 20, 2022.

C. PROCEDURAL REQUIREMENTS

If the Commission certifies the LCP Amendment as submitted, no further City Council action will be necessary, and the amendment will become effective. 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, pursuant to Sections 13537(d) and 13542(f) of the Commission’s regulations. 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. In that scenario, pursuant to the sections cited above and Sections 13544(c) and 13544.5 (c) of Title 14 of the California Code of Regulations, the modified LCP amendment will become final and effective at a subsequent Commission meeting when the Executive Director reports his or her determination that the City’s action in accepting the suggested modifications approved by the Commission for the LCP Amendment 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. MOTIONS AND RESOLUTIONS

A. Approval of the IP as Submitted

Motion: I move that the Commission reject the Implementation Plan Local Coastal Program Amendment No. LCP-5-NPB-22-0056-1 Part C for The City of Newport Beach as submitted.

Commission staff recommends a **NO** vote. Failure of this motion will result in certification of the Implementation Plan Amendment as submitted and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

Resolution to Certify Implementation Program As Submitted:

The Commission hereby certifies Implementation Plan Local Coastal Program Amendment Number LCP-5-NPB-22-0056-1-Part C for the City of Newport Beach as submitted and adopts the findings set forth below on grounds that the Implementation Plan Local Coastal Program Amendment Number LCP-5-22-0056-1-Part C conforms with, and is adequate to carry out, the provisions of the certified Coastal Land Use Plan Local Coastal Program as amended, and certification of the Implementation Plan 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 Plan.

III. FINDINGS

The Commission hereby finds and declares:

A. AMENDMENT DESCRIPTION & LOCATION

The subject LCP Amendment, LCP-5-NPB-22-56-1 Part C, would amend the IP (Title 21 of the City's Municipal Code) of the City's certified LCP to clarify development allowances for residential uses that are nonconforming due to density and modify side setback allowances for properties in the R-1-6,000, R-2-6,000, and the RM-6,000 coastal zoning districts. The R-1 (Single-Unit Residential) Coastal Zoning District allows a range of detached single-family residential dwelling units (lower density residential), each located on a single legal lot, and does not include condominiums or cooperative housing. The R-2 (Two-Unit Residential) Coastal Zoning District allows a maximum of two residential dwelling units (i.e., duplexes, medium density residential) located on a single legal lot. The RM (Multiple Residential) Coastal Zoning District allows multi-unit residential developments containing attached or detached dwelling units (mix of residential density).

The proposed LCP Amendment is split into two parts. The first part pertains to Nonconforming Residential Density and the other part pertains to Side Setback Clarification.

Nonconforming Residential Density

Early housing development within the City is characterized by a mixture of different types of housing including single-family, multi-family, and mixed-use housing that are located in nearby commercial and visitor serving use areas. In the older neighborhoods of Newport Beach, such as West Newport, the Balboa Peninsula, Balboa Island and Corona Del Mar, housing developments primarily consist of duplexes, triplexes, and fourplexes. As the years have passed, many portions of these areas have been rezoned to lower residential densities. As such, existing residential properties that were legally developed with higher densities (i.e. more dwelling units) than allowed under current zoning regulations are considered a nonconforming use and are subject to Section 21.38.050 (Nonconforming Uses) of the IP.

Section 21.38.050 (Nonconforming Uses) currently clearly indicates that a nonconforming use that exceeds the allowed number of units for its zoning district may be altered to reduce the number of dwelling units; however, it does not explicitly provide provisions that allow property owners to make repairs, alterations, or improvements to a nonconforming residential use.

Therefore, the subject LCP Amendment would revise Section 21.38.050 of the IP to clarify that residential properties that are legally nonconforming with respect to density may be maintained, altered, or expanded pursuant to the limitations of Section 21.38.040 (Nonconforming Structures). Section 21.28.040 generally allows additions of up to 50 percent of the floor area of the existing structure, provided that the addition complies with all applicable development standards and regulations found in the Implementation Plan.

If a property is also nonconforming with respect to parking, the improvements would be subject to Section 21.38.060 (Nonconforming Parking), which generally limit structural additions to 10 percent of the existing floor area of the structure.

Finally, Section 21.38.050 would be modified to remove the provision that allows the number of units in a nonconforming structure to be altered to reduce the number of dwelling units.

Side Setback Clarification

Prior to the City's 2010 comprehensive zoning code update, the Newport Beach Municipal Code (NBMC) included an overlay district known as the "Combining or "B" District (B Overlay)." The B Overlay was introduced in 1950 and included alternative development standards regarding site area, setbacks, and lot width requirements. In 2010, the City had a comprehensive code update and the "B Overlay" zones became

the R-1-6,000, R-1-7,200, R-1-10,000, R-2-6,000 and the RM-6,000 zoning districts. The R-1-7,200 and R-1-10,000 zoning districts only occur outside of the Coastal Zone. Conversely, the R-2-6,000 zoning district is only found in the Coastal Zone. However, both the R-1-6,000 and RM-6,000 zoning districts are found inside and outside of the Coastal Zone and are allowable uses in the LCP. The former "B Overlay" zoning district required a 6-ft., 7-ft. or 10-ft. side setback. Many of the properties located in the zoning district were permitted and developed under the County of Orange and then later annexed by the City of Newport Beach. For unknown reasons, several homes were developed with a smaller side setback than required by the "B Overlay" zoning district. As a result of these setback inconsistencies, the Newport Beach City Council adopted Ordinance No. 1076 on January 13, 1964, which authorized properties within the "B Overlay" to construct additions to the principal structure at the existing nonconforming side setback. This Ordinance also exempted properties within the "B Overlay" from development restrictions within the nonconforming code provisions, meaning they were not considered or treated as nonconforming properties. This allowance continued through future iterations of the Newport Beach Municipal Code (NBMC) until 2010. During a 2010 comprehensive Zoning Code Update, Ordinance No. 1076 was inadvertently omitted from the Zoning Code. As a result, this ordinance has also been left out of the certified LCP. Without this provision, an addition to a structure with a nonconforming side setback cannot be completed in line with the existing residence. In addition, without this provision, properties located in the former "B Overlay" are not exempt from development restrictions within the nonconforming provisions of Section 21.038.040 (Nonconforming Structures) of the IP, and would thus be subject to addition size limits.

Therefore, the subject LCP Amendment will now include this provision in Title 21 (IP). As such, property owners within the former "B Overlay" (i.e., the R-1-6,000, R-2-6,000 and RM-6,000 zoning districts located within the Coastal Zone and under jurisdiction of the LCP) will once again be allowed to construct an addition in line with the existing development rather than requiring the addition to be constructed pursuant to the current setback requirements. The LCP Amendment will also have a footnote included in Table 21.18-2, 21.18-3 and Table 21.8-4 to identify this allowance. Section 21.38.040 (Nonconforming Structures) will similarly be amended to clarify that structures in these zoning districts are exempt from the restrictions of the nonconforming structures section.

B. EVALUATION OF PROPOSED LCP AMENDMENT

Standard of Review

The proposed amendment affects the LCP's IP, and the standard of review for IP amendment is that they must be consistent with and adequate to carry out the provisions of the certified CLUP.

COASTAL LAND USE PLAN POLICIES

CLUP – Land Use and Development

2.2.5-4 Land Use and Development/ General Development Policies/Nonconforming Structures and Uses: The enlargement or intensification of legally established nonconforming uses shall be limited to only those uses normally permitted by right or by the approval of a use permit, but which were made nonconforming by additional regulations of the district in which they are located. Such enlargement or intensification shall be subject to discretionary review and approval by the City and shall not increase the degree of the use's nonconformity.

2.7.1. Land Use and Development/Residential Development: 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.

2.7.2. Land Use and Development/Residential Development: Continue the administration of provisions of State law relative to the demolition, conversion and construction of low and moderate-income dwelling units within the coastal zone.

As described above, the proposed LCP Amendment would revise Section 21.38.050 (Nonconforming Uses) of the IP to clarify that residential properties that are nonconforming due to density may be maintained, altered, or expanded pursuant to the limitations of Section 21.38.040 (Nonconforming Structures), but they may no longer be reduced in density. Generally, this LCP Amendment allows development with higher densities to do remodel work without requiring them to be consistent with current zoning, which in some cases has reduced densities for residential lots that once accommodated higher densities. This LCP Amendment would also modify side setback allowances for properties in the R-1-6,000, R-2-6,000, and the RM-6,000 coastal zoning districts of the certified IP that previously existed in earlier iterations of the Newport Beach Municipal Zoning Code prior to 2010 and were left out of the certified LCP. In addition, Section 21.38.040 (Nonconforming Structures) will be amended to clarify that structures in these zoning districts are exempt from the restrictions of the nonconforming structures section.

The proposed LCP Amendment is intended to clarify the allowable development for nonconforming residential uses regarding the improvements (i.e. enlargement or intensification) to nonconforming residential uses. The LCP Amendment would not allow an increase in the number of dwelling units on the property nor would it increase the degree of nonconforming density.

LUP Policy 2.7.1 requires development to maintain appropriate setbacks and to protect neighborhood character and coastal resources, such as public views. Reestablishing the once allowed setbacks to the R-1-6,000, R-2-6,000 and RM-6,000 (formerly known as the “B-Overlay”) zoning districts in the LCP would only affect those properties where the principal structure was legally developed with a reduced setback. The reestablishment of the former “B Overlay” setback requirements would not result in any character modifications to these zones, as it would only allow reduced setbacks for structures already built with a nonconforming setback.

Moreover, the LCP Amendment would not allow new development that would result in adverse impacts to coastal access and coastal resources, as it would only clarify the allowed development that may maintain existing nonconformities with respect to setbacks. The R-1-6,000, R-2-6,000 and RM-6,000 zones that are affected by this LCPA, are not located within protected view corridors or areas that contain important visual resources. And, given the limited scope of the amendment, no other coastal resources are expected to be adversely impacted by the amendment. As such, the amendment is consistent with LUP Policy 2.7.1.

Lastly, the proposed LCP Amendment would not adversely affect State Law pertaining to the demolition, conversion and construction of low and moderate-income dwelling units within the coastal zone, as required by LUP Policy 2.7.2. One such State law is the Housing Crisis Act of 2019 (Gov. Code sec. 66300 et seq.), which generally prohibits affected local governments from approving housing development projects that demolish more units than they create, approving development projects that demolish protected units, or enacting policies that reduce the net residential development capacity within their jurisdiction. The other is the No Net Loss Law (Gov. Code sec. 65863), which ensures that development opportunities remain available to accommodate a local government's regional housing need allocation (RHNA), especially for lower- and moderate- income households, by limiting the circumstances in which local governments can reduce density on parcels identified in their housing element inventory of sites or approve projects with fewer units than identified in the jurisdiction's housing element. The LCP Amendment allows existing development with higher densities to do remodel work without requiring them to be consistent with current zoning, which in some cases has reduced densities and thus reduced the availability of housing. The LCP Amendment would also remove Section 21.38.050(B)(2), which allows reductions in density of a residential use that is nonconforming because it exceeds the number of housing units allowed in the zoning district. Reestablishing the once allowed setbacks to the R-1-6,000, R-2-6,000 and RM-6,000 zoning districts in the LCP would allow construction of an addition in line with the existing development, rather than requiring the addition to conform to the current setback requirements. And removing the allowance for a reduction in density of nonconforming residential uses is also consistent with the requirements of State law requiring no net loss of density for residential developments.

Therefore, the Commission finds that, as submitted, the IP Amendment is consistent with the certified CLUP.

C. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

21080.9 of the California Environmental Quality Act (CEQA) exempts local governments from the requirement of preparing environmental documentation in compliance with CEQA in connection with a Local Coastal Program (LCP) amendment. The Commission's Local Coastal Program review and approval procedures have been found by the Resources Agency to be functionally equivalent to the environmental review process under CEQA. (14 CCR § 15265(a)(1).) Thus, under Section 21080.5 of CEQA, the Commission is relieved of the responsibility to prepare CEQA documentation for each Local Coastal Program submitted for Commission review and approval. Instead, this staff report serves as the functional equivalent of CEQA documentation. Nevertheless, the Commission is required when approving a Local Coastal Program to find that the amendment will not have a significant adverse impact on the environment and that there are no further feasible alternatives or mitigation measures that would substantially lessen the project's impact on the environment.

The Commission finds that, for the reasons discussed in this report, the IP amendment request will be consistent with the certified CLUP and will ensure that projects will not have significant coastal resource impacts.

Certification of the IP Amendment complies with the California Environmental Quality Act because: 1) the amendment as proposed will not have any significant adverse effects on the environment, and 2) there are no further feasible alternatives and mitigation measures that would substantially lessen any significant adverse impacts which the IP Amendment may have on the environment. The Commission finds that the proposed amendments will be consistent with Section 21080.5(d)(2)(A) of the Public Resources Code.

APPENDIX A: Redline Strike Out Version of LCP Amendment

Title 21 (Local Coastal Program Implementation Plan)

21.18.030 Residential Coastal Zoning Districts General Development Standards.

TABLE 21.18-2

DEVELOPMENT STANDARDS FOR SINGLE-UNIT RESIDENTIAL COASTAL ZONING DISTRICTS

Development Feature	R-A	R-1	R-1-6,000	Additional Requirements
Side (interior, each):				
Lots 40 ft. wide or less	5 ft.	3 ft. (4)	6 ft. (7)	21.30.110 <u>21.38.040 (I)</u>
Lots wider than 40 ft.	5 ft.	4 ft.	6 ft. (7)	
Side (street side):				
Lots 40 ft. wide or less	5 ft.	3 ft.	6 ft. (7)	21.30.110 <u>21.38.040 (I)</u>
Lots wider than 40 ft.	5 ft.	4 ft.	6 ft. (7)	

(7) An addition to the principal structure shall be allowed to be constructed to the side yard setback in effect at the time the principal structure was constructed provided the addition meets applicable building and fire code standards.

TABLE 21.18-3

DEVELOPMENT STANDARDS FOR TWO-UNIT RESIDENTIAL COASTAL ZONING DISTRICTS

Development Feature	R-BI	R-2	R-2-6,000	Additional Requirements
Side (interior, each):				
Lots 40 ft. wide or less	3 ft.	3 ft.	6 ft. (7)	<u>21.38.040 (I)</u>
Lots 40'1" wide to 49'11" wide	4 ft.	4 ft.	6 ft. (7)	
Lots 50 ft. wide and greater	N/A	4 ft.	6 ft. (7)	
Side (street side):				

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Lots 40 ft. wide or less	3 ft.	3 ft.	N/A	21.38.040 (I)
Lots 40'1" wide to 49'11" wide	4 ft.	4 ft.	N/A	
Lots 50 ft. wide and greater	N/A	N/A	6 ft. (7)	

[\(7\) An addition to the principal structure shall be allowed to be constructed to the side yard setback in effect at the time the principal structure was constructed provided the addition meets applicable building and fire code standards.](#)

TABLE 21.18-4

DEVELOPMENT STANDARDS FOR MULTI-UNIT RESIDENTIAL COASTAL ZONING DISTRICTS

Development Feature	RM	RM-6,000	Additional Requirements
Side (interior, each):			
Lots 40 ft. wide or less	3 ft.	6 ft. (9)	21.38.040 (I)
Lots 40'1" wide to 49'11" wide	4 ft.	6 ft. (9)	
Lots 50 ft. wide and greater	8% of the average lot width (4)	6 ft. (9)	
Side (street side):			
Lots 40 ft. wide or less	3 ft.	N/A	21.38.040 (I)
Lots 40'1" wide to 49'11" wide	4 ft.	N/A	
Lots 50 ft. wide and greater	8% of the average lot width (4)	6 ft. (9)	

[\(9\) An addition to the principal structure shall be allowed to be constructed to the side yard setback in effect at the time the principal structure was constructed provided the addition meets applicable building and fire code standards.](#)

21.38.040 Nonconforming Structures.

I. Exceptions.

1. Corona del Mar and Balboa Village. Existing nonresidential structures within Corona del Mar and Balboa Village that are nonconforming because they exceed the allowed floor area shall be exempt from the limits of this section and may be demolished and reconstructed to their preexisting height and floor area; provided, that not less than the preexisting number of parking spaces is provided along with provisions for alternative modes of transportation.

2. Landmark Structures. Landmark structures shall be exempt from the requirements of this chapter in compliance with Section 21.38.070 (Landmark Structures).

3. R-1-6,000, R-2-6,000, and RM-6,000 Coastal Zoning Districts. Existing principal structures that are nonconforming only because side yard setback requirements have been amended subsequent to the original construction shall be exempt from the limits of this section.

21.38.050 Nonconforming Uses.

Nonconforming uses may be changed, expanded, increased, or intensified only as provided in this section.

A. Expansion and Intensification of Existing Nonconforming Uses.

1. Nonresidential Coastal Zoning Districts. In nonresidential zoning districts, and in areas where residential uses are not allowed in Planned Community Districts or specific plan districts, a use that was previously allowed by right, but which becomes nonconforming because of new permit regulations, may be expanded or intensified (e.g., increase in floor area, lot area, or occupancy load) if such new development does not increase the degree of nonconformity, complies with the coastal protection policies of the Local Coastal Program, and is subject to the approval of a coastal development permit.
2. Residential Coastal Zoning Districts. In residential coastal zoning districts, and in areas where residential uses are allowed in Planned Community Districts or Specific Plans, a residential use that is nonconforming because it exceeds the allowed number of units for the coastal zoning district may be altered in compliance with the requirements of 20.38.040 (Nonconforming Structures).

B. Change of Use.

1. A nonconforming nonresidential use may be changed to a conforming use, provided the change does not create or increase a deficiency in required off-street parking except as provided in Section 21.38.060 (Nonconforming Parking).

~~2. A residential use that is nonconforming because it exceeds the allowed number of units for the zoning district may be altered to reduce the number of dwelling units, provided the reduction complies with any floor area limit and the provisions of Chapter 20.34 (Conversion or Demolition of Affordable Housing) are satisfied.~~

- C. Exception for Landmark Structures. The use of a landmark structure may be changed, expanded, increased, or intensified subject to compliance with the provisions of Section 21.38.070 (Landmark Structures).