

CALIFORNIA COASTAL COMMISSION

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W25b

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STAFF REPORT: APPEAL – SUBSTANTIAL ISSUE

Appeal No.: A-5-LGB-19-0159

Applicant: HCI Systems, (Attn: Hany Dimitry)

Agents: Carlton Graham

Local Government: City of Laguna Beach

Local Decision: Approval with Conditions

Appellant: Mark & Sharon Fudge

Project Location: 31987 Coast Highway, Laguna Beach, Orange County
(APN: 056-160-41)

Project Description: Appeal of City of Laguna Beach Local Coastal Development Permit No. 19-2820 for the construction of a 5,593-sq. ft., 29.4-ft. high (above grade) single-family residence with a two-car garage, 616 sq. ft. of deck space, 21.5-ft. by 7.5-ft. pool, 4.6-ft. by 4-ft. spa, 1,630.73 cu. yds. of grading, and landscaping on an ocean-fronting bluff property. The applicant is also requesting to maintain a pre-Coastal Act non-conforming funicular tram and set of beach access stairs.

Staff Recommendation: Determine that a substantial issue exists.

SUMMARY OF STAFF RECOMMENDATION

The City's action on Local CDP No. 19-2820 approves the construction of a new single-family residence and garage, and allows non-conforming accessory structures within the bluff setback

areas to remain at 31987 Coast Highway in Laguna Beach. The subject site is an approximately 30,000-square-foot ocean-fronting lot located on the bluff above the Thousand Steps public beach.

Staff recommends that the Commission determine that the appeal raises a **substantial issue** with respect to the grounds on which appeal number A-5-LGB-19-0159 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 and retention 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 that exist on-site.

Staff recommends that the Commission find the appeal raises a **substantial issue** 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.

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APPENDICES

Appendix A – Relevant LCP Policies and Definitions

EXHIBITS

- Exhibit 1 – Project Location
- Exhibit 2 – Project Plans
- Exhibit 3 – Appeal
- Exhibit 4 – Appeal Attachments (only available online or at CCC South Coast District Office)
- Exhibit 5 – City Resolution for local CDP No. 19-2820

I. MOTION AND RESOLUTION – SUBSTANTIAL ISSUE

Motion: *I move that the Commission determine that Appeal No. A-5-LGB-19-0159 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-19-0159 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. 19-2820 on June 13, 2019. Local CDP No. 19-2820 approves the construction of a new single-family residence on an ocean-fronting, blufftop property.

On July 26, 2019, an appeal was filed by Mr. Mark and Mrs. Sharon Fudge. Although the appellants' contentions are extensive, the relevant issues raised in the appeals may be summarized as follows (please see **Exhibit 3** to review the appeal in its entirety). The appellants contend that the City-approved development is inconsistent with the certified Laguna Beach Local Coastal Plan (LCP) and with the public access policies of Chapter 3 of the Coastal Act because:

- 1) 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, public access during and post construction, and water quality (i.e. BMPs, runoff control, landscaping) as required by the certified LCP.
- 2) The City did adequately address the non-conforming and potentially un-permitted development (beach stairs and funicular) at the site pursuant to LUE Action 7.3.8.
- 3) The 'bluff top edge' determination was not made pursuant to the LUE Glossary definition. Therefore, bluff edge protections and bluff top related restrictions were not properly assessed (such as setbacks, removal of unpermitted/obsolete structures, etc.).
- 4) The applicant's hazards reports were prepared prior to the knowledge that pre-existing gunite would be removed. Geologic hazards have not been properly assessed as reports have not been updated to reflect current conditions (i.e. 'post-gunite' removal).
- 5) The City did not review a complete project as no foundation plans were included in the

application. At the City's June 13th hearing, the applicant's architect stated the foundation would be 'slab with caissons'. Shoreline/bluff protective devices for geologic stability (caisson foundation) were not considered as 'armoring'.

- 6) The City-approved development will result in significant natural landform alteration which is inconsistent with the policies of the certified LCP.
- 7) According to the City's January 12, 2017 staff report, the applicant is proposing an energy dissipater at the toe of the bluff to satisfy WQMP requirements. This energy dissipater may constitute 'development' on the sandy beach, which is expressly prohibited by LBMC 25.50.004(B).
- 8) The City did not assess the project's potential impacts to native bluff vegetation and did not condition the approval to include revegetation of the slope as required by OS/C Policy 7-K.
- 9) The City did not impose a condition requiring appropriate cultural resource protections.
- 10) The City did not consider the requirement of OS/C Policy 3-G to provide public access.

III. LOCAL GOVERNMENT ACTION

The City of Laguna Beach Design Review Board (DRB) held two public hearings (January 12, 2017 and April 25, 2019) for the subject coastal development permit application for the construction of a new single-family residence on an ocean-fronting bluff lot that is currently developed with a non-conforming private bluff stairs and funicular. Public testimony and comments from the DRB related to issues concerning privacy, view equity, building placement, mass and scale, vehicular access, landform alteration, slope stability, bluff top location, retention of non-conformities, and native vegetation. At both hearings, the item was continued.

On June 13, 2019, the DRB held a third public hearing on the project. Since the public hearing in January 2017 and April 2019, the applicant modified the project to try to address some of the concerns raised at those previous hearing, including but not limited to the elimination of the upper level office area, a reduction of elevated decking, elimination of one exterior light fixture, 1,060-square-foot reduction in the size of the single-family residence, increased southerly side yard setback, and increase in total cubic yards of grading. The DRB conditionally approved Local Coastal Development Permit (CDP) No. 19-2820 and adopted a CEQA Section 15303 Class 3(a) Exemption for the project.

The project description of Resolution No. 19.23 (**Exhibit 5**) approving Local CDP No. 19-2820 reads as follows: *"To construct a 5,593 square-foot single-family dwelling with an attached two-car garage, elevated decks (616 square feet), tandem parking, grading, retaining walls, swimming pool, spa, water feature, three air conditioning units, landscaping, construction in an environmentally sensitive area (oceanfront), and to maintain nonconforming site conditions (funicular tram and beach access stairs."*

The City's approval of local CDP No. 19-2820 included the following conditions: "...*reducing landscape lighting to 3-watt LED and building lighting to 4-watt LED with the security lights on a timer, and adding six Agave plants adjacent to the exterior steps near the southern property line.*"

The Coastal Commission's South Coast District Office received a Notice of Final Action (NOFA) on July 12, 2019, and the Commission issued a Notification of Appeal Period that same day. On July 26, 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 the applicant were notified of the appeal by Commission staff in a letter dated July 26, 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 project includes construction of a 5,593-square-foot, 29.4-foot high, single-family residence with an attached two-car 434-square-foot garage, 616 square feet of deck space, retaining walls, 21.5-foot by 7.5-foot pool, 4.6-foot by 4-foot spa, and landscaping on an ocean-fronting bluff property (**Exhibit 2**). Present at the subject site are non-conforming private beach stairs and a

private funicular. The applicant proposes to retain these non-conforming features in place. The project also includes 1,630.73 cubic yards of grading (cut + fill).

The subject site is located at 31987 Coast Highway, in the South Laguna area of the City of Laguna Beach, Orange County. The subject lot is a 29,415-square-foot, oceanfront, bluff top lot located adjacent to Thousand Steps public beach. The subject site is zoned Village Low Density and is surrounded by single-family residential development on three sides. The subject lot is a “U” shaped lot, with the two ends of the “U” fronting on Coast Highway. In the cradle of the “U”, is a separate inset residential lot, developed with a single family residence (**Exhibit 1**). Single-family residences also exist on either side of the subject site. The subject lot is located between the first public road (Coast Highway) and the sea (Thousand Steps Beach).

Until 2018, the project site was developed with a single-family residence, in addition to the existing non-conforming private beach stairs and funicular. In 2017, the City approved a local coastal development permit (CDP) for the demolition of the previously existing single-family residence at the project site; the local CDP authorized the retention of the non-conforming private beach stairs and funicular and gunite slope treatment on the bluff face at the project site. Originally, the application requested authorization for both the demolition of the pre-existing single-family residence and construction of a new single-family residence; however, the project was ultimately modified and limited to only demolition of the pre-existing single-family. The City’s action was subsequently appealed to the Coastal Commission and on August 9, 2017, the Commission found that the appeal raised a substantial issue. On March 7, 2018, after a public hearing, the Commission conditionally approved Coastal Development Permit No. A-5-LGB-17-0033 authorizing the demolition of the previously existing single-family residence *and* the removal of the gunite from the bluff face. The pre-existing home has subsequently been demolished and the gunite has been removed from the bluff face. However, the project site is not a vacant lot as it is still developed with existing non-conforming private beach stairs and funicular.

The South Laguna area of the City of Laguna Beach draws significant numbers of visitors, especially to its beautiful beaches including Aliso Beach and numerous pocket beaches, such as Thousand Steps beach adjacent to the subject site. Thousand Steps beach is one of the larger pocket beaches and provides a wide sandy area enclosed by rocky headlands at either end. It is accessed from the public accessway located two lots upcoast of the subject site, opposite the end of 9th Avenue. Limited public parking is available in the vicinity along some portions of Coast Highway in the project area.

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;
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: Waiver of Rights to Shoreline Protection.

The City’s approval of local CDP No. 19-2820 was conditioned to require the following: “...reducing landscape lighting to 3-watt LED and building lighting to 4-watt LED with the security lights on a timer, and adding six Agave plants adjacent to the exterior steps near the southern property line.” Nevertheless, the appellants assert that the City did not adequately condition the permit to ensure the project’s consistency with the policies of the certified LCP regarding hazards, such as the requirement for permits for new development to require that applicants waive any rights to shoreline protection for the approved development.

The certified LCP requires that all new development is adequately evaluated to ascertain potential

negative impacts on coastal resources and public access, and that development be designed and sited to protect these resources and public coastal access. Given that ocean-fronting areas are inherently hazardous, their close proximity to the public beach and Pacific Ocean, and the potential presence of environmentally sensitive habitat areas at these sites, coastal bluff areas are subject to more unique constraints and site restrictions under numerous policies of the certified LCP, such as all the policies listed in **Appendix A** to this staff report. Section 25.07.012(G) of Chapter 25.07 of the certified Implementation Plan (IP) provides that in approving an application for a coastal development permit, the approving body may impose conditions necessary to enable the required findings to be made.

Section 25.07.012 (Procedures) of the IP of the certified LCP states:

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.*

Action 7.3.9 of the LUE of the certified LUP states (emphasis added):

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

The proposed development of a single-family residence would be located on an oceanfront bluff-top site. 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. 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 (e.g. waiver of future bluff/shoreline protective devices, protection of public access during and post construction,

protect existing native vegetation on bluff face, etc.) 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 the LCP.

Appellants’ Argument: Unpermitted Development and Obsolete Structures.

The project site is currently developed with non-conforming private beach stairs and a private funicular, which encroach into the bluff face. This development is inconsistent with Action 7.3.5, which prohibits development on oceanfront bluff faces except for public improvements that provide public access, protect coastal resource, or provide for public safety. The appellants assert that although the existing beach stairs and funicular, which provide private beach access from the bluff to the beach below, were constructed prior to the effective date of the Coastal Act, there is no evidence of a local permit or any local entitlements from the local government having authorized the construction of these structures. Therefore, the appellants allege that the beach stairs and funicular are unpermitted and are *not* legally non-conforming structures, and that the City should have required the removal of the stairs and funicular pursuant to Action 7.3.8 of the certified LCP.

Action 7.3.8 of the LUE of the certified LUP states (emphasis added):

*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 also requires new development to be set back from the bluff edge appropriately.

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.

The record contains photographic evidence demonstrating that the beach stairs and funicular were constructed prior to 1972, pre-dating the Coastal Commission’s jurisdiction in the area. However, appellants are correct that the City’s record for this project is unclear as to whether the applicant

obtained local entitlements and authorizations for the construction of these structures on the bluff face.

In addition, the appellants question whether the rail lift and funicular are safe and comply with safety codes, which the appellants suggest are important factors that should be considered when determining whether structures are obsolete. As previously stated, LUE Action 7.3.8 requires, where applicable, that applications for development on oceanfront bluff sites identify and remove all unpermitted and/or obsolete structures that encroach into oceanfront bluffs. The Commission's decision approving the demolition of the prior residence at this site found that the applicant had provided evidence that the railway lift and the stairway were functional as recently as February 2018. However, appellants raise a valid question as to whether the structures may nevertheless be "obsolete" if they are not safe and/or do not comply with applicable safety codes and should not be used. The City's record does not address this issue. Accordingly, the appeal raises a substantial issue as to the project's consistency with LUE Action 7.3.8.

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

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

LUE Actions 10.2.7 and 10.2.8 (cited above) and OS/C Element Policy 1-L of the LUP 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 not less than a 10-foot setback from the bluff edge for minor accessory structures/improvements.

Policy 1-L of the OS/C Element of the certified LUP states (*emphasis added*):

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.

Additionally, Section 25.50.004(B) of the IP requires a minimum bluff edge setback of 25 feet from the top of an oceanfront bluff for not only new buildings and additions to existing buildings but also to structures and *improvements*. Section 25.50.004(B) of the IP of the certified LCP states, in relevant part (*emphasis added*):

(B) Building Setbacks on or Adjacent to the Pacific Ocean and Beaches. There is established building setback lines along the ocean frontage of all property within the city fronting up and adjacent to the Pacific Ocean and its beaches, as provided in this subsection, and no building, structure or improvements shall be erected or constructed after the effective date of the ordinance codified in this section on the sandy portion of any beach except that which is determined by the city council to be necessary for the public health, safety and welfare. In addition, no building, structure or improvement shall be erected or constructed after the effective date of the ordinance codified in this section on the oceanward side of the following building setback lines:...

(4) *In addition to (1), (2) and (3) above, no new building, additions to existing buildings, 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. Greater setback may be required by the city engineer or building official in order to protect the public health, safety or welfare. Pools and spas shall be no closer than twenty-five feet to the top of bluff. Public accessways shall be exempt from this provision...*

Section 25.50.004(B) indicates that the most restrictive setback shall be required. In addition, consistent with the LUP, and Section 25.50.004(B) indicate the setback may be more than 25 feet. The LUP specifies that 25 feet is the *minimum*. 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 applicant’s 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.

Based on a letter titled Evaluation of Bluff Edge Determination dated June 12, 2019, the applicant’s geologist, Dr. Kevin A. Trigg, used both the Coastal Commission’s definition of “bluff edge” provided in California Code of Regulations, Section 13577(h) and the City of Laguna Beach Municipal Code Section 25.50.004 of the certified IP to approximate the location of the top of the bluff, (or bluff edge) (**Exhibit 4, Page 67**).

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.

Section 25.50.004 of the certified IP defines “oceanfront bluff” as”:

- (a) *An “oceanfront bluff” is an oceanfront landform having slope of forty-five degrees or greater from horizontal whose top is ten or more feet above mean sea level.*
 - (i) *In cases where an oceanfront bluff possesses an irregular or multiple slope condition, the setback will be taken from the most inland forty-five degree or greater slope.*
 - (ii) *In cases where the landform constitutes an oceanfront bluff whose slope is less than forty-five degrees, a determination as to whether or not the specific landform is subject to this provision shall be made by the Director of Community Development.*

The Laguna Beach Zoning Code, which is incorporated into the certified IP, indicates that the bluff edge is the point at which a 45 degree downward angle begins and the bluff descends to the beach. However, this definition is not consistent with the current certified Laguna Beach LUE, which prevails over the zoning code in cases of conflict, nor is it consistent with the definition of bluff edge in the Commission’s regulations.

It appears that in this case Dr. Trigg believes that the bluff edge defined by the zoning code closely coincides with that defined by the Coastal Act. He explains that the similarity is likely due in part because *“of the break in slope associated with the intersection of the steep bluff and the more gradual terrace surface being consistent between definitions, once the impact of man-made alterations is discounted and the underlying natural topography is considered.”*

Regarding the steplike features at the top of the cliff face, Dr. Trigg states, in part: *“At this site, retaining walls have been used to raise grades and establish building pad that overlook the coast and adjacent structures. These walls appear as artificial steps with the wall defining a false riser. When establishing the bluff edge, the fill materials are not to be considered to extend or modify the line determination.”*

Although Dr. Trigg 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 in Section 13577(h)(2) of the Commission’s regulations, which implement the Coastal Act. Therefore, it was not inappropriate for Dr. Trigg to rely on the definition provided by the Commission’s regulations. However, the LUE definition is the definition that should be cited and relied upon in the certified areas of the City of Laguna Beach.

Critical to all of the LCP policies related to bluff properties is a determination of the location of the bluff edge. According to Dr. Trigg, the bluff edge was determined consistent with the Commission’s regulations, upon which the LUE’s definition is based. Given that the appellants raise other questions and concerns about the project that raise a substantial issue as described in more detail throughout this report, 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: Outdated Hazards Reports.

The applicant prepared two hazards reports dated June 3, 2016 and September 13, 2016 for the project. The appellants assert that the applicant’s hazards reports were provided to the City prior to the knowledge that the previously existing gunite slope treatment on the bluff face would be removed, and that neither of the reports have been updated to reflect current conditions (i.e. ‘post-gunite removal’) and, therefore, the decision to approve this project was carried out with inaccurate evidence.

In 2017, the City approved a local coastal development permit (CDP) for the demolition of the previously existing single-family residence at the project site; the local CDP authorized the retention of the non-conforming private beach stairs and funicular and gunite slope treatment on the bluff face at the project site. Originally, the application requested authorization for both the demolition of the pre-existing single-family residence and construction of a new single-family residence; however, the project was ultimately modified and limited to only demolition of the pre-existing single-family residence. The City’s action was subsequently appealed to the Coastal Commission and on August 9, 2017, and the Commission found that the appeal raised a substantial issue. On March 7, 2018, after a public hearing, the Commission conditionally approved CDP No. A-5-LGB-17-0033 authorizing the demolition of the previously existing single-family residence *and* the removal of the gunite from the bluff face.

Prior to the Coastal Commission’s approval of CDP No. A-5-LGB-17-0033, a *Coastal Hazards Analysis* was prepared by GeoSoils, Inc. dated June 3, 2016, and a *Preliminary Geotechnical Investigation* report with a slope stability analysis was also prepared for the proposed development by Geofirm, Inc. dated September 13, 2016.

Since the issuance of CDP No. A-5-LGB-17-0033 on July 9, 2018, the pre-existing single-family residence has been demolished and the bluff gunite slope treatment has been removed.

It appears that after the subject gunite was removed, one of the appellants of Appeal A-5-LGB-17-0033 commissioned a peer review of the applicant’s geotechnical documents by Mr. David A. Purkis, PE. In his letter, Mr. Purkis notes that the September 2016 geotechnical report assumes that the pre-existing gunite slope treatment was to remain yet the gunite slope cover has since been removed. Mr. Purkis subsequently recommends that the site conditions be re-evaluated and potential impacts on adjoining properties should be addressed in consideration of the current site conditions. In response to this peer review letter, Geofirm prepared a letter dated September 28, 2018 to address the comments raised by Mr. Purkis. Geofirm concludes, among other things, that without the gunite cover, retreat of the upper portion of the bluff is anticipated from surficial erosion, which would commence at a rate not better or worse than similarly exposed and inclined portions of the local terrace bluffs.

The appellants of the current appeal (A-5-LGB-19-0159) assert that Mr. Purkis’s peer review letter and Geofirm’s response letter are not included in the record considered by the City of Laguna Beach for the project currently before the Coastal Commission.

Commission staff did not receive a copy of the complete public record file for the proposed development subject to this appeal before the publication of this staff report. However, the City did provide certain documents from the record file as part of its submittal of the Notice of Final Action

letter, and the appellants did the same as part of their appeal submittal. In addition, Commission staff is able to access scanned copies of a portion of the record file that are available online in the City's website (<http://64.58.157.208/sirepub/docsresults.aspx>).

Based on the City's online record, these two letters are and were included in the City's record during the City's consideration of project and prior to the City's Design Review Board's approval of the project; and, therefore, this contention does not raise a substantial issue.

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 according to the applicant's architect, installation of caissons and retaining walls are proposed 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.

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

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

Action 10.2.6 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.

Based on the applicant's geotechnical report, the site is globally stable but the "upper bluff slope underlying the existing residence does not have an adequate factor of safety" as it does not meet the minimum 1.5 (for global static conditions) and 1.1 (for global seismic conditions) required by the LUE Action 10.2.6. Therefore, the applicant's geotechnical consultants recommend that caissons

and shear pins be considered. However, whether such elements have been incorporated into the project is unclear, because the City's record does not include foundation plans for the proposed development. In addition, an alternatives analysis was not conducted and no rationale was provided to justify the caissons (and retaining walls, which may be a component of the project as well according to the geotechnical report) over other possible feasible and reasonable alternatives pursuant to LCP requirements, such as alternative designs and locations of the primary residence. Caissons can sometimes function as bluff protective devices and the lack of information in the City's record or rationale in the City's findings regarding this issue weighs in favor of finding substantial issue.

In addition, based on the conceptual site plan attached to the applicant's *Preliminary Geotechnical Investigation* prepared by Geofirm, Inc., the project potentially includes new caissons along the seaward edge of the seaside yard or proposed new patio. LUE Action 7.3.13 prohibits the construction of shoreline/bluff protective devices for the protection of accessory or ancillary structures and limits the use of bluff protective devices to the minimum required to protect existing development in danger from erosion.

Action 7.3.13 of the LUE of the certified LUP states (emphasis added):

*Limit the use of shoreline/bluff protective devices to the minimum required to protect existing development in danger from 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 principle 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.*

The proposed residence is new, not existing, development. It is unclear whether caissons are proposed to support the yard or patio area or intended to protect accessory structures (e.g. decks, stairs, *patios landscaping*, drainage, etc.) pursuant to Action 7.3.13. Development is required to be sited and installed in a manner sufficient to avoid the need for protective devices pursuant to Action 10.2.6. If retaining walls and/or caissons are intended to protect the landscaping and other accessory structures, the locally-approved project may be inconsistent with the policies of the certified LCP, particularly Action 7.3.13 (cited above).

In addition, 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, Actions 7.3.12 (see appendix A) and Action 10.2.6 (cited above), which specifically govern the use of oceanfront bluff protective devices, similarly require that the City consider alternatives to any proposal involving bluff protection by requiring that new development be sited and designed to avoid the need for protective devices.

The City has not reviewed the foundation plans to ensure consistency with the LCP policies that prohibit bluff/shoreline protection for new development, considered project alternatives if bluff/shoreline protection is proposed, or supported its decision on a permit with adequate findings. Therefore, this contention in the appeal raises a substantial issue as to conformity with the certified LCP.

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 1,631 cubic yards of grading (cut + fill). Two levels of the new three-level residence are proposed to be partially subterranean. Moreover, a portion of the grading is proposed to accommodate a pool and spa. 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, as discussed above, the project appears to include the installation of caissons and possibly retaining walls to protect against erosion, and the record does not establish whether those aspects of the development have been designed to minimize alteration of the bluff face and to be visually compatible with the surrounding area.

Therefore, this contention in the appeal raises a substantial issue as to conformity with the landform alteration policies of the certified LCP.

Appellants’ Argument: Project includes development on the sandy beach which is inconsistent with the policies of the certified LCP.

The appellants assert that, based on the City’s January 12, 2017 staff report, the applicant is proposing an energy dissipator at the toe of the bluff to satisfy a Water Quality Management Plan (WQMP) for the project. The appellants state that, as proposed, the energy dissipator would constitute development on the sandy beach, which is expressly prohibited by Section 25.50.004(B) of the certified IP.

Section 25.50.004(B)(4) of the certified IP states, in relevant part (emphasis added):

(B) Building Setbacks on or Adjacent to the Pacific Ocean and Beaches. There is established building setback lines along the ocean frontage of all property within the city fronting up and adjacent to the Pacific Ocean and its beaches, as provided in this subsection, and no building, structure or improvements shall be erected or constructed after the effective date of the ordinance codified in this section on the sandy portion of any beach except that which is determined by the city council to be necessary for the public health, safety and welfare. In addition, no building, structure or improvement shall be erected or constructed after the effective date of the ordinance codified in this section on the oceanward side of the following building setback lines: ...

*(4) In addition to (1), (2) and (3) above, no new building, **additions to existing buildings, 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. Greater setback may be required by the city engineer or building official in order to protect the public health, safety or welfare. Pools and spas shall be no closer than twenty-five feet to the top of bluff. Public accessways shall be exempt from this provision.***

As the appellants have suggested, the City’s January 12, 2017 staff report notes that the applicant is proposing an energy dissipator at the toe of the bluff to satisfy WQMP requirement according to preliminary correspondence with the City’s Water Quality Department. If proposed as a project element, the energy dissipator would not be consistent with the LCP’s prescribed setbacks for ocean-fronting bluff development and could negatively impact coastal public access and the bluff face. However, based on the applicant’s drainage plan, which was revised prior to City’s approval of the subject project, there is no indication that an energy dissipator is still proposed. Because the City’s record is unclear as to the scope of the approved project and whether it includes installation of an energy dissipator at the toe of the bluff, this contention raises a substantial issue.

Appellants’ Argument: Native Vegetation.

The appellants assert that the City-approved project, which would authorize the construction of a new single-family residence, does not include an assessment as to the project’s potential impacts to native vegetation on the coastal bluff. The appellants maintain that the City relied on an assessment that was based only on the demolition of the pre-existing residence and not the newly proposed construction of the new single-family residence and other associated development. In addition, the appellants state the City should have required the applicants to revegetate the slope with native vegetation pursuant to OS/C Element Policy 7-K (cited below).

The policies of the certified LCP require that development be adequately evaluated in consideration of natural resources that may exist onsite and identify 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), 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)) except for uses dependent upon such resources.

It should be noted that although the City's Notice of Public Hearing for this project states, in the project description, that the proposed development will include "*construction in an environmentally sensitive area (oceanfront)*" it more accurately should have stated "*construction in an Environmentally Sensitive Land/Resource.*" The area is recognized in the LCP as an Environmentally Sensitive Land/Resource due to the site being an oceanfront lot. Consequently, as described above, the LCP requires that the project site be evaluated for the presence of natural resources on the site, including sensitive habitat.

During the Coastal Commission's de novo review of Appeal No. A-5-LGB-17-0033 for the demolition of the pre-existing residence at the project site in 2017, a Vegetation Survey was prepared for the subject site to determine whether the site constitutes an environmentally sensitive habitat area (Results of Vegetation Survey, Glenn Lukos Associates, 12/5/17). The survey identified and mapped all vegetation on the project site and assessed the site for special-status species. The survey covered the entire project site, including both the areas affected by the proposed demolition as well as the remaining portions of the site. The survey work was conducted on November 7 and 9, 2017 by a senior project biologist.

The Vegetation Survey found that "*nearly all vegetation on the property consists of non-native ornamental species ...*" The Vegetation Survey did identify disturbed California Buckwheat Scrub, Laurel Sumac Scrub, and Saltbush Scrub, and some lemonadeberry individuals present at the subject site. The disturbed California Buckwheat Scrub, Laurel Sumac Scrub, and Saltbush Scrub are all located near the base of the bluff. Two of the four lemonadeberry individuals are also located near the base of the bluff. The other two lemonadeberry individuals are located higher on the bluff, about mid-way to the existing building pad on which the previously existing residence that was demolished sat, and the newly proposed residence would be sited.

In 2017, the Coastal Commission found that, although the Vegetation Survey did identify native plants on site, these plants were located well outside the demolition project footprint and, therefore, the demolition project was not anticipated to result in any impacts to the natural resources (native plants) on site.

However, based on the applicant's landscape plans, the City-approved project authorizes removal and replacement of vegetation throughout the property, including native vegetation along the bluff face slope. It is unclear how much vegetation (native and non-native) is being removed and replaced down along the bluff face. Therefore, whether the proposed replacement of existing vegetation is consistent with the policies of the certified LCP is unclear and is not substantiated by any of the City's findings. In addition, further review is necessary to ensure the proposed 'replacement' vegetation is appropriate for Southern California coastal bluffs. The City did not adequately detail

the project's consistency with the policies of the certified LCP cited above. Therefore, this contention raises a substantial issue.

Appellants' Argument: City failed to require archaeological/paleontological monitoring.

The appellants contend that the project, which involves new ground-disturbing activities, has the potential to affect archaeological and/or paleontological resources. Therefore, the City should have imposed conditions to ensure that any potential archaeological/paleontological discoveries during construction are protected.

The City's LCP does not contain policies identifying when a project must provide an archaeological analysis. Typically, the Commission has not required an archaeological analysis related to development on existing developed single-family lots, unless there are known archaeological resources in the area. For instance, recently, with regard to Appeal No. A-5-LGB-17-0033 of a local CDP for development involving ground-disturbing activities at the subject site (31987 Coast Highway, Laguna Beach), the Commission found substantial issue on a number of contentions raised by the appellants but not on the assertion that the City should have required archaeological/paleontological monitoring since no such resources were known to exist on the site.

However, after a Substantial Issue hearing on a recent appeal (A-5-LGB-17-0033) affecting this same project site, Commission staff received input from a professional archaeologist with expertise in the coastal Orange County area: Patricia Martz, Ph.D. Professor Emerita, Department of Anthropology, California State University, Los Angeles and President of the California Cultural Resources Preservation Alliance, Inc. Dr. Martz indicated that the 31987 Coast Highway site is in fact culturally sensitive as archaeological sites have been recorded in the vicinity. Therefore, the Commission imposed a number of special conditions to ensure that cultural resources were protected pursuant to the LCP policies. Although, the LCP does not contain policies identifying when a project must provide an archaeological analysis, it does contain policies regarding the protection of cultural resources.

Regarding protection of cultural resources, the City's certified LCP includes the following Open Space/Conservation Element policies:

Policy 12A

Promote the conservation of land having archaeological and/or paleontological importance, for its value to scientific research and to better understand the cultural history of Laguna Beach and environs.

Policy 12B

Develop a program which systematically inventories, records and preserves significant cultural resources in the community, in accordance with the guidelines in the City's Local Coastal Plan.

Policy 12C

Development adjacent to a place, structure or feature found to be of historical significance shall be designed so that the uses permitted and the architectural design will protect the visual setting of the historical site.

Policy 12D

Preserve cultural/scientific sites, including geologically unique formations having archeological significance.

In this case, an archaeological evaluation has been conducted for the site within the past year. However, this evaluation does not account for the additional ground disturbing activities currently proposed (i.e. approx. 1,631 cubic yards of grading). There is the possibility that archaeological resources exist deeper into the soil at the project site. In addition, there is the possibility that although construction and demolition of the previously existing residence may have disturbed resources that might have been present at that time, resources may yet remain on site. Furthermore, the Commission has previously allowed development in areas identified by project archaeological consultants as too disturbed to contain significant archaeological materials, only to discover, too late, that significant resources were present after all.

Because Commission staff has not been provided updated information regarding cultural resources and the proposed construction project, and the archaeological evaluation did not account for proposed grading for this project, this contention raises a substantial issue as to whether the project complies with LCP policies regarding protection of archaeological and cultural resources.

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; particularly OS/C Policy 3-G, which requires 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 policies to ensure that public access is protected such as the following:

Policy 3-G of the 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 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.

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.

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...*

Coastal Act Section 30212 also requires new development to provide access from the nearest roadway to the shoreline and along the coast. However, Section 30212(a)(2) allows for exceptions to this requirement where adequate public access already exists nearby.

In this case, public access is available nearby. There is a public access way located two lots upcoast of the project site that provides access from the road to the public beach below (Thousand Steps beach) and the shoreline. Thousand Steps beach is one of the larger pocket beaches and provides a wide sandy area enclosed by rocky headlands at either end. The City addressed this issue and made similar findings to substantiate how the project is consistent with the public access policies of the certified LCP and the Coastal Act. Therefore, this contention does not raise a substantial issue.

SUBSTANTIAL ISSUE FACTORS:

Applying the five factors typically relied upon by the Commission in making a determination whether an appeal raises a substantial issue 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 reference to all of the applicable policies of the certified LCP. In addition, there is a low degree of factual support for the City’s approval, which does not include important information necessary to determine that the project is consistent with LCP policies, such as foundation plans that are necessary to understand the scope of impacts to natural landforms and whether the project has been designed to be safe from hazards associated with development on a coastal bluff. Thus, the actual scope of the approved project and its impacts are unclear, undermining the City. 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 approved a local CDP for the construction of a 5,593-square-foot single-family residence with a two-car garage, outdoor deck, pool, spa, and landscaping, as well as approximately 1,630.73 cubic yards of grading on an ocean-fronting bluff property. Though substantial, the new residence appears to be similar in size and scope to other residences in the area. However, the City's record provided to the Commission is missing critical information concerning the scope of the development that could have implications for coastal resources, such as foundation plans, as discussed above. Therefore, there are fundamental questions concerning 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 could 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 concerning the extent and scope of the proposed development, allowing the City's local CDP approval to stand could result in adverse precedence regarding application of the LCP's various resource protection policies. 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

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 remove all unpermitted and/or obsolete structures, including but not limited to protective devices, fences, walkways, and stairways, which encroach into oceanfront bluffs.

Action 7.3.9 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 El Niño events, and any known site-specific conditions. To

assure stability, the development must maintain a minimum factor of safety against landsliding of 1.5 (static) or 1.2 (pseudostatic, $k=0.15$ or determined through analysis by the geotechnical engineer) for the economic life of the structure.

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

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

Policy 10.3

Ensure 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 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; ...

(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