

CALIFORNIA COASTAL COMMISSION

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W12b

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Hearing Date: 8/9/2017

STAFF REPORT: APPEAL – SUBSTANTIAL ISSUE

Appeal Number: A-5-LGB-17-0033

Applicants: Hany Dimitry

Agent: Brion Jeanette Architects

Local Government: City of Laguna Beach

Local Decision: Approval; No Special Conditions

Appellants: Derek Peterson and Mark Fudge

Project Location: 31987 Coast Highway, Laguna Beach, Orange County

Project Description: Appeal of City of Laguna Beach Coastal Development Permit 16-2180 for demolition of a single family dwelling.

Staff Recommendation: Find Substantial Issue

IMPORTANT HEARING PROCEDURE NOTE

The Commission will not take testimony on the “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. 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. If the Commission finds that the appeal raises a substantial issue, the de novo phase of the hearing will follow, unless it has been postponed, during which the Commission will take public testimony.

SUMMARY OF STAFF RECOMMENDATION

The staff recommends that the Commission, after public hearing, determine that a **substantial issue exists** with respect to the grounds on which the appeals have been filed for the following reasons: the project approved by the City is unclear as to the extent of demolition approved including whether existing bluff face development will be removed or not. This issue is exacerbated by the fact that no project plans (demolition plans) exist in the project record. In addition, the City's decision to approve the proposed demolition did not consider relevant LCP policies including those that require protection of natural resources/habitat, protection of water quality, assure stability and structural integrity, minimize hazards and landform alteration. The appellants also contend, and staff recommends that the Commission find, that the appeal raises a substantial issue with regard to consistency with the public access policies of the coastal Act. A summary of the appellants' contentions may be found on page 3 of this report. The complete appeals are included as [Exhibits](#) 5 and 6.

The City's action on local CDP 16-2180 would approve the demolition of an existing single family dwelling at 31987 Coast Highway in Laguna Beach. The subject site is a 29,415 square foot, oceanfront, bluff top lot located adjacent to 1000 Steps public beach in the South Laguna area of the City of Laguna Beach. The City Council's action approving local coastal development permit 16-2180 is reflected in City Council Resolution No. 17.032. The subject site is located between the first public road (Coast Highway) and the sea (1000 Steps public beach).

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.

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EXHIBITS: ONLINE ONLY

- EXHIBIT 1 - VICINITY MAP/SUBJECT SITE
- EXHIBIT 2 - CITY COUNCIL RESOLUTION NO. 17.032
- EXHIBIT 3 - SITE SURVEY
- EXHIBIT 4 - SUBJECT LOT
- EXHIBIT 5 - APPEAL OF DEREK PETERSON
- EXHIBIT 6 - APPEAL OF MARK FUDGE

I. MOTION AND RESOLUTION – SUBSTANTIAL ISSUE

Motion: *I move that the Commission determine that Appeal No. A-5-LGB-17-0033 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:

*The Commission hereby finds that Appeal No. A-5-LGB-17-0033 presents A **SUBSTANTIAL ISSUE** with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with Chapter 3 policies of the Coastal Act.*

II. APPELLANTS’ CONTENTIONS

The City-approved local coastal development permit authorizes demolition of the single family dwelling located at 31987 Coast Highway in Laguna Beach. Two appeals were timely filed, one by Derek Peterson (6/27/17, [Exhibit 5](#)), and one by Mark Fudge (6/28/17, [Exhibit 6](#)).

Although the appellants’ contentions are extensive, the relevant issues raised in the appeals may be summarized as follows (please see [exhibits 5 & 6](#) to review each appeal in its entirety). The appellants contend that the City-approved development is inconsistent with the certified Laguna

Beach Local Coastal Plan (LCP) and with the public access policies of Chapter 3 of the Coastal Act because:

- 1) The LCP Land Use Element Policy 7.4, Action 7.4.2 requires preparation of initial studies pursuant to the California Environmental Quality Act (CEQA) for any proposed development, including single-family residences located within an environmentally sensitive area (ESA). The subject site is located in an area recognized by the City's LCP as ESA in that it is a coastal bluff. The City approved a CEQA Categorical Exemption for the proposed development and did not require preparation of an initial study as required by the LCP/LUE policy cited above, inconsistent with the certified LCP.
- 2) City Council's review and eventual rejection of the Design Review Board's determination that the subject residence to be demolished was historically significant, was improper. Because the DRB, based upon the evidence on record, found the structure to be potentially historically significant, the burden of proof was on the project applicant to demonstrate that the structure was not historically significant and the applicant did not provide the required "preponderance of evidence" (per Section 25.05.070(B)(9)(e) of the LCP's Title 25 Zoning) to support his appeal to the City Council of the denial of coastal development permit 16-8120 to demolish the structure.
- 3) Chapter 25.05 *Administration* and Chapter 25.07 *Coastal Development Permits* of the LCP's Title 25 Zoning establish review criteria to be considered in reviewing requests for Design Review approval and approval of Coastal Development Permits. These criteria include, among others, consideration of environmental context (including preservation of natural features); compliance with the General Plan including, the certified Local Coastal Program; and historic preservation. Other criteria must also be considered. But none of these were considered in the City's approval of local coastal development permit 16-2180.
- 4) No demolition plans, and so no project plans, are included in the project record. Section 25.07.012(C)(3) of the LCP's Title 25 Zoning requires plans showing existing and proposed topography, among other things. The absence of demolition plans makes it unclear what is included in approval of local coastal development permit 16-2180.
- 5) The City's decision did not consider relevant LCP/Land Use Element policies that require protection of natural resources including landforms and habitat, public health and safety, assure stability and structural integrity and minimize hazards and landform alteration. Also not considered in the City's approval were LCP/Open Space Conservation Element policies regarding water quality, visual resources, and hazard issues. Without considering these relevant LCP policies, the City's approval is not consistent with the certified LCP.
- 6) By separating the demolition portion of the project from the construction of a new residence (which was originally part of the project proposal and is intended to be brought back for coastal development permit consideration), the applicant, and the City in approving the demolition, have effectively segmented ("piecemealed") the project in order to avoid environmental review.
- 7) The City did not adequately make a CEQA determination in that in approving a Categorical Exemption for the proposed project, no reason for why a Categorical Exemption was appropriate was identified by the City Council.

- 8) No conditions/mitigations were imposed with approval of the demolition project. Conditions should have been imposed as necessary to assure protection of environment/sensitive resources present at the site, as required by the certified LCP.
- 9) The location of the bluff edge identified on the project site plan is not consistent with LCP/LUE Glossary definition of “bluff edge”. Accurately depicting the “bluff edge” could require conditions or modifications to the approved demolition project.
- 10) The demolition project constitutes a “major remodel” as defined in the LCP/LUE Glossary and so constitutes “new development” for which non-conforming structures must be brought into conformance, but the City did not impose this requirement. The subject site plan indicates there are private stairs, a private funicular, and gunite on the bluff that should have been considered for removal along with demolition of the residence.
- 11) The City’s LCP includes language not certified by the Coastal Commission and so it applies standards not approved by the Coastal Commission when reviewing development proposals.
- 12) The subject site is an environmentally sensitive area (ESA). The project does not include any provisions to protect ESA.
- 13) Demolition only of the existing residence will leave the site exposed and could result in increasing potential hazards at the subject site, to neighboring properties, and to beach-goers at the public beach below the site, inconsistent with the requirements of the certified LCP.
- 14) The subject site is located approximately 200 feet from the only public accessway to 1000 Steps public beach. Numerous large trucks and equipment needed to perform the demolition will interfere with public access along Coast Highway, in terms of availability of public, on-street parking spaces and pedestrian access along Coast Highway to the public beach accessway. This interference with public access is inconsistent with both the LCP public access policies and the public access policies of Chapter 3 of the Coastal Act.
- 15) The residence to be demolished is an historic structure which triggers the need for a CEQA initial study, but a CEQA initial study has not been required by the City, inconsistent with the requirements of the certified LCP.
- 16) Section 25.07.012 of the LCP’s Title 25 Zoning requires that approval of a coastal development permit may only be allowed when specific findings can be made. These required findings were not made in the City’s approving action and cannot be made.

III. LOCAL GOVERNMENT ACTION

On March 18, 2017 the City Council heard an appeal by the project applicant of the Design Review Board’s denial of local coastal development permit 16-2180. The DRB’s denial occurred on January 12, 2017. The Design Review Board’s action included review of proposed development in addition to the demolition of the single family dwelling, including construction of a new single family dwelling. The appeal to the City Council was originally scheduled for March 7, 2017, but at the request of the project applicant it was continued to the City Council meeting of April 18, 2017. At the 4/18/17 City Council meeting, the City Council granted the appeal, overturned the Design Review Board’s action denying local coastal development permit 16-2180, and approved local coastal development permit 16-2180 and also a Categorical Exemption under CEQA for the proposed demolition. On May 25, 2017 the City Council adopted Resolution 17.032 as accurately reflecting its action on 4/18/17. Approval of local coastal development permit 16-2180 by the City Council included only demolition of the existing single family dwelling at the subject site without approval of construction of a single

family dwelling. The Design Review Board meeting of 1/12/16, and the City Council meetings of 4/18/17 and 5/25/17 were public hearings.

The City's Notice of Final Local Action for Local CDP No. 16-2180 was received in the Coastal Commission's Long Beach Office on June 5, 2017. However, the NOFA contained errors regarding the correct coastal development permit number and did not include the official Resolution (no resolution number was included and the resolution was unsigned). Consequently, Commission staff sent a Notice of Deficient Notice to the City on June 6, 2017 requesting corrected information. The City responded with the requested information which was received on June 14, 2017 and the Coastal Commission's required 10 working-day appeal period was established. On June 27, 2017 the appeal of Derek Peterson was received and on June 28, 2017 the appeal of Mark Fudge was received. No other appeals were received prior to the end of the appeal period at 5 p.m. on June 28, 2017. The applicant declined to waive the 49-day hearing requirement for the appeal. The 49th working day from the date the first appeal was filed is September 6, 2017, prior to the Commission's September 2017 meeting.

IV. APPEAL PROCEDURES

Coastal Act Section 30603 provides for the appeal to the Coastal Commission of certain CDP decisions in jurisdictions with certified LCPs. The following categories of local CDP decisions are appealable: (a) approval of CDPs for development that is located (1) 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) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff, and (3) in a sensitive coastal resource area; or (b) for counties, approval of CDPs for development that is not designated as the principal permitted use under the LCP. (*See* Coastal Act Section 30603(a)(1)-(4).) In addition, any local action (approval or denial) on a CDP for a major public works project (including a publicly financed recreational facility and/or a special district development) or an energy facility is appealable to the Commission. (*Id.* Section 30603(a)(5).) This project is appealable because it is located between the sea and the first public road paralleling the sea, and it is within 300 feet of the top of the seaward face of a coastal bluff.

The grounds for appeal under Section 30603 of the Coastal Act are limited to allegations that the development does not conform to the certified LCP or to the public access policies of the Coastal Act. Section 30625(b) of the Coastal Act requires the Commission to consider a CDP for an appealed project de novo unless a majority of the Commission finds that "no substantial issue" is raised by such allegations. Under Section 30604(b) of the Coastal Act, if the Commission conducts the de novo portion of an appeals hearing and ultimately approves a CDP for a project, the Commission must find that the proposed development is in conformity with the certified LCP. If a CDP is approved for a project that is located between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone, Section 30604(c) of the Coastal Act also requires an additional specific finding that the development is in conformity with the public access policies of Chapter 3 of the Coastal Act. This project is located between the nearest public road and the sea and thus this additional finding would need to be made (in addition to a finding that the proposed development is in conformity with the certified City of Laguna Beach LCP) if the Commission were to approve the project following a de novo hearing.

After a final local action on a local CDP application, the Coastal Commission must be noticed within five days of the decision. (14 CCR § 13331) After receipt of such a notice, which contains

all the required information, a ten working-day appeal period begins during which any aggrieved person or any two members of the Commission may appeal the local decision to the Coastal Commission. (14 CCR § 13110, 13111.) As provided under section 13318 of Title 14 of the California Code of Regulations, the appellant must conform to the procedures for filing an appeal as required under section 13111 of Title 14 of the California Code of Regulations, including identification of the specific grounds for appeal and a summary of the significant question raised by the appeal.

The action currently before the Commission is to find whether there is a “substantial issue” or “no substantial issue” raised by the appeal of the local approval of the proposed project. Sections 30621 and 30625(b)(1) of the Coastal Act require a de novo hearing of the appealed project unless the Commission determines that no substantial issue exists with respect to the grounds for appeal.

Commission staff recommends a finding of **substantial issue**. If the Commission decides that the appellants’ contentions raise no substantial issue as to conformity with the certified LCP or the public access policies of the Coastal Act, the action of the local government becomes final. Alternatively, if the Commission finds that a substantial issue exists with respect to the conformity of the action of the local government with the public access policies of Chapter 3 of the Coastal Act and with the certified LCP, the local CDP is voided and the Commission may continue the public hearing to a later date in order to review the coastal development permit as a de novo matter. Section 13321 of the Coastal Commission regulations specifies that de novo actions will be heard according to the procedures outlined in Sections 13114 and 13057-13096 of the Commission’s regulations.

If there is no motion from the Commission to find no substantial issue, it will be presumed that the appeal raises a substantial issue and the Commission may schedule the de novo phase of the public hearing on the merits of the application at a hearing following the substantial issue finding. 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, typically (at the discretion of the Chair) will have three minutes per side to address whether the appeal raises a substantial issue.

The only persons qualified to testify before the Commission on the substantial issue question are the Applicant, persons who opposed the project before the local government (or their representatives), and the local government. (14 CCR Section 13117.) Testimony from other persons regarding the substantial issue question must be submitted in writing. (*Id.*) Any person may testify during the de novo CDP determination stage of an appeal (if applicable). 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.

V. FINDINGS AND DECLARATIONS – SUBSTANTIAL ISSUE

A. PROJECT LOCATION & DESCRIPTION

The City’s action on local CDP 16-2180 would approve the demolition of an existing single family dwelling at 31987 Coast Highway in Laguna Beach. The subject site is a 29,415 square foot, oceanfront, bluff top lot located adjacent to 1000 Steps public beach in the South Laguna area of the City of Laguna Beach. The City Council’s action approving local coastal development permit 16-2180 is reflected in City Council Resolution No. 17.032, which also

approved a Categorical Exemption under CEQA (California Environmental Quality Act). Originally the City's review of local coastal development permit 16-2180 also included a construction of a proposed new single family dwelling to replace the existing, to be demolished residence. However, the project applicant requested that the City act only on the request to demolish the residence, with the intent to return later with a proposal for a replacement residence. As this is the scope of the project as ultimately approved by the City through its CDP, only the demolition of the existing single family dwelling is before the Commission at this time.

Both the City's certified Local Coastal Program (LCP) and the Coastal Act require a coastal development permit for demolition of an existing structure. The City's certified LCP Implementation Plan (IP) *Title 25 Zoning*, Section 25.07.006(D), which basically tracks the Coastal Act definition of development, defines development as follows:

*“[t]he 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; a 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 the 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.”* [Emphasis added.]

Thus, the development approved by the City under local coastal development permit 16-2180, demolition of an existing single family dwelling, constitutes development and thus requires approval of a coastal development permit. Also present at the subject site, according to aerial photos and the site survey prepared for the project, are private stairs and a private funicular down the bluff face.

The subject site is zoned Village Low Density and is surrounded by single family residential development on three sides. The subject lot is a “U” shaped lot, with the two ends of the “U” fronting on Coast Highway. Between the existing residence and Coast Highway, in the cradle of the “U”, is a separate residential lot, developed with a single family dwelling (see [exhibit 4](#)). Single family dwellings also exist on either side of the subject site.

The South Laguna area of the City of Laguna Beach draws significant numbers of visitors, especially to its beautiful beaches including Aliso Beach and numerous pocket beaches, such as 1000 Steps beach adjacent to the subject site. 1000 Steps beach is one of the larger pocket beaches and provides a wide sandy area enclosed by rocky headlands at either end. It is accessed from the public accessway located two lots upcoast of the subject site, opposite the end of 9th Avenue. Aerial photos of the site suggest some degree of bluff instability and the presence of what appears to be gunite down the bluff immediately seaward of the existing residence.

LCP Background/Standard of Review

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

(OSC); the Implementation Plan portion of the LCP is comprised of a number of documents including Title 25 Zoning.

B. FACTORS 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 unless it finds that no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603. The term “substantial issue” is not defined in the Coastal Act or its implementing regulations. Section 13115(b) of the Commission’s regulation 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 whether the local government action conforms to the provisions of the certified Local Coastal Program and the public access policies of Chapter 3 of the Coastal Act for the reasons set forth below.

C. SUBSTANTIAL ISSUE ANALYSIS

As stated in Section IV of this report, the grounds for an appeal of a CDP issued by the local government are the project’s conformity with the policies of the LCP and the project’s conformity with the public access policies of the Coastal Act. The Commission shall hear an appeal unless it determines that no substantial issue exists as to conformity with the policies of the LCP and the project’s conformity with the public access policies of the Coastal Act.

Section II of this staff report outlined the appellants’ numerous contentions regarding the project. In particular, they allege there are significant issues with regard to consistency with the certified LCP related to 1) protection of environmentally sensitive area (ESA)/natural resources; 2) minimizing hazards particularly impacts related to site stability and erosion; 3) the project was not evaluated under the review criteria specifically required by the LCP (particularly with regard to the Design Review Criteria (LCP Implementation Plan *Title 25 Zoning* Section 24.05.040(H) and the Coastal Development Permit required findings and conditions (LCP Implementation Plan *Title 25 Zoning* Section 25.07.012(G) and (H)); 4) the extent of project approved under the

City's action is unclear as it is for demolition only, but there are no demolition plans in the project file, and other development exists on the site and it is not clear whether the City's approval requires their removal or not; 5) LCP policies require that non-conformities (such as existing development other than the residence on site including: private beach stairs, private funicular, gunite) be removed when a project constitutes Major Remodel as defined in the LCP Land Use Element Glossary; 6) interfering with public access; and 7) no conditions/mitigation were imposed to assure protection of ESA/natural resources, to minimize hazards, and to protect public access, all of which are necessary to assure consistency with the certified LCP and public access policies of the Coastal Act.¹

LAND USE ELEMENT POLICIES:

Policy 5.2 Ensure that all new development, including subdivisions and the creation of new building sites and remodels that involve building additions, is adequately evaluated to ascertain potential negative impacts on natural resources and adjacent development, emphasizing impact avoidance over impact mitigation. Required mitigation should be located on-site rather than off-site. 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 10.3.)

Policy 7.3 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 natural landform alterations. (*Sane as Policy JO. 2.*)

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. (*Ongoing implementation.*)

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

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. (*Ongoing implementation.*)

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. (*Ongoing implementation.*)

¹ The appellants also raise numerous arguments regarding the City's compliance with CEQA. These are not valid bases for an appeal under the Coastal Act, however, as the only question before the Coastal Commission at this stage of an appeal is whether the development conforms to the standards set forth in the certified local coastal program or the public access policies of the Coastal Act. (Cal. Pub. Resources Code section 30603(b)(1).)

Action 7.3.8 On oceanfront bluff sites, require applications where applicable, to identify and remove all unpermitted and/or obsolete structures, including but not limited to protective devices, fences, walkways and stairways, which encroach into oceanfront bluffs. *(Ongoing implementation.)*

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 of the property as a deed restriction.

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 offsite mitigation should be located within the City's boundaries close to the project, where feasible. *(Similar to Policies 5.2 and 10.3)*

Action 7.4.1 Prepare and adopt California Environmental Quality Act (CEQA) thresholds of significance tailored to address the City's natural resources, such as marine resources, streams, drainage courses, ESHA and high-and very-high value habitat. *(Medium-term implementation.)*

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

Action 7.4.4 Continue to list Environmentally Sensitive Areas within the Real Property Report. *(Ongoing and short-to-long-term implementation.)*

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). *(Same as Policy 10.7.)*

Policy 7.10 Require new construction and grading to be located in close proximity to preexisting development to minimize environmental impacts and growth-inducing potential.

GOAL 10: Ensure that proposals for new development, subdivisions, and major remodels are sufficiently evaluated to protect public health and safety and natural resources.

Intent -In a community with extremely high land values and minimal developable land, pressure has increased to develop larger buildings, including development on environmentally sensitive lots has been increasing. Larger structures and development into environmentally sensitive areas have the potential to create numerous impacts on the environment and surrounding neighborhoods. Some potential impacts include 1) water quality impacts, 2) land movements, 3) a decrease in safety

response times on steep hillside roads during emergencies, and 4) the potential cumulative impacts to sensitive biological and coastal resources from which community members and visitors derive health benefits. The following policies are adopted to ensure that applications for new subdivisions, the creation of building sites, new development, and major remodels are thoroughly evaluated to mitigate potential health and safety impacts related to new development.

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, require 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 contains 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. *(Medium-term implementation.)*

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 Niño 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.

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 offsite 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.

LAND USE ELEMENT GLOSSARY:

Environmentally Sensitive Habitat Area (ESHA) -The Coastal Act defines environmentally sensitive area as 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 developments.

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.

OPEN SPACE/CONSERVATION ELEMENT POLICIES:

Water Quality

Policy 4-A Development Planning and Design Best Management Practices (BMPs)

Ensure that development plans and designs incorporate appropriate Site Design, Source Control and Structural Treatment Control Best Management Practices (BMPs), where feasible, to reduce to the maximum extent practicable, pollutants and runoff from the proposed development. Structural Treatment Control BMPs shall be implemented when a combination of Site Design and Source Control BMPs are not sufficient to protect water quality.

Policy 4-C Minimize Volume and Velocity of Runoff

Ensure that development is designed and managed to minimize the volume and velocity of runoff (including both stormwater and dry weather runoff) to the maximum extent practicable, to avoid excessive erosion and sedimentation.

Policy 4-D Minimize Introduction of Pollutants

Ensure that development and existing land uses and associated operational practices minimize the introduction of pollutants into coastal waters (including the ocean, estuaries, wetlands, rivers and lakes) to the maximum extent practicable.

Policy 4-G Minimize Construction Impacts

Ensure that all development minimizes erosion, sedimentation and other pollutants in runoff from construction-related activities to the maximum extent practicable. Ensure that development minimizes land disturbance activities during construction (e.g., clearing, grading and cut-and-fill), especially in erosive areas (including steep slopes, unstable areas and erosive soils), to minimize the impacts on water quality

Policy 4H Continue Application and Maintenance of Best Management Practices (BMPs)

Require the property owner, homeowner's association or local government, as applicable, to continue the application and maintenance of Source Control and/or Structural Treatment Control BMPs as necessary to reduce runoff pollution, including appropriate construction related erosion and sediment control measures.

Visual Resources

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 consider scenic and conservation values, impacts on soil mantle, vegetation cover, water resources, physiographic features, erosion problems, and recontouring and replanting where the natural landscape has been disturbed.

Vegetation and Wildlife Resources

Policy 8-I Environmentally Sensitive Areas (ESA's) as defined in Section 30107.5 of the California Coastal Act shall be identified and mapped on a Coastal ESA Map. The following areas shall be designated as Environmentally Sensitive Areas: Those areas shown on the Biological Resources Values Map in the Open Space/Conservation Element as "Very High" habitat value, and streams on the Major Watersheds and Drainage Courses Map which are also streams as identified on the USGS 7.5 Minute Quadrangle Series and any other areas which contain environmentally sensitive habitat resources as identified through an on-site biological assessment process, including areas of "High" and "Moderate" habitat value on the Biological Resources Values Map and areas which meet the definition of ESA's in Section 30107.5 of the Coastal Act, including streams, riparian habitats, and areas of open coastal waters, including tidepools, areas of special biological significance, habitats of rare or endangered species, near-shore reefs and rocky intertidal areas and kelp beds.

Natural Hazards

Policy 10-A Require that plan review procedures recognize and avoid geologically unstable areas, flood-prone lands, and slopes subject to erosion and slippage.

Policy 10-C 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. In any case, development should be generally discouraged within geologic hazard areas.

Policy 10-E 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 14 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.

TITLE 25 ZONING

Chapter 25.07 Coastal Development Permits

25.05.040(H) Design Review Criteria. Physical improvements and site developments subject to design review shall be designed and located in a manner which best satisfies the intent and purpose of design review, the city's village atmosphere and the design review criteria specified in this section. Village atmosphere shall be characterized by appropriately scaled development, diverse and unique architectural designs, pedestrian orientation and sensitivity to the natural conditions of the site. The property development standards as delineated in each zone are intended to provide the city with maximum flexibility and discretion in the decision making process, based upon the particular issues and circumstances in effect at the time development is proposed. These standards shall represent the maximum allowable building envelope for a given property. The actual development allowed might be less than that designated by the general standards for the zone because of localized condition identified during the design review process.

(4) Environmental Context. Development should preserve and, where possible, enhance the city's scenic natural setting. Natural features, such as existing heritage trees, rock outcroppings, ridgelines and significant watercourses should be protected. Existing terrain should be utilized in the design and grading should be minimized.

(5) General Plan Compliance. The development shall comply with all applicable policies of the general plan, including all of its elements, applicable specific plans, and the certified local coastal program.

(6) Historic Preservation. Destruction or alteration to properties with historic significance, as identified in the city's historic resources inventory or historic register should be avoided, whenever possible. Special preservation consideration should also be given to any structures over forty-five years old.

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.

Extent of Project Approved Unclear/Removal of Non-Conformities

In its action on local coastal development permit 16-2180, the City approved (pursuant to City Council Resolution No. 17.032) "demolition of a Single-Family Dwelling at 31987 Coast Highway." (See [exhibit 2](#)). The City's approval did not include any special conditions. No demolition plans are included in the record. Although "demolition of a single family dwelling" is the project description, other development in addition to the single family dwelling is present on the subject site, as reflected in the site survey in the record. The other development present at the site, as reflected on the site survey, includes, but is not necessarily limited to, a private stairway down the bluff and a private funicular down the bluff. In addition, photos in the record depict gunite immediately seaward of the existing residence and extending seaward, down the bluff.

Because the file reflecting the City's action does not include demolition plans, it is unclear whether these features were included in the development approved by the City, or even considered in its action at all. The City's certified LCP Land Use Element (LUE) includes the following policies (also cited earlier):

***Action 7.3.8** On oceanfront bluff sites, require applications where applicable, to identify and remove all unpermitted and/or obsolete structures, including but not limited to protective devices, fences, walkways and stairways, which encroach into oceanfront bluffs.*

***Action 7.3.5** Prohibit development on oceanfront bluff faces, except public improvements providing public access, protecting coastal resources, or providing for public safety. ...*

Although the subject site includes development such as that referenced in Action 7.3.8, the City did not address it in any way in its action on local coastal development permit 16-2180. In addition, Action 7.3.5 prohibits development on oceanfront bluff faces (with limited exceptions). Further, without project demolition plans it is not possible to know the extent of existing development to be removed under the demolition project approved by the City, which may have implications for consistency of the development with any other number of coastal resources protected under the LCP, including geological and coastal hazards, protection of water quality, and protection of vegetation, wildlife, and other Environmentally Sensitive Areas. Without an understanding of the exact extent and scope of the proposed demolition (e.g., demolition plan), analysis of potential impacts to these coastal resources simply cannot be meaningfully evaluated, as further discussed below. The LCP policies cited above suggest that the existing bluff face development may be appropriate to be considered for removal and prohibit most new private development on oceanfront bluff faces; however there is no discussion in the record regarding the existing bluff face development or the applicability of Action 7.3.5 as a bluff top lot. Without project plans and with no discussion addressing the existing bluff face development, it is not possible to determine the consistency of the project with these LCP policies, and therefore the Commission finds that the project does raise substantial issue regarding conformity with LCP.

Hazard

The appellants contend that the proposed development is inconsistent with the hazards policies of the LCP. These policies require, among other things, that all new development be (per the policies cited above): adequately evaluated to ascertain potential negative impacts on natural resources and on existing adjacent development; designed and sited to avoid hazardous areas and minimize risks to life and property from coastal and other hazards; and assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic 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, LCP policies (cited above) require: on bluff sites, that applications include a geologic/soils/geotechnical study that identifies any geologic hazards affecting the proposed project site, any necessary mitigation measures, and that contains 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. Moreover, the LCP requires preparation of in-depth analysis of constraint issues for properties so that the nature of the constraints 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. In addition, the Open

Space/Conservation Element of the LCP includes policies with similar requirements (these policies are cited previously).

Although no geologic/soils/geotechnical study is included in the project file, the file does include a Structural & Construction Feasibility Assessment prepared by Brion Jeannette Architecture, Core Structure, Inc., and Corbin-Reeves Construction (December 22, 2016) which assesses the structural condition of the existing residence and finds that “the house’s foundation and structural brick walls are failing and have little to no structural value at this time.” In addition this assessment states: “The gunite on the slope is cracked and erosion is evident below.” It also suggests that the slopes need to be stabilized (“There are two recommendations for stabilizing the slope ...”). Although this Assessment references a Preliminary Geotechnical Investigation by Geofirm dated September 13, 2016, no Geotechnical, Geological, or Soils study(ies) are included in the project file. In addition, the Structural & Construction Feasibility Assessment included in the file was not prepared/signed by a licensed professional Engineering Geologist or Geotechnical Engineer, as required by LCP LUE Action 10.2.5. Nevertheless, the language in the Structural & Construction Feasibility Assessment suggests that there may be stability issues with respect to the existing residence as well as the site itself.

A Coastal Hazard Analysis (prepared by GeoSoils, dated 6/3/16) prepared for the site is included in the project record. This Analysis considers potential hazards from shoreline erosion and wave runup. However, it does not assess stability of the site related to issues other than or in addition to ocean hazard, and does not constitute the geologic/soils/geotechnical study required by the LCP.

Although the subject site is an oceanfront, bluff top lot and information in the record suggests that stability may be an issue, none of the evaluations required by the policies of the LCP are included in the project record. In addition, because the development includes demolition only, it is not known how long the bluff top will remain exposed. It may be necessary to provide methods for stabilizing the site while it remains vacant as necessary to address erosion and other potential site stability issues. No discussion on how or whether demolition of the existing single family dwelling would affect the stability of the site is included in the record. Demolition at the subject site may be problematic due to the site location, possible stability issues, and, potentially, long term vacant state.

As discussed above, it is not clear whether the City’s approval includes removal of the existing bluff face development. Since such removal may be appropriate, this possibility magnifies the need for appropriate evaluation and construction method review. Even though the project includes demolition only, the methods of accomplishing demolition should be reviewed and evaluated to assure the demolition work does not destabilize the subject site or surrounding area. And as required by LCP LUE Action 10.3.2, such review is appropriate for all stages of development, which includes the demolition stage. The LCP policies cited above require that demolition construction methods be identified and evaluated to assure stability. In addition, no special conditions were considered that may be necessary to assure consistency with the LCP requirement to assure the stability and structural integrity of the site and surrounding area. Without the evaluations and recommendations required by the LCP, it is not possible to determine the consistency of the project with these LCP policies, and therefore the Commission finds that the project does raise a substantial issue regarding conformity with LCP.

Natural Resources

The appellants contend that the development approved by the City is inconsistent with the LCP policies that require protection of natural resources including habitat resources. The LCP policies cited above require that all new development is adequately evaluated to ascertain potential negative impacts on natural resources, and that development be designed and sited to protect natural resources and environmentally sensitive resources, and to minimize landform alteration. Nothing in the record indicates that the subject site was evaluated to ascertain potential negative impacts on natural resources, or that the demolition would be designed to protect any natural resources and/or environmentally sensitive habitat if it is determined to be present on-site. In addition, the extent of removal associated with the demolition in terms of excavation of the site is not known and so it cannot be determined whether the demolition will minimize landform alteration of the bluff top/bluff face. The LCP policies cited above require protection of natural resources and minimization of landform alteration. Because the extent of demolition is not known, and because the required evaluations are not included in the project record, it is not possible to determine the consistency of the project with these LCP policies, and therefore the Commission finds that the project does raise a substantial issue regarding conformity with LCP.

Water Quality

The appellants contend that the proposed development, demolition of the existing single family dwelling on an oceanfront, bluff top lot, is inconsistent with the water quality policies of the certified LCP. In support of these contentions, the appellants have cited a number of specific LCP water quality policies with which the development is inconsistent, including policies that require incorporation of appropriate Best Management Practices (BMPs) to reduce pollutants and runoff from the proposed development; minimize volume and velocity of runoff from the site to avoid excessive erosion and sedimentation; minimize the introduction of pollutants into coastal waters (including the ocean adjacent to the subject site); and, to minimize construction impacts including erosion, sedimentation and other pollutants in runoff from construction-related activities to minimize the impacts on water quality.

In addition, LUE Policy 7.3, Action 7.3.6 requires that new development on oceanfront bluff top lots 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. The development approved by the City permits demolition only. It is not known for how long after demolition the bluff top site may remain vacant. The LCP requires that site drainage be controlled to protect water quality and to minimize erosion. However, the project record does not include measures to be incorporated into the project and the City's approval did not include any requirements to address site drainage, either during active demolition work or in the period after demolition is complete. Without measures to address site drainage, it is not possible to determine the consistency of the project with these LCP policies, and therefore the Commission finds that the project does raise a substantial issue regarding conformity with LCP.

Conditions/Mitigation

The appellants contend that the City's LCP Implementation Plan Title 25 Zoning, Chapter 25.05 *Administration*, Section 25.05.040 *Design Review* and Chapter 25.07 *Coastal Development Permits*, establish review criteria and permit procedures required to be applied when considering approval of permits, including coastal development permits. Section 25.07.012 *Procedures*, Sections 25.07.012(H) *Findings* requires that a coastal development permit may only be approved if specified findings can be made, including that the project is in conformity with the certified Local Coastal Program. In addition, Section 25.07.012(G) *Conditions*, 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 appellants contend that, for the reasons described above, the finding cannot be made the project approved by the City is consistent with the certified LCP. In addition, the City has the authority to impose conditions as necessary to ensure consistency with the certified LCP, but did not do so in this case. As described above, based on the information in the project record, the project approved by the City cannot be found to be consistent with the certified LCP and thus the approval is inconsistent with the requirements of Chapter 25.07.012(H). In addition, conditions could have been imposed that may have made the project consistent with the certified LCP. Therefore the Commission finds that the project does raise a substantial issue regarding conformity with LCP.

Public Access

The appellants contend that the project approved by the City is inconsistent with the public access policies of the Coastal Act. Section 30210 of the Coastal Act requires that public access be maximized. 1000 Steps public beach is a sandy public beach located at the toe of the coastal bluff at the subject site. A public accessway to 1000 Steps beach is located within approximately 200 feet of the subject site. The appellants contend that the demolition project will likely require numerous trips by large trucks and potentially other large construction equipment. The appellants contend that the demolition work including construction trucks could interfere with public access by limiting traffic lanes and public, on-street parking spaces, as well as interfering with pedestrians. Moreover, it is not clear that demolition access from the public beach is prohibited. Use of the public beach for a private demolition project raises public access concerns. Access to the coast is required by the Coastal Act and LCP. Interference with existing public parking or hindering access with poor circulation around coastal areas can have a negative impact on coastal access. Appellants argue that the circulation and traffic congestion and decrease of available parking and potentially availability of the public beach itself caused by the project would impede public access.

Since the extent of demolition, demolition methods, project phasing, and staging are not known, it cannot be determined whether the project approved by the City would adversely impact public access. It may be that it would be necessary to limit the demolition project to outside the peak use summer months and/or prohibit construction access from the public beach, if deemed necessary to avoid interfering with public access. Or, other measures may be appropriate. Without more information regarding potential impacts to public access, it is not possible to determine the consistency of the project with the public access policies of the Coastal Act, and therefore the Commission finds that the project does raise a substantial issue regarding conformity with LCP.

APPELLANTS' CONTENTIONS THAT DO NOT RAISE A SUBSTANTIAL ISSUE

Bifurcating Project

The project originally before the Design Review Board included, in addition to demolition of the existing residence, construction of a new residence. That aspect of the project (construction of a new residence) was removed from consideration by the applicant, leaving only consideration of demolition of the existing structure. The appellants contend that, because it is known that the project will eventually include a proposal to construct a new residence, both aspects of the project should be heard together. The appellants contend that separating the project components is an attempt to avoid environmental review. Improper project segmentation or piecemealing is properly understood as an issue subject to a claim under CEQA. The LCP does not contain any relevant policies regarding project segmentation/piecemealing, and per Section 30603(b)(1) of

the Coastal Act the only grounds for an *appeal* of a locally-issued CDP is “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” (emphasis). Therefore, the Commission finds that the appellants’ contention regarding bifurcation of the project raises no substantial issue with regard to conformance with the certified Local Coastal Program at this stage of the appeal. (This project segmentation/piecemealing issue may become relevant at the de novo stage if the Commission approves a CDP for the proposed development as a matter of CEQA compliance.)

The appellants further contend that the burden of proof for the City Council to overturn the Design Review Board’s (DRB) denial is on the applicant, pursuant to Section 25.05.070(B)(9)(e), to demonstrate by a preponderance of the evidence that the DRB action was incorrect. The applicant did present additional information under the City Council appeal. It is ultimately a decision for the City Council to decide what the preponderance of the evidence is and whether the appeal of the DRB is appropriately overturned. Therefore, the appellants’ contention regarding the applicant’s burden of proof raises no substantial issue with regard to conformance with the certified Local Coastal Program.

Historic Preservation

The appellants cite sections of the LUE and Title 25 which provide historic preservation standards. However, the LUE policies regarding historic preservation encourage, rather than require preservation of historic or potentially historic structures. For example, LUE Policy 2.2 states: “Encourage the preservation of historically significant residential structures and protect the character-defining components of Laguna Beach’s traditional neighborhoods.” The appellants also cite Chapter 25.45 *Historic Preservation* of the LCP Title 25 Zoning. However, Chapter 25.45 establishes the process for listing a structure on the City’s Historic Register or Historic Inventory and provides incentives intended to promote listing an historic property. Furthermore, listing an historic property on the Historic Register or Historic Inventory is not required by this section. Therefore, the appellants’ contention regarding historic preservation raises no substantial issue with regard to conformance with the certified Local Coastal Program.

The appellants also argue that the existing residence on the site is potentially an historic structure, and as such triggers the requirement to perform a CEQA Initial Study. However, the City did consider whether to require an Initial Study or a CEQA Categorical Exemption, and determined a Categorical Exemption was appropriate. The City is the lead agency for CEQA review, and the City considered and made a determination as required by CEQA. Consistency with CEQA is up to the lead agency, in this case the City of Laguna Beach. The Coastal Commission is not the lead agency and does not make that determination. Therefore, the appellants’ contention that a CEQA Initial Study is required due to the existing structure’s potential to be deemed historic raises no substantial issue with regard to conformance with the certified Local Coastal Program.

Environmentally Sensitive Area

The appellants also contend that the City was required to prepare an Initial Study under the CEQA, citing LUE Policy 7.4, Action 7.4.2, which states: “*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.)*” Although the City’s Notice of Public Hearing for this project states, in the project description, that the proposed development will include “*construction in an*

environmentally sensitive area (oceanfront)” it more accurately should have stated “*construction in an Environmentally Sensitive Land/Resource.*” The LCP LUE Glossary defines an Environmentally Sensitive Land/Resource as:

*“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; 5) hillside slopes greater than 45%; 6) adjacent wildland area, which requires fuel modification; and 7) major or significant ridgelines.”* (Emphasis added.)

Meanwhile, the LCP OSC Policy 8F describes “Environmentally Sensitive Areas (ESA’s) as:

“Environmentally Sensitive Areas (ESA’s) as defined in Section 30107.5 of the California Coastal Act shall be identified and mapped on a Coastal ESA Map. The following areas shall be designated as Environmentally Sensitive Areas: those areas shown on the Biological Resource Values Map in the Open Space/Conservation Element as “Very High” habitat value, and streams on the Major Watersheds and Drainage Courses Map which are also streams as identified on the USGS 7.5 Minute Quadrangle Series and any other areas which contain environmentally sensitive habitat resources as identified through an on-site biological assessment process, including areas of “High” and “Moderate” habitat value on the Biological Resources Values Map and areas which meet the definition of ESA’s in Section 30107.5 of the Coastal Act, including streams, riparian habitats, and areas of open coastal waters, including tidepools, areas of special biological significance habitats of rare or endangered species, near-shore reefs and rocky intertidal areas and kelp beds.”

The LCP LUE Glossary defines an Environmentally Sensitive Habitat Area (ESHA) as:

“The Coastal Act defines environmentally sensitive area as 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 developments.”

The City’s use of the term ESA in its LCP mimics the term Environmentally Sensitive Area as that term is defined in Section 30107.5 of the Coastal Act. Both the ESA description in Policy 8F of the OSC and the definition of ESHA in the LUE Glossary specifically reference the Coastal Act definition of ESA. The term Environmentally Sensitive Land/Resource is specifically defined separately, as a distinct entity, in the LCP LUE Glossary. It is the term Environmentally Sensitive Land/Resource that specifically references land or resources located on the “**oceanfront.**” Neither the LCP LUE Glossary nor OSC Policy 8F include the term “oceanfront.” Moreover, the subject site is not mapped as habitat on the City’s Biological Resources Values Map (under any of the three habitat value categories of Very High, High, or Moderate), is not identified as a stream on the Major Watersheds and Drainage Courses Map, and it is not identified as a stream on the USGS 7.5 Quadrangle Series. Nothing in the project record indicates that the site supports significant habitat. There is no biological assessment of the site in the project record. Therefore, oceanfront land, such as the subject site, is accurately called an

Environmentally Sensitive Land/Resource, not automatically ESA. Oceanfront land may also constitute ESA, but that would need to be based on site specific information.

The area is recognized in the LCP as environmentally sensitive land/resource. Consequently, as described previously, the LCP requires that the project site should be *evaluated* for the presence of natural resources on the site, including sensitive habitat. Moreover, the appellant did not identify any coastal resources, including sensitive habitat, that may be affected by the City-approved development.

Notwithstanding the language on the City’s Notice of Public Hearing, the term ESA (environmentally sensitive area) is not appropriate for this site. So, the requirement of LUE Policy Actions 7.4.2 and 10.3.1 to conduct an initial study do not apply to the subject site. Therefore, the appellants’ contention that a CEQA Initial Study is required because the subject site is an ESA is in error and so does not raise a substantial issue with regard to conformance with the certified Local Coastal Program.

The appellants also cited LUP Policy 7.4, Action 7.4.1 as a basis for requiring an initial study for the proposed development. Action 7.4.1 states: “*Prepare and adopt California Environmental Quality Act (CEQA) thresholds of significance tailored to address the City’s natural resources, such as marine resources, streams, drainage courses, ESHA and high-and very-high habitat.*” This action however, requires the City to prepare, in the future, a general document, applicable citywide. It is intended to assist the City in carrying out CEQA in a more uniform manner. The policy does not require that the City complete the document as a function of considering a specific project proposal. In the interim, the City will apply CEQA using other thresholds of significance to each development as it arises. Thus, this policy is not applicable to the current project. Therefore, the appellants’ contention regarding historic preservation raises no substantial issue with regard to conformance with the certified Local Coastal Program.

Bluff Edge Location

The appellants contend that the LCP requires that the bluff edge be determined with new development and that the proposed demolition constitutes new development. The Commission agrees that demolition on a coastal bluff constitutes new development. As described above, the Commission also agrees that the extent of what was included in the City’s approval of “demolition of the single family dwelling” is unclear and that consideration of whether the existing non-conforming development on the bluff top/bluff face also needs to be demolished with the proposed demolition did not occur. Even using the bluff edge as described in the record, non-conforming development exists seaward of the bluff top setback. However, the bluff edge determination is necessary to determine an appropriate development setback from the bluff edge when *construction* is involved. No structures are proposed to be constructed, so there is nothing that must be set back here. When a structure is proposed to be constructed, the bluff edge will need to be determined, consistent with all the requirements of the certified LCP. Therefore, the appellants’ contention regarding the need to determine the location of the bluff edge now raises no substantial issue with regard to conformance with the certified Local Coastal Program.

LCP Contains Language Not Certified by the Coastal Commission

The appellants contend that the City, by not maintaining the LCP and updating the Municipal Code, creates confusion for the public and a burden for the Coastal Commission and its staff. It is true that the City’s LCP contains language approved by the City, but not certified by the Coastal Commission, and that as it has been amended through the years, the LCP has not been

updated universally throughout all the documents that make up the LCP. And that does make it confusing for the public, the Commission, and Commission staff. It would be extremely useful for the City's LCP to be cleaned up such that only certified language is included in the documents purported to be the LCP. Nevertheless, the uncertainty of certain portions of the LCP does not change the standard of review, which remains the LCP as certified by the Coastal Commission, nor do the erroneous uncertified portions of the LCP prevent Commission staff from adequately reviewing the proposed development on appeal for consistency with the certified LCP. Therefore, although not an ideal situation, the appellants' contentions regarding the current state of the LCP raise no substantial issue with regard to conformance with the certified Local Coastal Program.

Archaeology/Paleontology

The appellant contends that the project may have effects on archaeological and/or paleontological resources, but has not been conditioned to address such effects. In support of this allegation, the appellant cites discussion text from the LCP OSC Element from Topic 12 Archaeology/Paleontology acknowledging that issues relating to cultural/scientific resources focus on the need for proper mitigation measures, including preservation of archaeological sites. The appellant indicates that a property more than half a mile from the site, at 31461 Coast Highway, contains a known archaeological site: P-30-000842. The appellant acknowledges that the subject project "... will most likely not have any effects on that known Coast Hwy. archaeological site ..." but should nonetheless have mitigations required to protect any potential archaeological/paleontological discoveries during demolition/construction. Finally, the appellant states that an initial study should be required.

Policy 12-C requires that development adjacent to a historically significant site be sited and designed to protect the visual setting of the site. Policy 12-D requires preservation of cultural/scientific sites. However, the City's LCP does not contain policies identifying when a project must provide an archaeological analysis. Typically, the Commission has not required archaeological analysis related to development on existing developed single family lots, unless there are known resources in the area. No resources are known to exist in the area of the subject site. The appellant contends that the City should have required an Initial Study under CEQA for the proposed development. However, the City did consider whether to require an Initial Study or a CEQA Categorical Exemption, and determined a Categorical Exemption was appropriate. The City is the lead agency for CEQA review, and they considered and made a determination as required by CEQA. Consistency with CEQA is up to the lead agency, in this case the City of Laguna Beach. The Coastal Commission is not the lead agency and does not make that determination.

The appellant indicates that no local Native Americans were consulted for the proposed project, even though a member of the Tongva Ancestral Territorial Tribal Nation had requested to be added to the City's tribal consultation list. The Native American Heritage Commission maintains the Tribal Consultation List. This Tongva Nation member will be included on the public hearing notice list for this appeal.

FIVE FACTORS AND CONCLUSION

Applying the five factors discussed earlier leads to the conclusion that the appeal raises a significant issue with respect to conformance with the certified LCP.

The first factor is 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 LCP and public access policies of the Coastal Act. The City's approval simply approves "demolition of the existing single family dwelling at 31987 Coast Highway." However, as discussed above, no project plans (demolition plans) are provided. Whether the City's approval includes demolition of all development on site or not, and what specifically was approved for demolition is not clear and there is no supporting documentation in the record. The City's action does not indicate that the evaluations and considerations required by the various LCP polices cited previously were prepared and considered. The City's approval as reflected in the project record does not evaluate how demolition would affect stability of the site or surrounding development, it does not consider whether erosion will be a factor or could become a factor if the site is left vacant for an extended period of time, as it is not known when or if future development would occur. Protection of natural resources and of water quality is also not considered in the City's approval as reflected in the project record. As described above, the City's approval did not sufficiently consider the project's consistency with all relevant LCP policies that apply to the development and the project site. Nor did the City's approval consider the public access policies of the Coastal Act. Therefore the Coastal Commission finds that the City provided an inadequate degree of factual and legal support for its decision.

The second factor is the extent and scope of the development as approved or denied by the local government. Although the project approved by the City may seem relatively minor in that it is demolition of only one single family dwelling in an existing developed neighborhood, relative to the existing development and the project site itself, complete demolition of the existing residence is significant in terms of extent and scope.

The third factor is the significance of the coastal resources affected by the decision. The subject site is an oceanfront bluff top lot which raises concerns that are not routinely raised on interior, in-fill lots. The majority of ocean-fronting lots in the City are bluff top lots. Bluff top lots raise specific concerns, including hazards/geologic stability, protection of water quality, especially due to the location adjacent to the beach and ocean, and potentially public access. Therefore, the coastal resources potentially affected are significant.

The fourth factor is the precedential value of the local government's decision for future interpretations of its LCP. The subject site is an oceanfront, bluff top lot. The majority of ocean fronting development in Laguna Beach is bluff top development. The more problematic sites in the City tend to be the ocean fronting, bluff top lots. Because the City's approval did not consider significant LCP policies as they apply to ocean front bluff top lots, if unaddressed, this decision could be precedential. It is important that, even when the development under consideration involves demolition only, approving development, the extent of which is not clear, without project plans, without the required evaluations, without assessments of whether site stability will be assured, whether natural resources and water quality will be protected, and without consideration of whether appropriate project conditions should be imposed, could indeed be considered precedential, especially with regard to bluff top development. Therefore, the decision of the local government on this project could very likely influence future permit decisions made in the City's coastal zone.

The final factor is whether the appeal raises local issues, or those of regional or statewide significance. Issues relating to bluff top development arise up and down the state. While various areas may have issues specific to their area, the questions of bluff stability, protection of natural

resources and water quality, and maximizing public access are nearly universal to such development throughout the state. In addition, the fact that the project represents demolition only, could result in similar demolition only projects throughout the Coastal Zone being approved without the required application of relevant LCP and/or Coastal Act policies. Therefore, the City's approval does raise issues of regional and statewide significance.

For all of the reasons described above, the Commission finds that the appeal raises a **substantial issue** as to conformity with Laguna Beach's LCP and with public access policies of Chapter 3 of the Coastal Act.