

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
301 E. Ocean Blvd, Suite 300
Long Beach, CA 90802-4302
(562) 590-5071



Th17b

Filed: 02/13/2019
49th Day: 04/25/2019
Staff: M. Alvarado-LB
Staff Report: 03/22/2019
Hearing Date: 04/11/2019

STAFF REPORT: APPEAL – SUBSTANTIAL ISSUE

Appeal No.: A-5-LGB-19-0011

Applicant: Bluebird #24, LLC

Agent: Lance Polster & Carter Mudge

Local Government: City of Laguna Beach

Local Decision: Approval with Conditions

Appellant: Mark Fudge

Project Location: 1585 South Coast Highway, Unit 24, Laguna Beach, Orange County (APN: 895-200-08)

Project Description: Appeal of City of Laguna Beach Local Coastal Development Permit No. 18-0775 for after-the-fact approval of an addition to an existing residential unit. The addition consists of converting 235 sq. ft. of deck area into internal floor area, adding living space to an existing 1,318 sq. ft. residential unit on an ocean-fronting, bluff property.

Staff Recommendation: Determine that substantial issue exists.

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. (14 CCR § 13115(c).) If the Commission takes testimony regarding whether the appeal raises a substantial issue, testimony is generally and at the discretion of the Chair limited to 3 minutes total per side. Only the applicant, persons who opposed the application before the local government (or their representatives), and the local government shall be qualified to testify during this phase of the hearing. Others may submit comments in writing. (14 CCR § 13117.) If the Commission finds that the appeal raises a substantial issue, the de novo phase of the hearing will occur at a future Commission meeting, during which it will take public testimony.

SUMMARY OF STAFF RECOMMENDATION

Staff recommends that the Commission determine that a **substantial issue exists** with respect to the grounds on which appeal number A-5-LGB-19-0011 has been filed because the City's decision that the development is consistent with the provisions of the LCP is not supported by the Local CDP's findings, particularly with the provisions of the LCP that relate that to additions on the oceanfront and/or coastal bluffs or bluff faces. The existing structure may be nonconforming to oceanfront and oceanfront bluff edge setbacks and there are substantial issues as to whether the City-approved addition conforms to the required setbacks or whether it would increase the size or degree of nonconformity of the existing structure. Further analysis is required to determine whether or not the project is consistent with the relevant policies of the LCP.

The City's action on Local CDP No. 18-0775 would approve after-the-fact an addition to Unit 24, which is one out of 32 residential units at 1585 South Coast Highway in Laguna Beach. The subject property is a 26,845-square-foot ocean-fronting, bluff lot.

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

TABLE OF CONTENTS

I. MOTION AND RESOLUTION – SUBSTANTIAL ISSUE	4
II. APPELLANT’S CONTENTIONS	4
III. LOCAL GOVERNMENT ACTION	5
IV. APPEAL PROCEDURES	5
V. FINDINGS AND DECLARATIONS – SUBSTANTIAL ISSUE:	7
A. PROJECT DESCRIPTION AND LOCATION.....	7
B. LOCAL COASTAL PROGRAM CERTIFICATION.....	7
C. FACTORS TO BE CONSIDERED IN SUBSTANTIAL ISSUE ANALYSIS.....	7
D.SUBSTANTIAL ISSUE ANALYSIS	8

Appendix A – Relevant LCP Policies and Definitions

EXHIBITS

- Exhibit 1 – Project Location
- Exhibit 2 – Project Plans
- Exhibit 3 – Appeal
- Exhibit 4 – City Resolution for Local CDP No.18-0775

I. MOTION AND RESOLUTION – SUBSTANTIAL ISSUE

Motion: *I move that the Commission determine that Appeal No. A-5-LGB-19-0011 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-19-0011 presents a **SUBSTANTIAL ISSUE** with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the certified Local Coastal Plan and/or the public access policies of the Coastal Act.*

II. APPELLANT’S CONTENTIONS

The Commission received a notice of final local action for City of Laguna Beach Local Coastal Development Permit (CDP) No. 18-0775 on January 30, 2019. Local CDP No. 18-0775 approves an addition to a residential unit on an ocean-fronting, bluff property resulting from the enclosure of deck area into internal floor area.

On February 13, 2019, the appeal was filed by Mr. Mark Fudge (**Exhibit 3**). Mr. Fudge contends that the City’s approval does not comply with the City’s certified LCP. More specifically, he raises the following concerns with the City-approved development:

- 1) A bluff edge determination was not made. The approved development is likely sited on the bluff face inconsistent with the LCP policy relating to new development on a coastal bluff and/or bluff face; a bluff edge determination is necessary.
- 2) City’s approval would result in the expansion of a building that is nonconforming to oceanfront and/or oceanfront bluff setbacks and is not consistent with the certified LCP.
- 3) Non-conformities at the site must be eliminated if the project is “new development” as defined by LUE 7.3.10.
- 4) The City did not adequately condition the permit to ensure protection of coastal resources.
- 5) Public views may be negatively impacted by the City-approved development.
- 6) The 32-unit building at issue was potentially converted from an apartment building to condominiums without the benefit of a coastal development permit.

III. LOCAL GOVERNMENT ACTION

On November 29, 2018, the City of Laguna Beach Design Review Board (DRB) held a public hearing for the coastal development permit application and other discretionary approvals for the project. Public testimony related to issues concerning development on the bluff face and CEQA compliance. Following the public testimony and the board's deliberations, the DRB approved Local Coastal Development Permit (CDP) No. 18-0775, Design Review 18-0774, and Variance 18-0776. The City approved Variance 18-0776 to allow new construction where nonconforming density exists, new construction to encroach into the side setback, and to not require the applicant to provide the required parking and the required open space.

The project description of the Resolution CDP 18.49 (**Exhibit 4**) approving Local CDP No. 18-0775 reads as follows:

“Construction of a 235 square-foot living area addition by enclosing a deck area in the R-3 (Residential High Density) zone.”

The City's approval does not include any special conditions. Furthermore, a CEQA Categorical Exemption was adopted by the Design Review Board.

The Coastal Commission's South Coast District Office received the Notice of Final Action (NOFA) on January 30, 2019. The Commission issued a Notification of Appeal Period on February 6, 2019. On February 13, 2019, the appeal was filed by Mr. Mark Fudge during the ten (10) working day appeal period (**Exhibit 3**). No other appeals were received. Commission staff issued a letter notifying the City and the applicant of the appeal on February 14, 2019.

IV. APPEAL PROCEDURES

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

Section 30603 of the Coastal Act states in relevant part:

- (a) *After certification of its Local Coastal Program, an action taken by a local government on a Coastal Development Permit application may be appealed to the Commission for only the following types of developments:*
 - (1) *Developments approved by the local government between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach,*

whichever is the greater distance.

- (2) *Developments approved by the local government not included within paragraph (1) that are located on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, stream, or within 300 feet of the top of the seaward face of any coastal bluff.*

Section 30603(a)(1) of the Coastal Act establishes the project site as being in an appealable area because it is located between the sea and the first public road paralleling the sea and within 300 feet of the inland extent of any beach. The project site would also qualify as an appealable area based on Section 30603(a)(2) because of its location on the bluff. The issues raised in the subject appeal, on which the Commission finds there is a substantial issue as described further below, apply to proposed development located in the appeals area.

Grounds for Appeal

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

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

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

Qualifications to Testify before the Commission

If the Commission, by a vote of 3 or more Commissioners, decides to hear arguments and vote on the substantial issue question, proponents and opponents will have an opportunity to address whether the appeal raises a substantial issue. The time limit for public testimony will be set by the chair at the time of the hearing. As noted in Section 13117 of Title 14 of the California Code of Regulations, the only persons qualified to testify before the Commission at the substantial issue portion of the appeal process are the applicant(s), persons who opposed the application before the local government (or their representatives), and the local government. In this case, the City's record reflects that Mr. Mark Fudge expressed his concerns regarding the project in person at the local hearing. Testimony from other persons must be submitted in writing.

Upon the close of the public hearing, the Commission will vote on the substantial issue matter. It

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

V. FINDINGS AND DECLARATIONS – SUBSTANTIAL ISSUE

A. PROJECT DESCRIPTION AND LOCATION

The locally-approved project is a request for after-the-fact approval of a 235-square-foot addition to a 1,318-square-foot residential unit, Unit 24, in a 32-unit residential building. The addition consists of converting deck area into internal floor area, adding 235 square feet of living space to the residential unit (**Exhibit 2**). According to the applicant’s representative, the unpermitted addition has existed since 1964. Therefore, the addition pre-dates the Coastal Act. However, local entitlements and authorizations were never sought or obtained for the addition. The addition is not a *legal* pre-Coastal Act addition. Consequently, the applicant is now required to obtain all the necessary approvals, including a local building permit and coastal development permit for the proposed addition.

The subject property is an oceanfront, bluff lot located at 1585 South Coast Highway in the City of Laguna Beach, Orange County (**Exhibit 1**). The property is currently developed with a 32-unit residential building with 42-space garage (c. 1960), which abuts the public road (Pacific Coast Highway) and descends a coastal bluff slope to the sand below on the base of the bluff. The property is adjacent to Bluebird Beach and is between the first public road (Coast Highway) and the sea. The property fronts 176.50 feet along Coast Highway and extends approximately 200 feet seaward down a bluff slope to the sandy beach. No other work is proposed as part of the locally-approved coastal development permit subject to this appeal.

Visitor-serving uses and single-family residences on oceanfront and bluffs characterize the surrounding area. Public access from Coast Highway to the beach is available via a public access way that abuts the project site.

B. LOCAL COASTAL PROGRAM CERTIFICATION

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

C. FACTORS TO BE CONSIDERED IN SUBSTANTIAL ISSUE ANALYSIS

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

has considered the following factors.

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

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

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

D. SUBSTANTIAL ISSUE ANALYSIS

As stated in Section IV of this report, the grounds for an appeal of a coastal development permit (CDP) issued by the local government are the project’s conformity with the policies of the Local Coastal Program (LCP) and with the public access policies of the Coastal Act. The appellant raises several substantial issues discussed in detail below. Therefore, Staff is recommending that the Commission find that a substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603(a) of the Coastal Act. See Appendix A for list of applicable policies of the LCP.

The project is a request for after-the-fact approval of a 235-square-foot addition to a 1,318-square-foot residential unit in a 32-unit residential building. The addition consists of converting deck area into internal gross floor area, adding 235 square feet of living space to the residential unit. The addition was constructed circa 1964, prior to the passage of the Coast Act. Therefore, the addition is not a *legal* pre-Coastal Act addition as local entitlements and authorizations were never sought and obtained for the addition. Because the addition was never legalized and the applicant is now seeking after-the-fact approvals and local entitlements, the addition must be reviewed as non-existing and considered based upon the current standard of review – the policies of the certified LCP and the public access policies of the Coastal Act. Section 25.05.050 of the certified Implementation Plan (IP) (cited in Appendix A) requires approval of a coastal development permit for any development within the coastal zone that constitutes development as defined in Section 25.07.006(D).

Development is broadly defined by Section 25.07.006(D), which states:

“Development” means the placement or erection of any solid material or structure on land or in or under water; the discharge or disposal of any dredged material or of any gaseous, liquid, solid or thermal waste; the grading, removing, dredging, mining or extraction of any materials; change in the density or intensity of use of land including, but not limited to, the subdivision of land pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code) and any other division of land, including lot splits; change in intensity of use of water, or of access, thereto; the construction, reconstruction, demolition or alteration of the size of any structure, including any facility of any private, public or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes; and kelp harvesting.”

Consideration of a coastal development permit (CDP) application is required because the addition meets the definition of development as provided by Section 25.07.006(D). The City has reviewed and approved a local CDP for the addition. Consequently, the appeal of this permit is currently before the Coastal Commission.

Appellant’s Argument: Bluff face/edge and Bluff Development Constraints; Setback requirements.

The appellant asserts that the existing development (32-unit residential building) may be within the required bluff edge setbacks and/or on the bluff face. The appellant also maintains that a bluff edge determination has not made. Therefore, a bluff edge determination, consistent with the definition of Oceanfront Bluff edge contained in the certified Land Use Element (LUE) of the LCP is necessary to properly consider and review the project’s consistency the minimum required bluff edge setbacks.

The certified Land Use Plan (LUP) provides for minimum bluff edge setbacks for new development such as additions to a principal structure. Action 10.2.7 of the LUE of the certified Land Use Plan (LUP) states:

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

Action 10.2.7 of the LUE require that new development, such as additions to a principal structure, be sited to meet a building stringline but not less than a 25-foot setback from the bluff edge¹. Without an adequate bluff edge determination, all setbacks applicable to all new development and additions to the oceanfront and oceanfront bluff property have not been fully considered as

¹ The appellant also cites Sections 25.50.004 and 25.56.008 of the Implementation Plan (IP) of the certified LCP. Section 25.50.004 of the IP of the certified LCP states, in relevant part, “no new building, additions to existing building, or structures or improvements shall encroach beyond the applicable building stringline or shall be closer than twenty-five feet to the top of an oceanfront bluff; the more restrictive shall apply.” In addition, Section 25.56.008 of the IP of the certified LCP states, in relevant part, “[a] legal nonconforming structure may be enlarged or expanded if: The enlargement or expansion complies in every respect with all applicable provisions of this Title 25.” Title 25, which is in the certified IP, includes the setback requirements of Section 25.50.004. Although certain components of Section 25.50.004 conflict with the certified LUP, the section related to the minimum 25-foot setback from the bluff top reflects the minimum 25-foot setback from the bluff edge requirement of the LUP.

required by the certified LCP.

Entry 101 of the Land Use Element (LUE) Glossary, a component of the City of Laguna Beach certified LCP, contains the following definition of Oceanfront Bluff Edge or Coastal Bluff Edge:

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

Commission staff did not receive a copy of the complete public record file for the proposed development subject to this appeal before the publication of this staff report. However, the City did provide certain documents from the record file as part of its submittal of the Notice of Final Action letter, and the appellants did the same as part of their appeal submittal. In addition, Commission staff is able to access scanned copies of record documents that the City has made available online in its website (<http://64.58.157.208/sirepub/docsresults.aspx>).

Commission staff is unable to confirm if a recent analysis of the top of the bluff, or bluff edge has been prepared. Aside from a hand drawn depiction of the “25’ bluff top setback” line on the site plan, there is no other indication of the location of the bluff edge. Furthermore, aside from the applicant’s representative simply having made a comment at the local public hearing that the building is 80 feet back from the bluff, there is no evidence or analysis to substantiate that an adequate bluff edge determination has been made consistent with the *LUE definition*. It should be noted that in cases of conflict, the certified Laguna Beach Land Use Element prevails over the zoning code. Additionally, if the applicant is relying on a bluff edge that may have been used previously for the property, then the City should have provided findings to clarify how the bluff edge is still appropriate at present and consistent with the certified LUE’s current definition of bluff edge (incorporated 2012). The information provided to Commission staff is not sufficient to substantiate the applicants’ bluff edge, nor is it sufficient for Commission staff to adequately determine the bluff edge of the development site.

Without a proper bluff edge determination, Commission staff is unable to determine that the City-approved development is consistent with the policies of the LCP. The City’s findings fail to provide an adequate degree of factual and legal support for its decision to approve the proposed development and grant a Local CDP. Therefore, the Commission finds that the appeal does raise a substantial issue with respect to the project’s conformance to the LCP’s setback requirements for development on bluffs.

Appellant’s Argument: Expansion or Enlargement of Nonconforming Structure

The appellant asserts that the existing 32-unit residential building at issue, which may be currently nonconforming to oceanfront bluff edge setback requirements, may need to be brought into conformity pursuant to Action 7.3.10 of the certified LCP.

Action 7.3.10 of the LUE of the certified LUP states:

Allow oceanfront and oceanfront bluff homes, commercial structures, or other principal structures, that are legally nonconforming as to the oceanfront and/or oceanfront bluff edge setback, to be maintained and repaired; however, improvements that increase the size or degree of nonconformity, including but not limited to development that is classified as a major remodel pursuant to the definition in the Land Use Element Glossary, shall constitute new development and cause the pre-existing nonconforming oceanfront or oceanfront bluff structure to be brought into conformity with the LCP.

The subject ocean-fronting property is currently developed with a nonconforming 32-unit residential building, which was constructed in the early 1960’s. Action 7.3.10 of the LUE (cited above) allows oceanfront bluff principal structures that are legally nonconforming as to the oceanfront bluff edge setback to be “maintained and repaired”, but it prohibits increases in the size or degree of the nonconformity. Under this policy, a preexisting nonconforming oceanfront bluff structure would have to be brought into conformity with the LCP for improvements that constitute new development within the meaning of Action 7.3.10. The appellant asserts that the locally-approved addition would increase the size of the nonconformity of the existing building and, therefore, would constitute new development within the meaning of Action 7.3.10. This may be the case here if the locally-approved addition does not conform to the required setbacks.

Moreover, Action 7.3.5 of the LUE of the certified LUP states:

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

Due to the City’s failure to substantiate the bluff edge determination for this site, the City-approved addition may not be consistent with Action 7.3.5 of the LUE, which explicitly prohibits private new development on oceanfront bluff faces except for public improvements. Therefore, the Commission finds that the appeal does raise a substantial issue as to the project’s conformance with the LCP policies discussed above.

Appellant’s Argument: Inadequate imposition of special conditions.

The appellant also contends that the City did not adequately condition the permit to ensure the protection of coastal resources. For example, the City did not properly condition the permit involving additions on oceanfront and oceanfront bluff sites to address future bluff protection.

Action 7.3.9 of the LUE of the certified LUP states:

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

The City did not impose a special condition requiring a waiver of bluff protective devices for the protection of the proposed addition as required by LUP Action 7.3.9 (cited above).

The City has the authority and responsibility to impose conditions as necessary to ensure consistency with the certified LCP, but it did not fully do so in this case. Therefore the Commission finds that the project does raise a substantial issue regarding conformity with LCP.

Appellant’s Argument: City did not adequately consider public views.

The appellant argues that the City did not adequately address public view impacts of the proposed development.

Regarding protection of coastal views, Policy 7.3 (same as Policy 10.2) of the LUE of the certified LUP states:

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

Policy 7.3 and 10.2 require that new development be designed and sited in a manner that is protective of areas of unique scenic quality and public coastal views. The record is unclear on this issue. Therefore, if the Commission finds that other aspects of the appeal raise a substantial issue, the Commission will consider whether the project adequately protects public coastal visual resources during the de novo phase of the appeal.

Appellant’s Argument: Unpermitted conversion of apartments to condominiums.

The appellant states that the existing 32-unit residential building onsite was originally constructed as an “Own-Your-Own” (OYO), or cooperative, apartment building, and asserts that in 2003 the cooperative apartment building was converted to a condominium complex without the benefit of a coastal development permit even though the conversion is non-exempt development.

As previously stated, Section 25.05.050 of the IP requires approval of a coastal development permit for any development within the coastal zone that constitutes development as defined in Section 25.07.006(D) (cited above).

Any non-exempt development activity, including the change in intensity of use of land or land divisions, conducted in the Coastal Zone without a valid coastal development permit, or which does not substantially conform to a previously issued permit, constitutes a violation of the certified LCP. Conversion from a rental or cooperative apartment building (on one lot, with one owner) into a

condominium complex (subdivided parcels, a new tract map, and multiple owners) is considered development. The City’s action does not include adequate findings to address this inconsistency with the certified IP. Therefore, a substantial issue exists with respect to this issue raised by the appeal.

SUBSTANTIAL ISSUE FACTORS:

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

1. The degree of factual and legal support for the local government’s decision that the development is consistent with the relevant provisions of the Coastal Act. The City did not substantially support its approval and findings of the project’s consistency with all the applicable provisions of the certified LCP and the public access and recreation policies of the Coastal Act (specifically the bluff top/face policies). The City’s record provides no detail with regard to the location of bluff edge, the bluff setback, and the bluff slope stability. Overall, there is a low degree of factual and legal support for the local government’s decision, and this factor supports a finding of substantial issue.

2. The extent and scope of the development as approved or denied by the local government. The local government granted a Local CDP for a modest 235-square foot addition to one out of 32 units in a non-conforming residential building. However, without an adequate analysis of the locally-approved project including consideration of the location of the proposed development on the bluff, the extent of the work and potential impacts are unclear.

3. The significance of the coastal resources affected by the decision. California’s coastal bluffs are a significant resource, and represent a rare and visually pleasing landform which California citizens and governments have historically sought to preserve. Coastal bluffs are dynamic geologic formations, and development on them increases the potential for geologic hazards. Development on coastal bluffs also can have significant impacts on scenic resources and public access opportunities. The LCP and the Coastal Act provide coastal bluffs with special protections. This factor supports a finding of substantial issue.

4. The precedential value of the local government’s decision for future interpretations of its LCP. Allowing the local government’s decision to approve improvements potentially encroaching into bluff edge setback areas or sited on a bluff face would set a negative precedence for future interpretations of its LCP. If the subject local CDP is found to be consistent with the LCP based on the current record, there is a potential that future applicants, especially within the vicinity, would reference this permit if they wish to develop other oceanfront coastal bluff sites, of which there are hundreds in Laguna Beach. Without adequate information to determine the bluff edge and the extent and scope of the proposed development, allowing the City’s local CDP approval to stand would result in adverse precedence regarding application of the LCP’s various resource protection policies (specifically, relating to bluff top/face development). This factor supports a finding of substantial issue.

5. Whether the appeal raises local issues, or those of regional or statewide significance. Bluff face and blufftop development are issues of statewide significance, given that coastal bluffs are

A-5-LGB-19-0011 (Bluebird #24, LLC)

Appeal – Substantial Issue

an important coastal resource throughout the state, not just in Laguna Beach. (*See* third factor above.) Requiring consistency with the certified LCP (particularly policies relating to bluff face/top development) and the public access and recreation provisions of the Coastal Act is significant to all the people of California who wish to enjoy the public beaches of California. Unsubstantiated and erroneous application of these policies could have regional or statewide ramifications regarding other similar LCPs and their policies regarding bluffs. This factor supports a finding of substantial issue.

Conclusion

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

Appendix A – Relevant LCP Policies and Definitions

Land Use Element Glossary

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

102. Oceanfront Bluff/Coastal Bluff -A bluff overlooking a beach or shoreline or that is subject to marine erosion. Many oceanfront bluffs consist of a gently sloping upper bluff and a steeper lower bluff or sea cliff. The term "oceanfront bluff" or "coastal bluff" refers to the entire slope between a marine terrace or upland area and the sea. The term "sea cliff" refers to the lower, near vertical portion of an oceanfront bluff.

Land Use Plan, Land Use Element Policies – Policy 7.3

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

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

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

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

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

Action 7.3.6 Require new development on oceanfront blufftop lots to incorporate drainage

improvements, removal of and/or revisions to irrigation systems, and/or use of native or drought-tolerant vegetation into the design to minimize threats to oceanfront bluff recession.

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

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

Action 7.3.10 Allow oceanfront and oceanfront bluff homes, commercial structures, or other principal structures, that are legally nonconforming as to the oceanfront and/or oceanfront bluff edge setback, to be maintained and repaired; however, improvements that increase the size or degree of nonconformity, including but not limited to development that is classified as a major remodel pursuant to the definition in the Land Use Element Glossary, shall constitute new development and cause the pre-existing nonconforming oceanfront or oceanfront bluff structure to be brought into conformity with the LCP.

Action 7.3.12 Site and design new structures to avoid the need for shoreline and/or oceanfront bluff protective devices during the economic life of the structure (75 years).

Action 7.3.13 Limit the use of shoreline/bluff protective devices to the minimum required to protect existing development in danger of erosion. Site and design any such protective devices as far landward as possible. “Existing development” for purposes of this policy shall consist only of a principal structure, e.g. residential dwelling, required garage, or second residential unit, and shall not include accessory or ancillary structures such as decks, patios, pools, tennis courts, cabanas, stairs, landscaping etc. No shoreline/bluff protective device shall be allowed for the sole purpose of protecting an accessory structure.

Policy 7.4

Ensure that development, including subdivisions, new building sites and remodels with building additions, is evaluated to ascertain potential negative impacts on natural resources. Proposed development shall emphasize impact avoidance over impact mitigation. Any mitigation required due to an unavoidable negative impact should be located on-site, where feasible. Any off-site mitigation should be located within the City’s boundaries close to the project, where feasible. (Similar to Policies 5.2 and 10.3)

Policy 7.7

Protect marine resources by implementing methods to minimize runoff from building sites and streets to the City’s storm drain system (e.g. on-site water retention).

Policy 10.2

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

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

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

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

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

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

Policy 10.3

Ensure all new development, including subdivisions, the creation of new building sites and remodels that involve building additions, is evaluated to ascertain potential negative impacts

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

Open Space/Conservation Element Policies –
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.

Policy 10C

Require projects located in geological hazard areas to be designed to avoid the hazards, where feasible. Stabilization of hazard areas for purposed of development shall only be permitted where there is no other alternative location or where such stabilization is necessary for public safety. The more unstable areas should be left ungraded and undeveloped, utilizing land use designations such as Open Space.

Policy 10E

Development in the areas designated “Residential/Hillside Protection” on the Land Use Plan Map or within potential geologic hazard areas identified on the Geological Conditions Map of the Open Space/Conservation Element shall not be permitted unless a comprehensive geological and soils report is prepared pursuant to Title 22 of the City’s Municipal Code, and adequate mitigation measures have been approved and implemented by the City’s geologist. For projects located in areas subject to hazards as identified on the Geologic Conditions Map or subject to erosion, landslide or mudslide, earthquake, flooding or wave damage hazards confirmed by a geologic assessment, as a condition of approval or new development a waiver of liability shall be required through a deed restriction.

Section 25.07.012 Procedures:

Each coastal development permit application shall be processed in accordance with the following requirements.

(G) Findings. A coastal development permit application may be approved or conditionally approved only after the approving authority has reviewed the development project and made all the following findings:

(1) The project is in conformity with all the applicable provisions of the general plan, including the certified local coastal program and any applicable specific plans;

(2) Any development located between the sea and the first public road paralleling the sea is in conformity with the certified local coastal program and with the public access and public recreation policies of Chapter 3 of the Coastal Act;

(3) The proposed development will not have any significant adverse impacts within the meaning of the California Environmental Quality Act

Section 25.05.050 Coastal Development Permits.

In addition to any permits required, any development within the coastal zone that constitutes development as defined in Section 25.07.006(D) that is not exempt pursuant to Section 25.07.008, requires approval of a coastal development permit pursuant to Chapter 25.07.