

**CALIFORNIA COASTAL COMMISSION**

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**STAFF REPORT: APPEAL – SUBSTANTIAL ISSUE**

**Appeal Number:** A-5-LGB-19-0186

**Applicants:** Peter Last

**Agent:** None

**Local Government:** City of Laguna Beach

**Local Decision:** Approval with No Conditions

**Appellants:** Mark & Sharon Fudge

**Project Location:** 31883 Circle Drive, Laguna Beach, Orange County  
 APN: 658-113-29

**Project Description:** Appeal of City of Laguna Beach Coastal Development Permit 19-3760 to add 57 square feet of elevated decks to an existing single family residence on an oceanfront, blufftop lot.

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

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**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. 19-3760 approved the addition of 57 square feet of elevated deck to a single family dwelling in the R-1 zone. The subject site is an oceanfronting, blufftop lot. The 57 square foot elevated deck addition was approved at the ocean side of the residence. The subject single family dwelling is a 2,660 square foot, two level residence with an attached two car garage (or single car garage and single car carport, it's not entirely clear which from the record) on a 2,910 square foot lot. The topography of the lot is downward sloping from street level with a relatively steep average lot slope of 29.8 percent. The subject site is located at 31883 Circle Drive in the City of Laguna Beach, Orange County. The City approval was after-the-fact approval of the deck addition. The subject site is located above the rocky headlands at the upcoast end of Thousand Steps County Beach, a sandy public beach.

The appellants contend that restrictions applicable to blufftop development, such as Local Coastal Program (LCP) required bluff setbacks, have not been properly assessed. The certified LCP requires that new minor accessory development (such as the proposed deck addition) be sited to meet a stringline but in any case not less than 10 feet from the bluff edge. The City's findings for approval do not address the bluff edge or bluff edge setback at all. There is no discussion in the City record regarding how the proposed deck addition is consistent with the bluff edge setback required by the LCP, and in particular with Land Use Element (LUE) Action 10.2.8, which requires development to be setback from the bluff edge. Without this information, it is difficult to know whether the deck addition on the ocean side of the bluff top lot is consistent with the certified LCP, including LUE Action 10.2.8. There is nothing in the City's record to indicate that the location of the bluff edge and the proposed elevated deck's setback from that edge were considered by the City Council in approving the CDP for the project. Thus, 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.

In addition, the appellants contend that additional development has occurred at the site that should be considered part of the subject project, but was not. And, if the additional development were included, the project would constitute a major remodel and so LCP policies addressing bluff top development and bluff edge setback would require existing non-conforming development to be brought into conformance. The appellants contend that the City's approval did not consider the project as a major remodel, but should have. Lastly, the appellants contend that the City did not impose the requirement that the applicant waive any right to future shoreline/bluff protection devices, inconsistent with the policies the LCP. There is nothing in the City's record to indicate that these issues were considered in its approval of coastal development permit 10-3760. Without this information, it is difficult to know whether the development constitutes a major remodel; or why a condition to waive future shoreline/bluff protection devices would not be required. Thus, 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.

Staff recommends that the Commission determine that a **substantial issue exists** with respect to the grounds on which the appeal has been filed because there is a question of consistency of the project as approved by the City with LCP policies addressing development on a coastal bluff top, including appropriate bluff edge setback; major remodel; and future shoreline protection. Consequently, the appellants' contentions do raise significant questions with regard to the project's consistency with the City's certified Local Coastal Program (LCP).

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### Appendix A: Substantive File Documents

#### EXHIBITS:

EXHIBIT 1 – VICINITY MAP

EXHIBIT 2 – CITY OF LAGUNA BEACH RESOLUTION No.19.054

EXHIBIT 3 – PROJECT PLANS PROVIDED BY THE CITY

EXHIBIT 4 – APPLICANT’S RESPONSE TO COMMISSION APPEAL, 9/3/2019

EXHIBIT 5 – CITY OF LAGUNA BEACH DESIGN REVIEW BOARD STAFF REPORT, 6/13/2019

EXHIBIT 6 – CITY OF LAGUNA BEACH DESIGN REVIEW BOARD STAFF REPORT, 9/14/2017

EXHIBIT 7 - APPLICANT'S RESPONSE TO 6/13/2019 DRB STAFF REPORT

EXHIBIT 8 - APPLICANT'S RESPONSE TO 9/14/2017 DRB STAFF REPORT

EXHIBIT 9 – APPEAL OF MARK & SHARON FUDGE, 9/3/2019

## I. MOTION AND RESOLUTION – SUBSTANTIAL ISSUE

**Motion:** *I move that the Commission determine that Appeal No. A-5-LGB-19-0186 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-19-0186 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 19-3760 would allow the addition of 57 square-feet of elevated deck on the oceanfront side of a blufftop single-family dwelling in the R-1 (Residential Low Density) zone at 31883 Circle Drive in Laguna Beach. An appeal was timely filed by Mark & Sharon Fudge on 9/3/2019 ([Exhibit 9](#)). The appellants assert that the City's approval did not comply with the Local Coastal Program, specifically: 1) as it relates to the correct location of the bluff edge and required bluff setback; 2) because modifications to an earlier project approved by the City in 2006 have occurred at the site and should have been included in the current City review but were not, and, if included now, the entirety of the project should be considered a "major remodel" and current LCP standards should be applied to the entire residence, not just the proposed deck addition; and, 3) the LCP Land Use Element Action 7.3.9 requires that new development on oceanfront bluff sites be conditioned to record a waiver of any rights to new bluff/shoreline protection device, but such a condition was not required in the City's approval. The complete appeal is included as [Exhibit 9](#).

**NOTE:**

**Status of Appellants as Aggrieved Persons/Qualified Appellants**

In the *Response to Commission Appeal* submitted by the applicant, dated 9/3/2019 ([Exhibit 4](#)), the applicant questions whether the appellants have standing as "aggrieved persons." The applicant suggests that because the appellants did not attend the final local hearing on the matter, the August 6, 2019 City Council hearing, they do not have proper standing to file the subject appeal. The applicant states: "*The Appellant's failure to appear in person or through a representative prohibits their standing to file an appeal.*"

Implementation Plan states that an appeal of an appealable coastal development permit may be made by a qualified appellant, as defined in Section 25.07.006(L) of Title 25. Section 25.07.006(L) defines a “qualified appellant” as:

*“ ... any person who, in person or through a representative, appeared at a public hearing of the commission or local government in connection with the decision or action appealed, or who, by other appropriate means prior to a hearing, informed the commission or local government of the nature of his or her concerns or who for good cause was unable to do either. Qualified appellant includes the applicant for a permit and the local government involved.”*

This language mimics Section 30801 of the Coastal Act, which states, in relevant part:

*For purposes of this section and subdivision (c) of Section 30513 and Section 30625, an "aggrieved person" means any person who, in person or through a representative, appeared at a public hearing of the commission, local government, or port governing body in connection with the decision or action appealed, or who, by other appropriate means prior to a hearing, informed the commission, local government, or port governing body of the nature of his concerns or who for good cause was unable to do either. "Aggrieved person" includes the applicant for a permit and, in the case of an approval of a local coastal program, the local government involved.*

The appellants, Mark and Sharon Fudge, attended and spoke at the June 13, 2019 Design Review Board hearings on the matter, and corresponded with City staff on August 27, 2019, February 22, 2018 (via both email and via letter), and September 14, 2017 regarding the matter. Based on these actions, the appellants do qualify as aggrieved persons (qualified appellants), and thus do have proper standing to file an appeal of the City’s approval of local Coastal Development Permit 19-3760.

### **III. LOCAL GOVERNMENT ACTION**

On August 6, 2019 the City Council of the City of Laguna Beach approved local coastal development permit 19-3760 with no conditions, as reflected in Resolution No. 19-054 ([Exhibit 2](#)). The Design Review Board held noticed public hearings on the matter on June 13, 2019 and September 14, 2017. The Design Review Board’s action denying local coastal development permit 19-3760 was appealed by the applicant to the City Council. On August 6, 2019, the City Council granted the appeal of the Design Review Board’s decision and approved local coastal development permit 19-3760 at the August 6, 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 August 19, 2019, at which point the Commission’s required 10 working-day appeal period was established (August 20 – September 3, 2019). On September 3, 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 19-3760 approved the addition of a 57 square foot elevated deck to a single family dwelling in the R-1 zone. The subject site is an oceanfronting, blufftop lot. The 57 square foot elevated deck addition was approved at the ocean side of the residence. It appears from the City record that the single family dwelling is a 2,660 square foot, two level residence with an attached two car garage (or single car garage and single car carport, it's not entirely clear which from the record) on a 2,910 square foot lot. The topography of the lot is downward sloping from street level with a relatively steep average lot slope of 29.8 percent. The subject site is located at 31883 Circle Drive in the City of Laguna Beach, Orange County. The City approved the elevated deck after-the-fact.

The subject site is located above the rocky headlands at the upcoast end of Thousand Steps County Beach, a sandy public beach. Public access to Thousand Steps Beach is via a public access stairway located opposite the end of 9<sup>th</sup> 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 ocean on the fourth side.

### **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. In their appeal, the appellants have raised three contentions, discussed in detail below and included in full as [Exhibit 9](#).

#### **1. Bluff Edge Determination**

The appellants question whether a bluff edge determination was made in conjunction with the proposed project, and raise concerns that restrictions applicable to blufftop development, such as Local Coastal Program (LCP) required bluff setbacks, have not been properly assessed.

The Land Use Element (LUE) Glossary includes the following definition of “bluff edge”:



*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.*

LUE Action 10.2.8 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.*

LUE Action 10.2.8 (cited above) requires that new minor accessory development be sited to meet a building stringline but be sited not less than 10 feet from the bluff edge. Knowing the location of the bluff edge is critical in determining the location of the minimum required setback for development, including minor accessory development, on an ocean-fronting bluff property such as the subject site. LUE Action 10.2.8 is applicable to the proposed addition of 57 square feet of elevated decks as the deck addition constitutes an accessory structure and is located at the oceanward bluff side of the subject property.

By way of background, the City of Laguna Beach Design Review Board (DRB) heard this matter prior to the City Council's action on it. At that time, entitlements related to the proposed deck extension included a request for a variance to allow the deck addition to exceed the maximum allowed deck projection into the blufftop setback by three feet<sup>1</sup>. However, in City Council Resolution 19-054 (**Exhibit 2**) approving coastal development permit (CDP) 19-3760, the City Council found the deck addition was in conformance with the certified LCP because: visual impacts have been minimized and the single family dwelling is consistent with the R-1 zone; because public access exists along this portion of the coast and the proposed development will not create any adverse impacts to this access, and no dedication is required; and because the project will not have any significant adverse impacts on the environment within the meaning of CEQA. The City's approval findings do not provide any further detail. Moreover, the City Council findings do not address the bluff edge or bluff edge setback at all. There is no discussion in the City record regarding how the proposed deck addition is consistent with the bluff edge setback required by LUE Action 10.2.8. Without this information in the record, it is difficult to know whether the deck addition on the ocean side of the bluff top lot is consistent with the certified LCP, including LUE Action 10.2.8.

The City Council's action does not include discussion on the location of the bluff edge and whether or not the deck addition is consistent with the setback from the bluff edge required by

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<sup>1</sup> DRB Staff Reports, 6/13/2019 and 9/14/2017 (**Exhibits 5 & 6**).

LUE Action 10.2.8. Thus, it is not clear whether or not the project is consistent with the bluff edge setback requirements of the LCP. There is nothing in the City's record for local CDP 19-3760 to indicate that location of the bluff edge and the proposed elevated deck's setback from that edge were considered by the City Council in approving the CDP for the project. Thus, 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. Therefore, the Commission finds that the City's approval of local CDP 19-3760 approving the deck project does raise a substantial issue regarding conformity with LCP.

## **2. 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 (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 of an existing house, as new development, would require that the entire house conform to the LCP policies, including existing nonconforming development. These policies address issues involving bluff top development including bluff edge setback requirements. For example, Land Use Element Action 7.3.10 state:

*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.*

The appellants contend that the elevated deck addition approved by the City via CDP 19-3760 is only one part of a larger project, and that, if all aspects of the larger project were to be considered, the overall development would constitute a "major remodel" and so new development, and thus any non-conformities at the site should be required to be brought into conformance with the LCP pursuant to LUE Action 7.3.10. The appellants base this claim on activities including City approval of Design Review 06-085 and Variance 7349 on 4/13/2006, which apparently allowed conversion of a 404 square foot storage area to living area and conversion of a carport to a garage. The appellants note that no CDP was processed in 2006 along with these other entitlements despite the site/project being within 50 feet of the edge of a coastal bluff. Although these local entitlements were approved in 2006, a building permit was

not issued until 2012, with extensions approved in the interim.

There is some uncertainty as to the extent of development included in past local approvals. Other development in question may include storage area converted to living area, hardscape/landscape improvements, and conversion of a carport to enclosed garage. In 2017, the City began review of CDP 17-1763 which then included 57 square feet of elevated deck and hardscape/landscape improvements “*in the blufftop setback.*”<sup>2</sup> However, that CDP was withdrawn at the local level by the applicant (on 2/22/2018) and no action on it was taken by the City. In addition, in 2006 the City’s Design Review Board approved DR 06-085 and VA 7349 to convert a 404 square foot storage area to living area and to enclose a carport to a garage. This additional development, and possibly hardscape/landscape improvements, appears to have occurred at the site without benefit of a coastal development permit. The applicant, however, contends that all work at the site has been appropriately permitted. Based on the above information, which is included in the City’s record, it appears that additional development may have been undertaken at the proposed site and that that development may have required a coastal development permit, but none was required.

If past development (at least dating to 2006, as referenced in the City record) were considered, the total alterations to the residence may constitute a “major remodel.” If so, it may be that non-conformities at the site should have appropriately been required to be brought into conformance with the requirements of the LCP, including application of an appropriate bluff top setback. However, it appears from the information in the City’s record, that the question of whether or not all alterations to the residence would constitute a major remodel was not considered. Moreover, there is not enough information in the City’s record to determine now whether past development would make the overall project a major remodel. The question of whether or not the project should be considered a major remodel, and thus existing non-conformities be brought into conformance, should have been addressed in the City’s action in order to determine consistency with the LCP. But it was not. Thus, 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. Therefore, the Commission finds that the City’s approval of local CDP 19-3760 approving the deck project does raise a substantial issue regarding conformity with LCP.

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

The appellants contend that the City did not properly condition the permit to address future bluff protection. More specifically the appellants contend that “*when new development occurs on an oceanfront lot, the applicant is required to record a waiver of rights to any future shoreline protective devices for the project.*” The City’s approval of local CDP 19-3760 did not include any conditions; no condition was required to address future bluff/shoreline protection.

Action 7.3.9 of the LUE of the certified LUP states:

*Ensure that new development, major remodels, and additions to existing structures on oceanfront and oceanfront bluff sites do not rely on existing or future bluff/shoreline protection devices to establish geologic stability or protection from coastal hazards. A*

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<sup>2</sup> Design Review Staff Report, 9/14/2017 (Exhibit 6).

*condition of the permit for all such new development on bluff property shall expressly require waiver of any such rights to a new bluff/shoreline protection device in the future and recording of said waiver on the title of the property as a deed restriction.*

LUE Action 7.3.9 provides that the City shall impose a special condition requiring a waiver of bluff protective devices for new development, major remodels, and additions to existing structures on oceanfront and oceanfront bluff sites. The City did not impose such a special condition in this case. However, there is a separate LCP policy that prohibits the construction of shoreline/bluff protective devices for the protection of accessory or ancillary structures (such as decks), which are typically considered appurtenant development that inherently do not qualify for shoreline/bluff protection. Action 7.3.13 of the LUE of the certified LUP states (*emphasis added*):

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

Therefore, there is a question as to whether the imposition of the waiver of future shoreline/bluff protective devices special condition is necessary in this case when LUE Policy 7.3.13 already explicitly prohibits shoreline/bluff protection devices for the sole protection of any accessory or ancillary structures (i.e. decks). The City could have addressed this issue and made findings to substantiate the project’s consistency with LUE Action 7.3.9, but did not. LUE Action 7.3.9 prohibits the use of shoreline protective devices “solely” to protect accessory structures. It does not address the situation here where a protective device may protect an existing structure and an accessory structure. It is not clear whether the City considered imposing a special condition requiring a waiver of any right to a future bluff/shoreline protection device or not. There is no evidence in the City’s record that such a waiver was not needed or not appropriate. Thus, 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. Therefore, the Commission finds that the City’s approval of local CDP 19-3760 approving the deck project does raise a substantial issue regarding conformity with LCP.

#### **SUBSTANTIAL ISSUE FACTORS:**

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

**1. The degree of factual and legal support for the local government’s decision that the development is consistent with the relevant provisions of the Coastal Act.** The contentions raised by the appellants identify areas where factual and/or legal support of the decision is absent, particularly areas regarding the project’s consistency with the bluff top/face policies of

the certified LCP. The City's record provides no detail with regard to the location of bluff edge and bluff setback, or with regard to whether the project should be considered a major remodel, or the need to require a waiver of any rights to future shoreline/bluff protection devices. Overall, there is a low degree of factual and legal support for the local government's decision, and this factor supports a finding of substantial issue.

**2. The extent and scope of the development as approved or denied by the local government.**

The local government granted a local CDP for deck improvements (e.g. deck additions totaling 57 square feet) to a single family residence that may be legally non-conforming to the certified LCP's oceanfront and oceanfront bluff setback requirements and the additional square footage would exacerbate the non-conformities. Moreover, it is possible that the deck additions are only one part of a larger project that should also have been considered by the City. If the larger project includes alterations sufficient to raise the project to the level of a major remodel, the larger project would further increase the extent and scope of the development approved by the City. This factor supports a finding of substantial issue.

**3. The significance of the coastal resources affected by the decision.** The subject site is an oceanfront bluff lot, which may raise specific concerns that are not routinely raised on interior, in-fill lots. California's coastal bluffs are a significant resource, and represent a rare and visually pleasing landform which California citizens and governments have historically sought to preserve. Coastal bluffs are dynamic geologic formations, and development on them increases the potential for geologic hazards. Development on coastal bluffs and adjacent to public beaches also can have significant impacts on scenic resources and public access opportunities. The LCP and the Coastal Act provide coastal bluffs with special protections. This factor supports a finding of substantial issue.

**4. The precedential value of the local government's decision for future interpretations of its LCP.** The subject site is an oceanfront bluff property. The majority of ocean-fronting development in Laguna Beach is sited on bluff properties, and the decision of the local government for this project might influence future permit decisions made in the City's Coastal Zone. Allowing the local government's decision to approve improvements potentially encroaching into bluff edge setback areas or sited on a bluff face would set a negative precedence for future interpretations of its LCP. Likewise, neither the total extent of the project or the requirement to waive any rights to a future shoreline/bluff protection device where addressed in the City Council's approval. If the subject local CDP is found to be consistent with the LCP based on the current record, there is a potential that future applicants, especially within the vicinity, will reference this permit if they wish to develop other oceanfront coastal bluff sites, of which there are hundreds in Laguna Beach. Without adequate information to determine the bluff edge and the appropriate bluff edge setback, allowing the City's local CDP approval to stand would result in adverse precedence regarding application of the LCP's various bluff top/face development protection policies. This factor supports a finding of substantial issue.

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

Bluff face and blufftop development are issues of statewide significance, given that coastal bluffs are an important coastal resource throughout the state, not just in Laguna Beach (see third factor above). Requiring consistency with the certified LCP (particularly policies relating to bluff face/top development) is significant to all the people of California who wish to enjoy the public beaches backed by coastal bluffs throughout California. Lack of application of these policies could

have regional or statewide ramifications regarding other similar LCPs and their policies regarding bluffs. This factor supports a finding of substantial issue.

**Conclusion**

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

## **Appendix A – Substantive File Documents**

1. City of Laguna Beach certified Local Coastal Program