

**CALIFORNIA COASTAL COMMISSION**

SOUTH CENTRAL COAST AREA  
 89 SOUTH CALIFORNIA ST., SUITE 200  
 VENTURA, CA 93001  
 (805) 585-1800

**F 8a****Important Hearing Procedure Note:**

This is a substantial issue only hearing. Public testimony will be taken only on the question whether the appeal raises a substantial issue. Generally and at the discretion of the Chair, testimony is limited to 3 minutes total per side. Please plan your testimony accordingly.

Appeal Filed: 12/02/13  
 49<sup>th</sup> Day: 01/20/14  
 Staff: S. Edmondson - V  
 Staff Report: 12/16/2013  
 Hearing Date: 01/10/2014

**APPEAL STAFF REPORT: SUBSTANTIAL ISSUE  
 DETERMINATION**

**APPEAL NO.:** A-4-VNT-13-0254

**APPLICANT:** Ventura County Harbor District

**APPELLANTS:** Alfred Davtiyan, Arnie and Sherrie Friedman, Graham and Bella Galliford, Steve Gocke, John and Lisa Grindey, Cliff Jarvis, Joseph LaBrie, Priscilla McMurtry, Kathleen Mirante, Michael Monjer, Brad Orcutt, Sharee Parsell, Janis Pulliam, Rita Rothman and Glee Webster

**LOCAL DECISION:** Ventura County Public Works Permit (LU08-009) approved by the Ventura County Board of Supervisors on November 12, 2013

**PROJECT LOCATION:** Silver Strand Beach, west of the intersection of San Nicolas Avenue and Ocean Drive, County of Ventura (APN 206-0-179-290)

**PROJECT DESCRIPTION:** Construction of a 1,700 sq. ft., maximum 33-ft. in height (as measured from finished floor elevation), lifeguard tower and public restroom building to replace a previous lifeguard tower approximately 25 ft. in height and public restroom structure in approximately the same location.

**STAFF RECOMMENDATION:** No Substantial Issue Exists

**MOTION & RESOLUTION:** Page 6

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**SUMMARY OF STAFF RECOMMENDATION: NO SUBSTANTIAL ISSUE EXISTS**

The Commission's role at the "substantial issue" phase of an appeal is to decide whether the appeal of the local government action raises a substantial issue with respect to the grounds on which the appeal was filed. Staff recommends that the Commission, after public hearing, determine that **no substantial issue** exists with respect to the grounds on which these appeals were filed. The motion and resolution for the "no substantial issue" finding are found on **page 6**.

The proposed development has been the subject of prior Ventura County coastal development permit actions and prior appeals of those actions to the Coastal Commission resulting in a de-novo coastal development permit from the Coastal Commission.

On January 13, 2011, the Coastal Commission approved Coastal Development Permit No. A-4-VNT-08-057/A-4-VNT-08-100, on appeal, to the Ventura County Harbor Department, subject to conditions, for development consisting of: construction of a 1,700 square foot, maximum 33-foot in height (as measured from finished floor elevation), lifeguard tower, first aid station, bicycle racks and public restroom building at Silver Strand Beach (Exhibits 1, 2 and 3).

Development did not commence within the two year approval period, and the County did not apply for an extension to the permit prior to the January 13, 2013 expiration date, so the CDP expired on that date. Subsequently, on November 12, 2013, the Ventura County Board of Supervisors approved the "re-issuance" or re-approval of the local coastal development permit (County Public Works Permit No. LU08-0069), subject to an amendment to incorporate the seven conditions previously imposed by the Commission on CDP No. A-4-VNT-08-057/A-4-VNT-08-100 (Exhibit 4).

However, the nature of the County's action for "re-issuance" or re-approval and amendment of the local coastal development permit (County Public Works Permit No. LU08-0069) is unclear, due to procedural irregularities. Although Commission staff considers the action to be, in essence, the approval of a new coastal development permit (since the earlier CDP was appealed, and a new permit was approved de novo by the Commission, and allowed to expire), the notice that the County provided to the public characterized its action as a re-issuance and an amendment of the same LU08-0069 action.

The standing of most of the prospective appellants is also unclear, for related reasons. Several of the appellants of the instant action (the County's November 12, 2013 action) did participate at County hearings regarding this permit in 2008, and/or submitted appeals of those actions at that time. However, at the November 12, 2013 Board of Supervisor's public meeting; only one appellant, Kathleen Mirante, attended and spoke at the hearing and clearly has standing to appeal the County's approval. Of the remaining appellants, about half of them did not receive direct notice of the November action, so their absence may be attributable to not having been aware of the matter; but the County did post the site and provide newspaper notice, and those who did not received notice were not within a 300-foot radius of the site and had not appeared at the prior hearings (2008-2011) or otherwise indicated to the County that there were interested in this matter. Thus, they do not appear to be eligible for the exception to the exhaustion requirement for people who were "denied the right of local appeal because local notice and hearing procedures for the development did not comply with the provisions of this Article" (Cal. Code

regs., tit. 14, § 13573(a)(3)). Moreover, most of the other half of appellants who did not appear did receive direct notice. Still, given the procedural uncertainty, and in an abundance of caution, Commission staff believes that it is appropriate to consider all of the 17 appeals but for the Commission to reserve its right to assert that Alfred Davtayan, Arnie and Sherrie Friedman, Graham and Bella Galliford, Steve Gocke, John and Lisa Grindey, Cliff Jarvis, Joseph LaBrie, Priscilla McMurtry, Michael Monjer, Brad Orcutt, Sharee Parsell, Janis Pulliam, Rita Rothman, and Glee Webster are not aggrieved persons for purposes of Coastal Act sections 30625 and 30801 and therefore did not have standing to appeal.

As the appellants' contentions are very similar, they have been consolidated for discussion purposes. The contentions relate primarily to hazards, visual resources (both public and private), and public safety and private rights. The seventeen separate appeals can be found in Exhibit 5.

Given the extensive public review of the project as demonstrated by the County's administrative record, and the fact that the project has not changed since the Commission's de novo approval on January 13, 2011, the consistency of the approved development with the LCP and the public access and recreation policies of the Coastal Act is supported by substantial evidence in the record, the project does not raise issues of regional or statewide significance, and the local action does not set an adverse precedent for future coastal development permits. As such, the issues raised are not substantial. Therefore, staff recommends that the Commission find that the appellants' contentions raise no substantial issue with regard to the approved project's consistency with the policies and provisions of the certified LCP, or the public access policies in Chapter 3 of the Coastal Act.

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**EXHIBITS**

- Exhibit 1.** Vicinity Map
  - Exhibit 2.** Site Aerial View
  - Exhibit 3.** Project Plans
  - Exhibit 4.** Final Location Action Notice and County Staff Report
  - Exhibit 5.** Appeals in Alpha Order by Appellants Last Name (17 separate appeals)
  - Exhibit 6.** Public View / Vista Point
  - Exhibit 7.** Parcel Map
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## **I. APPEAL JURISDICTION AND PROCEDURES**

### **A. APPEAL PROCEDURES**

The Coastal Act provides that after certification of Local Coastal Programs (LCPs), certain local government actions on coastal development permit (CDP) applications for development in certain areas and for certain types of development may be appealed to the Coastal Commission. Local governments must provide notice to the Commission of their coastal development permit actions. During a period of ten working days following Commission receipt of a notice of local permit action for an appealable development, an appeal of the action may be filed with the Commission.

#### **Appeal Areas**

Approvals of CDPs by Counties may be appealed if the development authorized will be located within the appealable areas, which include the areas between the sea and the first public road paralleling the sea, 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 greater, on state tidelands, or along or within 100 feet of natural watercourses and lands within 300 feet of the top of the seaward face of a coastal bluff. (Coastal Act Section 30603[a]). Any action on an application for development that constitutes a major public works project or a major energy facility may also be appealed to the Commission. (Coastal Act Section 30603[a][5]).

The subject project is located in the appeals area, between the sea and the first public road paralleling the sea. The project site is located partially within and partially adjacent to the public parking lot which is immediately southwest of the intersection of San Nicolas Avenue and Ocean Drive. This area is immediately downcoast of the entrance to Channel Islands Harbor on Silver Strand Beach, within the jurisdiction of the County of Ventura. The entrance to the Channel Islands Harbor is bounded by two jetties. The subject area is adjacent to the southern / downcoast jetty. A concrete ramp and public walkway adjoins the northwest corner of the public parking lot, providing access to a public pathway atop the jetty.

#### **Grounds for Appeal**

The grounds for appeal of a local government approval of development 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 Division 20 of the Public Resources Code. (Coastal Act Section 30603[b][1])

#### **Substantial Issue Determination**

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that no substantial issue exists with respect to the grounds on which the appeal was filed. When Commission staff recommends that no substantial issue exists with respect to the grounds of the appeal, the Commission will hear arguments and vote on the “substantial issue” question. A majority vote of the Commissioners present is required to determine that an appeal raises no substantial issues, and that the Commission will therefore not

review the merits of the appeal *de novo*. If the Commission determines that no substantial issue exists, then the local government's coastal development permit action will be considered final.

### **De Novo Review**

Should the Commission determine that a substantial issue does exist; the Commission will continue the hearing to consider the CDP application *de novo* at a future meeting. The applicable test for the Commission to consider in a *de novo* review of the project is whether the entire proposed development is in conformity with the certified LCP and, for projects between the sea and the first public road paralleling the sea, with the public access and recreation policies of Chapter 3 of the Coastal Act. (Coastal Act Section 30604[b] & [c])

### **B. LOCAL GOVERNMENT ACTION AND FILING OF APPEAL**

The project that is the subject of this appeal was approved by the County of Ventura Board of Supervisor's on November 12, 2013. The Notice of Final Action by the County on the project was received by Commission staff on November 14, 2013. Commission staff provided notice of the ten working day appeal period, which began on November 15, 2013, and ended on December 2, 2013. Alfred Davtiyan, Arnie and Sherrie Friedman, Graham and Bella Galliford, Steve Gocke, John and Lisa Grindey, Cliff Jarvis, Joseph LaBrie, Priscilla McMurtry, Kathleen Mirante, Michael Monjer, Brad Orcutt, Sharee Parsell, Janis Pulliam, Rita Rothman and Glee Webster filed the subject appeal on December 2, 2013, during the Commission's appeal period (Exhibit 4). Commission staff notified the County, the applicant, and all interested parties that were listed on the appeal and requested that the County provide its administrative record for the permit. The administrative record was received on December 9, 2013. Pursuant to section 30621(a) of the Coastal Act, a hearing on an appeal shall be set no later than 49 days after the date on which the appeal is filed with the Commission.

## **II. STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE QUESTION – MOTION AND RESOLUTION**

### **MOTION:**

*I move that the Commission determine that Appeal No. A-4-VNT-13-0254 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 **YES** vote. Following the staff recommendation will result in passage of this motion, a finding of No 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 NO SUBSTANTIAL ISSUE:**

*The Commission hereby finds that Appeal No. A-4-VNT-13-0254 raises **No Substantial Issue** with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the Certified LCP and/or the public access and recreation policies of the Coastal Act.*

**III. FINDINGS AND DECLARATIONS FOR NO SUBSTANTIAL ISSUE DETERMINATION**

The Commission hereby finds and declares:

**A. PROJECT DESCRIPTION AND SETTING**

The approved project consists of the construction of a 1,700 sq. ft. lifeguard tower and public restroom building (maximum 33-ft. in height as measured from finished floor elevation) at Silver Strand County Beach in the unincorporated Ventura County community of Silver Strand.

The project site is located partially within and partially adjacent to the public parking lot that is immediately southwest of the intersection of San Nicolas Avenue and Ocean Drive. This area is immediately downcoast of the entrance to Channel Islands Harbor on Silver Strand Beach. The entrance to the Channel Islands Harbor is bounded by two jetties. The subject area is adjacent to the southern / downcoast jetty. A concrete ramp and public walkway adjoins the northwest corner of the public parking lot, providing access to a public pathway atop the jetty (Exhibits 1, 2 and 3).

The proposed development will replace a previous lifeguard and public restroom facility that deteriorated overtime and was demolished in 2002. The location of the proposed development is similar to the location of the previous structure but was moved approximately 16 feet south and 22 feet east of the previous structure in order to minimize impacts to visual resources. According to the County's July 22, 2008, staff report for this project, the pre-existing lifeguard tower and restroom structure had a combined area of approximately 1,300 square feet and was destroyed as a result of storms in 2002. The structure was removed in 2002. The County's staff report states the following with regard to the condition of the previous lifeguard tower and restroom structure:

*The previous lifeguard tower and restroom was constructed in approximately 1969 and had remained in place until the storms of 2002. The previous building was constructed of concrete block and, after 30 plus years of use, was already badly deteriorated at that time. The concrete block had cracked in many places and exposed the structure's rebar, which had begun to rust and disintegrate. The previous structure also had an inadequate foundation for its elevation and had been frequently inundated with seawater, which hastened its destruction. Nevertheless, since the building was approximately 30 years old when it was destroyed, it would have needed to have been replaced if it were still standing today.*

The subject structure is located on the sandy beach neighboring the jetty, and is situated adjacent to the parking lot. This location allows the lifeguard tower to have optimal visual access of the beach.

Silver Strand Beach is comprised of approximately 41 acres of County-owned day-use beach administered by Ventura County Harbor Department. Two parking lots serve Silver Strand Beach: (1) the Silver Strand Lot (i.e., the parking lot at the subject site southwest of San Nicolas Avenue and Ocean Drive) contains 60 public parking spaces serving the northern (upcoast) end of Silver Strand beach and (2) the La Jenelle Lot contains 40 public parking spaces serving the southernmost (downcoast) end of Silver Strand beach. Both parking lots and Silver Strand Beach experience high public use during the spring and summer months, and low-to-moderate use in off-season months depending upon the weather.

The stated purpose of the project is to provide public restroom facilities on the beach and increase public safety by improving the effectiveness of the lifeguards' efforts during peak beach use seasons. In this case the proposed lifeguard tower is intended to provide a station where the senior lifeguard can: (1) view both Silver Strand and Hollywood Beaches, (2) advise other lifeguard staff regarding conditions and problems requiring their attention, and (3) improve emergency response time by allowing lifeguard staff to detect swimmer and beach emergencies earlier than would be otherwise possible if only the shorter, portable lifeguard towers were utilized.

## **B. BACKGROUND AND PREVIOUS COMMISSION ACTIONS**

The proposed development has been the subject of prior Ventura County coastal development permit actions and prior appeals of those actions to the Coastal Commission, resulting in a de-novo coastal development permit from the Coastal Commission. Following is a description of all of these previous actions.

On June 13, 2006, the County of Ventura Board of Supervisors approved construction and preliminary design of the lifeguard tower and restroom but deferred approval of the final design of these structures until a future date.

On April 15, 2008, the Board of Supervisors reviewed and approved the final design proposed for the lifeguard tower and public restroom consistent with the site plan and elevations (finished floor elevation at 13.5 foot elevation). Final elevations for the project were reduced from the original 35 feet in height from finished floor elevation to a height of 33 feet from finished floor, at the Board's request.

On April 30, 2008, the Planning Division incorrectly issued a Zoning Clearance (ZC08-0394) for the construction of the lifeguard tower and public restroom. At the Board of Supervisors' direction, County Counsel reviewed the matter and advised that a Zoning Clearance was not the appropriate permit document for this project. In addition, Commission staff contacted County staff and informed them that a Zoning Clearance alone cannot be issued for appealable development (such as this project) on the sandy beach and that a coastal permit was required. The County rescinded the Zoning Clearance (ZC08-0394) on June 12, 2008. It was determined



by the County that the appropriate permitting approach under the certified Coastal Zoning Ordinance (CZO) was to process the project as a “Public Works Permit, County-Initiated” pursuant to Section 8174-4 of the CZO.

The certified Zoning Ordinance (CZO Section 8181-3.4) defines a Public Works Permit as follows:

*A Public Works Permit is a discretionary permit processed by the Public Works Agency in accordance with all applicable requirements of the Government Code and this Chapter regarding findings, public notification and hearings for discretionary permits.*

On July 22, 2008, the County of Ventura Board of Supervisors approved a Public Works Permit (LU08-0069) for construction of a 1,700 square foot, maximum 33-foot in height from finished floor, lifeguard tower and public restroom building on Silver Strand Beach.

This project was appealed to the Commission as A-4-VNT-08-057 and presented to the Commission at its September 10, 2008 meeting. At that meeting, the applicant waived its right to have the matter heard within 49 days and the Commission requested the applicant to have the County permit amended to ensure that no future shoreline protective device would be constructed for the structure under Coastal Act Section 30235. The item was continued in order to have the permit amended as directed by the Commission. The Commission indicated that the proposed project design (with five foot deepened foundations and no openings on the seaward side of the building) in conjunction with the applicant’s waiver prohibiting construction of a future shoreline protective device for the structure, would satisfy the requirements of Coastal Act Sections 30253 and 30235. In addition, the Commissioners directed staff to review potential public view impacts from the jetty.

On November 25, 2008, the Ventura County Board of Supervisors approved a resolution to amend Public Works Permit LU08-0069 to waive, on behalf of Ventura County, and all successors and assigns, any rights to construct a shoreline protective device for the lifeguard station / public safety building. The permit was also amended to require removal of the structure if any government agency has ordered that the structures are not to be occupied due to hazards.

A new Notice of Final Action for the project, as amended, was received by Commission staff on December 11, 2008. During the appeal period for this new notice, most of the original appellants re-filed their appeals or indicated a desire that their original appeals apply to the amended County permit as well, and Commission staff assigned a new appeal number, for the appeal of the revised project (identified in Commission records as A-4-VNT-08-100).

On February 4, 2009, the original appeal, A-4-VNT-08-057, and the amended appeal, A-4-VNT-08-100, went before the Commission. At that meeting, the Commission found the appeals to raise a substantial issue(s) with respect to the language the County approved for the ‘no future seawall restriction.’ The language for the amendment is as follows:

*a. The Board of Supervisors of Ventura County agrees, on behalf of itself and all successors and assigns, that, unless and until it obtains prior written approval*

*from the California Coastal Commission, no shoreline protective device(s) shall ever be constructed to protect the lifeguard station/public safety building approved pursuant to County-Initiated Public Works Permit Project No. LU08-0069 including, but not limited to, the building and walkway, in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, or other natural hazards in the future. By acceptance of this condition, the applicant hereby waives, on behalf of itself and all successors and assigns, any rights to construct such devices that may exist under the Ventura County certified Local Coastal Program or Public Resources Code Section 30235. and; b. By amending this Permit, the applicant further agrees, on behalf of itself and all successors and assigns, that the landowner shall remove the development authorized by this Permit, including the surrounding walkways, if any government agency has ordered that the structures. Are not to be occupied due to any of the hazards identified above.*

Specifically, the Commission raised concerns about the enforceability of such a condition that could easily be amended sometime in the future. Additionally, the Commission was also concerned whether the project had been designed in a manner to avoid potential impacts to public views, particularly from the viewing platform on the southern jetty adjoining the harbor entrance channel. The Commission found that that the platform/ramp provides significant coastal viewing opportunities for disabled persons and/or wheelchair access. The de novo review of the coastal development permit was postponed to a future hearing.

On January 13, 2011, the Coastal Commission conducted a de novo review of the County's amended permit and approved its own Coastal Development Permit No. A-4-VNT-08-057/A-4-VNT-08-100, subject to conditions, for development consisting of: construction of a 1,700 square foot, maximum 33-foot in height (as measured from finished floor elevation), lifeguard tower, first aid station, bicycle racks and public restroom building with the structure relocated approximately 16 feet south and 22 feet east from the originally proposed location in order to avoid blocking any west and southwest facing public views of the water from the public viewing platform, located immediately to the north of the new structure. The special conditions required include: 1) a requirement to allow Commission staff to review project plans for compliance with geotechnical consultant's recommendations; 2) construction responsibilities and timing of work; 3) a restriction on any future shoreline protection device; 4) a requirement for a public access program; 5) a requirement for an assumption of risk; 6) revised plans; and 7) State Lands Commission approval. The conditions were not met, and the coastal development permit was never issued. The County did not apply for an extension to the permit prior to the January 13, 2013 expiration and so the CDP expired on that date.

Subsequently, on November 12, 2013, the Ventura County Board of Supervisors approved the "re-issuance" or re-approval of the local coastal development permit (County Public Works Permit No. LU08-0069), subject to an amendment to incorporate the seven conditions previously imposed by the Commission on CDP No. A-4-VNT-08-057/A-4-VNT-08-100 (Exhibit 4).

### **C. APPELLANTS**

The County's action was appealed by Alfred Davtiyan, Arnie and Sherrie Friedman, Graham and Bella Galliford, Steve Gocke, John and Lisa Grindey, Cliff Jarvis, Joseph LaBrie, Priscilla McMurtry, Kathleen Mirante, Michael Monjer, Brad Orcutt, Sharee Parsell, Janis Pulliam, Rita Rothman and Glee Webster, all residents of the Silverstrand neighborhood. The appeals were filed on December 2, 2013.

There is a question about whether 16 of the 17 appellants qualify as "aggrieved persons" (as defined by Section 30801 of the Coastal Act), which they must do to be able to file an appeal of the subject action, pursuant to Coastal Act Section 30625 and Section 13111 of Title 14 of the California Code of Regulations. In this case, Section 30801 defines an aggrieved person as any person who appeared in person or through a representative at the County's November 12, 2013 public hearing, by other appropriate means informed the County of his/her concerns, or for good cause was unable to do so. In this case, only one of the appellants (Kathleen Mirante) spoke at the November 12, 2013 Board of Supervisor's hearing on the subject item, and thus clearly met the requirements to be considered an aggrieved person. According to the administrative record, the other 16 appellants neither spoke at the public hearing, nor provided written or other comments to the County of Ventura leading up to that hearing. Therefore, these appellants do not appear to meet the definition of "aggrieved person" with regard to the subject action.

However, the nature of the County's action for "re-issuance" or re-approval and amendment of the local coastal development permit (County Public Works Permit No. LU08-0069) is unclear, due to procedural irregularities. Although Commission staff considers the action to be, in essence, the approval of a new coastal development permit (since the earlier CDP was appealed, and a new permit was approved de novo by the Commission, and allowed to expire), the notice that the County provided to the public characterized the action as a re-issuance and an amendment of the same LU08-0069 action. Several of the appellants of the subject action did participate at County hearings regarding this permit in 2008, and/or submitted appeals of those actions at that time.

Given the procedural uncertainty, unclear noticing, and in an abundance of caution, the Commission finds that it is appropriate to consider all of the 17 appeals and to reserve its right to later determine that Alfred Davtiyan, Arnie and Sherrie Friedman, Graham and Bella Galliford, Steve Gocke, John and Lisa Grindey, Cliff Jarvis, Joseph LaBrie, Priscilla McMurtry, Michael Monjer, Brad Orcutt, Sharee Parsell, Janis Pulliam, Rita Rothman, and Glee Webster are not aggrieved persons.

### **D. APPELLANTS' CONTENTIONS**

Each of the 17 appellants submitted a separate appeal form. Although the wording of each appeal is not identical, the contentions are very similar and can be combined for the purpose of analyzing whether they raise a substantial issue. The appellants contend that: 1) the permit given by the Coastal Commission approving the project in 2011 has expired and no new valid permit has been granted to build the project; 2) the Ventura County Zoning Clearance for the project has expired; 3) the proposed building location is in the 100 year flood zone and not in compliance with permit conditions or FEMA requirements; 4) the building will increase beach erosion; 5) the

proposed building would impact existing antiquated sewer and drainage systems ; 6) the existing lifeguard stands are adequate; 7) the building would be used only 77 days a year and would sit empty the rest of the year, inviting crime and vandalism; 8) the building will block private views; 9) the second floor tower windows will encroach on the privacy of nearby residents; 10) the building would result in significant impacts to the public views from the adjacent Vista Point; 11) the building is not sited on the parcel specified in the County's staff report the location is not zoned and is State Land so is could not be legally built by the County; and 12) the building is of illegal height.

The appellants did not cite specific LCP policies related to any points raised in the appeal. However, the appellants' contentions relate primarily to hazards, visual resources (both public and private) and public safety and private rights, most of which are addressed in the LCP and the public access policies of the Coastal Act. Thus, many of these issues are legitimate bases for an appeal, and the contentions of the appeal are discussed and addressed in greater detail below.

Pursuant to Coastal Act Section 30603 (b)(1), as stated above, the grounds for appeal are limited to an allegation that the appealable development does not conform to the standards set forth in the certified Local Coastal Program (LCP) or the public access policies set forth in Coastal Act.

#### **E. ANALYSIS OF SUBSTANTIAL ISSUE**

Pursuant to Sections 30603 and 30625 of the Coastal Act, the appropriate standard of review for the subject appeal is whether a substantial issue exists with respect to the grounds raised by the appellant relative to the appealable development's conformity to the policies contained in the certified LCP or the public access policies of the Coastal Act.

The term "substantial issue" is not defined in the Coastal Act or its implementing regulations. The Commission's regulations indicate simply that the Commission will hear an appeal unless it "finds that the appeal raises no significant question." (Cal. Code Regs., Title 14, Section 13115(b).) 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 certified LCP or with the public access policies of the Coastal Act;
2. The extent and scope of the development as approved or denied by the local government;
3. The significance of coastal resources affected by the decision;
4. The precedential value of the local government's decision for future interpretation of its LCP; and
5. Whether the appeal raises only local issues, or those of regional or statewide significance.

In this case, for the reasons discussed below, the Commission determines that the appeal raises no substantial issue with regard to the grounds on which the appeal has been filed, as discussed below.

## 1. Hazards

Several of the appellants' contentions relate to coastal hazards and shoreline development, including structural stability and increase to beach erosion, although no specific LCP policies or provisions are cited. The appellants have not cited any policies or provisions in the certified LCP specifically, but the LCP requires that new development minimize risks to life and property in areas of high flood hazard and as such be sited and designed so as not to cause or contribute to flood hazards, or lead to the expenditure of public funds for flood control works. The LCP also prohibits new development that contributes to erosion.

Section 30253 of the Coastal Act, which is incorporated as part of the County of Ventura LCP, states in pertinent part that new development shall:

- (1) *Minimize risks to life and property in areas of high geologic, flood, and fire hazard.*
- (2) *Assure stability and structural integrity, and neither create nor contribute significantly to erosion, instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*

In addition, the following LCP policies are applicable in this case:

Coastal Area Plan, Central Coast Section, Hazards, Policy 3:

*New development shall be sited and designed to minimize risks to life and property in areas of high geologic, flood, and fire hazards.*

Coastal Area Plan, Central Coast Section, Hazards, Policy 4:

*All new development will be evaluated for its impacts to, and from geologic hazards (including seismic safety, landslides, expansive soils, subsidence, etc.), flood hazards, and fire hazards. Feasible mitigation measures shall be required where necessary.*

Coastal Area Plan, Central Coast Section, Hazards, Policy 7:

*New development shall be sited and designed so as not to cause or contribute to flood hazards, or lead to the expenditure of public funds for flood control works.*

Coastal Area Plan, Central Coast Section, Hazards, Objective:

*To protect public safety and property from natural and human hazards as provided in County ordinances.*

### Stability and Flood and Uprush Hazards

As stated above, the Ventura County LCP requires that new development be sited and designed to minimize risks to life and property from geologic, flood, and fire hazard. In addition, the LCP requires a geologic/soils/geotechnical study that identifies any geologic hazards affecting the proposed project site and any necessary mitigation measures, and contains a statement that the project site is suitable for the proposed development and that the development will be safe from geologic hazard.

The proposed project site is located on Silver Strand Beach. Geologic hazards common to this area are erosion and flooding associated with wave action and an exposure to the general marine environment. The site previously had a structure of similar function and size that was inundated during a storm and subsequently demolished. This site is currently vacant. The proposed project will incorporate an elevated first floor, a deepened perimeter footing, and a masonry block construction design that has a proposed lifespan of approximately 25 years. However, due to its proximity to the shoreline, this structure will be potentially subject to periodic wave uprush.

The primary purpose of the proposed lifeguard tower is to provide a lookout vantage point for on-duty lifeguards of public beach and swimming areas to facilitate public safety. Thus, by nature of its purpose, the lifeguard tower must be located on the sandy beach in close proximity to the water and is expected to be subject to periodic wave action. The LCP specifically allows for public restrooms and lifeguard stations to be located on Silver Strand Beach (Policy 6, Central Coast, Recreation and Access). Relocation of the structure further landward would diminish the capability of the structure to facilitate public safety. Therefore, the relevant issue is whether the development, as approved by the County, is designed in a manner that will minimize the risks given the constraints on where it must be located in order to serve the purpose for which it is being proposed and whether the location and design is adequate to ensure structural stability and consistency with Section 30253 of the Coastal Act, as directly incorporated into the County's Coastal Plan and related LCP policies.

Specifically, Section 30253, as incorporated in the LCP, addresses new development and requires, among other things, that it minimize risks to life and property, assure stability and structural integrity, and not contribute significantly to erosion or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs. In this case, those risks are from waves, storm events, erosion and flooding. Thus, while the Commission recognizes the important function of a lifeguard station and restrooms for the beach-going public, the structure must be located and designed to minimize risks, assure integrity, and avoid contributing significantly to erosion.

As part of the administrative record for this project (including earlier approvals), there are several geotechnical and soils engineering reports addressing the geologic and engineering stability of the proposed development including the *Third Geotechnical Update, Silver Strand Beach Restroom/Lifeguard Tower* by Fugro West, Inc. dated June 26, 2008; *Flood Potential Analysis Proposed Silverstrand Beach Restroom, Channel Islands Harbor, Oxnard, CA* by

GeoSoils, Inc. dated June 25, 2008; *Coastal Hazard & Wave Runup Study for Silver Strand Restroom, Channel Islands Harbor* by GeoSoils, Inc. dated January 2006; *Addendum to Update of Geotechnical Engineering Report, Silver Strand Beach Restroom/Lifeguard Tower* by Fugro West, Inc. dated January 31, 2006; *Update of Geotechnical Engineering Report, Silver Strand Beach Restroom/Lifeguard Tower* by Fugro West, Inc. dated October 7, 2005; and *Geotechnical Engineering Report Silver Strand Beach Restroom/Lifeguard Tower* by Fugro West, Inc. dated December 2000. In the Wave Runup and Coastal Hazards Study report by GeoSoils, Inc., dated January, 2006, the County's geologic and engineering consultants found that the subject site is, "relatively stable due to the presence of the jetty and periodic nourishment" and that the "potential for damage to the structure as a result of wave runup can be mitigated by the design" including through the proposed use of a deepened foundation system.

In the previous appeals of the County's approval of this project, some of the appellants asserted that the proposed structure is located within an area subject to flooding due to wave uprush, including the "Flood Zone" (Zone V5) as designated on the Flood Insurance Rate Map (FIRM). Zone V5 of the FIRM Map designates shoreline areas that are subject to flood hazard due to potential wave action and uprush. The applicant's coastal engineer (GeoSoils, Inc., June 25, 2008) found that the project site is mostly in Zone B and partly in Zone V5. Zone B and Zone V5 are defined in the GeoSoils, Inc. report as follows:

*Zone B. Areas between limits of the 100-year flood and 500-year flood; or certain areas subject to 100-year flooding with average depths less than one (1) foot or where the contributing drainage area is less than one square mile; or areas protected by levees from the base flood.*

*Zone V5. Areas of 100-year coastal flood with velocity (wave action); base flood elevations and flood hazard factors not determined.*

Notwithstanding the Flood Map Zone designation, the proposed development is located on the sandy beach within Ventura County and will be subject to some inherent potential hazards. The sandy beach/shoreline areas within Ventura County have historically been subject to substantial damage as the result of storm and flood occurrences, most recently, during the 2002 storm season and previously during the 1998 severe El Nino winter storm season. In this case, the proposed project is for the replacement (in function, location, and size) of a storm-damaged structure, thus, the subject site is clearly susceptible to flooding and/or wave damage from storm waves, storm surges and high tides.

The County prepared specific geologic and coastal engineering reports for the subject project to address hazards from wave uprush on site and ensure structural stability. The project has been designed with a finished floor elevation of +13.5 feet (NAVD88). The report by GeoSoils, Inc. (June 25, 2008) found that the project will comply with all FEMA protocols because the site-specific base flood elevation was determined to be 1 foot above grade. Since the finished grade for the parking lot adjacent to the proposed building is +11.5 feet NAVD88, then the calculated base flood elevation is +12.5 feet NAVD88. As a result, the proposed building is designed above the site-specific base flood elevation and the coastal engineer certified (GeoSoils, Inc., June 25, 2008) that:

*The proposed structure is safe from flooding based upon site specific base flood analysis. In addition, the design of the building further mitigates the potential for flooding or damage due to coastal hazards. The building openings are on the lee side with no direct path for wave runup flooding. The foundation is deepened (5-foot deep continuous footings) to mitigate any possible short-term erosion problems. The building is primarily constructed of concrete/masonry blocks, which are not subject to water damage from splash. In closing the proposed development is reasonably safe from coastal hazards and from flooding. No shoreline protection will be necessary to protect the structure over its lifetime. [emphasis added]*

In order to ensure that the recommendations of the geologic and geotechnical engineering consultants are incorporated into the development, the County incorporated a condition into its re-approved coastal development permit (LU08-0069) as Condition E(1) of Exhibit 5 in the County staff report, dated November 12, 2013 (Page 7 of 9):

*“E. CALIFORNIA COASTAL COMMISSION CONDITIONS*

*1. Plans Conforming to Geotechnical Engineer’s Recommendations*

*By acceptance of this permit, the Permittee agrees to comply with the recommendations contained in the submitted geotechnical and soils engineering reports (Third Geotechnical Update, Silver Strand Beach Restroom/Lifeguard Tower (Fugro West, Inc., June 26, 2008); Flood Potential Analysis Proposed Silverstrand Beach Restroom, Channel Islands Harbor, Oxnard, CA (GeoSoils, Inc. June 25, 2008); Coastal Hazard & Wave Runup Study for Silver Strand Restroom, Channel Islands Harbor (GeoSoils, Inc., January 2006); Addendum to Update of Geotechnical Engineering Report, Silver Strand Beach Restroom/Lifeguard Tower (Fugro West, Inc. January 31, 2006), Update of Geotechnical Engineering Report, Silver Strand Beach Restroom/Lifeguard Tower (Fugro West, Inc., October 7, 2005; Geotechnical Engineering Report Silver Strand Beach Restroom/Lifeguard Tower (Fugro West, Inc. December 2000)). These recommendations, including recommendations concerning foundations, grading, footings, and drainage shall be incorporated into all final design and construction plans, which must be reviewed and approved by consultants prior to commencement of development.”*

Based on the conclusions of the geotechnical consultants and as conditioned to incorporate all of their recommendations into the project, the County found that the project would minimize risks to life and property from geologic hazards, as required by the policies and provisions of the LCP.

Moreover, the County further addressed the issue of flooding/wave action by requiring Condition 2(c) which requires the applicant to obtain a Flood Zone Clearance from the Director of Public Works. Condition 2 (c) requires the applicant to submit site plans and grading plans with the 100-year Coastal Flood Plain Boundary using effective FIRM maps. The location of the proposed building shall be laid out by a registered land surveyor prior to construction and shall be monitored during construction to ensure that the building does not encroach into the 100-year floodplain. Additionally, the building shall incorporate flood proofing measures as recommended by FEMA, including but not limited to elevating all electrical and mechanical and servicing above the +16.0 elevation (NAVD88).



Further, although the proposed project was designed in a manner that will ensure structural stability to the extent feasible, beachfront development in the subject area is still subject to an unusually high degree of risk due to storm waves and surges, high surf conditions, erosion, and flooding. The County of Ventura's certified LCP, including Coastal Act policies incorporated therein, recognize that development, even as designed and constructed to incorporate all recommendations of the consulting coastal engineer, may still involve the taking of some risk. The County must assume these risks as the permittee. An assumption of risk condition that requires this has been incorporated into re-approved LU08-0069 as Condition 5 of Exhibit 5 in the County staff report, dated November 12, 2013 (Page 9 of 9).

For the reasons discussed above, a review of the records indicates that the approved project, as conditioned, is consistent with the provisions of the County's LCP relating to structural stability and minimizing the risks associated with new development in areas of flood hazard.

### Erosion

Another ground for appeal raised by several of the appellants is that the project will have a negative impact on the beach in the form of erosion due to wave action against the newly introduced hard structures. Although the appeals do not cite any specific LCP policies or provisions with regard to this contention Section 30253(2) of the Coastal Act, which is incorporated as part of the County of Ventura LCP, addresses this issue by requiring that new development:

*Assure stability and structural integrity, and neither create nor contribute significantly to erosion, instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*

The County found in its analysis (July 22, 2008 Staff Report, Page 7) that erosion is not a significant concern at Silver Strand Beach):

*Beach erosion is not a major issue at Silver Strand, as the LCP indicates that, "Beach erosion at Silver Strand is also slight. While the middle section of the beach is subject to erosion during periods of high tides and wave action, homes on the shoreline are protected from damage by bulldozed sand dikes. The Project has been designed and set as far landward as possible so as not to interfere with ordinary natural processes on the beach. The proposed development is consistent, therefore, with the issue of Beach Erosion as analyzed in the LCP.*

In addition, the Wave Runup and Coastal Hazards Report (GeoSoils, Inc., January 2006) provides the following assessment on shoreline erosion hazards:

*The beach and shoreline fronting the subject site has been essentially stabilized by the Channel Islands Harbor southeast jetty and the periodic placement of sand on the nearby beach from channel dredging. The jetty helps to hold the beach in place and shelters the site from significant waves from the northwest. The periodic beach nourishment prevents any long term erosion of the site as a result of sand moving into the harbor channel or down the coast. However, beach*

*fronting the proposed tower will be subject to short term, temporary erosion. Severe, temporary erosion is proposed to be managed by creating a sand berm or other means to prevent damage to the structure from short term erosion. The proposed project is reasonably safe from shoreline erosion because of the long term stability of the beach, the jetty, the beach nourishment program, and the short term, temporary, erosion management strategy.*

In general, the project is designed to minimize the impacts to shoreline processes by locating the structure as landward as feasible on the sandy beach while fulfilling the purpose of providing expanded field of view for lifeguards. The Wave Runup and Coastal Hazards Study (2006) also addressed the potential impacts of the structure on long-term erosion rates as follows:

*The proposed facility will not alter either the long term erosion rate (very small) or the seasonal erosion rate. The jetty adjacent to the proposed facility helps to stabilize the shoreline. In addition, the adjacent beach is nourished every two years as a result of the dredging of the harbor and inlet areas.*

*There are no anticipated impacts to the adjoining sections of shoreline as a result of the structure.*

The record therefore contains adequate factual support for the County's finding that, as designed to be located as far back on the beach as feasible, the approved development will not contribute to beach erosion, and it is consistent with the erosion-related LCP policies.

Finally, this Commission reviewed this proposed project previously and found that, if subject to certain conditions, the project would be consistent with the LCP's hazard sections. The County has incorporated all of the conditions that the Commission found necessary. Thus, this Commission has effectively already found that the local government action at issue is consistent with the certified LCP with respect to hazards.

For the reasons discussed above, the project is consistent with the above provisions of the County's LCP relating to hazards, including structural stability and beach erosion. The County record indicates there is adequate factual evidence and legal support for the County's analysis and decision.

In analyzing the other factors relevant to the issue of whether this appeal raises a substantial issue with respect to structural stability, hazards generally, and beach erosion, the Commission finds that the extent and scope of the project is relatively minor. There would be no significant coastal resources affected by the decision. The County's decision to replace the lifeguard tower and public restrooms will provide additional public amenities on a public beach and will have an overall beneficial impact consistent with the County's LCP policies. Further, this appeal raises issues only relating to consistency with local hazard policies, it does not establish dramatic new interpretations of those policies, and does not have regional or statewide significance. Given these factors, this appeal does not raise a substantial issue relating to structural stability, hazards and beach erosion.

## 2. Visual Resources

The appellants' concerns with regard to visual resources can be categorized as follows:

1. *Public and Private Views*. The development will block private views. The siting of the building causes significant impacts to public views from the adjacent Vista Point.

2. *Height of Structure*. The building is of illegal height.

The appellants contend that the structure damages scenic and visual quality of coastal areas, and damages public views to and along the coast, and causes significant impediment to views of the beach, ocean, and coastline. Although the appellants do not cite any specific LCP policies and provisions regarding the protection of visual resources, the following policies are applicable:

The Ventura County LCP provides for the protection of scenic and visual resources, including views of the beach and ocean, views of mountains and canyons, and views of natural habitat areas [how? You cited 30251 below, but you don't cite any LCP policies].

Section 30251 of the Coastal Act, incorporated into the Coastal Area Plan:

*The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.*

There are no policies or provisions in the County's certified LCP that require the protection of private views. Even so, it should be noted that the proposed structure will replace a previously existing lifeguard building, the structure will be located a fair distance away from private residences and located to the north west of the nearest residences. As such, while the structure will be visible from nearby residences, it will not completely block beach or ocean views. Finally, because there are no policies or provisions prohibiting or restricting impacts to private views, this contention does not raise a substantial issue.

With regard to the appellants' contentions regarding impacts to public views, the County did an analysis of the visual effects of the proposed development and found that the design of the lifeguard station will protect public coastal views while minimizing structural intrusion into the beach itself by condensing the visual impact of public-access-supporting structures (lifeguard station and restroom) into a single structure.

As proposed, the structure is designed with two distinct profiles: (1) the majority of the structure is comprised of single-story development with a maximum height of approximately 16.5 foot from finished floor to roof ridge and (2) in the southeast corner of the structure, a 16 foot square portion of the structure is comprised of a three-story observation tower with a maximum height

of 33 feet from finished floor to the top of tower roof. The observation tower includes a 5 foot wide balcony on three sides of the structure (no balcony facing the parking lot) on the third floor. The roof of the observation tower overhangs five feet on all four sides of the structure.

The location and height of the proposed structure is necessary to maximize views of the beach and swimming areas from the top of the lifeguard tower. The lifeguard station and restroom provide public amenities that must be visible and easily identifiable to the public in order to ensure the availability of their use. In this case, the structure is sited as landward as feasible, protecting views along the ocean.

With regard to public views there is a concrete access ramp that goes from the parking lot to the top of the jetty on the upcoast end of the subject site that terminates at a public viewing platform, Vista Point. Essentially, the ramp follows the jetty towards the ocean, then wraps back around 180-degrees to a large walkway/bikeway that heads back along the interior of the harbor. There are three secured benches toward the end of the access ramp (the point where the ramp curves back toward the harbor), which all face out toward the harbor where immediate, open water views of the harbor are afforded. The originally proposed location for the lifeguard tower and restroom structure would have impacted views from this public viewing area, but the approved project is sited to avoid blocking any west and southwest facing public views of the water from the public viewing platform. Though the structure would be visible from public viewing areas, the structure would not result in any significant impacts to public views (Exhibit 6).

Further, the appellants assert the building is of illegal height, is not zoned and is not sited on the parcel specified.

The Ventura County Coastal Zoning Ordinance (CZO) provides development standards with regard to height, lot coverage and setbacks.

*CZO Section 8175-2 (excerpt for Coastal Open Space (C-O-S) Zone District [so this lot is zoned after all? Otherwise, how did you choose this zone to quote?]):*

*Minimum Lot Area = 10 acres*

*Maximum Percentage of Building Coverage = As Determined by the Coastal Plan*

*Minimum Lot Width = 40 ft.*

*Minimum Setback, Front = 20 ft.*

*Minimum Setback, Side, Interior and Corner Lots = 10 ft.*

*Minimum Setback, Side, Reverse Corner Lots, Street Side = 20 ft.*

*Minimum Setback, Rear = 20 ft.*

*Maximum Height, Main Structure = 25 ft.*

*Maximum Height, Exceptions (Main Structure) = Height May be Increased to 35 ft. if Each Side Yard is at Least 15 ft.*

*Maximum Height, Accessory Structure = Same as Main Structure*

The project is designed at 33 feet in height above the finished floor elevation. The subject site is zoned C-O-S, 10 acre, and therefore is limited to 25 feet in height with certain exceptions. According to the CZO Section 8175-2, the maximum height of the main structure may be

increased to 35 feet if each side yard is at least 15 feet wide. The proposed building site, Silver Strand Beach, is County of Ventura owned parcel No. 206-0-179-290 (Exhibit 7). The subject parcel map shows the south (downcoast) side property setback traversing the entire length of the beach, well away from the main structure. The parcel map also shows a line parallel to and along the jetty. In this case, all proposed development will be located more than 15 feet from the side yard property boundaries and would therefore meet the minimum 15 feet setback from the north property lines in order to allow the increase in height. Thus, the proposed 33 foot high building will be consistent with the zoning for the subject site which allows for structures with a maximum of height of 35 feet.

Although the proposed structure will be 33 feet in height above its finished floor elevation, the appellants had originally asserted, along with objections made during the public comment period before the October, 2010 hearing, that the maximum height of 33 feet approved by the County translates to a height of 37.5 feet from existing sand levels. However, given the natural and expected variability in sand level, it is difficult to use a sand elevation at one point in time to measure height for planning purposes. Under these circumstances, it is more consistent to use benchmark heights to determine a finished floor level and then accurately define the structure above that level. In this case, the County approved a maximum height of 33 feet above the finished foundation. This method of determining height from the finished floor would translate to additional height above the parking lot level; however, there is no LCP basis on which to define the height of the adjacent parking lot as the baseline for the height of the lifeguard tower/restroom structure.

The County's analysis addressed the height issues (Staff Report, Page 8):

*The tower element has been limited in height to the extent feasible while still maintaining its effectiveness for public safety. The proposed development is consistent with the character of the surrounding beach and existing public-access development of the parking lot.*

The Commission has reviewed the record and concurs with the County's analysis that the project is consistent with the applicable LCP policies, including Section 30251, because the height of the proposed lifeguard station is consistent with a reasonable interpretation of the zoning requirements, the structure requires a specific height and location (in this case, near the sandy beach) to meet the needs of the lifeguard service; the LCP specifically allows for these types of amenities at Silver Strand Beach (Policy 6, Central Coast, Recreation and Access); the structure would not result in any significant impacts to public views; the restrooms are appropriately located adjacent to the public parking lot; these facilities will serve the long term needs of the public; and given those parameters, the project has been designed and conditioned under the terms of the County permit to blend with the surrounding environment to the maximum extent feasible.

Finally, this Commission reviewed this proposed project previously and found that, if subject to certain conditions, the project would be consistent with the LCP's visual resources provisions. The County has incorporated all of the conditions that the Commission found necessary. Thus,

this Commission has effectively already found that the local government action at issue is consistent with the certified LCP with respect to visual resources.

Finally, this Commission reviewed this proposed project previously and found that, if subject to certain conditions, the project would be consistent with the LCP's visual resources sections. The County has incorporated all of the conditions that the Commission found necessary. Thus, this Commission has effectively already found that the local government action at issue is consistent with the certified LCP with respect to visual resources.

### **3. Public Safety and Private Rights**

The appellants assert that the project, as approved by the County, raises issues with respect to public safety and privacy, although no specific LCP policies or provisions are cited. Nonetheless, the following provision addresses these issues:

CZO Section 8181-3.5 states, in relevant part:

*Discretionary permits may only be granted if all billed fees and charges for processing the application request that are due for payment have been paid, and if all of the following standards are met or if conditions and limitations, including time limits, as the decision-making authority deems necessary are imposed to allow it to meet said standards. The applicant shall have the burden of proving to the satisfaction of the appropriate decision-making authority that the following standards can be met. Specific factual findings shall be made to support the conclusion that each of these standards, if applicable, can be satisfied:*

- a. The proposed development is consistent with the intent and provisions of the County's Certified Local Coastal Program;*
- b. The proposed development is compatible with the character of surrounding development;*
- c. The proposed development, if a conditionally permitted use, is compatible with planned land uses in the general area where the development is to be located.*
- d. The proposed development would not be obnoxious or harmful, or impair the utility of neighboring property or uses; [Emphasis Added]*
- e. The proposed development would not be detrimental to the public interest, health, safety, convenience, or welfare. [Emphasis Added]*

The appellants' concerns with regard to public safety issues and private rights can be categorized as follows:

1. *Public Safety.* The proposed building would only be used 77 days a year and would sit empty the rest of the year, inviting crime and vandalism.
2. *Private Rights of Neighbors.* The second floor tower windows will encroach on the privacy of nearby residents

The County addressed public safety concerns in its analysis and found that the pre-existing facilities did not contribute to additional calls for sheriff patrols and since this is a replacement

facility in approximately the same location, no additional criminal activity would be expected (July 22, 2008 staff report, page 11):

*As the detailed discussion, above, shows the Project, restoring restrooms for public access and a lifeguard station for beach safety purposes, will support and promote the public interest, health, safety, convenience, and welfare. In addition, the Sheriff's Department was contacted to determine relative levels of criminal activity and calls for service in the area. Review of the Sheriff's crime analysis report and subsequent discussion with the Sheriff's Patrol Services Division indicate that there is no significant difference in such activity and service calls in the area between 2000-2002, when the prior structure was in place, and during the period from 2003 to the present, after its destruction. Therefore there is no factual basis for any finding that the construction of the proposed lifeguard tower and restroom will have a negative impact on public safety or lead to additional crime in this area.*

The appellants further argue that the proposed building will not protect the private rights of adjacent homeowners and will create a threat of invasion of privacy. One appeal (by Arnie Friedman) contends that: "This tower will also have a glass surrounding it's second floor which will enable those in it to see into our beach front bedrooms and living areas and encroach on our privacy". It should be noted that the tower in fact will have large windows on the north, west and east sides such that lifeguard personnel can have views of people on the beach or in the ocean. The east side of the building, facing the parking lot and residences, has a single window.

Additionally, with regard to the potential for the structure to allow invasion of privacy, the structure is located some distance away (approximately 240 feet) from any residences, with limited use primarily by lifeguard or other safety personnel and it is not evident that privacy would be impacted. Finally, issues of illegal activities are a matter of local law enforcement.

Finally, this Commission reviewed this proposed project previously and found that, if subject to certain conditions, the project would not violate public safety or privacy provisions in the LCP. The County has incorporated all of the conditions that the Commission found necessary. Thus, this Commission has effectively already found that the local government action at issue is consistent with the certified LCP with respect to public safety or privacy issues.

Finally, this Commission reviewed this proposed project previously and found that, if subject to certain conditions, the project would be consistent with the LCP. The County has incorporated all of the conditions that the Commission found necessary. Thus, this Commission has effectively already found that the local government action at issue is consistent with the certified LCP with respect to public safety and private rights.

#### **4. Other Contentions That Are Not A Basis of Appeal**

Pursuant to Section 30625 of the Coastal Act, the appropriate standard of review for the subject appeals is whether a substantial issue exists with respect to the grounds raised by the appellants pursuant to Section 30603.

Section 30603 provides, in part:

*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. (Section 30603(b)(1)).*

Section 30625 provides, in part:

*The commission shall hear an appeal unless it determines the following: ... (2) With respect to appeals to the commission after certification of a local coastal program, that no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603. (Section 30625(b)(2)).*

In this case, the appellants have appealed the County's final action on a number of bases, some of which are not legitimate grounds for an appeal of a CDP to the Commission pursuant to Section 30603. The legitimate grounds for appeal are limited to an allegation that the action does not conform to the LCP or public access policies of the Coastal Act.

The appellants' contentions about tying the structure into the "antiquated" sewer and drainage system are not a ground of appeal pursuant to Section 30603 of the Coastal Act]. The standards for tying into the County's sewer lines are reviewed by the Ventura County Environmental Health Department.

The appellants' contentions that the expiration of the Coastal Commission issued permit and the County's Zoning Clearance are also not grounds of appeal pursuant to Section 30603 of the Coastal Act as they are not issues of LCP consistency.

#### **5. Factors Considered in Substantial Issue Analysis**

The standard of review for the subject appeal is whether a substantial issue exists with respect to the grounds raised by the appellant relative to the appealable development's conformity to the policies contained in the certified LCP or the public access policies of the Coastal Act. The term "substantial issue" is not defined in the Coastal Act or its implementing regulations. The Commission's regulations indicate simply that the Commission will hear an appeal unless it "finds that the appeal raises no significant question." (Cal. Code Regs., Title 14, Section 13115(b).) In previous decisions on appeals, the Commission has been guided by the following five factors that are addressed below.

The first factor in evaluating the issue of whether the appeal raises a substantial issue is the degree of factual and legal support for the local government's decision that the development is



consistent with the subject provisions of the certified LCP. In this case, as explained above, the County's record includes extensive factual evidence and legal support for the County's findings that the project is consistent with the certified LCP and the public access policies of the Coastal Act.

The second factor in evaluating the issue of whether the appeal raises a substantial issue is the extent and scope of the development as approved. As described above, the project consists of reconstruction of a lifeguard tower and public restroom on a public beach. As such, the extent and scope of the development is not large.

The third factor in evaluating the issue of whether the appeal raises a substantial issue is the significance of coastal resources affected by the decision. In this case, the project site is a public beach with development proposed that is customary for a safe public beach. The approved project is consistent with the LCP's hazard, shoreline development, and visual resource policies, as discussed in detail above. The project promotes public access, recreation, and safety, and there is no significant habitat or other coastal resources on the site that would be negatively affected by the project.

The fourth factor in evaluating the issue of whether the appeal raises a substantial issue is the precedential value of the local government's decision for future interpretation of its LCP. In this case, and as described above, the Commission finds that the City applied its LCP policies correctly in finding that the project is consistent with the policies of the LCP with respect to the grounds of the appeal. As such, the City's decision will have no adverse precedential value for future CDP decisions.

The final factor in evaluating the issue of whether the appeal raises a substantial issue is whether the appeal raises only local issues, or those of regional or statewide significance. In this case, the approved project is consistent with the policies and provisions of the LCP, will not result in any adverse impacts to significant coastal resources, and does not have any regional or statewide significance.

In conclusion, the Commission finds that none of the factors listed above, used to evaluate whether a substantial issue exists, applies in this case. The project approval will not be an adverse precedent for future lifeguard tower and restroom redevelopments as the appeal offered no new evidence to support the assertions that the development is affected by unstudied hazards. In addition, no new evidence was presented by appellants to support the assertion of unstudied impacts to public views, public safety or private rights. Further, the approved development is supported by substantial evidence in the record and will not have an adverse effect on significant coastal resources.

Therefore, the Commission finds that the appellants' contentions regarding hazards, visual impacts, and public safety and private rights raise no substantial issue with regard to the approved project's consistency with the policies and provisions of the certified LCP or the public access policies of the Coastal Act.

## **F. PUBLIC ACCESS POLICIES OF THE COASTAL ACT**

When an appeal alleges that proposed development is inconsistent with the public access policies of the Coastal Act, the Commission must also determine whether those allegations raise a substantial issue. (Title 14, Cal. Code Regs., § 13115(b).) Here, the appeal does not allege that the proposed development is inconsistent with the Coastal Act's public access policies. It therefore does not raise a substantial issue in this regard.

The public access policies of the Coastal Act (Sections 30210-30214), which are incorporated into the Ventura County LCP as policies, mandate that maximum public access and recreational opportunities be provided, consistent with public safety needs and the need to protect public rights, the rights of private property owners, and natural resource areas from overuse. Likewise, the Coastal Act requires that public access from the nearest public roadway to the sea be provided in new development projects except where it would be inconsistent with public safety, military security needs, protection of fragile coastal resources and agriculture, where adequate access exists nearby, or where agriculture would be adversely affected.

The approved project is the reconstruction of a lifeguard tower and public restrooms located on a public beach. As such, the project, as approved by the County of Ventura, conforms to the public access policies and standards of the Coastal Act and Ventura County LCP.

## **G. CONCLUSION**

For the reasons discussed above, the appeal raises no substantial issue with respect to the consistency of the approved development with the policies of the City's certified LCP or the public access policies in Chapter 3 of the Coastal Act. Applying the five factors identified above, the Commission finds the County's record adequately supports its position that the proposed project is consistent with the applicable LCP policies. In addition, the development does not have a significant adverse effect on significant coastal resources, would not be an adverse precedent for future coastal development permits, and doesn't raise issues of regional or statewide significance. Therefore, the Commission finds that the appeal does not raise a substantial issue with respect to the grounds on which it was filed.