

**CALIFORNIA COASTAL COMMISSION**

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**W21c**

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 Hearing Date: 11/13/2019

**STAFF REPORT: APPEAL – SUBSTANTIAL ISSUE**

**Appeal Number:** A-5-LGB-19-0194

**Applicants:** Hugo Soria & Co., Designer

**Agent:** Laurence P. Nokes, Esq.

**Local Government:** City of Laguna Beach

**Local Decision:** Approval; No Special Conditions

**Appellants:** Mark & Sharon Fudge

**Project Location:** 865 South Coast Highway, Laguna Beach, Orange County

**Project Description:** Appeal of City of Laguna Beach local Coastal Development Permit 19-4244 for improvements to a single-family home on an oceanfront property, including replacing exterior windows and doors; repairing oceanfront middle level deck in-kind; installing glass deck railings; re-tiling bathroom and powder room; installing new wrought iron fence on top of existing north property line retaining wall; and installing new gate at lower level patio/stairs.

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

**IMPORTANT HEARING PROCEDURE 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 phase of the hearing will be scheduled at a subsequent Coastal Commission hearing, during which the Commission will take public testimony.

## SUMMARY OF STAFF RECOMMENDATION

Staff recommends that the Commission, after public hearing, determine that a **substantial issue exists** with respect to the grounds on which the appeal has been filed for the following reasons: the City failed to make a bluff edge determination, which is critical in determining the location of the minimum required setback for *new development* on an ocean-fronting bluff property, including the accessory improvements; failure to identify whether the site qualifies as a coastal bluff because, if it is a coastal bluff, the proposed construction of a fence and a gate on a non-conforming retaining wall and patio would result in the requirement to bring the entire non-conforming retaining wall and patio into compliance with the LCP's requirements regarding bluff edge setbacks; the scope of the proposed repair and maintenance work is not fully detailed, which raises a legitimate concern as to whether the proposed development requires a CDP and is not exempt, as found by the City; and valid concerns that impacts to visual resources were not adequately assessed. Consequently, the appeal raises significant questions with regard to the project's consistency with the City's certified Local Coastal Program (LCP). A summary of the appellants' contentions may be found on page 4 of this report. The complete appeal is included as [Exhibit 6](#).

The City's action on local Coastal Development Permit (CDP) 19-4244 would approve improvements to a single-family dwelling on an oceanfront property. The scope of work includes replacing exterior windows and doors within existing openings with associated stucco repair and patching; repairing the oceanfront middle level deck in-kind (20% damaged deck and ceiling joists, miscellaneous stucco patching, replacing plywood deck, waterproof membrane, and tile deck surface in-kind; installing 42-inch glass deck railings; re-tiling bathroom and powder room; installing a new wrought iron fence on top of the existing north property line retaining wall; and installing a new gate at the lower level patio and stairs on the western side of the property. The subject site, 865 South Coast Highway, is a beach front site located off Thalia Street Beach, between Cleo St. and Thalia St., in the City of Laguna Beach ([Exhibit 1](#)). The City's action approving local Coastal Development Permit 19-4244 is reflected in Design Review Board Resolution No. 19.34 ([Exhibit 4](#)). The subject site is located between the first public road (South Coast Highway) and the sea.

Staff recommends that the Commission find a **substantial issue** exists for the reasons summarized above, and described in greater detail in the body of this report.

## TABLE OF CONTENTS

<b>I. MOTION AND RESOLUTION – SUBSTANTIAL ISSUE</b> .....	3
<b>II. APPELLANTS’ CONTENTIONS</b> .....	4
<b>III. LOCAL GOVERNMENT ACTIONS</b> .....	4
<b>IV. APPEAL PROCEDURES</b> .....	4
<b>V. FINDINGS AND DECLARATIONS – SUBSTANTIAL ISSUE</b> .....	6
A. PROJECT LOCATION & DESCRIPTION.....	6
B. FACTORS TO BE CONSIDERED.....	6
C. SUBSTANTIAL ISSUE ANALYSIS.....	7

### EXHIBITS

[EXHIBIT 1 – VICINTY MAP](#)

[EXHIBIT 2 – SITE PHOTOS](#)

[EXHIBIT 3 – SITE PLAN](#)

[EXHIBIT 4 – DESIGN REVIEW BOARD RESOLUTION NO.19.34](#)

[EXHIBIT 5 – DESIGN REVIEW BOARD STAFF REPORT 8/8/2019](#)

[EXHIBIT 6 – APPEAL OF MARK and SHARON FUDGE](#)

[EXHIBIT 7 – LETTER from APPLICANT’S ATTORNEY 10/9/2019](#)

### SUBSTANTIVE FILE DOCUMENTS

Laguna Beach Local Coastal Program

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

**Motion:** *I move that the Commission determine that Appeal No. A-5-LGB-19-0194 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-19-0194 presents A **SUBSTANTIAL ISSUE** with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with Chapter 3 policies of the Coastal Act.*

## II. APPELLANTS' CONTENTIONS

The City-approved local coastal development permit would allow improvements to an existing beach front single-family dwelling located at 865 South Coast Highway in Laguna Beach. An appeal was timely filed by Mark and Sharon Fudge on September 10, 2019 ([Exhibit 6](#)).

A summary of the appellants' contentions are as follows (please see [Exhibit 6](#) to review the appeal in its entirety). The appellants contend that the City-approved development is inconsistent with the certified Laguna Beach Local Coastal Program (LCP) because:

- 1) The bluff top edge and setback was not properly determined, leading to inadequate protections for the coastal bluff.
- 2) The proposed repair and maintenance work was improperly exempted from CDP requirements, leading to potential adverse impacts to coastal resources, including visual resources.

## III. LOCAL GOVERNMENT ACTION

On August 8, 2019 the City of Laguna Beach Design Review Board approved Design Review 19-4243 and local Coastal Development Permit 19-4244 (see [Exhibit 5 and Exhibit 6](#)). The Design Review Board action occurred at a noticed public hearing.

The City's Notice of Final Local Action for Design Review 19-4243 and local Coastal Development Permit No. 19-4244 was received in the Coastal Commission's Long Beach Office on August 26, 2019, at which point the Coastal Commission's required 10 working-day appeal period was established. On September 10, 2019 the appeal of Mark and Sharon Fudge was received. No other appeals were received prior to the end of the appeal period at 5 p.m. on September 10, 2019. The 49<sup>th</sup> working day from the date the appeal was filed is November 19, 2019.

## 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 local CDP is voided and the Commission may continue the public hearing to a later date in order to review the coastal development permit 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 project includes improvements to a three-story, single-family dwelling on an oceanfront property, including replacing exterior windows and doors within existing openings with associated stucco repair and patching; repairing the oceanfront middle level deck in-kind (applicant estimates 20% damaged deck and ceiling joists, miscellaneous stucco patching, and replacing plywood deck, waterproof membrane, and tile deck surface in-kind); installing 42-inch glass deck railings; re-tiling bathroom and powder room; installing a new wrought iron fence on top of the existing north (side) property line retaining wall; and installing a new gate at the lower level patio on the western (oceanfront) side of the property that abuts a private stairway leading down to Thalia St. Beach (see [Exhibit 3](#) for site plans). No foundation work is proposed.

The subject site is located at 865 South Coast Highway ([Exhibit 1](#)) on a parcel split zoned C-1 (Local Business District) and R-3 (Residential High Density). The subject site is situated on the oceanfronting property zoned R-3 and was improved with a single family dwelling that was constructed in 1996. The property to the east of the subject site is zoned C-1 and fronts the first public road, at 877 South Coast Highway, while single-family residences exist to the north and south of the subject site. The subject lot slopes from the elevation of the adjacent South Coast Highway down to the sandy beach below (Thalia St. Beach).

#### **LCP Background/Standard of Review**

The City of Laguna Beach Local Coastal Program was certified by the Commission on January 13, 1993. The City's LCP Land Use Plan portion is comprised of a variety of planning documents including the Land Use Element (LUE), Open Space/Conservation Element (OSC), and Coastal Technical Appendix; the Implementation Plan portion of the LCP is comprised of a number of documents including Title 25 Zoning. The standard of review for this appeal is consistency with the certified Local Coastal Program and with the public access and recreation policies of the Coastal Act.

### **B. 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 whether the local government action conforms to the provisions of the certified Local Coastal Program and the public access policies of Chapter 3 of the Coastal Act for the reasons set forth below.

### **C. 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 and recreation 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 and recreation policies of the Coastal Act.

#### **Relevant LCP Policies and Definitions**

##### Land Use Element Glossary

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

*102. Oceanfront Bluff/Coastal Bluff -A bluff overlooking a beach or shoreline or that is subject to marine erosion. Many oceanfront bluffs consist of a gently sloping upper bluff and*

*a steeper lower bluff or sea cliff. The term "oceanfront bluff" or "coastal bluff" refers to the entire slope between a marine terrace or upland area and the sea. The term "sea cliff" refers to the lower, near vertical portion of an oceanfront bluff.*

Land Use Plan, Land Use Element Policies –  
Policy 7.3

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

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

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

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

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

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

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

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

*Action 7.3.10 Allow oceanfront and oceanfront bluff homes, commercial structures, or other principal structures, that are legally nonconforming as to the oceanfront and/or oceanfront bluff edge setback, to be maintained and repaired; however, improvements that increase the size or degree of nonconformity, including but not limited to development that is classified as a major remodel pursuant to the definition in the Land Use Element Glossary, shall*



*constitute new development and cause the pre-existing nonconforming oceanfront or oceanfront bluff structure to be brought into conformity with the LCP.*

#### Policy 10.2

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

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

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

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

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

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

#### Policy 10.3

*Ensure all new development, including subdivisions, the creation of new building sites and remodels that involve building additions, is evaluated to ascertain potential negative impacts on natural resources, ESHA and existing adjacent development. Proposed development shall*

*emphasize ESHA impact avoidance over impact mitigation. Any mitigation required due to unavoidable negative impact should be located on-site rather than off-site, where feasible. Any off-site mitigation should be located within the City's boundaries and in close proximity to the project. (Similar to Policies 7.4 and 5.2.)*

Section II of this staff report outlined the appellants' contentions regarding the project.

### **Bluff Edge Determination, Setbacks, and Coastal Bluff Protection**

The appellants contend that the City failed to recognize that the project is located on a site that contains a coastal bluff as defined in the certified LCP. Instead, the Design Review Board relied on the original entitlements that did not identify a bluff condition when the existing single-family dwelling was constructed in 1996. At the time, the site did not qualify as a bluff because the slope was less than 45 percent and pursuant to Laguna Beach Municipal Code 25.50.004 (4)(a)(ii), (b), and (c), the stringline was considered the oceanfront setback. However, given the definition of coastal bluffs and the requirements for bluff edge determinations in the Land Use Element of the City's certified LCP, the appellants contend that the site currently constitutes a coastal bluff and that a portion of the house is located on the bluff face, with the bluff edge located somewhere underneath the structure.

As discussed in the City's Design Review staff report ([Exhibit 5](#)), the City acknowledges that the original entitlements that did not identify a bluff condition were used to exempt the repair and maintenance activities. The proposed repair and maintenance work would thus not fall within 50 feet of the edge of a coastal bluff or within 20 feet of coastal waters, based on the previous bluff determination. However, for the proposed fence and gate, which the Design Review staff report identified as new development that requires a CDP, the improvements will be located on the existing patio slab and on top of the existing retaining wall. In the project plans, the bluff edge is not depicted, but the stringline of development is shown.

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

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

Action 10.2.8 of the LUE of the certified LUP states:

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

Section 25.07.008 (A)(2) and (A)(3)(c) of the Laguna Beach Municipal Code allows for certain types of development, without risk of adverse environmental effect on coastal resources, to be exempt from CDP requirements, including:

*(A) Improvements to Single-family Homes. Improvements to single-family dwellings and mobile homes including structures normally associated with a single-family residence such as garages, swimming pools, fences, storage sheds and landscaping are exempt unless classified as one of the following:*

*(2) Improvements to any structure located on a beach, wetland or stream, or where the structure or proposed improvements would encroach within fifty feet of a coastal bluff edge;*

*(3) Improvements to any structure between the sea and first public roadway paralleling the sea, or within three hundred feet of the inland extent of any beach, whichever is the greater distance when such improvements would constitute or result in any of the following:*

*(a) An increase of ten percent or more of the internal floor area of the existing structure(s) on the building site or an additional increase in floor area bringing the aggregate increase to ten percent or more,*

*(b) The construction of an additional story or loft or increase in building height of more than ten percent,*

*(c) The construction, placement or establishment of any significant detached structure such as a garage, fence, shoreline protective works or docks;*

In addition, section 25.07.008 (C)(4)(a) and (b) of the Laguna Beach Municipal Code allows for certain types of repair and maintenance activities to be exempt from CDP requirements:

*(C) Repair and Maintenance Activities. Repair and maintenance of shoreline protective works that do not result in an addition to, or enlargement or expansion of, unless classified under one of the following:*

*(4) Any repair or maintenance to facilities or structures or work located in an environmentally sensitive habitat area, any sand area, within fifty feet of the edge of a coastal bluff or environmentally sensitive habitat area; or within twenty feet of any coastal waters and streams that include:*

*(a) The placement or removal, whether temporary or permanent, of rip-rap, rocks, sand or other beach materials or any other forms of solid materials,*

*(b) The presence, whether temporary or permanent, of mechanized equipment or construction materials, except that the use of such equipment solely for routine beach cleaning and park maintenance shall not require a coastal development permit;*

Section 25.07.008 (C)(4)(a) and (b) of the Laguna Beach Municipal Code (shown above) tracks section 13252(a)(3)(B) of the Coastal Act:

*(a) For purposes of Public Resources Code Section 30610(d), the following extraordinary methods of repair and maintenance shall require a coastal development permit because they involve a risk of substantial adverse environmental impact:*

*(3) Any repair or maintenance to facilities or structures or work located in an environmentally sensitive habitat area, any sand area, within 50 feet of the edge*

*of a coastal bluff or environmentally sensitive habitat area, or within 20 feet of coastal waters or streams that include:*

*(A) The placement or removal, whether temporary or permanent, of rip-rap, rocks, sand or other beach materials or any other forms of solid materials;*

*(B) The presence, whether temporary or permanent, of mechanized equipment or construction materials.*

Actions 10.2.7 and 10.2.8 (cited above) of the LUE require that new development be sited to meet a building stringline but not less than a 25-foot setback from the bluff edge for principal structures and major accessory structures that require a structural foundation. A 10-foot setback from the bluff edge is required for minor accessory structures/improvements.<sup>1</sup> Further, improvements that are made to a structure within fifty feet of a bluff edge (see Section 25.07.008 (A)(2) above) or a structure between the sea and first public road that includes the construction, placement, or establishment of a detached structure, such as a fence (see Section 25.07.008 (A)(3)(b) above), would require a CDP. Knowing the location of the bluff edge is thus critical in determining the location of the minimum required setback for *new development* on an oceanfronting bluff property, including the minor accessory improvements like the fence and gate. Moreover, if the site does qualify as a coastal bluff where minor accessory improvements like the fence and gate are considered, then the existing development (i.e., the patio slab, retaining wall, and private beach access stairs) at the site would represent a non-conformity within the bluff edge setback area. The LCP requires that improvements that increase the size or degree of a non-conformity shall constitute *new development* and cause the pre-existing nonconforming oceanfront or oceanfront bluff structure to be brought into conformity (LUE Action 7.3.10). In addition, Implementation Plan Section 25.56.009 states: “*If any part of a nonconforming portion of the structure is substantially removed or modified in such a way that it compromises the structural integrity of the building, that portion must be rebuilt in conformance with zoning regulations.*” The Design Review staff report does not address whether the non-conformities would need to be brought into conformance.

It does appear that the project approved by the City does not apply the definition of a bluff edge contained in the LUE glossary and the requirement to set development back from the bluff edge in order to protect the bluff. If part of the project approved by the City constitutes new development, then the location of the bluff edge is important. As such, the appeal raises substantial issues as to whether the project requires a bluff edge determination. Therefore the Commission finds that the project does raise a substantial issue regarding conformity with LCP.

### **Improper CDP Exemption for Repair and Maintenance; Visual Resource Impacts**

The appellants contend that the repair and maintenance work, including window and door replacement, deck reconstruction, and installation of new deck railings, is improperly exempted from CDP requirements because the work cannot be performed without construction materials or mechanized equipment. The appellants point to a prior administrative permit approved by the

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<sup>1</sup> Section 25.50.004(B) of the IP also requires a minimum bluff edge setback of 25 feet from the top of an oceanfront bluff for additions to existing buildings. Section 25.50.004(B) of the IP of the certified LCP states, in relevant part, “*no new building, additions to existing building, or structures or improvements shall encroach beyond the applicable building stringline or shall be closer than twenty-five feet to the top of an oceanfront bluff; the more restrictive shall apply.*” Although certain components of Section 25.50.004(B) conflict with the certified LUP, this aspect of the section related to the minimum 25-foot setback from the bluff top reflects the minimum 25-foot setback from the bluff edge requirement of the LUP.

City in 2016<sup>2</sup> for similar repair and maintenance work as necessitating structural changes to the house and the use of mechanized equipment. This administrative permit modified a prior approval for “exterior window and door changes on the west (oceanfront) elevation of the existing single-family residence”, which the appellants contend required the installation of a beam and the use of panel lifts. The appellants provided documentation of beam installation in exhibit 2 of their appeal package (see [Exhibit 6](#)). In addition, the appellants contend that the deck railings being installed were not adequately examined for visual resource impacts, including glare and/or danger to birds from bird strikes.

As discussed in the City’s Design Review staff report ([Exhibit 5](#)), the City believes that the proposed work constitutes exempt repair and maintenance “because there is no placement of new solid materials or the presence of mechanized equipment and construction materials other than simple hand tools and repair [and] maintenance materials.” Further, the City argues that the proposed work “qualifies for a CDP exemption because the scope of work shown clouded and keyed into the original construction plans...includes removal and replacement of existing/permitted damaged construction” (see [Exhibit 2](#) for site photos of damaged construction). Moreover, the City relied on findings in original entitlements approved for the existing single family dwelling in 1996 establishing that the property was not located on a coastal bluff to find that the repair and maintenance activities are not occurring within 50 feet of the edge of a coastal bluff or within 20 feet of coastal waters. Regarding visual impacts from the glass deck railing, the City’s Design Review board found that the deck railing is code-compliant.

The City’s LCP and the Coastal Act define those situations where minor improvements to, or repair and maintenance of, an existing structure may be exempt from the Coastal Act. Section 25.07.008 (A)(2) and (A)(3)(c) of the Laguna Beach Municipal Code of the Laguna Beach Municipal Code allows for certain types of minor improvements to single-family residences, without risk of adverse environmental effect on coastal resources, to be exempt from CDP requirements, including:

*(A) Improvements to Single-family Homes. Improvements to single-family dwellings and mobile homes including structures normally associated with a single-family residence such as garages, swimming pools, fences, storage sheds and landscaping are exempt unless classified as one of the following:*

*(2) Improvements to any structure located on a beach, wetland or stream, or where the structure or proposed improvements would encroach within fifty feet of a coastal bluff edge;*

*(3) Improvements to any structure between the sea and first public roadway paralleling the sea, or within three hundred feet of the inland extent of any beach, whichever is the greater distance when such improvements would constitute or result in any of the following:*

*(a) An increase of ten percent or more of the internal floor area of the existing structure(s) on the building site or an additional increase in floor area bringing the aggregate increase to ten percent or more,*

*(b) The construction of an additional story or loft or increase in building height of more than ten percent,*

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<sup>2</sup> Administrative Design Review Permit 16-1766 approved on September 1, 2016.

*(c) The construction, placement or establishment of any significant detached structure such as a garage, fence, shoreline protective works or docks;*

In addition, section 25.07.008 (C)(4)(a) and (b) of the Laguna Beach Municipal Code allows for certain types of repair and maintenance activities to be exempt from CDP requirements:

*(C) Repair and Maintenance Activities. Repair and maintenance of shoreline protective works that do not result in an addition to, or enlargement or expansion of, unless classified under one of the following:*

*(4) Any repair or maintenance to facilities or structures or work located in an environmentally sensitive habitat area, any sand area, within fifty feet of the edge of a coastal bluff or environmentally sensitive habitat area; or within twenty feet of any coastal waters and streams that include:*

*(a) The placement or removal, whether temporary or permanent, of rip-rap, rocks, sand or other beach materials or any other forms of solid materials,*

*(b) The presence, whether temporary or permanent, of mechanized equipment or construction materials, except that the use of such equipment solely for routine beach cleaning and park maintenance shall not require a coastal development permit;*

Section 25.07.008 (C)(4)(a) and (b) of the Laguna Beach Municipal Code (shown above) tracks section 13252(a)(3)(B) of the Coastal Act section:

*(b) For purposes of Public Resources Code Section 30610(d), the following extraordinary methods of repair and maintenance shall require a coastal development permit because they involve a risk of substantial adverse environmental impact:*

*(3) Any repair or maintenance to facilities or structures or work located in an environmentally sensitive habitat area, any sand area, within 50 feet of the edge of a coastal bluff or environmentally sensitive habitat area, or within 20 feet of coastal waters or streams that include:*

*(A) The placement or removal, whether temporary or permanent, of rip-rap, rocks, sand or other beach materials or any other forms of solid materials;*

*(B) The presence, whether temporary or permanent, of mechanized equipment or construction materials.*

While the proposed repair and maintenance work could qualify as exempt repair and maintenance if additional detail was provided as to the scope of the construction activities being carried out, the record does not adequately describe how that the proposed improvements will be implemented. That is, no construction methods are discussed or included in the record except for the City's assertion that "simple hand tools" will be used in addition to "repair [and] maintenance materials." Further, the appellants cited similar window and door repair work in 2016 as resulting in the installation of a beam, which raises the possibility that the proposed work could necessitate structural improvements and the use of mechanized equipment and construction materials.

Regarding visual resource impacts, LUE Policy 10.2 states:

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

While the glass deck railing is described in the Design Review staff report as code compliant, the record does not provide information regarding the potential effects to birds or visual resources from glare. The City’s record does not adequately explain or substantiate that the project will not harm visual resources, including impacts of the glass railing to birds.

Given that the scope of the repair and maintenance activities are unclear, including whether mechanized equipment and construction materials may be used, and because visual resource impacts were not assessed, this contention raises a substantial issue. Therefore, the Commission finds that the project does raise a substantial issue regarding conformity with the LCP.

#### **FIVE FACTORS AND CONCLUSION**

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

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

The second factor is the extent and scope of the development as approved or denied by the local government. The extent and scope of the development is not clear from the City’s record. It may be minor development that does not rise to the level of new development, or it may be more substantial in nature. The lack of supporting information in the record as to what the project encompasses makes it difficult to assess whether the extent and scope of the development is significant or not.

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

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

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

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

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