

Attachment No. PC 6

Appellant's Application of Appeal

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Appeal Application

City Clerk's Office
100 Civic Center Drive / P.O. Box 1768
Newport Beach, CA 92658-8915
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Clerk's Date & Time Stamp

JUL 18 '25 PM2:59
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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): City of Newport Beach - Public Works Dept. Date of Final Decision: July 3, 2025

Project No.: Staff Approval No. PA2025-0130 Activity No.: _____

Application Site Address: 100 East Balboa Boulevard

Description of application: Proposed changes to Coastal Development Permit No. PA2024-0140, consisting of revised landscape plans.

Reason(s) for Appeal (attach a separate sheet if necessary): See attached

Signature of Appellant: Christopher L. Pitet Date: July 18, 2025

FOR OFFICE USE ONLY:

Date Appeal filed and Administrative Fee received: July 18, 20 25.

for Gary Jin
City Clerk

cc: Department Director, Deputy Director, Staff, File





APJURIS.COM

ATTORNEYS AND COUNSELORS

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949.502.7760

July 18, 2025

Laura Rodriguez
Assistant Planner
Community Development Department
100 Civic Center Drive
Newport Beach, CA 92660
LRodriguez@newportbeachca.gov

Re: Appeal of Staff Approval No. PA2025-0130

Dear Ms. Rodriguez:

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/>.

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. The City's initial approval of this project was based on faulty information, did not follow mandated protocols such as the City's Local Coastal Plan ("LCP") and G-1 Tree Policy. In fact, when confronted with evidence of the health of the Landmark Tree, and clear evidence showing removal was improper under the City's policies, Mayor Will O'Neill waived the City's G-1 Tree policy—which is designed to afford enhanced protection of Landmark Trees, especially those located within the Local Coastal Zone ("LCZ") that currently serve 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 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) the irreparable harm that the project will cause to the federally protected, nesting Blue Heron birds and 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, encompassing the elimination of one parking stall and addition of a single Western Sycamore tree in its place. This letter shall serve as the FLP's formal appeal of the revised project approval (the "Amended Proposal"). The FLP's grounds for appeal include, but are not limited to, the following:

The revised project still does not address the glaring deficiencies in the City's Local Coastal Plan. Rather than addressing FLP's core concerns about the City's lack of any standards in the LCP for protecting Landmark Trees (especially after the City's G-1 Tree policy was conveniently waived) and ESHAs, the Amended Proposal merely attempts to mitigate their symptoms—here, for example, the imminent harm that the federally protected nesting Blue Heron birds, in the sole remaining Landmark Tree located in Library Park, will suffer.

These mitigation efforts serve as a tacit concession 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." Until the City devises and implements an LCP that provides meaningful and clearly articulated guidelines for construction projects like the one here, the 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.

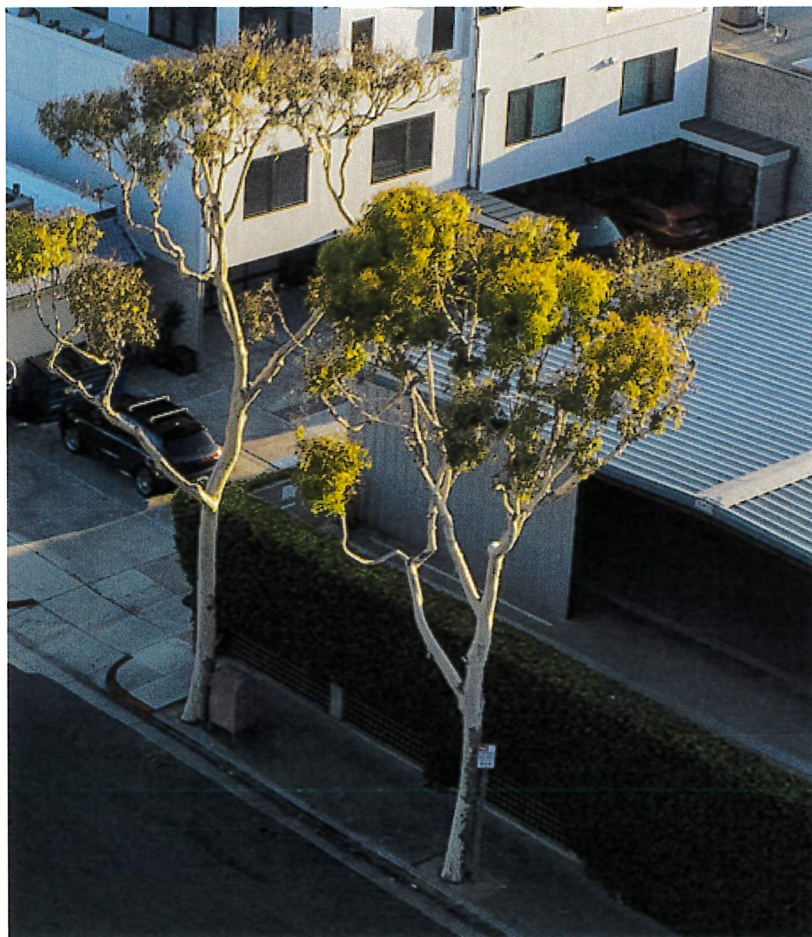
The City's proposed changes do not actually mitigate any environmental harm or demonstrate compliance with the Migratory Bird Treaty Act. The City's Amended Proposal suggests planting Western Sycamore trees "in order to better support nesting birds." (Amended Proposal at 2). But this suggestion—which relies on (without a valid basis) the Dudek Report — 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 Report at 1). Thus, the City's proposed changes do nothing to protect the birds now, when mitigation matters most. And at bottom, they predicate the project's approval on the same problematic circumstances that prompted the City to revise the project in the first place.

Additionally, on June 27, 2025, the City, in consultation with Dudek, released its initial drafts¹ of the Recreation and Natural Resources Elements. One of its primary goals includes using reasonable efforts to evaluate tree canopy cover in parks and the public right-of-way. (Draft Report

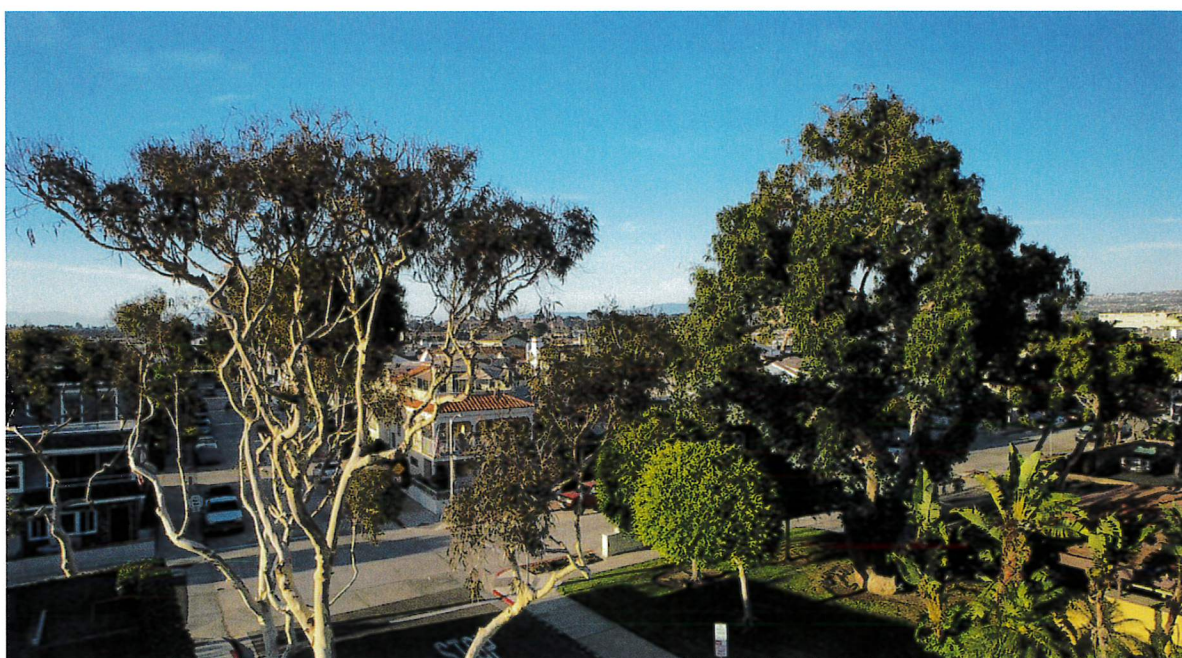
¹ Available at <https://newportbeach.legistar.com/View.ashx?M=F&ID=14325578&GUID=5E2BD777-3BA8-4B14-B40C-96D8C61D5475>.

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, yet the City suggests chopping it down and replacing it with trees which will take numerous years 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, development, and use of natural resources ... as well as the preservation of cultural and historic resources." (Draft Report at 10).

Finally, the Dudek report speculates that two nearby Eucalyptus trees (across the street from Library Park) as temporary homes for the nesting Blue Herons. But the nearby trees are nowhere near adequate to home the current population of Blue Herons making an active rookery in the Landmark Tree.



If these trees were well-suited to housing Blue Herons, they would already be nesting in them right now, in the aftermath of the City's removal of several other Blue Gum Eucalyptus trees in Library Park. But as video footage² makes clear, there are no such 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.



The City's proposal is not exempt under the California Environmental Quality Act. California Environmental Quality Act 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). As previously explained in prior correspondence with the City, The Amended Proposal erroneously states that the project is categorically exempt from the California Environmental Quality Act ("CEQA") under Class 1, Class 2, and Class 3.

- Class 1 Exemptions apply to the operation, repair, maintenance, or minor alterations of existing public structures. The City's proposed project cannot be considered an alteration to an existing structure because the previous structures are to be demolished and replaced with an entirely new structure.

² Available at <https://www.youtube.com/watch?v=9HkPH-RpO4k&feature=youtu.be>.

- Class 2 at most 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. After demolition of the two structures, the library and firehouse will be relocated to the site of the other.
- Class 3 applies to construction projects that do not exceed 10,000 square feet in floor area if the area surrounding the project is not “environmentally sensitive.” But the City concedes the project here will take up 10,900 square feet and the construction will take place in a Mini Park located within the City’s LCP in a clear ESHA. And it is no response to say the project only “nets” a 3,000 square foot addition, when accounting for the existing square footage of the two existing structures, because those structures will be demolished. Post demolition, the construction project will of necessity start from 0 square feet and reach approximately 11,000 square foot in total. There is no basis in CEQA regulations or case law interpreting CEQA that provides for square foot credit from prior structures that have been demolished or removed. Accordingly, the proposed 10,900 square foot addition necessarily exceeds Class 3’s exemption.

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. 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 “many species of birds nest and roost in riparian habitat.” (LCP 4-3). Here, the Landmark Tree provides a sanctuary for the federally protected nesting Blue Heron birds—thus playing vital role in the local ecosystem, and making it worthy of consideration as an ESHA.

Cal. P.R.C. § 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.

Letter to Laura Rodriguez

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The proposed construction project here does not contemplate a resource-dependent use. Instead, it proposes a resource-liquidating use: the removal of the Landmark Tree, and the Blue 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

cc: planning@newportbeachca.gov

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