

CALIFORNIA COASTAL COMMISSION

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

**F14.5a****ADDENDUM**

Date: August 10, 2010

To: Commissioners & Interested Persons

From: SHERILYN SARB, DEPUTY DIRECTOR
SOUTH COAST DISTRICT STAFF

Subject: Commission Hearing of August 13, 2010, **item F14.5a** of agenda, Substantial Issue Determination on Appeal A-5-LGB-10-166, Laguna Beach, Orange County

Attached is the Notice of Final Action for the project from the City of Laguna Beach, and the accompanying resolution of adoption.

Revise the Commission staff report as follows. Additions are shown in underlined text, and deletions are shown in ~~strike out text~~.

To the front page of the staff report, add the following language:

The Commission will not take public testimony during this phase of the appeal hearing unless at least three commissioners request it. If the Commission finds that the appeal raises a substantial issue, it will schedule the de novo phase of the hearing for a future meeting, during which it will take public testimony. Written comments may be submitted to the Commission during either phase of the hearing.

On Page 10, paragraph 2, revise as follows:

Appellant Prosser's also contends that there is an unmitigated loss of the two existing bars and existing restaurant. ~~However,~~ These visitor serving facilities would be replaced with a wine bar/restaurant, which would be considered a compatible land use under the Tourist/Commercial Corridor description in the City's certified LCP and similar to the existing uses. However, the City did not analyze the impact of loss of the existing and more extensive restaurant and bars which are protected pursuant to Section 30213 and replacement with smaller facilities on the site. Such analysis should occur prior to concluding ~~Therefore,~~ the elimination of the two bars and restaurant are consistent with the City's certified LCP and the Public Access policies of the Coastal Act.

On Page 12, add the following after the first paragraph under subheading 4 Historical Alterations/CEQA Requirements:

Regarding historical preservation, the City's action requires the property owner to register the structure on the City's Historic Register and record a Historic Preservation Agreement. In addition, the City's Historic Preservation Ordinance is part of the certified LCP. Historical significance is an issue addressed by the Coastal Act when the impacts of the development are related to the character of highly scenic areas or the character of special communities which because of their unique characteristics are popular visitor destination points for recreational uses. The feasibility of rehabilitation of the existing structure, rather than substantial demolition and new additions, must be analyzed in terms of both the loss of existing lower cost overnight accommodations, as mentioned above, and the historical significance of the structure as it relates to the community and historical character. Therefore, as approved by the City, the project raises a substantial issue with regard to impacts to community and historical character.



RECEIVED
South Coast Region

JUL 13 2010

CALIFORNIA
COASTAL COMMISSION

**NOTICE OF FINAL LOCAL ACTION
FOR COASTAL DEVELOPMENT PERMITS**

Date: July 7, 2010

The following project is located within the City of Laguna Beach Coastal Zone:

Location: 1401 South Coast Highway

Coastal Development Project No: CDP 10-05

Project Description: Conditional Use Permit 10-03, PC Design Review 10-02, Variance 7668, to allow continued use of the property as a hotel with a public wine bar and for alterations, rehabilitation and additions to a historic commercial structure.

Applicant: Morris Skenderian Architects. Agent

Mailing Address: 2094 South Coast Highway, Laguna Beach, CA 92651

On July 6, 2010 a coastal development permit application for the project was

- approved
- approved with conditions
- denied

Local appeal period ended N/A

- This action was taken by:
- City Council
 - Design Review Board
 - Planning Commission

The action (X) did () did not involve a local appeal; in any case, the local appeal process has been exhausted. Findings supporting the local government action and any conditions imposed are found in the attached resolution.

This project is

- not appealable to the Coastal Commission
- appealable to the Coastal Commission pursuant to Coastal Act Section 30603. An aggrieved person may appeal this decision to the Coastal Commission within 10 working days following Coastal Commission receipt of this notice. Applicants will be notified by the Coastal Commission if a valid appeal is filed. Appeals must be in writing to the appropriate Coastal Commission district office and in accordance with the California Code of Regulation Section 13111. The Coastal Commission may be reached by phone at (562) 590-5071 or by writing to 200 Oceangate, 10th Floor, Long Beach, CA 90802-4416

Attach: CDP Resolution No. 10,084

1 RECORDING REQUESTED BY
2 CITY OF LAGUNA BEACH
AND WHEN RECORDED MAIL TO:

3 CITY CLERK
4 CITY OF LAGUNA BEACH
5 505 FOREST AVENUE
LAGUNA BEACH, CA 92651

6 (Fee Exempt per Govt. Code 6103)

THIS SPACE RESERVED FOR RECORDING

7
8 **RESOLUTION NO. 10.084**

9 A RESOLUTION OF THE CITY COUNCIL
10 OF THE CITY OF LAGUNA BEACH
DENYING THE APPEAL AND SUSTAINING THE
11 PLANNING COMMISSION APPROVAL OF
CONDITIONAL USE PERMIT 10-03,
12 **PLANNING COMMISSION DESIGN REVIEW 10-02,**
VARIANCE 7668 AND COASTAL DEVELOPMENT PERMIT 10-05
13 **AT 1401 SOUTH COAST HIGHWAY**

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15 WHEREAS, an application has been filed by the property owner of property located at
16 1401 South Coast Highway (Coast Inn) requesting approval of Conditional Use Permit 10-03,
17 Planning Commission Design Review 10-02, Variance 7668 and Coastal Development Permit
18 10-05 to allow the continuing use of the property as a hotel with a public wine bar (including
19 the service of alcohol) and for alterations, rehabilitation and additions to a historic commercial
20 structure, and Variances in accordance with the provisions of Municipal Code Section
21 25.05.025 to allow structural alterations that exceed the permitted building height; and
22

23 WHEREAS, the Planning Commission of the City of Laguna Beach, acting in
24 accordance with the provisions of Municipal Code Sections 25.05.040, 25.05.030, 25.05.050
25 and 25.05.025, conducted legally noticed public hearings regarding this proposal on April 14,
26 2010 and May 12, 2010; and

27 WHEREAS, the Planning Commission carefully considered the oral and documentary
28 evidence and arguments presented at the hearing; and

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WHEREAS, on July 6, 2010, the City Council conducted a legally noticed public hearing of the appeal of the Planning Commission approval of Conditional Use Permit 10-03, Planning Commission Design Review 10-02, Variance 7668 and Coastal Development Permit 10-05; and

WHEREAS, the City Council of the City of Laguna Beach considered all of the evidence and arguments presented in support of and in opposition to the application; and

WHEREAS, the proposed project conforms with the Secretary of the Interior's Standards for the Treatment of Historic Properties and is considered to be a project that will not cause a significant impact (14 CCR Section 15126.4(b)(1)) and is considered categorically exempt from CEQA (14 CCR Section 15331).

WHEREAS, the Planning Commission has made the following findings with regard to **Conditional Use Permit 10-03:**

1. The site is adequate to accommodate the uses without adverse impact on abutting property or on parking or traffic circulation in that the parking is legal, non-conforming uses exist on-site and will be de-intensified in that the existing uses (24-room hotel, 4 commercial office spaces, a 54-seat restaurant and 2 bars, one with 27 seats and one with 40 seats) creates a parking demand of approximately 72 parking spaces and the proposed uses create a parking demand of approximately 23 spaces. The 13 new on-site parking spaces will satisfy the parking requirement because of this de-intensification.
2. The site for the proposed uses has access to streets and highways adequate in width and pavement type to carry the quantity and kind of traffic generated by the propose use in that the proposed use is a de-intensification and will result in a reduction of vehicle trip generation.
3. The granting of the Conditional Use Permit will have no substantial adverse effect upon

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3 abutting properties in that the hotel and restaurant and or bar uses exist on-site and are
4 proposed to be de-intensified.

5 4. The proposed use is consistent with the objectives and policies of the City's General Plan
6 in that the use will provide visitor-serving hotel facilities and a public wine bar with the
7 service of alcohol, which is consistent with the land use designation of Commercial Tourist
8 Corridor for the project site.

9
10 5. The Conditions stated in the decision are deemed necessary to protect the public health,
11 safety and general welfare in that provision have been included to ensure continued land use
12 compatibility.

13 WHEREAS, the Planning Commission has reviewed the **Planning Commission**
14 **Design Review 10-02** based on the Design Review Criteria set forth in Municipal Code
15 Section 25.05.040 and found the project to be consistent with all of the criteria; and

16
17 WHEREAS, the Planning Commission has made the following findings regarding
18 **Variance 7668:**

19 1. There are special circumstances applicable to the property involved, including size, shape,
20 topography, location or surroundings which cause the strict application of the zoning
21 ordinance to deprive such property of privileges enjoyed by other properties in the vicinity and
22 under identical zoning classification in that the existing structure is historic and was
23 constructed prior to the current height limitations and the alterations are in keeping with the
24 historic character of the building.

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26 2. The requested variances are necessary for the preservation and enjoyment of a substantial
27 property right of the applicant, which right is possessed by other property owners under like
28 conditions in the same vicinity and zone in that the proposed rehabilitation and restoration is of

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3 similar scale to other properties in the vicinity such as the Hotel Del Camino, the Heisler
4 Building and Hotel Laguna.

5 3. The granting of the variance will not be detrimental to the public health, safety,
6 convenience and welfare or injurious to property and improvements in the vicinity in which
7 the property is located in that the proposed alterations do not obstruct pedestrian access
8 through or around the property, do not impact ocean, beach, or hillside views from
9 neighboring properties, and further, do not obstruct light, air, or solar access to neighboring
10 properties.

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12 4. The granting of the variance will not be contrary to the objectives of the zoning
13 ordinance and the General Plan in that the proposed rehabilitation and restoration conforms
14 with the Secretary of the Interior's Standards for the Treatment of Historic Properties and is
15 a de-intensification of use of the site.

16
17 WHEREAS, the Planning Commission has made the following findings with regard
18 to **Coastal Development Permit 10-05**:

19 1. The project is in conformity with all applicable provisions of the General Plan,
20 including the Certified Local Coastal Program, in that the hotel and public wine bar use is
21 visitor-serving and that the proposed rehabilitation and restoration conforms with the
22 Secretary of the Interior's Standards for the Treatment of Historic Properties and is a de-
23 intensification of the site.

24
25 2. The project is located between the sea and the first public road paralleling the sea and is
26 in compliance with the certified local coastal program and with the public access and public
27 recreation policies of the Coastal Act in that conditions have been incorporated into the
28 project to mitigate any potential impacts, and the City shall request that the applicant grant

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lateral public access along the shoreline of the proposed project site.

3. The proposed project will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act in that the proposed project conforms with the Secretary of the Interior's Standards for the Treatment of Historic Properties and is considered to be a project that will not cause a significant impact (14 CCR Section 15126.4(b)(1)) and is considered categorically exempt from CEQA (14 CCR Section 15331).

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission hereby approves **Conditional Use Permit 10-03, Planning Commission Design Review 10-02, Variance 7668 and Coastal Development Permit 10-05** are hereby granted to the following extent:

Approval to operate a 10-room hotel and public wine bar with the service of alcohol and for the restoration, rehabilitation and additions to a historic commercial structure, with a variance to exceed the maximum allowable height as measured from the lowest finished floor and to exceed the maximum allowable height as measured above the curb elevation.

BE IT FURTHER RESOLVED, that the following condition(s) are set forth to protect the health, safety and welfare of the community and to assure the intent and purpose of the regulations:

Conditional Use Permit 10-03

1. The Conditional Use Permit shall be subject to review if written complaints are received, and shall be subject to administrative review one (1) year after issuance of the certificate of use to determine if the approved conditions of approval are in compliance. These reviews may result in a formal noticed public hearing before the Planning Commission. After the public

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3 hearing on the matter, the Planning Commission may require immediate condition compliance,
4 amend the conditions of approval or proceed with revocation of the Conditional Use Permit as
5 specified in Municipal Code Section 25.05.075.

6 2. It is understood that the conditions of approval apply herein to any future owners or lessees
7 operating under this Conditional Use Permit. This means in legal terms that the conditions of
8 approval for the Conditional Use Permit shall be and hereby are obligations of and binding
9 upon the applicant and his/her heirs, successors, assigns, agents and representatives. The
10 conditions shall constitute a covenant running with and binding the land in accordance with
11 the provisions of California Civil Code Section 1468. Failure to comply with such conditions,
12 and each of them, and any other related federal, state and local regulations may be grounds for
13 revocation of the Conditional Use Permit, in addition to other remedies that may be available
14 to the City.

15
16 3. This Conditional Use Permit shall not become effective until any required Design Review
17 has been obtained.

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19 4. The businesses or uses shall not open, inaugurate or commence until after the City has
20 issued a Certificate of Use and Occupancy; and such Certificate shall not be issued until after
21 City staff has verified compliance with all applicable conditions of approval.

22 5. If the uses authorized under this Resolution and Conditional Use Permit are abandoned or
23 terminated for any reason for a period of at least one year, the Conditional Use Permit shall
24 automatically expire and become void.

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26 6. A minimum of 13 parking spaces shall be provided on-site at no charge for the tenants and
27 patrons of the hotel and public wine bar.
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7. The hotel rooftop deck shall be for the exclusive and private use of the occupants of the hotel and their guests and not open to the public.

8. The hotel rooftop deck hours of use shall be from 6:00 a.m. to 10:00 p.m. daily, with no use from 10:00 p.m. to 6:00 a.m.

9. Prior to occupancy of the hotel, the applicant shall establish a new wine bar use within the project area depicted on page A-3 of the project plans.

10. The wine bar component shall have no less than 35 seats. The hours of operation shall be from 6:00 a.m. to 12:00 a.m. Sunday through Thursday and 6:00 a.m. to 1:00 a.m. Friday and Saturday. The wine bar shall be open to the public and open to hotel guests.

11. Prior to the commencement of the service of alcohol, the applicant shall apply for and receive approval for the appropriate liquor license from the California Department of Alcohol Beverage Control.

12. Alcohol service shall be limited to onsite sales and consumption.

13. The operators of the uses authorized by this permit will be responsible for the clean-up of all on-site and adjacent public areas, including the sidewalks. Hosing down the sidewalks and outdoor areas shall be prohibited.

14. The use of expanded polystyrene (Styrofoam) food containers is prohibited.

15. Outdoor display of any kind shall be prohibited, unless approved as an amendment to this Conditional Use Permit.

16. All awnings shall be cleaned yearly.

17. A City business license shall be obtained prior to the operation of any business use permitted by this Conditional Use Permit.

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3 18. No proposed change or modification to the specifically permitted use of a 10-room hotel
4 and a public wine bar shall be allowed except pursuant to a subsequent or amended
5 Conditional Use Permit granted pursuant to the terms of Title 25 of the City of Laguna Beach
6 Municipal Code.

7
8 19. No live entertainment or dancing shall be allowed, unless approved as an amendment to
9 this Conditional Use Permit.

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11 20. The applicant shall not allow, act, cause or permit any lessee, agent, employee,
12 exhibitor or concessionaire any "prohibited discharge" (as defined in Municipal Code
13 Section 16.01.020) into the City's storm water drainage system.

14
15 21. The permittee shall defend, hold harmless and indemnify, at his/her/its expense, the
16 City, City Council and members thereof, commissions, boards, officials, officers,
17 employees, agents and representatives from any and all third party claims, actions or
18 proceedings to the attack, set aside, void or annul and approval of this Conditional Use
19 Permit, which action is brought within the time period provided for in California
20 Government Code Section 66499.37, as same may be amended. This obligation shall
21 encompass all costs and expenses incurred by the City in defending against any claim,
22 action or proceeding, as well as costs or damages the City may be required by a court to pay
23 as a result of such claim, action or proceeding.

24 **Planning Commission Design Review 10-02**

25 22. Expiration. If development has not commenced within two years from the final action
26 of the approval authority on the application, the Design Review approval will expire.
27 Development, once timely commenced, shall be pursued in a diligent manner and
28 completed in a reasonable period of time. Any application for extension of the Design

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3 Review approval must be made prior to the expiration date and shall be accompanied by an
4 explanation of good cause for the request.

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6 23. Interpretation. Any questions of intent or interpretation of any condition will be
7 determined by the Community Development Director, whose determinations may be
8 subject to appeal pursuant to the provisions of Title 25 of the Laguna Beach Municipal
9 Code.

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11 24. Terms and Conditions Run with the Land. These conditions shall be perpetual and shall
12 bind all future owners, successors, heirs, assigns and possessors of the subject property to
13 all terms and conditions of the approval.

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15 25. Indemnification. The permittee shall protect, defend, indemnify and hold harmless the
16 City, its officers, employees or agents as to any demands, claims or actions arising out of or
17 resulting from the (a) the Design Review approval, (b) the development of the approved
18 project, and (c) any negligence acts or omissions of the permittee or the permittee's agents,
19 employees or contractors.

20
21 26. Plan Reliance and Modification Restriction. In the absence of specific provisions or
22 conditions to the contrary, the application and all plans or exhibits attached to the
23 application are relied upon, incorporated and made a part of the Design Review approval. It
24 is required that such plans or exhibits be complied with and implemented in a consistent
25 manner with the approved use, conditions of approval and approved plans. Such plans and
26 exhibits for which this Design Review approval has been granted shall not be changed or
27 amended except pursuant to a subsequent amendment or new Design Review approval as
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might otherwise be required or granted pursuant to the terms of Title 25 of the City of Laguna Beach Municipal Code.

27. Grounds for Revocation. The Design Review approval shall be subject to revocation or modification with regard to the grounds set forth in Title 25 of the Laguna Beach Municipal Code, including without limitation failure to comply with all conditions of approval.

28. Water Quality Condition. The permittee shall not, by act or omission, allow, cause or permit any "prohibited discharge" (as defined in Laguna Beach Municipal Code Section 16.01.020) into the City's storm water drainage system.

29. Prior to issuance of a grading or building permit, the applicant shall specify the BMPs listed in the Water Quality Management Plan on the Construction Plans and demonstrate how such will be incorporated into the project design and operation.

30. Construction. All project-related construction hauling operation equipment/vehicles shall be staged at a site outside of the City when not in use.

31. All construction trucks for hauling operations, while not being loaded, shall be in route to the receiving site from the project site, off-loading at the receiving site and/or awaiting radio or telephone communication for construction site staging availability.

32. All construction equipment shall be properly maintained and affixed with functional OEM (original equipment manufacturer) mufflers to minimize noise impacts. The Building Official or his designee shall have authority to prohibit the use of any heavy equipment with damaged or faulty mufflers, until equipment is repaired accordingly.

33. During all project site construction, the project contractor shall limit all construction

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3 related activities to between the hours of 7:30 a.m. and 6:00 p.m. Monday through Friday,
4 in compliance with Municipal Code Chapter 7.25. No construction activity that produces
5 loud noise (e.g. tools, equipment or machinery) that disturbs a person of normal sensitivity
6 who works or resides in the vicinity, shall be conducted on any weekend day or any federal
7 holiday.

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9 34. All construction/development in the right-of-way shall require either a public works
10 permit or a Caltrans Encroachment Permit. A civil engineering plan of all modifications
11 done within the public right-of-way shall be submitted to the City Engineer for review and
12 approval prior to the issuance of a building permit for said modifications.

13
14 35. Pedestrian accessibility shall be maintained all time along Coast Highway and
15 Mountain Street.

16 36. Construction within the bluff top setback. With the exception of new deck railings, no
17 new construction shall be allowed within the bluff top set back.

18
19 37. Landscape Plans. The applicant shall comply with requirements of the Landscape and
20 Scenic Highways Resource Document and submit revised landscape plans which
21 incorporate a minimum of two street trees as depicted in Figure D-10 of the City Landscape
22 and Scenic Highways Resource Document.

23
24 38. Dedications. Prior to the issuance of a demolition, grading or building permit, the
25 applicant shall execute and record a document granting permanent lateral public access
26 along the shoreline of the property, in compliance with Municipal Code Section
27 25.23.022(F).
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39. Prior to the issuance of a demolition, grading or building permit, the applicant shall dedicate or grant an easement (subject to the approval of the Director of Public Works and/or Caltrans) for the sidewalk area along South Coast Highway from the building to the current easterly property line.

40. Building Color. The final building colors shall be subject to the review and approval of the Planning Commission. A sample of the proposed building color/s or a palette of colors shall be applied to the building prior to the Planning Commission meeting.

41. Skylights. All skylights shall be equipped with night shades.

42. Lighting. A detailed lighting plan with photometric measurements shall be reviewed and approved by the Community Development Department, prior to the issuance of building permits. The plans shall include shielding devices to prevent spillage of lighting onto the adjacent properties and beach.

43. Historic Requirements. Prior to the issuance of a demolition, grading or permit the property owner shall register the structure on the City's Historic Register and record a Historic Preservation Agreement.

44. The City shall hire a historic resources consultant/inspector at the expense of the applicant, to address appropriate treatments of retained historic building fabric and features (historic fabric) and the compatibility of new design and construction components with retained historic features. A qualified architectural historian, historic architect, or historic preservation professional is someone who satisfies the *Secretary of the Interior's Professional Qualification Standards for History, Architectural History, or Architecture*,

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3 pursuant to 36 CRF 61, and has experience in reviewing architectural plans for
4 conformance to the *Secretary's Standards and Guidelines*.

5 45. Prior to the issuance of a building permit, the historic resources consultant/inspector
6 shall review and approve the final construction plans to insure that important character-
7 defining features are retained and that the rehabilitation and treatment of the building
8 during construction follows appropriate preservation practices and conformance to the
9 *Secretary of the Interior's Standards*. The historic resources consultant/inspector shall
10 prepare a memo commenting on the final construction plans prior to the issuance of a
11 building permit.
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13 46. Prior to the issuance of a building permit, the applicant shall submit plans and receive
14 approval of the interpretive exhibit/cultural display. The interpretive exhibit/cultural
15 display shall depict and address the social, physical and cultural history of the property,
16 including the iconic history of the gay community. The interpretive exhibit/cultural display
17 shall be prepared by a historic and cultural resources consultant and reviewed by the
18 Heritage Committee and approved by the Planning Commission. The location and
19 placement of the interpretive exhibit/cultural display (within the hotel and/or the public
20 wine bar) shall be evaluated by the Heritage Committee and approved by the Planning
21 Commission.
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23 47. A bronze plaque which recognizes the social, physical and cultural history of the
24 property, including the iconic history of the gay community shall be placed on the northeast
25 corner of the building.
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48. Prior to the issuance of a demolition, grading or permit, the interior and exterior of the existing structure shall be photographically documented with copies of the documentation provided to the City.

49. Reasonable efforts shall be made to utilize sustainable or renewable materials where appropriate within the interior.

50. The applicant shall work with the City in upgrading the garden and public access at the street-end of Mountain Road to recognize the gay community.

51. Signage. All proposed signage shall be reviewed in conjunction with a sign program by the Planning Commission.

ADOPTED this 6th day of July, 2010.

Elizabeth Pearson
Elizabeth Pearson, Mayor *note*

ATTEST:

Martha Anderson
City Clerk

I, MARTHA ANDERSON, City Clerk of the City of Laguna Beach, California, do hereby certify that the foregoing Resolution No. 10.084 was duly adopted at a Regular Meeting of the City Council of said City held on July 6, 2010, by the following vote:

- AYES: COUNCILMEMBER(S): Boyd, Egly, Rollinger, Iseman, Pearson
- NOES COUNCILMEMBER(S): None
- ABSTAIN COUNCILMEMBER(S): None
- ABSENT: COUNCILMEMBER(S): None

The foregoing instrument is a correct copy of the original on file in this office.

Martha Anderson
City Clerk of the City of Laguna Beach

Attest July 12, 2010
City Clerk of the City of Laguna Beach,
County of Orange, State of California.

By: Martha Anderson
City Clerk

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PROPERTY OWNER(S)/APPLICANT(S) CONSENT AFFIDAVIT

The owner(s) of the above described property, and the owner(s)/applicant(s) of all interests therein, do hereby consent to the imposition of the above stated conditions, and agree that said conditions shall constitute restrictions running with the land and shall be binding on said owner(s), their heirs, successors and assigns.

Signed this _____ day of _____, _____, by

_____	_____
Signature of Owner/Applicant	Signature of Owner/Applicant
_____	_____
Name (Print or Type)	Name (Print or Type)

State of California
County of Orange} SS.

On _____, before me _____, a

Notary Public, personally appeared _____

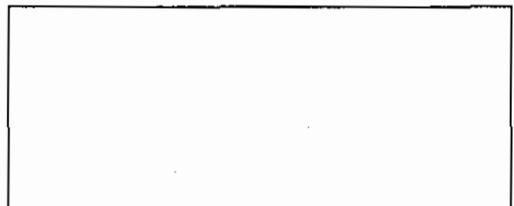
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

NOTARY SEAL OR STAMP



CALIFORNIA COASTAL COMMISSION

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

F 14.5

Filed: July 26, 2010
49th Day: September 13, 2010
Staff: John Del Arroz-LB
Staff Report: July 27th, 2010
Hearing Date: August 11-13, 2010
Commission Action:

**STAFF REPORT: APPEAL**
SUBSTANTIAL ISSUE

LOCAL GOVERNMENT: City of Laguna Beach

LOCAL DECISION: Approval with Conditions

APPEAL NUMBER: A-5-LGB-10-166

APPLICANT: Morris Skendarian, Architect

PROJECT LOCATION: 1401 South Coast Highway
Laguna Beach, Orange County

PROJECT DESCRIPTION: Extensive remodel of the historic Coast Inn including: an increase in room size and reduction in the number of rooms from 24 to 10; elimination of office space, restaurant, and 2 bars; and addition of 13 space subterranean parking garage, wine bar, elevator, and rooftop pool

APPELLANTS: Commissioners Mary Shallenberger and Sara Wan
Audrey Prosser

SUMMARY OF STAFF RECOMMENDATION

The staff recommends that the Commission, after public hearing, determine that the appeal raises a **SUBSTANTIAL ISSUE** with respect to the grounds on which the appeal has been filed. The appeal raises a substantial issue regarding whether the City-approved development conforms with the City of Laguna Beach certified Local Coastal Program (LCP) or the public access policies of the Coastal Act because the development may pose potential adverse effects to existing lower-cost visitor serving accommodations.

The subject development is located between the nearest public road and the sea, an area where development approved by the City of Laguna Beach pursuant to its certified Local Coastal Program (LCP) is appealable to the Coastal Commission. The subject site has a land use designation of Commercial Tourist Corridor

The appellants contend that the project approved by the City is inconsistent with the City's certified Local Coastal Program(LCP) and the Public Access policies of Chapter 3 of the Coastal Act. As described in the findings of this report, the project approved by the City does not protect existing lower-cost overnight visitor serving accommodations. Thus, the appeal raises a substantial issue regarding the conformity of the locally

approved development with the Public Access Policies of Chapter 3 policies of the Coastal Act. Therefore, staff is recommending that the Commission find that a substantial issue exists with respect to the grounds upon which the appeal was filed.

If the Commission adopts the staff recommendation, a de novo hearing will be scheduled at a future Commission meeting. **The motion to carry out the staff recommendation is on Page 6 of this report.**

SUBSTANTIVE FILE DOCUMENTS:

City of Laguna Beach Certified Local Coastal Program
Appeal of Commissioners Shallenberger and Wan
Appeal of Audrey Prosser
City Permit Record for local Coastal Development Permit 10-05
Local Coastal Development Permit 10-05

Exhibits

1. Appeal of Commissioners Sara Wan and Mary Shallenberger
2. Appeal of Audrey Prosser

I. APPELLANT'S CONTENTIONS

A. Summary of Appeal Contentions Raised by Commissioners Sara Wan and Mary Shallenberger

1. Reduction in Number of Rooms

The proposed loss of 14 rooms from the hotel results in a reduction in the number of overnight visitor serving accommodations in the Coastal Zone, and a reduction in the segment of the population which is able to take advantage of visitor-serving uses in the area. This is inconsistent with Coastal Act Section 30210's requirement that "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."

2. Loss of Existing Lower-Cost Overnight Accommodations

The reduction in the number of rooms and increase in size of the remaining hotel rooms would result in higher overall prices for the hotel accommodations. Coastal Act Section 30213 states: "Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided." The Coastal Act seeks to ensure that a range of facilities be provided in new development and the protection of existing lower cost facilities along the coastline. If conversion from lower cost to higher cost overnight accommodations were allowed unchecked, the stock of affordable overnight accommodations would eventually be depleted. If the development cannot accommodate on-site facilities for people with a range of incomes, the Commission in past actions has required mitigation, in the form of an in-lieu fee so that lower cost facilities can be provided at an off-site location. However, the city's action did not include a review of the issue of protection of the existing lower cost overnight visitor serving accommodations. As a result, no determination has been made as to whether

the proposed project could protect the existing lower-cost accommodations, what the appropriate mitigation for the loss of lower-cost overnight accommodations would be if the development was not able to protect lower-cost accommodations, nor has the potential impacts of a reduction in the number of rooms and increase in cost on Public Access been analyzed. Therefore, as approved by the City, the proposed project does not meet the requirements of the Public Access Policies of Chapter 3 of the Coastal Act.

B. Summary of Appeal Contentions Raised by Audrey Prosser

1. The project should be considered as new development

The appellant contends that the applicant's statement that 49.6% of the existing structure will be demolished is inaccurate, and that the proposed project should be considered new development.

2. The proposed project results in unnecessary, avoidable and significant visual impacts

The appellant contends that elements of the project, including a rooftop privacy wall, elevator, turrets, and skylights are unnecessarily bulky and block views from the highway and beach, which violates Land Use Element Policy 12-G (a policy which has not been certified by the Coastal Commission).

3. Loss of affordable visitor serving hotel, bar, and restaurant

The appellant contends that the project will eliminate the following visitor serving accommodations: a 24 room low cost hotel, a 54 seat affordable restaurant, and 2 bars without mitigation. The appellant states that the proposed project will have 10 condo-style hotel suites at a rate of \$800 per night, according to a statement made by the architect.

4. Historical Structure Alteration

The appellant contends that the loss of the bar and restaurant would be a significant loss of important historical structures due to the bar's importance to the gay community and the bar's importance as the first bar to obtain a liquor license after the end of Prohibition. The appellant contends that the CEQA was inadequately prepared and did not adequately address the loss of the bar, restaurant, and hotel. The appellant further contends that the City's claim that the project was exempt from CEQA due to the project's conformance with the Secretary of Interior's guidelines for the treatment of historical properties is faulty. The requirement in question requires that the property must be used as it was historically or given a new use that requires minimal change to its distinctive materials, features, space and spatial relationships. The appellant contends that the changes to the structure – the change in size and number of hotel rooms, added foundations, excavation of the subterranean parking lot, and installation of a new retaining wall disqualifies the project from this requirement.

5. Project encroaches into 25 foot setback requirement required in the LCP.

The appellant contends that the project encroaches into the 25 foot blufftop setback requirement which is required as a part of the City's certified LCP policy 1-I.

6. Project denies access to ocean from the site.

The appellant contends that the project blocks access to the ocean, as the proposed structure includes the existing non-conforming development which extends to the edge of the bluff.

II. LOCAL GOVERNMENT ACTION

Local Coastal Development Permit 10-05 was approved by the City of Laguna Beach on July 7, 2010. Based on the date of receipt of the Notice of Action, the ten (10) working day appeal period for local Coastal Development Permit 10-05 began on July 14, 2010 and ran through July 27, 2010. An appeal of local Coastal Development Permit 10-05 was received from Commissioners Shallenberger and Wan on July 26 2010, and from Audrey Prosser on July 27th (see Exhibits 1 and 2), within the allotted ten (10) working day appeal period.

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 100-feet of any wetland, estuary, or stream, 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 a designated "principal permitted use" under the certified LCP. Finally, any local government action on a proposed development that would constitute a major public work or a major energy facility may be appealed, whether approved or denied by the city or county. [Coastal Act Section 30603(a)].

Section 30603(a)(1) and (a)(2) of the Coastal Act establishes the project site as being in an appealable area because it is located between the sea and the first public road paralleling the sea and is within 300 feet of the inland extent of the beach and within 300 feet of the top of the seaward face of a coastal bluff .

Section 30603 of the Coastal Act states, in part:

- (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 a local government action approving a Coastal Development Permit for development 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 appeal of the local approval of the proposed project. Section 30625(b)(2) of the Coastal Act requires the Commission to hold a de novo hearing on the appealed project unless the Commission determines that no substantial issue exists with respect to the grounds for appeal.

If Commission staff recommends a finding of substantial issue, and there is no motion from the Commission to find no substantial issue, the substantial issue question will be considered moot, and the Commission will proceed to the de novo portion of the public hearing on the merits of the project. The de novo portion of the hearing may be scheduled at the same hearing or a subsequent Commission hearing. The de novo 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 an opportunity to address whether the appeal raises a substantial issue. The Chair will set the time limit for public testimony at the time of the hearing. As noted in Section 13117 of the California Code of Regulations, 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.

Upon the close of the public hearing regarding whether the appeal raises a substantial issue, the Commission will vote on the substantial issue matter. It takes a majority of Commissioners present to find that no substantial issue is raised by the local approval of the subject project.

If the appeal is found to raise a substantial issue, at the de novo hearing, the Commission will hear the proposed project de novo and all interested persons may speak. The de novo hearing will occur at a subsequent meeting date. All that is before the Commission at this time is the question of substantial issue.

IV. STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE

MOTION: I move that the Commission determine that Appeal No. A-5-LGB-10-166 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.

STAFF RECOMMENDATION:

Staff recommends a **NO** vote. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

RESOLUTION TO FIND SUBSTANTIAL ISSUE:

The Commission hereby finds that Appeal No. A-5-LGB-10-166 presents a substantial issue with respect to the grounds on which the appeal has 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 subject site is located at 1401 South Coast Highway, between the sea and the first public road, and has a designated land use of Commercial/Tourist Corridor. The city's certified LCP describes the Commercial/Tourist Corridor as:

The principle permitted uses of this category are visitor-serving facilities such as hotels, motels, restaurants, theaters, museums, specialty shops and beach-related retail uses. Other non-visitor-serving facilities (including service and residential uses) are also permitted, subject to a conditional use permit. Non-visitor serving uses shall not exceed 50 percent of the gross floor area of the entire structure and shall be located above the ground floor level.

The site is currently developed with a 24 room hotel, 4 commercial office spaces, a 54 seat restaurant and 2 bars (one with 27 seats and one with 40 seats). The structure was built in 1928, and is designated as a 'Contributive' historic structure by the City of Laguna Beach. The site is notable for having the "Boom Boom Room," one of the first bars within Laguna Beach to serve the gay community, and was one of the first bars in Laguna Beach to serve alcohol after the end of prohibition.

The proposed project would remodel the existing structure by demolishing 49.6% of the existing structure to create a 10 room boutique hotel, 1,224 square foot wine bar/restaurant, and 13 space subterranean parking garage. The existing structure is a non-conforming use, in that it extends to the edge of the bluff and does not meet the City's required 25 foot blufftop setback line. The proposed project would maintain this nonconforming part of the structure. No new development is proposed within the 25 foot setback with the exception of replacement of deck railings. The project proposes a height variance to allow the installation of design elements which were once a part of the historical structure such as turrets which exceed the City's height limit. The proposed project requires the applicant to dedicate a public easement allowing the public lateral access along the shoreline seaward of the existing structure.

B. Factors to be Considered in Substantial Issue Analysis

Section 30625(b)(2) of the Coastal Act states that the Commission shall hear an appeal of a local government action carried out pursuant to Section 30600(b) unless it finds that no substantial issue exists as to conformity with the certified Local Coastal Program or the public access policies of the Coastal Act. The term "substantial issue" is not defined in the Coastal Act or its implementing regulations. Section 13115(b) of the Commission's regulations simply indicates that the Commission will hear an appeal unless it "finds that the appellant raises no significant questions". In previous decisions on appeals, the Commission has been guided by the following factors.

1. The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the Local Coastal Program;
2. The extent and scope of the development as approved by the local government;
3. The significance of the coastal resources affected by the decision;
4. The precedential value of the local government's decision for future interpretations of its LCP; and,
5. Whether the appeal raises local issues, or those of regional or statewide significance.

Even when the Commission chooses not to hear an appeal, appellants nevertheless may obtain judicial review of the local government's coastal permit decision by filing petition for a writ of mandate pursuant to Code of Civil Procedure, Section 1094.5.

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 Permit may be appealed to the Commission on the grounds that it does not conform to the certified Local Coastal

Program or with the public access policies of the Coastal Act. The Commission must then decide whether a substantial issue exists with respect to the grounds on which an appeal has been filed in order to decide whether to hear the appeal de novo.

In making the substantial issue assessment, the Commission typically considers whether the appellants' contentions regarding the inconsistency of the local government action with the certified LCP raise significant issues in terms of the extent and scope of the approved development, the support for the local action, the precedential nature of the project, whether a significant coastal resource would be affected, and whether the appeal has statewide significance.

In this case, the appellants contend that the City's approval of the proposed project does not conform to the requirements of the Public Access policies of Chapter 3 of the Coastal Act, and/or the certified LCP regarding development and visual impacts.

Staff is recommending that the Commission find that a **substantial issue** does exist with respect to whether the approval of the project is consistent with the provisions of the Public Access Policies of the Coastal Act for the reasons set forth below.

C. 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 (LCP) are specific. In this case, the local coastal development permit may be appealed to the Commission on the grounds that it does not conform to the certified LCP or the Public Access Policies of the Coastal Act. The Commission must then decide whether a substantial issue exists in order to hear the appeal. In this specific case the appellants Wan and Shallenberger contend that the approved development does not conform to the public access policies of the Coastal Act, and appellant Prosser contends that the approved development does not conform to either the City's certified LCP or the public access policies of the Coastal Act.

For the reasons stated below, the Commission staff recommends that the appeal raises a substantial issue regarding the conformity of the locally approved development with the Public Access Policies of Chapter 3 of the Coastal Act.

1. **Lower-Cost Overnight Visitor Serving Accommodations**

The city's certified LCP describes the Commercial/Tourist Corridor as:

The principle permitted uses of this category are visitor-serving facilities such as hotels, motels, restaurants, theaters, museums, specialty shops and beach-related retail uses. Other non-visitor-serving facilities (including service and residential uses) are also permitted, subject to a conditional use permit. Non-visitor serving uses shall not exceed 50 percent of the gross floor area of the entire structure and shall be located above the ground floor level.

Coastal Act Section 30210 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.

Coastal Act Section 30213 states:

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

The commission shall not: (1) require that overnight room rentals be fixed at an amount certain for any privately owned and operated hotel, motel, or other similar visitor-serving facility located on either public or private lands; or (2) establish or approve any method for the identification of low or moderate income persons for the purpose of determining eligibility for overnight room rentals in any such facilities.

Coastal Act Section 30214 states:

(a) The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following:

- (1) Topographic and geologic site characteristics.*
- (2) The capacity of the site to sustain use and at what level of intensity.*
- (3) The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses.*
- (4) The need to provide for the management of access areas so as to protect the privacy of adjacent property owners and to protect the aesthetic values of the area by providing for the collection of litter.*

(b) It is the intent of the Legislature that the public access policies of this article be carried out in a reasonable manner that considers the equities and that balances the rights of the individual property owner with the public's constitutional right of access pursuant to Section 4 of Article X of the California Constitution. Nothing in this section or any amendment thereto shall be construed as a limitation on the rights guaranteed to the public under Section 4 of Article X of the California Constitution.

(c) In carrying out the public access policies of this article, the commission and any other responsible public agency shall consider and encourage the utilization of innovative access management techniques, including, but not limited to, agreements with private organizations which would minimize management costs and encourage the use of volunteer programs.

Commissioners Wan and Shallenberger contend that the project will result in the loss of overnight visitor serving accommodations along the coast. The proposed project would result in the elimination of 14 hotel rooms, resulting in a reduction in the number of members of the public which can visit the Coast over the year, and a reduction in the segment of the population which is able to enjoy coastal resources. The City's decision did not mitigate for this loss of overnight visitor serving accommodations, nor did it analyze the effect that the loss of hotel rooms would have on public access to the coast. Therefore the City's decision is inconsistent with Coastal Act Section 30210's requirement that "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.”

Both appeals contend that the project as approved by the City would result in the loss of lower-cost overnight visitor serving accommodations. The loss of visitor serving accommodations in this project encompasses two parts, the loss of existing overnight lower cost accommodations, and the replacement of these lower cost accommodations with overnight accommodations which do not qualify as low to moderate cost. The Commission staff has not yet received the local government record or a statement of the existing rates for the 24 room hotel, or the rates for the proposed 10 room boutique hotel. However, in verbal communication between the applicant and commission staff the applicant has stated that the existing hotel rooms, which are 9'x 11' in size, would qualify as low to moderate cost hotel accommodations. Appellant Prosser contends that a statement by the architect was that the rate for the proposed suites would be \$800 per night, which would not qualify as low to moderate cost accommodations. Even if the rate stated by appellant Prosser is incorrect, the project architect confirmed that there will be a reduction in the number of rooms and increase in size of rooms and that the proposed 10 suite hotel will be a higher cost visitor serving accommodation than the current 24 room hotel. This indicates that the proposed project would result in a loss of lower to moderate cost overnight accommodations.

The City has not analyzed the project for its potential to reduce the supply of lower-cost visitor serving accommodations, whether the current lower cost facility can be protected, or the appropriate mitigation for the loss if the hotel is converted to a higher cost facility. Therefore, the project as approved by the city represents a potential unmitigated loss of 24 lower-cost overnight visitor serving accommodations. The project as approved by the city is therefore inconsistent with Coastal Act Section 30213, which states in part: “Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided.”

Appellant Prosser’s also contends that there is an unmitigated loss of the two existing bars and existing restaurant. However, these visitor serving facilities would be replaced with a wine bar/restaurant, which would be considered a compatible land use under the Tourist/Commercial Corridor description in the City’s certified LCP and similar to the existing uses. Therefore, the elimination of the two bars and restaurant are consistent with the City’s certified LCP and the Public Access policies of the Coastal Act.

2. New development

The City's Certified Open Space Conservation Element states in policy 1-l:

The City shall impose a 25-foot minimum setback or a distance ascertained by stringline measurements for all blufftop development, notwithstanding the fact that ecological and environmental constraints may require an additional setback.

Appellant Prosser contends that the project as proposed by the city should be classified as new development, and not as a remodel of an existing historic structure. Specifically, she contends that the listed figure of 49.6% demolition is inaccurate. The City and applicant contend that the demolition plans show a total of 49.6%, and that the project consists of alterations, rehabilitation, and addition to a historic structure. The Commission has not received the project file from the City of Laguna Beach, and has not been able to review the demolition and historical element preservation plans used to determine the scope of demolition and new construction. Therefore at this time the Commission staff has not determined whether the project qualifies as demolition and new development or as a remodel.

Additionally, Appellant Prosser contends that because the project qualifies as new development, the project as approved by the City results in an encroachment into the 25 foot setback. The Commission has not yet received the project file from the City, and as a result has not had a chance to review the project plans and ensure that there is no construction planned within the 25 foot setback. However the City's resolution states that no development shall be allowed within the 25 foot blufftop setback except for the replacement of deck railings. If the project were considered as new development, the non-conforming part of the structure within the 25 foot setback would be considered as part of the new development as well. If this were the case, the proposed project would be in violation of the city's 25 foot setback requirement. However, the issue of whether the proposed development would qualify as new development has not yet been analyzed by the commission pending receipt of the project file from the City. Therefore at this time it has not been determined whether the project will encroach within the 25 foot blufftop setback required by the City's certified LCP.

3. Visual Elements

The City's Certified Land Use Element Policy 12-D states:

As part of the Design Review process, maximize the preservation of views of coastal and canyon areas from existing residences, and public view points while respecting rights of property owners proposing new construction.

The City's Certified Open Space Conservation Element Policy 7-A states:

Preserve to the maximum extent feasible the quality of public views from the hillsides and along the city's shoreline.

The City's resolution of adoption for the project states:

[T]he proposed alterations do not obstruct pedestrian access through or around the property, do not impact ocean, beach or hillside views from neighboring properties...

Appellant Prosser's contention that the project results in unnecessary, avoidable and significant visual impacts cites the uncertified Land Use Element Policy 12-G. If the appellant's contention only relies on an uncertified policy, it would not be valid grounds for an appeal, consistent with **Section III** above. However, Land Use Element Policy 12-D and Open Space Conservation Element Policy 7-A also require the preservation of views. The City's staff report from the Planning Commission meeting of April 14th states that the proposed project will increase the building's height on the south portion of the structure by 13 feet, and the application for variance included in the City's staff report states that a variance is required to exceed the maximum height limit of 36 feet by 7.6 feet, to the roof of the elevator.

The Commission has not yet had a chance to review the proposed project plans and the height of the proposed structures, and as a result has not yet been able to analyze the project for potential impacts to coastal views. Therefore at this time it has not been determined whether the project as approved by the City will result in impacts to Coastal Visual Resources, and as a result it has not been determined whether the approved project is consistent with the visual protection policies of the City's certified LCP.

4. Historical Alterations / CEQA requirements

Appellant Prosser contests the issue of how the City and applicant handled the City's requirement to perform an adequate CEQA analysis. However, pursuant to **Section III. Appeal Procedures**, above, this is not an appropriate basis for an appeal of a local government's action pursuant to Coastal Act Section 30603, as the appellant's claim is not based on either the City's certified LCP or the public access policies of the Coastal Act.

5. Public Access to the Shoreline

Coastal Act Section 30212 states:

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where: (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby, or, (3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

Appellant Prosser contends that because the proposed project keeps the nonconforming portion of the structure located within the 25-foot setback, the proposed project blocks access to the ocean.

The City's staff report for the April 14th Planning Commission meeting states that vertical access to the sand exists currently from Mountain Road. Furthermore,

the City's resolution of adoption requires the applicant dedicate a lateral public access easement along the sand granting lateral access to the public in front of the proposed development. Vertical public access from Mountain Road to the beach exists currently, and the proposed project would include a lateral public access easement along the coast in front of the development. Therefore, the project as proposed does not raise an issue with regards to conformity with Coastal Act Section 30212.

6. Additional Substantial Issue Assessment

In considering whether an appeal raises a substantial issue one factor the Commission considers is the significance of the coastal resources affected by the decision. In this case, the coastal resource affected is the supply of lower-cost overnight visitor serving accommodations within the Coastal Zone. Lower to moderate cost overnight visitor serving accommodations allow people with a range of incomes to be able to access and enjoy the Coastal Zone. The proposed development would result in the elimination of 24 lower-cost overnight accommodations, resulting in a reduction of the segment of the population which is able to access the Coast. Therefore, the resource affected area is indeed significant and the adverse impacts created by the proposed development upon the significant resources are considerable.

Another factor the Commission considers in determining whether an appeal raises a substantial issue is whether the appeal raises local issues, or those of regional or statewide significance. In this case, the appeal raises issues of regional and statewide, significance. The proposed development would adversely impact the amount of lower-cost visitor serving overnight accommodations, leading to a reduction in the supply of lower-cost visitor serving accommodations within Laguna Beach. If conversion from lower cost to higher cost overnight accommodations were allowed unchecked, the stock of affordable overnight accommodations would eventually be depleted. Allowing the conversion of lower cost overnight accommodations to high cost accommodations without determining whether the protection of the existing lower-cost facility is feasible and without mitigation for the loss of this type of facility would also set a precedent for allowing similar types of development statewide, thus resulting in impacts to lower cost visitor-serving facilities statewide. Thus, the appeal raises issues of regional and statewide significance.

7. Conclusion

For the reasons described above, the appeal raises a substantial issue regarding whether the development approved by the City is consistent with the Public Access policies of the Chapter 3 policies of the Coastal Act. Further, the inconsistencies raise issues with regard to significant coastal resources. Finally, the inconsistencies are of regional and statewide, not just local, concern. As described above, these issues raise a substantial issue with regard to the grounds upon which the appeal was filed. Therefore, the Commission finds that the appeal raises a substantial issue.

CALIFORNIA COASTAL COMMISSION

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



**APPEAL FROM COASTAL PERMIT
 DECISION OF LOCAL GOVERNMENT**

SECTION I. Appellant(s)

Name, mailing address and telephone number of appellant(s):

Coastal Commissioners: Sara Wan and Mary Shallenberger
200 Oceangate, Suite 1000
Long Beach, CA 90802 (562) 590-5071

SECTION II. Decision Being Appealed

1. Name of local/port government: Laguna Beach
2. Brief description of development being appealed: Extensive remodel of the historic Coast Inn including: an increase in room size and reduction in the number of rooms from 24 to 10; elimination of office space, restaurant, and 2 bars; and addition of 1,224 sq. ft. wine bar/restaurant, 13 space subterranean parking garage, elevator, and rooftop pool.
3. Development's location (street address, assessor's parcel no., cross street, etc.): 1401 South Coast Highway. APN# 644-217-01
4. Description of decision being appealed:
 - a. Approval; no special conditions: _____
 - b. Approval with special conditions: XX
 - c. Denial: _____

NOTE: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-5-LGB-10-166

DATE FILED: 7/26/10 **COASTAL COMMISSION**

DISTRICT: South Coast

EXHIBIT # 1

PAGE 1 OF 6

5. Decision being appealed was made by (check one):
- a. Planning Director/Zoning Administrator: _____
 - b. City Council/Board of Supervisors: XX
 - c. Planning Commission: _____
 - d. Other: _____
6. Date of local government's decision: July 7th, 2010
7. Local government's file number: CDP 10-05

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties.
(Use additional paper as necessary.)

1. Name and mailing address of permit applicant:
Morris Skendarian, Architect
2094 South Coast Highway #3,
Laguna Beach, CA 92651
2. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.
- a. _____

 - b. _____

COASTAL COMMISSION

EXHIBIT # 1
 PAGE 2 OF 6

SECTION IV. Reasons Supporting This Appeal

Note: Appeals of local government Coastal Permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section, which continues on the next page. Please state briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

The subject site is located on a coastal bluff in Laguna Beach between the first public road and the sea. The site is currently developed with the Coast Inn, a 24 room hotel, with 4 commercial office spaces, a 54 seat restaurant, and 2 bars with a total of 67 seats. The applicant is proposing an extensive remodel of the structure, resulting in a 10 room boutique hotel, with adjoining 1,224 square foot wine bar/restaurant with a minimum of 35 seats, new subterranean 13 space parking garage, rooftop pool, elevator, and reintroduction of design elements such as a cupola, turrets and flagpoles that were previously removed from the building. As a condition for development, the City of Laguna Beach has required the applicant to grant a lateral public access easement along the shoreline of the project site as specified by Laguna Beach code section 2553.022 (F), from the edge of development to the state tidelands, to allow the public lateral access along the shoreline in front of the proposed development. The current structure does not comply with bluff setback requirements.

Coastal Act Section 30603 states that the standard of review for an appeal of a development between the first public road and the sea is the City's certified LCP and the Public Access Policies of Chapter 3 of the Coastal Act. The City's certified LCP does not contain policies regarding the protection and provision of lower-cost visitor serving facilities.

The proposed loss of 14 rooms from the hotel results in a reduction in the number of overnight visitor serving accommodations in the Coastal Zone, and a reduction in the segment of the population which is able to take advantage of visitor-serving uses in the area. This is inconsistent with Coastal Act Section 30210's requirement that "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."

The reduction in the number of rooms and increase in size of the remaining hotel rooms would result in higher overall prices for the hotel accommodations. Coastal Act Section 30213 states: "Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided." The Coastal Act seeks to ensure that a range of facilities be provided in new development and the protection of existing lower cost facilities along the coastline. If conversion from lower cost to higher cost overnight accommodations were allowed unchecked, the stock of affordable overnight accommodations would eventually be depleted. If the development cannot

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accommodate on-site facilities for people with a range of incomes, the Commission in past actions has required mitigation, in the form of an in-lieu fee so that lower cost facilities can be provided at an off-site location. However, the city's action did not include a review of the issue of protection of the existing lower cost visitor serving accommodations. As a result, no determination has been made as to whether the proposed project could protect the existing lower-cost accommodations, what the appropriate mitigation for the loss of lower-cost accommodations would be if the development was not able to protect lower-cost accommodations, nor has the potential impacts of a reduction in the number of rooms and increase in cost on Public Access been analyzed. Therefore, as approved by the City, the proposed project is not consistent with the Public Access Policies of Chapter 3 of the Coastal Act.

COASTAL COMMISSION

EXHIBIT # 1
PAGE 4 OF 6

State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

Signed: *[Signature]*
Appellant or Agent

Date: 7/26/10

Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed: _____

Date: _____

(Document2)

COASTAL COMMISSION

EXHIBIT # 1
PAGE 5 OF 6

State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

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SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

Signed: Mary R. Shallenburger
Appellant or Agent

Date: 7/26/10

Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed: _____

Date: _____

Page 1 of 7

FAX TO: 562-590-5084

ATTN: MR. JOHN DEL ARROZ

CALIFORNIA COASTAL COMMISSION

RE: APPEAL TO 1401 SO. COAST HWY, LAGUNA BEACH DEVELOPMENT

FROM: AUDREY PROSSER

PHONE: 949-683-2715

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PAGE 1 OF 7

CALIFORNIA COASTAL COMMISSION

SOUTH COAST DISTRICT OFFICE
200 OCEANGATE, 10TH FLOOR
LONG BEACH, CA 90802-4416
VOICE (562) 590-5071 FAX (562) 590-5084

**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT**

Please Review Attached Appeal Information Sheet Prior To Completing This Form **RECEIVED**
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SECTION I. Appellant(s)

JUL 27 2010

Name: AUDREY PROSSER

Mailing Address: 230 BEVERLY ST #2

City: LAGUNA BEACH

Zip Code: 92651

Phone: 949-683-2715

CALIFORNIA
COASTAL COMMISSION**SECTION II. Decision Being Appealed**

1. Name of local/port government:

Laguna Beach Planning Commission and City Council

2. Brief description of development being appealed:

This appeal stems from a July 6, 2010 action by the City of Laguna Beach upholding a prior Planning Commission approval with new conditions on a property located at 1401 So. Coast Hwy, Laguna Beach, CA. The approval was for a CONDITIONAL USE PERMIT 10-03, PLANNING COMM DESIGN REVIEW 10-02, VARIANCE 7668 AND COASTAL DEVELOPMENT PERMIT 10-05 - PROPOSED REHAB, RESTORATION AND SEVERAL NEW ADDITIONS TO A HISTORIC "C" RATED COMMERCIAL STRUCTURE.

3. Development's location (street address, assessor's parcel no., cross street, etc.):

1401 S. COAST HWY, LAGUNA BEACH, CA 92651

OCEANFRONT BAR, RESTAURANT AND HOTEL LOCATED ON THE SW CORNER OF MOUNTAIN RD

4. Description of decision being appealed (check one.):

- Approval; no special conditions
 Approval with special conditions:
 Denial

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO: _____

DATE FILED: _____

DISTRICT: _____

COASTAL COMMISSIONEXHIBIT # 2PAGE 2 OF 2

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)

5. Decision being appealed was made by (check one):

- Planning Director/Zoning Administrator
- City Council/Board of Supervisors
- Planning Commission
- Other

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COASTAL COMMISSION

6. Date of local government's decision:

05/12/2010 PC AND 07/06/10 CC

7. Local government's file number (if any):

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

EMERALD FINANCIAL, LLC
10250 CONSTELLATION BLVD, #3400
LOS ANGELES, CA 92651

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

(1) ARNOLD HANO
1476 SANTA CRUZ
LAGUNA BEACH, CA 92651

(2) FRED KARGER
155 McAULAY PLACE
LAGUNA BEACH, CA 92651

(3) BEN SIMON
661 VIRGINIA PARK DR
LAGUNA BEACH, CA 92651

(4) VERNA ROLLINGER
825 PARK AVE
LAGUNA BEACH, CA 92651

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APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3) (1037)

SECTION IV. Reasons Supporting This Appeal

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PLEASE NOTE:

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- Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section.
- State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)
- This need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

THIS TIMELY APPEAL IS BROUGHT PURSUANT TO PUBLIC RESOURCES CODE 30625, 30603(A)(1). THE STANDARD OF REVIEW FOR THIS APPEAL AS SET FORTH IN PRC 30603(B)(1) IS BOTH THE PUBLIC ACCESS PROVISIONS OF THE COASTAL ACT (Public Resources Code 30210-30214) and the City of Laguna Beach certified Local Coastal Program (certified January 13, 1993 and amended July 20, 2004) The Laguna Beach LCP also includes Chapter 25 (Zoning Ordinance) of the Laguna Beach Municipal Code. I personally appeared at the Planning Commission and City Council meetings and spoke out against the project per Exhibit A in the appeal to the City Council. I, also met with the developer in an attempt to find a resolution.

This project is equivalent to new Construction and should not be considered a remodel or rehab. The developer's claim that the project is only a 49.6% remodel is inaccurate. It exceeds a 50% remodel. His own statements admit that the bars, restaurants and office will be torn out. This alone amounts to more than 40% of the building. In addition there is a new underground garage for 13 cars, the balance of the project will be reconfigured. The overall project by the developer's words and in the application submitted to the Planning Commission hearing in April is approximately 27,000 square feet. The existing building is under 16,000 square feet. It should be noted that the property has not been added to the City's Historical property inventory by the developer yet he seeks all the advantages afforded.

The project under appeal violates several provisions of the certified LCP including: 1)maximizing public views of the Pacific Ocean, height variance and view impact from inland, the beach and the water; 2) proper mitigation for the loss of affordable visitors services 3) The LCP requires a 25 setback, the Coastal Act has a greater setback 4)Excavation and its impact on air quality and traffic impact for hauling the dirt out of town. An analysis of the Coastal Act fails due to failure to protect biological and visual resources.

1- The proposed project results in unnecessary, avoidable and significant visual impacts. 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. The project is excessive in bulk.

The proposed project seeks a variance for a privacy wall for an new rooftop level of living and swimming pool for the exclusivity of guest with no public access that exceeds the height limit allowed by the City LCP by 13 feet plus there is a variance for excessive height for turrets, elevator to the rooftop flagpoles that impair the views from inland, ocean and highway.

EXHIBIT # 2
PAGE 4 OF 7

The proposed project includes a new floor in what is now open space. To accommodate the loss of light from enclosing the open space the project includes 11 new skylights that will interfere with the views from inland, ocean, highway and the health and welfare of residents and visitors as well as the welfare of birds, sea life and animals. The elevator exceeds height by 7.6 feet and is not necessary to serve the new rooftop swimming pool and lounge. That could be mitigated by ending at the level that houses hotel rooms. The flagpole that was added as a requirement by Planning Commission is massive and was not staked or noticed to nearby residents.

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2-The existing building consists of a 24 room low cost hotel, 4 commercial office spaces, a 54 seat restaurant with affordable dining and 2 bars all visitor and resident serving. The proposed use is to demolish the bar, restaurant, offices and change the spatial relationship of the balance of the property to form a 10 room \$800.00 per night (per architect statement) condo style hotel suites. The loss of the affordable visitor serving low cost hotel, bar and restaurant have not been mitigated.

The condition placed by the City Council for a 1224 square feet wine bar is too limited for adequate public access and is restricted to a wine bar. The loss of the historical bar and restaurant would be a significant environmental impact. The bar had the first liquor license in Laguna Beach that was issued after Prohibition. It also had the first produced beer in Laguna Beach. It has been a gathering place for locals and visitors since 1938. The bar also served the underserved Gay Community for 50 plus years according to testimony presented at the City Council by Jean Rolland and Arnold Hano and per One Archives at USC is the oldest Gay bar in the Western United States.

The CEQA analysis and the Historic Report are flawed. It does not represent the Historic Culture value associated with the use as a bar and restaurant. The City failed to peer review the Developer's CEQA analysis report. It was prepared by the developer's consultant and narrowly tailored for the benefit of the Developer. The loss of the bar/restaurant and the affordable visitor serving hotel is an Environmental Impact.

3 The project encroaches in the LCP in the 25 feet setback requirement of the bluff. The public is denied access to the ocean from this important coastal resource.

4- The City has stated that the project was exempt from CEQA because the property conformed with the Secretary of Interior treatment of Historical Properties. According to the Secretary of Interior, if a project is to qualify as "historic rehabilitation and restoration" the property must be used as it was historically or given a new use that requires minimal change to its distinctive materials, features, space and spatial relationships" The developers historical report (p.253 of April 14 Staff report) mentions only the hotel use in concluding that the project will meet this standard. The new proposed use--a boutique hotel with ten suites, all with kitchens and four of them with two bedrooms in addition to living and dining areas alters the buildings materials, features, spaces and spatial relationships dramatically. Everything except the four story portion of the building on the west end will have to be removed to excavate for the underground parking lot, sink caissons into bedrock and install a new retaining wall according to the geologic report. CEQA Section 21080.5(d)(2)(A) prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The project does not comply with the City's General Plan & LCP . It is located in the Commercial Tourist Corridor and therefore should provide open access to the front of the building on the street to encourage activity in the building. The hotel is exclusive and for guest only with no public component other than the tiny wine bar that is a condition of the approval City Council approval. The hotel prices prohibit access to 90% or more of the visitors and residents. There is very little opportunity for Public access in the building. This is a denial of Public Access to an oceanfront visitor and resident serving property.

In conclusion, we request that the Coastal Commission review this appeal and address the issues contained herein. The only person that benefits from this project if allowed to go forward is the owner of 1401 So Coast Hwy as it will shield his new oceanfront home under construction located next door on the oceanfront and Mountain Rd from the vibrant Commercial Tourist Corridor and visitors and residents will suffer the consequences.

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APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 4)

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.



Signature of Appellant(s) or Authorized Agent

Date: 7-27-10

Note: If signed by agent, appellant(s) must also sign below.

Section VI. Agent Authorization

I/We hereby authorize _____
to act as my/our representative and to bind me/us in all matters concerning this appeal.

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Signature of Appellant(s)

Date: _____

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EXHIBIT # 2
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