

From: Alford, Patrick
Sent: Monday, April 10, 2017 8:59 AM
To: City Clerk's Office <CityClerk@newportbeachca.gov>
Subject: FW: OCTA Comment Letter for the Draft Local Coastal Program Amendments

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Item No. 18

From: Lauren Sato [mailto:lsato@octa.net]
Sent: Monday, April 10, 2017 8:57 AM
To: Alford, Patrick <PAIford@newportbeachca.gov>
Subject: OCTA Comment Letter for the Draft Local Coastal Program Amendments

Good morning,

Thank you for giving the Orange County Transportation Authority (OCTA) the opportunity to review the Draft Local Coastal Program Amendments (Amendments). Attached is the comment OCTA has in regards to the Amendments. An official hard copy will also be mailed out shortly to the address provided in the public notice.

If you have any questions, please feel free to contact me. Thank you.

Lauren Sato
Strategic Planning/ Environmental Programs Intern
Orange County Transportation Authority
lsato@octa.net | 714.560.5756

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AFFILIATED AGENCIES

Orange County
Transit District

Local Transportation
Authority

Service Authority for
Freeway Emergencies

Consolidated Transportation
Service Agency

Congestion Management
Agency

Service Authority for
Abandoned Vehicles

April 10, 2017

Mr. Patrick Alford
Planning Manager
City of Newport Beach
100 Civic Center Drive
Newport Beach, CA 92660

Subject: **Notice of Availability of Draft Local Coastal Program
Amendments**

Dear Mr. Alford:

Thank you for providing the Orange County Transportation Authority (OCTA) with the Notice of Availability of the Draft Local Coastal Program Amendments (Amendments). The following comment is provided for your consideration:

- From the Local Coastal Program, Page 2-74, Section 2.9.1, Subsection 'Bus Transportation', please revise the first paragraph to read as follows:
 - "Public transportation services in Newport Beach are provided by the Orange County Transportation Authority (OCTA) and consist of regular fixed-route service and ADA Paratransit service through ACCESS service. OCTA operates at the Newport Beach Transportation Center located at Avocado Avenue and San Joaquin Hills Road. Demand for bus service from the inland areas to Newport Beach is intensified during the summer peak months. OCTA adds buses to beach routes most in demand to offset increased traffic congestion during the summer peak months."

Throughout the development of this project, we encourage communication with OCTA on any matters discussed herein. If you have any questions or comments, please contact me at (714) 560-5907 or at dphu@octa.net.

Sincerely,

Dan Phu
Manager, Environmental Programs

April 11, 2017, Council Agenda Item 18 Comments

The following comments on an item on the Newport Beach City Council [agenda](#) are submitted by:
Jim Mosher (jimmosher@yahoo.com), 2210 Private Road, Newport Beach 92660 (949-548-6229)

Item 18. Local Coastal Program Amendments

A. Procedural Comments: Improperly before Council

I strongly object to this matter, which I believe is being improperly placed before the Council without proper public review and without a recommendation from the Planning Commission.

Council members who were in office in 2016 may or may not recall that as originally submitted to the Coastal Commission, the Implementation Plan included a [Chapter 21.66](#) detailing the procedures for amending it, including the need for a Planning Commission recommendation.

At the Council's November 7, 2016, meeting, staff reported (see that agenda packet, [page 11-7](#)) that this chapter was deleted: "*IP Chapter 21.66 (Amendments) provided procedures for the amendment of the Local Coastal Program. Coastal Commission staff believes that it is inappropriate for an implementation plan to include these procedures as the regulations for LCP amendments are solely governed by the Coastal Act and its implementing regulations.*"

I suspect the complete deletion of Chapter 21.66 was a miscommunication between City and CCC staff, since one need go no further than [Huntington Beach](#) or [Laguna Beach](#) to find IP's with local regulations supplementing, without replacing, the statewide standards for amendment, including a requirement for a Planning Commission recommendation preceding any Council resolution.

In any event, **I do not believe the City is free to ignore the procedural requirement imposed by Table 21.50-1 of the recently certified LCP-IP**, which is reproduced on page 18-17 of the present staff report and which City staff does not recommend changing. That table (see second line under "Administrative and Legislative") clearly indicates that (as in Huntington Beach and Laguna Beach) the Council and CCC decisions on an LCP amendment are to be preceded by a Planning Commission recommendation.

I therefore believe the present hearing is improper. But notwithstanding the neglect of that clear requirement of the certified LCP-IP it is not at all clear that City staff has complied with even the minimal requirements of the "[Section 13515](#) of the California Code of Regulations" ([Title 14, Division 5.5](#)), which it says it is following.

Section 13515 places on local agencies a requirement for "***establishing procedures providing maximum opportunities for the participation of the public and all affected governmental agencies***" and then sets minimal standards.

Not only has Newport Beach failed to establish any procedures (beyond the cryptic note calling for Planning Commission review in IP Table 21.50-1), it is not clear it has met even the minimal standards of Section 13515. For example, Resolution No. 2017-26 claims "*review drafts of the*

LCP amendments were made available and a Notice of the availability was distributed a minimum of six weeks prior the public hearing.” There is indeed such a requirement in Section 13515, yet the Notice and what purport to be review drafts at the Mariners Branch Library (libraries being a minimal distribution location required by Section 13515) is stamped “March 10, 2017.” And to the best of my knowledge no one in the public was informed that copies had been distributed for public review: the City webpages devoted to the [LCP](#) and [IP](#) are completely silent on the idea that *any* revisions were being contemplated after the CCC approval trumpeted on the latter. Indeed, prior announcement of the present hearing on the City website appears to have been confined to an obscure posting placed at a completely different location and opaquely informing the public about a hearing involving “[Balboa Village Parking Management](#).”

In short, the public first became aware of the proposed amendments around 4 p.m. on the afternoon of April 6, five days before the hearing, when they were released as part of the Council’s 643 page agenda packet.

And, on further examination, the five double-sided plus one single-sided page of often unlabeled text provided without further explanation in the distribution placed at the Mariners Library sometime after March 10 (which no one, in practice, knew about, and which is not six weeks before the hearing) are at best an incomplete and inaccurate version of the revisions being presented at the present in this agenda item.

Among the discrepancies noted:

- The highlighted words “government facilities” on page 18-29 of the present staff report (and possibly others?) are not present in the Mariners draft
- The proposed changes to Section “21.30.010.015(E)(5)” shown on page 18-32 are not announced in the Notice or shown in the draft changes. Indeed, it is not apparent from the present report what Section 21.30.010.015(E)(5) is even part of, nor (it might be observed) is there actually a Section 21.30.010.015 in the IP at all.
- The changes on page 18-37 are to a section mentioned in the Notice, but the proposed changes are not shown in the Mariners draft.
- The changes on the present pages 18-38 through 18-41, and 18-58, are in neither the Notice nor the Mariners draft
- The changes on pages on pages 18-44 through 18-57 are mentioned in the Notice, but not shown in the Mariners draft
- The proposed resolution (see page 18-10) and all the notices say amendments are being proposed “to Coastal Land Use Plan (CLUP) Policy 3.13” but I have been unable to find any description of what those amendments might be. Does staff propose to reveal the changes after Council approves them?

Of similar discrepancies *within* the present report, it might be noted that an extensive new Section 21.52.090 is added on pages 18-18 through 18-20 of Attachment A, but as best I can tell it not part of the redline of Attachment B.

In short, rather than “*establishing procedures providing maximum opportunities for the participation of the public,*” as required by Section 13515, City staff seems to have gone out of

its way to ensure that the opportunities for public participation in the LCP amendment process would be sub-minimal.

In summary, it is my firm belief that to bring this matter to the Council in compliance with Section 13515 of the California Code of Regulations, a proper draft of the proposed amendments needs to be redistributed with adequate public notice, and then City staff needs to seek a recommendation from the Planning Commission as required by Table 21.50-1 of the certified Implementation Plan.

B. Substantive Comments

If the Council chooses to proceed with sending these improperly and inadequately reviewed changes to the Coastal Commission, based a quick reading of the material which I first became aware of on April 6 (along with the 585 *other* pages of the Council agenda packet) I have a number of specific comments. With the exception of the proposed new **Section 21.52.090**, which as noted above is not disclosed in the redline and whose significance I have not had time to assess, these comments refer to the page numbers in the redline of Attachment B, where the proposed changes are more apparent.

1. **Pages 18-29 through 30:** I strongly object to the proposed emasculatation of the Shoreline Height Limitation policy.

For 47 years, residents of Newport Beach have relied on strong height limits to preserve the low-key coastal environment of the bulk of the city, and dampen the wave of pre-Coastal Act high rise development pressure. More recently we have relied on the City's commitment to Shoreline Height limitations in CLUP Policy 4.4.2-1, as well as to maintaining bulk and height standards, as they existed at the time of CLUP certification, in Policies 2.2.2-4 and 4.4.2-3.

While it is true that the local height restrictions always allowed a number of minor exceptions to the basic 35 foot height limit (including, to encourage a variety of architectural styles, a 5 foot allowance for sloping roofs), the proposed changes simply do not express the height restrictions as they existed at the time of certification, thereby creating an internally inconsistent CLUP.

In particular, they insert a great number of vague and apparently *unlimited* exceptions using words defined nowhere in the CLUP, as well as creating an entirely new exception for "government facilities" (which, as noted above, would not have been found in the "review" drafts, even if the public knew there were review drafts).

As one example among many, it appears that consistent with this proposed policy, the IP could be expanded to completely exempt from height limits the "meeting facilities" of a hotel complex. That has never been the public's understanding of the shoreline height limits in Newport Beach.

Far more disturbingly, the proposed policy introduces a blanket exemption from the 35 foot limit for "planned communities." This is most certainly inconsistent with the public's

understanding of the shoreline height limits, and in particular the local restrictions in effect at the time of certification of the CLUP (see [Ordinance 97-9](#)). Former Zoning Code Section 20.65.050.A (for applicability of height limits to Planned Communities approved after October 11, 1972) said "***in no event shall the development exceed the height limits permitted in the height limitation zones***" and former Section 20.65.060.C (for use of limits specified in Planned Community texts approved prior to October 11, 1972) said "*a use permit shall be required for any structure which exceeds the height limits established by this chapter.*"

2. **Page 18-32:** Since these proposed edits, like many of the others, are presented out of context, I have not had time to assess their significance.
3. **Pages 18-33 through 35:** As noted in comment 1, above, neither the CLUP nor the IP properly express the nuances of the local 35 foot shoreline height limitation, including the allowance of 5 feet for sloped roofs and other minor exceptions, but these proposed changes make the discrepancies even worse, particularly to the extent they imply an exemption from height limits is available for anything the staff and City Council declare to be a "planned community."
4. **Page 18-32:** I have not had time to assess the significance of this proposed change.
5. **Page 18-32:** With regard to the proposed footnote (9), as noted in my comment to Item 14 on the Council's present consent calendar, a request from "two members" would not, in the usual understanding of things, constitute a request from "one-third" of the Council, any more than three are "one-half". Whatever is intended, it is probably wiser to simply cite the ambiguous code section by number rather than attempting to restate or summarize it. Repeating the same regulation in two or more places does nothing but lead to the possibility the various statements of policy may contradict each other.
6. **Pages 18-40 through 41:** As noted above, this proposed amendment was not noticed or provided in the public review drafts that no one knew about. I have not had time to assess it.
7. **Pages 18-44 through 48:** The proposal for a Balboa Village Parking Management Plan Overlay District seems remarkably similar to the plan that was previously submitted to the Coastal Commission, but deleted before certification of the IP. Although I did not have time to assess the former, if this proposal is changed from that, it would have been helpful to indicate how, where and why. My impression is the Coastal Commission wanted to see a comprehensive parking approach for the entire peninsula, not a piecemeal one.

The summary on page 18-3 of the staff report suggests that this implementation will eliminate parking requirements for "Most Commercial Uses," but not for such things as "Cultural Institutions" and "Marine Services." I find it very hard to see how that objective, particularly with regard to marine services, could be found consistent with the Coastal

Act. Indeed, it would seem to place special burdens on the most coastal-dependent uses, allowing them to be forced out by generic, non-coastal-related uses.

8. **Pages 18-49 through 57:** As noted above, I have not been able to find anywhere the text of the noticed change to CLUP Policy 3.13, which is presumably related to this. I also have trouble finding the rationale for allowing any of these private encroachments on public oceanfront property. The permission granted (on page 18-51) for private walls and fencing on public property seems particularly problematic and inconsistent with coastal access policies.

Of the specific changes proposed:

- a. Pages 18-50 through 51: The rationale for having areas where encroachments are allowed, but for some reason an area where they are not allowed, somewhere between E Street and G Street, is both hard to fathom and hard to visualize without a diagram (of which none seems to be provided). Only by finding a map can the reader discover that 107 G Street is adjacent to, but inland from, 1400 East Ocean Front, and that they share a west-facing beach-abutting property line, with only 1400 East Ocean Front also having a south-facing beach-abutting property line. Even knowing that, the code seems to say the owner of 107 G Street is prohibited from encroaching onto the sand to its west, but it is impossible to tell if 1400 East Ocean Front is similarly restricted.
- b. Page 18-57: The existing idea seems to be to use the encroachment fees to pay for physical improvements to mitigate the effect of allowing physical encroachments. I can see City staff's wish to use the fees to pay for its shuttle service, but I would see spending on "transportation alternatives" to be a much lower priority than providing physical improvements. In particular, it seems a continuing blot on the character of Newport Beach that there are areas of the city in which we allow private use of public beach property but do not provide restrooms for use by the public trying to enjoy the portion of the beach left to them. If "transportation alternatives" is allowed at all as an acceptable use of the encroachment fees, I think it should be toward the bottom of the list, to be used only after the other possibilities have been exhausted.