

**CALIFORNIA COASTAL COMMISSION**

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# F8a

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Hearing Date: 09/14/2018

## STAFF REPORT: APPEAL – SUBSTANTIAL ISSUE

**Appeal No.:** A-5-LGB-18-0051

**Applicant:** Merrick Leckey

**Agent:** Gregory Vail

**Local Government:** City of Laguna Beach

**Local Decision:** Approval

**Appellant:** Mark Fudge

**Project Location:** 749 Marlin Drive and adjacent vacant lot, Laguna Beach, Orange County (APNs: 656-032-03, 656-032-20)

**Project Description:** Appeal of City of Laguna Beach Local Coastal Development Permit No. 16-2719 for a lot line adjustment to modify a shared property line between two commonly-owned undeveloped parcels known to contain sensitive habitat that are approximately 1.9-acres and 1.6-acres to create two reconfigured lots that are approximately 1.04-acres (Lot 1) and 2.55-acres (Lot 2) in size.

**Staff Recommendation:** Determine that substantial issue exists.

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### SUMMARY OF STAFF RECOMMENDATION

The subject site is comprised of two commonly owned undeveloped parcels: a triangular-shaped 1.9-acre parcel with street frontage (Marlin Drive); and a rectangular-shaped 1.6-acre, landlocked parcel (i.e., no street access). The project site is located immediately south of the Arch Beach Heights neighborhood in the City of Laguna Beach. The City's action on Local CDP No.16-2719 would approve a lot line adjustment or redivision of the two undeveloped parcels.

The subject site is comprised of undeveloped canyon lands incised by ravines and a blue-line stream. Moreover, the subject parcels have been known to contain sensitive habitat such as coastal sage scrub and southern maritime chaparral habitat. The primary issue raised by the proposed lot line adjustment is whether the proposed reconfiguration of the parcels can be found consistent with the coastal resource protection provisions of certified Local Coastal Program (LCP). The City states that the lot line adjustment is the first step to three-step entitlement process to obtain building site status for residential development taken from Marlin Drive. However, the applicant asserts that future development of both parcels is speculative at this point. While the full extent of potential future development of these sites is unclear, it is clear that approval of this lot line adjustment allows the pursuit of future, more intense, development on at least one site that the City currently considers to be unbuildable. The City did not analyze the potential coastal resource impacts from approval of such development. Therefore, further information is required to determine whether or not the project is consistent with the relevant policies of the LCP, and the appeal raises a substantial issue of compliance with the LCP.

Staff recommends that the Commission determine that a substantial issue exists with respect to the grounds on which appeal number A-5-LGB-18-0051 has been filed because 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 the potential cumulative impacts that could result from the City-approved lot line adjustment.

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. Furthermore, staff recommends the Commission hold a de novo hearing at a later date.

**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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### Appendix A – Relevant LCP Policies and Definitions

#### EXHIBITS

- Exhibit 1 – Project Location
- Exhibit 2 – Parcel Maps
- Exhibit 3 – Appeal
- Exhibit 4 – Local CDP No. 16-2719 for LLA 16-1718
- Exhibit 5 – City Resolution for local CDP No. 16-2719
- Exhibit 6 – Response Letter from Applicant’s Agent to the Appeal

## **I. MOTION AND RESOLUTION – SUBSTANTIAL ISSUE**

**Motion:** *I move that the Commission determine that Appeal No. A-5-LGB-18-0051 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-18-0051 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.*

## **II. APPELLANT’S CONTENTIONS**

The Commission received a notice of final local action for City of Laguna Beach Local Coastal Development Permit (CDP) No. 16-2719 on July 18, 2018.

On July 24, 2018, 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 City has improperly deferred review and mitigations.
- 2) The project has been improperly segmented.
  - a. The City approved the project without special conditions in place to protect the environment.
  - b. The City failed to issue the required Design Review Permit and make the required findings.
- 3) The lot line adjustment was improperly exempted from the Subdivision Map Act requirements of the Laguna Beach Municipal Code Chapter 21.
- 4) It is unclear whether Lot A is a legal building site.
- 5) The City failed to disclose or review previous violations/unpermitted development on the properties.

### III. LOCAL GOVERNMENT ACTION

On June 12, 2018, the City of Laguna Beach’s City Council held a public hearing on the proposed project and approved without any special conditions Local Coastal Development Permit (CDP) No. 16-2719, Lot Line Adjustment 16-1718, and the Negative Declaration (**Exhibit 4**).

The project description of the Resolution No. 18.028 for Local CDP 16-2719 (**Exhibit 5**) approving Local CDP No. 16-2719 reads as follows:

“...a Lot Line Adjustment and Coastal Development Permit to modify the location of a common property line between two respective parcels of land....”

The Coastal Commission’s South Coast District Office received the notice of final action on July 18, 2018. On July 24, 2018 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 July 25, 2018.

Commission staff has received a letter from Mr. Gregory Vail 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)(2) of the Coastal Act establishes the project site as being in an appealable area because it is within 100 feet of a stream. 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

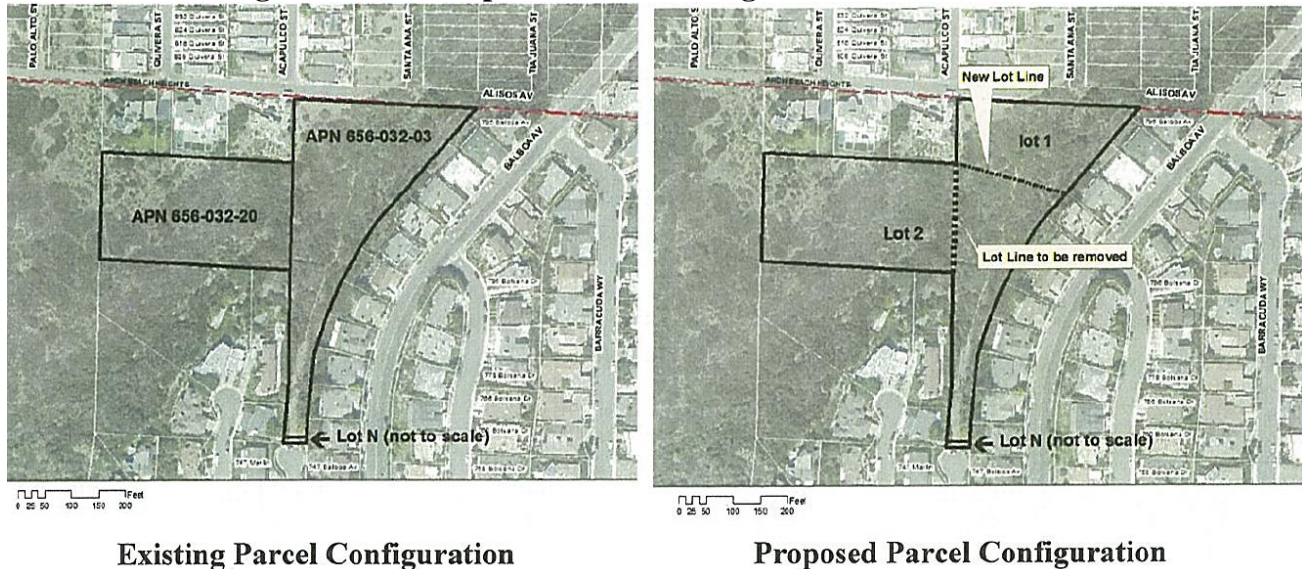
### A. PROJECT DESCRIPTION AND LOCATION

The applicant proposes a modification of a common property line between adjacent parcels in the City of Laguna Beach (**Exhibit 1 & 2**). The project site is comprised of two undeveloped, commonly-owned parcels: an approximately 1.9-acre triangular-shaped parcel (APN 653-032-03) that is situated between Marlin Drive and Alisos Avenue; and an approximately 1.6-acre rectangular-shaped parcel (APN 656-032-20) that is landlocked without street access. Under the existing lot configuration, the triangular-shaped parcel has street frontage on Alisos Avenue and potential street access from Marlin Drive.

The project site is designated R/HP (Residential Hillside Protection) by the certified City of Laguna Beach LCP and is located immediately south of the Arch Beach Heights neighborhood. The parcels are influenced by a blue-line stream and have been known to contain sensitive habitat. Consequently, the project site is designated as having high-value habitat in the City of Laguna Beach’s certified Land Use Plan.

The proposed lot line adjustment or redivision will create two reconfigured lots that are 1.04-acres (Lot 1) and 2.55-acres (Lot 2) in size (See Exhibit A below)<sup>1</sup>:

### Exhibit A: Existing Parcel and Proposed Parcel Configuration.



Lot 1 would continue to have frontage on Alisos Avenue, in the same way that the triangular-shaped parcel currently does. The redivision would result in the creation of an “L” shaped lot (Lot 2). Proposed Lot 2 will be separated from Marlin Drive by Lot N (a one-foot wide parcel that is also

<sup>1</sup> There is a minor discrepancy in the calculations provided in the City’s staff report for the existing total combined area of 3.5 acres and the total proposed combined area of 3.59 acres.

owned by the applicant)<sup>2</sup>. In its staff report, the City states “*the apparent intent of the proposed lot line adjustment is to divide the triangular-shaped parcel that maintains [essentially] two street frontages and thereby facilitate the creation of a second building site (one with street frontage on Marlin Drive and one with street frontage on Alisos Avenue).*”

The applicant also owns another adjacent approximately 18-acre parcel with street frontage on Nyes Place, but this parcel is not subject to the local coastal development permit or this appeal.

#### **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.

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<sup>2</sup> Lot N was dedicated as a public right-of-way by the original approval Tract Map 6029, but to date has not been accepted by the City Council.



#### **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). 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. In making that assessment, the Commission considers whether the appellants' contentions regarding the inconsistency of the local government action with the certified LCP raise significant issues in terms of the extent and scope of the approved development, the support for the local action, the precedential nature of the project, whether a significant coastal resource would be affected, and whether the appeal has statewide significance. See Appendix A for list of applicable policies of the LCP.

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: The City has improperly deferred review and mitigations.**

The appellant contends that the City is responsible for considering all coastal resource issues addressed in the City's certified LCP that would apply to a lot line adjustment including assessment and protection of biological resources and minimization and avoidance of hazards (e.g. geologic and fire), but failed to do so.

The City-approved project subject to this appeal is for the redivision of two undeveloped parcels (1.9-acre triangular-shaped parcel and 1.6-acre rectangular-shaped parcel) to create two new reconfigured parcels that are approximately 1.04-acres (Lot 1) and 2.55-acres (Lot 2) in size. The City currently characterizes the triangular-shaped parcel as a "buildable site", and the rectangular-shaped parcel as "non-buildable site" since it's landlocked without street access. In its approval, the City found that whether or not the two parcels are redivided as proposed, the baseline conditions would remain the same: there would still be one buildable site (Lot 1) and one non-buildable site (Lot 2). Lot 2 would not be considered a building site because it would be divided from Marlin Drive by Lot N (a one-foot wide parcel owned by the applicant dedicated as public right-of-way by the original Tract Map 6029 that has not yet been accepted by City Council). Therefore, the City's position is that a constraints analysis and cumulative impacts analysis is premature at this point. In addition, the City characterizes the locally-approved development as ministerial in nature pursuant to the provisions of the California Subdivision Map Act.

The Commission notes that lot line adjustments involve the redivision of land, which has the potential to change the density or intensity of the use of land. The LCP 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), 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.”*

As such, the Commission notes that lot line adjustments constitute development under the provisions of the certified LCP that require the issuance of a coastal development permit. For purposes of reviewing a coastal development permit application pursuant to the provisions of the certified LCP and applicable policies of the Coastal Act, the City should have considered all coastal resource issues addressed in the City’s certified LCP that would apply to a lot line adjustment including assessment and protection of biological resources and minimization and avoidance of hazards. Moreover, the proposed lot line adjustment does not maintain the same baseline constraints. The proposed lot line adjustment will result in the change of intensity of use of the parcels by changing the baseline conditions from one buildable site and one non-buildable site (as characterized by the City) into one buildable site and a second *potential* buildable site. In other words, approval of the lot line adjustment will remove a barrier to building on one of the sites, thus making future development of the site more likely.

Except for making generalized findings about the project being consistent with the criteria contained in the certified LCP, there is no evidence yet provided to the Commission that the City analyzed the consistency of the proposed development with all applicable LCP policies.

The appellant contends that the proposed lot line adjustment includes land that is identified on the City’s biological resource values maps as high value or very high value habitat and that these areas are likely also Environmentally Sensitive Areas (ESAs). Policy 8I of the Open Space Conservation Element of the LUP states that areas designated as ESAs include the following:

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

Such areas are subject to special treatment and protection under the policies of the certified LCP. LCP policies, such as Policy 8J of the Open Space Conservation Element (see Appendix A), require that detailed biological assessments be prepared for all development within and adjacent to ESAs and that identified ESAs be protected. The City’s staff report and resolution of approval of the permit makes no mention of any *current* biological assessment, typically required to ensure the protection of sensitive habitat. The applicant has indicated that the City relied upon a biological assessment report dated January 2015, which was submitted to the City for review of a fuel modification plan; the biological assessment reported that the parcels contained coastal sage scrub and southern maritime chaparral habitat. In 2015, the City authorized fuel modification by hand-

cutting at the subject parcels for fire protection purposes for nearby residences (Local CDP 15-0265). The 2015 fuel modification plan focused the thinning on the removal of non-native vegetation and dead or dying material, with only possible trimming of woody native species if the 50% threshold was not achieved through removal of the dead, dying and non-native vegetation. Since 2015, however, a biological assessment has not been prepared. Since it has been more than three years, the 2015 biological assessment report should no longer be relied upon.

Moreover, the City failed to consider alternatives to the proposal affecting lands within or adjacent to land containing high to very high value habitat, inconsistent with the certified LCP. Without a current biological assessment and alternatives analysis, it cannot be determined that the proposed redivision is the most protective of sensitive habitat areas. The absence of current biological information and measures imposed to protect sensitive resources raises a substantial issue as to the conformity of the City's action with the requirements of the LCP.

The appellant also contends that LUP policies that pertain to fuel modification and hazards were not addressed by the City. Any land division must consider siting development such that fuel modification within sensitive habitat is avoided and that adequate setbacks are incorporated into the developed area to provide all required defensible space. Policy/Action 7.3.2, 7.3.3 and 7.3.4 of the City's Land Use Plan states that the City must consider and address hazards in all new development. Conservation Open Space Element Policy 10C states the City must "[r]equire 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." There is no evidence the City considered fuel modification and the impacts it would have on sensitive habitat in this action, and the City's findings did not include any analysis of these hazard policies as they relate to the subject property. This raises a substantial issue as to the conformity of the development with the requirements of the LCP.

**Appellant's Argument: The project has been improperly segmented.**

The appellant asserts that the project has been improperly segmented and that the City has deferred review of the reasonably foreseeable future development of the parcels. The appellant maintains the lot line adjustment should not be reviewed in such a piecemeal manner to ensure that the ultimate project is consistent with all the relevant policies of the certified LCP. In addition, the appellant contends that the City failed to properly condition the permit that would ensure the protection of the extant sensitive habitat areas.

While not explicit, it is apparent to the Commission that the applicant's redivision of the project site is an integral component for future development of the land. In its staff report, the City states:

*"The apparent intent of the proposed lot line adjustment is to divide the triangular-shaped parcel that maintains [essentially] two street frontages and thereby facilitate the creation of a second building site (one with street frontage on Marline Drive and one with street frontage on Alisos Avenue). The proposed lot line adjustment is essentially step one of a three-step entitlement process to obtain building site status for residential development taken from Marlin Drive. The second step will require City Council consideration for the acceptance of the dedication of Lot N, and the third step will require the City Council*

*consideration of a Street Extension and associated Coastal Development Permit.”*

As noted in the City’s staff report, the subject lot line adjustment is the necessary first step of a three-step entitlement process to obtain building site status for Lot 2. Therefore, the creation of a second building site and potential future development of both parcels is a reasonably foreseeable consequence of the proposed lot line adjustment, and not simply speculative, such that the City of Laguna Beach should not have disregarded it in its review.

To understand the potential cumulative effects the proposed lot line adjustment could have on the environment, the lot line adjustment should not be reviewed without consideration of the potential impacts of creating a new building site on a parcel that is currently identified by the City as non-buildable. The review and approval of this project without consideration of future development potential may result in unanticipated and cumulative impacts to coastal resources and adjacent properties. Without a fuller picture of the potential environmental impacts in its review, the Commission cannot determine whether or not the proposed lot line adjustment could result in significant adverse impacts to coastal resources, such as sensitive biological resources, or whether alternative locations of a lot line adjustment would avoid or mitigate such impacts. The absence of such analysis is a substantial issue as allowing development that could create the potential for more intense development, without analyzing the potential coastal resource impacts of such development, is inconsistent with the certified LCP.

The City may not have before it a specific proposal for development; however, additional information about potential coastal resource issues on the sites, such as a biological assessment, is necessary to inform a decision about whether the proposed lot line adjustment could harm coastal resources protected by the LCP. The City’s failure to even engage in any analysis of potential impacts prevents an informed, reasonable decision about the appropriateness of the proposed lot line adjustment. Therefore, 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.

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: The LLA was improperly exempted from the Subdivision Map Act requirements.**

The appellant contends that the city-approved lot line adjustment does not qualify for an exemption from the Subdivision Map Act requirements based on Section 21.08 (Subdivision) of the certified Implementation Plan (IP) of the LCP.

Section 21.08.030 of the certified IP states, in relevant part:

*In accordance with Section 66412(d) of the California Government Code, a lot line adjustment between two or more existing building sites, or between parcels of land contained within an existing building site, where the land taken from one building site is added to an adjacent building site, or where interior parcel lines are eliminated for the purpose of consolidation, and where a greater number of parcels than originally existed is not thereby created, is exempt from this chapter, provided the lot line adjustment is*

*approved by the city council of the city of Laguna Beach and observes the following requirements:*

- (a) The project site described in the proposal consists of legal building sites as defined in Title 25 (Zoning) of this code;*
- (b) The proposal does not create one or more building site(s);*
- (c) Any land taken from one site will be added to an adjacent site and no additional sites will result from the lot line adjustment;*
- (d) The project complies with the requirements of the California Environmental Quality Act;*
- (e) The proposal is consistent with the general plan;*
- (f) The parcels proposed to be adjusted by the lot line adjustment comply with all applicable zoning regulations or, in the case of existing, legal nonconforming lots, do not significantly or adversely increase the extent of such nonconformity;*
- (g) The lot line adjustment, in and of itself, will not result in the need for additional improvements and/or facilities;*
- (h) The proposal does not include any lots or parcels created illegally;*
- (i) The project does not impair any existing access, create a need for new access, impair any existing easements or create a need for any new easements serving any adjacent lots or parcels. Lot line adjustment applications shall be filed by the legal owner(s) on a form prescribed by the director of community development and submitted with a fee as established by resolution of the city council. Since the forms, if approved, must be filed for record with the Orange County recorder they shall be drawn in a clear, legible and professional manner using conventional surveying or civil engineering techniques. An acceptable current title report, excerpt or lot book report that verifies the legal ownership of the parcels under consideration shall be submitted.*

The appellant asserts that the lot line adjustment was improperly exempted because it involves two parcels comprised of one “building site” and one that is *not* a “building site” pursuant to the certified definition in the LCP.

The Land Use Element of the certified LUP broadly defines building site as “*a parcel or contiguous parcels of land established in compliance with the building site requirements of the Municipal Code*”.

Section 25.08 (Definitions and Standards) of the IP defines building site more specifically as: “*Building site*” means a parcel or contiguous parcels of land which was established in compliance with the building site requirements of this code.

*No building permit and no certificate of use and occupancy shall be issued for a building or use of land until the director of community development has verified that the parcel of land upon which such building or use of land is to be established is a building site which may be used for the uses permitted in the zone in which it is located. Two or more lots whose common lot line is crossed by a structure or a setback requirements from an adjoining structure shall be deemed to be one building site until such time as the structure is removed and the line is unencumbered. To qualify as a building site, the parcel must be under one ownership and must meet the requirements of either subsection (1) or section (2) below:*

(1) *Any parcel of land that was established as a building site by either the recordation of a tract map, a parcel map, a record of survey recorded pursuant to a city-approved division of land, or a certificate of compliance, or by a deed of conveyance or contract of sale or in any other legal manner recorded prior to July 19, 1958 (or effective date of annexation to the city if such occurred thereafter), and which complied with all of the requirements of the zoning regulations in effect at the time of recordation in the office of the county recorder of Orange County or Los Angeles County, and:*

(a) *Contains the minimum area and dimensions required by this title for the zone in which the parcel is located. However, parcels under one ownership on the effective date of the ordinance codified in this section which constituted legal building sites under the terms of this title, as amended, but which do not comply with the minimum area and dimension standards of the zone are deemed to be building sites provided they meet all other requirements in this definition. Such sites may not be further reduced in area; and*

(b) *Furnishes, in addition to the space occupied or to be occupied by buildings and structures, sufficient area to provide the yards and open spaces required by this title for the zone in which the parcel is located; and*

(c) *Abuts for a minimum frontage of ten feet measured longitudinally in relationship to the paved street section and has the right to the use of a street improved to the subdivision street design standards of the city, or of a usable vehicular right-of-way of record, or of a street that does not meet the minimum standards but has been approved by means of a variance, or of a street of less than standard width as specifically approved for access by the city.*

(2) *A building site may be created by the recordation of a tract map or parcel map after approval has been secured from the city planning commission. The creation of any building site shall conform to the following minimum requirements:*

(a) *Each building site shall be shown on the recorded document as a numbered lot or parcel; and*

(b) *Each building site shall be of sufficient area, width and depth to comply with the minimum requirements of the zoning district in which the site is located; and*

(c) *Each building site shall abut a public or private street, having a right of access for vehicles and pedestrians, and enjoy practical and physical access to such street, for its continuous frontage along the front lot line. Such access road shall be constructed and maintained at a minimum unobstructed width (as described in subsection (1)(c) of this section) to a length as necessary to connect with existing roads of equal or greater width, shall be designed and maintained to support the imposed loads of fire apparatus and shall be provided with a surface such as asphaltic concrete, Portland cement concrete, or similar approved materials, so as to provide all-weather driving.*

*A parcel of land that does not meet the foregoing requirements is not a building site unless otherwise validated in accordance with Section 25.56.020 of this code;*

Because of the contradictory characterization of the project site as consisting of one buildable site and one non-buildable site, *and* as consisting of two legal building sites, the appellant’s contention does raise a substantial issue because further review is necessary.

In addition, in an exhibit coversheet attached to the appeal, the appellant suggests there is no mentioning of a coastal development permit associated with the original approval of Land Division 77-20 by the City in 1978, which locally authorized the subdivision that created the rectangular-shaped parcel that is subject to this appeal. If the Commission approves Commission staff’s recommendation, Commission staff will take the appellant’s comment into consideration during the De Novo phase.

**Appellant’s Argument: It is unclear whether Lot A is a legal building site.**

The appellant asserts that lettered lots are typically not intended to be used as building sites. Therefore, the triangular lot (Lot A) subject to this appeal, is not a “building site”.

*Alternatively, the City determined that “[t]he triangular lot was created by a 1966 subdivision and is legally described as Lot A of Tract No. 6029. Although Lot A is lettered, there is no development restriction for Lot A recited on the Tract No. 6029 cover sheet (as is common with lettered lots). Therefore, and as confirmed by the City Attorney, Lot A can be considered for residential development purposes.”*

The Commission cannot verify whether Lot A is an actual “legal building site” based on the City’s record for the coastal development permit. Because this assertion potentially raises an alternative scenario whereby both parcels subject to this appeal could be “non-buildable sites”, additional review of this issue is necessary. Therefore, this contention raises a substantial issue.

**Appellant’s Argument: Unpermitted development onsite.**

The appellant asserts that the site has a history of unpermitted development with no resolution. On March 23, 1978, a ‘stop work order’ was placed on the triangular-shaped site (APN: 656-032-03) for stockpiling activities. Based on public property files, after the issuance of the stop work order, the owner of property at that time applied for a grading permit for the stockpiling activities in 1978<sup>3</sup>. Later that same year, the City denied the grading permit, and it is unclear if the violation was ever resolved. 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.

There is no record of the grading project having obtained local coastal development permits from the city or emergency permit(s) from the Coastal Commission. Any proposed new development cannot depend on a prior development that was not permitted. Therefore, Commission staff is recommending that the Commission find that the proposed development raises a substantial issue with respect to the issues detailed above by the appeal. Because review of alleged unpermitted development relates more to the De Novo review of the application, if the Commission approves

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<sup>3</sup> The Leckey family purchased the property circa 1988.

Commission staff's recommendation, Commission staff will take any outstanding violations at the project site into consideration during the De Novo phase.

**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.** This is a case where the City has not shown the factual and legal support for its decision that the development is consistent with the Local Coastal Program. The City did not analyze development that creates the potential for a new buildable site in this location was consistent with the LCP. The City did not consider the potential existence of environmentally sensitive habitat area on the sites and the consequences of development that could create more intense development in this area. 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.** This is a case where the extent and scope of the development approved by the local government is significant as the area involved in the lot line adjustment is approximately 3.5 acres of undeveloped land containing sensitive habitat and a blue-line stream. Approval of the lot line adjustment is the first step in allowing potentially significantly more intense development on land containing sensitive habitat. Thus, this factor weighs in favor of a finding of substantial issue.

**3. The significance of the coastal resources affected by the decision.** The resources that could be impacted in this case are very significant in that there are extensive sensitive habitat areas that could be impacted individually and cumulatively by the proposed development. Coastal resources affected include the stream and its banks, scenic views, geologic features, sensitive habitat and potential public access (if any trails exists across the sites). This factor supports a finding of substantial issue.

**4. The precedential value of the local government’s decision for future interpretations of its LCP.** This is a case where there would be a significant adverse precedent made in that the local government did not apply all of the requirements of the LCP, as noted above.

**5. Whether the appeal raises local issues, or those of regional or statewide significance.** This appeal raises issues of regional and statewide significance given the resources at stake. Each of the issues identified above, where the Commission expressly has found there is a substantial issue, are individually sufficient to warrant a finding that the appeals raise a substantial issue. Unsubstantiated and erroneous application of these policies could have region- or statewide ramifications regarding other similar LCPs and their policies regarding the protection of biological resources. 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.



## Appendix A – Relevant LCP Policies and Definitions

### Land Use Plan, Land Use Element Policies –

#### Policy 1.1

*Reduce greenhouse gas (GHG) emissions 80% below 1990 levels by 2050.*

*Action 1.1.1 Protect natural assets and open-space areas to maintain their role as ‘carbon sinks.’*

#### Policy 5.2

*Ensure that all new development, including subdivisions and the creation of new building sites and remodels that involve building additions, is adequately evaluated to ascertain potential negative impacts on natural resources and adjacent development, emphasizing impact avoidance over impact mitigation. Required mitigation should be located on-site rather than off-site. Any off-site mitigation should be located within the City’s boundaries and in close proximity to the project.*

#### 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.*

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

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

*Action 7.4.4 Continue to list Environmentally Sensitive Areas within the Real Property Report.*

*Policy 10.1 Require that all subdivisions, including parcel maps, are compatible with neighborhood character including building pad elevations, visual and physical relationships to natural topography, open space, view corridors and surrounding residences, and neighborhood access.*

*Action 10.1.1 Require a visual impact analysis for subdivision to identify the buildable area or building bulk of each proposed lot to determine potential impacts to view corridors, visual and physical relationships to natural topography or scenic features, neighborhood character and compatibility, and view equity.*

**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.*

**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.*

**Policy 10.6**

*Require all fuel modification to be located within the site being developed. Exceptions may be granted for existing legal building sites when findings can be made by the approval authority that other alternatives are not available and a strict application of this provision would*

*endanger environmentally sensitive resources or deny a property owner reasonable use of an already existing legal building site. Fuel modification performed by private property owners cannot go beyond property lines without agreement by the adjacent property owners. Fuel modification on public land to protect existing development should be avoided whenever feasible; if avoidance isn't feasible, measures must be employed to minimize the amount of fuel modification necessary on public land.*

*Action 10.6.1 The development proposal should address the required fuel modification as part of the initial application and should integrate fuel modification provisions into the site plan in such a way as to minimize impact on existing native vegetation and areas of visual prominence. Any required thinning of flammable vegetation shall be conducted outside of the bird nesting season if feasible. Alternative means to thinning and/or removal of native vegetation for fire hazard management such as minimizing the building envelope, and/or siting of the structure(s) away from hazard areas, and/or use of fire retardant design and materials are preferred where feasible.*

*Action 10.6.2 Equivalent methods of fire risk reduction shall be determined on a case by-case basis by the City and may include the following, or a combination of the following, but are not limited to: compliance with Building Code and Fire Code requirements for projects; tile roof treatments; irrigated buffer zones; installation of masonry or other non-combustible fire resistant wall; boxed eaves; reduced landscaping; other alternative construction to avoid the need for vegetation thinning, pruning or vegetation removal.*

*Action 10.6.3 No new division of land shall be allowed which would require new fuel modification (e.g. vegetation removal) or new fuel breaks in environmentally sensitive habitat areas or on public open space or park lands to protect new development within the resultant lots.*

**Policy 10.8**

*Avoid creation of building sites that will result in significant adverse impacts on the community.*

**Policy 10.9**

*Continue to prohibit the approval of newly created building sites that do not conform to Municipal Code standards, including the creation of flag lots.*

**Policy 10.10**

*Prohibit lot line adjustments that are inconsistent with the Municipal Code, General Plan, and Subdivision Map Act. Existing building sites which maintain a legal nonconforming lot or lots may adjust the lot lines provided that the adjustment does adversely increase the extent of nonconformities [sic].*

**Open Space/Conservation Element Policies –**

*Policy 4E Ensure that development is sited and designed to limit disturbances and to preserve the infiltration, purification, retention and conveyance functions of natural drainage systems that exist on the site to the maximum extent practicable.*

Policy 7G *The Design Review process for an individual project shall include criteria for treatment of the urban edge between existing development and open space in areas designated “Hillside Management/Conservation” on the Land Use Plan Map. The criteria shall be developed to reflect topographic constraints and shall include at a minimum:*

- a. *Treatment to screen development, including the use of vegetation, variable setbacks and modified ridgelines or berms*
- b. *Fuel modification techniques for new development which provide the following: Result in graduated fuel modification zones in which on the minimum amount of native vegetation is selectively thinned; prohibit grading or discing for fuel modification; confine fuel modification to the development side of the urban open space edge to the maximum extent; avoid fuel modification encroachment into environmentally sensitive areas; locate structures with respect to topographic conditions to incorporate setbacks, minimize fuel modification requirements and maximize hazards; and provide requirements for ongoing maintenance.*
- c. *Treatment for fuel modification and maintenance techniques for existing development consistent with standards in (b) above to the maximum extent feasible.*

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 8A *Preserve the canyon wilderness throughout the city for its multiple benefits to the community, protecting critical areas adjacent to canyon wilderness, particularly stream beds whose loss would destroy valuable resources.*

Policy 8C *Identify and maintain wildlife habitat areas in their natural state as necessary for the preservation of species.*

Policy 8F *Require detailed biological assessments for all subdivisions and fuel modification proposals located within areas designated as high or very high value on the Biological Values Map.*

Policy 8G *When subdivision or fuel modification proposals are situated in areas designated as “high value habitats” on the Biological Values Map and where these are confirmed by subsequent on-site assessment, require that these habitats be preserved to the greatest extent possible.*

Policy 8H *When subdivision or fuel modification proposals are situated in areas designated as “very high value habitats” on the Biological Values Map and where these are confirmed by subsequent on-site assessment, require that these habitats be preserved and, when appropriate, that mitigation measures be enacted for immediately adjacent areas.*

Policy 8I *Environmentally Sensitive Areas (ESA’s) as defined in Section 30107.5 of the California Coastal act shall be identified and mapped on a Coastal ESA Map. The following*

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

*Policy 8J Detailed Biological assessments shall be required for all new development proposals located within areas designated as Environmentally Sensitive Areas on the Coastal ESA Map. To protect these resources, the following shall be required:*

- 1. No new development proposals shall be located in areas designated as “Environmentally Sensitive Areas” on the Coastal ESA Map except for uses dependent upon such resources.*
- 2. When new development proposals are situated in areas adjacent to areas designated as “Environmentally Sensitive Areas” on the Coastal ESA Map and where these are confirmed by subsequent on-site assessment, require that development be designed and sited to prevent impacts which would significantly degrade such areas.*
- 3. Where development is proposed on an existing subdivided lot which is otherwise developable (i.e., able to be served by utilities and access, and on slopes able to accommodate development consistent with City provisions on slope/density, grading, hazards, subdivisions and road access), and is consistent with all other policies of this Land Use Plan except for its location entirely within an identified ESA as confirmed by a site-specific assessment, the following shall apply:*
  - a. Resource Management uses including estuaries, nature centers and other similar scientific or recreational uses are permitted subject to a Conditional Use Permit to assure that uses are sited and designed to prevent degradation of the resource value; or alternatively,*
  - b. Transfer of a density bonus to another property in the vicinity able to accommodate increased density consistent with the policies of the Land Use Plan concurrent with the recordation of an open space easement or other similar instrument over the habitat area of the parcel;*
  - c. Existing dwellings shall be designated as nonconforming uses but shall be allowed to be rebuilt or repaired if damaged or destroyed by natural disaster provided however, that the floor area, height and bulk of the structure not exceed that of the destroyed structure by more than 10 percent.*
  - d. No new parcels shall be created which are entirely within a coastal ESA or which do not contain a site where development can occur consistent with the ESA policies of this Plan.*

*Policy 8L Preserve and protect fish and wildlife species for future generations.*

*Policy 8M Preserve a continuous open space corridor within the hillsides in order to maintain animal migration opportunities.*

*Policy 8N Encourage the preservation of existing drought-resistant, native vegetation and encourage the use of such vegetation in landscape plans.*

*Policy 9A Promote the preservation and restoration of Laguna’s natural drainage channels, freshwater streams, lakes and marshes to protect wildlife habitat and to maintain watershed, groundwater and scenic open space.*

*Policy 9F Where possible, require restoration of deteriorated significant natural drainage courses that have been disturbed by development, but which retain potential for natural function.*

*Policy 9K Promote preservation and enhancement of the natural drainage of Laguna Beach.*

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

*Policy 10B Require the incorporation of open space into the design of new development in hillside and canyon areas, where feasible, for the purposes of reducing the potential for spread of wildfires from structure to structure.*

*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.*

*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 12D Preserve cultural/scientific sites, including geologically unique formations having archeological significance.*

*Policy 13A Preserve the function of ridgelines, hillsides and canyons as a link between adjoining open space areas.*

Policy 14A *Require construction and grading to be concentrated on slopes of 30% or less.*

Policy 14B *Prohibit construction and grading on slopes of 45% or greater, except on properties previously approved by the subdivision map process and located adjacent to a dedicated, accepted right-of-way that has been, or can be, improved to the City's access standards.*

Policy 14C *Discourage the creation of new building sites that would require construction of a new street or a street extension of more than 12% in grade. Prohibit the creation of new building sites that would require construction of a new street or a street extension of more than 14% in grade.*

Policy 14E *Require all development on slopes of 30% or greater to be reviewed and approved by the Design Review Board.*

Policy 14F *Require grading projects to minimize earth-moving operations and encourage preservation of the natural topographic land features.*

Policy 14G *Prohibit the dumping of excess fill within hillside areas, unless necessary for the public's health and safety.*

Policy 14H *Encourage inaccessible hillside property to be dedicated to the city as permanent open space.*

Policy 14I *Discourage new roads or extensions of existing roads into currently inaccessible areas.*

Policy 14J *As a condition of approval of any new development in the "Residential/Hillside Protection" designation, the offer of a permanent open space easement over that portion of the property not used for physical development or service shall be required to promote the long-term preservation of these lands. Only consistent open space uses shall be allowed by the easements. Except for passive recreation, trails or trail-related rest areas, development shall not be allowed in this easement area. The offer of easement shall be in a form and content approved by the City and shall be recorded and run with the land, and shall be irrevocable for 21 years from recordation. The creation of homeowner's or other organizations, and/or the preparation of open space management plans may be required by the City to provide for the proper utilization of open space lands.*

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*

#### Section 25.15 R/HP Residential/Hillside Protection Zone – chapter in full

##### **25.15.002 Intent and purpose.**

*The intent and purpose of this zone is to allow for low-intensity, residential development that addresses concerns for public health and safety and promotes the design criteria set forth in Section 25.15.004. All new development in this zone shall be sensitive to the hillside terrain and to the environmental constraints and shall provide for the conservation of existing natural open space lands, unique landforms, scenic hillsides and sensitive biological habitats. These environmental constraints include potential danger from fire, slope failure and erosion, as well as the difficulty of emergency evacuation. Protection of the physical environment, public views and aesthetic qualities associated with undeveloped lands is of critical concern in this zone. Low-intensity agricultural uses and passive, recreational uses are also appropriate for this zone.*

##### **25.15.004 Design criteria.**

*The area included in the residential/hillside protection zone encompasses a substantial amount of the city's undeveloped hillsides. Not only does this land incorporate some of the most undisturbed physical environments in the city, it also supports many environmentally sensitive habitats. These included rare species of flora or fauna, significant watercourses, ridgelines and unique landforms such as rock outcroppings and caves. In addition, land within this zone typically contains physical conditions such as steep topography and geologically sensitive areas which amplify the environmental and safety concerns of this zoning district.*

*The following design criteria have been established to help ensure that future development proposals take the proper steps to avoid adverse impacts on these unique resources. In addition, all development proposals shall be subject to the zoning standards and design review procedures of this chapter and shall be strictly evaluated for conformance with the city's general plan, with particular emphasis on the open space and conservation element. As part of the environmental review process for any project, the city shall require detailed*



*environmental studies to identify specific impacts, measures to avoid those impacts and, when allowable impacts are unavoidable, the necessary mitigation measures.*

(A) *To ensure compliance with the applicable General Plan policies, all development proposals shall be subject to the following criteria:*

(1) *Building Site. Buildings and other improvements should be located on slopes of less than thirty percent and shall be situated such that they do not adversely impact any environmentally sensitive areas, and should minimize impacts to ridgelines, geologic hazard areas and unique landforms.*

(2) *Mass and Scale. The height and scale of the building(s) should respect the natural surroundings and unique visual resources by incorporating designs which minimize bulk and mass, follow natural topography and minimize visual intrusion on the natural landscape.*

(3) *Building Size. In addition to the mass and scale of the residence, the total square footage shall also be maintained at a size compatible with the open space characteristics of the hillsides. Residential designs should blend in with the surroundings, while minimizing their prominence to public view. As such, larger lots shall not necessarily enable the development of correspondingly larger homes.*

(4) *Architectural Style. The architectural style, including materials and colors, should be compatible with the natural setting by encouraging designs which blend in with the surroundings.*

(5) *Grading. Development proposals should minimize grading of hillside areas by encouraging designs which follow the natural grade while maintaining a building mass and scale that is sensitive to topography.*

(6) *Landscaping. The proposal should maintain native vegetation to the greatest extent possible and should include the provision of additional native vegetation to mitigate potential visual impacts and erosion concerns associated with the development proposal. Invasive plantings shall be prohibited.*

(7) *Fuel Modification. The development proposal should address the required fuel modification as part of the initial application and should integrate fuel modification provisions into the site plan in such a way as to minimize impact on existing native vegetation and areas of visual prominence. Alternative means to thinning and/or removal of native vegetation for fire hazard management such as minimizing the building envelope, and/or siting of the structure(s) away from hazard areas, and/or use of fire retardant design and materials are preferred where feasible.*

**25.15.006 Uses permitted.**

*Buildings, structures and land shall be used, and buildings and structures shall hereafter be erected, designed, structurally altered or enlarged only for the following purposes:*

(A) *Single-family dwellings;*

(B) *Accessory buildings and uses as defined in Section 25.08.002, including swimming pools and recreation courts for noncommercial use, consistent with the development standards set forth in Section 25.10.008 and Chapter 25.50, and subject to design review board approval;*

- (C) *Child care and other similar uses set forth in the State Health and Safety Code;*
- (D) *Guest house or guestroom, subject to the following conditions:*
  - (1) *The lot is a minimum of fourteen thousand five hundred square feet in size,*
  - (2) *There is no more than one guest house on any one lot,*
  - (3) *There is no kitchen within such guest house,*
  - (4) *The floor area of the guest house does not exceed three hundred square feet,*
  - (5) *Such guest house is used only by the occupants of the main building or their guests or domestic staff and shall not be rented separately, let or hired out, whether the compensation is paid directly or indirectly in money, goods, wares or merchandise,*
  - (6) *Such guest house is located entirely within one hundred feet of the main dwelling unit but does not encroach into any required setback area. Access to the guest house shall be provided from the same access driveway serving the main residence,*
  - (7) *Any guest house shall be subject to design review board approval,*
  - (8) *Unless superseded by the above conditions, all development standards for guest houses, as set forth in Section 25.10.008, shall apply;*
- (E) *Home occupations, subject to the standards in Chapter 25.08;*
- (F) *Raising of non-invasive vegetables, field crops, fruit and nut trees and horticultural specialties used solely for personal or educational, noncommercial purposes. The location of such agricultural uses should be restricted to areas where the slope does not exceed thirty percent;*
- (G) *Residential care facility, small licensed, subject to: (1) no outdoor smoking, (2) fire and building code inspection and compliance, and (3) maximum occupancy of six persons;*
- (H) *Residential housing, special needs; and*
- (I) *Second residential units, subject to the provisions of Chapter 25.17.*

**25.15.007 Uses permitted subject to an administrative use permit.**

*The following may be permitted subject to the granting of an administrative use permit as provided for in Section 25.05.020:*

- (A) *Family day care home, large, subject to the standards set forth in Section 25.10.005.*
- (B) *Parking or storage of recreational vehicles (meaning any travel trailer, boat, camper, motor home, van, travel and utility trailer or converted bus) that is more than twenty feet in length and more than six feet in height, subject to the following:*
  - (1) *The vehicle shall be owned by the owner of the property or the tenant who is the primary resident of the property.*
  - (2) *The outdoor parking of such vehicles shall not be closer than five feet to a property line, shall not be parked in the front or side yards and shall be located on a*

*paved, or any other stable, all-weather surface approved by the director of community development.*

- (3) *The vehicle shall not be connected to electricity, sewer or water.*
- (4) *The vehicle shall not be used, either temporarily or permanently, for sleeping or living purposes.*
- (5) *The vehicle shall not be used for storage of goods, materials or equipment other than those that constitute part of the unit or are essential for its immediate use.*
- (6) *The vehicle shall be in operable condition.*
- (7) *The vehicle shall be effectively screened from a public right-of-way and/or adjacent residences with fencing and/or landscaping to the maximum extent allowed under the zoning regulations.*

*All vehicles being parked or stored as of the effective date of the ordinance codified in this subsection and not conforming to the provisions hereof shall within three months after receiving appropriate notice from the community development department, either obtain approval of an administrative use permit or cause the vehicle to be removed from the property.*

**25.15.008 Uses permitted subject to a conditional use permit.**

*The following uses may be permitted subject to the granting of a conditional permit as provided for in Section 25.05.030:*

- (A) *Passive natural parks, such as view platforms, mini-parks, hiking and walking trails;*
- (B) *Public utility and public service pumping stations, power stations, drainage ways and structures, storage tanks and transmission lines;*
- (C) *Planned residential developments subject to the standards of Chapter 21.14, Planned Residential Developments (the conditional use permit must be approved by the city council after the planning commission makes a recommendation regarding the project. A subdivision proposal shall be processed in conjunction with the conditional use permit application for the planned residential development);*
- (D) *Churches; and*
- (E) *Such other uses as the planning commission may deem, after a public hearing, to be consistent with the intent and purpose of this zoning district and similar to and no more obnoxious or detrimental to the public health, safety and welfare, than other permitted uses.*

**25.15.010 Property development standards.**

*The following property development standards shall apply to all land and structures in this zone:*

- (A) *Lot Area. Each lot shall have an area of not less than fourteen thousand five hundred square feet. Exceptions: Any existing parcel which is considered a legal building site at the time of application for a development permit shall retain building site status even though it is less than fourteen thousand five hundred square feet in size. Title 21, Section*

21.14.010 sets forth criteria which allows for the fluctuation of lot sizes and shapes when a conditional use permit for a planned residential development is proposed and approved.

(B) *Lot Dimensions.*

(1) *Width.* No lot shall have a width at any point of less than eighty feet. *Exception:* Cul-de-sac lots shall have a minimum lot width at the front property line of fifty feet.

(2) *Depth.* Each lot shall have a minimum depth of one hundred fifty feet.

(3) *Planned Residential Developments.* Section 21.14.010 sets forth criteria which allows for the fluctuation of lot sizes and shapes when a conditional use permit for planned residential development is proposed and approved.

(C) *Density Standards.* The following slope/density table and density yield method shall be used to determine the maximum allowable building density for a given property in relation to a potential subdivision. The actual number of approved housing units may be significantly lower than the maximum allowable density due to localized conditions identified during the site-specific planning process. Such conditions may include, but are not limited to, infrastructure capacities, such as road, water and sewer systems, and environmental factors, such as natural drainage courses, sensitive biological habitats, geological conditions and aesthetic considerations. Importantly, the subdivision of land must be found to be consistent with general plan policies which may result in a density less than that allowed by the following slope/density table and density yield method:

***Slope/Density Table***

<b><i>Slope</i></b>	<b><i>Maximum Density</i></b>
0—10%	3.0 Units/Acre
10+—15%	2.5 Units/Acre
15+—20%	2.0 Units/Acre
20+—25%	1.5 Units/Acre
25+—30%	1.0 Units/Acre
30+—35%	.5 Units/Acre
35+—40%	.2 Units/Acre
40+—45%	.1 Units/Acre
45+%	.0 Units/Acre

*Exception:* Any existing parcel which is considered to be a legal building site at the time of application for a development permit shall retain building site status even though it has slopes in excess of forty-five percent.

*Note:* If density calculations result in a fractional number, the number shall be rounded down to the nearest whole number, although in no event shall the density calculations be less than one dwelling unit for an existing legal building site.

(1) *Density Yield Method.*

(a) *The maximum allowable building density for a given property shall be determined in accordance with the method known as the “bubble” (or “water drop”) method. This method totals the calculated maximum densities for each contiguous portion of other property that is fourteen thousand and five hundred square feet (the minimum lot area within the zone) or greater in lot area and that is forty-five percent or less in slope. The method shall be implemented as set forth in the following text and as illustrated in the drawing shown below (entitled “Definition Sketch—Slope Density Measurements”):*

(i) *Distances between contour lines are measured, and at every point where the slope corresponds to a change in slope category (as identified in the slope/density table above), a line is drawn between the contour lines.*

(ii) *A boundary is drawn around each contiguous portion of the property with slopes of forty-five percent or less (“slope area boundary”).*

(iii) *Within each slope area boundary on the property, the area in each slope category is measured and multiplied by the corresponding maximum density for the slope category using the slope/density table. To qualify for the calculation of density yield the slope area boundary must be at least fourteen thousand five hundred square feet in area and be forty-five percent or less in slope. Portions of the property within a slope area boundary that are greater than forty-five percent in slope are also excluded from the calculation of density yield.*

(iv) *The products of the calculation on density yield for each slope category within slope area boundaries are added together to arrive at the maximum allowable building density for a given property.*

(b) *Measurements shall be made for the entire parcel(s) proposed to be developed or subdivided at contour intervals of not more than ten feet nor less than two feet on a horizontal map scale where one inch equals one hundred feet or less.*

(2) *When more than one zoning designation exists on a parcel which is proposed to be subdivided, the density limit for the entire property shall be determined by calculating the allowable number of units within each separately zoned area (fractional numbers shall be rounded down to the nearest whole number) and taking the sum total of these densities. The city may consider allowing the resulting density in the residential/hillside protection zone to be transferred to a more intensive residential zone on the same parcel.*

(D) *Lot Coverage. The following table indicates the maximum percentage of lot coverage allowed. Grading and terrain alteration, except as required for public safety purposes and required access, are restricted to the lot coverage area.*

<i>Lot Slope</i>	<i>Maximum Percent of Coverage</i>
<i>0—20%</i>	<i>35%</i>

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20+—25%	30%
25+—30%	25%
30+—35%	20%
35+—45%	10%
45+%	0%

*Lot slope shall be ascertained by calculating the slope percentage of rise, (which is the vertical height distance between the highest and lowest points of a lot), divided by the run, (which is the horizontal distance between the highest and lowest points of a lot), multiplied by 100.*

*Exception: Any existing parcel which is considered to be a legal building site at the time of application for a development permit shall retain building site status even though it has a lot slope in excess of forty-five percent and entitled to a maximum lot coverage of ten percent.*

*(E) Accessory Use Lot Coverage. The maximum lot coverage permitted for the following accessory uses shall not exceed a total of fifteen percent of the lot coverage area, as established by the provisions of subsection D of this section: spas, swimming pools, recreation courts, and any other similar structures.*

*(F) Ridgelines. No development shall be permitted which, in any way, alters an existing ridgeline identified as significant in the general plan, including topographic changes, visual obstruction, or other direct impacts on the natural profile of the ridgeline. If during the initial environmental review process it is determined that a project could impact other ridgelines not identified in the general plan, the appropriate mitigation measures shall be required to protect the physical and aesthetic character of the ridgeline. Such measures may include, but are not limited to, a restriction on ridgeline development and specific design modifications as may be required.*

*(G) Accessory Buildings and Uses. All accessory buildings and uses, including recreation courts and swimming pools, shall be located within one hundred feet of the main dwelling unit but shall, in no case, encroach into any required yard or setback area.*

*(H) Building Height. Unless further restricted by the provisions of Chapter 25.50, the maximum height of any structure shall not exceed twenty-five feet. In addition, all residential units shall be reviewed for consistency with the city's design guidelines for hillside development as adopted by Resolution No. 89-104 or as amended thereafter.*

*(I) Yards. The general yard and open space provision of Chapter 25.50 shall apply in addition to the following:*

*(1) Front Yards. Each lot shall maintain a front yard of not less than twenty feet. Front yards shall not be used for accessory buildings, clotheslines, air conditioning or pool equipment, the storage of trailers, boats, campers or other materials, or the regular or constant parking of automobiles or other vehicles.*

*(2) Side Yard. The width of each side yard shall be not less than ten percent of the average lot width, but in no case less than eight feet.*

- (3) *Rear Yard. Each lot shall maintain a rear yard of not less than twenty-five feet.*
- (4) *Exception. Where a planned residential development is proposed, consisting of four or more structures, yard requirements shall be determined by the design review board.*
- (J) *Fences and Walls. All fences and walls shall be subject to the provisions of Section 25.50.012 as well as the following standards:*
- (1) *Except as provided for in subsection (2) of this section, any fencing shall be located within one hundred feet of the main dwelling. If no dwelling exists on the lot, a fence is not permitted.*
- (2) *Requests for security or safety fences which are not addressed in the Building Code may be exempt from the provisions of subsection (1) of this section, subject to design review board approval which includes a finding that the fence is necessary for the preservation of public health, safety and welfare.*
- (K) *Design Review. The provisions of Section 25.05.040 shall apply.*
- (L) *Signs. The provisions of Chapter 25.54 shall apply.*
- (M) *Parking. The provisions of Chapter 25.52 shall apply.*
- (N) *All other applicable sections of Title 25 shall apply, except as modified herein by this chapter.*
- (O) *Any previous reference pertaining to “Hillside Management/Conservation,” either as a zoning district or as a general plan or specific plan designation shall, from the effective date of the adoption of this chapter, be equated to “Residential/Hillside Protection.”*

**25.15.012 Required findings.**

*In addition to such written findings as may be required by state law or the municipal code, the following written findings shall be made by the approving authority prior to the approval or conditional approval of any development project:*

- (A) *That the proposed development is in conformity with all applicable provisions of the general plan, including the certified local coastal program and the zoning code (Title 25).*
- (B) *That the proposed development will not result in adverse impacts to environmentally sensitive areas, and that any unavoidable, allowable impacts will be minimized following the incorporation of reasonable mitigation measures, and so will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.*
- (C) *That the proposed development will not have a substantial or undue adverse effect upon adjacent property, the character of the neighborhood, traffic conditions, parking, utility facilities and other matters affecting the public health, safety and general welfare.*
- (D) *That the proposed development has adequately designed for and long-term implementation and maintenance measures have been established or conditioned to be established to reasonably protect the residents and their structures from wildfire hazards.*