

CALIFORNIA COASTAL COMMISSION

SOUTH COAST DISTRICT OFFICE
301 E. OCEAN BLVD, SUITE 300
LONG BEACH, CA 90802-4325
VOICE (562) 590-5071
FAX (562) 590-5084



Th11c

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STAFF REPORT: APPEAL –SUBSTANTIAL ISSUE

Appeal No.: A-5-LGB-20-0002

Applicant: Todd Schiffman Living Trust

Agents: Jay Gioia

Local Government: City of Laguna Beach

Local Decision: Claim of Exemption from Coastal Development Permit Requirements

Appellants: Mark & Sharon Fudge

Project Location: 31361 Coast Highway, Laguna Beach, Orange County
(APN: 056-032-06)

Project Description: Appeal of City of Laguna Beach Coastal Development Permit Exemption associated with Zoning Plan Check No. 19-5391 to remove the existing composite slate roof, wood sheathing, and a double-layer of “Class A” felt underlayment and replace all with like materials, on an existing multi-level, single-family residence with no change in height or usage.

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 follow, during which the Commission will take public testimony.

SUMMARY OF STAFF RECOMMENDATION

The City of Laguna Beach determined that the following development was exempt from Coastal Development Permit (“CDP”) requirements and issued Zoning Plan Check (“ZPC”) No. 19-5391 for the removal of existing “composite slate roof material and replace[ment] with slate roof material”, as well as “wood sheathing replaced with like materials [and installation of] a double layer Class A felt underlayment”. The City’s approval states that “all replacement materials will be hauled by hand” and that there will be “no presence of mechanized equipment or construction materials within 50 feet of the bluff edge”. The subject site is a 6,670 square foot bluff top beachfront lot with a zoning designation of Low Density Residential (R-1), located at 31361 Coast Highway in the South Laguna Area of the City of Laguna Beach.

Staff recommends that the Commission determine that a substantial issue exists with respect to the grounds on which the appeal has been filed. The primary basis of the appeal rests on the assertion that the City of Laguna Beach LCP does not currently allow exemptions for repair and maintenance activities on all projects; the LCP only allows exemptions for repair and maintenance activities associated with existing shoreline protective devices. The City of Laguna Beach has submitted Local Coastal Program Amendment No. 2-19, which would more broadly apply the repair and maintenance exemption provisions to residential and non-residential developments. However, this amendment has not yet been certified by the Commission and is not yet in effect.

The appellants’ additional contentions that the project is further ineligible for an exemption from CDP requirements, based on the presence of mechanized equipment and construction materials within 50 feet of the coastal bluff edge, are rebutted by the applicant’s project description and the City’s record. The applicant specifically states that project construction will not include the use of pulleys, a conveyor belt, or other mechanized machinery. The applicant addresses proper disposal of replacement materials at a specific disposal site, as well as plans to transport materials manually in lieu of mechanized equipment. The applicant also lists the construction equipment to be used (nail guns, air compressor, hammers, utility knives, and simple roofing bars), all of which may be categorized as hand tools presenting minimal environmental risk. The appellant also separately contends that a parcel of land adjacent to the subject site was abandoned by the City without a CDP in 2012 and its subsequent purchase by the property owner of the subject site may be a violation of the CDP requirements of the Local Coastal Program. Although the abandonment and sale of the property are not bases for appeal of the proposed re-roofing project, the abandonment and sale, which constitute violations of the Local Coastal Program, are described in more detail below to, among other things, help avoid inadvertent legalization of said activities through this Commission action. The project

poses no alteration to height, appearance, square footage, or intensity of use of the site. Despite these considerations, however, the City's exemption determination raises a substantial issue on the basis of the project's inconsistency with the City's current certified LCP repair and maintenance provisions.

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APPENDICES

Appendix A – Relevant LCP Policies and Definitions

EXHIBITS

Exhibit 1 – Project Location

Exhibit 2 – Local Coastal Development Permit Exemption

Exhibit 3 – Appeal

I. MOTION AND RESOLUTION – SUBSTANTIAL ISSUE

Motion: I move that the Commission determine that Appeal No. A-5-LGB-20-0002 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 staff's recommendation on this motion will result in 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-20-0002** 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 City-approved local coastal development permit exemption would allow the removal and like-for-like replacement of multiple layers of roofing on an existing single-family residence at 31361 Coast Highway in Laguna Beach. An appeal was filed by Mark and Sharon Fudge on January 16, 2020 (Exhibit 3).

The appellants contend that the City's determination that the project is exempt from coastal development permit requirements is not supported by the provisions of the City of Laguna Beach LCP, which only exempts repair and maintenance activities if associated with existing shoreline protective devices. The appellants also assert that the project will necessitate the presence of construction materials and mechanized equipment, which violates provisions of the City's exemption form. Additionally, the appellants state that the City's exemption did not include conditions to minimize potential adverse effects to coastal resources and the environment. They also allege that the applicant's purchase of a land parcel adjacent to the project site is a potential violation of the Local Coastal Program and Coastal Act Chapter 3 policies.

Regarding noncompliance with current Local Coastal Program policies, the appellants refer to the City's November 14, 2019 Design Review Board staff report findings, which describe the necessity of the Local Coastal Program Amendment No. 2-19. The appellants highlight an excerpt of the staff report explicitly stating that one effect of the amendment would be that "a re-roof of like for like materials on a single-family home would be considered [exempt] repair and maintenance". The appellants assert that this will not go into effect until Amendment No. 2-19 has been certified by the Coastal Commission, and thus the re-roofing project should not have been found exempt.

Regarding noncompliance with exemption regulations, the appellants cite Public Resources Code Title 14, Division 5.5, California Code of Regulations § 13252(a)(3)(b) (the regulations which apply to exempt development in the Commission's original

jurisdiction and in uncertified areas), barring the presence of mechanized equipment or construction materials within 50 feet of the bluff edge. They additionally state that this regulation would designate the project as an “extraordinary method of repair and maintenance” requiring a coastal development permit. This assertion of noncompliance relies on the assumption that the project is within 50 feet of the bluff edge and that the applicant’s project description failed to list mechanized equipment or construction materials, since the tools and materials described in the application are not mechanized.

The appellants contend that the approval of an exemption was detrimental to visual resources and water quality, as it didn’t allow for the conditions of approval that could have accompanied a coastal development permit. The alleged substantial adverse impacts to visual resources and water quality are not further specified.

Finally, the appellants indicate that in 2013 the applicant purchased the land parcel located adjacent to the project site—a parcel referred to as “Park” on City maps, spanning 30 feet and containing a trail that neighboring property owners have historically used to access the beach. This parcel was abandoned by the City in 2012 without issuance of a coastal development permit, which the appellants argue to be a violation of the Local Coastal Program. The appellants also indicate the current fence and gate blocking the “Park” parcel entry with a “No Trespassing” sign to be potential violations of Coastal Act Chapter 3 public access policies. The appellants do not indicate the relevance of the sale of the adjacent parcel in regard to the proposed roof replacement project.

III. LOCAL GOVERNMENT ACTION

On October 8, 2019, the City of Laguna Beach Design Review Board staff requested clarification on the project’s eligibility for an exemption from Commission staff and received guidance from Amber Dobson, District Manager of the South Coast District. The relevant portion of the response reads as follows:

“In response to your inquiries, based on the limited information provided in your email, the Executive Director is not able to make a final determination as to whether the proposed development is exempt or requires a coastal development permit (“CDP”). Nevertheless, both projects **may** be exempt, if certain circumstances exist.

The proposal to replace roofing material on the single-family residence may be exempt repair and maintenance, if the project does not include either of the following:

1. structural changes or alterations, which cumulatively, in addition to past structural alterations (whether or not they were permitted), would result in replacement of 50% or more of the structure (See Tit. 14, Div. 5.5, Cal. Code of Regs. § 13252(b)); or

2. the presence of mechanize equipment or construction materials within 50 feet of the bluff edge.

Please be aware that one or both projects **may not** be exempt from the requirement to obtain a CDP if a prior CDP issued for development at the project site contains a condition requiring the property owner to obtain a new CDP, or an amendment to a prior CDP, for any future repair or maintenance of the structures.”

On December 10, 2019, the City of Laguna Beach Design Review Board determined that the proposed development was exempt from coastal development permit requirements and issued ZPC 19-5391, as reflected in Exhibit 2. On January 3, 2020, the Design Review Board’s determination of exemption was received by the Coastal Commission, at which point the Commission’s 10 working day appeal period was established, extending to January 17, 2020. On January 16, 2020, the Commission received Mark and Sharon Fudge’s appeal. No other appeals were received. On January 17, 2020, a Notification of Appeal was sent to the Laguna Beach Community Development Department and the applicant, notifying each party of the appeal of the City’s coastal development permit exemption. The Design Review Board’s decision was automatically stayed, pursuant to Public Resources Code Section 30623, pending Commission action on the appeal.

IV. APPEAL PROCEDURES

After certification of an LCP, the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits and exemption claims. Section 30625(a) further specifies appealable action, including claim of exemption for any development by a local government. Development projects and exemption determinations 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.

The project site is in an appealable area because it is located between the sea and the first public road paralleling the sea and is 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 appeals area.

Grounds for Appeal

Section 30625(b)(2) of the Coastal Act requires the Commission to conduct a de novo review of the appeal unless the Commission determines that no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603(a) of the Coastal Act. If Commission staff recommends a finding 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 proceed to the de novo portion of the public hearing on the merits of the project. A de novo public hearing on the merits of the project uses the certified LCP as the standard of review. (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 (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 Mark and 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 government action. If the Commission finds that the appeal raises a substantial issue, the de novo phase of the hearing will follow at a later date during which the Commission will take public testimony.

V. FINDINGS AND DECLARATIONS – SUBSTANTIAL ISSUE

A. PROJECT DESCRIPTION AND LOCATION

The City-approved coastal development permit exemption associated with ZPC 19-5391 would allow the applicant to remove the existing composite slate roof material and wood sheathing for replacement with like materials, as well as install a double-layer of felt underlayment. According to information in the City record, the existing property is a 1,314 square foot, single-level single family residence. The repair and maintenance activities approved by the City would not result in increase to the property height or area, or change the use of the site. The subject site is located at 31361 Coast Highway in the City of Laguna Beach, Orange County.

The subject site is a triangular, 6,670 square foot oceanfront bluff-top lot located above the upcoast end of West Street Beach. West Street Beach is a sandy public beach with multiple access ways, one of which is the stairway located directly adjacent to the subject site. The zoning is Residential Low Density (R-1). The subject site is located immediately adjacent to a staircase at the northwest leading to West Street Beach, with Coast Highway and a side-yard on the remaining two sides to the northeast and southeast.

On September 18, 2012, the Laguna Beach City Council held a public hearing and resolved to abandon the “Park” parcel adjacent to (west of) the subject site for subsequent private purchase. The City pursued this action without processing a coastal development permit; the parcel was subsequently purchased by the property owner of the subject site and is now maintained for private use. No development is proposed on the adjacent parcel.

No bluff edge determination or geological analysis has been submitted for the site.

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 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 IP of the City of Laguna Beach certified LCP is comprised of more than 10 documents, including Title 25, the City’s Zoning Code. The Coastal Land Use Element portion 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’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 de novo review of the appeal unless the Commission determines that no substantial issue exists with respect to the grounds on which the appeal has been filed pursuant to Section 30603(a) of the Coastal Act. The term “substantial issue” is not defined in the Coastal Act or its implementing regulations.

Section 13115(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 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 only local issues, or those of regional or statewide significance.

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

D. SUBSTANTIAL ISSUE ANALYSIS

As stated in Section IV of this report, the grounds for an appeal of an exemption issued by the local government are the project's conformity with the policies of the LCP. The primary basis of the appeal rests on the assertion that Laguna Beach's LCP does not currently allow exemptions for repair and maintenance activities on all projects; the LCP only allows exemptions for repair and maintenance activities associated with existing shoreline protective devices. The appellants raise a substantial issue discussed in detail below. Therefore, Staff recommends that the Commission find that **a substantial issue exists** with respect to the grounds on which an appeal has been filed pursuant to Section 30603(a) of the Coastal Act. See Appendix A for list of relevant and applicable definitions and policies of the LCP.

Appellants' Contention No. 1: Inconsistency with LCP Exemption Provisions

The appellants contend that the City of Laguna Beach erred in granting a CDP exemption that is not supported by the provisions of the current certified LCP. The City approved the exemption on the basis of the Coastal Act and the Commission's regulations, primarily considering factors such as the absence of construction materials and mechanized equipment at the project site. The City's approval of the exemption is excerpted below:

"The proposed development is judged to be repair or maintenance activity not resulting in an addition to or enlargement or expansion of the object of such activities and not involving any risk of substantial adverse environmental impact (Coastal Act 30610(d)).

1. *No structural changes or alterations, which cumulatively, in addition to past structural alterations (whether or not they were permitted), result in replacement of 50% or more of the structure (See Tit. 14, Div. 5.5, Cal*

Code of Regs. Section 13252(b)); and

2. *There is no presence of mechanized equipment or construction materials within 50 feet of the bluff edge.”*

The language of this exemption rationale stems from Section 13252(a)(3)(B) of the Commission’s regulations:

(a) For purposes of Public Resources Code Section 30610(d), the following extraordinary methods of repair and maintenance shall require a coastal development permit because they involve a risk of substantial adverse environmental impact:

(3) Any repair or maintenance to facilities or structures or work located in an environmentally sensitive habitat area, any sand area, within 50 feet of the edge of a coastal bluff or environmentally sensitive habitat area, or within 20 feet of coastal waters or streams that include:

(A) The placement or removal, whether temporary or permanent, of rip-rap, rocks, sand or other beach materials or any other forms of solid materials;

(B) The presence, whether temporary or permanent, of mechanized equipment or construction materials.

Section 25.07.008 (C)(4)(a) and (b) of the Laguna Beach Municipal Code repeats Coastal Act Section 13252(a)(3)(B), but narrows its scope for categories of repair and maintenance activities that are exempt from CDP requirements:

(C) Repair and Maintenance Activities. Repair and maintenance of shoreline protective works that do not result in an addition to, or enlargement or expansion of, unless classified under one of the following:

(4) Any repair or maintenance to facilities or structures or work located in an environmentally sensitive habitat area, any sand area, within fifty feet of the edge of a coastal bluff or environmentally sensitive habitat area; or within twenty feet of any coastal waters and streams that include:

(a) The placement or removal, whether temporary or permanent, of rip-rap, rocks, sand or other beach materials or any other forms of solid materials,

(b) The presence, whether temporary or permanent, of mechanized equipment or construction materials, except that the use of such equipment solely for routine beach cleaning and park maintenance shall not require a coastal development permit;

While the applicant’s proposed repair and maintenance could qualify as exempt under Section 13252(a)(3)(B) of the Commission’s regulations, because the project is located

within the City of Laguna Beach LCP jurisdiction, the City must adhere to the language of its certified LCP. As it currently stands, repair and maintenance projects may only be found exempt if the subject of the work is a shoreline protective device, as shown above in Section 25.07.008.¹ The City has submitted Local Coastal Program Amendment No. 2-19, which would more broadly apply repair and maintenance provisions to residential and non-residential developments. But this amendment has not yet been certified by the Commission and is not yet in effect.

Thus, based on a review of the plain language of the certified LCP, the Commission finds that a substantial issue exists with the City's approval of a CDP exemption for a project that is inconsistent with the exemption provisions of the LCP.

Appellants' Contention No. 2: Mechanized Equipment

Regarding noncompliance with exemption regulations, the appellants cite Public Resources Code Title 14, Division 5.5, California Code of Regulations § 13252(a)(3)(b) stating that the presence of mechanized equipment or construction materials for use in a repair and maintenance project within 50 feet of the bluff edge renders the project ineligible for the repair and maintenance exemption. They additionally state that this regulation would designate the project as an "extraordinary method of repair and maintenance" requiring a CDP. This assertion of noncompliance relies on the assumption that the project is within 50 feet of the bluff edge and that the applicant's project description failed to list mechanized equipment or construction materials, since the tools and materials described in the application are not mechanized.

This contention is rebutted by the applicant's project description and the City's record. The applicant specifically states that project construction will not include the use of pulleys, conveyor belt, or other mechanized machinery and addresses proper disposal of replacement materials at a specific disposal site, as well as plans to transport materials manually in lieu of mechanized equipment. The applicant also lists the construction equipment to be used (nail guns, air compressor, hammers, utility knives, and simple roofing bars), all of which may be categorized as hand tools presenting minimal environmental risk.

The appellants contention regarding the use of mechanized equipment does not appear to be supported by any evidence. It is ultimately irrelevant, though, because as described in the prior section, pursuant to Section 25.07.008(C) of the Laguna Beach Municipal Code, even if the proposed repair and maintenance activities did involve the use of mechanized equipment, that factor only prevents projects involving the repair and maintenance of shoreline protective works from gaining exemption, per subdivision (C)(4)(b). Because the project does not involve a shoreline protective work, it is not eligible for that exemption regardless of whether it involves the use of mechanized equipment.

Appellants' Contention No. 3: Necessity of Special Conditions

¹ Although LCPs must generally be interpreted so as to be consistent with the Coastal Act, they can be more restrictive, as local governments can impose additional restrictions and procedural requirements, pursuant to both the Coastal Act and their police powers. See, e.g., Cal. Pub. Res. Code § 30005(a); *McAllister v. California Coastal Commission* (2009), 169 Cal.App.4th 912, 930, n.9.

The appellants contend that the approval of an exemption was detrimental to visual resources and water quality, as it didn't allow for the conditions of approval that could have accompanied a coastal development permit. The alleged substantial adverse impacts to visual resources and water quality are not further specified. No evidence has been presented to the Commission to support the allegation that the re-roofing project would adversely affect visual resources and water quality – or that special conditions are needed to prevent adverse impacts. Thus, this contention does not raise a substantial issue with respect to this appeal.

Appellants' Contention No. 4: CDP Required for Vacation of Adjacent "Park" Parcel

Finally, the appellants indicate that in 2013 the applicant purchased the land parcel located adjacent to the project site—a parcel referred to as "Park" on City maps, spanning 30 feet and containing a trail neighboring property owners have historically used to access the beach. This parcel was abandoned by the City in 2012 without issuance of a CDP, which the appellants argue is a violation of the LCP. The appellants also indicate the current fence and gate blocking the "Park" parcel entry with a "No Trespassing" sign are potential violations of Coastal Act Chapter 3 public access policies. The appellants do not demonstrate the relevance of the sale of the adjacent parcel to the proposed roof replacement project, much less to the project's exemption status. Thus, this contention does not raise a substantial issue with respect to this appeal, although unpermitted development is discussed in Section VI below and the Commission's enforcement division will consider how to address said violations as a separate matter.

SUBSTANTIAL ISSUE FACTORS:

The Commission applies five factors in making a determination whether an appeal raises a substantial issue per Section 13115(b).

1. The degree of factual and legal support for the local government's decision that the development is consistent with the relevant provisions of the Coastal Act.

The City did take steps to verify its exemption determination with Commission staff through correspondence and supported its approval with relevant Coastal Act policies as implemented through the Commission's regulations. The decision was not substantiated, however, by the relevant exemption provisions of the LCP. Therefore, there is inadequate 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 Exemption for the removal of the existing composite slate roof, wood sheathing, and a double layer of underlayment, as well as like-for-like replacement of all materials. The proposed work will be conducted on a multi-level, single-family residence with no alteration to the building height, area, density, or intensity of use.. The extent and scope of the project appears to be a relatively minor alteration to an existing structure, conducted with tools and methods that pose a low risk of environmental impact. Therefore, this factor alone does not support a finding of substantial issue.

3. The significance of the coastal resources affected by the decision.

The subject site is an oceanfront bluff top lot, which may raise concerns that are not routinely raised on interior, infill lots. Bluff top lots may raise specific concerns, including hazards/geologic stability, protection of water quality, and potential public access issues. The subject site is located directly adjacent to an beach access staircase, which further necessitates caution. Yet the nature of the project poses no risk to coastal resources. Therefore, this factor alone does not support finding of substantial issue.

4. The precedential value of the local government’s decision for future interpretations of its LCP.

The majority of ocean-fronting development in Laguna Beach is located on bluff top properties, and the exemption of this project may influence the City’s decisions on future CDP applications – specifically regarding the necessity of coastal permits as opposed to exemptions. Allowing the local government’s decision to authorize repair and maintenance activities on a bluff top home without a CDP could set a negative precedent for future LCP interpretations. If the subject exemption is found to be consistent with the LCP, there is a possibility that future project applicants will reference this action if they wish to perform more substantial bluff top or bluff face developments without a CDP. There are hundreds of these potential project locations in Laguna Beach. This factor supports a finding of substantial issue.

5. Whether the appeal raises local issues, or those of regional or statewide significance.

Bluff top developments, and correct application of permit requirements pursuant to a certified LCP, are an issue of statewide significance, given that bluff top and bluff face structures are present and in need of repair throughout the state. Requiring local governments to make decisions consistent with their certified LCP is a matter of statewide importance. Unsubstantiated application of these policies could have regional or statewide ramifications regarding similar LCPs and their policies regarding bluffs (e.g. repair and replacement of bluff face decks, stairs, and other accessory structures without a permit). 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.

VI. COASTAL ACT AND LOCAL COASTAL PROGRAM VIOLATIONS

Violations of the Coastal Act have occurred on property that is located at 31361 Coast Highway and on a vacant parcel owned by the applicant that abuts the property at 31361 Coast Highway. These violations include, but are not necessarily limited to, an unpermitted change in the intensity of use of the vacant parcel noted above. Also, City building permits indicate that unpermitted improvements to the residence 31361 Coast Highway, have been

undertaken, including but not necessarily limited to a re-roof, demolition of a kitchen to convert an unpermitted triplex into a duplex, and various other minor improvements.

With regard to the change in intensity of use of the vacant parcel, in 2012 the City vacated the parcel, which had been dedicated to the County of Orange, and accepted, for public park purposes through Tract Map No. 831. The park parcel was subsequently transferred to the City, and after the vacation in 2012, the City transferred the property to the applicant, thus changing its use from public park to private use. City Zoning Code Section 25.07.004 states that any activity defined as “development” within the coastal zone requires a coastal development permit. Under the City Local Coastal Program, an action that results in a "change in the density or intensity of use..." constitutes "development" as defined by City Zoning Code Section 25.07.006 and, therefore, requires a coastal development permit. Commission staff has not located a coastal development permit for the City’s vacation of the park parcel. Any unpermitted development that occurs within the Coastal Zone in the City, which is not exempt, constitutes a violation of the Local Coastal Program and the Coastal Act. Furthermore, while liability for Coastal Act violations attaches to the person or persons originally responsible for said violations (and continues to do so even if they no longer own the property), liability additionally attaches to whomsoever owns the property upon which a Coastal Act violation persists (see *Leslie Salt Co. v. San Francisco Bay Conservation and Development Com.* [1984], 153 Cal. App.3d 605, 622). Therefore, the applicant has assumed liability for, and the duty to correct, the violation on the park parcel.

Commission review and action on this appeal does not constitute a waiver of any legal action with regard to the alleged violations (or any other violations), nor does it constitute an implied statement of the Commission’s position regarding the legality of development undertaken on the site without a coastal permit, or of any other development, other than the development addressed herein. The Commission’s enforcement division will consider how to address said violations as a separate matter.

Appendix A – Relevant LCP Policies and Definitions

Land Use Element Glossary

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

102. Oceanfront Bluff/Coastal Bluff -*A bluff overlooking a beach or shoreline or that is subject to marine erosion. Many oceanfront bluffs consist of a gently sloping upper bluff and a steeper lower bluff or sea cliff. The term "oceanfront bluff" or "coastal bluff" refers to the entire slope between a marine terrace or upland area and the sea. The term "sea cliff" refers to the lower, near vertical portion of an oceanfront bluff.*

Land Use Plan, Land Use Element Policies – Policy 7.3

Design and site new development to protect natural and environmental sensitive resources, such as areas of unique scenic quality, public views, and visual compatibility with surrounding uses and to minimize natural landform alterations.

Action 7.3.10 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.

Open Space/Conservation Element Policies – Policy 1.5-A

The shoreline environment should remain in a natural state unless existing, substantial improvements are in imminent danger from erosion, flooding or collapse. "Imminent Danger" is defined as a short-range threat from the immediate to a maximum range of three (3) to five (5) years. A threat presented in the context of geologic time shall not constitute imminent danger.

Policy 7-K

Preserve as much as possible the natural character of the landscape (including coastal bluffs, hillsides and ridgelines) by requiring proposed development plans to

preserve and enhance scenic and conservation values to the maximum extent possible, to minimize impacts on soil mantle, vegetation cover, water resources, physiographic features, erosion problems, and require re-contouring and replanting where the natural landscape has been disturbed.

Policy 10-C

Require projects located in geological hazard areas to be designed to avoid the hazards, where feasible. Stabilization of hazard areas for purposed of development shall only be permitted where there is no other alternative location or where such stabilization is necessary for public safety. The more unstable areas should be left ungraded and undeveloped, utilizing land use designations such as Open Space.

Policy 10-E

Development in the areas designated “Residential/Hillside Protection” on the Land Use Plan Map or within potential geologic hazard areas identified on the Geological Conditions Map of the Open Space/Conservation Element shall not be permitted unless a comprehensive geological and soils report is prepared pursuant to Title 22 of the City’s Municipal Code, and adequate mitigation measures have been approved and implemented by the City’s geologist. For projects located in areas subject to hazards as identified on the Geologic Conditions Map or subject to erosion, landslide or mudslide, earthquake, flooding or wave damage hazards confirmed by a geologic assessment, as a condition of approval or new development a waiver of liability shall be required through a deed restriction.

Laguna Beach Municipal Code, Title 16, Chapter 16.01 Water Quality Control –
Section 16.01.020 Definitions, Subsection (GG)(9):

(v) Local environmentally sensitive areas, including areas of the Pacific Ocean coastline not listed as a Clean Water Act Section 303(d) Water Body. Environmentally sensitive areas are depicted on the water quality environmentally sensitive area (WQESA) map, (adopted as part of this chapter by reference). The areas directly adjacent to (within two hundred feet) of an environmentally sensitive area are also shown on the WQESA map.

Laguna Beach Municipal Code, Title 25 Zoning, Chapter 25.07 Coastal Development Permits:

Section 25.07.006 Definitions:

(D) “Development” means the placement or erection of any solid material or structure on land or in or under water; the discharge or disposal of any dredged material or of any gaseous, liquid, solid or thermal waste; the grading, removing, dredging, mining or extraction of any materials; a change in the density or intensity of use of land including, but not limited to, the subdivision of land pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code) and any other division of land, including lot splits; change in intensity of use of water, or of access, thereto; the construction, reconstruction, demolition or alteration of the size of any structure, including any facility of any private, public or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes; and kelp harvesting.

(K) “Structure” means anything that is constructed or built; for example, a building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, or electrical power transmission and distribution line.

Section 25.07.008 Exemptions:

(C) Repair and Maintenance Activities. Repair and maintenance of shoreline protective works that do not result in an addition to, or enlargement or expansion of, unless classified under one of the following:

(4) Any repair or maintenance to facilities or structures or work located in an environmentally sensitive habitat area, any sand area, within fifty feet of the edge of a coastal bluff or environmentally sensitive habitat area; or within twenty feet of any coastal waters and streams that include:

(a) The placement or removal, whether temporary or permanent, of rip-rap, rocks, sand or other beach materials or any other forms of solid materials,

(b) The presence, whether temporary or permanent, of mechanized equipment or construction materials, except that the use of such equipment solely for routine beach cleaning and park maintenance shall not require a coastal development permit;