

CALIFORNIA COASTAL COMMISSION

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 Staff: M. Alvarado-LB
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 Hearing Date: 02/08/2018

STAFF REPORT: APPEAL – SUBSTANTIAL ISSUE

Appeal No.: A-5-LGB-17-0073

Applicant: Ari Ryan

Agent: Marshal Innins

Local Government: City of Laguna Beach

Local Decision: Approval with Conditions

Appellant: Mark Fudge

Project Location: 31941 Coast Highway, Laguna Beach, Orange County (APN: 658-113-46)

Project Description: Appeal of City of Laguna Beach Local Coastal Development Permit No. 17-2013 for foundation repair work consisting of the installation of three caissons and a grade beam under a single-family residence on an ocean-fronting, bluff property.

Staff Recommendation: Determine that substantial issue exists.

SUMMARY OF STAFF RECOMMENDATION

Staff recommends that the Commission determine that a **substantial issue exists** with respect to the grounds on which appeal number A-5-LGB-17-0073 has been filed because the City's record is unclear as to whether the extent of the locally-approved development (bluff retention devices) is to protect "existing" principal structures, support new development, or protect accessory structures. More information is necessary to adequately consider whether the proposed project is LCP consistent. Moreover, the City's decision that the development is consistent with the provisions of the LCP is not supported by the Local CDP's findings, which does not take into account previous improvements to the structures onsite. Finally, the primary issues raised by the appeal of the locally approved development are consistency with the LCP as it relates to new development on the bluff or bluff face and bluff protective devices. Further information is required to determine whether or

not the project is consistent with the relevant policies of the LCP.

The City's action on Local CDP No. 17-2013 would approve foundation repair work at 31941 Coast Highway in Laguna Beach. The subject site is an approximately 7,400 sq. ft. ocean-fronting lot located on the bluff above Thousand Steps public beach in the South Laguna area.

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

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

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EXHIBITS

- Exhibit 1 – Project Location
- Exhibit 2 – Project Plans
- Exhibit 3 – Appeal
- Exhibit 4 – Local CDP No. 17-2013 & Design Review No. 17-2012
- Exhibit 5 – City Resolution for local CDP No. 17.37
- Exhibit 6 – Response Letter from Applicant’s Agent to Appeal

I. MOTION AND RESOLUTION – SUBSTANTIAL ISSUE

Motion: *I move that the Commission determine that Appeal No. A-5-LGB-17-0073 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-17-0073 presents a **SUBSTANTIAL ISSUE** with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the certified Local Coastal Plan and/or the public access policies of the Coastal Act.*

II. APPELLANT’S CONTENTIONS

The Commission received a notice of final local action for City of Laguna Beach Local Coastal Development Permit (CDP) No. 17-2013 on December 14, 2017. Local CDP No. 17-2013 approves residential foundation repair work, including installation of three caissons and a grade beam on an ocean-fronting, bluff property.

On December 21, 2017, the appeal was filed by Mr. Mark Fudge (**Exhibit 3**). Mr. Fudge contends that the City’s approval does not comply with the City’s certified LCP. More specifically, he raises the following concerns with the proposed development:

- 1) The 2016 City-approved remodel to the existing residence now constitutes a ‘major remodel’.
- 2) The City failed to condition the permit to require waiver of bluff protective devices to protect new development.
- 3) The approved development is likely sited on the bluff face inconsistent with the LCP policy relating to new development on a coastal bluff and/or bluff face; a bluff edge determination is necessary. In addition, the residence should be brought to conformity with all setback requirements.
- 4) Because the proposed caissons are bluff protective devices, the City should have considered all reasonable and feasible alternatives.
- 5) The site has a history of unpermitted development. The City failed to address removal of unpermitted development.

III. LOCAL GOVERNMENT ACTION

On October 12, 2017, the City of Laguna Beach Design Review Board held a public hearing on the

proposed project and approved Local Coastal Development Permit (CDP) No. 17-2013, Design Review 17-2012, and Variance 17-2011 (**Exhibit 4**).

The project description of the Resolution CDP 17.37 (**Exhibit 5**) approving Local CDP No. 17-2013 reads as follows:

“Permission is granted in the R-1 zone for a foundation repair work within the blufftop setback.”

The City’s approval includes standard/generally applied conditions to address water quality, landscaping, tree preservation, construction impact mitigations, and grading.

A CEQA Categorical Exemption was adopted by the Review Board. The Coastal Commission’s South Coast District Office received the notice of final action on December 14, 2017. On December 21, 2017 the appeal was filed by Mr. Mark Fudge (**Exhibit 3**) during the ten (10) working day appeal period. No other appeals were received. The City and applicant were notified of the appeal by Commission staff in a letter dated December 22, 2017. The City failed to forward its record for the permit to the Commission staff in time for the writing of this staff report.

Commission staff has received a letter from Mr. Laurence P. Nokes on behalf of the applicant in response to the appeal and the issues raised (**Exhibit 6**).

IV. APPEAL PROCEDURES

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

Section 30603 of the Coastal Act states in relevant part:

- (a) *After certification of its Local Coastal Program, an action taken by a local government on a Coastal Development Permit application may be appealed to the Commission for only the following types of developments:*
 - (1) *Developments approved by the local government between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance.*
 - (2) *Developments approved by the local government not included within paragraph (1) that are located on tidelands, submerged lands, public trust lands, within 100*

feet of any wetland, estuary, stream, or within 300 feet of the top of the seaward face of any coastal bluff.

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

Grounds for Appeal

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

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

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

Qualifications to Testify before the Commission

If the Commission, by a vote of 3 or more Commissioners, decides to hear arguments and vote on the substantial issue question, proponents and opponents will have an opportunity to address whether the appeal raises a substantial issue. The time limit for public testimony will be set by the chair at the time of the hearing. As noted in Section 13117 of Title 14 of the California Code of Regulations, the only persons qualified to testify before the Commission at the substantial issue portion of the appeal process are the applicant(s), persons who opposed the application before the local government (or their representatives), and the local government. In this case, the City's record reflects that Mr. Mark Fudge opposed the project in person at the 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 applicant proposes foundation repair work consisting of the installation of three 36-in. diameter caissons and a grade beam below grade under the seaside deck of a single-family residence (**Exhibit 2**).

The project site is a 7,381 sq. ft. oceanfront lot located at 31941 Coast Highway, Laguna Beach, Orange County (**Exhibit 1**). The site is located above Thousand Steps Beach in South Laguna Beach between the first public road (Coast Highway) and the sea. The subject property fronts 36 ft. along Coast Highway and extends 240 ft. seaward down a steep slope to the sandy beach. The site is currently developed with a primary residence and a two-car garage on the bluff, and a detached beach house on the sand below at the base of the bluff. A funicular tram on the site provides private access between the primary residence and the beach house. No work is proposed as part of the locally approved coastal development permit subject to this appeal to the beach house.

Single-family residences on oceanfront and bluffs characterize the surrounding area. Public access from Coast Highway to the beach is available via a public access stairway located approximately 300 feet downcoast of the project site.

B. LOCAL COASTAL PROGRAM CERTIFICATION

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

C. FACTORS TO BE CONSIDERED IN SUBSTANTIAL ISSUE ANALYSIS

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

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

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

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

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

D. SUBSTANTIAL ISSUE ANALYSIS

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

Relevant LCP Policies and Definitions

Land Use Element Glossary

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)

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 Nino events, and any known site-specific conditions. To assure stability, the development must maintain a minimum factor of safety against landsliding of 1.5 (static) or 1.2 (pseudostatic, $k=0.15$ or determined through analysis by the geotechnical engineer) for the economic life of the structure.

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

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

Policy 10.3

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

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

Open Space/Conservation Element Policies –

Policy 7K

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

Policy 10A

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

Policy 10C

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

Policy 10E

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

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

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

Section 25.07.012 Procedures:

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

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

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

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

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

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

Appellant’s Argument: This project qualifies as a ‘major remodel’.

The appellant asserts that the City failed to perform a cumulative analysis prior to making its determination that the proposed foundation repair work constitutes a minor improvement to an existing structure. The appellant maintains that if reviewed in juxtaposition with previous improvements to the main residence on the bluff, the City-approved foundation repair subject to this appeal exceeds the threshold of a minor remodel. The appellant states it is likely that reconstruction of more than 50% of the bluff structure has/is taking place and, therefore, constitutes major remodel, or new development.

Accordingly, the appellant asserts that the bluff residence, which is currently nonconforming to oceanfront bluff edge setback requirements, should be brought to conformity pursuant to Action 7.3.10 of the certified LCP.

The significance of the distinction between a minor remodel and a major remodel is that existing non-conformities for a minor remodel, such as existing development within the setback area or on the bluff face, may be retained as legal non-conforming development only if the proposed development does not constitute a major remodel pursuant to Action 7.3.10 (cited above). A major remodel is substantial new development, and as such, any existing non-conformities cannot be permitted to remain. The 50% demolition threshold provides one consistent and objective method of dealing with existing non-conformities associated with extensive major remodel projects.

The certified LCP defines a “Major Remodel” as:

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...

The certified Laguna Beach Municipal Code 25.10.008 of the Implementation Plan (IP) states, in relevant part:

A major remodel is a structural renovation and/or addition, which equals or exceeds fifty percent of the original gross floor area of the structure on the lot.

The certified Land Use Plan (LUP) does not include a definition of “existing building or structure”, as that phrase is used in the definition of a “major remodel”. As such, one may refer to the policies of the Coastal Act. In the context of Coastal Act Sections 30253 and 30235, “existing development” refers to development that existed prior to passage of the Coastal Act **in 1977**. Therefore, any improvements to a “development” that existed in 1977 should be analyzed holistically to account for all of the improvements to a development or structure that occurred since 1977. Although Action 7.3.13 of the LCP also defines the phrase “existing development,” that definition by its terms applies only for purposes of the specific LCP policy relating to shoreline/bluff protective devices, and not to the policies regarding what is a “major remodel.”

The subject property is currently developed with a residence with a two-car garage on the bluff, funicular, and detached second residential unit on the sand below at the base of the bluff. According to public property file documents provided by the appellant, the original bluff residence and guest house on the beach were constructed circa 1963, prior to the passage of the Coast Act in 1977.

Since 1963, the property has been granted entitlements by the local government authorizing: repairs to the guest house (1983); remodel with additions and new foundation elements to the principal residence and guest house (1993); conversion of the guest house into a second residential unit (1995); construction of a deck extension/privacy screen and placement of treads for new stairway down to the beach (2003); and reconstruction of the garage and exterior remodel of both the principal residence and second residential unit (beach house) including window and door modifications (2016). Commission staff, however, has only been provided vague descriptions of the previous site improvements. Therefore, there is uncertainty about the actual scope and extent of these previous improvements to the original structures since 1977, as well as whether these improvements in conjunction with the presently proposed development constitute a major remodel.

The City-approved foundation repair work subject to this appeal is for placement of three caissons and a new grade beam under the seaside deck of the principal residence on the bluff to repair failing footings, to provide protection, and for slope stabilization. The City characterizes the locally-approved development as a minor remodel/improvement to an “existing” residence. However, there is no indication in the City’s staff report that the City undertook a cumulative analysis of all proposed and previous improvements to the original structures during its consideration of the subject local coastal development permit.

For purposes of defining the current project as a minor remodel/improvement to an “existing” residence, the City may have erroneously applied the definition of “major remodel” pursuant to Ordinance 1543, which defines a “major remodel” as the alteration of or an addition to an existing building or structure at or exceeding 50% at any time *over a three-year period*. Under this definition a cumulative analysis would not be necessary as it would only require the consideration of improvements dating back no more than three years. Ordinance 1543, however, has not been certified by the Commission and should not be used by the City in the LCP-certified coastal zone. For local coastal development permit actions, the City should be using the certified LCP definition of “Major Remodel.”

The proposed caisson system is intended to function as a bluff protective device. Therefore, the issue of whether the threshold of a minor remodel has been exceeded is also significant because new development cannot rely on bluff protection pursuant to the policies of the certified LCP. Action 7.3.12 of the Land Use Element of the LUP requires that “new” development be sited and designed to avoid the need for bluff protective devices. Moreover, new development cannot rely on bluff protection to establish geologic stability pursuant to Action 7.3.13 (cited above) of the Land Use Element of the certified LUP.

Moreover, the appellant also contends that the City failed to properly condition the permit involving a “major remodel” and did not require a waiver of bluff protective devices for the protection of any new development, which would be inconsistent with LUP Policy 7.3.9 (cited above). However, whether the City can impose a waiver of a bluff protective devices condition is contingent on whether new development is being proposed based on the context and intent of the certified LCP.

It is unclear whether the extent of the locally-approved foundation repair is to protect existing development or for new development. Therefore, the City does not have an adequate degree of factual support for its decision that the development is consistent with the LCP’s characterization of minor remodel/improvement. In addition, there is a potential that the primary residence on the bluff

may constitute new development or that the locally-approved development will result in the major remodel/reconstruction of an existing structure per applicable LCP policies. Accordingly, there is a potential that the proposed bluff protective device is inconsistent with the policies of the LCP concerning new development and bluff protection. For the foregoing reasons, the Commission finds that a substantial issue exists with respect to the grounds on which the appeal was filed pursuant to section 30603 of the Coastal Act as to this specific issue.

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

The appellant asserts that given that the City-approved development is likely sited on the bluff face, the main residence is no longer considered “existing development”, and the City-approved caissons provide bluff protection to new development, the City-approved project does not conform to the LCP policies relating to new development on the bluff face and setback requirements.

The appellant cites a letter prepared by Morris Skenderian & Associates, A.I.A to the City Zoning Administrator, dated January 28, 1993, recognizing the ‘absence of a bluff top’ at the site. Accordingly, the appellant asserts that the main residence in its entirety is likely on the bluff face and, therefore, the proposed project would also be on the bluff face. The ‘absence of a bluff top’ determination contradicts the City’s more recent determination that the proposed development extends into the 25-ft. bluff setback. The appellant contends that a bluff edge determination 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.

Commission staff did not receive a copy of the public record file for the proposed foundation repair subject to this appeal before the publication of this staff report. However, staff was provided a copy of the City’s staff report for the project, which concludes that the proposed foundation repair would encroach into the required 25-ft. blufftop setback. This conclusion contradicts the 1993 public documents cited by the appellant that seem to indicate that the onsite development encroaches onto the bluff face but meets a stringline setback.

Without the 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, was provided to the City. Moreover, the information provided to Commission staff is not sufficient to adequately determine the bluff edge of the development site. Therefore, concerns regarding the project site’s location on the bluff and whether or not the proposed development is consistent with the LCP policies concerning bluff

edge setback requirements have not been addressed. Therefore, there is a potential that the main residence is located on the bluff face and additional review of this issue is necessary.

The appellant contends that with the foundation repair proposal, the main residence will no longer (if it does not already) meet the definition of an “existing” structure. Therefore, the proposed development is inconsistent with Action 7.3.10 of the LUE (cited above), which allows oceanfront bluff homes that are legally nonconforming as to oceanfront bluff edge setback to be maintained and repaired only within the thresholds of a minor remodel. Under this policy, a preexisting nonconforming oceanfront bluff structure would have to be brought into conformity with the LCP for improvements that constitute new development. As detailed in the subsection above, the status of the bluff residence as an “existing” structure or “new” structure is unclear.

Without a proper bluff edge determination, together with a cumulative analysis to verify the proposed development meets a minor remodel, it is difficult to know whether or not the city-approved development is consistent with the policies of the LCP and to determine all the necessary and appropriate conditions (e.g. minimum bluff setbacks, no development on the bluff face, future improvements restrictions, prohibiting reliance of new development on bluff protective devices, 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.

Appellant’s Argument: City should have considered alternatives to the proposed Bluff Protective Devices.

The appellant asserts that the City authorized the proposed bluff protection without any consideration of other feasible and reasonable alternatives pursuant to LCP requirements.

The appellant cites Policy 1.5C of the Open Space/Conservation (OS/C) Element of the certified LUP. Policy 1.5C relates to seawall and other shore protection devices and 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 bluff protective devices and similarly require that the City consider alternatives to any proposal involving bluff protection. Action 7.3.13 of the LUP (cited above) 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. Since an alternative analysis was not provided in the record, one cannot determine if the proposed project is the minimum necessary to address the situation, and if the proposed bluff protection has been sited and designed as far landward as possible.

Additionally, in its staff report, the City states that the subject caisson system/foundation repair “*is proposed at an area underneath the existing deck that is experiencing foundation failure and has*

been denuded by vegetation.” Other times, the City’s report indicates that the proposed development is for the protection of the residence. Therefore, because of discrepancies in the City’s findings, it is unclear whether the proposed development is intended to protect the principal structure or an accessory structure. The proposed caisson system is a form of bluff protective device, which should not be permitted for the sole purpose of protecting an accessory structure (e.g. decks, stairs, pools, etc.) pursuant to Action 7.3.13. If the bluff protection is intended to protect the deck, the locally-approved project would be inconsistent with the LCP. An alternative would be to remove the accessory structure consistent with LUP Action 10.2.8 (cited above), 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.

Appellant’s Argument: Unpermitted development exists onsite.

The appellant asserts that the site has a history of unpermitted development. The alleged unpermitted work includes the intensification and expansion of the detached beach house located within the property on the sandy beach at the base of the bluff.

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

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

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

Any non-exempt development activity (e.g. change in intensity of use and alteration of the size of any structure) 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.

According to the property file, the main residence was likely constructed prior to 1963 and the beach house was constructed circa 1963. The beach house was constructed as a 639 sq. ft. structure. In 1983, the City granted a Local CDP (CD 83-03Z) for repairs to the guest house due to winter storm

damage with conditions limiting the structure as a guest house without a kitchen. The City issued a local CDP in 1993 for a remodel of the guest house, which was then noted to be 744 sq. ft. In 1995, the City granted a use permit to allow the conversion of the guest house into a second residential unit. According to the appellant, the beach house has increased in size since 1995 and is currently approximately 1,162 sq. ft. Notwithstanding the use permit, there is no record of either of these projects (i.e. change in intensity of use and alteration of size of beach house) having obtained local coastal development permits from the city or emergency permit(s) from the Coastal Commission.

Action 7.3.8 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.

The City did not address this issue and did not require the removal of any alleged unpermitted development. Pursuant to Action 7.3.8 the City should have reviewed the development on the site in order to determine if that policy is applicable to the approved project and to ensure the project's consistency with the certified LCP. In addition, any unpermitted expansion of the structure on the sandy beach could result in adverse impacts to public access. The City's action does not include adequate findings to address this issue. Therefore, a substantial issue exists with respect to this issue raised by the appeal.

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 approval and findings of the project's consistency with all the applicable provisions of the certified LCP and the public access and recreation policies of the Coastal Act (specifically the bluff top/face policies). In addition, considering the evidence in the record, the actual extent of the proposed development is unclear, which necessarily means that evaluation of the project's consistency with the LCP policies cannot be made at this time. Therefore, there is a low degree of factual and legal support for the local government's decision.

2. The extent and scope of the development as approved or denied by the local government. The local government granted a Local CDP for "foundation repair work within the blufftop setback". Without an adequate analysis of the locally-approved project including consideration of the location of the proposed development on the bluff and past improvement of the primary residence, the extent of the work is unclear. The local coastal development permit is also unclear whether the City-approved development is to protect the seaside deck or the principal residence on the bluff. The simple fact that the scope of work is unclear strongly supports a finding of substantial issue on the basis of this factor.

3. The significance of the coastal resources affected by the decision. California’s coastal bluffs are a significant resource, 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 new development on a potential bluff face would set a negative precedence for future interpretations of its LCP. If Local Coastal Development Permit No. 17-2013 is found to be consistent with the LCP based on the current record, there is a potential that future applicants will reference this permit if they wish to develop other oceanfront coastal bluff sites, of which there are hundreds in Laguna Beach. In other words, 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. Bluff face and blufftop development are issues of statewide significance, given the special significance and protection afforded to bluffs by the Coastal Act and LCP. (*See* third factor above.) Requiring consistency with the certified LCP (particularly policies relating to bluff face/top development) and the public access and recreation provisions of the Coastal Act is significant to all the people of California who wish to enjoy the public beaches of California. Unsubstantiated and erroneous application of these policies could have region- or statewide ramifications regarding other similar LCPs and their policies regarding bluffs.

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