

CALIFORNIA COASTAL COMMISSION

South Coast District Office
301 E. Ocean Blvd., Suite 300
Long Beach, CA 90802-4830
(562) 590-5071



~~W21bF9b~~

Filed: 09/10/2019
49th Working Day: 11/16/2019
Staff: A. Spencer- LB
Staff Report: 10/31/2019
Hearing Date: 11/13/2019

STAFF REPORT: APPEAL – SUBSTANTIAL ISSUE

Appeal Number: A-5-LGB-19-0193

Applicant: 32007 Coast Highway, LLC

Agent: Gaines and Stacey, LLP (Attn: Rebecca Thompson)

Local Government: City of Laguna Beach

Local Decision: Approval with Conditions

Appellants: Mark and Sharon Fudge

Location: 32007 Coast Highway, Laguna Beach, Orange County

Project Description: Appeal of Local Coastal Development Permit No. 18-2660 approved for the interior remodel, door and window replacement, and stucco patching of an existing single-family residence.

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

SUMMARY OF STAFF RECOMMENDATION

Local Coastal Development Permit (CDP) No. 18-2660 approves an interior remodel, door and window replacement, stucco repair, and a parapet removal on an oceanfront bluff-top lot located approximately 300 feet south of Thousand Steps Beach in the South Laguna area of Laguna Beach. The lot is developed with a single-family residence that was constructed in 1971, prior to enactment of the Proposition 20, the predecessor to the Coastal Act, under an Orange County Planning Commission Permit. The project site shares a bluff slope with a neighboring parcel at 32005 Coast Highway (which the project site abuts on the east and the north). The 32005 Coast Highway lot is located at the top of the slope, whereas the subject project site is located at the bottom of the slope. The slope that connects the two properties has been repeatedly impacted by unpermitted grading, erosion and debris flow.

Staff recommends that the Commission determine that a **substantial issue exists** with respect to the grounds on which the appeal has been filed because the City did not provide adequate legal or factual support for its finding that the proposed interior remodel is consistent with the certified Local Coastal Program (LCP) provisions that apply to development on an oceanfront bluff. The applicant did not identify a bluff edge for the project site, and the City’s findings did not consider the bluff edge setback and redevelopment policies. During an analysis of the slope for the De Novo application on the upslope lot, the Commission’s staff geologist determined the bluff edge (as defined in the certified Land Use Element and the Coastal Act) as being at the 150-ft. contour, which is entirely landward of the existing residence; as such the subject project will occur entirely on the bluff face. The local CDP also does not determine whether the proposed development constitutes “new development.” In addition, the City’s staff report did not identify the existing beach access staircase (constructed without a permit in the 1970s and re-constructed under a City building permit without a CDP) as unpermitted development that is subject to Land Use Element Policy 7.3.8. In general, further analysis is required to determine whether or not the project is consistent with the relevant policies of the LCP. Staff recommends that the Commission find a substantial issue exists for the reasons summarized above.

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

TABLE OF CONTENTS

I. MOTION AND RESOLUTION	4
II. APPELLANT’S CONTENTIONS	4
III. LOCAL GOVERNMENT ACTION	4
IV. APPEAL PROCEDURES	5
V. FINDINGS AND DECLARATIONS – SUBSTANTIAL ISSUE	7
A. PROJECT DESCRIPTION AND LOCATION	7
B. LOCAL COASTAL PROGRAM CERTIFICATION	10
C. FACTORS TO BE CONSIDERED IN SUBSTANTIAL ISSUE ANALYSIS	10
D. SUBSTANTIAL ISSUE ANALYSIS	11

APPENDICES

[Appendix A - Substantive File Documents](#)

EXHIBITS

[Exhibit 1 – Vicinity Map and Project Site](#)

[Exhibit 2 – Site Plan](#)

[Exhibit 3 – City of Laguna Beach Determination](#)

[Exhibit 4 – Appeal of Local Coastal Development Permit](#)

I. MOTION AND RESOLUTION

Motion:

*I move that the Commission determine that Appeal No. A-5-LGB-19-0193 raises **NO SUBSTANTIAL ISSUE** with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act.*

Staff recommends a **NO** vote. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

Resolution:

*The Commission hereby finds that Appeal A-5-LGB-19-0193 presents a **SUBSTANTIAL ISSUE** with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the certified Local Coastal Plan and/or the public access policies of the Coastal Act.*

II. APPELLANT'S CONTENTIONS

The appellants have raised several contentions in regards to the local approval of the proposed development ([Exhibit 4](#)). First the appellants contend that the approval of Local CDP No. 18-2660 is not consistent with the LCP requirements for bluff top setbacks because the bluff edge was not accurately determined using the Land Use Element definition for the bluff edge. The appellants' second contention is that approval of the local CDP did not consider unpermitted bluff-face development that has occurred in the past onsite and therefore, the project is inconsistent with LUE Policy 7.3.8 regarding removal of unpermitted development. The appellants' third contention is that the City failed to incorporate the emergency slope repair into the project description as new development. The appellants' fourth contention is that the City failed to determine whether the proposed work (which the appellants believe should include both the remodel and the work authorized under the Commission's Emergency Permit) would perpetuate or increase the existing nonconformities of the residence, and failed to require the residence to be brought into conformity with the current LUP standards. Finally, the appellants contend that the City did not adequately condition the project to ensure the protection of natural resources or visual resources.

III. LOCAL GOVERNMENT ACTION

In July 2018, the applicants filed applications for a Local CDP and Design Review (Case Nos. 18-2660 and 18-2659, respectively) to remodel a 3,755 sq. ft. existing single-family residence within 50 ft. of a bluff edge. The project description also included replacement of exterior doors and windows in the same openings, stucco repair and patching, and interior floor plan reconfiguration with no foundation work.

The first local hearing for this project was held on January 10, 2019. During the hearing, local residents Derek Peterson, Pat Menne, Bryan Menne, Mark Fudge, and Sharon Fudge spoke out against the project. The residents raised the following issues: the spread of mudflow from the project site to neighboring properties; damage to neighbor's retaining walls due to the construction of a caisson retaining wall; concern that unpermitted slope repair is to construct a new residence; project piecemealing; unpermitted development onsite; and concern of development on or seaward of a bluff-edge. The Design review board also raised several issues with the project proposal. First, the board questioned whether an interior remodel could be approved if the slope above the residence was not stabilized. Several board members were also concerned with on-site hydrology. A site hydrology report was not submitted for the project, and there were unanswered questions as to how onsite runoff and flows would be managed. The Board ultimately voted to continue the hearing until they had time to review a hydrology study, landscaping plan, and a CEQA initial study.

The second local hearing for the project took place on August 8, 2019. During the meeting, the applicant noted that he received approvals for the slope repair. The applicant first referenced a "City Emergency Permit" from 2016¹ for the construction of a soldier-pile retaining wall to protect the neighboring property to the north. There was an extensive amount of grading that occurred on the upslope lot, without a Coastal Development Permit, that left the site vulnerable to surficial slides during last year's rain events. In order to prevent damage to the downcoast property (the subject site) during the rainy season, the Commission issued Emergency Permit G-5-19-0011- the second permit- for additional grading for slope stabilization. According to the applicant, the slope repair authorized under the Commission's emergency permit was less intrusive and did not result in utilizing additional caissons, but did approve temporary gravel caissons to support a wood lagging wall. The Board's previous concern about hydrology was not addressed during this hearing. With regard to landscaping, the Board stated that landscaping of the slope was not part of the scope of work for the subject project. At the conclusion of the public hearing, the Board voted unanimously to approve Local CDP 18-2660.

On August 23, 2019, the City sent a Notice of Final Action for Local CDP 18-2660 to the California Coastal Commission, which was received on August 26, 2019 ([Exhibit 3](#)). The Commission's 10-working day appeal period commenced on August 26, 2019. On September 10, 2019, the Coastal Commission received one appeal from Mark and Sharon Fudge. No other appeals were received.

IV. APPEAL PROCEDURES

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

¹ The referenced "emergency permit" was a building permit, not a CDP, which would have been required to be issued from the City for the described work.

Section 30603 of the Coastal Act states in relevant part:

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

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

Grounds for Appeal

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

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

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

Qualifications to Testify before the Commission

If the Commission, by a vote of 3 or more Commissioners, decides to hear arguments and vote on the substantial issue question, proponents and opponents will have an opportunity to address whether the appeal raises a substantial issue. The time limit for public testimony will be set by the chair at the time of the hearing. As noted in Section 13117 of Title 14 of the California Code of Regulations, the

only persons qualified to testify before the Commission at the substantial issue portion of the appeal process are the applicant(s), persons who opposed the application before the local government (or their representatives), and the local government. In this case, the City’s record reflects that Sharon Fudge and Mark Fudge opposed the project in person at the local hearing. Testimony from other persons must be submitted in writing.

Upon the close of the public hearing, the Commission will vote on the substantial issue matter. It takes a majority of Commissioners present to find that no substantial issue is raised by the local approval of the subject project. If the Commission finds that the appeal raises a substantial issue, the de novo phase of the hearing will follow at a later date during which the Commission will take public testimony.

V. FINDINGS AND DECLARATIONS – SUBSTANTIAL ISSUE

A. PROJECT DESCRIPTION AND LOCATION

The applicant is proposing an interior and exterior remodel of an existing two-story, 3,755 sq. ft. single-family residence. The interior remodel will primarily consist of a reconfiguration of the interior living areas. Some interior walls and soffits will be removed, but the interior walls to be removed are not structural load-bearing walls. The windows and doors would be replaced within the existing openings (i.e. no exterior wall removal would occur to accommodate the new windows and doors). The existing stucco would be repaired and patched. Finally, an existing parapet would be removed ([Exhibit 2](#)).²

The project is located within the South Laguna area of Laguna Beach, in Orange County, seaward of Pacific Coast Highway (PCH). The project site is a flag-shaped, 12,410 sq. ft. lot that is developed with a single-family residence near the toe of the bluff, a detached two-car garage located at street level at PCH, and a funicular that runs between the garage and the residence up the slope ([Exhibit 1](#)).

The project site shares a bluff slope with a neighboring parcel at 32005 Coast Highway (which the project site abuts on the east and the north). The 32005 Coast Highway lot is located at the top of the slope (adjacent to PCH), whereas the project site is located at the bottom of the slope. The slope that connects the two properties has been subject to erosion for decades. According to City records and previous geologic reports, the slope has been repeatedly impacted by unpermitted grading, erosion and debris flow.

Project Site History

The single-family residence and detached garage were constructed in 1971 under Permit V-7607, Issued by the Orange County Planning Commission. The residence and structure were permitted prior to the passage of Proposition 20 in 1972; therefore, both structures are considered “pre-coastal.”

On January 4, 1972, the Orange County Planning Commission granted Use Permit UP-3227 for the location of underground pipelines and utilities for the single-family residence/garage, and for the

² This action was included to the project’s scope of work in response to comments made at the local hearing. A neighboring resident argued that the parapet (or “wing-walls”) disrupted coastal views within the project vicinity.

removal of a dedication for an access easement. On August 1, 1972, the Orange County Planning Commission approved an amendment to UP-3227 for an addition to the garage, and construction of a rail-tram (i.e. funicular).

On January 5, 1973, the owner at the time filed another Use Permit application (UP-3383) for the following development: 1) one beach access stairway and two associated wooden decks at the top and bottom of the stairs; 2) a one-story addition to the residence not to exceed 34 ft. at its highest point; 3) a wooden deck and stairway; 4) a 20-ft. high concrete block/reinforced steel retaining wall associated with the proposed wooden deck; 5) a swimming pool to be located on the wooden deck; 6) a roof structure to be located over the swimming pool/deck; 7) a wooden stairway from the third-story deck to the second story; 8) a stair landing under the funicular; 9) 3.5 ft. high wooden fences along the property lines; and 10) a 10-ft. by 15-ft. wooden deck over a water drain pipe with an associated wooden staircase leading to the residence. Local hearings were held on January 31 and February 14, 1973 during which the Orange County Planning Commission and neighboring residents raised multiple issues. Local residents raised concerns about traffic impacts from construction as well as the use of neighboring utilities by construction workers. One of the County Commissioners noted that Coastal Commission approval might be necessary for the proposed development. Another Commissioner noted that a retaining wall would be necessary to support the proposed developments. The Orange County Planning Commission voted to continue the public hearing on February 20, 1973 in order for the applicant to revise her application to clarify the property lines, redesign a proposed lower deck, and to include a request for a retaining wall to support the development. On February 27, 1973, The Orange County Planning Commission issued a letter to the then-property owner stating that although the County approved UP-3383, “a permit from the Coastal Commission may be required before [you] can legally proceed with any development authorized by this application.” There is no evidence of Commission action for any of the development described in UP-3383. Based on aerial photographs taken between 1972 and the present, it appears that the only development described in UP-3383 that was actually constructed was the beach access staircase and associated decks (thus making these structures unpermitted development).

On February 25, 2015, the then-property owner (Summit Circle, LLC) submitted a CDP and Design Review application No. 15-0593 to the City for a 1,081 sq. ft. two-story addition to the single-family residence, lower and upper deck additions on the seaward side of the residence, a demolition and rebuild of the existing roof, conversion of garage storage to a new parking space, reconstruction of the funicular, a new spa, new hardscaping, new retaining walls, and new landscaping. At the first public hearing on October 8, 2015, several residents and local board members raised issues with the proposed project. Most of the concerns pertained to geologic stability on site. The geologic stability concern resulted in the Design Review board continuing the hearing to December 10, 2015, and again for an indefinite amount of time.³

On June 29, 2017, the City’s Design Review Board held a subsequent hearing for Local CDP Application No. 15-0593. Residents were concerned about the project’s impacts to coastal views, the location of the proposed development in relation to the bluff edge, and the classification of the

³ According to the December 10 meeting minutes, indefinite continuances can only be held for a maximum of six months. After then, the application is presumably deemed inactive.

project as a major or minor remodel.⁴ The Design Review Board maintained their concern over the geologic stability of the project site. The Board echoed the residents' view concerns and also raised issue with the project's nonconformance with the established development stringline setback. The Board voted to continue the hearing on September 14, 2017. However, it appears that the project was withdrawn after the June 29 hearing.

In addition to the aforementioned withdrawn CDP application, building permits were granted for additional improvements to the single family residence. On September 2, 2015, the City granted Building Permit RBP-2015-1327 to "repair and replace [the] existing beach access staircase, treads, and guardrails per approved plans." At the time, the City determined that the project was exempt from CDP requirements because the project was considered a repair/maintenance activity. Mark and Sharon Fudge wrote to the Coastal Commission Executive Director on October 19, 2018 to challenge the City's exemption determination for the beach staircase repair/replacement. On October 22, 2018, Commission Staff (on behalf of the Executive Director) determined that the stair replacement/reconstruction was new development and did not qualify as a "repair and maintenance" activity and therefore, required a CDP. To date, there is no evidence of a CDP for the beach staircase replacement.

On July 26, 2016, the City issued a building permit RBP-2016-1065, but not a CDP, for "emergency slope stabilization." The City incorrectly issued an "emergency permit"⁵ for the work. Further, the City also determined that a CDP was not required because the project site is located "in a landlocked area." In fact, any property in the coastal zone, whether or not it is landlocked, requires a CDP for such development, and in this area the permitting authority for an Emergency CDP is solely the Coastal Commission. This issue was brought up during a local CDP Application (17-0491) to authorize similar non-emergency slope stabilization activities on the adjacent 32005 Coast Highway Parcel. After Local CDP 17-0491 was approved by the City, Mark Fudge appealed the local permit to the Coastal Commission (Appeal No. A-5-LGB-17-0050). One of the contentions raised in the appeal for the adjacent parcel was that a portion of the slope stabilization occurred on the subject 32007 parcel (a soldier pile retaining wall along the northern side of the property that borders the 32001 Coast Highway parcel runs across both properties 32005 and 32007) and is unpermitted. The Commission found substantial issue on November 9, 2017. The project description was amended after the SI hearing to include after-the-fact approval of the soldier pile wall on the project site and is currently pending a De Novo review by the Coastal Commission.

Because the upslope lot was subject to unpermitted grading and was required by the City to stop-work, the condition of the site was left vulnerable to the natural elements. During the winter of 2018, storm conditions contributed to surficial instability leading to debris and mudflow onto the project site, the 32005 Coast Highway property, and the neighboring property to the north. The applicant (who holds both the subject lot and the upslope lot under two separate LLCs) applied to the Coastal Commission for an emergency permit to conduct additional grading and construct temporary slope repair devices on the project site to protect the house at the subject site, 32007 Coast Highway. The mudflow events were determined to constitute an emergency that could

⁴ If a project is considered to be a major remodel, then any existing nonconformities (which this residence has) would need to be brought into conformance with the current LCP standards.

⁵ It should be noted that the authority to issue emergency permits on ocean-fronting lots in Laguna Beach rests with the Coastal Commission, not the local government.

threaten or damage property, and on March 5, 2019, the Coastal Commission issued Emergency Permit G-5-19-0011. The emergency permit authorized the grading and benching of soil, construction of a terrace and fill with a geogrid layer, construction of new subdrains, and construction of a temporary wood lagging retaining wall supported by gravel piles mid-way down the slope to protect the subject residence. On April 3, 2019, a corrected Emergency Permit was issued which clarified the amount of authorized grading (525 cubic yards), and was scheduled to expire on May 3, 2019. The Emergency Permit was granted two extensions. As of September 10, 2019, the emergency work authorized under the Emergency CDP has been determined to be complete. Pursuant to the conditions of the Emergency CDP, the applicant is now required to submit a follow-up CDP application to request permanent authorization of the structures constructed under the emergency permit.

In sum, the reconstructed beach access staircase on the subject site is unpermitted and not currently the subject of a pending CDP application or authorized through an emergency permit. The applicant has applied for after-the-fact approval of a soldier-pile retaining wall through pending permit A-5-LGB-17-0050. Finally, the grading, benching of soil, construction of a terrace and fill, new subdrains and temporary wood lagging retaining wall authorized through Emergency Permit G-5-19-0011 must be authorized through the required follow-up permit.

B. LOCAL COASTAL PROGRAM CERTIFICATION

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

C. FACTORS TO BE CONSIDERED IN SUBSTANTIAL ISSUE ANALYSIS

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

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

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

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

D. SUBSTANTIAL ISSUE ANALYSIS

As stated in Section IV of this report, the grounds for an appeal of a CDP issued by the local government are the project’s conformity with the policies of the LCP and the project’s conformity with the public access policies of the Coastal Act. The Commission shall hear an appeal unless it determines that no substantial issue exists as to conformity with the policies of the LCP and the project’s conformity with the public access policies of the Coastal Act.

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

Contention 1: The applicant did not properly identify a bluff edge and the City could not determine consistency with the LCP policies pertaining to bluff development.

The appellants’ first contention is that the applicant did not accurately identify the location of the bluff edge using a methodology that is consistent with the Land Use Element (LUE) definition of bluff edge.

The LUE defines bluff edge as follows:

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.

The LUE also contains policies that regulate development along bluff edges, including the following:

Action 7.3.5- Land Use Element: Prohibit development on oceanfront bluff faces, except public improvements providing public access, protecting coastal resources, or providing for public safety. Permit such improvements only when no feasible alternative exists and when designed and constructed to minimize landform alteration of the oceanfront bluff face to not

contribute to further erosion of the oceanfront bluff face, and to be visually compatible with the surrounding area to the maximum extent feasible.

Action 10.2.5 *On bluff sites, require 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 contains 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.*

The appellants' contention raises a substantial issue with regard to consistency with the LCP. The City's staff report states that a CDP is required for the proposed remodel because the project constitutes development within 50 ft. of a coastal bluff. Although the staff report describes the project site as being within 50 ft. of the coastal bluff, the staff report does not explain whether or not the proposed development is occurring within the bluff face (seaward of the bluff edge). The City's staff report fails to mention the location of the bluff edge, and there are no documents or plans within the City record, or any documents provided by the applicant, that determine the bluff edge location for the site. Without a bluff edge determination, the City could not make findings that the proposed project is consistent with the LCP policies pertaining to bluff-top development or bluff face development and required setbacks.

Although the City record for this project does not contain a bluff edge determination, the Commission's staff geologist has determined that the bluff edge for the project site is located at approximately the 150-ft. contour line (**Exhibit X**), which indicates that the bluff edge is entirely

landward of the existing residence.⁶ According to the analysis, the existing residence appears to be located on a semi-flat portion of a bluff face protrusion. Thus, the existing residence is located on a bluff face and any development must be consistent with LCP policies that prohibit new development on bluff faces, so an analysis must be made to consider if the existing residence is entitled to maintain the existing non-conforming bluff edge setback with the proposal to remodel (if the remodel constitutes redevelopment or is considered new development, then the project may not be consistent with the LCP policies). The City failed to make the required findings of consistency with the LCP with regard to development on a bluff face. Therefore, the appellants' contention does raise a substantial issue.

Contention 2: The City-approved project is consistent with policies that require identification and removal of unpermitted development.

The appellants contend that unpermitted development is present on the site, including a private access beach staircase and soldier piles constructed landward of the single-family residence, and that the City failed to require removal of the unpermitted development as a condition of approval for the local permit.

Land Use Element Policy 7.3.8 states:

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

As stated in Section A of the staff report (Project Location and Description), the then-property owner applied to the Orange County Planning Commission for a conditional use permit for the construction of a beach access staircase and associated decks (among other things) in 1973. The conditional use permit was approved, but a CDP does not appear to have been issued for the staircase and decks (even though the property owner was made aware that a CDP was potentially required for the project). Nevertheless, the staircase was constructed and is visible in aerial photographs as far back as 1979; the original staircase was thus unpermitted. In 2015, the City issued a building permit to repair and replace the unpermitted staircase. Again, a CDP was not issued for the project. The City determined that a CDP was not necessary because the project was considered “repair and maintenance.” It should be noted that a previously unpermitted structure is not entitled to an exemption for repair and maintenance activities, and that the reconstruction of the stairway appeared to exceed the scope of a “repair and maintenance” project in any case. Although the Coastal Commission’s Executive Director ultimately determined that a CDP was necessary for the project due to its location within 50 ft. of a bluff edge, an application for the staircase was never submitted for review. Thus, both the original staircase and its replacement are unpermitted development.

In its review of the current project, the City stated in its staff report that a CDP was necessary for the project due to its location within 50 ft. of a bluff edge. However, the staff report failed to identify the existing staircase and the soldier pile wall as unpermitted development. Looking at the photos, it is evident that the beach access staircase encroaches into the oceanfront bluff. According to LUE Policy

⁶ The bluff edge was determined during an analysis of the upslope property for a pending De Novo application (A-5-LGB-17-0050).

7.3.8, the City should have identified the staircase and the soldier piles as unpermitted development⁷ and should have required that the staircase and the soldier pile wall be removed as a condition of approval, or before approving a CDP for the remodel. In failing to require the removal of the unpermitted development, the City took an action contrary to the certified LCP policies. Allowing the development to proceed under the City-issued CDP would prejudice the LCP with regard to development on coastal bluffs. Therefore, substantial issue must be found based on the appellants' second contention.

Contention 3: The City failed to consider the entirety of the project, which would include new development, and apply the appropriate policies.

The appellants contend that the project includes new development, including the installation of new beach stairs and substantial geo-sculpting of the slope between the project site and the 32005 Coast Highway slope (that is the subject of the Emergency Permit and past appeal described above). According to the appellants, the City should have considered all the activities in the contested local CDP action. In particular, the appellants state that the City should have applied the following LCP policies (all of which are contained in the Land Use Element):

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 10.2.6 (See Page 12 for text)

Action 10.2.7 (See Page 12 for text)

In its analysis of the project, the City should have considered all development proposed on the site, in order to find consistency with the aforementioned LCP policies. With regard to the contention that the City-approved project should have included the slope repair as new development, there is currently a pending De Novo application for the 32005 Coast Highway lot (CDP A-5-LGB-18-0050), which includes an after-the-fact approval request for a soldier pile retaining wall along the northern property line and a request to authorize emergency slope repair activities that were approved under emergency permit G-5-19-0011 in March 2019. While this development may be considered new development necessary for slope stabilization, it is not proposed as part of the current scope of the subject project.

Additionally, the City did not adequately define the proposed project to determine whether or not the scope of work constitutes a major remodel, and if the major remodel would be considered new development. "New development" has been interpreted to be any development that is newly proposed, for example a new addition on an existing structure or any new structure, including accessory and primary structures. A major remodel, which meets or exceeds a 50% redevelopment or demolition threshold, according to Policy 7.3.10 is considered a redevelopment and therefore,

⁷ While the City determined the stairway project was exempt, the Coastal Commission informed the City that CDP was required for the stairway in 2018, well before the City approved the remodel on the subject parcel. Additionally, the record of Substantial Issue found on the upslope lot in 2017 identifies the soldier pile wall as unpermitted development occurring across both lots, again well before the City approved the remodel on the subject parcel. As such, the City records would have indicated that there was unpermitted development on the site.

constitutes new development, which then must conform to the current LCP and development standards. The City’s staff report describes the project as an interior remodel, replacement of doors and windows within existing openings, and stucco patch/repair. The CEQA section of the report states:

Structural plans have been provided that confirm that no exterior demolition is proposed with the exception of new windows and doors proposed within existing openings. Furthermore, no foundation work is proposed.

New development is not explicitly defined in the LCP, but would consist of redevelopment and in cases of a substantial remodel, and according to the LCP policies, can include major remodels. The Land Use Element defines a major remodel as follows:

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.

Based on the City’s description of the project in its staff report and on the project plans, it is unclear if the project constitutes a major remodel. In its staff report, the City states that there would be no exterior demolition of the exterior walls given that the doors and windows would be replaced within the existing openings. However, there may be a replacement of 50 percent or more of the interior of the structure; based on the information in the City’s file, staff has been unable to determine what percentage of the interior is being replaced. In addition, there appears to be structural changes to the roof (i.e. the parapet removal⁸) that were not included in the City’s analysis of the project. The City’s staff report overall did not adequately apply the definition of a major remodel in its analysis of the project. If the project was defined as a minor remodel, the residence may not be allowed to maintain the existing non-conformities (discussed below). If the project constitutes a major remodel and is considered “new development,” all non-conformities would need to be corrected, according to the LCP policies. Thus, the City needed to undertake a more complete analysis of whether the proposed project was a minor or major remodel before it could make the required findings of LCP consistency regarding new development on bluff-top lots, or state that the policies are not applicable due to the status of the project as a minor remodel. Such findings were not made in the staff report; in fact, the LCP was not referenced at all in the City’s staff report. Overall, the City does not have an adequate factual and legal basis to support its decision to approve the proposed project.

Because the City did not adequately define the proposed project to determine whether or not the scope of work constitutes a major remodel, the City was unable to address whether the project complied with the certified LCP contains policies that regulate new development on bluff-top lots, which are typically considered as more sensitive zones. Therefore, the appellants’ contention does raise a substantial issue.

Contention 4: The City-approved project did not require non-conformities to be brought into conformance with the current LCP.

The appellants contend that the City failed to determine whether or not the proposed project increases the existing nonconformities of the single-family residence, and, if a major remodel (see above contention), failed to require the existing non-conformities to be brought into compliance with the current LCP policies. The appellants specifically reference Land Use Element Policy 7.3.10, referenced below.

***Policy 7.3.10.** Allow oceanfront and oceanfront bluff homes, commercial structures, or other principal structure, 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.*

According to the City record, the existing residence is nonconforming with respect to the front and side yard setbacks. The record does not reference a nonconformity with respect to the bluff edge setback, but based on the Commission staff geologist's determination of the bluff edge, the residence is also nonconforming with respect to the bluff edge (i.e. the residence has been built into the bluff face). Under LUE Policy 7.3.10, existing nonconforming structures may undergo repair and maintenance actions while maintaining the existing nonconformities AND may be improved upon provided that the improvements do not increase the size or degree of nonconformity. Major remodels shall, if approved, cause the residence to be brought into conformance with the current LCP standards.

As detailed in the discussion of the appellants' third contention, the City did not determine whether or not the project constitutes a major remodel. Without a determination as to whether the proposed project constitutes a major remodel, it is not possible to determine if the residence would be entitled to maintain the existing nonconformities. The staff report did not recognize all of the existing nonconformities, and did not make any findings that would allow them to remain if the project were considered to be a minor remodel. The City certainly did not analyze the project's scope of work in order to find consistency with LUE Policy 7.3.10. The City's staff report does not reference Policy 7.3.10. The City does not have an adequate basis to conclude that the project is consistent with the certified LCP with regard to the maintenance of nonconforming structures. Therefore, the appellants' contention raises a substantial issue.

Contention 5: The City failed to apply standard conditions (waiver of rights to shoreline protective devices) to the project.

The appellants contend that the City failed to require the applicant to record a waiver of rights to any future shoreline/bluff protective device for the project. In the appeal, the appellant refer to Land Use Element Policy 7.3.9, which states:

***Policy 7.3.9.** Ensure that new development, major remodels, and additions to existing structures on oceanfront and oceanfront bluffs 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 of the property as a deed restriction.

In their appeal, the appellants refer to the slope repair permitted by Emergency Permit G-5-19-0011 as constituting new development that would be subject to a waiver of rights to a future bluff/shoreline protective device. This development is not before the Commission in this appeal, but the project does consist of new development on an oceanfront bluff. As such, the City did not ensure conformance with the above policy, which requires that new development waive rights to future shoreline and bluff protective devices and requires a condition of approval. Therefore, the appellants' contention does raise a substantial issue.

SUBSTANTIAL ISSUE – FIVE FACTORS

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

The degree of factual and legal support for the local government’s decision that the development is consistent with the relevant provisions of the certified Local Coastal Program.

There is not an adequate degree of factual/legal documentation to support the City’s decision to approve a CDP for the proposed project consistent with the certified LCP and the Chapter 3 policies of the Coastal Act.

The extent and scope of the development as approved or denied by the local government. The City approved an interior remodel of an existing pre-coastal single-family residence, replacement of doors and windows, and stucco repair. In its decision to approve the project, the City failed to determine whether the proposed project constituted a “major remodel.” Without this determination, the City was unable to determine which LCP policies applied to the proposed development and whether the development was consistent with those policies.

The significance of the coastal resources affected by the decision. California’s coastal bluffs are significant resources, and represent a rare and visually pleasing landscape which California citizens and governments have historically sought to preserve. Development on coastal bluffs also can have significant impacts on scenic resources, recreation, habitat, and public access opportunities. The LCP and the Coastal Act provide coastal bluffs with special protections. Therefore, this factor supports a finding of substantial issue.

The precedential value of the local government’s decision for future interpretations of its LCP. Allowing the local government’s decision to approve new development on a bluff face would set a negative precedent for future actions and interpretations of the LCP. If Local CDP No. 18-2660 is found to be consistent with the LCP based on the current record, there is a potential that future applicants, especially in the vicinity of this project, will reference this permit if they wish to develop on other oceanfront coastal bluff sites and bluff faces in Laguna Beach. Without adequate information to determine the extent and scope of the proposed development, allowing the City’s local CDP approval to stand would result in adverse precedence regarding application of the LCP’s various resource protection policies (specifically, relating to bluff top/face development). This factor

supports a finding of substantial issue.

Whether the appeal raises local issues, or those of regional or statewide significance. The development of shoreline protective and bluff protective devices is an issue of statewide significance, given the potential impacts to public coastal access and recreation. Requiring consistency with the certified LCP (particularly policies relating to shoreline protective and bluff protective devices) and the public access and recreation provisions of the Coastal Act is significant to all the people of California who wish to enjoy the public beaches of California. Unsubstantiated and erroneous application of these policies could have region- or statewide ramifications regarding other similar LCPs and their policies regarding shoreline protective devices.

Conclusion

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