



CITY OF NEWPORT BEACH
COMMUNITY DEVELOPMENT DEPARTMENT

100 Civic Center Drive
Newport Beach, California 92660

949 644-3200
newportbeachca.gov/communitydevelopment

Director's Determination

To: Planning Division, Community Development Department
From: Seimone Jurjis, Community Development Director
Date: April 30, 2021
Re: Director's Determination No. DD2021-001 Interpreting Accessory Residential as an Allowed Use within Resort Hotels (PA2021-096)

Title 20 (Planning and Zoning) and Title 21 (Local Coastal Program Implementation Plan) of the Newport Beach Municipal Code ("NBMC") define "hotel" as *an establishment that provides guest rooms or suites for a fee to transient guests for sleeping purposes. Access to units is primarily from interior lobbies, courts, or halls. Related accessory uses may include conference rooms and meeting rooms, restaurants, bars, and recreational facilities. Guest rooms may or may not contain kitchen facilities for food preparation. Hotels with kitchen facilities are commonly known as extended stay hotels. A hotel operates subject to taxation under California Revenue and Taxation Code Section 7280.*

Neither Title 20 (Planning and Zoning) nor Title 21 (Local Coastal Program Implementation Plan) list residential uses as part of the definition of "hotel". Both Title 20 and Title 21 definitions of "hotel" are out of date and do not reflect current industry practice. Specifically, the definition of "hotel" has not been updated to designate residential uses as an accessory use, which has become common practice for destination resort hotels (mixed-use hotels). While the definition of a hotel does not prohibit residential uses, a Director's Determination is necessary to fill the gap between contemporary practice and the exact wording of Title 20 and Title 21.

Sections 20.12.020 and 21.12.020 (Rules of Interpretation) of the NBMC authorize the Community Development Director to interpret the meaning of provisions of the Zoning Code and Local Coastal Program Implementation Plan.

Background

Council Policy K-4 (Reducing the Barriers to the Creation of Housing)

At the March 9, 2021 City Council meeting, the City Council adopted Resolution No. 2021-18 adding City Council Policy K-4 (Reducing the Barriers to the Creation of Housing). Council Policy K-4 recognizes that the City has several major constraints on existing lands that severely limit or totally restrict the City's ability to

accommodate growth to the extent identified in the Sixth Cycle Regional Housing Needs Allocation ("RHNA"). As a result, new and flexible land use and zoning regulations and strategies should be developed in order to reasonably and practically accommodate this ambitious State housing mandate while protecting the character and maintaining a quality of life that makes Newport Beach a special place to live, work, and visit.

Council Policy K-4 directs City staff to develop, modify as necessary, and aggressively implement various strategies and action plans that are designed to accelerate housing production consistent with the policy, including encouraging and incentivizing the development of mixed-use hotels. Council Policy K-4's goals include interpreting ambiguities in the City of Newport Beach General Plan, Coastal Land Use Plan, and Titles 20 (Planning and Zoning) and 21 (Local Coastal Program Implementation Plan) of the Newport Beach Municipal Code ("NBMC") to allow hotels, located outside of the Coastal Commission Appeal Jurisdiction, to convert up to thirty percent (30%) of their approved hotel rooms into residential units on a one-for-one basis. Such an interpretation would allow for residential units to be deemed an accessory use to the principal use of a hotel and find that such residential uses are consistent with the hotel's underlying General Plan, Coastal Land Use Plan and municipal code land use and zoning designations.

Applicable Resort Hotels

Mixed-use hotels are an established trend in the hospitality industry that incorporate hotel-branded residential units as an accessory use located within a resort hotel complex where residents enjoy access to the full range of services, facilities, and amenities provided by the hotel operator or brand. These hotel-residential uses cannot exist without the hotel's services, facilities, and amenities. There are currently twenty-two (22) hotels in the City, of which ten (10) hotels qualify as a resort hotel, a self-contained destination that provides for all travel accommodation needs in one location, including but not limited to restaurants, bars, shopping, and recreational facilities (Attachment A). Of the ten (10) resort hotels in the City, one (1) hotel is located in the coastal zone, but completely outside the Coastal Commission Appeal Jurisdiction area, and three (3) hotels are located outside the coastal zone.

| Table 1. Applicable Resort Hotel Properties in the City | | | | | |
|---|----------------------------------|------------------------|---------------------------------|---|---|
| Map ID | Hotel Name | Location | General Plan | Local Coastal Program | Zoning |
| 1 | Renaissance Newport Beach | 4500 MacArthur Blvd. | Mixed-Use Horizontal (MU-H2) | N/A- Outside Coastal Zone | Koll Center Planned Community (PC15) |
| 2 | Fashion Island Hotel | 690 Newport Center Dr. | MU-H3 | N/A- Outside Coastal Zone | North Newport Center Planned Community (PC56) |
| 3 | Hyatt Regency John Wayne Airport | 4545 MacArthur Blvd. | MU-H2 | N/A- Outside Coastal Zone | Newport Place Planned Community (PC11) |
| 4 | Newport Beach Marriot | 900 Newport Center Dr. | Visitor Serving Commercial (CV) | Commercial Visitor-Serving (CV-B) / Visitor Serving Commercial (CV) | Commercial Visitor-Serving (CV) |

Planning and Zoning (Title 20) Interpretation

Pursuant to Section 20.12.020E (Rules of Interpretation – Unlisted Uses of Land) of the NBMC, the Director may determine that a proposed land use that is not listed in Part 2 of this title (Zoning Districts, Allowable Land Uses, and Zoning District Standards) may be allowed if the following findings can be made:

Finding:

- A. The characteristics of, and activities associated with, the proposed use are equivalent to those of one or more of the uses listed in the zoning district as allowable, and will not involve a greater level of activity, population density, intensity, traffic generation, parking, dust, odor, noise, or similar impacts than the uses listed in the zoning district;*

Facts in Support of finding:

1. The allowance of residential accessory units within a hotel will be regulated to ensure the underlying characteristics and activities remain equivalent to the listed hotel use within the applicable CV (Commercial Visitor-Serving) Coastal Zoning District or PC (Planned Community) Zoning District.
2. Approved hotel rooms will be allowed to convert to residential uses on a one-for-one basis to ensure the accessory residential use does not involve a greater level of activity, population density, traffic generation, parking, dust, odor, noise, or similar impacts than the other uses listed within the applicable CV (Commercial Visitor-Serving) Coastal Zoning District or PC (Planned Community) Zoning District.
3. The conversion of hotel rooms to residential uses will be limited to no more than 30 percent of the total number of approved hotel rooms. This restriction will further ensure that residential uses remain an accessory use to the hotel and do not change the primary use of the property from hotel to residential.
4. The traffic generation associated with a residential use is comparable to the traffic generation for a resort hotel use. According to the Institute of Transportation Engineers Trip Generation Manual (10th Edition), a Multi-Family Housing Mid-Rise (3-10 levels) development (ITE Code 221) would generate 0.36 and 0.44 average AM and PM weekday peak hour trips per dwelling unit. A Resort Hotel (ITE Code 330) would generate 0.32 and 0.41 average AM and PM weekday peak hour trips per room. The published ITE trip rates are generally for stand-alone development (e.g. stand-alone hotel or multi-family housing buildings); however, the reality is accessory residential dwelling units would likely have lower rates due to the additional on-site amenities provided. Therefore, following conversion of a hotel room to a residential unit, the anticipated traffic generation will be similar or lower.

5. Pursuant to Council Policy K-3 and in compliance with Senate Bill 743, the conversion of a resort hotel room to a residential unit is considered to be less than significant impact on transportation/traffic and no further vehicle miles traveled (VMT) analysis is required since all trips associated with such conversion have already been accounted for as approved hotel rooms. As a result, conversions are expected to fall below the adopted land use screening threshold of 300 or less daily trips. For ITE Code 330, there is no listed daily trip rate; however, the City Traffic Phasing Ordinance states that if there is not an applicable rate, the City Traffic Engineer may, in the exercise of his/her professional judgement, authorize the use of trip generation rates in San Diego Association of Government's (SANDAG) Traffic Generators or on the basis of actual site counts. The SANDAG daily trip rate for Resort Hotel is eight daily trips per room. The SANDAG daily trip rate for Multi-Family Condominium is also eight daily trips per unit. Therefore, the conversion of a resort hotel room to a residential unit would result in same or lower daily trips, and below the screening threshold of 300 daily trips requiring VMT analysis.
6. Based on the similar vehicular trips associated with accessory residential uses, levels of odor, dust, noise, or similar impacts at a hotel property with accessory residential uses is expected to be similar or less.
7. Mixed-use hotels are a form of accommodation that affords buyers with access to the full range of services, facilities, and amenities provided by the hotel.
8. The definition of hotel allows related accessory uses such as conference rooms and meeting rooms, restaurants, bars, and recreational facilities that can generate additional parking demand substantially higher than residential parking rates. The conversion of hotel rooms to residential units would constitute an amendment to the conditional use permit. In reviewing such amendments, approval of the conditional use permit would require ensuring adequate parking is provided to accommodate the residential units through surplus parking, shared parking, or the adoption of a parking management plan.

Finding:

- B. The proposed use will meet the purpose/intent of the zoning district that is applied to the location of the use;*

Facts in Support of finding:

1. The CV (Commercial Visitor-Serving) Coastal Zoning District is intended to provide for areas appropriate for accommodations, goods, and services intended to primarily serve visitors to the City. Hotels are allowed in the CV (Commercial Visitor-Serving) Coastal Zoning District subject to obtaining a

conditional use permit pursuant to Section 20.20.020 of the NBMC. A hotel with an accessory residential use that is limited to no more than 30 percent of the approved hotel rooms will primarily serve visitors to the City.

2. The resort hotels located within PC11, PC15, and PC56 are located within the MU-H (Mixed-Use Horizontal) land use category of the General Plan. The MU-H designations are intended to provide for the development of areas for a horizontally distributed mix of uses, which may include general or neighborhood commercial, commercial offices, multi-family residential, visitor-serving and marine-related uses, and/or buildings that vertically integrate residential with commercial uses. The hotel-branded units are consistent with the MU-H designations as residential units are clearly allowed, and a hotel with an accessory residential use that is limited to no more than 30 percent of the approved hotel rooms will primarily serve visitors to the City.
3. Mixed-use hotels are common practice within the hotel industry and provide visitor serving amenities and services consistent with the CV (Commercial Visitor-Serving) Coastal Zoning District and PC (Planned Community) Zoning District.
4. Fact in Support of Finding A.7 is hereby incorporated.

Finding:

C. The proposed use will be consistent with the goals, objectives, and policies of the General Plan, or any applicable specific plan;

Facts in Support of finding:

1. The CV (Commercial Visitor-Serving) Coastal Zoning District General Plan land use designation is intended to provide for areas appropriate for accommodations, goods, and services intended to serve primary visitors to the City. By limiting residential uses to an accessory use at a hotel property, the primary purpose of the hotel meets the goals, objectives and policies of the General Plan, or any applicable specific plan.
2. The MU-H (Mixed-Use Horizontal) designations are intended to provide for the development of areas for a horizontally distributed mix of uses, which may include general or neighborhood commercial, commercial offices, multi-family residential, visitor-serving and marine-related uses, and/or buildings that vertically integrate residential with commercial uses. Mixed-use hotels are consistent with the MU-H designations as residential units are clearly allowed, and a hotel with an accessory residential use that is limited to no more than 30 percent of the approved hotel rooms will primarily serve visitors to the City.

3. The trend in the hotel industry is to locate limited residential uses at a hotel property to create resort amenities that can be shared by residents, visitors, and tourists alike.
4. This interpretation implements Land Use Element Policy LU 2.3 (Range of Residential Choices) by providing new opportunities for the development of residential units in response to community and regional needs for housing.
5. This interpretation implements Land Use Element Policy LU 3.2 (Growth and Change) which encourages enhancement of existing neighborhoods, districts, and corridors, allowing for re-use and infill with uses that are complementary in type, form, scale, and character. Changes in use and/or density/intensity should only be considered in those areas that are economically underperforming, are necessary to accommodate the City's share of regional population growth, improve the relationship and reduce commuting distance between home and jobs, or enhance the values that distinguish Newport Beach as a special place to live for its residents. The hotel industry has been one of the hardest hit industries due to the COVID-19 pandemic and for some hotels, a full recovery of the industry is not anticipated for many years. Mixed-use hotels provide an opportunity to revitalize older and/or underperforming hotels to maintain their competitive standing by creating multiple revenue streams that can support improvements to the property enhancing the visitor experience. Economies of scale created by shared facilities, amenities, and services add additional benefit to mixed-use hotel developments. This cross pollination of business benefits both the hotel and the resident. It may also increase occupancy rates at the resort by creating increased synergy between uses and social gathering opportunities, boosting transient occupancy taxes while providing in-fill housing opportunities to partially assist the City in meeting its RHNA obligation in highly desirable and built-out areas.

Finding:

D. The proposed use is not listed as allowable in another zoning district;

Fact in Support of finding:

1. Hotels with an accessory residential use are not listed as allowable in another zoning district, Stand-alone residential uses, which are allowable in another zoning district, would not be permitted under this interpretation.

Finding:

E. The proposed use is not a prohibited or illegal use.

Fact in Support of finding:

1. Hotels with an accessory residential use are neither a prohibited or an illegal use.

Local Coastal Program Implementation Plan (Title 21) Interpretation

Pursuant to NBMC Section 21.12.020(E) (Rules of Interpretation – Unlisted Uses of Land) of the NBMC, the Director may determine that a proposed land use that is not listed in Part 2 of this title (Coastal Zoning Districts, Allowable Land Uses, and Coastal Zoning District Standards) may be allowed if the following findings can be made:

Finding:

F. The characteristics of, and activities associated with, the proposed use are equivalent to those of one or more of the uses listed in the coastal zoning district as allowable, and will not involve a greater level of activity, population density, intensity, traffic generation, parking, dust, odor, noise, or similar impacts than the uses listed in the coastal zoning district;

Facts in Support of finding:

1. The allowance of residential accessory units within a hotel will be regulated to ensure the underlying characteristics and activities remain equivalent to the listed hotel use within the applicable CV (Commercial Visitor-Serving) Coastal Zoning District.
2. Approved hotel rooms will be allowed to convert to residential uses on a one-for-one basis to ensure the accessory residential use does not involve a greater level of activity, population density, traffic generation, parking, dust, odor, noise, or similar impacts than the other uses listed within the applicable CV (Commercial Visitor-Serving) Coastal Zoning District.
3. The conversion of hotel room to residential units would constitute a major change in hotel operations requiring a coastal development permit. The coastal development permit review will require adequate parking be provided to accommodate the residential units through surplus parking, shared parking, or the adoption of a parking management plan, and to ensure the protection of lower-coast visitor accommodations.
4. Facts in Support of Finding A.3 through A.8 are hereby incorporated by reference.

Finding:

G. The proposed use will meet the purpose/intent of the coastal zoning district that is applied to the location of the use;

Facts in Support of finding:

1. The CV (Commercial Visitor-Serving) Zoning District is intended to provide for areas appropriate for accommodations, goods, and services intended to primarily serve visitors to the City. A hotel with an accessory residential use that is limited to no more than 30 percent of the approved hotel rooms will primarily serve visitors to the City.
2. Mixed-use hotels are common practice within the hotel industry and provide visitor serving amenities and services consistent with the CV (Commercial Visitor-Serving) Coastal Zoning District.

Finding:

H. The proposed use will be consistent with the goals, objectives, and policies of the Coastal Land Use Plan;

Facts in Support of finding:

1. The CV (Commercial Visitor-Serving) Coastal Zoning District Coastal Land Use Plan designation is intended to provide for areas appropriate for accommodations, goods, and services intended to serve primary visitors to the City. By limiting residential uses to an accessory use at a hotel property, the primary purpose of the hotel meets the goals, objectives and policies of the Coastal Land Use Plan that prioritize visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation over other uses.
2. The trend in the hotel industry is to locate limited residential uses at a hotel property to create resort amenities that can be shared by residents, visitors, and tourists alike.
3. This interpretation would restrict its applicability to hotel properties located outside of the appeal areas identified in the California Public Resources code Section 30603(a) as generally depicted on the Post-LCP Certification Permit and Appeal Jurisdiction Map. This applicability restriction ensures that coastal access and coastal dependent uses are not impacted.
4. Any development would be required to adhere to all LCP goals and policies including those related to public access and resource protection, and the protection of lower-cost visitor accommodations.

Finding:

- I. The proposed use is not listed as allowable in another coastal zoning district; and*

Fact in Support of finding:

1. Hotels with an accessory residential use are not listed as allowable in another coastal zoning district. Separate or stand-alone residential uses operating as primary land uses, which are allowable in another coastal zoning district, would not be permitted under this interpretation.

Finding:

- J. The proposed use is not a prohibited or illegal use.*

Fact in Support of finding:

1. Hotels with an accessory residential use are neither a prohibited or an illegal use.

Directors Determination

The Community Development Director of the City of Newport Beach hereby determines that residential uses are permitted as an accessory use to hotels subject to the following:

- a. This interpretation shall only apply to resort hotels, a self-contained destination that provides for all travel accommodation needs in one location, including but not limited to restaurants, bars, shopping, and recreational facilities. Residents shall enjoy access to the full range of services, facilities, and amenities provided by the hotel operator or brand.
- b. The hotel property relying upon this interpretation shall be located outside the appeal area identified in California Public Resources Code Section 30603(a) as generally depicted on the Post-LCP Certification Permit and Appeal Jurisdiction Map.
- c. Approved hotel rooms may be converted to residential units but only on a one-for-one basis.
- d. The residential use shall at all times be accessory to the hotel use, and the residential units shall comprise no more than 30 percent of the approved hotel rooms.
- e. The residential units may be located within a repurposed hotel or in a new residential structure.

- f. A property owner that desires to have an accessory residential use at their hotel shall process a conditional use permit and coastal development permit (if applicable). In reviewing said permits, the review authority shall ensure adequate parking is provided to accommodate the residential units through surplus parking, shared parking, or the adoption of a parking management plan.
- g. Potential impacts to public access, affordable housing, and the loss of transient occupancy tax must be mitigated by entering into a Development Agreement with the City or by some other means deemed appropriate.

Please note that a call for review or appeal may be filed within 14 days following the date of this determination.

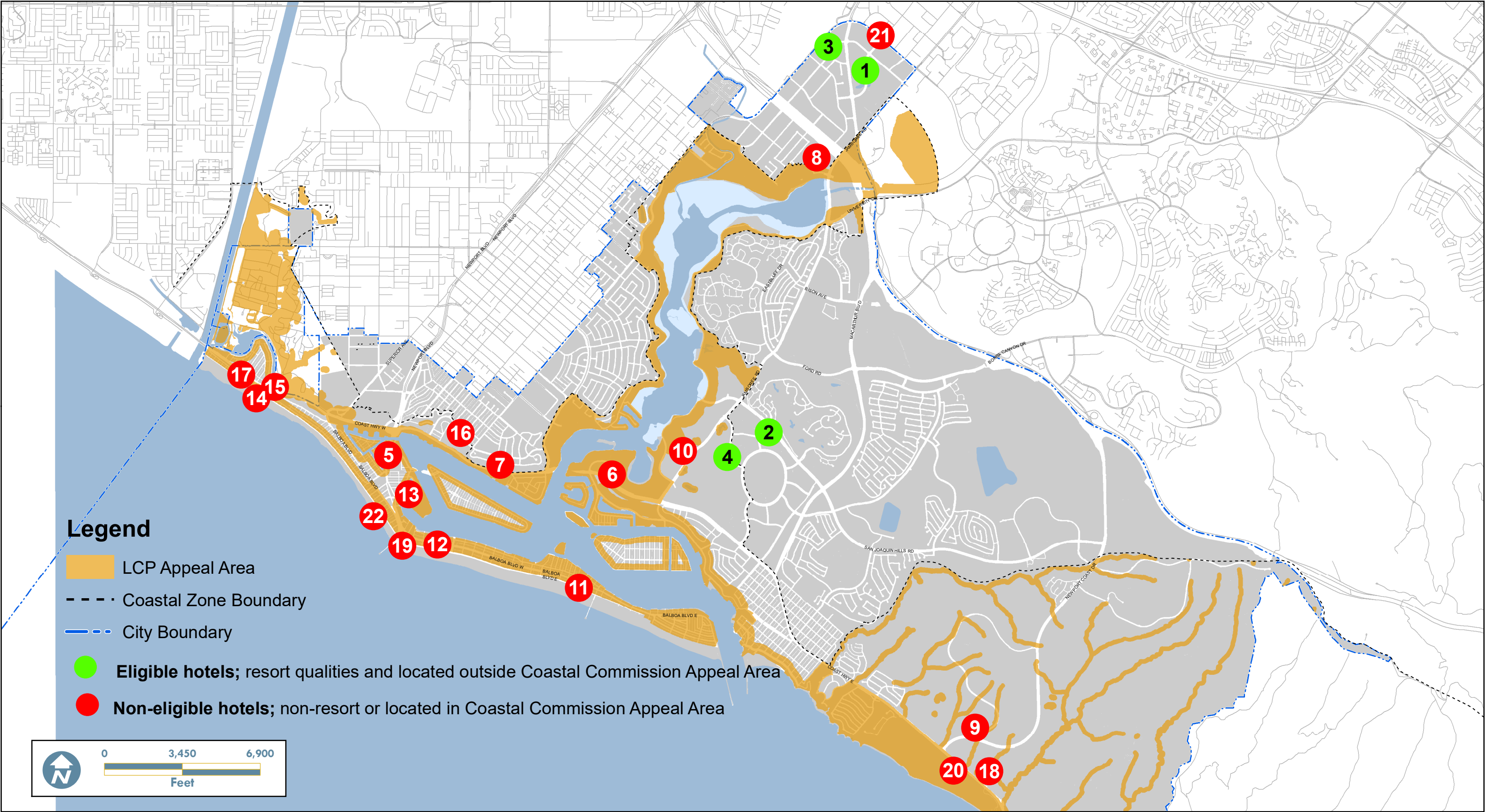

Seimone Jurjis, PE, CBO
Community Development Director

Attachments:

A – Hotel Map and List

ATTACHMENT A

Hotel Map and List



Qualifying Resort Hotels

Determination No. DD2021-001 (PA2021-096)

| Tag | Name of Establishment | Address | GP | Zoning | Coastal land Use and Zoning | Appeal Area | Resort Qualities | Eligible for Interpretation Non-Appeal Area Resort Qualities |
|-----|---|--------------------------|-------|----------------------------------|-----------------------------|-------------|------------------|--|
| 1 | Renaissance Newport Beach | 4500 MacArthur Blvd | MU-H2 | PC-15 (Office Site A) | -- | -- | Yes | Yes |
| 2 | Fashion Island Hotel | 690 Newport Center Drive | MU-H3 | PC-56 | -- | -- | Yes | Yes |
| 3 | Hyatt Regency John Wayne Airport | 4545 MacArthur Blvd | MU-H2 | PC11 (Hotel Site 1) | -- | -- | Yes | Yes |
| 4 | Newport Beach Marriot | 900 Newport Center Dr | CV | CV | CV-B/CV | No | Yes | Yes |
| 5 | Lido House | 3300 Newport Boulevard | CV-LV | CV-LV | CV-LV | Bisected | Yes | No |
| 6 | Newport Dunes | 1131 Back Bay Drive | PR | PC48 | PR/PC48 | Yes | No | No |
| 7 | Balboa Bay Resort | 1221 West Coast Highway | CV | PC45 (Resort) | CV-B/PC45 | Yes | Yes | No |
| 8 | Newport Beach Marriot Bayview | 500 Bayview Circle | CV | PC32 | CV-A/PC-32 | Bisected | Yes | No |
| 9 | The Resort at Pelican Hill | 22701 Pelican Hill Rd | CV | PC52 (PA13C-Tourist Commercial) | PC52 | Bisected | Yes | No |
| 10 | Hyatt Regency Newport Beach | 1107 Jamboree Rd | CV | CV | CV-B/CV | Bisected | Yes | No |
| 11 | Balboa Inn | 105 Main St. | CV | CV | CV-B/CV | Yes | Yes | No |
| 12 | Bay Shores Peninsula Hotel | 1800 West Balboa Blvd. | CV | CV | CV-A/CV | Yes | No | No |
| 13 | Little Inn By The Bay | 2627 Newport Blvd. | CV | CV | CV-A/CV | Bisected | No | No |
| 14 | Newport Channel Inn | 6100 West Coast Highway | CV | CV | CV-A/CV | No | No | No |
| 15 | Hotel Solarena | 6208 West Coast Highway | CV | CV | CV-A/CV | No | No | No |
| 16 | Holiday Inn Express | 2300 West Coast Highway | CV | CV | CV-A/CV | Bisected. | No | No |
| 17 | Pine Knot | 6302 West Coast Highway | CV | CV | CV-A/CV | No | No | No |
| 18 | Marriot's Newport Coast Villas | 23000 Newport Coast Dr | CV | PC52 (PA13C-Tourist Commercial) | PC52 | Bisected | No | No |
| 19 | Doryman's Inn | 2102 West Ocean Front | CV | CV | CV-B/CV | Yes | No | No |
| 20 | Crystal Cove Beach Cottages | 35 Crystal Cove | OS | PC52 (PA17) | PC52 (PA17) | Yes | No | No |
| 21 | Extended Stay America OC John Wayne Airport | 4881 Birch Street | CG | PC15 (Retail and Service Site 1) | — | — | No | No |
| 22 | The Newport Beach Hotel A Four Sisters Inn | 2306 W Oceanfront | CV | CV | CV-B/CV | Yes | No | No |