

**CALIFORNIA COASTAL COMMISSION**

South Coast Area Office  
200 Oceangate, Suite 1000  
Long Beach, CA 90802-4302  
(562) 590-5071

**Th8a-e****ADDENDUM**

April 3, 2008

TO: Coastal Commissioners and Interested Parties

FROM: South Coast District Staff

SUBJECT: ADDENDUM TO **ITEM Th8a-e**, COASTAL COMMISSION APPEAL NUMBERS **A-5-LGB-08-047** through **A-5-LGB-08-051** FOR THE COMMISSION MEETING OF **April 10, 2008**.

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**Changes to Staff Report**

Commission staff recommends modifications and additions to the Summary of Staff Recommendation on page 1 and to Section V of the staff report on page 5. Deleted language is in ~~strike through~~ and new language to be added is shown in ***bold, underlined italic***, as shown below:

**Page 1 – Modify Summary Staff Recommendation, as follows:**

The appellant contends, among other things, that the proposed permanent lifeguard towers create adverse visual impacts, present potential impacts to wildlife habitat, ~~would be located in areas subject to potential hazards (erosion, wave attack or run-up)~~, failed to provide required early neighbor communications, failed to provide required visual staking and failed to provide required public noticing, and impact lateral public access and recreation on these beaches. Staff analyzed the appellants' contentions and concludes that a substantial issue exists with regard to the approved local coastal development permits (07-72, 07-73, 07-74, 07-75, 07-76) on the grounds that, as approved, they do not conform to the policies of the City of Laguna Beach certified LCP and public access and recreation policies of the Coastal Act.

**Page 5 – Modify Section V, Findings and Declarations, as follows:****1. Appellant's Contentions that Raise Substantial Issue****a) Visual Impacts**

The appellant contends that the projects would create a year-round and unnecessary visual impact and that the applicant has failed to design the towers to limit their visibility and to limit the visual interruption of views to and along the shoreline. In addition, the appellant contends that the City has undergone no siting analysis to find the locations with the least visual impacts and has ignored public requests for less visually obtrusive alternatives.

As mentioned previously, the City is proposing to place five permanent lifeguard towers on five ~~small~~ **narrow** beaches throughout the City. These larger, permanent towers would replace smaller, temporary elevated lifeguard chairs, which are only on the beach during the summer months. This would create a year-round impact to public views to and along these beaches as the new permanent structures are more intrusive and the temporary structures are less intrusive. Additionally it should be emphasized that the proposed structures would not only be larger, but also would create a permanent visual impact compared to the smaller lifeguard towers that are removed when not in use during non summer months.

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##### **1. Appellant's Contentions that Raise Substantial Issue**

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Filed: February 25, 2008  
49th Day: April 14, 2008  
Staff: Gabriel Buhr-LB  
Staff Report: March 18, 2008  
Hearing Date: April 9-11, 2008  
Commission Action:

**Th8a-e****COMBINED STAFF REPORT: APPEAL**  
**SUBSTANTIAL ISSUE**

**LOCAL GOVERNMENT:** City of Laguna Beach

**LOCAL DECISION:** Approval, with conditions

**APPEAL NUMBERS:** A-5-LGB-08-047, A-5-LGB-08-048, A-5-LGB-08-049,  
A-5-LGB-08-050, A-5-LGB-08-051

**APPLICANT:** City of Laguna Beach (Department of Marine Safety)

**PROJECT LOCATION:** Picnic Beach (Myrtle Street), Bird Rock Beach, Sleepy Hollow Beach, Thalia St. Beach, Oak St. Beach, Laguna Beach, Orange County

**PROJECT DESCRIPTION:** The applicant proposes to replace five temporary/seasonal elevated lifeguard chairs with five new permanent lifeguard towers, which would measure approximately 14'9" tall with a 4'x4' shelter footprint, founded on 36 inch cement caissons, on several beaches throughout Laguna Beach.

**APPELLANT:** Sandra Siani

**SUMMARY OF STAFF RECOMMENDATION**

The staff recommends that the Commission, after public hearing, determine that a **substantial issue** exists with respect to the grounds on which the appeals have been filed for the following reason: Pursuant to Section 30603(b)(1) of the Coastal Act, the locally approved development does not conform to the standards set forth in the City of Laguna Beach certified Local Coastal Program (LCP) and the public access and recreation policies of the Coastal Act. The motion to carry out the staff recommendation is on page 4.

The appellant contends, among other things, that the proposed permanent lifeguard towers create adverse visual impacts, present potential impacts to wildlife habitat, would be located in areas subject to potential hazards (erosion, wave attack or run-up), failed to provide required early neighbor communications, failed to provide required visual staking and failed to provide required public noticing, and impact lateral public access and recreation on these beaches. Staff analyzed the appellants' contentions and concludes that a substantial issue exists with regard to the approved local coastal development permits (07-72, 07-73, 07-74, 07-75, 07-76) on the grounds that, as approved, they do not conform to the policies of the City of Laguna Beach certified LCP and public access and recreation policies of the Coastal Act.

**SUBSTANTIVE FILE DOCUMENTS:**

1. Local Coastal Development Permit Nos. 07-72, 07-73, 07-74, 07-75, 07-76
2. City of Laguna Beach Certified Local Coastal Program.

**I. APPELLANTS' CONTENTIONS**

Local Coastal Development Permit Nos. 07-72, 07-73, 07-74, 07-75, 07-76, approved by the City's Design Review Board on January 25, 2007, have been appealed by Sandra Siani on the grounds that the approved projects do not conform to the requirements of the Certified LCP (Exhibit 8) and the public access and recreation policies of the Coastal Act. The appellants contend that the proposed projects do not conform to the requirements of the certified LCP and the public access and recreation policies of the Coastal Act with regard to the following issues:

A. Visual Impacts

The appellant contends that replacing the smaller, temporary elevated lifeguard chairs with larger, permanent towers would create a year-round and unnecessary visual impact, and that the applicant has not provided evidence why the new permanent structures are required compared to other available temporary alternatives.

B. Habitat

The appellant contends that the projects approved by the City would be located on the sandy beach and near tidepools, which the Commission generally considers to be sensitive habitat and in some cases Environmentally Sensitive Habitat Areas (ESHA).

C. Public Access and Recreation

The appellant contends that by replacing temporary structures with permanent structures, lateral public access and recreation on these beaches would be impacted.

D. Miscellaneous

The appellant contends that the projects were approved by the City without the required early neighbor communication, visual staking and public notice. She also contends that the City did not have engineering plans or studies available for review by the public, nor were there meeting minutes from previous hearings available for review. Ms Siani also contends that the proposed projects would set unwanted precedent. In addition, Ms. Siani contends that the proposed projects have not taken appropriate construction Best Management Practices (BMPs) or water quality issues into account and recommended conditions for consideration (Exhibit 8). Furthermore, Ms. Siani contends that the projects are also subject to Coastal Act policies including Sections 30230, 30231, 30232, 30235, 30251, 30253 and 30255. Finally, Ms. Siani contends that the proposed projects are not consistent with the California Environmental Quality Act (CEQA).

## **II. LOCAL GOVERNMENT ACTION**

On February 1, 2008, the City of Laguna Beach's Design Review Board approved each of the 5 permits (Local Coastal Development Permit Nos. 07-72, 07-73, 07-74, 07-75, 07-76 to replace 5 temporary/seasonal elevated lifeguard chairs with 5 new permanent lifeguard towers on several beaches throughout Laguna Beach (Exhibits 2, 3 and 6).

## **III. APPEAL PROCEDURES**

After certification of Local Coastal Programs, the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits. Developments approved by cities or counties may be appealed if they are located within the appealable areas, such as those located between the sea and the first public road paralleling the sea or within 300 feet of the top of the seaward face of a coastal bluff. Furthermore, developments approved by counties may be appealed if they are not designated a "principal permitted use" under the certified LCP. Finally, developments which constitute major public works or major energy facilities may be appealed, whether approved or denied by the city or county. [Coastal Act Section 30603(a)].

The City of Laguna Beach Local Coastal Program was certified with suggested modifications, except for four areas of deferred certification, in July 1992. In February 1993 the Commission concurred with the Executive Director's determination that the suggested modifications had been properly accepted and the City assumed permit issuing authority at that time. Based on Sections 30603(a)(1) and (2) of the Coastal Act, the proposed developments are appealable because they are located on the beach, seaward of the first public road paralleling the sea. In addition, they are potentially on tidelands and are located within 300 feet of the top of the seaward face of a coastal bluff.

Section 30603 of the Coastal Act states:

- (a) *After certification of its Local Coastal Program, an action taken by a local government on a Coastal Development Permit application may be appealed to the Commission for only the following types of developments:*
  - (1) *Developments approved by the local government between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance.*
  - (2) *Developments approved by the local government not included within paragraph (1) that are located on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, stream, or within 300 feet of the top of the seaward face of any coastal bluff.*

The grounds for appeal of an approved local Coastal Development Permit in the appealable area are stated in Section 30603(b)(1), which states:

- (b)(1) *The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified Local Coastal Program or the public access policies set forth in this division.*

The action currently before the Commission is to find whether there is a "substantial issue" or "no substantial issue" raised by the appeals of the local approvals of the proposed developments.

Staff has proposed only one motion to find substantial issue for all five of these approvals because each of them raises the same concerns related to consistency with the requirements of the Laguna Beach LCP and the public access policies of the Coastal Act. Section 30625(b)(2) of the Coastal Act requires a de novo hearing of the appealed projects unless the Commission determines that no substantial issue exists with respect to the grounds for appeal.

If the Commission determines that the appeal raises no substantial issue with respect to conformity with the relevant LCP and public access policies of the Coastal Act, the actions of the local government stand. Alternatively, if the Commission finds substantial issue, the local coastal development permit is voided and the Commission typically continues the public hearing to a later date in order to review the coastal development permit as a de novo matter. The de novo portion of the hearing on the merits of the project uses the certified LCP as the standard of review. In addition, for projects located between the first public road and the sea, findings must be made that any approved project is consistent with the public access and recreation policies of the Coastal Act. Sections 13110-13120 of the California Code of Regulations further explain the appeal hearing process.

If the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have three minutes per side to address whether the appeal raises a substantial issue. The only persons qualified to testify before the Commission at the substantial issue portion of the appeal process are the applicants, persons who opposed the application before the local government (or their representatives), and the local government. Testimony from other persons must be submitted in writing.

The Commission will then vote on the substantial issue matter. It takes a majority of Commissioners present to find that a substantial issue is raised by the local approval of the subject project.

#### **IV. STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE**

##### **MOTION:**

I move that the Commission determine that Appeal Nos. A-5-LGB-08-047, A-5-LGB-08-048, A-5-LGB-08-049, A-5-LGB-08-050, and A-5-LGB-08-051 raise NO substantial issue with respect to the grounds on which the appeals have been filed under Section 30603 of the Coastal Act.

Staff recommends a NO vote. Failure of this motion will result in a finding of Substantial Issue and adoption of the following resolution and findings. If the Commission finds No Substantial Issue, the Commission will not hear the application de novo and the local action will become final and effective. The motion passes only by an affirmative vote by a majority of the Commissioners present.

##### **RESOLUTION TO FIND SUBSTANTIAL ISSUE:**

The Commission finds that Appeal Nos. A-5-LGB-08-047, A-5-LGB-08-048, A-5-LGB-08-049, A-5-LGB-08-050, and A-5-LGB-08-051 present a substantial issue with respect to the grounds on which the appeals have been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.



## **V. FINDINGS AND DECLARATIONS**

The Commission hereby finds and declares:

### **A. Project Description**

The projects approved by the City would replace five temporary/seasonal lifeguard chairs with five new permanent lifeguard towers on five beaches throughout Laguna Beach. The existing temporary lifeguard lookouts are comprised of a chair, elevated on a simple frame. There is no enclosure or roof of any type. The proposed larger, permanent towers would be located in generally the same location where the smaller, temporary elevated chairs are placed each season (Exhibit 6). The new towers are fully enclosable, solid fiberglass structures with windows, a roof and attached deck with railings and a ladder to gain access to and from the elevated structure. The structures would be approximately 14'9" tall, measuring approximately 9'9" from the top of the structure to the deck and approximately 5' from the deck to the sand, with a shelter footprint of 4' X 4' (Exhibit 4). Each of the new towers would be supported by a single 36 inch concrete caisson, which would be embedded through the sandy beach into bedrock.

### **B. Substantial Issue Analysis**

As stated in Section III of this report, the grounds for appeal of a Coastal Development Permit issued by the local government after certification of its Local Coastal Program are specific. In this case, the local Coastal Development Permits may be appealed to the Commission on the grounds that they do not conform to the certified LCP or the public access and recreation policies of the Coastal Act. The Commission must then decide whether a substantial issue exists in order to hear the appeal.

In this case, the appellant contends that the City's approval of the proposed projects do not conform to the requirements of the certified LCP and the public access and recreation policies of the Coastal Act (See Section I). Staff is recommending that the Commission find that the City's approvals present a substantial issue with respect to the grounds on which the appeals have been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and the public access and recreation policies of the Coastal Act.

#### **1. Appellant's Contentions that Raise Substantial Issue**

##### **a) Visual Impacts**

The appellant contends that the projects would create a year-round and unnecessary visual impact and that the applicant has failed to design the towers to limit their visibility and to limit the visual interruption of views to and along the shoreline. In addition, the appellant contends that the City has undergone no siting analysis to find the locations with the least visual impacts and has ignored public requests for less visually obtrusive alternatives.

As mentioned previously, the City is proposing to place five permanent lifeguard towers on five small beaches throughout the City. These larger, permanent towers would replace smaller, temporary elevated lifeguard chairs, which are only on the beach during the summer months. This would create a year-round impact to public views to and along these beaches as the new permanent structures are more intrusive and the temporary structures are less intrusive. Additionally it should be emphasized that the proposed structures would not only be larger, but also would create a permanent visual impact compared to the smaller lifeguard towers that are removed when not in use during non summer months.

Although it could be argued that the approved structures are for 'public health and safety' (see policy 1.E. below), the City has not demonstrated that permanent structures, like those authorized by these permits, are in fact necessary for public health and safety – it has not evaluated alternative, less permanent structures that would achieve necessary public health and safety requirements, while at the same time reducing the year round visual impacts associated with permanent structures. Potential temporary alternatives include using the proposed tower structures supported on movable sleds that could be removed from the beach, and stored elsewhere when not in regular use outside of the summer months. This technique is currently utilized by the City at a few locations (Exhibit 7). Another alternative would be the implementation of tower structures that are easy to assemble/disassemble allowing for simple removal from the coastline outside of peak use seasons. There may also be more aesthetically compatible alternatives other than the light-colored, fiberglass structures currently proposed that, as proposed, do not blend with the character of the surrounding coastal bluffs. The City has failed to provide reasons why these or other potential alternatives are unfeasible and would not provide the same benefits as the proposed permanent structures.

Although permanent lifeguard towers similar to those proposed by the City exist in a few locations in Southern California, none of these permanent structures have received a permit from the Commission.

Therefore, the projects approved by the local coastal development permits all raise a substantial issue as to consistency with the following relevant LCP policies:

*Open Space/Conservation Element Policy 1E: Prohibit the construction of buildings and other man-made structures on the sandy portion of the beach unless necessary for public health and safety.*

*Open Space/Conservation Element Policy 1.5K: The visual impact of a protective device should be minimized if the structure is sited next to or at the seacliff. As the structure encroaches onto the beach, the visual impact will increase accordingly, therebysuggesting nontechnical as well as technical reasons for reducing the encroachment.*

*Open Space/Conservation Element Policy 7A: Preserve to the maximum extent feasible the quality of public views from the hillsides and along the City's shoreline.*

*Land Use Element Policy 12-B Require building design which is compatible to and integrated with natural topographic features and preserve public views on the ocean and horizon by maintaining the low profile character of structures seaward of Pacific Coast Highway.*

*Land Use Element Policy 12-C Require the use of landscaping, special architectural treatments and siting consideration for projects visible from major highways and arterial streets.*

*Land Use Element Policy 12-G Future land use planning shall be compatible with the goal of providing visual access. As a consequence, all new and ancillary facilities shall be located to protect the public viewshed. Where this is not feasible, new development shall be sited to maximize views from public location (i.e. roads, bluff top trails, visitor-serving facilities, etc.).*

b) Public Access and Recreation

Installing permanent lifeguard towers on the beach in place of temporary lifeguard chairs would impact lateral public access and recreation on these beaches. This is because the proposed towers would be permanent and in-place year-round, as opposed to the temporary towers, which are only on the beach during the summer months. The beaches in which the proposed structures would be located are quite narrow (Exhibit 6), particularly during the winter when beach sands move offshore and also during extreme high tide events. These structures would be placed within the narrow band of drier sandy beach, which the public uses for lateral access along the shoreline. As stated previously, the City has not evaluated less permanent alternatives that would have a reduced impact on lateral beach access. Therefore, the projects approved by the local coastal development permits do not conform to the following relevant LCP policies:

*Open Space/Conservation Element Policy 1.5H: Construction and grading activities on the beach shall be staged and phased to minimize interference with public use.*

*Open Space/Conservation Element Policy 3A: Retain and improve existing public beach accessways in the City, and protect and enhance the public rights to use the dry sand beaches of the City.*

*Open Space/Conservation Element Policy 3H: In providing for legal public access, the City shall seek to protect the health and safety of residents and property owners consistent with Sections 30211 and 30213 of the Coastal Act.*

In addition, the projects approved by the local coastal development permit raise a substantial issue as to conformity with the requirements of the public access and recreation policies of the Coastal Act in regards to the following issues:

Section 30210 of the Coastal Act states:

*In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.*

Section 30211 of the Coastal Act states:

*Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.*

Section 30213 of the Coastal Act states:

*Lower cost visitor and recreational facilities shall be protected, encouraged, and where feasible, provided. Developments providing public recreational opportunities are preferred.*

Section 30221 of the Coastal Act states:

*Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.*

c) Miscellaneous

The appellant contends that the projects approved by the City did not provide early neighbor communication, failed to provide required visual staking and failed to provide required public notice. If the City (as the applicant) failed to follow procedures in the LCP regarding visual analysis, the City (as the applicant) would need to address this issue during the de novo review. She also contends that the City did not have engineering plans or studies available for review by the public, nor were there meeting minutes from previous hearings available for review. Although staff has requested the file materials from the City, we do not have those materials and thus we are unable to verify Ms. Siani's claims about the absence of various documents in the file. Ms. Siani also contends that the proposed projects would set unwanted precedent. In addition, Ms. Siani contends that the proposed projects have not taken appropriate construction Best Management Practices (BMP's) or water quality issues into account and recommended conditions for consideration (see Exhibit 8).

The appellant also contends that the proposed projects are not consistent with the California Environmental Quality Act (CEQA). Ms. Siani contends that the projects are also subject to Coastal Act policies including Sections 30230, 30231, 30232, 30235, 30251, 30253, 30255. However, based on the limited information available at this time the proposed projects are located within a certified area and, the standard of review are the policies of the City's certified LCP and the public access and recreation policies of the Coastal Act, which are discussed in the previous section. However, additional information may reveal that some or all of the proposed projects are located on tidelands that are within the Commission's original jurisdiction. If the development is located within the Commission's original jurisdiction, the standard of review would be the policies of the Coastal Act, and the Commission would need to consider these additional issues raised by the appellant when determining whether to issue a CDP for these developments.

**2. Appellant's Contentions that Do Not Raise Substantial Issue**

a) Habitat

The appellant contends that the development does not protect sensitive biological resources and is inconsistent with the policies of the certified LCP. The certified LCP contains the following habitat related policies:

*Open Space / Conservation Element Policy 2D: As part of the City's resource management program, include provisions for monitoring of tidepools to ensure a proper balance between public beach access and the preservation of marine resources.*

*Open Space/Conservation Element Policy 8C: Identify and maintain wildlife habitat areas in their natural state as necessary for the preservation of species.*

*Open Space/Conservation Element Policy 8J: Detailed biological assessments shall be required for all new development proposals located within areas designated as Environmentally Sensitive Areas on the Coastal ESA Map. To protect these resources, the following shall be required:*

*1. No new development proposals shall be located in areas designated as "Environmentally Sensitive Areas" on the Coastal ESA Map except for uses dependent upon such resources.*

*2. When new development proposals are situated in areas adjacent to areas designated as "Environmentally Sensitive Areas" on the Coastal ESA Map*

*and where these are confirmed by subsequent on-site assessment, require that development be designed and sited to prevent impacts which would significantly degrade such areas.*

The permanent lifeguard towers would be located on the sandy beach and in some cases near tidepools, which the Commission generally considers to be sensitive habitat and in some cases Environmentally Sensitive Habitat Areas (ESHA). After a previous appeal, the City initiated a site-specific/project-specific biological survey (*Five Proposed Lifeguard Tower Sites, Laguna Beach, California*, prepared by Christopher A. Joseph & Associates, dated November 1, 2007) to determine whether sensitive habitats/species would be adversely impacted by the proposed project, including both construction and operation of the lifeguard towers. The report found no sensitive plant or animal species at or adjacent to the proposed lifeguard tower sites, and only two plant species (*Aphanisma blitoides* and *Chaenactis glabriuscula*) had a moderate potential to occur on the sandy coastal bluffs located adjacent to the proposed tower sites at Picnic Beach and Bird Rock Beach. The report also describes that the closest Environmentally Sensitive Areas are represented by tidepools that are located at a minimum of 150 feet away from each of the proposed towers and therefore will not have a negative impact on these resources. The report goes on to suggest that standard BMP's be incorporated into the project to protect the sensitive biological resources present within the tidepool during construction. The City has included a special condition to the permit addressing construction related requirements to avoid these impacts.

The Commission concurs with the City's analysis and finds that the approved project, as conditioned, will not adversely impact sensitive species/habitats and is consistent with the policies of the certified LCP. Therefore, the proposed project does not raise a substantial issue with respect to biological resources.

### **3. Conclusion**

There has been little or no factual support supplied by the City that the proposed developments conform to the various policies described above. The scope of development may be limited in this case, but the impacts associated with the development are dramatic. These are highly scenic beaches that receive substantial public use; these approvals have a significant impact on the visual resources and public access available on these beaches. Staff is aware that the City has plans to install numerous permanent lifeguard towers on its beaches. The visual resources and public access issues are more than local issues; they are of regional and statewide significance particularly with regard to similarly situated beaches (narrow pocket beaches with high public use) elsewhere in the state.

In conclusion, the proposed projects are not consistent with the policies of the City's certified LCP or the public access and recreation policies of the Coastal Act. Therefore, staff recommends that the Commission find that a substantial issue exists with approved local Coastal Development Permits 07-72, 07-73, 07-74, 07-75, 07-76 on the grounds that they raise a substantial issue as to conformity with the City of Laguna Beach certified Local Coastal Program and the public access and recreation policies of the Coastal Act.

[Click here to go to the staff report exhibits.](#)