

CALIFORNIA COASTAL COMMISSION

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STAFF REPORT: APPEAL – SUBSTANTIAL ISSUE

Appeal No.: A-5-NPB-19-0204

Applicant: 2010 Bethel Family Trust & Stephen John Ridge and Shelley Marie Ridge AB Living Trust

Local Government: City of Newport Beach

Local Decision: Approval with Conditions

Appellants: Commissioners Donne Brownsey and Caryl Hart

Project Location: 361-365 Via Lido Soud, Newport Beach, Orange County (APN: 423-167-04)

Project Description: Appeal of City of Newport Beach Local Coastal Development Permit No. CD2019-024 for demolition of a four-unit building and creation of a Tentative Parcel Map to subdivide the property into two lots. No new construction proposed.

Staff Recommendation: Substantial issue.

IMPORTANT HEARING PROCEDURE NOTE: The Commission will not take testimony on this “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 and 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 occur at a future Commission meeting, during which it will take public testimony.

SUMMARY OF STAFF RECOMMENDATION

The staff recommends that the Commission, after public hearing, determine that a **substantial issue exists** with respect to the grounds on which the appeal has been filed for the following reasons: the subdivision of a shoreline lot in a hazardous area into two lots, further requiring a variance to waive minimum lot size and width standards, is inconsistent with the City of Newport Beach's certified Local Coastal Program (LCP) and the public access policies of the Coastal Act.

The City-approved project is the demolition of an existing four-unit multi-family structure and creation of a tentative parcel map to subdivide the property into two separate parcels, each 35 ft. in width and 3,150 sq. ft. in area, and a waiver of the IP's minimum lot width and area standards which require minimum lot size of 5,000 sq. ft. and minimum lot width of 50 ft.

The appellants are Commissioners Donne Brownsey and Caryl Hart, who contend that the City's approval of CD2019-024 is inconsistent with Land Use Plan Policies 2.8.1-2 and 2.8.1-3, and Implementation Plan Policy 21.30.025. These policies require that new development minimize risk to life and property, and Policy 21.30.025 specifically prohibits land divisions in hazardous areas unless the City can find that the resulting parcels would be safe from hazards for a minimum of 75 years. The City relied on a Coastal Hazards Report prepared by GeoSoils, Inc., which itself relied on direction from the Newport Beach City Council to apply a methodology for estimating sea level rise that is not consistent with State guidance from the California Ocean Protection Council nor the Coastal Commission. This methodology has never been certified by the Commission for application in the City's LCP, and is particularly inappropriate for application at the subject site because the site does not currently have a bulkhead and any future right to shoreline protection must be waived; the proposed subdivision has little to no adaptive capacity and may last in perpetuity. Thus, the City lacked sufficient factual and legal support for its finding that the site is safe from coastal hazards. The continued application of this methodology raises a significant issue, and future approvals of subdivisions in hazardous areas raises issues of statewide significance.

The City was also required to approve a variance waiving minimum lot size and width because the proposed subdivision would have resulted in new parcels that did not meet these standards. In order to approve the variance, the City was required to find that "strict application of Title 21 would deny the property owners privileges enjoyed by surrounding property owners." However, the City also appears to lack sufficient factual support of this finding. It does not state what such privileges would be. On the contrary, any privilege that the property owner would have following the proposed subdivision could be enjoyed currently on the existing, un-subdivided lot. The subdivision is not necessary to increase housing density; in fact, it would reduce maximum density on site by one unit.

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APPENDICES

Appendix A – Substantive File Documents

EXHIBITS

[Exhibit 1 – Project Location](#)

[Exhibit 2 – Project Plans](#)

[Exhibit 3 – Appeal](#)

[Exhibit 4 – City Zoning Administrator Resolution No. ZA2019-062](#)

[Exhibit 5 – Coastal Hazards Report, prepared by GeoSoils, Inc.](#)

I. MOTION AND RESOLUTION –SUBSTANTIAL ISSUE

Motion: *I move that the Commission determine that Appeal No. A-5-NPB-19-0204 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-NPB-19-0204 presents a **SUBSTANTIAL ISSUE** with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the certified Local Coastal Plan and/or the public access policies of the Coastal Act.*

II. APPELLANTS’ CONTENTIONS

The appellants contend that the City’s approval does not comply with the certified LCP, raising the following contentions:

- 1) The City’s approval of a subdivision in a hazardous area is inconsistent with LUP Policy 2.8.1-2, which requires that new development be designed and sited to avoid hazardous areas and minimize risks to life and property from coastal and other hazards; LUP Policy 2.8.1-3 which requires that land divisions, including lot line adjustments, be designed to avoid hazardous areas and minimize risks to life and property from coastal and other hazards; and IP Policy 21.30.025, which requires that proposed subdivisions be designed to avoid current hazardous areas, as well as areas that may become hazardous due to future changes, such as from sea level rise, and minimize risks to life and property from coastal and other hazards.
- 2) The Zoning Administrator lacked sufficient factual basis to support its finding that the site would be safe from hazards, because based on the applicant’s hazards analysis and direction from the Newport Beach City Council, they considered only the low risk-aversion scenario for high emissions to estimate sea level rise (SLR) (approx. 2.9 ft. by 2095), and thus did not adequately demonstrate that the resulting parcels would be developed safe from potential impacts from hazards over 75 years. Potential for flooding as a result of SLR beyond the high emissions estimate of the “low risk aversion” scenario is particularly important to be evaluated at the subject site because the property is not fronted by a bulkhead and is required to waive the right to future shoreline protection. Moreover, the approach is not consistent with the methodology recommended by Ocean Protection Council’s (OPC) or Commission’s SLR guidance.
- 3) The subdivision results in two parcels which are 3,150 sq. ft. in size and 35 ft. in width, which is not consistent with minimum lot size and lot width as defined by IP Table 21.18-4 (5,000 sq. ft. and 50 ft., respectively). The proposed subdivision does not comply with IP Section 21.52.090(2), which allows for a variance from development standards of the IP if strict application of the development standards denies the property owner privileges

- enjoyed by other property owners in the vicinity and in the same coastal zoning district.
- 4) The subdivision is not necessary for increasing housing density in the City.

III. LOCAL GOVERNMENT ACTION

On September 26, 2019 the City of Newport Beach Zoning Administrator approved Coastal Development Permit No. CD2019-024, Tentative Parcel Map No. NP2019-008, and County Tentative Parcel Map No. 2019-126 after a public hearing. The Zoning Administrator approved the local CDP with special conditions and adopted Resolution No. ZA-2019-062 ([Exhibit 4](#)) including findings in support and conditions of approval. The City determined that the project was categorically exempt from CEQA under Class 1 (Existing Facilities) and Class 3 (New Construction or Conversion of Small Structures).

Public notice of the Coastal Development Permit application is required by IP Policy 21.62.020. Pursuant to this policy, notice of the application was published in the Daily Pilot, mailed to all owners and residential occupants of the property within 300 feet of the boundaries of the site, and posted on the subject property at least 10 days before the scheduled hearing. Additionally, the item appeared on the agenda for the Zoning Administrator meeting, which was posted at City Hall and on the City website.

The City approved the local CDP with 27 conditions requiring, among other things:

- An agreement between the property owner and the City waiving rights to the construction of future shoreline protection devices and to address the threat of damage or destruction from coastal hazards
- A signed and notarized letter acknowledging all hazards present at the site, assuming risk of injury or damage from such hazards, unconditionally waiving any claims of damage against the City from such hazards
- The submission of additional copies of approved architectural plans for inclusion in the Coastal Development permit file.

The Coastal Commission's South Coast District Office received a Notice of Final Action (NOFA) on October 15, 2019. The Commission issued a Notification of Appeal Period on October 17, 2019.¹ On October 29, 2019, the tenth day of the ten (10) working day appeal period, an appeal was filed by Commissioners Brownsey and Hart ([Exhibit 3](#)), pursuant to Section 13111 of the California Code of Regulations. The City was notified of the appeal in a letter dated October 30, 2019.

IV. APPEAL PROCEDURES

After certification of Local Coastal Programs (LCP), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits. Developments approved by cities or counties may be appealed if they are located within appealable areas, such as between the sea and the first public road paralleling the sea or within three hundred feet of the mean high tide line or inland extent of any beach or top of the seaward face of a coastal

¹ Commission staff initially sent out a Notification of Appeal Period, dated October 17, 2019, which had inadvertently listed the tenth working day as October 25, 2019. A Corrected Notification of Appeal Period was issued later the same day, with the correct tenth working day of October 29, 2019.

bluff [Coastal Act Section 30603(a)]. In addition, an action taken by a local government on a coastal development permit application may be appealed to the Commission if the development constitutes a “major public works project” or a “major energy facility” [Coastal Act Section 30603(a)(5)].

The City of Newport Beach Local Coastal Program was certified in 2017. The City’s LCP is comprised of the coastal Land Use Plan (LUP) and the Implementation Plan (IP), which is Title 21 of the City’s Municipal Code. The standard of review for this appeal is the City’s certified LCP and the public access and recreation policies of the Coastal Act. Section 30603(a)(1) of the Coastal Act identifies the project site as being in an appealable area by virtue of its location between the sea and the first public road paralleling the sea.

Section 30603 of the Coastal Act states:

- (a) After certification of its Local Coastal Program, an action taken by a local government on a coastal development permit application may be appealed to the Commission for only the following types of developments:
 - (1) Developments approved by the local government 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) Developments approved by the local government not included within paragraph (1) that are located on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, stream, or within 300 feet of the top of the seaward face of any coastal bluff.

The grounds for appeal of an approved local coastal development permit in the appealable area are stated in Section 30603(b)(1), which states:

- (b)(1) The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified Local Coastal Program or the public access policies set forth in this division.

After a final local action on a local coastal development permit application, the Coastal Commission must be noticed within five days of the decision. After receipt of such a notice that 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. [Cal. Pub. Res. Code § 30603.] 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 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)(2) 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 finds that a substantial issue does exist with respect to the conformity of the action of the local government with the standards set forth in the certified Local Coastal Program or the public access policies of the Coastal Act, the Commission takes jurisdiction over the permit application and typically continues the public hearing to a later date in order to review the coastal development permit as a de novo matter. [Cal. Pub. Res. Code §§ 30621 and 30625.] 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.

Alternatively, if the Commission decides that the appellant’s contentions raise no substantial issue as to conformity with the standards set forth in the certified Local Coastal Program or the public access policies of the Coastal Act, the action of the local government stands.

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 will schedule the de novo phase of the public hearing on the merits of the application at a subsequent Commission hearing. A de novo public hearing on the merits of the application uses the certified LCP as the standard of review. In addition, for projects located between the first public road and the sea, findings must be made that an approved application is consistent with the public access and recreation policies of the Coastal Act. Sections 13110-13120 of Title 14 of the California Code of Regulations further explain the appeal hearing process.

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 Regulation, will have three minutes per side to address whether the appeal raises a substantial issue. The only persons qualified to testify before the Commission at the substantial issue portion of the appeal process are the applicants, persons who opposed the application before the local government (or their representatives), and the local government. Testimony from other persons must be submitted in writing. 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 AND DESCRIPTION

The subject property is located at 361, 363, and 365 Via Lido Soud on Lido Isle in the City of Newport Beach, between the first public road and the sea ([Exhibit 1](#)). The property is designated as Multiple-Unit Residential (RM-E) in the certified coastal Land Use Plan (LUP), and is zoned “Multi-unit Residential” (RM) in the IP. The minimum lot size in the RM zoning district is 5,000 sq. ft., and the minimum lot width is 50 ft.

The City-approved project is the demolition of an existing four-unit multi-family structure and a tentative parcel map to subdivide the property into two separate parcels, each 35 ft. in width and 3,150 sq. ft. in area, and a waiver of the IP’s minimum lot width and area standards ([Exhibit 2](#)). No new construction is proposed. The elevation of the site is approximately +11.0 ft North American

Vertical Datum of 1988 (NAVD88), which exceeds the minimum 9 ft. elevation standard for new structures subject to sea-level rise, as required by IP Section 21.30.015(D)(3). In addition, the City required, through the imposition of Special Conditions 5 and 6, that the property owner execute an agreement waiving rights to the construction of future shoreline protection devices, and assuming risk of injury or damage from hazards and unconditionally waiving any claims against the City.

B. LOCAL COASTAL PROGRAM CERTIFICATION

The City of Newport Beach Local Coastal Program was certified in 2017. The City's LCP is comprised of a Land Use Plan (LUP) and Implementation Plan (IP), which is the portion of the LCP adopted as Title 21 of the City's Municipal Code. The standard of review for this appeal is the City's certified LCP and the public access and recreation policies of the Coastal Act.

C. FACTORS TO BE CONSIDERED IN SUBSTANTIAL ISSUE ANALYSIS

Section 30625(b)(2) of the Coastal Act requires a de novo hearing of the appealed project unless the Commission determines that no substantial issue exists with respect to the grounds on which the appeal has been filed pursuant to Section 30603(a) of the Coastal Act. The term "substantial issue" is not defined in the Coastal Act or its implementing regulations. Section 13115(b) of the Commission's regulations 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.

Staff is recommending that the Commission find that a substantial issue exists with respect to the grounds on which the appeal has been filed pursuant to Section 30603(a) of the Coastal Act.

D. SUBSTANTIAL ISSUE ANALYSIS

As stated in Section IV of this report, the grounds for an appeal of a CDP issued by the local government is the development's conformity with the policies of the certified LCP and with the public access and recreation policies of the Coastal Act. The appellant contends that the local government's action is inconsistent with the certified LCP for reasons discussed in further detail below (and included in full in [Exhibit 3](#)).

Appellants' Argument: Inconsistency with LUP Policies 2.8.1-2 and 2.8.1-3 and IP Policy 21.30.025.

LUP Policy 2.8.1-2 states:

“Design and site new development to avoid hazardous areas and minimize risks to life and property from coastal and other hazards.”

LUP Policy 2.8.1-3 states:

“Design land divisions, including lot line adjustments, to avoid hazardous areas and minimize risks to life and property from coastal and other hazards.”

IP Policy 21.30.025 states:

“C. Hazardous Areas. Proposed subdivisions shall be designed to avoid current hazardous areas, as well as areas that may become hazardous due to future changes, such as from sea level rise, and minimize risks to life and property from coastal and other hazards. No division of land near the shoreline, including along the shoreline and bluffs, and including abutting the ocean, bays, lagoons, and other coastal water bodies, unless the new or reconfigured parcels can be developed safe from geologic and other hazards for a minimum of seventy-five (75) years, and unless shoreline protective devices are prohibited to protect development on the resultant parcels.”

The City’s certified LUP requires new development, land divisions, and lot line adjustments to avoid hazardous areas and minimize risks to life and property from coastal and other hazards. In this case, the proposed project includes demolition of an existing four-unit multi-family structure, and a subdivision of one lot into two. No new development subject to LUP Policy 2.8.1-2 is **currently** proposed. However, in order to be found consistent with LUP Policy 2.8.1, the proposed subdivision must ensure that the new parcels can be developed safe from hazards. This policy is implemented by IP Policy 21.30.025, which states that there shall be no division of land near the shoreline, including abutting the ocean, unless the new parcels can be developed safe from geologic and other hazards for a minimum of 75 years, and shoreline protective devices are prohibited. In this case, the applicant has been required to waive any future right to shoreline protection through the imposition of Special Condition 3. However, there is no evidence that the proposed subdivision has been designed to avoid areas that may become hazardous due to future changes, such as from SLR.

In fact, unlike structural development, which can be designed to incorporate adaptive elements like waterproofing or elevation, subdivisions have little to no adaptive capacity. Thus, it is not always feasible to mitigate the impacts created by subdivisions. For example, the proposed subdivision would create two lots, instead of one, for which an owner may claim the right to develop or to be compensated if government regulation deprives the owner of all economically beneficial use of the property. It is important to note that the subdivision of the lot proposed in this project is an action that lasts in perpetuity, beyond the minimum 75 year period for analysis of hazards required by the IP. Subdividing the lot could limit future options for long term, community-scale SLR adaptation by increasing the number of lots and potential properties that would have to be incorporated into a community scale strategy. Because the vulnerability of the site is likely to increase after 75 years, the larger question at hand is whether a subdivision on this site is consistent with intent of the IP Policy to ensure safety and minimize risks to lives and for future development.

Appellants’ Argument: The City lacked sufficient factual support for its hazards findings because it only considered the high emissions projection of the low risk-aversion scenario, and thus did not adequately demonstrate that the resulting parcels would be developed safe from potential impacts from hazards over 75 years.

The subject parcel is a bayside lot on Lido Isle that abuts Newport Bay, specifically the West Lido Channel. Lido Isle is identified in Section 2.8.3-1 of Appendix A to the IP as an area requiring SLR to be considered in CDP applications due to “proximity to water.” Consequently, the applicant submitted a report prepared by GeoSoils, Inc. dated September 16, 2019 ([Exhibit 5](#)) to determine how physical impacts from SLR may impact the project site. Consistent with Appendix A of the IP, the report referenced the best available science (ie. Kopp, et al., 2014), which provides SLR projects under low and high emissions assumptions, and at various probable ranges of exceedance to allow policy makers to account for “risk aversion.” However, the report was not consistent with the OPC’s guidance to evaluate low, medium-high, and extreme levels of risk aversion to evaluate a spectrum of scenarios, nor did the report incorporate the Commission’s SLR guidance, which recommends use of the high emissions assumption for the medium-high risk aversion for residential projects or development with low adaptive capacity. Instead, the report utilizes the high emissions assumption for the “low risk aversion” scenario, resulting in the report’s conclusion that the “likely” amount of SLR over 75 years is 2.9 ft. The City found that because the finished site grade is approximately +11 ft. NAVD88, that it would be safe from the “future extreme bay water level” of +10.6 ft. NAVD88.

The report notes that its use of the high emissions assumption for the low risk aversion scenario is consistent with direction from the Newport Beach City Council. This direction from the City Council is much less precautionary than Commission SLR guidance recommends for use in evaluating development with low adaptive capacity such as residential development and subdivisions. Furthermore, this less precautionary approach does not appear anywhere in the certified LCP, which is the standard of review for the City’s CDPs, nor has the Commission approved an LCP amendment to include it. This less precautionary approach is not be consistent with certified LUP policy 2.8.1-2 and 2.8.1-3, or IP Policy 21.30.025, which all require the minimization risk to life and property from coastal and other hazards.

In this case, the use of a less precautionary method is particularly inappropriate because the subject parcel does not currently have a bulkhead. Any right to future protection has been required to be waived through a special condition imposed by the City in CD2019-024. The Commission supports the use of shoreline protective device waivers to protect the beach. However, proposed subdivision could potentially last long past 75 years analyzed in the report. Thus, shoreline protective devices onsite cannot be counted on to hedge against potential consequences of underestimating impacts from coastal hazards onsite, and a more comprehensive analysis of potential future impacts across moderate-high and potentially extreme amounts of SLR should have been reviewed by the City to determine whether the subject parcel constitutes a site that may become hazardous due to future changes, such as from sea level rise, and minimize risks to life and property from coastal and other hazards. In conclusion, the City lacked sufficient information to support its finding that the site would be safe from future coastal hazards, and consequently should not have approved the subdivision.

Appellants’ Argument: The subdivision should not have been approved because the variance required to waive minimum lot size and width standards was inconsistent with IP Section 21.52.090(B)(2). It is also not necessary in order to increase housing density.

IP Policy 21.52.090(B)(2) states:

“Variances. Waiver or modification of certain standards of this Implementation Plan may be permitted when, because of special circumstances applicable to the property, including location, shape, size, surroundings, topography, or other physical features, the strict application of the development standards otherwise applicable to the property denies the property owner privileges enjoyed by other property owners in the vicinity and in the same coastal zoning district.”

To support its decision to grant a waiver of the minimum lot size (5,000 sq. ft.) and lot width (50 ft.) standards of the IP, the City found that the special circumstances at the subject parcel include an original underlying subdivision pattern which consisted of lots of 30 to 40 ft. in width. The City found that the subdivision to create two 35 ft. wide, 3,150 sq. ft. parcels is allowable because Title 20 (i.e. the Zoning Code outside of the Coastal Zone) contains a provision which allows for a parcel to be subdivided to a minimum lot size not less than the *original* underlying lots on the same block face in the same zoning district. However, the applicable zoning code for parcels in the Coastal Zone is Title 21 (i.e. the Implementation Plan), which, as the City notes, does not contain the same provision.

Instead, the City was required to find that “strict application of Title 21 would deny the property owners privileges enjoyed by surrounding property owners.” The City does not provide sufficient factual support for this finding. The City does not state what such privileges would be. Any number of dwelling units allowed to be constructed on the surrounding properties of the same zoning district would also be allowed on the existing, un-subdivided lot. For example, the other parcels on the same block face range from 2,700 to 4,500 sq. ft., and the subject parcel in its existing, un-subdivided form is 6,300 sq. ft. The RM zone states that the minimum site area per dwelling unit is 1,200 sq. ft., meaning that the other parcels on the block could be developed with a maximum of 2 to 3 units per lot. The subject parcel could be developed with a maximum of 5 units. Single-unit dwellings are also permitted on each lot in this RM zoning district. Thus, any privilege that the property would have with regard to the resulting 35 ft. wide, 3,150 sq. ft. lots can be enjoyed currently on the existing lot.

The subdivision is also not necessary to increase housing density in the City. In fact, the subdivision of subject lot decreases the overall potential density on the site, since each resulting lot could be developed with a maximum of 2 dwelling units, for a total of 4, compared to the maximum of 5 for the un-subdivided lot.

Public Access and Recreation Policies of the Coastal Act

The subject property is located between the first public road and the sea and must be consistent with the coastal access and recreation policies of the LCP pursuant to Section 21.30A.040 of the IP. The project does not impact private lands suitable for visitor-serving commercial recreational facilities because it is designated for residential use. It does not contain any coastal access

easements. It would not impact the public’s ability to access the beach and would not impact any visual resources or public coastal views. As conditioned, it would not impact shoreline processes. Accordingly, the project is consistent with all public access and recreation policies of the LCP.

SUBSTANTIAL ISSUE FACTORS:

Applying the five factors typically relied upon by the Commission in making a determination whether an appeal raises a substantial issue or not confirms that the appeal does raise a “substantial issue” per Section 30625(b)(2) of the Coastal Act.

1. The degree of factual and legal support for the local government’s decision that the development is consistent with the relevant provisions of the Coastal Act.

The City lacked sufficient factual support for its key finding that the subject site would be safe from future coastal hazards for the reasons stated above. Without sufficient factual support for this conclusion, the City also lacked sufficient factual support to approve a land division on a shoreline parcel. Furthermore, the City did not adequately demonstrate that the subdivision was necessary to prevent the property owner from being denied privileges afforded to property owners in the vicinity in the same zoning district, and thus lacked adequate factual support for its approval of a variance to waive minimum lot size and width standards of the IP. Lastly, the application of an inappropriate SLR analysis methodology at City Council’s direction lacks legal support because this direction has never been certified by the Commission and appears to be inconsistent with certified LCP policies.

2. The extent and scope of the development as approved or denied by the local government.

The scope of development in this appeal is limited. It entails the demolition of a four-unit residential structure, and subdivision of one parcel into two. No new construction is proposed. The demolition of the existing four-unit residential structure is not itself of significant scope, unless considered within the context of a change in housing density. Because no new construction is proposed on the resulting lots at this time, actual change in housing density is difficult to evaluate at this time. The subdivision would result in a decrease in maximum density on the site, although as above, it is difficult to evaluate definitive impacts to housing density that result from the subdivision without further information about future proposed development on each resulting lot. However, the subdivision is more significant in scope because it has the potential to change development potential, property ownership, and limit future adaptation options on the site in perpetuity.

3. The significance of the coastal resources affected by the decision.

The subject site is a shoreline parcel located on Lido Isle between the first public road and the sea. Shoreline parcels are presumed to be subject to coastal hazards and are thus specifically identified in both the LUP and IP as inappropriate sites for land divisions, unless proven otherwise. Lido Isle is also identified by the City as a site where SLR analysis requirements are applicable due to its proximity to the water. Lastly, development located between the first public road and the sea is identified in the Coastal Act as having high potential to impact coastal access and recreation. In this case, the subdivision would create two lots, instead of one, for which an owner may claim the right to develop or to be compensated if government regulation deprives the owner of all economically beneficial use of the property. Furthermore, even though the individual property owner(s) at the subject site have waived any right to future shoreline protection, additional property owners and investment in property values in a hazardous area could result in increased incentive for the City to pursue hard protection adaptation strategies that may impact coastal resources through coastal squeeze.

4. The precedential value of the local government’s decision for future interpretations of its LCP.

There is high precedential value of the local government’s decision for future interpretations of its LCP. The most immediate precedential implication is that future subdivisions in hazardous areas could potentially be approved, which would amplify the impacts on coastal resources across the city. More importantly, this decision utilized a non-certified, insufficiently precautionary methodology to evaluate potential impacts from SLR and coastal hazards. This methodology would theoretically be used in all CDP decisions by the City subject to Policy 21.30.010(E) “Development in Shoreline Hazardous Area” which requires a coastal hazards report. In a similar way that this methodology effectively allowed the City to circumvent its certified LUP and IP policies relating to land divisions, continued use of this methodology could also potentially allow the City to circumvent any and all certified policies requiring findings relating to the safety of a site or development from coastal hazards.

5. Whether the appeal raises local issues, or those of regional or statewide significance.

The primary topic of concern raised in this appeal is the City’s approval of a subdivision in a hazardous area. The approval of subdivisions in hazardous areas is an issue of statewide significance, and is included as a topic of discussion in the Commission’s Draft SLR Residential Adaptation Guidelines. More broadly, this appeal also raises issues with the City of Newport Beach’s interpretation and application of its LCP policies on evaluating coastal hazards. Issues with the City Council’s direction, outlined in the discussion above, are local issues.

Conclusion

The appeal raises significant concerns with the degree of factual and legal support for the City’s approval of a subdivision in a hazardous area. Subdivisions in hazardous areas are an issue of statewide concern, while the City’s application of an inappropriate SLR estimation methodology raises significant local issues. The application of the LCP is an ongoing concern which the City and the Commission may resolve through iterative review of future applications, and thus there is high precedential value for the City’s future interpretations of its LCP and application of this methodology. Thus, considering all of the factors and the standard of review, there exists a substantial issue with respect to whether the local government action conforms to the policies of the City’s certified LCP and the public access and recreation policies of the Coastal Act.

Appendix A – Substantive File Documents

1. City of Newport Beach certified Local Coastal Program