

MINUTES

HUNTINGTON BEACH PLANNING COMMISSION

TUESDAY, APRIL 24, 2007
HUNTINGTON BEACH CIVIC CENTER
2000 MAIN STREET, HUNTINGTON BEACH, CALIFORNIA 92648

5:15 P.M. - ROOM B-8 (CITY HALL LOWER LEVEL)

CALL PLANNING COMMISSION MEETING TO ORDER

P P P P P P P
ROLL CALL: *Shier-Burnett, Speaker, Livengood, Scandura, Horgan, Dwyer, Farley*

AGENDA APPROVAL

A MOTION WAS MADE BY DWYER, SECONDED BY SPEAKER, TO APPROVE THE PLANNING COMMISSION STUDY SESSION AGENDA OF APRIL 24, 2007, BY THE FOLLOWING VOTE:

AYES: Shier-Burnett, Speaker, Livengood, Scandura, Horgan, Dwyer, Farley,
NOES: None
ABSENT: None
ABSTAIN: None

MOTION APPROVED

- A. PROJECT REVIEW (FUTURE AGENDA ITEMS) - NONE
- B. STUDY SESSION ITEMS:

Scott Hess, Director of Planning, introduced the following new planning staff and welcomed them to the Planning Commission Meeting:

Andrew Gonzales, Assistant Planner
Jill Arabe, Planning Aide
Hayden Beckman, Planning Aide

B-1. MAJOR PROJECTS UPDATE/DEVELOPMENT ISSUES – Scott Hess/Ross Cranmer

Ross Cranmer, Director of Building & Safety, gave a presentation on the major projects that are under construction and the large amount of remodels and additions to residential homes within the City.

Scott Hess, presented an overview of current and future development projects, local and state planning initiatives and provided insight and some predictions for the future of the City.

B-2. PUBLIC HEARING PROCESS – Chair Scandura

Commissioners discussed the public hearing process and protocol.

C. AGENDA REVIEW (UPDATE ON ALL AGENDA ITEMS):

Herb Fauland, Acting Planning Manager, reviewed the agenda items for the 7:00 p.m. portion of the meeting. He advised of four late communications received regarding public hearing Item B-1 and one late communication from the applicant for item B-2 requesting a continuance. He stated there were three sets of minutes on the agenda that may require modifications based on comments from the Planning Commission.

D. PLANNING COMMISSION COMMITTEE REPORTS:

Commissioners Shier-Burnett and Horgan reported on the presentation of the Roadmap for the Green Building Subcommittee Report to the City Administrator's office and staff. She stated that they were awaiting comments.

A MOTION WAS MADE BY HORGAN, SECONDED BY SHIER-BURNETT FOR THE PLANNING COMMISSION SUBCOMMITTEE MEMBERS TO PRESENT THE GREEN BUILDING SUBCOMMITTEE REPORT AT THE MAY 8, 2007 STUDY SESSION PORTION OF THE MEETING, BY THE FOLLOWING VOTE:

AYES: Shier-Burnett, Speaker, Livengood, Scandura, Horgan, Dwyer, Farley
NOES: None
ABSENT: None
ABSTAIN: None

MOTION APPROVED

Commissioner Livengood reported on his recent trip to Huntington Beach sister city, Anjo, Japan and commented on what a great "Green" city it is.

E. PUBLIC COMMENTS (Regarding Study Session Portion of Meeting) - NONE

F. PLANNING COMMISSION COMMENTS:

Chair Scandura reported that the Planning Commission workshop is scheduled for this Thursday at 9:00am and that Commissioner Speaker will not be able to attend due to a prior commitment.

Scott Hess, Director of Planning gave details of the Santa Monica Green Building walking tour on May 4, 2007.

6:40 P.M. – RECESS FOR DINNER

7:15 P.M. – COUNCIL CHAMBERS

CALL PLANNING COMMISSION MEETING TO ORDER

PLEDGE OF ALLEGIANCE – Led by Commissioner Livengood

P P P P P P P

ROLL CALL: **Shier-Burnett, Speaker, Livengood, Scandura, Horgan, Dwyer, Farley**

AGENDA APPROVAL

A MOTION WAS MADE BY LIVENGOOD, SECONDED BY SPEAKER, TO APPROVE THE PLANNING COMMISSION AGENDA OF APRIL 24, 2007 AND TO MOVE ITEM NO. B-2 TO THE BEGINNING OF THE AGENDA, BY THE FOLLOWING VOTE:

AYES: Shier-Burnett, Speaker, Livengood, Scandura, Horgan, Dwyer, Farley
NOES: None
ABSENT: None
ABSTAIN: None

MOTION APPROVED

Please note that the Minutes will reflect actions taken in their original order.

- A. ORAL COMMUNICATIONS - NONE**
- B. PUBLIC HEARING ITEMS:**

PROCEDURE: Commission Disclosure Statement(s), Staff Report Presentation, Commission Questions, Public Hearing, Discussion/Action.

B-1. APPEAL OF ZONING ADMINISTRATOR'S APPROVAL OF MITIGATED NEGATIVE DECLARATION NO. 05-05/COASTAL DEVELOPMENT PERMIT NO. 05-07 (NEWLAND STREET IMPROVEMENTS): **Applicant:** City of Huntington Beach Public Works Department **Appellant:** Planning Commissioner Flossie Horgan **Request:** **MND:** To analyze the potential environmental impacts associated with the implementation of the proposed project. **CDP:** To permit the widening and improvement of Newland Street from Pacific Coast Highway to Hamilton Avenue, including widening the reinforced concrete bridge at Huntington Channel, installation of storm drain improvements, raising the profile of Newland Street to improve traffic visibility, adding a center striped median, adding a left turn lane from southbound Newland Street to eastbound Edison Way, and improving pedestrian access with a new sidewalk on the east side of Newland Street. **Location:** Newland Street, between Pacific Coast Highway and Hamilton Avenue **Project Planner:** Jane James

STAFF RECOMMENDATION: Motion to:
A. "Approve Mitigated Negative Declaration No. 05-05 with findings and mitigation measures."
B. "Approve Coastal Development Permit No. 05-07 with findings and suggested conditions of approval."

The Commission made the following disclosures:

- Commissioner Farley visited the site several times.
- Commissioner Dwyer visited the site and spoke with staff.
- Commissioner Horgan visited the site and spoke with staff.
- Commissioner Livengood visited the site several times and spoke with staff.

- Commissioner Speaker visited the site.
- Commissioner Shier-Burnett visited the site, spoke with staff and attended the workshop.
- Chair Scandura visited the site twice and spoke with staff.

Jane James, Senior Planner, gave a PowerPoint presentation of the proposed project and referred to the late communication received.

Commissioner Horgan gave her reasons for appealing the project and explained that her two concerns were the wetlands mitigation ratio and water quality issues.

Commissioner Horgan requested clarification on the acreage size of the wetlands mitigation.

Discussion ensued between the Commissioners and staff in relation to the difference between wetlands area and California Department of Fish and Game's (CDFG) jurisdictional area.

Shier-Burnett asked about dry weather drainage diversion to the Orange County Sanitation District and inquired how the pickle weed originated.

Livengood asked if pet waste from the animal hospital goes to the storm drain. Travis Hopkins, City Engineer, stated that the new plans connect to the sewer line.

Ms. James stated that the Newland Street Project will be obligated to fund \$75,000 to complete restoration of the .97 acre upper Magnolia marsh even if the Magnolia Street improvement project does not go forward. However, Public Works may request some restoration credits for the Magnolia Street project if available.

Horgan inquired about the mitigation ratio discrepancy. Ms. James responded that Fish and Game requires 1:1 ratio of jurisdictional area, which is greater than only wetlands. She indicated that Public Works Department must obtain permits from CDFG and Army Corps of Engineers.

In response to a question from Farley about the total budget figure, Mr. Hopkins responded that the total budget is \$2.3 million and that this project should eliminate the standing water on Newland Street.

THE PUBLIC HEARING WAS OPENED

Staff announced late communications were received from Marlon Stockdale of Stockdale Tree Farms dated April 23, 2007, from Commissioner Livengood regarding proposed conditions of approval, from David Guido dated April 18, 2007, and from The Orange County CoastKeepers dated April 10, 2007.

Jan Vandersoot, 8101 Newman, Suite C, Huntington Beach, thanked Commissioner Horgan for appealing the request. He requested the dry weather runoff be diverted to the Orange County Sanitation District (OCSD) and be required as a condition of approval. Mr. Vandersoot stated that staff has used the Department of Fish and Game definition of wetlands incorrectly, when in fact the Coastal Commission definition of wetlands, which would be larger and includes all of the Department of Fish and Game jurisdictional wetlands area, should be used. He stated that Meg Vaughn of the California Coastal Commission has not received a response from City staff to their email of March 29, 2007. He recommended continuing the item until staff communicates with the Coastal Commission. He further stated that widening a road into wetlands comes

under Section 30233 of the Coastal Act and staff is using the exemption for improvements relating to Incidental Public Services as rationale for allowing widening a road into wetlands.

WITH NO ONE ELSE PRESENT TO SPEAK, THE PUBLIC HEARING WAS CLOSED.

Chair Scandura asked staff to respond to Mr. Vandersoot's comment on the email from the Coastal Commission.

Ms. James stated that an email was received from the Coastal Commission stating that they understood the City had a project under review and to please ensure it complies with all requirements of Coastal Act Section 30233. The Coastal Commission also made a comment that it was their belief that a portion of the project lay in the original permit jurisdictional area of the Coastal Zone. Staff stated that no response was necessary because the project complies with Section 30233 and no portion of the project lies within the original permit jurisdictional area of the Coastal Zone. Staff stated that the Wetlands and Wildlife Conservancy parcel appears to be within the original permit jurisdiction and not the street itself. Staff felt that because the email did not come in the form of a comment letter, it did not need a response because the Coastal Commission did not pose any questions.

Horgan expressed her disappointment with staff for not responding to the Coastal Commission communication and stated that she would have appreciated being informed of the email from the Coastal Commission.

Horgan asked if the suggested mitigation measure requires Public Works to spend \$75,000 for the potential impacts to a .06 acre area of wetlands. Staff responded that the \$75,000 is to mitigate 0.16 acres of CDFG jurisdictional area, which includes 0.022 acres of wetlands.

Dwyer stated that \$75,000 is egregious when money could be better spent elsewhere. He indicated he would be voting in favor of the project because it is a blight and needs improvement.

Farley stated that the project results in more good than harm as it includes improved drainage and better sidewalks.

Livengood stated his concern as noted in the late communication regarding three deaths of pedestrians and cyclists. He stated that the project improves access to the beach and water quality and results in an environmental win win. He believes there is good rationale from staff to go forward and the project really benefits the coast and city.

Horgan stated that as a result of her appeal the dry weather diversion is taking place and wetlands definition has been clarified. Horgan agreed with Livengood that this is a long needed project resulting in a much safer place.

A MOTION WAS MADE BY LIVENGOOD, TO APPROVE MITIGATED NEGATIVE DECLARATION NO. 05-05 WITH FINDINGS, MITIGATION MEASURES, AND THE FOLLOWING MODIFIED CONDITIONS FOR APPROVAL:

3. Construction management plan for the City and all other affected agencies to include the following (PC):

- a. Thirty days prior to closure a notice is to be published in a local newspaper, notice circulated to property owners and mobile home owners, placed on City web site and signs posted.
- b. During demolition, grading, site development, and/or construction, the following shall be adhered to:
 - I. Water trucks will be utilized on the site and shall be available to be used throughout the day during site development to keep the soil damp enough to prevent dust being raised by the operations.
 - II. All haul trucks shall arrive at the site no earlier than 8:00 a.m. or leave the site no later than 5:00 p.m., and shall be limited to Monday through Friday only.
 - III. The construction disturbance area shall be kept as small as possible.
 - IV. All haul trucks shall be covered or have water applied to the exposed surface prior to leaving the site to prevent dust from impacting the surrounding areas.
 - V. Prior to leaving the site, all haul trucks shall be washed off on-site on a gravel surface to prevent dirt and dust from leaving the site and impacting public streets.
 - VI. Comply with AQMD Rule 403, particularly to minimize fugitive dust and noise to surrounding areas.
 - VII. Construction equipment shall be maintained in peak operating condition to reduce emissions.
 - VIII. Use low sulfur (0.5%) fuel by weight for construction equipment.
 - IX. Truck idling shall be prohibited for periods longer than 10 minutes.
 - X. Attempt to phase and schedule activities to avoid high ozone day's first stage smog alerts.
 - XI. Discontinue operation during second stage smog alerts.
 - XII. Compliance with all Huntington Beach Zoning and Subdivision Ordinance and Municipal Code requirements including the Noise Ordinance. All activities including truck deliveries associated with construction, grading, remodeling, or repair shall be limited to Monday - Saturday 7:00 AM to 8:00 PM. Such activities are prohibited Sundays and Federal holidays.
 - XIII. A Traffic Control Plan shall be prepared and submitted to the Department of Public Works for review and approval.
 - XIV. A truck haul route plan shall be submitted for review and approval by the Department of Public Works.
 - XV. A minimum 30-day notice to all adjacent properties is required prior to start of construction.

4. Best Management Practices for Water Quality plans shall include (PC):
 - a. Installation of gross pollutant separator device (Continuous Deflective Separator) on the new storm drain line just upstream of the existing catch basin at Pacific Coast Highway and Newland Street.
 - b. City of Huntington Beach shall pursue to the greatest extent feasible an agreement with the Orange County Sanitation District to divert low flow runoff into the District's 48 inch trunk line and shall make monthly progress reports to the Planning Commission.
 - c. Storm water pollution prevention plan shall be prepared by an Environmental Engineer in accordance with the National Pollution Discharge Elimination System.
5. Asphalt removed to be taken to an asphalt recycling facility (PC).

NO SECOND, MOTION FAILS.

Ms. James stated the landscaping condition is not applicable because AES' landscaping plans are already approved.

Ms. James suggested revised wording for Condition 4 b. to: "The City of Huntington Beach shall pursue to the greatest extent feasible an agreement with the Orange County Sanitation District (OCSD) to divert low flow runoff into the district's 48" trunk line."

Discussion ensued between Livengood and staff because the condition requires approval of another agency and Public Works does not have any control over that agency.

Hopkins asked if staff could report back on obtaining approval from OCSD. He stated that if the City does not receive approval, this project cannot go forward.

A STRAW VOTE MOTION WAS MADE BY LIVENGOOD, SECONDED BY SHIER-BURNETT, TO APPROVE THE RECOMMENDED CONDITIONS AS PROPOSED BY LIVENGOOD, EXCEPT B., E., AND C.2., BY THE FOLLOWING VOTE:

AYES: Shier-Burnett, Speaker, Livengood, Scandura, Dwyer, Farley

NOES: Horgan

ABSENT: None

ABSTAIN: None

Discussion ensued regarding diversion of low flow runoff into the sewer line.

Horgan stated that the City should lead by example and not put dry weather runoff into the ocean. She indicated her belief that staff will be able to obtain approval and that the Planning Commission should make it a condition of approval for this project that the dry weather diversion goes to the OCSD.

Shier-Burnett stated she was not in agreement with postponement, that the project is long overdue, and there are health and safety issues. She said it is critical to move forward. She stated that the Public Works Department has received strong assurances from OCSD that they will approve the dry diversion runoff and Public Works is pursuing it.

Farley questioned if this requirement is made a condition of approval and the City doesn't get OCSD approval, then what happens with the project?

Speaker stated that we can only suggest to OCSD, not require it.

Scandura said that beach water quality is our highest priority. Scandura stated that we are not telling OCSD, just asking staff to get approval.

In response to a question from Livengood, Hopkins estimated the time for a decision by the OCSD to be two to three months.

Livengood said he doesn't want to delay the project any further. Therefore, the City of Huntington Beach shall pursue an agreement with OCSD.

A STRAW VOTE MOTION WAS MADE BY LIVENGOOD, SECONDED BY FARLEY, TO REVISE CONDITION OF APPROVAL NO. 2 AS FOLLOWS: "THE CITY OF HUNTINGTON BEACH SHALL PURSUE TO THE GREATEST EXTENT FEASIBLE AN AGREEMENT WITH THE OCSD TO DIVERT LOW FLOW RUNOFF INTO THE DISTRICT'S 48" TRUNK LINE AND MAKE MONTHLY REPORTS ON PROGRESS TO THE PLANNING COMMISSION."

Scandura reiterated that a straw vote motion has been moved and seconded.

Horgan stated that she will not support this motion.

Hess spoke in response to Livengood's amended motion. Staff supports the amendment. Staff's opinion is that what is proposed is not a code requirement, but a policy decision. It's a recommendation overall the Planning Commission should be forwarding to the City Council to make the decision. The Planning Commission should not be making policy direction through conditions of approval on individual projects. Staff agrees with the merits of the requirement and would like to see it citywide but it is really a City Council policy issue.

Livengood reiterated the motion as follows:

A STRAW VOTE MOTION WAS MADE BY LIVENGOOD, SECONDED BY FARLEY, TO REVISE CONDITION OF APPROVAL NO. 2 AS FOLLOWS: "THE CITY OF HUNTINGTON BEACH SHALL PURSUE TO THE GREATEST EXTENT FEASIBLE AN AGREEMENT WITH THE OCSD TO DIVERT LOW FLOW RUNOFF INTO THE DISTRICT'S 48" TRUNK LINE AND MAKE MONTHLY REPORTS ON PROGRESS TO THE PLANNING COMMISSION," BY THE FOLLOWING VOTE:

AYES: Shier-Burnett, Speaker, Livengood, Farley
NOES: Scandura, Horgan, Dwyer
ABSENT; None
ABSTAIN: None

MOTION APPROVED

A MOTION WAS MADE BY SPEAKER, SECONDED BY FARLEY TO APPROVE MITIGATED NEGATIVE DECLARATION NO. 05-05, WITH FINDINGS AND MITIGATION MEASURES, BY THE FOLLOWING VOTE:

AYES: Shier-Burnett, Livengood, Speaker, Scandura, Horgan, Dwyer, Farley
NOES: None
ABSENT: None

ABSTAIN: None

MOTION APPROVED

A MOTION WAS MADE BY SPEAKER, SECONDED BY FARLEY TO APPROVE COASTAL DEVELOPMENT PERMIT NO. 05-07 WITH FINDINGS AND MODIFIED CONDITIONS OF APPROVAL, BY THE FOLLOWING VOTE:

AYES: Shier-Burnett, Livengood, Speaker, Scandura, Dwyer, Farley
NOES: Horgan
ABSENT: None
ABSTAIN: None

MOTION APPROVED

FINDINGS AND CONDITIONS OF APPROVAL

MITIGATED NEGATIVE DECLARATION NO. 05-05

COASTAL DEVELOPMENT PERMIT NO. 05-07

FINDINGS FOR APPROVAL – MITIGATED NEGATIVE DECLARATION NO. 05-05:

1. The Mitigated Negative Declaration No. 05-05 has been prepared in compliance with Article 6 of the California Environmental Quality Act (CEQA) Guidelines. It was advertised and available for a public comment period of thirty (30) days. Comments received during the comment period were considered by the Planning Commission prior to action on the Mitigated Negative Declaration and Coastal Development Permit No. 05-07. As a result of comments received an Errata to Mitigated Negative Declaration No. 05-05 was prepared and considered by the Planning Commission prior to action on the subject entitlement.
2. Mitigation measures, incorporated into the attached conditions of approval, avoid or reduce the project's effects to a point where clearly no significant effect on the environment will occur. The proposed street improvement project will impact 0.16 acres of wetlands by construction of improvements in the Huntington Channel and by eliminating a drainage ditch on the east side of Newland Street. Loss of this wetland acreage will be fully mitigated through an agreement and payment of funds to the Wetlands and Wildlife Conservancy to restore an existing 1.597 acre site with water supply, grading, and vegetation removal resulting in a total 0.97 acre restored wetland area.
3. There is no substantial evidence in light of the whole record before the Planning Commission that the project, as mitigated through the conditions of approval for CDP NO. 05-07, will have a significant effect on the environment.

FINDINGS FOR APPROVAL - COASTAL DEVELOPMENT PERMIT NO. 05-07:

1. Coastal Development Permit No. 05-07 for the improvements to Newland Street between Pacific Coast Highway and Hamilton Avenue, including widening the reinforced concrete bridge at Huntington Channel, installation of storm drain improvements, and raising the profile of Newland Street to improve traffic visibility, conforms with the General Plan, including the Local Coastal Program as follows:

A. Circulation Element

Goal CE 6: Provide a city-wide system of efficient and attractive pedestrian, equestrian, and waterway facilities for commuter, school, and recreational use.

Objective CE 6.1: Promote the safety of bicyclists and pedestrians by adhering to Caltrans and City-wide standards.

Policy CE 6.1.10: Implement appropriate traffic devices and operation programs throughout the community to ensure that conflicts between pedestrians, bicycles, and vehicles are minimized and safety enhanced.

The street improvement project includes a sidewalk on the east side of Newland, new striped bike lanes on both sides of Newland and addresses a sight visibility issue over Huntington Channel to improve safety and minimize conflicts between pedestrians, bicyclists, and motorists.

B. Coastal Element

Objective C 1.1: Ensure that adverse impacts associated with coastal zone development are mitigated or minimized to the greatest extent feasible.

The loss of 0.16 acres of area under the jurisdiction of the California Department of Fish and Game, which includes 0.022 acres of wetlands, is fully mitigated with restoration of a 1.597 acre site nearby. The restoration project includes introduction of a water supply, grading, and vegetation removal resulting in a fully restored net 0.97 acre wetland site.

Policy C 2.8.1: Promote safe pedestrian access to the beach from the inland side of Pacific Coast Highway.

The street widening and infrastructure improvement project provides a new sidewalk on the east side of Newland Street between Pacific Coast Highway and the existing sidewalk just south of Hamilton Avenue where no sidewalk exists today. Currently all pedestrians are walking either within the roadway or in the unimproved dirt area on the west side of the street. The street narrows over the bridge crossing Huntington Channel and further reduces the area available for pedestrians. The new sidewalk improvements promote safe pedestrian access to the beach from the inland side of Pacific Coast Highway.

Policy C 6.1.20: Limit diking, dredging, and filling of coastal waters, wetlands, and estuaries to the specific activities outlined in Section 30233 and 30607.1 of the Coastal Act and to those activities required for the restoration, maintenance, and/or repair of the Municipal Pier and marina docks. Conduct any diking, dredging, and filling activities in a manner that is consistent with Section 30233 and 30607.1 of the Coastal Act.

Policy C 7.2.6: Prohibit fill in any wetland area for the purpose of road construction, except for roads allowed pursuant to Section 30233 of the Coastal Act or when required to serve uses allowed in wetlands pursuant to and consistent with Section 30260-30264 of the Coastal Act for coastal dependent and energy uses. Any roads governed by this policy shall be limited to necessary access roads appurtenant to the facility, and shall be permitted only where there is no feasible, less environmentally damaging alternative and where feasible mitigation measures have been provided.

Goal C 9: Provide water, sewer, and drainage systems that are able to support permitted land uses; upgrade existing deficient systems, and pursue funding sources to reduce costs of wastewater service provision in the City.

Although the street widening and infrastructure improvement results in the loss of 0.16 acres of habitat area under the jurisdiction of California Department of Fish and Game, the 0.16 acres contains only 0.022 acres or 876 square feet of wetlands area. Coastal Act Section 30233 states that the diking, filling or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division where there is no feasible less environmentally damaging alternative and where feasible, mitigation measures have been provided to minimize adverse environmental effects. Section 30233 further states that diking, filling, or dredging shall be limited to the following and then lists numbers 1) through 8) of authorized reasons to fill.

The Newland Street Improvement project falls under number "5) Incidental public service purposes, including, but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines."

The project would fill a small isolated wetland for the public purpose of widening an existing roadway for public safety and improving a problematic drainage system. Filling of the ditch is necessary because there is no space to widen the street without impacting the ditch. Furthermore, the ditch currently presents a public service problem because it requires pumping to keep it from flooding. Currently, the wetlands that would be filled have minimal biological value. The ditch is isolated from other natural habitats and vegetation and, by necessity, is cleared periodically to reduce flooding and fire problems. The loss of approximately 0.02 acres of freshwater marsh habitat in the ditch and the loss of 0.002 acres of three small pickle weed patches will be mitigated by the restoration of tidal flow to a portion of the Huntington Beach Wetlands in a 1.597 acre parcel at the north end of Upper Magnolia Marsh. The restored wetlands will have much greater functional value than the degraded wetlands in the isolated ditch. Therefore the proposed mitigation measure would minimize the adverse effects of filling the drainage ditch and there is no feasible less environmentally damaging alternative available.

Section 30607.1 of the Coastal Act discusses mitigation measures for filling of wetlands and states that mitigation, "... shall include, at a minimum, either acquisition of equivalent areas of equal or greater biological productivity or opening up equivalent areas to tidal action; provided, however, that if no appropriate restoration site is available, an in-lieu fee sufficient to provide an area of equivalent productive value or surface areas shall be dedicated to an appropriate public agency..."

As noted above the restoration of Upper Magnolia Marsh complies with the mitigation requirements established in Coastal Act Section 30607.1 because a gross 1.597 acre (net .97 acres) area will be opened to tidal action. The Upper Magnolia Marsh restoration project far exceeds the CDFG 1:1 mitigation requirements for the loss of 0.16 acres of habitat area.

2. The project is consistent with the requirements of the CZ Overlay District, the base zoning district, as well as other applicable provisions of the Municipal Code. The street widening and improvement project is compatible with zoning designations on the adjacent properties and will improve access to coastal resources. No above ground structures, other than street lights and pet waste bag stations are proposed in conjunction with the street improvement project. New sidewalks, landscaping, and infrastructure improvements are all consistent with surrounding zoning designations.

3. The proposed project will provide infrastructure in a manner that is consistent with the Local Coastal Program. The proposed project includes infrastructure improvements to the street system, storm drain, and bridge over Huntington Channel. No other infrastructure improvements, other than standard maintenance, are necessary for the long-term operation of the proposed street improvement project.
4. The development conforms with the public access and public recreation policies of Chapter 3 of the California Coastal Act. The proposed street improvement project will not result in negative impacts to public access and recreation opportunities within the Coastal Zone. Conversely, the projects results in improved access to coastal resources by improving the quality of the street, restriping bike lanes on both the east and west sides of Newland Street, improving the sight visibility over the Huntington Channel, and constructing a sidewalk on the east side of Newland Street between Pacific Coast Highway and Huntington Channel, where no sidewalk exists today.

CONDITIONS OF APPROVAL - COASTAL DEVELOPMENT PERMIT NO. 05-07:

1. The site plan, floor plans, and elevations received and dated January 10, 2005 shall be the conceptually approved design.
2. Prior to issuance of grading permits, the City of Huntington Beach shall enter into an agreement with the Huntington Beach Wetlands Conservancy for restoration of the Upper Magnolia Marsh, a 1.6 acre site owned by the Conservancy. The agreement shall identify the three restoration elements of water supply, grading, and vegetation removal, shall provide for full funding of the \$75,000.00 project from the City to the Conservancy, and shall obligate the Conservancy to carry out the restoration and monitoring of the project pursuant to the standards of the California Department of Fish and Game. The full \$75,000.00 shall be transferred from the City to the Conservancy prior to issuance of grading permits for the Newland Street Improvement project but the City may also obtain restoration credits and satisfy mitigation requirements for approximately 0.4 acres of wetlands anticipated to be effected by the Magnolia Street Improvement project in the future (Mitigation Measure BIO 1).
3. Construction Management Plans for the city and all other affected agencies to include the following (PC):
 - a. Thirty days prior to closure a notice is to be published in a local newspaper, notice circulated to property owners and mobile home owners, placed on City web site and signs posted.
 - b. During demolition, grading, site development, and/or construction, the following shall be adhered to:
 - I. Water trucks will be utilized on the site and shall be available to be used throughout the day during site development to keep the soil damp enough to prevent dust being raised by the operations.
 - II. All haul trucks shall arrive at the site no earlier than 8:00 a.m. or leave the site no later than 5:00 p.m., and shall be limited to Monday through Friday only.
 - III. The construction disturbance area shall be kept as small as possible.

- IV. All haul trucks shall be covered or have water applied to the exposed surface prior to leaving the site to prevent dust from impacting the surrounding areas.
 - V. Prior to leaving the site, all haul trucks shall be washed off on-site on a gravel surface to prevent dirt and dust from leaving the site and impacting public streets.
 - VI. Comply with AQMD Rule 403, particularly to minimize fugitive dust and noise to surrounding areas.
 - VII. Construction equipment shall be maintained in peak operating condition to reduce emissions.
 - VIII. Use low sulfur (0.5%) fuel by weight for construction equipment.
 - IX. Truck idling shall be prohibited for periods longer than 10 minutes.
 - X. Attempt to phase and schedule activities to avoid high ozone day's first stage smog alerts.
 - XI. Discontinue operation during second stage smog alerts.
 - XII. Compliance with all Huntington Beach Zoning and Subdivision Ordinance and Municipal Code requirements including the Noise Ordinance. All activities including truck deliveries associated with construction, grading, remodeling, or repair shall be limited to Monday - Saturday 7:00 AM to 8:00 PM. Such activities are prohibited Sundays and Federal holidays.
 - XIII. A Traffic Control Plan shall be prepared and submitted to the Department of Public Works for review and approval.
 - XIV. A truck haul route plan shall be submitted for review and approval by the Department of Public Works.
 - XV. A minimum 30-day notice to all adjacent properties is required prior to start of construction.
4. Best Management Practices for Water Quality plans shall include (PC):
- a. Installation of gross pollutant separator device (Continuous Deflective Separator) on the new storm drain line just upstream of the existing catch basin at Pacific Coast Highway and Newland Street.
 - b. City of Huntington Beach shall pursue to the greatest extent feasible an agreement with the Orange County Sanitation District to divert low flow runoff into the District's 48 inch trunk line and shall make monthly progress reports to the Planning Commission.
 - c. Storm water pollution prevention plan shall be prepared by an Environmental Engineer in accordance with the National Pollution Discharge Elimination System.
5. Asphalt removed to be taken to an asphalt recycling facility (PC).

6. During construction, an inflatable dam or similar device shall be utilized on only one side of the channel at a time. Water shall be routed around the construction area and continuous water exchange up and down the channel shall be maintained. (Mitigation Measure BIO 2).

B-2. ENTITLEMENT PLAN AMENDMENT NO. 06-07 (LOWE'S RETAIL PAD SITE MODIFICATION—AMENDMENT TO CONDITIONAL USE PERMIT NO. 00-31):
Applicant: Mark Raber, Tarlos & Associates **Request:** To amend Condition of Approval No. 8 of Conditional Use Permit No. 00-31 which limits development on the vacant parcel adjacent to Lowe's Home Improvement Warehouse to a restaurant building with a maximum of 8,500 sq. ft. The proposed amendment is to allow a maximum building area of 14,200 sq. ft. on the vacant parcel.
Location: 8291 Warner Avenue (north side of Warner Avenue, east of Beach Boulevard) **Project Planner:** Tess Nguyen

STAFF RECOMMENDATION: Motion to: "Approve Entitlement Plan Amendment No. 06-07 at the applicant's request."

A MOTION WAS MADE BY LIVENGOOD, SECONDED BY HORGAN TO CONTINUE ENTITLEMENT PLAN AMENDMENT NO. 06-07, AT THE APPLICANT'S REQUEST, WITH THE PUBLIC HEARING OPEN, TO THE MAY 8, 2007 PLANNING COMMISSION MEETING, BY THE FOLLOWING VOTE:

AYES: Shier-Burnett, Speaker, Livengood, Scandura, Horgan, Dwyer, Farley
NOES: None
ABSENT: None
ABSTAIN: None

MOTION APPROVED

B-3. APPEAL OF ZONING ADMINISTRATOR'S APPROVAL OF TEMPORARY USE PERMIT NO. 07-001 (HUNTINGTON SURF & SPORT OUTDOOR SALES):
Applicant: Aaron Pai **Appellant:** Planning Commissioner Elizabeth Shier-Burnett **Request:** To permit temporary outdoor sales on forty-nine (49) days per year for a period of five (5) years from 2007-2011. **Location:** 126 Main Street, Unit 101 (southeast corner of Main Street and Walnut Avenue) **Project Planner:** Andrew Gonzales

STAFF RECOMMENDATION: Motion to: "Approve Temporary Use Permit No. 07-01 with findings and suggested conditions of approval."

The Commission made the following disclosures:

- Commissioner Shier-Burnett visited the site, spoke with staff, Council Member Bohr, and citizens.
- Commissioner Speaker visited the site.
- Commissioner Livengood visited the site several times.
- Commissioner Dwyer visited the site and spoke to Council Member Don Hansen.
- Commissioner Farley visited the site.
- Chair Scandura visited the site, spoke to Mayor Gil Coerper and read the Downtown Specific Plan to understand the requirements.
- Commissioner Horgan visited the site.

Andrew Gonzales, Assistant Planner, gave a presentation of the project. He reviewed the project and the appeal of the Zoning Administrator's approval by Commissioner Shier-Burnett.

Gonzales explained the appeal concerns the five year period, inconsistency between approval of subject request and similar requests approved for downtown businesses, aesthetics and total number of days per year for outdoor sales.

Shier-Burnett explained the reasons for her appeal and emphasized that the basis for the appeal was on the downtown area in general and not specifically about Huntington Surf & Sport (HSS). She requested a reduction in the number of days, improvement in the presentation/appearance of the sales area and review of the duration of the permits for outdoor sales events.

Discussion ensued regarding the number of days comparable to other businesses, potential path of travel problems, duration and costs of the permits and possible expiration of the HSS permit in 2008.

THE PUBLIC HEARING WAS OPENED.

Sunshine, Store Manager, Huntington Surf & Sport, spoke in support of the project emphasizing her customer's anticipation of the sales and the amount of time, effort, care and preparation that is required for planning outdoor sales events.

Lori Miethke, 8271 Dancy Circle, Huntington Beach, customer of Huntington Surf & Sport, spoke in support of the project indicating the high standards HSS maintains for their outdoor sales and that these sales bring business to the downtown area.

Andy Verdone, teacher at Huntington High, Huntington Beach resident, surfing coach and friend of Aaron Pai, spoke in favor of the project and was there to support Aaron Pai.

Aaron Pai, Applicant, gave a PowerPoint presentation and indicated he has been a business owner for 29 years. He stated he wants to support his many loyal customers and employees and that outdoor sales are vital to the health of his business. He obtained 5000 signatures in support of the permit. Mr. Pai stated his outdoor sales are on private property and located on one of the widest corners of Main Street. He emphasized the meticulous planning, preparation and expense involved for these sales which are tied to school vacations and local events and how they bring thousands of people to the downtown area. He stated that HSS has always been compliant and responsible and no code enforcement complaints have been received in 29 years.

Mr. Pai responded to Dwyer's question that the outdoor sales events contribute approximately 30% of overall sales.

WITH NO ONE ELSE PRESENT TO SPEAK, THE PUBLIC HEARING WAS CLOSED.

Farley reiterated Burnett's comments that this is not specific to HSS but about downtown area. He expressed concern in trying to reconcile the fact that so many people are depending upon the revenue from outdoor sales versus the cost of producing these events. He suggested the Planning Commission review these TUP's to fit with the vision for the future of the downtown area.

Dwyer expressed concern with the inequity in the cost and length of time of the permit for HSS versus other downtown businesses.

Horgan stated that she has been a fan of HSS for 20 years and believes they are an asset to the City. She suggested limiting the permit to expire at the end of 2008 and charging \$360 versus \$1,800 and then revisit the whole permit process.

In response to Livengood's question asking if the \$1,850 fee could be waived, the City Attorney representative explained that the fee is the cost of processing a permit and cannot be waived by the Planning Commission.

Discussion ensued between Livengood, Mulvihill and staff regarding permit fees, duration of the permit, and the height of barrier.

Speaker stated he was in favor of five years, 49 days per year (mostly in December) and will support staff's motion.

Scandura expressed concern with the aesthetics of the downtown area and the need to upgrade the image. He suggested reducing the length of the permit from five years to two years with expiration in 2008 and allowing HSS 49 days in order to avoid any competitive disadvantage. He also suggested Minute Action be submitted to City Council to review the TUP policy.

Shier-Burnett agreed with Scandura on the 49 days, minute action to City Council and increasing the number of days from 22 to 49. She spoke in favor of Surf City Tuesday night events and the fact HSS has taken advantage of them. She reiterated her high regard for, and excellent track record of HSS in the community and emphasized the issue of outdoor sales being more about the downtown vision for the future. She commended the appearance of the HSS sales tables.

Discussion ensued between Commissioners and staff regarding duration and cost of permit, expiration date, design of outdoor sales area and minute action to City Council.

Scandura summarized; 49 days, two years, expire 2008, submit City Council minute action.

A MOTION WAS MADE BY SHIER-BURNETT, SECONDED BY SCANDURA TO APPROVE TEMPORARY USE PERMIT NO. 07-001 WITH FINDINGS AND MODIFIED CONDITIONS FOR APPROVAL, BY THE FOLLOWING VOTE:

AYES: Shier-Burnett, Scandura, Horgan, Dwyer, Farley
NOES: Speaker, Livengood
ABSENT: None
ABSTAIN: Speaker

MOTION APPROVED

Scandura reiterated the reason for approval is dependant upon City Council review of the Minute Action. Discussion ensued relating to the procedure for City Council minute action and Shier-Burnett stated she would work on the transmittal for the proposed minute action for presentation to City Council.

FINDINGS AND CONDITIONS OF APPROVAL

TEMPORARY USE PERMIT NO. 07-001

FINDINGS FOR PROJECTS EXEMPT FROM CEQA:

The Planning Commission finds that the project will not have any significant effect on the environment and is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Class 4, Section 15304 of the CEQA Guidelines, because the project consists of a minor temporary use of land having negligible or no permanent effects on the environment

FINDINGS FOR APPROVAL - TEMPORARY USE PERMIT NO. 07-001:

1. The proposed temporary use will be located, operated and maintained in a manner consistent with the policies of the General Plan (Pedestrian Overlay District), Local Coastal Program and Downtown Specific Plan; and provisions of Chapter 241 of the Huntington Beach Zoning and Subdivision Ordinance, including the following policies:
 - LU 15.2.2: Require that uses in the Pedestrian Overlay District be sited and designed to enhance and stimulate pedestrian activity along the sidewalks.

Assure that areas between building storefronts and public sidewalks are visually and physically accessible to pedestrians.
 - LCP/DTSP: Main Street should be lively, active commercial district at the street level. The first floor or developments along Main Street should be commercial, with open-air establishments encouraged.
 - UD 1.3.2: Develop or enhance the pedestrian environment along landscape corridors where there is existing or the potential for pedestrian activity.
2. Approval of the application for the proposed temporary use will not be detrimental to property or improvements in the surrounding area or to the public health, safety or general welfare. Proposed sales events will occur adjacent to the applicant's storefront and will be sited to prevent interference with use of the surrounding area. The two (2) years utilized for the previous temporary use permit had resulted in no violations relative to inconsistencies with the associated conditions of approval. In addition the temporary use permit is conditioned to ensure that adequate public, disabled, and emergency access will be maintained.

CONDITIONS OF APPROVAL – TEMPORARY USE PERMIT NO. 07-01:

1. The site plan received and dated March 2, 2007, shall be the conceptually approved design.
2. Temporary Use Permit shall be valid for a maximum period of two (2) years (2007-2008), expiring on 12/31/08.
3. Prior (10 days minimum) to commencement of the use each year, a schedule (dates) for temporary sidewalk sales events to occur in that year (not to exceed 49 days), shall be submitted to the Planning Department.

4. The use shall comply with the following:

- a. The temporary sales area shall be entirely confined to private property. Any encroachment into the public right-of-way shall be prohibited.
- b. The sales area shall be cordoned off (i.e. roped off with a minimum 36" high barrier), nine feet from the building façade with intermittent openings every 10 to 15 feet for customer access.
- c. Four-foot wide clearance shall be maintained along side the display racks within the "cordoned off" area between the sales racks and pedestrian pathway. (B&S)
- d. A ten-foot wide clear path of travel shall be maintained along the sidewalk. Required pathways for patron and disabled access shall be maintained clear of obstructions. (PW)
- e. All required exits and access ways to the tenant space, as determined by the Building & Safety Department, shall be maintained clear and free of obstructions. The minimum required access width shall be 48 inches. (B&S, PW)
- f. All overhead obstruction shall be a minimum of 80 inches above the walking surface. (B&S)
- g. All sales transactions shall occur inside the store.
- h. Sales to patrons in vehicles or in the public right-of-way shall be prohibited.
- i. Line formations within the public right-of-way shall be prohibited. (PW)
- j. Sales events, including associated furniture, structures, patron lines, etc., shall not in any way interfere with access to any commercial establishment. (B&S, PW)
- k. Furniture pieces shall weigh less than 35 pounds each. (B&S)
- l. All displays associated with sales events shall be maintained in an orderly condition.
- m. Only the uses described in the narrative and the dates and times in the approved schedule(s), shall be permitted. Any proposed change to the approved schedule and dates shall be submitted to the Planning Director for review and approval a minimum of ten days in advance of the planned event date.

5. After an initial warning(s), the Code Enforcement Division reserves the right to cease operation of the temporary outdoor sales in the event that the use is in violation of the conditions of approval of Temporary Use Permit No. 07-01.

C. CONSENT CALENDAR:

C-1. PLANNING COMMISSION MINUTES DATED FEBRUARY 27, 2007

RECOMMENDED ACTION: Motion to: "Approve the February 27, 2007, Planning Commission Minutes as submitted."

A MOTION WAS MADE BY LIVENGOOD, SECONDED BY DWYER, TO APPROVE THE FEBRUARY 27, 2007 PLANNING COMMISSION MINUTES WITH MODIFICATION BY THE FOLLOWING VOTE:

AYES: Shier-Burnett, Livengood, Speaker, Scandura, Horgan, Dwyer, arley,
NOES: None
ABSENT: None
ABSTAIN: None

MOTION APPROVED

C-2. PLANNING COMMISSION MINUTES DATED MARCH 13, 2007

RECOMMENDED ACTION: Motion to: "Approve the March 13, 2007, Planning Commission Minutes as submitted."

A MOTION WAS MADE BY LIVENGOOD, SECONDED BY FARLEY, TO APPROVE THE MARCH 13, 2007, PLANNING COMMISSION MINUTES AS SUBMITTED, BY THE FOLLOWING VOTE:

AYES: Shier-Burnett, Livengood, Speaker, Scandura, Horgan, Dwyer, Farley
NOES: None
ABSENT: None
ABSTAIN: None

MOTION APPROVED

C-3. PLANNING COMMISSION MINUTES DATED MARCH 27, 2007

RECOMMENDED ACTION: Motion to: "Approve the March 27, 2007, Planning Commission Minutes as submitted."

A MOTION WAS MADE BY HORGAN, SECONDED BY FARLEY, TO APPROVE THE MARCH 27, 2007, PLANNING COMMISSION MINUTES AS SUBMITTED, BY THE FOLLOWING VOTE:

AYES: Shier-Burnett, Livengood, Speaker, Scandura, Horgan, Dwyer, Farley
NOES: None
ABSENT: None
ABSTAIN: None

MOTION APPROVED

D. NON-PUBLIC HEARING ITEMS – NONE

E. PLANNING ITEMS

E-1. CITY COUNCIL ACTIONS FROM PREVIOUS MEETING

Scott Hess, Director of Planning - reported on the items from the previous City Council meeting.

E-2. CITY COUNCIL ITEMS FOR NEXT MEETING

Scott Hess, Director of Planning – reported on the items scheduled for the next City Council meeting.

E-3. PLANNING COMMISSION ITEMS FOR NEXT MEETING

Herb Fauland, Acting Planning Manager – reported on the items scheduled for the next Planning Commission meeting.

F. PLANNING COMMISSION ITEMS

F-1. PLANNING COMMISSION REQUEST ITEMS

Chair Scandura introduced a minute action request regarding temporary outdoor retail/sidewalk sales. Commissioner Shier-Burnett volunteered to prepare the minute action for the Planning Commission's review and action at the May 8, 2007 meeting.

A MOTION WAS MADE BY SHIER-BURNETT , SECONDED BY SCANDURA TO HAVE THE CITY COUNCIL MINUTE ACTION PUT ON THE AGENDA FOR THE MAY 8, 2007 PLANNING COMMISSION MEETING, BY THE FOLLOWING VOTE:

AYES: Shier-Burnett, Livengood, Speaker, Scandura, Horgan, Dwyer, Farley
NOES: None
ABSENT: None
ABSTAIN: None

MOTION APPROVED

F-2. PLANNING COMMISSION COMMENTS

Commissioner Farley – None

Commissioner Horgan – None

Vice-Chair Livengood – reported on the upcoming event at the Shipley Nature Center on Saturday, April 28, 2007. He also reported on his Sister City trip to Anjo, Japan and noted the Anjo delegation will be here July 4th. He also recommended the next trip to Sister City in New Zealand

Commissioner Dwyer – Offered his condolences to Congressman Dana Rohrabacher and family on the recent passing of his brother.

Commissioner Speaker – reported on the Duck-A-Thon scheduled for next month.

Chairperson Scandura – commended Jane James and Andrew Gonzales on their good staff work and presentations.

Commissioner Shier-Burnett - None

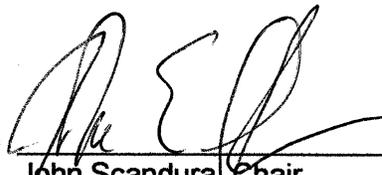
ADJOURNMENT:

Adjourned at 10:25 p.m. to the Planning Commission Workshop on April 26, 2007 and then to the next regularly scheduled meeting of May 8, 2007.

APPROVED BY:



Scott Hess, Secretary



John Scandura, Chair