

CALIFORNIA COASTAL COMMISSION

SOUTH COAST DISTRICT OFFICE
301 E. OCEAN BLVD, SUITE 300
LONG BEACH, CA 90802-4325
VOICE (562) 590-5071
FAX (562) 590-5084



F9b

2nd ADDENDUM

August 10, 2021

TO: Coastal Commissioners and Interested Parties

FROM: South Coast District Staff

SUBJECT: **ADDENDUM TO ITEM F9b, APPLICATION NO. A-5-NPB-21-0026 FOR THE COMMISSION MEETING OF FRIDAY, AUGUST 13, 2021.**

I. RESPONSE TO CORRESPONDENCE

On August 6, 2021, the Commission received correspondence in opposition to the staff report for Appeal No. A-5-NPB-21-0026. The correspondence was from David Tanner of Environmental & Regulatory Specialists, Inc. and is attached as **Exhibit A**. Below is Commission staff's response to the objections raised in the correspondence.

Mr. Tanner claims that the proposed project subject to the appeal is part of a larger project that involves widening of West Coast Highway that he claims will also result in the removal of the existing public sidewalks and crosswalk at Superior Avenue. This issue has been discussed in the staff report. To be clear, the project subject to the appeal does not include the widening of West Coast Highway nor does it include the removal of crosswalks, which will remain unchanged and continue to be accessible to pedestrians and bicyclists. The project subject to the appeal only includes the construction of the Superior Avenue Bridge (excluding the western bridge abutment) and expansion of Sunset View Park and the parking lot.

There is another project taking place on the east side of Superior Avenue that is associated with the project subject to the appeal. It is CDP No. 5-11-302-A2 for the construction of a western bridge abutment (structural support for a bridge) located at Sunset Ridge Park, which will also be heard at the August 2021 Commission hearing. While the City of Newport Beach has a certified LCP and would be the permit issuing authority, this project subject to an amendment is subject to review and approval by the Commission due to a prior condition of the original CDP Special Condition No. 14, Future Development Restriction. The project subject to the appeal and discussed in this staff report is within the City's LCP jurisdiction.

These two developments are linked as one project but are being processed separately because each development is subject to a different jurisdiction.

Pursuant to LCP-IP 21.50.025 Projects Bisected by Jurisdictional Boundaries, Mr. Tanner claims that a consolidated coastal development permit should have been processed in order to analyze both projects' impacts to coastal resources as a whole. The City did not pursue consolidation, and the CDP amendment is subject to review and approval by the Commission due to a prior condition of the original CDP (Special Condition No. 14, Future Development Restriction). Both projects were reviewed and found consistent with the City's LCP.

Mr. Tanner claims that the project subject to the appeal cannot obtain relief from the LCP IP development standards since the City did not demonstrate that the project is consistent with the purposes of the certified LCP and will not have an adverse effect, either individually or cumulatively, on coastal resources. In regard to the appeal project exceeding the Shoreline Height Limit, the allowable retaining wall height, and having a reduced wetland setback, the staff report addresses provisions in the LCP that allows these exceptions. Regarding Mr. Tanner's claim that the appeal project is part of a larger project resulting in the expansion of West Coast Highway, the proposed project subject to the appeal only involves the construction of the Superior Avenue Bridge (excluding the western bridge abutment) and expansion of Sunset View Park and the parking lot.

Mr. Tanner claims views from certain vantage points in Sunset Ridge Park and along Superior Avenue of the bridge subject to the appeal will impact blue water views and has provided pictures. However, Mr. Tanner's pictures do not show any impacts to blue water views as a result of the bridge. The pictures do show that there are existing residential structures that already impact the blue water views. As discussed in the staff report, based on the City's visual analysis the proposed project subject to the appeal does not significantly impact visual resources and is consistent with the City's LCP. Mr. Tanner also raises concerns about an existing Caltrans view easement which overlaps the area where the western bridge abutment would be located at Sunset Ridge Park that does not allow permanent structures within this easement. The western bridge abutment at Sunset Ridge Park is not part of the development subject to the appeal. It is associated with the development that is part of the amendment, CDP No. 5-11-302-A2, that will also be heard at the August 2021 Commission Hearing. While not part of the appeal, the City has indicated that they are finalizing an agreement with Caltrans to remove this portion of the scenic easement. To ensure that the project subject to the amendment adheres to the requirements from Caltrans, as well as others as applicable, staff is recommending the Commission impose **Special Condition No. 13**, as amended, which requires the permittee to comply with all the requirements of Caltrans.

Mr. Tanner claims that the project subject to the appeal will impact the wetland located along West Coast Highway. The proposed development subject to the appeal does result in reduced setbacks from this wetland as analyzed in the staff report. LCP provisions allow for reduced wetland setbacks, and the project is consistent with the City's LCP. No direct impacts to the wetland were identified by the City.

Mr. Tanner claims that the City incorrectly identifies the bridge as a government facility in order to allow the increase in height over what is allowed in the Shoreline Height Limit Area pursuant to the City's LCP. As discussed in the staff report, the proposed project subject to the appeal meets the definition of government facilities in the City's LCP, IP Policy 21.70.020 Definition of Specialized Terms and Phrases, and thus is allowed to exceed the allowable height in the Shoreline Height Limit Area. Mr. Tanner claims that a different definition in the LCP, IP Policy 21.30.060 Height Limits and Exceptions, is

applicable. However, pursuant to IP Policy 21.70.010 Purpose of Part, if the definition in this part of the IP conflicts with another definition in the Municipal Code, these definitions shall control for the purposes of the IP. Thus, the definition of Governmental Facility pursuant to IP Policy 21.70.020 is applied and the project meets this definition, as discussed in the staff report.

II. CHANGES TO STAFF REPORT

Commission staff recommends changes to the staff report for Item F9b, dated July 30, 2021. The following modifications clarify that only inland views and not coastal views will be impacted by the proposed retaining walls. Language to be added is shown in underlined text, and language to be deleted is identified by ~~strike out~~.

Page 14 – Appellants’ Argument No. 2: The City action fails to protect scenic and visual qualities of coastal areas, as follows:

...

While consistent with the LCP to exceed allowed retaining wall heights, the retaining walls also do not impact any blue water views. These retaining walls would be located along Superior Avenue and along West Coast Highway. No adverse impacts to the views of the coast from Superior Avenue will be created as bluewater views are already impeded by existing development, as discussed above. In addition, while the retaining walls placed along West Coast Highway will be as tall as 25 ft. tall and taller than existing development located at the same location, only existing inland views from West Coast Highway will be affected by the development ~~are already impeded by existing development including Sunset Ridge Park, Sunset View Park and the parking lot and the proposed retaining walls will not impact any inland views not already impacted~~ ([Exhibit No. 4](#)).

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.

EXHIBIT A

Mr. Chairman and Members of the Commission

Subject: Supplemental Comments: Appeal No. A-5-NPB-21-0026 (City of Newport Beach)
New comments: Permit Amendment No. 5-11-302-A2 (City of Newport Beach)

We offer the following comments to support your decision that the CDP Appeal **does raise substantial issues** and our concerns regarding the associated CDP Amendment.

1. Community supports - Additional public parking and access. The Community supports the idea of additional public parking and access to coastal resources including Sunset Ridge and Sunset View Parks, but not if the additional parking and access is part of the widening of West Coast Highway at Superior Avenue.

2. Community concern - The removal of public access. The community has become aware of a larger project, “the West Coast Highway and Superior Ave/Balboa Blvd Intersection Improvement Plan” and is concerned that if this project is approved, the existing public sidewalks and crosswalk at Superior Avenue will be removed and the public will have no choice but to cross Superior Avenue and WCH by bridge which will be an inconvenience for pedestrians and bicyclists and a hardship for children in strollers; the disabled and handicapped. The proposed bridges have no elevator access. Both sides of the Superior bridge are accessed by long zig zag walkways. This project represents Phase 1 of the larger project. The removal of public sidewalks and crosswalks will occur in Phase 2. Phase 2 cannot proceed if Phase 1 is not constructed.

3. Community concern - The project is part of a larger project not being discussed. Since 2014 the city, in coordination with Caltrans and OCTA, has been developing detailed plans for the widening of the intersection of Superior Ave and Pacific Coast Highway.¹ These improvements implement the long-range (2040) California Transportation Plan (CTP) required by federal and State law. The CTP is incorporated in the Orange County Master Plan of Arterial Highways and incorporated in the City General Plan, Circulation Element. **Figure 1** provides a copy of the **West Coast Highway and Superior Ave/Balboa Blvd Intersection Improvement Plan**.

The project represents Phase 1 of a 2-phased improvement plan for the intersection of Superior and WCH. At the August 25, 2020, City Council meeting, the Public Works Department described the intersection improvements as follows:

“The Superior Avenue Bridge project involves constructing a new pedestrian bridge across Superior Avenue and a new larger parking lot. The new pedestrian bridge will improve access to Sunset Ridge Park and the new larger parking lot will provide additional parking for visitors to Sunset Ridge Park and the beach. The WCH Bridge project involves widening West Coast Highway to increase vehicular capacity and constructing a pedestrian bridge across West Coast Highway. With the completion of both projects, sidewalks and two crosswalks at this intersection can be eliminated as pedestrians will be able to use the two new bridges and ramps. Eliminating two crosswalks and moving the pedestrians from the street level to the bridges and ramps will significantly improve pedestrian access and safety. This will also greatly improve traffic signal operation and vehicular circulation by allowing more traffic signal green time for vehicles traveling through the intersection.”

¹ West Coast Highway and Superior Ave/Balboa Blvd Intersection Improvement Plan (Phase 2)
<file:///B:/City%20of%20Newport%20Beach%20-%20Matters%20-%20General%20Plan/Superior%20Bridge/FINAL%20NPB%20OCTA%20RCP%20ICE%2010-17-2018.pdf>

City Staff reported to the City Council at this meeting that an Environmental Impact Report (EIR) is being prepared for the WCH Bridge project (Phase 2) indicating that the project has the potential for one or more potentially significant adverse impacts.

In August 2020 the City publicly acknowledged Federal Congestion Mitigation and Air Quality Funds (CMAQ) and state funding had been secured for construction of Phase 1 and partial funding for Phase 2. Both Phases are included in the city Capital Improvement Program for FY2020-21 through 2025-26.² Phase 2 is clearly active and on-going at this time.

The following comments are based on the assumption LCP Section 21.52.025(B) would apply and the project analysis would address the whole of the project, not 2 separate independent applications, in effect piecemealing the analysis of the project's impacts to coastal resources.

"LCP-IP 21.50.025 Projects Bisected by Jurisdictional Boundaries

B. Projects Bisected By City and Coastal Commission Jurisdiction. Where a proposed development is located within both the Coastal Commission's and City's coastal Newport Beach LCP Implementation Plan development permit jurisdictions, coastal development permits are required by both the City and the Coastal Commission. Alternatively, if the applicant, the City and the Coastal Commission agree, the Coastal Commission can process a consolidated coastal development permit application pursuant to the procedures in Public Resources Code, section 30601.3."

4. Community concern - The Commission/City is failing to comply with LCP Section 21.52.090.A

21.52.090 Relief from Implementation Plan Development Standards.

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.

To obtain relief from LCP Implementation Plan Development Standards, the city must demonstrate the Protect is consistent with the purposes of the certified LCP and will not have an adverse effect, either individually or **cumulatively**, on coastal resources. The Commission is failing to consider cumulative impacts (Phase 2 of the West Coast Highway and Superior Ave/Balboa Blvd Intersection Improvement Plan) on coastal resources.

² Newport Beach Capital Improvement Program for FY2020-21 through 2025-26 (refer to page 71)
<file:///B:/City%20of%20Newport%20Beach%20-%20Matters%20-%20General%20Plan/Superior%20Bridge/ADOPTEDCIPFiscalYear202021%20pg%2071.pdf>

5. Community concern - The Project will not protect existing coastal blue-water views from Superior Avenue and Sunset Ridge Park

Sunset Ridge Park: The bridge deck elevation is proposed to be even with the top of the existing Sunset Ridge Park stairway/walkway elevation. Bridge improvements will extend into the park. Bridge improvements (bridge railing and screening) above the deck elevation total approximately 6 feet will impact coastal blue-water views from locations within the park. **Figures 2 & 3** provide factual evidence showing locations of project coastal blue-water view impact from Sunset Ridge Park.

Figure 2
View southeasterly from the walking path at the western terminus of the Superior Bridge



(Photo date 8-5-21)

Figure 3
View looking southeasterly from the park bench along norther-central walkway



(Photo date 8-5-21)

The state reinforced their intent to protect the coastal blue water views in the sale of the property to the City in 2006 by establishing an easement for scenic view and open space purposes. It is the intent of the state that structures and paving be prohibited within this easement.³

“GRANTEES USE OF SAID EASEMENT AREA SHALL BE LIMITED TO THOSE "PERMITTED" USES UNDER GRANTEE'S ZONING DESIGNATION OPEN SPACE - ACTIVE AS DEFINED UNDER TITLE 20 OF GRANTEE'S ZONING CODE AS IT EXISTED ON OCTOBER 12, 2006. ADDITIONALLY THE GRANTEE IS PROHIBITED FROM PLACING PERMANENT STRUCTURES OR PAVEMENT WITHIN THE EASEMENT AREA, AND NO PARKING OF MOTORIZED VEHICLES SHALL BE PERMITTED WITHIN THE EASEMENT AREA.”

Superior Avenue: Coastal Land Use Plan, Coastal Views, Policy 4.4.1-6 requires the protection of views from Superior Avenue from Hospital Road to Coast Highway. The bridge will impact coastal blue-water views from a portion of Superior Avenue and its sidewalks. **Figures 4, 5 & 6** provides factual evidence showing three locations where the project impacts coastal blue-water views from Superior Avenue and adjacent public sidewalks.

³ Directors Deed 040766-01-01 https://nbgis.newportbeachca.gov/images/pdf/OR/OR_2006000813583.pdf

Figure 4
View southerly from Superior Ave. center median (photo date 8-5-12)



(Photo date 8-5-21)

Figure 5
Viewing southerly from west Superior Ave. sidewalk adjacent to Sunset Ridge Park



(Photo date 8-5-21)

Figure 6
Viewing southerly from east Superior Ave. sidewalk



(Photo date 8-5-21)

The Project conflicts with Policy 4.4.1-1 which requires “protection” of coastal views, and Section 30251 – “The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance.”

6. Community concern – The Project will impact coastal wetlands (The WCH wetland). The analysis failed to consider the impact of remedial grading and the retaining wall footing on the West Coast Highway wetland. The wetland is fed by a groundwater seep. Proposed remedial grading, soil compaction and retain wall footing will directly impact the wetlands.

7. Community concern – The project does not meet the intent of a government facility. The city relies on the LCP-IP exceptions for government facility to exceed the maximum height limit. The intent of the coastal act and LCP is that government facilities constitute a major project or projects such as “lifeguard towers, tsunami warning sirens, architectural design features that accommodate emergency vehicles or essential equipment, etc.” and “e.g., City Hall, community recreation center, post office, library, etc.”. Nowhere in the applicable government code sections are public parks referenced by name.

LCP Section 21.30.060 Implementation Plan, Height Limits and Exceptions, is the applicable definition of a government facility when seeking an exception to height limits. The proposed bridge does not contain “architectural design features that accommodate emergency vehicles or essential equipment, etc.”. and therefore, the project is not a government facility for the purpose of qualifying for an exception for an increase in height limit.