

July 7th, 2016

Offices of Mayor Kevin Faulconer
202 "C" Street 11th Floor
San Diego, CA 92101

Re: Coastal Zone Height Limit Calculations & 3144 Emerson Street | Project #475473

Dear Mayor Faulconer,

The Ocean Beach Planning Board supports the Peninsula Community Planning Board in their position against the project at 3144 Emerson Street PTS #475473. The coastal height limit is an integral part to the quality of the communities on Point Loma. Actions that builders and developers take to defy the intent of the height limit by modifying the finished grade should not be tolerated.

Because the Land Development Code uses two measurement methods, the Base Zone Height Limit [LDC Section 113.0207(a)(2)(A)] and the Prop D Coastal Height Limit [LDC Section 113.0270(a)(4)(D)], there is a lack of clarity in which methodology can be used to calculate the height for properties. To address this, in 2011 the City Council adopted the 7th Update to the LDC, which specifically clarified that Prop D Coastal Height Limit properties must adhere to both measurement methods. The Council did this by adding a 3rd bullet to the LDC section that explains how to measure the Prop D Coastal Height Limit, Section 113.0270(a)(4)(D) [[see here](#) pp. 47]:

“(iii) Structure height of buildings subject to the Coastal Height Limit shall also comply with the height measurement calculations for plumb line in Section 113.0270(a)(2)(A) and overall height in Section 113.0270(a)(2)(B).”

This language states that projects in the Coastal Zone shall comply with BOTH the Base Zone and Height Limit, not one or the other. In this respect, if a base zone allows for a taller height than the Coastal Height Limit, than the Coastal Height limit shall be the standard as it is the more restrictive zoning.

Furthermore, the Coastal Commission agreed with this interpretation when it approved the 7th update to the LDC. This is shown in Coastal’s staff report on [the 7th Update](#) (see p. 13, “Measurement Amendments” section). This is to suggest that Development Services is applying the LDC in a manner inconsistent with the Coastal Commission’s approval.



Please investigate the calculation of the 30 ft height limit on this project, and see to it that the project meets the intent of voter in Proposition D and Coastal Zone Height Limit. In addition, please engage with Bob Vacchi and the deputy directors at Development Services Department to ensure the calculation methodology for all projects in the Coastal Zone is consistently measured across all projects.

We call on you to support the Coastal Height Limit, protect our coastal views, and support the residents that inhabit our coastal communities. Please, stand with Ocean Beach and Point Loma to ensure egregious violations of the Coastal Height Limit are not violated in the future. I am available if you would like to discuss further or have any questions regarding this letter. You may reach me via email at johnambert@gmail.com or by phone at # 805.801.2015. Thank you.

Sincerely,



John Ambert, AIA, LEED AP BD+C
Chair, Ocean Beach Planning Board

Attachments:

- LDC 113.0270 pages 46-48
- CA Coastal Commission Addendum to W16h, City of San Diego Major LCP Amendment, pg 13

CC:

- Bob Vacchi, Director of Development Services
- Elyse Lowe, Deputy Director of Development Services
- Tony Kempton, San Diego City Planner for Ocean Beach
- Sara Toma, San Diego City Planner for Ocean Beach
- Jon Linney, Peninsula Community Planning Group Chair
- John Ly, Director of Outreach
- Conrad Wear, Council Representative District 2
- David Moty, Community Planning Groups Chair

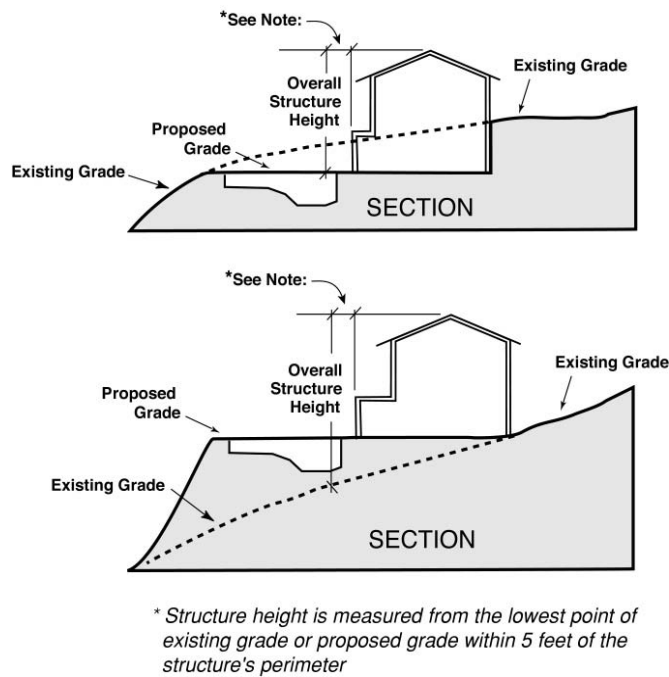
An approved action by the Ocean Beach Planning Board on July 6th, 2016



- (C) When a pool is located within 5 feet of the *structure*, the overall *structure height* shall not include the pool. This is illustrated in Diagram 113-02PP.

Diagram 113-02PP

Overall Structure Height With Pool



- (D) *Structure Height* of Buildings subject to Coastal Height Limit in accordance with Section 132.0505
 - (i) The height of a building is measured to the uppermost point of the *structure* or any appurtenance placed upon the roof thereof, including *signs*, penthouses, mechanical equipment, chimneys, vent stacks, spires, or steeples, or other projections.

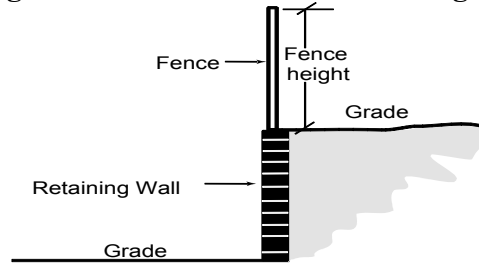
- (ii) The base of the measurement shall be taken from finished grade in accordance with the 1970 Uniform Building Code. The height shall be measured from the highest adjoining sidewalk or ground surface within 5 feet of the *structure*, provided that the height measured from the lowest adjoining surface shall not exceed such maximum height by more than 10 feet.
 - (iii) *Structure height* of buildings subject to the Coastal Height Limit shall also comply with the height measurement calculations for plumb line in Section 113.0270(a)(2)(A) and overall height in Section 113.0270(a)(2)(B).
 - (5) *Structures* excluded from the measurement of *structure height*

Uninhabited roof *structures* up to 15 feet in height that conceal mechanical equipment, elevators, stair overruns, trellis and shade *structures*, and *fences* with a surface area at least 75 percent open to light are excluded from the calculation of *structure height* for *development*, if all of the following conditions exist:
 - (A) The *development* is not located within the Coastal Height Limit Overlay Zone, within the Clairemont Mesa Height Limit Overlay Zone, or within a designated view corridor within the Coastal Overlay Zone;
 - (B) The *structure height*, exclusive of the exemptions permitted in Section 113.0270(a)(5), is 45 feet or greater;
 - (C) The *development* is a commercial and residential mixed-use project; and
 - (D) The *structure* does not project above a 45-degree plane inclined inward from the top of the parapet of the nearest wall, except that trellises and shade *structures* outside of the 45-degree plane may be 9 feet in height, and *fences* outside of the 45-degree plane with a surface area at least 75 percent open to light may be 4 feet in height.
- (b) *Structure Height of Fences, Walls, and Retaining Walls*
 - (1) *Fence and Wall Height*

- (A) The height of any portion of a *fence* or wall is measured from the lowest *grade* abutting the *fence* or wall to the top of the *fence* or wall, except that the height of a *fence* or wall on top of a *retaining wall* is measured from *grade* on the higher side of the *retaining wall*, as shown in Diagram 113-02QQ.

Diagram 113-02QQ

Height of Fence or Wall on Retaining Wall



- (B) The height of a *fence* or wall may be averaged between two points along the *property line* to create a straight line along the top of the *fence* or wall, provided that the average height does not exceed the maximum permitted.

in the lawsuit was filed and the date the lawsuit was officially resolved.

(2) The credited time for the tolling period shall not exceed 5 years.

The Commission finds that this provision, independent of the discretionary authority granted by the state through the Subdivision Map Act, is overly broad. The expansion of tolling ability with regard to coastal development could very readily undermine the timeliness and accuracy of analysis critical to the protection of coastal resources. Without knowing whether there are changed circumstances in either the legal or physical environment of the development, the Commission cannot be confident that all appropriate and applicable protective measures called for in the certified LCP have been applied to fully implement the intent of the Coastal Act. In summary, therefore, given the concerns with the discretionary permits exemption in the ESL regulations and the expanded application of tolling to all development permits, the City's LCP amendment must be rejected as submitted.

PART V. FINDINGS FOR APPROVAL OF THE CITY OF SAN DIEGO IMPLEMENTATION PLAN AMENDMENT, IF MODIFIED

Permit Process Amendments:

The Commission finds that modifications are required to the proposed permit process amendment in order to assure implementation of the certified LUPs and the Coastal Act. Regarding permit process, the most significant changes to the proposed amendments which will assure the analysis and protective measures, such as wetland buffers and open space deed restrictions, provided by the ESL regulations are applied to all coastal development on premises containing ESL is to eliminate the exemption of Section 143.0110 with respect to properties within the Coastal Overlay Zone.

Through the suggested modification to the amendment's proposed exemption from obtaining a NDP or SDP, deviations from the ESL regulations are not applicable within the Coastal Overlay Zone. By retaining the requirement for development on premises containing ESL to obtain an NDP or SDP, which are the recognized vehicles for application of ESL regulations, the proposed amendment, as modified, can be found consistent with the applicable certified LUPs.

Tolling of Development Permits:

The second modification to the proposed amendments will be to limit the application of Section 126.0115's expanded tolling provisions for development permits to development that is located outside of the Coastal Overlay Zone. Through the suggested modification to the proposed tolling amendment, the Commission ensures that development permits for development within the Coastal Overlay Zone will not be able to avoid analysis of changed circumstances, be they legal or physical, for overly long periods of time, but instead will have to satisfy the legally required findings contained in the LDC before being granted a time extension.