

**CALIFORNIA COASTAL COMMISSION**

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# W12a

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## STAFF REPORT: APPEAL – SUBSTANTIAL ISSUE

**Appeal Number:** A-5-LGB-20-0017

**Applicant:** Lions Pride Exempt Trust (Ryan)

**Agent:** Marshall Innns Design Group, Architect

**Local Government:** City of Laguna Beach

**Local Decision:** Approval with No Conditions

**Appellants:** Mark & Sharon Fudge

**Project Location:** 31941 Coast Highway, Laguna Beach, Orange County

**Project Description:** Appeal of City of Laguna Beach Coastal Development Permit 19-5453 to authorize, after the fact, conversion of an existing detached guest house with storage to a 1,164 square-foot accessory dwelling unit in the R-1 (Residential Low Density) zone located on the sandy beach portion of an oceanfront property. Scope of work includes converting the upper level 476 square-foot storage area to two bedrooms and a bathroom within the existing roof line.

**Staff Recommendation:** Find Substantial Issue

## IMPORTANT HEARING PROCEDURE NOTE

The Commission will not take testimony on the “substantial issue” recommendation unless at least three commissioners request it. The Commission may ask questions of the applicant, any aggrieved person, the Attorney General or the executive director prior to determining whether or not to take testimony regarding whether the appeal raises a substantial issue. If the Commission takes testimony regarding whether the appeal raises a substantial issue, testimony is generally and at the discretion of the Chair limited to 3 minutes total per side. Only the applicant, persons who opposed the application before the local government (or their representatives), and the local

government shall be qualified to testify during this phase of the hearing. Others may submit comments in writing. If the Commission finds that the appeal raises a substantial issue, the de novo phase of the hearing will be scheduled at a subsequent Coastal Commission hearing, during which the Commission will take public testimony.

### **SUMMARY OF STAFF RECOMMENDATION**

The subject property extends from the level of Coast Highway, down a steep slope, to the sandy beach below. The primary residence is located at the level of Coast Highway. In 1963 the County of Orange approved a 639 square foot guest house on the sandy beach portion of the subject site. Since the County's 1963 approval, a number of subsequent permits have been approved related to the subject guest house, including a number of coastal development permits (CDPs). None of the subsequent permits appear to have allowed an increase in square footage beyond the originally approved 639 square feet, nor authorized a change of use from guest house to second dwelling unit. In 2019, Commission enforcement staff notified the City and property owner that conversion of the guest house into a second dwelling unit, which had occurred without the necessary coastal development permit, and increase in the square footage of the structure, constitute violations of the Coastal Act and Local Coastal Program, and requested that the property owner return the structure to its pre-violation condition or remove it. However, the City-approved local CDP 19-5453 would allow, after the fact: conversion of a detached guest house with storage to a 1,164 square foot accessory dwelling unit, including converting the upper level 476 square foot storage area to two bedrooms and a bathroom within the existing roof line.

The City's approval record does not explain how the approved 639 square feet became 1,164 square feet. Even if the 476 square foot upper level storage area is assumed to have been part of a past approval (which is not evidenced from the City's approval record), the numbers do not align. The approved 639 square feet added to the purported 476 square feet storage area add up to 1,115 square feet, not 1,164 square feet (a shortfall of 49 square feet). Moreover, it is not clear from the City's record whether the 476 square feet of storage area is existing or new and proposed to be added. The only reference to the square footage figures in the City's approval is in the project description, and nowhere in the City record is the history of guest house square footage explained. The language of the City's project description, conversion of a detached guest house with storage, omits the square footage of the existing structure. The City's approval simply recognizes the resulting 1,164 square footage.

Thus, it appears that the development approved by the City is expansion of a 639 square foot guest house to 1,164 square feet, and conversion of the resulting, larger guest house to an accessory dwelling unit. It appears then that a 525 square foot addition was approved by the City. If so, this addition represents an increase of more than 50% in square footage (an increase of 82%). If so, this would make the project approved by the City a "major remodel" as that term is defined in the City's certified local coastal program (LCP).

The certified LCP requires that, when a project constitutes a “major remodel,” existing nonconformities must be brought into conformance with the requirements of the City’s certified LCP. The certified LCP prohibits buildings on the sand portion of the beach, unless necessary for public health and safety. A private guest house or accessory dwelling unit (ADU) are not necessary for public health and safety. Thus, the presence of the guest house/ADU on the sand portion of the beach appears to be non-conforming. If the development approved by the City constitutes a major remodel, as it appears to, then nonconformities such as the guest house/ADU would be required under the LCP to be removed. But neither the major remodel nor the removal of nonconformities is addressed in the City’s approval of local CDP 19-5453.

Moreover, the City’s certified LCP requires that proposed oceanfront development provide a coastal hazards assessment and recordation of a waiver of any rights to future shoreline protection. Neither was required pursuant to the City’s review of the local CDP application.

Additionally, no bluff edge determination was provided, although required by the LCP for development proposed on oceanfront bluff lots such as the subject site. Finally, the analysis of the public access impacts that would result from this expansion and continuance of the guest house on the sand is insufficient to determine whether potential adverse impacts of the subject development to public access would result from the project as approved by the City.

The issues raised by the appellants raise significant questions with regard to the project’s consistency with the City’s certified LCP and with the public access policies of the Coastal Act. A summary of the appellants’ contentions may be found on page 4 of this report. The complete appeal is included as [Exhibit 4](#).

The City’s action approving local CDP 19-5453 is reflected in Director Resolution No. 20-02 ([Exhibit 2](#)). The subject site is located between the first public road (South Coast Highway) and the sea.

Staff recommends that the Commission find a **substantial issue** exists for the reasons summarized above, and as described in greater detail in this report.

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### Exhibits:

- Exhibit 1 – Vicinity Map/Subject Site
- Exhibit 2 – City of Laguna Beach Director Resolution No. 20-02
- Exhibit 3 – Project Plans
- Exhibit 4 – Appeal of Mark & Sharon Fudge
- Exhibit 5 – Public Access at Thousand Steps Beach

## I. MOTION AND RESOLUTION – SUBSTANTIAL ISSUE

**Motion:** I move that the Commission determine that Appeal No. A-5-LGB-20-0017 raises NO Substantial Issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.

Staff recommends a **NO** vote. Following the staff recommendation 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-20-0017 presents 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

The City-approved local coastal development permit would allow conversion of a detached guest house to an ADU at 31941 Coast Highway in Laguna Beach. An appeal was timely filed by Mark & Sharon Fudge on 3/16/2020 ([Exhibit 4](#)).

A summary of the appellants' contentions is listed below (please see [Exhibit 4](#) to review the appeal in its entirety). The appellants contend that the City-approved development is inconsistent with the certified Laguna Beach LCP and with the public access policies of Chapter 3 of the Coastal Act because:

1. Construction on a beach is prohibited. Policy 1E of the Open Space Conservation Element portion of the certified Local Coastal Program Land Use Plan prohibits construction on the sand portion of the beach unless necessary for public health and safety; and the subject project, the conversion of a private guest house to a private ADU, is not necessary for public health and safety.
2. The proposed development constitutes a "major remodel" as defined in the certified LCP's Land Use Element (LUE) Glossary. Past City actions recognize the guest house structure's square footage as 639 square feet. The City's approval of local CDP 19-5453 recognizes the structure now as 1,164 square feet. This increase in size of more than 50% means the project should be considered a major remodel pursuant to the certified LUE definition. The implications of the subject development constituting a "major remodel" were not considered in the City's approval of CDP 19-5453, inconsistent with the requirements of the certified LCP.
3. The subject guest house structure is non-conforming due to its presence on the sandy beach. The enlargement of the structure is also nonconforming, but not **legally** non-conforming. Certified LUP LUE Action 7.3.10 allows legally nonconforming, **principal** structures to be maintained and repaired, but "improvements that increase the size or degree of nonconformity" including major remodels, require that the nonconformity be brought into conformance with the LCP. The subject guest house structure is both NOT legally conforming and NOT a principal structure, and so must be brought into conformance (i.e. removed) in order to be consistent with the City's certified LCP. In addition, LUE Action 7.3.5 prohibits development on oceanfront bluff faces, except for certain public improvements. The existing bluff funicular and stairway at the subject site are not consistent with this requirement of the LUE. If the guest house must be removed, based upon the above requirements, then the stairway and funicular which connect the principal residence with the guest house, are made obsolete, non-conforming structures that must also be removed. This was not considered in the City's approval of CDP 19-5453.
4. No bluff edge determination was made in conjunction with the City's action on CDP 19-5453. Because no bluff edge determination was made, it is not possible to determine whether unpermitted development at the site encroaches beyond the oceanfront bluff setback. Such encroachment would be inconsistent with

certified LUE Policy 7.3.8 and LUE Actions 7.3.9 and 7.3.10, which require: unpermitted and/or obsolete development on oceanfront bluff sites to be removed; require that new development on oceanfront bluffs waive any future rights to shoreline protection; and, that, with major remodels, nonconforming development be brought into conformance.

5. No coastal hazards analysis or sea level rise analysis was required or provided in conjunction with the City's action on local CDP 19-5453, inconsistent with LUE Action 7.3.2 and with LUE Action 7.3.11. LUE Action 7.3.2 requires all applications for new development to determine potential threats from coastal and other hazards. LUE Action 7.3.11 requires that all new development on oceanfront property provide a wave uprush and impact report. Although a coastal hazards analysis was prepared in 2016 for a project related to proposed work on the main house at the subject site, it specifically states: "*The proposed remodel project is entirely to the main structure and no work is proposed to the accessory structure.*" That coastal hazards analysis is not only out of date, but specifically does not apply to the subject guest house located on the sandy beach.
6. The City's action on CDP 19-5453 did not require a waiver of future shoreline protection device, inconsistent with LUE Action 7.3.9, which requires such a waiver with new development, major remodels, and additions to existing structures on oceanfront and oceanfront bluff sites.
7. The development approved by the City under CDP 19-5453 would potentially have adverse impacts on public access, inconsistent with Coastal Act Section 30210 and 30211 and with the certified LCP. The development approved by the City would allow use of the private building on the beach to be intensified, further inhibiting public access to the beach in the area. This impact will only increase when future sea level rise is considered. In addition, Policy 3-G of the Open Space/Conservation Element portion of the certified LUP requires recordation of an offer to dedicate an easement for public access and recreational use on and along the beach as a condition of approval of any new development including additions greater than 10% for projects located between the first public road and the sea. No condition requiring this was imposed on CDP 19-5453.
8. Permitting history at the subject site appears to indicate that the currently existing 1,164 square foot guest house did not receive valid CDPs for its current configuration. As such, the conversion of the potentially unpermitted structure from a guest house to an ADU cannot be permitted because the structure itself is not legally permitted. The appellants refer to concerns raised regarding this aspect of the project in their appeal of the project considered under A-5-LGB-17-0073, and request that that appeal be considered a substantive file document in this appeal.

### **III. LOCAL GOVERNMENT ACTION**

On January 30, 2020, the City of Laguna Beach Director of Community Development approved local CDP No. 19-5453 with no conditions. No public hearing occurred for the action allowing an accessory dwelling unit on an R-1 zoned lot.

The City's Notice of Final Local Action for Local CDP No. 19-5453 was received in the Coastal Commission's Long Beach Office on March 2, 2020, and the Coastal Commission's required 10 working-day appeal period was established. On March 16, 2020, within the appeal period, the appeal of Mark and Sharon Fudge was received. No other appeals were received. The 49<sup>th</sup> working day from the date the appeal was filed is May 26, 2020, although this date was tolled by California Governor Newsom's Order N-52-20, issued April 16, 2020, making the effective date July 27, 2020. However, the applicant waived the requirement that the Commission act within that window.

#### **IV. APPEAL PROCEDURES**

Coastal Act Section 30603 provides for the appeal to the Coastal Commission of certain CDP decisions in jurisdictions with certified LCPs. The following categories of local CDP decisions are appealable: (a) approval of CDPs for development that is located (1) 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) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff, or (3) in a sensitive coastal resource area; and (b) for counties, approval of CDPs for development that is not designated as the principal permitted use under the LCP. (See Coastal Act Section 30603(a)(1)-(4).) This project is appealable because it is located between the sea and the first public road paralleling the sea, and it is within 300 feet of both the top of the seaward face of a coastal bluff and the inland extent of a beach.

The grounds for appeal under Section 30603 of the Coastal Act are limited to allegations that the development does not conform to the certified LCP or to the public access policies of the Coastal Act. Section 30625(b) of the Coastal Act requires the Commission to consider a CDP for an appealed project de novo unless a majority of the Commission finds that "no substantial issue" is raised by such allegations. Under Section 30604(b) of the Coastal Act, if the Commission accepts an appeal and reviews the project de novo, in order to be able to approve a CDP for a project, the Commission must find that the proposed development is in conformity with the certified LCP. If a CDP is approved for a project that is located between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone, Section 30604(c) of the Coastal Act also requires an additional specific finding that the development is in conformity with the public access policies of Chapter 3 of the Coastal Act. This project is located between the nearest public road and the sea and thus this additional finding must be made (in addition to a finding that the proposed development is in conformity with the certified City of Laguna Beach LCP) for Commission to approve the project following a de novo review.

After a final local action on a local CDP application, the Coastal Commission must be noticed within five days. (14 CCR § 13331.) After receipt of such a notice, which contains all the required information, a ten working-day appeal period begins during which any aggrieved person or any two members of the Commission may appeal the

local decision to the Coastal Commission. (14 CCR §§ 13110, 13111.) As provided under section 13318 of Title 14 of the California Code of Regulations, the appellant must conform to the procedures for filing an appeal as required under Section 13111, including identification of the specific grounds for appeal and a summary of the significant question raised by the appeal.

The action currently before the Commission is to find whether there is a “substantial issue” or “no substantial issue” raised by the appeal of the local approval of the proposed project. Sections 30621 and 30625(b)(1) of the Coastal Act require 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 for appeal.

Commission staff recommends a finding of **substantial issue**. If the Commission decides that the appellants’ contentions raise no substantial issue as to conformity with the certified LCP or the public access policies of the Coastal Act, the action of the local government becomes final. Alternatively, if the Commission finds that a substantial issue exists with respect to the conformity of the action of the local government with the public access policies of Chapter 3 of the Coastal Act and with the certified LCP, the local CDP is voided and the Commission may continue the public hearing to a later date in order to review the coastal development permit as a de novo matter. Section 13321 of the Coastal Commission regulations specifies that de novo actions will be heard according to the procedures outlined in Sections 13114 and 13057-13096 of the Commission’s regulations.

If there is no motion from the Commission to find no substantial issue, it will be presumed that the appeal raises a substantial issue and the Commission may schedule the de novo phase of the public hearing on the merits of the application at a hearing following the substantial issue finding. If the Commission decides to hear arguments and vote on the substantial issue question, those who are qualified to testify at the hearing, as provided by Section 13117 of Title 14 of the California Code of Regulations, typically (at the discretion of the Chair) will have three minutes per side to address whether the appeal raises a substantial issue.

The only persons qualified to testify before the Commission on the substantial issue question are the Applicant, persons who opposed the project before the local government (or their representatives), and the local government. (14 CCR Section 13117.) Testimony from other persons regarding the substantial issue question must be submitted in writing. (*Id.*) Any person may testify during the de novo CDP determination stage of an appeal (if applicable). The Commission will then vote on the substantial issue matter. It takes a majority of Commissioners present to find that the grounds for the appeal raise no substantial issue.



## V. FINDINGS AND DECLARATIONS – SUBSTANTIAL ISSUE

### A. Project Location & Description

The City's action on local CDP 19-5453 would allow conversion of "an existing detached guest house with storage to a 1,164 square-foot accessory dwelling unit in the R-1 zone (Residential Low Density) on an oceanfront property. Scope of work includes converting the upper level 476 square-foot storage area to two bedrooms and a bathroom within the existing roof line." CDP 19-5453 was approved pursuant to Director Resolution No. 20.02. The City's action included approval by the Director of Community development, as reflected in the Director Resolution. No local public hearing was held.

The subject property is a 7,381 square foot oceanfront bluff lot located at 31941 Coast Highway, Laguna Beach, Orange County ([Exhibit 1](#)). The site abuts Thousand Steps Beach in South Laguna Beach, and is located between the first public road (Coast Highway) and the sea. The subject property fronts 36 feet along Coast Highway and extends 240 feet seaward, down a steep slope, and onto the sandy beach. The subject site is zoned Low Density Residential, R-1. The site is currently developed with a primary residence and a two-car garage at the street level, and a detached guest house on the sand below at the base of the bluff. A funicular tram and private stairway on the site provide private access between the primary residence and the guest house on the beach and to the beach itself. The development proposed as part of the locally approved coastal development permit subject to this appeal is limited to conversion of the guest house on the beach. Public access from Coast Highway to Thousand Steps beach is available via a public access stairway located approximately 275 feet downcoast/south of the project site, at 9<sup>th</sup> Avenue.

### PRIOR CDP History

A smaller version of the existing structure on the beach was originally approved by Orange County in 1963 (Use Variance 5269), as a 639 square foot guest house. In 1983, the County approved CDP 83-03z<sup>1</sup> for restoration of the guest house following winter storm damage. In 1993, the City approved CDP 93-15 for work on the main house. In 1995, the City approved Use Permit UP097, but no CDP, to convert the guest house to a second residential unit. In 2003, the City approved CDP 03-23 for a deck extension and stairs in the bluff setback area. In 2016, the City approved CDP 16-707 for work on the main house and replacement of windows and doors on the guest house. In 2017, the City approved CDP 17-2013 for foundation work related to the main house. CDP 17-2013 was appealed to the Coastal Commission (A-5-LGB-17-0073), and the Commission found the appeal to raise a substantial issue. Subsequently, the applicant withdrew the project at the local level, prior to de novo review by the Coastal Commission. All of these past actions are listed in the City's approval resolution 20-02. Some of these past actions included work to the main residence. None of these past

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<sup>1</sup> Until its 1989 annexation into the City of Laguna Beach, the South Laguna area of Laguna Beach was unincorporated County area. This geographic segment of Orange County was subject to a County certified Local Coastal Program.

actions approved an expansion in square footage from the originally approved 639 square feet approved by the County in 1963.

In addition to the past actions listed in the City's approval resolution for the subject development, in 1983 the Coastal Commission approved CDP 5-83-516 at the subject site, which allowed reconstruction of the guest house on the beach, replacing the existing house in kind, with the exception that additional footings for the foundation would be placed. This permit also did not approve expansion in square footage beyond the originally approved 639 square feet (approved by the County in 1963). Thus, it appears that the proposed project would actually result in the addition of 525 square feet of living area to the approved 639 square feet. If so, the addition would represent an addition of approximately 82% over the approved 639 square feet of living area.

### **LCP Background/Standard of Review**

The City of Laguna Beach Local Coastal Program was certified by the Commission on January 13, 1993. The City's LCP Land Use Plan portion is comprised of a variety of planning documents including the Land Use Element (LUE) and Open Space/Conservation Element (OSC); the Implementation Plan portion of the LCP is comprised of a number of documents including Title 25 of the Laguna Beach Municipal Code (Zoning). The standard of review for this appeal is consistency with the certified Local Coastal Program and with the public access policies of the Coastal Act.

### **B. Factors Considered In Substantial Issue Analysis**

Section 30625(b)(2) of the Coastal Act states that the Commission shall hear an appeal of a local government action unless it finds that no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603. The term "substantial issue" is not defined in the Coastal Act or its implementing regulations. Section 13115(b) of the Commission's regulations provides that the Commission may consider the following five factors when determining if a local action raises a significant issue:

1. The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the relevant provisions of the certified LCP;
2. The extent and scope of the development as approved or denied by the local government;
3. The significance of the coastal resources affected by the decision;
4. The precedential value of the local government's decision for future interpretations of its LCP; and,
5. Whether the appeal raises local issues, or those of regional or statewide significance.

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

Staff is recommending that the Commission find that **a substantial issue** exists with respect to whether the local government action conforms to the provisions of the certified Local Coastal Program and the public access policies of Chapter 3 of the Coastal Act for the reasons set forth below.

### **C. Substantial Issue Analysis**

As stated in Section IV of this report, the grounds for an appeal of a CDP issued by the local government are the project's conformity with the policies of the LCP and with the public access policies of the Coastal Act. The Commission shall hear an appeal unless it determines that no substantial issue exists as to conformity with the policies of the LCP and the project's conformity with the public access policies of the Coastal Act.

Section II of this staff report outlined the appellants' contentions regarding the project. In particular, the appellants contend there are significant issues with regard to consistency with the certified LCP related to 1) development on a sandy beach; 2) whether the proposed development constitutes a major remodel, and if so, application of LCP policies that would then apply; 3) application of LCP policies regarding non-conforming development; 4) lack of a bluff edge determination; 5) lack of a coastal hazards analysis/sea level rise assessment; 6) lack of required waiver of future shoreline protection; and, 7) potential impacts to coastal access. The appellants contend that the potential impacts to coastal access are inconsistent with both the LCP and public access policies of the Coastal Act. The appellants cite a number of policies from the Land Use Element of the certified LCP in support of their arguments. Those policies are copied below:

### **SECTIONS OF THE LCP & COASTAL ACT CITED BY THE APPELLANTS**

#### **LAND USE ELEMENT POLICIES:**

**ACTION 7.3.2** Review all applications for new development to determine potential threats from coastal and other hazards. (*Ongoing implementation.*)

**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. (*Ongoing implementation.*)

**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. (*Ongoing implementation.*)

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

**ACTION 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 7.3.11** Require all coastal development permit applications for new development on an oceanfront or on an oceanfront bluff property subject to wave action to assess the potential for flooding or damage from waves, storm surge, or seiches, through a wave uprush and impact report prepared by a licensed civil engineer with expertise in coastal processes. The conditions that shall be considered in a wave uprush study are: a seasonally eroded beach combined with long-term (75 years) erosion; high tide conditions, combined with long-term (75 year) projections for sea level rise; storm waves from a 100-year event or a storm that compares to the 1982/83 El Nino event. (Ongoing implementation.)

**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.

**LAND USE ELEMENT GLOSSARY:**

**MAJOR REMODEL** - Alteration of or an addition to an existing building or structure that increases the square footage of the existing building or structure by 50% or more; or demolition, removal, replacement and/or reconstruction of 50% or more of the existing structure; greater specificity shall be provided in the Laguna Beach Municipal Code.

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

**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.

**OPEN SPACE/CONSERVATION ELEMENT POLICIES:**

**POLICY 1E** Prohibit the construction of buildings and other man-made structures on the sand portion of the beach unless necessary for public health and safety.

**POLICY 3G** Lateral public access along the shoreline shall be assured by requiring as a condition of any new development, including approval for new building construction, additions greater than 10% to building, variances or subdivisions on property between the first public road and the sea, the recordation of an irrevocable offer to dedicate an easement for public access and recreational use on and along the beach. The easement shall extend from the mean high tide line to a specific landward reference point. Depending upon site characteristics, that reference point shall be either: a) the seaward extent of the building; b) the top of the vertical seawall; c) the intersection of sand and revetment; or d) the toe of the bluff.

**MUNICIPAL CODE, TITLE 25 (ZONING)**

25.17.030(B) of Title 25

Each second residential unit approved pursuant to this chapter shall comply with the following standards and criteria:

...

(B) A second residential unit may be attached to or detached from the existing dwelling on the building site, with the exception of certain historic structures as described in subsection (O). Attached and **detached second residential units** shall be allowed on lots having a minimum site area of six thousand square feet, and **may range in size from two hundred seventy-five square feet to a maximum of six hundred forty square feet**, as follows: The maximum second residential unit size shall be determined by multiplying the square footage of the building site by seven percent. (For example, a maximum second residential unit size of four hundred twenty square feet shall be allowable

on a building site of six thousand square feet, and a maximum second residential unit size of six hundred forty square feet shall be allowable on a building site of nine thousand one hundred forty-two square feet or more.) [Emphasis added.]

**25.56.002 NONCONFORMING BUILDING, STRUCTURE OR IMPROVEMENT.**

A nonconforming building, structure or improvement is one which lawfully existed on any lot or premises at the time the first zoning or districting regulation became effective with which such building, structure or improvement, or portion thereof, did not conform in every respect.

Any such nonconforming building, structure or improvement may be continued and maintained, except as otherwise provided in this chapter, but may not be moved in whole or in part unless and except every portion thereof is made to conform to the provisions of this title. (Ord. 1282 § 1, 1994).

**25.56.008 ADDING TO OR ENLARGING NONCONFORMING STRUCTURE.**

A legal nonconforming structure may be enlarged or expanded if:

- (A) The enlargement or expansion complies in every respect with all applicable provisions of this Title 25 Laguna Beach Zoning Code; and
- (B) When Design Review is required, the approval authority finds that the proposed enlargement or expansion and the project as a whole complies with the Design Review Ordinance Intent and Purpose Section 25.05.040(A) and Design Review Criteria as set forth in Section 25.05.040(H). (The existing nonconformities shall be identified in the public hearing notice.); and
- (C) The required number of parking spaces is provided per Chapter 25.52, Parking Requirements. However, existing single-family dwellings that have a nonconforming number of required parking spaces may be enlarged or expanded without complying with the required number of spaces, if the total gross floor area of the residential structure, including the proposed enlargement or addition, does not exceed fifteen hundred square feet and at least one parking space is provided on the property. (Ord. 1515 § 6, 2009; Ord. 1416 § 22, 2002; Ord. 1282 § 1, 1994).

**25.56.009 MODIFICATION OF EXISTING NONCONFORMING STRUCTURE.**

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. (Ord. 1282 § 1, 1994).

The appellants also identify the following public access policies of the Coastal Act in support of their arguments:

**COASTAL ACT SECTION 30210**

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

**COASTAL ACT SECTION 30211**

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

**Appellants' Argument: Nonconforming Development on Sandy Beach**

The appellants contend that construction on sandy beach is prohibited per Policy 1E of the Open Space Conservation Element portion of the certified Local Coastal Program Land Use Plan, which does prohibit construction on the sandy portion of the beach unless necessary for public health and safety. The subject project, conversion of a private guest house to a private accessory dwelling unit (ADU) with expanded living area, is not necessary for public health and safety. Thus, the presence of the guest house on the sandy beach is inconsistent with Policy 1E of the OS/C Element of the certified LCP.

The subject guest house structure is non-conforming due to its presence on the sandy beach. The appellants contend that the enlargement of the structure is also nonconforming, but not **legally** non-conforming as the enlargement of living area was never legally permitted. Moreover, the appellants contend, certified LUE Action 7.3.10 allows legally nonconforming, **principal** structures to be maintained and repaired, but "improvements that increase the size or degree of nonconformity" including major remodels, require that the nonconformity be brought into conformance with the LCP. The appellants contend that the subject guest house structure is both NOT legally conforming (due to the expanded living area) and NOT a principal structure (the guest house is accessory to the main house), and because the proposed project must be understood to include the increase in square footage, it increases the size and degree of nonconformity and constitutes a major remodel. Thus, the appellants argue, pursuant to 7.3.10, this project constitutes new development and requires that the preexisting structure be brought into conformance with the LCP. In this case, that means it would need to be removed, in order to be consistent with OS/C Element Policy 1E of the City's certified LCP (no development on a sandy beach).

LUE Action 7.3.5 prohibits development on oceanfront bluff faces, except for certain public improvements. LUE Policy 7.3.8 requires the removal, where applicable, of unpermitted and/or obsolete structures that encroach into oceanfront bluffs. LUE Action 7.3.10 requires that when development constitutes a "major remodel" (as defined in the LUE Glossary), pre-existing, nonconforming oceanfront or oceanfront bluff structures must be brought into conformity with the LCP, which includes LUE Actions 7.3.5 and 7.3.8. The appellants contend that the increased square footage and conversion of the guest house constitutes a major remodel that in turn requires the existing, non-conforming bluff funicular and private stairway at the subject site to be removed. The appellants contend that, if the guest house must be removed, based upon the above requirements, then the stairway and funicular become obsolete, non-conforming structures that must also be removed.

The appellants cite Section 25.17.030(B) of Title 25 of the Laguna Beach Municipal Code, a portion of the Implementation Plan portion of the certified LCP, which limits the maximum size of second residential units to 640 square feet. The subject guest house, which was approved by the City for conversion to an accessory dwelling unit (ADU) or, in other words, a second residential unit, was approved at 1,164 square feet. This appears to make the ADU approved by the City inconsistent with this section of the LCP. The City is in the process of updating its code to be compliant with new State laws related to ADUs and the City has indicated it will submit an LCP Amendment specific to ADUs in the future. The appellants recognize that State law that became effective on 1/1/2020 may affect Section 25.17.030(B), but contend that because the appealed CDP was submitted to the City in 2019 (as reflected in the local CDP number, which is 19-5453) the state law that went into effect on 1/1/2020 would not apply. This question was not addressed in the City's approval of CDP 19-5453, which approved a second residential unit larger than 640 square feet. Rather, the City's approving Resolution 20.02 simply finds that the proposed guest house footprint will not change and the project conforms with the various requirements of the LCP, with no further explanation.

The appellants also cite Section 25.56.008 of Title 25, which addresses adding to or enlarging nonconforming structures. Section 25.56.008 states that legal nonconforming structures may be enlarged or expanded if (A) "the enlargement or expansion complies in every respect with all applicable provisions" of Title 25. Further, the appellants cite Section 25.56.009 of Title 25 which addresses modification of existing nonconforming structures. Section 25.56.009 states, "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 contend that the proposed development is nonconforming with Open Space/Conservation (OS/C) Element Policy 1E which prohibits development, including private residential development, on the sandy beach and with Section 25.17.030(B) of Title 25 which limits the size of second residential units to 640 square feet. The appellants further cite Sections 25.56.008 and 25.56.009 of Title 25 which allows expansion or enlargement of nonconforming development only when it complies in every respect with the provisions of Title 25 and requires that if any part of a nonconforming struct is substantially modified, it must be rebuilt in conformance with zoning regulations. The appellants contend that the intent of these Sections is to require removal of nonconforming structures when they are altered, as is proposed.

Clearly, the presence of the guest house on the beach is nonconforming. The fact that the guest house was approved in 1963 at 639 square feet, and the record does not cite any subsequent permits that allowed expansion of the approved 639 square feet, raises the question of whether the currently existing guest house on the beach should appropriately be considered legal nonconforming or, perhaps more accurately, illegally nonconforming. Moreover, the appellants contend that with the extent of proposed development, it is appropriate that the nonconforming guest house be removed. Further, the appellants contend that, if the guest house is removed, the existing funicular and private stairs become non-conforming, obsolete structures, which consequently must



also be removed. However, in approving the local CDP for the project, the City's approval resolution did not address the existing development's nonconforming status, and makes no statement as to whether the status constitutes a legal nonconforming structure or not. Consequently, because the nonconforming status of the guest house is not addressed, the question of whether the removal of the nonconforming guest house, as well as, the funicular and private stairs, is required by the provisions of the LCP, is also not addressed. The City's approval of the project is silent on both of these questions.

The LCP policies cited above suggest that there are at least questions regarding whether the structure that is the subject of this project proposal is a legal nonconforming structure and whether the development approved by the City under CDP 19-5453 triggered additional LCP requirements, such as that the nonconforming development be removed. However, there is no discussion in the City's approval or in the record regarding whether the development is nonconforming or whether it should be removed in order to be consistent with the applicable sections of the certified LCP. Therefore, the City's approval of the project does raise substantial issue regarding conformity with the City's certified LCP.

### **Appellants' Argument: Major Remodel, Nonconforming Development & Permitting History**

The appellants contend that the development approved by the City constitutes a "major remodel" as defined in the certified LCP's Land Use Element (LUE) Glossary. Past City, County, and Coastal Commission actions recognize the guest house structure's square footage as 639 square feet. The City's approval of local CDP 19-5453 recognizes the structure now as 1,164 square feet. The City's approval Resolution 20-02 lists past permit approvals related to the subject guest house ([Exhibit 2](#)). In addition to the past actions listed in the City's approval resolution for the subject development, the Coastal Commission approved CDP 5-83-516 for work at the subject site, allowing reconstruction of the 639-square-foot guest house on the beach, replacing the existing house **in kind** with the exception that additional foundation footings were approved. Thus, none of the referenced permits approved expansion of the guest house's square footage beyond the 639 square feet originally approved by the County in 1963. Thus, based on the current square footage of 1,164 square feet, it appears that the proposed project would actually result in the addition of 525 square feet of living area to the originally approved 639 square feet. If so, the addition would represent an increase of approximately 82% over the originally approved 639 square feet of living area.

Permitting history at the subject site appears to indicate that the currently existing 1,164 square foot guest house did not receive valid CDPs for its current configuration. As such, the conversion of the potentially unpermitted structure from a guest house to an ADU may not be permissible if the current structure itself has not been legally permitted.

The project description approved by the City allows conversion of "an existing detached guest house with storage to a 1,164 square-foot accessory dwelling unit" and

acknowledges that the “scope of work includes converting the upper level 476 square-foot storage area to two bedrooms and a bathroom within the existing roof line.” But the difference in area between the 1,164 square foot guest house and the originally approved 639 square foot guest house is 525 square feet. If 476 square feet is added to 639 square feet the total is 1,115 square feet, not 1,164 square feet. In any case, even if the increase in square footage is only 476 square feet, that would still be an increase of more than 50% of 639 square feet. It is not clear from the City record how the guest house square footage went from 639 to 1,164 square feet. Project plans included in the City record do not provide clarification. The LUE defines “Major Remodel” to include addition to a structure that increases the square footage by 50% or more. Based solely on the originally approved 639 square feet compared to the current 1,164 square feet, it appears that the project approved by the City would constitute a major remodel. But it remains unclear how the various square footages were determined.

The appellants contend that the apparent increase in the size of the subject guest house is well more than 50%, and thus the project should be considered a major remodel pursuant to the certified LUE definition. If the project approved by the City does constitute a “major remodel”, then the LCP LUE Sections 7.3.5, 7.3.8, and 7.3.10 require that all nonconformities must be brought into conformance with the certified LCP. However, none of these questions and issues was addressed in the City’s approval of CDP 19-5453. Rather, approving Resolution 20.02 simply finds that the proposed guest house footprint will not change and the project conforms with the various requirements of the LCP, with no further explanation.

Permitting history at the subject site appears to indicate that the existing 1,164 square foot guest house did not receive valid CDPs for its current configuration. As such, the conversion of the potentially unpermitted current structure from a guest house to an ADU raises questions as to whether it can be permitted if the structure itself in its current form is not legally permitted and a new structure could not be approved in the location on the sand beach. There is no discussion in the record regarding how the change in square footage was determined and whether the project constitutes a major remodel or not. Therefore, the City’s approval of a CDP for the project does raise a substantial issue regarding conformity with these portions of the LCP.

**Appellants’ Argument: Bluff Edge Determination**

No bluff edge determination was made in conjunction with the City’s action on CDP 19-5453. The LUE Glossary defines “bluff edge.” LUE Policy 7.3.8 refers to structures on oceanfront and oceanfront blufftop sites that encroach into oceanfront bluffs. LUE Policy 7.3.10 refers to structures that are non-conforming as to the oceanfront and/or oceanfront bluff edge setback. LUE Policy 10.2.6 requires all new development located on an oceanfront bluff top to be setback from the bluff edge a sufficient distance to ensure stability and safety from erosion and to avoid the need for protective devices. The appellants contend that, because no bluff edge determination was made, it is not possible to determine whether existing (i.e. the funicular and stairs) development at the site is nonconforming as to the oceanfront and oceanfront bluff setback referenced in LUE Policies 7.3.8 and 7.3.10.

The location of the bluff edge is important in determining whether development is located beyond the bluff edge setback, and whether such encroaching development would be inconsistent with certified LUE Policies 7.3.8 and 7.3.10, which require that unpermitted and/or obsolete development on oceanfront and oceanfront bluff sites to be removed (7.3.8); and that legally non-conforming development be removed with new development/major remodels (7.3.10). Although with development on the slope between the upper (street) level of the property and the beach, it may seem obvious that retaining such development is inconsistent with the LUE policies cited above, the appellant is raising the question of whether that determination may even be made without a formal bluff edge determination.<sup>2</sup>

There is no evidence in the City record that a bluff edge determination was prepared. Because the subject property is a bluff top site, a bluff edge determination would be used to determine an appropriate setback as required by LUE Section 10.2.6. There is no discussion in the City record regarding what oceanfront bluff setback would be appropriately required, and, relatedly, what existing development may be inconsistent with that oceanfront bluff top setback. The approving resolution finds that the development is in conformance with the LCP because “the proposed project is limited to the existing footprint of existing structures and does not include any foundation work.” However, the existing funicular and stairs located on the slope between the upper level of the subject property and the beach may be non-conforming, obsolete, and/or unpermitted. If any of these circumstances apply to the funicular or stairs, they may need to be removed. However, no evidence that such an evaluation occurred appears in the City record of the project, and therefore the project does raise substantial issue regarding conformity with the setback requirements of the certified LCP.

### **Appellants’ Argument: Coastal Hazards Analysis & Waiver of Future Shoreline Protection**

No coastal hazards analysis or sea level rise analysis was required or provided in conjunction with the City’s action on local CDP 19-5453. The appellants contend that this lack of hazards analysis is inconsistent with LUE Action 7.3.2 and with LUE Action 7.3.11. LUE Action 7.3.2 requires all applications for new development to determine potential threats from coastal and other hazards. LUE Action 7.3.11 requires that all new development on oceanfront property provide a wave uprush and impact report. Although a Coastal Hazards Analysis was prepared in 2016 for a project related to proposed work on the main house at the subject site, it specifically states: “*The proposed remodel project is entirely to the main structure and no work is proposed to the accessory structure.*” That coastal hazards analysis is not only out of date, but specifically does not apply to the subject guest house located on the sandy beach.

In addition, the City’s action on local CDP 19-5453 did not require a waiver of any future shoreline protection device. The appellants content this is inconsistent with LUE Action 7.3.9, which requires such a waiver with new development, major remodels, and

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<sup>2</sup> In the appeal ([Exhibit 4](#)), the appellants state: “Because there has been no determination of where the bluff edge lies at this property, it is impossible to determine whether or not there is unpermitted development at the site that encroaches into the oceanfront bluff.”

additions to existing structures on oceanfront and oceanfront bluff sites, such as the subject site.

According to the City's approval Resolution 20-02, a County permit (CDP 83-03z) allowed restoration of the guest house that was damaged during winter storms. The Coastal Commission's 1983 CDP for the guest house (5-83-516) described the work as "reconstruction" of a guest house on the beach. This suggests that the El Nino storms of 1982/83 severely damaged the guest house. This site history underscores the need to evaluate the hazards at the site relative to the subject development. However, regarding coastal hazards, the City's approving Resolution 20.02 finds: "The proposed development will minimize the alterations of natural landforms and will not result in undue risks from geological and erosional forces and/or flood and fire hazards in that the proposed project is limited to the existing footprint of existing structures and does not include any foundation work." No evaluation of actual hazards that exist at the site was conducted. As discussed above, the existing guest house may be nonconforming and/or unpermitted in its current configuration. It also may constitute a major remodel. Any of these aspects would require consideration of whether the existing structure may legally remain as is. In any case, LUE Action 7.3.11 requires that all CDP applications for development on oceanfront properties subject to wave action must include a report assessing the potential for flooding or damage from waves, storm surge, including consideration of sea level rise projections over the long-term (75 years). Clearly the guest house location on a sandy beach is required by the certified LCP to be evaluated for such hazards, but based on the City's record, such evaluation was not required and did not occur.

In addition, LUE Action 7.3.9 requires that new development, major remodels and additions to existing structures on oceanfront sites not rely on existing or future shoreline protection devices for protection from coastal hazards, and the history at least raises a question of whether the subject development might need such future armoring in order to be safe. Moreover, LUE Action 7.3.9 requires that all such new development on bluff property expressly require a waiver of any rights to new shoreline protection in the future and recordation of such waiver on the title of the property as a deed restriction. At a minimum the proposed development appears to constitute an addition to the pre-existing guest house (an apparent increase from 639 square feet to 1,164 square feet), and so appears to trigger the need to comply with LUE Action 7.3.9 to provide a coastal hazards report and LUE Action 7.3.11 to require a waiver of future shoreline protection. However, the project was approved by the City with no special conditions and no such report or waiver were required or included in the City record. Therefore, the project as approved by the City does raise a substantial issue regarding conformity with these aspects of the LCP.

**Appellants' Argument: Public Access**

The appellants contend that the development approved by the City under local CDP 19-5453 would potentially have adverse impacts on public access, inconsistent with Coastal Act Section 30210 and 30211 and with the public access requirements of the certified LCP. The appellants raise concerns that the development approved by the City would allow use of the private building on the beach to be intensified, both by increasing

the permitted square footage from 639 to 1,164 as well as intensifying the use from an accessory guest house to an accessory dwelling unit. The appellants contend that these actions as approved by the City will further inhibit public access to the beach in the area. Further contentions by the appellants include: these impacts will only increase when future sea level rise is considered; and, Policy 3G of the Open Space/Conservation Element portion of the certified LUP requires recordation of an offer to dedicate an easement for public access and recreational use on and along the beach as a condition of approval of any new development including additions greater than 10% for projects located between the first public road and the sea. No condition requiring an offer to dedicate an easement for public access was imposed in conjunction with the City's approval of local CDP 19-5453.

As mentioned above, OS/C Element Policy 1E prohibits structures on the sand portion of the beach unless necessary for public health and safety. Despite this LCP requirement, the City's approval does not explain how the continued presence of the guest house on the sandy beach, as allowed by approval of local CDP 19-5453, is consistent with this requirement nor does it provide any explanation as to why it should be allowed to be converted to a new use, the larger ADU. Furthermore, the City's approval does not require a condition imposing recordation of a public access easement as required OS/C Element 3G nor does it provide any explanation as to why it may not be applicable in this case.

The subject guest house is located on sandy beach, adjacent to Thousand Steps public beach. Thousand Steps Beach is accessed from Coast Highway by the public access stairway located opposite the end of 9<sup>th</sup> Avenue, approximately 275 feet downcoast of the subject site ([Exhibit 5](#)). Both the Coastal Act and the City's LCP require that public access to the coast be maximized. In approving local CDP 19-543, regarding public access, the City's approval resolution states (Section 2, subsection A):

“The proposed development will not encroach upon any existing physical accessway legally utilized by the public or any proposed public accessway identified in the adopted local coastal program land use plan in that the closest public accessway to Thousand Steps beach is located approximately 275 feet to the south of the project site at 9<sup>th</sup> Avenue. The proposed development will be limited to its site boundaries and will not encroach upon any existing physical accessways.”

While this section of the City's approval resolution discusses public access, it does not address whether the continued presence of the private guest house structure on the sandy beach, and proposed enlarged ADU adjacent to the public beach, would have adverse impacts on public access over the life of the structure by virtue of its presence on the beach, apart from whether it blocks an existing or proposed accessway. Typically, and consistent with the Commission's adopted Sea Level Rise Guidelines, the Commission considers a 75-year life for such development. The appellants raise the question of how this development, taken together with future sea level rise, could impact public access at the site over its expected life. It appears from the record, as reflected in

the 1983 permits for the guest house, that the structure is already subject to severe storm damage under current El Nino type storm events. This likely will only be exacerbated with expected future sea level rise. One of the expected impacts of sea level rise is the narrowing, and potentially, the ultimate disappearance of sandy beach over time. As the beach narrows, the sand area available to the public is reduced more and more over time. Private development located adjacent to the public beach area tends to inhibit public use of the remaining public sandy beach area. However, none of these concerns (storm impacts currently and with future sea level rise, or the psychological impact of having a large private structure located directly adjacent to the public areas of a beach) regarding public access are addressed in the City's approval. Moreover, the City's approval does not recognize or address the requirements of OS/C Element Policies 1E and 3G, which prohibit private development on sandy beach and require recordation of an offer to dedicate a public access easement, respectively. The City's approval does not discuss how these policies are applicable in this case. No evidence that an evaluation of potential public access impacts occurred appears in the City record for the project. Therefore, the project does raise a substantial issue regarding conformity with these aspects of the LCP.

#### **FIVE FACTORS AND CONCLUSION**

Applying the five factors discussed earlier leads to the conclusion that the appeal raises a significant issue with respect to conformance with the certified LCP.

The first factor is 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 LCP and public access policies of the Coastal Act. As described above in the Substantial Issue Analysis (incorporated herein by reference), the City record does not include an adequate degree of factual and legal support for its decision that the development is consistent with the relevant policies of the LCP or the public access policies of the Coastal Act. Therefore, the Coastal Commission finds that the City provided an inadequate degree of factual and legal support for its decision.

The second factor is the extent and scope of the development as approved or denied by the local government. In this case, the project is relatively small in extent and scope (one guest house) and so this factor is not relevant to the question of whether the appeal raises a significant issue

The third factor is the significance of the coastal resources affected by the decision. The impacts to the site due to coastal hazards and impacts to public access on a sandy beach are potentially significant and support a finding of substantial issue.

The fourth factor is the precedential value of the local government's decision for future interpretations of its LCP. The development approved by the City is a private residence on the sandy beach. At Thousand Steps beach alone, based on Google photos, there are at least two other similar structures on the sandy beach. Moreover, other types of development such as bluff stairways and funiculars, and patio development at the base of the bluff are present at Thousand Steps beach and at other oceanfront properties throughout the City. Because the City's approval did not consider significant LCP

policies as they apply to ocean front properties, if unaddressed, this decision could indeed set a negative precedent. It is important that all aspects of the proposed development's conformance with the applicable LCP and public access policies of the Coastal Act be considered, including whether a project constitutes a major remodel or not, whether hazards will impact the proposed development over its expected life, and how public access will be impacted. In this case, the City record does not explain how the subject structure increased from the approved 639 square feet to 1,164 square feet. Based on these numbers, it appears the development approved by the City should be considered a major remodel. But the City record does not include information as to whether the project does or does not constitute a major remodel, but nevertheless approves the project as if it is not a major remodel. In trying to bring nonconformities into conformance, such as the subject guest house structure, this question must be addressed, but was not addressed in the City's action. The issue of application of the major remodel standard on oceanfront sites has major implications with virtually all of the oceanfront properties in the City of Laguna Beach. Thus, the project as approved by the City could be considered precedential, especially with regard to when development does or does not constitute a major remodel, and the related question of when nonconformities, such as the guest house on the sandy beach, should be removed. Therefore, the decision of the local government on this project could adversely influence future permit decisions made in the City's coastal zone.

The final factor is whether the appeal raises local issues, or those of regional or statewide significance. Issues relating to oceanfront development arise up and down the state. Questions related to hazards, exacerbated by expected future sea level rise, are universal to the State and require analysis of the point at which a project becomes a major remodel and removal of nonconformities must be required. In addition, issues relating to how to require new development to avoid hazards in order to maximize public access is also of statewide concern. Therefore, the City's approval does raise issues of regional and statewide significance.

For all of the reasons described above, the Commission finds that the appeal raises a **substantial issue** as to conformity with City of Laguna Beach's certified LCP and with the public access policies of Chapter 3 of the Coastal Act.

#### **D. Coastal Act and Local Coastal Program Violations**

Violations of the Coastal Act and LCP exist on the subject property, including, but not necessarily limited to, unpermitted expansion of a 639 square foot guest house to 1,164 square feet and conversion of the guest house to an accessory dwelling unit, all of which occurred on a sandy beach. By letter dated August 22, 2019, Commission enforcement staff notified the City and property owner that conversion of the guest house into a second dwelling unit and increase in the square footage of the structure constitute violations of the Coastal Act and Local Coastal Program, and requested that the property owner return the structure to its pre-violation condition or remove it. However, the City-approved local CDP 19-5453 would allow, after the fact: conversion of a detached guest house with storage to a 1,164 square foot accessory dwelling unit,

including converting the upper level 476 square foot storage area to two bedrooms and a bathroom within the existing roof line.

This finding that substantial issues exist with respect to the conformity of the City's approval to the LCP and the Coastal Act's public access policies, pursuant to the staff recommendation, will result in violations remaining on the subject property. Commission review and action on this appeal does not constitute a waiver of any legal action with regard to the alleged violations (or any other violations), nor does it constitute an implied statement of the Commission's position regarding the legality of the development undertaken on the subject site without a coastal permit, and the Commission retains all of its authority to address these outstanding violations of the Coastal Act and LCP.