

**CALIFORNIA COASTAL COMMISSION**

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



# Th17a

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Staff: M.Vaughn– LB  
Staff Report: 3/21/2019  
Hearing Date: 4/11/2019

## STAFF REPORT: APPEAL – SUBSTANTIAL ISSUE

**Appeal Number:** A-5-LGB-19-0010

**Applicants:** Surf & Sand Resort

**Agent:** Dan Patton, Architect for WATG

**Local Government:** City of Laguna Beach

**Local Decision:** Approval with Conditions

**Appellants:** Mark & Sharon Fudge

**Project Location:** 1555 South Coast Highway, Laguna Beach, Orange County

**Project Description:** Appeal of City of Laguna Beach Coastal Development Permit 18-2147 to renovate an existing resort hotel. The renovation includes a modified parking plan and parking layout, new mechanical enclosures, converting deck guardrails to glass, door and window changes, painting of all buildings, rooftop mechanical equipment reconfiguration, new air conditioning units, a swimming pool ADA access platform lift, hardscaping and landscaping.

**Staff Recommendation:** Find Substantial Issue

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### 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 appeal raises substantial issues because it is not clear that the entire project is fully described, which creates questions as to the consistency of the project approved by the City with various LCP policies including those addressing public access, coastal bluff development, visual resources and water quality, and with the public access policies of the Coastal Act. Consequently, the issues raised by the appellants raise significant questions with regard to the project's consistency with the City's certified Local Coastal Program (LCP) and with the public access policies of the Coastal Act. A summary of the appellants' contentions may be found on page 4 of this report. The complete appeal is included as Exhibit 8.

The City's action on local CDP 18-2147 would approve renovation of an existing resort hotel (Surf & Sand Resort). The renovation includes a modified parking plan and parking layout, new mechanical enclosures, converting metal deck guardrails to glass, in kind door and window changes, painting of all buildings, rooftop mechanical equipment reconfiguration, new air conditioning units, an ADA access platform lift to serve the existing swimming pool, hardscaping and landscaping. The subject site, 1555 South Coast Highway, is a beach front site located to the southeast of Main Beach, between Mountain Road and Bluebird Canyon Drive, in the City of Laguna Beach (Exhibit 1). The City's action approving local Coastal Development Permit 18-2147 is reflected in Planning Commission Resolution No. 18-2145. 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.

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### EXHIBITS: ONLINE ONLY

EXHIBIT 1 - VICINITY MAP

EXHIBIT 2 – SITE PHOTO

EXHIBIT 3 – SITE PLAN

EXHIBIT 4 – PLANNING COMMISSION RESOLUTION NO.18-2145

EXHIBIT 5 - PLANNING COMMISSION STAFF REPORT 11/7/2018

EXHIBIT 6 - 1989 PARKING STUDY (Traffic and Parking Study, prepared by Justin F. Farmer, Transportation Engineers, Surf and Sand Hotel, Inc., dated 1/12/198, revised 1/19/1989)

EXHIBIT 7 - COASTAL HAZARDS & WAVE RUNUP STUDY (GeoSoils, Inc. 6/4/2018)

EXHIBIT 8 - APPEAL OF MARK & SHARON FUDGE

## I. MOTION AND RESOLUTION – SUBSTANTIAL ISSUE

**Motion:** *I move that the Commission determine that Appeal No. A-5-LGB-19-0010 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-19-0010 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 renovations to an existing beach front resort hotel (Surf & Sand Resort) located at 1555 South Coast Highway in Laguna Beach. An appeal was timely filed by Mark & Sharon Fudge on 2/13/2019 (Exhibit 8).

A summary of the appellants' contentions are as follows (please see Exhibit 8 to review the appeal in its entirety). The appellants contend that the City-approved development is inconsistent with the certified Laguna Beach Local Coastal Plan (LCP) and with the public access policies of Chapter 3 of the Coastal Act because:

- 1) No consideration was given to whether the project would affect Lower Cost Accommodations in the City.
- 2) Protection of public access was not properly considered, particularly with regard to the provision of adequate parking both during construction activities and during on-going operation of the resort.
- 3) Bluff top/oceanfront protections and restrictions were not properly assessed.
- 4) The bluff top edge was not properly determined.
- 5) No determination was made as to whether this project constitutes 'new development' and if so, what that determination means with regards to un-permitted or non-conforming development at the site.
- 6) Visual resources were not properly protected.
- 7) Water Quality controls and other related construction BMPs were not properly applied.

## **III. LOCAL GOVERNMENT ACTION**

On November 7, 2018 the City of Laguna Beach Planning Commission approved local coastal development permit 18-2147 with conditions. The Planning Commission action occurred at noticed public hearing.

The City's Notice of Final Local Action for Local CDP No. 18-2147 was received in the Coastal Commission's Long Beach Office on December 20, 2018. However, the NOFA included an incomplete or unclear project description. Consequently, Commission staff sent a Notice of Deficient Notice to the City on December 24, 2018 requesting corrected information regarding the project description as well as project plans. The City responded with the requested information, which was received in the Commission's South Coast District Office on January 30, 2019, at which point the Coastal Commission's required 10 working-day appeal period was established. On February 13, 2019 the appeal of Mark & Sharon Fudge was received. No other appeals were received prior to the end of the appeal period at 5 p.m. on February 13, 2019. The 49<sup>th</sup> working day from the date the appeal was filed is April 24, 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 City's approval of local CDP 18-2147 would allow renovations to an existing resort hotel, Surf & Sand Resort. The renovations include: a modified parking plan and parking layout, new mechanical enclosures, converting deck guardrails on seaward facing guest room balconies from metal to glass, replacing doors and windows in kind, painting of all buildings, rooftop mechanical equipment reconfiguration, new air conditioning units, installation of a new ADA<sup>1</sup> access platform lift to serve the existing swimming pool, hardscaping and landscaping. This is the extent of the development as provided in the City's project description. However, the project plans indicate that all of the hotel guest rooms in the Tower Building of the resort will be remodeled, consisting of demolition of interior guest room bathroom walls, enlarging the bathrooms, and upgrades of all finishes, fixtures, and furnishings. In addition, the Coastal Hazards and Wave Runup Study (GeoSoils, Inc. 6/4/2018) indicates that two guest rooms will be demolished adjacent to the hotel lobby in order to expand the lobby area. But this is not discussed in the Planning Commission staff report and it is difficult to ascertain from the plans whether this is part of the project approved by the City. The GeoSoils study also indicates that a terrace expansion, requiring new foundations will occur, but this aspect of the project was deleted from the project prior to the City's action, as is reflected in the 11/7/2018 Planning Commission staff report. No foundation work is proposed in conjunction with the subject project. The City's approval also makes clear that the proposed project does not include any additional hotel guest rooms and also does not include new ancillary areas. The City Council's

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<sup>1</sup> ADA refers to the Americans with Disabilities Act.

action approving local coastal development permit 18-2147 is reflected in Planning Commission Resolution No. 18-2145.

The subject site is located on the beach at 1555 South Coast Highway in the City of Laguna Beach. The subject lot slopes from the elevation of the adjacent South Coast Highway down to the sandy beach below. The project requires approval of a coastal development permit due to its location within 50 feet of a coastal bluff.

Surrounding the subject site, are sandy beach, public views from the street end access ways (some with benches), and, along the same stretch of South Coast Highway, hotels, restaurants, retail shops, art galleries and public art. The beach in front of the site is accessed from the public accessways located approximately 200 feet downcoast of the site at Bluebird Canyon Drive and approximately 200 feet upcoast at Mountain Road. In addition, the heart of downtown, near Main Beach Park, is located about one mile north/upcoast. The downtown/main beach area of the City of Laguna Beach draws significant numbers of visitors, especially to its active beachfront, public views and many hotels, restaurants, retail shops, art galleries and public art displays. The vicinity of the subject site more or less represents the downcoast extent of the downtown/main beach area of the City. A free public trolley system connects the subject site with main beach, the summer art festivals in Laguna Canyon, and the additional beaches and visitor amenities of South Laguna.

The land use designation at the subject site is Commercial Tourist Corridor (CTC) and the zoning is C-1 Local Business. The principal permitted uses in the Commercial Tourist Corridor are visitor-serving facilities such as hotels, motels, restaurants, theaters, museums, specialty shops, and beach related retail uses. Other uses may be allowed subject to approval of a conditional use permit and may not exceed 50% of the gross floor area and must be located above the ground floor. Hotels are allowed in the C-1 zone subject to approval of a Conditional Use Permit. The subject hotel resort use is consistent with the land use designation and zoning for the subject site.

Based upon information contained in the City's record, the Surf & Sand Resort currently includes 165 hotel guestrooms, a restaurant and bar, conference facilities, a spa, one residential apartment, and various incidental areas such as administrative offices, laundry, storage area, and guest exercise areas. The City's record also indicates that a motel with a restaurant and bar and conference facility was initially approved in 1967 and 1968. The resort is comprised of nine buildings:

### Surf & Sand Resort Building Summary

| Building Name        | Building Height | Building Area  |
|----------------------|-----------------|----------------|
| Towers               | 75'             | 72,350 sq. ft. |
| Surfside             | 35'             | 11,025 sq. ft. |
| Seaview              | 35'             | 21,600 sq. ft. |
| Catalina             | 35'             | 18,000 sq. ft. |
| Splashes             | 17'8"           | 3,353 sq. ft.  |
| Conference Center    | 35'             | 7,354 sq. ft.  |
| Sand Castle/Starfish | 35'             | 3,000 sq. ft.  |
| Parking Structure    | 17' 8"          | 3,353 sq. ft.  |

|              |     |                 |
|--------------|-----|-----------------|
| Spa Building | 35' | 7,354 sq. ft.   |
| <b>Total</b> |     | 147,389 sq. ft. |

**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.

Section II of this staff report outlined the appellants' contentions regarding the project. In particular, the appellants allege there are significant issues with regard to consistency with the certified LCP related to 1) lower cost overnight accommodations; 2) public access (parking, construction); 3) bluff protections; 4) bluff edge determination; 5) new development vs. remodel; 6) visual resources; and, 7) water quality.

### **Lower Cost Overnight Accommodations**

The appellants contend:

*The City failed to consider LUE Action 6.2 which directs them to “Preserve and encourage an increase of the City’s stock of affordable motel and hotel rooms available for short-term visitors. Protect, encourage, and where feasible provide, affordable overnight accommodations.”*

The appellants contend that, because the subject coastal development permit is for renovations to a resort hotel, the City should have evaluated the project for consistency with LUE action 6.2. In addition, LUE Action 6.2.2 states:

*Investigate and, if appropriate, amend the Municipal Code to ensure that affordable hotel and motels are maintained for short-term visitor occupancy. A method to define whether a facility providing overnight accommodation is low, moderate, or high cost shall be evaluated as part of the investigation. Establish standards that would require new high-cost visitor accommodations provide affordable overnight accommodation or pay an “in-lieu” fee.*

The proposed project includes changes to an existing higher cost hotel. LUE Policy 6.2 and Action 6.2.2 do suggest that when considering hotel uses, the provision of lower cost accommodations be considered. However, typically, such considerations are done in conjunction with new hotel projects or remodels that rise to the level major remodel/new development. Although the project approved by the City appears to be relatively minor in nature, based upon the information currently available in the record, it is not entirely clear what the entire extent of the project includes. For example, the project plans in the record indicate that all hotel guest rooms in the Tower Building will be remodeled. The remodeling shown on the plans may constitute only interior work with no substantial changes and may not rise to the level of a major remodel/new development. But this aspect of the project is not included in the written project description or in the Planning Commission staff report (11/7/2018). Thus, based on the information currently in the record, the appeal raises substantial questions as to whether the project involves a major remodel that must comply with LUE policies relating to lower cost accommodations, which the City's record fails to resolve.

The question of the provision of lower cost overnight accommodations when appropriate is a significant question that has not been adequately addressed in the record. Therefore the Commission finds that the project does raise substantial issue regarding conformity with LCP.

**Public Access**

Parking

Section 30252(4) of the Coastal Act <sup>2</sup> states:

*The location of and amount of new development should maintain and enhance public access to the coast by providing adequate parking facilities or providing substitute means of serving the development with public transportation.*

In addition, because the subject site is located between the sea and the first public road, the following Coastal Act policy also applies:

Section 30210

*In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.*

Although the project description provided by the City for the proposed project includes: *modified parking plan and parking layout*, there are no details provided as to how the parking plan and/or the parking layout will be modified. Plan sheets 0A0-014 and 0A0-015 depict the on-site parking spaces, but do not reflect changes referred to in the project description (modified parking plan and parking layout). The Planning Commission staff report indicates that the previously identified parking ratio of 1.62 parking spaces per hotel room will remain adequate, with the requirement that 1,225 square feet of conference area (Starfish and Gray Whale Conference Rooms) are restricted for use by hotel guests only. The Planning Commission staff report, in citing the project applicant's proposal, refers to LCP IP Section 25.52.012(G) which allows that hotel uses may be eligible for a 20% parking reduction for ancillary uses such as restaurant and conference facilities, when those uses are integrated with the hotel use. However, the Planning Commission staff report does not quantify the parking demand for the other uses, which include the restaurant and bar, spa, possible retail area, and meeting/conference space. Moreover, area figures for these uses are not described in the record provided by the City.

The City's approval of the proposed project relies on a 1989 Parking Study (Traffic and Parking Study, Surf and Sand Hotel, prepared by Justin F. Farmer, Transportation Engineers, Inc., dated 1/12/198, revised 1/19/1989). This Parking Study is thirty years old. It is reasonable to assume that standard professional practices have evolved in the last thirty years, and that the most recent standards and practices of the transportation engineering profession should be applied to the subject project, if the project results in changes that may affect the parking demand. Perhaps the City relied on the 1989 Parking Study because the scope of the work proposed would not result in any changes to the current parking demand. But if that is the case, then it is unclear why the 1989 Parking Study is referenced at all. It is not clear from the record provided by the City what the parking modifications are and why a thirty year old parking study was used.

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<sup>2</sup> The Coastal is a standard of review in this case because the subject site is located between the first public road and the sea.

In addition, the City appears to have addressed parking in its current action in order to formalize a parking agreement reflected in a 2010 letter from the then City Manager. That 2010 letter acknowledges that, by the applicant agreeing that 1,225 square feet of conference area (the Starfish and Gray Whale conference rooms), would be available for use only by registered hotel guests, and by providing 217 valet parking spaces on-site and 16 spaces off-site, the site meets the parking requirements established in the 1989 Traffic and Parking Analysis prepared by Justin Farmer. Based on this analysis, the City approved a basement remodel at the site back in 2010.

Regarding parking and the current project, the City’s Planning Commission staff report states:

*“The proposal does not constitute an intensification of use since no new hotel rooms or ancillary areas are proposed, only mechanical enclosures that do not require additional parking. The parking plans and layouts (sheets OA0-014 and OA0-015) are proposed to be slightly reconfigured in order to accommodate the new mechanical cooling yard; however, no spaces will be lost. Therefore, the parking described in the table above [identifying 217 on-site parking spaces and 16 off-site parking spaces] satisfies parking requirements for the proposed project.”*

However, the appellant raises questions regarding the City’s reliance on the 1989 Parking Study, stating in the appeal:

*“The City relied on a parking and traffic study from 1989 to assess parking requirements for this current project. Unfortunately, the 1989 study is outdated and flawed and does not reflect either existing conditions at the site or the proposed conditions. Nor was the 1989 project ever built in the configuration considered by the study. For instance, the ‘Summary and Conclusions’ section of the report states that the ‘Existing’ uses (in 1989) are for 158 rooms, 6554 sf of Restaurant, 6540 sf of Meeting Rooms, and 5,448 sf of retail. In 2019, the resort’s website advertises over 19,000 sf of meeting space. This indicates a substantial increase in the usable area of the resort since 1989.”*

Moreover, the 1989 Parking Study assumes 298 parking spaces will be available to serve the site, whereas the Planning Commission 11/7/2018 staff report identifies 233 parking spaces (including the use of valet parking and 16 spaces provided off site) available to serve the site. This discrepancy in the number of parking spaces (65) may affect the conclusions of the report. Furthermore, the 1989 Parking Study evaluates the development present on the site in 1989, described in the report as: 184 hotel guest rooms (compared to 165 currently present at the site), one apartment (same as current project), restaurant and bar totaling 4,197 square feet (square footage for current restaurant and bar is not identified in the information contained in the City record), conference/meeting rooms totaling 6,440 square feet (square footage for conference meeting space is not identified in the information contained in the City record, although the appellant indicates that in 2019 the resort’s website advertised over 19,000 square feet of meeting space (both in- and outdoors) which is still reflected on the resort’s website), and retail totaling 1,599 square feet (it is unclear how much area of the site is currently dedicated to retail uses).

The information in the record does not provide details on the specific square footages of each of the ancillary uses at the subject site. Although plans were provided, it is difficult to ascertain

square footage information from them with certainty. It is unclear why the City deemed the 1989 Parking Study adequate to address the project's parking demand in 2019. Based on the Planning Commission staff report (cited above) the City approved the site parking because the current project does not intensify use of the site, as no new hotel rooms or ancillary uses are proposed, and so the parking demand does not change. However, it does appear that the City's action incorporates and formalizes the parking agreement reflected in the City Manager's letter of 2010, which does rely on the 1989 Parking Study, even though there is no discussion on current or 2010 site usage compared to the uses considered in the 1989 Parking Study. So it is not clear that the City's action adequately addressed parking. Providing adequate parking to serve private development is an important aspect of maximizing public access. When private development does not provide adequate parking, patrons of the development may seek parking that would otherwise be available to visitors to the area, thereby hindering public access to the coast.

The appellants also raise the question of whether the proposed development constitutes an intensification of use, stating that "*more than fifty percent of the gross floor area of the building is proposed to be remodeled.*" It is not clear what information the appellant is relying on regarding the extent of the project, but it is also not clear from the City's record what the extent of the project is. In addition, the appellant contends that the City's approval would allow substandard parking conditions to continue at the site and suggests there are discrepancies between plan pages regarding parking aisle widths and number of parking spaces. These points also require further clarification that is not found in the City's record provided to Commission staff.

Although the Commission considers other factors, such as alternate transportation serving the development, the question of protecting public access to the coast by providing adequate parking to serve a development is a significant question that has not been adequately addressed in the record. Without a clearer understanding of the total project reflected in both the written record as well as the plans of record, the project does raise a substantial issue regarding conformity with the LCP.

#### Construction

The appellants also raise concerns regarding impacts to public access during construction, including impacts to the sandy beach and to public parking spaces, which may arise from construction activities. For example, construction trucks may impede traffic flow and/or displace public parking along Coast Highway and streets in the general project vicinity. The appellants also raise the question of the duration of project-related construction. The City did not require a construction phasing/staging plan to assist in evaluating these potential issues.

It is not clear that construction access from the public beach is prohibited. Use of the public beach for a private development project raises public access concerns. Maximizing public access to the coast is required by the Coastal Act and LCP. Interference with existing public parking or hindering access by contributing to poor traffic circulation around coastal areas can have a negative impact on coastal access. Traffic congestion and decreases in available parking, and potentially, availability of the public beach itself, which may possibly be caused by the project may adversely impact public access.

Since the project phasing and staging methods are not known, the project may have impacts on public access and recreation. The question of project phasing and construction staging methods was not addressed in the City's action. Therefore, the Commission finds that the project does raise a substantial issue regarding conformity with the LCP.

The appellants also raise concerns regarding the hotel's use of public beach for exclusive use by hotel guests by placing beach chairs on the public beach for use by hotel guests. The question of the placement of beach chairs on the public beach, however, is not a part of the current proposal. The appellant submitted a copy of an online ad for the hotel for private cabana on the beach or other secluded spots dating from 2004. No current evidence of this practice was provided by the appellant. If the hotel is implementing such a practice that would be a matter separate from this appeal.

### **Bluff Top/Oceanfront Protections & Restrictions**

The appellants contend that:

*“The City's action is inconsistent with the LCP because it approved development on an oceanfront bluff face and on the beach itself, without regard to its effect and without mitigation or monitoring. In its action, it failed to protect an area of unique scenic quality and public views as required by Open Space/Conservation Element Policy 7K.”*

In addition, the appellants contend that the project may constitute 'new development' as it is an improvement that increases the size or degree of nonconformity, and exceeds the allowable 'maintenance and repair' scope of work, and that the project has undergone an 'intensification of use'. Based upon the limited information in the record, in fact, there is a reasonable question whether the proposed development may constitute 'new development', whether the project exceeds the allowable 'maintenance and repair' scope of work, and whether the project results in an 'intensification of use.'

The appellants also raise questions regarding slope stability, stating no slope stability analysis was performed. Although a *Coastal Hazard and Wave Runup Study* was prepared by GeoSoils, Inc., dated 6/4/18, this analysis did not extend to or include bluff stability analysis. The City's LCP Land Use Element (LUE) Action 10.2.6 provides standards by which to evaluate bluff retreat, which typically is quantified in a bluff stability analysis. Action 10.2.6 requires this for all new development located on an oceanfront bluff top.

LUE Action 10.2.6 states:

*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.*

It appears this LUE policy would apply to *new* development. It is not clear whether the project approved by the City would rise to the level of *new* development or not. The appellants cite the GeoSoils 6/4/18 report that indicates that the proposed development will include demolition of two hotel guest rooms in order to expand the lobby, as well as an extension of an outdoor terrace that will require new foundations. However, the Planning Commission staff report states, on page 8: “*Staff notes that the Analysis references an elevated deck extension with new foundations that has since been eliminated from the scope of work.*” Therefore, because this aspect of the project has been eliminated, concerns related to the terrace extension and associated foundations do not present any issues as to conformity with the certified LCP. However, whether the project includes demolition of two hotel guest rooms and lobby expansion remains unclear. Also, the extent of hotel guest room remodeling is also unclear. These aspects of the project are not included in the written project description and it is difficult to ascertain from the project plans provided in the City record the full extent of what the project includes. There may be additional components to the project, but that is not made clear in the City record. Because the demolition of two hotel rooms, expansion of the lobby, and remodeling of some existing hotel guest rooms are not described as part of the proposed project or discussed in the Planning Commission staff report or approval resolution, but yet appear to be part of the development based upon outside sources and, to some extent, the project plans, this makes understanding the scope of what constitutes the entire project difficult to determine. Consequently, the appeal raises substantial issues as to whether the proposed project would intensify existing use of the site and whether the entire project would constitute *new* development.

The City’s record does not adequately establish or explain whether the project approved by the City is consistent with the bluff top and oceanfront protections and restrictions policies of the certified LCP. Therefore, the Commission finds that the project does raise a substantial issue regarding conformity with LCP.

### **Non-Conformities**

The appellants contend that the existing site development is located within the 25 foot bluff setback area, on the bluff itself, and on the sandy beach. The appellants contend that existing development at the site includes non-conformities including development within the bluff edge setback area, parking deficiencies, and height limits. The LCP requires that improvements that increase the size or degree of 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 City did approve Variance 18-2171 to allow an ADA platform lift to be installed within the existing pool area, recognizing that the ADA lift would be located within the bluff top setback. Other than the ADA platform to serve the existing pool, the City record does not discuss whether other aspects of the project would occur within the bluff top setback area. The Planning Commission staff report does not address whether the project would rise to the level of *new* development and whether non-conformities would need to be brought into conformance.

If the project approved by the City, the appellants contend, increases the size or degree of any of the existing non-conformities at the site, and/or if the nonconforming portion of the structure is substantially removed or modified in such a way that it compromises the structural integrity of the building, then those non-conformities must be brought into conformance.

Since the total extent of the proposed project is not clear from the City's record, the appeal raises a substantial issue as to whether the project must bring existing non-conformities into conformance with the certified LCP. Therefore the Commission finds that the project does raise a substantial issue regarding conformity with LCP.

### **Bluff Edge Determination**

The appellants contend that the City did not apply the bluff edge definition contained in the LUE glossary, which was certified on May 9, 2012. Determining the correct location of the bluff edge is critical to knowing what conditions should be applied to a project (restoration, removal of structures, etc.). As noted by the appellants, the City's Planning Commission staff report acknowledges that the existing hotel has been developed within the bluff top setback, and in many instances the bluff has been removed in order to accommodate buildings and improvements. The Planning Commission staff report also recognizes that the applicant extrapolated the remaining bluff locations using historical photos to estimate the former location of the bluff. A bluff edge is depicted on some of the project plans. The appellants contend that it is unclear what process the applicant used to extrapolate the bluff locations. The appellants contend that the bluff edge definition in the LUE glossary is the applicable standard to apply to determine the bluff edge locations and that that standard requires that the original bluff edge location applies.

It does appear that the project approved by the City does not apply the definition of bluff edge contained in the LUE glossary. And, based upon the City record, it is not clear how the bluff edge was determined, and how the bluff edge that was identified affects the project.

If the project approved by the City constitutes new development (this question is discussed above), then the location of the bluff edge is important. As discussed above, the appeal raises substantial issues as to whether the project involves new development. Therefore the Commission finds that the project does raise a substantial issue regarding conformity with LCP.

### **Visual Resources**

The appellants contend that the replacement of metal rails with glass rails on the ocean side of the existing hotel may cause excessive glare and/or danger to birds from bird strikes. In addition, the appellant submitted photos of hotel renovation "test units" that indicate that ocean facing hotel room patios/balconies may have one light on each side of the sliding doors leading to the patio/balcony. The appellant alleges such lights would also cause excessive light and glare and danger to birds from bird strikes.

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.”*

In addition, the LCP Open Space/Conservation Element includes the following policy:

*7K Preserve as much as possible the natural character of the landscape (including coastal bluffs, hillsides and ridgelines) by requiring proposed development plans to preserve and enhance scenic and conservation values to the maximum extent possible, to minimize impacts on soil mantle, vegetation cover, water resources, physiographic features, erosion problems, and require re-contouring and replanting where the natural landscape has been disturbed.*

The lights described by the appellant are not described as part of the project approved by the City, and so it is not clear whether they are part of the proposed project. The change from metal to glass rails on the oceanfront hotel room patios/balconies is described as part of the project. However, no information regarding potential effects to birds or the surrounding area is included in the record.

The City’s record does not adequately explain or substantiate that the project will not harm visual resources, including impacts of the lights and the glass rails to birds and the surrounding area. Therefore, the Commission finds that the project does raise a substantial issue regarding conformity with LCP.

### **Water Quality**

The certified LCP Open Space/Conservation Element includes water quality protection policies that require best management practices be implemented with development, that minimization of volume and velocity of site runoff be considered, that minimization of the introduction of pollutants be considered, and that minimization of construction impacts be considered.

The appellants contend that the City approved the project without any conditions related to protecting water quality inconsistent with the requirements of the Open Space/Conservation Element. The appellant did not identify specific water quality impacts due to the project, just that without them the oceanfront property is at risk unless protected. The appellants further contend that the project landscaping plans did not include erosion control measures. Without these measures, the appellants contend, the oceanfront property is at risk.

The City’s record does not indicate that protection of water quality was addressed when the City considered this project. Protecting water quality, especially on an oceanfront site such as the subject site, is an important aspect of development. The City record does not establish that the project will adequately protect water quality. Therefore the Commission finds that the project does raise a substantial issue regarding conformity with 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.