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W13b

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STAFF REPORT: APPEAL – NO SUBSTANTIAL ISSUE

Appeal No.: A-5-LGB-20-0015

Applicant: Steven Contursi

Agent: Laurence P. Nokes, Esq

Local Government: City of Laguna Beach

Local Decision: Approval with Conditions

Appellants: Mark & Sharon Fudge

Project Location: 865 South Coast Highway, Laguna Beach, Orange County (APN: 644-024-03)

Project Description: Appeal of City of Laguna Beach local Coastal Development Permit 20-0126 for improvements to a single-family home on an oceanfront blufftop property, including replacing exterior windows and doors within existing openings with associated stucco patching; repairing oceanfront middle level deck in-kind (20% damaged materials to be replaced); installing 42-in. code-compliant glass deck railings; re-tiling a bathroom, and after-the-fact approval of replacement of sliding doors within an existing opening. No foundation work is requested.

Staff Recommendation: Determine that no substantial issue exists

Important Hearing Procedure Note: This is a substantial issue only hearing. Testimony will be taken only on the question of whether the appeal raises a substantial issue. Generally and at the discretion of the Chair, testimony is limited to 3 minutes total per side. Please plan your testimony accordingly. Only the applicant, persons who opposed the application before the local government (or their representatives), and the local government shall be qualified to testify. Others may submit comments in writing. If the Commission determines that the appeal does raise a substantial issue, the de novo phase of the hearing will occur at a future Commission meeting, during which it will take public testimony.

SUMMARY OF STAFF RECOMMENDATION

The project site is a 11,194 sq. ft. parcel split zoned C-1 (Local Business District) and R-3 (Residential High Density). The seaward portion of the parcel, which is adjacent to the bluff edge (the landward portion of the parcel is adjacent to the access road) slopes from the elevation of that road (South Coast Highway) down to the sandy beach below (Thalia St. Beach). That portion of the parcel is developed with a three-story single-family residence that was constructed in 1996 and is the subject of the appeal.

The City's action on Local Coastal Development Permit ("CDP") No. 19-5450 approved the replacement of exterior windows and doors within existing openings with associated stucco repair and patching; repair of the middle-level ocean-fronting deck in kind (20% damaged deck/ceiling joists, stucco patching, plywood deck replacement, waterproof membrane, and tile deck surface); installation of 42-in. high glass deck railings (consistent with City Code); and retiling of a bathroom and a powder room. The project proposal includes an after-the-fact request to authorize the replacements of sliding doors within the existing openings. The scope of work does not include any work to the existing foundation.

The appellants contend that the City did not require a proper bluff edge determination; that the project increases the size/degree of existing nonconformities; that the City's approval did not require improvements to adhere to bluff edge setbacks; that the City did not require the removal of unpermitted development; that the City's staff recommendation did not analyze potential visual impacts; and that the City did not condition its approval to require a waiver of rights to shoreline and/or bluff protective devices.

Commission staff have reviewed the appeal in the context of the City's action and recommend the Commission find that no substantial issues exists because, with one small exception (a new, code-compliant glass hand-rail), the scope of the City-approved project is limited to repair and maintenance of existing portions of an existing, legal non-conforming single-family residence, so: (1) a bluff edge determination was not required, the changes did not need to adhere to the current bluff-edge setback or visual requirements, and no waiver was required; (2) the project does not constitute new development or a major remodel; (3) the project does not increase the size or degree of existing nonconformities; (4) The project does not include any work to a beach access staircase for

which a CDP cannot be located, and furthermore, unpermitted development is not a basis of appeal; (5) the project does not rely on existing bluff/shoreline protective devices or require new bluff/shoreline protective devices; and (5) the project will not prejudice the implementation of the LCP in this area. The motion and resolution can be found on **Page 4.**

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Appendix A – Substantive File Documents

EXHIBITS

- Exhibit 1 – Project Location
- Exhibit 2 – Project Plans
- Exhibit 3 – City Determination, Local CDP No. 19-5450
- Exhibit 4 – Appeal

I. MOTION AND RESOLUTION – NO SUBSTANTIAL ISSUE

Motion:

I move that the Commission determine that Appeal No. A-5-LGB-20-0015 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 **YES** vote. Passage of this motion will result in a finding of No Substantial Issue and adoption of the following resolution and findings. If the Commission finds No Substantial Issue, the Commission will not hear the application de novo and the local action will become final and effective. The motion passes only by an affirmative vote by a majority of the Commissioners present.

Resolution:

The Commission finds that Appeal No. A-5-LGB-20-0015 does not present a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

II. APPELLANTS' CONTENTIONS

On January 16, 2020, Mark and Sharon Fudge filed an appeal of City of Laguna Beach local CDP No. 19-5450 ([Exhibit 4](#)). 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 City did not require a proper bluff edge determination;
- 2) The project allows for the increase in size/degree of existing nonconformities, inconsistent with the certified LCP policies;
- 3) The City's approval did not require improvements to adhere to bluff edge setbacks;
- 4) The City did not require the removal of unpermitted development pursuant to LUE Policy 7.3.8;
- 5) The City's staff recommendation did not include an analysis of potential visual impacts; and
- 6) The City did not condition its approval to require a waiver of rights to shoreline and/or bluff protective devices.

III. LOCAL GOVERNMENT ACTIONS AND APPEALS

On August 8, 2019, the City of Laguna Beach Design Review Board approved Design Review 19-4243 and local Coastal Development Permit 19-4244 (see Exhibit 5 and Exhibit 6). The Design Review Board action occurred at a noticed public hearing.

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).

The City’s Notice of Final Local Action for Design Review 19-4243 and local Coastal Development Permit No. 19-4244 was received in the Coastal Commission’s Long Beach Office on August 26, 2019, at which point the Coastal Commission’s required 10 working-day appeal period was established. On September 10, 2019 Mark and Sharon Fudge filed an appeal of the City’s CDP with the Commission’s South Coast District Office. No other appeals were filed prior to the end of the appeal period at 5 p.m. on September 10, 2019. The Fudges’ appeal was assigned a Commission appeal number (A-5-LGB-19-0194), and was reviewed by Commission staff, who published a staff report for the November 2019 Commission meeting, recommending a finding of substantial issue. Prior to the hearing, however, the applicant withdrew the application.

On December 17, 2019, the applicant submitted a revised project to the City for review. The revised project proposes the same door and window replacement, deck repair, and bathroom/powder room retiling, but did not include the new wrought iron fence along the north property line and lower patio level gate adjacent to the beach level stairs. On January 9, 2020, the City held a public meeting for the revised project. At the hearing, the Design Review Board members raised concern with an unpermitted staircase that extends from the lower level patio down the bluff face to the beach below. The Design Review board considered conditioning approval of the project on the removal of the stairs, but ultimately directed City Planning staff to conduct more research on the staircase to verify that it is unpermitted, and if the deck is unpermitted, to pursue code enforcement action. The project was approved with one condition to install a debris fence under the outermost deck to catch any construction debris.

On February 7, 2020, the Commission’s South Coast District office received a Final Local Action Notice for the project, and the Commission’s ten working-day appeal period was established. On February 24, 2020, Mark and Sharon Fudge filed a timely appeal of the City-approved project. No other appeals were received during the appeal period.

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 proposed project involves the replacement of exterior windows and doors within existing openings with associated stucco repair and patching; repair of the middle-level ocean-fronting deck in kind (20% of total deck materials including damaged deck/ceiling joists, stucco patching, plywood deck replacement, waterproof membrane, and tile deck surface to be replaced in-kind); installation of 42-in. high glass deck railings (consistent with City Code); and retiling of a bathroom and a powder room. The project proposal includes an after-the-fact request to authorize the replacements of existing sliding doors within the existing openings.¹ The scope of work does not include any work to the existing foundation ([Exhibit 2](#)).

The project site is located at 865 South Coast Highway ([Exhibit 1](#)) on a 11,194 sq. ft. parcel split zoned C-1 (Local Business District) and R-3 (Residential High Density). The landward portion of the parcel, which is adjacent to Coast highway, is zoned C-1 and developed with a two-story retail structure. The seaward portion of the parcel (adjacent to the bluff edge) is developed with a three-story single-family residence that was constructed in 1996 and is the subject of this appeal. Single-family residences exist to the north and south of the subject site. The subject lot slopes from the elevation of the adjacent South Coast Highway down to the sandy beach below (Thalia St. Beach).

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

¹ This work received a building permit in 2016 (RBP 16-1978), but never received a coastal development permit.

(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. The standard of review for this appeal is consistency with the certified Local Coastal Program and with the public access and recreation policies of the Coastal Act.

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 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.

D. SUBSTANTIAL ISSUE ANALYSIS

Contention 1: The City should have required a bluff edge determination for the project.

The appellants contend that the City did not rely on a bluff edge determination to determine whether the proposed project is consistent with the certified LCP policies.

Specifically, the appellants point to Land Use Element (LUE) policy 7.3.5., which prohibits development on oceanfront bluff faces unless the development is a public improvement that provides public access, protects coastal resources, or provides public safety.

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 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.

Identifying the location of the bluff edge may be required in order to implement policies 7.3.4 and 7.3.5 cited above. In this case, the City did make at least an implicit determination that the bluff edge is within 50 feet of the project, in concluding that the project was not exempt. Specifically, the City's staff report correctly acknowledged that the proposed repair and maintenance actions require a CDP pursuant to Laguna Beach Municipal Code Section 25.07.008(A)(2), which makes the exemption from the permit requirement for improvements to single-family residences inapplicable if they are within 50 feet of a coastal bluff edge. Thus, the City at least implicitly found the bluff edge to be within 50 feet of this project. This is a departure from the City's earlier CDP determination, which did not characterize the project site as being on a bluff because the

slope steepness was calculated to be less than 45 degrees.² For the subject CDP findings, the City applied the Land Use Element definition of a coastal bluff from the certified LCP, the City determined that the residence is “built within the bluff (i.e. nonconforming with respect to bluff edge setbacks).”

The City’s findings characterized the project as a repair and maintenance project with no expansion besides the railing height increase (which is being done to comply with City Code requirements regarding deck railing height). The scope of work approved under Local CDP 19-5450 includes like-for-like replacement of doors and windows, stucco repair/patching, deck replacement, deck railing replacement, and retiling of an interior restroom and powder room. All of the aforementioned components except for the new railing constitute routine repair and maintenance that the homeowner is entitled to undertake. In fact, had the project site not been located within 50 feet of the bluff edge, the project (as currently proposed) would have likely been exempted from CDP requirements. However, in this case, the City correctly processed a CDP for the proposed repair and maintenance activities due to their location.

New CDP applications for development on bluff top lots typically require a bluff edge analysis in order to determine whether new development would adhere to the bluff edge setbacks established in Policies 10.2.7 and 10.2.8 of the certified LCP. Policy 10.2.7 establishes a 25 foot setback requirement for primary structures and major accessory structures, while policy 10.2.8 establishes a 10 foot setback requirement for minor accessory structures. Furthermore, the bluff edge determination indicates whether or not the existing structure is conforming or nonconforming with regard to bluff edge setbacks. If a structure is nonconforming, then any proposed development that increases the size or degree of nonconformity would require the structure to come into compliance with the current LCP standards. In this case, the City did not require a bluff edge determination for the proposed project. Despite this, the City acknowledged that the residence is nonconforming in that it is built into the bluff face (thus implicitly identifying at least the general location of the bluff edge), and determined that the project would not increase the size or degree of the existing nonconformities. Furthermore, prior to the City’s approval of the subject CDP, the applicant revised the project to remove the construction of a new fence and gate, which were proposed on the bluff face in previous project plans. The scope of work being reviewed today consists primarily of repair and maintenance actions to an existing single-family residence; no expansion is being proposed at this time. As will be explained in detail below, because the proposed repair/maintenance elements of the project do not expand the size or degree of existing nonconformities, the proposed project would not require the existing residence to be brought into conformity with the existing LCP.

The proposed new railing is not considered a repair and maintenance action because the new 42-inch railing would be 6 inches taller than the existing 36-inch railing. Given that

² This bluff definition is found in Laguna Beach Municipal Code 25.50.004 of the City’s certified IP, and was used by the City to determine blufftop lots until the Land Use Element was revised in 2012 to include the Coastal Act definition of a bluff edge. In its January 9, 2020 determination, the City’s planning staff relied on the LUE bluff edge definition instead of the Title 25 zoning code definition to make project findings.

the existing residence is already built into the bluff face, the new railing would not adhere to the 10 foot setback requirement despite the fact that it would be reconstructed in the same location as the existing railing. Although the new railing would not be consistent with Policy 10.2.8, the new railing still would not raise a substantial issue because it would not adversely impact coastal resources. The railing would not cause the existing residence to encroach further into the bluff face because it is not being constructed further seaward than the existing railing. Furthermore, the new railing, although taller than the existing railing, would actually serve to bring the residence into compliance with the local building code.

In this contention, the appellants point to LUE Policy 7.3.5 to assert that **all** development is prohibited on oceanfront bluff faces unless the development is a public improvement. The Commission acknowledges that the repair/maintenance project constitutes development. However, the existing residence is a legally permitted structure; the homeowners therefore have the right to maintain the residence (as the appellants have also acknowledged in their appeal). This policy is intended to provide protections for coastal bluffs, which are a rare and scenic resource along the Coast. However, the Commission has not previously interpreted the policy as precluding homeowners from maintaining existing legal non-conforming structures. Policy 7.3.5 is implemented through the permitting process, but true repair and maintenance work, even if not exempt, due to its location, is only subject to review for the method of the work, not whether the work can be completed. Thus, a policy prohibiting development in a particular location outright cannot be applied to prohibit repair and maintenance work. Existing structures can be maintained, but improvements cannot increase the degree of non-conformity (e.g. a new deck on the bluff face could not be approved, nor could any other new structure that would render the development as a whole even closer than it currently is to feature from which it is already too close). The subject project would not enlarge the existing residence, nor would it extend the life of the existing residence. The project does not involve any foundation work or construction of shore/bluff protective devices. The repair and maintenance of the deck, guardrails, and windows/doors will maintain existing features in their existing locations.

Thus, while a bluff edge determination is typically required for all development, whether new development or repair and maintenance, a precise bluff-edge determination is not necessary for this project (which consists of repair and maintenance, as well as one minor improvement to achieve consistency with the building code), and the City did recognize the proximity of the bluff edge. Thus, the City's action is consistent with the LCP and its action would not have been different had a precise bluff edge determination been completed. The City and the applicant acknowledge that the development is on the bluff face.

Contention 2: The City-approved project increases the size/degree of existing nonconformities.

The appellants assert that the project increases the size and degree of existing nonconformities. The appellants refer to the existing 36-inch deck railing, which is

proposed to be replaced with a 42-inch railing (a height increase of 6 inches). Also referenced is the replacement sliding door, which also includes the replacement of a structural beam above the door frame. The appellants argue that the aforementioned work increases the size/degree of the existing nonconformities in that the increased railing increases the size of the nonconforming deck railing, while the new beams increase the life of the structure. However, the nonconformity of the residence is not being increased in size or degree. Far from increasing the degree of non-compliance, the increased height of the deck railings from 36 inches to 42 inches is necessary in order to achieve code compliance of an existing feature. And it does not render the structure as a whole any closer to the bluff edge or in any other way any more out of compliance with any existing standards. The beam replacement, while necessary for the replacement door framing, does not by itself affect the life of the structure as a whole. The extent of deck repair sought by the applicant is limited to replacing the exterior decking including 20% of the total materials and would not enlarge the deck in any way. The exterior stucco patching and the interior retiling are also repair actions to address water damage, and neither increase the size nor the life of the nonconforming residence.

Under LUE Policy 7.3.10, only improvements that increase the size or degree of the non-conformity of an existing nonconforming structure (which it defines to necessarily include all major remodels) qualify as new development. Repair and maintenance actions are not typically considered new development. The City's findings correctly identified the project as a repair and maintenance project that does not constitute new development. The doors, windows, and deck can be repaired and replaced in their current locations. The bathroom can be remodeled in its current location.

Overall, the project has been correctly classified as a repair and maintenance project that does not increase either the size or the degree of existing nonconformities. The project does not propose any work to the foundation or additions to the existing structure. In addition, the project does not propose any work that would extend the life of the existing structure, such as a total replacement of joists or structural beams. The existing residence is a legally nonconforming structure, thus affording the homeowners the right to repair and maintain the residence.

Contention 3: The City-approved project does not adhere to the bluff setback requirements set forth in the certified LCP.

The appellants assert that the City's approval is inconsistent with the certified LCP because the City-approved project increases the size or degree of existing nonconformities. In addition, the appellants also contend that the doors and windows that are proposed to be replaced should adhere to the bluff edge setbacks prescribed in the certified LCP due to nonconformity of the residence.

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.

The appellants assert that the residence is not legally conforming. They argue that the residence does not have the right to undertake “improvements,” which in the case of this project, includes the replacement of doors/windows. And they contend, as stated above, that the City-approved project increases size and degree of the existing nonconformities.

The appellants assert that the structure is not legally conforming because the homeowner undertook development (the replacement of a screen door and a beam above the door) without a permit. The unpermitted development, the appellants argue, renders the structure illegally non-conforming because violations of the Coastal Act have occurred on the property. Staff notes that this interpretation of a legally nonconforming structure is not consistent with previous Commission interpretations. The subject residence was constructed in 1996 pursuant to local CDP No. 96-006. Variance 6289 was approved concurrent with CDP 96-006, presumably to allow the residence to encroach into the bluff face. The issuance of a coastal development permit and a recognized variance for the residence renders the structure legally nonconforming. If sliding doors and a beam were replaced without a permit, that unpermitted development renders those elements illegal, but the replacement of such minor, isolated elements does not constitute a “redevelopment” of the existing residence (i.e. it is not extensive enough to render it a new residence), and thus, it does not deprive the structure as a whole of its legal non-conforming status. Furthermore, the applicant has sought a CDP from the City in order to correct the unpermitted development. Therefore, the residence is still considered a legally nonconforming structure. Because the structure retains its status as a legal non-conforming structure, it is not required to adhere to the bluff setback requirements set forth in the certified LCP.

The appeal argues that the City-approved project is not limited to repair and maintenance, but also includes “improvements,” which includes the like-for-like replacement of doors and windows. Again, the appellants mention that some portion of these “improvements” was unpermitted, which, they argue, negates the legally nonconforming status of the structure. As previously mentioned, the residence is a legally nonconforming structure, in spite of the unpermitted door and beam replacement that has occurred on the site. Seeing that the residence is legally nonconforming, the homeowners are entitled to repair and maintain their residence. LUE Policy 7.3.10 states that “improvements” that increase the degree of non-conformity require the entire structure to be brought up to code (into conformity with the LCP standards), and it references development qualifying as a “major remodel” as an example of development that would qualify as such an improvement. However, minor improvements and repair

and maintenance actions, , such as a like-for-like window and door replacement, do not trigger the requirement to bring the entire residence into conformity with the LCP standards. The project consists almost entirely of repair and maintenance, except for the new glass handrail. However, the glass handrail is a minor improvement that does not expand the residence further into the bluff face, and on its own does not constitute a major remodel of the residence. As stated above, the handrail does not comply with LUE Policy 10.2.8 with regard to siting new accessory development at least 10 feet from the bluff edge. However, the taller replacement handrail is necessary to be compliant with the City's building code, and by itself does not adversely impact coastal resources. Furthermore, the City's staff report states that the westerly exterior doors, windows, and decks need to be repaired as a result of water damage. Thus, the window replacement, door replacement, and deck repair would be classified as repair and maintenance, **not** improvements intended to increase the property value of residence.

Contention 4: The City-approved project did not require the removal of unpermitted development.

The appellants assert that the City-approved project should have required the removal of an unpermitted staircase on the seaward side of the residence as well as a restoration of the slope upon which the unpermitted staircase was built. In their contention, the appellants refer to LUE Policy 7.3.8, which requires applications to remove unpermitted development, including walkways, which encroach onto oceanfront bluffs.

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

The project site is developed with a three-story single-family residence and a beach access staircase. The residence was constructed in 1996 under local CDP 96-03. The local CDP did not include an approval for the beach access staircase, but the staircase appears on aerial images of the property as early as 2002. To Commission staff knowledge, there is no record of a CDP approval for the beach access staircase. According to the City record, the City's planning staff recommended that the Design Review Board approve the project with a condition to remove the beach access staircase, for which a CDP was not found. At the local hearing, however, the Design Review Board voted to approve the project without the condition to remove the beach access staircase. Instead, the Board directed the City Planning staff to pursue code enforcement action for the staircase if staff cannot locate a CDP for the staircase.

The project does not include any work to the beach access staircase, either directly or indirectly. The previous CDP application included a fence adjacent to the unpermitted stairs, but that has been removed from the plans. The repair and maintenance development included in the subject CDP is attached to a legally non-conforming structure which was constructed separately from the alleged unpermitted development. Land Use Element Policy 7.3.8 requires applications on oceanfront bluff sites to identify and remove unpermitted structures **where applicable**. The appellants interpret this

policy to mean that oceanfront bluff applications must always require the removal of unpermitted development, whether or not the unpermitted development is a part of the subject application. In its CDP approval, however, the City adopted a narrower interpretation of the policy by choosing not to require the removal of the staircase. This is presumably because the project application does not include any work to the staircase. Given that the policy language prescribes the removal of unpermitted development **where applicable** and that the proposed project does not include any work to the staircase, the City's action is not inconsistent with the LCP.

In any case, unpermitted development is not a basis for appeal, and appeals are not the proper mechanism by which to address unpermitted development. The beach access staircase should be addressed either through local code enforcement (as the City has indicated it will undertake) or through the Coastal Commission's Enforcement Division, should the City fail to take action. The Commission's Enforcement Division is following up with the City regarding the ongoing investigation of the beach access staircase.

Contention 5: The City-approved project did not adequately analyze impacts to visual resources.

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.

The Commission has typically interpreted public coastal views to include views to and along coastal bluffs as well as views to and along the ocean. Coastal bluffs are significant resources, and represent a rare and visually pleasing landscape that California citizens and governments have sought to preserve through the Coastal Act. The project consists almost entirely of repair and maintenance to a home that is constructed on an ocean-

fronting bluff lot. True repair and maintenance work, even if it not exempt, due to its location, is only subject to review for the method of the work, not whether the work can be completed. Thus, the visual impacts of most of the work could not be considered.

The one element of the project that arguably goes beyond repair and maintenance is the increasing of the height of the deck railings. Because those increase the size of the railings, they may not qualify as repair and maintenance. Those elements could thus have been reviewed for their visual impacts. 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. In particular, the City did not analyze the potential scenic resource impacts that could result from increasing the height of the proposed rails from 36 inches to 42 inches or the potential glare impacts by using glass in the new guardrail design.

Given the unique visual qualities of coastal bluffs, the City should have analyzed the impact to public coastal views to and along coastal bluffs more closely. Specifically, the City should have considered glass options that would reduce glare. In spite of the City's shortcomings with respect to this analysis, this omission does not rise to the level of substantial issue with respect to the five factors, which will be explained in more detail below. The repair and maintenance, and extension of the railing, are in the same location as existing features of the home and do not appear to cause new adverse impacts to visual resources, although the applicant should have considered alternatives to improve visual resources.

Contention 6: The City-approved project failed to require a waiver of shoreline protective device.

Action 7.3.9 Ensure that new development, major remodels and additions to existing structures on oceanfront and oceanfront bluff sites do not rely on existing or future bluff/shoreline protection devices to establish geologic stability or protection from coastal hazards. A condition of the permit for all such new development on bluff property shall expressly require waiver of any such rights to a new bluff/shoreline protection device in the future and recording of said waiver on the title of the property as a deed restriction.

The appellants contend that the City erred in not requiring a waiver of future shoreline protective devices for the project, referencing a staff report statement that the repair and maintenance project is considered new development. Under LUE Action 7.3.9, the appellants argue, the project should not rely on shoreline protective devices **and** include a waiver of rights to any new shoreline protective device.

Commission staff has reviewed the City's staff report, and acknowledges that the City was inconsistent in its classification of the project. In its consistency determination with LUE Policy 7.3.9, stated above, the City stated that "the repair/maintenance project is considered new development and is not a major remodel and addition." However, in its consistency determination for LUE Policy 7.3.6, the City states that "the project is not new

development ([Exhibit 3](#)).³ The City was consistent in asserting that the project is a repair and maintenance of existing materials throughout the staff report. Typically, repair and maintenance of existing residential elements (which may include like-for-like replacement of existing damaged elements) is not considered new development. Furthermore, the residence does not currently have a shoreline protective device (as verified in the City's staff report), and the City-approved project does not propose a new shoreline protective device. Should the applicant apply for a CDP for **new development** in the future, the City can require a waiver of rights at that time to ensure that the new development does not rely on protective devices. At this point however, it is reasonable for the City to conclude that the proposed work, which is mostly comprised of repair and maintenance work, is not subject to the waiver of rights to shoreline protection at this time.

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 adequately supported its approval of the project's consistency with the applicable policies of the certified LCP and the public access provisions of the Coastal Act (specifically the bluff top/bluff face policies). The City concluded that the project is almost entirely a repair/maintenance project, which includes an after-the-fact authorization of repair/maintenance activity that occurred without the benefit of a CDP. Applying the LCP policies, the City was able to verify that the project would not increase the size/degree of existing nonconformities and did not trigger the requirements for a waiver of armoring or to remove existing unpermitted development. The City failed to analyze the potential impacts of the one element of the project that went beyond repair and maintenance on visual resources, but there do not appear to be any adverse impacts, as this one element hardly changes any visual resources. Therefore, there is a sufficient degree of factual and legal support for the local government's decision, and this factor supports a finding of no substantial issue.

2. The extent and scope of the development as approved by the local government.

The local government granted a CDP for fairly minor repair and maintenance actions on an existing single-family residence and one small expansion of deck railings. The scope of work includes stucco patching, repair of 20% of an ocean-fronting deck, replacement of a glass handrail for the deck, and retiling of a restroom and powder room. The project does not propose any structural changes to the roof structure, exterior walls, structural beams, or foundation. The project also does not propose any bluff/shoreline protective devices, and will not increase the height or square footage of the existing residence. The City correctly classified the project as almost entirely a repair/maintenance project with no new expansion. The scope of the development is small. Therefore this factor supports a finding

³ LUE Policy 7.3.6 states: "Require new development on oceanfront blufftop 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."

of no 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 include special protections for coastal bluffs. The City approved a repair and maintenance project for a legally nonconforming residence that would not encroach farther into the bluff face, that does not require a bluff/shoreline protective device, and that does not have any significant impact on the visual qualities of the bluff. Thus this resource will not be affected by this project, as all development is repair and maintenance of existing structures which have already impacted the bluff. Therefore, this factor supports a finding of no substantial issue.

4. The precedential value of the local government's decision for future interpretations of its LCP. The subject site is a nonconforming 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. In this case, the City approved a repair and maintenance project that is required to fix portions of the residence that have been damaged by water intrusion. The project does not constitute new development, and is not a major remodel or addition that would encroach further into the bluff face. As stated above, the City had adequate factual support to approve the project, and the approval of similar repair/maintenance projects with no new development would not prejudice the LCP in this area. Therefore, this factor supports a finding of no 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.

Conclusion

In conclusion, staff recommends that the Commission find that no substantial issue exists with respect to whether the local government action conforms with the policies of the City's certified LCP and the public access policies of the Coastal Act.

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Appeal – No Substantial Issue

Appendix A – Substantive File Documents

1. City of Laguna Beach certified Local Coastal Program.
2. City of Laguna Beach Resolution and staff report for Local CDP No. 19-27