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# Th10a

Filed: 09/02/2020  
49<sup>th</sup> Day: 11/12/2020  
Staff: C.Seifert-LB  
Staff Report: 10/15/2020  
Hearing Date: 11/05/2020

## STAFF REPORT: APPEAL – SUBSTANTIAL ISSUE

**Appeal Number:** A-5-LGB-20-0050

**Applicant:** Chris Dornin, Dig Coast Inn, LLC

**Agents:** Marshall Innins, Marshall Innins Design Group

**Local Government:** City of Laguna Beach

**Local Decision:** Approval with Conditions

**Appellants:** Terry Meurer, Mark & Sharon Fudge

**Project Location:** 1401 South Coast Hwy, Laguna Beach, Orange County (APN: 644-217-01)

**Project Description:** Appeal of City of Laguna Beach Coastal Development Permit No. 16-2480 for the renovation of an existing historic hotel, including addition of new 3,707 sq. ft. rooftop deck with mechanical equipment and pool/bar, interior remodel of 24 existing rooms, and exterior remodel at 1401 S. Coast Highway, Laguna Beach, Orange County

**Staff Recommendation:** Substantial Issue.

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**IMPORTANT HEARING PROCEDURE 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. 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 three 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 phase of the hearing will be scheduled for a later hearing date, during which the Commission will take public testimony.

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## SUMMARY OF STAFF RECOMMENDATION

The City of Laguna Beach's action on Local Coastal Development Permit (CDP) No. 16-2480 approved the renovation of an existing 17,042 sq. ft. structure consisting of a 24-room hotel (the Coast Inn), a ground floor, 54-seat restaurant and bar, and four office suites. The structure was built in 1929, prior to the effective date of the Coastal Act, and designated by the Heritage Committee (a City Council-appointed advisory committee) as an E-rated contributive historic structure on December 12, 2015. The applicant proposes construction of a new 3,707 sq. ft. rooftop deck with a pool and bar limited to hotel guest use and interior remodeling for the construction of a new staircase and elevator system. The applicant also proposes renovation of exterior features, including re-plastering and reconstruction of multiple turrets that may have existed on the original building. The City's local CDP approved a reduced size, 2,700 sq. ft. rooftop deck with a pool and bar, as well as the other project elements described above.

On September 2, 2020, Terry Meurer filed an appeal of Local CDP No. 16-2480; on September 8, 2020, Mark and Sharon Fudge filed a subsequent timely appeal. The appeals raise the following contentions: 1) the City did not include the full scope of work in its analysis of whether the project constitutes a major remodel; 2) the City did not verify the applicant's bluff edge determination; 3) the project does not qualify for a CEQA Exemption; 4) the City's findings do not include adequate review of potential impacts to low-cost visitor accommodations, public access, or visual resources; and 5) the project is being piecemealed as part of a larger project affiliated with the same property owner.

Staff recommends that the Commission determine that a **substantial issue exists** with respect to the grounds on which the appeal has been filed for the following reason: the City's conclusion that the development is consistent with the provisions of the certified Local Coastal Program (LCP) was not adequately supported by documents in the record or the City's findings as stated in Local CDP No. 16-2480. More specifically, the City-approved permit authorized new development within the bluff edge setback and on the bluff face, which may be allowed pursuant to the LCP if the building is historic and other criteria are satisfied, but the findings do not fully support that conclusion. Additionally, the applicant appears to have identified the bluff edge based on an uncertified definition and the Commission's staff geologist has not yet reviewed the proposed bluff edge for consistency with the definition in the certified Land Use Element.

The City's findings state that no intensification of use will occur with project approval, and thus the lack of any on-site parking will not pose a significant issue; however, the City's action to require three in-lieu parking fees rather than any actual vehicle parking or transportation demand management measures is not supported by staff report findings or LCP policies. Additionally, the City's approved CDP does not include any analysis of the impact on public access, and the availability of lower cost visitor serving uses, that would

result from the conversion of 24 lower-cost hotel rooms to higher-cost hotel rooms. The applicant and the City do not appear to have considered any alternatives that would preserve lower cost overnight accommodation opportunities. Furthermore, the City's approved CDP also does not adequately consider the potential impacts of the proposed project elements on public coastal views and visual resources.

The appellants' contention that the project does not qualify for a CEQA exemption does not raise a substantial issue with respect to any legitimate ground for an appeal pursuant to section 30603 of the Coastal Act. Also, the appellants' contention that the project is being piecemealed by the applicant is not supported by the evidence because, while the hotel is associated with a liquor store and cottage, those structures are on a different property across the street. The applicant is not required to include the structures on a separate property in the subject development. Regardless, the locally-approved CDP raises a substantial issue for the grounds summarized above. The City of Laguna Beach LCP was certified by the Commission on January 13, 1993. Therefore, the appeal is reviewed for substantial issue as to the project's conformity with the certified LCP and the Coastal Act's public access policies.

## TABLE OF CONTENTS

<b>I. MOTION AND RESOLUTION – SUBSTANTIAL ISSUE .....</b>	<b>5</b>
<b>II. APPELLANTS’ CONTENTIONS .....</b>	<b>5</b>
<b>III. LOCAL GOVERNMENT ACTION.....</b>	<b>5</b>
<b>IV. APPEAL PROCEDURES .....</b>	<b>6</b>
<b>V. FINDINGS AND DECLARATIONS – SUBSTANTIAL ISSUE .....</b>	<b>8</b>
A. PROJECT DESCRIPTION AND BACKGROUND.....	8
B. LOCAL COASTAL PROGRAM CERTIFICATION .....	9
C. FACTORS TO BE CONSIDERED IN SUBSTANTIAL ISSUE ANALYSIS.....	9
D. SUBSTANTIAL ISSUE ANALYSIS .....	9
<b>APPENDIX A – SUBSTANTIVE FILE DOCUMENTS .....</b>	<b>22</b>

### EXHIBITS

[Exhibit 1 – Project Location](#)

[Exhibit 2 – Project Plans](#)

[Exhibit 3 – Project Photos](#)

[Exhibit 4 – Local CDP No. 16-2480](#)

[Exhibit 5 – Appeals](#)

## I. MOTION AND RESOLUTION – SUBSTANTIAL ISSUE

**Motion:** I move that the Commission determine that Appeal No. A-5-LGB-20-0050 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. Following the staff recommendation on this motion will result in the Commission proceeding to conduct a de novo review of 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-20-0050 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 program and the public access policies of the Coastal Act.

## II. APPELLANTS' CONTENTIONS

On September 2, 2020, Terry Meurer filed an appeal of Local CDP No. 16-2480 ([Exhibit 5](#)). On September 8, 2020, Mark and Sharon Fudge filed a subsequent appeal of Local CDP No. 16-2480 ([Exhibit 5](#)). The appellants contend that the City's approved CDP does not comply with the City's certified LCP and the public access policies of the Coastal Act. More specifically, the appellants raise the following concerns with the City-approved development:

- 1) The City did not include the full scope of work in its analysis of whether the project constitutes a major remodel.
- 2) The City did not verify the applicant's bluff edge determination.
- 3) The project does not qualify for a CEQA exemption.
- 4) The City's findings do not include adequate review of impacts to low-cost overnight accommodations, public access, or visual resources.
- 5) The project is being piecemealed as part of a larger project affiliated with the same property owner.

## III. LOCAL GOVERNMENT ACTION

On July 28, 2020, the City Council held a public hearing for Local CDP No. 16-2480 and approved the permit with conditions ([Exhibit 4](#)). The City record indicates that Terry Meurer spoke in opposition to the project at the public hearing, and Mark and Sharon Fudge submitted a letter in opposition prior to the public hearing.

On the date of the above referenced public hearing, the City Council approved Resolution No. 20.059 approving Design Review Board recommendation, which stated that the project was categorically exempt from CEQA under the following sections of the CEQA

Guidelines:<sup>1</sup> Section 15301(a) (Alterations to Existing Facilities), Section 15303(c) (Small Commercial Spaces) and Section 15331 (Historic Resource Restoration/ Rehabilitation), which allows exemption for “projects limited to maintenance, repair,...or reconstruction of historical resources in a manner consistent with the Secretary of Interior’s Standards for the Treatment of Historic Properties...”

On August 25, 2020, the Coastal Commission’s South Coast District office received a valid Notice of Final Action for Local CDP No. 16-2480. Commission staff issued a Notification of Appeal Period on September 1, 2020. On September 2, 2020, Terry Meurer filed an appeal, and a subsequent appeal was filed by Mark and Sharon Fudge on September 8, 2020, during the ten-working day appeal period ([Exhibit 3](#)). No other appeals were received. Commission staff first notified the City and applicant of the project appeal filed by Terry Meurer in a letter dated September 2, 2020. Commission staff subsequently notified the City and applicant of the second appeal filed by Mark and Sharon Fudge, and provided copies of both appeals.

#### **IV. APPEAL PROCEDURES**

After certification of LCPs, the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on CDPs. Development projects 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.

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<sup>1</sup> The regulations implementing the California Environmental Quality Act (CEQA) are known as the “CEQA Guidelines” and are codified in Chapter 3 of Division 6 of Title 14 of the California Code of Regulations (CCR). The following section references are therefore to that title of the CCR.

The project site is in an appealable area due to its location between the sea and the first public road paralleling the sea, within 300 feet of the inland extent of any beach (Section 30603(a)(1)). The project site would also qualify as an appealable area due to its location on the bluff (Section 30603(a)(2)). The issues raised in the subject appeal apply to proposed development located in the appealable area.

### **Grounds for Appeal**

The grounds for appeal of an approved local CDP in the appealable area are stated in Section 30603(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 the Commission to conduct a de novo review 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). If Commission staff recommends a finding that a substantial issue does exist, 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 conduct the de novo portion of the public hearing on the merits of the project at a later time. A de novo review of the application on the merits uses the certified LCP as the standard of review (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 (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 three or more Commissioners, decides to hear arguments and vote on the substantial issue question, proponents and opponents will have an opportunity to address whether the appeal raises a substantial issue. The time limit for public testimony will be set by the chair at the time of the hearing. As noted in Section 13117 of Title 14 of the California Code of Regulations, the only persons qualified to testify before the Commission at the substantial issue portion of the appeal process are the applicant, 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 Terry Meurer opposed the project in person at the local hearing and Mark and Sharon Fudge opposed the project through timely submitted letters. Testimony from other persons must be submitted in writing.

Upon the close of the public hearing, the Commission will vote on the substantial issue question. 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 BACKGROUND

The project site is a rectangular, 8,500 sq. ft. bluff-top lot located between the sea and the first public road at 1401 S Coast Highway in Laguna Beach ([Exhibit 1](#)). The site has a General Plan/Land Use Plan land use designation of “Commercial/Tourist Corridor” and C-1 (Local Business) zoning code designation. The lot was originally developed in 1929 with a 33-room hotel (the Coast Inn) and a four-room dwelling unit occupied by the owner. In the years spanning 1929 and 1956, the Coast Inn was remodeled with multiple improvements. The subject development now contains a 24-room hotel, a ground-level 54-seat restaurant and bar, and four commercial office spaces. The on-site bar (known as The Boom Boom Room) notably served as one of the first in Laguna Beach to serve the gay community, as well as the first in Laguna Beach to serve alcohol following the end of prohibition.

On July 26, 2010, Appeal No. A-5-LGB-10-166 was filed by two Commissioners and a member of the public on a local CDP approved for an earlier proposed renovation of the subject site. This prior project proposed the demolition of 49.6% of the existing structure and the construction of a new ten-room boutique hotel, a bar/restaurant, and a subterranean parking garage including 13 spaces. On August 13, 2010, the Commission found that the appeal raised substantial issues on the basis of reduction in affordable overnight accommodations and impacts to visual resources posed by the locally-approved increase in height. The project was never developed.

The current project was initially proposed by the applicant as a combined application for the redevelopment of the Coast Inn and the Coast Liquor Store (located at 1401 S Coast Highway and 1391 S Coast Highway, respectively). However, the City requested that the applicant submit two separate applications for the projects. The work approved by Local CDP No. 16-2480 now proposes solely the renovation of the 24-room hotel and 54-seat restaurant/bar, including: (1) rehabilitation of the exterior to “reflect the original Spanish Colonial Revival style as shown in a 1930’s hotel postcard” including re-plastering, reconstruction of historic turrets and repair of architectural features; (2) interior remodel of the 24 hotel rooms and restaurant, for an approximate 181 sq. ft. reduction in existing restaurant area and 81 sq. ft. reduction in overall total floor area; (3) construction of a new circular staircase and elevator system within the interior; (4) construction of a new 2,700 sq. ft. rooftop deck, with a 361 sq. ft. pool/spa and a bar for the use of registered hotel guests only; and (5) installation of new rooftop signage and mechanical equipment ([Exhibit 4](#)).

The pre-Coastal development includes encroachments into the 25-ft. blufftop setback required for new development by the certified LCP and is a legally non-conforming structure. The existing development does not offer any on-site parking spaces; the City has applied credit for 96 “grandfathered” parking spaces due to the legal nonconformance of the historic structure, but would require 86 vehicle parking standards per current parking standards. The C-1 (Local Business) zoning requirements allow a maximum height of 20 ft. above the curb of South Coast Highway and 36 feet above the lowest finished floor. The roofline of the subject structure extends 28.8 ft. above the curb and 36.8 ft. above the lowest finished floor. In summary, the structure is legally nonconforming with regard to blufftop encroachments, vehicle parking, and height. The proposed project would maintain



these non-conformities and include new outdoor space and new features within the blufftop setback.

#### **B. LOCAL COASTAL PROGRAM CERTIFICATION**

The City of Laguna Beach LCP was certified on January 13, 1993. The City's LCP is comprised of a Land Use Plan (LUP) and an Implementation Plan (IP). The City's Land Use Plan is comprised of a variety of planning documents including the 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 portion of the certified LCP is comprised of over 10 documents, including Title 25, the City's Zoning Code. The Coastal Land Use Element of the LCP was updated and replaced in its entirety via LCPA 1-10 in 2012. The Open Space/Conservation Element and Title 25 have been amended a number of times since original certification. Laguna Beach has a certified LCP, but there are four areas of deferred certification in the City: Irvine Cove, Blue Lagoon, Hobo Canyon, and Three Arch Bay. The project site is located within the City of Laguna Beach's certified jurisdiction and is subject to the policies of the certified LCP.

#### **C. FACTORS TO BE CONSIDERED IN SUBSTANTIAL ISSUE ANALYSIS**

Section 30625(b)(2) of the Coastal Act requires the Commission to conduct a de novo review 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). The term "substantial issue" is not defined in the Coastal Act or its implementing regulations. However, Section 13115(c) of the Commission's regulations lists the following five factors as appropriate considerations in determining whether an appeal raises a substantial issue:

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 certified LCP and the public access policies 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.

The Commission may, but need not, assign a particular weight to a factor.

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.

**Contention: The City did not consider the full scope of work in its analysis of whether the project constitutes a major remodel.**

The appellants assert that the City's findings do not acknowledge the full scope of structural upgrades required for renovation of the historic structure, and thus the City's determination of the project as less than a major remodel is inaccurate. The appellants further contend that the project constitutes new development under the LUE definition, and thus should not be allowed to maintain existing nonconformities.

The following certified LCP policies pertain to major remodels and nonconformities in relevant part:

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

**LUE 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.

**LUE 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.

**LUE Action 1.1.13** Encourage preservation of historic structures and adaptive reuse of buildings.

**Laguna Beach Municipal Code Section 25.56.008** A legal nonconforming structure may be enlarged or expanded if:

(A) The enlargement or expansion complies in every respect with all applicable provisions of this Title 25 Laguna Beach Zoning Code; and...

(C) The required number of parking spaces is provided per Chapter 25.52, Parking Requirements. However, existing single-family dwellings that have a nonconforming number of required parking spaces may be enlarged or expanded without complying with the required number of spaces, if the total gross floor area of the residential structure, including the proposed enlargement or addition, does not exceed fifteen hundred square feet and at least one parking space is provided on the property...

**Laguna Beach Municipal Code Section 25.56.009** If any part of a nonconforming portion of the structure is substantially removed or modified in such a way that it compromises the structural integrity of the building, that portion must be rebuilt in conformance with zoning regulations.

The City's findings include calculations submitted by the applicant which estimate 40.9% of the exterior walls and 44% of the combined roof, walls, and foundation of the existing structure will be demolished and replaced.<sup>2</sup> The initial project proposed by the applicant included additions to the ground level restaurant and increases in height that were ultimately eliminated from the proposed project. The approved project proposed a total area reduction of 81 sq. ft. The City worked with the applicant to include several revisions reducing the scope of work, and ultimately determined that the project did not constitute a major remodel. As such, the applicant was not required to correct the nonconforming height, parking, or blufftop setback encroachment of the structure, as would be required with new development located on an oceanfront bluff. The applicant's proposed deck restoration within an existing bluff encroachment was also approved; the City's findings refer to a 1930's postcard illustration as verification that the proposed deck reconstruction will not extend past the historic encroachment constructed in 1929.

The appellants contend that the percentage of project renovation must be calculated from the original gross floor area of the structure in order to determine whether a project constitutes a major remodel; they further assert that this should include all improvements constructed on the residence since 1929. However, in previous actions the Commission has reviewed the scope of development occurring after the Coastal Act was effectively certified on January 1, 1977. Thus, this specific contention is not supported by past precedent or LCP policy.

Regardless, it is unclear whether or not the applicant's percentage estimations incorporated the full scope of structural alterations necessary to ensure the existing 94-year old development complies with the requirements of the California Building Code. The applicant retained a structural engineer to estimate the amount of demolition and reconstruction necessary to comply with the building code requirements for historic structures, which is more lenient than the regular building code given the City's determination that the structure is historic. Appellant Terry Meurer retained another structural engineer (Petra Structural Engineers) to argue that more structural support would be required than the applicant has identified, and also submitted a letter received from the applicant's structural engineers in response to her inquiry, dated July 23, 2020 ([Exhibit 5](#)). This letter acknowledges that the project will require a foundation system with new pile foundations and "a mandatory seismic and gravity upgrade of the entire structural system to current [California Building Code] requirements." Despite this disagreement between structural engineers, required upgrades to the foundation were not analyzed in the City's findings. Additionally, the City-approved CDP did not reference evidence (e.g. building department review) that it has verified the accuracy of the applicant's remodel percentage calculations.

The figures submitted by the applicant appear to show demolition of the majority of the

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<sup>2</sup> The applicant's revised plans submitted following CDP approval show that 45.46% of the combined total roof, walls, and foundation of the existing structure will be demolished and replaced.

roof and major alteration to the entire foundation system, as well as replacement of all existing windows and doors on the west elevation and installation of a new stairway and elevator system within 181 sq. ft. of existing restaurant floor area. In order to comply with the LCP policies listed above, if the comprehensive project alterations exceed 50% of the original structure (including the alterations that occurred prior to passage of the Coastal Act), the building would not be allowed to maintain its existing nonconformities.

These policies help ensure that the lifetimes of nonconforming structures are not indefinitely extended. In order for the City to confirm that the historic structure rehabilitation was not a major remodel, the full scope of structural retrofits should have been analyzed and the applicant's estimated percentages of demolition/reconstruction should have undergone peer review. Further definition of the term 'major remodel' is ongoing and the City's preferred definition, referenced in the Local CDP findings, has not been certified for inclusion in the LCP. The City's findings should have discussed the full scope of project alterations, including the retrofitting and foundation upgrades discussed by the applicant's architect prior to the public hearing. Additionally, the City's findings should have included further analysis of whether the full scope of work complied with Municipal Code Section 25.56.009, or LUE Action 7.3.10.

Due to the lack of findings supporting the City's action to approve the remodel, this appellant contention supports a finding of that the appeal raises a substantial issue with respect to this ground on which the appeal was filed.

**Contention: The City did not properly determine the bluff edge and associated setbacks.**

The appellants assert that the City should have verified the applicant's submitted bluff edge determination for compliance with the certified LCP. More specifically, the appellants contend that the applicant's geologist bluff edge determination did not reference relevant LUE policies or include figures adequately supporting the findings.

The following LCP policies pertain to coastal bluff development and bluff edge setbacks:

**LUE Glossary Entry 101.** Ocean Front 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 sea cliff. 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.

**LUE Glossary Entry 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.

**LUE Action 7.3.4** Require new development to 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.

**LUE 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.

**LUE 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.

**LUE 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 of the property as a deed restriction.

**LUE 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.

**LUE 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.

**Laguna Beach Municipal Code Section 25.50.004 (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) ...no new buildings, 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...

**OSC/C Element 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.

The LCP policies above prohibit development on oceanfront bluff faces with the exception of public improvements (Action 7.3.5), additions to existing oceanfront blufftop structures which rely on future shoreline protective devices (Action 7.3.9), or improvements within 25 ft. from the top of oceanfront bluffs (Section 25.50.004). In order to determine whether the proposed project is consistent with these policies, an accurate bluff edge determination is required.

It is important to note that the subject development includes structures on the first floor which extend to the bluff edge, and down the bluff face, constituting a bluff edge setback encroachment. This, and other encroachments by the second, third, and fourth floor decks, is a legal nonconformance. However, the project still requires a bluff edge determination consistent with the certified LCP in order to determine whether the proposed improvements will substantially alter or extend the life of the existing nonconformities. An accurate bluff setback determination is also necessary to consider whether the project improvements may contribute to coastal erosion or blufftop instability, considering the approved project aspects include substantial alteration to the existing foundation system and rehabilitation of existing ocean-fronting structures.

The City's findings do not include verification of the applicant's submitted bluff edge determination, despite the applicant's geologist's letter failing to reference any relevant LCP policies relating to the formal definition of bluff edge. Furthermore, the City's findings do not adequately discuss the development in relation to the bluff edge setback beyond stating: "The restored deck area is proposed within the 25-foot blufftop setback; however the proposed deck addition will be in line with the previous deck (as noted in the 1935 postcard) and will not extend beyond the existing structure" ([Exhibit 4](#)). These findings are not adequate to address the accuracy of the bluff edge determination; additionally, the fact that the existing structure is non-conforming does not support the expansion of decks and construction of turrets within the bluff edge setback area. Enlargement of structures existing within the 25-ft. bluff edge setback is not consistent with LUE Action 10.2.7 or 10.2.8 or Municipal Code/IP Section 25.50.004 (B). Therefore, the City's findings raise a substantial issue with regard to blufftop development policies and nonconforming structure regulations of the certified LCP.

**Contention: The City did not adequately consider impacts to low-cost overnight accommodations.**

The appellants contend that the City's findings fail to discuss the potential loss of affordable overnight accommodations in Laguna Beach, or whether the project is consistent with LCP and Coastal Act policies encouraging preservation of affordable visitor-serving hotel and motel rooms.

The following LCP policies and Coastal Act Policies pertain to low-cost overnight accommodations:

**LUE Action 6.2** Preserve and encourage an increase of the City's stock of affordable motel and hotel rooms available for short-term visitors. Protect, encourage, and where feasible provide, affordable overnight accommodations.

**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 Coast Inn is currently operated through Airbnb without on-site staff. The City's findings do not include the current range of room rates, historic affordability of the hotel rooms, or change in affordability that is likely to accompany the proposed renovation. The City record indicates that at the public hearing for Local CDP No. 16-2480, the applicant indicated that the construction of a new roof deck and swimming pool were intended as amenities enabling an increase in the cost of rooms ([Exhibit 3](#)). The City's findings did not include a discussion of the existing stock of affordable motel and hotel rooms in Laguna Beach, or whether the 24 rooms of the Coast Inn function as an important part of the City's stock of affordable accommodations. The findings also did not indicate whether affordable/lower cost restrictions were feasible for some or all of the hotel rooms.

The project is not inherently inconsistent with LUP Action 6.2 or Coastal Act Section 30213 because it is not clear that lower-cost overnight accommodations are being eliminated, or that higher-cost hotel rooms are being developed. However, the relevant LCP and Coastal Act policies should be referenced when hotel development or redevelopment projects are proposed; the City should have included further analysis and findings analyzing the project for consistency with these policies. Thus, the appellants' contention regarding low-cost accommodations does raise a substantial issue with regard to the certified LCP and the public access policies of the Coastal Act.

**Contention: The City did not adequately consider impacts to public access posed by parking and construction staging.**

The appellants contend that the City failed to consider whether the project may constitute an intensification of use that requires provision of parking adhering to current regulations. The appellants also assert that the Local CDP was not conditioned to avoid public access impacts during construction activities, which may be accompanied by an increased strain on parking along South Coast Highway.

The following LCP policies and Coastal Act Policies pertain to public access and parking requirements:

**LUE Section 25.52.004 (E) General Provisions, Intensification of Use.**

(1) When...more than fifty percent of the gross floor area of an existing building is proposed to be remodeled or reconstructed, or a use is changed to a use which has a greater parking requirement, or when the floor area of an existing building is enlarged, then the property owner or applicant shall provide parking or purchase in-lieu parking certificates equivalent to the number of parking spaces required by current parking regulations (up to the maximum allowed in Section 25.52.006(E) for the proposed use having a greater parking requirement, or for the entire building which is enlarged less credit for the following:

- (a) The actual number of parking spaces provided on-site, if any;
- (b) The number of previously paid for in-lieu parking certificates for the subject premises, if any; and
- (c) The number of parking spaces that would have been required by the parking regulations in effect in 1958 for the use currently existing on the property, if the building was built prior to that time, minus the actual number of parking spaces provided on-site, if any.

**Coastal Act Section 30210 (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 resources, (2) adequate access exists nearby, or (3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway...

As previously noted, it is unclear whether the proposed project would result in a remodel to over 50% of the existing structure; thus, the renovated Coast Inn may or may not be required to comply with current parking standards in order to comply with public access policies of the LCP.

However, the City's findings indicate that the existing site does not offer any on-site parking, and the project does not propose to construct any new vehicle parking spaces. The City's findings state that the site has credit for 96 "grandfathered" parking spaces, due to the legal nonconformance of the historic structure. However, the City also required the applicant to purchase three in-lieu parking passes (credits for non-existent parking). The City's findings also indicate that, while the newly constructed rooftop bar and pool will be capable of accommodating up to 101 people, the use has been restricted to hotel guests to reduce the likelihood of an increase in parking needs beyond the existing use. The City's findings further reference a parking analysis conducted in 2014 which analyzes the traffic impacts of the subject project in conjunction with the proposed, adjacent remodel at the Coast Liquor Store (1391 S Coast Highway). Based on this information, the City found that the project will not increase parking needs on-site or adversely impact public access to nearby beaches. It is not clear why the City required the applicant to purchase three in-lieu parking passes (certificates), since the City found that the project did not constitute a major remodel and did not result in an increase in intensity of use.



The appellants Mark and Sharon Fudge further contend that the 96 grandfathered parking spaces associated with the existing restaurant are no longer applicable, pursuant to Laguna Beach Municipal Code Section 25.56.006 prohibiting re-establishment of nonconforming uses which have been abandoned for at least 12 consecutive months. The appellants reference a newspaper article indicating closure of the ground level restaurant/bar, The Boom Boom Room, on September 2, 2007. The appellants describe a letter dated March 29, 2018 from the City Manager, which responds to their contentions by stating that the building has not been vacant and operates as a hotel with periodic operation of the bar area for special events.

There does not appear to be sufficient evidence as to whether the grandfathered parking spaces apply; however this is only relevant if the project is not defined as a major remodel. It is not clear whether the project is a major remodel. It is also not clear whether the proposed development will change the intensity of use, particularly the operation of a new restaurant and increase in rooftop amenities. This uncertainty and the lack of findings to support the City's conclusions supports a finding of substantial issue.

**Contention: The City did not adequately consider impacts to visual resources posed by oceanfront glass structures.**

The appellants contend that the City did not analyze or condition the use of glazed glass structures in the oceanfront renovation project. The appellants further contend that the City's findings failed to adequately discuss the project impacts on visual resources and coastal views.

The following LCP policies and Coastal Act Policies pertain to protection of visual resources:

**LUE Policy 7.3** 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 natural landform alterations.

**LUE 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.

**Open Space/Conservation Element Policy 7A** Preserve to the maximum extent feasible the quality of public views from the hillsides and along the City's shoreline.

**Open Space/Conservation Element Policy 7K** Preserve as much as possible the natural character of the landscape (including coastal bluffs, hillsides, and ridge lines) by requiring proposed development plans to preserve and enhance scenic and conservation values to the maximum extent feasible, to minimize impacts on soil mantle, vegetation cover, water resources, physiographic features, erosion problems, and require recontouring and replanting where the natural landscape has been disturbed.

**Coastal Act Section 30251** The scenic and visual qualities of coastal areas shall

be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

The Commission has traditionally interpreted public coastal views to include views to and along coastal bluffs as well as views to and along the ocean. Coastal bluffs are significant resources and represent a rare and visually pleasing landscape that California citizens and governments have sought to preserve through the Coastal Act. As previously discussed, the project site is developed with a pre-coastal commercial structure extending 28.8-ft. above the curb and 36.8-ft. above the lowest floor elevation on an ocean-fronting bluff lot. The west elevations shown on the City-approved project plans include several remodeled glass railings and windows. Past Commission actions on blufftop structures often include conditions to minimize bird-strikes, such as UV-reflective glazing or appliques intended to reduce reflectivity and transparency. While this is not strictly required, the City staff report does not include any findings analyzing the impacts of the project on bird-strikes. The City's findings discuss the project revisions to eliminate originally proposed rooftop umbrellas and height variances, ultimately stating that the project will not significantly impact coastal views or visual resources.

These findings do not adequately consider the potential impacts of the proposed newly-constructed turrets or replacement windows throughout the west facade of the building. Furthermore, the City's approval may be inconsistent with LUE Policy 7.3 or Open Space Conservation Element Policies 7A and 7K, as the project may extend the life of development along the coastal bluff and thus diminish its natural character over time. Given the unique visual qualities of coastal bluffs, the City's findings should have included analysis of how the rehabilitation of the historic hotel—including reconstruction of exterior turrets, installation of rooftop structures and flags, and construction of several glass features—had the potential to impact public coastal views. Thus, the City's approval of a project that is not consistent with the visual resource policies of the LCP raises a substantial issue.

**Contention: The project is being piecemealed as part of a larger project affiliated with the same property owner.**

The appellants contend that the City-approved project is part of a larger redevelopment project associated with the same property owner. The applicant (Dig Coast Inn, LLC) also owns Coast Liquor located at 1391 S Coast Highway, which is across the street from the project site. The appellants assert that aspects of the subject project, such as trash collection, have been deferred to the Coast Liquor Store public hearing. The appellants further allege that this will make it difficult to ensure the two sites, which have shared ownership and associated visitor-serving uses, are reviewed comprehensively for compliance with LCP and Coastal Act policies.

The appellants cite Section 30105.5 of the Coastal Act, which states:

**Section 30105.5** "Cumulatively" or "cumulative effect" means the incremental effects of an individual project shall be reviewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.

The City's findings indicate that the applicant initially filed a combined local CDP application for both projects, and the projects were considered cumulatively for the majority of the City's multi-year review. However, the City ultimately requested that the applicant submit separate applications for the Coast Inn and Coast Liquor Store renovation projects. On September 22, 2020, the City approved Local CDP No. 20-6388 for the renovation of the historic Coast Liquor Store and a nearby retail cottage (located at 1391 South Coast Highway and 168 Mountain Road, respectively). The local CDP approved conversion of the Coast Liquor Store from a single-use to multi-use building, with retention of the historic liquor store use, addition of a coffee shop, and addition of office suites. The project includes a 54.1% parking reduction and 3 in-lieu parking credits.

The City Council public hearing minutes indicate that a Councilmember inquired into the potential piecemealing and Director of Community Development Marc Wiener spoke on why the issue was not applicable. Specifically, the projects are on different legal lots and are different land uses. The sharing of trash facilities will not have a cumulative impact on coastal resources, provided the separate CDP that approves the trash facilities contains provisions to ensure safe handling and disposal to preserve water quality. The fact that the hotel lacks vehicle parking does not mean the adjacent land use on a separate property is required to provide parking; if additional parking or amenities on that site are proposed, their impacts may be analyzed and mitigated through a separate permit. While it is preferable to analyze impacts of the hotel project with potential impacts of development next door, the applicant and the City's decision to separate the projects can be justified and future impacts can be analyzed separate from the impacts of the subject project. Furthermore, the appellants have not cited any relevant LCP policies relating to bifurcation of project applications with shared property ownership. Thus, this contention does not raise a substantial issue with respect to consistency with the LCP.

**Contention: The City's CEQA determination is not supported by relevant State CEQA Guidelines.**

Lastly, the appellants contend that the City's finding of project exemption from CEQA is not supported by relevant State CEQA Guidelines. On July 28, 2020, the Design Review Board determined that the project was categorically exempt from CEQA under CEQA Guidelines Sections 15301(a) (Alterations to Existing Facilities), Section 15303(c) (Small Commercial Spaces) and Section 15331 (Historic Resource Restoration/ Rehabilitation), which allows exemption for "projects limited to maintenance, repair,...or reconstruction of historical resources in a manner consistent with the Secretary of Interior's Standards for the Treatment of Historic Properties..." The City is the lead agency for CEQA certification. As is explained in Section IV. Appeal Procedures above, this is not an appropriate basis for an appeal of a local government's action pursuant to Coastal Act Section 30603, as the appellants' claim is not based on either the City's certified LCP or the Chapter 3 policies of the Coastal Act. Thus, this contention does not raise a substantial issue with respect to any legitimate basis for an appeal.

**SUBSTANTIAL ISSUE FACTORS:**

The Commission typically applies five factors in making a determination whether an appeal raises a substantial issue pursuant to Section 30625(b)(2):

**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 certified LCP and public access policies of the Coastal Act.** The City did not substantially support its approval of the project’s consistency with all of the applicable policies of the certified LCP and the public access provisions of the Coastal Act (specifically major remodel and bluff top/bluff face policies). In addition, the scope of the proposed remodeling and the applicant’s bluff edge determination were not verified for accuracy. This means that evaluation of the project’s consistency with the LCP policies cannot be made at this time. Therefore, there is a low degree of factual and legal support for the local government’s decision, and this factor supports a substantial issue finding.

**2. The extent and scope of the development as approved or denied by the local government.** The local government granted a CDP for comprehensive alterations to the existing historic coastal hotel and restaurant located on an ocean-fronting blufftop property. While it remains unclear whether the project as approved constitutes new development as a major remodel, the approved elements are extensive and include restructuring of the blufftop foundation system, installation of a 3,707 sq. ft. rooftop deck potentially within the 25-ft. bluff edge setback, and construction of multiple turrets on the existing, approximately 94-year old development. In addition, the project includes maintenance of multiple nonconformities and may not be consistent with the certified LCP. Therefore this factor supports a finding of substantial issue.

**3. The significance of the coastal resources affected by the decision.** The subject site is an oceanfront bluff lot, which may raise specific concerns that are not routinely raised on interior, in-fill lots. 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 and adjacent to public beaches also can have significant impacts on scenic resources and public access opportunities. The LCP and the Coastal Act provide coastal bluffs with special protections. In addition, the subject hotel and restaurant have significance as historic Laguna Beach structures. This factor supports a finding of substantial issue.

**4. The precedential value of the local government’s decision for future interpretations of its LCP.** The subject site is an oceanfront blufftop lot developed with a historic structure including encroachments. The majority of ocean-fronting development in Laguna Beach is sited on bluff properties, and many are pre-coastal structures. The decision of the local government to allow substantial remodeling to the Coast Inn, potentially extending the lifespan of existing nonconformities and the overall building, could influence future permit decisions made in the City’s Coastal Zone. Without verified, accurate information to determine the extent and scope of the proposed project, allowing the City’s local CDP approval to stand would result in adverse precedent 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 bluff top 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.) The preservation of affordable overnight accommodations along the coast is also an issue of both regional and statewide significance. Requiring consistency with the certified LCP (particularly policies relating to bluff face/top development) 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 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, the Commission finds 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 – Substantive File Documents**

1. City of Laguna Beach certified Local Coastal Program
2. City of Laguna Beach Local CDP No. 16-2480.