

CALIFORNIA COASTAL COMMISSION

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STAFF REPORT: APPEALS – NO SUBSTANTIAL ISSUE

Appeal Number: A-5-LOB-17-0064

Applicant: City of Long Beach

Agent: Monica der Gevorgian, Department of Public Works

Local Government: City of Long Beach

Local Decision: Approval with Conditions

Appellants: Ann Cantrell, El Dorado Audubon Society, Renee S. Lawler, & Susan K. Miller

Project Location: 4000 E. Olympic Plaza, City of Long Beach, Los Angeles County

Project Description: Appeals of City of Long Beach Local Coastal Development Permit No. 1705-09/LCDP17-012 granted for extension of use and occupancy of Temporary Belmont Pool, consisting of a 25M by 50M pool with pool deck, spectator seating for 310 persons, hardscape and landscape improvements, and portable restroom/shower facilities, for five years plus two possible one-year time extensions.

Staff Recommendation: No Substantial Issue

IMPORTANT NOTE: This is a substantial issue only hearing. Testimony will be taken only on the question of whether the appeal raises a substantial issue. Generally and at the discretion of the Chair, testimony is limited to three minutes total per side. Please plan your testimony accordingly. Only the applicant, persons who opposed the application before the local government (or their representatives), and the local government shall be qualified to testify. Others may submit comments in writing. If the Commission determines that the appeal does raise a substantial issue, the de novo phase of the hearing will occur at a future Commission meeting, during which it will take public testimony.

SUMMARY OF STAFF RECOMMENDATION

The staff recommends that the Commission, after public hearing, determine that **no substantial issue exists** with respect to the grounds on which the appeals have been filed because the project, as approved by the City of Long Beach, is consistent with the City's certified Local Coastal Program and the public access policies of the Coastal Act.

On October 5, 2017, the City approved Local Coastal Development Permit Case No. 1705-09/LCDP17-012 with conditions for the extension of use and occupancy of Temporary Belmont Pool, consisting of a 25M by 50M above-grade swimming pool with pool deck, spectator seating for 310 persons, hardscape and landscape improvements, and portable restroom/shower facilities, for five years plus two possible one-year time extensions. The appellants contend that the project has significant environmental impacts including noise, air, light, and garbage pollution, and that it restricts ocean views, and that these impacts are adversely affecting humans, migratory birds, and habitat. One of the appellants also contends that the landscaping is inconsistent with the policies of the certified LCP.

The subject site is located immediately inland of the beach within the Granada public beach parking lot in Planning Area D (Belmont Shore), which is almost entirely developed with dense residential housing, pedestrian-oriented commercial uses, and heavily used beach. The Temporary Belmont Pool has existed in this location since 2013 and has a Local CDP that is set to expire on December 19, 2017. These temporary pool facilities replaced the Belmont Plaza Pool, a principal recreation and visitor-serving facility as identified in the certified LCP, while a more permanent facility is being planned for development. The current proposal to extend the permitted life of the temporary pool facilities includes no change in public access, and the special conditions of the local CDP mitigate the identified adverse impacts of the existing temporary pool facilities. The local coastal development permit restricts the time of use and decibel levels of noise-making instruments, adds a trash receptacle, and improves landscaping consistent with the City's certified LCP. Concerns about the Temporary Belmont Pool's impacts on ocean views, migratory birds, and habitat are not considered significant, in part because of the nature of the site which is within the Granada public beach parking lot, south (seaward) of a wall described in the certified LCP as view-restricting, and adjacent to Ocean Boulevard. The major vegetation (trees) adjacent to the temporary pool facilities, which hosts bird nests, has not been altered by activities associated with the temporary swimming pool, and the appellants' claims that use of the Temporary Belmont Pool is related to the decline in the number of nests found in the area is unsupported. Therefore, staff recommends that the Commission determine that no substantial issue exists with respect to the grounds on which the appeals were filed.

The City-approved recreational swimming project maintains public access and mitigates potential adverse impacts on coastal resources. Pursuant to Section 30603(b)(1), the standard of review for these appeals is the City's certified LCP and the public access policies of the Coastal Act. The proposed time extension for use and occupancy of the Temporary Belmont Pool is consistent with these policies and, therefore, does not raise a substantial issue as to its conformity with the certified LCP or the public access policies of the Coastal Act.

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EXHIBITS

- Exhibit 1 – Project Site
- Exhibit 2 – Appeals
- Exhibit 3 – Site Plans
- Exhibit 4 – Street View
- Exhibit 5 – Notice of Final Local Action, LCDP 1705-09, Findings, & Staff Report

I. MOTION AND RESOLUTION – NO SUBSTANTIAL ISSUE

Motion:

*I move that the Commission determine that Appeal No. A-5-LOB-17-0064 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 **YES** vote on the motion. Passage of this motion will result in a finding of No Substantial Issue and adoption of the following resolution and findings and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the Commissioners present.

Resolution:

*The Commission hereby finds that Appeal No. **A-5-LOB-17-0064** presents **NO SUBSTANTIAL ISSUE** with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the City of Long Beach’s certified Local Coastal Program and the public access policies of the Coastal Act.*

II. APPELLANTS’ CONTENTIONS

On October 19, 2017, Ann Cantrell, El Dorado Audubon Society, Renee S. Lawler, and Susan K. Miller filed four appeals of Local Coastal Development Permit No. 1705-09/LCDP17-012 ([Exhibit 2](#)). The appellants contend that restricted ocean views and noise, air, light, and garbage pollution from the presence and use of the Temporary Belmont Pool are adversely impacting coastal resources. More specifically, the appellants state that the noise from the pool facility not only impacts neighboring residents, but birds observed nesting in adjacent trees. The appellants also contend that the temporary swimming pool facility is not a coastal dependent use and could be relocated. Concern regarding the lack of a full Environmental Impact Report is raised by the appellants. One appellant also asserts that the landscaping of the pool facility is inconsistent with the City’s certified Local Coastal Program policies.

III. LOCAL GOVERNMENT ACTIONS

On April 8, 2013, the City of Long Beach conditionally approved a Local CDP (No. 1303-09) for the construction of the temporary above-grade 50M public swimming pool with pool deck, hardscape improvements, landscaping, portable office, and portable restroom and shower facilities to temporarily replace the Belmont Pool which was closed and demolished in late 2014 due to public safety issues. LCDP1303-09 issued for the temporary pool was conditioned to limit the use of the temporary pool for three years, with an additional one-year extension, and would thereafter require a new City-approved coastal development permit for continued use. The City installed the temporary pool in 2013, and upon expiration of the initial three years, a one-year extension of LCDP1303-09 was issued on August 16, 2016. Application No. 1705-09 proposing additional time extensions was filed with the City of Long Beach in 2017.

On August 14, 2017, the Zoning Administrator held a public hearing on Application No. 1705-09 (City of Long Beach, Department of Public Works) and approved Local Coastal Development Permit No. 1705-09/LCDP17-012 with conditions. Appeal No. APL17-001 was filed with the City by Susan K. Miller within the City's 10-day appeal period. Public hearing notices were then posted and distributed on September 18, 2017. On October 5, 2017, the City of Long Beach Planning Commission held a public hearing for Categorical Exemption No. CE 17-124, Appeal No. APL17-001, and Local Coastal Development Permit No. 1705-09/LCDP17-012. The City received 114 emails before the appeal hearing: two in support of the appeal and 112 in support of the time extension. Ann Cantrell, Mary Parsell of El Dorado Audubon Society, Renee S. Lawler, and Susan K. Miller were among those who gave verbal testimony at the hearing. The City of Long Beach Planning Commission denied the appeal by Susan Miller and upheld the Zoning Administrator's approval of the Local Coastal Development Permit 1705-09/LCDP17-012 with imposed special conditions (**Exhibit 6**). The Planning Commission also determined that the Temporary Belmont Pool time extension is categorically exempt from CEQA in accordance with State Guidelines Section 15323—Normal Operations of Facilities for Public Gatherings (Class 23) (**Exhibit 6**).

The City's Notice of Final Local Action for Local CDP No. 1705-09/LCDP17-012 was received in the Coastal Commission's Long Beach Office on October 19, 2017, and the Coastal Commission's required ten working-day appeal period was established. Appeals of Local CDP No. 1705-09/LCDP17-012 by Ann Cantrell, El Dorado Audubon Society, Renee S. Lawler, and Susan K. Miller were also filed that day, within the 10 working-day appeal period ([Exhibit 2](#)). No other appeals were received prior to the end of the appeal period on November 2, 2017.

IV. APPEAL PROCEDURES

After certification of an 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 mean high tide line of beach or 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:

(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 the beach.

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 for appeal. If Commission staff recommends a finding of substantial issue, and there is no motion from the Commission to find no substantial issue, the substantial issue question will be considered moot, and the Commission will proceed to the de novo public hearing on the merits of the project. The de novo hearing will be scheduled at the same hearing or a subsequent Commission hearing. A de novo public hearing on the merits of the project uses the certified LCP as the standard of review. In addition, for projects located between the first public road and the sea, findings must be made that any approved project is consistent with the public access and recreation policies of the Coastal Act.

Sections 13110-13120 of the California Code of Regulations further explain the appeal hearing process.

The grounds for the current appeal include contentions that the approved development does not conform to the policies set forth in the certified LCP regarding landscaping, nor with the public access policies of the Coastal Act.

Qualifications to Testify before the Commission

If the Commission decides to hear arguments and vote on the substantial issue question, those who are qualified to testify at the hearing, as provided by Section 13117 of Title 14 of the California Code of Regulations, will have three minutes per side to address whether the appeal raises a substantial issue. The only persons qualified to testify before the Commission at the substantial issue portion of the appeal process are the applicants, persons who opposed the application before the local government (or their representatives), or those who, for good cause, were unable to oppose the application before the local government, and the local government. Testimony from other persons must be submitted in writing.

The Commission will then vote on the substantial issue matter. It takes a majority of Commissioners present to find that the grounds for the appeal raise no substantial issue.

VI. FINDINGS AND DECLARATIONS – NO SUBSTANTIAL ISSUE

A. PROJECT LOCATION & DESCRIPTION

The subject site is located immediately inland of the beach within the Granada public beach parking lot in Planning Area D (Belmont Shore), which is almost entirely developed with dense residential, pedestrian-oriented commercial, and heavily used beach areas (**Exhibit 1**). In April 2013, the Temporary Belmont Pool was conditionally approved by Local Coastal Development Permit No. 1303-09 to temporarily replace the Belmont Plaza Pool, which was closed January 13, 2013 due to major seismic and structural deficiencies and subsequently demolished in late 2014. The temporary swimming pool is located at the west end of the Granada public beach parking lot, adjacent to the site of the former Belmont Plaza Pool. The pool facilities include a 25M by 50M above-grade pool with pool deck, spectator seating, portable restroom/shower facilities, and a temporary portable office; the facilities are used for lap and recreational swimming, water exercise classes, and aquatic sports training and competition. The Temporary Belmont Pool is enclosed by an approximately ten-foot tall chain-link fence with approved screening material and temporary landscaping. The tallest structures on the site are shade structures, which hang approximately fifteen feet above the pool, and the four aquatic sports lighting poles.

Local Coastal Development Permit 1705-09/LCDP17-012, the subject of this appeal, is the approval of the City of Long Beach Department of Public Works' request to extend the use and occupancy of Temporary Belmont Pool for five years plus two possible one-year time extensions.

B. LOCAL COASTAL PROGRAM CERTIFICATION

Long Beach is a coastal city in southern Los Angeles County. In 1980, the Coastal Commission certified the City's LCP. The City's LCP is comprised of a Land Use Plan and Implementation Plan, which, along with the public access policies of the Coastal Act, are the standard of review for the subject appeal.

C. FACTORS TO BE CONSIDERED IN SUBSTANTIAL ISSUE ANALYSIS

Section 30625(b)(2) of the Coastal Act states that the Commission shall hear an appeal of a local government action carried out pursuant to a certified LCP unless it finds that no substantial issue exists with respect to the grounds on which the appeal was filed. 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 had 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 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 if 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 **no substantial issue exists** with respect to whether the local government action conforms to the policies of the certified LCP and the public access policies of the Coastal Act for the reasons set forth below.

D. SUBSTANTIAL ISSUE ANALYSIS

As provided below, the City of Long Beach’s certified Local Coastal Program contains policies that protect natural resources and public access within the coastal zone. Additionally, Chapter 3 of the Coastal Act includes policies requiring that maximum public access be provided.

Relevant LCP Policies

Land Use Plan – Introduction, Coastal Resources:

The water resources of Alamitos Bay, Marine Stadium, Sims Pond, Colorado Lagoon, and Los Cerritos Wetlands are monitored, preserved, and enhanced by a formal set of policies promulgated by the Resources Management Plan. A balance between human use and ecological concerns is the principal theme of this Plan. The beaches are preserved in perpetuity by the dedication policy, and enhanced by limited development programs which will encourage sensible public use.

General Plan – Open Space and Recreation Element:

Policy 4.6: With the help of the community, plan and maintain park facilities at a level acceptable to the constituencies they serve.

Implementation Plan – Chapter 21, Park District:

Section 21.35.255, Landscaping requirements: Landscaping shall be provided as required by Chapter 21.42 (Landscaping Standards) of this Title.

Relevant Coastal Act Policies

Section 30210 of the Coastal Act states, in part:

...maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, and rights of private property owners, and natural resource areas from overuse.

Section 30211 of the Coastal Act states, in part:

Development shall not interfere with the public’s right of access to the sea where acquired through use or legislative authorization...

No substantial issue exists with respect to the proposed project's conformance with the City's certified Local Coastal Program or the public access policies of the Coastal Act. The proposed project is a time extension for the use and occupancy of an existing public and visitor-serving recreation facility, the Temporary Belmont Pool. As the existing CDP expires December 19, 2017, this extension is deemed necessary by the City of Long Beach to maintain a minimum level of aquatic recreational service to the community while the permanent replacement for the Belmont Plaza Pool is being designed, permitted, and constructed (no application has been submitted at this point). The proposed development conforms to general and Area D policies of the City's Local Coastal Plan and the Park Zone District requirements of the City's Implementation Plan. There is no change in public access during the proposed five to seven years of prolonged use and occupancy of the Temporary Belmont Pool. Multiple access points by foot, bike, automobile, and public transit exist at the site. The appellants' contentions are addressed below.

Susan Miller contends that the landscaping surrounding the pool is not in compliance with the certified LCP policies for the Belmont Pier Planning District (**page 2, Exhibit 2**); however, the project site is in Planning Area D, which is southeast of the Belmont Pier district. Although the City misidentified the planning area of the project as Area C, where the Belmont Plaza Pool was located, the site is in the Park Zone District, which has the same implementation policies independent of whether it is in Area C or D. During a visit to the site, staff observed ornamental landscaping variably extending a few feet beyond the base of the chain-link fence and surrounding a majority of the perimeter of the temporary pool facilities as per the site plans (**Exhibit 3**). Furthermore, Special Condition 14 of City approved CDP No. 1705-09/LCDP17-012 requires that the moveable wooden planter boxes shall be replanted or replaced with similar landscape features to the satisfaction of the City's Director of Development Services. These plantings are not in violation of the Area D policies of the certified LCP.

Two of the appellants raise the issue of impacted ocean views which are protected by Section 30251 of the Coastal Act. This section of the Coastal Act, while an important consideration, is not the standard of review for this project. Ocean Boulevard, which is just north (inland) of the project site, was designated as a scenic route in Long Beach's certified LCP. However, the LCP also states that the wall to the south (seaward) of the street, which borders the Granada public beach parking lot, limits any view potential and "because of the lack of grade differential throughout Belmont Shore and because the streets are quite narrow, there are no significant views toward the ocean on the north/south streets." (**LCP, page III-D-5**). While the Temporary Belmont Pool is partially visible from Ocean Boulevard, Roswell Avenue, Bennet Avenue, and Ximeno Avenue, the ocean view is already blocked by the City's storage yard, maintenance building, and smaller existing outdoor pool (**Exhibit 4**), all of which are situated seaward of the temporary swimming pool facility. In addition, as conditioned in LCDP17-012, the portion of the fence that is visible from the neighboring streets is decorated with beach or aquatic themed artistic displays. The subject project does not adversely affect views of the ocean or beach and does not violate the public access policies of the Coastal Act or any policies of the certified LCP.

Most of the appellants contend that air, light, noise, and garbage pollution are impacting neighboring residents and wildlife. Susan Miller's appeal of the Zoning Administrator's approval of local CDP No. 1705-09/LCDP17-012 to the City Planning Commission included concerns

about the lack of a full environmental impact report. The City did not find issue with the appeal and approved the project as a Section 15323 CEQA Exemption for normal operations of facilities for public gatherings. Considering the location of the pool facilities is within the Granada public beach parking lot and adjacent to Ocean Boulevard, both of which are subject to active traffic and lighting at night, the pool's impacts are not out of character for the location. To mitigate garbage pollution, the local CDP is conditioned to add an additional trash receptacle. To mitigate the noise impacts, the City Planning Commission added and amended the special conditions (**Exhibit 6**) of the local CDP to prohibit whistles exceeding ninety decibels, the use of whistles and airhorns after 7:00 pm, and amplified sound after 8:00 pm, with the potential to implement additional noise reduction measures if noise levels are identified as nonconforming by the Long Beach Health and Human Services Division. In any case, allegations regarding CEQA do not form grounds for an appeal to the Coastal Commission. Grounds for this appeal are limited to inconsistency with the Long Beach LCP and public access and recreation policies of the Coastal Act.

The appellants also voice concern about the impacts of the pool facilities, especially elevated noise levels, on the surrounding residents and migratory birds, specifically, Black-crowned Night Herons and Snowy Egrets which have been observed nesting in the trees adjacent to the Temporary Belmont Pool. The El Dorado Audubon Society (EDA) has been monitoring nesting of these birds for fifteen years. The appellant representing the EDA reports observations in three trees adjacent to the project site of approximately seventy-five nests of Black-crowned Night Herons and three Snowy Egret nests yearly before the Temporary Belmont Pool was installed, and fewer each year since that time. In 2017, EDA observed six Black-crowned Night Heron nests. These species are on the Migratory Bird Treaty Act of 1918 List (2013); however, they are not a threatened or endangered species, and the trees they are found in, while major vegetation, are not designated as environmentally sensitive habitat. Considering the active traffic and construction work in the area, including the current rehabilitation of the Granada public beach parking lot approved in 2016, and a multitude of other potential causes of the decline in nest counts of these species, without further study, implying causation between the use of the temporary pool facilities and the decline in observed Black-crowned Night Heron and Snowy Egret nests is unsubstantiated. If noises from the Temporary Belmont Pool are affecting these birds' nesting habits, the special conditions imposed should minimize adverse noise impacts.

For the reasons described above, the subject project, as approved with special conditions by the City of Long Beach, is consistent with the policies of the certified LCP and the public access policies of the Coastal Act. Therefore, the Commission finds that no substantial issue exists with respect to the City-approved project's conformance with these policies.

Applying the five factors listed in the prior section clarifies that the appeal raises "no substantial issue" with respect to the public access policies of the Coastal Act and the policies of the certified LCP, and therefore, do not meet the substantiality standard of Section 30265(b)(2).

The first factor is the degree of factual and legal support for the local government's decision that the developments are consistent or inconsistent with the relevant provisions of the certified LCP. Despite incorrectly identifying the project site as within Area C, the staff report included accurate analysis of the impacts to coastal access and recreation and appropriate findings that public access and recreation opportunities will be maintained as conditionally approved. In terms

of evidence supporting the appellants' contentions, the landscaping was claimed to be inconsistent with planning districts that are not relevant to the temporary swimming pool. Contentions that the use of the swimming pool was impacting air quality was not described or substantiated. In addition, no comprehensive study or conclusive evidence was provided to support direct or indirect impacts of the occupancy and use of the temporary swimming pool on the nesting habits of migratory birds found in the adjacent trees, and the City imposed appropriate mitigation to address the project's noise impacts. Therefore, the Coastal Commission finds that the City provided an adequate degree of factual and legal support for the local government's decisions to approve a time extension.

The second factor is the extent and scope of the development as approved or denied by the local government. This project is a limited time extension for the use of a visitor-serving aquatic recreation facility. The Temporary Belmont Pool temporarily replaces, for up to seven more years, the Belmont Plaza Pool, which was identified in the City's certified LCP as a principal recreation and visitor-serving facility. There is no proposed change in public access. Therefore, the extent and scope of the proposed development is relatively small, temporary, and consistent with the City's certified LCP and the public access policies of the Coastal Act.

The third factor is the significance of the coastal resources affected by the decision. The impacts of the time extension on coastal resources are limited to a temporary continuation of those resulting from the development of this site in 2013. The impacts identified by the appellants—air, light, noise, and garbage pollution and restricted ocean views—as discussed above, are not significant for reasons including the site's location in a parking lot surrounded by active traffic and the mitigation of some of these impacts through the imposition of special conditions. Therefore, the project would not significantly and adversely affect coastal resources.

The fourth factor is the precedential value of the local government's decision for future interpretations of its LCP. The City's action on this project does not raise difficult issues related to LCP interpretation and will not prejudice future interpretations of its certified LCP.

The final factor is whether the appeal raises local issues, or those of regional or statewide significance. These appeals raise specific local issues relating to the localized impacts of the temporary swimming pool on noise levels, air quality, bird nesting, and garbage accumulation. These issues were addressed by the City through its CDP conditions, and the City's CEQA determination does not qualify as a ground for appeal to the Coastal Commission. The City's approvals do not raise issues of statewide significance.

In conclusion, the Commission finds that the appeals do not raise a substantial issue as to conformity with the City's certified LCP or the public access policies of the Coastal Act, and therefore, does not meet the substantiality standard of Section 30625(b)(2), because the proposed project is subject to special conditions and the local government action does not violate the certified LCP or Coastal Act public access policies.