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STAFF REPORT: APPEAL – SUBSTANTIAL ISSUE

Appeal No.: **A-5-NPB-22-0022**

Applicant: **Park Newport Land LTD**

Agents: CAA Planning, Shawna Shaffner and Gerson Bakar & Associates

Local Government: City of Newport Beach

Local Decision: Approval with Conditions

Appellants: Juliette and Todd Worthe

Project Location: 5000 Park Newport Drive, Newport Beach, Orange County (APN: 440-132-52 and 440-132-23)

Project Description: Appeal of City of Newport Beach follow-up Coastal Development Permit (CDP) for two Emergency CDPs: CD2021-001 and CD2021-066 for the retention of previously installed rock fall/landslide mitigation consisting of an anchored mesh, K-rail barriers, and temporary plastic tarps on coastal bluffs along Back Bay Drive below the Park Newport community. New development authorized by this CDP consisting of construction of bluff protection for two existing residential structures of approximately 20 soldier piles at a 60-foot depth along a 150-foot long section of the bluff south past Unit 4830 and approximately 28 soldier piles along a 200-foot section on the southeast side of Building 4 of Park Newport community; and on-going annual installation of plastic tarps from October through April on select bluff face locations.

Staff Recommendation: Determine that a substantial issue exists.

IMPORTANT HEARING PROCEDURE NOTE: The Commission will not take public testimony during the “substantial issue” phase of the appeal hearing unless at least three Commissioners request it. The Commission may ask questions of the applicants, appellants, any aggrieved person, the Attorney General, or the Executive Director prior to determining whether or not to take testimony regarding whether the appeal raises a substantial issue. If the Commission takes testimony regarding whether the appeal raises a substantial issue, testimony is generally, and at the discretion of the Chair, limited to three minutes total per side. Only the applicants, appellants, persons who opposed the application before the local government (or their representatives), and the local government shall be qualified to testify during this phase of the hearing. Others may submit comments in writing. If the Commission finds that the appeal raises a substantial issue, the “de novo” phase of the hearing will follow, during which the Commission will take public testimony.

SUMMARY OF STAFF RECOMMENDATION

On January 22, 2021, the City of Newport Beach Community Development Director approved Emergency Coastal Development Permit (CDP) No. CD2021-001 authorizing the installation of anchored rockfall mesh at the head of the scarp of a June 2020 landslide on an Upper Newport Bay coastal bluff. On October 26, 2021, the City of Newport Beach Community Development Director approved Emergency CDP No. CD2021-066 authorizing the installation of tarps at three locations along the coastal bluff secured with sandbags for the 2020-2021 rainy season. On April 21, 2022, the City of Newport Beach Planning Commission approved CDP No. CD2021-001 as the follow-up CDP to make permanent development from both Emergency CDPs and proposed new development consisting of the installation of soldier piles supporting two existing residential structures (Building 4 and Unit 4830) within the Park Newport development; and on-going annual installation of plastic tarps from October through April on select bluff face locations.

On May 11, 2022, Juliette and Todd Worthe filed a timely appeal of local CDP No. CD2021-001. The appeal contends adverse visual impacts caused by the large sections of coastal bluff covered by plastic tarps during the months of October to the end of April (time period identified by the City as the rainy season).

The subject property is located within the appealable jurisdiction of the Coastal Commission. The City of Newport Beach LCP was certified on January 30, 2017. Therefore, the standard of review for this appeal is the certified LCP and the Chapter 3 public access policies of the Coastal Act.

Staff recommends that the Commission determine that a **substantial issue exists** with respect to the grounds on which appeal number A-5-NPB-22-0022 has been filed for the following reasons: the City’s conclusion that the development is consistent with the provisions of the LCP was not adequately supported by documents in the record file or

the City's findings as stated in Local CDP No. CD2020-001. The motion and resolution to carry out the staff recommendation is on Page 6 of this report.

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EXHIBITS

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

[Exhibit 2 – Site of June 2020 Land Slide and Photos](#)

[Exhibit 3 – Project Plans Approved by Emergency CDP CD2021-001 and Emergency CDP CD2021-066](#)

[Exhibit 4 – Tarp locations during the 2020-2021 rainy season](#)

[Exhibit 5 – City Resolution for local CDP CD2021-001](#)

[Exhibit 6 – Appeal of Local CDP CD2021-001 \(Follow-Up CDP to Emergency CDPs\)](#)

I. MOTION AND RESOLUTION – SUBSTANTIAL ISSUE

Motion: I move that the Commission determine that Appeal No. A-5-NPB-22-0022 raises NO Substantial Issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.

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

Resolution: The Commission hereby finds that Appeal No. **A-5-NPB-22-0022** presents a **SUBSTANTIAL ISSUE** with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the certified Local Coastal Program.

II. APPELLANTS' CONTENTIONS

The Commission received a Notice of Final Local Action (NOFA) for City of Newport Beach Local CDP No. CD2021-001 on May 6, 2022. The project approved by Local CDP No. CD2021-001 was for the installation of rock fall mitigation consisting of anchored mesh, K-rail barriers, and temporary tarps in select locations to prevent rock fall and landslide debris from impacting Back Bay Drive below the Park Newport community. The project also includes the installation of soldier piles supporting two existing residential structures (Building 4 & Unit 4830) within Park Newport to mitigate against landslide risk.

On May 11, 2022, an appeal was filed by Juliette and Todd Worthe ([Exhibit 2](#)). The appellants raise the following concerns with the City-approved development:

- 1) The project results in adverse visual impacts during the time of year that the tarps are installed.

III. LOCAL GOVERNMENT ACTION

A landslide occurred along a section of bluff at the subject property site on June 26, 2020 resulting in the temporary closure of Back Bay Drive ([Exhibit #2](#)). On January 22, 2021, the City of Newport Beach Community Development Director approved Emergency Coastal Development Permit (CDP) No. CD2021-001 authorizing the installation of anchored rockfall mesh at the head of the scarp of the June 2020 landslide on an Upper Newport Bay coastal bluff and installation of a section of K-rail barrier along the toe of the slope of the landslide ([Exhibit #3](#)). On October 26, 2021, the City of Newport Beach Community Development Director approved Emergency CDP No. CD2021-066 authorizing the installation of tarps at three locations along the coastal bluff secured with sandbags for the 2020-2021 rainy season ([Exhibit #3](#)). On April 21, 2022 at a publicly noticed hearing, the City of Newport Beach Planning Commission approved CDP No.

CD2021-001 as the follow-up CDP requesting to make permanent development approved under both Emergency CDPs and proposing new development consisting of the installation of soldier piles supporting two existing residential structures (Building 4 and Unit 4830) within the Park Newport development. The City determined the project categorically exempt from CEQA pursuant to CEQA Guidelines Section 15269(c) (the activity was deemed necessary to prevent or mitigate an emergency) and Section 15301, Class 1 (Existing Facilities).

On May 6, 2022, the Coastal Commission's South Coast District Office received a Notice of Final Action (NOFA) for Local CDP No. CD2020-001. The Commission issued a Notification of Appeal Period from May 10 through May 20, 2022. On May 11, 2022, Juliette and Todd Worthe filed an appeal contending adverse visual impacts caused by the continued approval of large sections of coastal bluff to be covered by plastic tarps during the months of October to the end of April ([Exhibit #6](#)). No other appeals were received. The City and applicant were notified of the appeal on May 27, 2022.

IV. APPEAL PROCEDURES

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

Section 30603 of the Coastal Act states in relevant part:

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

Section 30603(a)(1) of the Coastal Act establishes the project site as being in an appealable area because it is located within 300 feet of the inland extent of any beach or

of the mean high tide line of the sea where there is no beach.

Grounds for Appeal

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

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

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

Qualifications to Testify before the Commission

If the Commission, by a vote of 3 or more Commissioners, decides to hear arguments and vote on the substantial issue question, proponents and opponents will have an opportunity to address whether the appeal raises a substantial issue. The time limit for public testimony will be set by the chair at the time of the hearing. As noted in Section 13117 of Title 14 of the California Code of Regulations, the only persons qualified to testify before the Commission at the substantial issue portion of the appeal process are the applicant, persons who opposed the application before the local government (or their representatives), and the local government. In this case, the City's record reflects that Juliette and Todd Worthe submitted written comments during the local hearing objecting to aspects of the project. Testimony from other persons who did not submit testimony before the local government may be submitted in writing.

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

V. FINDINGS AND DECLARATIONS – SUBSTANTIAL ISSUE

A. PROJECT LOCATION AND DESCRIPTION

The project site is along the coastal bluffs of Upper Newport Bay at 5000 Park Newport Drive in Newport Beach. It is in an area where development approved by the City of Newport Beach pursuant to its certified LCP is appealable to the Coastal

Commission. The site is developed with the Park Newport Apartment Complex comprised of approximately 1,300 apartments, numerous pools, numerous sports courts, clubhouse, parking garage, and shopping plaza buildings on the bluff top. The Park Newport Apartment complex was constructed in 1969, prior to the passage of the Coastal Act. The site is bounded by Jamboree Road to the east, San Joaquin Hills Road to the south and Upper Newport Bay and Back Bay Drive to the south, downslope of the coastal bluff, and Big Canyon Park to the north ([Exhibit #1](#)). The site contains an approximately 1,300 foot linear section (a quarter mile) of 90-foot tall bluffs.

The site is highly visible to the public along Back Bay Drive. Back Bay Drive is a popular public recreation amenity through its use as a vehicular, cycling, walking, and jogging route in Upper Newport Bay. There is public parking with connection to a hiking trail located north of the project site on Back Bay Drive.

The site is adjacent to the Upper Newport Bay Ecological Reserve. Upper Newport Bay is one of the largest coastal wetlands remaining in southern California and is an ecological resource of national significance. Sensitive natural habitats within Upper Newport Bay include estuarine marine open water, freshwater marshes/wetlands, coastal salt marsh, intertidal mudflats, and coastal sage scrub along the coastal bluffs.

The coastal bluffs at the subject site are subject to on-going erosion, surficial instability, rockfalls, and landslides. The bluff slope descends at slope ratios of 0.5:1 to 1.5:1 (horizontal to vertical) to locally vertical with a maximum height of approximately 90 feet. Numerous older landslides have been identified along these bluff slopes.¹ The most recent bluff failure/landslide occurred on June 26, 2020 which resulted in an approximately 10-foot high scarp exposing approximately 100 sq. ft. of highly fractured siltstone ([Exhibit #2](#)). The landslide material fell onto Back Bay Drive located at the toe of the coastal bluff, causing the temporary road closure from late June 2020 through April 2021. The property owners retained Hetherington Engineering, Inc. to assess the risk of further slope failure and assist with the remediation of the landslide area. On January 6, 2021 the geotechnical consultant concluded that there continued to be imminent risk of rockfalls from the subject site onto Back Bay Drive at the toe of the slope due to the steeply inclined scarp along the upper portion of the landslide area. On January 22, 2021 the City's Community Development Director approved Emergency CDP CD2021-001 for the installation of steel mesh with wire rope and epoxy anchoring at the landslide site and the placement of concrete k-rail at the toe of the slope to keep landslide debris off the roadway. Then on October 26, 2021, the City's Community Development Director approved a second Emergency CDP CD2021-066 for the installation of temporary tarps along three selected portions of the bluff for the entire 2021-2022 rainy season due to "imminent risk of future rockfalls at the subject site due to the bluff height,

¹ Geotechnical Recommendations for Proposed Landslide Mitigation, Park Newport Apartments, One Park Newport Drive, Newport Beach, CA, Hetherington Engineering, Inc. August 2, 2021.

steep slope ratios, poor quality bedrock and history of landslide activity.”² The three areas approved to be tarped under Emergency CDP CD2021-066 shown in [Exhibit #4](#) are not areas associated with the June 26, 2020 landslide. Instead, emergency tarping of these three areas for the 2021-2022 rainy season was in response to risks due to the natural geological structure of the coastal bluffs at this location composed of sedimentary bedding within siltstone bedrock subject to ongoing natural erosion, surficial instability, rockfalls, and landslides. The applicants’ geotechnical engineer reported six landslides dating back to 1978 and five rock falls dating back to 1998 that generally coincide with years that had long duration and/or high intensity rainfall events.

Consistent with the conditions of approval of both Emergency CDP CD2021-001 and Emergency CDP CD2021-066, the property owners submitted a follow-up CDP application on April 22, 2021 requesting:

- permanent authorization of the work completed under the Emergency CDP CD2021-001 and Emergency CDP CD2021-066 including installation of anchored rockfall mesh at the head of the scarp of the landslide area (40 to 60 feet wide by 58 feet high, with a coverage of 2,900 sq. ft.) held in place by eight boundary anchors, 5 spot anchors, and 41 pattern anchors; and the installation of a k-rail barrier along the toe of the slope;
- new development consisting of installation of soldier pile walls to protect Building 4 and Unit 4830. Approximately 20 soldier piles installed at a 60-foot depth are proposed along a 150-foot long section of the bluff south past Unit 4830 and along an approximately 28 soldier piles along a 200-foot section on the southeast side of Building 4 where landslide materials extend under the existing structure; and
- the continued on-going installation of tarps along to-be-determined sections of the coastal bluffs every year during the rainy season identified as a seven-month period from October through April to address continued bluff instability at the subject site.

Project plans for the work undertaken pursuant to the Emergency CDPs are included in [Exhibit #3](#). Page 7 of [Exhibit 3](#) depicts the locations for the proposed new development consisting of installation of soldier pile walls to protect Building 4 and Unit 4830; however, no plans for these new structures were included in the City’s Local CDP approval. The City did not issue a new CDP number to the follow-up CDP for these two emergency CDP; instead, CDP No. CD2020-001 approved the development completed under both emergency permits and proposed new development. The project description in the NOFA for CD2020-001 received by the Coastal Commission’s South Coast District Office on May 6, 2022 (subject to this appeal) described the City approved project as:

“A coastal development permit to allow for the installation of rock fall mitigation consisting of anchored mesh, K-rail barriers, and temporary tarps in select

² Emergency Coastal Development Permit CD2021-066 – Community Development Director Action Letter

locations to prevent rock fall and landslide debris from impacting Back Bay Drive below the Park Newport community. The project also includes the installation of soldier piles supporting two existing residential structures (Building 4 & Unit 4830) within Park Newport to mitigate against landslide risk.”

Thus, this CDP approval not only provides permanent authorization for the development approved by Emergency CDPs in response to the June 26, 2020 land slide/rock fall but approves new development in an attempt to address on-going bluff instability at the project site.

B. LOCAL COASTAL PROGRAM CERTIFICATION

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

C. FACTORS TO BE CONSIDERED IN SUBSTANTIAL ISSUE ANALYSIS

Section 13115(c) of the Commission regulations provides that the Commission may consider the following five factors when determining if a local action raises a substantial issue:

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

The Commission may, but need not, assign a particular weight to a factor. Staff is recommending that the Commission find that a substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603(a) of the Coastal Act.

D. SUBSTANTIAL ISSUE ANALYSIS

As stated in Section IV of this report, the grounds for an appeal of a CDP issued by the local government are the project’s conformity with the policies of the LCP. The appellants make a general contention that the project results in an adverse visual impact with no actual reference to specific LCP policies. Staff is recommending that the Commission find

that a substantial issue exists with respect to the single contention of adverse visual impacts on which this appeal has been filed.

The appellants contend that the portion of the project consisting of “large and imposing” tarps on the coastal bluffs result in adverse visual impacts “ruining one of the most beautiful cliff sides in Newport Beach” ([Exhibit #6](#)).

The following LUP policies in the LCP pertain to the protection of scenic/visual resources and natural landforms:

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

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

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

The following IP regulations in the LCP pertain to the protection of scenic/visual resources and natural landforms:

Section 21.30.030 – Natural Landform and Shoreline Protection

Section 21.30.030(A) Purpose. This section provides regulations for the protection of natural landforms and shoreline features. The intent is to ensure that development is sited and designed to minimize hazards to life and property; to ensure the structural integrity of bluff and canyons; to neither create nor contribute to erosion or adverse impacts on shoreline sand supply and the shoreline; to maintain a system of harbor bulkheads that are essential to the continued operation of Newport Harbor and to protect public access, public views, and scenic qualities of the Coastal Zone; and to implement policies of the Coastal Land Use Plan.

IP Section 21.30.030(C)(3)(d) Protective Structures. Protective devices shall be designed and sited to:

- (1) Be as far landward as possible and within private property, where feasible;
- (2) Eliminate or mitigate adverse impacts to coastal resources;
- (3) Minimize alteration of natural processes;
- (4) Provide for public access to State tidelands and recreational areas and facilities;
- (5) Minimize visual impacts and maximize the enjoyment of the natural shoreline environment;

Section 21.30.100 – Scenic and Visual Quality Protection

Section 21.30.100(A) – Purpose. The purpose of this section is to insure that development shall be sited and designed to 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.

Section 21.30.100(C) Visual Impact Analysis. Where the initial evaluation indicates that a proposed development has the potential to significantly impact a public view or viewshed or the scenic and visual qualities of the Coastal Zone, a view impact analysis shall be prepared at the project proponent's expense. The analysis shall include recommendations to avoid or minimize impacts to public views from the identified public view points and corridors identified in Policy 4.4.1-6 and Map 4-3 of the Coastal Land Use Plan.

Section 21.30100(E)(8) – Landform Alteration. Development shall be sited and designed to minimize the alteration of gullies, ravines, rock outcroppings, and other natural landforms and the removal of native vegetation. Site design and construction techniques include, but not limited to the following: (8) Requiring any altered slopes to blend into the natural contours of the site.

Section 21.30B.060 – Mitigation and Monitoring

Section 21.30B.060(A) When Required. Mitigation and monitoring programs, including restoration plans and management programs, shall be submitted with the coastal development permit application.

1. **ESHA.** Mitigation shall be required for allowable impacts to ESHA and other sensitive resources that cannot be avoided through the implementation of siting and design alternatives. Mitigation shall not substitute for implementation of the project alternative that would avoid impacts to ESHA.

Section 21.30B.060© Habitat Creation/Restoration.

1. **ESHA.** Mitigation for impacts to ESHA and other sensitive resources shall be in the form of habitat creation or substantial restoration. The mitigation shall occur on-site wherever possible. Off-site mitigation measures shall only be approved when it is not feasible to fully mitigate impacts on-site.

Visual Resources

The City of Newport Beach Planning Commission approved CDP No. 2021-001, based on the findings and subject to the Conditions of Approval in Zoning Administrator Resolution No. PC2022-007. The City made the finding that the project conforms to all applicable sections of the certified LCP. The City's findings specific to visual impacts state:

The Project site is located adjacent to and immediately east of Back Bay Drive, which is a designated public view road in the Coastal LUP and offers public views of Upper Newport Bay. Site evaluation revealed that the proposed landslide/rockfall mitigation improvements will not affect the existing view afforded from Back Bay Drive as the Project improvements are located landward of Upper

Newport Bay. In addition, tarping of the slope has been limited through conditions of approval to only allow minimum times of the year when heavy rains are likely to occur and pose the greatest risk of landslide/slope failure. Therefore, the Project does not have the potential to degrade the visual quality of the coastal zone or result in significant adverse impacts to public views.

The City's Planning Commission staff report stated that the proposed seasonal temporary tarps are anchored by sandbags and that Condition of Approval #17 requires the sandbags be of natural colors to avoid becoming an eye sore as had happened in the past when a bright color was used, concluding that the emergency work and future proposed work would not impact public views and is consistent with IP Section 21.30 – Development Standards. Condition of Approval #18 limits the "temporary" tarping to seven (7) months of the year, specifically from October to the end of April to coincide with Southern California's rainy season. However, the City also identifies these coastal bluffs to be Environmentally Sensitive Habitat Areas (ESHA) and the City's Conditions of Approval do not specify or limit what areas of the bluffs may be tarped, thus, no protections are given to ESHA or other sensitive resources that enhance the visual quality of the bluffs. Furthermore, the local CDP does not specify the time frame that use of the tarps would be permitted, as approved, any area of the 1,300 foot linear length of coastal bluffs associated with the project site may be tarped seven (7) months out of the year forever into the future. And the local CDP does not contain a term of authorization (e.g., 10 years), which would provide an opportunity for the development's impacts to be evaluated and additional mitigation applied if necessary.

As stated above, LUP Policy 4.4.1-1 requires new development to protect coastal views along the ocean, the bay, the harbor, costal bluffs, and other coastal resources. The proposed tarps and sandbags have the potential to adversely impact the visual qualities of the coastal bluffs. The City approval does not adequately analyze the visual impacts of the use of the tarps. The City staff report and Resolution do not provide findings indicating that use of the tarps is the least visually intrusive alternative. The Conditions of Approval or approved plans do not identify the tarp material or color, only that of the sandbags. The City approval of the use of tarps on the bluff face along this property lacks specificity, the approval is broad and ambiguous, with no limits to the size of the areas that may be tarped; thus there is no quantification of the total possible visual impact. Additionally, the coastal bluffs in the area are known to contain ESHA. The LCP requires mitigation for allowable impacts to ESHA and other sensitive resources that cannot be avoided through the implementation of siting and design alternatives. Mitigation for impacts to ESHA and other sensitive resources shall be in the form of habitat creation or substantial restoration and shall occur on-site wherever possible. The City approval lacks analysis on the possible impact that the on-going yearly tarping of unidentified bluff face areas would have on existing sensitive vegetation and possible ESHA on the bluff face; any loss of existing vegetation caused by yearly bluff disturbance could adversely impact the visual qualities of the coastal bluffs.

Even if this aspect of the project is considered an allowable impact to ESHA and other sensitive resources, mitigation for those impacts is required. There is no such analysis and no such requirement. The project includes the re-vegetation of a 2,900 sq. ft. portion of the bluff proposed to be covered with anchored rockfall mesh at the head of the scarp

of the June 2020 landslide, but no discussion or analysis of re-vegetation alternatives to other bluff face areas subject to erosion where the tarping would most likely be proposed in the future. The proposed on-going yearly tarping of unspecified bluff areas is characterized as “temporary” and a finding made that their use would be limited through conditions of approval to *only allow minimum times of the year when heavy rains are likely to occur* and pose the greatest risk of landslide/slope failure; however, the tarps would be allowed to remain in place seven (7) months out of the year. There is insufficient data or analysis provided to support the finding that tarping is necessary during the entirety of the “Southern California rainy season.” Data is not provided to support the assertion that heavy rains would occur during the entire rainy season, nor that the rainy season lasts a full seven months, and that the risk of landslide and rockfall at the subject site is the same year after year. The approval does not appear to include any type of monitoring of the condition of the tarps or maintenance requirements during the yearly 7-month usage period.

California’s coastal bluffs are significant coastal resources, and great care should be taken with the approval of bluff protective devices to ensure protection of the visual qualities of these natural landforms. The City-approved project does not appear to be consistent with the above cited policies and regulations of the certified LCP in that the project does not include appropriate measures to adequately protect the visual qualities of the coastal bluff. If such measures are included, they are not well reflected in the findings and conditions to approve the project.

SUBSTANTIAL ISSUE FACTORS:

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

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

The City did not substantially support its approval of the project as being consistent with all of the applicable policies of the certified LCP (specifically the visual resource policies, landform alteration policies, and the ESHA protection policies). Therefore, there is a low degree of factual support for the local government’s decision that the project, as conditioned, is consistent with the LCP. This factor supports a substantial issue finding.

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

The City did not specify the material or color of the tarps or limit the size of the area, or restrict the areas where the tarps would be allowed on the coastal bluffs. ESHA is known to exist along these coastal bluffs. As approved, the extent and scope of the development approved by the Local CDP is broad and ambiguous and does not properly analyze possible impacts to ESHA or other sensitive vegetation resources to ensure protections to adjacent ESHA or enhancement of the scenic and visual qualities that vegetation on the bluff provides. The development could result in the tarping of ESHA or highly sensitive biological resources existing on the bluffs for a 7-month period of the year, every year, resulting in the degradation of the ESHA and adverse visual impacts that would result by the degradation of the habitat. Therefore, the extent of development approved may not be appropriate, and this factor supports a finding of substantial issue.

3. The significance of the coastal resources affected by the decision.

The proposed development is on coastal bluffs visible from Newport Bay and a popular recreation area on Back Bay Drive below. California’s coastal bluffs are significant resources and represent rare and visually pleasing landforms which California citizens and governments have historically sought to preserve. Coastal bluffs are dynamic geologic formations. Development on coastal bluffs can have significant impacts on scenic resources. The LCP and the Coastal Act provide coastal bluffs/cliffs with special protections. This factor supports a finding of substantial issue.

4. The precedential value of the local government’s decision for future interpretations of its LCP.

The project site is located along a highly scenic road and itself a popular recreational amenity through its use as a vehicular, cycling, walking and jogging route. The decision of the local government for this project might influence future permit decisions made in the City’s Coastal Zone, particularly within other coastal bluff areas located within the City’s coastal zone. Allowing the local government’s decision to approve a CDP for improvements that significantly alter the bluff face without properly addressing/minimizing visual impact concerns would set a negative precedent for future interpretations of its LCP. If the subject local CDP is found to be consistent with the LCP based on the current record, there is a potential that future applicants, especially within the vicinity, will reference this permit if they wish to apply for similar use of tarps on the bluff face to address ongoing geological instability. This factor supports a finding of substantial issue.

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

Development adjacent to coastal bluffs are issues of statewide significance, given that coastal bluffs are an important coastal resource throughout the state, not just in Newport Beach. Requiring consistency with the certified LCP policies relating to the protection of visual resources is significant to all the people of California who wish to enjoy the Coastal Zone. Unsubstantiated application of these policies could have regional or statewide ramifications regarding other similar LCPs and their policies regarding coastal bluffs. This factor supports a finding of substantial issue.

Conclusion

The Commission finds that a substantial issue exists with respect to whether the local government action conforms with the policies of the City’s certified LCP.

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

1. Emergency CDP CD2021-001 and Emergency CDP CD2021-066
2. Proposed Emergency Rockfall Mitigation, Park Newport Apartments, One Park Newport Drive, Newport Beach, CA, Hetherington Engineering Inc., January 6, 2021
3. Geotechnical Summary of Proposed Landslide Mitigation, Park Newport Apartments, One Park Newport Drive, Newport Beach, CA, Hetherington Engineering Inc., March 29, 2021

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4. Geotechnical Recommendations for Proposed Landslide Mitigation, Park Newport Apartments, One Park Newport Drive, Newport Beach, CA, Hetherington Engineering Inc., August 2, 2021
5. Temporary Tarp Placement, Coastal Bluff - Park Newport Apartments, One Park Newport Drive, Newport Beach, CA, Hetherington Engineering Inc., October 22, 2021
6. Park Newport Alternative Analysis – Soldier Pile Walls Letter Addressed to Shawna Schaffner, CAA Planning Inc., Hetherington Engineering Inc., April 21, 2022
7. Pre-Construction Avian Surveys for Park Newport Rockfall Mitigation Project (PA2021-008), Emergency Coastal Development Permit No. CD2021-001, Glenn Lukos Associates, February 17, 2021
8. Additional Pre-Construction Avian Surveys for Park Newport Rockfall Mitigation Project (PA2021-008), Emergency Coastal Development Permit No. CD2021-001, Glenn Lukos Associates, April 19, 2021
9. City of Newport Beach Local Coastal Program, certified January 30, 2017.