

CALIFORNIA COASTAL COMMISSION

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

**F10a**

Filed: 04/16/2019
 49th Day: 06/25/2019
 Staff: M. Alvarado-LB
 Staff Report: 05/30/2019
 Hearing Date: 06/14/2019

STAFF REPORT: APPEAL – SUBSTANTIAL ISSUE

Appeal No.: **A-5-LGB-19-0023**

Applicants: **Charles & Lynda Kinstler**

Agents: Carlton Graham

Local Government: City of Laguna Beach

Local Decision: Approval with Conditions

Appellant: Mark & Sharon Fudge

Project Location: 31861 Coast Highway, Laguna Beach, Orange County
(APN: 658-113-06)

Project Description: Appeal of City of Laguna Beach Local Coastal Development Permit No. 18-2175 for the demolition of an existing residence and construction of a 5,194 sq. ft., 28.5-ft. high (above grade) single-family residence with a detached 686 sq. ft. garage, 810 sq. ft. of deck area, 27-ft. by 9-ft. pool, 10-ft. by 5-ft. spa, 1,440 cu. yds. of grading, retaining walls, and landscaping on an ocean-fronting, bluff property. The proposal also includes the demolition of an existing second residential unit, and the construction of a new 640-sq. ft. accessory dwelling unit.

Staff Recommendation: Determine that a substantial issue exists.

SUMMARY OF STAFF RECOMMENDATION

The City's action on Local CDP No. 18-2175 approves the construction of a new single-family residence and garage, and allows non-conforming appurtenant structures within the bluff setback

areas to remain at 31861 Coast Highway in Laguna Beach. The subject site is an approximately 14,133-square-foot¹ ocean-fronting lot located on the bluff above the Totuava Bay public beach.

Staff recommends that the Commission determine that a **substantial issue exists** with respect to the grounds on which appeal number A-5-LGB-18-0012 has been filed for the following reasons: the City’s decision that the development is consistent with the provisions of the LCP regarding new development on an ocean-fronting bluff and bluff protective devices was not adequately supported by documents in the record file or the Local CDP’s findings. In addition, the scale of the project is unclear because foundation plans have not been provided for review. Further information is required to determine whether or not the project is consistent with the relevant policies of the LCP and the public access policies of the Coastal Act. In addition, more information is necessary to adequately evaluate and address any existing nonconformities (and potentially unpermitted development) and natural resources (e.g. wetlands and environmentally sensitive areas) that exist on-site.

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.

IMPORTANT HEARING PROCEDURAL NOTE: The Commission will not take public testimony during the “substantial issue” phase of the appeal hearing 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.

¹ This figure includes easements; the site is approximately 11,620 square feet without easements.

TABLE OF CONTENTS

I. MOTION AND RESOLUTION – SUBSTANTIAL ISSUE.....4

II. APPELLANTS’ CONTENTIONS4

III. LOCAL GOVERNMENT ACTION5

IV. APPEAL PROCEDURES6

V. FINDINGS AND DECLARATIONS – SUBSTANTIAL ISSUE7

 A. PROJECT DESCRIPTION AND LOCATION.....7

 B. LOCAL COASTAL PROGRAM CERTIFICATION.....8

 C. FACTORS TO BE CONSIDERED IN SUBSTANTIAL ISSUE ANALYSIS.....8

 D. SUBSTANTIAL ISSUE ANALYSIS.....9

APPENDICES

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. 18-2175
- Exhibit 5 – Letter from Applicants’ Attorney
- Exhibit 6 – City Resolution No. CDP 08-009

I. MOTION AND RESOLUTION – SUBSTANTIAL ISSUE

Motion: *I move that the Commission determine that Appeal No. A-5-LGB-19-0023 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-19-0023 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. APPELLANTS' CONTENTIONS

The Commission received a Notice of Final Local Action (NOFA) for City of Laguna Beach Local Coastal Development Permit (CDP) No. 18-2175 on April 3, 2019. Local CDP No. 18-2175 approves the construction of a new single-family residence on an ocean-fronting, blufftop property.

On March 6, 2018, an appeal was filed by Mr. Mark and Mrs. Sharon Fudge (**Exhibit 3**). The appellants contend that the City's approval does not comply with the City's certified LCP. More specifically, the appellants raise the following concerns with the City-approved development:

- 1) The City failed to adequately condition the permit to address hazards (i.e. long-term retreat, landform alteration, erosion, shoreline/bluff protection), and protection of visual resources and water quality (i.e. BMPs, runoff control, landscaping) as required by the certified LCP.
- 2) There was no discussion of a formal wetland delineation in the staff report or Initial Study generated for the City-approved project although one was recommended in the peer review report.
- 3) Removal/repair/replacement of the staircase on the bluff face c. 2009 was unpermitted and requires a CDP. City failed to address the non-conforming and un-permitted development (beach stairs) at the site pursuant to Action 7.3.8.
- 4) The appellants question the 'bluff top edge' determination, and are concerned that restrictions relating to blufftop development have not been properly assessed (such as setbacks, removal of unpermitted/obsolete structures, etc.).
- 5) The City did not completely review the project as no foundation plans were included in the application. Based on the preliminary geologic report, applicants are proposing

shoreline/bluff protection devices (i.e. caisson foundation).

- 6) City did not consider the requirements of the LCP and the Coastal Act (Section 30212(b)(2)) to provide public access.
- 7) The city-approved development will result in significant landform alteration which is inconsistent with the policies of the certified LCP.
- 8) Public beach access easement at 31851 Coast Highway. Development on neighboring residential lot (Matsumoto property) appears to encroach upon the 10-foot wide parcel. This development constitutes a violation of the Coastal Act.

III. LOCAL GOVERNMENT ACTION

On December 13, 2018 and February 14, 2019, the City of Laguna Beach Design Review Board (DRB) held public hearings for the coastal development permit application and other discretionary approvals for the project, which includes demolition of an existing residence and the construction of a new single-family residence with a detached garage and new accessory dwelling unit. Public testimony related to issues concerning retention of non-conformities and public access. The DRB requested that minor modifications be made to the project, requested more information on the status of the existing beach stairs, inquired about easements onsite and public access, and expressed concerns regarding proposed landscaping and lighting. At both hearings, the item was continued.

On March 14, 2019, the DRB held a third public hearing on the project. Neighbors and interested persons expressed continued concerns regarding non-conformities and public access; and new concerns relating to bluff setback requirements, water quality, and the LCP requirement for a waiver of future protection devices where new development is proposed. The DRB conditionally approved Local Coastal Development Permit (CDP) No. 18-2175 and Design Review 18-2174.

The project description of Resolution No. 19.10 (**Exhibit 4**) approving Local CDP No. 18-2175 reads as follows:

“Construction of a new single-family residence (5,194 square feet) with a detached garage (686 square feet), elevated decks (810 square feet), skylights, two air conditioning units, pool, spa, grading, retaining walls, landscaping, ...An accessory dwelling unit was also approved.”

The City’s approval of local CDP No. 13-1266 included the following conditions:

- 1) No development, including but not limited to the repair, enhancement, augmentation or reconstruction of the existing beach stairs is authorized under this Design Review and Coastal Development Permit approval. Any subsequent major remodel associated with the beach stairs shall require a Coastal Development Permit.
- 2) Adherence to the mitigation plan and monitoring program.
- 3) Protect Salt Grass on the bluff edge.
- 4) Vegetation in the bluff top setback shall be replaced with native vegetation in an informal layout and with temporary irrigation only to be used to allow the vegetation to become established.

- 5) Install leak prevention and detection measures for the swimming pool and spa.

A Mitigated Negative Declaration was adopted by the Design Review Board. The Coastal Commission's South Coast District Office received a Notice of Final Action (NOFA) on April 3, 2019. The Commission issued a Notification of Appeal Period on April 5, 2019. On April 16, 2019, the appeal was filed by Mr. Mark Fudge during the ten (10) working day appeal period. No other appeals were received. The City and applicants were notified of the appeal by Commission staff in a letter dated April 17, 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. 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 applicants, 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 opposed the project in person at the local hearing. Testimony from other persons must be submitted in writing.

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

V. FINDINGS AND DECLARATIONS – SUBSTANTIAL ISSUE

A. PROJECT DESCRIPTION AND LOCATION

The proposed project includes the demolition of an existing a 1,195-square-foot single-family residence, 602-square-foot detached garage and 930-square-foot second residential unit; and the construction of a new 5,194-square-foot, 28.5-foot high (above grade) single-family residence with a detached 686-square-foot garage, 640-square-foot accessory dwelling unit, 810 square feet of deck area, 27-foot by 9-foot pool, 10-foot by 5-foot spa, retaining walls, and hardscape and landscape improvements on an ocean-fronting bluff property (**Exhibit 2**). The project includes 1,440 cubic yards of grading (cut + fill).

The project site is a narrow, rectangular 14,133-square-foot² ocean-fronting, blufftop lot located at 31861 Coast Highway, Laguna Beach, Orange County (**Exhibit 1**). The site is located between the first public road (Coast Highway) and the sea (an area where development approved by the City of Laguna Beach pursuant to its certified LCP is appealable to the Coastal Commission); Coast Highway is located to the northeast/east of the property. In addition, the project site overlooks Totuava Beach and the Pacific Ocean to the west/southwest.

The project site is currently developed with a single-family residence that was constructed circa 1940, and a detached garage was constructed in the 1970s. A coastal development permit was issued by the Coastal Commission for an addition to the single-family residence on January 21, 1973. A second residential unit (SRU) was later constructed and granted local approval on December 9, 1993; it is unclear if a coastal development permit was acquired for the SRU. In any case, the applicants are proposing to demolish the existing single-family residence including the SRU.

There are neighboring single-family residences on oceanfront and bluffs to the north/northwest and south/southeast. Public access from Pacific Coast Highway to the beach is available via the Thousand Steps Beach public access stairway located approximately 900 feet downcoast of 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 Land Use Plan is comprised of a variety of planning documents including the Land Use Element (LUE), Open Space/Conservation Element, Technical Appendix, and Fuel Modification Guidelines (of the Safety General Element of the City's General Plan as adopted by Resolution 89.104). The Implementation Plan (IP) portion is comprised of over 10 documents, including Title 25, the City's Zoning Code.

C. FACTORS TO BE CONSIDERED IN SUBSTANTIAL ISSUE ANALYSIS

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

1. The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the relevant provisions of the Coastal Act;
2. The extent and scope of the development as approved or denied by the local government;

² This figure includes easements; the site is approximately 11,620 square feet without easements.

3. The significance of the coastal resources affected by the decision;
4. The precedential value of the local government’s decision for future interpretations of its LCP; and,
5. Whether the appeal raises local issues, or those of regional or statewide significance.

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

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

D. SUBSTANTIAL ISSUE ANALYSIS

As stated in Section IV of this report, the grounds for an appeal of a CDP issued by the local government are the project’s conformity with the policies of the LCP and with the public access policies of the Coastal Act. The appellants raise 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 relevant and applicable definitions and policies of the LCP.

Appellants’ Argument: Inadequate Imposition of Special Conditions.

The appellants assert that the City did not condition the permit to ensure the project’s consistency with the certified LCP. For example, the City did properly condition the permit involving a new development 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. (emphasis added)

The City did not impose a special condition requiring a waiver of bluff/shoreline protective devices for the protection of the proposed new development in the future and a deed restriction to record the waiver on the title of the property, which is required by LUP Action 7.3.9. In a letter addressed to Coastal Commission staff dated May 16, 2019 (**Exhibit 5**), the applicants’ attorney states that compliance with the waiver and deed restriction requirement of Action 7.3.9 will be enforced by the City “prior to the permit becoming valid.” However, without the imposition of a condition of the permit to expressly require the waiver and recordation of the deed restriction prior to issuance of the local coastal development permit, there is no assurance that the requirements provided for in Action

7.3.9 are enforceable by the City after approval of the permit by the City’s Design Review Board.

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

Appellants’ Argument: Natural Resources – ESHA and Wetland.

The appellants assert that the City failed to adequately evaluate the project in consideration of natural resources given that a formal wetland delineation was not conducted for the site.

A peer review report prepared by Hamilton Biological, dated September 6, 2018, was submitted to the City by the applicants’ representative (**Exhibit 3, Page 149**). The purpose of the peer review report was to review the applicants’ original biological resources report prepared by Environmental Science Associates (ESA), dated November 21, 2017, and the applicants’ draft landscape plans to ensure that CEQA and Coastal Act requirements have been fully met.

In the peer review report, Hamilton Biological recommends that a formal wetland delineation and jurisdictional determination be conducted because saturated soils and wetland-type plant species were observed at the project site. In addition to a potential wetland, Hamilton Biological notes that two special-status species were observed (i.e. *Panoquina errans* (Wandering Skipper) and *Atriplex coulteri* (Saltbush)), as well as a raptor species of special concern (i.e. *Circus cyaneus* (Northern Harrier)). Therefore, the patches of salt grass within the project site should be recognized as a sensitive plant community and may potentially rise to the level of an environmentally sensitive area/environmentally sensitive habitat area.

The policies of the certified LCP require that development be adequately evaluated in consideration of natural resources that may exist onsite and areas designated as Environmentally Sensitive Areas (ESAs) to ascertain any potential negative impacts to such resources and establish measures of avoidance or mitigation if necessary.

Policy 8I of the Open Space Conservation Element of the LUP states that areas designated as ESAs include the following:

“Those areas shown on the Biological Resource Values Map in the Open Space/Conservation Element as “Very High” habitat value, and streams on the Major Watersheds and Drainage Courses Map which are also streams as identified and the USGS 7.5 Minute Quadrangle Series and any other areas which contain environmentally sensitive habitat resources as identified through an on-site biological assessment process, including areas of “High” and “Moderate” habitat value on the Biological Resources Values Map and areas which meet the definition of ESA’s in Section 30107.5 of the Coastal Act, including streams, riparian habitats, and areas of open coastal waters, including tidepools, areas of special biological significance, habitats of rare or endangered species, near-shore reefs and rocky intertidal areas and kelp beds.”

Such areas are subject to special treatment and protection under numerous policies of the certified LCP, such as the following:

Policy 4-D of the Open Space/Conservation Element (OS/C Element) of the certified LUP states:

Ensure that development and existing land uses and associated operational practices minimize the introduction of pollutants into coastal waters (including the ocean, estuaries, wetlands, rivers and lakes) to the maximum extent practicable.

Policy 4-F of the OS/C Element of the certified LUP states:

Water Conservation and Native Plants – Ensure that development encourages water conservation, efficient irrigation practices and the use of native or drought tolerant non-invasive plants appropriate to the local habitat to minimize the need for fertilizer, pesticides herbicides and excessive irrigation. Prohibit the use of invasive plants and require native plants appropriate to the local habitat where the property is in or adjacent to Environmentally Sensitive Areas (ESAs)

Policy 4-I of the certified OS/C Element states

Promote the protection and restoration of offshore, coastal, lake, stream or wetland waters and habitats and preserve them to the maximum extent practicable in their natural state. Oppose activities that may degrade the quality of offshore, coastal, lake, stream or wetland waters and habitat and promote the rehabilitation of impaired waters and habitat.

Policy 7-K of the certified OS/C Element states:

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 8-C of the certified OS/C Element states:

Identify and maintain wildlife habitat areas in their natural state as necessary for the preservation of species.

Policy 8-K of the certified OS/C Element states:

As a condition of new development in South Laguna, require the identification of environmentally sensitive areas, including chaparral and coastal sage scrub. Intrusion into these areas for wildlands fuel modification programs should not be permitted.

Policy 8-L of the certified OS/C Element states:

Preserve and protect fish and wildlife species for future generations.

Policy 8-N of the certified OS/C Element states:

Encourage the preservation of existing drought-resistant, native vegetation and encourage the use of such vegetation in landscape plans.

Policy 5.2 of the LUE of the certified LUP states:

Ensure that all new development, including subdivisions and the creation of new building sites and remodels that involve building additions, is adequately evaluated to ascertain potential negative impacts on natural resources and adjacent development, emphasizing impact avoidance over impact mitigation. Required mitigation should be located on-site rather than off-site. Any off-site mitigation should be located within the City's boundaries and

in close proximity to the project.

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 7.4 of the LUE of the certified LUP states:

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)

Action 7.4.2 of the LUE of the certified LUP states:

Continue preparation of initial studies, pursuant to the California Environmentally Quality Act (CEQA), for any proposed development, including single-family residences located within environmentally sensitive areas (Same as Action 10.3.1).

Action 10.2.1 of the LUE of the certified LUP states:

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.

The LCP policies cited above require that all new development is adequately evaluated to ascertain potential negative impacts on natural resources, such as areas designated as Environmentally Sensitive Areas (ESAs) including wetlands, and that development be designed and sited to protect natural resources and environmentally sensitive resources, and to minimize landform alteration. The LCP contains strict policies limiting any development that may occur in areas designated as ESAs (or Environmentally Sensitive Habitat Areas (ESHA)), which includes wetlands, except for uses dependent upon such resources.

It appears that the project site contains environmentally sensitive areas (including wetland), as defined in the LCP, however, the applicants did not provide a formal wetland delineation although it was recommended by one of the applicants' consulting biologists and, therefore, the City did not adequately evaluate the project and project site to ascertain potential negative impacts (including any consideration of appropriate habitat buffers) on natural resources pursuant to OS/C Element 8-I and Policy 7.4 (Similar to Policies 5.2 and 10.3) of the certified LCP. Therefore, this contention raises a substantial issue.

Appellants' Argument: Unpermitted Development and Natural Resources.

The appellants allege that the complete reconstruction of the applicants' non-conforming beach stairs, which provide private beach access from the top of the bluff to the beach below, occurred without a coastal development permit circa 2009. Therefore, appellants allege, the City should have required the removal of these stairs pursuant to Action 7.3.8 of the certified LCP.

Action 7.3.8 of the LUE of the certified LUP states:

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

Action 7.3.8 of the LUE requires, where applicable, that applications for new development on oceanfront bluff sites identify and remove all unpermitted and/or obsolete structures which encroach into oceanfront bluffs. The LCP requires the removal of non-conforming and/or unpermitted structures, if any exist, and requires elements of the new development to be setback appropriately.

The original beach stairs were constructed prior to the effective date of the Coastal Act. Based on the City's record, however, the City reconstructed the beach stairs, or a portion thereof, circa 2008-2009 without first obtaining a coastal development permit authorizing the work.

Section 25.05.050 of the IP (cited above) 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.”

Section 25.07.008 (Exemptions) of the Implementation Plan (IP) of the certified LCP states, in relevant part:

- (A) *Improvements to Single-family Homes. Improvements to Single-family Homes. Improvements to single-family dwellings and mobilehomes including structures normally associated with a single-family residence such as garages, swimming pools, fences, storage sheds and landscaping are **exempt unless classified as one of the following**:*
 - ...
 - (2) *Improvements to any structure located on a **beach, wetland** or stream, or where the structure or proposed improvements would encroach **within fifty feet of a coastal bluff edge**;*
 - ...
- (E) *Destroyed Structures. The replacement of any structure, other than a public works facility, destroyed by natural disaster is exempt, provided such replacement structure is designed and intended for the same use as the destroyed structure and further, such replacement structure does not exceed the floor area, height or bulk of the destroyed*

structure by more than ten percent and is sited in the same location on the same building site as the destroyed structure. (emphasis added)

Any non-exempt development activity 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 Coastal Act and the certified LCP. Section 25.07.008 of the certified IP states that improvements to existing structures in certain areas, including, but not limited to, improvements to any structure located on a beach, wetland or within fifty feet of a coastal bluff edge, are not exempt and require a coastal development permit. As set forth in Section 25.07.008 of the certified IP, which has been a part of the LCP since its certification in 1993, the “reconstruction” of the beach stairs is not exempt development because 1) it classifies as an improvement to a structure that is located on a beach, 2) encroaches within fifty feet of a coastal bluff edge, and 3) is potentially sited on a wetland. Moreover, the beach stairs at issue are not considered *principle* non-conforming structures allowed to be maintained and repaired pursuant to LUE Action 7.3.10, which allows *principle structures* that are legally nonconforming as to the oceanfront bluff edge setbacks to be repaired and maintained, but not if such improvements increase the size or degree of the nonconformity.

In 2007, the City’s Public Works Department requested a coastal development permit (Local CDP Application No. 07-80) for the construction of a storm drain outlet that extends from the top of the bluff to the bottom of the bluff, and the installation of landscaping at the base of the bluff of the subject site (31861 Coast Highway) for screening. A small rock wedge failure was reported in 1991 beneath the open storm channel. As part of a settlement agreement between the City and the former owners of the subject property (31861 Coast Highway), the City applied for a local CDP for a new storm drain. The new storm drain was intended to address any uncontrolled storm drain water and erosion of the cliff face. After a public hearing, the City’s Design Review Board approved Local CDP Application No. 07-80 through Resolution No. CDP 08-009 on February 8, 2008.

At the February 7, 2018 public hearing, the project was described as:

“The Public Works Department of Laguna Beach requests Design Review Board approval to install a storm drain with an energy dissipater and landscape at the base of the bluff. The proposed vertical storm drain will be tunneled through the bluff and will not be visible. The energy dissipater will have a rockscape finish and will be screened from the beach by natural vegetation plantings.”

In addition, the project description of Resolution No. CDP 08-009 (**Exhibit 6**) approving Local CDP Application No. 07-80 reads as follows:

“Permission is granted in the R-1 Zone for the City of Laguna Beach to install a storm drain with an energy dissipater and landscape at the base of the bluff.”

Based on record documents, the objectives of the storm drain project were to (1) remove the nuisance flows and possible contaminants from the beach and divert the low flows into the sanitary sewer system and (2) to discharge the large flows at the bottom of the bluff in a non-erosive way to

avoid continued erosion and recession of the bluff face. Work to the beach stairs was *not* included or described as part of the scope of the project authorized under Resolution No. CDP 08-009.

During the installation of the new storm drain circa 2008-2009, the City later requested a change order (local approval) to reconstruct the beach stairs, but failed to issue a coastal development permit for the work or to process an amendment to Resolution CDP 08-009 to incorporate the reconstruction of the beach stairs into the authorized scope of work. As described by the City in its staff report for the project subject to this appeal (A-5-LGB-19-0023), the beach stairs were reconstructed out of “necessity due to flood damage and the repair of the City’s storm drain.” Nevertheless, the reconstruction of all, or a portion, of the beach stairs is not exempt and should have required (and still requires) a coastal development permit.

The applicants’ representative asserts that the work to the beach stairs was done under an emergency; however, there is no evidence in the record to indicate that the stairs needed to be reconstructed to address an emergency. In any case, if non-exempt development must be undertaken to address an emergency, an emergency permit and follow-up coastal development permit are still required. In addition, Section 25.07.008 (Exemptions) of the certified LCP states: *The replacement of any structure, other than a public works facility, destroyed by natural disaster is exempt...* However, in this case, there is also no indication in the City’s record that the beach stairs were destroyed by a *natural* disaster.

The beach stairs were constructed located on a private easement shared between the property owners of 31861 and 31851 Coast Highway for access to the beach below; the private easement seems to be located on the applicants’ property. However, there is some indication in the city’s record that a small portion of the beach stairs may be encroaching into the neighboring property at 31851 Coast Highway (Matsumoto property), beyond the applicants’ property at 31861 Coast Highway. Given the complex history concerning the alleged unpermitted development, and given that additional review and information is necessary to adequately consider the consistency of the proposed project with the LCP policies, this contention raises a substantial issue.

Appellants’ Argument: Hazards and Bluff Development Constraints; Setback requirements.

The appellants question the applicants’ bluff edge determination, and are concerned that restrictions applicable to blufftop development, such as LCP required bluff setbacks, have not been properly assessed.

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

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

In addition, Action 10.2.8 of the LUE of the certified LUP states:

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

Action 10.2.7 and 10.2.8 (cited above) of the LUE require that new development be sited to meet a building stringline but not less than a 25-foot setback from the bluff edge for principal structures and major accessory structures that require a structural foundation, and a 10-foot setback from the bluff edge for minor accessory structures/improvements.³ Knowing the location of the bluff edge is critical in determining the location of the minimum required setback for development on an ocean-fronting bluff property.

The appellants assert that the applicants' geologist did not rely on the certified Land Use Element definition of "ocean front bluff edge or coastal bluff edge" and, consequently, there is a potential that the City-approved development does not meet the LCP-required setbacks for new development on oceanfront bluffs, among other site constraints and requirements that may apply. Entry 101 of the Land Use Element Glossary, a component of the City of Laguna Beach certified Local Coastal Program, 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.

In a letter titled Justification and Explanation for Determining Top of the Bluff Face for South Laguna House dated December 8, 2017, the applicants' geologist, Dr. Peter E. Borella, indicates that the approximate location of the applicants' top of the bluff, (or bluff edge) is based on the Coastal Commission's definition of "bluff edge" provided in California Code of Regulations, Section 13577(h) and recent topographic information, site geologic explorations, and mapping (**Exhibit 3, Page 146**).

³ Section 25.50.004(B) of the IP also requires a minimum bluff edge setback of 25 feet from the top of an oceanfront bluff for additions to existing buildings. Section 25.50.004(B) of the IP of the certified LCP states, in relevant part, "no new building, additions to existing building, or structures or improvements shall encroach beyond the applicable building stringline or shall be closer than twenty-five feet to the top of an oceanfront bluff; the more restrictive shall apply. Although certain components of Section 25.50.004(B) conflict with the certified LUP, this aspect of the section related to the minimum 25-foot setback from the bluff top reflects the minimum 25-foot setback from the bluff edge requirement of the LUP.

The Coastal Commission's Regulations, Section 13577(h)(2), defines “bluff line or edge” as:

... the upper termination of a bluff, cliff, or seacliff, In cases where the top edge of the cliff is rounded away from the face of the cliff as a result of erosional processes related to the presence of the steep cliff face, the bluff line or edge shall be defined as that point nearest the cliff beyond which the downward gradient of the surface increases more or less continuously until it reaches the general gradient of the cliff. In a case where there is a steplike feature at the top of the cliff face, the landward edge of the topmost riser shall be taken to be the cliff edge.

Although Dr. Borella does not directly cite the certified Land Use Element (LUE) definition, it should be noted that the LUE’s definition of ‘bluff edge’ (cited above) is based on, and mirrors the substance of, the definition provided by Section 13577(h)(2) of the Regulations. Therefore, it was appropriate for Dr. Borella to rely on the definition provided by the Commission’s Regulations.

In addition, based on the 2017 letter, it appears that Dr. Borella also appropriately referenced the technical memorandum prepared by the Coastal Commission’s former geologist, Dr. Mark Johnson, dated January 2003, which details the Commission staff’s methodology in evaluating setbacks for bluff top development. In citing the definition of bluff edge in the California Code of Regulations (which the LUE’s definition is based upon) and Dr. Johnson’s memorandum, Dr. Borella concludes that the bluff edge at the project site is approximately located in elevations of 66 feet and 63 feet above sea level from south to north of the property at the upper termination “where there is a transition from the vertical edge (bluff face) a[nd] horizontal plain” and where there is a “line of intersection between the steeply sloping bluff face and the flat or more gently sloping bluff top.”

Critical to all of the LCP policies related to bluff properties is a determination of the location of the bluff edge. It appears that the applicants’ geologist identified the bluff edge *appears* consistent with the LCP definition and, therefore, the appellants’ arguments about the bluff edge do not raise a substantial issue. The appellants raised additional questions and concerns with the details of the geological report, such as the bluff retreat rate described in more detail below, and questions if expected bluff retreat would require a greater setback than the 25 feet required by the LCP. As such, the Commission’s technical staff will evaluate the applicants’ bluff edge and setback during the de novo phase to ensure that all requirements and restrictions applicable to new development on bluff properties of the LCP have been properly measured and assessed.

Appellants’ Argument: Hazards – Erosion and Setback requirements.

The appellants assert that Action 10.2.6 requires that predicted bluff retreat over the next 75 years be taken into consideration when determining blufftop setbacks; therefore, the City should have required an additional setback from the bluff top edge commensurate to the predicted long-term bluff retreat (approximately +4 to 6 feet), which should have been supplemental to the minimum 25-foot and 10-foot setbacks required by Action 10.2.7 and 10.2.8 of the certified LCP (cited above).

Setting development back from the edge of the bluff can substantially decrease risk to life, because the further from the bluff edge development is located, the less likely it is that that development will become jeopardized by erosion, landslides, and similar hazards. Likewise, setbacks decrease the

likelihood of destruction of a structure caused by geologic instability. Therefore, Action 10.2.7 and 10.2.8 (cited above) of the certified LCP require a minimum 25-foot and 10-foot setback from the oceanfront bluff edge for new development to assure geologic stability. These bluff edge setbacks are the *minimum* required and provide a starting point to determine the appropriate distance from the bluff edge to assure stability after having taken into consideration slope stability and bluff retreat.

Before determining the minimum bluff edge setback requirements provided by the certified LCP, it is the responsibility of the local government to consider the site's slope stability and predicted long-term retreat to determine whether the minimum requirement is sufficient. In certain locations, the LCP's minimum 25-foot and 10-foot required bluff setbacks alone may be sufficient to assure stability, especially on coastal bluffs underlain by bedrock that is relatively resistant to erosion; in others, a greater setback may be necessary due to geologic conditions, such as coastal bluff comprised of highly erosive composites.

Action 10.2.5 of the LUE of the certified LUP states:

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 of the LUE of the certified LUP 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 EI Nino events, and any known site-specific conditions. To assure stability, the development must maintain a minimum factor of safety against landsliding of 1.5 (static) or 1.2 (pseudostatic, $k=0.15$ or determined through analysis by the geotechnical engineer) for the economic life of the structure. (**emphasis added**)*

Action 10.2.5 of the certified LUP requires, on bluff sites, that applications include a geologic/soils/geotechnical study that identifies any geologic hazards affecting the proposed project site, any necessary mitigation measures, and determine whether the development will be safe from geologic hazard for its economic life. Action 10.2.6 requires that new development be sited a sufficient distance from the oceanfront bluff edge to ensure stability after taking into account both long-term bluff retreat and slope stability. Action 10.2.6 specifies that the analysis concerning

geologic stability be guided by the industry-accepted standards for slopes (codified in many local grading ordinances), which require that a particular minimum “Factor of Safety” against landslides be attained. Pursuant to Action 10.2.6 of the LCP, development must maintain a minimum factor of safety (FoS) against landslides of 1.5 (for static conditions) or 1.2 (for pseudostatic conditions) to assure geologic stability.

A preliminary geotechnical investigation report with a slope stability analysis was also prepared for the proposed development by Borella Geology, Inc., dated August 5, 2017, was prepared for the site and is included in the City record. This geologic report presents results and preliminary recommendations regarding the proposed development at the subject site. The slope stability analysis indicates that all generated factor of safety values exceed the minimum 1.5 (for global static conditions) and 1.1 (for global seismic conditions) required and that the project site is grossly stable.

The subject site is located on San Onofre Breccia, which is a highly stable geologic formation. Based on the geotechnical and coastal hazards analysis reports, it appears that the applicants’ technical consultants did consider long-term bluff retreat and concluded that the minimum setback requirements were sufficient and that the proposed development is geotechnically feasible.

In addition, a Coastal Hazard Analysis (sea level rise, wave runup and bluff/shoreline erosion analysis) prepared by Borella Geology, Inc. dated August 6, 2017. This analysis identifies potential hazards from shoreline erosion and wave runup. The analysis concludes that the rate of bluff retreat is sufficiently low (4 to 6 feet over next 100 years) and that the new residence is reasonably safe from sea level rise related hazards (e.g. wave runup, retreat of the seacliff, and flooding).⁴

Therefore, in this case, the minimum setback requirements may be adequate to address both slope stability and erosion over the next 75 years.

However, as previously stated, the location of the minimum 25-foot and 10-foot setback areas are ultimately dependent on the approximate location of the bluff edge consistent with the definition provided for in the certified LCP and the Coastal Act. In addition, a greater setback may be necessary to accommodate a habitat buffer given that the project site contains environmentally sensitive areas as defined in the LCP.

Appellants’ Argument: Hazards - Geologic Stability and Bluff/Shoreline Protection Devices.

The appellants assert that the City did not fully review the project as no foundation plans were included in the application. In addition, the appellants indicate that the applicants’ geotechnical report made a reference to the installation of caissons and retaining walls as part of the city-approved project. The appellants contend that the City’s incomplete review and approval of these bluff/shoreline protective devices was not properly considered and is inconsistent with the policies of the certified LCP that limit the use of bluff/shoreline protection to establish geologic stability.

⁴ The applicants’ coastal hazards analysis is only based on the sea level rise projections provided in the Coastal Commission’s 2015 Sea-Level Rise Policy Guidance document and has not been supplemented in consideration of the updated projections on rising sea levels provided for in the Ocean Protection Council’s 2017 *Rising Seas in California: An Update on Sea-Level Rise Science* report and the Coastal Commission’s 2018 update to its Sea-Level Rise Policy Guidance document.

Numerous LCP policies, including but not limited to Actions 7.3.4, 7.3.9, 7.3.12, 7.3.13 and 10.2.6 (see appendix A), prohibit new development to rely on existing or future bluff/shoreline protective devices to establish geologic stability (which would include caissons and retaining walls).

Contrary to the appellants' assertion, the applicants' attorney states that the proposed caissons are intended to support the foundation and will not function as bluff/shoreline protective devices. It is difficult to determine how the proposed caissons will function without reviewing the foundation plans. Without foundation plans, the scope and extent of the proposed project is unclear. In addition, an alternatives analysis was not conducted and no rationale was provided to justify the caissons and retaining walls over other possible feasible and reasonable alternatives pursuant to LCP requirements.

Policy 1.5C of the Open Space/Conservation (OS/C) Element of the certified LUP, which relates to seawalls and other shore protection devices, states, in relevant part:

An investigation of reasonable and feasible alternatives that accomplish the same, or similar, level of protection must be provided with every application for the construction of a shore-protection device...

Policy 1.5C broadly governs shore protection devices and clearly requires that the local government consider any feasible alternatives. In addition, other policies in the certified LUP specifically govern the use of oceanfront bluff protective devices and similarly require that the City consider alternatives to any proposal involving bluff protection.

The City should have reviewed the foundation plans to ensure consistency with the LCP policies that prohibit bluff/shoreline protection for new development, consider project alternatives if bluff/shoreline protection is proposed, and support its decision on a permit with adequate findings. The City's decision that the development is consistent with the provisions of the LCP is not supported by the Local CDP's findings and may not be accurate. Therefore, this contention in the appeal raises a substantial issue as to conformity with the certified LCP.

Appellants' Argument: City did not adequately consider public access requirements for project site.

The appellants assert that the City did not consider the policies of the certified LCP and the Coastal Act (Section 30212(b)(2)) that require that public access be provided.

As noted above, the certified LCP is the standard of review (Coastal Act Section 30604(b).), as well as the public access and recreation policies of the Coastal Act for projects located between the first public road and the sea.

With regard to new development and public access requirements, the certified LUP has the following policies:

Policy 3-G of the Open Space Conservation Element (OS/C Element) of the certified LUP states:

Lateral public access along the shoreline shall be assured by requiring as a condition of any new development, including approval for new building construction, additions greater than

10% to building, variances or subdivisions on property between the first public road and the sea, the recordation of an irrevocable offer to dedicate an easement for public access and recreational use on and along the beach. The easement shall extend from the mean high tide line to a specific landward reference point. Depending upon site characteristics, that reference point shall be either: a) the seaward extend of the building; b) the top of the vertical seawall; c) the intersection of sand and revetment; or d) the toe of the bluff.

Policy 3-L of the Open Space Conservation Element (OS/C Element) of the certified LUP states:

Procure public access in South Laguna as shown on Figure 5 (see Addendum), consistent with Coastal Act policies and other legal requirements.

Also with regard to public access and new development, Coastal Act Section 30212 states, in relevant part:

- (a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where: (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resource, (2) adequate access exists nearby, or (3) agriculture would be adversely affected...*
- (b) For purposes of this section, “new development” does not include:*

- ...*
- (2) The demolition and reconstruction of a single-family residence; provided, that the reconstructed residence shall not exceed either the floor area, height or bulk of the former structure by more than 10 percent, and that the reconstructed residence shall be sited in the same location on the affected property as the former structure...*

OS/C Element Policies 3-G and 3-L require that public coastal access be procured on a property between the first public road and the sea if new development is proposed. Because the City-approved project includes “new development” within the meaning of OS/C Element Policies 3-G and 3-L of the certified LCP the appellants assert that the City should have ensured beach and/or bluff top public coastal access through an irrevocable offer to dedicate consistent with policy 3-G.

Coastal Act Section 30212 also requires new development to provide access from the nearest roadway to the shoreline and along the coast. Usually, this is not the responsibility of an individual homeowner because Section 30212(a)(2) allows for exceptions to this requirement where adequate public access already exists nearby, unless there is a direct nexus and rough proportionality between a condition of a permit requiring public access and the impacts associated with the applicants’ proposed development. (*Nollan v. California Coastal Commission* (1987) 483 U.S. 825, 837; *Dolan v. City of Tigard* (1994) 512 U.S. 374, 391.). Most neighborhoods in Orange County between the sea and the first public road have a public access way in between the private development. However, in this particular housing community in Laguna Beach, there is no public access way from the road to the shoreline that would allow the public to gain access to the wet sand (mean high tide line), the area of the public tidelands seaward of the private lands. Because of the natural coves and rocky cliffs, the nearest public access point to the public beach is approximately 900 feet away at Thousand Steps beach. The beach below the subject property is Totuava Beach, which is one of the most inaccessible beaches in Laguna Beach. The only way to access the beach (on dry land) is from Thousand Steps beach, over and through rocky cliffs and only during low tide. It can be very

dangerous and those that manage to get to the beach can get trapped in the cove when the high tide comes in. The appellants argue that the project is not consistent with Section 30212 of the Coastal Act.

The appellants assert that the City did not adequately consider procurement of public access and that it simply concluded that because the project site does not currently provide public coastal access, the proposed development would not create any adverse impacts to existing public coastal access, disregarding the LCP policy that requires the City to consider public access opportunities in new development projects.

Based on the grant deed for the subject property, the seaside property boundary is determined by the line of ordinary high tide of the Pacific Ocean. Because the ordinary high tide line can or potentially has migrated inland due to sea level rise, there is a potential that the beach stairs may be encroaching onto public trust lands, and the construction of the stairs could have had an impact to public access. The City's action was bifurcated to defer any consideration of the beach stairs, and as such the applicants are allowed to retain development on bluff face and on the beach itself (i.e. the allowance to maintain non-conforming, unpermitted bluff/beach stairs) without the benefit of a coastal development permit and without regard to potential public access effects. A determination by the California State Lands Commission may be necessary to distinguish between the public and private beach at the project site.

It appears that the City did not fully consider public access in its review of the proposed development, and it appears that the project may not be consistent with the public access and recreation policies of the Coastal Act. Therefore, this issue raises a substantial issue.

Appellants' Argument: Hazards and Visual Resources – Excessive Landform Alteration.

The appellants contend that the City-approved project will result in excessive landform alteration (grading), which is inconsistent with the provisions of the certified LCP, particularly Policies 2.8 and 7.3.

Policy 2.8 of the LUE of the certified LUP states, in relevant part:

Require building design and siting to be compatible and integrated with natural topographic features, minimize significant alteration of topography and/or other significant onsite resources, and protect public views...

Policy 7.3 (same as Policy 10.2) of 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.

In addition, Action 7.3.5, which is a subcomponent of Policy 7.3, more specifically 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.

Policies 2.8 and 7.3, and Action 7.3.5, of the certified LUE require that new development be designed and sited in a manner that is protective of natural resources and to minimize natural landform alterations.

Based on the project plans in the City's record, the City-approved development includes approximately 1,440 cubic yards of grading (cut + fill). Most of the grading is proposed along the middle of the subject lot to construct a new 243-square-foot pool, an 849-square-foot courtyard, and habitable space for the partially subterranean lower level of the principle residence and for the partially subterranean accessory dwelling unit.

The City's record did not include an alternatives analysis or substantiate in its findings how the proposed development, as designed, minimizes landform alterations and is consistent with the above policies.

In addition, because the City's action deferred any consideration of the recently constructed beach stairs, the City did not consider the above policies to avoid significant landform alteration of the coastal bluff and bluff face all development on the project site. As such, this contention raises a substantial issue.

Appellants' Argument: Public Beach Access Easement within Neighbor's property.

The appellants have identified a potential 10-foot wide public access easement along the northern property line of the neighboring property at 31851 Coast Highway (Matsumoto Property), and allege there is private development encroaching into this potential easement. The appellants are requesting that the Coastal Commission review this potential public beach access easement and potential encroachments during the de novo review of this appeal.

Because the public access easement in question and alleged encroachments do not directly relate to the City-approved development subject to this appeal, these concerns do not raise a substantial issue as to the proposed development's conformity to the certified LCP and, therefore, will not be evaluated during the de novo phase of this appeal.

However, any encroachments of private development into a public access easement could constitute a violation of the provisions of the Coastal Act because one of the basic goals stated in the Coastal Act is to maximize public access and recreation along the coast. Section 30210 of the Coastal Act states:

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.

In addition, Actions 4.3.2 and 8.1.3 of the certified LUE require that public pedestrian access to and along beaches and oceanfront bluffs using public right-of-way and public easements be maintained and improved, and Policy 3-A of the Open Space/Conservation Element of the LUP requires that public beach accessways be retained and improved (see Appendix A for citations). If such a violation exists, the matter would need to be addressed by the Commission's enforcement division.

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 of the project's consistency with all of the applicable policies of the certified LCP and the public access and recreation provisions of the Coastal Act (specifically the bluff top/face policies). In addition, without foundation plans, the actual scope of the proposed project is unclear, which necessarily means that evaluation of the project's consistency with the LCP policies cannot be made at this time. Therefore, there is a low degree of factual and legal support for the local government's decision, and this factor supports a substantial issue finding.

2. The extent and scope of the development as approved or denied by the local government.

The local government granted a Local CDP for the new development on the subject site located on an ocean-fronting blufftop property. The record does not contain an adequate analysis of the foundation elements of the proposed development and its potential cumulative effects on similar development in Laguna Beach bluff areas. Therefore, it is not possible at this time to determine the extent and scope of the project, and this factor supports a finding of substantial issue.

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 or authorize the perpetuity of structures potentially encroaching into bluff edge setback areas or sited on a bluff face would set a negative precedence for future interpretations of the City's certified 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, will 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 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 public access policies of the Coastal Act.

Appendix A – Relevant LCP Policies and Definitions

Land Use Element Glossary

89. *Major Remodel* – alteration of or an addition to an existing building or structure that increases the square footage of the existing building or structure by 50% or more; or demolition, removal, replacement and/or reconstruction of 50% or more of the existing structure; greater specificity shall be provided in the Laguna Beach Municipal Code.

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 2.8

Require building design and siting to be compatible and integrated with natural topographic features, minimize significant alteration of natural topography and/or other significant onsite resources, and protect public views as specific in the Design Guidelines and the Landscape and Scenic Highways Resource Document.

Action 2.8.2 Establish criteria for placement of new development on the most suitable area of the lot to maximize the preservation of sensitive resources (same as Action 3.10.1).

Policy 2.9

Require the use of appropriate landscaping, special architectural treatments, and/or siting considerations to protect public views for projects visible from major highways and arterial streets.

Policy 2.10

Maximize the preservation of coastal and canyon views (consistent with the principle of view equity) from existing properties and minimize blockage of existing public and private views. Best efforts should be made to site new development in locations that minimize adverse

impacts on views from public locations (e.g. roads, bluff top trails, visitor-serving facilities, etc.)

Action 2.10.1 Discourage the addition of second stories in established neighborhoods where view equity has historically been achieved through one-story construction.

Action 2.10.2 Ensure that the Design Guidelines sufficiently protect public views.

Policy 4.3 states:

Maintain and enhance access to coastal resource areas, particularly the designated public beaches, by ensuring that access points are safe, attractive, and pedestrian friendly.

Action 4.3.1 states: Continue to pursue dedication and acceptance of beach access and other offers-to-dedicate throughout the City. The City shall maintain an inventory of public access and open space dedication or offers-to-dedicate to ensure such areas are known to the public and are protected through the coastal development permit process. (Same as Action 6.9.1)

Action 4.3.2 Maintain and improve public pedestrian access to and along beaches and oceanfront bluff using public rights-of-way and public easements. Protect, and where feasible, formalize, continued public use over areas used historically by the public (i.e. public prescriptive rights) to gain access to and along beaches, oceanfront bluffs, and other recreational areas.

Policy 5.2:

Ensure that all new development, including subdivisions and the creation of new building sites and remodels that involve building additions, is adequately evaluated to ascertain potential negative impacts on natural resources and adjacent development, emphasizing impact avoidance over impact mitigation. Required mitigation should be located on-site rather than off-site. Any off-site mitigation should be located within the City's boundaries and in close proximity to the project.

Policy 7.3 (same as Policy 10.2)

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)

Action 7.4.2 Continue preparation of initial studies, pursuant to the California Environmentally Quality Act (CEQA), for any proposed development, including single-family residences located within environmentally sensitive areas (Same as Action 10.3.1).

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 8.1

Encourage a pedestrian-oriented, nonmotorized community by developing a system of bikeways and pedestrian paths and discouraging high-speed traffic along City streets.

Action 8.1.3 Maintain and improve public pedestrian access to and along beaches and sea cliffs using all public right-of-way and public easements.

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 10.2.3 Develop criteria by which applicants shall provide a slope analysis to determine the best location for development on a site.

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 EI Nino events, and any known site-specific conditions. To assure stability, the development must maintain a minimum factor of safety against landsliding of 1.5 (static) or 1.2 (pseudostatic, $k=0.15$ or determined through analysis by the geotechnical engineer) for the economic life of the structure.

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

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 that 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 mitigation. Any mitigation required due to an 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.

Action 10.3.2 Continue to require in-depth analysis of constraint issues for properties, especially those designated on the City's hazard maps so that the nature of the constraint and the best options for mitigation or avoidance will be considered at all stages of the approval process since these constraints may affect what development is appropriate for the property.

Open Space/Conservation Element Policies –

Policy 1-L

The City shall impose a 25-foot minimum setback or a distance ascertained by stringline measurements for all blufftop development, notwithstanding the fact that ecological and environmental constraints may require an additional setback.

Policy 1.5-A

The shoreline environment should remain in a natural state unless existing, substantial improvements are in imminent danger from erosion, flooding or collapse. "Imminent Danger" is defined as a short-range threat from the immediate to a maximum range of three (3) to five

(5) years. A threat presented in the context of geologic time shall not constitute imminent danger.

Policy 3-A states:

Retain and improve existing public beach accessways in the City, and protect and enhance the public rights to use the dry sand beaches of the City.

Policy 4-D

Ensure that development and existing land uses and associated operational practices minimize the introduction of pollutants into coastal waters (including the ocean, estuaries, wetlands, rivers and lakes) to the maximum extent practicable.

Policy 4-F

Water Conservation and Native Plants – Ensure that development encourages water conservation, efficient irrigation practices and the use of native or drought tolerant non-invasive plants appropriate to the local habitat to minimize the need for fertilizer, pesticides herbicides and excessive irrigation. Prohibit the use of invasive plants and require native plants appropriate to the local habitat where the property is in or adjacent to Environmentally Sensitive Areas (ESAs)

Policy 4-I

Promote the protection and restoration of offshore, coastal, lake, stream or wetland waters and habitats and preserve them to the maximum extent practicable in their natural state. Oppose activities that may degrade the quality of offshore, coastal, lake, stream or wetland waters and habitat and promote the rehabilitation of impaired waters and habitat.

Policy 7-K

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 8-C

Identify and maintain wildlife habitat areas in their natural state as necessary for the preservation of species.

Policy 8-I

Environmentally Sensitive Areas (ESA's) as defined in Section 30107.5 of the California Coastal Act shall be identified and mapped on a Coastal ESA Map. The following areas shall be designated as Environmentally Sensitive Areas: Those areas shown on the Biological Resources Values Map in the Open Space/Conservation Element as "Very High" habitat value, and streams on the Major Watersheds and Drainage Courses Map which are also streams as identified on the USGS 7.5 Minute Quadrangle Series and any other areas which contain environmentally sensitive habitat resources as identified through an on-site biological assessment process, including areas of "High" and "Moderate" habitat value on the Biological Resources Values Map and areas which meet the definition of ESA's in Section

A-5-LGB-19-0023 (Kinstler)
Appeal – Substantial Issue

30107.5 of the Coastal Act, including streams, riparian habitats, and areas of open coastal waters, including tidepools, areas of special biological significance, habitats of rare or endangered species, near-shore reefs and rocky intertidal areas and kelp beds.

Policy 8-K

As a condition of new development in South Laguna, require the identification of environmentally sensitive areas, including chaparral and coastal sage scrub. Intrusion into these areas for wildlands fuel modification programs should not be permitted.

Policy 8-L

Preserve and protect fish and wildlife species for future generations.

Policy 8-N

Encourage the preservation of existing drought-resistant, native vegetation and encourage the use of such vegetation in landscape plans.

Policy 8-O

Map environmentally sensitive areas in South Laguna and include these areas on City maps. (ESA and Biological Resources Maps.)

Policy 10-A

Require that plan review procedures recognize and avoid geologically unstable areas, flood-prone lands, and slopes subject to erosion and slippage.

Policy 10-C

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 10-E

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.

Laguna Beach Municipal Code, Title 16, Chapter 16.01 Water Quality Control –
Section 16.01.020 Definitions, Subsection (GG)(9):

(v) Local environmentally sensitive areas, including areas of the Pacific Ocean coastline not listed as a Clean Water Act Section 303(d) Water Body. Environmentally sensitive areas are depicted on the water quality environmentally sensitive area (WQESA) map, (adopted as part of

this chapter by reference). The areas directly adjacent to (within two hundred feet) of an environmentally sensitive area are also shown on the WQESA map.

Laguna Beach Municipal Code, Title 22 Excavating, Grading and Filling, Chapter 22.10 –
Section 22.10.010 Permits required:

(a) Permit Required for Grading. No person shall commence or perform grading or install any appurtenant works without first having obtained a grading permit from the City. A grading permit is required for all construction projects that will disturb more than twenty cubic yards of soil, or project where the Building Official has determined that a grading permit is necessary. A separate permit may be required for each site. One permit may cover both excavation and any fill made with excavated materials or any necessary borrow and stockpiling. If the applicant is not the legal owner of the site, the applicant must present a letter signed by the legal owner of the property designating the applicant as his agent, and authorizing the city to enter upon the site to make such inspections or take such corrective action as the city deems necessary.

If remedial work for slope repair or construction in-kind, when confined to preexisting lines and grades on developed parcels, does not require concept review but shall observe the provision of Section 22.10.010.

(c) Grading Discretionary. Unless otherwise exempted under subsection (e) of this section, the review of a grading project is a discretionary activity subject to Section 22.08.010(b) and 22.10.010(a), (b) and (c), and is subject to environmental documents procedures. Once concept approval of grading plans has been secured, the issuance of a grading permit by City staff is a ministerial activity provided that any rough and precise grading plans authorized under such permit are in substantial compliance with the approved concept plans.

(e) Exceptions. A grading permit shall not be required for any of the following conditions, but in all other respects the provisions of this title shall apply:

(1) An excavation below finished grade for footings or walls of a building contiguous to and within the natural terrain, if authorized by a valid building permit. This excavation shall not affect the applicability of this title to, nor the requirements of a grading permit for, any fill made with material from such excavation;

(2) An excavation for a swimming pool if authorized by a valid building permit or valid swimming pool permit;

(3) For purposes of landscaping developed lots, fills of less than twenty cubic yards which do not obstruct a drainage course and are not intended for structural support and which are placed over an existing ground sloping not more than four feet horizontal to one foot vertical and not exceeding three foot maximum height above the preexisting ground surface with side slopes conforming to the requirements of this code and not extending within two feet of any adjoining property line;

(4) For purposes of landscaping developed lots, excavation of less than twenty cubic yards and not exceeding three feet in maximum depth with slopes conforming to the requirements of this code, with top of cut slope not extending within two feet of any adjoining lot or

parcel; ...

Laguna Beach Municipal Code, Title 25 Zoning, Chapter 25.07 Coastal Development Permits –
Section 25.07.006 Definitions:

(F) “Environmentally sensitive area” means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and development.

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