

Attachment A

Resolution No.2025-70

RESOLUTION NO. 2025-70

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, DENYING AN APPEAL AND UPHOLDING THE PLANNING COMMISSION'S APPROVAL OF MINOR CHANGES TO COASTAL DEVELOPMENT PERMIT NO. PA2024-0140 FOR THE PROPERTY LOCATED AT 100 EAST BALBOA BOULEVARD (PA2025-0130)

WHEREAS, Section 200 of the City Charter, of the City of Newport Beach ("City"), vests the City Council with the authority to make and enforce all laws, rules and regulations with respect to municipal affairs subject only to the restrictions and limitations contained in the City Charter and the State Constitution, and the power to exercise, or act pursuant to any and all rights, powers, and privileges or procedures granted or prescribed by any law of the State of California;

WHEREAS, the underlying project involves an application filed by the City's Public Works Division ("Applicant"), with respect to the Property located at 100 East Balboa Boulevard and legally described as Block 2 of the East Newport Tract ("Property");

WHEREAS, the Property is comprised of the Balboa Branch Library which was constructed in 1929 and is approximately 4,500 square feet in area, including a 360-square-foot City museum along with Fire Station No. 1, which was constructed in 1962 and is approximately 3,400 square feet in area;

WHEREAS, the Applicant proposes the redevelopment of the Balboa Branch Library and Fire Station No. 1 along with a 3,675-square-foot green space and 1,500-square-foot playground area ("Project");

WHEREAS, the Property is designated as Public Facilities (PF) by the General Plan Land Use Element, which is intended to provide public facilities, including public schools, cultural institutions, government facilities, libraries, community centers, public hospitals, and public utilities;

WHEREAS, the Property is in the Public Facilities (PF) Zoning District, which is intended to provide public facilities, including public schools, cultural institutions, government facilities, libraries, community centers, public hospitals, and public utilities;

WHEREAS, the Property is designated as Public Facilities (PF) by the Coastal Land Use Plan and Coastal Zoning District, which is intended to provide public facilities, including cultural institutions, government facilities, libraries, community centers, public utilities, and public schools;

WHEREAS, a coastal development permit (“CDP”) is required for completion of the Project;

WHEREAS, the Property contains various trees and landscaping including a Blue Gum Eucalyptus tree and Canary Island Date Palm tree that are designated as City landmark trees (“Trees”) under City Council Policy G-1 (Retention, Removal, and Maintenance of City Trees) (“Council Policy G-1”);

WHEREAS, a tree assessment completed in 2021 supported removal of the Trees due to incurable disease which has led to internal rot pursuant to City Council Policy G-1;

WHEREAS, the Parks, Beaches, and Recreation Commission (“PB&R”) conditionally approved the removal of the Trees on March 5, 2024;

WHEREAS, the Friends of Library Park (“FLP”), an association comprised of Newport Beach residents represented by Christopher L. Pitet (“Appellant”), filed an appeal of PB&R’s decision to the City Council on June 14, 2024;

WHEREAS, a public hearing was held by the City Council, in the City Council Chambers located at 100 Civic Center Drive, Newport Beach, California on September 24, 2024. A notice of time, place, and purpose of the hearing was given in accordance with California Government Code 54950 *et seq.* (“Ralph M. Brown Act”), Chapters 20. 62 and 21. 62 (Public Hearings) of the Newport Beach Municipal Code (“NBMC”). Evidence, both written and oral, was presented to, and considered by the City Council at this public hearing;

WHEREAS, at the public hearing, the City Council considered the appeal of PB&R’s decision as well as the CDP application for the Project;

WHEREAS, at the conclusion of the hearing, the City Council unanimously adopted Resolution Nos. 2024-71 and 2024-72 upholding PB&R’s approval of the removal of the Trees and approved CDP No. PA2024-0140 for the Project;

WHEREAS, the Appellant filed an appeal of the CDP with the California Coastal Commission (“CCC”) on October 24, 2024, citing concerns about the removal of the diseased Blue Gum Eucalyptus tree and the potential displacement of nesting Great Blue Herons;

WHEREAS, City staff worked with CCC staff on appropriate revisions to the approved CDP Landscape Plan for the Project to incorporate tree species that better support nesting birds including Western Sycamore trees along Island Avenue and East Bay Avenue and a Sweetshade tree and Australian Willow tree within the planting areas of the parking lot along East Bay Avenue;

WHEREAS, the modifications to the CDP Landscape Plan alter the parking layout and result in the loss of one surplus parking space, requiring minor changes to CDP No. PA2024-0140;

WHEREAS, Section 21.54.070(B) (Changes to an Approved Coastal Development Permit) of the NBMC authorizes the Community Development Director to approve minor changes to the CDP without a public hearing;

WHEREAS, the Community Development Director approved Staff Approval No. PA2025-0130 on July 3, 2025, for the proposed landscape and parking layout changes to CDP No. PA2024-0140 to address issues raised in the appeal of the CDP;

WHEREAS, the Appellant filed an appeal of the Community Development Director's decision on July 18, 2025, alleging the modifications were not exempt under California Environmental Quality Act ("CEQA"), citing concerns that the replacement trees are insufficient for nesting birds, and alleging risks to Environmentally Sensitive Habitat Areas ("ESHAs");

WHEREAS, a public hearing was held by the Planning Commission in the City Council Chambers located at 100 Civic Center Drive, Newport Beach, California on September 18, 2025. A notice of time, place, and purpose of the hearing was given in accordance with the Ralph M. Brown Act, and Chapters 20. 62 and 21. 62 (Public Hearings) of the NBMC. Evidence, both written and oral, was presented to, and considered by the Planning Commission at this public hearing;

WHEREAS, at the conclusion of the hearing, the Planning Commission unanimously adopted Resolution No. PC2025-021, denying the appeal and upholding the Community Development Director's approval of landscaping and parking layout changes to CDP No. PA2024-0140 for the redevelopment of Fire Station No.1 and Balboa Branch Library;

WHEREAS, the Appellant filed an appeal of the Planning Commission's approval of the landscaping and parking layout changes, alleging that 1) the replacement trees are insufficient for nesting birds; 2) the landscaping and parking layout changes conflict with the intent of the Natural Resources Element of the General Plan; 3) the Project violates protections of ESHAs; and 4) the Property carries a historic underground spring beneath the Blue Gum Eucalyptus Tree and therefore requires an Environmental Impact Report ("EIR"); and

WHEREAS, a public hearing was held by the City Council on October 28, 2025, in the Council Chambers located at 100 Civic Center Drive, Newport Beach, California. A notice of time, place, and purpose of the hearing was given in accordance with the Ralph M. Brown Act, Chapters 20.62 and 21.62 (Public Hearings) of the NBMC. Evidence, both written and oral, was presented to, and considered by the City Council at this public hearing.

NOW, THEREFORE, the City Council of the City of Newport Beach resolves as follows:

Section 1: The City Council does hereby uphold the Planning Commission's decision authorizing the approval of landscape and parking layout changes to the CDP, under Staff Approval No. PA2025-0130, based upon the findings set forth in Exhibit "A," and subject to the conditions of approval set forth in Exhibit "B," both of which are attached hereto and incorporated herein by reference.

Section 2: The City Council finds the adoption of this resolution is exempt from environmental review under CEQA pursuant to Section 154302 (Class 2 – Replacement or Reconstruction) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3. The Class 2 exemption applies to the replacement or reconstruction of existing structures where the new structure will be located on the same site as the structure being replaced and substantially have the same purpose and capacity.

In this case, the originally approved CDP identified the demolition and reconstruction of the fire station and library. The Project is substantially conforming to the scope of the approved CDP, which is the replacement or reconstruction of the existing Balboa Branch Library and Fire Station No. 1 with a new library and fire station on the same project site. Therefore, the intent of Class 2 is met and the Project's minor changes to landscaping and parking will not affect the Class 2 exemption.

The exceptions to this categorical exemption under Section 15300.2 are not applicable. The Project does not impact an environmental resource of hazardous or critical concern, does not result in cumulative impacts, does not have a significant effect

on the environment due to unusual circumstances, does not damage scenic resources within a state scenic highway, is not a hazardous waste site, and is not identified as a historical resource.

Section 3: The recitals provided in this resolution are true and correct and are incorporated into the operative part of this resolution.

Section 4: If any section, subsection, sentence, clause or phrase of this resolution is, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this resolution. The City Council hereby declares that it would have passed this resolution, and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more section, subsections, sentence, clause or phrases be declared invalid or unconstitutional.

Section 5: This resolution shall take effect immediately upon its adoption by the City Council, and the City Clerk shall certify the vote adopting the resolution.

ADOPTED this 28th day of October 2025.

Joe Stapleton
Mayor

ATTEST:

Lena Shumway
City Clerk

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE



Aaron C. Harp
City Attorney

Attachments: Exhibit A - Findings for Approval of Minor Changes to CDP No.
PA2024-0140
Exhibit B - Conditions of Approval

EXHIBIT "A"

FINDINGS FOR APPROVAL OF MINOR CHANGES TO CDP NO. PA2024-0140

In accordance with Section 21.54.070 (Changes to an Approved Coastal Development Permit) of the NBMC, the following findings and facts in support of such findings as set forth:

Finding of Consistency with Section 21.54.070(B)(1):

The changes are consistent with all applicable provisions of this Implementation Plan.

Facts in Support of Finding with 21.54.070(B)(1):

1. The Property is located in the Public Facilities (PF) General Plan Land Use Plan Category, Coastal Land Use Plan Category, Zoning District, and Coastal Zoning District. These designations are intended to provide public facilities, including public schools, cultural institutions, government facilities, libraries, community centers, public hospitals, and public utilities. The Property is currently developed with a fire station and library and will be reconstructed to operate in the same manner. The Project's minor changes related to landscaping and parking do not alter the Property's land use and remain consistent with the intent of the Public Facilities (PF) designations.
2. As conditionally approved in the CDP, the landscape plan is required to comply with Section 21.30.075 (Landscaping) of the NBMC. The Project revisions replace certain tree species for the purpose of supporting nesting birds, which will continue to comply with Section 21.30.075 (Landscaping) of the NBMC and do not include any invasive species. Although the revised landscape plan will alter the Property's parking layout and result in the loss of one surplus parking space, the Property will continue to provide sufficient on-site parking.
3. Tree Evaluation Report, dated May 5, 2025, was prepared by Dudek Consultants to assist the City in preparation of a revised landscape plan. The report, which was prepared by a biologist and urban forester, recommended the use of the Western Sycamore tree species due to its ecological value, compatibility with the Southern California climate, and structural suitability for nesting birds, such as Blue Herons. The report noted that mature eucalyptus trees located directly across from the Property at the intersection of Island Avenue and West Bay Avenue, provide the size, height, and structural characteristics, which are well-suited locations for heron nesting during the reconstruction and replanting phase of the Project. An existing hoop pine tree, which is located in the median southeast of the library, also

provides viable nesting options. The report notes that these trees should help minimize disruption to the nesting cycle during the Project's reconstruction while the newly planted trees mature and develop sufficient canopy coverage to support long-term habitat needs. The Project utilizes the recommendations of the report and has provided an updated landscape plan that better serves nesting birds.

4. As conditionally approved in the CDP, the demolition and reconstruction of Fire Station No.1 and Balboa Branch Library are subject to comply with the Migratory Bird Treaty Act ("MBTA"), which is intended to ensure the sustainability of populations of all migratory bird species. Additionally, the Applicant is required to conduct a pre-construction nesting survey prior to the demolition of the structures. The survey allows the Applicant to identify areas with active nests and to create buffers to protect the nests from disturbance during construction. The Project, which provides an updated landscaping plan and parking layout, will not affect compliance with these conditions of approval.

Finding of Consistency with Section 21.54.070.(B)(2):

The changes do not involve a feature of the project that was a basis for or subject of findings or exemptions in a negative declaration or Environmental Impact Report for the project.

Facts in Support of Finding with 21.54.070(B)(2):

1. The Project primarily affects landscaping which is intended to provide additional support to bird nesting habitats. No alterations to the CDP's approved floor area, height, or use are being requested. While the Project will result in the loss of one parking space, the Property will continue to provide sufficient on-site parking. The Project is substantially conforming to the scope of the approved CDP, which is the replacement or reconstruction of an existing library and fire station with a new library and fire station on the same site. Therefore, the requested changes will not affect the Class 2 (Replacement or Reconstruction) exemption under the CEQA Guidelines.
2. The findings set forth in Section 2 (California Environmental Quality Act Determination) in Resolution 2025-__ are hereby incorporated by reference.

Finding of Consistency with Section 21.54.070.(B)(3):

The changes do not involve a feature of the project that was specifically addressed or was the subject of a condition(s) of approval for the project or that was a specific consideration by the applicable review authority in the project approval.

Facts in Support of Finding 21.54.070.(B)(3):

1. The Project's proposed parking layout, which removes one surplus parking space, does not involve a feature that was specifically conditioned or addressed by the approved CDP.
2. While the Project proposes replacement tree species to provide added support to nesting birds, the revised landscape plan will continue to be consistent with Title 21 landscape standards. Therefore, the Project complies with Condition of Approval No. 14 of the approved CDP, which requires the Applicant to submit a final landscape and irrigation plan prior to the issuance of a building permit.

Finding of Consistency with Section 21.54.070.(B)(4):

The changes do not result in an expansion or change in operational characteristics of the use.

Fact in Support of Finding 21.54.070.(B)(4):

1. The approved CDP authorized the demolition of the Balboa Branch Library and Fire Station No. 1, along with the removal of two diseased trees, to allow for the construction of a new City fire station and library. The Project's revisions do not change the approved use, height, or floor area of the CDP. While the Project's changes will result in the loss of one surplus parking space, the Property will continue to provide sufficient on-site parking.

Finding of Consistency with Section 21.54.070.(B)(5):

Do not alter the facts in support of the findings required by Section 21.52.015(F) and any other application section of this Implementation Plan.

Facts in Support of Finding 21.54.070.(B)(5):

1. The Project's revisions will not alter the original facts in support of the findings that were made to support the CDP's approval given that the changes are primarily affecting landscaping and parking.
2. On August 14, 2025, a memorandum was prepared by Dudek Consultants which discussed the protection status of nesting Great Blue Herons. Section 21.30B.030 (Environmentally Sensitive Habitat Areas) ("ESHA") of the NBMC, defines ESHA as any area in which plant or animal life, or their habitats are either rare or are especially valuable because of their special nature or role in an ecosystem that could easily be disturbed or degraded by human activities and developments. The memorandum clarifies that while Great Blue Herons are provided protection under the MBTA, particularly while nesting, it is not federally listed as threatened or endangered under the Federal Endangered Species Act (FESA). Therefore, the Great Blue Heron is not a federally protected species and is considered a secure species, in California as well as globally, according to the California Department of Fish and Wildlife Natural Diversity Database. The memorandum also states that Great Blue Herons that nest on site are only protected while actively nesting and rookeries are not protected further.
3. The August 14, 2025, Dudek Consultants memorandum also evaluated whether the Blue Gum Eucalyptus tree qualifies as an ESHA. The memorandum states that the tree is not an ESHA and supports that its removal is not detrimental since it does not play a special role in an ecosystem given that it is located in a developed area as ornamental landscaping. The tree is also not a rare species and is non-native.
4. Additionally, Section 21.30B.030 (A)(1) (Environmentally Sensitive Habitat Areas – Exceptions) includes exceptions and states that ESHAs do not include existing developed areas. The Balboa Branch Library was constructed in 1929. A fire station was added to the existing library and has been operating as Fire Station No. 1 since 1962. The two buildings total approximately 7,930 square feet and are surrounded by residential, commercial, and mixed-used development. The August 14, 2025 Dudek memorandum affirms that the Property and eucalyptus tree qualify as exceptions under Section 21.30B.030(A)(1) of NBMC due to the Property's status as existing development. The memorandum also states that the Property lacks natural communities, coastal streams, rare plants or wildlife, and connectivity to other natural areas given that it is surrounded by development.

5. The Property is also not identified as one of the twenty-eight Environmental Study Areas within the City under Figure NR2 (Environmentally Study Areas) of the General Plan's Natural Resources Element. Additionally, the Property is not identified as a site with Biological Resources under General Plan Figure NR1 (Biological Resources) of the Natural Resources Element.
6. While existing trees on the Property will be removed, the Project provides proper mitigation by proposing a tree species that supports heron nesting. The future removal of the eucalyptus tree and any remaining nests would be conducted outside of the nesting season (February through August) and after there is no active nesting, as determined by a biologist. Overall, the Project's revised changes continue to comply with the MBTA.
7. The Appellant's claim of an underground spring was not supported with supplemental evidence. Furthermore, upon review of the City's municipal sources and the City's senior engineer geologist, there is no evidence to suggest that the Property historically carries an underground spring. The Property is located on the Balboa Peninsula which is a relatively flat surface. The City's geotechnical borings encountered groundwater six feet below the existing ground surface.

EXHIBIT "B"

CONDITIONS OF APPROVAL

(Project-specific conditions are in italics)

1. *All previous conditions of approval for Coastal Development Permit No. PA2024-0140 shall remain in full force and effect.*
2. The development authorized by the Staff Approval filed as PA2025-0130 shall be in substantial conformance with the revised landscape plan.