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STAFF REPORT: APPEAL – SUBSTANTIAL ISSUE

Appeal No.: A-5-LGB-20-0083

Applicant: Matthew Williams

Agents: Morris Skenderian

Local Government: City of Laguna Beach

Local Decision: Approval with Conditions

Appellants: Mark & Sharon Fudge

Project Location: 1685 Viking Road, Laguna Beach, Orange County
(APN: 644-218-04)

Project Description: Appeal of City of Laguna Beach Coastal Development Permit 20-6901 for demolition of remnants of an approx. 2,520-sq. ft., 22-ft. high (above grade) single-family residence, installation of security fence and implementation of erosion control measures, removal of construction debris, request to retain non-conforming beach stairs, and after-the-fact request for installation of stabilization devices to support temporary shoring on the bluff face.

Staff Recommendation: Find that a substantial issue exists.

SUMMARY OF STAFF RECOMMENDATION

The subject site is an approximately 9,955-square-foot beachfront lot located on the bluff above the Agate Street public beach in Laguna Beach. The City of Laguna Beach’s action on Local CDP No. 20-6901 approves the demolition of the “remnants of an existing single-family dwelling” and allows non-conforming appurtenant structures within the bluff setback areas to remain at 1685 Viking Road. Demolition of less than 50 percent of the home was authorized in 2014 pursuant to a previous CDP No. 5-13-0080. The applicant’s work on the site exceeded the scope of that CDP, and now only remnant framing of the original single-family residence exists.

Staff recommends that the Commission determine that a **substantial issue exists** with respect to the grounds on which appeal number A-5-LGB-20-0083 has been filed for the following reasons: the City’s decision that the development is consistent with the provisions of the LCP regarding new development on an ocean-fronting bluff and bluff protective devices was not adequately supported by documents in the record file or the local CDP’s findings. In addition, it appears the local CDP fails to address the unpermitted demolition work to the single-family residence that has already occurred on the site. Furthermore, the City’s record does not clearly identify all other potentially unpermitted components that have occurred on the site prior to the subject application, and the City’s findings do not adequately address unpermitted and non-conforming development on the site. . Further information is required to determine whether or not the project is consistent with the relevant policies of the LCP and the public access policies of the Coastal Act. In addition, more information is necessary to adequately evaluate and address any existing nonconformities (and potentially unpermitted development) that exist on the site. A summary of the appellants’ contentions may be found on pages 4 of this report. The complete appeal is included as [Exhibit 3](#).

IMPORTANT HEARING PROCEDURAL NOTE: The Commission will not take public testimony during the “substantial issue” phase of the appeal hearing 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. (14 CCR § 13115(d).) 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. (14 CCR § 13117.) If the Commission finds that the appeal raises a substantial issue, the de novo phase of the hearing will occur at a future Commission meeting, during which it will take public testimony.

PLEASE NOTE THAT THIS WILL BE A VIRTUAL MEETING. As a result of the COVID-19 emergency and the Governor’s Executive Orders N-29-20 and N-33-20, this Coastal Commission meeting will occur virtually through video and teleconference. Please see the Coastal Commission’s Virtual Hearing Procedures posted on the Coastal Commission’s webpage at www.coastal.ca.gov for details on the procedures of this hearing. If you would like to receive a paper copy of the Coastal Commission’s Virtual Hearing Procedures, please call 415-904- 5202.

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EXHIBITS

[Exhibit 1 – Project Location](#)

[Exhibit 2 – Site Plans](#)

[Exhibit 3 – Appeal](#)

[Exhibit 4 – City Resolution for Local CDP No. 20-6901](#)

I. MOTIONS AND RESOLUTIONS

Motion: I move that the Commission determine that Appeal No. A-5-LGB-20-0083 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. Failure of this motion will result in a de novo hearing on the application, and 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 I:

The Commission hereby finds that Appeal No. **A-5-LGB-20-0083** presents a **SUBSTANTIAL ISSUE** with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the certified Local Coastal Plan and/or the public access policies of the Coastal Act.

II. APPELLANTS' CONTENTIONS

On December 29, 2020, Mark and Sharon Fudge filed an appeal during the ten (10) working day appeal period ([Exhibit 3](#)). No other appeals were received. Mark and Sharon Fudge submitted an email to the City of Laguna Beach Design Review Board in opposition to the project the day of the local hearing and thus qualify as "aggrieved persons" pursuant to Coastal Act Section 30801 and Title 14, California Code of Regulations, Section 13111. The appellants contend that the City's approval does not comply with the policies of the City's certified LCP. More specifically, the appellants contend and allege the following:

- 1) Bluff edge was improperly determined because the City did not account for previous excessive grading at the site, which is not consistent with the LCP/LUE definition of "bluff edge."
- 2) The City should have addressed and required the removal of unpermitted and/or obsolete development that encroaches into oceanfront bluffs.
- 3) The City should have required that pre-existing structures that are nonconforming as to the ocean and oceanfront bluff setback be brought into conformity with the LCP.
- 4) The project has been bifurcated and piecemealed, which is not appropriate.
- 5) The City's deferral of the requirement to incorporate drainage improvements to a later time is inappropriate.

III. LOCAL GOVERNMENT ACTION

On June 26, 2014, the City of Laguna Beach Design Review Board (DRB) conditionally

approved a local CDP (No. 13-0080) and a CEQA Categorical Exemption for an 859-square-foot net addition to a single-family residence, new garage, construction more than 15 feet above grade, stringline violation, skylights, pool/spa, grading, landscaping, and maintenance of nonconforming side and blufftop setbacks. This project was limited to less than 50 percent demolition and fell just below the City of Laguna Beach (City) certified LCP's threshold of a "major remodel." City-imposed conditions of approval included:

- The car lift and lower level car storage area be replaced with a garage of the same size with an elevation not to exceed 67.17;
- The ridge skylights have automatic night shades installed that are light sensitive to be closed at night;
- The pool have a solar cover and be used to minimize evaporation;
- The 20-foot Palm be replaced with a smaller Palm that does not exceed 12 feet in height; and
- All basement storage area within the setback have a floor to ceiling height of no more than six feet."

In 2017, the building permit issued for the work that was authorized under local CDP 13-0080 expired after the City issued a stop work order due to the project having deviated from the permitted construction at the subject site. The site is subject to an active City code enforcement case.

On November 12, 2020 the DRB held a public hearing for consideration and subsequent conditional approval of the Local CDP subject to this appeal (No. 20-691), Variance (20-6902), and CEQA Categorical Exemption authorizing the applicant's request to:

"...demolish the remnant of the single-family dwelling, remove construction debris, install stabilization devices to the temporary shoring (after-the-fact request) at the north and south of the excavated site, and install security fence and erosion control measures..."

The DRB adopted a Categorical Exemption in accordance with the California Environmental Quality Act (CEQA) guidelines. No local appeal was filed.

On December 14, 2020, the Commission received the City's Notice of Final Action for the approval of the local CDP and opened a 10 working day appeal period. On December 29, 2020, Mark and Sharon Fudge filed an appeal to the California Coastal Commission during the ten (10) working day appeal period. No other appeals were received by the Commission.

IV. APPEAL PROCEDURES

After certification of an LCP, the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on CDP applications. Development approved by cities or counties may be appealed if located within certain geographic appealable areas, such as development 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.

Section 30603(a)(1) of the Coastal Act establishes the project site as being 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 a beach. The project site would also qualify as an appealable area based on Section 30603(a)(2) because of its location on the bluff. The issues raised in the subject appeal, on which the Commission finds there is a substantial issue as described below, apply to proposed development located in the appeals area.

Grounds for Appeal

The grounds for appeal of an approved local CDP in the appealable area are stated in Section 30603(b)(1):

(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 a de novo hearing 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) of the Coastal Act. If Commission staff recommends a finding of substantial issue, and there is no motion from the Commission to find no substantial issue, the substantial issue question will be considered presumed, and the Commission will proceed to the de novo public hearing on the merits of the project. A de novo public hearing on the merits of the project uses the certified LCP as the standard of review. (Coastal Act 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. (Id. 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 applicants, 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 Mr. Mark Fudge opposed the project in person at the local hearing. Testimony from other persons must be submitted in writing.

Upon the close of the public hearing, the Commission will vote on the substantial issue matter. It takes a majority of Commissioners present to find that no substantial issue is raised by the local 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.

IV. FINDINGS AND DECLARATIONS – SUBSTANTIAL ISSUE

A. PROJECT LOCATION AND DESCRIPTION

The subject site is a 9,955-square-foot beachfront lot at 1685 Viking Road in the South Laguna area of the City of Laguna Beach, Orange County ([Exhibit 1](#)). The project site is developed with remnant framing of a single-family residence, in addition to erosion control measures, side yard retaining walls and potentially non-conforming bluff retaining wall and temporary shoring, and non-conforming private beach access stairs. The subject site is zoned Village Low Density and is surrounded by single-family residential development on three sides. The subject lot is a quadrilateral-shaped lot, with the two corners fronting Viking Road. Single-family residences also exist on either side of the subject site. The subject lot is located between the first public road (South Coast Highway) and the sea (Agate Street Beach).

The City's action on Local CDP No. 20-6901 approves the demolition of the "remnants of an existing single-family dwelling"¹ and allows non-conforming appurtenant structures within the bluff setback areas to remain at 1685 Viking Road in Laguna Beach ([Exhibit 2](#)). The locally approved project subject to this appeal includes the installation of stabilization devices (e.g., pad footings) to support temporary shoring (after-the-fact request), installation of security fence and implementation of erosion control measures, removal of

¹ Demolition of less than 50 percent of the single-family residence was authorized under a previous city-approved CDP (No. 13-0080). The applicant's work onsite exceeded the scope of local CDP 13-0080, and now only remnant framing of the original single-family residence exist onsite.

construction debris, and request to retain non-conforming beach access stairs on the bluff face.

The City granted a variance offering after-the-fact authorization of the installation of some of the temporary shoring within the LCP-required 25-foot bluff edge setback. Therefore, portions of the temporary shoring are also non-conforming.

B. LOCAL COASTAL PROGRAM CERTIFICATION

The City of Laguna Beach Local Coastal Program (LCP) was certified on January 13, 1993. The City's LCP is comprised of a Land Use Plan (LUP) and an Implementation Plan (IP). The City's Land Use Plan is comprised of a variety of planning documents including the Land Use Element (LUE), Open Space/Conservation Element, Technical Appendix, and Fuel Modification Guidelines (of the Safety General Element of the City's General Plan as adopted by Resolution 89.104). The Implementation Plan (IP) of the City of Laguna Beach certified Local Coastal Program (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 Local Coastal Program (LCP), but there are four areas of deferred certification in the City: Irvine Cove, Blue Lagoon, Hobo Canyon, and Three Arch Bay. The project site is located within the City of Laguna Beach's certified jurisdiction and is subject to the policies of the certified LCP.

C. FACTORS TO BE CONSIDERED IN SUBSTANTIAL ISSUE ANALYSIS

Section 30625(b)(2) of the Coastal Act requires 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) of the Coastal Act. Section 13115(c) of the Commission regulations provides that the Commission may consider the following five factors when determining if a local action raises a substantial issue:

1. The degree of factual and legal support for the local government's decision that the development, as approved, is consistent 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 any factor. Staff is recommending that the Commission find that substantial issue exists with respect to the grounds on which this appeal has been filed pursuant to Section 30603(a) of the Coastal Act.

D. SUBSTANTIAL ISSUE ANALYSIS

As stated in Section IV of this report, the grounds for an appeal of a CDP issued by the local government are the project's non-conformity with the policies of the LCP. The subject coastal development permit is appealable to the Commission due to the project's location between the first public road and the sea, as well as its location on an ocean-fronting blufftop lot. The appellants' grounds for appeal are attached as [Exhibit 3](#).

Appellants' Argument No. 1: Bluff edge was improperly determined.

The appellants assert that the bluff edge was improperly determined because the applicant's geotechnical consultants and the City did not account for previous excessive grading at the site, which the appellants argue is not consistent with the Land Use Element (LUE) definition of "bluff edge" in the certified Local Coastal Program (LCP), and therefore, all requirements relating to blufftop development have not been properly assessed.

Entry 101 of the Land Use Element (LUE) Glossary, contains the following definition of Oceanfront Bluff Edge or Coastal Bluff Edge (**emphasis added**):

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.

The LUE definition of a coastal bluff edge notes that bluff edges typically retreat over time as a result of grading (cut). In its staff report, the City states that in the 2020 Coastal Hazards Analysis report prepared by Borella Geology Inc., it is noted that the top of the bluff (or bluff edge) that is consistent with the LUE's definition of "bluff edge" is located at a height of 42 to 50 feet above mean sea level. However, beyond the project plan simply identifying the "Top of Coastal Bluff" (or bluff edge) and the City's staff report stating that the plans correctly reflect the location of the LUE-defined coastal bluff edge, there is no rationale or other information in the City's record detailing the bluff edge's consistency with the certified LCP. Such a rationale was not provided in the 2020 Coastal Hazards Analysis and it is unclear whether previous grading was taken into account in determining the bluff edge pursuant to the certified LCP. Additional information provided to Commission staff following the appeal is not sufficient to adequately determine the bluff edge of the development site. Consequently, a site visit by Commission staff may be warranted.

Accurately depicting the bluff edge and applying the required primary structure and accessory structure setbacks could require conditions or modifications to the approved project. Therefore, this contention raises a substantial issue.

Appellants' Argument No. 2: City should have required removal of unpermitted and/or obsolete structures that encroach into oceanfront bluffs.

The appellants assert that the City should have required the removal of all unpermitted and/or obsolete development pursuant to LUE Action 7.3.8 as part of this demolition project. The appellants allege that the project site contains both obsolete (seawall) and unpermitted structures (stairway repair and guardrail replacement in 2012 and retaining wall replacement in 1997). The appellants assert that the City instead inappropriately allowed these unidentified elements to remain, inconsistent with LUE Action 7.3.8, and only required that these elements be removed if the applicant does not obtain the applicable permits for future residential development within two years.

Action 7.3.8 of the LUE of the certified LCP states:

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

LUE Action 7.3.8 requires, where applicable, that applications for development on oceanfront bluff sites identify and remove all unpermitted and/or obsolete structures which encroach into oceanfront bluffs.

Regarding unpermitted structures on the project site the appellants allege the following:

1. The replacement of bluff retaining wall (located on bluff face) circa 1997 was done without a local CDP, is unpermitted, and should be removed.
2. In 2012, City granted a building permit to the property owner to 'repair beach stairs and replace guardrails per approved plans'. But no local CDP was granted and, therefore, this work was unpermitted and should be addressed as part of the current demolition application.
3. In 2012, new caissons were installed without local CDP.

The locally approved permit provides after-the-fact approval for the unpermitted installation of stabilization devices (e.g., pad footings) to support temporary shoring at the north and south of the project site. The City's record, however, does not address the additional alleged unpermitted development nor does it clearly identify all other potentially unpermitted components of the project. It appears the local CDP fails to address the unpermitted demolition work to the single-family residence that has already occurred on the site and only authorizes the demolition of the "remnants" of the single-family residence. Demolition of less than 50 percent of the single-family residence was authorized under a previous city-approved CDP (No. 13-0080). The applicant exceeded the scope of that local CDP 13-0080, and now only remnant framing of the original single-family residence exists onsite.

Further information is required to determine whether or not the project is consistent with the relevant policies of the LCP and the public access policies of the Coastal Act. In addition, more information is necessary to adequately evaluate and address any existing unpermitted development that exist onsite.

Even if the structures encroaching into the oceanfront bluff that are appurtenant to the single-family residence are legally permitted or existed prior to the effective date of the Coastal Act (1977), these structures may nevertheless be “obsolete” if they are not safe and/or do not comply with applicable safety codes. The City’s record does not fully address this issue.

Additionally, because the locally approved permit would allow the remnants of the existing single-family residence to be demolished (which will result in the complete, cumulative, demolition of the residence), appurtenant structures that encroach into the oceanfront bluff face such as, but potentially not limited to, the non-conforming beach stairway and bluff retaining wall (potentially bluff retention/protective device), would no longer be able to perform their intended function to serve the pre-Coastal Act residence. Thus, these structures will become obsolete once the residence is demolished (most of which has already occurred).

Allowing the local government’s decision to authorize the perpetuity of structures potentially encroaching into bluff edge setback areas or sited on a bluff face would set bad precedent for future interpretations of the City’s certified LCP. Therefore, this contention raises a substantial issue.

Appellants’ Argument No. 3: City should have required pre-existing structures that are nonconforming as to ocean bluff setbacks be brought into conformity with LCP.

The appellants assert that the City should have required that non-conformities be brought into conformance but instead the City approved a variance to allow them to continue which is not appropriate. In addition, the appellants assert that the locally approved project includes the construction of new non-conforming pad footings and after-the-fact approval of a variance for encroachments into the required setbacks from the bluff edge pursuant to the certified LCP and cite LUE Action 7.3.10.

Action 7.3.10 of the LUE of the certified LCP states:

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 of oceanfront bluff structure to be brought into conformity with the LCP.

In response to LUE Action 7.3.10, the City found that the residence is a legal nonconforming structure that maintains encroachments on the bluff face and within the

bluff edge setback. However, given that more than 50 percent of the residence has already been demolished, the residence is no longer a legal nonconforming structure. Furthermore, also in response to LUE Action 7.3.10, the City's staff report states that the project includes the demolition of the remnants of the residence but also includes new improvements (i.e., new pad footing and after-the-fact approval for encroachments within the setback) that constitute new development. However, there is no discussion on how these components of the project are actually consistent with LUE Action 7.3.10, and the City's findings do not discuss alternatives such as requiring that the nonconforming conditions be corrected.

The City, however, did condition the permit requiring "nonconforming items (the beach access stairs and other miscellaneous hardscape items)" to be removed if the property owner does not obtain applicable permits for future residential development within two years from the final action of the Board to be consistent with this Land Use Element Action.

Allowing the local government's decision to authorize the perpetuity of structures and/or approve new improvements/structures that will potentially encroach into bluff edge setback areas or those sited on a bluff face would set bad precedent for future interpretations of the City's certified LCP. Therefore, this contention raises a substantial issue.

Appellants' Argument No. 4: The project has been bifurcated and piecemealed, which is not appropriate.

The appellants assert that the project has been bifurcated and piecemealed to avoid environmental review. The appellants compare the city-approved project with another application that also involved the demolition of a single-family residence on an ocean-fronting bluff property, which was appealed to the Coastal Commission and subsequently heard by the Commission as a de novo application (No. A-5-LGB-17-0033; Dimitry). In 2018, the Dimitry project was subject to a lawsuit. One of the grounds for the lawsuit was that the project was improperly segmented because the demolition of the existing single-family residence was reviewed and approved without consideration of the new single-family residence that was already being separately proposed. In 2018, the demolition project was remanded to the Coastal Commission for further proceedings.

The appellants assert that in this case (A-5-LGB-20-0083), the applicant has already begun plans to redevelop the property with a new single-family residence. The applicant's Coastal Hazards Analysis alludes to the proposal of a new residence at the property, which notes that the new residence will be sited at approximately the same elevations as the existing residence.

The appellants contend that if the issues concerning the bluff edge determination, removal of obsolete and unpermitted structures is not addressed as part of this project, the applicant may assert some type of 'vested rights' claim to assure that these decisions made by the City remain in force. In fact, the City's errors in applying its LCP for one application would not provide the property owner with a vested right to rely on the same errors in a future application (e. g. incorrect bluff edge identification or bluff edge setback requirements), but it would set a bad precedent for the City's own interpretation of its LCP.

The LCP does not have policies regarding piecemealing, so that issue alone does not raise a substantial issue; however, both the vested rights concern and the piecemealing concern relate to the City’s misapplication of LUE Action 7.3.8 and LUE Action 7.3.10 discussed in the previous contentions, which do raise a substantial issue.

Appellants’ Argument No. 5: Drainage improvements a later time is inappropriate and violates the LCP.

The appellants assert that the City’s deferral to require drainage improvements as part of the locally approved project was inappropriate and violates the LCP. The appellants contend that LUE Action 7.3.6 requires the incorporation of drainage improvements when new development occurs and not later in some point in time. The appellants argue that drainage improvements should be implemented now, especially considering the history of erosion problems at the site which precipitated the placement of a seawall in 1980.

Action 7.3.6 of the LUE of the certified LCP 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.

Both the City’s certified Local Coastal Program (LCP) and the Coastal Act require a coastal development permit for demolition of an existing structure. The City’s certified LCP Implementation Plan (IP) *Title 25 Zoning*, Section 25.07.006(D), which basically tracks the Coastal Act definition of development, defines “development” as follows (**emphasis added**):

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

The proposed project constitutes development (demolition of remnants of the residence, the principal structure onsite). However, installation and construction of new accessory structures, such as new drainage improvements, without retention of the principal structures to which they would be appurtenant, is not appropriate.

In any case, the City-approved project includes erosion control measures to prevent erosion problems at the site and the applicant’s geotechnical consultants concluded that the drainage on the property is adequate with water draining downward to the base of the bluff. Therefore, the City did address issues regarding onsite drainage. Thus, this contention does not raise a substantial issue.

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 or inconsistent with the certified LCP.

The City did not substantially support its approval of the project’s consistency with all of the applicable policies of the certified LCP and the public access and recreation provisions of the Coastal Act (specifically the bluff top/face policies). Therefore, there is a low degree of factual and legal support for the local government’s decision, and this factor supports a substantial issue finding.

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

The local government granted a local CDP for the cumulative demolition of a single-family residence and new construction/installation of accessory structures on the subject site located on an ocean-fronting blufftop property. The record does not contain an adequate analysis of the proposed development’s potential cumulative effects on similar development in Laguna Beach bluff areas. Therefore, it is not possible at this time to determine the extent and scope of the project, and this factor supports a finding of substantial issue.

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

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 also can have significant impacts on scenic resources and public access opportunities. The LCP and the Coastal Act provide coastal bluffs with special protections. This factor supports a finding of substantial issue.

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

Allowing the local government’s decision to approve improvements or authorize the perpetuity of structures potentially encroaching into bluff edge setback areas or sited on a bluff face would set bad precedent for future interpretations of the City’s certified LCP. If the subject local CDP is found to be consistent with the LCP based on the current record, there is a potential that future applicants, especially within the vicinity, will reference this permit if they wish to develop other oceanfront coastal bluff sites, of which there are hundreds in Laguna Beach. Without adequate information to determine the bluff edge and the extent and scope of the proposed development, allowing the City’s local CDP approval to stand would result in adverse precedence regarding application of the LCP’s various resource protection policies (specifically, relating to bluff top/face development). This factor supports a finding of substantial issue.

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

significance.

Bluff face and blufftop development are issues of statewide significance, given that coastal bluffs are an important coastal resource throughout the state, not just in Laguna Beach. (See third factor above.) Requiring consistency with the certified LCP (particularly policies relating to bluff face/top development) and the public access and recreation provisions of the Coastal Act is significant to all the people of California who wish to enjoy the public beaches of California. Unsubstantiated and erroneous application of these policies could have regional or statewide ramifications regarding other similar LCPs and LCP policies regarding bluffs. This factor supports a finding of substantial issue.

Conclusion

In conclusion, staff recommends that the Commission find that a substantial issue exists 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.