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Filed: 5/10/2024
49th Day: 7/22/2024
Staff: EG-LB
Staff Report: 6/20/2024
Hearing Date: 7/11/2024

STAFF REPORT: APPEAL – NO SUBSTANTIAL ISSUE

Appeal No.: A-5-NPB-24-0021

Applicant: Orange County Sanitation District (OC San)

Local Government: City of Newport Beach

Local Decision: Approval with Conditions

Appellant: Bayside Village Marina LLC (BVM)

Project Location: 250 E. Coast Hwy. and 100 Dover Dr., Newport Beach, Orange County

Project Description: Demolish an existing 4, 800 sq. ft. pump station and construct a new, approximately 7,500 sq. ft. pump station within an approximately 14,500 sq. ft. site area and install two associated approximately 1,300 ft. long, 24 in. diameter force mains for the Orange County Sanitation District's (OC San) Bay Bridge Pump Station. The station includes a new generator room, electrical room, and odor control facility. The approval also includes the temporary use of a portion of the City-owned property at 100 Dover Drive as a construction staging yard.

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

On January 18, 2024, the City of Newport Beach (City) Planning Commission approved local Coastal Development Permit (CDP) No. PA2023-0076 for the demolition of an existing approximately 4,800 sq. ft. pump station and construction of a new, approximately 7,500 sq. ft. pump station within an approximately 14,500 sq. ft. site area and two associated approximately 1,300 ft. long, 24 in. diameter force mains for the Orange County Sanitation District's (OC San) Bay Bridge Pump Station (BBPS). The station includes a new generator room, electrical room, and odor control facility. The approval also includes the temporary use of a portion of the City-owned property at 100 Dover Drive as a construction staging yard.

The pump station is located at 250 E. Coast. Hwy., in the City of Newport Beach, Orange County ([Exhibit 1](#)). The site is developed with an existing wastewater pump station known as the Bay Bridge Pump Station (BBPS), which was constructed in 1966 and which has been operated by OC San. Adjacent to the property is the Bayside Village Marina, which includes visitor serving uses, recreational vehicle and boat storage, and a marina parking lot. This adjacent property is intended to be developed with a future mixed-use waterfront village in accordance with the Back Bay Landing (BBL) Planned Community Development Plan (PCDP) (PC-9).

The Commission's South Coast Office received the City's Notice of Final Local Action (NOFA) on April 26, 2024. Bayside Village Marina (BVM) filed a timely appeal of the City's local action on May 10, 2024. The appellant contends that the City's approval does not comply with the City's certified Local Coastal Program (LCP), including the Certified Back Bay Landing (BBL) Planned Community Development Plan (PCDP) and key provisions of the Coastal Act. More specifically, the appellant contends that: **1)** The BBL PCDP, as approved by the Commission in 2016, provides for coastal-dependent and related uses, and limited residential uses; **2)** OC San could feasibly relocate the sewer lift station elsewhere on the 7-plus acre BVM site or refurbish and/or replace the BBPS within its existing footprint; **3)** The project disrupts the balance of land uses on the site; **4)** The BBPS expansion will adversely impact Commission-mandated LCP-identified coastal view corridors; and **5)** The BBPS expansion will adversely affect coastal resources during the thousands of construction truck trips during five years of construction.

In response to the first contention, the proposed project is within Planning Area 1, which allows a wastewater pump station as a permitted use, therefore the proposed project is consistent with the permitted uses of the BBL PCDP.

In response to the second contention, as will be discussed in more detail below, OC San evaluated alternative versions of this project, including alternative project locations in an environmental impact report (EIR) before determining that the proposed project and its location is the least environmentally damaging feasible alternative.

In response to the third contention, the proposed project is consistent with the permitted uses for the site and is an expansion of the existing use. Additionally, regarding the contention that the proposed project could eliminate uses such as future residential units and/or boat storage and marina parking, the BBL project that approved the future residential units on site has not received a final site plan approval, therefore it is unclear at this time where the potential residential units would be constructed, or if they will even be constructed at all.

In response to the fourth contention, the City's visual analysis of the project concluded that the proposed project would not significantly impair the existing view of the bay and maintains a view of the Back Bay Bluff to the north and is consistent with the height requirements for the site.

In response to the fifth contention, the appellant did not specify which coastal resources would be affected by increased truck trips. However, the proposed project is a necessary replacement of aging public sewer infrastructure, and due to the size of the project, truck trips will be necessary for its construction. However, the applicants have minimized coastal resource impacts from construction truck trips to the greatest extent feasible.

For the reasons described above, Staff recommends that the Commission determine that the appeal raises **no substantial issue** with respect to the grounds on which appeal no. A-5-NPB-24-0021 was filed. The motion and resolution to carry out the staff recommendation is on Page 5 of the staff report.

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EXHIBITS

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[Exhibit 9 – City’s Conditions of Approval](#)

I. MOTION AND RESOLUTION – NO SUBSTANTIAL ISSUE

Motion: I move that the Commission determine that Appeal No. A-5-NPB-24-0021 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 of the majority of the Commissioners present.

Resolution: The Commission hereby finds that Appeal No. **A-5-NPB-24-0021** does not present 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 Plan and/or the public access 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. PA2023-0076 on April 26, 2024. Local CDP No. PA2023-0076 approved the demolition of existing pump station and the construction of a new pump station with associated force mains and the use of Lower Castaways Park as a construction staging area.

On May 10, 2024, Bayside Village Marina LLC (BVM), represented by John Erskine, filed a timely appeal of the City's action ([Exhibit 5](#)). BVM owns the Back Bay Landing site, the 220 slip marina and related amenities. The appellant contends that the City's approval does not comply with the City's certified LCP, including the Certified Back Bay Landing (BBL) Planned Community Development Plan (PCDP) and key provisions of the Coastal Act. More specifically, the appellant raises the following concerns with the City-approved development:

- 1) The Back Bay Landing Planned Community Development Plan (PCDP), as approved by the Commission in 2016, provides for coastal-dependent and related uses, and limited residential uses. The BBL PCDP allows development "on or near the bay in a manner that will encourage the continuation of coastal-dependent and coastal-related land uses as well as mixed use residential uses."
- 2) The PCDP identifies the Bay Bridge Pump Station (BBPS), but only at its current 4,800 square foot size, and evidence abounds and will be presented to the Commission that OC San could feasibly relocate the sewer lift station elsewhere on the 7-plus acre BVM site, or refurbish and/or replace the BBPS within its existing footprint.
- 3) This grossly oversized pump station disrupts the balance of land uses on the site while eliminating over 30,000 square feet of the aforementioned uses, including

an estimated 7 or 8 of the approved 49 residential units and/or thousands of square feet of currently utilized dry stack storage and marina parking.

- 4) The BBPS expansion will also adversely impact Commission-mandated LCP-identified coastal view corridors from E. Coast Highway towards Castaways.
- 5) The BBPS expansion will also adversely affect coastal resources during the thousands of construction truck trips both during five years of construction of the BBPS, microtunneling under the Newport Channel, and up to 120 monthly pump station service truck trips through the Back Bay Landing on a permanent shared access during operations.

The appellant's contentions are discussed in the Substantial Issue Analysis section of this staff report.

III. LOCAL GOVERNMENT ACTION

The City held a public hearing for the local CDP on January 18, 2024. Four (4) members of the public spoke at the hearing. John Erskine, an attorney with Nossaman LLP and representative of BVM, noted efforts to negotiate a willing seller/purchaser acquisition with OC San for the project area. He also relayed that the eminent domain case will go to a jury trial in July and stated problems with the project size. Michael Gelfand, representing the ownership of BVM and the Back Bay Landing project, noted the impact of the project, suggested the proposal be rejected and recreated by OC San with community input and noted alternatives to the project. Jim Mosher, a city resident, reviewed the proposed project design and made suggestions. Julie Sheffield, resident, expressed concerns about the access road on Bayside Drive, the impact from the number of trucks, and the hours of operation. Coastal Development Permit PA2023-0076 was approved with conditions by the Planning Commission of the City of Newport Beach on January 18, 2024 ([Exhibit 3](#)).

On January 31, 2024, John Erskine, representing BVM, filed an appeal of the City Planning Commission's decision. The appellants' contentions were primarily related to the mass and height of the pump station and its potential impact on view corridors. The appellant also raised concerns regarding the evaluation of alternative project locations.

On April 23, 2024, the City of Newport Beach conducted a de novo public hearing for the City Council's determination on the appeal filed by BVM. Two (2) members of the public spoke at the hearing. Heath Clarke, President of the Bayside Village Homeowners Association (HOA), expressed concern for the impacts of the project to the community and asked the City to take all reasonable precautions relative to pedestrian and bike safety, traffic congestion, fumes, noise, dust, debris, and ecological impacts from the microtunneling. Jim Mosher, a city resident, noted the aesthetic concerns and impact to views, an unknown long-term impact, and architectural transparency. City planning staff recommended that the City Council find that the project complies with the California Environmental Quality Act (CEQA) as it is consistent with the certified Environmental Impact Report (EIR) for Project No. 5-67, also known as the Bay Bridge Pump Station and Force Mains Replacement Project, as approved by the Orange County Sanitation District,

and the subsequent certified Addendum to the EIR. The City planning staff also recommended that the City Council adopt Resolution No. 2024-28, A Resolution of the City Council of the City of Newport Beach, California, Denying an Appeal and Upholding the Decision of the Planning Commission to Approve a Major Site Development Review and Coastal Development Permit to Demolish an Existing Pump Station and Construct a New Pump Station and Associated Force Mains at the Property Located at 250 East Coast Highway (PA2023- 0076). The City Council adopted the resolution and upheld the approval of the project as recommended by the City's staff ([Exhibit 4](#)).

On April 26, 2024, the Coastal Commission South Coast District Office received a valid Notice of Final Action (NOFA) for Local CDP PA2023-0076. The Commission issued a Notice of Appeal Period on April 29, 2024. On May 10, 2024, BVM filed an appeal during the ten (10) working day appeal period. The appeal period ended on May 10, 2024, at 5:00pm. No other appeals were received by the Commission.

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 projects 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.

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.

The project site is located adjacent to Newport Bay, which is a tidally-influenced body of water, and is between the sea and the first public road paralleling the sea and is within 300 feet of the inland extent of a beach. Therefore, the Local CDP PA2023-0076 is appealable to the Commission under Section 30603(a)(1).

Grounds for Appeal

The grounds for appeal under Section 30603 of the Coastal Act are limited to allegations that the development does not conform to the certified LCP or to the public

access policies of the Coastal Act. Section 30625(b)(2) of the Coastal Act requires the Commission to consider a CDP for an appealed project de novo unless a majority of the Commission finds that “no substantial issue” is raised by such allegations.

If the Commission finds that the appellants’ contentions raise no substantial issue as to conformity with the certified LCP, the action of the local government becomes final.

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 John Erskine (speaking on behalf of BVM), Michael Gelfand (speaking on behalf of BVM), Jim Mosher, Heath Clarke (speaking on behalf of Bayside Village HOA), and Julie Sheffield opposed the project in person at the local hearing. Testimony from other persons must 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 follow at a later date, during which the Commission will take public testimony.

V. FINDINGS AND DECLARATIONS – NO SUBSTANTIAL ISSUE

A. PROJECT DESCRIPTION AND LOCATION

The City’s action on local CDP PA2023-0067 approved the demolition of an existing approximately 4,800 sq. ft. pump station and construction of a new, approximately 7,500 sq. ft. pump station that includes a 3,616 sq. ft. underground pump room, 1,175 sq. ft. electrical room, 1,781 sq. ft. odor control facility and a 672 sq. ft. generator room within an approximately 14,500 sq. ft. site area ([Exhibit 2](#)). The City also approved the installation of two new, 1,300 ft. long, 24-in. diameter dual force mains by microtunneling beneath E. Coast Hwy. from the pump station across the Newport Bay Channel, to a new valve vault located below grade in the public right-of-way at the corner of the intersection of E. Coast Hwy. and Bayshore Dr. The City also approved the temporary use of a portion of the City-owned Lower Castaways Park as a construction staging yard. OC San proposes to use approximately 18,000 sq. ft. of the southwest corner of Lower Castaways Park, which is to be fenced and screened.

The proposed pump station is located at 250 E. Coast Hwy. in the City of Newport Beach, Orange County ([Exhibit 1](#)). The property is located in the Back Bay Landing (BBL) Planned Community (PCDP) (PC-9) Zoning and Coastal Zoning District. The BBL PCDP (PC-9) was certified by the Commission in 2016. Within the PC-9 district, the property is

categorized as Planning Area 1 (Mixed-Use Area) where a wastewater pump station is a permitted use. The existing infrastructure is critical to OC San operations as it conveys approximately 50 to 60 percent of the total Newport Beach wastewater flow; it is imperative to ensure continuous service to the community and avoid spills for the next design lifespan (an additional 50 years). This would be accomplished through an upgrade to the existing infrastructure.

The proposed construction staging area of Lower Castaways Park at 100 Dover Dr. is located within the coastal zone and in the Castaways Marina Planned Community (PC-37) Zoning District.

B. LOCAL COASTAL PROGRAM CERTIFICATION

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

C. FACTORS TO BE CONSIDERED IN SUBSTANTIAL ISSUE ANALYSIS

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

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 and Chapter 3 public access policies of the Coastal Act. The Commission shall hear an appeal unless it determines that no substantial issue exists as to conformity with the policies of the LCP and relevant policies of the Coastal Act.

Contention 1: The project is inconsistent with the Commission-Certified Back Bay Landing Planned Community Development Plan.

The appellant contends that the project is inconsistent with the Back Bay Landing (BBL) Planned Community Development Plan (PCDP), because the PCDP, as approved by the Commission in 2016, provides for coastal-dependent and related uses, and limited residential uses. The BBL PCDP allows development "on or near the bay in a manner that will encourage the continuation of coastal-dependent and coastal-related land uses as well as mixed use residential uses."

Table 2 Permitted Uses, shown in [Exhibit 6](#), which is included in the City's certified BBL PCDP (PC-9) under Section III Permitted Uses, describes the permitted uses for each planning area in PC-9. The pump station property is categorized by PC-9 as Planning Area 1 (Mixed-Use Area) where a wastewater pump station is a permitted use. Additionally, the PCDP does not limit the expansion of the pump station, and even states that it may be reconstructed in the future. Page 24 of the BBL PCDP states: "Should the OCSD facility be reconstructed, the architectural design of the structure shall be compatible with the architectural design of the Back Bay Landing development and design standards contained in this PCDP." Therefore, the City adequately applied the requirements of the BBL PCDP in its review of the project. Therefore, this contention does not raise a substantial issue with regard to the policies in the Certified Local Coastal Program (LCP).

Contention 2: OC San could feasibly relocate the sewer lift station elsewhere on the 7-plus acre BVM site, or refurbish and/or replace the BBPS within its existing footprint.

The appellant asserts that the project is inconsistent with the BBL PCDP because the PCDP only identifies the pump station in its current 4,800 sq. ft. size, and accordingly is limited to that footprint, and that the pump station could feasibly be relocated to another location on BVM's property, or that the pump station could be refurbished/replaced within its existing footprint. As explained above, the PCDP does not prohibit an expansion of the pump station, and even states that it may be reconstructed in the future. With regard to project alternatives, the applicants prepared an Environmental Impact Report (EIR) for the proposed project which analyzed several project alternatives such as the no project alternative, rehabilitating the pump station in place, and the following alternate locations for the pump station: the Northeast Location, South Location, and the Adjacent Pump Station Location (proposed project) ([Exhibit 7\(a-c\)](#)).

The EIR concluded that rehabilitating the existing pump station within its current footprint would not meet any of the project objectives. This is due to the limited square footage available at the existing site. The pump station needs to include an updated electrical building designed in accordance with the National Electrical Code (NEC) and OC San's standards for safety, such as increasing the distance between the 480-volt electrical equipment to six feet to allow for a proper working clearance for electricians. The electrical building also needs to be updated to include additional reliability and redundancy, which is intended to offer additional environmental protection by preventing sewage spill flowing from a single point of failure. Additionally, an odor control facility is needed to meet OC San's organizational standards to minimize impacts to surrounding neighbors, which includes having 12 or fewer odor complaints per year under normal operation conditions in the entire OC San collections system. OC San also explained that the site needs to be improved to increase safety for OC San Operations and Maintenance personnel. This can be done by adding entry and exit points that can be accessed more easily and safely by maintenance crews and drivers, as the existing pump station can only be accessed directly from E. Coast. Hwy, where adjacent traffic can create safety hazards for OC San vehicles. These project elements require an expansion of the existing footprint to accommodate the necessary infrastructure and increase safety for OC San staff, thereby making the rehabilitate or replace within the existing footprint alternative infeasible.

For the South Location alternative, shown in [Exhibit 7a](#), the EIR determined that this location would not have adequate space for a backup generator and odor control facility. This alternative location is also more vulnerable to coastal hazards, such as sea level rise flooding, and would require the construction of a retaining wall along Newport Bay Channel. Therefore, it was determined that this alternative would not feasibly meet all the project objectives, such as having the odor control facility in close proximity to the other infrastructure, and it would not be the least environmentally damaging alternative.

The EIR determined that the Northeast Location, shown in [Exhibit 7b](#), could be a feasible alternative location that would meet all of the project objectives. However, this alternative would limit the City's ability to use Lower Castaways Park due to the permanent easements for the proposed force mains. Additionally, this alternative would involve open cut construction for the installation of the force mains through Lower Castaways Park, which has the potential to impact coastal resources. Therefore, although this alternative appears to be feasible, it is not clear that it would be less environmentally damaging than the proposed project.

The proposed project, the Adjacent Pump Station Location alternative, shown in [Exhibit 7c](#), is feasible and would be the least environmentally damaging alternative as it is designed to be safe from coastal hazards throughout the life of the development and will not result in any permanent impacts to public access. Therefore, OC San did evaluate project alternatives, and provided a sufficient level of information to determine that the proposed project would be the least environmentally damaging alternative and the least impactful to coastal resources. Therefore, this contention does not rise to the level of substantial issue.

Contention 3: The project disrupts the balance of land uses on the site.

The appellant contends that project is inconsistent with the City's LCP and the Coastal Act, because the new, larger pump station disrupts the balance of land uses on site. The PC-9 zoning district sets nonresidential development limits for the future BBL development, which is 61,534 sq. ft. for commercial and 32,500 sq. ft. for dry stack boat storage, for a total of 94,034 sq. ft. of future nonresidential development. PC-9 also explicitly states that the OC San wastewater pump station shall not be counted towards the square footage development limits. The proposed pump station is an expansion of an existing use within an area where a wastewater pump station is a permitted use, and because this expansion does not count towards the square footage development limits, this ensures that land uses are balanced by not limiting any future allowable development on site.

The appellant further contends that the new, larger pump station will eliminate over 30,000 square feet of the aforementioned uses, including an estimated 7 or 8 of the approved 49 residential units and/or thousands of square feet of currently utilized dry stack storage and marina parking. The appellant does not explain how these potential losses would be inconsistent with the LCP or the public access policies of Chapter 3 of the Coastal Act. Regardless, although the BBL PCDP- which allows for 49 residential units within the BBL property- was approved and certified, the final development site plan has not yet been approved. Therefore, there is uncertainty as to whether these residential units will even be constructed, and if so, where they will be located. Therefore, the Commission cannot find a substantial issue exists based on a hypothetical situation that has not yet occurred. As for the current dry stack storage and marina parking, these are both private uses, and OC San has legally obtained the adjacent site where the new pump station will be located, therefore this contention also does not rise to the level of substantial issue with regard to the policies in the LCP and Chapter 3 public access policies of the Coastal Act.

Contention 4: The BBPS expansion will adversely impact Commission-mandated LCP-identified coastal view corridors from E. Coast Highway towards Castaways.

The appellant asserts that the proposed pump station expansion is inconsistent with the City's LCP and the Coastal Act, because the proposed project will adversely impact LCP-identified coastal view corridors from E. Coast Hwy. towards Castaways Park.

[Exhibit 8](#) shows the views with and without the proposed project from the view corridor along E. Coast Hwy. referenced by the appellant. As shown in [Exhibit 8](#), the pump station will block a small portion of the bluffs at Castaways Park, however this section of bluff is already partially degraded due to the existing development, and a majority of the bluff would remain unimpacted by the proposed project. Additionally, the BBL PCDP sets maximum height limits for development within Planning Area 1, where the proposed pump station is located. The PCDP states that building heights within Planning Area 1 shall not exceed 35 ft. for flat roofs and 40 ft. for sloped roofs. The proposed electrical and generator building will be 22 ft. tall and features a sloped roof design with parapet walls, and the proposed odor control building will be 15.5 ft. tall and features a flat roof design with parapet walls. The proposed heights of both buildings account for the raised floor necessary for flood and coastal hazard protection, electrical and mechanical equipment for

station operation, and screening for the rooftop HVAC equipment. Based on the information provided by the applicant, the pump station appears to be designed to be the minimum height necessary for proper functionality. This project is also located within the Shoreline Height Limitation Zone of the City, which controls development heights within the Bay area to reduce impacts to public views by setting a height limitation of 35 ft. The proposed project is consistent with both the height requirements of the PCDP and the height requirements of the Shoreline Height Limitation Zone.

Therefore, because the project will not significantly impact any public views to and along the coast; this contention does not raise a substantial issue in relation to the City's LCP.

Contention 5: The BBPS expansion will adversely affect coastal resources during the thousands of construction truck trips.

The appellant contends that project is inconsistent with the LCP and the Coastal Act, because the proposed project will adversely affect coastal resources during the thousands of truck trips both during five years of construction of the BBPS, microtunneling under the Newport Channel, and up to 120 monthly pump station service truck trips through the BBL on a permanent shared access road during operations. Notably, the appellants did not identify any specific coastal resources that would be adversely affected by the increased truck trips or provide any evidence to support their contention.

The EIR prepared by the applicants identifies the average number of truck trips to the site during the significant construction periods:

- Demolition activities – 10 average truck trips per day
- Grading activities – 25 average truck trips per day
- Building construction 16 average truck trips per day
- Microtunneling of force mains – 28 truck trips per day
- Gravity Sewer improvements – 23 truck trips per day

These truck trips would not all occur at once, as the various construction periods will be occurring at different times throughout the approximate five years of construction. However, currently there are approximately 15 truck trips per week to the site, so the construction of the new pump station and associated infrastructure would result in a higher frequency of truck trips to the site. However, as explained in more detail below, the number of truck trips would return to normal after construction is complete, and any potential impacts to coastal resources would be temporary.

As noted above, the appellant did not specify which coastal resources would be adversely affected by the construction truck trips. Generally, the applicants have limited coastal resource impacts associated with these construction truck trips by proposing various mitigation measures in their EIR. These measures include minimizing traffic circulation disruption to the greatest extent feasible. The applicants explained that two lanes of traffic will always remain open in each direction. Other measures include requiring the contractor to keep all haul routes clean and free of debris, and only allowing for the hauling of oversized loads between the hours of 9:00am and 3:00pm, Monday through Friday, no

hauling or transport of oversized loads will be allowed during nighttime hours, weekends, or Federal holidays. There are also measures which prohibit the use of local streets except when required to provide direct access to the project site and in compliance with the approved project haul routes. In the City's CDP (PA2023-0076) they conditioned the project to require OC San to comply with the mitigation measures outlined in the EIR.

Additionally, regarding the contention that monthly truck trips through the BBL development once pump station construction is completed will also adversely affect coastal resources, the applicants have explained that the frequency of truck trips to the site during the operation of the new facility will not be different than the current level of truck trips to the existing pump station. Page 2-85 of the EIR states, "the project would require up to 15 maintenance vehicle trips per week for periodic maintenance and inspections by OCSD staff, and no new maintenance trips would be required a result of the proposed project."

Therefore, although the construction of the project will result in many truck trips to the project site, coastal resource impacts associated with these truck trips have been minimized to the greatest extent possible, and once construction is completed the number of truck trips to the site will remain the same as the current pump station. It should also be noted that this temporary increase in truck trips to construct the project is necessary because the proposed project is a needed public works improvement project. The applicants have provided evidence that the pump station and associated infrastructure is aging and nearing the end of its useful life and that it needs to be replaced and upgraded to meet current standards and increase safety for OC San employees to access and maintain the infrastructure. Additionally, failure to replace the pump station and associated infrastructure could potentially lead to significant coastal resource impacts, such as impacts to marine resources, water quality, and public access if there were to be a sewage spill into Newport Bay. Therefore, it is clear that the project is needed, and due to the size of the project many truck trips will be necessary throughout the multiple years of construction. However, coastal resource impacts associated with the construction truck trips have been minimized to the greatest extent feasible. Therefore, this contention does not raise a substantial issue.

SUBSTANTIAL ISSUE FACTORS:

The Commission typically applies the five factors listed in subsection C above in making a determination whether an appeal raises a substantial issue pursuant to Section 30625(b)(2). The Commission may, but need not, assign a particular weight to a factor in making its determination.

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. As is discussed above, the City substantially supported its approval of the project as being consistent with all of the applicable policies of the certified LCP, including public view policies related to views from public roadways such as E. Coast Hwy., as well as other coastal resource protection policies not referenced in the appeal. The City's findings were supported by evidence in the administrative record. Additionally, in the City's action they required 42 conditions of approval to ensure consistency with the LCP, of note condition 30 requires

OC San to comply with all of the mitigation measures in their EIR ([Exhibit 9](#)). 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. As described above, the scope of the approved development includes an approximately 7,500 sq. ft. pump station within an approximately 14,500 sq. ft. site area. The approved project is zoned for mixed use development, where a wastewater pump station is a permitted use, and the site is currently developed with a pump station. Therefore, the Commission finds that the extent and scope of development is not significant and weighs against finding substantial issue.

3. The significance of the coastal resources affected by the decision. The City-approved project is a new pump station that is consistent with the development standards for the site. The proposed development will not interfere with any existing public access and will not significantly impact public views of the coast. Therefore, the Commission finds that the proposed project would not impact sensitive coastal resources. This factor weighs in favor of a finding of no substantial issue.

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

5. Whether the appeal raises local issues, or those of regional or statewide significance. The valid grounds for this appeal are limited to whether the proposed project is consistent with City's certified LCP and the public access policies of the Coastal Act, which is a local issue that does not raise issues of statewide significance. There is nothing associated with the project approved by the City that rises to a regional or statewide level of significance. As such, this factor supports a finding of no substantial issue.

Conclusion

In conclusion, the Commission finds that **no substantial issue** exists with respect to whether the local government action conforms with the policies of the City's certified LCP and the public access policies of the Coastal Act.

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

- Appeal No. A-5-NPB-24-0021 and associated file documents