

CALIFORNIA COASTAL COMMISSION

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**F17b**

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 Staff: M. Vaughn- LB
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 Hearing Date: 10/18/2019

STAFF REPORT: APPEAL – SUBSTANTIAL ISSUE

Appeal Number: A-5-LGB-19-0171

Applicants: Emil Estafanous

Agent: None

Local Government: City of Laguna Beach

Local Decision: Approval with No Conditions

Appellants: Mark & Sharon Fudge

Project Location: 31893 Circle Drive, Laguna Beach, Orange County
 APN: 658-113-34

Project Description: Appeal of City of Laguna Beach Coastal Development Permit 19-3343 to add 337 square feet of interior area, 68 square feet of elevated decks and a new pedestrian entry feature to an existing 2,140 square foot, three level single family residence, and approval of an air conditioning unit, and landscaping on a blufftop lot.

Staff Recommendation: Determine that a substantial issue exists

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

SUMMARY OF STAFF RECOMMENDATION

The City's action on Local CDP No. 19-3343 approved construction of "*a 337 square foot addition to an existing single family residence including upper level additions, elevated decks (68 square feet), a pedestrian entry feature, air conditioning unit, and landscaping*". The City's approval also acknowledges that the project will retain "*nonconforming setbacks in conjunction with additions exceeding 10% of the existing area*". The City's approval did not address the presence of existing private beach access stairway on the bluff face. The subject site is a 3,457 square foot trapezoidal lot, with a land use designation of Village Low Density and zoning of Low Density Residential (R-1), located at 31893 Circle Drive, a bluff top, beach front site above the upcoast end of Thousand Steps County Beach, in the South Laguna area of the City of Laguna Beach.

Staff recommends that the Commission, after public hearing, determine that a **substantial issue exists** with respect to the grounds on which the appeal has been filed because the scope of the entire project is not fully described in the City's findings or detailed on the approved plans, which raises a legitimate concern as to whether the proposed development constitutes a major redevelopment subject to the same LCP standards as new development. Specifically, the extent of proposed demolition and new construction of existing structural components and construction of new components (roof, upper floor, lower floor, exterior walls, foundation) is not clear. This in turn raises the question of consistency of the project as approved by the City with various LCP policies addressing development on a coastal bluff top, including appropriate bluff edge setback and prohibition of bluff/shoreline protection devices. Although the applicant's geotechnical consultant recommends specific foundation elements (piles and grade beams, also referred to by the consultant as caissons), no discussion or plans addressing foundations are included in the City record for the project. Additionally, construction methods are not discussed or included in the record. Construction methods related to the proposed excavation would include types of construction equipment to be used, construction access, and how excavation beneath the existing residence will be accomplished without adversely affecting stability and structural integrity of the site or surrounding area. Consequently, the assertions of the appellants do raise significant questions with regard to the project's consistency with the City's certified Local Coastal Program (LCP) and, potentially, with the public access policies of the Coastal Act.

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EXHIBIT 4 – CITY OF LAGUNA BEACH DESIGN REVIEW BOARD STAFF REPORT 7/11/2019

EXHIBIT 5 – CITY OF LAGUNA BEACH DESIGN REVIEW BOARD STAFF REPORT 5/23/2019

EXHIBIT 6 – VIA GEOS LETTER RESPONSE, 5/20/2019

EXHIBIT 7 – APPEAL OF MARK & SHARON FUDGE

I. MOTION AND RESOLUTION – SUBSTANTIAL ISSUE

Motion: *I move that the Commission determine that Appeal No. A-5-LGB-19-0171 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-19-0171 presents A **SUBSTANTIAL ISSUE** with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with Chapter 3 policies of the Coastal Act.*

II. APPELLANTS' CONTENTIONS

The City-approved local coastal development permit would allow a 337 square foot addition to an existing single-family residence including upper level additions, elevated decks (68 square feet), pedestrian entry feature, air conditioning unit, and landscaping at 31893 Circle Drive in Laguna Beach. An appeal was timely filed by Mark & Sharon Fudge on 8/12/2019 (**Exhibit 7**).

The appellants assert that the City's approval did not comply with the Local Coastal Program, specifically as it relates to the definition of major remodel/new development, bluff edge location, and nonconforming/unpermitted development. Additionally, the appellants contend that the City did not adequately condition the permit despite the project's probability of causing adverse effects to coastal resources and the environment. The complete appeal is included as Exhibit 7. A summary of the appellants' contentions follows:

Regarding hazards, the appellants contend that the City's approval is not consistent with the requirements of the certified LCP because: the determination of the bluff edge location applied to the project is inconsistent with the LCP certified definition of bluff edge; appropriate setbacks from the correct bluff edge location were not imposed; a waiver of any right to future bluff/shoreline protective devices was not imposed; residential development is prohibited on bluff faces; pile/grade beam foundations are recommended for the proposed project by the geotechnical consultant, which may constitute shoreline armoring, but was not analyzed nor conditioned in the City's approval; and the true amount of excavation generated by the project was not evaluated in the City's approval.

Regarding public access, the appellants request that if the Commission finds that this appeal does raise a substantial issue, that during the de novo stage of review, the Commission consider whether public access to Tortuava Bay beach (located just upcoast of the subject site and the rocky headlands separating it from Thousand Steps beach) is required by the owners of Circle Drive, including the current project applicant. The appellants also request that if the Commission finds that this appeal does raise a substantial issue, that during the de novo stage of review, the Commission consider whether the Thousand Steps settlement that occurred decades ago affects the subject site.

The appellants contend that the City's approval did not address visual impacts of the project including glare resulting from the proposed glazing and glass railings on the ocean-facing side of the building. The appellants also contend that impacts to public views from the beach due to the proposed retention of the existing private bluff face stairway were not considered by the City. The appellants also contend that the proposed glazing and glass railings may create risks to birds in the form of potential bird strikes, which was also not considered by the City.

Regarding natural resources, the appellants contend that in its action the City did not consider impacts of the proposed development on natural resources. For example, consistent with certified LCP Land Use Element and Open Space/Conservation Element policies, the project could be conditioned to revegetate the slope with native plants.

Regarding cultural/archaeological resources, the appellants state: "*Although there is minimal*

grading proposed, due to the location of the project and the lack of previous monitoring, we ask that appropriate cultural resource protections are considered in the event of a de novo hearing for this project.”

Regarding water quality protection, the appellants contend that the City did not review the proposed development in conjunction with the numerous water quality protection policies of the certified LCP. And, further, that there is nothing in the record addressing site drainage.

Regarding unpermitted development, the appellants contend that there is no evidence to show that some improvements at the site are permitted, and, if they are unpermitted, they must be removed. The appellants argue that only development that conforms with the correct bluff edge location and setback requirements may be found to be consistent with the certified LCP and that non-conforming development should be removed, especially if it is unpermitted and non-conforming. The appellants argue that the City approved project will result in the indefinite continuation of the nonconforming structures by allowing increases (i.e. lifespan) to both the bluff stairway and the residence located on the bluff top.

Regarding deed restrictions/waivers, the appellants contend that “*deed restrictions should have been obtained for a waiver of rights to future bluff/shoreline protection; the recordation of an OTD [offer to dedicate] for public access/recreational use on and along the beach; and a waiver of liability” pursuant to the requirements of the certified LCP.*

Finally, the appellants contend that the City approved the project on July 11, 2019, but the findings for approval do not address issues raised at earlier public hearing on the subject project, including issues regarding the project’s mass and scale; and it is not clear that such findings could be made.

III. LOCAL GOVERNMENT ACTION

On July 11, 2019 the City of Laguna Beach Design Review Board approved local coastal development permit 19-3343 with no conditions, as reflected in Resolution No. 19-28. The Design Review Board held noticed public hearings on the matter on May 23, 2019 and July 11, 2019. The Design Review Board action occurred at the July 11, 2019 noticed public hearing. After the local appeal period had expired, the City’s Notice of Final Action (NOFA) was received in the Coastal Commission’s South Coast District Office on July 29, 2019, at which point the Commission’s required 10 working-day appeal period was established (July 30 – August 12, 2019). On August 12, 2019 the appeal of Mark & Sharon Fudge was received. No other appeals were received.

IV. APPEAL PROCEDURES

Coastal Act Section 30603 provides for the appeal to the Coastal Commission of certain CDP decisions in jurisdictions with certified LCPs. The following categories of local CDP decisions are appealable: (a) approval of CDPs for development that is located (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance, (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff, and (3) in a sensitive

coastal resource area; or (b) for counties, approval of CDPs for development that is not designated as the principal permitted use under the LCP. (*See* Coastal Act Section 30603(a)(1)-(4).) In addition, any local action (approval or denial) on a CDP for a major public works project (including a publicly financed recreational facility and/or a special district development) or an energy facility is appealable to the Commission. (*Id.* Section 30603(a)(5).) This project is appealable because it is located between the sea and the first public road paralleling the sea, and it is within 300 feet of the top of the seaward face of a coastal bluff.

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

After a final local action on a local CDP application, the Coastal Commission must be noticed within five days of the decision. (14 CCR § 13331) After receipt of such a notice, which contains all the required information, a ten working-day appeal period begins during which any aggrieved person or any two members of the Commission may appeal the local decision to the Coastal Commission. (14 CCR § 13110, 13111.) As provided under section 13318 of Title 14 of the California Code of Regulations, the appellant must conform to the procedures for filing an appeal as required under section 13111 of Title 14 of the California Code of Regulations, including identification of the specific grounds for appeal and a summary of the significant question raised by the appeal.

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

Commission staff recommends a finding of **substantial issue**. If the Commission decides that the appellants’ contentions raise no substantial issue as to conformity with the certified LCP or the public access policies of the Coastal Act, the action of the local government becomes final. Alternatively, if the Commission finds that a substantial issue exists with respect to the conformity of the action of the local government with the public access policies of Chapter 3 of the Coastal Act and with the certified LCP, the Commission accepts the appeal and may continue the public hearing to a later date in order to review the coastal development permit application as

a de novo matter. Section 13321 of the Coastal Commission regulations specifies that de novo actions will be heard according to the procedures outlined in Sections 13114 and 13057-13096 of the Commission’s regulations.

If there is no motion from the Commission to find no substantial issue, it will be presumed that the appeal raises a substantial issue and the Commission may schedule the de novo phase of the public hearing on the merits of the application at a hearing following the substantial issue finding. If the Commission decides to hear arguments and vote on the substantial issue question, those who are qualified to testify at the hearing, as provided by Section 13117 of Title 14 of the California Code of Regulations, typically (at the discretion of the Chair) will have three minutes per side to address whether the appeal raises a substantial issue.

The only persons qualified to testify before the Commission on the substantial issue question are the applicant, persons who opposed the project before the local government (or their representatives), and the local government. (14 CCR Section 13117.) Testimony from other persons regarding the substantial issue question must be submitted in writing. (*Id.*) Any person may testify during the de novo CDP determination stage of an appeal (if applicable). The Commission will then vote on the substantial issue matter. It takes a majority of Commissioners present to find that the grounds for the appeal raise no substantial issue.

V. FINDINGS AND DECLARATIONS – SUBSTANTIAL ISSUE

A. Project Location & Description

The City-approved local CDP 19-3343 would allow: “*a 337 square foot addition to an existing single-family residence including upper level additions, elevated decks (68 square feet), pedestrian entry feature, air conditioning unit, landscaping, to maintain nonconforming setbacks in conjunction with additions exceeding 10% of the existing area, and construction in an environmentally sensitive oceanfront area.*” According to information in the City record, the existing structure on the property is a 2,140 square foot, three level single family residence. With the development approved by the City, the resulting structure would be a 2,477 square foot, three level, 28.53¹ foot high, single family residence with an attached 414 square foot, two car garage (if the garage addition of 25 square feet is part of the approved final project; if not, the garage square footage would be 389). The subject site is located at 31893 Circle Drive in the City of Laguna Beach, Orange County.

The subject site is a trapezoidal, 3,457 square feet, oceanfront blufftop lot located above the upcoast end of Thousand Steps County Beach. Thousand Steps beach is a sandy public beach accessed via the public access stairway located opposite the end of 9th Street, approximately a quarter mile downcoast of the subject site (**Exhibit 1**). The land use designation at the subject site is Village Low Density and the zoning is Residential Low Density (R-1). The subject site is surrounded by existing single family residential development and Circle Drive on three sides, with the bluff and beach on the fourth side.

¹ The 28.53 foot building height is taken from the Project Summary Tables attached to the City staff report prepared for the Design Review Board 7/11/2019 hearing on the matter. This Table indicates the existing height of the structure is 29.63 feet. It is not clear what the height measurements are taken from (base elevation, natural grade, finished grade, or other). It should be noted that the copy of the Project Summary Tables included in the record forwarded by the City is not legible. However a legible copy was included with the appeal.

The site has a relatively steep 65% average gradient, sloping down to the base of the bluff at the level of the sandy beach below. The Preliminary Geotechnical Investigation prepared for the proposed project by ViaGeos, dated 1/30/2019 describes the subject site as:

“The trapezoidal shaped bluff top property fronts 37+/- feet on Circle Drive and extends southeasterly 116 to 117 feet to the rear property boundary located along a sandy beach and shoreline below. The property consists of three physiographic features that include a partially graded marine terrace surface/upper bluff slope, a steep natural sea cliff, and the adjoining relatively level beach. The upper bluff slope descends from the adjacent marine terrace surface underlying Circle Drive to the crest of the sea cliff. The marine terrace surface/upper bluff slope has been substantially modified by excavation and terracing in conjunction with development of the site. The sea cliff is about 40+/- feet high measured from the crest of the sea cliff to the present beach level. Lower portions of the sea cliff are buried beneath the sand and the overall height of the sea cliff is likely near 50+/- feet. Total relief across the site is about 80 feet.

The property is developed with a circa 1940’s multi-level residence with attached garage adjacent to Circle Drive. Front [street side] portions of the structure are constructed into grade and a 10+/- feet high retaining wall forms front perimeter foundation at this location. The house appears to be supported on shallow conventional footings and utilizes raised wood floors at the middle level, whereas, the lower level floor consists of a slab-on-grade. Improvements in the bluff top areas include a deck at the rear of the lower level and wood framed stairs that descend to the beach. The stairs are located on both the subject site and adjacent property to the southwest.”

The Coastal Hazards Report (GeoSoils, Inc., 3/19/2018), under the heading Erosion Hazard, states: *“Based on our review of the referenced reports, site observations, and review of aerial photographs, for discussion purposes herein, a conservative estimate of basal bluff retreat (San Onofre Breccia), is less than 1 foot total, during the past 41 years (0.26 inches per year, or 0.025 feet per year).”*

B. Local Coastal Program Certification

The City of Laguna Beach Local Coastal Program was certified in 1993. The City’s Land Use Plan is comprised of a variety of planning documents including the Land Use Element (LUE), Open Space/Conservation Element, Technical Appendix, and Fuel Modification Guidelines (of the Safety General Element of the City’s General Plan as adopted by Resolution 89.104). The Implementation Plan (IP) includes Title 25, the City’s Zoning Code, as well as other implementation documents.

C. Factors Considered In Substantial Issue Analysis

Section 30625(b)(2) of the Coastal Act states that the Commission shall hear an appeal of a local government action unless it finds that no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603. The term “substantial issue” is not defined in the Coastal Act or its implementing regulations. Section 13115(b) of the Commission’s regulation simply indicates that the Commission will hear an appeal unless it

“finds that the appeal raises no significant question.” In previous decisions on appeals, the Commission has considered the following factors:

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

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

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

D. Substantial Issue Analysis

As stated in Section IV of this report, the grounds for an appeal of a CDP issued by the local government are the project’s conformity with the policies of the LCP and with the public access policies of the Coastal Act. The appellants raise several substantial issues discussed in detail below, as previously summarized in Section II of this report and included in full as **Exhibit 7**. See Appendix A for list of relevant and applicable definitions and policies of the LCP.

The City record forwarded to CCC staff in response to notification of the subject appeal is insufficient to determine the scope of the project. The copy of the Project Summary Table is illegible. The project plans are reduced black and white copies that are difficult to read and/or illegible. In addition, some items that should have been included in the record were not, such as the Preliminary Geotechnical Investigation by ViaGeos, 1/30/2019 (although this document is referenced in the City’s 7/11/2019 Design Review Board (DRB) staff report, indicating it is linked to the online agenda, but no link was provided with the project record). Two subsequent documents prepared by ViaGeos were included in the record forwarded by the City, but not the original, more detailed 1/30/2019 document. However, the 1/30/2019 ViaGeos Preliminary Geotechnical Investigation was included with the appeal.

1. Scope of Proposed Project: Major Remodel/New Development

The City’s certified Land Use Element (LUE) of the LCP contains the following definition in the LUE Glossary:

***Major Remodel** -Alteration of or an addition to an existing building or structure that increases the square footage of the existing building or structure by 50% or more; or*

demolition, removal, replacement and/or reconstruction of 50% or more of the existing structure; greater specificity shall be provided in the Laguna Beach Municipal Code.

The City has not yet submitted an LCP Implementation Plan amendment to provide consistency with the certified LUP definition. A number of LUP policies apply to new development (i.e. which includes development that constitutes a major remodel as defined above) differently than these policies apply to minor remodels. Application of these policies to a project that constitutes a major remodel, as new development, would require that the entire project conform to the LCP policies, including existing nonconforming development. These policies address issues involving bluff top development including bluff edge setback requirements and other hazard policies. For example, Land Use Element Actions 7.3.8 and 7.3.10 state:

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

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

If the subject project constitutes a major remodel, it would be reviewed as new development. In this case there is an existing private stairway down the face of the bluff to the beach below. Consideration as to whether this development on the bluff face must be removed, as required by LUE Actions 7.3.8 and 7.3.10, must be considered with new development. Other LCP requirements would similarly apply when a project constitutes a major remodel and thus new development. With new development (including development that constitutes a major remodel), nonconformities would not be allowed to proliferate on the site (or allowed to remain).

In their summary of appeal points, the appellants argue that the City's action does not address whether the proposed development constitutes a major remodel as defined in the certified LUE (cited above). Although the City's action recognizes that the project includes "*additions exceeding 10% of the existing area*", the City's action to approve the project does not address the question of whether or not the project constitutes a major remodel. And thus, the question of whether nonconformities must be brought into conformance is not addressed. This question represents the primary issue, raised by the appellants, of the City's action. The question of the scope of the proposed development is a question upon which many other issues hinge, with regard to whether or not a substantial issue is raised by the proposed development. That is, whether or not the development as approved by the City constitutes a major remodel, as that term is defined in the certified LCP LUE Glossary. If the project constitutes a major remodel, it must be considered as new development with the related requirements to conform to current standards, including bringing any existing non-conformities into conformance. In this case, that would

include conforming to the bluff top setback requirements of the certified LCP and removal of existing development that does not conform to that setback.

The City's approval appears to acknowledge that existing site development encroaches into the blufftop setback², and that that development would remain in this non-conforming position: "*The structure is considered legal nonconforming due to encroachment into the front, side, and rear (blufftop) setbacks.*" The City's approval has not recognized the proposed development as a major remodel. If the proposed revisions to the existing residence do rise to the level of a major remodel, and therefore must be considered as new development, then not only the question of the appropriate bluff edge setback for the proposed revised residence is raised, but also the question of whether existing development seaward of the residence, including a private bluff face stairway, should be removed. The existing bluff face stairway is located on both the subject site and the adjacent property to the southwest (Exhibit 3). Other questions may also be raised if the project constitutes a major remodel.

Information necessary to determine whether the proposed development constitutes a major remodel includes detailed project plans depicting the development as it currently exists, and the extent of development to be removed, retained, and/or added (including structural elements of all interior and exterior walls, floors, roof, and foundations). Also necessary to make this determination is a written project description that includes specific details (linear and area figures of walls, floors, roof, and foundations to be removed, added, remain, and/or otherwise altered), and discussion of where these changes are located. Also required is a site plan that clearly depicts all existing development relative to the correct bluff edge location. However, the record forwarded by the City contains insufficient evidence to support the City's determination. Below is a discussion regarding the extent of alteration to the existing structure resulting from the project as approved by the City, as reflected in the City record provided.

Information in the Project Record Indicates³:

Roof: The Project Summary Table indicates that the existing roof is 1,020 square feet, of which 631 square feet would be removed and replaced, resulting in 62% demolition and replacement of the existing roof (631 removed/1020 existing = 61.86% => 62%). The existing pitched roof would be removed and replaced with a new, single incline (rather than pitched) roof (staff acknowledges that the roof replacement is proposed to address neighbors' private view concerns). Only the existing flat roof over the garage is to remain intact (389 square feet).

Upper Level: Based upon the project plans included with the City's record (which are difficult to read due to the quality of the reduced, black and white copies of the project plans), it appears that more than 50% of existing interior/exterior walls are to be removed, including most of the seaward-most exterior wall and a stairway between the upper and mid levels. In addition, new interior walls in new locations appear to be included in the project approved by the City.

Mid Level: It appears that close to 50% of interior/exterior walls are to be removed, including the seaward-most wall. In addition, it appears that new interior walls in new locations would be added in the City-approved project.

Lower Level: An addition of 312 square feet⁴ to the existing 496 square foot lower level represents an increase of 63% in floor area of the lower level of the house (312/496 = 62.9% =>

² Design Review Board staff report, 5/23/2019

³ The roof square footage figures are taken from the Project Summary Tables attached to the City staff report prepared for the Design Review Board 5/23/2019 hearing on the matter attached to the appeal.

⁴ This 312 sq. ft. lower level addition figure is based on the project description reflected in the City's approval of 377 sq. ft. addition – 25 sq. ft. garage addition = 312 sq. ft. addition on lower level. But its not clear that these are in fact the final project figures for the lower level.

63%). An addition of 312 square feet to the existing 2,140 square foot residence is an increase of 14.5% ($312/2140 = 14.5\%$). In addition, it appears that less than 50% interior/exterior walls would be removed, but it is difficult to tell based upon the poor quality copies of the plans and lack of linear footage details included in the record. However, it appears that more than 50% of the walls on this level will be new walls compared to existing walls, but, again, it is difficult to know this with certainty based upon the record forwarded by the City.

Foundations: The City’s approval does not address foundations and no foundation plans are included in the record provided by the City. However, the Preliminary Geotechnical Investigation prepared for the proposed project by ViaGeos, dated 1/30/2019 states: “*As recommended herein, improvements that are sufficiently set back from the sea cliff will utilize conventional footings, whereas, pile and grade beam foundations are recommended to support site improvements located on and adjacent to the descending bluff slope at the rear [seaward site] of the structure.*” Because no foundations plans were provided and there is no discussion of foundations in the City’s approval or in the City record, it is unclear whether the pile and grade beam foundations recommended by the project geotechnical consultant are included as part of the proposed project or not. It is also not clear whether the recommended pile and grade beam foundations are necessary because it is not known whether the City-approved project includes development on and adjacent to the bluff, because that is not discussed in the City’s record.

From the City record, including the project plans, it is not clear where the upper level additions will occur. The plans seem to indicate the addition will occur at the landward side of the lower level and the upper level square footage area will remain the same, although more than 50% of existing walls appear to be being removed and new walls constructed. The Design Review Board staff report (5/23/2019) indicates that the garage (which is on the upper/street level) will be expanded by 25 square feet, but this wouldn’t account for the rest of the “*337 square foot upper level additions*” included in the City’s approval [emphasis added]. It is also not clear from the project plans or the rest of the project record forwarded by the City where the 68 square feet of elevated decks included in the project approved by the City will be located. The project plans (which, as noted, are difficult to read) appear to identify all decks as “existing.”

The City’s approval of the project recognizes the existing structure as “*legal nonconforming due to encroachment into the front, side, and rear (blufftop) setbacks.*”⁵ However, the City’s approval appears to find that the project is consistent with bluff top setback requirements because *new* development will not be located within the setback area. However, if a project constitutes a major remodel, then consideration must be given to bringing those *existing* non-conformities, such as encroachments into the required blufftop setback, into conformance. So the question of whether the proposed project constitutes a major remodel is critical in determining its consistency with the certified LCP.

The project was revised during the City’s review process, mainly to address neighbors’ concerns regarding private view issues. It is not clear from the information included in the City’s record what information applies to the final project as approved by the City. For example, whether changes to the existing foundations are proposed (or necessary) is not clear from the record. It is also not clear where the 377 square foot addition will be located, nor where the 68 square feet of

⁵ Design Review Board staff report, 5/23/2019

elevated decks will be located. Although the project description approved by the City includes a “pedestrian entry feature” there is no further description of what that entails, and it is not clear from the plans.

The project approved by the City may constitute a major remodel, but to make that determination, more detailed information is needed. More specifically, such information includes (both written and graphics/plans) details regarding the elements of the proposed development that are existing to remain, that are new/to be added, and that are to be demolished/removed (and/or otherwise altered). This information must be quantified in detail by a qualified professional (i.e. licensed, registered architect or engineer). Without this information, an accurate determination of whether the project constitutes a major remodel, and thus whether all nonconformities must be brought into conformance with current standards, cannot be made. Without this information, there is a substantial question as to whether the City’s approval of the project is consistent with the LCP policies regarding major remodel and new development.

Since the scope of the proposed project is not clear from the City’s record, and consequently a determination cannot be made as to whether or not the project constitutes a major remodel, the appeal raises a substantial issue as to whether the project must bring existing non-conformities into conformance with the certified LCP. Therefore the Commission finds that the project does raise a substantial issue regarding conformity with LCP.

2. Bluff Edge Determination

The appellants question the applicant’s bluff edge determination, and are concerned that restrictions applicable to blufftop development, such as LCP required bluff setbacks and elimination of non-conforming development seaward of the bluff edge setback requirements, have not been properly assessed.

With regard to setbacks from the oceanfront bluff, Action 10.2.7 of the LUE of the certified LUP states:

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

In addition, Action 10.2.8 of the LUE of the certified LUP states:

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

Actions 10.2.7 and 10.2.8 (cited above) of the LUE require that new development be sited to meet a building stringline but not less than a 25-foot setback from the bluff edge for principal structures and major accessory structures that require a structural foundation. A 10-foot setback

from the bluff edge is required for minor accessory structures/improvements.⁶ Knowing the location of the bluff edge is critical in determining the location of the minimum required setback for development on an ocean-fronting bluff property.

The appellants assert that the applicants' geologist did not rely on the certified Land Use Element definition of "ocean front bluff edge or coastal bluff edge" and, consequently, there is a potential that the City-approved development does not meet the LCP-required setbacks for new development on oceanfront bluffs, among other site constraints and requirements that may apply. The Land Use Element Glossary, a component of the City of Laguna Beach certified Local Coastal Program, contains the following definition of Oceanfront Bluff Edge or Coastal Bluff Edge:

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

In a letter titled Response to Planning Department Comments Regarding Bluff Edge Determination dated May 20, 2019, the applicants' geotechnical consultant, ViaGeos (Exhibit 6), states:

"Our determination of bluff edge is in compliance with City of Laguna Beach Municipal Code Title 25.50.004, Building Setback Lines (B)(4)(a) that states An "oceanfront bluff" is an oceanfront landform having a slope of forty-five degrees or greater from horizontal whose top is ten or more feet above mean sea level, and this criteria was utilized in determination of the bluff edge shown on Plates 1 and 2. Figure 1 depicts topography of the site vicinity as obtained from the City of Laguna Beach Geographic Information Server (GIS), and the approximate location of the bluff edge, based on this criteria, is depicted for locations in the site vicinity.

Furthermore, this determination of bluff edge is generally consistent with the California Coastal Act definition for bluff edge whereby 'In cases where the top edge of the cliff is rounded away from the face of the cliff as a result of erosional processes related to the presence of the steep cliff face, the bluff edge shall be defined as that point nearest the cliff beyond which the downward gradient of the surface increases more or less continuously until it reaches the general gradient of the cliff.' Additionally, in the discussion 'Establishment of Development Setbacks for Coastal Bluffs', Mark Johnson,

⁶ Section 25.50.004(B) of the IP also requires a minimum bluff edge setback of 25 feet from the top of an oceanfront bluff for additions to existing buildings. Section 25.50.004(B) of the IP of the certified LCP states, in relevant part, "no new building, additions to existing building, or structures or improvements shall encroach beyond the applicable building stringline or shall be closer than twenty-five feet to the top of an oceanfront bluff; the more restrictive shall apply. Although certain components of Section 25.50.004(B) conflict with the certified LUP, this aspect of the section related to the minimum 25-foot setback from the bluff top reflects the minimum 25-foot setback from the bluff edge requirement of the LUP.

Staff Geologist for the California Coastal Commission, presents a method for determination of the bluff edge where ‘results may be obtained by finding the point at which ... the rate of change in steepness of the topographic profile increases sharply’, as is shown on Geotechnical Cross Section A-A’.”

The Coastal Commission's Regulations, Section 13577(h)(2), defines “bluff line or edge” as:

... the upper termination of a bluff, cliff, or seacliff, In cases where the top edge of the cliff is rounded away from the face of the cliff as a result of erosional processes related to the presence of the steep cliff face, the bluff line or edge shall be defined as that point nearest the cliff beyond which the downward gradient of the surface increases more or less continuously until it reaches the general gradient of the cliff. In a case where there is a steplike feature at the top of the cliff face, the landward edge of the topmost riser shall be taken to be the cliff edge.

Although the applicant’s geotechnical consultant does not directly cite the certified Land Use Element (LUE) definition, it should be noted that the LUE’s definition of ‘bluff edge’ (cited above) is based on, and mirrors the substance of, the definition provided by Section 13577(h)(2) of the Regulations. Therefore, it was appropriate for geotechnical consultant to rely on the definition provided by the Commission’s Regulations.

In addition, based on the geotechnical consultant’s letter, it appears that ViaGeos also appropriately referenced the technical memorandum prepared by the Coastal Commission’s former geologist, Dr. Mark Johnsson, dated January 2003, which details the Commission staff’s methodology in evaluating setbacks for bluff top development. In citing the definition of bluff edge in the California Code of Regulations (upon which the LUE’s definition is based) and Dr. Johnsson’s memorandum, the applicant’s geotechnical consultant concludes that the bluff edge at the project site is located at approximately elevation 60 feet above sea level, as depicted in Plates 1 and 2 attached to the ViaGeos letter dated 5/20/2019.

Critical to all of the LCP policies related to bluff properties is a determination of the location of the bluff edge. It *appears* that the applicant’s geotechnical consultant identified the bluff edge consistent with the LCP definition and, therefore, the appellants’ arguments about the bluff edge location do not raise a substantial issue. However, the appellants have raised additional questions and concerns with the City’s approval of the project that do raise a substantial issue. As such, the Commission’s technical staff will evaluate the applicants’ bluff edge and setback during the de novo phase to ensure that all requirements and restrictions applicable to new development on bluff properties of the LCP have been properly measured and assessed.

3. Shoreline/Bluff Armoring & Waiver of Future Protection Devices

The appellants contend that the applicant’s Preliminary Geotechnical Investigation (ViaGeos, 1/30/2019) made reference to the installation of pile and grade beam foundations and repair of retaining walls related to the proposed project. The appellants contend that the City’s incomplete review did not address project foundations at all or whether these pile and grade beam foundations, which could be considered bluff/shoreline protection devices, should be required with the development as recommended by the applicant’s geotechnical consultant. The appellants

contend this issue was not properly considered and thus the City's approval of the project is inconsistent with the policies of the certified LCP that limit the use of bluff/shoreline protection to establish geologic stability.

With regard to bluff/shoreline armoring, Action 7.3.9 of the LUE of the certified LUP states:

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

In addition, numerous other LCP policies, including but not limited to Actions 7.3.9, 7.3.12, 7.3.13 and 10.2.6 (see appendix A), prohibit new development if it would rely on existing or future bluff/shoreline protective devices (which could include piles and grade beams) to establish geologic stability. Moreover, Action 7.3.9 requires that new development, major remodels, and additions on oceanfront bluff sites must be conditioned to waive any rights to new bluff/shoreline protection, and that the waiver be recorded against the subject property as a deed restriction.

It is difficult to determine how the proposed piles and grade beams will function without reviewing foundation plans. Without foundation plans, and with no discussion of project foundations in the City record at all, there is a substantial question as to whether project foundations will include pile and grade beams or other types of foundations that might have the potential to act as shoreline/bluff protection devices. The scope and extent of the proposed project foundations are unclear. Although the applicant's geotechnical consultant recommends specific foundations (piles and grade beams, also referred to by the consultant as caissons), no discussion or plans addressing foundations are included in the City record for the project. No analysis of whether the pile and grade beam foundation (if proposed/required) would act as a bluff/shoreline protection device was provided. And additionally, if so, alternatives to shoreline/bluff protection were not considered. The certified LCP requires consideration of reasonable alternatives to shoreline/bluff protection devices, in those cases where such may be allowed.

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

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

Policy 1.5C broadly governs shore protection devices and clearly requires the local government to consider any feasible alternatives. In addition, other policies in the certified LUP specifically govern the use of oceanfront bluff protective devices and similarly require that new development may not be afforded such protection, and that in those cases where such protection may be allowed, alternatives to any proposal involving bluff protection must be considered.

The City should have reviewed foundation plans to ensure consistency with the LCP policies that prohibit bluff/shoreline protection for new development, and that require consideration of project alternatives if bluff/shoreline protection is proposed in those cases where it may be allowed. Additionally, the LCP requires, as a condition of approval of new development, major remodels, and additions on oceanfront bluff sites, that a waiver of any rights to bluff/shoreline protection in the future be recorded against the subject property. However, the project was approved by the City with no conditions and there is nothing in the City's record to indicate that foundations were considered or that foundation plans were reviewed. The City's decision that the development is consistent with the provisions of the LCP is not supported by the local CDP's findings and may not be accurate. Therefore, this contention in the appeal raises a substantial issue as to conformity with the certified LCP.

4. Amount of Project Excavation Not Clear/Evaluated

The appellants allege that the true amount of excavation generated by the project was not evaluated in the City's approval. The City approved project includes an addition at the street side of the lowest level of the existing residence. An earlier staff report indicates that this lower level addition will include 558 square feet. However, since the area of addition ultimately approved is limited to 337 square feet, and additions to other level(s) may be included in the City's approval, it is not clear what the exact extent of the City-approved lower level addition is. In any case, it appears that the project does include excavation to accommodate expansion of the lowest level of the residence. It is anticipated that the excavation would occur beneath the existing upper levels of the residence and would require shoring. However, the amount of grading is not included in the City's record for the project.

Action 7.3.4 of the LUE of the certified LUP states:

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.

Excavation on an oceanfront bluff site has the potential to affect stability and structural integrity, and/or contribute to erosion or destruction of the site or surrounding area. Consequently such development must be evaluated to assure that it will not result in such impacts. This would include review of construction methods and of the site's ability to accommodate the contemplated excavation. The Preliminary Geotechnical Investigation prepared for the proposed project by ViaGeos, dated 1/30/2019 states: "*Grading is anticipated to consist of excavation beneath front [street side] portions of the residence for the lower level addition, excavation for foundations and backfill of retaining walls.*" The City's approval does recognize (in its 5/23/2019 DRB staff report) that the proposed development will include 115 cubic yards of grading to accommodate the lower level addition. However, that staff report also recognizes an addition to the residence of 664 square feet of living area, but that was not the amount ultimately approved. The 7/11/2019 DRB staff report, while recognizing that the residential addition will be 337 square feet, does not consider the proposed project's related grading. Therefore it is difficult to know how much grading is proposed on this oceanfront bluff site.

The City’s 5/23/2019 DRB staff report states:

“A Preliminary Geotechnical Investigation has been submitted for the proposal, which provides a slope stability analysis and determination of the bluff top location. The Investigation concludes that the proposed additions are geotechnically feasible provided that the recommendations of the report are followed. Proposed construction should not adversely impact adjoining properties provided that appropriate construction methods and care are utilized during construction. The proposed project will not result in any risks from geological and erosional forces and/or flood and fire hazards. Proposed grading includes excavating the lower level underneath the existing house, and no alterations will be made to remaining natural landforms, including the oceanfront bluff. Therefore, this criterion [minimization of alteration of natural landforms and no undue risks from geological and erosional forces and consideration of flood and fire hazards] has been met.”

In addition to a lack of clarity regarding the amount of excavation to occur, there is no information in the record as to how that excavation would be carried out. That is, no construction methods are discussed or included in the record. Construction methods related to the proposed excavation would include types of construction equipment to be used, construction access, and how excavation beneath the existing residence will be accomplished without adversely affecting stability and structural integrity of the site or surrounding area. The Preliminary Geotechnical Investigation includes general recommendations regarding site preparation and grading. It recommends that these should be carried out in accordance with Standard Grading Specifications, which include that the *“excavation, construction, and placement of fill shall be under the direct observation of Via Geos or a designated representative.”* These standard grading specifications are general and not site specific. Moreover, more specifically to the site, the geotechnical consultant recommends (in the 1/30/2019 report) that the site be subject to remedial grading, stating:

“Remedial grading is recommended to include overexcavation and recompaction of existing fill and loose or disturbed near surface soils in locations of slabs-on-grade, fill placement and other structural improvements including hardscape elements. The limits and depth of overexcavation will be determined by ViaGeos during grading and construction. The bottom of all removal excavations should be observed by this office and approved in writing prior to fill placement.”

The Preliminary Geotechnical Investigation (ViaGeos, 1/30/2019) includes other recommendations regarding compaction standards, temporary excavations, and other factors. None of these however, provide the construction methods. Moreover, the appellants raise the concern, that the recommended overexcavation will increase the amount of grading required by the proposed project and assert this additional grading was not considered in the City’s approval.

The LCP requires that development on an oceanfront bluff site, such as the subject project, assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic stability, or destruction of the site or surrounding area. In order to meet this LCP requirement, it is important to identify how that will be done. This includes construction methods to be used and the extent of grading that is expected to occur. From the City record, it is not clear

how much grading is proposed. In addition, there is no discussion regarding construction methods to be employed to assure stability and minimize erosion at the site. Although it is not unusual to not know the exact extent of overexcavation that may be required with a proposed development, this is often addressed by imposing special conditions requiring that the project be carried out in conformance with geotechnical recommendations prepared for the project. However, the project was approved by the City without addressing construction methods and without imposing any conditions, including conditions addressing geotechnical recommendations. In addition, the amount of grading to accommodate the lower level addition is not known. Typically, this information is known up front. The City's decision that the development is consistent with the provisions of the LCP is not supported by the local CDP's findings and may not be accurate. Therefore, this contention in the appeal regarding project grading raises a substantial issue as to conformity with the certified LCP.

5. Public Access

The appellants have requested that, if the Commission finds that this appeal does raise a substantial issue, that during the de novo stage of review, the Commission consider whether public access to Tortuava Bay beach (just upcoast of the subject site and of the rocky headlands at the upcoast end of Thousand Steps beach) is required to be provided by the owners of Circle Drive, including the current project applicant. In addition, the appellants have requested that, if the Commission finds that this appeal does raise a substantial issue, that the Commission consider the relationship of this project to a settlement agreement regarding Thousand Steps beach decades ago during de novo review of the project and whether that triggers any public access requirements at the subject site. The appellants have not alleged that this issue raises a substantial issue with respect to the action of the local government.

6. Visual Resources

The appellants contend that the City's approval did not address visual impacts of the project due to the continued presence of the private stairway down the bluff face; and due to glare resulting from the proposed glazing and glass railings on the ocean-facing side of the building. The appellants assert that the proposed glazing and glass railings may also create risks to birds in the form of potential bird strikes, which also was not considered by the City.

As described earlier, consideration of removal of the private bluff stairway will hinge largely on whether the proposed development constitutes a major remodel as defined in the certified LUE. The appellants have raised additional questions and concerns with the City's approval of the project that do raise a substantial issue. As such, the question of removal of the bluff stairway will be considered further during the de novo phase to ensure that all requirements and restrictions applicable to new development on bluff properties of the LCP have been properly assessed.

With regard to window glazing and glass railings and potential risks to birds due to bird strikes, the appellant's cite LUE Policies 2.8 and 10.2, which state:

LUE Policy 2.8 Require building design and siting to be compatible and integrated with natural topographic features, minimize significant alteration of natural topography and/or other significant onsite resources, and protect public views as specified in the Design Guidelines and the landscape and Scenic Highways Resource Document.

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)*

These policies do not specifically address potential risks to birds due to bird strikes, but do require that building design and siting be compatible with significant onsite resources and to protect natural and environmentally sensitive resources. The appellants have not provided any information as to what significant onsite resources (birds) may be impacted or more specifically how this project, which already includes a residence in this location, will cause adverse impacts. The City, in its approval, did require that the area of glazing be reduced. However, as stated above, the appellants have raised additional questions and concerns regarding the City's approval of the project that do raise a substantial issue. As such, consideration of potential bird strikes will be considered further during the de novo phase to ensure that all requirements and restrictions applicable to new development on bluff properties of the LCP have been properly assessed.

7. Natural Resources

The appellants contend that in its action, the City did not assess impacts to natural resources, including vegetation. The appellants cite LUP Open Space/Conservation (OS/C) Element Policy 7-K, which requires, among other things, projects to include replanting where the natural landscape has been disturbed. However, as stated in the DRB staff report dated 5/23/2019:

“The applicant proposes to maintain the existing landscape open space area at 26% of the total lot, which satisfies the landscape open space requirements. Independent landscape review was completed on March 8, 2019 and is included as an attachment. Staff concludes that landscaping has been incorporated as an integral part of the design and enhances the neighborhood, and therefore this criterion has been met.”

Based on the above, it appears that the City did consider site vegetation and landscaping. In any case, whether it is appropriate to require revegetation on the site is related to the extent of the proposed project and whether it constitutes a major remodel. Other than the suggestion that the project could have been conditioned to revegetate the slope with native plants, the appellants' contention is not specific as to how the project would impact natural resources. However, as stated previously, the appellants have raised additional questions and concerns regarding the City's approval of the project that do raise a substantial issue. As such, the question of whether revegetation of the bluff or other measures to protect natural resources are appropriate with the proposed development will be considered further during the de novo phase to ensure that all requirements and restrictions applicable to new development on bluff properties of the LCP have been properly assessed.

8. Cultural/Archaeological Resources

The appellants state: *“Although there is minimal grading proposed, due to the location of the project and the lack of previous monitoring, we ask that appropriate cultural resource protections are considered in the event of a de novo hearing for this project.”* The appellants have not alleged that this issue raises a substantial issue with respect to the action of the local government. However, the City's LCP does contain policies requiring preservation of

cultural/agricultural resources, which could inform the Commission’s de novo review of the project.

9. Water Quality

The appellants cite LUP policies regarding water quality, and state that the project was approved by the City without any reference to water quality and no conditions were imposed to ensure protection of water quality. The appellants further state: “*We ask that these issues be considered during the de novo stage of the appeal if Substantial Issue is found.*” The appellants have not alleged that this issue raises a substantial issue with respect to the action of the local government. However, the City’s LCP does contain water quality policies requiring best management practices, which could inform the Commission’s de novo review of the project.

FIVE FACTORS AND CONCLUSION

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

The first factor is the degree of factual and legal support for the local government’s decision that the development is consistent or inconsistent with the relevant provisions of the LCP and public access policies of the Coastal Act. The City’s approval does address a number of factors regarding the project in its approval. However, the contentions raised by appellants identify areas where factual and/or legal support of the decision is absent. Therefore the Coastal Commission finds that the City provided an inadequate degree of factual and legal support for its decision.

The second factor is the extent and scope of the development as approved or denied by the local government. The extent and scope of the development is not clear from the City’s record. It may be minor development that does not rise to the level of new development, or it may be more substantial in nature. The project involves one single family residence, which typically is not considered to be of significant extent and scope. However, if this project as approved is inconsistent with the City’s certified LCP, particularly with regard to development on oceanfront bluff sites, then the extent and scope of the development may be significant. However, the lack of supporting information in the record as to what the project encompasses makes it difficult to assess whether the extent and scope of the development is significant or not.

The third factor is the significance of the coastal resources affected by the decision. The subject site is an oceanfront bluff top lot which may raise concerns that are not routinely raised on interior, in-fill lots. Bluff top lots may raise specific concerns, including hazards/geologic stability, blufftop setback, bluff/shoreline protection devices, protection of water quality, especially due to the location adjacent to the beach and ocean, and potentially public access. The LCP for Laguna Beach recognizes the City’s coastal bluffs as an important natural resource. Therefore, the coastal resources potentially affected here are significant.

The fourth factor is the precedential value of the local government’s decision for future interpretations of its LCP. The subject site is an oceanfront, bluff top lot. The majority of ocean fronting development in Laguna Beach is bluff top development. The more problematic sites in the City tend to be the ocean fronting, bluff top lots. Because the City’s approval did not clearly describe the extent of the project, if unaddressed, this decision could be precedential. It is important that development be described to a degree that extent, scale and scope of a project can

be clearly understood so that any adverse impacts can be identified and minimized or avoided, especially with regard to development on a coastal bluff. Therefore, the decision of the local government on this project might influence future permit decisions made in the City's coastal zone.

The final factor is whether the appeal raises local issues, or those of regional or statewide significance. Issues relating to development on a coastal bluff arise up and down the state. While various areas may have issues specific to their area, the questions of bluff stability, bluff/shoreline protection, protection of natural resources and water quality, and maximizing public access are nearly universal to such development throughout the state. Therefore, the City's approval may raise issues of regional and statewide significance.

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

Appendix A – Relevant LCP Policies and Definitions

Land Use Element Glossary

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

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

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

Land Use Plan, Land Use Element Policies –

Policy 7.3

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

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

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

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

Action 7.3.5 Prohibit development on oceanfront bluff faces, except public improvements providing public access, protecting coastal resources, or providing for public safety. Permit such improvements only when no feasible alternative exists and when designed and constructed to minimize landform alteration of the oceanfront bluff face, to not contribute to further erosion of the oceanfront bluff face and to be visually compatible with the surrounding area to the maximum extent feasible.

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

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

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

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

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

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

Policy 7.4

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

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

Policy 7.7

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

Policy 10.2

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

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

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

Action 10.2.6 Require all new development located on an oceanfront bluff top to be setback from the oceanfront bluff edge a sufficient distance to ensure stability, ensure that it will not be endangered by erosion, and to avoid the need for protective devices during the economic life of the structure (75 years). Such setbacks must take into consideration expected long- term bluff retreat over the next 75 years, as well as slope stability. The predicted bluff retreat shall be evaluated considering not only historical bluff retreat data, but also acceleration of bluff retreat made possible by continued and accelerated sea level rise, future increase in storm or EI Nino events, and any known site-specific conditions. To assure stability, the development must maintain a minimum factor of safety against landsliding of 1.5 (static) or 1.2 (pseudostatic, $k=0.15$ or determined through analysis by the geotechnical engineer) for the economic life of the structure.

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

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

Open Space/Conservation Element Policies –

Policy 1.5-A

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

Policy 4-F

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

Policy 7-K

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 8-C

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

Policy 8-I

Environmentally Sensitive Areas (ESA's) as defined in Section 30107.5 of the California Coastal Act shall be identified and mapped on a Coastal ESA Map. The following areas shall be designated as Environmentally Sensitive Areas: Those areas shown on the Biological Resources Values Map in the Open Space/Conservation Element as “Very High” habitat value, and streams on the Major Watersheds and Drainage Courses Map which are also streams as identified on the USGS 7.5 Minute Quadrangle Series and any other areas which contain environmentally sensitive habitat resources as identified through an on-site biological assessment process, including areas of “High” and “Moderate” habitat value on the Biological Resources Values Map and areas which meet the definition of ESA's in Section

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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 8-L

Preserve and protect fish and wildlife species for future generations.

Policy 8-N

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

Policy 10-C

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

Policy 10-E

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

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

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

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

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

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

(c) Grading Discretionary. Unless otherwise exempted under subsection (e) of this section, the review of a grading project is a discretionary activity subject to Section 22.08.010(b) and 22.10.010(a), (b) and (c), and is subject to environmental documents procedures. Once concept approval of grading plans has been secured, the issuance of a grading permit by City staff is a ministerial activity provided that any rough and precise grading plans authorized under such permit are in substantial compliance with the approved concept plans.

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

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

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

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

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

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

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

Section 25.07.012 Procedures:

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

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

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

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

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

Appendix B – Substantive File Documents

1. City of Laguna Beach certified Local Coastal Program
2. *Preliminary Geotechnical Investigation*, by ViaGeos, dated January 30, 2019
3. *Response to Planning Department Comments Regarding Bluff Edge Determination*, prepared by ViaGeos, dated May 20, 2019
4. *Analysis Regarding Potential Impacts of Long Term Sea Level Rise*, prepared by ViaGeos, dated May 23, 2019
5. *Discussion of Coastal Hazards and Wave Runup*, by GeoSoils Inc., dated March 19, 2018.