

**CALIFORNIA COASTAL COMMISSION**

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# Th10a

## ADDENDUM

DATE: November 2, 2020

TO: Coastal Commissioners and Interested Parties

FROM: South Coast District Staff

SUBJECT: **ADDENDUM TO ITEM TH10A, APPEAL NO. A-5-LGB-20-0050 FOR THE COMMISSION MEETING ON THURSDAY, NOVEMBER 5, 2020.**

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### **I. CORRESPONDENCE RECEIVED AFTER THE ISSUANCE OF THE STAFF REPORT**

The appellants, Mark and Sharon Fudge, submitted a comment letter dated October 22, 2020, supporting staff's recommendation of a finding that the appeal raises substantial issue with regard to the majority of the appellants' contentions and Chapter 3 of the Coastal Act. However, the letter contests the staff finding regarding the starting date from which the percentage of project renovation should be calculated. The correspondence is included under the "Correspondence" tab of this agenda item.

The appellants assert that the staff findings limiting the scope of work to be considered in assessing the extent of the remodel to only those renovations occurring after the effective date of the Coastal Act (January 1, 1977) are not supported by the Coastal Act or its implementing regulations. The comment letter contends that multiple policies within the certified Local Coastal Program (LCP) reference "original gross floor area" and support the use of the original gross floor area as a baseline for calculating the percentage of project renovation in order to determine whether a project constitutes a major remodel.

In response, staff notes that the LCP glossary definition of a major remodel is included on page 11 of the staff report. This definition does not include reference to the original gross floor area and instead requires consideration of the extent of the changes to the "existing structure." While this definition indicates that the Laguna Beach Municipal Code (LBMC) will provide greater specificity, the LBMC does not have a certified section that does so, and the section cited by the appellants as containing both the terms "original" and "major remodel" (Section 25.10.008(O)) pertains solely to landscaping requirements for new or remodeled homes in the R-1 zoning code designation. The subject site is located in a C-1 (Local Business) zoning code designation and thus the section is not relevant. Thus, pending the certification of a LBMC section that provides the greater specificity envisioned

by the LUP definition, the term “existing” as used in this context should be construed based on the purpose of the provision, so as to most accurately effectuate its intent. Additionally, the term “existing” as used in Section 30235 of the Coastal Act is defined as development existing since January 1, 1977, because the section and included language were adopted on that date.

Furthermore, “original gross floor area” as defined by LBMC Section 25.08.012 is limited to horizontal areas, excluding garages, elevator shafts, basements, cellars, attics, and other exclusively accessory uses to the building. This would suggest that the certified LCP definition of “original gross floor area” does not encompass the full scope of work considered by the Commission in calculating the percentage of renovation, and is therefore not intended for use as a starting date in a determination of whether a project constitutes a major remodel. Regardless, the staff report includes findings beginning on page 11 indicating that the City did not consider the full scope of work in their analysis.

The comment letter additionally states that Commission regulations do not preempt the provisions of the certified LCP and cites the recent court ruling in *Citizens for South Bay Coastal Access v. City of San Diego*. However, the subject LCP does not currently specify a date from which to calculate the percentage of project remodels. While there are other jurisdictions with certified LCPs using dates other than January 1, 1977, to calculate the scope of alteration to “existing structures,” the Laguna Beach LCP has not codified such a date. The Commission has recently taken the position that in order to evaluate the extent of change effectuated by a project, a reviewing body should compare the resulting structure to that which existed on the effective date of Coastal Act, such as in the appellants’ cited example of the San Clemente Land Use Plan amendment application (which was ultimately withdrawn by the City).

In summary, staff agree with the appellants’ position that this is a complex issue that would benefit from statewide consistency. However, in the absence of an explicitly stated date in the certified Laguna Beach LCP, the Commission should use January 1, 1977, as a starting date from which to review the percentage of project alteration. Regardless, the appeal still raises substantial issue with regard to other contentions discussed further in the staff report.