

CALIFORNIA COASTAL COMMISSION

SOUTH COAST DISTRICT OFFICE
301 E. OCEAN BLVD., SUITE 300
LONG BEACH, CA 90802-4830
(562) 590-5071



Th11a

A-5-NPB-20-0025 (215 Riverside, LLC)

August 13, 2020

EXHIBITS

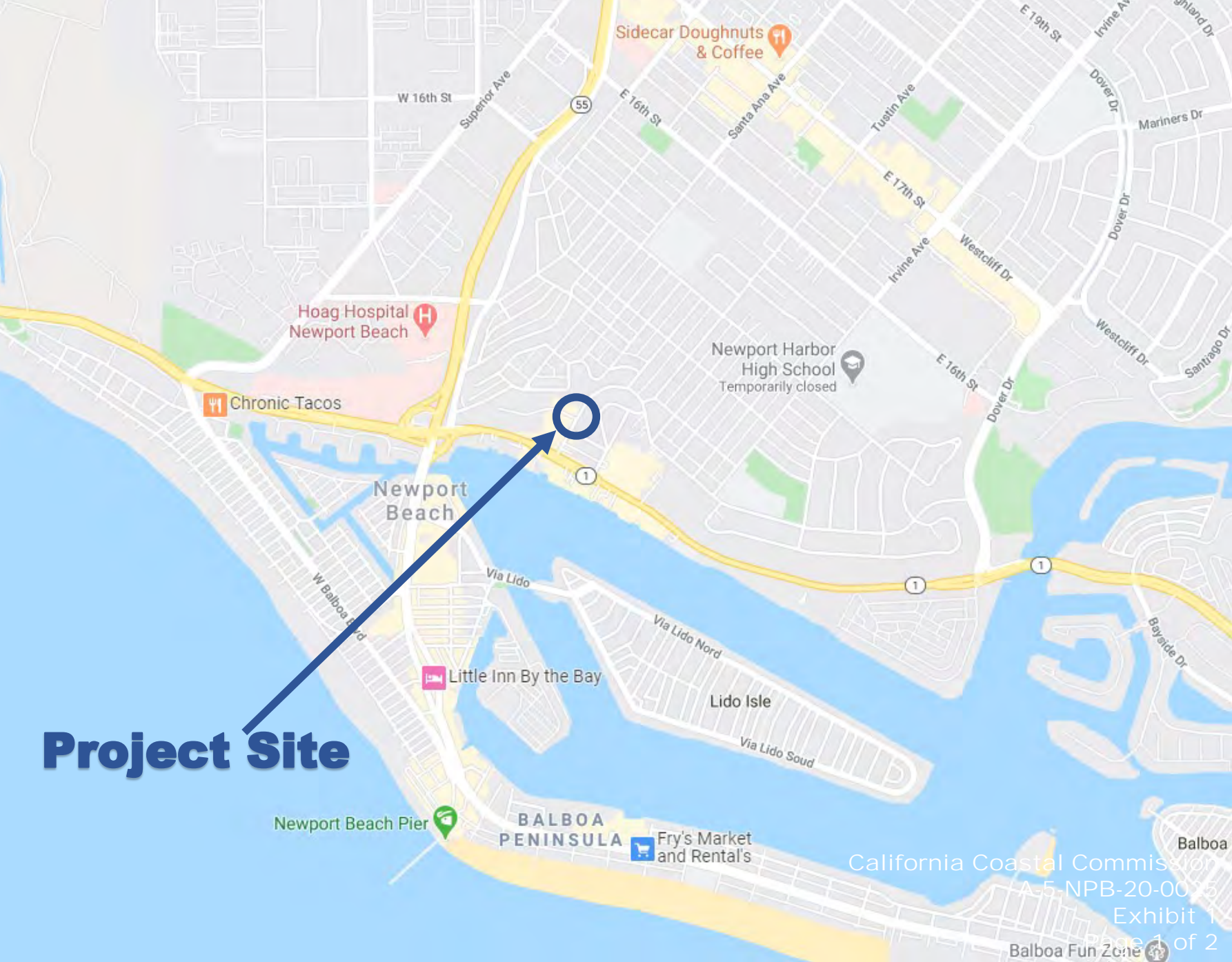
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Exhibit 2 – Project Plans

Exhibit 3 – Appeal of Local CDP CD2019-003

Exhibit 4 – City Resolution for local CDP No. CD2019-003



Project Site

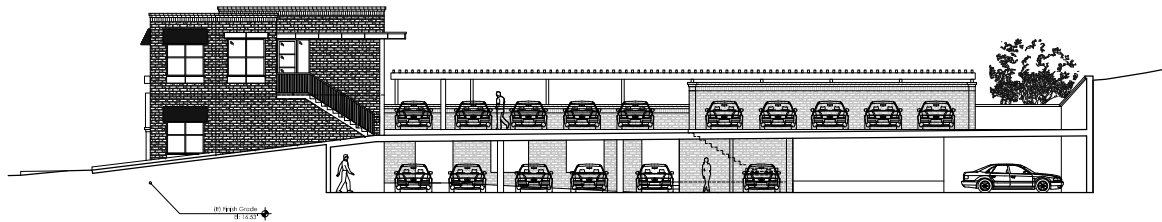
Avon Wetland

Project Site

Avon Street

Riverside Avenue

- 1st Floor
- 2nd Floor
- 3rd Floor
- 4th Floor
- 5th Floor
- 6th Floor
- 7th Floor
- 8th Floor
- 9th Floor
- 10th Floor
- 11th Floor
- 12th Floor
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- 100th Floor

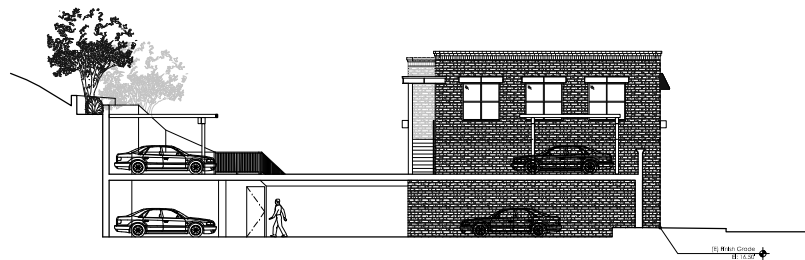


LS architects
LAIDLAW SCHULTZ

2 East Elevation

Scale: 1/8" = 1'-0"

- 1st Floor
- 2nd Floor
- 3rd Floor
- 4th Floor
- 5th Floor
- 6th Floor
- 7th Floor
- 8th Floor
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- 97th Floor
- 98th Floor
- 99th Floor
- 100th Floor



PROJECT
216 Riverside Ave
Newport Beach, CA 92663

OWNER
Schlager Properties

DATE	DESCRIPTION	DESIGNER	REVIEWER
07.2010	CLP/CDP	JY	SL
08.2010	Submitted	JY	SL
09.2010	CLP/CDP	JY	SL
09.2010	Resubmitted	JY	SL
09.2010	CLP/CDP	JY	SL
09.2010	Resubmitted	JY	SL

1 North Elevation

California Coastal Commission
A-5 NPS 20-0025





3 View From Riverside Ave. Existing



View From Riverside Ave. Proposed

LS architects
LAIDLAW SQUARTZ



2 View From Avon St. Existing



View From Avon St. Proposed

PROJECT:
216 Riverside Ave
Newport Beach, CA 92663



1 View From Cliff Drive Park Existing



View From Cliff Drive Park Proposed

APPROVED DESCRIPTION
Notes:

DATE	DESCRIPTION	DESIGNED BY	CHECKED BY
07.2019	CUP/CDP	JY	SL
08.2019	Submittal	JY	SL
08.2019	CUP/CDP	JY	SL
08.2019	Resubmittal	JY	SL
08.2019	CUP/CDP	JY	SL
08.2019	Resubmittal	JY	SL

A.2
California Coastal Commission
A-5-NP-20-0025





Symbol	Botanical Name	Common Name
TREES		
	<i>Lagerstroemia Natchez</i>	Crape Myrtle
SHRUBS: GROUNDCOVERS		
NATIVE SHRUB SLOPE AREA		
	<i>Artemisia californica</i>	California Sagebrush
	<i>Eriogonum fasciculatum</i>	California Buckwheat
	<i>Lonicera caespitosa</i>	California Broom
	<i>Rhamnus crocea</i>	Redberry
	<i>Salvia spaldingii</i>	White Sage
	<i>Punica blanda</i>	Reddy Apple Cherry
	<i>Rhus californica</i>	Coffeeberry
ENHANCED SHRUB LANDSCAPE AREA		
	<i>Leucodendron laevis</i>	Sunshine Conebush
	<i>Penstemon sp. 'Honeyb'</i>	Chief Fountain Grass
	<i>Anolis 'Red Bird'</i>	Red Bird Anolis
	<i>Lavandula 'Mascot'</i>	Mascot Lavender
	<i>Callistemon 'Nottle Pop Neon'</i>	Nottle Pop Neon Bottlebrush
	<i>Salvia 'Not Top'</i>	Not Top Sage
	<i>Muldenbergia capillaris</i>	Pink Mandy
	<i>Punica sp. 'Bright n' Tight'</i>	Carolina Cherry Laurel

NOTES
 TOTAL LANDSCAPE AREA: 4,411 SF
 PLANT MATERIAL NOT LISTED MAY BE USED, SUBJECT TO APPROVAL BY THE CITY.
 ALL LANDSCAPE PLANS AND INSTALLATIONS SHALL ADHERE TO CITY DESIGN GUIDELINES, CODES AND REGULATIONS.
 ALL LANDSCAPE AREAS SHALL RECEIVE AUTOMATIC BRUSHBURN SYSTEM.
 ALL LANDSCAPE INSTALLATION SHALL BE PERMANENTLY MAINTAINED.



CALIFORNIA COASTAL COMMISSION

SOUTH COAST DISTRICT OFFICE
301 E. OCEAN BLVD., SUITE 300
LONG BEACH, CALIFORNIA 90802-4830
(562) 590-5071 FAX (562) 590-5084

WWW.COASTAL.CA.GOV

**COMMISSION NOTIFICATION OF APPEAL**

June 29, 2020

To: Markana Nova
City of Newport Beach
100 Civic Center Drive
Newport Beach, CA 92660

From: Zach Rehm, District Supervisor

Re: **Commission Appeal No. A-5-NPB-20-0025**

Please be advised that the coastal development permit decision described below has been appealed to the California Coastal Commission pursuant to Public Resources Code Sections 30603 and 30625. Therefore, the decision has been stayed pending Commission action on the appeal pursuant to the Public Resources Code Section 30623.

LOCAL PERMIT #: **CD2019-003 (PA2019-023)**

APPLICANT(S): **Laidlaw Schultz Architects**

DESCRIPTION: Appeal of Local Government LCDP of Demolish an existing restaurant/office building and associated surface parking lot and to construct a new 40-space, two-level parking structure and a 2,744 sq. ft. office building. A conditional use permit is required to authorize the construction of the parking structure adjacent to the residentially zoned property. The proposed office building is 2-stories and 28 feet 3 inches in height. The proposed finished floor elevation is 17 feet (NAVD88 datum). The project includes hardscape, drainage, and landscape improvements. The proposed development complies with all applicable development standards including height, setbacks, and floor area limits.

LOCATION: 215 Riverside Ave, Newport Beach, Ca 92663 (APN(s): 049-103-17)

LOCAL DECISION: Approval With Special Conditions

APPELLANT(S): Environmental & Regulatory Specialists, Inc.

DATE APPEAL FILED: 06/29/2020

COMMISSION NOTIFICATION OF APPEAL

The Commission appeal number assigned to this appeal is A-5-NPB-20-0025. The Commission hearing date has not been scheduled at this time. Within 5 working days of receipt of this Commission Notification of Appeal, copies of all relevant documents and materials used in the City of Newport Beach's consideration of this coastal development permit must be delivered to the South Coast District Office of the Coastal Commission (California Administrative Code Section 13112). Please include copies of plans, relevant photographs, staff reports and related documents, findings (if not already forwarded), all correspondence, and a list, with addresses, of all who provided verbal testimony.

A Commission staff report and notice of the hearing will be forwarded to you prior to the hearing. If you have any questions, please contact Zach Rehm at the South Coast District Office.

cc: Laidlaw Schultz Architects
Environmental & Regulatory Specialists, Inc., Attn: David J. Tanner

CALIFORNIA COASTAL COMMISSION

SOUTH COAST DISTRICT OFFICE
301 E. OCEAN BLVD., SUITE 300
LONG BEACH, CA 90802
(562) 590-5071
SOUTHCOAST@COASTAL.CA.GOV

**APPEAL FORM****Appeal of Local Government Coastal Development Permit****Filing Information (STAFF ONLY)**

District Office: South Coast

Appeal Number: A-5-NPB-20-0025Date Filed: 06-29-2020Appellant Name(s): David J. Tanner**RECEIVED**
South Coast Region

JUN 29 2020

CALIFORNIA
COASTAL COMMISSION**APPELLANTS**

IMPORTANT. Before you complete and submit this appeal form to appeal a coastal development permit (CDP) decision of a local government with a certified local coastal program (LCP) to the California Coastal Commission, please review [the appeal information sheet](#). The appeal information sheet describes who is eligible to appeal what types of local government CDP decisions, the proper grounds for appeal, and the procedures for submitting such appeals to the Commission. Appellants are responsible for submitting appeals that conform to the Commission law, including regulations. Appeals that do not conform may not be accepted. If you have any questions about any aspect of the appeal process, please contact staff in the Commission district office with jurisdiction over the area in question (see the Commission's [contact page](#) at <https://coastal.ca.gov/contact/#/>).

Note regarding emailed appeals. Please note that emailed appeals are accepted ONLY at the general email address for the Coastal Commission district office with jurisdiction over the local government in question. For the North Coast district office, the email address is SouthCoast@coastal.ca.gov. An appeal emailed to some other email address, including a different district's general email address or a staff email address, will be rejected. It is the appellant's responsibility to use the correct email address, and appellants are encouraged to contact Commission staff with any questions. For more information, see the Commission's [contact page](#) at <https://coastal.ca.gov/contact/#/>.

Appeal of local CDP decision
Page 2

1. Appellant information¹

Name: 215 Riverside Appellants (see attached list)
Mailing address: 223 62nd Street, Newport Beach, CA 92663
Phone number: 949 646-0895
Email address: dave@earsi.com

How did you participate in the local CDP application and decision-making process?

☐ Did not participate ☒ Submitted comment ☒ Testified at hearing ☐ Other

Describe: The 215 Riverside Appellants submitted written comments to the City or provided
oral testimony to the Planning Commission and/or City Council public hearings.
copies of written comments and testimony are provided on the City of Newport Beach website
(<http://ecms.newportbeachca.gov/Web/Browse.aspx?startid=691512&cnb=CityCouncil&dbid=0>)

If you did *not* participate in the local CDP application and decision-making process, please identify why you should be allowed to appeal anyway (e.g., if you did not participate because you were not properly noticed).

Describe: _____

Please identify how you exhausted all LCP CDP appeal processes or otherwise identify why you should be allowed to appeal (e.g., if the local government did not follow proper CDP notice and hearing procedures, or it charges a fee for local appellate CDP processes).

Describe: The Project was heard by the Planning Commission on 10/17/19
and appealed to the City Council. The City Council conducted
a de novo public hearing on May 12, 2020 approving the Project,
subject to conditions. (See City of Newport Beach website)

¹ If there are multiple appellants, each appellant must provide their own contact and participation information. Please attach additional sheets as necessary.

Appeal of local CDP decision
Page 3

2. Local CDP decision being appealed²

Local government name:	City of Newport Beach
Local government approval body:	City Council
Local government CDP application number:	PA2019-023 / Resolution No. 2020-33
Local government CDP decision:	<input checked="" type="checkbox"/> CDP approval <input type="checkbox"/> CDP denial ³
Date of local government CDP decision:	May 12, 2020

Please identify the location and description of the development that was approved or denied by the local government.

Describe: The Property is located at 215 Riverside Avenue, Newport Beach, CA.
The Property is legally described as a portion of Lot D of Tract 919,
including a portion of the abandoned street adjacent thereto ("Property").
The Applicant requested a coastal development permit and conditional
use permit for the construction of a new 41 space, two level parking
structure and a 2,744 square foot office building ("Project"). The
Applicant requested the following approvals from the City of Newport Beach for
the Project: a) CDP No CD2019-003 to allow demolition of an existing
restaurant/office building and associated surface parking lot and construction
of the Project, and b) Conditional Use Permit No UP2019-003 - to authorize
the construction of the parking structure adjacent to the residentially
zoned property. The Project was approved subject to conditions (see
(City of Newport Beach website for complete public record incorporated herein
<http://ecms.newportbeachca.gov/Web/Browse.aspx?startid=691512&cnb=CityCouncil&dbid=0>)

² Attach additional sheets as necessary to fully describe the local government CDP decision, including a description of the development that was the subject of the CDP application and decision.

³ Very few local CDP denials are appealable, and those that are also require submittal of an appeal fee. Please see the [appeal information sheet](#) for more information.

Appeal of local CDP decision
Page 4

3. Identification of interested persons

On a separate page, please provide the names and contact information (i.e., mailing and email addresses) of all persons whom you know to be interested in the local CDP decision and/or the approved or denied development (e.g., the applicant, other persons who participated in the local CDP application and decision making process, etc.), and check this box to acknowledge that you have done so.

☒ Interested persons identified and provided on a separate attached sheet

4. Grounds for this appeal⁴

For appeals of a CDP approval, grounds for appeal are limited to allegations that the approved development does not conform to the LCP or to Coastal Act public access provisions. For appeals of a CDP denial, grounds for appeal are limited to allegations that the development conforms to the LCP and to Coastal Act public access provisions. Please clearly identify the ways in which the development meets or doesn't meet, as applicable, the LCP and Coastal Act provisions, with citations to specific provisions as much as possible. Appellants are encouraged to be concise, and to arrange their appeals by topic area and by individual policies.

Describe: Pursuant to section 30603(b)(1) of the Coastal Act, the appellants assert:

- 1). The Project is inconsistent with the City's certified LCP.
 - 2). Finding concerning the CDP are not supported by substantial evidence.
 - 3). The project has not been designed or sited to minimize impacts to public views from Pacific Coast Highway (CLUP Policy 4.4.1-2) or impacts to natural landforms.
 - 4). Piecemealing - The Project is part of a larger Project affiliated with the same property owner ("The Garden Restaurant Project") located adjacent to the Project site and adjacent to Pacific Coast Highway. A development application for the Garden Restaurant Project has been submitted to the City but not deemed complete by the City. Piecemealing is not allowed allowed by the certified LCP or CEQA.
 - 5). The Project does not qualify for a CEQA Class 32 Exemption.
- See Attachment A for additional assertions.

⁴ Attach additional sheets as necessary to fully describe the grounds for appeal.

Appeal of local CDP decision
Page 5

5. Appellant certifications

I attest that to the best of my knowledge, all information and facts in this appeal are correct and complete.

Print name See attached Appellant certification forms

Signature 

Date of Signature 6-29-2020

5. Representative authorizations⁵

While not required, you may identify others to represent you in the appeal process. If you do, they must have the power to bind you in all matters concerning the appeal. To do so, please complete the representative authorization form below and check this box to acknowledge that you have done so.

☐ I have authorized a representative, and I have provided authorization for them on the representative authorization form attached.

⁵ If there are multiple appellants, each appellant must provide their own certification. Please attach additional sheets as necessary.

⁶ If there are multiple appellants, each appellant must provide their own representative authorization form to identify others who represent them. Please attach additional sheets as necessary.

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE (415) 904-5200
FAX (415) 904-5400

**DISCLOSURE OF REPRESENTATIVES**

If you intend to have anyone communicate on your behalf to the California Coastal Commission, individual Commissioners, and/or Commission staff regarding your coastal development permit (CDP) application (including if your project has been appealed to the Commission from a local government decision) or your appeal, then you are required to identify the name and contact information for all such persons prior to any such communication occurring (see Public Resources Code, Section 30319). The law provides that failure to comply with this disclosure requirement prior to the time that a communication occurs is a misdemeanor that is punishable by a fine or imprisonment and may lead to denial of an application or rejection of an appeal.

To meet this important disclosure requirement, please list below all representatives who will communicate on your behalf or on the behalf of your business and submit the list to the appropriate Commission office. This list could include a wide variety of people such as attorneys, architects, biologists, engineers, etc. If you identify more than one such representative, please identify a lead representative for ease of coordination and communication. You must submit an updated list anytime your list of representatives changes. You must submit the disclosure list before any communication by your representative to the Commission or staff occurs.

Your Name _____

CDP Application or Appeal Number _____

Lead Representative

Name _____

Title _____

Street Address, _____

City _____

State, Zip _____

Email Address _____

Daytime Phone _____

Your Signature _____

Date of Signature _____

Additional Representatives (as necessary)

Name _____
Title _____
Street Address. _____
City _____
State, Zip _____
Email Address _____
Daytime Phone _____

Name _____
Title _____
Street Address. _____
City _____
State, Zip _____
Email Address _____
Daytime Phone _____

Name _____
Title _____
Street Address. _____
City _____
State, Zip _____
Email Address _____
Daytime Phone _____

Name _____
Title _____
Street Address. _____
City _____
State, Zip _____
Email Address _____
Daytime Phone _____

Your Signature _____

Date of Signature _____

Appeal of local CDP decision
Page 5

5. Appellant certification⁵

I attest that to the best of my knowledge, all information and facts in this appeal are correct and complete.

Print name David J. Tanner

Signature David J. Tanner

Date of Signature 6-29-2020

5. Representative authorization⁶

While not required, you may identify others to represent you in the appeal process. If you do, they must have the power to bind you in all matters concerning the appeal. To do so, please complete the representative authorization form below and check this box to acknowledge that you have done so.

☐ I have authorized a representative, and I have provided authorization for them on the representative authorization form attached.

⁵ If there are multiple appellants, each appellant must provide their own certification. Please attach additional sheets as necessary.

⁶ If there are multiple appellants, each appellant must provide their own representative authorization form to identify others who represent them. Please attach additional sheets as necessary.

215 Riverside Appellants Appeal – Attachment A
June 29, 2020

Mr. Steve Padilla, Chair
Members of the California Coastal Commission

California Coastal Commission
South Coast District Office
301 E. Ocean Blvd., Suite 300
Long Beach, Ca 90802
(562) 590-5071
SOUTHCOAST@COASTAL.CA.GO

Subject: Appeal of adoption of City of Newport Beach Resolution No. 2020-33 and the finding the Project is categorically exempt under Section 15332, of the California Environmental Quality Act (CEQA Guidelines – Class 32 (In-Fill Developments))

Mr. Padilla,

Pursuant to Section 30603 of the Coastal Act, the Appellants file this appeal of adoption of City of Newport Beach Resolution No. 2020-33. A Resolution of the City Council of the City of Newport Beach, California upholding and affirming the Planning Commission's approval of Coastal Development Permit No. CD2019-003 and Conditional Use Permit No. UP2019-003 to demolish an existing restaurant and office building and construct a new office building and parking structure located at 215 Riverside Avenue (PA2019-023). Furthermore, the Appellants appeal the finding the Project is categorically exempt under Section 15332, of the California Environmental Quality Act (CEQA Guidelines – Class 32 (In-Fill Developments)).

1. Appellant Information

“215 Riverside Appellants”

Primary point of contact for “215 Riverside Appellants”

David J. Tanner, President
Environmental & Regulatory Specialists, Inc.
2232 62nd Street
Newport Beach, CA 92663
dave@earsi.com

(see attached sheets for individual Appellants and their Certification forms)

The 215 Riverside Appellants submitted written comments to the City or provided oral testimony to the Planning Commission and/or City Council public hearings. Copies of written comments and oral testimony are provided on the City of Newport Beach website:

<http://ecms.newportbeachca.gov/Web/Browse.aspx?startid=691512&cnb=CityCouncil&dbid=0>

The Project was heard by the Planning Commission on 10/17/19 and appealed to the City Council. The City Council conducted a de novo public hearing on May 12, 2020 approving the Project subject to conditions. (See City of Newport Beach website)

2. Local CDP decision being appealed

City of Newport Beach
City Council
City of Newport Beach Resolution No. 2020-33 / Garden Office and Parking Structure Project (PA2019-023),
CDP and CEAQA Class 32 exemption
May 12, 2020

Property Location

The Property is located at 215 Riverside Avenue, City of Newport Beach, CA. The Property is legally described as a portion of Lot D of Tract 919, including a portion of the abandoned street adjacent thereto ("Property").

Entitlement Requested

The Applicant requested a Coastal Development Permit and Conditional Use Permit for the construction of a new 41 space (40 we ultimately granted by the City), two level parking structure and a 2,744 square foot office building ("Project" aka, "215 Riverside").

The Applicant requested the following approvals from the City of Newport Beach for the Project:

- a) CDP No CD2019-003 to allow demolition of an existing restaurant/office building and associated surface parking lot and construction of the Project, and
- b) Conditional Use Permit No UP2019-003 - to authorize the construction of the parking structure adjacent to the residentially zoned property.

Public Controversy

This Project has generated significant public controversy as memorialized in the hundreds of pages of communication submitted to the City. The main areas of controversy appear to be:

For the first time the City has approved an open top parking structure to be built into a Coastal Bluff. The Parking structure is immediately adjacent to and 24' below existing bluff top single-family residences.

Residents believe Project construction will adversely impact Avon Creek/Wetlands whose headwaters are immediately adjacent to the Project on the west. Avon Creek/Wetlands is the only such remaining wetlands within the Mariners Mile.

Residents believe Project construction will impact a privately owned Heritage Coast Live Oak Tree estimated to be 100-200 years old, the only such heritage oak tree in the area. This Heritage Coast Live Oak tree is located immediately adjacent the Projects eastern boundary. Many residents are unsatisfied with the last-minute conditions added by the City Council to protect the tree and believe the conditions will be ineffective.

Residents believe this Project is part of a larger project owned by the same property owner. Residents base this ascertain on information in the public record. The Project includes a parking structure which is being oversized to provide parking for a proposed restaurant/bar project adjacent to this property also within the coastal zone.

Residents believe the Project should be subject to CEQA.

Residents are concerned about the lack of and method of City responses to public concerns raised and perceive a bias in favor of the developer. Residents are concerned about the precedence this City approval will have on other development projects within the Coastal Zone and throughout the City.

To add to the residents' concerns, Newport Beach like all other cities in SCAG is trying to find a means to comply with the City's draft RHNA allocation (roughly 4,800 du) and is in the process of a General Plan update. Candidate locations are in close proximity to the Project site within the Mariners Mile. Development of additional housing within the Mariners Mile would likely adversely impact coastal bluffs and public viewsheds.

3. Identification of interested persons

See attached sheet

4. Grounds for this appeal

Pursuant to Section 30603(b)(1) of the Coastal Act, the Appellants assert:

- A. The Project is inconsistent with the City's recently certified LCP.
- B. Findings concerning the CDP are not supported by substantial evidence.
- C. The Project has not been designed or sited to minimize impacts to public views from Pacific Coast Highway (CLUP Policy 4.4.1-2) or impacts to natural landforms.
- D. Piecemealing - The Project is part of a larger Project affiliated with the same property owner ("The Garden Restaurant Project") located adjacent to the Project site adjacent to Pacific Coast Highway. A development application for the Garden Restaurant Project has been submitted to the City but not deemed complete by the City. Piecemealing is not allowed by the certified LCP or CEQA.
- E. The Project does not qualify as categorically exempt under Section 15332, of the California Environmental Quality Act, Section 15332 (CEQA Guidelines – Class 32 (In-Fill Developments)).

5. Appellant certification

See attached sheets

1.5 Issue Analysis

A. The Project is inconsistent with the City's recently certified LCP.

- a. The Project does not comply with the biological resource policies of the City's certified LCP

The Coastal Land Use Plan (CLUP) contains the following applicable policies

4.1 Biological Resources

4.1.1-1. Define any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments as an environmentally sensitive habitat area (ESHA). Using a site-specific survey and analysis by a qualified biologist, evaluate the following attributes when determining whether a habitat area meets the definition of an ESHA:

215 Riverside Appellants Appeal – Attachment A
June 29, 2020

- A. The presence of natural communities that have been identified as rare by the California Department of Fish and Game.
- B. The recorded or potential presence of plant or animal species designated as rare, threatened, or endangered under State or Federal law.
- C. The presence or potential presence of plant or animal species that are not listed under State or Federal law, but for which there is other compelling evidence of rarity, such as designation as a 1B or 2 species by the California Native Plant Society.
- D. The presence of coastal streams.
- E. The degree of habitat integrity and connectivity to other natural areas. Attributes to be evaluated when determining a habitat's integrity/connectivity include the habitat's patch size and connectivity, dominance by invasive/non-native species, the level of disturbance, the proximity to development, and the level of fragmentation and isolation.

Existing developed areas and existing fuel modification areas required by the City of Newport Beach Fire Department or the Orange County Fire Authority for existing, legal structures do not meet the definition of ESHA.

4.1.1-2. Require a site-specific survey and analysis prepared by a qualified biologist as a filing requirement for coastal development permit applications where development would occur within or adjacent to areas identified as a potential ESHA. Identify ESHA as habitats or natural communities listed in Section 4.1.1 that possess any of the attributes listed in Policy 4.1.1-1. The ESA's depicted on Map 4-1 shall represent a preliminary mapping of areas containing potential ESHA.

4.1.1-3. Prohibit new development that would necessitate fuel modification in ESHA.

4.1.1-4. Protect ESHAs against any significant disruption of habitat values.

4.1.1-6. Require development in areas adjacent to environmentally sensitive habitat areas to be sited and designed to prevent impacts that would significantly degrade those areas, and to be compatible with the continuance of those habitat areas.

4.1.1-7. Limit uses within ESHAs to only those uses that are dependent on such resources.

4.1.1-9. Where feasible, confine development adjacent to ESHAs to low impact land uses, such as open space and passive recreation.

4.1.1-10. Require buffer areas of sufficient size to ensure the biological integrity and preservation of the habitat they are designed to protect. Terrestrial ESHA shall have a minimum buffer width of 50 feet wherever possible. Smaller ESHA buffers may be allowed only where it can be demonstrated that 1) a 50-foot wide buffer is not possible due to site-specific constraints, and 2) the proposed narrower buffer would be amply protective of the biological integrity of the ESHA given the site-specific characteristics of the resource and of the type and intensity of disturbance.

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4.1.1-11. Provide buffer areas around ESHAs and maintain with exclusively native vegetation to serve as transitional habitat and provide distance and physical barriers to human and domestic pet intrusion.

4.1.1-12. Require the use of native vegetation and prohibit invasive plant species within ESHAs and ESHA buffer areas.

4.1.1-13. Shield and direct exterior lighting away from ESHAs to minimize impacts to wildlife.

4.1.1-14. Require mitigation in the form of habitat creation or substantial restoration for allowable impacts to ESHA and other sensitive resources that cannot be avoided through the implementation of siting and design alternatives. Priority shall be given to on-site mitigation. Off-site mitigation measures shall only be approved when it is not feasible to fully mitigate impacts on-site. Mitigation shall not substitute for implementation of the project alternative that would avoid impacts to ESHA.

4.1.2-1. Maintain, enhance, and, where feasible, restore marine resources.

4.1.2-4. Continue to cooperate with the state and federal resource protection agencies and private organizations to protect marine resources.

4.1.3-1. Utilize the following mitigation measures to reduce the potential for adverse impacts to ESA natural habitats from sources including, but not limited to, those identified in Table 4.1.1:

C. Prohibit the planting of non-native plant species and require the removal of non-natives in conjunction with landscaping or revegetation projects in natural habitat areas.

D. Strictly control encroachments into natural habitats to prevent impacts that would significantly degrade the habitat.

E. Limit encroachments into wetlands to development that is consistent with Section 30233 of the Coastal Act and Policy 4.2.3-1 of the Coastal Land Use Plan.

F. Regulate landscaping or revegetation of blufftop areas to control erosion and invasive plant species and provide a transition area between developed areas and natural habitats.

N. Prohibit invasive species and require removal in new development.

- b. The Project does not comply with Wetlands and Deepwater Areas policies of the City's certified LCP

The Coastal Land Use Plan (CLUP) contains the following applicable policies

4.2 Wetlands and Deepwater Areas

4.2.1-1. Recognize and protect wetlands for their commercial, recreational, water quality, and habitat value.

4.2.1-2. Protect, maintain and, where feasible, restore the biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes.

4.2.2-3. Require buffer areas around wetlands of a sufficient size to ensure the biological integrity and preservation of the wetland that they are designed to protect. Wetlands shall have a minimum buffer width of 100 feet wherever possible. Smaller wetland buffers may be allowed only where it can be demonstrated that 1) a 100-foot wide buffer is not possible due to site-specific constraints, and 2) the proposed narrower buffer would be amply protective of the biological integrity of the wetland given the site-specific characteristics of the resource and of the type and intensity of disturbance.

c. The Project does not comply with the visual resource policies of the City's certified LCP

The Coastal Land Use Plan (CLUP) contains the following applicable policies:

4.4 Scenic and Visual Resources

4.4.1 Coastal Views

4.4.1-1. Protect and, where feasible, enhance the scenic and visual qualities of the coastal zone, including public views to and along the ocean, bay, and harbor and to coastal bluffs and other scenic coastal areas.

4.4.1-2. Design and site new development, including landscaping, so as to minimize impacts to public coastal views.

4.4.1-3. Design and site new development to minimize alterations to significant natural landforms, including bluffs, cliffs and canyons.

4.4.1-4. Where appropriate, require new development to provide view easements or corridors designed to protect public coastal views or to restore public coastal views in developed areas.

4.4.1-5. Where feasible, require new development to restore and enhance the visual quality in visually degraded areas.

4.4.1-6. Protect public coastal views from the following roadway segments:

Coast Highway from Newport Boulevard to Marino Drive.

4.4.3 Natural Landform Protection

The bluffs, cliffs, hillsides, canyons, and other significant natural landforms are an important part of the scenic and visual qualities of the coastal zone and are to be protected as a resource of public importance.

However, development on the bluff face is controlled to minimize further alteration.

d. The Project does not comply with the visual Development Standards of the City's certified LCP - IP

The Implementation Plan (IP) contains the following applicable provisions and policies:

Chapter 21.30B (Habitat Protection).

21.30B.010 Purpose.

This chapter is intended to:

- A. Protect environmentally sensitive habitat areas against any significant disruption of habitat values.
- B. Maintain and, where feasible, restore the biological productivity and the overall quality of coastal waters, streams, wetlands, estuaries, and lakes.
- C. Protect wetlands for their commercial, recreational, water quality, and habitat value. (Ord. 2016-19 § 9 (Exh. A)(part), 2016)

21.30B.040 Wetlands, Deepwater Areas, and Other Water Areas.

21.35.030 Construction Pollution Prevention Plan

21.35.040 Post-Development Runoff Plan

The Post-Development Runoff Plan (PDRP) shall describe the runoff management site design strategies, pollutant source control BMPs, and other measures the development will implement to minimize stormwater pollution and changes in runoff flows from the site after development is completed, in order to protect and, where feasible, restore the quality of coastal waters.

21.35.050 Water Quality and Hydrology Plan

A Water Quality and Hydrology Plan (WQHP) shall be required for developments of water quality concern (see subsection (A) of this section), which are specified categories of development that have a greater potential for adverse water quality and hydrologic impacts due to the development size, type of land use, and/or proximity to coastal waters.

21.50.070 Environmental Review.

- A. LCP Review. After acceptance of a complete application, the development shall be reviewed in compliance with the applicable policies of the LCP.
- B. Investigation. Analysis of proposed development within or adjacent to ESHA, wetlands or other sensitive resources shall include an analysis of the individual and cumulative impacts of the development on coastal resources, define the least environmentally damaging alternative, and recommend modifications or mitigation measures to avoid or minimize impacts on coastal resources.
- C. Environmental Documents.
 - 1. Preparation by Qualified Specialist. All environmental documents, including surveys, assessments, reports and other technical studies, shall be prepared by a qualified resource specialist with technical expertise as appropriate for the environmental issues of concern.
 - 2. Review of Documents. All environmental documents submitted as part of a development application shall be reviewed by a qualified City staff member, City-

designated advisory committee, or consultant approved by, and under the supervision of, the City. Environmental documents prepared more than two years prior to the date of submittal shall be reviewed to determine if changes to the project and/or changes to the surrounding area of the project warrant additional environmental review in the form of an addendum, a supplemental environmental document, or a new environmental document.

3. Report. A qualified City staff member, advisory committee, or contracted employee shall prepare a written report with recommendations to the appropriate decision making official or body.

4. Recommendations. Written findings of fact, analysis and conclusions shall be included in any recommendation to approve, conditionally approve, or disapprove proposed development within or adjacent to ESHA, wetlands or other coastal resources. Any recommendations of approval shall include an identification of the preferred project alternative and required modifications or mitigation measures necessary to ensure conformance with the Local Coastal Program. (Ord. 2016-19 § 9 (Exh. A)(part), 2016)

Discussion.

The Property is a disturbed site. The proposed Project's development plan clearly depicts areas where the Project will exceed the existing area of disturbance by removing portions of the existing retaining wall extending disturbance off-site to the west into the Avon Creek/Wetlands and off-site to the east/northeast beneath the dripline of the Heritage Coast Live Oak Tree (*Quercus agrifolia*).

Project plans also call for the Project to excavate further into native earth material comprising the coastal bluff to construct the parking structure. The full extent of excavation/slope stabilization was not established by the preliminary geotechnical analysis which analyzed project feasibility of an earlier design. The City relied upon a geotechnical analysis through the CUP and CDP and CEQA process which does not address other topics such as remedial grading, earthquake risk, steps needed to insure the stability of the adjacent homes atop the bluff, etc. The full extent of offsite disturbance was either not known, or denied by the City. Project plans call for the export approximately 3,375 cubic yards of earth material from the Coastal Bluff.

The adjacent Avon Creek/Wetlands is fed year-round by an underground source emanating from the Coastal Bluff. The extent of the Avon Creek/Wetland surface features change seasonally, decreasing with periods of drought and increasing during wet cycles.

The Biological Assessment (p 247 of October 17, 2019, PC staff report; and page 21-213 of May 12, 2020, CC staff report) says: "Thus, the proposed project would have no potential to affect the hydrology of the wetland area, which is totally dependent on a groundwater source unconnected to the proposed project." There is no evidence in the public record supporting the purported lack of groundwater connection.

In March, 1988 an exhibit identifies the approximate size of the Avon Creek/Wetlands (Staff report package pg. 222 of 334). The exhibit depicts the eastern extent of the wetlands in approximately the same position found thus far in 2020. The location of the creek (an underground spring) is shown within 10'-15' from the Property's western boundary. On September 23, 2019 (a dry period) the extent of the wetlands surface features was documented in a Technical Memorandum by the City's consultant (Staff report package pgs. 210-228 of 334 pages). The consultant's scope was to "examine a potential wetland in the Avon Street right-of-way, west of the 215 Riverside project site" (this is not a biological report as characterized by Staff). According to the consultant, a wetland existed. At that time (September 3, 2019) the closest part of the wetland was 29' from the western Property boundary.

Between April – May 2020, (a wet period) during the time of the City Council appeal, the condition of the Avon Creek/Wetlands was documented on multiple visits by Environmental & Regulatory Specialists, Inc. (EARSi). EARSi documented the closest part of the wetland extends to within approximately 12 feet of the western Property boundary. EARSi's documentation was submitted to the City. Year-round wetlands emanating from the base of coastal bluffs in Newport Beach were much more common in the past. The Avon Creek/Wetlands is the only remaining coastal bluff creek/wetlands within the City's Mariners Mile.

Despite Appellants' requests expressed to the City, no investigation of the Project's impact (from Project grading/excavation into the coastal bluff) to the source of water for the Avon Creek/Wetlands or Heritage Coast Live Oak Tree was undertaken by the City. The geotechnical report states subdrains will be used if groundwater is encountered during grading. The subdrains will discharge groundwater into the storm drain.

Areas of off-site grading shown on the Project plans were pointed out to the City. The City was asked to provide an exhibit showing the maximum development impact footprint for the Project (a maximum development impact footprint exhibit identifies a project's grading limits on and off-site, fuel modification zones/brush clearance areas, areas of incidental disturbance, temporary impact areas, offsite landscaping and offsite improvements). No development impact footprint exhibit or explanation was provided. Neither the California Department of Fish and Wildlife, the Regional Water Quality Control Board, or as far as the Appellants are aware, the California Coastal Commission was contacted by the City to determine policy conformance, if notification or certification is required, or to obtain their opinions on the extent of impact to both surface and subsurface wetland features within their jurisdictions. It was noted by Jan Vandersloot in 1989 that "In addition, I would also recommend that since the Department of Fish and Game has determined that the area represents a wetland, and since this wetland lies within the Coastal Zone, that a Coastal Permit be applied for, before indiscriminate disruption of the flora and fauna in the creek." (Staff report package pg. 220 of 334). The City provided no response to the changed condition of Avon Creek/Wetland's documented by EARSi in 2020, or the fact that their own consultant's Technical Memorandum contained Vandersloot's 1989 report which states "the Department of Fish and Game has determined that the area represents a wetland" prior to or during the Planning Commission or City Council de novo hearing.

Typically, Coast Live Oak Tree roots extend far beyond the tree's dripline. This species does not rely solely on a center tap root. This species has a capillary root system which provides stability and uses capillary action to suck up water away from the center of the tree beyond the dripline. In this case, the trees roots could extend well onto the Project site well within the area impacted by grading. There is a reasonable expectation the roots would seek a reliable source of groundwater to the west (the source of the Avon Creek/Wetlands). Until the appeal to the City Council, the City had not recognized the impact to this tree. A resident contacted an arborist (Arborge Consulting, Inc.) and obtained a written opinion from the arborist on March 23, 2020 (attached hereto) which was submitted to the City. The Arborist informed the City that older heritage trees such as this tree, are very sensitive to change and after reviewing the Project development Plans concluded it was just not worth the risk of losing this valuable Heritage Coast Live Oak tree by moving ahead with the Project.

A diagram depicting the typical root structure of this species of tree was also submitted to the City (attached hereto) clearly showing a typical trees root system extending well beyond the drip line of the tree, and which component of the root system absorb water. The City was asked to determine if the Project would impact the water source for the Heritage Coast Live Oak Tree. No response was provided. No testimony from the City's Arborist was presented at the City Council's de novo hearing. In response, the City Council added two conditions (#65 & 66 both mitigation measures) to their approving Resolution requiring "Prior to the issuance of demolition and grading permits, the City's Arborist will review the Project plans for conformity with applicable regulations" and "Prior to the

issuance of grading permits, the Project Applicant or Project Developer will retain a licensed arborist to observe construction of the project to ensure compliance with Council Policy G-1 (Retention, removal and Maintenance of City Trees) related to Special Trees and the City Arborists findings.”. The review of project plans will do nothing to determine the extent to which tree’s roots extend under the Project site or if site grading and construction will impact the tree’s roots or water source. Construction monitoring will determine the impact to the Heritage Coast Live Oak Tree’s roots after-the-fact. Both the City General Plan, Coastal Act (Section 30240(a) and (b)) and LCP (Section 4.1.1) require sensitive resources to be preserved and enhanced. The Project as designed will do neither and has the potential to significantly impact the Avon Creek/Wetlands and significantly damage or kill this 100 – 200-year-old Heritage Coast Live Oak Tree. The City approved Project landscape plan goes one step further by ignoring the General Plan Natural Resources Element and LCP (Policy 4.1.1-12) by approving the use of nonnative ornamental landscape species throughout.

The City could have required additional detailed Project plans and technical analysis to determine the impact to the Avon Creek/Wetlands and Heritage Coast Live Oak Tree per LCP Policy 4.1.1-2; contacted responsible agencies including the California Department of Fish and Wildlife and Regional Water Quality Control Board to determine the Project’s potential impacts to sensitive resources and identify required agency permitting; required design modifications to the Project to support and enhance existing sensitive resources per LCP Policies 4.1.1-4, 4.1.1-4 and 4.1.1-6 and used the information obtained in updating their CEQA determination. The City chose not to.

The Project’s inconsistency with the City’s recently certified LCP policies; visual impact from the Project to Pacific Coast Highway; potential impact to the Avon Creek Wetlands; and potential impact to the Heritage Coast Live Oak Tree were knowingly overlooked by the City when it determined the Project qualified as categorically exempt under Section 15332, of the California Environmental Quality Act, Section 15332 (CEQA Guidelines – Class 32 (In-Fill Developments)). Hence this appeal to the Coastal Commission.

e. The Project does not comply with the land use policies of the City’s certified LCP

2.1.4-5. Development shall be designed and planned to achieve high levels of architectural quality and compatibility among on-site and off-site uses. Adequate pedestrian, non-automobile and vehicular circulation and parking shall be provided.

2.1.4-6. Require sufficient area be provided for individual uses to prevent fragmentation and assure each use’s viability, quality, and compatibility with adjoining uses.

2.4.1-4. Design and site new development to avoid impacts to existing coastal dependent and coastal-related developments. When reviewing proposals for land use changes, give full consideration to the impact on coastal-dependent and coastal-related land uses including not only the proposed change on the subject property, but also the potential to limit existing coastal-dependent and coastal-related land uses on adjacent properties.

2.7-1. Continue to maintain appropriate setbacks and density, floor area, and height limits for residential development to protect the character of established neighborhoods and to protect coastal access and coastal resources.

Discussion.

Policies set forth in the LCP (Policies 2.1.4-5 & 2.1.4-6 (compatibility), 2.4.1-4 (avoid impacts to existing coastal dependent) and 2.7-1 (maintain appropriate setbacks and density) and General Plan LU 5.2.2 provides that the City is to “[r]equire that commercial uses adjoining residential neighborhoods

be designed to be compatible and minimize impacts through such techniques as: Incorporation of landscaping, decorative walls, enclosed trash containers, downward focused lighting fixtures, and/or comparable buffering elements; Attractive architectural treatment of elevators facing the residential neighborhood; Location of automobile and truck access to prevent impacts on neighborhood traffic and privacy.”

The excess capacity built into Project’s parking structure facilitates an intensity of use that fails to respect the adjoining residential homes. The use of the Project’s parking structure for off-site parking, assuredly involving valet parking for one or more nearby restaurants/ entertainment venues, creates a difficult parking figuration and management program as identified by the requirement that the City issue a conditional use permit to allow the same since the parking structure would be adjacent to residential uses. Valet parking will significantly increase the parking capacity of the parking structure, its odors from vehicle emissions, noise, light and glare all impacting adjacent homes atop the bluff.

The Project’s creation of a two-story open-topped parking structure is incompatible with the adjoining residential houses and fails to adequately minimize impacts by facilitating the parking of two and a half times the number of vehicles than 215 Riverside’s current configuration (to be demolished), and which will be used far more frequently and in a substantially more intrusive manner than the current configuration, including currently non-existent nighttime use. The conditions of approval in the Resolution do not reasonably or adequately mitigate the foreseeable negative impacts on the Adjacent Homeowners use and enjoyment of their homes. Based upon the 215 Riverside Owner’s intended use of the Project, the Project’s parking structure will be used for off-site parking to facilitate restaurant use, which will involve vehicles frequently entering and existing the parking structure. The 8’ retaining wall at the back of the Project will not mitigate the negative impacts whatsoever since the Adjacent Homeowners’ homes are upslope from the Project site and thus the retaining wall does not shield noise, light, glare or other disturbances from the Project upon the Adjacent Homeowners’ homes whatsoever. The trellis over the roof-top parking spaces similarly will not mitigate the negative impacts since that trellis does not shield noise, block vehicular emissions and only partially shields light, glare or other disturbances from the Project upon the Adjacent Homeowners’ homes. Roof-top parking traditionally has not been approved in Mariners’ Mile because of these types of foreseeable negative impacts on adjoining residential uses, which should also be the case here since the Adjacent Homeowners’ homes are located as little as 24 feet from the Project.

The existing access drive onto the Property from Riverside Avenue has long been considered a traffic hazard by local residents. A concern not addressed in the City’s CEQA determination. The proposed Project maintains this access location and widens this access point to address this hazard. The City could have chosen to have the applicant relocate this access point to Avon Avenue, eliminating this hazard, but it chose not to.

Conclusion.

The City incorrectly justifies its position with statements like the following contained in the May 12, 202 Staff report (pg.5) to the City Council:

“the General Plan and Coastal Land Use Plan policy analysis provided in the Planning Commission staff report and Class 32 exemption narrative are designed to focus on the most relevant policies for discussion purposes. Ultimately, the Zoning Code is intended to serve as the as the implementing document for the General Plan (GP) and the Local Coastal Program is intended to serve as the implementing document for the Coastal Land Use Plan.”

In this case, the City chose what it considered to be “relevant” to discuss and refused to recognize other “relevant” land use policies and natural resource policy concerns raised by the Appellants. In the final

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staff report, when the City replied to specific comments, they used a generic non-responsive response such as the following response to a comment questioning the Project's compliance with the Coastal Act and LCP:

Section 30240 of the California Coastal Act: Environmentally sensitive habitat areas; adjacent developments subsection (a)

"This Coastal Act Section is implemented through the Local Coastal Program Sections 21.30B (Habitat Protection), 21.30A.050 (Development Standards, the required findings for a Coastal Development Permit (Section 21.52.015.F), and Council Policy K-3 (Implementation Process for CEQA)" (Staff report, pg.6)

In this case Council Policy K-3 is irrelevant because the Project was determined to be categorically exempt from CEQA. However, the prior environmental review conducted by the City to determine the applicability of the CEQA Class 32 exemption failed to consider City General Plan or LCP natural resource policies. Furthermore, the City failed to acknowledge what the Project Plans clearly show. The Project will increase the area of disturbance and extend off-site (One obvious example of offsite grading: the red dashed lines along the western boundary of property, Sheet No. A.100.):

"the design utilizes the existing development footprint and retaining wall on-site and does not increase the area of disturbance." (Staff report, pg. 7)

The Appellants are very aggrieved by the position taken by the City on this Project. The City's position is "designed to focus on the most relevant policies" and the need to review the other equally important General Plan Elements and LCP Land Use Component policies is un-necessary because ultimately the Zoning Code or LCP Implementation Plan are intended to serve as the implementing document for the General Plan and LCP.

Tremendous development pressure is on the City's Mariners Mile segment within the Coastal Zone. The Appellants are very concerned about the precedent set by the City's action on this Project and the precedential value of the local government's decision for future interpretations of its LCP and implementation of CEQA.

B. Finding concerning the CDP are not supported by substantial evidence.

Discussion.

Since the Project is located in the City's Coastal Zone, the Project requires a CDP. The record does not support the Resolution's findings concerning a CDP. The City's LCP, as codified in the City's Municipal Code, requires that the Project conforms to all applicable sections of the LCP. (Municipal Code § 21.52.015(F).) The Resolution finds that "[t]he proposed design, bulk, and scale of the development is consistent with the existing neighborhood pattern of development and expected future development." Given the unprecedented approval of roof-top parking in Mariners' Mile within as little as 24 feet from residential uses, and the foreseeable negative impacts on the Adjacent Homeowners, the Project's design, bulk, and scale is inconsistent with the existing neighborhood pattern of development and the expected future development, which protects residential uses from negative impacts due to adjacent and nearby commercial uses. The Resolution also finds that the Project is located "in an area known for the potential of seismic activity and liquefaction" and thus that "[g]eotechnical investigations specifically addressing liquefaction are required to be reviewed and approved prior to the issuance of building permits." That geotechnical investigation should have already occurred and been considered as part of the Project's review along with other investigations identifying required remedial grading, presence and effect of ground water, and Project impacts to the

structural stability of the slope/existing homes immediately adjacent to the Project atop the bluff per LCP Policies 2.8.1-1, 2.8.1-2, 2.8.1-4 and 2.8.7-3 before the Planning Commission and certainly prior to the City Council de novo hearing as addressed above. Deferring the City's approval of the geotechnical investigation for the Project until after the CEQA determination when the public is no longer involved in the review process for the Project is inappropriate, contrary to the LCP's and Zoning Code's and CEQA's purpose and intent and extremely concerning the Appellants and Adjacent Homeowners since their homes are on the slope above and look down onto the 215 Riverside site.

C. The Project has not been designed or sited to minimize impacts to public views from Pacific Coast Highway (CLUP Policy 4.4.1-2) or impacts to natural landforms.

Discussion.

- *The development site is located on a coastal bluff.*
- *The development site is within the viewshed of a coastal view road, and public park as identified on Coastal Land Use Plan Map 4-3 (Coastal Views).*
- *The development site contains significant natural landforms or natural vegetation.*

The development site is located on a Coastal Bluff which is clearly visible from the intersection of Riverside Avenue and West Pacific Coast Highway. The development site is bounded by a public park (Cliff Drive Park), the Avon Creek/Wetlands and a Heritage Coast Live Oak Tree estimated to be 100 - 200 years old.

The proposed Project's development plan locates the proposed cube shaped office building at the corner of Avon Avenue and Riverside Avenue, a location clearly visible from Pacific Coast Highway. The cube shape of the office building is an intrusive shape, (more so that the existing structure to be demolished) with an attention-grabbing brick exterior. The City could have conditioned the Project to locate the office building further west on the Property, reducing or totally eliminating the visual impact of the office building to Pacific Coast Highway, a Coastal View Road in the LCP and City General Plan.

D. Piecemealing - The Project is part of a larger Project affiliated with the same property owner ("The Garden Restaurant Project") located adjacent to the Project site adjacent to Pacific Coast Highway. A development application for the Garden Restaurant Project has been submitted to the City but not deemed complete by the City. Piecemealing is not allowed by the certified LCP or CEQA.

Discussion.

The California Supreme Court has adopted the following test for determine whether unlawful piecemealing has occurred. An agency must analyze a future expansion or other action as part of the initial project "if: (1) it is a reasonably foreseeable consequence of the initial project; and (2) the future expansion or action will be significant in that it will likely change the scope or nature of the initial project or its environmental effects."

Gary Jabara, the principal of the 215 Riverside Owner, is also the owner of the Garden Shopping Center ("Garden Shopping Center") located across Avon Street from 215 Riverside. On January 14, 2019, Mr. Jabara filed application number PA2019- 006 with the City for entitlements relating to the proposed Garden Restaurant in the Garden Shopping Center at 2902 West Coast Highway ("Proposed Restaurant Project"). The City determined that a coastal development permit, operator license, site development review, traffic study, and use permit would be required for the Proposed Restaurant Project. The City's website indicates that it transmitted a letter to the applicant on August 15, 2019 that the application for

the Proposed Restaurant Project was incomplete, which is the last status entry. The Staff Report for the Planning Commission's August 22, 2019 public hearing concerning the Project indicated that: "The project is intended to support off-site parking for future restaurants with The Garden shopping center located south of the project site across Avon Street" and that "[a] separate conditional use permit is requested as part of a proposed restaurant at 2902 West Coast Highway for off-site parking and to establish a parking management plan for the shopping center including valet parking for the proposed structure." (Page 5.) The Parking Management Plan submitted by the Applicant from RK Engineering Group, Inc. dated May 16, 2019 in support of the Project, included as Attachment No. PC 3 to the August 22, 2019 Staff Report, states that "[t]he remaining 35 non-tandem parking spaces onsite [at the Proposed Project's parking structure] will be utilized for overflow parking from restaurant use located at 2902 West Coast Highway." (Page 2.) The Parking Management Plan adds that the 35 non-office related parking spaces "will satisfy the off-site parking requirements for the CUP application for 2902 West Coast Highway." (Page 2.) The Adjacent Homeowners and other members of the public raised the point the Project and the Proposed Restaurant Project are inextricably linked because there is common ownership between the two projects and the common owner intends to use the Project to satisfy the parking requirement for the Proposed Restaurant Project through off-site parking. In an attempt to obscure this issue, the 215 Riverside Owner signed a Memorandum of Understanding with another local property owner to use parking spaces at that other property "for use as overflow parking spaces for patrons and employees of the Garden's tenants." The 215 Riverside Owner submitted that Memorandum of Understanding to the City to argue that the off-site parking requirement for the Proposed Restaurant Project may be fulfilled through those other spaces and not at the Project. This argument is misleading and meaningless since the Memorandum of Understanding is not a contract and is not binding, it is not specific to the Proposed Restaurant Project, and the City's records do not reflect that the application for the Proposed Restaurant Project has been changed to indicate that the off-site parking requirement will be satisfied anywhere other than the Project. The common owner expressly tied the Proposed Restaurant Project and the Project together through its submissions to date and its belated attempts to avoid CEQA required environmental review of the Project are improper. The October 17, 2019 Staff Report acknowledges that the two projects are still tied together: "Since there is an application on file proposed to use this site for restaurant off-site parking the Planning Commission can direct staff to bring both applications to them for concurrent review if deemed appropriate." (Page 7.) The Planning Commission was required, but failed, to do so. Even the Appealed Resolution acknowledges this connection. For example, on page 6 under the "Facts in Support of Finding" concerning Finding (C), the Appealed Resolution states in relevant part: "Parking structures are commonly associated with restaurant development and are compatible with the other commercial uses located in Mariners' Mile."

Given the foregoing nexus, CEQA requires that the City consider the environmental impacts of the Project's parking structure together with the Proposed Restaurant Project. "A public agency may not divide a single project into smaller individual projects in order to avoid its responsibility to consider the environmental impacts of the project as a whole." (Sierra Club v. West Side Irrigation District (2005) 128 Cal.App.4th 690, 698.) This is because CEQA's requirements "cannot be avoided by chopping up proposed projects into bite-size pieces which, individually considered, might be found to have no significant effect on the environment or to be only ministerial." (Topanga Beach Renters Assn. v. Department of General Services (1976) 58 Cal.App.3d 188, 195-196; See also, Bozung v. Local Agency Formation Commission (1975) 13 Cal.3d 263, 283-284.) As a result, not only is the environmental analysis incomplete when split into sub-projects, but appropriate mitigation measures may be erroneously omitted.

For CEQA purposes, a "project" means "the whole of an action, which has the potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment" (Guidelines § 15378.) As explained in Natural Resources Defense Council, Inc. v. Arcata Nat. Corp. (1976) 59 Cal.App.3d 959 at page 969, "in elaborating on the

definition of the term ‘project,’ the Guidelines emphatically underline that it means the Whole of an action which has the potential for physical impact on the environment, and that ‘The term ‘project’ refers to the underlying activity and not the governmental approval process.” As a result, separate activities constitute one “project” when “both activities are integral parts of the same project” (Id.) or “the future expansion or action will be significant in that it will likely change the scope or nature of the initial project or its environmental effects” (Laurel Heights Improvement Assn. v. Regents of the University of California (1988) 47 Cal.3d 376, 396).

Again, as set forth in the Staff Reports and the materials submitted by the 215 Riverside Owner in support of the Project, the Project’s parking structure is an integral part of the Proposed Restaurant Project since it is intended to be used in connection with the Garden Restaurant and it is intended to satisfy the requirements of the conditional use permit sought for the Garden Restaurant for offsite parking. The Proposed Restaurant Project, based upon the current application, would not be possible but for the creation of 29 extra parking spaces through the Project. Moreover, since the use of the Project’s parking structure has been tied to the Garden Restaurant’s operation, the subsequent approval of the Garden Restaurant’s operation would constitute a significant future expansion or action as it would likely change the scope and nature of the Project and the Project’s environmental effects since the Project’s parking structure would not merely be for surplus parking from the Garden Shopping Center, but rather would be a dedicated, ongoing use for parking to facilitate the Garden Restaurant’s operation.

The 215 Riverside Owner’s attempt to piecemeal is critically important because the City has wrongfully considered the environmental impacts of the Project in a vacuum without considering the integrated role it will play with the Proposed Restaurant Project and the cumulative environmental impacts of the two proposed projects together. The 215 Riverside Owner has purposefully separated the two inextricably linked projects in order to avoid CEQA’s required substantive environmental review of the projects. Separating the projects has made it easier for the 215 Riverside Owner to wrongly support an argument that the Project is subject to a categorical exemption from CEQA’s requirements; the common owner is supporting an identical argument for the Proposed Restaurant Project, which the City’s Staff indicated during the Planning Commission’s August 22, 2019 public hearing is presently being analyzed.

The environmental studies purportedly supporting the Project’s eligibility for a Class 32 categorical exemption narrowly examine the anticipated use of the Project without any influence from the Proposed Restaurant Project. This both wrongly minimizes the foreseeable environmental impacts of the Project to a less-than significant basis by excluding environmental ramifications of the interconnected use of the two projects and avoids cumulatively analyzing the foreseeable environmental impacts of the two projects together such that they may individually be less-than significant.

As a practical example, the Proposed Restaurant Project seeks approval for the Garden Restaurant to operate until 1:00 a.m. from Friday through Sunday. Given the intended use of the Project’s parking structure for benefit of the Garden Restaurant, there will be foot traffic between the Garden Restaurant and the Proposed Project site, which is separated by Avon Street and most of the Garden Shopping Center and vehicular traffic entering the Project Site Until 10:00 p.m. and existing the Project site until after 1:00 a.m. on those days. None of the environmental studies purportedly to support the Class 32 exemption account for or include the foreseeable significant impacts from this interconnected use. The Appellants and Adjacent Homeowners have grave concerns about the noise, vehicular emissions, light and glare, traffic, circulation, and aesthetic environmental impacts of the Project, particularly when applied to the sought use of the Project’s parking structure for purposes of the Garden Restaurant’s operation, which, contrary to CEQA’s requirements, simply have not been analyzed in the technical reports purportedly supporting the exemption. Given the foregoing, CEQA requires that the Project

and the Proposed Restaurant Project be considered together as one “project” and that appropriate environmental review of that “project” be completed.

The City could have erred on the side of the environment, conducted additional technical studies, determined the Project was subject to CEQA, conducted an environmental assessment for the whole of the Project, determined the appropriate environmental CEQA document and acted as the CEQA Lead Agency for its preparation and certification. The City could have reduced the number of parking spaces to that needed by the Project’s office building. The City could have placed a condition on the Project requiring the Project parking not be used by the proposed Restaurant Project (any future Restaurant Project in the Garden shopping center obtain other parking). The City could have placed a condition on the Project requiring the parking structure not be used for valet parking. But the City choose not to take these steps.

If the proposed Parking structure is to be used by the owner for other parking needs, the City should have considered the nature of the Parking shortage within the Mariners Mile and the type of individuals using the structure in its consideration of the CDP and CUP:

“The 2002 field observations indicate there is adequate parking during daytime hours, but that parking facilities reach effective capacity during evening hours, due to the concentration of restaurants and entertainment establishments.” (LCP pg. 2-79)

The City should have anticipated the impact to adjacent residents from the shortage of nighttime parking existing at other restaurants and entertainment establishments within close proximity.

The Appellants believe the Applicant and City hoped the City’s approving Resolution would not be appealed. Therefore, when the remainder of this Project (the Restaurant component – a renovation of an existing structure) is processed by the City, parking would not be an issue discussed by the CUP or LCP process allowing the City to conclude the Restaurant component also qualifies as categorically exempt under Section 15332, of the California Environmental Quality Act, Section 15332 (CEQA Guidelines – Class 32 (In-Fill Developments) avoiding a more costly and time consuming Environmental Impact Report process which will involve expanded technical studies, additional mitigation measures, public and Responsible Agency (CDFW, RWQCB, etc.) review and comment.

E. The Project does not qualify as categorically exempt under Section 15332, of the California Environmental Quality Act, Section 15332 (CEQA Guidelines – Class 32 (In-Fill Developments)).

LCP IP Section 21.50.070 - Environmental Review.

B. Investigation. Analysis of proposed development within or adjacent to ESHA, wetlands or other sensitive resources shall include an analysis of the individual and cumulative impacts of the development on coastal resources, define the least environmentally damaging alternative, and recommend modifications or mitigation measures to avoid or minimize impacts on coastal resources.

Discussion.

The City Council found that the Project qualified as categorically exempt under Section 15332, of the California Environmental Quality Act, Section 15332 (CEQA Guidelines – Class 32 (In-Fill Developments)). The City Staff report lays out in detail their justification for their recommendation to the City Council.

Appellants believe, based on the whole of the public record that there is overwhelming evidence the Project does not qualify for a CEQA Class 32 exemption. The Project is not consistent with General

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June 29, 2020

Plan, Local Coastal Program and California Coastal Act policies; has onsite sensitive resources, has the potential to impact the Avon Wetlands; adjacent Heritage Special, Designated, Coast Live Oak tree; has the potential to generate significant nighttime lighting impacts to sensitive receptors (adjacent residential uses); increase public safety hazards and involves unusual circumstances which have a reasonable possibility to adversely impact the environment.

The Appellants further believe the Resolution violates CEQA's Piecemealing prohibition.

Any policy inconsistency with the City General Plan or LCP or potentially significant adverse impact invalidates the use of a Class 32 exemption. Project inconsistencies and potentially significant impacts are discussed in detail herein, as well as in EARS's April 27, 2020 Comment letters to the City Council (attached) and the City Council Appeal Application of Planning Commission action, dated October 31, 2019 (attached).

The City could as CEQA suggests, erred on the side of the environment when concerns over potentially significant environmental impacts arise; the City could have contacted or noticed the California Department of Fish and Wildlife, the Regional Water Quality Control Board and the California Coastal Commission; the City could have conducted additional technical studies to address public comments received. The City could have conducted an independent CEQA review as EARS suggest in its comments prior to making its decision. However, the City chose not to. The City did however, acknowledge a number of problems with the Project and modified Project condition in an attempt to mitigate these policy and environmental concerns. These changed conditions are discussed below.

Condition 61. "Prior to the issuance of building permits, the project plans shall be modified to extend the proposed trellis at the upper deck of the parking structure across both rows. The trellis will be completely foliated with vines and other organic material to provide a green landscape covering to help reduce noise and light spillage."

No analysis was conducted to determine the year-round effectiveness of a partial foliated trellis to reduce the Project impacts to reduce acknowledged noise and light spillage impacts. This analysis should have been completed prior to the Planning Commission and City Council public hearings and the findings used in the determination of the appropriate CEQ document for the Project. The deferral of studies by the City is extremely concerning to the Appellants since they will have no ability to participate in the same or be made aware of the same.

Condition 63. "Vehicles shall not be allowed to enter the upper level of the parking structure from 10 p.m. through 6 a.m., seven days a week."

While vehicle owners have restriction on when they can park their vehicles in the parking structure, vehicle owners and their occupants will be able to access their vehicles in the parking structure 24 hours a day, seven days a week. This would include restaurant/bar employees and their customers late at night, the homeless and others. Time restriction would not prevent the use of the parking structure valet parking which would significantly increase the capacity of the parking structure. This is extremely concerning to the Appellants since the only remedy will be to repeatedly call city code enforcement leave a message and wait for a delayed response.

Condition 65. "Prior to the issuance of demolition and grading permits, the City's Arborist will review the Project plans for conformity with applicable regulations."

No applicable regulations were cited to definitively determine the effectiveness of this condition, or if it will have any effect on reducing the Project's possible impacts. The arborist investigation should

have already occurred and been considered as part of the Project's CEQA review before the Planning Commission and certainly prior to the City Council de novo hearing. This is extremely concerning to the Appellants since they will have no ability to participate in the same or be made aware of the same.

Condition 66. "Prior to the issuance of grading permits, the Project Applicant or Project Developer will retain a licensed arborist to observe construction of the project to ensure compliance with Council Policy G-1 (Retention, removal and Maintenance of City Trees) related to Special Trees and the City Arborists findings."

The effectiveness of this Condition is questionable at best. The Heritage Coast Live Oak Tree is on private property. Policy G-1 applies to City Trees. The Heritage Coast Live Oak Tree's roots are inter-twined with non-native shrubs which will be removed as part of the Project. Observing construction of the project will allow real-time observations/after the fact observations and will do nothing to prevent impacts and/or the loss of this Heritage Coast Live Oak Tree estimated to be 100 - 200 years old.

The Project's light and glare, noise, traffic, geotechnical and impacts to sensitive resources should have been already analyzed and presented to the Planning Commission and City Council. The deferral of technical studies, including the prospective nighttime light inspection, after the CEQA determination, after the public review of the Project is completed, is extremely concerning to the Appellants since they will have no ability to participate in the same or be made aware of the same. Moreover, there are myriad other potential impacts besides only noise, light, and glare, many of which simply were not considered or analyzed by the Planning Commission or City Council in approving the Resolution. The critical absence of a properly scoped traffic study and a geotechnical evaluation are easy examples of foreseeable impacts of the Project on the public, including the Adjacent Homeowners, which have not been considered or analyzed and to which the Resolution is silent. As a result, the Resolution is both incomplete and unsupported with respect to this required finding.

Appellants believe the Coastal Commission should evaluate the use of a Class 32 exemption for this project. It is clear from the overwhelming body of evidence the Project is inconsistent with the City's recently certified LCP; the City's adopting Resolution is not supported by substantial evidence in the record; numerous technical studies required to support environmental conclusions were not prepared; or studies that were relied upon were flawed and did not address all probable environmental impacts; and this Project involves unusual circumstances which when taken together lead to the inexplicable conclusion the Project does not qualify for a Class 32 exemption and an environmental assessment/initial study is required to determine the appropriate CEQA documentation for the Project.

COVID -19 and its Impact on the City Council de novo Public Hearing.

Throughout the City Council de novo public hearing process the Appellants and other members of the public expressed concerns to the City Council about their ability to attend the public hearing and be able to present a fair argument to the City Council.

An overwhelming majority of cities and counties across California have deferred business on all non-emergency business until the Statewide shelter in place order has been lifted. For reasons unknown and unspecified to Appellants, the City refused to do so here.

As reflected in the hundreds of pages of letters received by the Planning Commission in preparation for its public hearings on the proposed Project, and the dozen plus members of the public who spoke during the same public hearing, the proposed Project was known by the City Council to be a highly controversial matter that had garnered extensive public scrutiny.

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June 29, 2020

Moreover, since the Statewide shelter in place order prohibiting members of the public from leaving their homes except for essential purposes at the time of the City Council de novo hearing, no member of the public was allowed in the Council chamber, including the Appellants attended the public hearing in person. The City Council de novo hearing appeared rushed, general public testimony was limited to 2 minutes/speaker, participating only by phone and were not able to use visual aids they would have otherwise been able to use.

Incorporation of Prior Public Comments Into the Public Record.

The Appellants appeal incorporates all of the other public comments they, their counsel, and other members of the public concerned with and/or opposed to the Project, made during and incident to the public hearings before the Planning Commission and City Council concerning the Project. Those comments include, in part, the correspondence contained on the City website. (Agenda Item # 21) see link blow:

<http://ecms.newportbeachca.gov/Web/Browse.aspx?startid=691512&cnb=CityCouncil>

We encourage Staff to review the detailed technical comments submitted to the City on the issues raised in this appeal.

Attachments

1. Individual Appellants list and certification forms
2. Identification of Interested Persons
3. Attachments and Exhibits



COASTAL DEVELOPMENT PERMIT
NOTICE OF FINAL ACTION

May 14, 2020

RECEIVED
South Coast Region

MAY 18 2020

CALIFORNIA
COASTAL COMMISSION

South Coast District
California Coastal Commission
301 E. Ocean Blvd., Suite 300
Long Beach, CA 90802

On **May 12, 2020**, the City Council **approved** Coastal Development Permit No. CD2019-003 (PA2019-023). This approval is based on the findings and subject to the conditions of approval in the attached City Council resolution. The City's action became final on **May 12, 2020**.

Application No.: Coastal Development Permit No. CD2019-003 and Conditional Use Permit No. UP2019-003 (PA2019-023)

Filing Date: May 13, 2020

**Application
Deemed Complete:** August 6, 2019

Applicant: Laidlaw Schultz Architects
jyee@lsarchitects.com
949-645-9982

Applicant Address: 3111 Second Avenue #1
Newport Beach, CA 92625

Site Location: 215 Riverside Avenue
Newport Beach, CA 92663 (APN: 049-103-17)

Project Title: Office and Parking Structure (PA2019-023)

Project Description: A coastal development permit (CDP) to demolish an existing restaurant/office building and associated surface parking lot and to construct a new 40-space, two-level parking structure and a 2,744-square-foot office building. A conditional use permit is required to authorize the construction of the parking structure adjacent to the residentially zoned property. The proposed office building is 2 stories and 28 feet 3 inches in height. The proposed finished floor elevation is 17 feet (NAVD 88 datum). The project includes hardscape, drainage,

and landscape improvements. The proposed development complies with all applicable development standards including height, setbacks, and floor area limits.

Although the project site is not located in the mapped appeal jurisdiction area, the project is appealable to the Coastal Commission pursuant to Section 21.64.035 of the NBMC and Public Resources Code Section 30603(a) because a wetland is located within 100 feet of the project site.

Coastal Commission Appeal Determination (*Choose one*):

- ☒ Appealable to the Coastal Commission.
The subject property is located within the Appeals Jurisdiction of the California Coastal Commission. The City's final action is appealable to the Coastal Commission. Appeals to the Coastal Commission shall be filed directly to the Coastal Commission at the South Coast District Office in Long Beach.
- ☐ Not Appealable to the Coastal Commission.
Subject Property is not located within the Appeals Jurisdiction and therefore not appealable to the California Coastal Commission. This Notice of Final Action is for informational purposes only.

On behalf of Seimone Jurjis, Community Development Director

By:



Makana Nova
Associate Planner

Attachment: City Council Resolution with Findings and Conditions of Approval

RESOLUTION NO. 2020-33

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, UPHOLDING AND AFFIRMING THE PLANNING COMMISSION'S APPROVAL OF COASTAL DEVELOPMENT PERMIT NO. CD2019-003 AND CONDITIONAL USE PERMIT NO. UP2019-003 TO DEMOLISH AN EXISTING RESTAURANT AND OFFICE BUILDING AND CONSTRUCT A NEW OFFICE BUILDING AND PARKING STRUCTURE LOCATED AT 215 RIVERSIDE AVENUE (PA2019-023)

WHEREAS, an application was filed by Laidlaw Schultz Architects representing the property owner, 215 Riverside, LLC ("Applicant"), with respect to property located at 215 Riverside Avenue and legally described as a portion of Lot D of Tract 919, including a portion of the abandoned street adjacent thereto ("Property");

WHEREAS, the Applicant requests a coastal development permit and a conditional use permit for the construction of a new 41 space, two-level parking structure and a 2,744 square foot office building ("Project");

WHEREAS, the Applicant requests the following approvals from the City of Newport Beach ("City") for the Project:

- a) Coastal Development Permit ("CDP") No. CD2019-003 - to allow demolition of an existing restaurant/office building and associated surface parking lot and construction of a new 41 space, two-level parking structure and a 2,744 square-foot office building, and
- b) Conditional Use Permit No. UP2019-003 - to authorize the construction of the parking structure adjacent to the residentially zoned property;

WHEREAS, the Property is designated General Commercial (CG) by the City of Newport Beach General Plan ("General Plan") Land Use Element and is located within the Commercial General (CG) Zoning District;

WHEREAS, the Property is located within the Commercial General (CG) Coastal Zoning District and the City of Newport Beach Local Coastal Program Coastal Land Use Plan category is Commercial General (CG-B);

WHEREAS, a public hearing was held on August 22, 2019, in the Council Chambers located at 100 Civic Center Drive, Newport Beach. A notice of time, place and purpose of the hearing was given in accordance with California Government Code Section 54950 *et seq.* ("Ralph M. Brown Act") and Chapters 20.62 and 21.62 of the Newport Beach Municipal Code ("NBMC"). Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this hearing. The Planning Commission continued the item to September 19, 2019;

WHEREAS, at the September 19, 2019, Planning Commission meeting, the Planning Commission further continued the item at the request of staff so that they could complete additional analysis of the Project;

WHEREAS, at the October 3, 2019, Planning Commission meeting, the item was taken off calendar to be re-noticed;

WHEREAS, a public hearing was held on October 17, 2019, in the Council Chambers located at 100 Civic Center Drive, Newport Beach. A notice of time, place and purpose of the hearing was given in accordance with the Ralph M. Brown Act and Chapters 20.62 and 21.62 of the NBMC. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this public hearing. At the conclusion of the public hearing, the Planning Commission voted (6 ayes and 1 no) to adopt Resolution No. PC2019-031 approving CD2019-003 and UP2019-003;

WHEREAS, on October 31, 2019, Ernest Castro, Stephanie Pilalas, Jack Staub and Hal Woods filed an appeal of the Planning Commission's decision to the City Council;

WHEREAS, a public hearing was scheduled on March 24, 2020, in the Council Chambers located at 100 Civic Center Drive, Newport Beach. A notice of time, place and purpose of the hearing was given in accordance with the Ralph M. Brown Act and Chapters 20.62 and 21.62 of the NBMC. The City Council continued the item to April 14, 2020;

WHEREAS, a telephonic public hearing was held on April 14, 2020, in the Council Chambers located at 100 Civic Center Drive, Newport Beach. A notice of time, place and purpose of the hearing was given in accordance with the Ralph M. Brown Act and Chapters 20.62 and 21.62 of the NBMC. The City Council continued the item to April 28, 2020;

WHEREAS, a telephonic public hearing was held on April 28, 2020, in the Council Chambers located at 100 Civic Center Drive, Newport Beach. A notice of time, place and purpose of the hearing was given in accordance with the Ralph M. Brown Act and Chapters 20.62 and 21.62 of the NBMC. The City Council continued the item to May 12, 2020; and

WHEREAS, a telephonic public hearing was held on May 12, 2020, in the Council Chambers located at 100 Civic Center Drive, Newport Beach. A notice of time, place and purpose of the hearing was given in accordance with the Ralph M. Brown Act and Chapters 20.62 and 21.62 of the NBMC. Evidence, both written and oral, was presented to, and considered by, the City Council at this hearing.

NOW, THEREFORE, the City Council of the City of Newport Beach resolves as follows:

Section 1: The City Council does hereby find the Project is categorically exempt from the California Environmental Quality Act ("CEQA") pursuant to Section 15332 under Class 32 (Infill Development Projects) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because the Project consists of an in-fill development project. The additional facts in support of the CEQA determination are set forth in Exhibit "A" which is incorporated herein by reference.

Section 2: The City Council does hereby uphold the Planning Commission's approval of Coastal Development Permit No. CD2019-003 and Conditional Use Permit No. UP2019-003, subject to the conditions of approval attached as Exhibit "B" and incorporated herein by reference. The City Council's decision is made in accordance with Sections 21.52.015(F) (Coastal Development Permits, Findings and Decision) and Section 20.52.020(F) (Conditional Use Permits and Minor Use Permits, Findings and Decision) of the NBMC, and is supported by the following findings and facts:

I. COASTAL DEVELOPMENT PERMIT

A coastal development permit is required to authorize the demolition and redevelopment on the Property. In accordance with Section 21.52.015(F) (Coastal Development Permits, Findings and Decision) of the NBMC, the following findings and facts in support of such findings are set forth:

Finding:

- A. *Conforms to all applicable sections of the certified Local Coastal Program.*

Facts in Support of Finding:

1. The Project complies with applicable development standards including, but not limited to, floor area limitation, setbacks, height, and parking.

- a. The maximum floor area limitation is equal to a floor area ratio ("FAR") of 0.5 or 8,145 square feet and the proposed floor area is 0.17 FAR or 2,744 square feet.
 - b. The Project provides the minimum required setbacks, which are zero (0) feet along the front property line abutting Riverside Avenue and Avon Street, zero (0) feet on the right side yard, and five (5) feet on the left side yard and rear yard abutting the residential properties.
 - c. The highest parapet is 28 feet from established grade (30.5 feet North American Vertical Datum of 1988 [NAVD 88]), which complies with the maximum height requirements.
 - d. The Project includes a parking structure for a total of 41 vehicles, complying with the minimum 11 parking spaces required for the 2,744-square-foot office development on-site.
2. The front façade of the parking structure has been designed to be architecturally compatible with and appear as an extension to the shopping center located to the south across Avon Street. The proposed design, bulk, and scale of the development is consistent with the existing neighborhood pattern of development and expected future development. The bulk of the proposed building is similar to or less than that of the existing development on site.
 3. The Property is an inland parcel that is not located on the waterfront.
 4. An initial biological resources analysis of the Property indicates that the adjacent Avon Street right-of-way, west of the Property, is characterized by wetland areas located within 100 feet of the Property. The report evaluates the proposed wetland buffer and concludes that a 100-foot buffer is not necessary and that the proposed 39-foot wetland buffer is sufficient for protection of the wetland and that the Project will not impact habitat for endangered, rare, or threatened species.

5. The Property is located in an area known for the potential of seismic activity and liquefaction. All projects are required to comply with the California Building Code ("CBC") and Building Division standards and policies. A geotechnical investigation was prepared, attached hereto as Exhibit C and incorporated herein by this reference, which includes design recommendations to address liquefaction and other geologic issues. A final Geotechnical report and investigation specifically addressing liquefaction and other geologic related design issues is required to be reviewed and approved prior to the issuance of building permits. Permit issuance is also contingent on the inclusion of design mitigation identified in the investigations. Construction plans are reviewed for compliance with approved investigations and CBC prior to building permit issuance.
6. The Property is not located within 200 feet of coastal waters. The Project design addresses water quality with a construction erosion control plan and a post-construction drainage system. The Project is required to adhere to the City's grading, erosion control, and drainage requirements that includes percolation features and retention of dry weather and minor rain event run-off on-site. Any water not retained on-site is directed to the City's storm drain system.
7. Due to the area of proposed impervious surfaces on the Project site, a Water Quality Management Plan ("WQMP") / Water Quality and Hydrology Plan ("WQHP") is required. A WQMP/WQHP prepared by Total Engineering, Inc., dated June 17, 2019, has been reviewed and approved by the City's Engineer Geologist. The WQMP/WQHP includes a polluted runoff and hydrologic site characterization, a sizing standard for Best Management Practices ("BMPs"), use of a Low Impact Development ("LID") approach and bio filtration planters to retain the design storm runoff volume on site, and documentation of the expected effectiveness of the proposed BMPs.
8. Proposed landscaping complies with Section 21.30.075 (Landscaping) of the NBMC. A condition of approval is included that requires drought-tolerant species. Prior to issuance of building permits, the final landscape plans will be reviewed to verify invasive species are not planted.

Finding:

- B. *Conforms with the public access and public recreation policies of Chapter 3 of the Coastal Act if the project is located between the nearest public road and the sea or shoreline of any body of water located within the coastal zone.*

Facts in Support of Finding:

1. The Project is not located between the nearest public road and the sea or shoreline; however, the Project is located on a property within 100 feet of a wetland area located within the Avon Street right-of-way. The Project will not affect the public's ability to gain access to, use, and/or view the coast and nearby recreational facilities.
2. Vertical access to the bay front is available approximately 625 feet south of the Property at 2751 West Coast Highway where there is a pedestrian easement with access to the waterfront.
3. Lateral access and views of the bay are also accessible from 2751 West Coast Highway and 2801 West Coast Highway via a six foot wide pedestrian easement.
4. The closest public viewpoint is immediately adjacent and above the Property to the northwest at Cliff Drive Park. The Project is located entirely on private property and will not inhibit coastal views since the Project will be constructed partially into the slope and four feet lower than the 32 foot height limit. View simulations are provided as part of the project plans. Due to the distance and height differential of the Project from these public viewpoints, the development and change of use of the existing building will not impact coastal views. The bulk and scale of the proposed development is similar to that of the existing restaurant and office building with surface parking. The Project is generally not visible from Cliff Drive Park due to the sloping condition of the park, existing vegetation in surrounding areas, and the lower grade of the proposed parking structure and building pad.
5. The closest coastal view road is West Coast Highway, which is located to the south, as designated in the City of Newport Beach Local Coastal Program Coastal Land Use Plan. Views from this vantage point are directed toward the harbor and away from the Property, which is inland and north of West Coast Highway. The bulk and scale of the Project is similar to that of the existing restaurant and office building with surface parking. The proposed office building and accompanying parking structure will complement the architectural style of the adjacent shopping center to the south, improving the character of the community and maintaining a consistent design theme.

II. CONDITIONAL USE PERMIT

Pursuant to Section 20.40.070(B)(3) (Development Standards for Parking Areas, Location of Parking Facilities) of the NBMC, a conditional use permit is required to allow for the construction of a parking structure adjacent to a residential zoning district. In accordance with Section 20.52.020(F) (Conditional Use Permits and Minor Use Permits, Findings and Decision) of the NBMC, the following findings and facts in support of such findings are set forth:

Finding:

C. The use is consistent with the General Plan and any applicable specific plan.

Facts in Support of Finding:

1. The commercial building and related uses are consistent with General Commercial (CG) General Plan land use designation. The parking structure is considered an accessory use that supports the commercial uses. Parking structures are commonly associated with restaurant development and are compatible with the other commercial uses located in Mariners' Mile.
2. The Property is not located within a specific plan area.

Finding:

D. The use is allowed within the applicable zoning district and complies with all other applicable provisions of this Zoning Code and the Municipal Code.

Fact in Support of Finding:

1. The commercial office building and related uses are consistent with the Commercial General (CG) zoning district. The parking structure is considered an accessory use that supports commercial uses. Parking structures located adjacent to residential districts require review and approval of a conditional use permit to minimize impacts to the residential uses.

Finding:

E. The design, location, size, and operating characteristics of the use are compatible with the allowed uses in the vicinity.

Facts in Support of Finding:

1. The parking structure will be visually screened by vegetation surrounding the rear and sides of the parking structure to help block the view from Cliff Drive Park and adjacent residential properties. A portion of the second level structure will be covered by a trellis carport cover adjacent to Avon Street. The trellis adds architectural interest to the architectural façade of the building and helps to screen portions of the second level parking deck that may be visible to residences above.
2. The parking structure is proposed at the base of the hillside adjacent to a residential district. The neighboring residential properties are located along the top of the hillside approximately 63 feet above the project's first floor pad elevation. The parking structure will be built into an existing retaining wall in the hillside and the second level deck of the parking structure is eight feet above the first floor pad elevation directly adjacent to the residential district. The residential dwellings will remain approximately 55 feet higher in elevation than the surface of the second level parking deck and approximately 48 feet higher in elevation than the top of the parking structure trellis. The closest residential dwelling is located approximately 24 feet from the existing retaining wall supporting the parking structure. These vertical and horizontal separations between the proposed commercial building and the homes provide adequate distance so that the mass and bulk of the parking structure should not negatively impact residents.

Finding:

- F. The site is physically suitable in terms of design, location, shape, size, operating characteristics, and the provision of public and emergency vehicle (e.g., fire and medical) access and public services and utilities.*

Facts in Support of Finding:

1. The Project results in a parking requirement of 11 spaces, which are provided on-site within the 41 space parking structure.
2. The Traffic Engineer and Fire Department have reviewed the parking lot design and have determined that the parking lot design will function safely and will not prevent emergency vehicle access to the establishment.

Finding:

- G. *Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, or endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood of the proposed use.*

Facts in Support of Finding:

1. Parking structures have the potential to generate noise, such as car alarms, car horns, car audio systems, people talking, vehicle pass-by noise, and engine idling, which have the potential to disturb the adjacent residences. These individual noise sources last for short durations and their occurrences are infrequent; however, they can annoy neighbors. The Project has a 19 space surface level parking lot at approximately the same elevation as the upper level of the proposed parking structure. The proposed parking structure will accommodate more parking spaces at this level (22 spaces) but the impacts from vehicle movements will be similar to that of existing conditions according to the noise analysis as discussed below.
2. A noise analysis was prepared by Urban Crossroads to analyze the potential noise impacts associated with vehicle movements at the uncovered parking structure to the adjacent residents using sound modeling. The analysis concludes that the noise generated from vehicles within the first and second level of the structure will satisfy Section 10.26.025 (Exterior Noise Standards) of the NBMC daytime and nighttime base exterior noise level standards at the nearby noise-sensitive residential homes and adjacent commercial uses. Additionally, a supplemental noise assessment was provided, which compares the projected project noise to the ambient nighttime noise of four commercial parking areas in the City. The results of the supplemental assessment found similar noise levels to the initial analysis and concludes that the initial analysis adequately describes the potential project parking lot noise levels. No additional exterior noise abatement measures are required.
3. The Project has been conditioned to require a photometric study and nighttime light inspection to confirm there light and glare impacts are minimized.

Section 3: The recitals provided in this resolution are true and correct and are incorporated into the operative part of this resolution.

Section 4: If any section, subsection, sentence, clause or phrase of this resolution is, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this resolution. The City Council hereby declares that it would have passed this resolution, and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

Section 5: This resolution shall take effect immediately upon its adoption by the City Council, and the City Clerk shall certify the vote adopting the resolution. Final action taken by the City may be appealed to the California Coastal Commission in compliance with Section 21.64.035 of the NBMC and Title 14, Division 5.5, Chapter 5 of the California Code of Regulations and Sections 13111 through 13120, and Section 30603 of the California Public Resources Code.

ADOPTED this 12th day of May, 2020.


Will O'Neill
Mayor

ATTEST:


Leilani I. Brown
City Clerk



APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE


Aaron C. Harp
City Attorney

Attachments: Exhibit A - California Environmental Quality Act ("CEQA") Determination
Exhibit B - Conditions of Approval
Exhibit C - Geotechnical Investigation