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Hearing Date: 10/13/21

STAFF REPORT: APPEAL – NO SUBSTANTIAL ISSUE

Appeal No.: A-5-NPB-21-0058

Applicants: 2510 W. Coast Hwy LLC &
2530 W. Coast Hwy Eat LLC

Representatives: Sean Matsler, Cox, Castle & Nicholson LLP

Local Government: City of Newport Beach

Local Decision: Approval with Conditions

Appellants: Coalition to Preserve Mariners Mile c/o FitzGerald Yap
Kreditor, LLP

Project Location: 2510 West Coast Highway and 2530 West Coast
Highway (APNs: 425-471-55, 425-471-56)

Project Description: Appeal of City of Newport Beach Local Coastal Development Permit No. CD2019-062 to replace an existing vehicle sales office with a 3-story, 35-foot-tall, 39,842 sq. ft. mixed-use development consisting of 36 residential dwelling units and a 5,096 sq. ft. commercial office. The residential component will consist of 8 studio units, 22 one-bedroom units, and 6 two-bedroom units (3 units will be designated as affordable to very low-income households).

Staff Recommendation: No Substantial Issue.

IMPORTANT HEARING PROCEDURE NOTES:

This is a substantial issue only hearing. Testimony will be taken only on the question of whether the appeal raises a substantial issue. Generally, and at the discretion of the Chair, testimony is limited to 3 minutes total per side. Please plan your testimony accordingly. Only the applicant, persons who opposed the application before the local government (or

their representatives), and the local government shall be qualified to testify. Others may submit comments in writing. If the Commission determines that the appeal does raise a substantial issue, the de novo phase of the hearing will occur at a future Commission meeting, during which it will take public testimony.

PLEASE NOTE THAT THIS WILL BE A VIRTUAL MEETING. As a result of the COVID-19 emergency and the Governor's Executive Orders N-29-20 and N-33-20, this Coastal Commission meeting will occur virtually through video and teleconference. Please see the Coastal Commission's Virtual Hearing Procedures posted on the Coastal Commission's webpage at www.coastal.ca.gov for details on the procedures of this hearing. If you would like to receive a paper copy of the Coastal Commission's Virtual Hearing Procedures, please call 415-904-5202.

SUMMARY OF STAFF RECOMMENDATION

The City of Newport Beach approved a local coastal development permit (CDP), site development permit, tentative parcel map, and affordable housing implementation plan for a mixed-use project located on an inland site near the intersection of Tustin Avenue and West Coast Highway in Newport Beach. The proposed development will demolish two existing vehicle sales office buildings, storage sheds, a 66-space surface private parking lot, hardscape, and concrete pedestrian walks. In its place on five parcels, a three-story, 35-foot-tall, 39,842 sq. ft. mixed-use development consisting of 36 residential units and a 5,096 sq. ft. office is proposed. The project will also dedicate to the City a 12-foot strip along the frontage of the property facing West Coast Highway, as well as a 20-foot strip and parking spaces in the rear of the lot for roadway and sidewalk expansion. The dedication of the strip for public sidewalk construction and landscaping improvements is the only development proposed within the appealable area and thus subject to Commission review during the substantial issue phase of the hearing, is the; the area where the building is proposed is more than 300 feet inland of the coast and is therefore outside of the appealable area.

On August 4, 2021, the Coastal Commission's South Coast District Office received a valid Notice of Final Action (NOFA) for the local CDP. The Commission issued a Notification of Appeal Period on August 10, 2021. On August 18, 2021, Coalition to Preserve Mariners Mile filed the appeal during the ten (10) working day appeal period. The City and applicant were notified of the appeal by Commission staff in a letter dated August 20, 2021.

The appellants raise the following concerns with the City-approved development: 1) the City did not make findings with adequate factual or legal support; 2) the City determined as complete an incomplete CDP application; 3) the City failed to provide adequate time for the public to review and comment on the Coastal Development Permit; 4) the City failed to adequately address LCP environmental concerns; 5) the City action failed to protect scenic and visual qualities of coastal areas; 6) the City failed to adequately protect public safety; 7) the City failed to adequately protect public recreation and public access to coastal resources; 8) the City action failed to analyze the effects of regulatory changes on existing

and project build-out conditions; 9) the City action failed to consider cumulative changes and the project's precedent-setting effect on coastal resources; and 10) the City action erred in following the LCP Rules of Interpretation.

The appellants assert that the City did not make findings with adequate factual or legal support. The appellants allege that the City did not evaluate the project using the LCP policies and Chapter 3 policies of the Coastal Act as the main standard of review. However, the City contemplated project elements using specific evidence and reasoning in order to support the required standard of review and make adequate findings of consistency with the City's zoning code (Implementation Plan) and Land Use Plan, both components of the certified LCP.

The appellants assert, on procedural grounds, that the City failed to process the CDP application correctly, and that the project should be annulled for that reason. However, the City reviewed the project for completeness, engaged with the applicant where information was missing, brought the project to public hearing on four separate occasions with proper noticing, and made sufficient findings on the project's consistency with the LCP, Coastal Act, and other relevant policies.

The appellants assert that the City failed to adequately address LCP environmental concerns. Those include failure to protect scenic and visual qualities of coastal areas, public safety, public access to coastal resources, and public recreation. The appellants are particularly concerned with views of coastal resources from high value strategically placed public vantage points. The City has demonstrated that blue water views from John Wayne Park will not be adversely impacted. The City analyzed other environmental concerns, such as increased traffic, insufficient parking, and allegedly incompatible site uses along the West Coast Highway frontage and did not identify any adverse impacts or inconsistencies with the LCP. The City imposed conditions of approval to avoid impacts to coastal resources.

The appellants assert that the proposed project will have cumulative and precedent-setting effects on coastal resources. Moreover, the appellants claim that the City action failed to analyze the effects of regulatory changes on project build-out conditions. However, the City did not utilize extraordinary criteria in its review of the project, is not required to analyze the impacts of other State laws or local ordinances through its review of individual development applications, and did not prioritize recent statewide housing policies or incentives (as part of Housing Element and Circulation Element Updates) above Coastal Act and LCP policies. In fact, the LCP allows for density bonuses under certain circumstances, and in this case the project is eligible. The City also studied traffic circulation and parking for the development and found that in providing the code-required parking on site and in widening streets and sidewalks, as conditioned, there will be no adverse impact on nearby development or coastal resources.

Therefore, Staff recommends that the Commission determine that **no substantial issue exists** with respect to the grounds on which appeal number A-5-NPB-21-0058 has been filed. The motion and resolution can be found on Page 5 of the staff report.

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EXHIBITS

- Exhibit No. 1 – Location Map
- Exhibit No. 2 – Appealable Area Exhibit
- Exhibit No. 3 – City-approved Project Plans
- Exhibit No. 4 – View Simulations
- Exhibit No. 5 – Appeal

I. MOTION AND RESOLUTION – SUBSTANTIAL ISSUE

Motion: I move that the Commission determine that Appeal No. A-5-NPB-21-0058 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 **YES** vote. Passage of this motion will result in a finding of No Substantial Issue and adoption of the following resolution and findings. If the Commission finds No Substantial Issue, the Commission will not hear the application de novo and the local action will become final and effective. The motion passes only by an affirmative vote by a majority of the Commissioners present.*

Resolution: The Commission hereby finds that Appeal No. **A-5-NPB-21-0058** presents **no substantial issue** with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

II. APPELLANTS' CONTENTIONS

The Commission received a Notice of Final Local Action (NOFA) for City of Newport Beach Local CDP No. CD2019-062 on August 4, 2021. Local CDP No. CD2019-062 approves the demolition of an existing vehicle sales office and its replacement with a new 3-story, 35-foot-tall, 39,842 sq. ft. mixed-use development consisting of 36 residential dwelling units and a 5,096 sq. ft. commercial office. The residential component will consist of 8 studio units, 22 one-bedroom units, and 6 two-bedroom units (3 units will be designated as affordable to very low-income households).

On August 18, 2021, an appeal was filed by the Coalition to Preserve Mariners Mile¹ (**Exhibit No. 5**). Furthermore, David J. Tanner Environmental & Regulatory Specialists, Inc., as authorized representative of the appellants, has submitted an additional memorandum in support of the Coalition appeal (**Exhibit No. 5**). Altogether, the appellants contend that the City's approval does not comply with the City's certified LCP. More specifically, the appellants raise the following concerns with the City-approved development:

- 1) The City failed to make findings with adequate factual or legal support.
- 2) The City determined as complete an incomplete CDP application.
- 3) The City failed to provide adequate time for the public to review and comment on the Coastal Development Permit.
- 4) The City failed to adequately address LCP environmental concerns.
- 5) The City action failed to protect scenic and visual qualities of coastal areas.
- 6) The City action failed to adequately protect public safety.

¹ The Coalition to Preserve Mariners Mile is interchangeably known as the Coalition to Protect Mariner's Mile. More information about the Coalition may be found at <https://nopchfreeway.weebly.com>.

- 7) The City action failed to adequately protect public recreation and public access to coastal resources.
- 8) The City action failed to analyze the effects of regulatory changes on existing and project build-out conditions.
- 9) The City action failed to consider cumulative change and the project's precedent setting effect on coastal resources.
- 10) The City action erred in following the LCP Rules of Interpretation.

III. LOCAL GOVERNMENT ACTION

On January 21, 2021, the Planning Commission held an initial noticed public hearing for the project and found it exempt from the California Environmental Quality Act (CEQA) under Section 15332, Class 32 (In-fill Development Projects). On February 18, 2021, the Planning Commission conducted another noticed public hearing and following receipt of public comments and deliberation, voted to adopt Planning Commission Resolution No. PC2021-001 approving the project, which includes the written findings for the action.

On April 27, 2021, the City Council conducted a de novo public hearing to consider the project and its potential impacts. After hearing a staff presentation on the project and receiving public comment, the City Council voted to continue the item to the May 25, 2021, City Council meeting. Prior to the May 25, 2021 meeting, the applicant informed staff that based upon the feedback they received at the previous City Council meeting, they were electing to amend their application and revise the project.

Key changes to the project included a reduction in the size and a different proposed use of the project's commercial space ([Exhibit No. 3](#)). Whereas the original project proposed an 11,266 sq. ft. boutique auto showroom, the proposed project would now propose a 5,096 sq. ft. office space. The development would no longer require a conditional use permit for the boutique auto showroom and its associated reduction in parking; in fact, the currently proposed project would result in a five-space surplus above the minimum parking requirements. The architecture and orientation of the proposed buildings have also been significantly updated ([Exhibit No. 4](#)). One additional residential unit has been incorporated into the project bringing the total to 36 residential units, including three affordable units for very low-income households. The applicant has also offered and incorporated a 20-foot dedication along the Avon Alley frontage to accommodate the widening of Avon Street.

On July 27, 2021, the Newport Beach City Council approved the revised project and adopted Resolution No. 2021-70, including Coastal Development Permit (CDP) No. CD2019-062, Site Development Permit (SDP) No. 2019-003, Tentative Parcel Map (TM) No. NP2020-013, and Affordable Housing Implementation Plan (AHIP) No. AH2021-001.

On August 4, the Coastal Commission's South Coast District Office received a valid Notice of Final Local Action (NOFA) for the local CDP. The Commission issued a Notification of Appeal period on August 10, 2021. On August 18, 2021, the Coalition to Preserve Mariners Mile filed the appeal during the ten (10) working day appeal period ([Exhibit No. 5](#)). No other appeals were received. The City and applicant were notified of the appeal by Commission staff in a letter dated August 20, 2021.

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. Per Section 30603(a), development approved by cities or counties may be appealed only if it is located within certain geographic appealable areas, such as development located between the sea and the first public road paralleling the sea, or within 100 ft. of any wetland, estuary, or stream, or within 300 ft. of the top of the seaward face of a coastal bluff. Likewise, developments approved by counties may also 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.

On July 30, 2021, in a written memo to the City, the Executive Director determined that in this case, the proposed development is subject to the appeal procedures as established in Section 30603(a)(1), in that a portion of the project site is located within 300 feet of the inland extent of any beach or of the mean high tideline of the sea where there is no beach, whichever is the greater distance. An analysis of Newport Beach's post-LCP certification map, for which criteria are set forth in 14 CCR Section 13577, has yielded an appealable area confined to a strip along the property frontage measuring approximately 10 feet in width and 50 feet in length, which is part of the proposed development because it will be developed with a street and sidewalk and dedicated to the City of Newport Beach ([Exhibit No. 2](#)).

Grounds for Appeal

The grounds for appeal of an approved local CDP in an appealable area under Section 30603 of the Coastal Act are limited to allegations that the proposed development does not conform to the certified LCP or the public access policies of the Coastal Act.

Section 30625(b)(2) of the Coastal Act requires 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 the Commission finds that the appellants' contentions raise no substantial issue, the action of the local government becomes final.

Qualifications to Testify before the Commission

If the Commission decides to hear arguments and vote on the substantial issue question, the only persons qualified to testify before the Commission on the substantial issue question are the Applicant, persons who opposed the project before the local government (or their representatives), and the local government (14 CCR Section 13117). In this case, the City's record reflects that Coalition to Preserve Mariners Mile opposed the project in person at the local hearing. Testimony from other persons regarding the substantial issue question must be submitted in writing (Ibid.) Any person may testify during the de novo CDP determination stage of an appeal (if applicable). The Commission will then vote on the substantial issue matter. It takes a majority of Commissioners present to find that the grounds for the appeal raise no substantial issue.

V. FINDINGS AND DECLARATIONS – SUBSTANTIAL ISSUE

A. PROJECT DESCRIPTION AND LOCATION

The City-approved project is located on a 0.98-acre inland site fronting West Coast Highway (State Route 1) within the Mariners' Mile area of Newport Beach, and is approximately 290 feet landward of Newport Bay to the south ([Exhibit No. 1](#)). The existing site consists of five contiguous parcels and is bound by Avon Street to the north, a day care facility to the east, and retail and vehicle sales uses to the west. The site has vehicular access to West Coast Highway and Tustin Ave via Avon Alley. The project site is also immediately adjacent to prominent coastal bluffs and John Wayne Park, a widely used recreational facility with blue water views within the Coastal Zone, also accessed via Avon Alley. The prior marine sales use on the site was originally established at 2510 West Coast Highway in 1960 and expanded into the adjacent 2530 West Coast Highway location in 2001. The existing site is developed with two office buildings, two small storage sheds, and paved areas for ancillary boat and (private) automobile parking. The site currently contains minimal landscaping. As of June 23, 2021, the property manager for the site has notified the City that the use of the commercial space has changed from a boat sales office to a vehicle sales office, which the City determined is consistent with the permitted parameters of the Mixed-Use Horizontal (MU-H) designation of the Coastal Land Use Plan and the Mixed-Use Mariners' Mile (MU-MM) Coastal Zone District.

The proposed development would demolish the existing vehicle sales office buildings, storage sheds, 66-space surface parking lot, hardscape, and concrete pedestrian walks. In its place, the applicant proposes a three-story, 35-foot-tall, 39,842 sq. ft. mixed-use development consisting of 36 residential units and a 5,096 sq. ft. office ([Exhibit No. 3](#)). The residential component will consist of 8 studio units, 22 one-bedroom units, and 6 two-bedroom units; three of the units will be set aside for workforce housing and made available to very low-income households under State density bonus law (Government Code Section 65915). As authorized by the City, the project will therefore be eligible for "incentives" to (a) increase height limits from 26 feet to 35 feet; (b) increase the number of residential units permitted from 26 to 36; and (c) halve the required amount of commercial development from 10,075 sq. ft. to 5,096 sq. ft.² The proposed office building does not yet have identifiable commercial uses or tenants; however it is anticipated that compatible activities, such as vehicle sales or something similar will be operated in the proposed office space. For the residential and commercial components, there will be 65 parking spaces in total, exceeding the minimum required by the City. Sixteen existing parking spaces and a 20-foot-wide strip in the rear of the lot will be vacated to allow for the widening of Avon Alley, and the new two-way street providing 23 public parking spaces will be dedicated to the City.

The project will also dedicate the front 12 feet of the property to the City for a 125-foot-long utility easement and expansion of the West Coast Highway right-of-way. It is within this

² More information can be found in the Affordable Housing Implementation Plan and Density Bonus Application dated July 14, 2021 and prepared by Springbrook Realty Advisors, Inc.

strip that a roughly 10-foot-wide and 50-foot-long segment is located approximately 290 feet from the mean high tide line and is therefore within the appealable area ([Exhibit No. 2](#)). Within the appealable area, the frontage will consist of sidewalk, trees, planters, lighting, and utility poles. Immediately to the north of the appealable area, a two-way driveway will allow access from West Coast Highway to the proposed residential and office building. Traffic circulation will be possible through and around the site, thus facilitating ingress, egress, and general access to visitor-serving and recreational facilities in the vicinity of the project site, such as John Wayne Park, Newport Theatre Arts Center, Newport Beach City Cruises, and boat rentals and yacht clubs along Newport Bay Harbor ([Exhibit No. 1](#)).

B. LOCAL COASTAL PROGRAM CERTIFICATION

In January 2017, the City of Newport Beach LCP was effectively certified. The City's LCP is comprised of a Land Use Plan (LUP) and an Implementation Plan (IP). There is one area of deferred certification in the City (Banning Ranch). The standard of review for development within the City's permit jurisdiction is the City's certified LCP.

C. FACTORS TO BE CONSIDERED IN SUBSTANTIAL ISSUE ANALYSIS

Section 30625(b)(2) of the Coastal Act requires a de novo hearing on an 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. Section 13115(c) of the Commission's 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.

D. SUBSTANTIAL ISSUE ANALYSIS

Appellants' Argument No. 1: The City failed to make findings with adequate factual or legal support.

Implementation Plan (IP), Coastal Development Permits, 21.52.015(F), states in relevant part,

F. Findings and Decision. The Review authority may approve or conditionally approve a coastal development application, only after first finding that the proposed development:

- 1. Conforms to all applicable sections of the certified Local Coastal Program;*
- 2. 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.*

The appellants assert that the City failed to make adequate findings or analysis corresponding to the requirements established in IP Policy 21.52.015(F), mainly those concerning public access, public recreation, and blue water views.

In its City Council Staff Report and Resolution No. 2021-70, the City evaluated various project components against applicable sections of the Local Coastal Program (LCP). Where the City conducted analysis that directly supports IP Policy 21.52.015(F), it specifically examined LCP policies that are particularly related to coastal resources (as opposed to those covered by the City's General Plan elsewhere, which were discussed at length separately). For example, the City weighed the compatibility of the proposed use with the MU-H (Mixed-Use Horizontal) designation (LUP Policy 2.1.1-1) and MU-MM (Mixed-Use Mariners' Mile) zoning (IP Policy 21.22.010(B)), and found that the operational characteristics and physical orientation of the new development will comply. Similarly, the City addressed drainage, water quality, construction best management practices (BMPs), landscaping, and environmentally sensitive habitat area (ESHA) considerations pursuant to relevant sections of the LCP.

While the project site is not located between the first public road and the sea, it is still subject to IP Policy 21.52.015(F)(2) by virtue of IP Policy 21.64.035 (Appeal to the Coastal Commission), and as such, the City made findings in relation to policies Chapter 3 of the Coastal Act as well. In support of IP Policy 21.52.015(F)(2), the City analyzed the view simulations submitted along with the project plans and concluded that the inland location of the project site in conjunction with the elevated and sloping relief of the adjacent John Wayne Park will minimize public recreation and coastal view impacts. Furthermore, the City assessed that the architectural characteristics of the planned project will consist of neutral colors, negligible vertical intrusions, and strategic articulation that would minimize degradation of public views. The City also examined project compatibility with IP Section 21.30A.040 (Determination of Public Access/Recreation Impacts) and found that despite the anticipated change of intensity of use of the new mixed-use project, the project is consistent with IP Section 21.40. Because the revised project no longer proposes to reduce the number of parking spaces below the City's requirements, a parking management plan is no longer needed per IP Policy 21.40.110(B), although the applicant has previously submitted a Parking Demand Study for the previous project iteration.³ Lastly, given the location of the property inland of Newport Bay, the City recognized that no public access easements need to be provided, yet the applicant is proposing to dedicate to

³ Prepared by Urban Crossroads, dated July 7, 2020.

the City two segments in the front and rear of the lot, respectively, which may enhance public access.

The appellants claim that the findings relied on the Housing Accountability Act (HAA) and other deficient statutory interpretations inconsistent with IP Policy 21.52.015(F). However, the City, in fact, conducted a principled and heuristic analysis predicated on relevant LCP policies and Chapter 3 policies of the Coastal Act as the standard of review for the proposed project.

Therefore, the appellants' contention that the City failed to make findings with adequate factual or legal support is inaccurate and does not raise a substantial issue.

Appellants' Argument No. 2: The City determined as complete an incomplete CDP application.

Likewise, the appellants assert, per IP Policy 21.52.015(F) cited above, that the City did not fully weigh all applicable policies in determining consistency of the project with the certified Local Coastal Program. As explained previously, the City parsed its analysis, and as such, it engaged in discussion of LCP consistency when covering overlapping policies of the General Plan.

Furthermore, Implementation Plan (IP), Initial Application Review, 21.50.050(A), states in relevant part,

A. Review for Completeness.

...

5. Submittal of Additional Information.

- a. During the course of the review process, the review authority may require the applicant to submit additional information or revised plans.*
- b. The Director shall notify the applicant in writing of any revisions or additional information required and the applicant shall submit the requested information to the Department within thirty (30) days after the date of the notice or within the period of time designated by the review authority.*
- c. Failure to submit the required information within the thirty (30) day period or within the period of time designated by the review authority may be cause for denial.*

6. Additional Environmental Information. After an application has been accepted as complete, the Director may require the applicant to submit additional information needed for the environmental review of the project's compliance with the certified LCP and the public access and recreation policies of Chapter 3 of the Coastal Act, if applicable.

The City followed the process set forth in IP Policy 21.50.050(A) and informed the applicant of numerous raised issues following the April 27, 2021 de novo hearing. The applicant, prior to the May 25, 2021 hearing and within the 30-day window, responded to the City by electing to modify large parts of the project. The applicant resubmitted plans, the Affordable Housing Implementation Plan and Bonus Density application, and Tentative Parcel Map and Survey. The City reviewed the newly submitted information for compliance with Chapter 3 of the Coastal Act, as established in IP Policy 21.50.050(A)(6) and in accordance with IP Policy 21.54.080(D)(1). The City Council made findings of consistency with the LCP and Coastal Act policies referenced in the LCP as the standard of review, which can be found in the City Council Staff Report and Resolution No. 2021-70 adopted at the July 27, 2021 hearing.

Therefore, the appellants' contention that the City determined as complete an incomplete CDP application does not raise a substantial issue.

Appellants' Argument No. 3: The City failed to provide adequate time for the public to review and comment on the Coastal Development Permit.

The appellants assert that the City failed to provide adequate time for the public to review and comment on the Coastal Development Permit. The appellants claim that the project did not meet procedural rigor in regard to noticing, distributing sufficient information, and providing an adequate period of time for the public to give meaningful feedback. Once again, the appellants cite IP Policy 21.52.015(F) in support of their contentions. In fact, the City indeed offered ample opportunity for public involvement throughout the local CDP process as promulgated in IP Section 21.62. The City arranged for two Planning Commission public hearings and two City Council public hearings, with supporting documentation such as public notices, staff reports, correspondence, and resolutions. On three occasions, the public was able to participate, and City staff and applicant presented and were available for questions. As such, the appellants' contention that the City failed to provide adequate time for the public to review and comment on the Coastal Development Permit on procedural grounds does not raise a substantial issue.

Appellants' Argument No. 4: The City failed to address LCP environmental concerns.

Implementation Plan, Environmental Review, 21.50.070, states in relevant part,

- 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.*

The appellants assert that the City failed to address LCP environmental concerns and that the project has adverse impacts:

- To views of high value coastal resources from high value strategically placed public vantage points;

- To public safety from increased traffic on local roadways;
- To public access to coastal resources;
- To public recreation within the Coastal Zone;
- To all of the above from the effects of regulatory changes on existing, project, and build-out conditions;
- From failure to identify the existing General Plan build-out condition;
- From failure consider cumulative changes and effects on coastal resources; and
- From the precedent-setting nature of the decision on coastal resources.

Many of these claims are further discussed below and are not directly related to the required environmental review the City must complete per the LCP.

IP Policy 21.50.070, cited in part above, states that the proposed development within or adjacent to 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. The City has found that there would be no significant direct or indirect impacts to wetland or environmentally sensitive habitat area (ESHA) associated with the project, as the site has no native vegetation or habitat. It is currently entirely paved, with the exception of minor non-native decorative vegetation. There is little to no potential for special-status plants or animals to exist on the property, and the project would not encroach into any jurisdictional waters or areas that support native or sensitive habitat or wetland. In general, given the urban character of the surrounding area, no significant impacts to biological resources would occur. The City also made findings that the proposed Water Quality Management Plan (WQMP), as implemented for the project, would not result in significant impacts to drainage patterns and surface and ground water quality onsite. The new drainage pattern would match the existing drainage pattern, which drains southerly towards West Coast Highway. The flow would be collected into the cross gutter and directed toward a new stormwater treatment system. The project is designed to minimize impervious areas, and runoff would be directed to landscaping that is improved with plantings of native and drought tolerant plants and trees in disturbed areas. Despite the City exempting the project from CEQA requirements under Section 15332, Case 32, the applicant nonetheless prepared a Noise Impact Analysis and Air Quality & Greenhouse Gas Assessment in order to gauge other possible environmental impacts which could be avoided or mitigated under other applicable regulations including the zoning code and LCP, and the City found that all proposed mitigation is adequate.

Therefore, the appellants' contention that the City failed to address LCP environmental concerns does not raise a substantial issue.

Appellants' Argument No. 5: The City action failed to protect scenic and visual qualities of coastal areas.

Coastal Land Use Plan, Coastal Views, Policy 4.4.1-1 states:

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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.

Coastal Land Use Plan, Coastal Views, Policy 4.4.1-2 states:

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

Coastal Land Use Plan, Coastal Views, Policy 4.4.1-1 states:

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

Coastal Land Use Plan, Coastal Views, Policy 4.4.1-6 states in relevant part:

Protect public coastal views from the following roadway segments:

- *Coast Highway from Newport Boulevard to Marino Drive*
- *Coast Highway/Newport Bay Bridge*

Implementation Plan, Height Limits and Exceptions, 21.30.060, states in relevant part,

...

C. *Increase in Height Limit.*

...

2. *Height Limit Areas. The height limit areas shall be as follows:*

- c. *Nonresidential, Shoreline Height Limit Area. In this height limit area the base height limit for nonresidential and mixed-use structures with flat roofs is twenty-six (26) feet and the base height limit for structures with sloped roofs is thirty-one (31) feet. The height of a structure may be increased up to a maximum of thirty-five (35) feet with a flat roof or forty (40) feet with a sloped roof through the approval of a coastal development permit application as provided above. The shoreline height limit shall apply to all nonresidential coastal zoning districts and mixed-use coastal zoning districts within the boundaries of the Shoreline Height Limit Area shown on the High Rise and Shoreline Height Limit Areas Map (See Map H-1 in Part 8 (Maps) of this Implementation Plan).*

...

3. *Required Findings. The review authority may approve a coastal development permit to allow an increase in the height of a structure above the height limit only after first making all of the following findings in addition to the findings required in Section 21.52.015(F):*

A-5-NPB-21-0058 (2510 W. Coast Hwy LLC & 2530 W. Coast Hwy Eat LLC)

- a. *The project is sited and designed to protect public views to and along the ocean and scenic coastal areas; and*
- b. *The project is sited and designed to minimize visual impacts and be visually compatible with the character of surrounding areas; and*
- c. *Where feasible, the project will restore and enhance visual quality in visually degraded area; and*
- d. *Where the project is located in the Shoreline Height Limitation Zone, the project will not exceed thirty-five (35) feet.*

...

- D. *Exceptions to Height Limits. In cases where the exception to a height limit requires the approval of a coastal development permit, the review authority may approve a coastal development permit to allow an increase in the height of a structure above the base height limit as described below only after first making all of the findings in subsection (C)(3) of this section, in addition to the findings required in Section 21.52.015(F).*

Implementation Plan, Relief from Implementation Standards, 21.52.090, states in relevant part,

- A. *Purpose. The purpose of this section is to provide relief from the development standards of this Implementation Plan when so doing is consistent with the purposes of the certified Local Coastal Program and will not have an adverse effect, either individually or cumulatively, on coastal resources.*
- B. *Applicability. Any development standard of this Implementation Plan may be modified or waived through the approval of a coastal development permit, except: allowed and prohibited uses; residential density; nonresidential floor area ratios; specific prohibitions (for example, prohibitions intended to protect coastal resources, prohibited barriers to public access, limits on the use of protective structures, prohibited materials, prohibited plant species, prohibited signs, etc.); or procedural requirements.*

...

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

Section 30251 of the Coastal Act, Scenic and visual qualities, incorporated by reference in the City's certified LCP (LUP Page 4-70), states:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas...

The appellants assert that the project's height variance will result in impacts to views of coastal resources from public parks (John Wayne Park and Cliff Drive Park). The appellants also claim that the methodology that the City utilized to assess the visual impacts of the proposed project was not adequate, and that the project therefore fails to protect scenic and visual coastal resources from and to the project site inconsistent with the City's certified LCP.

The project site is located within the Shoreline Height Limit Area of the City's LCP, where the base height limit for nonresidential structures with flat roofs is 26 feet. Pursuant to IP Section 12.30.060(C), cited above, the LCP has provisions that allow an increase in height to a maximum of 35 ft. with a flat roof with approval of a CDP. In this case, the proposed height of the development will be uniformly at the maximum allowable height of 35 ft. In order to allow an increase in the height of the project beyond the base height, the City must make all findings of minimum impact as established in IP Policy 12.30.060(C)(3). The City made the appropriate findings in the April 27, 2021 Staff Report and accompanying resolution.

The City found that existing views to the coast from John Wayne Park and Cliff Drive Park are already impacted by development in the area, and the proposed project will not cause new adverse impacts from significant viewpoints identified in the LCP. Public views of the coast are provided at John Wayne Park, including along promontories abutting Avon Street below. Based on the applicant's simulations, views of a portion of the bay will be minimally impacted by the proposed commercial and residential development ([Exhibit No. 4](#)). Existing blue water views from these park elevations will generally remain, and existing view angles which are currently obstructed by residential structures will not be further obstructed by the proposed project. No views from designated scenic highways (e.g., West Coast Highway) or trails would be impacted. No views of the ocean will be obstructed. As such, the proposed project will not impact scenic and visual resources as protected by the City's certified LCP, including CLUP Policies 4.4.1-1, 4.4.1-2, 4.4.1-6 and Section 30251 of the Coastal Act, incorporated by reference in the City's certified LCP, all cited above. The City's decision not to require story poles as a condition of approval, in order to establish a more thorough analysis, would still not change the visual impact of the project in any way.

The City has argued that the architectural and aesthetic design of the project might even be considered an enhancement of the view over the current condition, where large expanses of surface parking predominate. In turn, the appellants retort that lighting emanating from the project will create light pollution and glare and will require further study per IP Policy 21.30.070. However, the City has found that the site is consistent with the surrounding urban uses, including commercial uses south, east and west of the site and single-family residential uses north of the site. Therefore, impacted public views of the coast are already present and the proposed project would only impact those already affected views and would minimally impact public coastal views from the park.

In addition, the proposed development will not impact coastal public views as one travels down West Coast Highway from Newport Boulevard to Marino Drive, an important view corridor cited per LUP Policy 4.4.1-6. Similar to the views from the higher elevations from the park, the blue water views from West Coast Highway are already rather impeded by existing seaward development. Specifically, within the appealable area, pedestrians looking seaward towards Newport Bay will not see any changes to visual resources at all. However, looking northward towards the project site, pedestrians and onlookers may enjoy increased visual resources due to the proposed sidewalks, landscaping, and increased setbacks from West Coast Highway. The City concurs that the architectural details of the proposed project would provide modulation of building masses, elevations, and rooflines to promote “visual interest” and maintain compatibility with surrounding buildings. As such, the need for the increase in height above what is allowed in the Shoreline Height Limit Area is consistent with IP Policy 21.52.090(B)(2) of the City’s certified LCP. In addition, processing of the CDP for the proposed project, requiring a visual resource analysis, including the increase in height above what is allowed in the Shoreline Height Limit Area, is consistent with the City’s certified LCP.

Therefore, the appellants’ contention that the proposed project fails to protect scenic and visual coastal resources inconsistent with the City’s certified LCP does not raise a substantial issue.

Appellants’ Argument No. 6: The City failed to adequately protect public safety.

The appellants assert that the City failed to evaluate the project’s impact to motorists, bicyclists, and pedestrians along the West Coast Highway corridor. The appellants raise concerns that the new traffic circulation plan for the site will impact the safety of bicyclists and pedestrians by increasing traffic along Tustin Avenue, West Coast Highway, and Avon Street. The appellants further claim that the proposed project was evaluated under the General Plan Circulation Element and that a CEQA review should have additionally supplemented the City’s analysis. The appellants believe that the dedication by the applicant to the City to widen West Coast Highway along the 12 seawardmost feet of the property will only exacerbate existing vehicular accidents and east-west thru-traffic at the risk of pedestrian and bicyclist public safety. Lastly, the appellants allude to an interruption of the mixed-use village concept along the existing inland stretch of West Coast Highway, which is referenced in Section 2.1.4 of the LUP. The City, in due diligence, reviewed the Parking Demand Study that the applicant had previously submitted, and when the applicant revised the project to provide the code-required on-site parking, the City determined that that the study was no longer needed in compliance with IP Policy 21.40.110(B). In addition, the City found that the project fosters the mixed-use concept established in the LCP and complements the existing type and character of nearby development. The City indicated that the project represents infill development that will correspond to surrounding uses and will be mainly served by existing infrastructure. Lastly, as directed in Coastal Act Section 30603, compliance with CEQA is not grounds for an appeal. While compliance with CEQA is not a ground for appeal, the City indicates that the proposed sidewalk along West Coast Highway and the widening of Avon Street to standard will improve public safety and traffic mobility around the project site, and in fact, may garner increased public access to coastal resources.

Therefore, the appellants’ contention that the City failed to evaluate the project’s impact to

public safety does not raise a substantial issue.

Appellants' Argument No. 7: The City action failed to adequately protect public recreation and public access to coastal resources.

IP Policy 21.30A.040, Determination of Public Access/Recreation Impacts, states in relevant part:

- A. *Relationship and Proportionality. The provision of public access shall bear a reasonable relationship between the requirement and the project's impact and shall be proportional to the impact.*
- B. *Methodology. In determining a development's impact on public access, the City shall evaluate, at a minimum, the factors listed below. Any access dedication required as a condition of approval shall be supported by substantial evidence in the record and findings shall explain how the adverse effects that have been identified will be alleviated or mitigated by the dedication*

...

- 2. *Demand for Access and Recreation. The project's impact upon the use and capacity of the identified access and recreation opportunities, including the ocean, harbor, bay, channels, estuaries, salt marshes, sloughs, beaches, coastal parks, trails, or coastal bluffs; the capacity of coastal access roads; public parking; and recreational support facilities and services.*

IP Chapter 21.30A where IP Policy 21.30A.040(B)(2) is located identifies its purpose to enhance and maximize public access:

"This chapter provides procedures and standards for the preservation, dedication, and improvement of public access to and along the shoreline and coastal bluffs, in conjunction with development in the Coastal Zone. The intent is to ensure that public rights of access to the shoreline are protected as guaranteed by the California Constitution, and achieve the basic State goals of maximizing public access to the coast and public recreational opportunities, as set forth in the Coastal Act (Sections 30000 through 30900); to implement the public access and recreation policies of Chapter 3 of the Coastal Act (Sections 30210 through 30255) and the applicable policies of the Coastal Land Use Plan; and where feasible, expanded and enhanced; to ensure public access to coastal bluff tops. [...]" (IP Policy 21.30A.010.)

The appellants assert that there will be loss of important coastal access routes due to the dedication of the 12-foot buffer along West Coast Highway to the City. The appellants are particularly concerned in regard to potential changes to the existing Tustin Avenue crossing and at-grade crosswalk across West Coast Highway at Riverside Avenue. Though these changes may be proposed by the City and Caltrans in the future, these contentions are not part of the proposed project and should be evaluated separately. Also, the appellants' contention that an increased dedication to West Coast Highway and new

sidewalk will dissuade pedestrian and bicycle use is not supported by fact. The applicant proposes to construct a sidewalk and landscaping along West Coast Highway, but there will be no new vehicle travel lane or increase in available throughput. Lastly, the widening of Avon Street in the rear of the project site will increase available parking for visitors of John Wayne Park and increase safety margins for pedestrian and bicyclists.

Therefore, the appellants' contention that the City action failed to adequately protect public access to coastal resources does not raise a substantial issue.

Appellants' Argument No. 8: The City failed to analyze the effects of regulatory changes on existing and project build-out conditions.

Note 6 of IP Table 21.22-3, Development Standards for Vertical and Horizontal Mixed-Use Zoning District, says in relevant part:

6. *Density bonuses may be granted for the development of housing that is affordable to lower-, low-, and moderate-income households and senior citizens in compliance with Government Code Section 65915 through 65917. Any housing development approved pursuant to Government Code Section 66915 shall be consistent, to the maximum extent feasible, and in a manner most protective of coastal resources, with all otherwise applicable Local Coastal Program policies and development standards.*

The appellants contend that the development standards adopted by the City for the project are not consistent with the LCP. The appellants claim that the City reviewed this project with less regard to the LCP, and instead, prioritized the General Plan Housing Element Update in its analysis. The appellants claim that the City should have referred any interpretation to the Commission for input or determination prior to acting on the project. However, per Note 6 of the LCP cited above, the City is allowed to provide density bonuses for development in accordance with Government Code Section 65915 through 65917, in a manner that maximizes protection of coastal resources. The City acted in further accordance with IP Policy 21.52.090(B)(2), Variances. The City determined through objective analysis that the project is eligible for a 35 percent density bonus as a result of 11 percent of the base units having been made affordable units to very low-income households. Additionally, as noted by the appellants, the City determined that the project was consistent with other State housing laws encouraging development of housing.

As such, the appellants' contention that the City did not review development standards per the LCP is not accurate and does not raise a substantial issue.

Appellants' Argument No. 9: The City failed to consider cumulative changes and the project's precedent-setting effect on coastal resources.

The appellants assert that the City's review of the proposed project does not account for cumulative changes and precedent-setting effect on coastal resources. In particular, the appellants claim that the project is not in accordance with the MU-H designation, and that the site is no longer serving a coastal-dependent use as promoted in the MU-MM Zoning District. While the claim that the site was previously used for marine sales is true, this use has recently changed, and the proposed project would not further detract from the area's

offering of coastal-dependent uses. Additionally, per LUP Policy 2.1.4-1(a), the Land Use designation requires development of marine-related and highway-oriented general commercial uses, which does not necessarily require provision of visitor serving uses, and LUP Policy 2.1.4-1(b) allows for mixed-use residential uses to the rear of the commercial frontage. The City determined that the project will be entirely consistent with the MU-H designation. The appellants also claim that the City did not consider the joint impact of the Newport Village Mixed Use Project roughly 300 feet to the east, as well as the potential Caltrans project to widen West Coast Highway. The City reviewed in depth the applicant's submitted Noise Impact Analysis and Air Quality and Greenhouse Gas Assessment, and found that the proposed project does not pose a cumulative risk to environmental impact. The LCP requires the City to analyze potential cumulative impacts to coastal resources through IP Policy 21.50.070(B), when a project is located adjacent to ESHA, wetlands or other sensitive resources. The LCP only requires an analysis of cumulative impacts to visual resources with respect to property setbacks as they may affect those view corridors identified in LUP Policy 4.4.1-6, such as West Coast Highway. The City found the subject project will not adversely impact visual resources. The cumulative effects of State laws encouraging production of housing were analyzed by the legislature at the time the laws were passed, and the cumulative effect of the LCP was analyzed by the Commission at the time the LCP was certified; it is not the City's responsibility to analyze the cumulative effect of complementary land use laws when it reviews individual development applications.

Therefore, the appellants' contention that the project review did not consider cumulative changes and precedent-setting effects does not raise a substantial issue.

Appellants' Argument No. 10: The City action erred in following the LCP Rules of Interpretation.

Implementation Plan, Rules of Interpretation, 21.12.020(A), states in relevant part,

- A. *Authority. The Director has the authority to interpret the meaning of provision of this Implementation Plan, including maps, and to apply and/or enforce the Implementation Plan. The Director may also refer any interpretation to the Commission for input or a determination. An interpretation made by the Director may be appealed or called for review to the Commission in compliance with Chapter 21.64 (Appeals and Calls for Review).*

The appellants assert that the City interpreted IP Policy 21.12.020(A) and other LCP policies as of lesser significance than the Housing Accountability Act (HAA) requirement to analyze a project's compliance with objective standards applicable to the project. However, as discussed previously, the City relied heavily on the LCP and the Coastal Act policies referenced in the LCP as the standard of review throughout the CDP process. Furthermore, when the Executive Director provided the City with a determination that a portion of the project is within the LCP appealable area, the City deferred to the Coastal Commission for input and determination via the appeal process established in Section 30603 of the Coastal Act.

Therefore, the appellants' contention that the project was not scrutinized per the appropriate standards does not raise a substantial issue.

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 substantially supported its approval of the project as being consistent with all of the applicable policies of the certified LCP, including visual resources, community character, public access, and coastal resource protection policies. The City's findings were supported by evidence in the administrative record. Therefore, there is a high degree of factual and legal support for the local government's decision that the project, as conditioned, is consistent with the LCP, and this factor supports a no substantial issue finding.

2. The extent and scope of the development as approved or denied by the local government. The City approved a Local CDP to merge five parcels to allow for the construction of residential and commercial development. The proposed project would add compatible uses to the site consistent with the land use regulations for the site. The scope of the development is limited to infill urban development well served by a public highway and is not anticipated to have substantial impacts to adjacent sites or Newport Bay on the other side of the highway. Therefore, this factor supports a finding of no substantial issue.

3. The significance of the coastal resources affected by the decision. The appellants are concerned that coastal-dependent, visitor-serving recreational facilities and views will be affected by the proposed project as they are both significant resources in the area. The public park is a significant coastal resource, but it is located inland of the first public road and above the proposed development, and will not be directly impacted by the proposed development. There will be a small impact to the view from a portion of the park to a portion of Newport Bay, but the evidence in the record and the City findings provide that there will not be an adverse impact to the resource. Therefore, this factor supports a finding of no substantial issue.

4. The precedential value of the local government's decision for future interpretations of its LCP. The proposed project is consistent with the policies of the certified LCP, and the City interpreted the LCP in a manner that is consistent with the visual resources, community character, public access, and coastal resource protection policies of the Coastal Act. Thus, the City's decision will not set an adverse precedent for interpretation of the LCP. This factor supports a finding of no substantial issue.

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

The appeal raises issues about coastal dependent, visitor-serving recreational facilities and views, which are resources of statewide concern. However, the proposed project is consistent with the policies of the LCP and as a result no impacts are proposed to these resources. Additionally, the project will provide increased housing, which is an issue of statewide concern as the state grapples with a housing shortage crisis. Therefore, this factor supports a finding of no substantial issue.

Conclusion

In conclusion, the Commission finds that the appeal raises **no substantial issue** as to conformity with the policies of the City's certified LCP and the public access policies of the Coastal Act.

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

1. Executive Director Determination for 2510 West Coast Highway, Newport Beach dated July 30, 2021
2. City Council Resolution No. 2021-070
3. Planning Commission Resolution No. 2021-001
4. City of Newport Beach Coastal Development Permit No. CD2019-062
5. Tentative Parcel Map No. NP2020-013
6. Project Plans with Photo Simulations
7. Affordable Housing Implementation Plan and Density Bonus Application (No. AH2021-001) prepared by Stonybrook Realty Advisors, Inc. dated July 14, 2021
8. Zoning Clearance Letter dated June 24, 2021 to Pierce Stemler