

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



Th11e

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STAFF REPORT: APPEAL – SUBSTANTIAL ISSUE

Appeal No.: A-5-LGB-20-0005

Applicant: Table Rock Association

Agents: Cynthia Enriquez

Local Government: City of Laguna Beach

Local Decision: Claim of Exemption from Coastal Development Permit Requirements

Appellants: Mark & Sharon Fudge

Project Location: 31561 Table Rock Drive, Laguna Beach, Orange County
(APN: 658-092-51)

Project Description: Appeal of City of Laguna Beach Coastal Development Permit Exemption associated with Zoning Plan Check No. 19-3950 for installation of 45 HVAC units in an existing multi-level, multi-family residential structure with no change in height or usage. The applicant proposes to install a 6 centimeter diameter conduit, copper pipe, vents, and air conditioning within the crawlspace and interior of the structure, with no use of construction materials or mechanized equipment.

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. 19-3950 for the installation of Heating, Ventilation, and Air-Conditioning units for 45 residential units in the condominiums at 31561 Table Rock Drive in Laguna Beach. The City’s approval states that the project will not require “mechanized construction equipment or construction materials within 50 feet of the bluff edge” and that “solid materials will be restricted to the inside of the building”. The subject site is a 82,298 square foot lot with a zoning designation of Low Density Residential (R-1), located on a bluff top beachfront lot at 31561 Table Rock Drive 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 Local Coastal Program (“LCP”) does not currently exempt repair and maintenance activities on all projects; the LCP only exempts 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 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’ also contend that the project is further ineligible for an exemption from CDP requirements because it was misclassified as repair and maintenance and should have been classified as new development. The City of Laguna Beach, prior to issuance of the exemption, requested clarification from Commission staff as to whether the installation of new HVAC units constituted repair and maintenance. After reviewing past determinations, staff confirmed this classification with the stipulation that all installed materials remain within the building interior. The applicant generally adhered to this guidance and specifically described the method in which solid materials would be confined within the structure. The approved project plans, however, also identify minor exterior work including new ducts. Despite these considerations as to whether the project should have been classified as new development, the City’s exemption determination raises a substantial issue on the basis of inconsistency with the City’s current certified Local Coastal Program repair and maintenance provisions.

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APPENDICES

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EXHIBITS

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I. MOTION AND RESOLUTION – SUBSTANTIAL ISSUE

Motion: I move that the Commission determine that Appeal No. A-5-LGB-20-0005 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-20-0005** 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 installation of 45 HVAC units, including 6 centimeter diameter conduit and copper pipe, vents, and air-conditioning units, in the condominium crawlspace and interior at 31561 Table Rock Drive in Laguna Beach. An appeal was filed by Mark and Sharon Fudge on January 28, 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 Local Coastal Program, which only exempts repair and maintenance activities if they are associated with existing shoreline protective devices. Additionally, the appellants assert that the project constitutes new development rather than repair and maintenance and thus requires a bluff edge determination.

Regarding noncompliance with current Local Coastal Program policies, the appellants refer to the City’s November 14, 2019 Design Review Board staff report, which describes the necessity of the Local Coastal Program Amendment No. 2-19. The appellants highlight an excerpt of the staff report stating that “the Laguna Beach Local Coastal Program currently has repair and maintenance provisions; however they are limited to shoreline protective devices”. The appellants assert that the expansion of exempt repair and maintenance activities to apply to residential structures will not go into effect until Amendment No. 2-19 has been certified by the Coastal Commission, and thus the installation of HVAC units should not have been found exempt prior to the Local Coastal Program Amendment.

Regarding classification, the appellants cite Laguna Beach Municipal Code Title 25, Chapter 25.07, Section 006(D), which defines development as “the placement or erection of any solid material or structure on land”. They additionally cite Section 006(K) which defines a structure as “anything that is constructed or built” and included several examples.

The appellants claim that the applicant's project is consistent with these definitions and proposes new development with placement of solid materials within 50 feet of a bluff edge. They argue repair and maintenance is "a restorative action taken to return a structure to its previous original form or to restore a function that was previously offered" and state that the installation of new HVAC units is not a restoration to the original form of the condominium. Thus, the appellants assert that the project is new development which requires a bluff edge determination in order to obtain approval for a coastal development permit.

III. LOCAL GOVERNMENT ACTION

On July 25, 2019 the City of Laguna Beach Design Review Board considered the project for approval of local CDP No. 19-3950, but did not issue approval. On November 14, 2019 the Design Review Board considered approval of the project CDP a second time, and the applicant requested a time continuance for the project to be considered a third time on January 23, 2020.

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 proposed installation of new HVAC systems in the crawl space below the existing building may qualify as exempt repair and maintenance if it does not involve the placement of any solid materials within 50 feet of the bluff edge and will not require the presence, whether temporary or permanent, of mechanized construction equipment or construction materials within 50 feet of the bluff edge. Such solid materials may be present inside the building, including in the crawl space. Please see Section 25.07.008(C)(4) of the Laguna Beach Municipal Code; Public Resources Code ("PRC") § 30610(d); Tit. 14, Division 5.5, Cal. Code of Regs. § 13252(a)(3). A bluff edge determination would not be required if the project does not include the placement of any solid material, or presence of mechanized equipment or construction equipment, on the bluff itself, and all construction work is confined to the interior of the structure.

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 January 16, 2020, the City of Laguna Beach Design Review Board determined that the proposed development was exempt from coastal development permit requirements and issued ZPC No. 19-5391, as reflected in Exhibit 3. The City’s decision to find the project exempt from CDP requirements was further considered by the Design Review Board on January 23, 2020. On January 21, 2020, the exemption claim was received by the Coastal Commission, at which point the appeal process was established, to extend until February 4, 2020. Mark and Sharon Fudge filed an appeal on January 28, 2020, and on January 29, 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 CDP exemption. The Design Review Board’s decision was automatically stayed, pursuant to Public Resources Code section 30623, pending Commission action on the appeal. On February 5, 2020 the Coastal Commission received three letters from Michael Rustigan, a tenant in the Table Rock Condominiums, protesting the City’s exemption on the basis of cost and the applicant’s qualifications.

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 19-3950 would allow the applicant to install HVAC units within the crawlspace below the 45-unit Table Rock condominium, as well as within the building interior. All materials will be transported to and from the crawlspace manually and disposed of at an appropriate site. According to information in the City record, the existing property is an approximately 52,256 square foot, three-level multi-family residence. The repair and maintenance activities approved by the City would not result in an increase to the property height or area, or change the use of the site. The subject site is located at 31561 Table Rock Drive in the City of Laguna Beach, Orange County.

The subject site is a multi-sided 82,298 square foot oceanfront bluff top lot located on the bluff above both the south end of West Street Beach and the north end of Table Rock Beach. West Street Beach is a sandy beach with multiple access ways located further north of the site; Table Rock Beach has a singular point of access in 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 the staircase at the southwest leading to Table Rock Beach, with West Street Beach and Coast Highway on the remaining sides.

A geotechnical analysis performed on September 12, 2002 was submitted by the applicant on February 4, 2020. While the report describes the site's geological stability and the steepness of the bluff, it was conducted 18 years prior to the current proposal and may not reflect current conditions.

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 a CDP 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 the City of Laguna Beach LCP does not currently exempt for repair and maintenance activities on all projects; the LCP only exempts repair and maintenance activities associated with existing shoreline protective devices. The appellants raise a substantial issue 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 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*

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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)(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 shoreline protective devices, as shown above in Section 25.07.008.¹ The City has submitted LCP Amendment No. 2-19, which would more broadly apply a repair and maintenance exemption to residential and non-residential developments -- however, 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 coastal development permit exemption for a project that is inconsistent with the exemption provisions of the LCP.

Appellants' Contention No. 2: Classification as New Development

The appellants' also contend that the project is further ineligible for an exemption from CDP requirements because it was misclassified as repair and maintenance and should have been classified as new development. The appellants cite Laguna Beach Municipal Code Title 25, Chapter 25.07, Section 006(D), which defines development as "the placement or erection of any solid material or structure on land." They additionally cite Section 006(K) which defines a structure as "anything that is constructed or built" and included several examples.

The definitions of Section 006 may broadly apply to the applicant's project and the project may be classified as development. Section 006 does not, however, substantiate the appellants' claim that the project constitutes new development with placement of solid materials within 50 feet of a bluff edge.

The appellants assert that repair and maintenance is "a restorative action taken to return a structure to its previous original form or to restore a function that was previously offered" and state that the installation of new HVAC units is not a restoration to the original form of the condominium. If the condominium contains an existing HVAC system (or systems) including existing ventilation units within the interior of the structure, however, this claim may be proven false and the project could arguably be considered a restoration. Information in the City record states the existence of a limited number of ventilation units within the structure, but the quantity and type of unit is unclear. It is also unclear whether all of the existing units have exterior ducts, and how many such ducts exist.

The City, prior to issuance of the exemption, requested clarification from Commission staff as to whether the installation of the new HVAC units constituted repair and maintenance. After reviewing past determinations, staff confirmed this classification with the stipulation that all installed materials remain within the building interior. Staff determined that limiting installation of new solid materials to the confines of the structure would avoid potential hazardous impacts and risks to surrounding coastal resources.

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.

Based on the applicant's adherence to this guidance, as well as the specifically described method in which solid materials would be installed within the structure, the project would not constitute new development. Thus, the appellants' claim regarding project classification does not raise a substantial issue with respect to the City's application of its LCP.

SUBSTANTIAL ISSUE FACTORS:

The Commission typically applies five factors in making a determination whether an appeal raises a substantial issue per 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 take steps to verify its approval with Commission staff through correspondence, held multiple meetings in which the project applicant was given direction, and supported its approval with relevant Coastal Act policies as implemented through the Commission's regulations. The decision was not substantiated, however, by the exemption provisions currently outlined in 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 installation of 45 HVAC units in the crawlspace and interior of the subject site located on an oceanfront bluff top property. The proposed project will not result in an alteration of height, area, density, or intensity of use, and will be confined to the crawlspace below the building. 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 potentially public access. Despite these considerations, the installation of 45 HVAC units within the crawlspace and interior of the existing condominium does not actually pose a substantial risk to any of these concerns. As mentioned in the above factor, the project will be conducted with low risk hand tools in a location that is not exposed to the surrounding bluff environment. Therefore, it is unlikely that the coastal resources will be affected by the applicant's project and this factor alone does not support a 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 coastal development permit applications – specifically regarding the necessity of coastal

permits as opposed to exemptions. Allowing the local government's decision to authorize repair and maintenance activities to a bluff top home without a permit, despite its lack of support in the LCP, could set a negative precedent for future LCP interpretations. If the subject exemption is found to be consistent with the LCP, there is a potential that future applicants will reference this action if they wish to perform more substantial bluff top or bluff face development without a permit, of which there are hundreds of such 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 (especially regarding bluff top properties vulnerable to damage) is a matter of statewide importance. Unsubstantiated application of these policies could have regional or statewide ramifications regarding other 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.

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

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 7.3.2 Review all applications for new development to determine potential threats from coastal and other hazards.

Action 7.3.3 Design and site new development to avoid hazardous areas and minimize risks to life and property from coastal and other hazards

Action 7.3.4 Require new development to assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic stability, 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 7.3.6 Require new development on oceanfront bluff top lots to incorporate

drainage improvements, removal of and/or revisions to irrigation systems, and/or use of native or drought-tolerant vegetation into the design to minimize threats to oceanfront bluff recession.

Action 7.3.8 On oceanfront bluff sites, require applications where applicable, to identify and removal 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 property as a deed restriction.

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.

Action 7.3.12 Site and design new structures to avoid the need for shoreline and/or oceanfront bluff protective devices during the economic life of the structure (75 years).

Action 7.3.13 Limit the use of shoreline/bluff protective devices to the minimum required to protect existing development in danger of erosion. Site and design any such protective devices as far landward as possible. “Existing development” for purposes of this policy shall consist only of a principal structure, e.g. residential dwelling, required garage, or second residential unit, and shall not include accessory or ancillary structures such as decks, patios, pools, tennis courts, cabanas, stairs, landscaping etc. No shoreline/bluff protective device shall be allowed for the sole purpose of protecting an accessory structure.

Policy 7.4

Ensure that development, including subdivisions, new building sites and remodels with building additions, is evaluated to ascertain potential negative impacts on natural resources. Proposed development shall emphasize impact avoidance over impact mitigation. Any mitigation required due to an unavoidable negative impact should be located on-site, where feasible. Any off-site mitigation should be located within the City’s boundaries close to the project, where feasible. (Similar to Policies 5.2 and 10.3)

Action 7.4.2 Continue preparation of initial studies, pursuant to the California Environmentally Quality Act (CEQA), for any proposed development, including single-family residences located within environmentally sensitive areas (Same as Action 10.3.1).

Policy 7.7

Protect marine resources by implementing methods to minimize runoff from building sites and streets to the City's storm drain system (e.g. on-site water retention).

Policy 10.2

Design and site new development to protect natural and environmentally sensitive resources such as areas of unique scenic quality, public views, and visual compatibility with surrounding uses and to minimize landform alterations. (Same as Policy 7.3)

Action 10.2.1 Adopt standards that require new development and related improvements to be located on the most suitable areas of the site so as to maximize safety and the preservation of sensitive resources.

Action 10.2.5 On bluff sites, requires applications where applicable, to include a geologic/soils/geotechnical study that identifies any geologic hazards affecting the proposed project site, any necessary mitigation measures, and contain statements that the project site is suitable for the proposed development and that the development will be safe from geologic hazard for its economic life. For development on oceanfront bluffs, such reports shall include slope stability analyses and estimates of the long-term average bluff retreat/erosion rate over the expected life of the development. Reports are to be prepared/signed by a licensed professional Engineering Geologist or Geotechnical Engineer.

Action 10.2.6 Require all new development located on an oceanfront bluff top to be setback from the oceanfront bluff edge a sufficient distance to ensure stability, ensure that it will not be endangered by erosion, and to avoid the need for protective devices during the economic life of the structure (75 years). Such setbacks must take into consideration expected long-term bluff retreat over the next 75 years, as well as slope stability. The predicted bluff retreat shall be evaluated considering not only historical bluff retreat data, but also acceleration of bluff retreat made possible by continued and accelerated sea level rise, future increase in storm or El Nino events, and any known site-specific conditions. To assure stability, the development must maintain a minimum factor of safety against landsliding of 1.5 (static) or 1.2 (pseudostatic, $k=0.15$ or determined through analysis by the geotechnical engineer) for the economic life of the structure.

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.

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.

A-5-LGB-20-0005 (Table Rock Association)
Appeal – Substantial Issue

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;

Section 25.07.012 Procedures:

Each coastal development permit application shall be processed in accordance with the following requirements.

(G) Findings. A coastal development permit application may be approved or conditionally approved only after the approving authority has reviewed the development project and made all the following findings:

(1) The project is in conformity with all the applicable provisions of the general plan, including the certified local coastal program and any applicable specific plans;

(2) Any development located between the sea and the first public road paralleling the sea is in conformity with the certified local coastal program and with the public access and public recreation policies of Chapter 3 of the Coastal Act;

(3) The proposed development will not have any significant adverse impacts within the meaning of the California Environmental Quality Act

Appendix B – Substantive File Documents

1. Geotechnical Evaluation for 31561 Table Rock Drive, Laguna Beach by Mark D. Hetherington & Brandon A. Boka, dated September 12, 2002.