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W13a

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STAFF REPORT: APPEAL – SUBSTANTIAL ISSUE

Appeal No.: A-5-LGB-20-0055

Applicants: Robert and Lucy Donahue

Agents: Morris Skenderian

Local Government: City of Laguna Beach

Local Decision: Approval with Conditions

Appellants: Mark & Sharon Fudge

Project Location: 1225 Cliff Drive Laguna Beach, Orange County
(APN: 053-161-05)

Project Description: Appeal of Local CDP No. 19-5311 for a remodel of an existing two-level, 15-foot high (from curb), 3,122 sq. ft. single-family residence, which includes: 1) 1,101 square feet of additions greater than 15 feet in height, 2) tandem parking, 3) 372 sq. ft. of new elevated decks, 4) new skylights, 5) grading to create a new pool/spa, 6) a new pedestrian entry feature, and 7) new landscaping.

Staff Recommendation: Determine that a substantial issue exists.

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. If the Commission finds that the appeal raises a substantial issue, the “de novo” phase of the hearing will be scheduled for a future Commission meeting, during which the Commission will take public testimony.

SUMMARY OF STAFF RECOMMENDATION

The City’s action on Local CDP No. 18-1096 authorized alterations to a single-family residence and associated amenities located at 8 Rockledge Road in Laguna Beach. The work that was approved beyond the main structure included alterations to a garage and deck, the addition of an outdoor spa, additional hardscape and landscape improvements, and the removal of an unpermitted pool. The net effect of all of the work would result in the enlargement of the main structure but without any increase in habitable space. The subject site is a 10,828 sq. ft. ocean-fronting lot located on the blufftop.

Staff recommends that the Commission determine that a **substantial issue exists** with respect to the grounds on which appeal number A-5-LGB-20-0055 has been filed for the following reasons: there is a low degree of legal and factual support for the City’s approval of the project, and the City-approved project would prejudice the application of the certified Local Coastal Program (LCP). First, the City did not adequately determine the bluff edge on the site. The applicant’s geologist established the bluff edge to be located at +NAVD40. However, the City did not reference the bluff edge in the staff report, nor did it analyze whether the determined bluff edge was consistent with the Land Use Element (LUE) definition of “bluff edge.” Without this determination, the City could not have determined whether the proposed new development (residential additions, decks, and the pool/spa) adhere to the 10-foot accessory structure setback requirement and the 25-foot primary structure setback requirement pursuant to LUE policies 10.2.7 and 10.2.8.

Furthermore, the City did not adequately determine whether or not the proposed project constitutes a major remodel. While the City determined that the project would result in less than 50% alteration of the roof structure, floor area, and exterior walls, the City did not require or review any foundation plans. Therefore, it is unknown if the foundation would be altered by more than 50%. In addition, the City did not factor in demolition/alteration calculations from previous remodel projects at the same site. Therefore, it is possible that approval of this project may result in a cumulative major remodel of the residence. Under the certified LCP, and based on Commission precedent, major remodels at a site must consider cumulative remodels/additions, and if a major remodel threshold is met, then the entire structure is required to come into compliance with the LCP policies. More information and analysis are needed to determine whether the residence has been substantially remodeled and whether the residence would need to come into compliance with the current LCP policies. Finally, the City did not require a waiver of rights to shoreline protection for the approved new development. Under the certified LCP, new development is not entitled to shore or bluff protection. Although no protective devices are proposed for this project, the Waiver of Rights to Shore/Bluff protective devices ensures that such devices are not approved at any point in the future to protect new development. In addition,

the City-approved project raises issues regarding the LCP's public access policies and visual resource policies.

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EXHIBITS

[Exhibit 1 – Vicinity Map and Project Location](#)

[Exhibit 2 – Project Plans](#)

[Exhibit 3 – City Determination](#)

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I. MOTION AND RESOLUTION – SUBSTANTIAL ISSUE

Motion: I move that the Commission determine that Appeal No. A-5-LGB-20-0055 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. Conversely, 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-20-0055** presents a **SUBSTANTIAL ISSUE** with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the certified Local Coastal Plan and/or the public access policies of the Coastal Act.

II. APPELLANTS' CONTENTIONS

The appellants contend that the City's approval does not comply with the City's certified LCP. More specifically, the appellants raise the following concerns with the City-approved development:

- 1) Bluff edge determination has not been made consistent with the Certified Land Use Element (LUE) definition, and, furthermore, all requirements relating to blufftop development have not been properly assessed (such as minimum required setbacks for development).
- 2) The City's classification of the project as a minor remodel was improperly determined.
- 3) The City should have addressed non-conforming/unpermitted development.
- 4) The City should have required the recordation of an irrevocable offer to dedicate an easement for public access and recreational use on and along the beach, pursuant to Open Space and Conservation Element (OSCE) Policy 3G.
- 5) The project is approved development on an oceanfront bluff face without considering potential visual impacts.
- 6) The project is not consistent with the LCP's natural resource policies. The project did not include a vegetation study, and the City should have required the project to revegetate the bluff slope pursuant to OSCE Policy 7K.
- 7) The project did not include adequate cultural resource protections as conditions of approval.
- 8) The project did not require a waiver of rights to shoreline protection as a condition of approval.

III. LOCAL GOVERNMENT ACTION

On February 27, 2020, the City of Laguna Beach Design Review Board (DRB) held a public hearing for the coastal development permit application and other discretionary

approval for additions to and a remodel of an existing single-family residence. The DRB conditionally approved Local Coastal Development Permit (CDP) No. 19-5311 and Design Review 19-5310. ([Exhibit 3](#)). The DRB also approved Revocable Encroachment Permit 19-5312 in order to allow the maintain a walkway and lighting associated with the single-family residence within the public right-of-way. In accordance with the California Environmental Quality Act (CEQA) guidelines, the Design Review Board determined the project to be categorically exempt pursuant to Section 15301, Class 1(e)(1) (Existing Facilities).

On September 15, 2020, the Coastal Commission's South Coast District Office received a valid Notice of Final Action (NOFA) for Local CDP No. 19-5311. The Commission issued a Notification of Appeal Period on September 15, 2020. On September 29, 2020, Mark and Sharon Fudge filed the appeal during the ten (10) working day appeal period ([Exhibit 4](#)). No other appeals were received. The City and applicant were notified of the appeal by Commission staff in a letter dated September 29, 2020.

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 approved by cities or counties may be appealed if it is located within certain geographic appealable areas, such as those located between the sea and the first public road paralleling the sea or within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of a coastal bluff. Furthermore, developments approved by counties may be appealed if they are not a designated "principal permitted use" under the certified LCP. Finally, any local government action on a proposed development that would constitute a major public work or a major energy facility may be appealed, whether approved or denied by the city or county [Coastal Act Section 30603(a)].

Section 30603 of the Coastal Act states in relevant part:

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

Section 30603(a)(1) of the Coastal Act establishes the project site as being in an appealable area because it is located between the sea and the first public road paralleling

the sea and within 300 feet of the inland extent of any beach. The project site would also qualify as an appealable area based on Section 30603(a)(2) because of its location on a coastal bluff. The issues raised in the subject appeal, on which the Commission finds there is a substantial issue as described further below, apply to proposed development located in the appeals area.

Grounds for Appeal

The grounds for appeal of an approved local CDP in the appealable area are stated in Section 30603(b)(1):

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

Section 30625(b)(2) of the Coastal Act requires a de novo 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 of substantial issue, and there is no motion from the Commission to find no substantial issue, the substantial issue question will be considered presumed, and the Commission will proceed to the de novo portion of the public hearing on the merits of the project. A de novo review of the merits of the project 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 3 or more Commissioners, decides to hear arguments and vote on the substantial issue question, proponents and opponents will have an opportunity to address whether the appeal raises a substantial issue. The time limit for public testimony will be set by the chair at the time of the hearing. As noted in Section 13117 of Title 14 of the California Code of Regulations, the only persons qualified to testify before the Commission at the substantial issue portion of the appeal process are the 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 Mr. Mark and Mrs. Sharon Fudge opposed the project in person at the local hearing. Testimony from other persons must be submitted in writing.

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

V. FINDINGS AND DECLARATIONS – SUBSTANTIAL ISSUE

A. PROJECT DESCRIPTION AND LOCATION

The City-approved project is described as the construction of 1,319 sq. ft. of additions greater than 15 feet in height, tandem parking, 372 sq. ft. of elevated decks, skylights, grading, a new pool/spa, a new pedestrian entry feature, landscaping, and the maintenance of a walkway and lighting within an unimproved portion of the public right-of-way. Specifically, the proposed project would add 2,161 sq. ft. of additions and remove 851 sq. ft. of existing living area (which equals the net 1,310 sq. ft. addition). The additions would accommodate a new living room, bathroom, laundry room, and powder room. A 350 sq. ft. mechanical yard is proposed below the existing outdoor patio to store pool/spa and three air-conditioning units. The tandem parking would be created through a remodel of the detached garage ([Exhibit 2](#)).

The project site consists of an 8,156 sq. ft. ocean-fronting blufftop lot that is developed with a three-story, 3,055 sq. ft. single-family residence that was constructed in 1916, prior to passage of the Coastal Act ([Exhibit 1](#)). The residence is listed on the City's Historic Resources Inventory with a K rating.¹ The project site is located adjacent to Crescent Bay Beach, to which public access is available via Baranca Street, located approximately 200 feet north of the project site. Single-family residences on ocean-fronting bluffs characterize the surrounding area. The project site is designated Village Low Density under the General Plan, which permits single-family residences to be developed.

Project Site History

The project site was originally developed with two single-family dwellings prior to 1931; the subject residence was constructed in 1916, and a second residence was constructed seaward of the residence at an unknown date. The seaward residence was demolished in 1960, leaving the subject residence and some foundation remnants from the demolished second residence. Several building permits were issued for minor alterations to the subject residence prior to January 1, 1977 effective date of the Coastal Act, but based on the City's property records history there was only one residence and no swimming pool authorized as of the effective date of the Coastal Act.

Several projects also took place on site after passage of the Coastal Act. In 1988, the residence and detached garage were re-roofed pursuant to Building Permit 88-434.² In 2000, Building Permit 00-0368 was issued to remodel the residence. However, a CDP was not issued for this work. In 2001, CDP 01-022 was issued for a 300 sq. ft. addition to the

¹ The City defines K-rated Historic structures as "very good historical architectural examples which strongly retain their original integrity. These buildings have significant architectural, historical, and/or aesthetic value and are find period examples."

² It is uncertain if the Coastal Commission issued a CDP or exemption for this work- this project took place prior to certification of the LCP, so the Coastal Commission would have been the permitting agency at this time.

residence and a variance to exceed the maximum building height. In 2003, CDP 02-003 approved the demolition and reconstruction of the detached garage. Finally, in 2004, Design Review Permit No. 04-821 was approved to construct a new entry canopy, a trellis, and insert a new window on the residence.³

B. LOCAL COASTAL PROGRAM CERTIFICATION

The City of Laguna Beach Local Coastal Program (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 Land Use Element (LUE), Open Space/Conservation Element, Technical Appendix, and Fuel Modification Guidelines (of the Safety General Element of the City's General Plan as adopted by Resolution 89.104). The Implementation Plan (IP) of the City of Laguna Beach certified Local Coastal Program (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 Local Coastal Program (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 a de novo hearing of the appealed project unless the Commission determines that no substantial issue exists with respect to the grounds on which the appeal has been filed pursuant to Section 30603(a) of the Coastal Act. Section 13115(c) of the Commission regulations provides that the Commission may consider the following five factors when determining if a local action raises a significant 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;
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.

³ Although a Design Review Permit was issued, it does not appear that a CDP was issued for this work.

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. The appellants raise several substantial issues discussed in detail below. Therefore, Staff is recommending that the Commission find that a substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603(a) of the Coastal Act. See Appendix A for a list of relevant and applicable definitions and policies of the LCP.

Contention 1: Bluff edge determination has not been made consistent with the Certified Land Use Element (LUE) definition, and, furthermore, all requirements relating to blufftop development have not been properly assessed (such as minimum required setbacks for development).

The appellants assert that the applicant's geologist relied on the Coastal Act definition of "bluff edge" instead of the certified Land Use Element definition of "ocean front bluff edge or coastal bluff edge" and, consequently, there is a potential that the City-approved development does not meet the LCP-required setbacks for new development on oceanfront bluffs, among other site constraints and requirements that may apply. They further argue that a bluff edge determination, consistent with the definition of Oceanfront Bluff edge contained in the certified Land Use Element (LUE) of the LCP, is necessary to properly consider and review the project's consistency with the required bluff edge setbacks.

The Land Use Element of the certified Land Use Plan (LUP) of the LCP contains the following definition of Oceanfront Bluff Edge or Coastal Bluff Edge:

The California Coastal Act and Regulations define the oceanfront bluff edge as the upper termination of a bluff, cliff, or seacliff. In cases where the top edge of the bluff is rounded away from the face of the bluff, the bluff edge shall be defined as that point nearest the bluff face beyond which a downward gradient is maintained continuously to the base of the bluff. In a case where there is a step like feature at the top of the bluff, the landward edge of the topmost riser shall be considered the bluff edge. Bluff edges typically retreat over time as a result of erosional processes, landslides, development of gullies, or by grading (cut). In areas where fill has been placed near or over the bluff edge, the original bluff edge, even if buried beneath fill, shall be taken to be the bluff edge. [LUP Appendix pp. A-12, #101]

The certified Land Use Plan (LUP) also establishes minimum bluff edge setbacks for new development such as additions to a principal structure.

Action 10.2.7 of the LUE of the certified Land Use Plan (LUP) states:
Require all new development located on oceanfront bluffs to be sited in

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

Action 10.2.8 of the LUE of the certified LUP states:

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

LUE Action 10.2.7 and 10.2.8 (cited above) require that development be sited to meet a building stringline but not less than a 25-foot setback from the bluff edge for principal structures and major accessory structures that require a structural foundation (e.g. pools, caisson-supported retaining walls), and a 10-foot setback from the bluff edge for minor accessory structures/improvements (e.g. decks, landscaping, etc.).

The appellants state that a geology report provided by Geofirm for the project estimates the bluff edge to be located at approximately +40NAVD88, which is seaward of the residence and associated patio development. The appellants argue that this bluff edge is incorrect, and that the actual bluff edge, using the certified LUE definition stated above, is likely located far further landward underneath the existing residence. The applicant confirms Geofirm's bluff edge determination at +40NAVD88, but argues that the bluff edge was determined using the LUE and was performed in accordance with Technical Memorandum W11.5 prepared by former Commission Staff Geologist Mark Johnsson.

In their appeal, the appellants do not provide substantive evidence to demonstrate that the bluff edge was determined incorrectly. However, the City's staff report does not contain any analysis of the bluff edge determination. The City's findings in approval of the proposed development do not analyze whether the +40NAVD bluff edge determination is consistent with the LUE definition of bluff edge, nor do the findings discuss whether the proposed new development (the residential additions, pool, and spa) is consistent with 25-foot minimum setback requirement for primary structures and the 10-foot minimum setback requirement for accessory structures. The City's staff report identifies the Geofirm report as an attachment to the staff report, but the report was not provided to the Coastal Commission as part of the City's administrative record.

Given the questions as to the bluff edge determination, the City record does not demonstrate that the City-approved development is wholly consistent with the policies of the LCP or that all the necessary and appropriate conditions (e.g. minimum bluff setbacks, no development on the bluff face, etc.) have been imposed. The City's findings do not provide an adequate degree of factual and legal support for its decision to approve the proposed development and grant a Local CDP. Therefore, the Commission finds that the appeal does raise a substantial issue with respect to the project's conformance to the certified LCP.

Contention 2: The City’s classification of the project as a minor remodel was improperly determined.

The appellants’ second contention is that the City improperly defined the project as a minor remodel. They point to the extensive work that has been undertaken on the residence since its construction in 1916 to argue that the residence could at this point be considered new structure.

Certified LUE Glossary Entry 89 defines a major remodel as follows:

“Alteration of or 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.

A Major remodel is a structural renovation and/or addition which equals or exceeds fifty percent of the original gross floor area of the structure on the lot.

The City’s staff report states that the proposed project would demolish seven percent of the existing roof structure and 41 percent of the exterior walls. The floor area of the current residence would be increased by approximately 43 percent. However, the City’s staff report notes that foundation plans were not included in the project plans, so the report did not analyze the extent of demolition of the foundation of the residence. In previous Commission actions, major remodels have been determined based on the extent of demolition of any structural element- which includes the floor area, exterior walls, roof structure, and foundation. Even if the floor area, exterior wall, and roof structure alterations come in under 50%, if the foundation of the residence is altered by 50% or more, the project may be considered to constitute a major remodel. This is significant because major remodels are likened to “new development” and require the entire structure (including accessory development) to be brought into conformity with the LCP policies, including the required bluff edge setbacks.

Moreover, previous Commission action in this area has considered cumulative alterations to any structural element of a structure of 50% or more to constitute a major remodel. In its analysis of the project, the City only reviewed the extent of structural element demolition proposed by the subject project. However, the City did not analyze cumulative changes to the floor area, exterior walls, roof structure, and foundation developed through earlier projects. Therefore, it is possible that, considering cumulative additions/remodels along with the proposed development, the structure may surpass the 50 percent threshold of structural element alterations the proposed residence might be considered a “new” structure. Additional information and analysis is needed to confirm the total amount of structural element alteration. However, in this case, there is a low degree of factual support for the City’s determination to approve the project as a minor remodel, and the appellants’ contention does raise a substantial issue.

Contention 3: The City should have addressed non-conforming/unpermitted development.

The appellants assert that the City should have required the removal of non-conforming and unpermitted development, including the remaining foundations from the demolished seaward residence, a beach access stairway, and accessory seaward decks. They argue that the beach access stairway is not pre-coastal, and therefore non-legally conforming seeing as the stairway is built along the bluff face. The appellants also suggest that the seaward decks may have been constructed under a remodel project in 2000 that only received a building permit (thus rendering the decks unpermitted).

Unpermitted development, considered on its own, is not a ground for appeal. In most cases, the appropriate mechanism to address unpermitted development is to pursue either local code enforcement or an enforcement action through the Coastal Commission's Enforcement Division. However, the certified LUP does offer the follow policy regarding unpermitted and obsolete development:

LUE Action 7.3.8 On oceanfront bluff sites, require applications where applicable, to identify and remove all un-permitted and/or obsolete structures, including but not limited to, protective devices, walkways and stairways, which encroach into oceanfront bluffs.

Furthermore, LUE Action 7.3.10 states:

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.

At this time, Commission staff does not have enough information to verify whether or not the beach access staircase and the seaward decks are permitted or not. However, the project does not appear to propose any work to the beach access staircase or the seaward decks. Therefore, LUE Action 7.3.8 may not apply in this case. However, as stated above, the precise bluff edge location is not clear. If the bluff edge is determined to be further landward than the Geofirm estimate of +40NAVD, then it is possible that the beach access staircase and seaward decks (whether permitted or not) could be nonconforming structures. Furthermore, if the project is determined upon further analysis to constitute a major remodel, then all nonconforming development, including the previously mentioned development, would need to be removed pursuant to LUE Policy 7.3.10. The City's staff report did not analyze any obsolete, nonconforming, or potentially unpermitted development in its staff report for the project. Therefore, there is not enough support for the City's determination that the proposed project is consistent with all applicable policies of the certified LCP, and the appellants' contention raises a substantial issue.

Contention 4: The City should have required the recordation of an irrevocable offer to dedicate an easement for public access and recreational use on and along the beach, pursuant to Open Space and Conservation Element (OSCE) Policy 3G.

OSCE Policy 3G states:

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

The appellants assert that because the proposed project includes additions exceeding 10% of the existing residence, the City should have required a public access easement along the beach in front of the project site. The City's staff report does not explain why a public access easement was not required for this project, or whether a public access easement has already been offered by the property owner or previous property owner. The City did not include findings about the ownership of the sandy beach below the property or the potential impacts that development might have on public access to the beach below. Therefore, there is an inadequate level of support for the City's approval of the project without a public access easement requirement. Therefore, the appellants' contention raises a substantial issue.

Contention 5: The project is approved development on an oceanfront bluff face without considering potential visual impacts.

The appellants contend that the City did not require the applicant to site and design development to prevent adverse impacts to scenic resources, especially those located in or near parks and recreation areas.

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.

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.

The Commission has typically 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. The proposed scope of work includes additions to the single-family residence that exceed 15 feet in height as new decks, and a new pool and spa. All of the aforementioned elements have the potential to impact public views of the coastal bluffs. Given that the current residence exceeds the allowable height limit in the area (which the City has allowed under a variance granted in 2001), the additions should have been analyzed for additional public view impacts. The pool and spa require additional grading on a bluff top lot, and the overall increase in landform alteration should have been studied for additional view impacts. In addition, the City should have considered alternatives to the proposed glass railings, which are generally known to increase glare.

Overall, given the unique visual qualities of coastal bluffs, the City should have analyzed the impact to public coastal views to and along coastal bluffs more closely. In this case, the proposed work is substantially more than just a simple repair/maintenance project, and the increased landform alteration through the grading for the pool and spa has the potential to negatively impact coastal views along the coastal bluffs. Therefore, the appellants' contention does raise a substantial issue.

Contention 6: The project is not consistent with the LCP's natural resource policies. The project did not include a vegetation study, and the City should have required the project to revegetate the bluff slope pursuant to OSCE Policy 7K.

OSCE Policy 7K states:

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.

The appellants argue that the City should have required a vegetation study to analyze the feasibility of revegetating the bluff face, and further, that the City should have considered conditioning its approval on revegetating the slope to enhance the scenic and conservation values of the bluff. Although the project does include some grading to create a new pool and spa adjacent to the residence, there is no additional grading proposed further down the bluff slope. Because no additional work is being proposed further down the bluff face, it is not imperative to revegetate the bluff face at this time. If, at some point in the future, the homeowners propose additional grading on the bluff slope, the City can consider the option to require revegetation of the slope. However, for the purposes of this project, the appellants' contention does not raise a substantial issue.

Contention 7: The project did not include adequate cultural resource protections as conditions of approval.

The appellants assert that cultural and archaeological protections should have been included in the City's conditions of approval for the project. In their appeal, the appellants reference an Archeological and Paleontological Resources Assessment that was prepared by Dudek in October, 2019. The assessment identifies six cultural resources within half a

mile of the project site, which includes the residence itself.⁴ The assessment also states the following regarding potential archeological resources:

“...the proposed Project site is located near natural resources which would have been important to Native Americans in prehistoric and protohistoric times and therefore, the possibility of encountering intact archaeological deposits at subsurface levels exists. Moreover, based on geomorphological evidence, the area within the proposed Project site has a moderate to high potential to contain unanticipated buried paleontological resources. As such, management recommendations to reduce potential impacts to unanticipated archaeological and paleontological resources and human remains during construction activities are provided below. With the implementation of these measures, impacts to archaeological and paleontological resource as a result of the proposed Project will be less than significant.”

The appellants note that the Assessment does not clarify whether Native American tribes were consulted about cultural and archeological resources. Furthermore, the appellants argue that mitigation measures for cultural and paleontological resources should have been included as permit conditions in order to comply with the California Environmental Quality Act (CEQA).

While CEQA is not the standard of review for this appeal, the City does have an obligation to ensure that development projects are consistent with any CEQA provisions. Although neither the certified LCP or the Coastal Act contain policies specific to archaeological and cultural resources, the Coastal Commission has considered cultural and archeological resources to be coastal resources that should be protected. The City’s staff report states that Dudek did not identify any cultural or archaeological resources on site. However, given that the project site is located in an area that has the potential to contain such resources, the City should have required, at a minimum, a monitor during the proposed excavation activities for the pool. The appellants’ contention thus raises a substantial issue.

Contention 8: The project did not require a waiver of rights to shoreline protection as a condition of approval.

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.

The appellants contend that the City erred in not requiring a waiver of future shoreline protective devices for the project, referencing a staff report statement that the repair and

⁴ The residence was classified as a local Historic resource, but has since been taken off the historic inventory due to extensive renovations that impacted the historic qualities of the residence.

maintenance project is considered new development. Under LUE Action 7.3.9, the appellants argue, the project should not rely on shoreline protective devices and include a waiver of rights to any new shoreline protective device.

The City's staff report does not identify any existing or proposed shoreline protective devices, and further notes that the proposed project would not rely on shoreline protection. However, the proposed project includes a significant amount of new development, including residential additions, decks, a pool, and spa. Although the residence as a whole is pre-coastal, the development proposed under this project is not entitled to bluff or shoreline protection now or at any point in the future. Although no protective devices are being proposed now, a deed-restricted waiver of rights is necessary to ensure that no protective devices are approved to protect new development at any point going forward. The City's approval of this project with no required waiver of rights to shoreline protection effectively prejudices its certified LCP and could adversely impact surrounding blufftop structures that may be redeveloped in the future. Therefore, the appellants' contention raises a substantial issue.

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 certified LCP.

The City did not substantially support its approval of the project as being consistent with all of the applicable policies of the certified LCP and the public access and recreation provisions of the Coastal Act (specifically the bluff top/face/hazards policies). In addition, the City did not condition the project to ensure consistency with policies regarding protection of water quality policies, landscaping, and public access. Finally, without foundation plans, the actual scope of the proposed project is unclear, which necessarily means that evaluation of the project's consistency with the LCP policies cannot fully be made at this time. Therefore, there is a low degree of factual and legal support for the local government's decision that the project, as conditioned, is consistent with the LCP, 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 City granted a Local CDP for additions and renovations to a single-family residence on the subject site located on an ocean-fronting blufftop property. The record does not contain an adequate analysis of the foundation elements of the proposed development and its potential cumulative effects on similar development in Laguna Beach bluff areas. Therefore, it is not possible at this time to determine the extent and scope of the project, and this factor supports a finding of substantial issue.

3. The significance of the coastal resources affected by the decision. 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. 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 bluff property. The majority of ocean-fronting development in Laguna Beach is sited on bluff properties, and the decision of the local government for this project might influence future permit decisions made in the City’s Coastal Zone. Allowing the local government’s decision to approve improvements potentially encroaching into bluff edge setback areas or sited on a bluff face would set a negative precedent for future interpretations of its LCP. If the subject local CDP is found to be consistent with the LCP based on the current record, there is a potential that future applicants, especially within the vicinity, will reference this permit if they wish to develop other oceanfront coastal bluff sites, of which there are hundreds in Laguna Beach. Without adequate information to determine the extent and scope of the proposed development, 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 blufftop development are issues of statewide significance, given that coastal bluffs are an important coastal resource throughout the state, not just in Laguna Beach. Requiring consistency with the certified LCP (particularly policies relating to bluff face/top development) and the public access and recreation provisions of the Coastal Act is significant to all the people of California who wish to enjoy the public beaches of California. Unsubstantiated application of these policies could have regional or statewide ramifications regarding other similar LCPs and their policies regarding bluffs. This factor supports a finding of substantial issue.

Conclusion

In conclusion, staff recommends that the Commission find that a substantial issue exists with respect to whether the local government action conforms with the policies of the City’s certified LCP and the public access policies of the Coastal Act.