

CALIFORNIA COASTAL COMMISSION

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STAFF REPORT: APPEAL – SUBSTANTIAL ISSUE

Appeal Number: A-5-DPT-19-0211

Owner: Global Resorts, Inc.

Applicant: Yenny Ng, YNG Architects

Local Government: City of Dana Point

Local Decision: Approval with Conditions

Appellants: Coastal Commissioners Brownsey and Hart
 Concerned Residents of Dana Point c/o Tyler Hee, DeLano & DeLano

Project Location: 34482 Street of the Green Lantern, City of Dana Point,
 Orange County (APN Nos. 672-234-07 & 672-234-08)

Project Description: Appeal of City of Dana Point approval of Coastal Development Permit No. CDP16-0014 with conditions for a lot merger and construction of a six-level plus roof deck 47,988 sq. ft., 51-room hotel with 25% on-site low-cost overnight accommodations, including a 20,065 sq. ft. 61-space subterranean parking garage, approximately 8,600 cu. yds. of grading, and public blufftop trail improvements on two vacant coastal bluff lots totaling 17,737 sq. ft.

Staff Recommendation: Substantial Issue

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

SUMMARY OF STAFF RECOMMENDATION

The City-approved construction of a new six-level (plus roof deck) hotel on two contiguous lots totaling 17,737 sq. ft. in area. The project site is located on a coastal bluff between Pacific Coast Highway and the sea but not between the first public road and the sea. Nonetheless, due to its proximity to a coastal bluff the site is within the appealable area of the City's certified Dana Point Specific plan (DPSP), 1986 Local Coastal Program (LCP). For the sake of simplicity, the DPSP/LCP will be referred to as the LCP. The grounds for these appeals are limited to allegations that the development does not conform to the LCP or the public access policies of the Coastal Act. The appeals raise issues with the project's consistency with the LCP with regard to: 1) public access; 2) low-cost overnight accommodations; 3) public views; 4) geologic hazards; and 5) water quality.

At the time that this staff report was published, the City's complete record for the proposed project had just been requested and had not yet been received. However, using the portion of the City's record that accompanied the City's Notice of Final Action, along with information provided by the appellants, an analysis of the City-approved project was possible and substantiates that the appeals raise several substantial issues as to the project's conformance to the certified LCP and the public access policies of the Coastal Act.

The LCP requires the construction of a public blufftop trail at the project site (LCP policies II.D.6.c and II.D.7.c). While the City did require the construction of such a trail, the local coastal development permit (CDP) includes provisions that would limit the circumstances under which the accessway could be accepted by the City and allows for the potential future elimination of the accessway under certain circumstances, which is not consistent with LCP public access policies (LCP policy III.C.29) of the LCP. Furthermore, the City's action did not detail a management plan for the public trail, including, but not limited to, hours of operation, which is necessary information to ensure consistency with the public access policies of the LCP.

The LCP includes Section 30213 of the Coastal Act (LCP policy II.D.1.a), which requires that lower cost visitor and recreational facilities shall be protected, encouraged and where feasible, provided. While the City-approved project is a hotel that proposes 25% of the rooms at a lower cost rate, the details regarding the implementation of this proposal are not addressed; therefore, it is unclear whether the project complies with Coastal Act Section 30213 (as incorporated into the LCP) and the project may be inconsistent with the LCP without further refinement.

The City's LCP incorporates Section 30251 of the Coastal Act, which requires the protection of public coastal views. The proposed development would be constructed on a vacant coastal bluff lot with expansive views of the Dana Point Harbor and the coastline to La Jolla. The proposed hotel would be built to the maximum height of 35 ft., which would impact the expansive public views that are currently available. An alternatives analysis, including a smaller hotel, should be considered in order to determine if it is feasible to reduce or avoid the impacts that the development could have on public coastal views. It does not appear that such an alternatives analysis to minimize impacts to public coastal views was conducted, which is not consistent with the LCP.

The City's LCP incorporates Section 30253 of the Coastal Act (II.E.1.a), which requires new development to minimize risks to property in areas subject to hazards and prohibits the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs. In

addition, General Provision No. 18 of the LCP states that the setback for new development shall be a sufficient distance from the bluff edge to be safe from the threat of bluff erosion for a minimum of 50 years based upon a geologic report and other applicable information. While the City required a minimum 25 ft. setback for the proposed development, the proposal also includes “an array of caissons” to protect the proposed development, which indicates that the 25-ft. setback may not be adequate without reliance on a protective device, which may be inconsistent with the LCP.

The City’s LCP includes policies (II.B.3.c.7) that require construction Best Management Practices (BMPs) to protect water quality. The appellants (Concerned Residents of Dana Point) assert that the City-approved project fails to incorporate adequate water quality measures and BMPs consistent with the LCP. The City did require several conditions to address water quality, however, the plans required as part of those conditions have not been reviewed for specific BMPs and so it is not clear at this time if, in fact, the City-approved project is consistent with LCP policy II.B.3.c.7. Since the appeals raise a substantial issue based on other issues, a de novo review of the project will occur through which the water quality issues can be further evaluated and addressed, as necessary.

For the reasons stated, staff recommends that the Commission determine that a **substantial issue exists** with respect to the grounds on which appeal number A-5-DPT-19-0211 has been filed because the locally approved development raises issues of consistency with the City’s certified LCP.

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EXHIBITS

Exhibit No. 1 – Project Location

Exhibit No. 2 – Appeals (Including Project Renderings)

Exhibit No. 3 – City of Dana Point Planning Commission Resolution No. 19-11-05-03

I. MOTION AND RESOLUTION

Motion:

I move that the Commission determine that Appeal No. A-5-DPT-19-0211 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-DPT-19-0211 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 City of Dana Point certified Local Coastal Program and/or the public access policies of the Coastal Act.*

II. APPELLANTS' CONTENTIONS

On November 27, 2019, an appeal was filed by Coastal Commissioners Brownsey and Hart alleging the project's failure to comply with the City's certified 1986 Dana Point Specific Plan (DPSP)/1986 Local Coastal Program (LCP) (herein referred to as the LCP) ([Exhibit 2, pages 1 to 9](#)). The Commissioners' appeal contends that the project is not consistent with the LCP with regard to: 1) public access; 2) low cost overnight accommodations; 3) protection of public views; and 4) geologic hazards.

An appeal was also filed on November 26, 2019, by Concerned Residents of Dana Point, c/o Tyler Hee, DeLano & DeLano, which raises issues similar to those identified in the Commissioners' appeal except that the appeal also raises issues with regard to water quality ([Exhibit 2, pages 11 to 28](#)).

III. LOCAL GOVERNMENT ACTION

On August 26, 2019, the City of Dana Point Planning Commission held a public hearing and approved the proposed development. The local CDP was subsequently appealed to the City Council by Concerned Residents of Dana Point who were represented by Mr. Everett DeLano, an attorney for the group. On November 5, 2019, the City Council denied the local appeal and approved the project per Resolution No. 19-11-05-03 ([Exhibit 3](#)).

On November 13, 2019, the Commission South Coast District Office received the City's Notice of Final Local Action and the Commission's ten working-day appeal period was started. Two appeals were received, as described above. No other appeals were received prior to the publishing of this staff report, however, the Commission's appeal period for this project ends at 5:00 pm on November 27, 2019. Therefore, there may be additional appeals received after this staff report is published and prior to the end of the Commission's appeal period, which would be evaluated in a staff report addendum.

IV. APPEAL PROCEDURES

After certification of Local Coastal Programs, the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits. Developments approved by cities or counties may be appealed if they are located within the mapped appealable areas, such as those located between the sea and the first public road paralleling the sea or within three hundred feet of the mean high tide line or inland extent of any beach or top of the seaward face of a coastal bluff [Coastal Act Section 30603(a)].

Section 30603 of the Coastal Act states in relevant part:

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

Section 30603(a)(2) of the Coastal Act establishes that the City's approval of the development may be appealed to the Commission because it is located within 300-feet of the top of the seaward face of a coastal bluff.

Hearing Procedure and Grounds for an Appeal

The grounds for appeal of an approved local CDP in the appealable area are stated in section 30603(b)(1) of the Coastal Act, 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 [the Coastal Act].*

As stated above, the project is located in the appealable area. 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 was filed pursuant to Section 30603. Under Section 13115 of Title 14 of the California Code of Regulations, if Commission staff recommends a finding of substantial issue, and there is no motion from the Commission to find no substantial issue, the Commission must proceed to the de novo public hearing on the merits of the project. If the Commission finds substantial issue, the de novo hearing will be scheduled at a subsequent Commission hearing. 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 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, will typically have three minutes per side at the discretion of the Chair to address whether the appeal raises a substantial issue. The only persons qualified to testify before the Commission at the substantial issue portion of the appeal process are the applicants, persons who opposed the application before the local government (or their representatives), or those who, for good cause, were unable to oppose the application before the local government, and the local government. Testimony from other persons must be submitted in writing. 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

A. PROJECT DESCRIPTION AND LOCATION

The City approved a lot merger and the construction of a six-level (plus roof deck), 47,988 sq. ft. 51-room hotel with 61 on-site parking spaces within a three-level subterranean parking garage, 8,600 cu. yds. of grading, and public blufftop trail improvements. The project also includes a provision for 25% on-site lower cost overnight accommodations. ([Exhibits 2, pages 25 to 28, and Exhibit 3](#))

The project site is located at 34482 Green Lantern in the City of Dana Point, Orange County ([Exhibit 1](#)). The site consists of two vacant contiguous coastal bluff lots totaling 17,737 sq. ft. and is designated as Coastal Visitor Commercial (C-VC) by the City's certified LCP (DPSP).

B. LOCAL COASTAL PROGRAM

Dana Point is a shoreline community in southern Orange County that incorporated as a City in 1989. On September 13, 1989, the Commission approved the City's post-incorporation LCP. The City's LCP is comprised of a variety of planning documents. At the subject site, the applicable document is the City's certified 1986 Dana Point Specific Plan (DPSP)/Local Coastal Program (LCP). However, the project is also visible from public vantage points outside the DPSP and within the adjacent area covered by the Headlands Development Conservation Plan (HDCP), which is another component of the City's LCP, and consistency with the policies of that plan are implicated by the proposed development as well.

C. FACTORS TO BE 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 carried out pursuant to a certified LCP unless it finds that no substantial issue exists with respect to the grounds on which the appeal was filed. 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 had been guided by 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.

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 LCP for the reasons set forth below.

D. SUBSTANTIAL ISSUE ANALYSIS

As stated in Section IV of this report, the local CDP may be appealed to the Commission on the grounds that the proposed development does not conform to the standards set forth in the City’s certified LCP or the public access policies of the Coastal Act. Pursuant to Section 30625(b) of the Coastal Act, the Commission must assess whether the appeals raise a substantial issue with respect to the grounds upon which the appeals were filed pursuant to Section 30603 of the Coastal Act.

In making that assessment, the Commission will consider whether the appellants’ contentions regarding the inconsistency of the local government action with the certified LCP raise significant issues in terms of the extent and scope of the approved development, the factual and legal support for the local action, the precedential nature of the local action for interpretation of the LCP, whether a significant coastal resource would be affected, and whether the appeal has statewide or regional, as opposed to local, significance.

The grounds on which the appeals have been filed relate to the proposed project’s alleged inconsistency with a number of policies and standards of the City’s certified LCP with regard to: 1) public access; 2) low cost overnight accommodations; 3) public view impacts; 4) geologic hazards; and 5) water quality impacts.

Under section 30603(b)(1) of the Coastal Act, the grounds for these appeals is limited to allegations that the development does not conform to the LCP or the public access policies of the Coastal Act. The City’s certified LCP includes policies that address each of the issues raised in the appeals as follows:

Local Coastal Program (LCP) Policies

Section II. D. 6. c. “Access Component” of the City’s certified LCP states in part:

Bluff Top Trail

The Dana Point Specific Plan proposes the development of a bluff top walk to provide linkage between the regional pedestrian trail entering the Dana Point area from Laguna Niguel to Doheny State Beach and between upland recreational uses proposed along the coastal bluffs. The specific use of the bluff top walks will be to provide pedestrian access and coastal viewing.

As depicted on Figure 8, two bluff top walks are proposed for adoption. The permanent or planned trail is generally located adjacent to the bluff edge within the entire Dana

Point coastal area. In contrast, the interim trail is located away from the bluff edge from the Street of the Green Lantern to Street of the Golden Lantern.

The provision of this interim trail is essential to the successful implementation of a bluff top trail system within the near future. The dedication of an easement from a property owner for the trail system is exacted at the time of development or redevelopment of his property. Consequently, in areas which are developed and unlikely to redevelop in the near term, the provision of a bluff top trail system in the immediate future is unlikely. The interim trail, however, will skirt those properties and thus facilitate the timely implementation of the trail system.

It should be noted that the exact location of the trail is conceptual. To ensure the protection of the trail from potential bluff instability and to permit some flexibility in the site design of property, the precise location of the trail will be determined as development plans are reviewed by the County.

Section II. D. 7. c. “Access Component” of the City’s certified LCP states in part:

25. *The bluff top walk should link the proposed open space areas of the Dana Point Headlands southwest of Cove Road, the Lantern Bay lookout park, and the existing and proposed lookout points. (Dana Point Specific Plan Community Design Element, page IX-2)*
26. *In the tourist recreational commercial areas, the bluff top walk should be integrated into the design of the commercial complexes to assure the continuous pedestrian access along the bluff. (Dana Point Specific Plan Community Design Element, page IX-2)*
29. *A bluff top walk/bike trail will follow a route from the Dana Point Headlands to the Dana Point Palisades. (Because of the already developed property along the bluff, it is extremely difficult to establish a continuous system. However, the system will not require extensive public acquisition and, further, connects with existing and planned vista points and view parks). (Dana Point Specific Plan Local Coastal Program Policy, page X-6)*
31. *While most likely in private ownership, the majority of the area should be easily accessible to the public, particularly along the bluff edge. (Dana Point Specific Plan Headlands Use Policy, Area E, page rv-23)*
32. *A bluff top public walkway will be provided, and integrated with future land uses. (Dana Point Specific Plan Community Headlands Land Use Policy, Area E, page IV-23)*
33. *The use of the bluff top walk will be limited to pedestrian access and coastal viewing.*
34. *The bluff top walk on the Headlands, Lantern Bay Sectors and other properties within the Dana Point area will be permanently available to the public as implemented by an open space management system. This system will assure permanency as well as long-term maintenance for all public systems.*

35. *The location of the bluff top walk as depicted on Figure 8 is conceptual in nature. Precise alignment of the bluff top walk will be determined as new development plans are reviewed by the County.*
37. *An, interim bluff top walk as shown on Figure 8 will be used until the completion of the permanent trail system.*
38. *The bluff top walk will provide adequate lighting to accommodate evening use, utilize path materials and finishes compatible with expected uses, provide seating areas along the walk, and provide a minimum width of eight feet.*

Section III. C.29. “New Development Component” of the City’s certified LCP states in part:

29. *For all new development between Pacific Coast Highway and the shoreline, public access to the shoreline and the coast shall be provided in a manner which carries out the policies of the LUP including the Access Component.*

As a condition of development the applicant shall cause to be duly executed and record an irrevocable offer to dedicate an easement for public access as follows:

- a. *For all development proposed along the shoreline bluff top, a lateral easement shall be irrevocably offered for dedication to a public agency or private association approved by the County to ensure implementation of the bluff top trail system as shown in Figure 8 of the LOP. The easement shall be a minimum of 10 feet wide and shall be set back a sufficient distance from the bluff edge to assure safety from the threat of erosion for 50 years. A 10-foot setback from the accessway easement shall be required for any proposed structures to minimize the impacts between the accessway and adjacent residential uses.*

Headland Development Conservation Plan (HCDP) Section 4.4 states, in part:

The three primary goals of the Park and Open Space Plan are as follows:

1. *Create high quality public parks, recreation, and open space areas that maximize coastal access, establish and preserve public views, and conserve sensitive habitat area.*

Section II. D. 1. a. “Access Component” of the City’s certified LCP states in part:

Section 30213: Lower cost visitor and recreational facilities and housing opportunities for persons of low and moderate income shall be protected, encouraged, and where feasible, provided. Developments providing public recreational opportunities are preferred. New housing in the coastal zone shall be developed in conformity with the standards, policies, and goals of local housing elements adopted in accordance with the requirements of subdivision (c) of Section 65302 of Government Code.

Section II. B. 4. a. 18. “Environmental Hazards” of the City’s certified LCP states in part:

18. *In areas of new development, above-ground structures will be set back a sufficient distance from the bluff edge to be safe from the threat of bluff erosion for a*

minimum of 50 years. The City will determine the required setback. A geologic report shall be required by the City in order to make this determination.

Section II. E. 1. a. “New Development Component” of the City’s certified LCP states in part:

Section 30253: New development shall:

Minimize risks to life and property in areas of high geologic, flood and fire hazard: Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, 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;

Where appropriate, protect special communities and neighborhoods which, because of their unique characteristics, are popular visitor destination points for recreational uses.

Section 30251 of the Coastal Act, which is incorporated in the City’s certified LUP, states:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural landforms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Park and Recreation and by local government shall be subordinate to the character of its setting.

Section II. B.3.c.7 states, in part:

All construction will be conducted with provisions for the control of sediment transport, and debris originating at the construction site as follows:

- a. For necessary grading operations, the smallest practical area of land will be exposed at any one time during development, and the length of exposure will be kept to the shortest practical amount of time. The clearing of land should be avoided during the winter rainy season and all measures for removing sediments and stabilizing slopes should be in place before the beginning of the rainy season...”*

Appeals – Analysis of Consistency

Sections II.D.6 and II.D.7 of the City’s LCP require the construction of a continuous public blufftop trail system to “provide linkage between the regional pedestrian trail entering the Dana Point area from Laguna Niguel to Doheny State Beach and between upland recreational uses proposed along the coastal bluffs” (Section II. D. 6.c). Specifically, Section II.D.7.c states, in part “[t]he bluff top walk should link the proposed open space areas of Dana Point Headlands **southwest of Cove Road**, the Lantern Bay lookout park, and the existing and proposed lookout points.” [Emphasis added]. The subject site is located directly adjacent to and north of Cove Road, which is an integral link between “open space areas” at Dana Point Headlands and the “look out points.” While the City did incorporate a public blufftop trail along the bluff edge of the project site, Condition 52 of the City’s CDP includes provisions that would limit the

circumstances under which the accessway could be accepted by the City and allows for future elimination of the accessway under certain circumstances. Specifically, Condition 52 states, in part, “...[s]aid dedication shall be in the form of a recorded, irrevocable offer to dedicate **until the City acquires the same rights from continuous blufftop property owners. This offer shall be valid for 21 years or until the City accepts the easement, or until an amendment of the Local Coastal Program deleting the requirement of dedication of a lateral access easement for trail purposes, whichever occurs first...**” [Emphasis added]. The City’s condition regarding the offer to dedicate the public trail easement does not ensure that the offer to dedicate will be accepted by the City and maintained for public use, nor does it “assure permanency” as required by Sections II.D.7 and II. C. 29 of the City’s LCP. Furthermore, the City’s action does not detail management requirements (Section II.D.7) for the trail, including, but not limited to, hours of operation. Considering the location of the subject site at an important entry point to the blufftop trail system, the City’s condition of approval of the blufftop trail system is inconsistent with the certified LCP policies, as described.

The proposed development would be constructed on two vacant lots, over which there are currently expansive views to and along the coast line and Dana Point Harbor from public areas. The project site is directly adjacent to, although not within, the area of the City that falls within the Headlands Development Conservation Plan (HCDP), specifically Area 8A, Harbor Point Park (Recreational Open Space) and Area 9, Resort Seaside Inn (Visitor/Recreation Commercial). Exhibit 4 of the City’s certified LUP, identifies two lookout points (designated as Ocean Coastline Views From Public Areas) that are in direct line of site of the project site from Areas 8A and 9. Although the site itself is not within the areas cover by the HCDP, the policies regarding the public view impacts for development that is in the line of site of identified lookout points still apply to the proposed development because the proposed development has the potential to obstruct identified views from the area covered by the HCDP. The proposed project would be built to the maximum height limit of 35 ft., creating public view impacts that don’t currently exist. While a hotel is a proper use for the commercial designated site, it is not sited and designed in a manner that minimizes impacts to public views, including by not limiting the overall height of the structure, which is inconsistent with Section 4.4 of the City’s certified HCDP and Section 30251 of the Coastal Act, as it is incorporated into the City’s certified LCP.

The certified LCP includes Section 30213 of the Coastal Act, which requires that lower cost visitor and recreational facilities shall be protected, encouraged and where feasible, provided. While the proposed use is an overnight accommodation use and does propose that 25% of rooms are to be made available for lower cost overnight accommodations, the details regarding implementation of this proposal are not addressed, such that it is unclear whether the City-approved project complies with Coastal Act Section 30213 (as incorporated into the LCP). Such details should include, but are not limited to, if 25% of low cost rooms would be available every day or if the low cost rooms would be available on only certain days of the year, which rooms would be available at the low cost rate, how would the public know that low cost rooms are available, etc. Considering the importance of providing lower cost overnight accommodations in coastal areas, these details should be worked out ahead of time to ensure that proposal of lower cost on-site accommodations is implemented in a practical manner that is consistent with the LCP.

General Provision No. 18 of the LCP states that the setback for new development shall be a sufficient distance from the bluff edge to be safe from the threat of bluff erosion for a minimum

of 50 years based upon a geologic report and other applicable information. For this project, a 25-ft. setback was required to address geologic conditions. However, the City's LCP also incorporates Section 30253 of the Coastal Act, which requires new development to minimize risks to property in areas subject to hazards and prohibits the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs. Here, however, the proposal includes construction of "an array of caissons" to protect the proposed hotel, indicating the 25-foot setback may not be sufficient to assure stability without the construction of a protective device, which would be inconsistent with the City's certified LCP.

The City's LCP includes policies (II.B.3.c.7) that require construction Best Management Practices (BMPs) to protect water quality. The appellants (Concerned Residents of Dana Point) assert that the City-approved project fails to incorporate adequate water quality measures and BMPs consistent with the LCP. The City did require several conditions to address water quality, including: conditions 24, 25, 27, 54, 55, 56, 57, 58, 59, and 68, which, in some cases, do require certain BMPs, however the plans required as part of those conditions have not been reviewed for specific BMPs. At this time it is not clear if, in fact, the City-approved project is consistent with LCP policy II.B.3.c.7. Since the appeals raise a substantial issue based on other issues noted elsewhere, a de novo review of the project will occur through which the water quality issues can be further evaluated and addressed, as necessary.

For the reasons stated above, the City's approval of local CDP16-0014 is inconsistent with the City's certified LCP and the appeals raise substantial issues.

Significance of Issues Raised by Appeals

Applying the five factors listed in the prior section establishes that the appeals raise a "substantial issue," and the staff recommends the Commission accept the appeals and hold a de novo hearing on the permit application at a future date.

The first factor is the degree of factual and legal support for the local government's decision that the development is consistent with or inconsistent with the relevant provisions of the certified LCP. With regard to public access, although the City has required the applicant to construct a public blufftop trail, the City's findings and conditions do not detail how the public blufftop trail would be managed, thereby maximizing public access consistent with the LCP. In addition, the City's conditions leave open the possibility that the applicant's offer to dedicate the public blufftop trail may never be accepted by the City and does not assure trail permanency, as required by LCP policies II.D.6.c and II.D.7.c.34 and 37. With regard to public views, the City did not demonstrate that the project has been designed to minimize impacts to public views and identified view corridors as required by the LCP. With regard to geologic hazards, the City's action does not demonstrate that the project has been designed to minimize landform alterations, as required by the certified LCP. While the project proposes lower cost overnight accommodations, the City's findings and conditions do not detail how the applicant will implement the proposal in a manner that ensures that at least 25% of the rooms on-site are maintained at lower cost rates, consistent with the certified LCP. With regard to water quality, the City's conditions do require several water quality measures, however, the plans associated with those conditions have not been reviewed for consistency with the certified LCP. Therefore, the degree of factual and legal support is inadequate to support the City's determination that the project is consistent with the relevant provisions of the certified LCP.

The second factor is the extent and scope of the development as approved or denied by the local government. The City approved a new 47,988 sq. ft. six-level hotel on two vacant lots, in a seemingly hazardous area, over which expansive coastal views from public vantage points are currently available. While the scope of the development isn't as large as other commercial developments in the area, the project could have significant impacts to coastal resources if not fully consistent with the certified LCP. Thus, the extent and scope of the project, which does not appear to be consistent with the certified LCP, weighs in favor of a finding of substantial issue.

The third factor is the significance of the coastal resources affected by the decision. Public access to the coast is a highly important coastal resource that requires enhancement and strict protection. The availability of low cost overnight accommodations is an integral component of public access as is the protection of public coastal views. As such, the public access policies of the Coastal Act, including the provision to provide low cost overnight accommodations and the protection of public coastal views, have been incorporated into the City's certified LCP as detailed above. In addition, coastal bluffs and water quality are also important coastal resources that are explicitly protected by the City's certified LCP. Thus, it is important to ensure that bluff-top development is appropriately sited and designed to minimize coastal hazards and that adequate water quality measures are incorporated in the City's approval throughout the construction the proposed development as well as the life of the project. Given the significance of the coastal resources affected by the proposed development, this factor also weighs in favor of a finding of substantial issue.

The fourth factor is the precedential value of the local government's decision for future interpretations of the City's certified LCP. As discussed, the City-approved project is not consistent with the relevant policies of the City's certified LCP. In fact, the City's record indicates the City does not agree that protection and provision of lower cost accommodations is required under its LCP even though Section 30213 of the Coastal Act is incorporated into the LCP. Thus, approving the project as proposed and conditioned by the City could set a precedent for future development in Dana Point and other certified areas throughout the state that is not consistent with certified LCPs. This factor supports a finding of substantial issue.

The final factor is whether the appeal raises local issues, or those of regional or statewide significance. The issues raised in the appeal concern the protection of public access, including the provision of low cost overnight accommodations and the protection of public coastal views, as well as issues related to geologic hazards and water quality. The issues raised are not unique to Dana Point and have been raised in many CDP applications and appeals throughout the state and are of substantial public interest. Therefore, the appeals raise issues of statewide significance. These factors support a finding of substantial issue.

In conclusion, the Commission finds that the appeals do raise substantial issues with respect to the grounds on which they were filed and City-approved project's consistency with the City's certified LCP.