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# Th11a

Filed: 06/29/2020  
 49<sup>th</sup> Day: 09/08/2020  
 Staff: A. Spencer -LB  
 Staff Report: 07/23/2020  
 Hearing Date: 08/13/2020

## STAFF REPORT: APPEAL – SUBSTANTIAL ISSUE

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

**Applicant:** **215 Riverside, LLC**

**Agent:** Laidlaw Schultz, Architects

**Local Government:** City of Newport Beach

**Local Decision:** Approval with Special Conditions

**Appellants:** David Tanner on behalf of himself and 45 other individuals, listed on Page 5

**Project Location:** 215 Riverside Avenue, Newport Beach, Orange County (APN: 049-103-7)

**Project Description:** Appeal of City of Newport Beach Local Coastal Development Permit No. CD2019-003 to demolish an existing restaurant/office building and associated surface parking lot and construct a new 40-space, two-level parking structure and a two-story, 28-foot high, 2,744 sq. ft. office building. The project includes hardscape, drainage, and landscape improvements.

**Staff Recommendation:** Determine that a substantial issue exists.

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**IMPORTANT HEARING PROCEDURE NOTE:** The Commission will not take public testimony during the “substantial issue” phase of the appeal hearing unless at least three Commissioners request it. If the Commission finds that the appeal raises a substantial issue, the “de novo” phase of the hearing will follow, during which the Commission will take public testimony.

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## SUMMARY OF STAFF RECOMMENDATION

The City of Newport Beach's action on Local CDP No. CD2019-003 authorized the demolition of an existing 8,313 square foot restaurant/office building and associated surface parking lot, and the construction of a two-story, 28-foot high, 2,744 square foot office building and a two-story, 40-space parking structure. The City-approved project also includes hardscape and drainage, including planter boxes and pumps to collect and filter roof and surface runoff before being discharged into the municipal storm drain system. The project would include 3,375 cubic yards of grading (cut) to construct the parking structure, and the construction of large retaining walls adjacent to a public park on two sides of the corner lot.

On June 29, 2020, David Tanner filed a timely appeal of local CDP No. CD2019-003 on behalf of himself and 45 other appellants. The appeal raises the following contentions: 1) the project is inconsistent with the City's certified Local Coastal Program (LCP); 2) the findings approving the local 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 or impacts to natural landforms; 4) the project is being piecemealed as part of a larger project affiliated with the same property owner; and 5) the project does not qualify for a CEQA Class 32 Exemption.

Staff recommends that the Commission determine that a **substantial issue exists** with respect to the grounds on which appeal number A-5-NPB-20-0023 has been filed for the following reasons: the City's conclusion that the development is consistent with the provisions of the LCP was not adequately supported by documents in the record file or the City's findings as stated in Local CDP No. CD2019-003. The City of Newport Beach LCP was certified on January 30, 2017. Therefore, the standard of review for this appeal is the certified LCP. It should also be noted that CEQA policies are not the standard of review for this appeal.

The issues raised by this appeal include visual resources, landform alteration, and development within 100 feet of a wetland. The proposal to construct a parking structure that requires extensive grading and new retaining walls is not supported by a finding that the landform alteration is the minimum amount necessary to support the development, nor does it analyze design alternatives that do not require the structure to be constructed below grade and with large new retaining walls near the property lines. As the project has been designed and approved by the City, the development would significantly alter the bluff face (part of which has been previously altered by an existing retaining wall on the property that appears to have been constructed prior to the effective date of the Coastal Act or the LCP). The applicant notes that the height of the proposed development is less than the existing development and less than the maximum height specified in the LCP. However, because the City did not require a visual analysis of the project site from Pacific Coast Highway, there is not sufficient evidence that the project would protect scenic resources consistent with LUP Policies 4.4.1-1 through 4.4.1-3.

The project site is located within 39 feet of a narrow wetland (3-to-6 feet wide, and approximately 100 feet long) directly adjacent to Avon Street that is known colloquially as the Avon Wetlands. The wetland mostly contains southern cattail plants, with some arroyo willows and saltgrass distributed along the lateral extent of the wetland. According to the applicant's hired biologist, the wetland obtains its water from a groundwater spring, and is discharged to a culvert located approximately 430 feet east of the wetland. Under LUP policy 4.2.2-3, a minimum 100-foot buffer is required around a wetland for new development unless a proposed development site has site-specific constraints that preclude the provision of a 100-foot buffer or it can be demonstrated that a buffer width of less than 100 feet can protect the wetland. The staff report and the applicant's biologist report do not specify whether there are site-specific constraints that would prevent the applicant from providing the appropriate buffer, nor do they adequately justify why a 100-foot buffer is not required for protection this wetland. The applicant's biologist report characterizes the Avon Wetland as a generally low-value wetland. However, Policy 4.2.2-3 does not limit the requirement of a 100-foot buffer to high-value wetlands. Given that wetlands are a rare coastal resource in this region, extra care must be given to protect the wetlands from further degradation. It is possible that a reduced wetland buffer may be approved for this site and still protect biological resources consistent with the LCP, but the City-approved CDP does not include adequate findings to justify the 39-foot buffer or identify alternatives that would allow for a greater buffer. The City did not appropriately apply Section 4.2.2-3 to this project. Therefore, the appellants' contention raises a substantial issue with regard to consistency with the certified LCP.

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### **EXHIBITS**

[Exhibit 1 – Vicinity Map and Project Site](#)

[Exhibit 2 – Project Plans and Photos](#)

[Exhibit 3 – Appeal of Local CDP CD2019-003](#)

[Exhibit 4 – City Resolution for local CDP No. CD2019-003](#)

## I. MOTION AND RESOLUTION – SUBSTANTIAL ISSUE

**Motion:** I move that the Commission determine that Appeal No. A-5-NPB-20-0025 raises NO Substantial Issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.

Staff recommends a **NO** vote. Following the staff recommendation on this motion will result in the Commission proceeding to conduct a de novo review of the application, and adoption of the following resolution and findings. Conversely, passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

**Resolution:** The Commission hereby finds that Appeal No. **A-5-NPB-20-0025** presents a **SUBSTANTIAL ISSUE** with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the certified Local Coastal Program.

## II. APPELLANTS' CONTENTIONS

The Commission received a Notice of Final Local Action (NOFA) for City of Newport Beach Local CDP No. CD2019-003 on May 18, 2020. Local CDP No. CD2019-003 approves the demolition of an existing restaurant/office building and surface parking lot, and construction of a two-story office building and a two-level parking structure.

On June 29, 2020, an appeal was filed by David Tanner on behalf of the following appellants: Portia Weiss, Charles Klobe, Vicki Ronaldson, Jean Watt, Lynn Lorenz, Bruce Choate, Bill Dunlap, John Staub, Nancy Scarbrough, Peter Vanderburg, Peggy Palmer, Svend Schmidt, Lukas Ronaldson, Marjaneh Goodarzy, Don Ronaldson, Jill Ayres, Janice Gormley, Patrick Gormley, Kayvon Goodarzy, Thomas Baker, Lu Anne Baker, Mary Beth Saucerman, Majada Saucerman, Caitlin Adams, Dwayne Forester, Michael Palmer, Ronald Ressel, Lynda Adams, Daniel Clark, Gail Demmer, Richard Weiss, Remington Weiss, Tammy Schmidt, Katherine Choate, Dru Vanderberg, Christne Carr, Peggy Clark, Ernest Castro, Alan Paladino, Diane Buyers, Steve Byers, Carolyn Slaybeck, and Valerie Carson, Diana Meyers, and Teri Watson ([Exhibit 3](#)). The appellants raise the following concerns with the City-approved development:

- 1) The project is inconsistent with the City's certified LCP.
- 2) The findings approving the local 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 or impacts to natural landforms.
- 4) The project is being piecemealed as part of a larger project affiliated with the same property owner.
- 5) The project does not qualify for a CEQA Class 32 Exemption.

### **III. LOCAL GOVERNMENT ACTION**

The applicant filed an application with the City of Newport Beach for the demolition of an existing restaurant/office building and associated surface parking lot, and construction of a new 2,744 square foot office building. The CDP application also includes a Conditional Use Permit request to authorize the construction of a new 40-space parking structure that would be sited adjacent to a residentially zoned lot.

The City held a noticed public hearing for the project on August 22, 2019, where the Planning Commission decided to continue the item to its September 19, 2019 hearing. During the September 2019 hearing, the item was postponed by City planning staff in order to conduct additional analysis of the project. The project was re-noticed and brought back at the City's October 17, 2019 hearing, where the Planning Commission voted 6-1 to approve Local CDP No. CD2019-003 and Conditional Use Permit UP2019-003. The project was also determined to be categorically exempt from CEQA pursuant to Section 15332, Class 32 (Infill Development Projects).

On October 31, 2019, Ernest Castro, Stephanie Pilalas, Jack Staub, and Hal Woods filed a local appeal of local CDP No. CD2019-003. A public hearing for the appeal was scheduled on March 24, 2020, when the appeal was continued to April 14, 2020. The project was subsequently continued to the April 28, 2020 and again to the May 12, 2020 hearing, where the City Council voted to uphold the approval of both the local CDP and the conditional use permit.

On May 18, 2020, the Coastal Commission's South Coast District Office received a valid Notice of Final Action (NOFA) for Local CDP No. CD2019-03 and the Commission issued a Notification of Appeal Period, which opened June 15, 2020, due to the Governor's Order tolling certain regulatory deadlines during the early stages of the Covid-19 emergency, and ran through June 29, 2020. On June 29, 2020, David Tanner filed the appeal on behalf of a group of 44 appellants ([Exhibit 3](#)). No other appeals were received. The City and applicant were notified of the appeal by Commission staff in a letter dated June 29, 2020.

### **IV. APPEAL PROCEDURES**

After certification of LCPs, the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on CDPs. Development approved by cities or counties may be appealed if it is located within certain geographic appealable areas, such as those located between the sea and the first public road paralleling the sea or within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of a coastal bluff. Furthermore, developments approved by counties may be appealed if they are not a designated "principal permitted use" under the certified LCP. Finally, any local government action on a proposed development that would constitute a major public work or a major energy facility may be appealed, whether approved or denied by the city or county [Coastal Act Section 30603(a)].

Section 30603 of the Coastal Act states in relevant part:

- (a) After certification of its Local Coastal Program, an action taken by a local government on a Coastal Development Permit application may be appealed to the Commission for only the following types of developments:
  - (1) Developments approved by the local government between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance.
  - (2) Developments approved by the local government not included within paragraph (1) that are located on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, stream, or within 300 feet of the top of the seaward face of any coastal bluff.

Section 30603(a)(1) of the Coastal Act establishes the project site as being in an appealable area because it is located within 100 feet of a wetland. The issues raised in the subject appeal apply to proposed development located in the appeals area.

### **Grounds for Appeal**

The grounds for appeal of an approved local CDP in the appealable area are stated in Section 30603(b)(1):

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

Section 30625(b)(2) of the Coastal Act requires the Commission to conduct a de novo review of the appealed project unless the Commission determines that no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603(a). If Commission staff recommends a finding of substantial issue, as it has done here, and there is no motion from the Commission to find no substantial issue, the substantial issue question will be considered presumed, and the Commission will proceed to the de novo portion of the public hearing on the merits of the project. A de novo review of the merits of the project uses the certified LCP as the standard of review. (Section 30604(b).) Sections 13110-13120 of Title 14 of the California Code of Regulations further explain the appeal hearing process.

### **Qualifications to Testify before the Commission**

If the Commission, by a vote of 3 or more Commissioners, decides to hear arguments and vote on the substantial issue question, proponents and opponents will have an opportunity to address whether the appeal raises a substantial issue. The time limit for public testimony will be set by the chair at the time of the hearing. As noted in Section 13117 of Title 14 of the California Code of Regulations, the only persons qualified to testify before the Commission at the substantial issue portion of the appeal process are the applicant,

persons who opposed the application before the local government (or their representatives), and the local government. In this case, the City’s record reflects that David Tanner (representing a group of appellants) opposed the project in person at the local hearing. Testimony from other persons who did not submit testimony before the local government may be submitted in writing.

Upon the close of the public hearing, the Commission will vote on the substantial issue matter. It takes a majority of Commissioners present to find that no substantial issue is raised by the local approval of the subject project. If the Commission finds that the appeal raises a substantial issue, the de novo phase of the hearing will take place at a future Commission hearing, during which time the Commission will take public testimony.

## **V. FINDINGS AND DECLARATIONS – SUBSTANTIAL ISSUE**

### **A. PROJECT DESCRIPTION AND LOCATION**

The City-approved project is described as the demolition of an existing 8,313 square foot restaurant/office building and associated surface parking lot, and the construction of a two-story, 28-foot high, 2,744 square foot office building and a two-story, 40-space parking structure. The project includes hardscape and drainage, which utilizes bioretention planter boxes and pumps to collect and filter roof and surface runoff before being discharged into the municipal storm drain system. The proposed landscaping consists of non-invasive, drought tolerant plants. The applicants proposed 3,375 cubic yards of grading (cut) to construct the parking structure ([Exhibit 2](#)).

The project site is an irregularly shaped 18,323 square foot lot located at 215 Riverside Avenue in Newport Beach ([Exhibit 1](#)). The site is approximately 850 feet inland of Newport Bay, and approximately 550 feet inland of Pacific Coast Highway. Riverside Avenue provides public vertical access to the Bay and to Pacific Coast Highway. The site is bounded by public streets on two sides and natural bluff, which is designated as a public park, on a third side. It is in an area where development approved by the City of Newport Beach pursuant to its certified LCP is appealable to the Coastal Commission.

### **B. LOCAL COASTAL PROGRAM CERTIFICATION**

The City of Newport Beach Local Coastal Program (LCP) was certified on January 30, 2017. The City’s LCP is comprised of a Land Use Plan (LUP) and an Implementation Plan (IP). Newport Beach has a certified Local Coastal Program (LCP), but there is one area of deferred certification in the City (Banning Ranch). The project site is located within the City of Newport Beach’s certified jurisdiction and is subject to the policies of the certified LCP.

### **C. FACTORS TO BE CONSIDERED IN SUBSTANTIAL ISSUE ANALYSIS**

Section 30625(b)(2) of the Coastal Act requires a de novo hearing of the appealed project unless the Commission determines that no substantial issue exists with respect to the grounds on which the appeal has been filed pursuant to Section 30603(a) of the Coastal Act. Section 13115(c) of the Commission regulations provides that the Commission may



consider the following five factors when determining if a local action raises a significant issue:

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

The Commission may, but need not, assign a particular weight to a factor.

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

#### **D. SUBSTANTIAL ISSUE ANALYSIS**

As stated in Section IV of this report, the grounds for an appeal of a CDP issued by the local government are the project's conformity with the policies of the LCP. The appellants' arguments about the City-approved project's consistency with the LCP raise several substantial issues, as discussed in detail below. Therefore, Staff is recommending that the Commission find that a substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603(a) of the Coastal Act.

**Contention 1 and Contention 2: The project is inconsistent with the City's certified LCP, and the City's findings to approve the local CDP are not supported by substantial evidence.**

In their third contention, the appellants argue more specifically that the project is not consistent with the visual resource policies, landform alteration policies. Thus, that issue is addressed in detail below, under "Contention 3." However, the appellants also argue that the project is inconsistent with wetland resource policies of the certified LCP ([Exhibit 3](#)). The visual resource and landform alteration policies will be discussed. This analysis is focused on the following biological resource policies found in the LCP:

- 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:

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 IB 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.

4.1.1-4. 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.

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

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 the disturbance.

The project site is located within 100 feet of a wetland directly adjacent to Avon Street that is known colloquially as the Avon Wetland. The applicant submitted a wetland delineation survey prepared by Glen Lukos Associates dated September 23, 2019, which identified the Avon Wetland as being located 39 feet away from the project site. The wetland ranges from 3-to-6 feet in width and is approximately 100 feet in length, and is bounded by Avon Street on the South, a bluff slope on the north, an existing retaining wall associated with the project site on the east, and a pedestrian staircase on the west. The wetland mostly contains southern cattail plants, with some arroyo willows and saltgrass distributed along the lateral extent of the wetland. According to the applicant-retained biologist's report, the wetland's water comes from a groundwater spring, and is discharged to a culvert located approximately 430 feet to the east.

The Commission's staff ecologists have not visited the site to confirm the presence and extent of the wetland, but it was acknowledged by the applicant and the City. The Commission has often found wetlands to rise to the level of Environmentally Sensitive Habitat Area, based on their potential to support sensitive plant species which provide ecological value. LUP Policy 4.1.1-1 provides context for ESHA determinations as 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 ESHA. The policy requires those seeking to develop in or near a potential ESHA to use a site-specific survey and analysis by a qualified biologist. After identifying ESHAs, LUP Policy 4.1.1-4 requires that ESHAs be protected against any significant disruption of habitat values. Policy 4.2.1-1 requires that wetlands be recognized and protected for their commercial, recreational, water quality, and habitat values.

Pursuant to LUP Policy 4.1.1-1, the applicant submitted a site survey prepared by a qualified biologist to delineate the Avon Wetland. The survey identified the cattail plants as a low-value plant for special-status plants and habitat. The biologist also noted that the arroyo willows were not present within 100 feet of the project site, but did not describe whether the arroyo willows constitute a rare or high-value habitat within the wetland. Therefore, an adequate ESHA determination was not made for the Avon Wetland.

In order to protect wetlands, LUP policy 4.2.2-3 requires a minimum 100-foot buffer unless a proposed development site has site-specific constraints that preclude the provision of a 100-foot buffer, or it can be demonstrated that a buffer width of less than 100 feet can protect the wetland. The City's staff report contains a small section to discuss wetland protection and refers to the Lukos report's conclusion that the wetland does not require a

100-foot buffer ([Exhibit 4](#)). The Lukos report provides an overall analysis of the Avon Wetlands and its potential vulnerability. The report states that the development does not have the potential to affect the hydrology of the wetland because the wetland depends on a groundwater source. The BMPs proposed by the project, which include a silt fence during construction, salt wattle, and permeable planter boxes to collect runoff, would prevent water quality degradation. Finally, the report states that the wetland is located directly adjacent to the street (Avon Street), and the abundance of cattail within the wetland is of low value to support special status and habitat.

However, Policy 4.2.2.-3 states that smaller buffers (less than 100 feet) can only be allowed “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 the disturbance.” The staff report and the Lukos Report do not specify whether there are site-specific constraints that would prevent the applicant from providing the appropriate buffer, nor do they adequately justify why a 100-foot buffer is not required for this wetland. The subject site is 18,323 square feet, which is a large lot with ample space to construct a 2,744 square foot office building. The project feature which is nearest to the wetland is a two-story 40 space parking garage. The parking garage contains more parking spaces than would be required by the LCP to serve the office building and is constructed very close to the western property line (along with a new driveway and portion of the new retaining wall). The development could be clustered closer to the northeast portion of the lot to provide a greater buffer from the wetland at the western side.

Additionally, the Lukos report characterizes the Avon Wetlands as a generally low-value wetland. However, Policy 4.2.2-3 does not limit the requirement of a 100-foot buffer to high-value habitats. Given that wetlands are a rare coastal resource in this region, extra care must be given to protect the wetlands from further degradation, consistent with the LCP policies. Aside from the proposed construction BMPs and post-construction drainage system, the City did not make findings to justify approval of development with a reduced wetland buffer. It is possible that a reduced wetland buffer may be approved for this site and still protect biological resources consistent with the LCP, but the City-approved CDP does not include adequate findings to justify the 39-foot buffer or identify alternatives that would allow for a greater buffer. The City did not appropriately apply Section 4.2.2-3 to this project. Therefore, the appellants’ contention raises a substantial issue with regard to consistency with the certified LCP, and the City’s findings to approve the local CDP are not supported by substantial evidence.

**Contention 3: The project has not been designed or sited to minimize impacts to public views from Pacific Coast Highway (LUP Policy 4.4.1-2) or impacts to natural landforms.**

The appellants also contend that the City-approved project was not designed to minimize adverse impacts on public coastal views from Pacific Coast Highway or impacts to natural landforms. The following LUP policies pertain to the protection of scenic resources and

natural landforms:

**LUP Policy 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.

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

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

### Visual Resources

In its findings to approve the project, the City stated that the proposed office building would not impact public coastal views from Pacific Coast Highway because the proposed building, at 28 feet, is below the 32-foot height limit in the General Commercial zone (where the project site is located). As stated above, LUP Policy 4.4.1-1 requires new development to protect coastal views along the ocean, the bay, the harbor, costal bluffs, and other coastal resources. There is a coastal bluff located directly behind the project site that is visible from Pacific Coast Highway. The city-approved project also involves the construction of a two-level parking structure that would be constructed level with the street. New retaining walls would be required between the development and existing retaining walls which are cut into the coastal bluff. The proposed two-story parking structure has the potential to adversely impact the visual qualities of the adjacent coastal bluff and public park by grading a lower pad and constructing a two-story structure at the property line adjacent to the natural slope of the bluff. Other portions of the bluff (at the north) would be obscured by the project site and new retaining walls, generally not more so than the existing condition. The City should have required a visual analysis from Coast Highway to adequately analyze how the development as a whole (including the office building and the parking structure) could impact views to the coastal bluffs behind the project site, but the visual analysis in the City Record focused on views from private property and the public park above the site. California's coastal bluffs are significant coastal resources, and great care should be taken when designing new development to protect the visually aesthetic qualities of these rare landforms. The City-approved project does not appear to be consistent with LUP Policy 4.1.1-1 in that the project does not include appropriate measures to adequately protect the visual qualities of the coastal bluff. If such measures are included, they are not well reflected in the findings and conditions to approve the project.

### Landform Alteration

The City-approved project includes 3,375 cubic yards of grading in order to construct the two-story parking structure level with the adjacent street. LUP Policy 4.4.1-3 requires new development to minimize landform alteration, particularly bluffs, canyons, cliffs, and other significant resources. At the outset, the City's staff report does not acknowledge the coastal bluff directly behind the project site as a significant coastal resource.

Furthermore, the staff report does not justify how the proposed grading for the parking structure minimizes landform alteration to the best extent feasible ([Exhibit 4](#)). The City should have analyzed alternative parking structure designs that minimize the total amount of landform alteration to the coastal bluff, particularly at the western edge of the site where the retaining wall divides the site from the public park and adjacent wetland. Such options could include moving the structure farther away from the bluff face altogether and reducing the overall size of the structure, among other options. The City record does not contain any alternatives analysis for the parking structure, and the City's staff report does not contain any discussion of mitigating the proposed landform alteration. This runs counter to the LUP Policy 4.4.1-3.

Overall, the City-approved project did not adequately apply the LUP policies pertaining to visual resource protection and landform alteration. Therefore, there is not an adequate degree of factual and legal evidence to support the City's decision to approve the local CDP as consistent with these policies, and the appellants' contention with respect to the policies protecting this resource raises a substantial issue.

**Contention 4: The project is being piecemealed as part of a larger project affiliated with the same property owner.**

The appellants contend that the City-approved project is part of a larger redevelopment project associated with the same property owner. According to the appellants, the applicant (215 Riverside, LLC) also owns the Garden Shopping Center located at 2902 West Coast Highway, which is across the street from the project site. The applicant filed a separate local CDP application (PA2019-006) for improvements to a restaurant within the shopping center, but the application is currently incomplete. The Garden Shopping Center restaurant project proposes to utilize 35 parking spaces from the proposed parking structure at 215 Riverside Avenue to satisfy the restaurant's parking demand. The applicants argue that the use of the proposed 215 Riverside Avenue parking structure for both the proposed office use (which is the subject of this appeal) and the restaurant improvements (which is under a separate CDP application) inherently ties the two projects together, and that reviewing these two developments separately constitutes a piecemealing, which is not permitted under CEQA.

In its findings to approve the CDP application for the new office building and parking structure, the City undertook a detailed analysis to explain why the City-approved project does not constitute project piecemealing. The City cited a California Supreme Court test that establishes scenarios in which a project could be found to constitute project piecemealing.<sup>1</sup> Under this test, 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." The City ultimately determined that the two proposals submitted by 215 Riverside, LLC do not have a causal

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<sup>1</sup> This California Supreme Court test was adopted pursuant to its findings in *Laurel Heights Assn v. Regents of Univ. of Cal. (1988)*.

link that ties them to a larger overall redevelopment project. In other words, the development of the new office building does not rely on the development of the new restaurant, and vice versa. The use of a single parking structure to serve both developments does not itself bind the two developments together.

Overall, the City provided an adequate analysis, using relevant legal support, to determine that the City-approved project is not being piecemealed as part of a larger project. In addition, the CEQA policies do not constitute the standard of review for this appeal. Therefore, this contention does not raise a substantial issue with regard to consistency with the certified LUP for Newport Beach.

**Contention 5: The project does not qualify for a CEQA Class 32 exemption.**

The appellants contend that the City's CEQA determination for the proposed project is incorrect and does not fully consider the project's environmental impacts. However, they do not explain how, even if this were true, it would indicate that the project as approved by the City would fail to conform to any LCP standards or the public access policies of the Coastal Act, which, as indicated above, is the only valid basis for an appeal. The City conducted an initial study in compliance with the State CEQA guidelines and determined that the project was exempt from CEQA under Section 15332, Class 32 (Infill Development Projects) because the project consists of an infill development. During the City's public hearing, there was an abundance of public testimony in opposition to City Council's determination of a CEQA exemption. There was a specific concern with the presence of sensitive resources in close proximity to the project site (the Avon Wetlands and a 100-200 year old Coast Live Oak Tree).<sup>2</sup> The City underwent a 30-day advisement period after the public hearing to re-analyze the project. After another analysis of the project's environmental impacts, the City determined that the proposed project was categorically exempt from the provisions of CEQA under Class 1 (Existing Facilities), Class 3 (New Construction or Conversion of Small Structures), and Class 32 (In-Fill Development Projects). The City of Newport Beach is the lead agency for CEQA certification and the City determined that the project was exempt from CEQA. The standard of review for this appeal is whether the project is consistent with Newport Beach's certified LCP. This contention does not raise an issue with LCP-specific policies; therefore, it does not raise substantial issue as to conformity with the certified LCP.

**SUBSTANTIAL ISSUE FACTORS:**

The Commission typically applies five factors in making a determination whether an appeal raises a substantial issue pursuant to Section 30625(b)(2).

**1. The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP.**

The City did not substantially support its approval of the project as being consistent with all of the applicable policies of the certified LCP and the public access and recreation provisions of the Coastal Act (specifically the wetland protection policies and the visual

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<sup>2</sup> According to the appellants, this Coast Live Oak tree is designated in the LCP as a sensitive coastal resource)

resource/landform alteration policies). Therefore, there is a low degree of factual and legal support for the local government's decision that the project, as conditioned, is consistent with the LCP. This factor supports a substantial issue finding.

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

The City granted a Local CDP for the construction of a new office building and parking structure. The project would construct the parking structure adjacent to a coastal bluff and would require over 3,000 cubic yards of grading. The City did not demonstrate that the proposed grading and design of the project constitutes the minimum amount of landform alteration necessary to carry out the project. Therefore, the extent of development may not be appropriate, and this factor supports a finding of substantial issue.

**3. The significance of the coastal resources affected by the decision.** The subject site is located less than 100 feet from a wetland and adjacent to the base of a coastal bluff, which may raise specific concerns that are not routinely raised on interior, in-fill lots. California's coastal bluffs and wetlands are both significant resources and represent rare and visually pleasing landforms which California citizens and governments have historically sought to preserve. Coastal bluffs are dynamic geologic formations, and development on them increases the potential for geologic hazards. Development on coastal bluffs and adjacent to wetlands also can have significant impacts on scenic resources and public access opportunities. The LCP and the Coastal Act provide coastal bluffs and wetlands with special protections. This factor supports a finding of substantial issue.

**4. The precedential value of the local government's decision for future interpretations of its LCP.** The project site is located within 39 feet of a wetland and is adjacent to the base of a coastal bluff. The decision of the local government for this project might influence future permit decisions made in the City's Coastal Zone, particularly within other coastal bluff areas and near wetlands located within the City's coastal zone. Allowing the local government's decision to approve a CDP for improvements that significantly alter the bluff face and that do not adhere to the minimum wetland buffer width would set a negative precedent for future interpretations of its LCP. If the subject local CDP is found to be consistent with the LCP based on the current record, there is a potential that future applicants, especially within the vicinity, will reference this permit if they wish to develop other sites that are adjacent to a coastal bluff face or less than 100 feet from the Avon wetland. Without adequate information to justify a smaller wetland buffer width or findings that landform alteration has been minimized to the maximum extent feasible, allowing the City's local CDP approval to stand would result in adverse precedent regarding application of the LCP's various resource protection policies. This factor supports a finding of substantial issue.

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

Development adjacent to wetlands and coastal bluffs are issues of statewide significance, given that wetlands and coastal bluffs are an important coastal resource throughout the state, not just in Newport Beach. Requiring consistency with the certified LCP (particularly



policies relating to wetland development and development on bluff faces) and the public access and recreation provisions of the Coastal Act is significant to all the people of California who wish to enjoy the public beaches of California. Unsubstantiated application of these policies could have regional or statewide ramifications regarding other similar LCPs and their policies regarding wetlands and coastal bluffs. This factor supports a finding of substantial issue.

**Conclusion**

The Commission finds that substantial issues exist with respect to whether the local government action conforms with the policies of the City's certified LCP.

**APPENDIX A – SUBSTANTIVE FILE DOCUMENTS**

1. "215 Riverside Avenue, Newport Beach: Delineation and Evaluation of Wetland within Avon Street Right-of-Way West of Subject Property" dated September 19, 2019, Glen Lukos Associates Regulatory Services.
2. City of Laguna Beach Local Coastal Program, certified January 30, 2017.