

CALIFORNIA COASTAL COMMISSION

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



W25c

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STAFF REPORT: APPEAL – SUBSTANTIAL ISSUE

Appeal No.: A-5-LGB-18-0071

Applicants: Martin & Deborah Hale

Agent: Ann Christoph, Landscape Architect

Local Government: City of Laguna Beach

Local Decision: Approval with Conditions

Appellants: Mark & Sharon Fudge

Project Location: 15 Camel Point Drive, Laguna Beach, Orange County (APN: 056-020-48)

Project Description: Appeal of City of Laguna Beach Local Coastal Development Permit No. 18-0130 for a new 40-ft. long, 6-ft. high retaining wall with five 24-in. diameter caissons (8-to 10-foot deep), drainage, and landscaping on an ocean-fronting, bluff property.

Staff Recommendation: Determine that substantial issue exists.

SUMMARY OF STAFF RECOMMENDATION

Local Coastal Development Permit (CDP) No. 18-0130, approved by the City of Laguna Beach on September 13, 2018, authorizes a new retaining wall with five caissons, drainage, and landscaping at 15 Camel Point Drive in Laguna Beach. The subject site is an approximately 15,400-square-foot ocean-fronting lot located on the bluff above two public beaches, Aliso Beach and West Street Beach.

Staff recommends that the Commission determine that a **substantial issue exists** with respect to the grounds on which appeal number A-5-LGB-18-0071 has been filed because the City did

not provide adequate legal or factual support for its finding that the proposed retaining wall is not a bluff protective device and is consistent with the certified Local Coastal Program (LCP) provisions that apply to development on an ocean-fronting bluff. In addition, the City did not complete an alternatives analysis. In addition, the scale of the project is unclear because grading information has been not provided. Further information is required to determine whether or not the project is consistent with the relevant policies of the LCP and the public access policies of the Coastal Act. Staff recommends that the Commission find a substantial issue exists for the reasons summarized above, and described in greater detail in the body of this report.

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

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APPENDICES

Appendix A – Relevant LCP Policies and Definitions

EXHIBITS

Exhibit 1 – Project Location

Exhibit 2 – Project Plans

Exhibit 3 – Appeal

Exhibit 4 – Local CDP No. 18-0130 & Design Review No. 18-0129

Exhibit 5 – City Resolution for local CDP No. 18.33

I. MOTION AND RESOLUTION – SUBSTANTIAL ISSUE

Motion: *I move that the Commission determine that Appeal No. A-5-LGB-18-0071 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-18-0071 presents a **SUBSTANTIAL ISSUE** with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the certified Local Coastal Plan and/or the public access policies of the Coastal Act.*

II. APPELLANTS' CONTENTIONS

The Commission received a valid Notice of Final Local Action for City of Laguna Beach Local Coastal Development Permit (CDP) No. 18-0130 on October 18, 2018. Local CDP No. 18-0130 approves the construction of a new retaining wall with five caissons, drainage, and landscaping on an ocean-fronting, bluff property.

On October 31, 2018, the appeal was filed by Mark & Sharon Fudge (**Exhibit 3**). The appellants contend that the City's approval does not comply with the City's certified LCP. More specifically, they raise the following concerns with the proposed development:

- 1) The City did not properly determine the bluff edge and setbacks, and the City failed to take into account potential bluff retreat and did not require necessary mitigations.
- 2) The purpose of the project is unclear (whether it is or is not meant to serve as a protective device). The proposed retaining wall is likely a shoreline protective device and the City should have reviewed alternatives to ensure the proposed development is the least environmentally damaging option.
- 3) The City failed to issue a grading permit for the project.
- 4) The City did not require archeological/paleontological monitoring for the earth-disturbing activities.
- 5) Nonconforming structures were not evaluated for removal.
- 6) The City failed to consider requiring the removal of unpermitted work.

- 7) The City failed to condition the permit to require waiver of bluff protective devices to protect new development.
- 8) The City failed to properly notice the project in a manner that would allow the public and the Commission to have a complete understanding of the scope of this development.
- 9) The City failed to generate an Initial Study required by LUE Policy 7.4.2.

III. LOCAL GOVERNMENT ACTION

On May 22, 2018, the City of Laguna Beach Design Review Board (DRB) held a public hearing for the coastal development permit application and other discretionary approvals for the proposed project. Public testimony related to issues concerning view corridors, CEQA compliance, bluff setbacks, and grading permit requirements. The DRB continued the item for a second public hearing.

On September 13, 2018, the City of Laguna Beach DRB held a second public hearing on the proposed project. Changes to the landscape on the property were discussed. The neighbors of the adjacent property at 17 Camel Point Drive expressed concerns regarding view blockage as a result of landscaping improvements/structures proposed by the applicants, as well as concerns regarding maintenance of trees on the applicants' property. The DRB approved the Local Coastal Development Permit (CDP) No. 18-0130 and Design Review No. 18-0129 with the conditions that the potted plants on the deck not exceed the height of the deck railing, and that landscape be maintained and be pruned semi-annually to maintain the height and width as provided on the approved landscape plan, and that volunteers of the acacia plants be regularly removed (**Exhibit 4**).

The project description of DRB Resolution CDP 18.33 (**Exhibit 5**) approving Local CDP No. 18-0130 reads as follows:

“The Design Review Board granted Design Review 18-0129 and Coastal Development Permit 18-0130 subject to conditions for modifications to a prior approval including a new retaining wall, drainage and landscaping.”

The City imposed three conditions of approval, which include: 1) potted plants on the deck that protrude southerly not exceed the height of the deck railing; 2) landscape be maintained and semi-annually to maintain the height and width as provided on the approved landscape plan; and 3) volunteers that come from the Acacia plant be regularly eliminated.

The DRB also adopted a CEQA Categorical Exemption for the development. The Coastal Commission's South Coast District Office received the City's Notice of Final Action on October 18, 2018. On October 31, 2018 the appeal was filed by Mark and Sharon Fudge (**Exhibit 3**) during the ten (10) working day appeal period. No other appeals were received. The City and applicant were notified of the appeal by Commission staff in a letter dated November 6, 2018. The City has not forwarded its record for the permit to the Commission staff in time for the writing of this staff report.

IV. APPEAL PROCEDURES

After certification of Local Coastal Programs (LCP), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits. Development approved by cities or counties may be appealed if they are located within certain geographic appealable areas, such as those located between the sea and the first public road paralleling the sea or within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of a coastal bluff. Furthermore, developments approved by counties may be appealed if they are not a designated "principal permitted use" under the certified LCP. Finally, any local government action on a proposed development that would constitute a major public work or a major energy facility may be appealed, whether approved or denied by the city or county [Coastal Act Section 30603(a)].

Section 30603 of the Coastal Act states in relevant part:

(a) After certification of its Local Coastal Program, an action taken by a local government on a Coastal Development Permit application may be appealed to the Commission for only the following types of developments:

(1) Developments approved by the local government between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance.

(2) Developments approved by the local government not included within paragraph (1) that are located on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, stream, or within 300 feet of the top of the seaward face of any coastal bluff.

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

Grounds for Appeal

The grounds for appeal of an approved local CDP in the appealable area are stated in Section 30603(b)(1), which states:

(b)(1) The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified Local Coastal Program or the public access policies set forth in this division.

Section 30625(b)(2) of the Coastal Act requires a de novo hearing of the appealed project unless

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

Qualifications to Testify before the Commission

If the Commission, by a vote of 3 or more Commissioners, decides to hear arguments and vote on the substantial issue question, proponents and opponents will have an opportunity to address whether the appeal raises a substantial issue. The time limit for public testimony will be set by the chair at the time of the hearing. As noted in Section 13117 of Title 14 of the California Code of Regulations, the only persons qualified to testify before the Commission at the substantial issue portion of the appeal process are the applicant(s), persons who opposed the application before the local government (or their representatives), and the local government. In this case, the City's record reflects that Mr. Mark Fudge and Mrs. Sharon Fudge opposed the project in person at the first local hearing. Testimony from other persons must be submitted in writing.

Upon the close of the public hearing, the Commission will vote on the substantial issue matter. It takes a majority of Commissioners present to find that no substantial issue is raised by the local approval of the subject project. If the Commission finds that the appeal raises a substantial issue, the de novo phase of the hearing will follow at a later date during which the Commission will take public testimony.

V. FINDINGS AND DECLARATIONS – SUBSTANTIAL ISSUE

A. PROJECT DESCRIPTION AND LOCATION

The applicants propose a six-foot, 40-foot long high retaining wall with five 24-inch diameter caissons (with a depth of 8 to 10 feet), drainage, and landscaping (**Exhibit 2**).

The project site is a 15,400-square-foot oceanfront lot located at 15 Camel Point Drive, Laguna Beach, Orange County (**Exhibit 1**). The site is located above Aliso Beach and West Street Beach, two public beaches in Laguna Beach between the first public road (Coast Highway) and the sea. The site is currently developed with a primary residence on the bluff. No work is proposed to the residence as part of the locally approved coastal development permit subject to this appeal.

Single-family residences on oceanfront and bluffs characterize the surrounding area. Public access from Coast Highway to the beaches is available via a public access stairway located approximately a quarter-of-a-mile north (upcoast) of the project site.

B. LOCAL COASTAL PROGRAM CERTIFICATION

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

C. FACTORS TO BE CONSIDERED IN SUBSTANTIAL ISSUE ANALYSIS

Section 30625(b)(2) of the Coastal Act requires a de novo hearing of the appealed project unless the Commission determines that no substantial issue exists with respect to the grounds on which the appeal has been filed pursuant to Section 30603(a) of the Coastal Act. The term “substantial issue” is not defined in the Coastal Act or its implementing regulations. Section 13115(b) of the Commission’s regulations simply indicates that the Commission will hear an appeal unless it “finds that the appeal raises no significant question.” In previous decisions on appeals, the Commission has considered the following factors.

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

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

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

D. SUBSTANTIAL ISSUE ANALYSIS

As stated in Section IV of this report, the grounds for an appeal of a CDP issued by the local government are the project’s conformity with the policies of the LCP and with the public access policies of the Coastal Act. The appellant raises several substantial issues discussed in detail below. Therefore, Staff is recommending that the Commission find that a substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603(a) of the Coastal Act. See Appendix A for list of applicable policies of the LCP.

Appellants’ Argument: Bluff face/edge and Bluff Development; Setback requirements.

The appellants assert that there is no evidence in the record to substantiate the applicants’ location of the bluff edge on the project plans. Additionally, the appellants assert that the subject property appears to contain development within what they believe is the LCP-required bluff setback; the LCP requires a 25-foot setback for primary or major accessory structures and 10-foot setback for minor accessory structures. Moreover, the appellants argue the City failed to take bluff erosion and retreat into account, which is relevant to determining bluff setbacks. The appellants aver that a bluff edge determination, consistent with the definition of Oceanfront Bluff edge contained in the certified Land Use Element (LUE) of the LCP, and consideration of the bluff retreat and erosion, is necessary to properly consider and review the project.

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

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

Laguna Beach Zoning Code Section 25.44.050 sets property development standards specifically for Three Arch Bay (not certified by the Commission). Section 25.44.050(C)(2) states:

For the purpose of defining building site coverage, a “bluff line” is that line which separates the buildable pad from the bluff top. The “bluff top” shall be defined as an incline greater than the slope of the buildable pad. The “bluff face” is defined as that portion of bluff which slope is forty-five degrees or greater from horizontal, and whose top is ten or more feet above mean sea level. The net area of the lot is the area that extends from the side corner property lines along the bluff line to the front corner property lines.

Commission staff did not receive a copy of the complete public record file for the proposed development subject to this appeal before the publication of this staff report. However, the City did provide certain documents from the record file as part of its submittal of the Notice of Final Action letter, and the appellants did the same as part of their appeal submittal. In addition, Commission staff is able to access scanned copies of a portion of the record file that are available online in the City’s website (<http://64.58.157.208/sirepub/docsresults.aspx>).

Nevertheless, without the complete record file for the proposed development, Commission staff is unable to confirm if a recent analysis of the top of the bluff, or bluff edge has been prepared. The landscape plan does show that the proposed retaining wall is located inland of a “bluff line” drawn on the plans. Aside from this depiction of a “bluff line” on the landscaping plans, there is no

additional evidence or analysis to substantiate that the bluff edge determination is consistent with the *LUE definition*. It should be noted that in cases of conflict, the certified Laguna Beach Land Use Element prevails over the zoning code. Additionally, if the bluff line shown on the landscaping plan represents a bluff edge that may have been used for prior redevelopment of the property, then the City should have provided findings to clarify how the bluff edge is still appropriate at present and consistent with the certified LUE's current definition of bluff edge (incorporated 2012). The information provided to Commission staff is not sufficient to substantiate the applicants' bluff edge, nor is it sufficient for Commission staff to adequately determine the bluff edge of the development site.

In addition, the appellants contend that the City did not address erosion. Commission staff has not been able to locate a copy of the original geotechnical reports referenced in the supplemental geotechnical response document dated November 3, 2017. Commission staff is unable to confirm whether or not erosion was taken into account in the original geotechnical reports as it is not addressed in the supplemental report. For development on oceanfront bluffs, the LCP requires geotechnical reports that include estimates of the long-term average bluff retreat/erosion rate over the expected live of the development to ensure that the project site is suitable for development pursuant to LUE Action 10.2.5 (see Appendix A). Accordingly, erosion is a factor that must be accounted for to properly determine the appropriate bluff edge setbacks to ensure that the development will be safe from geologic hazard for its economic life. Therefore, concerns regarding the project site's location on the bluff and whether or not the proposed development is consistent with the LCP policies concerning bluff edge setback requirements have not been effectively addressed.

Without a proper bluff edge determination and consideration of erosion, it is difficult to know whether or not the City-approved development is consistent with the policies of the LCP and to identify the necessary and appropriate conditions and site constraints (e.g. minimum bluff setbacks, no development on the bluff face, development must be sited and designed in a manner that would not require protective devices, placement of erosion control measures, drainage, native and drought-tolerant non-invasive landscaping, etc.). The City's findings fail to provide an adequate degree of factual and legal support for its decision to approve the proposed development and grant a Local CDP. Further information is required to determine whether or not the project is consistent with all the applicable policies of the LCP. Therefore, the Commission finds that the project does raise a substantial issue with respect to this issue raised by the appeal.

Appellants' Argument: City should have considered alternatives to the Bluff Protective Device.

The appellants state that although it is unclear whether or not the retaining wall is intended to function as a bluff protective device, there are multiple references to 'slope stabilization' and 'erosion control' in the record. Therefore, the appellants assert that the City-approved caisson-supported retaining wall is likely a form of bluff protection. Accordingly, the appellants assert that the City erroneously authorized the caisson-supported retaining wall without any consideration of other feasible and reasonable alternatives pursuant to LCP requirements.

Policy 1.5C of the Open Space/Conservation (OS/C) Element of the certified LUP, which relates to seawalls and other shore protection devices, states, in relevant part:

An investigation of reasonable and feasible alternatives that accomplish the same, or similar, level of protection must be provided with every application for the construction of a shore-protection device...

Policy 1.5C broadly governs shore protection devices and clearly requires that the local government consider any feasible alternatives. In addition, other policies in the certified LUP specifically govern the use of oceanfront bluff protective devices and similarly require that the City consider alternatives to any proposal involving bluff protection. Action 7.3.13 of the LUP (see Appendix A) limits the use of bluff protective devices to the minimum required to protect “existing” development and requires that any such protective devices be sited and designed as far landward as possible. The certified LUP does not include a definition of “existing” building or structure. As such, one may refer to the policies of the Coastal Act as guidance on how to interpret the LCP. In the context of Coastal Act Sections 30253 and 30235, “existing development” refers to development that existed prior to the effective date of the Coastal Act. In any case, the primary residence appears to have been completely reconstructed circa 2005 based on historical aerial photographs and public hearing minutes related to the subject local CDP; therefore, the residence does not pre-date the Coastal Act, and does not enjoy the rights to protection set forth in Section 30235 of the Coastal Act and Action 7.3.13 of the LUE.

Regarding accessory structures, Action 7.3.13 of the LUP also states, in relevant part:

*...accessory or ancillary structures such as decks, patios, pools, tennis courts, cabanas, stairs, **landscaping**, etc. No shoreline/bluff protective device shall be allowed for the sole purpose of protecting an accessory structure. (emphasis added)*

At the local public hearing for the project on March 22, 2018, the applicants’ representative, Ms. Christoph, clarified that the intended purpose of the retaining wall is “to stabilize the slope and to support the landscape.” Based on the City’s project overview (**Exhibit 3, page 19**), several trees have fallen along the seaside of the property since 2000. Most recently, a Monterey Cypress tree uprooted and fell onto the adjacent property at 17 Camel Point Drive in January 2017. Subsequently, a building code enforcement case was opened at the subject property requiring that erosion control measures be provided in order to prevent further damage. However, the City has indicated that erosion control measures have since been implemented and the City has closed the building code enforcement case.

In addition, applicants provided to the City a supplemental geotechnical document with a slope stability analysis dated November 3, 2017, which indicates that the factor of safety (FOS) computed for the project site exceeds the required minimum FOS of 1.5 for slope stability under static condition and 1.2 under seismic condition. The report presents recommendations for enhancing slope stability such as adequate drainage measures and slope planting of deep-rooted vegetation native to Southern California that would require little watering.

Nonetheless, the applicants are proposing to construct a retaining wall at present that would involve imbedding caissons into the San Onofre rock to stabilize the ocean-fronting slope to establish permanent planting. It appears that the City-approved retaining wall is intended to serve as a bluff protective device, which, although not raised by the appeal and not a basis for finding substantial issue, should not be permitted for the sole purpose of protecting an accessory structure (e.g.

decks, stairs, *landscaping*, *drainage*, etc.) pursuant to Action 7.3.13. Development is required to be sited and installed in a manner sufficient to avoid the need for protective devices pursuant to Action 10.2.6. If the bluff protection is intended to protect the landscaping and other accessory structures, the locally-approved project would be inconsistent with the policies of the certified LCP, particularly Action 7.3.13 (cited above).

The appellants are correct that an alternatives analysis was not provided in the record. One potential alternative is that the applicant be required to follow the recommendations provided by the applicants' geotechnical consultant, which suggest that the applicants plant deep-rooted vegetation along the slope that require little watering, such as plants that are native to Southern California, to help enhance the stability of the slope.

Another alternative is to remove any accessory structures pursuant to LUP Action 10.2.8 (see Appendix A), which requires that accessory structures be removed or relocated landward when threatened by erosion, geologic instability or other coastal hazards.

The City should have considered project alternatives to ensure the project's consistency with the certified LCP, and should have supported its decision through adequate findings to address this issue. The City's decision that the development is consistent with the provisions of the LCP is not supported by the Local CDP's findings. Therefore, a substantial issue exists with respect to this issue raised by the appeal.

Appellants' Argument: City failed to issue grading permit.

The appellants assert that the City-approved project was not subjected to the environmental document procedures required by Title 22 of the Laguna Beach Municipal Code and part of the LCP Implementation Plan (Excavating, Grading, and Filling), and that a grading permit was not conceptually reviewed by the City. According to the appellant, more than twenty cubic yards are proposed to be excavated, which renders the approved project ineligible for a grading permit exemption. Furthermore, based on the City's online record, a grading plan has not been provided. The City should have, at a minimum, required and reviewed grading plans to adequately determine the extent of landform alteration resulting from the proposed project. Because the extent of grading and landform alteration cannot be confirmed, it is not possible at this time to determine whether the proposed development is consistent with the LCP. Therefore, the appellant's contention does raise a substantial issue in regards to consistency with the Laguna Beach LCP.

Appellants' Argument: City failed to require archaeological/paleontological monitoring.

The appellants contend that the project, which involves ground-disturbing activities, has the potential to affect archaeological and/or paleontological resources. Therefore, the City should have imposed conditions to ensure that any potential archaeological/paleontological discoveries during construction are protected.

The City's LCP does not contain policies identifying when a project must provide an archaeological analysis. Typically, the Commission has not required an archaeological analysis related to development on existing developed single-family lots, unless there are known archaeological resources in the area. For instance, recently, with regard to another appeal (A-5-LGB-17-0033) of a Local CDP for development involving ground-disturbing activities on an ocean-fronting coastal bluff (31987 Coast Highway, Laguna Beach), the Commission found substantial issue on a number

of contentions raised by the appellants but not on the assertion that the City should have required archaeological/paleontological monitoring since no such resources were known to exist on the site.

However, after a Substantial Issue hearing on this other appeal (A-5-LGB-17-0033), Commission staff received input from a professional archaeologist with expertise in the coastal Orange County area: Patricia Martz, Ph.D. Professor Emerita, Department of Anthropology, California State University, Los Angeles and President of the California Cultural Resources Preservation Alliance, Inc. Dr. Martz indicated that the 31987 Coast Highway site is in fact culturally sensitive as archaeological sites have been recorded in the vicinity. Therefore, Commission imposed a number of special conditions to ensure that cultural resources were protected pursuant to the LCP policies. Although, the LCP may not contain policies identifying when a project must provide an archaeological analysis, it does contain policies regarding the protection of cultural resources.

Regarding protection of cultural resources, the City's certified LCP includes the following Open Space/Conservation Element policies:

Policy 12A

Promote the conservation of land having archaeological and/or paleontological importance, for its value to scientific research and to better understand the cultural history of Laguna Beach and environs.

Policy 12B

Develop a program which systematically inventories, records and preserves significant cultural resources in the community, in accordance with the guidelines in the City's Local Coastal Plan.

Policy 12C

Development adjacent to a place, structure or feature found to be of historical significance shall be designed so that the uses permitted and the architectural design will protect the visual setting of the historical site.

Policy 12D

Preserve cultural/scientific sites, including geologically unique formations having archeological significance.

In this case, no archaeological evaluation for the site has been conducted; consequently, whether the site is considered culturally sensitive is unknown. There is the possibility that archaeological resources exist in the vicinity of the current project subject to this appeal (A-5-LGB-18-0071). In addition, there is the possibility that although construction of the primary residence may have disturbed resources that might have been present at that time, there is nevertheless the potential that resources may yet remain on site. Furthermore, the Commission has previously allowed development in areas identified by project archaeological consultants as too disturbed to contain significant archaeological materials, only to discover, too late, that significant resources were present after all.

Because Commission staff has been provided little to no information regarding cultural resources, it is difficult to know whether the City-approved project is consistent with the cultural resource

protection policies of the LCP and to determine whether conditions are necessary to ensure potential adverse effects on cultural/archaeological resources are avoided. Therefore, the appeal raises a substantial issue as to conformity with LCP policies regarding protection of archaeological resources.

Appellant’s Argument: Removal of Nonconformities.

The appellants contend that the City-approved project does not conform to bluff edge setbacks required by the LCP. Accordingly, the appellants assert, that under LUE Action 7.3.10, the City-approved development constitutes “new development” because the subject retaining wall will increase the size/degree of nonconformities that exist onsite with regard to bluff edge setbacks. Therefore, the appellants argue that the City should have considered requiring the removal of all nonconforming structures pursuant to LUE Action 7.3.10.

Action 7.3.10 of the LUE of the certified LUP states:

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

In the context of Action 7.3.10, “improvements that increase the size or degree of nonconformity”, which would trigger the removal of pre-existing nonconforming oceanfront structures, refers to direct improvements to oceanfront bluff homes or other *principal* structures. In this case, the oceanfronting blufftop single-family residence is the principal structure. The City-approved project authorizes appurtenant improvements to the yard that would be *associated* with the principal bluff residence but would not be direct improvements to the primary structure. No work to the principal residence is proposed as part of the project at issue. Therefore, the requirement to remove pre-existing nonconformities does not appear to have been triggered by the City-approved project. Appellants’ contention related to removal of nonconformities, therefore, does not raise a substantial issue as to conformity with the LCP.

Appellants’ Argument: Removal of unpermitted structures.

The appellants contend that the site has a history of unpermitted development, which should be removed as required by Action 7.3.8 of the LUE.

Action 7.3.8 of the LUE of the LUP requires applications where applicable to removal all unpermitted structures on oceanfront bluff sites.

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

Any non-exempt development activity (i.e. grading) conducted in the Coastal Zone without a valid

coastal development permit, or which does not substantially conform to a previously issued permit, constitutes a violation of the certified LCP and the Coastal Act. However, the information provided to Commission staff is not sufficient to verify whether or not the allegation is true. Because review of alleged unpermitted development relates more to the De Novo review of the application, any outstanding violations at the project site could be taken into consideration during the De Novo phase of this appeal. With the information currently available to the Commission, however, this contention does not raise a substantial issue.

Appellants’ Argument: Waiver of Bluff Protective Devices to Protect New Development.

The appellants assert that the City failed to impose the waiver of bluff protective devices condition pursuant to Action 7.3.9 (see appendix A).

Action 7.3.9 of the LUE of the certified LUP states:

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.

LUE Action 7.3.9 requires that the local government impose a special condition requiring applicants to waive any rights to a shoreline or bluff protection device to protect new development, major remodels, and additions to existing structures on oceanfront and oceanfront bluff sites. The City-approved permit authorizes landscaping, including a landscaping wall (potentially a shoreline protective device), and drainage improvements to improve stability of the slope, all of which relate mostly to appurtenances to a principle structure (i.e. single-family residence). Therefore, the City-approved project does not involve new development, additions to or major remodel of the principle residence within the meaning of LUE Action 7.3.9, nor would it result in the complete redevelopment of the property. This contention in the appeal, therefore, does not raise a substantial issue.

Appellants’ Argument: City failed to properly notice the project.

The appellants argue that the public notices, including the Notice of Final Action (NOFA) to the Coastal Commission, issued by the City for the project did not contain an adequate description of the project, therefore, the City failed to properly reveal the entire scope of the work proposed.

Commission staff received the City’s NOFA on October 18, 2018. As part of its submittal of the NOFA letter for this project, the City included a copy of the resolution, the building plan check requirements checklist, a staff memorandum, hearing minutes, project overview, landscape plan review checklist, reduced project plans, and the slope stability analysis. Therefore, Commission staff determined that the NOFA was properly submitted and was not identified as deficient.

With regard to public noticing requirements, without the complete record file, Commission staff is unable to evaluate the claim that the public was not properly noticed. In any case, Commission staff is recommending that the Commission find substantial issue on other grounds as described in

greater detail above. Accordingly, there will be additional public noticing during the De Novo phase of this appeal, which will provide interested parties more opportunity for public participation.

Appellants’ Argument: City failed to comply with LCP and CEQA requiring Initial Study.

The appellants contend that the project is inconsistent with LUE Action 7.4.2 because the City did not prepare an Initial Study under the California Environmental Quality Act (CEQA), and instead determined that the project is categorically exempt from CEQA. LUE Action 7.4.2 directs the City to 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.” Appellants contend that Action 7.4.2 applies to the City-approved project because it is located on a coastal bluff that automatically qualifies for protection as an environmentally sensitive area (ESA).

Here, however, all coastal bluff-top lots, such as the one involved in this project, are not necessarily ESAs for purposes of LUE Action 7.4.2. In any event, the City determined that the project is categorically exempt from CEQA, and the Commission has no authority to review and invalidate a lead agency’s CEQA determination. Thus, this contention does not raise a substantial issue of compliance with the City’s LCP.

SUBSTANTIAL ISSUE FACTORS:

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

1. The degree of factual and legal support for the local government’s decision that the development is consistent with the relevant provisions of the Coastal Act. The City did not substantially support its finding that the proposed retaining wall is not an oceanfront bluff protective device. The public hearing minutes and project plans indicate that the retaining wall (with caissons) has been designed to function as a protective device. In addition, the City did not substantially support its approval of the project’s consistency with all of the applicable policies of the certified LCP. The City action also provides no detail in regards to the bluff edge, the bluff setback, grading and landform alteration. Overall, there is a low degree of factual and legal support for the local government’s decision, and this factor supports a finding of substantial issue.

2. The extent and scope of the development as approved or denied by the local government. The local government granted a Local CDP for construction of a retaining wall with five caissons. The City’s staff report in support of the project did not include an adequate analysis of alternative actions. Also, the record does not contain an adequate analysis of the proposed grading/landform alteration, either through review of grading plans or requirement of a grading permit. Therefore, it is not possible at this time to determine the scale of the project. Therefore, this factor supports a finding of substantial issue.

3. The significance of the coastal resources affected by the decision. California’s coastal bluffs are a significant resource, and represent a rare and visually pleasing landform which California citizens and governments have historically sought to preserve. Coastal bluffs are dynamic geologic formations, and development on them increases the potential for geologic hazards. Development on

coastal bluffs also can have significant impacts on scenic resources and public access opportunities. The LCP and the Coastal Act provide coastal bluffs with special protections. This factor supports a finding of substantial issue.

4. The precedential value of the local government’s decision for future interpretations of its LCP. Allowing the local government’s decision to approve improvements potentially sited on a bluff face would set a negative precedence for future interpretations of its LCP. If Local Coastal Development Permit No. 18-0130 is found to be consistent with the LCP based on the current record, there is a potential that future applicants, especially within the vicinity, will reference this permit if they wish to develop other oceanfront coastal bluff sites, of which there are hundreds in Laguna Beach. Without adequate information to determine the bluff edge and the extent and scope of the proposed development, allowing the City’s local CDP approval to stand would result in adverse precedence regarding application of the LCP’s various resource protection policies (specifically, relating to bluff top/face development). This factor supports a finding of substantial issue.

5. Whether the appeal raises local issues, or those of regional or statewide significance. Approval of oceanfront bluff protective devices is an issue of statewide significance, given that coastal bluffs are an important coastal resource throughout the state, not just in Laguna Beach. (*See* third factor above.) Requiring consistency with the certified LCP (particularly policies relating to bluff face/top development) and the public access and recreation provisions of the Coastal Act is significant to all the people of California who wish to enjoy the public beaches of California. Unsubstantiated and erroneous application of these policies could have regional or statewide ramifications regarding other similar LCPs and their policies regarding bluffs. This factor supports a finding of substantial issue.

Conclusion

In conclusion, staff recommends that the Commission find that a substantial issue exists with respect to whether the local government action conforms with the policies of the City’s certified LCP and the public access policies of the Coastal Act.

Appendix A – Relevant LCP Policies and Definitions

Land Use Element Glossary

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

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

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

Land Use Plan, Land Use Element Policies – Policy 7.3

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

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

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

Action 7.3.4 Require new development to assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic stability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

Action 7.3.5 Prohibit development on oceanfront bluff faces, except public improvements providing public access, protecting coastal resources, or providing for public safety. Permit such improvements only when no feasible alternative exists and when designed and

constructed to minimize landform alteration of the oceanfront bluff face, to not contribute to further erosion of the oceanfront bluff face and to be visually compatible with the surrounding area to the maximum extent feasible.

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

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

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

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

Action 7.3.12 Site and design new structures to avoid the need for shoreline and/or oceanfront bluff protective devices during the economic life of the structure (75 years).

Action 7.3.13 Limit the use of shoreline/bluff protective devices to the minimum required to protect existing development in danger of erosion. Site and design any such protective devices as far landward as possible. “Existing development” for purposes of this policy shall consist only of a principal structure, e.g. residential dwelling, required garage, or second residential unit, and shall not include accessory or ancillary structures such as decks, patios, pools, tennis courts, cabanas, stairs, landscaping etc. No shoreline/bluff protective device shall be allowed for the sole purpose of protecting an accessory structure.

Policy 7.4

Ensure that development, including subdivisions, new building sites and remodels with building additions, is evaluated to ascertain potential negative impacts on natural resources. Proposed development shall emphasize impact avoidance over impact mitigation. Any mitigation required due to an unavoidable negative impact should be located on-site, where feasible. Any off-site mitigation should be located within the City’s boundaries close to the project, where feasible. (Similar to Policies 5.2 and 10.3)

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

Policy 7.7

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

Policy 10.2

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

Action 10.2.1 Adopt standards that require new development and related improvements to be located on the most suitable areas of the site so as to maximize safety and the preservation of sensitive resources.

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

Action 10.2.6 Require all new development located on an oceanfront bluff top to be setback from the oceanfront bluff edge a sufficient distance to ensure stability, ensure that it will not be endangered by erosion, and to avoid the need for protective devices during the economic life of the structure (75 years). Such setbacks must take into consideration expected long-term bluff retreat over the next 75 years, as well as slope stability. The predicted bluff retreat shall be evaluated considering not only historical bluff retreat data, but also acceleration of bluff retreat made possible by continued and accelerated sea level rise, future increase in storm or El 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.

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

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

Open Space/Conservation Element Policies –

Policy 1.5A

The shoreline environment should remain in a natural state unless existing, substantial improvements are in imminent danger from erosion, flooding or collapse. “Imminent Danger” is defined as a short-range threat from the immediate to a maximum range of three (3) to five (5) years. A threat presented in the context of geologic time shall not constitute imminent danger.

Policy 4F

Water Conservation and Native Plants – Ensure that development encourages water conservation, efficient irrigation practices and the use of native or drought tolerant non-invasive plants appropriate to the local habitat to minimize the need for fertilizer, pesticides herbicides and excessive irrigation. Prohibit the use of invasive plants and require native plants appropriate to the local habitat where the property is in or adjacent to Environmentally Sensitive Areas (ESAs)

Policy 7K

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

Policy 10C

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

Policy 10E

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

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Appeal – Substantial Issue

Policy 12A

Promote the conservation of land having archaeological and/or paleontological importance, for its value to scientific research and to better understand the cultural history of Laguna Beach and environs.

Policy 12B

Develop a program which systematically inventories, records and preserves significant cultural resources in the community, in accordance with the guidelines in the City's Local Coastal Plan.

Policy 12C

Development adjacent to a place, structure or feature found to be of historical significance shall be designed so that the uses permitted and the architectural design will protect the visual setting of the historical site.

Policy 12D

Preserve cultural/scientific sites, including geologically unique formations having archeological significance.

Laguna Beach Municipal Code, Title 16, Chapter 16.01 Water Quality Control –
Section 16.01.020 Definitions, Subsection (GG)(9):

(v) Local environmentally sensitive areas, including areas of the Pacific Ocean coastline not listed as a Clean Water Act Section 303(d) Water Body. Environmentally sensitive areas are depicted on the water quality environmentally sensitive area (WQESA) map, (adopted as part of this chapter by reference). The areas directly adjacent to (within two hundred feet) of an environmentally sensitive area are also shown on the WQESA map.

Laguna Beach Municipal Code, Title 22 Excavating, Grading and Filling, Chapter 22.10 –
Section 22.10.010 Permits required:

(a) Permit Required for Grading. No person shall commence or perform grading or install any appurtenant works without first having obtained a grading permit from the City. A grading permit is required for all construction projects that will disturb more than twenty cubic yards of soil, or project where the Building Official has determined that a grading permit is necessary. A separate permit may be required for each site. One permit may cover both excavation and any fill made with excavated materials or any necessary borrow and stockpiling. If the applicant is not the legal owner of the site, the applicant must present a letter signed by the legal owner of the property designating the applicant as his agent, and authorizing the city to enter upon the site to make such inspections or take such corrective action as the city deems necessary.

If remedial work for slope repair or construction in-kind, when confined to preexisting lines and grades on developed parcels, does not require concept review but shall observe the provision of Section 22.10.010.

(c) Grading Discretionary. Unless otherwise exempted under subsection (e) of this section, the review of a grading project is a discretionary activity subject to Section 22.08.010(b) and 22.10.010(a), (b) and (c), and is subject to environmental documents procedures. Once concept approval of grading plans has been secured, the issuance of a grading permit by City staff is a

ministerial activity provided that any rough and precise grading plans authorized under such permit are in substantial compliance with the approved concept plans.

(e) Exceptions. A grading permit shall not be required for any of the following conditions, but in all other respects the provisions of this title shall apply:

(1) An excavation below finished grade for footings or walls of a building contiguous to and within the natural terrain, if authorized by a valid building permit. This excavation shall not affect the applicability of this title to, nor the requirements of a grading permit for, any fill made with material from such excavation;

(2) An excavation for a swimming pool if authorized by a valid building permit or valid swimming pool permit;

(3) For purposes of landscaping developed lots, fills of less than twenty cubic yards which do not obstruct a drainage course and are not intended for structural support and which are placed over an existing ground sloping not more than four feet horizontal to one foot vertical and not exceeding three foot maximum height above the preexisting ground surface with side slopes conforming to the requirements of this code and not extending within two feet of any adjoining property line;

(4) For purposes of landscaping developed lots, excavation of less than twenty cubic yards and not exceeding three feet in maximum depth with slopes conforming to the requirements of this code, with top of cut slope not extending within two feet of any adjoining lot or parcel; ...

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

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

Section 25.07.012 Procedures:

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

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

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

(2) Any development located between the sea and the first public road paralleling the sea is in conformity with the certified local coastal program and with the public access

and public recreation policies of Chapter 3 of the Coastal Act;

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