

CALIFORNIA COASTAL COMMISSION

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STAFF REPORT: APPEAL – SUBSTANTIAL ISSUE

Appeal Number: A-5-LGB-18-0014

Applicants: Peter Harle & Lori Olvera

Agent: David P. Reynolds, D.P. Reynolds Corp.

Local Government: City of Laguna Beach

Local Decision: Approval with Conditions

Appellant: Sharon Fudge

Location: 31101 South Coast Highway, Laguna Beach, Orange County

Project Description: Appeal of Local Coastal Development Permit No. 17-2097 approved for the construction of a fifty-foot long, approximately three-foot high retaining wall on the seaward side of an ocean-fronting single-family residence.

Staff Recommendation: Determine that **Substantial Issue** exists

SUMMARY OF STAFF RECOMMENDATION

Local Coastal Development Permit (CDP) No. 17-2097 approves the construction of a fifty-foot long, approximately three-foot high retaining wall on a beachfront lot located approximately 100 feet north of Aliso Creek in the South Laguna area. The lot is developed with a single-family residence that was permitted in 1982 by the Coastal Commission CDP No. 5-82-368 (Arciero). A cinder block and wrought iron wall was permitted to be constructed on the seaward side of the property in 1987 by County of Orange Local CDP No. 86-74Z (Arciero). In March 2017, the wall that formerly occupied the seaward portion of the property was severely damaged by erosion caused by Aliso Creek when it flowed towards the site during a winter storm. On March 24, 2017, the Commission issued Emergency CDP No. G-5-17-0019 for the temporary placement of a six-foot high, sixty-foot long chain-link fence inland of the oceanfront property line in order to enclose the damaged wall and to protect the beach-going public from being injured by it.

Staff recommends that the Commission determine that a **substantial issue exists** with respect to the grounds on which the appeal 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 shoreline protective device and is consistent with the certified Local Coastal Program (LCP) provisions that apply to development on a beach or bluff. The City’s staff report, the project plans, and the coastal hazards analysis submitted by the applicants all refer to the retaining wall as a shoreline protective device. The local CDP also does not indicate whether the proposed development is necessary to protect the single-family residence or other development, and the City did not complete an adequate alternatives analysis. In addition, the scale of the project is unclear because grading information was not provided in the City’s record. 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 HEARING PROCEDURE 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 – Vicinity Map and Photographs of Site](#)
- [Exhibit 2 – Site Plan](#)
- [Exhibit 3 – City of Laguna Beach Determination](#)
- [Exhibit 4 – Appeal of Local Coastal Development Permit](#)

I. MOTION AND RESOLUTION

Motion:

*I move that the Commission determine that Appeal No. A-5-LGB-18-0014 raises **NO SUBSTANTIAL ISSUE** with respect to the grounds on which the appeal has been filed under Section 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 A-5-LGB-18-0014 presents a **SUBSTANTIAL ISSUE** with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the certified Local Coastal Plan and/or the public access policies of the Coastal Act.*

II. APPELLANT'S CONTENTIONS

The appellant has raised several contentions in regards to the local approval of the proposed development (**Exhibit #4**). First, the appellant contends that the project, as approved by the City, allows development on an oceanfront bluff face inconsistent with the certified LCP, specifically Action 7.3.5 of the Land Use Element. The appellant also contends that the City-approved project was never reviewed by City Council as required by Section 25.50.004(B) of the Laguna Beach Municipal Code, which is included in the LCP's Implementation Plan. Third, the appellant contends that it is not clear whether the approved development, a "retaining wall" to be constructed on the beach sand in front of the single-family residence, is intended to serve as a shoreline protective device. Furthermore, the degree of imminent danger of the residence and the slope of the bluff face has not been made clear. The appellant's fourth contention is that an initial study (pursuant to CEQA) was not generated for the project as required by Land Use Element Action 7.4.2 (part of the LCP's Land Use Plan), which pertains to environmentally sensitive areas. Fifth, the appellant contends that a grading permit was not conceptually reviewed, nor was the project subjected to environmental document procedures, as required by Section 22.10.010 of the Laguna Beach Municipal Code (part of the LCP's Implementation Plan), which refers to required permits for excavation, grading, and filling activities. Finally, the appellant contends that the City did not review a plan to redevelop the damaged area of the site that exists between the proposed retaining wall and the residence.

III. LOCAL GOVERNMENT ACTION

In July 2017, the applicants filed applications for Design Review and a Local CDP (Case Nos. 17-2096 and 17-2097, respectively) for the reconstruction of a damaged wall at 31101 South Coast Highway, as well as an application for a variance (17-2095) to allow the proposed retaining wall to

encroach into the blufftop setback. This application followed the Commission's issuance of Emergency Coastal Development Permit G-5-17-0019 on March 24, 2017 for the temporary installation of a chain-link fence to enclose a severely damaged wall on the beach. The wall was severely damaged during a 2017 winter storm when Aliso Creek changed direction and flowed toward the subject site and changed the contour of the beach. This resulted in the erosion of the sand under the former wall, which then collapsed (**Exhibit #1**).

On November 30, 2017, the City of Laguna Beach Design Review Board held a public hearing to discuss the application for the proposed reconstruction of a retaining wall to replace the damaged wall. The Design Review Board expressed concerns with the project as proposed at the time, particularly with the proposed use of seven caissons drilled approximately 12 feet deep into the bluff or beach to secure the proposed wall. Another concern raised by the board was that the design and location of the proposed wall appeared to protect both the residence and its patio, which would conflict with LCP Land Use Element Action 7.3.13:

Action 7.3.13- Land Use Plan: *Limit the use of shoreline/bluff protective devices to the minimum required to protect existing development in danger from 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 principle 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.*

The applicants' original proposal to the City included a new gate and stairway as part of the wall, which the Design Review Board and the staff report took issue with because the previous beach access stairway at the site was allegedly not permitted. Finally, the Design Review Board found that the proposed color of the wall was too bright for the project site. The Design Review Board ultimately voted to continue the hearing at a later time to allow the applicants the opportunity to revise the project to address the Design Review Board's concerns.

On February 22, 2018, the Design Review Board held the second public hearing on the matter. The applicants revised the proposed project to utilize a foundation comprised of a grade beam, three deepened piles, and three deadman footings, instead of the seven caissons. The three piles that would support the grade beam would extend down into the underlying bedrock, which is about ten feet below grade. [The site of the proposed wall is comprised of sand over bedrock.] The applicants also proposed to locate the proposed wall about five inland of the seaward property line, to delete the proposed gate and stairway, and to use a darker clay beige color for the proposed wall. The Design Review Board found the applicants' revisions satisfactory, and voted unanimously to approve Local CDP 17-2097 with the condition that no beach access shall be permitted from the retaining wall to the beach. The Design Review Board also approved Variance 17-2095 to allow the retaining wall to encroach onto the bluff top setback on the property [LBMC 25.50.004(B)(4)].

On March 9, 2018, the City sent a Notice of Final Action for Local CDP 17-2097 to the California Coastal Commission, which was received on March 12, 2018. The Commission's 10-working day appeal period commenced on March 13, 2018. On March 26, the Coastal Commission received one appeal from Sharon Fudge. No other appeals were received.

IV. APPEAL PROCEDURES

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

Section 30603 of the Coastal Act states in relevant part:

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

Section 30603(a)(1) of the Coastal Act establishes the project site as being in an appealable area because it is located between the sea and the first public road paralleling the sea and within 300 feet of the inland extent of any beach.

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 portion of the

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 Sharon Fudge and 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 applicants are proposing to construct a fifty-foot long, approximately three-foot high retaining wall to replace the previous wall that was destroyed by erosion during a March 2017 winter storm. The City-approved retaining wall, which is located approximately 24 feet seaward of the residence, would be supported by a grade beam on three pile footings that are embedded into the underlying bedrock, which is about ten feet below grade. Three deadman footings in the rear yard would comprise part of the wall’s foundation. The wall is proposed to be placed on sand and set back about five feet from the oceanfront property line. Access to the site for drilling and construction is proposed to occur from the beach.

The project site is a 5,984 square foot beachfront lot located approximately 100 feet north of the mouth of Aliso Creek. The lot is developed with a single-family residence, a hardscape patio, and a damaged, approximately three-foot high wall located on the beach at the applicants’ oceanfront property line. The single-family residence was permitted in 1982 by the Coastal Commission CDP No. 5-82-368 (Arciero). A cinder block and wrought iron wall was permitted to be constructed on the seaward side of the property in 1987 by County of Orange Local CDP No. 86-74Z (Arciero). As stated in the record of County of Orange Local CDP No. 86-74Z, the former wall was not permitted as a shoreline protective device, and not even as a “retaining” wall.

The former wall was destroyed during a March 2017 winter storm, during which the Aliso Creek flooded, temporarily changed direction, and flowed northwest toward the project site. The beach sand in front of the property eroded, causing the collapse of the former wall and subsequent damage to the applicants' hardscaped patio landward of the wall (**Exhibit #1**).

On March 24, 2017, the applicants obtained Emergency Coastal Development Permit G-5-17-0019 from the Coastal Commission for a temporary chain link fence to close off the damaged wall for public safety purposes. The applicants applied to the City of Laguna Beach for a local CDP to construct a replacement wall, because the property is within the City's LCP permitting jurisdiction. The City's LCP does not include provisions to issue emergency permits.

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 grounds for an appeal of a CDP issued by the local government are the project's conformity with the policies of the LCP and the project's conformity with the public access policies of the Coastal Act. The Commission shall hear an appeal unless it determines that no substantial issue exists as to conformity with the policies of the LCP and the project's conformity with the public access policies of the Coastal Act.

It is staff's assessment that the appellant raises several substantial issues with the City's approval of a CDP for this project. This staff report addresses the most significant issues in detail and recommends a fuller review of all of the issues when the Commission reviews the project de novo.

The appellant's first contention that the City-approved project allows blufftop development that is inconsistent with Action 7.3.5 of the Land Use Element, which is part of the certified LCP, raises a substantial issue. This policy states:

***Action 7.3.5- Land Use Element:** 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.*

First, the City did not determine whether the subject property is on a bluff, or on a beach. The Pre-Application Site Development Review Meeting Evaluation states that the lot slope may be over 20%, but needs to be verified with a survey. The record did not include a survey to verify the slope of the lot. The Pre-Application Site Development Review also states that "[t]he proposed retaining wall in the blufftop setback will require a geological report and a coastal hazards analysis." The City record contains a coastal hazards analysis, but not a geological report. The staff report also makes no reference to a geological report. The erosion that destroyed the former wall occurred on the beach, so the project site is either a beach or possibly a bluff located inland of the beach. Either way, the proposed project must be evaluated for consistency with the certified LCP, and the public access and recreation policies of the Coastal Act.

The City's staff report states that "the primary purpose of the proposed retaining wall is to stabilize the failing bluff and protect the existing residence, which is in danger of erosion." The staff report does not clarify whether the bluff can be protected by the proposed retaining wall due to the development of the lot with the residence. The staff report does not make findings that assess the requirements of LUP Action 7.3.5. It does not state that the wall is designed to protect any other coastal resources, such as the public beach in front of the residence. Furthermore, the staff report does not contain findings to demonstrate that the wall provides public access or that it provides for public safety, and the City did not provide an adequate alternatives analysis. There is a brief mention of the consequences that would result with no wall, but there was no discussion of alternatives that resulted in less landform alteration than the approved wall. Therefore, the appellant's contention does raise a substantial issue.

The appellant's second contention that the City-approved project was not reviewed by the City Council, as required in Section 25.50.004(B) of the Laguna Beach Municipal Code, which is included in the City's LCP Implementation Plan under Title 25 (Zoning), also raises a substantial issue.

Section 25.50.004(B) states:

Building Setbacks on or Adjacent to the Pacific Ocean and Beaches. There is established building setback lines along the ocean frontage of all property within the city fronting up and adjacent to the Pacific Ocean and its beaches, as provided in this subsection, and no building, structure or improvements shall be erected or constructed after the effective date of the ordinance codified in this section on the sandy portion of any beach except that which is determined by the City Council to be necessary for the public health, safety and welfare. In addition, no building, structure or improvement shall be erected or constructed after the effective date of the ordinance codified in this section on the oceanward side of the following building setback lines: (emphasis added)

As stated above, the proposed project may be located on a beach. The City record for this case does not include any determination made by the City Council. The code states that City Council alone can determine whether a proposed development on a sandy beach is necessary for public health, safety, and welfare. Again, the City's failure to determine if the proposed project is on a beach, bluff, or something else raises a substantial issue in regards to Action 7.3.5 of the Land Use Element (stated above), which only permits bluff development if it is found to be necessary for public safety. Therefore, it is uncertain at this time whether the absence of a City Council determination impacts consistency with other provisions of the LCP. The appellant's contention therefore raises a substantial issue in regards to consistency with the LCP.

The appellant's third contention also raises a substantial issue. Appellant alleges that the City-approved project is not clear as to whether or not the retaining wall is intended to function as a shoreline protective device. LCP policies pertaining to shoreline protective devices include the following:

Policy 1.5A-Open Space/Conservation Element: *The shoreline environment should remain in a natural state unless existing, substantial improvements are in imminent danger from erosion, flooding, or collapse.*

Action 7.3.9- Land Use Element: *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.*

In the City's February 22, 2018 decision to approve the proposed retaining wall, the City determined that the wall was not a shoreline protective device, despite the fact that both the City's November 30, 2017 staff report and application materials characterized the wall as a shoreline protective device. Although the Planning Commission made the finding that the wall was not a shoreline protective device, no evidence was provided to support this finding. A closer look at the submitted materials suggests that the retaining wall may indeed serve as a shoreline protective device, because the City-

approved development would be embedded into bedrock (approximately ten feet below grade), and is designed to protect against erosion.

The project plans show a wall that is supported by a grade beam on three pile footings and three deadman footings. The pile footings will be embedded approximately one foot into bedrock. This is a modification from the originally proposed seven caissons embedded approximately 5-6 feet into bedrock. The bedrock under the site is about ten feet below grade. Although the proposal, as modified, reduces the scale of the wall foundation, the grade beam and piles still constitute a deepened foundation that appears designed for the wall to function as a shoreline protective device to protect the rear yard and patio of the residence against future damage from erosion.

The City-approved retaining wall also raises substantial issue with regard to Policy 1.5A of the Open Space/Conservation Element. During the February 22, 2018 hearing, the Design Review Board noted that “the house was not in imminent danger.” Furthermore, the Coastal Hazards Analysis submitted by the applicants supports the finding that the house is not in imminent danger of flooding or erosion. According to the report, although erosion is a common hazard within the project site vicinity, “the subject site and surrounding bluff area is highly developed (with residential homes) and will be more protected than an open system scenario. Similarly, the hazards analysis found that “the lowest living floor level for the residence is positioned . . . above any potential ocean flood elevation.” These findings suggest that although the residence is *vulnerable* to the analyzed coastal hazards, the house is not at this time *in imminent danger* from erosion, flooding, or collapse. Therefore, the City did not make the necessary findings to support consistency with Policy 1.5A.

The proposed project also raises substantial issue with regard to Action 7.3.9 of the Land Use Element. At this time, only the construction of the retaining wall has been considered for a CDP. However, should the applicants apply for a future permit to repair the hardscape patio (which was also damaged during the March 2017 storm), the proposal could not be found to be consistent with the LCP provisions because the improvements would inevitably rely on the retaining wall for protection from storm flooding and erosion. Allowing future patio repairs to occur after the construction of the retaining wall, if it is a shoreline protective device, would constitute a flagrant disregard of the LCP, and would furthermore set a bad precedent for future interpretations of the LCP.

The City record’s classification of the proposed retaining wall as a shoreline protective device is inconsistent with the City’s classification of the wall as not a shoreline protective device at the time a CDP was approved for the development. Although the project was modified from its original design to replace seven caissons with three pile footings, the wall is still supported with a deepened foundation embedded in bedrock, and thus still functions as a shoreline protective device. The City record has also not provided any evidence to prove that the *modified* design is not indicative of a shoreline protective device. Furthermore, the shoreline protective device, as approved by the City, may not be consistent with the relevant LCP policies that pertain to shoreline protective devices. Therefore, the appellant’s contention does raise a substantial issue in regards to consistency with the Laguna Beach LCP.

The appellant’s fourth contention is that the project site is located within an environmentally sensitive area (ESA), and therefore the City should have required the preparation of an Initial Study pursuant to the California Environment Quality Act (CEQA). However, the Commission has no authority to

review and invalidate a lead agency's CEQA determination. Thus, this does not raise a substantial issue of compliance with the City's LCP.

The appellant's fifth contention is that the 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, the online record does not show a recalculation for the new wall as approved by the City, and the City record does not include a grading plan. 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.

SUBSTANTIAL ISSUE – Five 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).

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 a shoreline protective device. The staff report, the coastal hazards analysis, and the project plans indicate that the retaining wall has been designed to function as a shoreline protective device. Also, the City did not substantially support its approval of the project's consistency with all of the applicable policies of the certified LCP. Also, the City did not determine whether the subject property is located on a bluff, beach or other landform. This determination is critical because if the subject property is indeed on a bluff, then the proposed development must comply with all LCP policies pertaining to bluff development. If it is on a beach, even more stringent policies apply. The City action also provides no detail in regards to grading and landform alteration. Overall, there is a low degree of factual and legal support for the local government's decision, and this factor does support a finding of substantial issue.

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, as well as a variance to encroach into the blufftop setback. However, the scope of the development is silent in regards to the development of the yard/patio area located inland of the retaining wall. 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. Furthermore, the applicants propose to use the beach to access the construction site, and the City's approval includes no analysis of the potential impacts to coastal resources that could result from such a plan. Therefore, it is not possible at this time to determine the scale of the project. Therefore, this factor does support a finding of substantial issue.

The significance of the coastal resources affected by the decision. California's coastal beaches,

bluffs, and creeks are all significant resources, and collectively represent a rare and visually pleasing landscape which California citizens and governments have historically sought to preserve. Development on beaches or coastal bluffs also can have significant impacts on scenic resources, recreation and public access opportunities. The LCP and the Coastal Act provide coastal bluffs and beaches with special protections. This factor supports a finding of substantial issue.

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 or beach would set a negative precedence for future interpretations of its LCP. If Local CDP No. 17-2097 is found to be consistent with the LCP based on the current record, there is a potential that future applicants, especially in the vicinity of this project, will reference this permit if they wish to develop shoreline protective devices on other oceanfront coastal bluff sites in Laguna Beach. Without adequate information to determine 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.

Whether the appeal raises local issues, or those of regional or statewide significance. The development of shoreline protective devices is an issue of statewide significance, given the potential impacts to public coastal access and recreation. Requiring consistency with the certified LCP (particularly policies relating to shoreline protective devices) 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 shoreline protective devices.

Conclusion

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