

CALIFORNIA COASTAL COMMISSION

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STAFF REPORT: APPEAL – SUBSTANTIAL ISSUE

Appeal Number: A-5-DPT-18-0046

Owner: Harbor Bluff Corp. (Cannon's)

Applicant: Joe Lancor, AIA

Local Government: City of Dana Point

Local Decision: Approval with Conditions

Appellant: Coastal Commissioners Brownsey and Aminzadeh

Project Location: 34344 Street of the Green Lantern, City of Dana Point, Orange County;
 APN No. 672-232-06

Project Description: Appeal of City of Dana Point approval of Coastal Development Permit No. CDP16-0005 with conditions for demolition of an existing restaurant (Cannon's) and construction of a 100-room resort hotel, with a restaurant, café, spa, and associated parking facilities on a coastal bluff lot overlooking Dana Point Harbor.

Staff Recommendation: Substantial Issue

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

finds that the appeal raises a substantial issue, the de novo hearing will occur at a future Commission meeting, during which time the Commission will take public testimony.

SUMMARY OF STAFF RECOMMENDATION

The City-approved development is the demolition of an existing three-story restaurant (Cannon's) constructed in 1972 totaling approximately 10,400 square feet, with associated exterior improvements including a bluff-side dining deck and a 78-stall surface parking lot, and construction of a 44,164 square foot, 100-room resort hotel, with a 2,996 square foot restaurant, patio and café, a 892 square foot spa, and 54,731 square feet of associated parking facilities on a 40,189 square foot coastal bluff lot overlooking Dana Point Harbor. In addition, a public bluff top trail is proposed. The proposed project may adversely impact public access, and also due to its location on a coastal bluff, may not be adequately designed to minimize hazards. The appellant claims various inconsistencies with the City's certified Dana Point 1986 Dana Point Specific Plan (DPSP)/Local Coastal Program (LCP) and the public access policies of Chapter Three of the Coastal Act: 1) the project does not address or include low cost overnight accommodations; 2) it is unclear if the proposed development, including the public trail, is sufficiently setback from the bluff to be safe from the threat of bluff erosion for a minimum of 50 years; 3) the management and operating details of the proposed public access components, i.e. the bluff top trail, the six designated visitor parking stalls and the public viewpoint, have not been fully analyzed and, thus, may adversely impact public access.

Staff recommends that the Commission determine that a **substantial issue exists** with respect to the grounds on which appeal number A-5-DPT-18-0046 has been filed because the locally approved development raises issues of consistency with the City's certified 1986 Dana Point Specific Plan (DPSP)/Local Coastal Program (LCP) and the public access policies of Chapter Three of the Coastal Act.

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EXHIBITS

[Exhibit No. 1 – Notification of Appeal of City of Dana Point Coastal Development Permit No. CDP16-0005](#)

[Exhibit No. 2 – City of Dana Point Planning Commission Resolution No. 18-06-11-17](#)

[Exhibit No. 3 – Location Map](#)

[Exhibit No. 4 – Project Plans](#)

[Exhibit No. 5 – Sherman Stacey Letter dated June 25, 2019](#)

I. MOTION AND RESOLUTION

Motion:

*I move that the Commission determine that Appeal No. A-5-DPT-18-0046 raises **No Substantial Issue** with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

Staff recommends a **NO** vote. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

Resolution:

*The Commission hereby finds that Appeal No. A-5-DPT-18-0046 presents a **SUBSTANTIAL ISSUE** with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the City of Dana Point certified Local Coastal Program and/or the public access policies of the Coastal Act.*

II. APPELLANTS' CONTENTIONS

On July 13, 2018, an appeal by Coastal Commissioners Brownsey and Aminzadeh was filed alleging the project's failure to comply with the City's certified 1986 Dana Point Specific Plan (DPSP)/Local Coastal Program (LCP) and the public access policies of Chapter Three of the Coastal Act ([Exhibit No. 1](#)). The Commissioners' appeal contends that: 1) the project does not address or include low cost overnight opportunities; 2) it is unclear if the proposed development, including the public trail, is sufficiently setback from the bluff to be safe from the threat of bluff erosion for a minimum of 50 years; and 3) the management and operating details of the proposed public access components, i.e. the bluff top trail, the six designated visitor parking stalls and the public viewpoint, have not been fully analyzed and thus may adversely impact public access.

III. LOCAL GOVERNMENT ACTION

On June 11, 2018, the City of Dana Point Planning Commission held a duly noticed public hearing for the proposed development. At the conclusion of the public hearing, the Planning Commission approved with conditions Local Coastal Development Permit CDP16-0005/Conditional Use Permit CUP18-0008/Site Development Permit SDP18-0016/Tentative Tract Map TTM 18164 (Resolution No. 18-06-11-17) ([Exhibit No. 2](#)).

Following the action by the Planning Commission, a Notice of Final Action related to the Planning Commission's action on Local CDP 16-0005, as required by both the Coastal Act and the City's certified 1986 Dana Point Specific Plan (DPSP)/Local Coastal Program (LCP), was received in the Coastal Commission's South Coast Area Office in Long Beach on June 28, 2018. A Notification of Appeal Period was provided to the City by Coastal Commission staff, dated July 3, 2018 indicating the ten (10) working day appeal period would expire on July 13, 2018.

On July 13, 2018, Coastal Commissioners Brownsey and Aminzadeh filed the appeal of Local Coastal Development Permit No. CDP16-0005 in the Coastal Commission's South Coast District Office in Long Beach. No other appeals were received prior to the end of the appeal period.

IV. APPEAL PROCEDURES

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

Section 30603 of the Coastal Act states in relevant part:

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

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

Hearing Procedure and Grounds for an Appeal

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

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

As stated above, the project is located in the appealable area. Section 30625(b)(2) of the Coastal Act requires a de novo hearing of the appealed project unless the Commission determines that no substantial issue exists with respect to the grounds on which the appeal was filed pursuant to Section 30603. Under Section 13115 of Title 14 of the California Code of Regulations, if Commission staff recommends a finding of substantial issue, and there is no motion from the Commission to find no substantial issue, the Commission must proceed to the de novo public

hearing on the merits of the project. If the Commission finds substantial issue, the de novo hearing will be scheduled at a subsequent Commission hearing. Sections 13110-13120 of Title 14 of the California Code of Regulations further explain the appeal hearing process.

Qualifications to Testify before the Commission

If the Commission decides to hear arguments and vote on the substantial issue question, those who are qualified to testify at the hearing, as provided by Section 13117 of Title 14 of the California Code of Regulations, will typically have three minutes per side at the discretion of the Chair to address whether the appeal raises a substantial issue. The only persons qualified to testify before the Commission at the substantial issue portion of the appeal process are the applicants, persons who opposed the application before the local government (or their representatives), or those who, for good cause, were unable to oppose the application before the local government, and the local government. Testimony from other persons must be submitted in writing. The Commission will then vote on the substantial issue matter. It takes a majority of Commissioners present to find that the grounds for the appeal raise no substantial issue.

V. FINDINGS AND DECLARATIONS

A. PROJECT DESCRIPTION

The project site is a coastal bluff top lot overlooking Dana Point Harbor and the Pacific Ocean that measures approximately 40,189 square feet ([Exhibit No. 3](#)). The proposed project consists of the demolition of an existing three-story restaurant (Cannon's) constructed in 1972, totaling approximately 10,400 square feet, with associated exterior improvements including a bluff-side dining deck and a 78-stall surface parking lot, and construction of a 44,164 square foot, 100-room resort hotel, with a 2,996 square foot restaurant, patio and café, an 892 square foot spa, and 54,731 square feet of associated parking facilities with a total of 165 parking spaces on a 40,189 square foot coastal bluff top lot overlooking Dana Point Harbor. In addition, a public bluff top trail is proposed along the seaward edge of the property ([Exhibit No. 4](#)). The project site is designated as Coastal Visitor Commercial District (C-VC) on the Coastal Land Use Regulations Map of the Implementing Actions Program of the 1986 DPSP/LCP, and is designated Tourist Recreational/Commercial on the Land Use Element figure of the Land Use Plan of the 1986 DPSP/LCP and is located within the appeals jurisdiction of the California Coastal Commission. The site is bordered by the Blue Lantern Inn to the east and across Green Lantern to the west are multi-family development and the City owned, Hilltop Park. To the north, across Santa Clara Avenue, is a retail commercial center, and to the south is an Orange County owned and maintained coastal bluff that slopes from the bluff edge property line of the project site to the street below ([Exhibit No. 3, page 2](#)).

B. LOCAL COASTAL PROGRAM

Dana Point is a shoreline community in southern Orange County that incorporated as a City in 1989. On September 13, 1989, the Commission approved the City's post-incorporation LCP. The City's LCP is comprised of a variety of planning documents. At the subject site, the applicable document is the City's certified 1986 Dana Point Specific Plan (DPSP)/Local Coastal Program (LCP).

C. FACTORS TO BE CONSIDERED IN SUBSTANTIAL ISSUE ANALYSIS

Section 30625(b)(2) of the Coastal Act states that the Commission shall hear an appeal of a local government action carried out pursuant to a certified LCP unless it finds that no substantial issue exists with respect to the grounds on which the appeal was filed. The term “substantial issue” is not defined in the Coastal Act or its implementing regulations. Section 13115(b) of the Commission’s regulations simply indicates that the Commission will hear an appeal unless it “finds that the appeal raises no significant question.” In previous decisions on appeals, the Commission had been guided by the following factors:

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

Staff recommends that the Commission find that a **substantial issue exists** with respect to whether the local government action conforms to the policies of the City’s certified 1986 DPSP/LCP and the public access policies of the Coastal Act for the reasons set forth below.

D. SUBSTANTIAL ISSUE ANALYSIS

As stated in Section IV of this report, the local CDP may be appealed to the Commission on the grounds that the proposed development does not conform to the standards set forth in the City’s certified 1986 DPSP/LCP or the public access policies of the Coastal Act. Pursuant to Section 30625(b) of the Coastal Act, the Commission must assess whether the appeal raises a substantial issue with respect to the grounds upon which the appeal was filed pursuant to Section 30603 of the Coastal Act.

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

The grounds for this appeal relate to the proposed project’s alleged inconsistency with a number of policies and standards of the City’s certified 1986 DPSP/LCP and the public access policies of Chapter Three of the Coastal Act. Specifically, the appellants claim: 1) the project does not address or include low cost overnight opportunities; 2) it is unclear if the proposed development, including the public trail, is sufficiently setback from the bluff to be safe from the threat of bluff erosion for a minimum of 50 years; 3) the management and operating details of the proposed public access components, i.e. the bluff top trail, the six designated visitor parking stalls and the public viewpoint, are unknown and thus may adversely impact public access.

Under section 30603(b)(1) of the Coastal Act, the standard of review for this appeal are the City's certified 1986 Dana Point Specific Plan (DPSP)/Local Coastal Program (LCP) and the public access policies of the Coastal Act. The City's certified 1986 DPSP/LCP includes policies to provide public access, lower cost visitor and recreational facilities, including overnight accommodations and for development located adjacent to coastal bluffs, which include:

Local Coastal Program (LCP) Policies

Section II. B. 4. a. 18. "Environmental Hazards" of the City's certified LCP states in part:

18. *In areas of new development, above-ground structures will be set back a sufficient distance from the bluff edge to be safe from the threat of bluff erosion for a minimum of 50 years. The City will determine the required setback. A geologic report shall be required by the City in order to make this determination.*

Section II. D. 1. a. "Access Component" of the City's certified LCP states in part:

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

Section II. D. 6. c. "Access Component" of the City's certified LCP states in part:

Bluff Top Trail

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

As depicted on Figure 8, two bluff top walks are proposed for adoption. The permanent or planned trail is generally located adjacent to the bluff edge within the entire Dana Point coastal area. In contrast, the interim trail is located away from the bluff edge from the Street of the Green Lantern to Street of the Golden Lantern.

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

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

Section II. D. 7. c. 25-29, 31-35, and 36-38 “Access Component” of the City’s certified LCP states in part:

25. *The bluff top walk should link the proposed open space areas of the Dana Point Headlands southwest of Cove Road, the Lantern Bay lookout park, and the existing and proposed lookout points. (Dana Point Specific Plan Community Design Element, page IX-2)*
26. *In the tourist recreational commercial areas, the bluff top walk should be integrated into the design of the commercial complexes to assure the continuous pedestrian access along the bluff. (Dana Point Specific Plan Community Design Element, page IX-2)*
27. *Provide a linkage to adjacent open space uses such as the proposed minipark on La Cresta Drive and the Lantern Bay lookout park. (Dana Point Specific Plan Community Design Element, page IX-3)*
28. *A continuation of the Regional Bike Trails System and an establishment of a bluff top walk (Dana Point Specific Plan Local Coastal Program Policy, page X-6)*
29. *A bluff top walk/bike trail will follow a route from the Dana Point Headlands to the Dana Point Palisades. (Because of the already developed property along the bluff, it is extremely difficult to establish a continuous system. However, the system will not require extensive public acquisition and, further, connects with existing and planned vista points and view parks). (Dana Point Specific Plan Local Coastal Program Policy, page X-6)*
31. *While most likely in private ownership, the majority of the area should be easily accessible to the public, particularly along the bluff edge. (Dana Point Specific Plan Headlands Use Policy, Area E, page rv-23)*
32. *A bluff top public walkway will be provided, and integrated with future land uses. (Dana Point Specific Plan Community Headlands Land Use Policy, Area E, page IV-23)*
33. *The use of the bluff top walk will be limited to pedestrian access and coastal viewing.*
34. *The bluff top walk on the Headlands, Lantern Bay Sectors and other properties within the Dana Point area will be permanently available to the public as implemented by an open space management system. This system will assure permanency as well as long-term maintenance for all public systems.*
35. *The location of the bluff top walk as depicted on Figure 8 is conceptual in nature. Precise alignment of the bluff top walk will be determined as new development plans are reviewed by the County.*
37. *An, interim bluff top walk as shown on Figure 8 will be used until the completion of the permanent trail system.*

38. *The bluff top walk will provide adequate lighting to accommodate evening use, utilize path materials and finishes compatible with expected uses, provide seating areas along the walk, and provide a minimum width of eight feet.*

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

Section 30253: New development shall:

Minimize risks to life and property in areas of high geologic, flood and fire hazard: Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs;

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

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

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

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

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

In addition, the Coastal Act contains the following public access policies relevant to the appeal:

Coastal Act Section 30210:

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

Coastal Act Section 30211:

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Coastal Act Section 30213:

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.

The commission shall not: (1) require that overnight room rentals be fixed at an amount certain for any privately owned and operated hotel, motel, or other similar visitor-serving facility located on either public or private lands; or (2) establish or approve any method for the identification of low or moderate income persons for the purpose of determining eligibility for overnight room rentals in any such facilities.

Commission Appeal – Analysis of Consistency

The City of Dana Point has granted approval of a coastal development permit that allows the demolition of an existing restaurant (Cannon's) and construction of a new hotel. Both section 30213 of the Coastal Act, and the City's certified 1986 DPSP/LCP (which incorporates Section 30213), require that lower cost visitor and recreational facilities shall be protected, encouraged and where feasible, provided. The proposed project includes the construction of a new hotel which is a visitor-serving overnight accommodation use; however, the local CDP failed to indicate if the proposed hotel would provide low cost accommodations on site or if it would serve as a moderate or higher cost overnight accommodation use. While the City's staff report discussed the visitor-serving amenities proposed with the project, including a 10-foot bluff top public trail, designation of six (6) parking stalls for visitor use, and repurposing of an existing trash enclosure structure to become a public viewpoint, the City's findings did not address or include low cost overnight opportunities as required under Section 30213 of the Coastal Act. The City's certified 1986 DPSP/LCP does not provide the type of specificity found in more recent LCPs regarding the provision of low cost overnight accommodations; however, Coastal Act Section 30213, which is incorporated into the LCP, clearly requires that low cost facilities be provided.

In a November 2016 report to the Commission, Commission staff found that, since 1989, out of six hotel "cost" categories ranging from "economy" to "luxury," a total of 24,720 economy hotel rooms were lost, compared to 11,247 hotel rooms in the remaining five categories. Economy rooms have been lost over the same time period at over twice the rate of all other cost categories combined. With the loss of low cost overnight accommodations, the ability of all members of the public to enjoy the coast is constrained. Thus, consistent with the language in Section 30213 of the Coastal Act, low cost overnight accommodations must be protected, encouraged and where feasible, provided in order to maximize public access opportunities.

Given that the record does not address whether the project provides low cost overnight accommodations, the appeal raises a substantial issue as to whether the City's approval of the project is consistent with the public access policies of the City's certified 1986 DPSP/LCP, as including the public access policies of the Coastal Act (Section 30213).

The applicant has submitted a letter asserting that, under Section 30604 of the Coastal Act, the Commission does not have authority to condition the project to be consistent with Section 30213 of the Coastal Act, and the standard of review is limited to the certified LCP policies ([Exhibit No. 3, page 2](#)). However, Section 30603(b)(1) makes clear that the grounds for an appeal of development within 300-feet of the seaward face of a coastal bluff (section 30603(a)(2)) includes allegations that the development does not conform to the Coastal Act's public access policies. In any event, the certified LCP incorporates Section 30213, as well as the Coastal Act's other public access policies; as such, the Commission may consider the project's consistency with Section 30213 when assessing whether the appeals raises a substantial issue.

The proposed project is located on top of a coastal bluff that has a history of stability issues. The City's certified 1986 DPSP/LCP includes Section 30253 of the Coastal Act, which requires new development to minimize risks to property in areas subject to hazards. Also, to address new development that is subject to hazards, the City's certified 1986 DPSP/LCP includes General Provision No. 18, which states the setback for new development shall be a sufficient distance from the bluff edge to be safe from the threat of bluff erosion for a minimum of 50 years based upon a geologic report and other applicable information. To address geologic site conditions of the project site, a 25-foot bluff top setback was incorporated into the proposed project, which includes a hotel and public bluff top trail. However, it is unclear whether this 25-foot bluff top setback will be adequate to protect the proposed new development without relying on bluff protective devices. As stated earlier, the site has been subject to geologic instability with the lower portion of the coastal bluff below the project site experiencing a failure in 1980, and the County of Orange, which owns the bluff face, subsequently completing repairs in 1985, consisting of reconstruction of the slope and installation of tiebacks ([Exhibit No. 3, page 2](#)). The City's approval contains a prior to issuance condition (No. 16) requiring the applicant provide engineering plans to the County for review to verify that the proposed project does not interfere with the bluff stabilization devices nor does it compromise the stability of the slope. Without knowing the result of the County's review, it is unclear if the proposed project meets current stability requirements, or what measures may be needed to ensure adequate stability. Therefore, the appeal raises a substantial issue as to whether the City-approved development, including the public bluff top trail, is sufficiently setback to be safe from the threat of bluff erosion for a minimum of 50 years.

In addition, the 10-foot wide public bluff top trail would span the seaward property line along the coastal bluff of the project site. The City's certified 1986 DPSP/LCP includes policies (Section II. D. 7. c. 25-29, 31-35, and 36-38 "Access Component" and Section III. C.29. "New Development Component") requiring a public trail in this location. The policies also detail the required components for the public trail and how it shall be made permanently available to the public. In addition, Section 30213 of the Coastal Act, as incorporated into the certified LCP, provides that lower cost recreational facilities "shall be protected, encouraged, and, where feasible, provided." The City's approval of the project included a condition (No. 74) requiring the applicant to record an irrevocable offer to dedicate an easement for the 10-foot wide public bluff top trail. However, the City's record lacks important information about how the trail would

be managed, such as hours of operation, which is necessary to determine that the project will protect and provide this low cost form of recreation for public use, as inherently required by Section 30213. Therefore, the appeal raises a substantial issue as to whether the project is consistent with the policies of the City's certified 1986 DPSP/LCP and the public access policies of the Coastal Act (Section 30213).

In addition to the public bluff top trail, the proposed project includes other visitor-serving amenities, consisting of six (6) designated parking stalls for visitor use and repurposing of an existing trash enclosure structure to provide a public viewpoint. However, similar to the 10-foot wide public bluff top trail, the City's record lacks important public access information, such as hours of operation and maintenance programs. Therefore, the appeal raises a substantial issue as to whether the project is consistent with the City's certified DPSP/LCP and the public access policies of the Coastal Act (Section 30213), which require protection of lower cost recreational facilities.

Therefore, the City's approval of Coastal Development Permit CDP16-0005 is inconsistent with the City's certified 1986 DPSP/LCP and the public access policies of Chapter 3 of the Coastal Act.

Significance of Issues Raised by Appeal

Applying the five factors listed in the prior section establishes that the appeal raises a "substantial issue," and the staff recommends the Commission accepts the appeal and hold a de novo hearing on the permit application.

The first factor is the degree of factual and legal support for the local government's decision that the development is consistent with or inconsistent with the relevant provisions of the certified LCP and/or the public access policies of the Coastal Act. As discussed above, the City's analysis does not support a finding of consistency with the public access and hazards provisions of the City's certified 1986 DPSP/LCP, or with section 30213 of the Coastal Act relating to the provision of lower-cost visitor-serving accommodations and recreational facilities. For example, the project does not explicitly provide any lower-cost accommodations, as required by both section 30213 and the certified LCP. In addition, the City's record does not adequately support that the project will be safe from coastal hazards given its location at the top of a coastal bluff for at least 50 years, as required by section 30253 and policies of the certified LCP. Therefore, there is a low degree of factual and legal support for the City's action in approving Local CDP16-0005 and finding the project consistent with the relevant portions of the City's certified 1986 DPSP/LCP, as discussed above, and this factor supports a finding of substantial issue.

The second factor is the extent and scope of the development as approved or denied by the local government. The extent and scope of the development approved by the City is the demolition of an existing restaurant and parking lot and construction of a 100-room resort hotel, with a restaurant, patio and café, spa, and parking facilities on a 40,189 square foot coastal bluff top lot, which may be subject to geological hazards, overlooking Dana Point Harbor. Thus, the project involves construction of a large hotel at the top of a coastal bluff that would significantly expand development at this potentially hazardous location, and in an important public recreational location. This factor supports a finding of substantial issue.

The third factor is the significance of the coastal resources affected by the decision. Public access to the coast is one of the most important policies embodied in the Coastal Act, and the provision of lower-cost accommodations and recreational facilities is integral to protecting public access. Specifically, Section 30213 of the Coastal Act, incorporated into the City's certified 1986 DPSP/LCP, requires that lower cost visitor and recreational facilities shall be protected, encouraged and where feasible, provided. The proposed project includes the construction of a hotel which is a visitor-serving overnight accommodation use; however, it is not known if it will provide low cost overnight accommodations, and, therefore, the project may not provide accommodations that are accessible to a broad spectrum of the public. Coastal bluffs are also an important resource of regional and statewide value, thus, it is important to ensure that bluff-top development is appropriately sited to minimize coastal hazards. These factors also support a finding of substantial issue.

The fourth factor is the precedential value of the local government's decision for future interpretations of its certified DPSP/LCP and/or the public access policies of the Coastal Act. The project as proposed may potentially impact the ability of the public to access the coast by not providing on site low cost accommodations and may not be adequately designed to deal with the geologic hazards present on the site and consequently raises issues of consistency with the City's certified 1986 Dana Point Specific Plan (DPSP)/Local Coastal Program (LCP) and Chapter Three public access policies. Thus, approving the project as proposed could set a precedent for future development in Dana Point that does not provide for lower-cost accommodations, and may not be sited safely on a coastal bluff. This factor supports a finding of substantial issue.

The final factor is whether the appeal raises local issues, or those of regional or statewide significance. Public access, including the provision of lower-cost accommodations near the coast, and development that may not address geologic hazards on coastal bluffs, are significant issues of regional and statewide concern in coastal areas. In particular, the rise of moderate and/or higher cost overnight accommodation along the coast limits the type of access available to all members of the public who wish to enjoy the coast. The proposed project does not explicitly describe the affordability of the hotel that will be constructed and, therefore, it may not be accessible by a large segment of the general public. While the issues raised by this project do involve local issues relating to public access and geologic hazards in Dana Point, the potential failure to provide lower cost overnight accommodations given the dwindling number of affordable options all along the coast would be of statewide significance. Therefore, the appeal raises issues of regional and statewide significance. These factors support a finding of substantial issue.

Therefore, in conclusion, the Commission finds that the appeal does raise substantial issues with respect to the City-approved project's consistency with the City's certified 1986 DPSP/LCP and Chapter 3 public access policies. The Commission will accept the appeal and set the matter for a de novo hearing on the permit application.