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STAFF REPORT: APPEAL – NO SUBSTANTIAL ISSUE

Appeal No.: **A-5-NPB-21-0026**

Applicant: **City of Newport Beach Public Works Department**

Local Government: City of Newport Beach

Local Decision: Approval with Conditions

Appellants: Environmental & Regulatory Specialists, Inc., and 10 individuals: Jackie Cota, Mary G. Howard, Sandra Aryes, Charles Klobe, Peggy Palmer, Patrick Gormley, Janice Gormley, Michael Palmer, Barbara Lyon, and Edward Lyon

Project Location: Northern (inland) side of the intersection of West Coast Highway (WCH) and Superior Avenue (APNs: 424-041-13, 424-041-11, 424-041-12, 424-042-02, 424-042-03, and 424-041-09)

Project Description: Appeal of City of Newport Beach Local Coastal Development Permit No. CD2020-143 to construct a pedestrian and bicycle bridge across Superior Avenue, an expanded parking lot, and open space improvements to Sunset View Park.

Staff Recommendation: No Substantial Issue.

IMPORTANT HEARING PROCEDURE NOTE: 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.

SUMMARY OF STAFF RECOMMENDATION

The City of Newport Beach approved a local coastal development permit (CDP) and Mitigated Negative Declaration (MND) and MND Addendum for development located on an inland lot on the east side of Superior Avenue at the intersection of Superior Avenue and West Coast Highway in the City of Newport Beach on the east side of Superior Avenue consisting of the demolition of an existing 64 space surface parking lot and the construction of a new 130-space surface parking lot with a pedestrian/bicycle concrete bridge over Superior Avenue. The proposed bridge includes a staircase from the bridge down to the corner of Superior Avenue and West Coast Highway, and the project also includes open space improvements to Sunset View Park. The City's project also includes earthwork, grading, retaining walls, and landscaping improvements. The proposed bridge will connect to Sunset Ridge Park located on the west side of Superior Avenue.

On March 22, 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 March 24, 2021. On April 5, 2021, Environmental & Regulatory Specialists, Inc. filed the appeal during the ten (10) working day appeal period. No other appeals were received. The City and applicant were notified of the appeal by Commission staff in a letter dated April 5, 2021.

The appellants raise the following concerns with the City-approved development: 1) the City failed to consider development within a Scenic View and Open Space Easement; 2) the City action fails to protect scenic and visual qualities of coastal areas; 3) the City action fails to minimize landform alteration and provide design alternatives; 4) the City incorrectly asserts the project is a government facility; 5) the City action fails to provide adequate wetland buffers; 6) the City failed to address LCP environmental concerns; 7) the City failed to provide data to justify the need for the project; 8) the City fails to acknowledge the project is part of a larger project for compliance with CEQA and LCP/Coastal Development Permit review; and 9) the City failed to evaluate the project's impact to bicyclists and pedestrians crossing West Coast Highway.

The appellants assert that scenic resources and wetlands will be impacted by the proposed project. However, existing blue water views will remain and only already impeded coastal views will be impacted by the proposed project. While the project does exceed the height limit established for the Shoreline Height Limit Area and the height limit for retaining walls, it does so consistent with provisions in the City's LCP.

The appellants also assert that the City failed to consider development within a scenic view and open space easement. The proposed bridge adjacent to Sunset Ridge Park does lie within a scenic view easement held by the California Department of Transportation. However, the City has indicated that it is finalizing an agreement with Caltrans to remove this portion from the scenic easement, which will be heard at an upcoming Caltrans hearing. Even though this scenic view easement has been raised, the

proposed project does not result in adverse impacts to visual resources.

The appellants also assert that the project site is a bluff and will be altered by the project. However, the site is not a significant natural landform as it was created by the realignment of Superior Avenue. The appellants also assert that alternatives designs were not considered that minimized landform alteration. The City did evaluate another alternative but decided against it due to numerous reasons.

There is a wetland located on the project site and the appellants assert that there are inadequate wetland buffers proposed. Reduced wetland buffers are proposed that are less than the minimum 100 ft. setback identified in the LCP. However, the LCP does include provisions for the allowance of reduced setbacks. The reduced setbacks are due to onsite engineering constraints and are still protective of the wetland and thus consistent with the policies of the City's LCP that allows reduced setbacks.

The appellants also assert that the City has failed to justify the need for the project. The City has indicated that the project will improve safety and access to Sunset Ridge Park and increase the parking available for visitors. As such, public access will be enhanced and maximized by the project, consistent with the goals of the LCP.

The appellants assert that the proposed project is part of a larger project, including the West Coast Highway Bridge Project, to widen the capacity of the Superior Avenue and West Coast Highway intersection. Furthermore, the appellants claim that the City failed to disclose the project in its entirety and as such was not analyzed together to determine any potential environmental impacts as required by CEQA. However, as indicated by Coastal Act Section 30603, compliance with CEQA is not grounds for an appeal of a local CDP.

The appellants assert that the City failed to evaluate the project's impact to bicyclists and pedestrians crossing Superior Avenue and West Coast Highway. The appellants allude to the crosswalks being unsafe and being removed as part of the proposed project in order to facilitate the previously mentioned West Coast Highway Bridge Project and thus linking the two projects and requiring CEQA review of both projects together. However, as indicated by Coastal Act Section 30603, compliance with CEQA is not grounds for an appeal. The City has indicated that the existing crosswalks will not be removed and will remain unchanged and continue to be accessible to pedestrians and bicyclists.

Therefore, Staff recommends that the Commission determine that **no substantial issue exists** with respect to the grounds on which appeal number A-5-NPB-21-0026 has been filed. The motion and resolution can be found on Page 5 of the staff report.

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.

TABLE OF CONTENTS

I. MOTION AND RESOLUTION – SUBSTANTIAL ISSUE5
II. APPELLANTS’ CONTENTIONS5
III. LOCAL GOVERNMENT ACTION6
IV. APPEAL PROCEDURES.....6
V. FINDINGS AND DECLARATIONS – SUBSTANTIAL ISSUE7
 A. PROJECT DESCRIPTION AND LOCATION 7
 B. LOCAL COASTAL PROGRAM CERTIFICATION..... 8
 C. FACTORS TO BE CONSIDERED IN SUBSTANTIAL ISSUE ANALYSIS..... 8
 D. SUBSTANTIAL ISSUE ANALYSIS 9
APPENDIX A – SUBSTANTIVE FILE DOCUMENTS23

EXHIBITS

[Exhibit No. 1 – Location Map](#)

[Exhibit No. 2 – City-approved Project Plans](#)

[Exhibit No. 3 – Figure 4-1: Updated Bridge Design Ocean Viewpoint](#)

[Exhibit No. 4 – Existing & Proposed View of Location of Retaining Wall Along West Coast Highway](#)

[Exhibit No. 5 – West Coast Highway Wetlands](#)

[Exhibit No. 6 – Planning Commission Resolution - No. PC2021-005](#)

[Exhibit No. 7 – Appeal](#)

I. MOTION AND RESOLUTION – SUBSTANTIAL ISSUE

Motion: I move that the Commission determine that Appeal No. A-5-NPB-21-0026 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-21-0026** 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. 2020-143 on March 22, 2021. Local CDP No. 2020-143 approves the construction a pedestrian and bicycle bridge across Superior Avenue, an expanded parking lot, and open space improvements to Sunset View Park.

On April 5, 2021, an appeal was filed by Environmental & Regulatory Specialists, Inc. ([Exhibit No. 7](#)). 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 consider development within a Scenic View and Open Space Easement.
- 2) The City action fails to protect scenic and visual qualities of coastal areas.
- 3) The City action fails to minimize landform alteration and provide design alternatives.
- 4) The City incorrectly asserts the Project is a Government Facility.
- 5) The City action fails to provide adequate wetland buffers.
- 6) The City failed to address LCP environmental concerns.
- 7) The City failed to provide data to justify the need for the project.
- 8) The City fails to acknowledge the project is part of a larger project for compliance with CEQA and LCP/Coastal Development Permit review.
- 9) The City failed to evaluate the project's impact to bicyclists and pedestrians crossing West Coast Highway.

III. LOCAL GOVERNMENT ACTION

A public meeting was held by the City's Parks, Beaches, and Recreation Commission on August 6, 2019, in the City Council Chambers. At this public meeting, that commission recommended City Council approval of the project design.

The Mitigated Negative Declaration ND2019-002 for the project was approved and adopted by the Newport Beach City Council on November 19, 2019 via Resolution No. 2019-102.

Changes to the project occurred after the MND was approved, including an updated bridge design. Thus, the City prepared an Addendum to the MND. The City also prepared the local CDP No. CD2020-143 for the Superior Ave Pedestrian Bridge and Parking Lot project (excluding the western bridge abutment at Sunset Ridge Park, being processed separately by the Commission as 5-11-301-A1). This local CDP and MND Addendum was approved and adopted by the City Zoning Administrator on December 10, 2020 via Resolution No. ZA2020-082.

The City zoning administrator approved a local CDP for development of the replacement of the parking lot and the majority of the pedestrian bridge on December 10, 2020. On January 4, 2021, a local CDP appeal was filed. A de novo public hearing was conducted during the City's Planning Commission meeting on March 4, 2021 and the Planning Commission affirmed the decision of the Zoning Administrator to adopt the MND Addendum and approve the CDP via Resolution No. PC2021-005 ([Exhibit No. 6](#)).

On March 22, 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 March 24, 2021. On April 5, 2021, Environmental & Regulatory Specialists, Inc. filed the appeal during the ten (10) working day appeal period ([Exhibit No. 7](#)). No other appeals were received. The City and applicant were notified of the appeal by Commission staff in a letter dated April 5, 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. Development approved by cities or counties may be appealed 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. 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(a)(1) of the Coastal Act establishes the project site as being in an appealable area within 100ft. of a wetland

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 Environmental & Regulatory Specialists, Inc. opposed the project in person at the local hearing. Testimony from other persons regarding the substantial issue question must be submitted in writing. (Id.) 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 an inland lot located on the east side of Superior Avenue at the intersection of Superior Avenue and West Coast Highway in City of Newport Beach ([Exhibit No. 1](#)). The proposed development consists of demolition of the existing 64-space surface parking lot and the construction of a new 130-space surface parking lot, with a pedestrian/bicycle concrete bridge over Superior Avenue. The proposed bridge includes a staircase from the bridge down to the corner of Superior Avenue and West Coast Highway, and the project also includes open space improvements to Sunset View Park. The project also includes construction of retaining walls and landscaping improvements. Grading is proposed that will consist of 20,000 cubic yards of excavation. Most of the excavated material, approximately 17,000 cubic yards, will be used on site as fill as part of the parking lot construction and the remaining 3,000 cubic yards will be exported offsite outside the coastal zone ([Exhibit No. 2](#)).

There is also a second component of this project that is located on an inland lot on the west side of Superior Avenue at the intersection of Superior Avenue and West Coast Highway ([Exhibit No. 1](#)). That part of the proposed project consists of the construction of a western bridge abutment (structural support for a bridge) located at Sunset Ridge Park. The abutment will be supported by two precast concrete piles and wing walls. A short segment of a single span concrete arch pedestrian and bicycle bridge, supported by the abutment, will be installed over Superior Avenue connecting the new pedestrian and bicycle bridge to an existing walkway at Sunset Ridge Park. The City also proposes temporary grading and restoration of disturbed existing landscape improvements. Upon completion of the western bridge abutment, the surrounding area will be restored to pre-construction condition. No

landscaping is proposed other than the restoration of disturbed landscape improvements (Coastal Sage Scrub). While the City of Newport Beach has a certified LCP and would be the permit issuing authority for new development within its jurisdiction, the proposed project 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. This proposal is subject to a separate staff report for CDPA No. 5-11-302-A1, which is also to be heard by the Commission on August 13, 2021.

The project site is an inland lot located on the east side of Superior Avenue at the intersection of Superior Avenue and West Coast Highway in Newport Beach ([Exhibit No. 1](#)). The site is not located between the first public road and the sea nor is it within 300 ft. of the beach. The project is located within 100 ft. of a wetland and as such, the development approved by the City of Newport Beach pursuant to its certified LCP is appealable to the Coastal Commission at this project site. The project site is located within the Parks and Recreation (PR) Coastal Land Use Plan category and Parks and Recreation (PR) Coastal Zoning District. This zone is intended to provide for active public or private recreational use. The surrounding area is developed with a variety of uses, including Superior Avenue to the north, West Coast Highway to the south, Sunset Ridge Park and residential development to the west, and Hoag Hospital and residential development to the east.

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

See Appendix A for a list of substantive file documents.

Appellants' Argument No. 1: The City failed to consider development within a Scenic View and Open Space Easement.

The appellants assert that the proposed project lies within a scenic view easement that prohibits placing permanent structures or pavement within the easement. The appellants further state that the proposed project will result in significant visual impacts. The proposed bridge adjacent to Sunset Ridge Park does lie within a scenic view easement held by the California Department of Transportation. However, the City has indicated that it is finalizing an agreement with Caltrans to remove this portion from the scenic easement, which will be heard at an upcoming Caltrans hearing. Even though this scenic view easement has been raised, the underlying argument that the development impacts visual resources is not supported by evidence, and the entire proposed project will not result in adverse impacts to visual resources. Existing views to the coast from Sunset Ridge Park and Superior Avenue are already impacted and the proposed project will not change that. The new parking area will not block existing views because it is at a lower elevation than the park and is on the inland side of Coast Highway, with additional development between it and the coast. This is explained in response to the appellants' second argument, below. Thus, visual resources will not be impacted, and the City did analyze development for impacts to visual resources consistent with the LCP, which is the standard of review. Therefore, the appellants' contention does not raise a substantial issue.

Appellants' Argument No. 2: The City action fails to protect scenic and visual qualities of coastal areas.

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

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:

Protect public coastal views from the following roadway segments:

- Superior Avenue from Hospital Road to Coast Highway

Implementation Plan, Fences, Hedges, Walls and Retaining Walls, 21.30.040, states in relevant part,

This section provides standards for the provision of fences, hedges, walls, and retaining walls for development in all coastal zoning districts.

A. Maximum Height Allowed.

2. Retaining Walls. The maximum height of a retaining wall shall be eight feet measured from finished grade at the base of the wall, not including any required guardrails. A minimum horizontal separation equal to the height of the tallest retaining wall shall be provided between retaining walls, except that the required separation shall not be more than six feet. The above requirements shall not apply to retaining walls that are an integral part of principal structures. An increase in the height of a retaining wall may be requested in compliance with Chapter 21.52 (Coastal Development Review Procedures).

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).

...

- 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).

16. Government Facilities. Structures owned, operated, or occupied by the City or other governmental agency to provide a governmental service to the public may be allowed to exceed the height limit subject to the approval of a coastal development permit in compliance with Chapter 21.52 (Coastal Development Review Procedures) where the increase in height is necessary to accommodate design features required for the facility to function (e.g., lifeguard towers, tsunami warning sirens, architectural design features that accommodate emergency vehicles or essential equipment, etc.). (Ord. 2019-5 §§ 3, 4, 2019; Ord. 2016-19 § 1 (Exh. A)(part), 2016)

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.

Implementation Plan, Purpose of Part, 21.70.010, states in relevant part,

This part provides definitions of terms and phrases used in this Implementation Plan that are technical or specialized, or that may not reflect common usage. If the definitions in this part conflict with definitions in other provisions of the Municipal Code, these definitions shall control for the purposes of this Implementation Plan. If a word is not defined in this part, or elsewhere in this Implementation Plan, the most common dictionary definition is presumed to be correct.

As used in this Implementation Plan, the following terms and phrases shall have the meaning ascribed to them in this part, unless the context in which they are used clearly requires otherwise. (Ord. 2016-19 § 9 (Exh. A)(part), 2016)

Implementation Plan, Definition of Specialized Terms and Phrases, 21.70.020, states in relevant part,

“Governmental facility (land use)” means a structure owned, operated, or occupied by the City or other governmental agency to provide a governmental service to the public (e.g., City Hall, community recreation center, post office, library, etc.).

Section 30251 of the Coastal Act, Scenic and visual qualities, incorporated by reference in the City’s certified LCP (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 Sunset View Park and its parking lot are on a coastal bluff face that would be altered by the proposed project, and thus the project is inconsistent with the City’s certified LCP. The appellants also claim that the proposed project fails to protect scenic and visual coastal resources from and to the project site inconsistent with the City’s certified LCP.

The location where the city park and parking expansion is to take place consists of two halves. The lower half consists of the of the existing Sunset View Park and the parking lot and the upper half is undeveloped. As proposed, the currently undeveloped portion will be developed as an expansion of the existing parking lot. The entire developed and undeveloped project site came about as a result of the Superior Avenue realignment project in 1982 where excess soils that were generated from the grading for the current alignment of Superior Avenue were placed on the project site. Thus, what the appellants considers a coastal bluff is actually the excess spoils material excavated from the roadway realignment. Therefore, the appellants’ argument that the project is inconsistent with CLUP Policy 4.4.1-1, cited above, which states that new development shall minimize alterations to significant natural landforms including bluffs, is incorrect since the project location is not a bluff. Therefore, the appellants’ contention that the bluff is being altered inconsistent with the City’s certified LCP does not raise a substantial issue.

Existing views to the coast from Sunset Ridge Park, Sunset View Park, and Superior Avenue are already impacted and the proposed project will not change that. Public views of the coast are provided at Sunset Ridge Park, including from higher elevations than the highway and commercial and residential development below. Based on the applicant’s simulations, views of the coast will not be impacted by the proposed pedestrian and bicycle bridge as shown in “Figure 4-1: Updated Bridge Design Ocean Viewpoint” in the MND Addendum dated October 2020 ([Exhibit No. 3](#)). Existing blue water views from these park elevations will remain and existing view angles which are currently obstructed by

residential structures will not be obstructed by the proposed bridge. No views from designated scenic highways or trails would be impacted. 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 and 4.4.1-2 and Section 30251 of the Coastal Act, incorporated by reference in the City's certified LCP, all cited above. Impacted public views of the coast are already present and the proposed project would only impact those already affected views and not impact public coastal views from the park. In addition, the proposed bridge will not impact coastal public views as one travels down Superior Avenue toward Coast Highway. Similar to the views from the higher elevations from the park, the views from Superior Avenue are not of the beach or ocean. As such, only already impeded views of the coast will be impacted by the proposed project. The City's certified LCP identifies available public views from Sunset Ridge Park and Sunset View Park in the LUP Map Coastal Views Map 4-3 and also identifies Superior Avenue as a coastal view road per CLUP Policy 4.4.1-6, cited above. As part of the project, improvement to Sunset View Park will occur including raising the location of the park to be consistent with the height of the Superior Avenue Bridge so that access between these two is unobstructed. As such, no coastal views from Sunset View Park will be impacted, as they may be improved as a result of the park elevation being raised. As the proposed project would not impact coastal public views from Sunset Ridge Park, Sunset View Park, or from Superior Avenue, the proposed project would be consistent with the visual resource policies of 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 ft. 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 bridge at its tallest point would be approximately 32 ft., which is taller than the allowed 26 ft., but is less than the allowed maximum height of 35 ft. As stated, the LCP does include provisions that allow an increase in height than what is allowed in the Shoreline Height Limit Area with approval of a CDP. One such provision states that structures owned, operated, or occupied by the City or other governmental agency to provide a governmental service to the public may be allowed to exceed the height limit subject to the approval of a coastal development permit where the increase in height is necessary to accommodate design features required for the facility to function. Here, the City has indicated that the bridge is a government facility, and that the height of the proposed bridge is necessary to provide adequate vertical clearance for vehicular traffic to travel along Superior Avenue, as well as to provide a bridge with the proper slope for the walking surface to be compliant with the American with Disabilities Act (ADA), and also to provide necessary guardrails and projectile barriers. The City's certified LCP (IP Policy 21.70.010 Purpose of Part and IP Policy 21.70.020 Definitions of Specialized Terms and Phrases) defines "governmental facility" as a structure owned, operated, or occupied by the City or other governmental agency to provide a governmental service to the public and the bridge meets this definition. The proposed bridge will be a capitol asset owned and maintained by the City to facilitate access to Sunset Ridge Park which provides governmental services in the form of passive and programmed recreational opportunities. As such, the need for the increase in height above what is allowed in the Shoreline Height Limit Area is consistent with the City's certified LCP. In addition, processing of the CDP for the proposed project, including the increase in height above what is allowed in the

Shoreline Height Limit Area, is consistent with the City's certified LCP.

The proposed project also includes retaining walls up to a height of 25 ft. that will support the new surface parking lot and the public plaza and viewing benches adjacent to the parking lot, assist to achieve sufficient vertical clearance under the proposed pedestrian and bicycle bridge, and will support the expanded passive open space at Sunset View Park. These retaining walls will not impact visual resources as existing inland views are already impacted by existing development ([Exhibit No. 4](#)). Pursuant to IP Section 21.30.040, cited above, retaining walls are allowed a maximum height of 8 ft. However, IP Section 21.52.090, cited above, includes provisions to deviate from the 8 ft. maximum retaining wall height through approval by a coastal development permit due to special circumstances, such as topography. In this case, significant earthwork and grading are necessary to create a project site suitable for the larger, 128-space surface parking lot. In addition, retaining walls up to 25 ft. are needed since the grade of the parking lot must be raised to allow the construction of the pedestrian and bicycle bridge between the subject site and the higher grade of Sunset Ridge Park. Lastly, the retaining walls exceeding 8 ft. in height are necessary to support the expansion of the City's public park, Sunset View Park, to support public coastal views. As such, the need for the increase in height above what is allowed in the LCP based on topography is consistent with the City's certified LCP.

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, existing inland views from West Coast Highway 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.

Appellants' Argument No. 3: The City action fails to minimize landform alteration and provide design alternatives.

Appellants' Argument No. 5: The City action fails to provide adequate wetland buffers.

Coastal Land Use Plan, Wetland Definition and Delineation, Policy 4.2.2-3 states:

Require buffer areas around wetlands of a sufficient size to ensure the biological integrity and preservation of the wetland that they are designed to protect. Wetlands shall have a minimum buffer width of 100 feet wherever possible. Smaller wetland buffers may be allowed only where it can be demonstrated that 1) a 100-foot wide

buffer is not possible due to site-specific constraints, and 2) the proposed narrower buffer would be amply protective of the biological integrity of the wetland given the site-specific characteristics of the resource and of the type and intensity of disturbance.

Implementation Plan, Wetlands, Deepwater Areas, and Other Water Areas, 21.30B.040, states in relevant part:

A. Protection Required.

1. The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes shall be protected, maintained and, where feasible, restored.

...

C. Wetland Buffers. A protective open space buffer shall be required to horizontally separate wetlands from development areas. Wetland buffers shall be of a sufficient size to ensure the biological integrity and preservation of the wetland. Wetlands shall have a minimum buffer width of one hundred (100) feet wherever possible.

1. Exception: Smaller wetland buffers may be allowed only where it can be demonstrated that:
 - a. A one hundred (100) foot wide buffer is not possible due to site-specific constraints; and
 - b. The proposed narrower buffer would be amply protective of the biological integrity of the wetland given the site-specific characteristics of the resource and of the type and intensity of disturbance.

The appellants assert that the proposed project fails to minimize landform alteration and provide design alternatives. The appellants also state that the height of the bridge and the retaining walls that are allowed to exceed the height limit and the parking lot that requires extensive grading into the coastal bluff are not supported by a finding that this landform alteration is the minimum amount necessary to support the development. Furthermore, the appellants claim that the City fails to provide adequate wetland buffers and that design alternatives were not analyzed that do not require the bridge and parking lot be constructed within 100 ft. of two wetlands.

The location of the existing Sunset View Park and parking lot that is to be expanded is not considered a coastal bluff as discussed earlier in the report. The landform where the Sunset View Park and the parking lot is located is also not a significant natural landform as it was created with the excess soils from the realignment of Superior Avenue. Thus, the landform alteration that takes place with the project is not to a significant natural landform and is therefore consistent with LCUP Policy 4.4.1-1. However, as discussed earlier, while the height of the bridge and retaining walls do exceed the height limits, they do so consistent and as allowed by the City's certified LCP.

An isolated .03-acre wetland is located on the project site facing West Coast Highway ([Exhibit No. 5](#)). The proposed parking lot has a maximum setback 75 ft. from the wetland, while grading taking place on the project site has a maximum setback of 10 ft. from the wetland. While the City's certified LCP requires a minimum 100 ft. setback from wetlands, wherever possible, the LCP provides for reduced wetland setbacks.

Pursuant to the LCP, a reduced buffer is allowed if there are site-specific constraints and if the narrower buffer would be amply protective of the biological integrity of the wetland given the site-specific characteristics of the resource and of the type and intensity of disturbance. Regarding the West Coast Highway Wetland, the City indicates that due to onsite engineering constraints that would otherwise eliminate essential components of the project, a reduced wetland setback is necessary. The MND states that the reduced buffers from the wetland still protects the wetlands. The MND supports this determination by stating that the reduced 100 ft. setback is sufficient enough since there are existing on-going urban activities less than 20 ft. away, the wetland is relatively small in size (0.03 acres) and the wetland is isolated from any adjacent habitat having substantive ecological value as a resource. The Commission's biologist has also reviewed this analysis and agrees with the conclusion.

The appellants state that there is an insufficient buffer for a second wetland, which is located on the west side of Superior Avenue. However, that wetland is not located with the project area subject to the City's CDP. Thus, the adequacy of that wetland buffer is not evaluated in this appeal staff report. Instead, it is analyzed in the staff report for CDPA No. 5-11-302-A1, which is also to be heard by the Commission on August 13, 2021.

The City indicated that it previously considered construction of a two-story subterranean parking structure alternative as part of the proposed parking lot expansion, but the City decided against it because it would require additional grading, retaining walls, waterproofing, a significant amount of soil support, and the cost was significant.

Therefore, the appellants' contention that the project fails to minimize landform alteration and provide design alternatives and fails to provide adequate wetland buffers does not raise a substantial issue.

Appellants' Argument No. 4: The City incorrectly asserts the Project is a "Government Facility."

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

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\(F\)](#).

16. Government Facilities. Structures owned, operated, or occupied by the City or other governmental agency to provide a governmental service to the

public may be allowed to exceed the height limit subject to the approval of a coastal development permit in compliance with Chapter [21.52](#) (Coastal Development Review Procedures) where the increase in height is necessary to accommodate design features required for the facility to function (e.g., lifeguard towers, tsunami warning sirens, architectural design features that accommodate emergency vehicles or essential equipment, etc.). (Ord. 2019-5 §§ 3, 4, 2019; Ord. 2016-19 § 1 (Exh. A)(part), 2016)

Implementation Plan, Purpose of Part, 21.70.010, states in relevant part,

This part provides definitions of terms and phrases used in this Implementation Plan that are technical or specialized, or that may not reflect common usage. If the definitions in this part conflict with definitions in other provisions of the Municipal Code, these definitions shall control for the purposes of this Implementation Plan. If a word is not defined in this part, or elsewhere in this Implementation Plan, the most common dictionary definition is presumed to be correct.

As used in this Implementation Plan, the following terms and phrases shall have the meaning ascribed to them in this part, unless the context in which they are used clearly requires otherwise. (Ord. 2016-19 § 9 (Exh. A)(part), 2016)

Implementation Plan, Definition of Specialized Terms and Phrases, 21.70.020, states in relevant part,

“Governmental facility (land use)” means a structure owned, operated, or occupied by the City or other governmental agency to provide a governmental service to the public (e.g., City Hall, community recreation center, post office, library, etc.).

The appellants assert that the City incorrectly asserts the project is a “government facility.” Commission staff posits that this argument is based on the LCP’s allowance that the bridge can exceed the 26 ft. height limit if it is a government facility, since it is located in the Shoreline Height Limit Area. As already discussed in the appellants’ second argument for appeal, the proposed bridge meets the definition of a governmental facility, IP Policy 21.70.020 Definition of Specialized Terms and Phrases, and is thus allowed to exceed the 26 ft. height limit in the Shoreline Height Limit Area, consistent with the City’s LCP.

The appellant also claims that a separate definition of Governmental Facility based on IP Policy 21.30.060 Height Limits and Exceptions needs to be applied in order for the bridge to qualify for relief from the height Shoreline Height Limit Requirements. However, pursuant to IP Policy 21.70.010 Purpose of Part, it clarifies that if the definition in this part conflicts with another definition in the Municipal Code, these definitions shall control for the purposes of this Implementation Plan. Thus, the definition of Governmental Facility pursuant to IP Policy 21.70.020 is applied and the project meets this definition as previously discussed. This definition of Government Facility meets the requirements of the LCP and allows the project to exceed the height limit established in the Shoreline Height Limit Area.

Therefore, the appellants’ contention that the City incorrectly asserts the project is a

government facility does not raise a substantial issue.

Appellants' Argument No. 6: 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. The appellants claim that the project did not meet the following design standards pursuant to CLUP Policy 4.4.1-1, IP Policy 21.30.060, IP Policy 21.50.070, and IP Policy 21.52.090.

The proposed development's consistency with CLUP Policy 4.4.1-1 has previously been discussed, in that the portion of the project located at Sunset View Park and the parking lot is not on a coastal bluff.

The proposed development and its consistency with IP Policies 21.30.060 and 21.052.090 have been previously discussed as well, as those policies pertain to the project exceeding the Shoreline Height Limit Area requirement of 26 ft. and the retaining walls exceeding the 8 ft. height requirement. The City's certified LCP has provisions that allow a project to exceed height requirements and the project has met those provision consistent with the City's certified LCP.

IP Policy 21.50.070, cited 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 proposed development was analyzed by the City in its Mitigated Negative Declaration (MND) and MND Addendum that also drew from other environmental documents prepared for the project including a Biological Technical Report and Jurisdictional Delineation Report. The MND and MND Addendum also proposed mitigation measures such as a bird nesting survey, coastal sage scrub replanting, and an archeological monitor. With these analyses completed and mitigation measures imposed, the proposed development is consistent with the City's certified LCP.

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

Appellants' Argument No. 7: The City failed to provide data to justify the need for the project.

Implementation Plan, Determination of Public Access/Recreational Impacts, 21.30A.040, 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 blufftops, 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 the City failed to justify the need for the project. The appellants claim that IP Policy 21.30A.040(B)(2), cited above, requires the applicant prepare a Demand Access and Recreation Analysis.

While the project site is neither along the shoreline nor along a bluff, it is located within the Coastal Zone and nearby coastal amenities. The site provides public amenities for people enjoying the coast. The primary goals of the project identified by the City are to improve safety and access to Sunset Ridge Park and to increase parking availability for visitors. The proposed pedestrian and bicycle bridge over Superior Avenue will provide an

additional access point to Sunset Ridge Park without having to cross Superior Avenue. While the existing Superior Avenue crosswalk will remain to allow access to the park, the proposed Superior Avenue Bridge will provide another option to access the park. The parking lot capacity will be increased with the proposed project in order to provide increased access to the park, a recreational coastal amenity. The City indicates that that they do not currently program Sunset Ridge Park to its capacity due to insufficient parking for organized sporting events. The City also states that the parking lot is used by users as a base for beach use and other recreational activities, as it is within ½ mile of the coast. With the increased parking, the City states that they will be able to better utilize the park for sporting events and more users will be provided with access to the coast.

The appellants claim that IP Policy 21.30A040(B)(2) requires the City to prepare a Demand Access and Recreation Analysis to justify the need for the project. However, the policy does not require such a specific analysis but instead requires that the project's impact upon the capacity and identified recreational opportunity be analyzed. The City has indicated that the project will improve safety and access to Sunset Ridge Park and increase the parking available for visitors. As such, public access will be enhanced and maximized by the project, consistent with the goals of IP Chapter 21.030A.

Therefore, the appellants' contention that the City failed to justify the need for the project does not raise a substantial issue.

Appellants' Argument No. 8: The City fails to acknowledge the project is part of a larger project for compliance with CEQA and LCP/Coastal Development Permit review.

The appellants assert that the proposed project is part of a larger City project to widen the capacity of the Superior Avenue and West Coast Highway intersection. Furthermore, the appellants state that the City divided the project into two phases for greater opportunity to obtain public funding and to attempt to avoid having to discuss the project as a whole and identifying its intent. The two projects are the proposed project subject to this appeal involving the installation of a bridge over Superior Avenue and the expansion of the adjacent parking lot and Sunset View Park and the other is the West Coast Highway Bridge project. This West Coast Highway Bridge project involves the installation of a bridge over West Coast Highway and widening of West Coast Highway. The appellants claim that the City failed to disclose the project in its entirety and as such was not analyzed together to determine any potential environmental impacts as required by CEQA. However, as indicated by Coastal Act Section 30603, compliance with CEQA is not grounds for an appeal of a local CDP. Additionally, the City has indicated that the proposed project is a stand-alone project that has independent utility and could be constructed to meet the project objectives entirely on its own, without approval of any future projects.

Therefore, the appellants' contention that the project is part of a larger project for compliance with CEQA and LCP/Coastal Development Permit Review does not raise a substantial issue.

Appellants' Argument No. 9: The City failed to evaluate the project's impact to bicyclists and pedestrians crossing West Coast Highway.

The appellants assert that the City failed to evaluate the project's impact to bicyclists and pedestrians crossing West Coast Highway. The appellants raise concerns that the new larger parking lot will impact the safety of bicyclists and pedestrians using this new parking area to then cross West Coast Highway and that this should have been considered during the project's CEQA review. The appellants further assert that crossing Superior Avenue via the existing crosswalk is not safe and that being a reason why the bridge over Superior Avenue is being proposed. The appellants claims that if crossing Superior Avenue is unsafe, then crossing West Coast Highway would not be safe at all as well. The appellants allude to the crosswalks being unsafe and being removed as part of the proposed project in order to facilitate the West Coast Highway Bridge Project previously discussed and thus linking the two projects and requiring CEQA review of both projects together. However, as indicated by 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 existing crosswalks at Superior Avenue and West Coast Highway are not unsafe. The existing crosswalks will not be removed and will remain unchanged and continue to be accessible to pedestrians and bicyclists. The proposed Superior Avenue Bridge will provide an alternative crossing at Superior Avenue, which will improve safety and access. The City states that in regards to the increased number of pedestrians and bicyclists using West Coast Highway, the primary goal is to improve safety and access to Sunset Ridge Park and increase parking availability for visitors and the project would achieve this.

Therefore, the appellants' contention that the City failed to evaluate the project's impact to bicyclists and pedestrians crossing West Coast Highway 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 and biological resource policies. 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 construct a pedestrian and bicycle bridge, expand a parking lot, and make open space improvements to Sunset View Park. The proposed project would not change the use of the site, but instead would expand and enhance the existing development. The scope of the development is limited to this geographical area. 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 wetlands and views will be affected by the proposed project as they area both significant resources. However, the City has complied with the policies of their LCP and as such no impacts are proposed to these resources. 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 an improvement to an existing public facility. 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 public access 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 wetlands 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. 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. Mitigated Negative Declaration and Addendum No. ND2019-002
2. Biological Resources Technical Report prepared by Chambers Group, Inc. dated June 2019
3. Jurisdictional Delineation Report prepared by Chambers Group, Inc. dated September 2019
4. City of Newport Beach Coastal Development Permit No. CD2020-143
5. City Council Resolution No. 2019-102
6. Zoning Administrator Resolution No. ZA2020-082
7. Planning Commission Resolution No. PC2021-005