

**CALIFORNIA COASTAL COMMISSION**

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



# Th12b

Filed: 09/21/2017  
49th Day: 12/04/2017  
Staff: M. Alvarado-LB  
Staff Report: 10/26/2017  
Hearing Date: 11/09/2017

## STAFF REPORT: SUBSTANTIAL ISSUE

**Application No.:** A-5-LGB-17-0050

**Applicants:** Summit Circle, LLC

**Agent:** Stan Andrade

**Local Government:** City of Laguna Beach

**Local Decision:** Approval with Conditions

**Appellant:** Mark Fudge

**Project Location:** 32005 Coast Highway, Laguna Beach, Orange County  
(APN# 056-160-08)

**Project Description:** Appeal of City of Laguna Beach local coastal development permit for grading, permanent shoring, and slope restoration including landscaping, two caisson-supported retaining walls, new drainage, and bio-retention area on a vacant bluff property.

**Staff Recommendation:** Determine that a substantial issue exists.

---

## SUMMARY OF STAFF RECOMMENDATION

Staff recommends that the Commission, after a public hearing, determine that a **substantial issue exists** with respect to the grounds on which appeal number A-5-LGB-17-0050 has been filed because the extent and scope of City-approved development is unclear based on the city's description of the project and discrepancies in the record. In addition, the record is unclear as to whether the extent of the locally-approved development (bluff retention devices) is to protect existing development or to support new development. More information is necessary to adequately consider whether the proposed project is LCP consistent. Moreover, the City's decision that the development is consistent with the provisions of the LCP is not supported by the Local CDP's findings. Finally, the primary issues raised by the appeal of the locally approved development are consistency with the LCP as it relates to new development on the bluff or bluff face development.

Further information is required to determine whether or not the project is consistent with the relevant policies of the LCP.

The City's action on local CDP No. 17-0491 would approve grading and slope restoration at 32005 Coast Highway in Laguna Beach. The subject site is an approximately 6,000 sq. ft. bluff lot located within the vicinity of 1000 Steps public beach in the South Laguna area. The subject site is landlocked between the first public road (Coast Highway) and a privately owned oceanfront bluff parcel (32007 Coast Highway).

Staff recommends that the Commission find a **substantial issue** exists for the reasons summarized above, and described in greater detail in the body of this report.

**IMPORTANT NOTE:** The Commission will not take testimony on this “substantial issue” recommendation unless at least three commissioners request it. The Commission may ask questions of the applicant, any aggrieved person, the Attorney General or the executive director prior to determining whether or not to take testimony regarding whether the appeal raises a substantial issue. (14 CCR § 13115(c).) If the Commission takes testimony regarding whether the appeal raises a substantial issue, testimony is generally and at the discretion of the Chair limited to 3 minutes total per side. Only the applicant, persons who opposed the application before the local government (or their representatives), and the local government shall be qualified to testify during this phase of the hearing. Others may submit comments in writing. (14 CCR § 13117.) If the Commission finds that the appeal raises a substantial issue, the de novo phase of the hearing will occur at a future Commission meeting, during which it will take public testimony.

## TABLE OF CONTENTS

<b>I. MOTION AND RESOLUTION – SUBSTANTIAL ISSUE</b> .....	4
<b>II. APPELLANT’S CONTENTIONS</b> .....	4
<b>III. LOCAL GOVERNMENT ACTION</b> .....	4
<b>IV. APPEAL PROCEDURES</b> .....	5
<b>V. FINDINGS AND DECLARATIONS – SUBSTANTIAL ISSUE:</b> .....	7
A. PROJECT DESCRIPTION AND LOCATION .....	7
B. LOCAL COASTAL PROGRAM CERTIFICATION.....	7
C. FACTORS TO BE CONSIDERED IN SUBSTANTIAL ISSUE ANALYSIS .....	7
D.SUBSTANTIAL ISSUE ANALYSIS .....	8

### EXHIBITS

Exhibit 1 – Project Location

Exhibit 2 – Project Plans

Exhibit 3 – Appeal

Exhibit 4 –Local CDP No. 17-0491 & Design Review No. 17-0490

Exhibit 5 – City Resolution for local CDP No. 17.30

## **I. MOTION AND RESOLUTION – SUBSTANTIAL ISSUE**

**Motion:** *I move that the Commission determine that Appeal No. A-5-LGB-17-0050 raises NO Substantial Issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

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-17-0050 presents a **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 Local Coastal Plan and/or the public access policies of the Coastal Act.*

## **II. APPELLANT’S CONTENTIONS**

The Commission received a notice of final local action for City of Laguna Beach Local Coastal Development Permit (CDP) 17-0491 on September 12, 2017. Local CDP No. 17-0491 approves grading and slope restoration, including installation of retaining walls and landscaping on a vacant bluff property.

On September 21, 2017 the appeal was filed by Mr. Mark Fudge (**Exhibit 3**). Mr. Fudge contends that the City’s approval does not comply with the City’s certified LCP. More specifically, his concerns regard:

- 1) The proposed new development is sited on a coastal bluff and does not conform to the LCP policy relating to new development on a coastal bluff and/or bluff face;
- 2) A bluff edge determination is necessary.
- 3) The site has a history of unpermitted development.
- 4) The City did not make the requisite findings for approval of the Local CDP.
- 5) The City failed to condition the permit to: address erosion, water quality, landform alterations, and hazards; and protect coastal access and shoreline despite risks and project’s potential for adversely affecting coastal resources without mitigation.
- 6) An Initial Study for CEQA review should be required.

## **III. LOCAL GOVERNMENT ACTION**

On August 17, 2017, the City of Laguna Beach Design Review Board held a public hearing on the

proposed project and approved with conditions local Coastal Development Permit (CDP) No. 17-0491 and Design Review 17-0490 (**Exhibit 4**).

The project description of the Resolution CDP 17.30 (**Exhibit 5**) approving local CDP No. 17-0491 reads as follows:

“Permission granted for grading involving slope restoration in the R-1 (Residential Low Density) zone. The project includes installation of retaining walls and landscaping.”

The City’s approval of has been conditioned to include:

- 1) Wall faces be beige color (color to be confirmed by staff)
- 2) Hauling of the materials not occur between AM and PM peak periods of travel
- 3) Construction staging plan be provided for building plan check
- 4) Certification of grades to be provided during the building inspection process by a licensed professional to verify compliance

A CEQA Categorical Exemption was adopted by the Review Board. The Coastal Commission’s South Coast District Office received the notice of final action on September 12, 2017. On September 21, 2017 the appeal was filed by Mr. Mark Fudge (**Exhibit 3**) during the ten (10) working day appeal period. No other appeals were received.

#### **IV. APPEAL PROCEDURES**

After certification of Local Coastal Programs (LCP), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits. Development approved by cities or counties may be appealed if they are located within certain geographic 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 of the Coastal Act states in relevant 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.*

Section 30603(a)(1) 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 within 300 feet of the inland extent of any beach. The project site would also qualify as an appealable area based on Section 30603(a)(2) because of its location on the bluff. The issues raised in the subject appeal, on which the Commission finds there is a substantial issue as described further below, apply to proposed development located in the appeals area.

### **Grounds for Appeal**

The grounds for appeal of an approved local CDP 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.*

Section 30625(b)(2) of the Coastal Act requires a de novo hearing of the appealed project unless the Commission determines that no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603(a) of the Coastal Act. 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 presumed, and the Commission will proceed to the de novo public hearing on the merits of the project. The de novo hearing will be scheduled at a subsequent Commission hearing. A de novo public hearing on the merits of the project uses the certified LCP as the standard of review. (Coastal Act Section 30604(b).) In addition, for projects located between the first public road and the sea, a specific finding must be made at the de novo stage of the appeal that any approved project is consistent with the public access and recreation policies of the Coastal Act. (*Id.* Section 30604(c).) Sections 13110-13120 of Title 14 of the California Code of Regulations further explain the appeal hearing process.

### **Qualifications to Testify before the Commission**

If the Commission, by a vote of 3 or more Commissioners, 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 time limit for public testimony will be set by the chair at the time of the hearing. As noted in Section 13117 of Title 14 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 applicant(s), persons who opposed the application before the local government (or their representatives), and the local government. In this case, the City's record reflects that Mr. Mark Fudge opposed the project in writing and in person at local hearings. Testimony from other persons must be submitted in writing.

Upon the close of the public hearing, 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 Commission finds that the appeal raises a substantial issue, the de novo phase of the hearing will follow at a later date during which the Commission will take public testimony.

## **V. FINDINGS AND DECLARATIONS – SUBSTANTIAL ISSUE:**

### **A. PROJECT DESCRIPTION AND LOCATION**

The applicant proposes 1,050 cu. yd. of grading, permanent shoring, and slope restoration including landscaping, two caisson-supported shoring walls, new drainage, and bio-retention area on a vacant bluff property (**Exhibit 2**). Based on the project plans, a total of 15 caissons are proposed. No work is proposed to the existing single-family residence located at the oceanward parcel at 32007 Coast Highway as part of the locally approved coastal development permit subject to this appeal.

The site is an approximately 6,000 sq. ft. vacant bluff lot located at 32005 Coast Highway, Laguna Beach, Orange County (**Exhibit 1**). The site is landlocked between the first public road, Coast Highway, and an oceanfront bluff parcel, 32007 Coast Highway. Single-family residences on oceanfront and bluff characterize the surrounding area. Public access to the beach is available via a public access stair way located approximately 300 feet upcoast of the project site.

### **B. LOCAL COASTAL PROGRAM CERTIFICATION**

The City of Laguna Beach Local Coastal Program was certified on January 13, 1993. The City's LCP is comprised of a variety of planning documents including the Land Use Element (LUE), Conservation/Open Space Element, and Safety Element of the City's General Plan. The Implementation Plan (IP) portion is Title 25, the City's Zoning Code.

### **C. FACTORS TO BE CONSIDERED IN SUBSTANTIAL ISSUE ANALYSIS**

Section 30625(b)(2) of the Coastal Act requires a de novo hearing of the appealed project unless the Commission determines that no substantial issue exists with respect to the grounds on which the appeal has been filed pursuant to Section 30603(a) 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 appeal raises no significant question." In previous decisions on appeals, the Commission has considered 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 relevant provisions of the Coastal Act;
2. The extent and scope of the development as approved or denied 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.

Staff is recommending that the Commission find that a substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603(a) of the Coastal Act.

#### **D. SUBSTANTIAL ISSUE ANALYSIS**

As stated in Section IV of this report, the local Coastal Development Permit (CDP) may be appealed to the Commission on the grounds that the proposed development does not conform to the standards set forth in the certified Local Coastal Program (LCP) or the public access policies of the Coastal Act. Pursuant to Section 30625(b)(2) of the Coastal Act, the Commission must assess whether the appeal raises a substantial issue with respect to the grounds on which the appeal has been filed pursuant to Section 30603(a) of the Coastal Act.

#### **Relevant LCP Policies and Definitions**

##### *Land Use Element Glossary*

43. Environmentally Sensitive Lands/Resources – Land or resources that have been identified in the City's General Plan as having one or more of the following characteristics: 1) high- or very- high-value biological habitat, as described in the Open Space/Conservation Element; 2) **located on the oceanfront**; 3) a City-mapped watercourse; 4) geologic conditions such as slide-prone formations, potentially active fault, inactive fault, landslide potential, liquefaction potential, and soft coastal headlands; 6) hillside slopes greater than 45%; 7) adjacent wildland area, which requires fuel modification; and 8) major or significant ridgelines (**emphasis added**).

89. Major Remodel – alteration of or an addition to an existing building or structure that increases the square footage of the existing building or structure by 50% or more; or demolition, removal, replacement and/or reconstruction of 50% or more of the existing structure; greater specificity shall be provided in the Laguna Beach Municipal Code.

101. Oceanfront Bluff Edge or Coastal Bluff Edge – The California Coastal Act and Regulations define the oceanfront bluff edge as the upper termination of a bluff, cliff, or seacliff. In cases where the top edge of the bluff is rounded away from the face of the bluff, the bluff edge shall be defined as that point nearest the bluff face beyond which a downward gradient is maintained continuously to the base of the bluff. In a case where there is a step like feature at the top of the bluff, the landward edge of the topmost riser shall be considered the bluff edge. Bluff edges typically retreat over time as a result of erosional processes, landslides, development of gullies, or by grading (cut). In areas where fill has been placed near or over the



bluff edge, the original bluff edge, even if buried beneath fill, shall be taken to be the bluff edge.

102. Oceanfront Bluff/Coastal Bluff -A bluff overlooking a beach or shoreline or that is subject to marine erosion. Many oceanfront bluffs consist of a gently sloping upper bluff and a steeper lower bluff or sea cliff. The term "oceanfront bluff" or "coastal bluff" refers to the entire slope between a marine terrace or upland area and the sea. The term "sea cliff" refers to the lower, near vertical portion of an oceanfront bluff.

*Land Use Plan, Land Use Element Policies –*  
Policy 7.3

Design and site new development to protect natural and environmental sensitive resources, such as areas of unique scenic quality, public views, and visual compatibility with surrounding uses and to minimize natural landform alterations.

Action 7.3.2 Review all applications for new development to determine potential threats from coastal and other hazards.

Action 7.3.3 Design and site new development to avoid hazardous areas and minimize risks to life and property from coastal and other hazards

Action 7.3.4 Require new development to assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic stability, 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.

Action 7.3.5 Prohibit development on oceanfront bluff faces, except public improvements providing public access, protecting coastal resources, or providing for public safety. Permit such improvements only when no feasible alternative exists and when designed and constructed to minimize landform alteration of the oceanfront bluff face, to not contribute to further erosion of the oceanfront bluff face and to be visually compatible with the surrounding area to the maximum extent feasible.

Action 7.3.6 Require new development on oceanfront blufftop lots to incorporate drainage improvements, removal of and/or revisions to irrigation systems, and/or use of native or drought-tolerant vegetation into the design to minimize threats to oceanfront bluff recession.

Action 7.3.9 Ensure that new development, major remodels and additions to existing structures on oceanfront and oceanfront bluff sites do not rely on existing or future bluff/shoreline protection devices to establish geologic stability or protection from coastal hazards. A condition of the permit for all such new development on bluff property shall expressly require waiver of any such rights to a new bluff/shoreline protection device in the future and recording of said waiver on the title property as a deed restriction.

Action 7.3.10 Allow oceanfront and oceanfront bluff homes, commercial structures, or other principal structures, that are legally nonconforming as to the oceanfront and/or oceanfront bluff edge setback, to be maintained and repaired; however, improvements that increase the size or degree of nonconformity, including but not limited to development that is classified as a major remodel pursuant to the definition in the Land Use Element Glossary, shall constitute new development and cause the pre-existing nonconforming oceanfront or oceanfront bluff structure to be brought into conformity with the LCP.

#### Policy 7.4

Ensure that development, including subdivisions, new building sites and remodels with building additions, is evaluated to ascertain potential negative impacts on natural resources. Proposed development shall emphasize impact avoidance over impact mitigation. Any mitigation required due to an unavoidable negative impact should be located on-site, where feasible. Any off-site mitigation should be located within the City's boundaries close to the project, where feasible.

*(Similar to Policies 5.2 and 10.3)*

Action 7.4.2 Continue preparation of initial studies, pursuant to the California Environmental Quality Act (CEQA), for any proposed development, including single-family residences located within environmentally sensitive areas. *(Same as Action 10.3.1.)*

#### Policy 7.7

Protect marine resources by implementing methods to minimize runoff from building sites and streets to the City's storm drain system (e.g. on-site water retention).

#### Policy 10.2

Design and site new development to protect natural and environmentally sensitive resources such as areas of unique scenic quality, public views, and visual compatibility with surrounding uses and to minimize landform alterations. *(Same as Policy 7.3)*

Action 10.2.5 On bluff sites, requires applications where applicable, to include a geologic/soils/geotechnical study that identifies any geologic hazards affecting the proposed project site, any necessary mitigation measures, and contain statements that the project site is suitable for the proposed development and that the development will be safe from geologic hazard for its economic life. For development on oceanfront bluffs, such reports shall include slope stability analyses and estimates of the long-term average bluff retreat/erosion rate over the expected life of the development. Reports are to be prepared/signed by a licensed professional Engineering Geologist or Geotechnical Engineer.

Action 10.2.6 Require all new development located on an oceanfront bluff top to be setback from the oceanfront bluff edge a sufficient distance to ensure stability, ensure that it will not be endangered by erosion, and to avoid the need for protective devices during the economic life of the structure (75 years). Such setbacks must take into consideration expected long-term bluff retreat over the next 75 years, as well as slope stability. The

predicted bluff retreat shall be evaluated considering not only historical bluff retreat data, but also acceleration of bluff retreat made possible by continued and accelerated sea level rise, future increase in storm or El Nino events, and any known site-specific conditions. To assure stability, the development must maintain a minimum factor of safety against landsliding of 1.5 (static) or 1.2 (pseudostatic,  $k=0.15$  or determined through analysis by the geotechnical engineer) for the economic life of the structure.

Action 10.2.7 Require all new development located on oceanfront bluffs to be sited in accordance with the stringline but not less than 25 feet from the bluff edge. This requirement shall apply to the principal structure and major accessory structures such as guesthouses and pools that require a structural foundation. The setback shall be increased where necessary to ensure geologic safety and stability of the development.

Action 10.2.8 On oceanfront bluffs, require new minor accessory structures such as decks, patios and walkways that do not require structural foundations to be sited in accordance with stringline but not less than 10 feet from the bluff edge. Require accessory structures to be removed or relocated landward when threatened by erosion, geologic instability or other coastal hazards.

### Policy 10.3

Ensure all new development, including subdivisions, the creation of new building sites and remodels that involve building additions, is evaluated to ascertain potential negative impacts on natural resources, ESHA and existing adjacent development. Proposed development shall emphasize ESHA impact avoidance over impact mitigation. Any mitigation required due to unavoidable negative impact should be located on-site rather than off-site, where feasible. Any off-site mitigation should be located within the City's boundaries and in close proximity to the project. (*Similar to Policies 7.4 and 5.2.*)

Action 10.3.1 Continue preparation of initial studies, pursuant to the California Environmental Quality Act (CEQA), for any proposed development, including single-family residences, located within environmentally sensitive areas. (*Same as Action 7.4.2.*)

Action 10.3.2 Continue to require in-depth analysis of constraint issues for properties, especially those designated on the City's hazard maps so that the nature of the constraint and the best options for mitigation or avoidance will be considered at all stages of the approval process since these constraints may affect what development is appropriate for the property.

### *Open Space/Conservation Element Policies –* Policy 7K

Preserve as much as possible the natural character of the landscape (including coastal bluffs, hillsides and ridgelines) by requiring proposed development plans to preserve and enhance scenic and conservation values to the maximum extent possible, to minimize impacts on soil mantle, vegetation cover, water resources, physiographic features, erosion problems, and require re-contouring and replanting where the natural landscape has been disturbed.

Policy 10A

Require that plan review procedures recognize and avoid geologically unstable areas, flood-prone lands, and slopes subject to erosion and slippage.

Policy 10C

Require projects located in geological hazard areas to be designed to avoid the hazards, where feasible. Stabilization of hazard areas for purposes of development shall only be permitted where there is no other alternative location or where such stabilization is necessary for public safety. The more unstable areas should be left ungraded and undeveloped, utilizing land use designations such as Open Space.

Policy 10E Development in the areas designated “Residential/Hillside Protection” on the Land Use Plan Map or within potential geologic hazard areas identified on the Geological Conditions Map of the Open Space/Conservation Element shall not be permitted unless a comprehensive geological and soils report is prepared pursuant to Title 22 of the City’s Municipal Code, and adequate mitigation measures have been approved and implemented by the City’s geologist. For projects located in areas subject to hazards as identified on the Geologic Conditions Map or subject to erosion, landslide or mudslide, earthquake, flooding or wave damage hazards confirmed by a geologic assessment, as a condition of approval or new development a waiver of liability shall be required through a deed restriction.

*Laguna Beach Municipal Code, Title 25 Zoning, Chapter 25.07 Coastal Development Permits – Section 25.07.006 Definitions:*

(F) “Environmentally sensitive area” means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and development.

Section 25.07.012 Procedures:

Each coastal development permit application shall be processed in accordance with the following requirements.

(G) Findings. A coastal development permit application may be approved or conditionally approved only after the approving authority has reviewed the development project and made all the following findings:

(1) The project is in conformity with all the applicable provisions of the general plan, including the certified local coastal program and any applicable specific plans;

(2) Any development located between the sea and the first public road paralleling the sea is in conformity with the certified local coastal program and with the public access and public recreation policies of Chapter 3 of the Coastal Act;

(3) The proposed development will not have any significant adverse impacts within the meaning of the California Environmental Quality Act

Staff is recommending that the Commission find that a substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603(a) of the Coastal Act.

**Appellant’s Argument: Bluff face and Bluff Development; Bluff Edge**

The appellant asserts the City of Laguna Beach (City) should have required a bluff edge determination to properly consider and review the project. In addition, the appellant argues that the project site appears to be on an oceanfront bluff face and, therefore, the city-approved project does not conform to the LCP policies relating to new development (i.e. retaining walls, bio-retention area, and new drainage) on the bluff face.

Although the project site does not directly front the oceanfront portion of the bluff and is located inland of a private oceanfront bluff property (32007 Coast Highway), which is currently developed with a single-family residence, the existing seaward development does not have any bearing on the location of the bluff edge.

Entry 101 of the Land Use Element (LUE) Glossary, a component of the City of Laguna Beach certified LCP, contains the following definition of Oceanfront Bluff Edge or Coastal Bluff Edge:

*The California Coastal Act and Regulations define the oceanfront bluff edge as the upper termination of a bluff, cliff, or seacliff. In cases where the top edge of the bluff is rounded away from the face of the bluff, the bluff edge shall be defined as that point nearest the bluff face beyond which a downward gradient is maintained continuously to the base of the bluff. In a case where there is a step like feature at the top of the bluff, the landward edge of the topmost riser shall be considered the bluff edge. Bluff edges typically retreat over time as a result of erosional processes, landslides, development of gullies, or by grading (cut). In areas where fill has been placed near or over the bluff edge, the original bluff edge, even if buried beneath fill, shall be taken to be the bluff edge.*

Based on the City’s record, the applicant provided a geotechnical analysis but did not provide a bluff edge analysis. The submitted geotechnical analysis is not sufficient to adequately determine the bluff edge of the development site. Therefore, concerns regarding the project site’s location on the bluff and whether or not the proposed development is consistent with the LCP policies have not been addressed. Without a proper bluff edge determination, it is difficult to know whether or not the city-approved development is consistent with Action 7.3.5 of the LUE (cited above), which explicitly prohibits private developments on ocean front bluff faces except for public improvements providing public access, protecting coastal resources, or providing for public safety. Moreover, it is unclear whether the extent of the locally-approved slope shoring and restoration is to protect existing development (e.g. 32007 Coast Highway) or for new development (at 32005 Coast Highway), and whether it is necessary to provide for public safety consistent with Action 7.3.5.

In addition, a bluff edge determination is also necessary to determine if the city-approved project is sited in accordance with Action 10.2.7 of the LUE (cited above), which requires bluff setbacks of not less than 25 ft. from the bluff edge for major structures that require a

structural foundation. At this time it remains unclear whether the proposed bio-retention area with two caisson-supported retaining walls complies with these setback requirements.

Additionally, Policy 7.3 of the LUE (cited above) requires that new development be sited and designed to minimize landform alterations. The proposed project will result in over 1,000 cu. yd. of grading at a bluff property which may result in significant natural landform alteration of the bluff. Since there was no alternative analysis provided in the record one cannot determine whether the proposed project is the minimum necessary to address the situation.

More information is necessary to adequately consider the consistency of the proposed project with LCP bluff face/top and landform alteration policies. Consequently, the City's decision that the development is consistent with the provisions of the LCP is not supported by the findings. Further information is required to determine whether or not the project is consistent with all the applicable policies of the LCP. Therefore, a substantial issue exists with respect to this issue raised by the appeal.

**Appellant's Argument: Unpermitted Development**

The appellant asserts that the site has a history of unpermitted development that has been authorized by the city without the benefit of a coastal development permit. The alleged unpermitted work includes the demolition of the previously existing residence in 2004 and the slope stabilization/slope repair in 2016-2017.

Section 25.05.050 of the IP (cited above) requires approval of a coastal development permit for any development within the coastal zone that constitutes development as defined in Section 25.07.006(D).

Development is broadly defined by Section 25.07.006(D), which states:

*“Development” means the placement or erection of any solid material or structure on land or in or under water; the discharge or disposal of any dredged material or of any gaseous, liquid, solid or thermal waste; the grading, removing, dredging, mining or extraction of any materials; change in the density or intensity of use of land including, but not limited to, the subdivision of land pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code) and any other division of land, including lot splits; change in intensity of use of water, or of access, thereto; the construction, reconstruction, demolition or alteration of the size of any structure, including any facility of any private, public or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes; and kelp harvesting.”*

Any non-exempt development activity (e.g. demolition and placement of caissons on land) conducted in the Coastal Zone without a valid coastal development permit, or which does not substantially conform to a previously issued permit, constitutes a violation of the certified LCP.

A demolition permit was granted by the city in 2004 for the demolition of the previously existing residence after years of erosion caused by blocked drain pipes resulted in severe gullies at the bluff

site. Regarding the slope repair work, the city issued a building permit for “*emergency slope stabilization*” on July 26, 2016. Notwithstanding the building permits, there is no record of either of these projects having obtained local coastal development permits from the city or emergency permit(s) from the Coastal Commission.

A substantial issue exists because it is difficult to distinguish from the city’s record what is currently being authorized as part of the presently proposed slope shoring and restoration project, versus the potentially unpermitted “emergency slope stabilization” work that occurred in 2016-2017. According to the public hearing minutes for the currently-proposed project, nine caissons were constructed and installed at the site as part of the 2016-2017 “emergency work”, and that thirteen additional caissons will be installed for permanent shoring of the site as part of the city-approved project. However, based on the project plans, the two proposed retaining walls will be supported by a total of 15 caissons. Thus, evidence in the record is conflicting as to the scope of the proposed development in part due to the unpermitted status of prior development.

The project description of the Resolution CDP 17.30 approving local CDP No. 17-0491 subject to this appeal reads as follows:

*“Permission granted for grading involving slope restoration in the R-1 (Residential Low Density) zone. The project includes installation of retaining walls and landscaping.”*

Because the Local CDP fails to provide a comprehensive description of the proposed project and due to discrepancies in the findings and project plans, the extent and scope of the development is unclear. There is uncertainty as to how much work has already occurred at the site (e.g. installation of caissons and potentially grading), and whether the proposed project incorporates the caissons that were previously installed without a required coastal development permit (if so, the previous unpermitted development would be proposed for “after-the-fact” approval), reducing the total number of caissons required. In addition, it is unclear how many caissons total will exist at the project site upon completion of the project. Consequently, because of the ambiguity regarding the scope of work, it is difficult to determine if the proposed development is the alternative most protective of coastal resources.

Therefore, the local government’s decision lacks the degree of factual and legal support necessary to support its decision and more information is necessary to adequately consider the consistency of the proposed project with LCP policies. Therefore, a substantial issue exists with respect to this issue raised by the appeal.

**Appellant’s Argument: City’s findings and conditions are inadequate**

The appellant argues that the City did not make the requisite findings for approval of the Local Coastal Development Permit (CDP), and that the city failed to condition the permit to adequately address erosion, water quality, landform alterations, hazards, and protection of coastal access and the shoreline.

Pursuant to Section 25.07.012 of the certified Implementation Plan (IP) (cited above), a coastal development permit may be approved or conditionally approved after the approving authority has reviewed the development project and made all the following findings: the project is in conformity with all applicable provisions of the general plan including the certified LCP, the project conforms with the policies of the LCP and public access and recreation policies of Chapter 3 of the Coastal Act, and the project will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act (CEQA).

The City's findings are as follows:

*“(1) The project is in conformity with provisions of general plan, including certified local coastal program and any applicable specific plans in that:*

*The risks from geologic hazards and potential erosion in steep hillside areas are minimized because the project must comply with Title 22 which sets forth rules and regulations to rigorously control all aspects of grading, including cut and fill operations, water runoff and soil erosion.*

*(2) Any development located between the sea and the first public road paralleling the sea is in conformity with the certified local coastal program and with the public access and recreation policies of Chapter 3 of the Coastal Act in that:*

*The project does not present either direct or cumulative impacts on physical public access since existing public vertical and lateral access exist nearby and there are no new adverse impacts on beach access since the development will not result in any further seaward encroachment.*

*(3) The proposed development will not have any significant adverse impacts on environment within meaning of CEQA in that:*

*The proposed project, as conditioned, minimizes impacts to geologic hazards and does not present any adverse impacts on the environment.”*

To find the proposed project consistent with the all the applicable policies of the certified LCP, the City cites Title 22 of their municipal code, which sets forth regulations to address grading, water runoff, and soil erosion. However, the city fails to elaborate on the project's consistency with all the relevant policies of the LCP, particularly those that relate to development on bluff properties. Therefore, the city fails to provide an adequate degree of factual and legal support for its decision to approve the proposed development and grant a Local CDP, and a substantial issue exists with respect to this issue raised by the appeal.

Regarding special conditions, the appellant contends the City did not adequately condition the permit to mitigate potential negative impacts. Section 25.07.012(G) of Chapter 25.07 of the IP provides that in approving an application for a coastal development permit, the approving body may impose conditions necessary to enable the required findings to be made. The City's approval has been conditioned to include:

- 1) Wall faces be beige color (color to be confirmed by staff)



- 2) Hauling of the materials not occur between AM and PM peak periods of travel
- 3) Construction staging plan be provided for building plan check
- 4) Certification of grades to be provided during the building inspection process by a licensed professional to verify compliance

Although the City did impose a few special conditions concerning the color of the retaining walls, time restrictions for the hauling of construction material, construction staging plan, and certification of grades, there are still a variety of additional conditions that the City could have imposed to ensure that identified impacts of the proposed bluff project are mitigated. For instance, if the City had properly required a bluff edge analysis, it could have conditioned for: minimum bluff setbacks, no development on the bluff face, future improvements restrictions, prohibiting reliance of new development on bluff protective devices, etc.

However, one is unable to determine all the necessary and appropriate conditions for the proposed project because the scope of the project is uncertain and a bluff edge analysis has not been provided. Accordingly, the City fails to provide an adequate degree of factual and legal support for its decision to approve the proposed development and grant a Local CDP. Therefore, the Commission finds that the project does raise a substantial issue with respect to this issue raised by the appeal.

## **APPELLANT’S CONTENTIONS THAT DO NOT RAISE SUBSTANTIAL ISSUE**

### **CEQA Compliance**

The appellant contends that the City should have required the preparation of an Initial Study pursuant to CEQA requirements. This contention, however, does not raise a substantial issue. LUE Policy 7.4, Action 7.4.2 specifies that an initial study should be prepared for development proposed within environmentally sensitive areas (ESA). In this case, however, there is no evidence that the site is an ESA. The City is under no obligation pursuant to Policies 7.4.2 and 10.3.1 of the certified LUE to conduct an initial study if the project is not within an ESA (as appears to be the case). In addition, the City did consider whether to require an Initial Study or a CEQA Categorical Exemption, and determined a Class 4(c) Categorical Exemption was appropriate.

### **SUBSTANTIAL ISSUE FACTORS:**

Applying the five factors typically relied upon by the Commission in making a determination whether an appeal raises a substantial issue or not clarifies that the appeal does raise a “substantial issue” per Section 30625(b)(2).

**1. The degree of factual and legal support for the local government’s decision that the development is consistent with the relevant provisions of the Coastal Act.** The City did not substantially support its approval and findings of the project’s consistency with all the applicable provisions of the certified LCP and the public access and recreation policies of the Coastal Act (specifically the bluff top/face policies). In addition, considering the evidence in the record, the actual scope of the proposed project is unclear, which necessarily means that evaluation of the

project's consistency with the LCP policies cannot be made at this time. Therefore, there is a low degree of factual and legal support for the local government's decision.

**2. The extent and scope of the development as approved or denied by the local government.**

The local government granted a Local CDP for “grading involving slope restoration in the R-1 zone”. Due to discrepancies in the record in the scope of the proposed work is unclear. In addition, without an adequate analysis of the locally-approved project including consideration of the location of the proposed development on the bluff, the extent of the work is unclear for this reason as well. The simple fact that the scope of work is unclear strongly supports a finding of substantial issue on the basis of this factor.

**3. The significance of the coastal resources affected by the decision. California's coastal bluffs are a significant resource.** They represent a rare and visually pleasing landform which California citizens and governments have historically sought to preserve. Coastal bluffs are dynamic geologic formations, and development on them increases the potential for geologic hazards. Development on coastal bluffs also can have significant impacts on scenic resources and public access opportunities. The LCP and the Coastal Act provide coastal bluffs with special protections. This factor supports a finding of substantial issue.

**4. The precedential value of the local government's decision for future interpretations of its LCP.** Allowing the local government's decision to approve new development on a potential bluff face would set a negative precedence for future interpretations of its LCP. If local Coastal Development Permit No. 17-0491 is found to be consistent with the LCP based on the current record, there is a potential that future applicants will reference this permit if they wish to develop other oceanfront and landlocked coastal bluff sites, of which there are hundreds in Laguna Beach. In other words, without adequate information to determine the bluff edge and the scope of the proposed development, allowing the City's local CDP approval to stand would result in adverse precedence regarding application of the LCP's various resource protection policies (specifically, relating to bluff top/face development). This factor supports a finding of substantial issue.

**5. Whether the appeal raises local issues, or those of regional or statewide significance.**

Bluff face and blufftop development are issues of statewide significance, given the special significance and protection afforded to bluffs by the Coastal Act and LCP. (*See* third factor above.) Requiring consistency with the certified LCP (particularly policies relating to bluff face/top development) and the public access and recreation provisions of the Coastal Act is significant to all the people of California who wish to enjoy the public beaches of California. Unsubstantiated and erroneous application of these policies could have region- or statewide ramifications regarding other similar LCPs and their policies regarding bluffs.

In conclusion, staff recommends that the Commission find that a substantial issue exists with respect to whether the local government action conforms with the geologic hazards and bluff development policies of the City's certified LCP.