

Attachment K

Appellant's Appeal Application to City Council



Appeal Application

City Clerk's Office
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Newport Beach, CA 92658-8915
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OCT 2 '25 PM 3:26
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Appeals are time sensitive and must be received by the City Clerk within the specified time period from a decision or final action by a decision-maker. It is advisable to consult with the Department managing the issue if there is question with regards to appealing an action. This is an appeal of the:

- ☐ (CDD222) Community Development Director Action to the Planning Commission - \$2116
- ☐ (CDD222) Zoning Administrator Action to the Planning Commission - \$2116
- ☐ (CDD222) Coastal Development Application CDP Appeal from Zoning Admin to the Planning Commission (only if appeal is solely based on the CDP portion of the application) - No Fee
- ☒ (CDD222) Planning Commission Action to the City Council - \$2116
- ☐ (CDD222) Community Development Director Action to the Harbor Commission - \$623
- ☐ (CDD222) Harbor Commission Action to the City Council (CDD - Planning) - \$498
- ☐ (CDD222) Hearing Officer Action to the City Council - \$2116
- ☐ (CDD223) Building Official/Fire Marshal Action to the Building/Fire Board of Appeals - \$1827
- ☐ (CDD224) Chief of Police Action on an Operator License to the City Manager - \$1033
- ☐ (RSS073) City Manager Action on a Special Events Permit to the City Council - \$1953
- ☐ (HBR001) Harbormaster Action to the Harbor Commission - \$622
- ☐ (HBR001) Harbor Commission Action to the City Council (Harbor Department) - \$498
- ☐ (PBW018) Public Works Director Action to Harbor Commission - \$1446
- ☐ (PBW018) Harbor Commission Action to City Council (Public Works Department) - \$691
- ☐ Other - Specify decision-maker, appellate body, Municipal Code authority and fee: _____

Appellant Information:

Name(s): The Friends of Library Park
Address: c/o Christopher L. Pitet, 100 Bayview Circle, Suite 210
City/State/Zip: Newport Beach, CA 92660
Phone: (949) 502-7760 Email: cpitet@apjuris.com

Appealing Application Regarding:

Name of Applicant(s): Planning Commission Date of Final Decision: September 18, 2025
Project No.: Staff Approval No. PA2025-0130 Activity No.: _____
Application Site Address: 100 East Balboa Boulevard
Description of application: Planning Commission's decision to uphold the Community Development Director's approval of revised landscape plans to CDP No. PA2024-0140 for redevelopment of Fire Station No. 1 and Balboa Branch Library.
Reason(s) for Appeal (attach a separate sheet if necessary): See attached

Signature of Appellant: Christopher L. Pitet Date: October 2, 2025

FOR OFFICE USE ONLY:

Date Appeal filed and Administrative Fee received: 2nd, October, 2025

Gina Tri
City Clerk

cc: Department Director, Deputy Director, Staff, File



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Updated 9/17/2024

BY FAX



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October 2, 2025

We represent the Friends of Library Park ("FLP"), an association of residents from the City of Newport Beach (the "City") who strongly oppose the removal of the sole remaining Blue Gum Eucalyptus tree no. 3517580 (the "Landmark Tree") in Library Park at 100 Balboa Boulevard, Newport Beach, CA 92661. The subject of media coverage and a defining symbol of a community, the Landmark Tree must be preserved. *See* Michele Gile, *Newport Beach Residents Fight Back Against City's Plan to Remove Eucalyptus Tree Home to Great Blue Herons*, CBS News (Jan. 30, 2024), <https://www.cbsnews.com/losangeles/news/newport-beach-residents-fight-back-against-citys-plan-to-remove-eucalyptus-tree-home-to-great-blue-herons/>; *see also* Michele Gile, *Bird Lovers Fight Against Newport Beach's Plan to Cut Down a Tree*, CBS News (Sep. 18, 2025), <https://www.cbsnews.com/losangeles/video/bird-lovers-fight-against-newport-beachs-plan-to-cut-down-a-tree/>.

Preserving this tree does *not* have to come at the expense of future renovations to Balboa Branch Library and Fire Station No. 1. Both preservation *and* development can be accomplished, and FLP is willing to discuss a mutually agreeable solution with the City—one that will preserve the tree without bogging the City's renovation efforts in future appeals and litigation.

In September 2024, the City Council approved Coastal Development Permit No. PA2024-0140, which authorized (1) the demolition of the existing Balboa Branch Library and Fire Station No. 1, (2) the removal of the Landmark Tree, and (3) construction of a 10,900 square foot building that will house a new fire station and library.

From the start, FLP challenged the City for basing its project on faulty information. For example, the City relied on prior arborist reports—now more than two years old—with inconsistent results suggesting that, if anything, the tree's health was improving and nowhere near failing. Due to this unreliable analysis, FLP has even offered (and continues to offer) to pay for a new, up-to-date report by an independent arborist. But FLP's repeated attempts at questioning the City's primary justification for removing the tree—it purportedly being sick and dying—has repeatedly gone ignored. Perhaps nothing has highlighted the City's environmentally unsound, ends-means rationale more than its conduct after being confronted with the faulty information underlying its decision. Rather than following mandated protocols and the City's own policies, such as its Local Coastal Plan ("LCP") and G-1 Tree Policy, Mayor Will O'Neill waived the City's G-1 Tree Policy in order to get this project approved in the first place. And he functionally did so

despite the fact that the City designed that policy to afford enhanced protection of landmark trees, especially those located within the Local Coastal Zone (“LCZ”). The Landmark Tree is exactly that: a landmark tree, located within the LCZ, which currently serves as a rookery for nearly two dozen Blue Herons. By waiving the City’s only concrete guardrail for protecting Environmentally Sensitive Habitat Areas (“ESHAs”), it has become abundantly clear that the City lacks any protections for—and perhaps does not *actually* care for—landmark trees, much less the sensitive natural habitat for wildlife in the LCZ.

In October 2024, the FLP appealed the City’s decision to the California Coastal Commission (“Coastal”). FLP’s arguments included (but were not limited to) its lack of meaningful guidelines for protecting the environment, the irreparable harm that the project will cause to the federally protected nesting Blue Heron birds, and the City’s complete disregard for a healthy Landmark Tree solely because it is located on the site where an approximately 11,000 square foot building is proposed to be constructed.

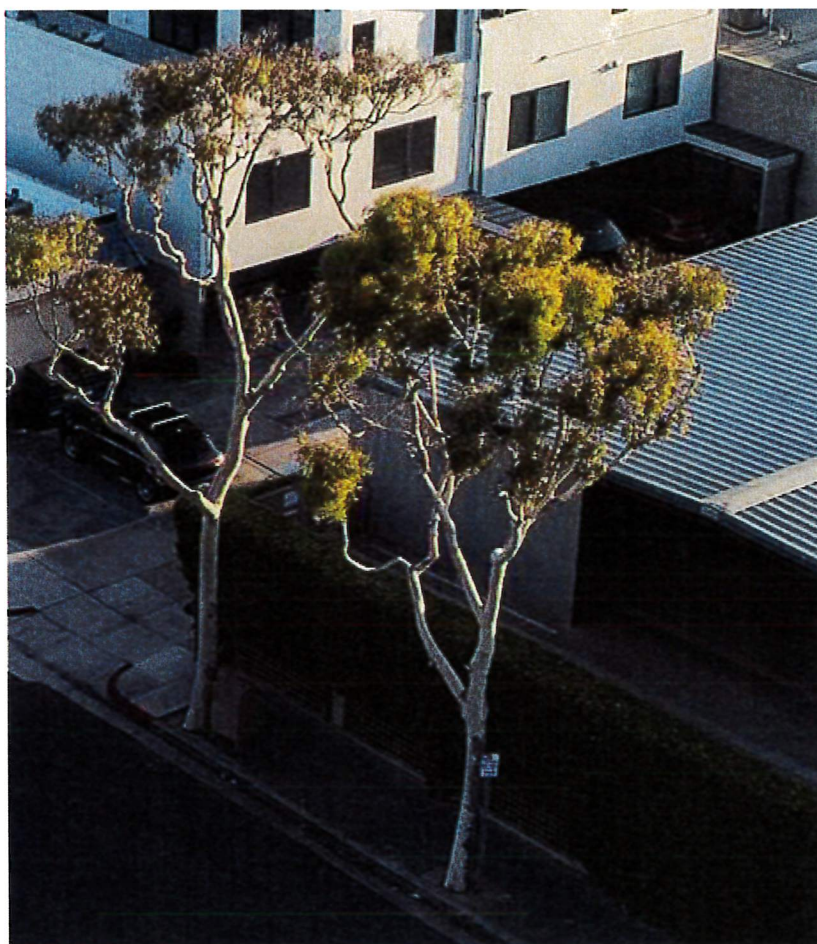
On July 3, 2025, the FLP received a revised project approval and Staff Report from Ms. Laura Rodriguez proposing a modification to Coastal Development Permit No. PA2024-0140, which would eliminate one parking stall and add a single Western Sycamore tree in its place. On July 18, 2025, the FLP appealed this revised proposal to the Newport Beach Planning Commission. Exactly one month later, on September 18, 2025, after public comments, the Planning Commission approved a motion to deny that appeal. This letter shall serve as the FLP’s formal appeal of the revised project approval to the Newport Beach City Council (the “Amended Proposal”). The FLP’s grounds for appeal include, but are not limited to, the following:

First, the revised project’s attempt to mitigate the concerns outlined in FLP’s numerous appeals functionally concedes that the project at issue will cause environmental harm—especially to the nearly two dozen Blue Heron birds that have long called the Landmark Tree “home.” And it underscores the need for a substantively revised LCP. Until the City devises and implements an LCP that provides meaningful and clearly articulated guidelines for construction projects like the one at issue, this renovation project will only highlight the flaws in the City’s LCP. Given these deficiencies, which undermine any suggestion that the City has grounds for proceeding with the project, the Landmark Tree must be left unharmed, and the nesting Blue Heron birds undisturbed.

To be sure, the proposed mitigation efforts are also nonstarters. They offer *nothing* to address the glaring deficiencies in the City’s Local Coastal Plan for protecting Landmark Trees, ESHAs, and the Blue Heron birds. The lack of meaningful solutions is not surprising—City Staff *repeatedly* referred to the Amended Proposal as a *minor change*. And that minor change—planting Western Sycamore trees “in order to better support nesting birds” (Amended Proposal at 2)—ignores a simple fact: The Western Sycamores will not reach maturity for 20–30 years after they are planted, and “herons favor tall, mature trees.” (Dudek Memo at 1). Thus, the City’s proposed changes do nothing to protect the birds now, when mitigation matters most. And even if they could, the Western Sycamore can also be chopped down—again harming the Blue Heron

birds—without any reasonable justification based on the City’s waiver of its G-1 Tree Policy and lack of guidelines for protecting ESHAs.

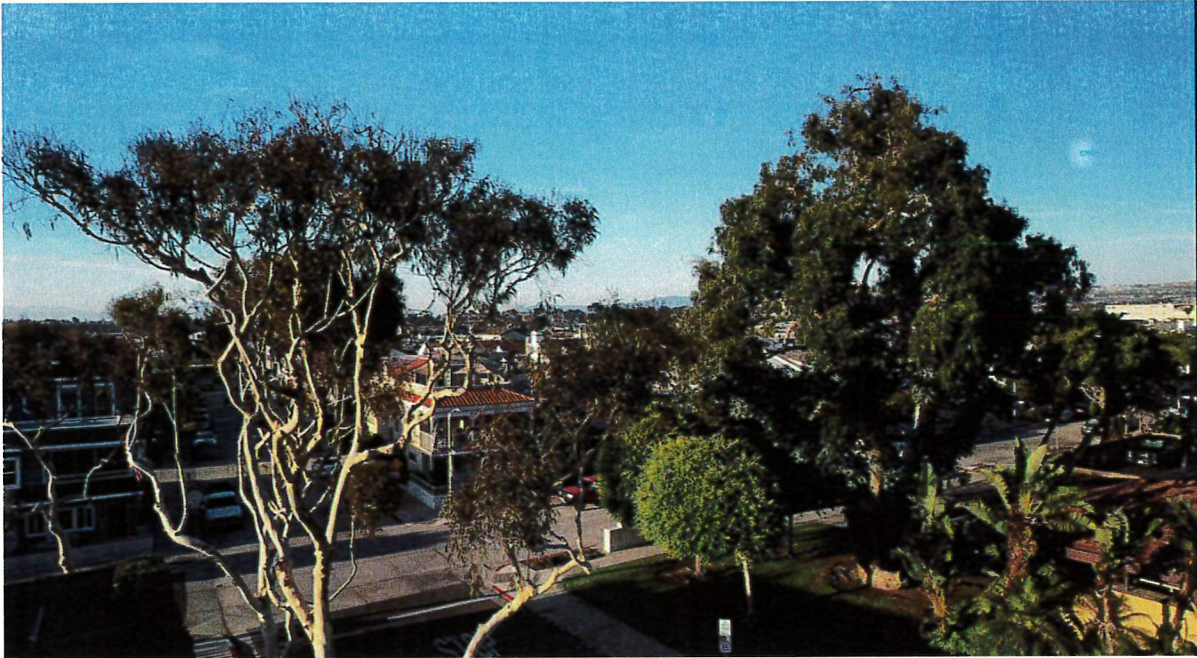
The Dudek memorandum on which the Staff Report relies also speculates that two nearby Eucalyptus trees (across the street from Library Park) and another nearby Hoop Pine tree could serve as temporary homes for the nesting Blue Herons. But these nearby trees are unable to support the current population of Blue Herons making an active rookery in the Landmark Tree.



If these Eucalyptus trees (as shown directly above) or the Hoop Pine tree were well-suited to housing Blue Herons, the Blue Herons would be nesting in them right now, after the City removed several other Blue Gum Eucalyptus trees in Library Park. Unfortunately, as video footage¹ makes

¹ Available at <https://www.youtube.com/watch?v=9HkPH-RpO4k&feature=youtu.be>.

clear, there are no rookeries in the surrounding trees. And there is little wonder why: Compared to the towering, healthy, and thriving Landmark Tree, the surrounding trees would leave the Blue Herons vulnerable and exposed.



Rather than waiving the protective policies it already has in place—as the City did when approving this project—it should commit to devising and implementing an LCP with meaningful and clearly articulated standards. Until then, this project—including with the “minor changes” approved by the Planning Commission—will merely highlight the flaws in the City’s system, which protects the environment only in word, but not in deed.

Second, on June 27, 2025, the City, in consultation with Dudek, released its initial drafts² of the Recreation and Natural Resources Elements. One of the draft’s primary goals includes using reasonable efforts to evaluate tree canopy cover in parks and the public right-of-way. (Draft Report at 7). The Landmark Tree provides canopy cover to both the existing Mini Park located behind the Library at 100 Balboa Boulevard and the adjacent sidewalk. But the City suggests chopping it down and replacing it with trees which will take decades to grow to the same height and will provide no coverage in the interim. Removing this beloved Landmark Tree will not further the Natural Resources Element guide’s purpose of “guid[ing] the conservation, protection,

² Available at <https://newportbeach.legistar.com/View.ashx?M=F&ID=14325578&GUID=5E2BD777-3BA8-4B14-B40C-96D8C61D5475>.

development, and use of natural resources ... as well as the preservation of cultural and historic resources.” (Draft Report at 10).

Third, the City’s proposal is not exempt under the California Environmental Quality Act (“CEQA”). CEQA exemptions must be “construe[d] ... narrowly in order to afford the fullest possible environmental protection[.]” *Save Our Carmel River v. Monterey Peninsula Water Mgmt. Dist.*, 141 Cal. App. 4th 677, 697 (2006), as modified (July 21, 2006). Originally, the Amended Proposal erroneously stated that the project was categorically exempt from CEQA under Class 1, Class 2, and Class 3. Then, in the Planning Commission agenda for September 18, 2025, the City only addressed an exemption under Class 2, thereby effectively conceding that Classes 1 and 3 did not apply. But as explained below, Class 2 also does not apply, and thus, the project is not exempt under CEQA.

At most, Class 2 exempts the “[r]eplacement of a commercial structure with a new structure of substantially the same size, purpose, and capacity,” but it “does not cover expansions in use or capacity of the facility to be replaced or reconstructed.” *See* § 15302(b). Here, the two existing buildings are not being replaced with buildings of substantially the same size, purpose, or capacity because the library is being replaced with a fire station and the fire station is being replaced with a library—buildings which have two very distinct and dissimilar purposes.

Fourth, the revised project violates Cal. P.R.C. § 30240’s protections for ESHAs. ESHAs are defined as “any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.” Cal. P.R.C. § 30107.05. Section 30240 protects ESHAs “against any significant disruption of habitat values” and states that only “uses dependent on those resources shall be allowed within those areas.” Cal. P.R.C. § 30240. The phrase “dependent on those resources” means “resources that make an area a protected habitat—i.e., ‘plant or animal life or their habitats [that] are either rare or especially valuable because of their special nature or role in an ecosystem.’” *McAllister v. California Coastal Com.*, 169 Cal. App. 4th 912, 928 (2008), as modified (Jan. 20, 2009). Accordingly, developments inside ESHAs are limited “to uses that are dependent on the resources to be protected and that do not significantly disrupt habitat values.” *Id.* at 929.

Examples of ESHAs provided in the City’s LCP include native riparian habitats, because “of their rarity and because of their important roles in the ecosystem”—as evinced by the fact that “many species of birds nest and roost in riparian habitat.” (LCP 4-3). Here, the Library Branch pocket park—especially the Landmark Tree and the Blue Herons nesting therein—is an ESHA. The Blue Heron birds are valuable to the Newport Beach ecosystem because they are predators who help regulate the populations of nearby fish, amphibians, and small mammals. Controlling the population size of smaller species is vital to biodiversity and the overall function of the food chain. Without a nesting place, the Blue Herons would be unable to fulfill their role in the

ecological community. Therefore, the Landmark Tree provides a sanctuary for the birds and plays a vital role in the local ecosystem, making it worthy of consideration as an ESHA.

The Landmark Tree plays another vital role in the area as well. Newport Beach contains a historic underground spring that has existed for many years. This large body of water helps hydrate and supply the Landmark Tree with vital nutrients. Moreover, by absorbing the water, the Landmark Tree controls the size of the underground spring. But the city has not, at any point, considered the impacts of removing the Tree on this underground spring. Before proceeding with this significant project, the City should thus conduct an environmental impact report that analyzes the consequences which will follow from (1) removing the Landmark Tree, *and* (2) demolishing the current Library and Firehouse (and rebuilding structures that will exceed 10,000 square feet in size), on the natural springs lying beneath Library Park.

To be sure, the approved Staff Report also claimed the City's Municipal Code recognizes an "exception" for ESHAs. (Staff Report at 11-12). ESHAs, it explained, do not include "existing developed areas." *Id.* at 11. And because the Library and Fire Station are existing developments, the Landmark Tree is *exempted* from ESHA protections. FLP strongly objects to any attempt at using a local municipal code at undermining substantive protections demanded by the State of California. But regardless, the Report completely misunderstands FLP's position. FLP is not arguing that the *Library and Fire Station* are ESHAs. Instead, it is that the pocket park and the Landmark Tree—which are clearly *not* "developments"—get ESHA protections. Accordingly, the purported exemption for existing developments is simply irrelevant. And in fact, any contrary interpretation would mean, for example, that native riparian habitats and wetlands located in the same "area" as existing developments could freely be trampled *regardless* of strict ESHA protections. That dangerous (and incorrect) premise, however, necessarily follows from the Staff Report's exemption-argument—further confirming the City's lack of meaningful environmental protections and underscoring the need for granting FLP's appeal.

Next, the report also claims the Landmark tree "does not play a special role in an ecosystem given that it is located in a developed area as ornamental landscaping." *Id.* at 12. But the Blue Herons clearly think otherwise. Moreover, the Landmark Tree has been in place for decades, and even the City has recognized the Tree's special importance—when the City initially designated it as a Landmark Status tree. The Planning Commission also seems to suggest the special Library Park ecosystem is not an ESHA because Blue Herons are not endangered under FESA. But that is irrelevant: the municipal code does not say that *only* wildlife subject to the FESA (or the MBTA for that matter) are of special value to an ecosystem. Rather, it states that habitats that are valuable to an ecosystem and can be easily disturbed are protected. And there's no doubt the Blue Herons meet this definition.

For all of these reasons, the pocket park is an ESHA—meaning any construction project there must involve a resource-dependent use as required under Cal. P.R.C. § 30240. Instead, the Commission proposes a resource-*liquidating* use: the removal of the Landmark Tree, and the Blue

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Heron nests which take refuge on it, in order to build a library and firehouse. Accordingly, the project runs afoul of Cal. P.R.C. § 30240.

We would appreciate you confirming receipt of this appeal by emailing me at the email address above. Further, please let us know the steps and timeline for the City Council's consideration of and action on this important appeal.

Thank you.

Very truly yours,

Christopher L. Pitet

Christopher L. Pitet