

CALIFORNIA COASTAL COMMISSION

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STAFF REPORT: APPEAL – SUBSTANTIAL ISSUE

Appeal Number: A-5-HNB-18-0067

Applicant: Pendulum Properties Partners

Agent: Kevin Hayes and Bryan Russell, Pendulum Properties

Local Government: City of Huntington Beach

Local Decision: Approval with Conditions

Appellant: Tony Sellas

Project Location: 16330 – 16470 Pacific Coast Highway, Huntington Beach, Orange County APNs: 178-451-02, 178-451-12, 178-451-04, 178-441-15, 178-441-13, 178-441-16, 178-441-17, 178-441-14

Project Description: Appeal of City of Huntington Beach approval of Local Coastal Development Permit 18-032 to establish a shared parking program for an existing 98,823 square foot shopping center (Peter’s Landing) and up to an additional 2,666 square feet of future commercial development. The parking program includes a reduction in the number of parking spaces required for the existing and future commercial uses at the commercial shopping center (retail, office, restaurant, marina, and religious assembly).

Staff Recommendation: Find Substantial Issue

IMPORTANT HEARING PROCEDURE NOTE

The Commission will not take testimony on the “substantial issue” recommendation unless at least three commissioners request it. The Commission may ask questions of the applicant, any aggrieved person, the Attorney General or the executive director prior to determining whether or

not to take testimony regarding whether the appeal raises a substantial issue. If the Commission takes testimony regarding whether the appeal raises a substantial issue, testimony is generally, at the discretion of the Chair, limited to 3 minutes total per side. Only the applicant, persons who opposed the application before the local government (or their representatives), and the local government shall be qualified to testify during this phase of the hearing. Others may submit comments in writing. If the Commission finds that the appeal raises a substantial issue, the de novo phase of the hearing will be scheduled for hearing at a later date, during which the Commission will take public testimony.

SUMMARY OF STAFF RECOMMENDATION

Staff recommends that the Commission determine that a **Substantial Issue** exists with respect to the grounds upon which the appeal has been filed for the following reasons:

The City's action on local CDP 18-032 would approve a shared use parking program for the Peter's Landing shopping center. Peter's Landing shopping center was originally approved in the late 1970s/early 1980s by the Coastal Commission pursuant to Coastal Development Permit P-76-8742, as subsequently amended by CDP amendments P-79-6083 and P-7393. The subject site is located between the first public road (Pacific Coast Highway) and the sea (Huntington Harbour). Peter's Landing fronts on Huntington Harbour, with a public walkway along the bulkhead. The public walkway extends in both directions along the waterfront beyond the subject site. In addition, a public park and public fishing opportunities are located at the subject site. Also, the public, ocean fronting, sandy beach is located approximately two blocks southwest of the subject site. In approving the Peter's Landing development, the Commission found that, to be consistent with the public access policies of the Coastal Act, public beach access parking spaces must be provided on site, and that signage making the public aware of the availability of the required public access parking spaces must also be provided. In addition, the Commission found that bicycle racks must be provided on site in order for the development to be consistent with the public access policies of the Coastal Act.

The appellant contends that: 1) the City-approved coastal development permit is inconsistent with the certified Huntington Beach Local Coastal Plan (LCP) and with the public access policies of the Coastal Act because the entire site is not included in the City's action, 2) the City's action evaluates additional commercial development, but does not recognize that development in the findings, 3) the additional development may be constructed within the existing parking area further impacting public access due to inadequate parking, and 4) the project approved under the local CDP will lead to a shortage of required on-site parking, adversely impacting public access. Please see Exhibit 5 for the entire appeal.

In the City's approval of Local Coastal Development Permit 18-032, 72 beach access public parking spaces were included in the total number of parking spaces required for the Peter's Landing parking program. However, in its approval the City did not discuss or require the beach access public parking spaces to include signage. Likewise the City's approval did not discuss or require on-site bicycle racks. In the Coastal Commission's original approval of the Peter's Landing shopping center, the Commission found that only with the public beach access parking spaces and related signage and bicycle racks could the proposed development be found to be consistent with the public access policies of the Coastal Act. The City's approval did not explain

how, without the required signage and bicycle racks, the project now could be considered consistent with the public access policies of the Coastal Act (and also, now, with the public access policies of the certified LCP). The City also does not explain how it has the legal ability to change the parking requirements of a Coastal Commission-issued coastal development permit.

Moreover, although not grounds for appeal, the parking program approved in the local CDP should, in fact, have been processed by the Coastal Commission as an amendment to its earlier actions on the development at Peter's Landing because the proposed parking program materially affects a special condition of approval of the project as approved by the Coastal Commission. Commission staff did notify the City of this prior to the City's decision to process the CDP, but nevertheless the City chose to process the CDP itself.

The appellant contends, and staff recommends that the Commission find, that the appeal raises a substantial issue with regard to consistency with the public access policies of the Coastal Act and the certified LCP. A summary of the appellant's contentions may be found on page 4 of this report. The complete appeal is included as Exhibit 5.

Staff recommends that the Commission find a **substantial issue** exists for the reasons summarized above, and described in greater detail in the body of this report.

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EXHIBITS:

- EXHIBIT 1 - VICINITY MAP/SUBJECT SITE
- EXHIBIT 2 – NOTICE OF ACTION LOCAL CDP 18-032
- EXHIBIT 3 – PARKING SITE PLAN
- EXHIBIT 4 – PARKING DEMAND ANALYSIS LETTER #1 FOR PETER’S LANDING MARINA PROJECT, LINS COTT, LAW & GREENSPAN, 7/19/2018 (ONLINE ONLY)
- EXHIBIT 5 - APPEAL OF TONY SELLAS

I. MOTION AND RESOLUTION – SUBSTANTIAL ISSUE

Motion: *I move that the Commission determine that Appeal No. A-5-HNB-18-0067 raises NO Substantial Issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

Staff recommends a **NO** vote. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

Resolution:

*The Commission hereby finds that Appeal No. A-5-HNB-18-0067 presents A **SUBSTANTIAL ISSUE** with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the City of Huntington Beach certified Local Coastal Program and the public access policies of the Coastal Act.*

II. APPELLANT’S CONTENTIONS

The City-approved local coastal development permit would establish a shared parking program for an existing 98,823 square foot shopping center (Peter’s Landing) and up to an additional 2,666 square feet of future commercial uses on site. The parking program allows a reduction in

the number of parking spaces required compared to the number required by the City's Implementation Plan parking standards for each individual use totaled separately, for the existing and future commercial uses at the commercial shopping center (retail, office, restaurant, marina, and religious assembly). The reduced parking standard is based upon the shared use concept that the different uses have different peak parking demands.

The appellant's contentions are that the City-approved development is inconsistent with the certified Huntington Beach Local Coastal Plan (LCP) and with the public access policies of the Coastal Act because:

- 1) The parking program as approved by the City relies on all existing site parking but does not include the site addresses or APNs for each of the existing parking areas. This means the parking areas not included in the City's approval will not be restricted by the approved CDP, even though the approved parking program relies on these parking areas.
- 2) The parking program as approved by the City included an evaluation of additional commercial development (2,666 square feet), but the approved CDP does not recognize this additional square footage because the findings for the City's approval of CDP 18-032 states "There is no physical expansion proposed as part of the request"
- 3) The additional 2,666 square footage of commercial development evaluated in the parking program may be constructed within the existing parking area, displacing existing on-site parking spaces needed to meet the demand of existing site development.
- 4) All of the above may lead to a shortage of on-site parking that could lead to patrons and/or employees of the Peter's Landing shopping center seeking parking in the nearby residential area and/or within the 72 parking spaces required at the site for public beach access.
- 5) Construction is occurring at the site now without an approved coastal development permit.

III. LOCAL GOVERNMENT ACTION

Coastal Development Permit 18-032 was conditionally approved by the Zoning Administrator of the City of Huntington Beach on September 5, 2018. The Zoning Administrator's action was not appealed at the City. The City's Notice of Final Local Action for Local CDP No. 18-032 was received in the Coastal Commission's Long Beach Office on September 27, 2018. However, the NOFA was not clear on the exact properties (APNs) to which the CDP applied. Consequently, Commission staff sent a Notice of Deficient Notice to the City on October 2, 2018 requesting corrected information. The City responded with the requested information which was received on October 22, 2018 and the Coastal Commission's required 10 working-day appeal period was established. On October 23, 2018 the appeal of Tony Sellas was filed. No other appeals were received prior to the end of the appeal period at 5 p.m. on November 5, 2018. The 49th working day from the date the first appeal was filed is January 4, 2019.

IV. APPEAL PROCEDURES

Coastal Act Section 30603 provides for the appeal to the Coastal Commission of certain CDP decisions in jurisdictions with certified LCPs. The following categories of local CDP decisions are appealable: (a) approval of CDPs for development that is located (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance, (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff, and (3) in a sensitive coastal resource area; or (b) for counties, approval of CDPs for development that is not designated as the principal permitted use under the LCP. (*See* Coastal Act Section 30603(a)(1)-(4).) In addition, any local action (approval or denial) on a CDP for a major public works project (including a publicly financed recreational facility and/or a special district development) or an energy facility is appealable to the Commission. (*Id.* Section 30603(a)(5).) This project is appealable because it is located between the sea and the first public road paralleling the sea.

The grounds for appeal under Section 30603 of the Coastal Act are limited to allegations that the development does not conform to the certified LCP or to the public access policies of the Coastal Act. Section 30625(b) of the Coastal Act requires the Commission to consider a CDP for an appealed project de novo unless a majority of the Commission finds that “no substantial issue” is raised by such allegations. Under Section 30604(b) of the Coastal Act, if the Commission conducts the de novo portion of an appeals hearing and ultimately approves a CDP for a project, the Commission must find that the proposed development is in conformity with the certified LCP. If a CDP is approved for a project that is located between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone, Section 30604(c) of the Coastal Act also requires an additional specific finding that the development is in conformity with the public access policies of Chapter 3 of the Coastal Act. This project is located between the nearest public road and the sea and thus this additional finding would need to be made (in addition to a finding that the proposed development is in conformity with the certified City of Huntington Beach LCP) if the Commission were to approve the coastal development permit following a de novo hearing.

After a final local action on a local CDP application, the Coastal Commission must be noticed within five days of the decision. (14 CCR § 13331) After receipt of such a notice, which contains all the required information, a ten working-day appeal period begins during which any aggrieved person or any two members of the Commission may appeal the local decision to the Coastal Commission. (14 CCR § 13110, 13111.) As provided under section 13318 of Title 14 of the California Code of Regulations, the appellant must conform to the procedures for filing an appeal as required under section 13111 of Title 14 of the California Code of Regulations, including identification of the specific grounds for appeal and a summary of the significant question raised by the appeal.

The action currently before the Commission is to find whether there is a “substantial issue” or “no substantial issue” raised by the appeal of the local approval of the proposed project. Sections 30621 and 30625(b)(1) of the Coastal Act require a de novo hearing of the appealed project unless the Commission determines that no substantial issue exists with respect to the grounds for appeal.

Commission staff recommends a finding of **substantial issue**. If the Commission decides that the appellant's contentions raise no substantial issue as to conformity with the certified LCP or the public access policies of the Coastal Act, the action of the local government becomes final. Alternatively, if the Commission finds that a substantial issue exists with respect to the conformity of the action of the local government with the public access policies of Chapter 3 of the Coastal Act and with the certified LCP, the local CDP is voided and the Commission may continue the public hearing to a later date in order to review the coastal development permit as a de novo matter. Section 13321 of the Coastal Commission regulations specifies that de novo actions will be heard according to the procedures outlined in Sections 13114 and 13057-13096 of the Commission's regulations.

If there is no motion from the Commission to find no substantial issue, it will be presumed that the appeal raises a substantial issue and the Commission may schedule the de novo phase of the public hearing on the merits of the application at a meeting following the substantial issue finding. If the Commission decides to hear arguments and vote on the substantial issue question, those who are qualified to testify at the hearing, as provided by Section 13117 of Title 14 of the California Code of Regulations, typically (at the discretion of the Chair) will have three minutes per side to address whether the appeal raises a substantial issue.

The only persons qualified to testify before the Commission on the substantial issue question are the applicant, persons who opposed the project before the local government (or their representatives), and the local government. (14 CCR Section 13117.) Testimony from other persons regarding the substantial issue question must be submitted in writing. (*Id.*) Any person may testify during the de novo CDP determination stage of an appeal (if applicable). The Commission will then vote on the substantial issue matter. It takes a majority of Commissioners present to find that the grounds for the appeal raise no substantial issue.

V. FINDINGS AND DECLARATIONS – SUBSTANTIAL ISSUE

A. PROJECT LOCATION & DESCRIPTION

The City's action on Local CDP 18-032 would approve a shared parking program for the Peter's Landing shopping center, which includes 98,823 square feet of commercial uses including retail, office, restaurant, marina, and religious assembly. The shared parking program recognizes that up to an additional 2,666 square feet of commercial development could be accommodated by the total of 693 parking spaces that would be provided. The shared use parking program would allow a reduction in the number of parking spaces identified in the Implementation Plan (IP) portion of the City's certified Local Coastal Plan (LCP) for each individual use in the mixed use shopping center, based on the shared use concept that different uses at the site have different peak parking demands. The shared use parking concept is also reinforced when customers of the shopping center patronize more than one use at the site on a single visit. The shared parking program is intended to apply to both the existing 98,823 square feet of development, and up to 2,666 square feet of additional, future development at the site. The City's approval of local CDP 18-032 for the parking program relies on the *Parking Demand Analysis* prepared by Linscott Law & Greenspan Engineers and Planners, dated 7/19/2018 for the Peter's Landing project (see Exhibit 4, online only). The subject site is located between the sea (the waters of Huntington Harbour) and the first public road (Pacific Coast Highway).

The subject shopping center was originally approved in the late 1970s/early 1980s by the Coastal Commission pursuant to Coastal Development Permit P-76-8742, as subsequently amended by CDP amendments P-79-6083 and P-7393¹. Peter's Landing fronts on Huntington Harbour, with a public walkway along the bulkhead. There is an adjacent marina that was included in the Commission's original approval of development at the site. The marina remains, but is now under separate ownership. The certified Local Coastal Program (LCP) land use designation at the subject site is Commercial Visitor (CV-f2-d)². The certified LCP Implementation Plan (IP) zoning at the subject site is Visitor Commercial with a coastal zone overlay (CV-cz). In addition to fronting on the waters of Huntington Harbour, the subject site is located approximately two blocks from Sunset Beach, a sandy public ocean-fronting beach. Public parking for coastal access is provided in the Peter's Landing parking lot, as required by the Commission's original approval of the CDPs cited above.

Prior Coastal Commission CDP

Peter's Landing shopping center originally was included in the project approved by the Coastal Commission via Coastal Development Permit No. P-76-8742, as subsequently amended by CDP amendments P-79-6083 and P-7393 (A-372-80). In approving CDP P-7393 (A-372-80), the Coastal Commission imposed Special Conditions on the project to protect public access, including a requirement to prepare a public beach parking plan including *“50 bike racks and adequate signing along Pacific Coast Highway indicating the availability of the parking to the public.”* The proposed parking program approved in the CDP processed by the City departs from special conditions of the Coastal Commission's prior approval of the project relating to public access, including the requirement to provide 50 bike racks and adequate public parking signage along PCH. As discussed below in the proposed findings, the City's justification for this departure is relevant to the appellant's contentions that the project does not comply with Chapter 3 policies relating to public access. In addition, though not a basis for finding the appeal raises a substantial issue, Commission staff notes that the proper procedure here would have been for the applicant to obtain a CDP for the parking program from the Coastal Commission as an amendment to its earlier actions on the development at Peter's Landing. Commission staff did not notify City staff prior to the City's action that, even though the proposed parking is located within an area now covered by the City's LCP, it should be processed as an amendment to the Commission's earlier CDP. These issues can be more fully addressed at the de novo stage if the Commission finds the appeal raises a substantial issue.

LCP Background/Standard of Review

The City of Huntington Beach Local Coastal Program was certified by the Commission in March 1985. The City's Coastal Element makes up the Land Use Plan portion of the certified LCP. The City's Zoning and Subdivision Ordinance, including a number of Specific Plans, comprises the Implementation Plan portion of the certified LCP. The standard of review for the proposed development is the City's certified Local Coastal Program (LCP) and the public access and recreation policies of the Coastal Act.

¹ CDP amendment P-7393 may also be referred to as A-372-80 due the regional and statewide commission appeals system and the permit numbering system at the time.

² The suffixes f2 and d indicate an allowed mixed use density of 0.5 and that special design standards applicable.

B. FACTORS CONSIDERED IN SUBSTANTIAL ISSUE ANALYSIS

Section 30625(b)(2) of the Coastal Act states that the Commission shall hear an appeal of a local government action unless it finds that no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603. The term “substantial issue” is not defined in the Coastal Act or its implementing regulations. Section 13115(b) of the Commission’s regulation simply indicates that the Commission will hear an appeal unless it “finds that the appeal raises no significant question.” In previous decisions on appeals, the Commission has considered the following factors:

1. The degree of factual and legal support for the local government’s decision that the development is consistent or inconsistent with the relevant provisions of the Coastal Act;
2. The extent and scope of the development as approved or denied by the local government;
3. The significance of the coastal resources affected by the decision;
4. The precedential value of the local government’s decision for future interpretations of its LCP; and,
5. Whether the appeal raises local issues, or those of regional or statewide significance.

Even when the Commission chooses not to hear an appeal, appellants nevertheless may obtain judicial review of the local government’s coastal permit decision by filing petition for a writ of mandate pursuant to Code of Civil Procedure, Section 1094.5.

Staff is recommending that the Commission find that **a substantial issue exists** with respect to whether the local government action conforms to the provisions of the certified Local Coastal Program and the public access policies of Chapter 3 of the Coastal Act for the reasons set forth below.

C. SUBSTANTIAL ISSUE ANALYSIS

As stated in Section IV of this report, the grounds for an appeal of a CDP issued by the local government are the project’s conformity with the policies of the LCP and the project’s conformity with the public access policies of the Coastal Act. The Commission shall hear an appeal unless it determines that no substantial issue exists as to conformity with the policies of the LCP and the project’s conformity with the public access policies of the Coastal Act.

Section II of this staff report outlined the appellant’s contentions regarding the project. Generally, the appellant alleges that the project approved by the City raises issue with the public access policies of the City’s certified LCP and the public access policies of the Coastal Act, particularly with regard to the provision of adequate parking as necessary to support and promote public access.

Public Access

Coastal Act Section 30210 states:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Coastal Act Section 30252 states, in pertinent part:

The location and amount of new development should maintain and enhance public access to the coast by(1)... ,(2) ... ,(3) providing nonautomobile circulation within the development, (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation,(5) ... ,(6)

LAND USE PLAN POLICIES:

Policy C 1.1.3a

The provision of public access and recreation benefits associated with private development (such as but not limited to public access ways, public bike paths, habitat restoration and enhancement, etc.) shall be phased such that the public benefit(s) are in place prior to or concurrent with the private development but not later than occupation of any of the private development.

Policy C 2.2.6

Provide adequate bike racks at appropriate locations within the Coastal Zone with special emphasis for facilities adjacent to the beach.

Policy C 2.4.1

Maintain an adequate supply of parking that supports the present level of demand and allows for the expected increase in private transportation use.

Policy C 2.4.2 (in pertinent part)

Ensure that adequate parking is maintained and provided in all new development in the Coastal Zone utilizing one or a combination of the following:
a. Apply the City's parking standards at a minimum.

Policy C 2.5.1

Require that existing public access to the shoreline and Huntington Harbour waterways be maintained and enhanced, where necessary and feasible, notwithstanding overriding safety, environmental or privacy issues.

In addition, IP Section 231.06 Joint Use Parking states:

In the event two (2) or more uses occupy the same building, lot or parcel of land, the total requirement for off-street parking shall be the sum of each individual use computed separately except as provided in this section.

The Planning Commission or Zoning Administrator may grant a reduction in the total number of required spaces as part of the entitlement for the use or uses, or by conditional use permit when no other entitlement is required, when the applicant can demonstrate that the

various uses have divergent needs in terms of daytime versus nighttime hours or weekday versus weekend hours. Such joint use approvals shall be subject to the following:

- 1. The maximum distance between the building or use and the nearest point of the parking spaces or parking facility shall be 250 feet; and*
- 2. There shall be no conflict in operating hours based on parking space requirements for the different uses on the parcel; and*
- 3. Evidence of an agreement for such joint use shall be provided by property legal instrument, approved as to form by the City Attorney. The instrument shall be recorded in the Office of the County Recorder and shall be filed with the City prior to issuance of building permit and/or certificate of occupancy, whichever occurs first.*

As stated earlier, the subject site fronts on the waters of Huntington Harbour where there is a public walkway along the bulkhead. The public walkway extends along the bayside beyond the subject site in both directions along the harbor front. The Peter's Landing complex offers a small public park as well as public fishing opportunities, and public parking as well. In addition, approximately two blocks southwest of the subject site is the public ocean fronting sandy beach known as Sunset Beach. Thus, support for these public access opportunities at the subject site and in the vicinity is important. Both the certified LCP and the Coastal Act require that public access be protected and maximized; and both find that adequate parking is important to assure that public access opportunities are supported. Both the LCP and Coastal Act also recognize the importance of providing bicycle racks as a means of supporting public access and as a means of supporting alternate transportation to the coast and to public amenities. These requirements are reflected in the Coastal Act and LUP policies cited above.

In support of these policies, the LCP Implementation Plan (IP) provides the parking standard for the number of parking spaces to be provided with various types of development. The IP requires that development provide the full complement of parking spaces required for each use on site, with two exceptions as described in IP Sections 231.06 and 231.08. The parking program approved by the City is a shared use parking program, which is allowed by Section 231.06 of the certified IP.

However, as acknowledged in the City's approval and by the applicant in the record, the Commission's original approval of the Peter's Landing development required that on-site parking spaces be provided for public beach access, available to the general public. The parking study prepared for the project recognizes that 72 spaces must be available for public beach access. However, the Commission's original approval also required that the availability of these public parking spaces be reflected in signage recognizing this public availability. In addition, the Commission's original approval required that 50 bicycle racks be provided at the subject site. As approved by the City, there is no requirement for the public access parking signage or bicycle racks. It is also not discussed in the *Parking Demand Analysis* prepared for the subject parking program.

Maximizing public access is one of the most important requirements of the Coastal Act. Support for public access often requires the provision of adequate parking to serve a development, and in this case also adequate public parking spaces for public beach use. Likewise, support for public access also includes encouraging non-automobile transportation, through such measures as

providing bicycle racks on site. In the Huntington Harbour area, only limited access to the waters of the harbor are available, making it all the more important to assure public access remains available in those few areas where it does exist, such as at the subject site. This is one of the reasons the Commission imposed the requirement to provide signage for the required public beach access parking spaces, when it first considered development of the site.

The availability of public parking in the area is already constrained, especially during peak use periods such as throughout the summer. Many older residences and commercial developments in the project vicinity pre-date current parking standards and do not provide enough parking to serve those developments. Thus, the on-street parking that is available is often usurped by overflow parking from these developments. The lack of adequate parking leads to reductions in beach access. Thus, in re-visiting the appropriate amount of parking required for the Peter's Landing development, it is important that in addition to providing the required on-site public beach access parking spaces, the signage required to make the public aware of the availability of the public parking spaces on-site must also be required. Without providing the informational signage, the effectiveness of providing public parking spaces on site is essentially lost. Even when 72 public access parking spaces are provided, if the spaces are not signed as available to the public, effective public access does not occur.

In addition, the Commission also originally found that the Peter's Landing development could only be found to be consistent with the public access policies of the Coastal Act if bicycle racks were provided on-site. Bicycle racks promote additional public access and recreation, as well as encourage the use of alternative transportation to the coast, other than private automobiles. Without the previously required bicycle racks, public access is not maximized. The requirement for bicycle racks was also not discussed or required by the City's approval of the parking program, nor is it mentioned in the project record. Nor is there an explanation in the City's approval or in the record explaining why public access would still be maximized without providing the previously required bicycle racks on site. The vehicular and bicycle parking spaces that should be available to the public would not be available under the City's CDP, resulting in aggravating competition for already limited public parking supplies in the area.

The Commission originally found that the Peter's Landing development could only be found to be consistent with the public access policies of the Coastal Act if on-site parking spaces were available for public beach access AND that those spaces include signage alerting the public of their availability. As approved by the City, it is not clear that the general public would know that parking is available on the site even regardless of whether a member of the public patronizes any of the commercial establishments on the site or not. Without public signage notifying the public that such parking is available, and thus without knowledge of that the spaces are for public beach use, it is unlikely that a member of the general public would take advantage of the public beach access parking available on the site. Although the City's approval recognizes the need to provide public beach access parking spaces, it does not mention public access parking signage, nor require it in its approval. And there is no explanation as to why, although found to be necessary in the Commission's original approval, that such signage would not be necessary now. Consequently, the City's action does not maximize public access as required by the public access policies of the Coastal Act and the City's certified LCP. It would also be inconsistent with the Commission's original approval of the Peter's Landing development.

As approved, it is not clear that the proposed parking program includes the provision of any bicycle racks on site. The City's approval does not mention bicycle racks, nor require it in its approval. And there is no explanation as to why, although found to be necessary in the Commission's original approval, that bicycle racks would not be necessary now. Consequently, public access does not appear to be maximized as required by the public access policies of the Coastal Act and the City's certified LCP. It would also be inconsistent with the Commission's original approval of the Peter's Landing development.

Because there is no discussion of or requirement for public beach access parking signage or bicycle racks, nor any explanation of how public access would still be maximized without them, it is not possible to determine the consistency of the project with the public access policies of the Coastal Act and the certified LCP, and therefore the Commission finds that the project as approved by the City does raise a substantial issue regarding conformity with LCP.

In addition, Section 231.06 *Joint Use Parking*, subsection 3 requires that a joint use parking program be subject to the following: "*Evidence of an agreement for such joint use shall be provided by proper legal instrument, approved as to form by the City Attorney. The instrument shall be recorded in the Office of the County Recorder and shall be filed with the City prior to issuance of building permit and/or certificate of occupancy, whichever occurs first.*" The City's approval of local CDP 18-032 did not discuss this requirement, it is not required in the findings or conditions of approval, and no evidence of such a recorded agreement is present in the record provided to the Coastal Commission office in response to the notification of appeal. Without such a recorded agreement, or a requirement in the permit approval for such a recorded agreement, there is no assurance that the standards outlined in the *Parking Demand Analysis* would be implemented in a manner to assure that adequate parking is indeed provided for the life of the development as required by both the Coastal Act and certified LCP public access policies.

Because there is no discussion of or requirement in the City record for a recorded joint parking agreement as required by Section 231.06.3 of the certified IP it is not possible to determine the consistency of the project with the public access policies of the Coastal Act and the certified LCP, and therefore the Commission finds that the project does raise a substantial issue regarding conformity with LCP.

APPELLANTS' CONTENTION THAT DOES NOT RAISE A SUBSTANTIAL ISSUE

The appellant contends that the parking program as approved by the City relies on all existing site parking but does not include the site addresses or APNs for each of the existing parking areas. This means the parking areas not included in the City's approval will not be subject to and restricted by the approved CDP, even though the approved parking program relies on these parking areas.

Upon receipt of the Notice of Final Action for the City's approval of local CDP 18-032, Commission staff sent the City a Notice of Deficient Notice requesting that all effected project APNs be identified. The City responded with the eight APNs which are subject to the City's action: 178-451-02, 178-451-12, 178-451-04, 178-441-15, 178-441-13, 178-441-16, 178-441-17, 178-441-14. Commission staff has confirmed that these APNs do indeed cover the entire Peter's Landing site, including all parking lots/areas. Therefore, the Commission finds that the appellant's contention regarding including and restricting all existing site parking under the

City's approved CDP of the project raises no substantial issue with regard to conformance with the certified Local Coastal Program or with the public access policies of the Coastal Act.

FIVE FACTORS AND CONCLUSION

Applying the five factors discussed earlier leads to the conclusion that the appeal raises a substantial issue with respect to conformance with the certified LCP.

The first factor is the degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the relevant provisions of the LCP and public access policies of the Coastal Act. In this case, although the City's approval recognized the need to include public beach access parking spaces in the total number of parking spaces required in the approved parking program, it did not recognize the need for or require the provision of signage in support of those public beach access parking spaces. Similarly, the City's approval did not recognize or require the need to provide bicycle racks at the site as a means of encouraging alternative transportation other than private automobiles to provide access to the public amenities available at the subject site and at the nearby public beach. Nor did the City's action provide an explanation of why signage and bicycle racks would not be needed, even though the Commission's original approval of the Peter's Landing development found that only with the signage and bicycle racks could the development be found to be consistent with the public access policies of the Coastal Act. This information is missing from the record. Therefore, the Coastal Commission finds that the City provided an inadequate degree of factual and legal support for its decision.

The second factor is the extent and scope of the development as approved or denied by the local government. According to the *Parking Demand Analysis* prepared for the subject parking program, the parking demand for the current Peter's Landing development plus up to 2,666 square feet of future development results in a code-parking requirement of 961 spaces (including 72 beach access parking spaces). With an on-site parking supply of 693 spaces, the *Parking Demand Analysis* forecasts a parking deficiency of 268 spaces when compared to providing all code required parking for each use. The Parking Demand Analysis expects this deficiency would not occur however, due to the shared use concept of offset peak parking demands of the various uses. However, a deficiency of 268 parking would be significant.

And, in addition, although the absence of public access signage and bicycle racks at a single site may not seem to create significant adverse impacts in extent and scope, without it, impacts to public access would certainly result. Each case where all available measures to maximize access are not implemented, adds to the cumulative impacts on public access. Thus, the extent and scope of the likely loss of 72 public parking spaces because the public is not made aware that they are available and the loss of bicycle racks, the extent and scope of adverse public access impacts would be significant.

The third factor is the significance of the coastal resources affected by the decision. The resource impacted in this case would be public access, to both harbor waters and to the public ocean fronting beach, as well as the public amenities on-site including the public walkway along the harbor front, public park, and public fishing access. Maximizing public access is one of the highest priorities of the Coastal Act. This is also reflected in the City's certified LCP. In this area of Huntington Beach, the lack of adequate public parking limits public coastal access. Public

access is among the most important resources under both the Coastal Act and the City's certified LCP. Therefore, the coastal resource potentially affected is significant.

The fourth factor is the precedential value of the local government's decision for future interpretations of its LCP. If public access measures that were previously required, such as the provision of signage alerting the public of the availability of public access parking opportunities and also of providing bicycle racks, are not addressed in subsequent approvals such as the City's review of this parking program, these public benefits may be lost, adversely impacting public access, inconsistent with both the public access policies of the Coastal Act and the certified LCP. This then creates a negative precedent regarding the City's implementation of the Coastal Act and certified LCP, which both require that public access be preserved and maximized. Therefore, the decision of the local government on this project could very likely influence future permit decisions made in the City's coastal zone.

The final factor is whether the appeal raises local issues, or those of regional or statewide significance. Issues relating to public access arise up and down the state. While various areas may have issues specific to their area, the questions of maximizing public access are nearly universal throughout the state. Therefore, the City's approval does raise issues of regional and statewide significance.

For all of the reasons described above, the Commission finds that the appeal raises a **substantial issue** as to conformity with the City of Huntington Beach LCP and with public access policies of the Coastal Act.