

CALIFORNIA COASTAL COMMISSION

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STAFF REPORT: APPEAL – SUBSTANTIAL ISSUE

Appeal No.: A-5-LGB-20-0003

Applicant: Betty Dekovner

Agents: Homer Oatman, Oatman Architects, Inc.

Local Government: City of Laguna Beach

Local Decision: Approval with Conditions

Appellants: Mark & Sharon Fudge

Project Location: 1045 Gaviota Drive, Laguna Beach, Orange County
(APN: 644-076-05)

Project Description: Appeal of City of Laguna Beach Local Coastal Development Permit No. 19-4711 for the repair and replacement of structural posts, beams, railing, and stairs in-kind; installation of additional baluster on existing railings; installation of a code compliant handrail; and installation of interior fall protection at operable windows.

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’s action on Local Coastal Development Permit (“CDP”) No. 19-4711 approved in-kind repair and replacement of several structural posts, beams, railing, and stairs primarily associated with an existing deck for a duplex. The City’s approval also includes the installation of a handrail for the repaired stairs as well as the installation of interior fall protection at several windows around the duplex.

Staff recommends that the Commission determine that a **substantial issue exists** with respect to the grounds on which appeal number A-5-LGB-20-0003 has been filed for the following reasons: (1) the scope of the City-approved project is unclear and the City incorrectly determined that the in-kind repair and replacement for the stairs, structural posts, and beams shown on the approved plans were exempt from CDP requirements; (2) the City did not require a bluff edge determination for the project site and thus it is not possible for the City to make findings of consistency with the coastal bluff development policies of the certified Local Coastal Program (“LCP”); (3) the City did not acknowledge the existing duplex as a nonconforming structure, and therefore did not analyze whether or not the proposed repair and replacement activities would increase the size or degree of nonconformity; and (4) the City did not adequately analyze potential impacts to public coastal views, particularly along coastal bluffs.

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APPENDICES

Appendix A – Substantive File Documents

EXHIBITS

[Exhibit 1 – Project Location](#)

[Exhibit 2 – Project Plans](#)

[Exhibit 3 – Appeal](#)

[Exhibit 4 – Local CDP No. 19-4711, Design Review No. 19-4712](#)

[Exhibit 5 – Variance 7470 associated with CDP 07-27 \(2007\)](#)

I. MOTION AND RESOLUTION – SUBSTANTIAL ISSUE

Motion: I move that the Commission determine that Appeal No. A-5-LGB-20-0003 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 would 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-20-0003** 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

On January 16, 2020, Mark and Sharon Fudge filed an appeal of Local CDP No. 19-4711 (**Exhibit 3**). 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) The scope of the City's approval is not accurate;
- 2) The project does not include an accurate determination of the bluff edge and associated setbacks;
- 3) The City's approval allows for the replacement of nonconforming development, inconsistent with the City's LCP; and
- 4) The City conducted an inadequate review of public view impacts from the beach and the ocean.

III. LOCAL GOVERNMENT ACTION

On December 12, 2019, the City of Laguna Beach Design Review Board ("DRB") held a public hearing for the CDP application and the other discretionary approval sought by the applicant to authorize the repair and replacement activities she proposed for accessory structures associated with an existing duplex. The DRB conditionally approved Local CDP No. 19-4711 and Design Review 19-4710 (**Exhibit 4**).

The Design Review Board determined that the project was categorically exempt from the California Environmental Quality Act ("CEQA") under Section 15301, Class 1(a) (existing facilities) and Section 15303, Class 3 (New Construction), which "allows repair, maintenance, permitting, or minor alteration of existing public or private structures, mechanical equipment involving negligible or no expansion of use beyond that existing at the time of determination."

On January 3, 2020, the Coastal Commission's South Coast District Office received a valid Notice of Final Action for Local CDP No. 19-4711. The Commission issued a Notification of Appeal Period on January 7, 2020. On January 16, 2020, Mark and Sharon Fudge filed an appeal during the ten working day appeal period ([Exhibit 3](#)). No other appeals were received. The City and applicant were notified of the appeal by Commission staff in a letter dated January 17, 2020.

IV. APPEAL PROCEDURES

After certification of Local Coastal Programs (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.

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 because of 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 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 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 LOCATION

The City of Laguna Beach approved the in-kind repair and replacement of several structural posts, beams, railing, and stairs primarily associated with an existing deck for a duplex. The City's approval also includes the installation of a handrail for the repaired stairs as well as the installation of interior fall protection at several windows around the duplex ([Exhibit 2](#)).

The project site is an irregular-shaped 4,821 square-foot ocean-fronting, bluff top lot

located at 1045 Gaviota Drive in Laguna Beach ([Exhibit 1](#)). The site is located above Oak Street Beach, between the first public road (South Coast Highway) and the sea. It is in an area where development approved by the City pursuant to its certified LCP is appealable to the Coastal Commission. The area is characterized by residential structures on ocean-fronting bluffs. Public access to the beach is available via public access stairways located at the seaward end of Anita Avenue (162 feet north of the project site) and at the seaward end of Oak Street (195 feet south of the project site).

The project site is developed with a four-level, approximately 37-foot high duplex that was constructed in 1968, prior to passage of the Coastal Act. In 1973, the California Coastal Zone Conservation Commission (the predecessor to this Commission) approved an administrative CDP for a ten-foot addition to the living room of the duplex. In 2007 (after certification of the Laguna Beach LCP), the City issued Local CDP No. 07-27 for a shotcrete and rock nail slope stabilization to prevent the bluff slope on which the duplex rests from sliding. In addition to the development approved in the aforementioned CDPs, additional work appears to have taken place without obtaining CDPs. This includes a re-roof (permitted under building permit RBP-2012-0038), the demolition of a kitchen to restore a non-permitted triplex back into a duplex (permitted under RBP-2015-0496), and various other projects for minor improvements and repair and maintenance that did not alter the height or square footage of the structure.

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 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 5 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 Coastal Act;

2. The extent and scope of the development as approved or denied by the local government;
3. The significance of the coastal resources affected by the decision;
4. The precedential value of the local government’s decision for future interpretations of its LCP; and,
5. Whether the appeal raises local issues, or those of regional or statewide significance.

Staff 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. 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.

Contention: The scope of the City’s approval is inaccurate.

The appellants assert that the City’s decision to exempt portions of the project proposal and grant a CDP only for other portions of the project proposal is inconsistent with the Coastal Act and the relevant policies of the certified LCP. Specifically, the appellants assert that only the baluster additions and the handrail addition were approved under the local CDP action; the City determined the repair and replacement actions to be exempt from CDP requirements.

Coastal Act Section 30610 states, in relevant part:

“Notwithstanding any other provision of this division, no coastal development permit shall be required pursuant to this chapter for the following types of development and in the following areas:

(b) Improvements to any structure other than a single-family residence or a public works facility; provided, however, that the commission shall specify, by regulation, those types of improvements which (1) involve a risk of adverse environmental effect, (2) adversely affect public access, or (3) involve a change in use contrary to any policy of this division. Any improvement so specified by the commission shall require a coastal development permit.

(d) Repair or maintenance activities that do not result in an addition to, or enlargement or expansion of, the object of those repair or maintenance activities; provided, however, that if the commission determines that certain

extraordinary methods of repair and maintenance involve a risk of substantial adverse environmental impact, it shall, by regulation, require that a permit be obtained pursuant to this chapter.”

Section 13253 of the Coastal Commission Administrative Regulations states in relevant part:

“(b) Pursuant to Public Resources Code section 30610(b), the following classes of development require a coastal development permit because they involve a risk of adverse environmental effect, adversely affect public access, or involve a change in use contrary to the policy of Division 20 of the Public Resources Code:

(1) Improvement to any structure if the structure or the improvement is located: on a beach; in a wetland, stream, or lake; seaward of the mean high tide line; in an area designated as highly scenic in a certified land use plan; or within 50 feet of the edge of a coastal bluff; . . .”

Section 25.07.008 of the Laguna Beach Title 25 Zoning Code (i.e. the Implementation Plan of the certified LCP) states in relevant part:

“Certain types of development, described as follows, are considered to be without risk of adverse environmental effect on coastal resources, including public access, and therefore do not require a coastal development permit unless indicated otherwise.

(A) Improvements to Single-family Homes. Improvements to single-family dwellings and mobilehomes including structures normally associated with a single-family residence such as garages, swimming pools, fences, storage sheds and landscaping are exempt unless classified as one of the following:

(2) Improvements to any structure located on a beach, wetland or stream, or where the structure or proposed improvements would encroach within fifty feet of a coastal bluff edge (emphasis added);

(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.”

In its staff report for Local CDP Application No. 19-4711, the City made two determinations for the proposed project described above. First, the City determined that the proposed repair and replacement of structural posts, beams, railing, and stairs are exempt from CDP requirements under Section 13253(a)(3) of the Commission’s regulations. Second, the City

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determined that the proposed addition of balusters and handrails do require a CDP. This partial CDP approval and partial exemption is inconsistent with the certified LCP policies and the Coastal Act for the reasons set forth below.

The City justified exempting the proposed repair/replacement actions from the CDP under Section 13253(a)(3), stated above. This regulation references raises confusion because Section 13253(a) does not contain a third provision. Furthermore, Section 13253 refers to **improvements** to structures other than single-family residences and public works facilities that require permits. This section differs from Section 13252, which specifies **repair and maintenance** activities that require permits. Given that the project involves repair and maintenance actions, it is likely that that the City intended to cite Section 13252(a)(3) of the Commission's regulations, which is stated above for reference. Nevertheless, because the project site is located within a certified LCP area, the certified LCP constitutes the standard of review. The discussion below will demonstrate that the proposed repair/replacement of the posts, beams, railing, and stairs would **not** be exempt from CDP requirements under the LCP policies.

The City did not correctly apply the exemption policies found in Section 25.07.008 of the City's Title 25 Zoning Code (which constitutes the certified Implementation Plan for the City's LCP), stated in relevant part above. Subsection C of Section 25.07.008 exempts like-for-like repair and maintenance of shoreline protective works, provided that the work does not take place within an environmentally sensitive habitat area, within 50 feet of a coastal bluff edge, any sand area, or any coastal access/recreation area. The language in this section is similar to the language found in Section 13252 of the Commission's regulations (stated in relevant part above for reference); however, the IP language narrowly defines exempt repair/maintenance work to apply only to shoreline protective devices. Given that the project proposal does not include repair/maintenance of a shoreline protective device, certified IP Section 25.07.008 exemption policy does **not** apply to the repair/replacement of structural posts, beams, railing, and stairs. Moreover, the standard of review in this area is the certified LCP, with the Coastal Act used as guidance. The City should have relied on the LCP policies in its determination, but clearly misapplied the IP exemption policy when making the determinations for the proposed project. Therefore, **all elements** of the project should have been considered in the local CDP action. Because the City did not make a determination that is consistent with its LCP policies, the appellants' contention raises a substantial issue.

Furthermore, the project description for the proposed work and the City-approved plans are not consistent. Specifically, the approved plans do not indicate which, if any, exterior stairs would be repaired or replaced during the project ([Exhibit 2](#)). This is significant because the entire structure -- including accessory development -- appears to have been constructed on the bluff face, which renders all previously approved development legally nonconforming. There may also be unpermitted development on the site which would not be legally nonconforming. Under certified Land Use Element policy 7.3.10 (cited below), existing legally nonconforming structures on an oceanfront bluff may be maintained/ repaired so long as the repair and maintenance activities do not increase the size or degree of nonconformity. Without an accurate description of what is proposed to be

repaired/ maintained, there is no way for the City to adequately determine whether the proposed repairs increase the degree or size of nonconformity of the duplex or the accessory structures.

According to the appellants, the Zoning Administrator stated that the City is working with the Coastal Commission on a standardized CDP exemption form, but that the form has not been finalized or adopted as of the local hearing. However, this statement is a moot point because the City did not correctly apply the exemption requirements of the certified Implementation Plan in the first place. Overall, the City incorrectly determined that the repair/maintenance aspects of the project were exempt from permit requirements. Also, the written project description is not consistent with the City-approved plans. Therefore, the City's determinations raise a substantial issue with regard to consistency with the certified LCP.

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

The appellants assert that the City's approval is inconsistent with the certified LCP because a bluff edge was not determined for the project pursuant to the Land Use Plan definition. According to the appellants, the Zoning Administrator stated during the local hearing that the project does not require a CDP because the project does not constitute "new development." The appellants argue that the proposed project (including the elements that the City determined to be exempt) does constitute new development, and therefore should have required a bluff edge determination in order to review the project's consistency with the certified LCP policies pertaining to coastal bluff development.

The following Land Use Element Policies pertain to coastal bluff development:

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.

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.

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.

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.

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.

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.

Policy 1-L of the OS/C Element of the certified LUP states (**emphasis added**):

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.

Additionally, Section 25.50.004(B) of the IP requires a minimum bluff edge setback of 25 feet from the top of an oceanfront bluff for not only new buildings and additions to existing buildings but also to structures and **improvements**. Section 25.50.004(B) of the IP of the certified LCP states, in relevant part (**emphasis added**):

“(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) In addition to (1), (2) and (3) above, **no new building, 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...”

The appellants assert that the City should have required a bluff edge determination for the project, despite the fact that the project primarily consists of repair/maintenance actions (which the City erroneously determined to be exempt). Although the Zoning Administrator determined that a bluff edge determination was not necessary for the proposed project, a bluff edge determination is in fact required in order to establish consistency with the LCP policies pertaining to bluff top development. Section 25.50.004 of the certified implementation plan (stated above) clearly states that improvements to existing structures shall not be sited closer than 25 feet from the coastal bluff edge. Without a bluff edge determination, the City could not find consistency with the Implementation Plan. Similarly, the City could not find consistency with Actions 10.2.7 and 10.2.8.

As described above, the City incorrectly determined that only the proposed baluster and handrail additions required a CDP, when in fact all elements of the proposed project (including the proposed repair/maintenance elements) should have required a CDP. Therefore, the bluff top development analysis detailed below should be applied to all elements of the proposed project.

Local CDP No. 07-27 (approved by the City in 2007 to authorize a bluff stabilization project for the bluff slope on which the house rests) included an approval for a variance to encroach into the bluff top setback, detailed in [Exhibit 5](#). The fact that a variance was required for the bluff stabilization project implies that at least portions of the existing duplex (including the decks and exterior staircases) have been built into the bluff face, which renders the permitted structures legally nonconforming (Refer to [Exhibit 5](#)- Cross Section for Local CDP No. 07-27). Given that the current duplex is protected with a bluff protective device, any new associated development (which may include replacement of existing accessory development), needs to be analyzed to ensure that it does not rely on existing bluff protective devices, pursuant to LUE Policy 7.3.9. The City’s staff report did not analyze the potential for the proposed development to rely on the existing bluff protective device.

Given the contention regarding the absence of a bluff edge determination, the City record does not demonstrate that the City-approved development is 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) have been imposed. The City’s findings fail to 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: The City’s approval allows the replacement of nonconforming development, inconsistent with the LCP.

The appellants contend that the City’s approval and exemption determinations did not include a review of the existing nonconformities, and further, that the City did not consider options to remove the decks and the beach stairs.

The following policies pertain to nonconforming development:

LUE Policy 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 Policy 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.

LBMC 25.56.009 (Implementation Plan): 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.

As described above, the City incorrectly determined that only the proposed baluster and handrail additions required a CDP, when in fact all elements of the proposed project (including the proposed repair/maintenance elements) should have required a CDP. Therefore, the nonconforming development analysis detailed below should be applied to all elements of the proposed project.

In its review of the project, the City did not require a bluff edge determination. As stated earlier, the lack of a bluff edge determination raises a substantial issue because it precludes the City from making findings that the project is consistent with the coastal bluff policies of the certified LCP. However, the bluff edge is also necessary to determine what, if any, portions of the structure are nonconforming.

LUE Policies 10.2.7 and 10.2.8 (stated above) require primary structures to be set back at least 25 feet from the bluff edge and accessory structures to be set back at least 10 feet from the bluff edge. Any structure or portions thereof that do not adhere to these setback requirements are classified as “nonconforming structures.” Nonconforming structures are not necessarily illegal – they could have obtained all of the necessary permits – but these structures are not consistent with the **current** development standards. In any case, without a bluff top determination, the City cannot determine whether the entire duplex or portions of the duplex are nonconforming. Given that Local CDP No. 07-27 (granted for the project site in 2007) included a variance to encroach into the bluff top setback, it is reasonable to presume that at least portions of the duplex are built into the bluff face, thus rendering the duplex a nonconforming structure.

LUE Policy 7.3.10 allows the repair/maintenance of legally nonconforming structures, so long as the repair/maintenance does not increase the size or degree of the existing nonconformity. The City's staff report for the project does not review the development to determine whether or not the proposed project would increase the size or degree of nonconformity of the duplex. Looking at the City-approved plans, the proposed beam repair would take place under the existing seaward deck, which could be nonconforming based on its location below the area of the slope stabilization project. If, in fact, the deck is nonconforming, the improvements could increase the degree of nonconformity of the existing duplex by extending the life of deck, inconsistent with LUE policy 7.3.10.

LUE Policy 7.3.8 requires removal of unpermitted development that encroaches into oceanfront bluffs. The duplex was constructed in 1968, prior to passage of the Coastal Act. However, looking at the City record for the project site, it is not clear whether the seaward decks and beach access stairs were permitted with the residence in 1968. Subsequent applications for the project site have not included authorizations to construct decks or staircases. Without this information, it is not possible to determine whether or not the staircases and seaward deck were permitted, and further, if they would be subject to removal under Land Use Element Policy 7.3.8.

For the reasons stated above, the appellants' third contention raises a substantial issue with regard to consistency with the certified LUP and the Coastal Act.

Contention: The City did not adequately consider public view impacts from the beach and the ocean.

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.

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 states:

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. The project site consists of a duplex that is constructed on an ocean-fronting bluff lot. The City's staff report does not include an analysis of potential public coastal view impacts, either along the ocean or along the coastal bluffs.

As previously mentioned, the duplex appears to be nonconforming based on a variance granted by the City for a bluff stabilization project to encroach into the bluff top setback. If the residence is in fact constructed on the bluff face, then approving repair/replacement of existing nonconforming elements of the structure would not be consistent with LUE Policy 7.3 or Open Space Conservation Element Policies 7A and 7K because the project would extend the life of development along the coastal bluff, thus diminishing its natural character over time.

Given the unique visual qualities of coastal bluffs, the City should have analyzed the impact to public coastal views to and along coastal bluffs. For this reason, the Commission finds that a substantial issue exists with the City's approval of a project that is not consistent with the visual resource policies of the LCP.

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 with the relevant provisions 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 the bluff top/bluff face policies). In addition, the scope of the proposed project was incorrectly determined. The City did not correctly apply the IP policies, leading to an incorrect determination that certain repair/replacement elements of the proposed project are exempt from CDP requirements. 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 improvements to an existing duplex on the subject site located on an ocean-fronting bluff top property. While the record does not contain an accurate representation the elements that should be included in the CDP action, the development appears to be relatively minor based on the project description. However, as explained above, the project may not be consistent with the LCP policies pertaining to bluff top development, despite the relatively small scale of the project. 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. 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 could 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 precedent for future interpretations of its LCP that may be incorrect. 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 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 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.) 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

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with respect to whether the local government action conforms with the policies of the City's certified LCP and the scenic and visual policies of the Coastal Act.

Appendix A – Substantive File Documents

1. City of Laguna Beach certified Local Coastal Program.
2. City of Laguna Beach CDP No. 07-27